

Disappearing Human Rights Defenders: Russia's Human Rights Violations and International Crimes in Ukraine

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Cover Image: Protest in Kherson, March 9, 2022.
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FORWARD

This report describes the patterns of forced disappearance, arbitrary detention, and forcible transfer and deportation that have cascaded from the Russian war of aggression¹ against Ukraine. The Russians have pursued their “special military operation” with Machiavellian shamelessness (to borrow Justice Robert Jackson’s description of Nazi “methods for subverting people’s liberty and establishing their dictatorship”).² The irony is that Vladimir Putin’s Victory Day speech on May 9, 2022³ attempted to justify aggression against Ukraine by analogy to the Great War effort that eliminated Nazism. The OSCE meetings in Warsaw provide a forum for helping orchestrate a “whole of the Free World” approach towards protecting human rights and facilitating the pursuit of justice for crimes committed in Ukraine, including the numerous disappearances of human rights defenders and other civilians at the hands of Russian forces and affiliated actors.

Current circumstances in Ukraine present profound challenges that threaten the fabric of the rules-based international order. Indeed, as the U.S. Representative to the United Nations pointed out in her prepared intervention to the U.N. Security Council on September 7th, 2022,⁴ the pattern of forcible deportation and transfer represent predicate crimes for the overarching offense of illegal annexation. The OSCE Office for Democratic Institutions and Human Rights agreed that “Russia is the aggressor and therefore responsible for all human suffering in Ukraine, whether or not it results from violations of IHL.”⁵

Legal efforts to address war related crimes are an essential corollary to diplomatic, military, and economic efforts aimed at building sustainable peace in the region. In her comments to the United Nations Security Council on April 27, 2022, Ambassador Van Schaack assured the world that “those who unleashed, perpetrated, and ordered these crimes must be held to account. And the evidence of this criminality is mounting daily. And our simple message to Russia’s military and political leadership and to the rank-and-file is this: the world is watching, and you will be held accountable.”⁶ May this report and these meetings portend progress towards holding the perpetrators of these crimes accountable and restoring the basic human rights of the people of Ukraine.

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- 1 See, e.g., Open Society Justice Initiative, *Model Indictment for the Crime of Aggression Committed against Ukraine*, May 2022, <https://www.justsecurity.org/wp-content/uploads/2022/05/osji-model-indictment-for-crime-of-aggression-committed-against-ukraine-may-2022.pdf>.
- 2 Justice Robert Jackson’s Final Report to the President Concerning the Nuremberg War Crimes Tribunal (6 June 1945), available at https://www.roberthjackson.org/wp-content/uploads/2015/01/Justice_Jackson_s_Final_Report.pdf.
- 3 See The Spectator, *Read Vladimir Putin’s victory day speech in full* (9 May 2022), <https://www.spectator.co.uk/article/read-vladimir-putin-s-victory-day-speech-in-full>; Robyn Dixon et al., *On Victory Day, Putin defends war on Ukraine as fight against ‘Nazis’*, THE WASHINGTON POST (9 MAY 2022), <https://www.washingtonpost.com/world/2022/05/09/russia-victory-day-putin-speech-ukraine/>.
- 4 <https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-un-security-council-meeting-on-russias-filtration-operations/>.
- 5 Professors Wolfgang Benedek, Veronika Bílková and Marco Sassòli, *Report on Violations of International Humanitarian Law and Human Rights Law, War Crimes, and Crimes Against Humanity Committed in Ukraine Since 24 February 2022*, OSCE Office for Democratic Institutions and Human Rights (ODIHR) (13 April 2022), available at <https://www.osce.org/files/f/documents/f/a/515868.pdf#page=11>.
- 6 Ambassador Beth Van Schaack, Remarks at a UN Security Council Arria-Formula Meeting on Ensuring Accountability for Atrocities Committed by Russia in Ukraine (27 April 2022), available at <https://usun.usmission.gov/remarks-at-a-un-security-council-arria-formula-meeting-on-ensuring-accountability-for-atrocities-committed-by-russia-in-ukraine/>.

■ EXECUTIVE SUMMARY

Human rights defenders and other civilians have been disappearing around Ukraine since the February 24th invasion by Russian forces. Their disappearances appear to be part of a systematic effort by The Russian Federation to terrorize the Ukrainian population and break local resistance. The disappearances have, in fact, become so widespread and the victims so numerous, that they appear to be part of an official Russian State policy to disappear and detain civilians who oppose the Russian invasion and occupation.

Local human rights advocates as well as the international community - including the United States Representative to the United Nations and the Head of the United Nations Human Rights Monitoring Mission in Ukraine - have become increasingly vocal about the potential crimes and human rights violations being committed by Russian troops and proxy groups.

This report highlights the individual cases of five human rights defenders who were taken from their homes or abducted in the street after participating in peaceful protests, while delivering basic humanitarian aid, or speaking out on social media against the Russian invasion/occupation. These five individuals, like hundreds - or even thousands - of other Ukrainian civilians, were detained without a court order and taken to an unknown location where they were held incommunicado, for days or weeks or months, while Russian authorities failed or refused to provide their family members with information about their whereabouts. In many cases, the disappeared have been subjected to torture and other cruel and inhuman treatment and/or forcibly transferred to Russian territory.

This report analyzes the enforced disappearances conducted by the Russian military and proxy groups against three international law frameworks: international human rights law, international criminal law, and international humanitarian law. The law across the three frameworks is congruous, protecting the same or similar fundamental rights of disappeared persons and their families and imposing obligations on the violating State. Many of the protections have also become norms under customary international law. Regardless of which legal paradigm the enforced disappearances and accompanying detentions are examined under, the perpetrators are committing gross violations and the Russian State is failing to fulfill its duties.

The report concludes by setting forth recommendations aimed to ensure that the perpetrators are held accountable for the numerous human rights violations and international crimes implicated by these enforced disappearances. Specifically, the author urges the international community, local NGOs and civil society actors, and the government of Ukraine to take active steps to:

- Support the family members of the disappeared defenders and civilians in their efforts to obtain information about the whereabouts of the victims;
- Explore potential avenues that victims and family members may take to seek justice for the disappeared defenders, including but not limited to complaints before the U.N. Human Rights Committee, the U.N. Committee Against Torture, and the Working Group on Enforced and Involuntary Disappearances; and
- Prosecute these and other crimes committed by Russian troops and affiliated perpetrators against human rights defenders to the full extent possible under domestic law, the Rome Statute, and any hybrid tribunal established under legitimate authorities empowered by international law.

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I. BACKGROUND

Reports of Russian forces forcibly disappearing civilians in Ukraine began surfacing as early as the first weeks after the invasion. A number of Ukrainian journalists, activists, civilian humanitarian volunteers and other human rights defenders as well as local politicians have been among those forcibly disappeared. Many have been released within days or weeks of their arrest/abduction - including high profile victims such as Melitopol Mayor Ivan Federov and journalists Oleh Baturyn and Viktoria Roschchina⁷ - while others remain missing more than six months after their disappearance.⁸ Those who have been released have relayed the circumstances of their disappearance and the conditions of their detention, which often included torture.⁹

Between 24 February and 10 May 2022, the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU) documented 204 cases of enforced disappearances, “the overwhelming majority of them [committed] by Russian armed forces and affiliated armed groups.”¹⁰ That number continues

to climb. Just a few weeks later, on 3 June 2022, the HRMMU reported 230 cases of “conflict-related detention and enforced disappearance” at the hands of Russian forces and affiliated groups.¹¹

The numbers published by the Ukrainian government and other sources have been even higher. Between 24 February and June 2022, the Ukrainian government recorded more than 765 cases of forced disappearances, while Ukrainian national police reportedly received more than 9,000 missing persons reports.¹² By July, Ukraine human rights monitors reportedly estimated that at least 600 people had been forcibly disappeared from the Kherson region alone.¹³ During recent remarks given at a U.N. Security Council meeting on Russia’s filtration operations, the U.S. Representative to the United Nations, Ambassador Linda Thomas-Greenfield, reported that estimates from various sources, including the Russian government, are exponentially higher, “indicat[ing] that Russian authorities have interrogated, detained, [and/or] forcibly deported between 900,000 and 1.6 million

⁷ See, e.g., Oleksandr Yankovskiy, ‘They Described How I would Die In Agony’: Ukrainian Journalist Recounts His Brutal Week As A Russian Prisoner, RADIOFREEEUROPE/RADIOLIBERTY (2 MAY 2022), <https://www.rferl.org/a/ukraine-journalist-abducted-russian-prisoner/31830684.html>; Current Time, Mayor of Occupied Ukrainian Town Discusses Abduction by Russian Forces, RADIOFREEEUROPE/RADIOLIBERTY (18 MARCH 2022), <https://www.rferl.org/a/ukraine-melitopol-mayor/31759949.html>; Committee to Protect Journalists, Ukrainian journalist Oleh Baturyn released 8 days after going missing (20 March 2022), <https://cpj.org/2022/03/ukrainian-journalist-oleh-baturyn-released-8-days-after-going-missing/>; Committee to Protect Journalists, Ukrainian journalist Viktoria Roschchina released after 10 days; at least 4 other journalists briefly detained (22 March 2022), <https://cpj.org/2022/03/ukrainian-journalist-viktoria-roshchina-released-after-10-days-at-least-4-other-journalists-briefly-detained/>.

⁸ See discussion of the cases of Serhiy Tsyhipa, Serhii Liubych, and Yevhen Guryanov, *infra*.

⁹ See, e.g., Yankovskiy, ‘They Described How I would Die In Agony’; Human Rights Watch, *Ukraine: Torture, Disappearances in Occupied South* (22 July 2022), <https://www.hrw.org/news/2022/07/22/ukraine-torture-disappearances-occupied-south> (reporting on 71 interviews conducted in the Kherson and Zaporizhzhia regions in which “[t]hey described 42 cases in which Russian occupation forces either forcibly disappeared civilians or otherwise held them arbitrarily, in some cases incommunicado, and tortured many of them.”).

¹⁰ United Nations Office of the High Commissioner for Human Rights (OHCHR), *Plight of civilians in Ukraine: Press briefing on Ukraine by Matilda Bogner – Head of UN Human Rights Monitoring Mission in Ukraine* (10 May 2022), <https://www.ohchr.org/en/press-briefing-notes/2022/05/plight-civilians-ukraine>.

¹¹ United Nations Ukraine, Press Release, *A comment by Matilda Bogner, Head of UN Human Rights Monitoring Mission in Ukraine (HRMMU), on the occasion of 100 days since the Russian Federation began its armed attack on Ukraine* (3 June 2022), <https://ukraine.un.org/en/184833-comment-matilda-bogner-head-un-human-rights-monitoring-mission-ukraine-hrmmu-occasion-100>.

¹² Paulina Villegas and Reis Thebault, *All over Ukraine, people are missing forcing families to become detectives*, THE WASHINGTON POST (19 JUNE 2022), <https://www.washingtonpost.com/world/2022/06/19/people-missing-ukraine-russia-invasion>.

¹³ Human Rights Watch, *Ukraine: Torture, Disappearances in Occupied South*, *supra* note 9; United Nations, *Enforced disappearance a serious human rights violation, used to spread terror*, UN News (30 Aug. 2022), <https://news.un.org/en/story/2022/08/1125802>.

Ukrainian citizens from their homes to Russia.”¹⁴

Moreover, both the Head of the HRMMU, Matilda Bogner, and Ambassador Thomas-Greenfield have hinted that the disappearances and detention by Russian forces and affiliated groups have been committed in furtherance of official state policy. As early as 25 March 2022, at a time when the United Nations (U.N.) had documented just 37 cases of disappeared journalists, activists and local officials, Ms. Bogner noted that these forced disappearances and detainments “‘seem to be a pattern that is occurring’” in Russian-occupied areas.¹⁵ In her remarks made during the 7 September 2022 U.N. Security Council meeting, Ambassador Thomas-Greenfield similarly suggested a pattern in the disappearances, stating: “[T] here is mounting and credible evidence that those considered threatening to Russian control because of perceived pro-Ukrainian leanings are ‘disappeared’ or further detained.”¹⁶

Enforced disappearance is often used as a strategy to spread terror among a population,¹⁷ and international and local human rights advocates believe that the purpose behind the disappearances of Ukrainian civilians by Russian forces and proxy groups is no different.¹⁸ The individual cases discussed in this report are merely illustrative examples of what has been documented as a widespread, State-endorsed practice of enforced disappearance and unlawful detention taking place throughout Ukraine - from Kyiv to Kherson to Zaporizhzhya to Mariupol. In each region, city or village, the practice is the same. Civilians who actively, or appear to, oppose the Russian invasion and occupation - whether by attending peaceful protests, delivering basic humanitarian aid, or speaking out on social media - are taken from

the streets or from their homes, to an unknown location where they are detained for days or weeks or months. They are detained without a warrant or court order, their families are not given information about their whereabouts, they cannot speak to a lawyer or communicate with their families, and in many cases, victims have been forcibly transferred to Russian territory.¹⁹ In June, the U.N. reported that it had corroborated complaints of torture and other ill-treatment of detainees, including blindfolding and tying, beatings with batons and sticks, threats of sexual violence, mock executions, deprivation of food or water, and overcrowded and unsanitary conditions.²⁰

The analysis below outlines the numerous human rights violations and international crimes committed by the Russian Federation and its proxies against Ukrainian human rights defenders and sets forth various avenues by which victims and their families may seek accountability and justice.

14 U.S. Mission to the United Nations, *Remarks by Ambassador Linda Thomas-Greenfield at a UN Security Council Meeting on Russia's Filtration Operations* (7 Sept. 2022), <https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-un-security-council-meeting-on-russias-filtration-operations/>.

15 Xander Landen, *UN Warns of 'Enforced Disappearance' of Journalists, Officials in Ukraine*, Newsweek (25 March 2022), <https://www.newsweek.com/un-warns-enforced-disappearance-journalists-officials-ukraine-1692078>.

16 U.S. Mission to the United Nations, *Remarks by Ambassador Linda Thomas-Greenfield at a UN Security Council Meeting on Russia's Filtration Operations*.

17 See, e.g., Amnesty International, *Enforced Disappearance*, <https://www.amnesty.org/en/what-we-do/enforced-disappearances/> (last accessed 8 Sept. 2022).

18 See Human Rights Watch, *Ukraine: Torture, Disappearances in Occupied South*, *supra* note 9 (“The purpose of the abuse seems to be to obtain information and to instill fear so that people will accept the occupation, as Russia seeks to assert sovereignty over occupied territory in violation of international law[.]”).

19 See, e.g., OHCHR, *Plight of civilians in Ukraine: Press briefing on Ukraine by Matilda Bogner* (reporting that the documentation of “cases where Russian armed forces had detained civilians . . . and transferred them to Belarus and then to Russia, where they have been held in pre-trial detention centres.”).

20 OHCHR, *Situation of human rights in Ukraine in the Context of the Armed Attack by the Russian Federation 24 February – 15 May 2022* (29 June 2022), para. 85, <https://ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>.

II. SELECT CASES OF DISAPPEARED DEFENDERS

A. Olha Haisumova

Olha Haisumova is the head of the non-governmental organization (NGO) Melitopol Conscious Society, an activist, and organizer of pro-Ukrainian protests in Melitopol. Ms. Haisumova was abducted by armed men believed to be “Russian invaders” on 12 March 2022, while the city was under Russian occupation, during a rally calling for the release of Melitopol Mayor Ivan Federov, who had been arrested by the Russian military the day before.²¹ Ms. Haisumova actively posted footage of the rallies on her Facebook page, which was reportedly blocked within hours of her abduction.²²

During her detainment, Ms. Haisumova was reportedly bound in a basement with a bag over her head for nine days.²³ She was also subjected to psychological pressure and forced to sign two documents to secure her release.²⁴ Notably, this information was obtained through unofficial channels and an

interview given by Ms. Haisumova after her release. It appears that Russian authorities never registered or otherwise acknowledged Ms. Haisumova’s detention or communicated her whereabouts to her family. According to Ms. Haisumova in her post-release interview, she does not know exactly where she was held but believes it was a building for military registration.²⁵

B. Serhiy Tsyhipa

Serhiy Tsyhipa is an “activist, blogger, and vocal opponent of Russia’s invasion” of Ukraine.²⁶ Mr. Tsyhipa disappeared on 12 March 2022 from the city of Nova Kakhovka.²⁷ Prior to his disappearance, Mr. Tsyhipa had been very active on social media, particularly Facebook, posting statements and videos about the Russian invasion and pro-Ukraine/anti-invasion sentiments.²⁸ He was reportedly tortured into contacting Ukrainian journalist Oleh Baturin and arranging a meeting during

21 Roman Petrenko, *In Melitopol, the protest coordinator was kidnapped by activists*, PRAVDA (12 MARCH 2022), <https://www.pravda.com.ua/news/2022/03/12/7330665/> (unofficial translation); Hayla Coynash, *Mayor of Melitopol Ivan Federov abducted after refusing to collaborate with the Russian invaders*, KHARKIV HUMAN RIGHTS PROTECTION GROUP (12 March 2022), <https://khhpg.org/en/1608810181>; <https://zmina.info/news/na-hersonshhyni-znyk-aktyvist-sergij-czygipa/>; see also Euromaiden Press, Tweet dated 12 March 2022, <https://twitter.com/euromaidanpress/status/1502576996819386377> (“According to the reports by locals, Russian invaders have kidnapped Olha Haisumova, one of the coordinators of daily Ukrainian protests in Melitopol. . .”).

22 Hayla Coynash, *Mayor of Melitopol Ivan Federov abducted after refusing to collaborate with the Russian invaders*.

23 Zaporozhie Investigative Center, “Russian World” in Melitopol: Searches, Kidnapping, and Torture (20 April 2022), <https://incentre.zp.ua/russian-world-in-melitopol-searches-kidnapping-and-torture/> (reporting that this treatment lasted until 21 March 2022) (unofficial translation); RIA-m.tv, *Seven days with a bag on her head – an activist from Melitopol Olga Gaysumova spoke about her time in captivity* (21 March 2022), https://ria-m.tv/news/280976/sem_dney_s_meshkom_na_golove_aktivistka_iz_melitopolya_olga_gaysumova_rasskazala_o_svoem_prebyivanii_v_plenu.html (unofficial translation).

24 RIA-m.tv, *Seven days with a bag on her head – an activist from Melitopol Olga Gaysumova spoke about her time in captivity* (21 March 2022), https://ria-m.tv/news/280976/sem_dney_s_meshkom_na_golove_aktivistka_iz_melitopolya_olga_gaysumova_rasskazala_o_svoem_prebyivanii_v_plenu.html (unofficial translation).

25 *Id.*

26 Oleskandre Yankovskiy, Volodymyr Mykhaylov, and Yevhenia Tokar, *In A Ukrainian Region Occupied by Russian Forces, People Are Disappearing. Locals Fear It's About To Get Worse* RADIOFREEEUROPE/RADIOLIBERTY (16 MARCH 2022), <https://www.rferl.org/a/ukraine-invasion-kherson-disappearances-russia-kidnapping/31756418.html>.

27 *Id.*; ZMÍNA, *Journalist and public figure Serhiy Tsyhipa disappeared in the occupied Kherson region* (13 March 2022), <https://zmina.info/news/na-hersonshhyni-znyk-aktyvist-sergij-czygipa/>; The Economist, *Russia is disappearing vast numbers of Ukrainians* (7 July 2022), <https://www.economist.com/europe/2022/07/07/russia-is-disappearing-vast-numbers-of-ukrainians>.

28 See Facebook page of Serhiy Tsyhipa, <https://www.facebook.com/tsyhipa?fref=mentions> (last accessed 22 Sept. 2022).

which Baturin was abducted.²⁹

More than six months since his disappearance, Serhiy Tsyhipa is still missing and his whereabouts are unknown.³⁰ According to reports, Mr. Tsyhipa's family has not received any official information from Russian authorities regarding his detainment.³¹

In March, the European Union condemned the abductions, kidnappings, and detainment by Russian troops "and their proxies" of Ukrainian civilians, journalists, civil society activists, and local officials and specifically highlighted the cases of Serhiy Tsyhipa and Olha Haisumova.³²

C. Serhii Liubych and Yevhen Guryanov

Serhii Liubych and Yevhen Guryanov both went missing in March 2022 while distributing humanitarian aid in or around the Russian-occupied city of Bucha. Mr. Liubych and Mr. Guryanov, who are related through marriage,³³ are two among many civilian volunteers who

have been abducted by the Russian military while trying to deliver humanitarian aid in Russian-controlled regions of Ukraine following the February invasion.³⁴

Mr. Liubych was living with his family in Bucha when he went missing on 7 March 2022 while transporting drinking water from Bucha to Hostomel.³⁵ According to eyewitnesses, Russian soldiers detained him, placing a bag over his head when he exited his vehicle, and took him away.³⁶ Liubych's car was found in Hostomel in April after the de-occupation of the city.³⁷ However, Mr. Liubych remains missing.

During the occupation of Bucha, Mr. Yevhen Guryanov began delivering humanitarian assistance in the form of food and water and helped people waiting for evacuation.³⁸ On 18 March 2022, the Russian military took Mr. Guryanov from his home in Bucha after soldiers raided his home and interrogated his family.³⁹ At least one witness identified Mr. Guryanov being held captive near the Antonov airport in the city of Gostomel.⁴⁰ On 23 March 2022, he was

- 29 Hayla Coynash, *Kherson journalist kidnapped by Russian invaders after reporting their violent suppression of a peaceful protest*, KHARKIV HUMAN RIGHTS PROTECTION GROUP (6 APRIL 2022), <https://khpg.org/en/1608810349>; Human Rights Watch, *Ukraine: Torture, Disappearances in Occupied South*, *supra* note 9.
- 30 Zerkalo, *What Russian forces are doing to the population of southern Ukraine – Human Rights Watch report* (25 July 2022), <https://news.zerkalo.io/world/18545.html>. Oleh Baturin's abduction, detention and release were documented extensively by news outlets and non-governmental organizations. See, e.g., *Local journalist goes missing in Kakhovka*, Pravda (12 March 2022), <https://www.pravda.com.ua/eng/news/2022/03/12/7330838>; Hayla Coynash, *Ukrainian journalist Oleh Baturin feared abducted by Russian invaders in Kherson oblast*, KHARKIV HUMAN RIGHTS PROTECTION GROUP (13 MARCH 2022); COMMITTEE TO PROTECT JOURNALISTS, *UKRAINIAN JOURNALIST OLEH BATURYN RELEASED 8 DAYS AFTER GOING MISSING* (20 MARCH 2022), <https://cpj.org/2022/03/ukrainian-journalist-oleh-baturyn-released-8-days-after-going-missing/>; .
- 31 See OMCT SOS-Torture Network, *Ukraine: killings, kidnappings and torture of civilians in territories under Russian control* (5 May 2022), <https://www.omct.org/en/resources/statements/ukraine-kidnappings-and-torture-of-civilians-in-territories-under-russian-control> (noting that Tsyhipa's family learned of his transfer to the Russian Federation through a Russian television segment in which he "was shown defending Russian official arguments," which the family contends was done under duress).
- 32 See European Union External Action, *Ukraine: Statement by the Spokesperson on the abductions of Ukrainian officials and citizens by Russian occupation troops* (20 March 2022), https://www.eeas.europa.eu/eeas/ukraine-statement-spokesperson-abductions-ukrainian-officials-and-citizens-russian-occupation_en.
- 33 Mr. Liubych's wife and Mr. Guryanov's wife are sisters.
- 34 See, e.g., Jake Tapper, *Nine volunteer drivers on rescue mission to Mariupol detained by Russian forces, aid group says*, CNN (11 April 2022) (reporting that nine drivers working with the Ukrainian volunteer group "Help People" were abducted and detained by the Russian military in March 2022 when attempting to evacuate civilians from Mariupol); Joshua Yaffa, *A Ukrainian City Under A Violent New Regime*, THE NEW YORKER (16 May 2022) (REPORTING THAT WHEN A GROCERY STORE OWNER IN MELITOPOL WAS ARRESTED, "THE DISTRIBUTION OF HUMANITARIAN AID WAS CONSIDERED THE PREROGATIVE OF THE RUSSIAN MILITARY"); HALYA COYNASH, *RUSSIA ABDUCTS 25 VOLUNTEERS DELIVERING HUMANITARIAN AID TO MARIUPOL, THREATENS TO PUT THEM 'ON TRIAL'*, KHARKIV HUMAN RIGHTS PROTECTION GROUP (3 JUNE 2022), <https://khpg.org/en/1608810661> (identifying 25 Ukrainians abducted and detained by Russian armed forces while trying to deliver humanitarian aid from Zaporizhzhia to Mariupol); Bogdana Bondarenko, *Russian Army Treatment of Ukrainian Civilians*, EU Political Report (2 Aug. 2022), <https://www.eupoliticalreport.eu/how-the-russian-army-treats-ukrainian-civilians/> (reporting that Yevhen Maliarchuk, one of the volunteer drivers abducted while carrying humanitarian aid from Zaporizhzhia to Mariupol, was detained for more than three months in an occupied territory in the Donetsk region).
- 35 Human Rights Watch, *Russia: Forcible Disappearances of Ukrainian Civilians*, 14 July 2022, <https://www.hrw.org/news/2022/07/14/russia-forcible-disappearances-ukrainian-civilians>; see also Testimony of Liubych's relatives, posted on Facebook, <https://fb.watch/flvrn0TqpS/>.
- 36 Human Rights Watch, *Russia: Forcible Disappearances of Ukrainian Civilians*, 14 July 2022, <https://www.hrw.org/news/2022/07/14/russia-forcible-disappearances-ukrainian-civilians>; Center for Civil Liberties interviews and communications with families, Notes on file with Center for Civil Liberties.
- 37 Center for Civil Liberties interviews and communications with families, Notes on file with Center for Civil Liberties.
- 38 Center for Civil Liberties interviews and communications with families, Notes on file with Center for Civil Liberties. See also Let My People Go, Tweet, 15 Aug. 2022, https://twitter.com/letmypplgoua_en.
- 39 Human Rights Watch, *Russia: Forcible Disappearances of Ukrainian Civilians* (14 July 2022), <https://www.hrw.org/news/2022/07/14/russia-forcible-disappearances-ukrainian-civilians>.
- 40 Center for Civil Liberties interviews and communications with families, Notes on file with Center for Civil Liberties. See also Let My People Go, Tweet, 15 Aug. 2022, https://twitter.com/letmypplgoua_en.

transported to Belarus to a filtration camp in Norovlia.⁴¹ Guryanov was reportedly moved to a pre-trial detention center in Novozybkov in the Bryansk region of Russia on 25 March 2022.⁴²

In August 2022, five months after their disappearance, the Russian Federation finally acknowledged in a letter that arrived through the International Committee for the Red Cross (ICRC) that as of 17 August 2022, Mr. Liubych and Mr. Guryanov are being held in Russia.⁴³ The letter from the Russian Federation's Department of Defense states that Liubych and Guryanov were detained "for countering special military operation" but that information about their whereabouts cannot be given to third parties.⁴⁴ Thus, the letter provides no details about where the men are being held.⁴⁵ The most recent accounts from eye witnesses place both men at the Novozybkov detention center in the Bryansk region of Russia.⁴⁶

Mr. Liubych and Mr. Guryanov have been held largely incommunicado, and have not had access to a lawyer. In August, undated letters arrived from Liubych and Guryanov stating only, "I'm alive and well." and "I'm alive and healthy. Everything is ok.", respectively.⁴⁷ The letters contain no return address or date and no information concerning their whereabouts was provided.⁴⁸

D. Arkadij Dovzhenko

Arkadij Dovzhenko is a Ukrainian human rights defender who was abducted, detained, and tortured by Russian forces in April 2022. After the Russian invasion on 24 February, and particularly when Russian soldiers began to enter Kherson, where he lived, Mr. Dovzhenko began participating in and leading public protests against the Russian invasion and occupation.⁴⁹ He was also posting actively on social media sites, including Facebook and Instagram.⁵⁰ On 21 March 2022, Russian soldiers began shooting and using gas against the peaceful protestors at a rally attended by Mr. Dovzhenko in Kherson; Mr. Dovzhenko believes that he was subsequently watched and targeted by Russian troops.⁵¹

On 21 April 2022, Mr. Dovzhenko was abducted by two men with automatic guns and weapons.⁵² The men forced Mr. Dovzhenko into a car, covered his mouth and tied his hands, and took him to a building that he believes were police headquarters,⁵³ where there were Russian soldiers and other Ukrainians being held in captivity.⁵⁴ Mr. Dovzhenko was held incommunicado for one week. During this time, he was tortured on a daily basis, from which he suffered broken ribs and knee caps.⁵⁵

41 Center for Civil Liberties interviews and communications with families, Notes on file with Center for Civil Liberties. See also Let My People Go, Tweet, 15 Aug. 2022, https://twitter.com/letmypplgoua_en.

42 Information provided by a witness who was released as part of a witness exchange, Notes on file with Center for Civil Liberties.

43 Copy of a letter from the Russian Federation's Department of Defense, on file with the Center for Civil Liberties. See also <https://www.hrw.org/news/2022/07/14/russia-forcible-disappearances-ukrainian-civilians> (reporting that "Ukrainian authorities dealing with POWs have" informed the family that they received information that Serhiy Liubych is in detention in Russia.).

44 Copy of a letter from the Russian Federation's Department of Defense, on file with the Center for Civil Liberties. See also Human Rights Watch, *Russia: Forcible Disappearance of Ukrainian Civilians* (14 July 2022), <https://www.hrw.org/news/2022/07/14/russia-forcible-disappearances-ukrainian-civilians>.

45 Copy of a letter from the Russian Federation's Department of Defense, on file with the Center for Civil Liberties.

46 Human Rights Watch, *Russia: Forcible Disappearance of Ukrainian Civilians* (14 July 2022), <https://www.hrw.org/news/2022/07/14/russia-forcible-disappearances-ukrainian-civilians>. The last witness testimony as to Mr. Guryanov's whereabouts is from 30 April 2022, reporting that Mr. Guryanov remained in the Novozybkov detention center. Information provided by the International Committee of the Red Cross (ICRC) to the Center for Civil Liberties.

47 Information provided by family members to the Center for Civil Liberties.

48 Information provided by family members to the Center for Civil Liberties.

49 Interview with Arkadij Dovzhenko, 29 June 2022, notes on file with the American Bar Association.

50 Interview with Arkadij Dovzhenko, 29 June 2022, notes on file with the American Bar Association.

51 Aljazeera, *Ukraine says Russian forces violently disperse Kherson protest* (21 March 2022), <https://www.aljazeera.com/news/2022/3/21/ukraine-says-russia-shoot-at-protesters-in-occupied-kherson>; User-generated content, *Russian Troops Open Fire on Ukrainian Protesters in Kherson* (video) (21 March 2022), <https://www.rferl.org/a/ukraine-kherson-protesters-fired/31763601.html>.

52 Interview with Arkadij Dovzhenko, 29 June 2022, notes on file with the American Bar Association.

53 Human Rights Watch, *Ukraine: Torture and kidnappings in the occupied south* (29 July 2022), <https://www.hrw.org/ru/news/2022/07/29/ukraine-torture-disappearances-occupied-south>.

54 Interview with Arkadij Dovzhenko, 29 June 2022, notes on file with the American Bar Association.

55 *Id.*; see also Human Rights Watch, *Ukraine: Torture and kidnappings in the occupied south*, *supra* note 53 (describing the circumstances of his abduction and the torture Mr. Dovzhenko suffered in detention).

III. ANALYSIS

The enforced disappearances of Ukrainian human rights defenders, journalists, activists, politicians, and other civilians by Russian forces - including those individuals whose cases are discussed above - have been part of a systematic effort to terrorize the population and break local resistance.⁵⁶ The disappearances - taking place in different regions across Ukraine with hundreds, if not thousands, of victims - represent the hallmarks of an affirmative Russian State policy imposed to remove and detain anyone seen as opposing the Russian invasion and occupation.

These forced disappearances and the accompanying detainments violate international human rights law and international humanitarian law (the law of war)⁵⁷ and constitute a crime against humanity in violation of international criminal law. The three legal frameworks offer different avenues for redress, but the law across all three frameworks is coterminous - protecting the same or similar fundamental rights of disappeared persons and their families and imposing obligations on the violating State, which the Russian Federation is failing to fulfill.

A. Violations of International Human Rights Law

In 1992, the United Nations General Assembly declared enforced disappearance an offence to human dignity and a “grave and flagrant violation” of human rights.⁵⁸ Enforced disappearance has since become the subject of its own U.N. human rights treaty - the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which entered into force in 2010.⁵⁹ The ICCPED defines “enforced disappearance” as:

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such person outside the protection of the law.⁶⁰

56 See, e.g., Lara Bullens, *Russia uses abductions to intimidate Ukrainians in occupied territories*, FRANCE24 (29 MARCH 2022); HUMAN RIGHTS WATCH, *UKRAINE: EXECUTIONS, TORTURE DURING RUSSIAN OCCUPATION* (18 MAY 2022), <https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>; Paulina Villegas and Reis Thebault, *All over Ukraine, people are missing, forcing families to become detectives*, THE WASHINGTON POST (19 JUNE 2022), <https://www.washingtonpost.com/world/2022/06/19/people-missing-ukraine-russia-invasion/>.

57 Under international human rights law and international humanitarian law, the enforced disappearances need not be widespread or systematic - any enforced disappearance constitutes a violation. See ICRC, IHL Data base, *Customary IHL, Rule 98. Enforced Disappearance*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule98 (last accessed 12 Sept. 2022).

58 U.N. General Assembly, *Declaration on the Protection of all Persons from Enforced Disappearance*, Gen. Ass. Res. 47/133 (18 Dec. 1992), Art. 1, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-protection-all-persons-enforced-disappearance>.

59 U.N. General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 Dec. 2006, G.A. res. A/61/177 (2006), entered into force on 23 Dec. 2010, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced> [hereinafter ICCPED].

60 ICCPED, Art. 2. The Inter-American system already had a specific treaty dedicated to forced disappearance, pre-dating the U.N. treaty by more than a decade. See *Inter-American Convention on Forced Disappearance of Persons*, OAS Treaty Series No. 68 (28 March 1996), Article II (defining “forced disappearance” under the Convention “to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.”).

It prohibits enforced disappearance without exception for war, threat of war, internal political instability, or any other public emergency.⁶¹ It aims to prevent enforced disappearances, uncover the truth when disappearances occur, and work to secure justice, truth and reparation for survivors and their families.⁶²

While the Russian Federation has not ratified the ICCPED, and therefore is not bound by its terms, enforced disappearance also constitutes a human rights violation under human rights treaties to which the Russian Federation is a state party, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT).⁶³ Moreover, the Russian Federation is a State party to the First Optional Protocol to the ICCPR, which is the individual communication mechanism that allows individuals whose rights have been violated to bring complaints to the Human Rights Committee⁶⁴ and has accepted the individual complaint mechanism for CAT.⁶⁵

The U.N. Human Rights Committee - the body responsible for monitoring States parties' implementation of the ICCPR - has developed a robust body of jurisprudence on enforced

disappearance. Although the ICCPR does not contain specific reference to “enforced disappearance” in its articles, numerous Views (decisions) issued by the Committee over the past several decades have found enforced disappearances to involve multiple violations of the ICCPR - including as cruel, unusual or inhuman treatment (article 7), deprivation of one’s liberty and security of person (article 9), the right to be treated with humanity and respect for the inherent dignity of the human person (article 10), the right to be recognized as a person before the law (article 16), and the right to life (article 6).⁶⁶

In its early jurisprudence, the Committee adopted the definition of enforced disappearance set forth in Article 7 of the Rome Statute, discussed *infra*.⁶⁷ However, following the entry into force of the ICCPED in 2010, the Committee has moved away from its practice of reiterating the Rome Statute’s definition and embraced that of the ICCPED.⁶⁸ In 2012, the Committee recalled in *Guezout et al. v. Algeria*, Communication No. 1753/2008 (2012) that “in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge that fact or by concealment of

61 ICCPED, Art. 1.

62 Amnesty International, *Enforced Disappearances: Disappearances Convention*, <https://www.amnesty.org/en/what-we-do/enforced-disappearances/> (last accessed 12 Sept. 2022).

63 International Covenant on Civil and Political Rights, 16 Dec. 1966, 999 U.N.T.S. 171, entered into force 23 March 1976, ratified by the Russian Federation 16 Oct. 1973, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=144&Lang=EN; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, 10 Dec. 1984, 1465 U.N.T.S. 85, entered into force 26 June 1987, ratified by the Russian Federation 3 March 1987, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=144&Lang=EN.

64 In order for a complaint to be admissible to the Human Rights Committee, the complaining party must first exhaust domestic remedies.

65 Until 16 September 2022, the Russian Federation was also a state party to the European Convention on Human Rights, which contains a number of human rights guarantees that are violated by enforced disappearance. Council of Europe, *Russia ceases to be a Party to the European Convention on Human Rights on 16 September 2022* (23 March 2022), <https://www.coe.int/en/web/portal/-/russia-ceases-to-be-a-party-to-the-european-convention-of-human-rights-on-16-september-2022>; Aljazeera, *Russian MPs vote to quit European Court of Human Rights* (7 June 2022), <https://www.aljazeera.com/news/2022/6/7/russia-exits-european-court-of-human-rights-jurisdiction>. Although the Russian Federation ceased to be a party to the European Convention on 16 September 2022, during the period in question covered by this report – until 16 September 2022 – it was a state party obligated to respect and fulfil the rights and duties set forth therein.

66 See, e.g., Human Rights Committee, *Kandel v. Nepal*, Communication No. 2560/2015 (2019), para. 7.15 (finding inter alia a violation of ICCPR article 9 where the victim was arrested without a warrant and never appeared before a judge, no legal grounds were provided for the detention, and he had no ability to challenge the legality of his detention); Human Rights Committee, *El Abani v. Libyan Arab Jamahiriya*, Communication No. 1640/2007 (2010), para. 7.3; Human Rights Committee, *El Hassy and El Hassy v. Libya*, Communication No. 1422/2005 (2007), para. 6.6; Human Rights Committee, *Bousroual v. Algeria*, Communication No. 992/2001 (2006), para. 9.6 (finding a violation of ICCPR Art. 9(3) where the disappeared was held incommunicado for 33 days by judicial police without any access to a lawyer) Human Rights Committee, *Sarma v Sri Lanka*, Communication No. 950/2000 (2003), para. 9.3; Human Rights Committee, *Celis Laureano v Peru*, Communication No. 540/1993 (1996). See also Human Rights Committee, *Katwal v. Nepal*, Communication No. 2000/2010 (2015), para. 11.3 (finding violations of ICCPR article 2(3) in conjunction with articles 6, 7, 9 and 16).

67 See, e.g., Human Rights Committee, *El Hassy and El Hassy v. Libya*, Communication No. 1422/2005 (2007), para. 6.6 (“[T]he Committee recalls the definition of enforced disappearance in article 7, paragraph 2(i), of the Rome Statute of the International Criminal Court: ‘Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.’ Any act leading to such disappearance constitutes a violation of many of the rights enshrined in the Covenant. . . .”); Human Rights Committee, *Bousroual v. Algeria*, Communication No. 992/2001 (2006), para. 9.2 (same).

68 See Human Rights Committee, *El Abani v. Libyan Arab Jamahiriya*, Communication No. 1640/2007 (2010), para. 7.3 (“The Committee recalls the definition of enforced disappearance set forth in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006, which states. . . . Any act leading to such a disappearance constitutes a violation of many of the rights enshrined in the Covenant[.]”).

the fate or whereabouts of the disappeared persons, removes such persons from the protection of the law and places their lives at serious and constant risk, for which the State is accountable.”⁶⁹ This iteration of the legal standard for enforced disappearance under the ICCPR has been repeated by the Human Rights Committee in subsequent decisions.⁷⁰

The Human Rights Committee further formalized its view that enforced disappearance violates a number of human rights protected by the ICCPR through two General Comments issued in 2014 and 2018. In General Comment No. 35, the Human Rights Committee describes enforced disappearance as “a particularly aggravated form of arbitrary detention” which constitutes a violation of “numerous substantive and procedural provisions of the Covenant.”⁷¹ It also recognizes that enforced disappearances violates the rights to personal liberty and personal security, and in some instances the right to life.⁷² The Committee’s General Comment No. 36 similarly emphasizes that “[e]xtreme forms of arbitrary detention that are themselves life-threatening, in particular enforced disappearances, violate the right to personal liberty and personal security and are

incompatible with the right to life.”⁷³

The Committee Against Torture has similarly determined that enforced disappearance may constitute “a form of torture or inhuman treatment” and therefore a violation of the CAT.⁷⁴ Moreover, “arrests without a warrant and the lack of judicial oversight on the legality of detention can facilitate torture and ill-treatment” in violation of the Convention.⁷⁵ In its General Comment No. 2, the Committee against Torture sets forth basic guarantees that “apply to all persons deprived of their liberty,” including inter alia the ability to contact relatives, promptly receiving independent legal assistance, and a means “to challenge the legality of their detention or treatment.”⁷⁶ It also requires the responsible authority to “maintain[] an official register of detainees.”⁷⁷

In addition to violating the rights of the disappeared individual, enforced disappearance violates the rights of the victim’s family members.⁷⁸ The Human Rights Committee explained in *Amirov v. Russian Federation*, Communication No. 1447/2006 (2009) that due to the “unique nature of the anxiety, anguish and uncertainty for those [close] to the direct

69 Human Rights Committee, *Guezout et al. v. Algeria*, Communication No. 1753/2008 (2012), para. 8.4.

70 See, e.g., Human Rights Committee, *Abushaala v. Libya*, Communication No. 1913/2009 (2013), para. 6.2; Human Rights Committee, *Almegaryaf and Matar v. Libya*, Communication No. 2006/2010 (2014), para. 7.4; Human Rights Committee, *Shikhmuradova v. Turkmenistan*, Communication No. 2069/2011 (2015), para. 6.3 (“The Committee recalls its jurisprudence that, in cases of enforced disappearance, deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate of the disappeared person removes the person from the protection of the law and places his or her life at a serious and constant risk for which the State is accountable.”); Human Rights Committee, *Nakarmi v. Nepal*, Communication No. 2184/2012 (2017), para. 11.6 (same). See also Council of Europe, *Statement on the occasion of the International Day of Victims of Enforced Disappearances* (29 Aug. 2022), <https://www.coe.int/en/web/commissioner/-/statement-on-the-occasion-of-the-international-day-of-victims-of-enforced-disappearances> (quoting the Council of Europe’s Commissioner for Human Rights as stating, “Even if the victims are disappeared for a short duration and eventually found or released, their disappearances are serious violations of human rights and international humanitarian law, and may amount to crimes against humanity[.]”)

71 Human Rights Committee, *General Comment No. 35 on Article 9, Liberty and security of person*, U.N. Doc. CCPR/C/GC/35 (31 Oct. 2014), para. 17, available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-35-article-9-liberty-and-security> [hereinafter Human Rights Committee General Comment No. 35]

72 Human Rights Committee General Comment No. 35, para. 55 (“Extreme forms of arbitrary detention that are themselves life-threatening violate the rights to personal liberty and personal security as well as the right to protection of life, in particular enforced disappearances.”)

73 Human Rights Committee, *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, U.N. Doc. CCPR/C/GC/36 (30 Oct. 2018), para. 57, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf.

74 Committee against Torture, *Hernández Colmenarez and Guerror Sánchez v. Venezuela*, U.N. Doc. CAT/C/54/D/456/2011 (26 June 2015), para. 6.4. See also Committee against Torture, *Concluding Observations of the Committee against Torture: Colombia*, U.N. Doc. CAT/C/COL/CO/4 (4 May 2010), para. 11 (expressing “grave concern at the persistence of serious violations linked to torture, such as extrajudicial execution, forced disappearance, forced displacement....”).

75 Committee against Torture, *Concluding Observations of the Committee against Torture: Ethiopia*, U.N. Doc. CAT/C/ETH/CO/1 (20 Jan. 2011), para. 15 (referring to articles 2 and 11).

76 Committee against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, U.N. Doc. CAT/C/GC/2 (24 Jan. 2008), para. 13.

77 Committee against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, U.N. Doc. CAT/C/GC/2 (24 Jan. 2008), para. 13.

78 See, e.g., *Celis Laureano v. Peru*, para. 8.5; *Bousroual v. Algeria*, Communication No. 992/2001 (2006), para. 9.8; *Mójica v. Dominican Republic*, Communication No. 449/1991 (1994), para. 5.7; *Sedhai v. Nepal*, Communication No. 1865/2009 (2013), para. 8.4. See also Committee against Torture, *Hernández Colmenarez and Guerror Sánchez v. Venezuela*, U.N. Doc. CAT/C/54/D/456/2011 (26 June 2015), para. 6.4; U.N. General Assembly, *Declaration on the Protection of all Persons from Enforced Disappearance*, Gen. Ass. Res. 47/133 (18 Dec. 1992), Art. 2 (“Any act of enforced disappearance . . . inflicts severe suffering on [the victim] and their families.”)

victim,” which is an “inexorable consequence of an enforced disappearance,” close family members may have their ICCPR article 7 rights violated.⁷⁹ For example, in the case of *Tripathi v. Nepal*, Communication No. 2111/2011 (2014), the Human Rights Committee found a violation of the Article 7 rights of victim’s wife and daughter due to the “anguish and distress” caused to them by the State party’s failure to carry out an investigation or provide an “adequate explanation of the circumstances surrounding Mr. Tripathi’s disappearance.”⁸⁰ The Committee has also found violations of a disappeared individual’s parents⁸¹ and children.⁸²

Enforced disappearance is a continuing violation - meaning that the human rights violation does not cease until the victim’s whereabouts have been established.⁸³ The Committee’s recent jurisprudence underscores this interpretation, noting in the case of *Kandel v. Nepal*, Communication No. 2560/2015 (2019): “[E]nforced disappearance constitutes a unique and integrated series of acts that represents continuing violation of various rights recognized in that treaty.”⁸⁴

Human rights law permits no derogation from the prohibition against enforced disappearance - whether in times of war, political instability,

or other public emergency.⁸⁵ The prohibition against torture under CAT is absolute and non-derogable as a matter of customary international law.⁸⁶ ICCPR Article 7’s prohibition against cruel, unusual or inhuman treatment is similarly not subject to limitation, even in times of public emergency.⁸⁷ Moreover, the Human Rights Committee has affirmed that the ICCPR’s “prohibitions against [the] taking of hostages, abductions or unacknowledged detention are not subject to derogation.”⁸⁸ Rather, “[t]he absolute nature of these prohibitions, even in times of emergency, is justified by their status as norms of general international law” (*i.e.*, *ius cogens*).⁸⁹

B. Crimes Against Humanity Under International Criminal Law

In addition to constituting numerous human rights violations, the abductions, disappearances, and detention of Ukrainian human rights defenders and other civilians perceived to be resisting Russian efforts in Ukraine have the indicia of crimes against humanity under international criminal law. The geographical dispersion, variety of victims, and consistency in the conduct of the offenders together suggest that these acts are “part of a widespread or

79 Human Rights Committee, *Amirov v. Russian Federation*, Communication No. 1447/2006 (2009), para. 11.7 (further noting with indirect victimization, “the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will [] usually be a factor.”).

80 Human Rights Committee, *Tripathi v. Nepal*, Communication No. 2111/2011 (2014), para. 7.5. See also Human Rights Committee, *Shikhmuradova v. Turkmenistan*, Communication No. 2069/2011 (2015) (finding a violation of the disappeared victim’s wife’s article 7 rights due to the “anguish and distress caused by the incommunicado detention and disappearance of her husband.”). See also Human Rights Committee, *El Boathi v. Algeria*, Communication No. 2259/2013 (2017) (finding violation of the article 7 rights of victim’s mother and other family members).

81 See, e.g., Human Rights Committee, *Sarma v. Sri Lanka*, Communication No. 950/2000, 16 July 2003, para. 9.5 (“[N]oting the anguish and stress caused to the author’s family by the disappearance of his son and by the continuing uncertainty concerning his fate and whereabouts, the Committee considers that the author and his wife are also victims of violation of article 7 of the Covenant.”); Human Rights Committee, *Almeida de Quinteros et al. v. Uruguay*, Communication No. 107/1981 (1990), para. 14 (finding the mother’s ICCPR article 7 rights violated due to “the anguish and stress caused to [her] by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts.”).

82 See, e.g. Human Rights Committee, *El Abani v. Libyan Arab Jamahiriya*, Communication No. 1640/2007 (2010), para. 7.5 (finding that the facts of the victim’s disappearance violated the Article 7 rights of the victim’s children and wife).

83 See REDRESS, *Enforced Disappearance As Torture*, Module 3, <https://redress.org/wp-content/uploads/2021/07/Training-Module-03-Enforced-Disappearance-As-Torture.pdf> (last accessed 12 Sept. 2022).

84 Human Rights Committee, *Kandel v. Nepal*, Communication No. 2560/2015 (2019), para. 7.7; *Nakarmi v. Nepal*, Communication No. 2184/2012 (2017), para. 11.5; *Katwal v. Nepal*, Communication No. 2000/2010 (2015), para. 11.3; *Serna et al. v. Colombia*, Communication No. 2134/2012 (2015), para. 9.4.

85 U.N. General Assembly, *Declaration on the Protection of all Persons from Enforced Disappearance*, Gen. Ass. Res. 47/133 (18 Dec. 1992), Art. 7 (“No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.”). See also Human Rights Committee, Communication No. 2134/2012 (2015) para. 5.5 (“The Inter-American Court of Human Rights has found that the prohibition of enforced disappearance” has become a principle “from which no derogation is possible.”) (citing *Goiburú et al. v. Paraguay*, judgment of 22 Sept. 2006, series C, No. 153, para. 84).

86 Committee against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, U.N. Doc. CAT/C/GC/2 (24 Jan. 2008), para. 1.

87 Human Rights Committee, *Sedhai v. Nepal*, Communication No. 1865/2009 (2013), para. 8.3.

88 Human Rights Committee, *General Comment No. 29: States of Emergency (Article 4)*, CCPR/C/21/Rev.1/Add.11 (31 Aug. 2001), Para. 13(b).

89 *Id.*

systematic attack directed against any civilian population”⁹⁰ “pursuant to or in furtherance of” Russian State policy.⁹¹ Indeed, the conduct by Russian State (and affiliated) actors may satisfy the elements of various different crimes against humanity under Article 7 of the Rome Statute of the International Criminal Court (“Rome Statute”), including but not limited to enforced disappearance, imprisonment or other severe deprivation of liberty, persecution, or inhumane acts.

1. Enforced Disappearance

Enforced disappearance constitutes a crime against humanity under Article 7 of the Rome Statute when it is “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”⁹² - *i.e.*, when committed “pursuant to or in furtherance of a State or organizational policy to commit such attack[.]”⁹³ The Rome Statute’s definition of “enforced disappearance” contains an additional (temporal) element to the definition set forth in international human rights law. The statute defines “enforced disappearance of persons” as:

the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.⁹⁴

The Russian military and its proxies have been engaged in the widespread practice of disappearing journalists, community leaders, politicians, humanitarian volunteers, and other

human rights defenders since the outset of the invasion. The cases discussed in this report illustrate how such disappearances satisfy the elements of the Rome Statute’s definition of enforced disappearance and thereby violate international criminal law.

- i. Arrest, detention, or abduction by or with the authorization, support or acquiescence of a State or political organization*

While there is a complete absence of judgments from the ICC related to charges of enforced disappearance under the statute, a 2017 decision by the Pre-Trial Chamber provides some insights into interpretation of the elements. In its *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi*, No. ICC-01/17-X (9 Nov. 2017), Pre-Trial Chamber III suggests that “the terms ‘arrest, detention or abduction’ . . . cover comprehensively any form of deprivation of liberty of a person against his or her will.”⁹⁵

The abductions, arrests and detention of the Ukrainian defenders discussed above, and the hundreds of others that have taken place to date, were conducted by or with the “authorization, support or acquiescence of” the Russian military, a State agent.⁹⁶ They either took place at the hands of Russian soldiers or by other armed men during the Russian occupation of the cities where the abductions took place. According to accounts by family members and other eye witnesses, none of these defenders went with their abductors by their own free will.

All five cases of disappeared defenders discussed above - and countless other Ukrainians - satisfy this element of the crime. Ms. Olha Haisumova was abducted by armed men while attending a

90 U.N. General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, art. 7(1)(i), available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> [hereinafter Rome Statute].

91 Rome Statute, art. 7(2)(a).

92 Rome Statute, art. 7(1)(i).

93 Rome Statute, art. 7(2)(a).

94 ICC, Pre-Trial Chamber III, *Situation in the Republic of Burundi: Public Redacted Version of the “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”*, No. ICC-01/17-X (9 Nov. 2017), para. 118, available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2017_06720.PDF (citing first and second paragraphs of the Elements of Crimes of article 7(1)(e)) [hereinafter Pre-Trial Chamber, *Decision on the Situation in Burundi*].

95 *Id.* at para. 117.

96 In the *Decision on the Situation in Burundi*, the ICC Pre-Trial Chamber identified as “State agents” the police, the intelligence service and the army, including groups that are implementing State policies.” *Id.* at para. 119.

peaceful protest over the detention of Melitopol Mayor Ivan Federov. Her abduction took place on 12 March 2022, while the city was under Russian occupation. Mr. Serhiy Tsyhipa went missing and silent after an active presence on social media speaking out against the Russian invasion. His abduction and detention is similarly believed to be at the hands of Russian forces or their proxies.⁹⁷ Arkadij Dovzhenko was abducted by armed men in Russian-occupied Kherson and taken to a building where there were Russian soldiers.

Mr. Serhii Liubych and Mr. Yevhen Guryanov - both of whom were reportedly in the process of delivering humanitarian assistance in Bucha when they were abducted - have been deprived of their liberty since 7 March and 18 March 2022, respectively. Mr. Guryanov's family witnessed him being taken away by Russian soldiers and other eye witnesses reportedly have placed both men in the detention facility in Novozybkov, Russia. Moreover, the letter issued by the Russian Federation's Department of Defense in August 2022 concerning Mr. Guryanov and Mr. Liubych confirm that they are being detained with the authorization of the Russian State.

ii. *Refusal by the State or political organization to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of those persons*

Many of the human rights defenders, journalists, and other civilians disappeared by Russian forces

have been held incommunicado with information reaching family members only through informal channels. According to the guidance coming out of the ICC Pre-Trial Chamber's *Decision on the Situation in the Republic of Burundi*,

[T]he refusal to acknowledge or give information encompasses [the] outright denial or the giving of false information about the fate or whereabouts of the victim. Whether or not the victim's family lodges a formal complaint, the State authorities are duty-bound to commence an impartial and thorough investigation *ex officio* without delay into the disappearance of the victim.⁹⁸

In the majority of cases reported on in the news, by the U.N., and by organizations such as Human Rights Watch, no information has been provided to the family members of those detained about their whereabouts, even in the face of requests.⁹⁹ In the cases of the five human rights defenders outlined above, the Russian Federation similarly failed to acknowledge the detention or specifically refused to give information concerning the victim's whereabouts. For example, in the cases of Serhii Liubych and Yevhen Guryanov, the Russian Federation finally acknowledged their detention six months after they went missing; however, even in doing so, it refused to provide information related to their whereabouts - other than that they were being held in Russia.¹⁰⁰ Olha Haisumova and Arkadij Dovzhenko were both

97 See, e.g., European Union External Action, *Ukraine: Statement by the Spokesperson on the abductions of Ukrainian officials and citizens by Russian occupation troops* (20 March 2022), https://www.eeas.europa.eu/eeas/ukraine-statement-spokesperson-abductions-ukrainian-officials-and-citizens-russian-occupation_en.

98 Pre-Trial Chamber, *Decision on the Situation in the Burundi* ((Citing Declaration on the Protection of all Persons from Enforced Disappearance ("1992 Declaration on Enforced Disappearance"), GA Res. 47/133 of 18 December 1992 ("Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint") & 3 Human Rights Committee, *Sarma v Sri Lanka*, Communication No. 950/2000, 16 July 2003, para. 11; *Quinteros v Uruguay*, Communication No. 107/1981, 21 July 1983, para. 15; *Celis Laureano v Peru*, Communication No. 540/1993, 25 March 1996, para. 10; Inter-American Court of Human Rights ("IACtHR"), *Case of García and Family Members v Guatemala*, Judgment of 29 November 2012, para. 138)).

99 See, e.g., Human Rights Watch, *Russia: Forcible Disappearances of Ukrainian Civilians* (14 July 2022), <https://www.hrw.org/news/2022/07/14/russia-forcible-disappearances-ukrainian-civilians> (reporting that "[t]wo lawyers who attempted to visit detention facilities in Kursk and the town of Novozybkov in Bryansk told Human Rights Watch that the authorities refused to grant them access, acknowledge the detention, or disclose detainees' whereabouts."); NPR, *Russia is disappearing Ukrainian civilians. Their families want answers* (24 June 2022), <https://www.npr.org/2022/06/24/1107022067/russia-ukraine-detention-enforced-disappearance> (reporting on the disappearance of Viktoriya Andrusha, who was taken from her parents' home by Russian soldiers in March 2022 for passing information about the movement of Russian troops to the Ukrainian army; Ms. Andrusha's family has not received any information of her whereabouts from Russian authorities); Paulina Villegas and Reis Thebault, *All over Ukraine, people are missing, forcing families to become detectives*, THE WASHINGTON POST (19 JUNE 2022), <https://www.washingtonpost.com/world/2022/06/19/people-missing-ukraine-russia-invasion/> (reporting that according to the U.N. mission, "[o]nly in rare cases have relatives received information directly from Russian military officials[.]").

100 Copy of a letter from the Russian Federation's Department of Defense, on file with the Center for Civil Liberties (acknowledging that Serhii Liubych and Yevhen Guryanov were detained "for countering special military operation and are located on the territory of the Russian Federation," but stating that information about whereabouts of people who were detained for countering the special military operation is limited and cannot be given to third parties) (unofficial translation).

held incommunicado for at least a week during which time no information was provided to their families. And for more than six months, the Russian Federation has not acknowledged Serhiy Tsyhipa' detention. These detentions and those of many others violate the Russian Federation's duty to provide information on the fate and whereabouts of those detained.

iii. *Intention of removing them from the protection of the law for a prolonged period of time*

The Russian State's intention to remove those abducted and detained from the protection of the law can be inferred from the manner in which they have been deprived their liberty.¹⁰¹ For example, as in the cases of Serhii Liubych and Yevhen Guryanov, the fact that they were detained without a warrant, never brought before a court, and were removed from Ukrainian territory and transferred to the Russian Federation all suggest a clear intention to remove them from the protection of the law.¹⁰²

While neither the Rome Statute nor ICC jurisprudence expounds on the length of time deemed necessary to satisfy the element of a "prolonged period of time," the ICC Pre-Trial Chamber in the *Decision on the Situation in the Republic of Burundi* stated that a "period of several months or years certainly fulfills that requirement."¹⁰³ In many cases of disappeared journalists, political figures and activists - including Olha Haisumova and Arkadij Dovzhenko - the victim has been released after a few days or weeks. However, for others - including Serhiy Tsyhipa, Serhii Liubych and Yevhen Guryanov -

where the detention has lasted for more than six months, this element is certainly fulfilled.

2. Imprisonment or Severe Deprivation of Liberty

The disappearance of human rights defenders by Russian forces in Ukraine also violate Article 7(1)(e) of the Rome Statute - the crime of "[i]mprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law."¹⁰⁴ A violation of Article 7(1)(e) occurs when "(i) the perpetrator imprison[s] one or more persons or otherwise severely deprive[s] one or more persons of physical liberty; and (ii) the gravity of the conduct is such that it violates fundamental rules of international law."¹⁰⁵

The ICC has explained that "imprisonment" encompasses "unlawful captivity of a person in an enclosed environment, such as a prison. . ." while the unlawful restriction of a "person's movements to a specific area, such as a ghetto, camp or a house" can amount to severe deprivation of physical liberty.¹⁰⁶ Deprivation of physical liberty alone does not constitute a violation of Article 7(1)(e), however; the deprivation must be in violation of fundamental rules of international law¹⁰⁷ - such as detention without due process of law.¹⁰⁸

In contrast to the crime against humanity of enforced disappearance, "article 7(1)(e) of the Statute does not require the imprisonment or the deprivation of liberty to be for a prolonged period of time."¹⁰⁹ In addition, "[t]he brevity of detention alone cannot be used as an argument

101 Pre-Trial Chamber, *Decision on the Situation in the Burundi*, para. 120

102 *Id.* ("[O]ftentimes the manner in which the person is deprived of his or her liberty allows the Chamber to infer the intention to remove the victim from the protection of the law, such as the lack of a court order for the detention, abduction in cars without license plates and with tinted windows, detention in secret, unofficial prisons, non-registration of names of the detainees in official records, or capture in desolate areas.") (internal citations omitted).

103 *Id.*

104 Rome Statute, Art. 7(1)(e)

105 Pre-Trial Chamber, *Decision on the Situation in Burundi*, para. 68.

106 *Id.*

107 *Id.*

108 *Id.*; see also U.N. Human Rights Council, *Report of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/22/44 (24 Dec. 2012), para. 79, https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf (finding that "the prohibition of all forms of arbitrary deprivation of liberty constitutes part of customary international law and constitutes a peremptory norm or *jus cogens*"); *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, U.N. Gen. Assembly Res. 43/173, adopted 9 Dec. 1988, Principle 2, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention>.

109 Pre-Trial Chamber, *Decision on the Situation in Burundi*, para. 68; *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaissona*, No. ICC-01-14/01-18, Pre-Trial Chamber: *Decision on the Confirmation of Charges Against Alfred Yekatom and Patrice Edouard Ngaissona* (11 Dec. 2019), para. 119.

to deny the severity of the deprivation of physical liberty.”¹¹⁰

In all five cases highlighted in this report – as well as countless others since 24 February 2022 – the detention by Russian forces has taken place without due process of law, with many of the disappeared being subject to torture and other inhuman conditions while in detention. As such, these detentions violate the fundamental rules of international law and constitute “imprisonment or other severe deprivation of liberty” in violation of Article 7(1)(e) of the Rome Statute.

3. Other Possible Article 7 Crimes

The arrests, abductions, and accompanying incommunicado detention of human rights defenders, journalists, politicians, and other Ukrainian civilians may support other possible charges of crimes against humanity under Rome Statute Article 7. For example, enforced disappearance when carried out on discriminatory grounds – e.g., when committed against political opponents (such as human rights defenders participating in pro-Ukrainian/anti-Russian protests and rallies) – may constitute the crime against humanity of persecution.¹¹¹ According to Article 7(1)(h), “persecution against any identifiable group or collectivity on political . . . grounds . . . is impermissible.”¹¹² Article 7(1)(h) “means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity[.]”¹¹³ Severe deprivation of fundamental rights may include, for example,

infringements of the right to personal liberty, the right to not be subjected to torture or cruel, inhuman or degrading treatment, and the right to life.¹¹⁴

Notably, while it must be shown that “the perpetrator targeted certain persons, a group, or a collectivity, based on one of the prohibited grounds, it is not required that *all* victims of the crimes of persecution be members, sympathisers, allies of, or in any other way related to, the protected group.”¹¹⁵ Moreover, the discriminatory targeting of victims based on political grounds includes targeting for both actual and perceived political affiliations.¹¹⁶

In addition, to the extent that the facts of some cases do not satisfy the elements of other crimes against humanity enumerated in Article 7(1), they may support charges of inhumane acts under Article 7(1)(k). The crime of inhumane acts stems from either an act or omission where (i) “the perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane acts[;]” and (ii) “[s]uch act was of a character similar to any other act referred to in article 7, paragraph 1” of the Rome Statute.¹¹⁷ Article 7(1)(k) is considered in ICC jurisprudence as a “residual category of crimes against humanity,” where the “specific act in question fails to qualify” as any of the other enumerated crimes under Article 7(1).¹¹⁸ As noted by the ICC Trial Chamber in *Prosecutor v. Dominic Ongwen*, international case law “suggests that serious beatings, subjection to deplorable conditions of detention and requiring persons to witness the beatings or killings of

110 Pre-Trial Chamber, *Decision on the Situation in Burundi*, para. 68 (citing decisions by the UN Human Rights Committee and European Court of Human Rights on arbitrary detention ranging from 8 hours to 50 hours).

111 See, e.g., ICTY, *Prosecutor v. Gotovina et al.*, No. IT-06-90-T, *Judgment* (19 April 2011), para. 1839.

112 Rome Statute, Art. 7(1)(h).

113 Rome Statute, Art. 7(3)(g); See also *Prosecutor v. Dominic Ongwen*, Trial Chamber: *Trial Judgment*, No. ICC-02/04-01/15 (4 Feb. 2021), para. 2731.

114 ICC, *Prosecutor v. Dominic Ongwen*, Trial Chamber: *Trial Judgment*, No. ICC-02/04-01/15 (4 Feb. 2021), para. 2733.

115 *Id.* at para. 2736.

116 *Id.* at para. 2737.

117 *Id.* at para. 2744 (citing Elements of Crimes, Article 7(1)(k)).

118 *Id.* at para. 2745; see also *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Pre-Trial Chamber: *Decision on the Confirmation of Charges*, No. ICC-01/04-01/07 (30 Sept. 2008), para. 452 (noting that “none of the acts constituting crimes against humanity according to article 7(1)(a) to (j) can be simultaneously considered as another inhumane act encompassed by article 7(1)(k) of the Statute.”); *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali*, Pre-Trial Chamber: *Decision on the Confirmation of Charges*, No. ICC-01/09-02/11 (23 Jan. 2012), para. 269 (“The Chamber understands that other inhumane acts is a residual category within the system of article 7(1) of the Statute. Therefore, if a conduct could be charged as another specific crime under this provision, its charging as other inhumane acts is impermissible.”).

others can constitute inhumane acts.”¹¹⁹

Based on the facts coming to light about the abductions, disappearances and detainment of Ukrainian civilians by Russian forces, these two charges under Article 7(1) of the Rome Statute provide additional avenues by which the perpetrators may be held accountable.

C. War Crimes Under International Humanitarian Law

Enforced disappearance is also prohibited by international humanitarian law. State practice has established as a customary norm the prohibition against enforced disappearance, which violates “a range of customary rules of international humanitarian law,” including the prohibition cruel or inhuman treatment, torture, arbitrary deprivation of liberty, and outrages upon personal dignity.¹²⁰ The prohibition against enforced disappearances is absolute, with no exception. Neither war nor national security nor a state of emergency can justify enforced disappearance.¹²¹

State practice also has established as a norm of customary international law that “[s]erious violations of international humanitarian law constitute war crimes,” including “grave breaches” of the Geneva Conventions.¹²² Grave breaches may be found in cases of torture or inhuman treatment as well as “willfully causing great suffering or serious injury to body

or health, unlawful deportation or transfer or unlawful confinement of a protected person,” “willfully depriving a protected person” of fair trial rights, and taking hostages.¹²³ As noted by the International Committee of the Red Cross, the understanding of these violations as war crimes “is uncontroversial.”¹²⁴

Moreover, States have affirmative duties under the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War to facilitate the prosecution of the Russian perpetrators for these grave breaches. Pursuant to the terms of the Convention, and as widely accepted in state practice, all States have “the obligation to search for persons alleged to have committed, or have ordered to be committed, such grave breaches,” and shall bring such persons before its courts.¹²⁵ Thus, there should be no safe haven anywhere in the world for the perpetrators of these crimes against Ukrainian civilians.¹²⁶

119 *Prosecutor v. Dominic Ongwen*, Trial Chamber: *Trial Judgment*, No. ICC-02/04-01/15 (4 Feb. 2021), para. 2744 (citing inter alia ICTY, Trial Chamber, *Prosecutor v. Duško Tadić*, Judgment, 7 May 1997, IT-94-1-T, paras. 726, 730); ICTY, Trial Chamber, *Prosecutor v. Zoran Kupreškić et al.*, Judgment, 14 Jan. 2000, IT-95-16-T, para. 819; ICTY, Trial Chamber, *Prosecutor v. Miroslav Kvočka et al.*, Judgment, 2 Nov. 2001, IT-98-30/1-T, para. 209); ICTR, Trial Chamber I, *The Prosecutor v. Ignace Bagilishema*, Judgment, 7 June 2001, IT-95-16-T, para. 819); ECCC, Trial Chamber, *Prosecutors v. Nuon Chea and Khieu Samphan*, Judgment, 16 Nov. 2018, 002/19-09-2007-ECCC/TC, paras. 733-39).

120 ICRC, IHL Database, *Customary IHL, Rule 98. Enforced Disappearance*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule98 (last accessed 12 Sept. 2022)

121 *Enforced disappearance: a violation of humanitarian law and human rights*, Statement by the ICRC to the U.N. Human Rights Council concerning the draft International Convention for the Protection of all Persons from Enforced Disappearances, 27 June 2006, <https://icrc.org/en/doc/resources/documents/statement/human-rights-council-statement-270606.htm>.

122 ICRC, IHL Database, *Customary IHL, Rule 156. Definition of War Crimes*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156.

123 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 Aug. 1949, art. 147. The Geneva Convention (IV) Relative to the Protection of Civilian Persons in the Time of War applies in “all cases of declared war or any other armed conflict” between two parties “even if the state of war is not recognized by one of them.” *Id.* at Art. 2.

124 ICRC, IHL Database, *Customary IHL, Rule 156. Definition of War Crimes*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156.

125 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, art. 146.

126 Indeed, as the U.S. Representative to the United Nations pointed out in her prepared intervention to the U.N. Security Council on 7 September 2022, the war crimes of forcible deportation and transfer also represent predicate crimes for the overall crime of illegal annexation. The war crimes of Russian forces and their proxies facilitate the distinctive crime that would violate the very core crime of the U.N. Charter, illegal aggression to seize territory in violation of Article 2 and the very foundations of the international order. See U.S. Mission to the United Nations, *Remarks by Ambassador Linda Thomas-Greenfield at a UN Security Council Meeting on Russia's Filtration Operations* (7 Sept. 2022), <https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-un-security-council-meeting-on-russias-filtration-operations/>.

■ IV. CONCLUSION AND RECOMMENDATIONS

The enforced disappearances of journalists, civic activists, and other human rights defenders as well as local community leaders and politicians by Russian forces since the start of the war in Ukraine constitute numerous human rights violations against the victims and their families, contravene the Russian Federation's obligations under international human rights law and international humanitarian law, and to the extent they have been conducted on a systematic level against the civilian population as part of a State policy, amount to crimes against humanity in violation of international criminal law. The victims have been arrested or abducted by Russian soldiers or proxy groups in Russian-controlled territories of Ukraine, held in incommunicado detention, and removed from the protection of the law, with the Russian Federation failing or refusing to acknowledge the detention and/or provide the families with information of the victim's whereabouts. In many cases, the victims were forcibly removed from Ukraine and transferred to Russia. Moreover, for several of the individuals whose specific cases are discussed in this report, the disappearance is now entering its seventh month.

While attention to the day-to-day engagement in the fight against Russian forces continues to occupy Ukrainian leaders and the international community, it is necessary to begin taking concrete steps to hold the responsible actors accountable for the numerous human rights violations and international crimes implicated by the

enforced disappearances. In particular, the author urges the international community, local NGOs and civil society actors, and the government of Ukraine to take active steps to:

- Support the family members of the disappeared defenders and civilians in their efforts to obtain information about the whereabouts of the victims;
- Explore potential avenues that victims and family members may take to seek justice for the disappeared defenders, including but not limited to complaints before the U.N. Human Rights Committee, the U.N. Committee Against Torture, and the Working Group on Enforced and Involuntary Disappearances; and
- Prosecute these and other crimes committed by Russian troops and affiliated perpetrators against human rights defenders to the full extent possible under domestic law, the Rome Statute, and any hybrid tribunal established under legitimate authorities empowered by international law.



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