



**Russia's  
War in  
Ukraine  
*Filtration and  
Forced Relocation  
of Civilians Constitute  
Gross Violations of  
International Law***

**SEPTEMBER 2023**



## ■ ABOUT

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Free Russia Foundation (FRF) is a non-profit and non-partisan international organization headquartered in Washington, D.C., which supports civil society and democratic development in Russia. Free Russia Foundation coordinates global efforts that share its vision of a free, democratic and peaceful Russia, including political development and economic reforms. Since the summer of 2022, FRF has worked to document the Russian Federation's violations of international humanitarian law during its invasion of Ukraine, including through its "Poshuk.Polon" ("Search Captivity") Project, which searches for combatants and civilians who have been captured by Russia's forces since its invasion. In May of 2023, the Poshuk.Polon Project signed a memorandum of cooperation with the Ukrainian Parliament Commissioner for Human Rights (Ombudsman) to share information related to their search for missing civilians.

## ■ ACKNOWLEDGMENTS

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## ■ FOREWORD



By its existence, an armed conflict presupposes immense suffering to civilians caught in the literal cross-hairs. In a way that no external observer can appreciate, daily life is distorted into thousands of daily indignities. When an armed conflict is conducted without concern for the legal regimes the international community has created, the suffering of those civilians is multiplied. The instruments of international humanitarian law, international criminal law and human rights law are the safeguards that the international community relies on in a desperate attempt to civilize the barbarity of war. As Kofi Annan said, “International humanitarian law stands as a beacon, guiding us through the darkness of war towards the light of humanity.”

This report applies international law to the criminal conduct inherent in the so-called “filtration” process whereby Russian forces detain, interrogate, and in some cases mistreat and forcibly relocate Ukrainian civilians with the alleged goal of identifying threats to Russian occupying forces. As this report explains, the filtration process is potentially unlawful in each of its stages, while it masquerades as the lawful prerogative of an occupying power. In implementing a systemic and unlawful “filtration” process, Russian forces flout the norms of each international legal regime consented to and relied on by the international community. Their disregard for the international legal system must not be ignored.

The voice of the international community is broadcast globally through reports like this one, which painstakingly scour information – open source content, witness statements, and journalistic reporting - to set down for posterity and instruction the experiences of those most intimately and immediately impacted by armed conflict and to analyze war’s gruesome details according to international legal regimes. This latest report by the ABA and partners should be confidently viewed as a tool in advocacy, human rights protection, and accountability by the numerous stakeholders engaged in ensuring that peace, security and accountability eventually returns to Ukraine.

**Glenna MacGregor**  
**Steering Committee Member and former Chair (2018-2022),**  
**ABA International Criminal Law Practice Project**

# ■ TABLE OF CONTENTS

|  |    |
|--|----|
| <b>EXECUTIVE SUMMARY</b> .....   | 1  |
| <b>I. INTRODUCTION</b> .....   | 3  |
| <b>II. BACKGROUND</b> .....  | 8  |
| <b>III. LEGAL ANALYSIS</b> .....   | 21 |
| <b>A. Deprivation of Liberty and Arbitrary Detention</b> .....                               | 22 |
| 1. Human Rights Violations Implicated by Filtration-Related<br>Detention.....                | 22 |
| 2. The War Crime of Unlawful Confinement.....  | 25 |
| 3. Potential Crime Against Humanity of Imprisonment or Severe<br>Deprivation of Liberty..... | 26 |
| <b>B. Torture and other Cruel or Inhuman Treatment</b> .....                                 | 29 |
| 1. Human Rights Law Protections Against Torture and Inhuman<br>Treatment.....                | 29 |
| 2. Inhuman Treatment and Great Suffering or Serious Injury<br>Constitute War Crimes.....     | 30 |
| <b>C. Deportations and Forced Transfers</b> .....  | 32 |
| 1. War Crimes Under IHL and ICL.....   | 32 |
| 2. Potential Crimes Against Humanity.....  | 34 |
| <b>D. Rights Violations Specific to Children</b> .....                                       | 37 |
| <b>IV. RECOMMENDATIONS</b> .....   | 40 |

# ■ EXECUTIVE SUMMARY



Among the many atrocities committed by the Russian military and proxy forces in Ukraine since Russia's February 2022 full scale invasion, the so-called "filtration" of Ukrainian civilians has emerged as an area of growing focus and concern. This report joins the voices of those documenting the treatment of Ukrainian civilians and the conditions in which civilians are held, as well as the forced transfers and deportations taking place in connection to the filtration process. The report summarizes the evidence collected and insights developed on the practice of filtration by Free Russia Foundation (FRF) and the Center for Civil Liberties (CCL) from their work both inside Ukraine and beyond its borders, as well as other domestic and international entities.

The Russian military and proxy forces appear to be conducting filtration not only at specially-designated camps, but throughout Russian-controlled territories in Ukraine and at nearly every border checkpoint. While security screening at border crossings may be justified in principle, the methods employed by Russian and affiliated forces go well beyond permissible screening. As part of filtration, civilians are reportedly subjected to strip searches, physical and verbal humiliation and abuse, and in some instances torture and sexual violence. Civilians undergoing filtration may be effectively detained in certain areas or buildings while they wait to undergo the procedure, and those who do not pass filtration are typically transferred to detention centers or prisons in Russian-controlled territories of Ukraine or on the territory of the Russian Federation, where they may be held for prolonged periods of time, disappeared, or possibly killed by Russian or Russian-affiliated forces.

Russia's filtration of Ukrainian civilians appears to be aimed at identifying anyone showing loyalty to Ukraine, including former members of the Ukrainian military or the Azov Battalion, those with close links to the Ukrainian government, civil activists, and human rights defenders. Filtration also appears to be part of a pre-planned, well-organized, widespread and systematic practice endorsed by Russian officials. Civil society members—including FRF and CCL—have noted that the filtration taking place in Ukraine since the February 24, 2022 invasion is a continuation of the loyalty-testing that began in Russian-occupied Crimea after Russia's annexation of that territory in 2014.

The aim of this report is to build upon what has been documented previously and provide further legal analysis of the various bases upon which the Russian Federation as well as individual Russian authorities and other perpetrators of filtration-related abuses can be held accountable under international law. The report's analysis focuses on three specific practices employed as part of Russia's filtration of Ukrainian civilians: filtration-related detention, torture, and forced relocation. The report evaluates such practices under the frameworks of international human rights law, international humanitarian law, and international criminal law. The law across these three legal frameworks, while distinct, protects the same or similar fundamental rights of civilians and, as such, provides multiple avenues through which the perpetrators may be held accountable.

The report concludes by setting forth recommendations aimed to ensure accountability for the perpetrators of filtration-related detention, torture, and forced transfers and deportations. The report's authors call on the international community and civil society actors support Ukraine's war crimes investigations and prosecutions and coordinate efforts to examine the mounting evidence of atrocities in Ukraine—including those connected to filtration—that may be taken to international monitoring bodies, the International Criminal Court, or a national court or special tribunal.

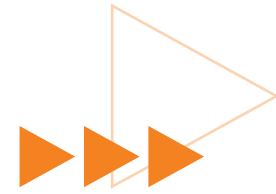
The authors urge the Russian Government, Russian forces and Russian-affiliated forces to:

- ◆ Respect the Russian Federation's obligations under international law, including international human rights law and international humanitarian law;
- ◆ Ensure that Ukrainian civilians are able to leave warzones freely and safely and enter Ukrainian controlled territories, without subjecting them to filtration processes;
- ◆ Immediately stop the forcible transfer and deportation of civilians, including children, from Ukraine to the Russian Federation or Russian-controlled areas of Ukraine; and
- ◆ Grant the international community access to filtration sites and facilities.

They also recommend that local civil society actors, NGOs and the international community:

- ◆ Coordinate efforts to gather and examine the mounting evidence of atrocities committed in Ukraine by Russian and Russian-affiliated forces, including those associated with filtration; and
- ◆ Support Ukraine's investigations and prosecutions of perpetrators of war crimes and other international law violations related to filtration.

# I. INTRODUCTION



Ukrainian civil society groups and the international community have been actively documenting and investigating crimes and human rights violations committed by the Russian military and its proxies in Ukraine since Russia's February 24, 2022 invasion. One of the areas of growing concern is the practice now widely known as "filtration."

Filtration has been described as "a form of compulsory security screening," during which Russian or Russian-affiliated forces collect civilians' biometric data, including fingerprints and facial images, search cell phones and other personal belongings, conduct body searches—at times forcing the individual to strip naked,<sup>1</sup> and interrogate them about their political views and affiliations.<sup>2</sup> According to the Organization for Security and Co-operation in Europe (OSCE), the interrogations and searches taking place as part of filtration seem to be aimed at determining whether the persons have fought on the Ukrainian side of the conflict, have any connections to the Azov

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- 1 Human Rights Watch, *'We Had No Choice': 'Filtration' and the Crime of Forcibly Transferring Ukrainian Civilians to Russia*, Sept. 1, 2022, <https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians> [hereinafter *'We Had No Choice'*]; Human Rights Watch, *Russia: Submission to the UN Committee on the Rights of the Child*, Dec. 12, 2022, [https://www.hrw.org/news/2022/12/12/russia-submission-un-committee-rights-child#\\_ftn21](https://www.hrw.org/news/2022/12/12/russia-submission-un-committee-rights-child#_ftn21); National Intelligence Council, Memorandum (Unclassified), *Russian Forces Conducting Detentions and Forced Deportations Through Systematic Filtration Operations*, June 15, 2022, <https://www.dni.gov/files/ODNI/documents/assessments/NICM-Unclassified-Assessment-on-Russian-Filtration-Camps-2022.pdf> [hereinafter NIC Unclassified Memorandum] ("During filtration, screeners inspect detainees for 'nationalistic' tattoos, photograph them, and take their fingerprints. Russian forces also check and sometimes confiscate victims' passports and identifying documents, and search their cell phones and download contacts."); Nadia Beard, *Ukrainians who fled to Georgia reveal details of Russia's 'filtration camps'*, THE GUARDIAN (June 12, 2022), <https://www.theguardian.com/world/2022/jun/12/ukrainians-who-fled-to-georgia-reveal-details-of-russias-filtration-camps> (reporting that Ukrainians forced through the filtration process are photographed, fingerprinted, and interrogated and the contents of their cell phones searched, and Ukrainian men were forced to strip and have their bodies searched for tattoos linking them to Ukrainian nationalist groups).
  - 2 Human Rights Watch, *'We Had No Choice'*; Human Rights Watch, *Russia: Submission to the UN Committee on the Rights of the Child*; Jason Paladino, *Russian filtration camps: 'Black holes of human rights abuses' where Ukrainians face torture and loyalty tests*, GRID, Aug. 2, 2022, <https://www.grid.news/story/global/2022/08/08/russian-filtration-camps-black-holes-of-human-rights-abuses-where-ukrainians-face-torture-and-loyalty-tests/>.

Battalion<sup>3</sup> or have close links to the Ukrainian government.<sup>4</sup> Information gathered by FRF suggests that it may be even more broad— with occupiers attempting to identify anyone showing loyalty to Ukraine (or conversely, anyone the Russian forces and affiliates believe could do something disloyal to Russia), including civil society activists.<sup>5</sup> Individuals with close links to the government, former officers and soldiers in the Ukrainian army, former police officers, bureaucrats, and civil activist are likely to not pass filtration.<sup>6</sup>

While some level of security screening at borders and/or during a conflict, including interrogation, may be reasonable, the manner in which Russian and Russian-affiliated forces are conducting it go beyond the parameters of domestic or international law. As a result, the Russian Federation’s filtration process and associated detention, conditions of confinement, torture and other physical and psychological abuse, as well as forced transfers and deportations have garnered much attention from researchers, journalists, foreign governments, and regional and international bodies such as the European Parliament, the OSCE, the United Nations Office of the High

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- 3 The Azov Battalion is a Ukrainian far-right, voluntary, “infantry military unit whose members . . . are ultra-nationalists and accused of harbouring neo-Nazi and white supremacist ideology.” Aljazeera, *Profile: Who are Ukraine’s far-right Azov regiment*, March 1, 2022, <https://www.aljazeera.com/news/2022/3/1/who-are-the-azov-regiment>. The presence of such units within the Ukrainian military was one of the reasons stated by Putin for launching the ‘special military operation’ in Ukraine—“to de-militarise and de-Nazify” the country. *Id.*; Sudarsan Raghavan et al., *Right-wing Azov Battalion emerges as a controversial defender of Ukraine*, THE WASHINGTON POST (April 6, 2022), <https://www.washingtonpost.com/world/2022/04/06/ukraine-military-right-wing-militias/>.
  - 4 OSCE, Office for Democratic Institutions and Human Rights, Note Verbale, *Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine 1 April – 25 June 2022*, ODIHR. GAL/36/22/Corr.1, July 14, 2022, p. 68, <https://www.osce.org/files/f/documents/3/e/522616.pdf>. [hereinafter OSCE July 2022 Report].
  - 5 Information provided by Vladimir Zhabankov of FRF. See also OSCE Office of Democratic Institutions and Human Rights, *Third Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine* (July 17, 2023), para. 42, <https://www.osce.org/odihr/548629> [hereinafter OSCE July 2023 Report] (reporting that the profiles of those civilians detained by Russian authorities appear to have been targeted “on the basis of their real or perceived support for the Ukrainian armed forces, for being formerly associated with or having relatives or friends who served in the Ukrainian armed forces, for refusing to cooperate with the occupation authorities, or for merely holding pro-Ukrainian views. . . .”) (internal citations omitted).
  - 6 Information provided by Vladimir Zhabankov of FRF. See also OHCHR, *Detention of Civilians in the Context of the Armed Attack by the Russian Federation Against Ukraine: 24 February 2022-23 May 2023*, para. 6 (June 27, 2023), <https://www.ohchr.org/en/documents/country-reports/detention-civilians-context-armed-attack-russian-federation-against> [hereinafter OHCHR June 2023 Report on Detention of Civilians] (reporting that cases of civilian detention documented by OHCHR include cases of “local public officials, civil society activists, humanitarian volunteers and informal leaders of communities, including teachers and priests.”).



Commissioner for Human Rights (OHCHR), and the International Criminal Court (ICC).

As early as April 2022, just weeks after the Russian invasion, United States (U.S.) Representative to the United Nations (U.N.), Ambassador Linda Thomas-Greenfield, raised concerns about Russia's filtration operations at a U.N. Security Council Briefing. Ambassador Green referred to credible reports about "'filtration camps,' where Russian forces are reportedly making tens of thousands of Ukrainian citizens relocate to Russia."<sup>7</sup> A few weeks later, the U.S. Ambassador to the OSCE, Michael Carpenter, similarly informed the Permanent Council of the OSCE of credible reports of filtration and forced relocation.<sup>8</sup>

On July 14, 2022, official representatives from forty-five states convened at the Ukraine Accountability Conference in The Hague to promote collaboration between national, regional and international accountability initiatives for the crimes committed in Ukraine since the start of Russia's 2022 invasion. In a press statement issued on the eve of that conference, U.S. Secretary of State Antony Blinken referred to mounting evidence that Russian authorities are "reportedly detaining or disappearing thousands of Ukrainian civilians who

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7 Ambassador Linda Thomas-Greenfield, *Remarks by Ambassador Linda Thomas-Greenfield at a UN Security Council Briefing on the Humanitarian Impact of Russia's War Against Ukraine*, April 5, 2022, <https://eg.usembassy.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-un-security-council-briefing-on-the-humanitarian-impact-of-russias-war-against-ukraine/>.

8 See RadioFreeEurope/RadioLiberty, *OSCE Envoy Says Evidence of 'Filtration Camps' Emerging from Areas of Ukraine Claimed by Russian Forces* (April 28, 2022), <https://www.rferl.org/a/russia-ukraine-filtration-camps-osce/31825625.html>.

do not pass ‘filtration.’”<sup>9</sup> Secretary Blinken acknowledged that those civilians “filtered out” (i.e., detained) “include Ukrainians deemed threatening because of their potential affiliation with the Ukrainian army, territorial defense forces, media, government, and civil society groups.”<sup>10</sup> This is consistent with the information obtained by Free Russia Foundation (FRF) and the Center for Civil Liberties (CCL) through their field work in and around Ukraine.

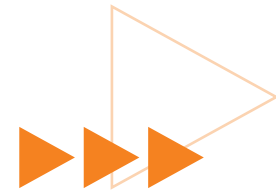
In September 2022, Rosemary DiCarlo, Under Secretary General for Political and Peacebuilding Affairs told the U.N. Security Council that persistent allegations of forced displacement, deportation, and so-called filtration camps run by the Russian Federation and affiliated local forces are “extremely disturbing,” and called for such reports to be investigated with the cooperation of competent authorities.<sup>11</sup> The forced transfer and deportation of Ukrainian children, in particular, has triggered extensive scrutiny and condemnation from the international community, with the ICC in March 2023 issuing arrest warrants for Russian President Vladimir Putin and Russia’s Commissioner for Children’s Rights, Maria Alekseyevna Lvova-Belova.<sup>12</sup>

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- 9 U.S. Dept. of State, Press Release, *Russia’s “Filtration” Operations, Forced Disappearances, and Mass Deportations of Ukrainian Citizens*, Press Statement by Antony J. Blinken, Secretary of State, July 13, 2022, <https://www.state.gov/russias-filtration-operations-forced-disappearances-and-mass-deportations-of-ukrainian-citizens/>. See also Yale School of Public Health Humanitarian Research Lab, *Extrajudicial Detentions and Enforced Disappearances in Kherson Oblast*, Nov. 18, 2022, p. 42, <https://hub.conflictobservatory.org/portal/sharing/rest/content/items/90f22f80754042c597f85529c42e8f6b/data> (reporting that the filtration of Ukrainian civilians has been used to identify those with ties to the Ukrainian military or having pro-Ukraine or anti-Russia views as they are perceived as a threat to Russian forces and affiliated groups); Nadia Beard, *Ukrainians who fled to Georgia reveal details of Russia’s ‘filtration camps’*, *supra* note 1 (reporting that those who do not ‘pass’ the interrogation conducting during the filtration process are detained for further questioning). As reported in a previous ABA CHR and CCL report, forced disappearances of Ukrainian civilians by Russian forces and proxy groups appear to be part of a widespread and systematic effort by the Russian Federation to break local resistance in Ukraine and terrorize the population. See Am. Bar Ass’n and Center for Civil Liberties, *Disappearing Human Rights Defenders: Russia’s Human Rights Violations and International Crimes in Ukraine*, Oct. 7, 2022, [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/justice-defenders/chr-hrd-disappearances-ukraine.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-hrd-disappearances-ukraine.pdf).
- 10 U.S. Dept. of State, Press Release, *Russia’s “Filtration” Operations, Forced Disappearances, and Mass Deportations of Ukrainian Citizens*, *supra* note 9.
- 11 U.N. Meeting Coverage, Statement by Khrystyna Hayovyshyn (Ukraine) *in Reports of Russian Federation Forces Putting Ukrainian Civilians in ‘Filtration’ Camps Must Be Investigated, Senior Officials Tell Security Council*, Security Council 9126<sup>th</sup> Meeting, SC/15023, Sept. 7, 2022, <https://press.un.org/en/2022/sc15023.doc.htm> [hereinafter U.N. Security Council 9126<sup>th</sup> Meeting].
- 12 ICC, Press Release, *Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, March 17, 2023, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>.

The aim of this report is to build upon what has been documented previously and provide further legal analysis of the various bases upon which the Russian Federation as well as individual Russian authorities and other perpetrators of the filtration procedures and associated conduct can be held accountable under international law. To that end, this report provides an overview of Russia's filtration operations based upon information gathered by FRF and CCL, as well as secondary sources in the form of reports by governmental and non-governmental sources, press statements, U.N. briefing documents, and news articles from both domestic and foreign media outlets. It then analyzes that information against three inter-related and overlapping legal frameworks: international human rights law (IHRL), international criminal law (ICL) and international humanitarian law (IHL).

The analysis is not intended to be an exhaustive list of crimes for which the perpetrators of filtration and filtration-related abuses could be charged; rather, it focuses on three categories of filtration-related conduct: (i) deprivation of liberty and arbitrary detention; (ii) torture and other inhuman treatment; and (iii) deportations and forced transfers. It then touches briefly on human rights violations specific to children subject to filtration or affected by the filtration process. Finally, the report offers recommendations to ensure accountability for the perpetrators of human rights violations and international crimes that take place as part of the filtration operations.

## ■ II. BACKGROUND



### A Widespread, Organized System

The filtration of Ukrainian civilians is more than an ad hoc procedure carried out by a few Russian soldiers or occupiers. Multiple reports reveal that Russian forces have an entire filtration *system* in place in parts of Ukraine.<sup>13</sup> In June 2022, the U.S. National Intelligence Council described Russia’s filtration operations as “systematic” after identifying 18 possible locations of filtration facilities in eastern Ukraine and western Russia.<sup>14</sup> In July 2022, the Government of Poland described a “network of prisons and filtration camps to which Ukrainians are sent en masse,” identifying five specific locations where “Russian torture chambers” were reportedly used against Ukrainians.<sup>15</sup> And in August 2022, Yale University’s Humanitarian Research Lab in collaboration with the U.S. State Department-supported Conflict Observatory released an extensive report on Russia’s filtration system, in which the authors identified “with high confidence” 21 filtration facilities operated by Russian and “Russian-aligned” forces in and around Donetsk oblast alone.<sup>16</sup> A month later, Ukraine’s Prosecutor-General announced that filtration camps were “set

13 See, e.g., OSCE July 2022 Report, *supra* note 4 at p. 4 (identifying “two new alarming phenomena which were not included or paid sufficient attention to in the first [OSCE] report, namely the establishment and use of so-called filtration centres.”); Paladino, *Russian filtration camps: ‘Black holes of human rights abuses’*, *supra* note 2 (reporting Russian forces’ use of “an archipelago of filtration camps in Russian-controlled eastern Ukraine to hold and scrutinize” Ukrainian civilians); Yale School of Public Health Humanitarian Research Lab, *System of Filtration: Mapping Russia’s Detention Operations in Donetsk Oblast*, Aug. 25, 2022, p. 9, <https://hub.conflictobservatory.org/portal/sharing/rest/content/items/7d1c90eb89d3446f9e708b87b69ad0d8/data>.

14 NIC Unclassified Memorandum, *supra* note 1.

15 Government of Poland, Special Services, *Special services have identified Russian filtration camps*, July 27, 2022, <https://www.gov.pl/web/special-services/special-services-have-identified-russian-filtration-camps> (the five specific locations being: 56 Aksakowa Street, Donieck; Niepodległości Ukrainy, Dokuczajewsk; 63 Tytowa St., Manhusz; 69 Kommunariv St., Nowoazowsk; and 30 Paszy Angeliny St., Starbeszewe).

16 Yale School of Public Health Humanitarian Research Lab, *System of Filtration*, *supra* note 13 at p. 9; Conflict Observatory, *Mapping the Filtration System in Donetsk Oblast*, Aug. 25, 2022, <https://hub.conflictobservatory.org/portal/apps/sites/#/home/pages/filtration-1>. Donetsk Oblast is an administrative region in eastern Ukraine. Filtration in the camp setting reportedly typically includes the following components: registration, holding, interrogation, and detention. *Id.* It may also involve forced or coerced relocation of Ukrainian civilians, including those fleeing hostilities, to Russian-occupied areas of Ukraine or across the border to the Russian Federation.

up in the cities of Makiivka, Snizhne, Torez, Shakhtarsk, Khartsysk, Novoazovsk and Berdyansk, as well as the villages of Nikolske, Bezimenne, Yuryivka.”<sup>17</sup>

Local civil society organizations suggest that Russia’s filtration operations are even more widespread. A coalition of Ukrainian human rights organizations dubbed “5:00 AM Coalition” asserts in their 2023 report on the deportation of Ukrainian citizens that “filtration processes take place in all settlements occupied by Russia, without exception, as well as at checkpoints.”<sup>18</sup> The 5:00 AM Coalition further claims that the Russian Federation “planned the creation of filtration camps in Ukraine in advance” of its February 2022 invasion, citing multiple media sources in support of this allegation.<sup>19</sup> For example, Promote Ukraine Media reported in December 2021 that a “very credible source in Ukraine” expressed serious concerns that “once the invasion [of Ukraine

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17 U.N. Security Council 9126<sup>th</sup> Meeting, *supra* note 11 (Statement by Khrystyna Hayovyshyn (Ukraine)). There is some overlap between the various reports—for example, both the Government of Poland and the Yale School of Public Health/Conflict Observatory identified filtration operations in Dokuchaivsk, Novoazovsk, Manhush, Donetsk and Starobesheve and Ukraine’s Prosecutor General and the Yale School of Public Health/Conflict Observatory both reported on camps identified in Bezimenne, Mikiivka and Nikolske, as well as Novoazovsk. News outlets have corroborated a number of the filtration camp sites as well. See, e.g., Beard, *Ukrainians who fled to Georgia reveal details of Russia’s ‘filtration camps’*, *supra* note 1 (reporting on the existence of filtration camps in Novoazovsk, Manhush, Bezimenne and Nikolske); Amnesty Int’l, *Like a Prison Convoy: Russia’s Unlawful Transfer and Abuse of Civilians in Ukraine During ‘Filtration’*, Nov. 10, 2022, p. 19, <https://www.amnesty.org/en/documents/eur50/6136/2022/en/> (reporting that Amnesty International interviewed people who underwent filtration in Starobesheve, Dokuchaevsk, Bezimenne, Manhush, and Donetsk).

18 5:00 AM Coalition, *Deportation of Ukrainian Citizens from the Territory of Active Military Operations or From the Temporarily Occupied Territory of Ukraine to the Territory of the Russian Federation and the Republic of Belarus*, p. 8, <https://zmina.ua/en/publication-en/deportation-of-ukrainian-citizens-from-the-territory-of-active-military-operations-or-from-the-temporarily-occupied-territory-of-ukraine-to-the-territory-of-the-russian-federation-and-the-republic-of/>. Similar information was reported by a FRF consultant who is conducting interviews with Ukrainians who have been questioned and detained by Russian forces and affiliates.

19 Onysia Syniuk et al., *Deportation of Ukrainian citizens from the territory of active military operations or from the temporarily occupied territory of Ukraine to the territory of the Russian Federation and the Republic of Belarus*, 5:00 AM Coalition (February 2023), p. 7, [https://zmina.ua/wp-content/uploads/sites/2/2023/01/deportation\\_eng.pdf](https://zmina.ua/wp-content/uploads/sites/2/2023/01/deportation_eng.pdf) [hereinafter 5:00 AM Coalition Report]. See also, ZMINA, *Russia planned deportation of Ukrainians in advance, deliberately created conditions for it – human rights defender*, May 18, 2023, <https://zmina.ua/en/event-en/russia-planned-deportation-of-ukrainians-in-advance-deliberately-created-conditions-for-it-human-rights-defender/>.

by Russia] happens, ‘filtration camps’ will be set up over all the [Russian-] occupied area.”<sup>20</sup>

Such preparation and planning further illustrates a high level of organization by the Russian Federation and indicates that the filtration of Ukrainian civilians is indeed being performed pursuant to an official Russian state policy. Moreover, according to local experts, the filtration process being used during Russia’s ongoing war in Ukraine is fashioned after the Russian Federation’s practice in occupied territories since the annexation of Crimea in 2014.<sup>21</sup>

▶▶▶ **“In a broad sense, what is happening now [in occupied territories of Ukraine] is what has been happening in Crimea since 2014. . . .constantly vetting the loyalty.”**

- Scott Martin, FRF Consultant

Russia’s filtration operations are also reportedly well organized. Yale University’s researchers identified four categories of filtration facilities (or, stages of Russia’s filtration system): “1) registration points, 2) camps and other holding facilities for those awaiting registration, 3) interrogation centers, and 4) prisons (typically correctional colonies) that serve as longer-term detention facilities.”<sup>22</sup> Another factor that suggests the filtration operations are well organized is that individuals reportedly receive a “filtration receipt” once they successfully complete the process that they then show to Russian or Russian-affiliated authorities to pass through checkpoints.<sup>23</sup>

20 Promote Ukraine, *Is Russia Planning “Filtration Camps” for Ukrainians?*, Dec. 15, 2021, <https://www.promoteukraine.org/is-russia-planning-filtration-camps-for-ukrainians/>. Promote Ukraine is a “Brussels-based media platform for expertise and civil society initiatives for Ukraine and the EU.” Promote Ukraine, About Us, <https://www.promoteukraine.org/overview/> (last accessed June 15, 2023).

21 Information provided by CCL and FRF. See also U.N. Security Council 9126<sup>th</sup> Meeting, *supra* note 11 (including Oleksandra Drik’s statement that the Russian Federation has been implementing the so-called filtration process “in the occupied territories of Ukraine over the last eight years.”).

22 Yale School of Public Health Humanitarian Research Lab, *System of Filtration*, *supra* note 13 at p. 9. The report notes that the different facilities may play multiple roles in the filtration process and/or the role a facility “play[s] in the system can change over time.” *Id.*

23 See, e.g., 5:00 AM Coalition Report, *supra* note 19 at p. 8; Human Rights Watch, ‘We Had No Choice’, *supra* note 1; U.S. Dept. of State, Foreign Press Centers Briefing, *Russian Filtration Operations and the Human Cost in Ukraine*, Sept. 15, 2022, <https://www.state.gov/briefings-foreign-press-centers/russian-filtration-operations-and-the-human-cost-in-ukraine>.

## Filtration-Related Detention: Conditions and Treatment

Although the filtration screening itself may in some instances require only 30 minutes, those waiting to complete filtration can end up waiting for a period of several hours or days or up to a month.<sup>24</sup> According to the U.S. Intelligence Council, “those subjected to filtration probably face temporary detention during processing.”<sup>25</sup> Human Rights Watch similarly reported that Ukrainian civilians—including some children—“were effectively interned as they waited to undergo this process.”<sup>26</sup>

CCL, FRF, the Ukraine Ombudsman, and numerous published reports have documented the treatment and conditions experienced by those held in de facto or formal detention centers in connection to filtration. Persons awaiting filtration often spend nights in vehicles or unequipped premises, often without adequate access to food, water, and sanitation.<sup>27</sup> Civilians who have been processed through filtration camps or been held in filtration-related detention and survived to tell their stories speak of unsanitary and overcrowded conditions<sup>28</sup> as well as mistreatment ranging from malnutrition

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24 See Beard, *Ukrainians who fled to Georgia reveal details of Russia's 'filtration camps'*, *supra* note 1; Peter Sidel, *Russia Holds 3,000 Civilians in Town Where Mariupol Fighters Were Taken, Kyiv Says*, THE WALL STREET JOURNAL (May 17, 2022), <https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-05-17/card/russia-holds-3-000-civilians-in-town-where-mariupol-fighters-were-taken-kyiv-says-KBS729yaHhwRNQT3uTOj>; Human Rights Watch, *'We Had No Choice'*, *supra* note 1.

25 NIC Unclassified Memorandum, *supra* note 1.

26 Human Rights Watch, *Russia: Submission to the UN Committee on the Rights of the Child*, *supra* note 1.

27 U.N. Office of the High Commissioner for Human Rights, *Situation of Human Rights in Ukraine in the Context of the Armed Attack by the Russian Federation 24 February-15 May 2022*, June 29, 2022, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>; <https://www.dni.gov/files/ODNI/documents/assessments/NICM-Unclassified-Assessment-on-Russian-Filtration-Camps-2022.pdf> [hereinafter OHCHR, *Situation of Human Rights in Ukraine*]; U.N. Security Council 9126<sup>th</sup> Meeting, *supra* note 11 (reporting that those going through the filtration procedures are “humiliated and kept in inhuman conditions without access to proper food, water or sanitation.”); NIC Unclassified Memorandum, *supra* note 1.

28 Amnesty Int'l, *Ukraine: Russia's unlawful transfer of civilians a war crime and likely a crime against humanity – new report*, Nov. 10, 2022, <https://www.amnesty.org/en/latest/news/2022/11/ukraine-russias-unlawful-transfer-of-civilians-a-war-crime-and-likely-a-crime-against-humanity-new-report/> (reporting that many “held in dangerous and overcrowded conditions”); Human Rights Watch, *'We Had No Choice'*, *supra* note 1 (reporting “overcrowded and squalid conditions”).

to verbal abuse, intimidation and humiliation, and in many cases torture.<sup>29</sup> According to OHCHR, in some cases individuals subject to filtration have experienced sexual violence.<sup>30</sup>

At a U.N. Security Council briefing in September 2022, CCL's Oleksandra Drik, "recounted the stories of several individuals who have passed through this filtration process, where they were interrogated, beaten, tortured with electricity, and psychologically pressured to renounce Ukrainian citizenship or provide information on their connections with the Ukrainian military."<sup>31</sup> For example, CCL interviewed a man from Mariupol who passed through filtration with his wife and child. He was interrogated by Russian military intelligence and Russian-controlled forces. When they found out that his wife had ties to the Ukrainian army, they attempted to take away their child for "re-education."<sup>32</sup> Although this man informed the interrogators that he was not part of the Ukrainian military—and therefore did not have any relevant information to give—they beat him, hitting him in the groin multiple times and connecting electricity to his neck and shocking him. His dental fillings fell out as a result of the torture.<sup>33</sup>

Ms. Drik also told the story of Taras Tselenchenko, a 21-year-old student from Mariupol who along with his 80-year-old cancer-stricken grandmother was subjected to the filtration process twice. The student "was fingerprinted, photographed, interrogated, [and] psychologically pressured" in the course of interrogation by a former member of the Ukrainian military and "a Russian wearing civilian clothes and holding a baseball bat in his hands."<sup>34</sup>

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29 Paladino, *Russian filtration camps: 'Black holes of human rights abuses'*, *supra* note 2; Information provided by FRF; OHCHR, *Situation of Human Rights in Ukraine*, *supra* note 27 (reporting that "[i]ndividuals subjected to 'filtration' have been verbally intimidated, humiliated and beaten, which may amount to ill-treatment and, in some cases, were subjected to sexual violence.").

30 OHCHR, *Situation of Human Rights in Ukraine*, *supra* note 27.

31 U.N. Security Council 9126<sup>th</sup> Meeting, *supra* note 11.

32 C-SPAN, *U.N. Security Council Meeting on Situation in Ukraine*, Sept. 7, 2022, <https://www.c-span.org/video/?522655-1/un-security-council-meeting-situation-ukraine>

33 *Id.*

34 *Id.*; see also Oleksandra Matviichuk, Natalia Arno and Jasmine Cameron, *Russia's Forcible Transfers of Ukrainian Civilians: How Civil Society Aids Accountability and Justice*, JUST SECURITY (March 3, 2023), <https://www.justsecurity.org/85324/russias-forcible-transfers-of-ukrainian-civilians-how-civil-society-aids-accountability-and-justice/>.



Marya Vychenko, 17, was subjected to filtration in a camp in Manhush. She told CCL that in addition to the usual humiliating procedure, “she was also sexually harassed during her interrogation but was spared violence because the Russian soldiers did not find her pretty enough.”<sup>35</sup>

Those who do not pass filtration are typically transferred to formal detention centers or prisons in Russian-controlled territory of Ukraine or to the Russian Federation, where they may be detained for prolonged periods, and in some cases “simply disappear” or are presumed killed.<sup>36</sup> According to information received by FRF, when Ukrainian civilians are detained by Russian forces—including after filtration—they typically have no criminal case against them,

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- 35 C-SPAN, *U.N. Security Council Meeting on Situation in Ukraine*, Sept. 7, 2022, <https://www.c-span.org/video/?522655-1/un-security-council-meeting-situation-ukraine>; see also Oleksandra Matviichuk, Natalia Arno and Jasmine Cameron, *Russia's Forcible Transfers of Ukrainian Civilians: How Civil Society Aids Accountability and Justice*, JUST SECURITY (March 3, 2023), <https://www.justsecurity.org/85324/russias-forcible-transfers-of-ukrainian-civilians-how-civil-society-aids-accountability-and-justice/>.
- 36 OSCE July 2022 Report, *supra* note 4 (reporting that if the interrogators believe that such links exist, those individuals “are separated from others and often simply disappear” while some undergoing filtration “are allegedly transferred to the territories of the so-called Donetsk and Luhansk People’s Republic, where they are detained or even murdered.”); Information provided by Vladimir Zhbakov of FRF. See also Human Rights Watch, “*We Had No Choice*”, *supra* note 1 (reporting that the fate and whereabouts of some of those individuals who failed filtration in DNR are presumed forcibly disappeared by family members); U.N., Meeting Coverage: Security Council, *Reports of Russian Federation Forces Putting Ukrainian Civilians in ‘Filtration’ Camps Must Be Investigated, Senior Officials Tell Security Council*, 9126th Meeting, C/15023, Sept. 7, 2022, <https://press.un.org/en/2022/sc15023.doc.htm> (reporting statements by CCL’s Oleksandra Drik regarding reports of those who fail filtration being killed “and satellite images reveal mass graves situated close to filtration camps.”); U.S. Dept. of State, Press Release, *Russia’s “Filtration” Operations, Forced Disappearances, and Mass Deportations of Ukrainian Citizens*, *supra* note 9 (acknowledging reports that “some individuals targeted for ‘filtration’ have been summarily executed, consistent with evidence of Russian atrocities committed in Bucha, Mariupol, and other locations in Ukraine.”); Amnesty Int’l, “*Like a Prison Convoy*”, *supra* note 17 at pp. 20-23, <https://www.amnesty.org/en/documents/eur50/6136/2022/en/> (documenting six accounts of Ukrainians being detained during the filtration process, including individuals who were held for at least a week and some cases of individuals who never returned after filtration.).

but are held in prison for months without any formal charges.<sup>37</sup> Many are reportedly tortured while in detention throughout the controlled territories or Russia, including with electric shocks, threats of execution, and physical beatings.<sup>38</sup>

▶▶▶ **“When Ukrainian civilians are detained by Russian forces—including after filtration—they typically have no criminal case against them, but are held in prison for months without any formal charges.”**

- Vladimir Zhabankov, Free Russia Foundation

### Transfers and Deportations

Filtration may be accompanied by a transfer to Russian-controlled regions of Ukraine or deportation to the Russian Federation. Reports of Russian authorities and affiliates deporting or forcibly transferring Ukrainian citizens in connection with filtration began emerging within weeks of Russia’s invasion.<sup>39</sup> However, reported figures of the number of civilians transferred or deported vary greatly and remain difficult to confirm.

37 Information provided by Vladimir Zhabankov of FRF. See also OHCHR, *Detention of Civilians in the Context of the Armed Attack by the Russian Federation Against Ukraine, 24 February 2022-23 May 2023* (June 27, 2023), para. 61, [https://www.ohchr.org/sites/default/files/2023-07/2023-06-27-Ukraine-thematic-report-detention-ENG\\_0.pdf](https://www.ohchr.org/sites/default/files/2023-07/2023-06-27-Ukraine-thematic-report-detention-ENG_0.pdf), (reporting that civilians held in filtration-related detention by Russian forces lacked procedural guarantees: “[d]etainees were not informed about the reasons for their detention, were held *incommunicado*, and had no access to a judicial or administrative mechanism to review or challenge their detention.”); *id.* at para. 60 (reporting that *upon release* some civilian detainees “were informed that they had been held under ‘administrative detention’, while others received no information at all regarding the grounds for their detention.”) (emphasis added). As of July 2023, Ukraine’s Ombudsman had information related to approximately 10,000 cases of Ukrainian civilians being detained by Russian authorities, including those detained in relation to filtration. Information provided by FRF.

38 See U.S. Dept. of State, Press Statement, *Russia’s ‘Filtration’ Operations, Forced Disappearances, and Mass Deportations of Ukrainian Citizens*, *supra* note \_\_; Amnesty Int’l, *Ukraine: Russia’s unlawful transfer of civilians*, *supra* note 28; Saidel, *Russia Holds 3,000 Civilians in Town Where Mariupol Fighters Were Taken, Kyiv Says*, *supra* note 24 (reporting that Ukraine Ombudsman for Human Rights, Lyudmyla Denisova, accused Russia of torturing civilians detained during filtration).

39 See, e.g., Paladino, *Russian filtration camps: ‘Black holes of human rights abuses’*, *supra* note 2 (“Almost since the war began, Ukrainians have accused Russian forces of detaining civilians, interrogating them and in many cases forcing them not only from their homes but from their country.”); OSCE July 2022 Report, *supra* note \_\_ at 30.

In May 2022, officials on both sides estimated that Russian occupation forces and affiliates had moved over a million Ukrainians to the Russian Federation.<sup>40</sup> The Head of the National Centre for Defence Control of the Russian Federation claimed that Russia had transferred as many as 238,329 children (despite denials by Russia that the Russian military is forcibly deporting Ukrainians to Russia).<sup>41</sup> By June 2022, the OSCE reported that an estimated 1.7 million Ukrainians had been moved<sup>42</sup> and President Zelensky reported that over 200,000 children were among those forcibly taken to Russia.<sup>43</sup> U.S. Secretary of State Antony Blinken similarly reported in July 2022 that “[e]stimates from a variety of sources, including Russian authorities have interrogated, detained, and forcibly deported between 900,000 and 1.6 million Ukrainian citizens, including 260,000 children, from their homes to Russia[.]”<sup>44</sup> But more recent figures coming out of Ukraine are more modest, with the

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40 See Paladino, *Russian filtration camps: ‘Black holes of human rights abuses’*, *supra* note 2 (reporting that in May 2022, a Russian official stated that “1,426,979 people, of which 238,329 are children,’ had been ‘evacuated from dangerous areas of the republics of Donbas and Ukraine to the territory of the Russian Federation” and that according to a Ukrainian official, “Russia had deported 1,377,925 Ukrainians, 232,480 of whom were children.”); Christopher Miller, *One Ukrainian family’s perilous journey through Russia’s ‘filtration camps’*, Politico (May 26, 2022), <https://www.politico.com/news/2022/05/26/ukraine-filtration-camps-00034862> (reporting that close to 1.2 million Ukrainians, including 206,000 children, “have been taken from eastern and southern Ukraine to Russia” according to Ukraine’s human rights ombudsman, Lyudmila Denisova). See also OSCE July 2022 Report, *supra* note 4 at 31 (reporting that “Ukraine’s Commission for human rights said in mid-May [2022] that Russia had relocated more than 210,000 children during the conflict, part of the more than 1.2 million Ukrainians deported against their will, according to Kyiv.”).

41 OSCE July 2022 Report, *supra* note 4 at pp. 72-73; see also Roman Petrenko, *Russia says more than 300,000 Ukrainian children ‘deported’*, PRAVDA (June 19, 2022), <https://www.pravda.com.ua/eng/news/2022/06/19/7353366/> (unofficial translation) (citing <https://www.interfax.ru/world/846957>) (reporting that according to the Russian Federation’s head of the National Defence Management Centre, Mikhail Mizintsev, a total of 1,936,911 Ukrainians had been deported to Russia, including 307,423 children).

42 OSCE July 2022 Report *supra* note 4; Paladino, *Russian filtration camps: ‘Black holes of human rights abuses’*, *supra* note 2.

43 See, e.g., Human Rights Watch, *Russia: Submission to the UN Committee on the Rights of the Child*, *supra* note 1; The Kyiv Independent, *Zelensky: More than 200,000 Ukrainian children have been deported to Russia*, June 2022, <https://kyivindependent.com/zelensky-more-than-200000-ukrainian-children-have-been-deported-to-russia/>.

44 U.S. Dept. of State, Press Release, *Russia’s “Filtration” Operations, Forced Disappearances, and Mass Deportations of Ukrainian Citizens*, *supra* note 9.

Ukrainian government suggesting that approximately 20,000 children have been deported to Russia.<sup>45</sup>

Individual accounts conveyed to CCL, FRF, Human Rights Watch, Amnesty International and various media outlets reveal that the relocations performed in connection with filtration are either physically forced or coerced and that those subjected to them lack any genuine choice. In some reported cases, Russian and Russian-affiliated forces told civilians that they had no choice to go to Ukrainian-controlled areas; they could either “stay in Russian-occupied areas or go to Russia.”<sup>46</sup> In other cases, Russian forces reportedly took civilians by force from where they were sheltering to Russian-controlled territory for filtration.<sup>47</sup> Amnesty International interviewed 88 people from Ukraine, mostly civilians from Mariupol, as well as civilians from the Kharkiv, Luhansk, Kherson and Zaporizhzhia regions. Most of the individuals interviewed described coercive conditions with no meaningful choice but to go to Russia or other Russian-occupied areas.<sup>48</sup>

Of further concern, according to the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, “most of those transferred to the Russian Federation have no travel documents[,]” making those wishing to return home “literally trapped in the Russian Federation.”<sup>49</sup>

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45 See Radio Svoboda, *Zelensky promises continued efforts to return all deported Ukrainian children from the Russian Federation* (April 27, 2023) (unofficial translation), <https://www.radiosvoboda.org/a/news-zelenskyi-dity-deportatsiya/32382557.html>; Foreign Affairs Committee, Press Release, *McCaul Questions Ukrainian Prosecutor General on Putin's War Crimes*, April 20, 2023, <https://foreignaffairs.house.gov/press-release/mccaul-questions-ukrainian-prosecutor-general-on-putins-war-crimes/> (recounting Ukrainian Prosecutor General Andriy Kostin's statement that “we [the Ukrainian government] have information about up to 20,000 Ukrainian children who were forcibly deported [to Russia].”).

46 Human Rights Watch, “*We Had No Choice*”, *supra* note

47 *Id.* (reporting that a woman from the Livoberezhnyi suburb of Mariupol and her mother were taken on April 10, 2022 from her mother's apartment building and with other people sheltering in the basement of the building taken “to the DNR to undergo the filtration process.”); Human Rights Watch also recounted the experience of another woman from Mariupol who was taken by Russian forces with neighbors from the basement in which they were sheltering, put on buses, and then taken to Taganrog, Russia “without giving us another choice”. *Id.*

48 Amnesty Int'l, “*Like a Prison Convoy*”, *supra* note 17.

49 U.N. Press Release, Statement by Khrystyna Hayovyshyn (Ukraine) *in Reports of Russian Federation Forces Putting Ukrainian Civilians in 'Filtration' Camps Must Be Investigated, Senior Officials Tell Security Council*, 9126<sup>th</sup> Meeting, SC/15023, Sept. 7, 2022, <https://press.un.org/en/2022/sc15023.doc.htm>.

### ▶▶▶ *Seven Months in a Russian Prison*

Free Russia Foundation spoke with a man in his mid-30s from Chervone who was stopped by “traffic police” while traveling from Crimea to elsewhere in Ukraine in June 2022. After preliminary questioning during the purported traffic stop, the police arrested him and took him away in handcuffs.

He was transported to a prison in Volgograd, Russia and then transferred to a prison in the village of Kamyshev. There he was interrogated by Russian police about his views and actions. During the interrogation, they verbally threatened him, calling him an extremist and a Nazi, and accused him of promoting extremism due to a video they saw of him on social media saying “Glory to Ukraine.” They beat him severely with batons to the point that some of his teeth were knocked out. A doctor came who gave him an injection that resulted in the man feeling dizzy and not being able to move properly. Then he was presented with documents to sign. He was later told that he signed a statement renouncing his Ukrainian citizenship.

This man was held in Russian prisons for seven months, from June 10, 2022 until January 30, 2023. He was not allowed contact with his family or a lawyer. When prison guards learned that he was discussing with another prisoner how to contact their families, he was placed in solitary confinement for two months. Even when not in solitary confinement, the conditions in which he was held were poor—he was only allowed to shower once per week and only given time outdoors for roughly 15 minutes per day.

The interrogations during his detention became daily, sometimes 3 to 4 times a day. He recounted that during the interrogations he was offered Russian citizenship if he joined the Wagner Group. When he refused, prison officials became violent—tear gassing him, handcuffing him to a wall, and beating him with a bat. They poured bleach on the floor of his cell, burning his feet.

Eventually, young man was transferred to Yerevan, Armenia in February 2023, but he believes that Ukrainian prisoners are now being transferred to the Russian border with Georgia when the Russian officials “lose interest” in them.

- Interview conducted by FRF on April 11, 2023 and June 11, 2023

On March 30, 2023, forty-five countries, including the United States, invoked the OSCE Moscow Mechanism, requesting “an expert mission to examine the allegations of the forced transfer of children in those parts of Ukraine’s territory temporarily controlled or occupied by Russia,” as well as the allegations that Ukrainian children have been deported to the Russian Federation.<sup>50</sup> In May 2023, the OSCE issued a report detailing their findings, including that the forcible transfers and deportations of children constitute a war crime, violate numerous children’s rights under the human rights framework, and may amount to crimes against humanity.<sup>51</sup> As noted

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50 U.S. Dept. of State, Press Statement, *Invocation of the OSCE Moscow Mechanism to Examine Reports of the Russian Federation’s Forcible Transfer and Deportation of Ukraine’s Children*, March 30, 2023, <https://www.state.gov/invocation-of-the-osce-moscow-mechanism-to-examine-reports-of-the-russian-federations-forcible-transfer-and-deportation-of-ukraines-children/>. The Moscow Mechanism was adopted by the OSCE in 1991 and gives “the option of sending missions of experts to assist participating States in the resolution of a particular question or problem relating to the human dimension.” OSCE, Resources, Moscow Mechanism, <https://www.osce.org/odihr/20066> (last accessed May 29, 2023).

51 OSCE Office for Democratic Institutions and Human Rights, *Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, Related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation*, Note Verbale, ODIHR.GAL/37/23/Rev.1/Corr.1, May 4, 2023, <https://www.osce.org/files/f/documents/7/7/542751.pdf>.

above, the ICC also has issued arrest warrants for Vladimir Putin and Maria Alekseyevna Lvova-Belova for the war crimes of unlawful deportation of population and that of unlawful transfer of population in connection to the deportation of Ukrainian children to the Russian Federation.

## Separation of Family Members

In some instances, children have been separated from parents or other relatives or guardians as a result of the filtration process. The length of separation ranges from several hours—while the children wait for their parents to be interrogated—to indefinitely, if their parents do not pass filtration.<sup>52</sup> In some cases, children may be transported to Russia after separation from their family.

The Ukrainian Helsinki Human Rights Union documented the case of a family with two children that was stopped by Russian occupiers between August 22 and 24, 2022 while trying to leave the occupied Zaporizhia region. The husband and wife were reportedly “put in a cage (sent for filtration) and two minor children aged four and six sat in the car alone for eight hours.”<sup>53</sup> This report was apparently based upon a statement made by Melitopol mayor, Ivan Fedorov, on August 23, 2022.<sup>54</sup> Mayor Fedorov also reportedly claimed

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52 OHCHR, *Situation of Human Rights in Ukraine*, supra note 29 (reporting that OHCHR had “received credible reports that some children were separated from their parents during and after the [filtration] process, when the accompanying adult did not pass the ‘filtration.’”). See also 5:00 AM Coalition, *Deportation of Ukrainian Citizens from the Territory of Active Military Operations or from the Temporarily Occupied Territory of Ukraine to the Territory of the Russian Federation and the Republic of Belarus*, p. 11 (noting that “there are many reports on family separation, when family members were separated from loved ones as a result of ‘filtration measures’ and “[t]hat there are also cases when children were taken away from their parents during ‘filtration’ because the Russian military ‘detects and suspects’ the parents’ involvement in pro-Ukrainian activities.”).

53 See Ukrainian Helsinki Human Rights Union, *Chronology of events in Zaporizhia and the Zaporizhia region during the Russian-Ukrainian war on August 22-24, 2022*, Aug. 25, 2022, <https://www.helsinki.org.ua/articles/khronolohiia-podiy-u-zaporizhzhii-ta-zaporizkiy-oblasti-pid-chas-rosiysko-ukrainskoi-viyny-22-24-serpnia-2022-roku/> (unofficial translation); See The First Zaporozhye, *The children were left in the car for 8 hours, and the parents were sent for filtration: it is becoming more difficult to leave Melitopol*, Aug. 23, 2022, <http://1news.zp.ua/ditej-zalishili-v-mashini-na-8-godin-a-batkiv-vidpravili-na-filtracziyu-z-melitopolya-sta%94-vazhche-vi%97hati/> (unofficial translation).

54 See The First Zaporozhye, *The children were left in the car for 8 hours, and the parents were sent for filtration: it is becoming more difficult to leave Melitopol*, Aug. 23, 2022, <http://1news.zp.ua/ditej-zalishili-v-mashini-na-8-godin-a-batkiv-vidpravili-na-filtracziyu-z-melitopolya-sta%94-vazhche-vi%97hati/> (unofficial translation).

that the filtration in Melitopol was taking place in the direction of annexed Crimea.<sup>55</sup>

In early 2023, local media outlets reported the story of a single father who was separated from his three minor children by Russian soldiers at a checkpoint near Mariupol.<sup>56</sup> Yevhen Mezhevyi, a former member of Ukraine's military, was taken with his children from a basement where they had been sheltering with other families as part of a purported evacuation by Russian forces.<sup>57</sup> When the car they were riding in stopped at a checkpoint, Russian soldiers reportedly inspected documents and belongings and saw Mr. Mezhevyi's military documentation from his prior service in Ukraine's armed forces.<sup>58</sup> Mr. Mezhevyi asked a woman to watch the children while he was taken away for further interrogation so they could get on the evacuation bus.<sup>59</sup> However, according to the reports, the children were ultimately taken to Russia and put up for adoption while their father was detained in relation to filtration in Donetsk oblast.<sup>60</sup>

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55 See The First Zaporozhye, *The children were left in the car for 8 hours, and the parents were sent for filtration: it is becoming more difficult to leave Melitopol*, Aug. 23, 2022, <http://1news.zp.ua/ditej-zalishili-v-mashini-na-8-godin-a-batkiv-vidpravili-na-filtracziyu-z-melitopolya-sta%20d1%94-vazhche-vi%20d1%97hati/> (unofficial translation); Ukrainian Helsinki Human Rights Union, *Chronology of events in Zaporizhia and the Zaporizhia region during the Russian-Ukrainian war on August 22-24, 2022*, Aug. 25, 2022, <https://www.helsinki.org.ua/articles/khronolohiia-podiy-u-zaporizhzi-ta-zaporizkiy-oblasti-pid-chas-rosiysko-ukrainskoi-viyny-22-24-serpnia-2022-roku/> (unofficial translation).

56 See Marjana Sich, "Dad, they want to adopt us. You have 5 days.": how a Ukrainian father returned his children deported to Russia, RADIO SVOBODA (Feb. 14, 2023), <https://www.radiosvoboda.org/a/deportatsiya-mariupol-dity-rosiya-ukraina/32265673.html> (unofficial translation); Halya Coynash, *Invaders seize and imprison former Ukrainian soldier, then kidnap his three children to Russia 'for adoption'*, KHARKIV HUMAN RIGHTS PROTECTION GROUP (Feb. 24, 2023), <https://khpg.org/en/1608811855>.

57 Coynash, *Invaders seize and imprison former Ukrainian soldier*; *supra* note \_\_.

58 Marjana Sich, "Dad, they want to adopt us. You have 5 days.": how a Ukrainian father returned his children deported to Russia, RADIO SVOBODA (Feb. 14, 2023), <https://www.radiosvoboda.org/a/deportatsiya-mariupol-dity-rosiya-ukraina/32265673.html> (unofficial translation); Halya Coynash, *Invaders seize and imprison former Ukrainian soldier, then kidnap his three children to Russia 'for adoption'*, KHARKIV HUMAN RIGHTS PROTECTION GROUP (Feb. 24, 2023), <https://khpg.org/en/1608811855>. Mr. Mezhevyi reportedly left the Ukrainian military around 2017. *Id.*

59 *Id.*

60 *Id.* During filtration, Mezhevyii was reportedly interrogated, blindfolded with hands bound, and transported first to the Novoazovsk SIZO remand prison and then to Olenivka prison near occupied Donetsk. Coynash, *Invaders seize and imprison former Ukrainian soldier*, *supra* note \_\_.



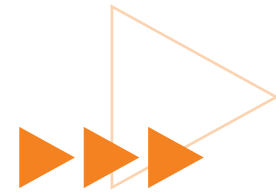
According to the U.S. Department of State, the separation of families in connection to filtration operations is part of “an apparent effort to change the demographic makeup of parts of Ukraine.”<sup>61</sup> Equally concerning is that Russian authorities have adopted a simplified procedure to grant Russian citizenship to children without parental care, and that these children would be eligible for adoption by Russian families.<sup>62</sup>

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61 U.S. Dept. of State, Press Release, *Russia's 'Filtration' Operations, Forced Disappearances, and Mass Deportations of Ukrainian Citizens*, *supra* note 9.

62 U.N. Security Council 9126<sup>th</sup> Meeting, *supra* note 11; Information provided by FRF.

## ■ III. LEGAL ANALYSIS



The filtration of Ukrainian civilians by Russian and Russian-affiliated forces and the accompanying detention, torture, and forced relocation of many of those civilians, violate a host of international laws across three distinct but overlapping legal frameworks—international humanitarian law (IHL), international human rights law, and international criminal law.

IHL (often referred to as the law of war) governs the legality of conduct during armed conflict and specifically protects people who are not part of the conflict, including civilians. Yet international human rights law does not cease to apply during an armed conflict; rather, it applies concurrently with IHL.<sup>63</sup> While there is no enforcement mechanism in IHL for individuals to pursue redress for violations of their rights, they may do so under the international human rights framework. The Russian Federation is a state party to the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC). It also has accepted the authority of the individual complaint mechanisms associated with the ICCPR and CAT.<sup>64</sup> This means that individuals whose rights have been violated under those treaties may bring a complaint to the relevant treaty body against the Russian Federation.

Aspects of Russia's filtration of Ukrainian civilians also violate international criminal law. Although neither Russia nor Ukraine have ratified the Rome Statute of the International Criminal Court (hereinafter Rome Statute), Ukraine has accepted the ICC's jurisdiction over crimes committed in its territory since February 20, 2014.<sup>65</sup> Unlawful confinement, inhuman treatment and the infliction of serious injury and unlawful transfers and deportations

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63 See OHCHR, *International Legal Protection of Human Rights in Armed Conflict* (2011), p. 55, [https://www.ohchr.org/sites/default/files/Documents/Publications/HR\\_in\\_armed\\_conflict.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/HR_in_armed_conflict.pdf) (noting that “the International Court of Justice has clearly stated that ‘the protection of the [ICCPR] does not cease in times of war’ except to the extent derogation is permissible under article 4 of the Covenant”); ICRC, *IHL and human rights*, Oct. 29, 2010, <https://www.icrc.org/en/document/ihl-human-rights-law>.

64 See U.N. OHCHR, Ratification Status for Russian Federation, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=144&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=144&Lang=en) (last visited June 29, 2023).

65 <https://www.icc-cpi.int/news/ukraine-accepts-icc-jurisdiction-over-alleged-crimes-committed-20-february-2014>

amount to war crimes under Article 8 of the Rome Statute. Moreover, evidence gathered by numerous organizations, including CCL and FRF, suggests that filtration is being carried out by Russian or Russian-affiliated authorities as “part of a widespread or systematic attack directed against” Ukraine’s civilian population<sup>66</sup> and is possibly being performed pursuant to—and in furtherance of—Russian state policy.<sup>67</sup> As such, aspects of Russia’s filtration processes and related forced relocation of Ukrainian civilians may constitute crimes against humanity, including the crimes of imprisonment or severe deprivation of liberty, torture, and deportation or forcible transfer of population.<sup>68</sup>

## **A. Deprivation of Liberty and Arbitrary Detention**

The deprivation of liberty and arbitrary detention taking place as part of Russia’s filtration operations in Ukraine is prohibited by IHL, violates civilians’ human rights, and may constitute crimes against humanity and war crimes under international criminal law.

### **1. Human Rights Violations Implicated by Filtration-Related Detention**

The evidence reported to date suggests that many, if not most, of the civilians subjected to filtration by Russian or Russian-affiliated forces are detained for a period of time—either while awaiting filtration, during filtration, or after failing to pass filtration. These periods of detention violate the individuals’ right to liberty and the prohibition against arbitrary detention under international and regional human rights law. ICCPR article 9(1) guarantees everyone “the right to liberty and security of person” and prohibits arbitrary arrest and detention.<sup>69</sup> Article 9(1) further states that “[n]o one shall be

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66 See U.N. Gen. Ass., Rome Statute of the Int’l 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 the Rome Statute].

67 Rome Statute, Art. 7(2).

68 While this report focuses on the Rome Statute for the basis of its international criminal law analysis, even if the ICC is not the venue where the prosecutions ultimately take place, other tribunals such as the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have prosecuted the same types of conduct and their jurisprudence may provide further guidance for prosecuting these crimes. Moreover, this report does not attempt to provide analysis of an exhaustive list of potential criminal charges that may be lodged against the perpetrators of filtration and filtration-related conduct. For example, such conduct may be prosecuted as the crime against humanity of persecution due to its apparent attempt to filter out those politically aligned with Ukraine.

69 ICCPR Art. 9(1).

deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”<sup>70</sup> Detention is thus arbitrary “when the deprivation of liberty occurs outside the confines of nationally recognized laws or international standards.”<sup>71</sup>

According to the U.N. Human Rights Committee, the body responsible for monitoring state compliance with the ICCPR, the notion of ‘arbitrariness’ must be interpreted broadly “to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”<sup>72</sup> While the right to personal liberty is not absolute, any “deprivation of liberty must not be arbitrary, and must be carried out with respect for the rule of law.”<sup>73</sup> An “[a]rrest or detention that lacks any legal basis” is not only unlawful, but also arbitrary.<sup>74</sup> Moreover, “detention may be arbitrary if the manner in which the detainees are treated does not relate to the purpose for which they are ostensibly being detained.”<sup>75</sup>

While security detention that otherwise complies with international humanitarian law during times of armed conflict in principle is not arbitrary, such detention must safeguard the rights to liberty and security of person set forth in Article 9.<sup>76</sup> And although Article 9 is not among the rights listed as non-derogable in Article 4 of the ICCPR, States parties that derogate from normal Article 9 procedures during armed conflict “must ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation.”<sup>77</sup>

In addition, the Human Rights Committee has clarified that the requirement of effective judicial review of detention is non-derogable<sup>78</sup> as is the prohibition

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70 ICCPR, Art. 9(1).

71 [https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UkraineArbDetTorture\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/UA/UkraineArbDetTorture_EN.pdf) (citing GC 35, paras. 10-12).

72 General Comment 35, para. 12; H.R.C. Views: İsmet Özçelik, Turgay Karaman and I.A. v. Turkey, Comm’n No. 2980/2017, CCPR/C/125/D/2980/2017 (23 Sept. 2019), para. 9.3; Gorji-Dinka v. Cameroon, Comm’n No. 1134/2002, para. 5.1; Van Alphen v. Netherlands, Comm’n No. 305/1988, para. 5.8.

73 General Comment 35, para. 10. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/244/51/PDF/G1424451.pdf?OpenElement>

74 General Comment 35, para. 11 (citing Concluding observations: Brazil (CCPR/C/BRA/CO/2, 2005), para. 16.); *see also id.* at para. 12 (stating that “[a]n arrest or detention may be authorized by domestic law and nonetheless be arbitrary.”).

75 General Comment 35, para. 14.

76 General Comment 35, para. 64. *See also id.* at para. 66 (stating that “[d]uring international armed conflict, substantive and procedural rules of international humanitarian law remain applicable and limit the ability to derogate. . .”).

77 HRC General Comment No. 35, para. 65.

78 *See* HRC General Comment No. 29, note 9 (citing concluding observations to Israel)

against abductions and unacknowledged detention.<sup>79</sup> In its 2019 decision in *İsmet Özçelik, Turgay Karaman and I.A. v. Turkey* the Committee reiterated its view that “[t]he fundamental guarantee against arbitrary detention is non-derogable, insofar as even situations covered by article 4 (e.g., public emergencies) cannot justify a deprivation of liberty that is unreasonable or unnecessary under the circumstances.”<sup>80</sup> It also has established that in times of international armed conflict, “the substantive and procedural rules of international humanitarian law remain applicable” and thereby limit States parties’ ability to derogate from Article 9.<sup>81</sup>

Filtration-related detention as enforced by the Russian military and its proxies occurs outside the confines of national law and is both unlawful and arbitrary. It is not provided for by Ukrainian or Russian law, and according to the evidence coming out of Ukraine in the form of individuals’ testimonials, the manner in which the Russian authorities are conducting filtration and the manner in which detainees are treated do not meet international standards. Ukrainian civilians are detained without warrant, are interrogated at length, held without formal charges, and have no means of challenging the detention before a judicial body. There is no indication that the Russian military has taken any steps to ensure that filtration-related detention safeguards the civilians’ rights to liberty and security of person. As such, the filtration-related detention of civilians in Ukraine by Russian forces and proxies is arbitrary and in violation of ICCPR Article 9.

Moreover, the Human Rights Committee specifically recognizes “being involuntarily transported” as a deprivation of liberty that violates Article 9.<sup>82</sup> For example, in the case of *Saldías de López v. Uruguay*, Comm’n No. 52/1979 (1981), the Human Rights Committee found a violation of Article 9(1) where the victim was “illegally and clandestinely transported” from Argentina to Uruguay by Uruguayan security and intelligence forces “because the act of abduction into Uruguayan territory constituted an arbitrary arrest and detention.”<sup>83</sup> Thus for those cases where civilians have been transported by Russian and Russian-backed forces from Ukraine to Russian-controlled

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79 HRC General Comment No. 29, para. 13(b).

80 H.R.C. Views: *İsmet Özçelik, Turgay Karaman and I.A. v. Turkey*, Comm’n No. 2980/2017, CCPR/C/125/D/2980/2017 (23 Sept. 2019), para. 9.2. The Committee also reiterated that “the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation.” *Id.*

81 HRC General Comment No. 35, para. 66.

82 Human Rights Committee, General Comment No. 35: Article 9 (Liberty and security of person), para. 5 (citing *Saldías de López v. Uruguay*, Comm’n No. 52/1979 (1981), para. 13).

83 *Saldías de López v. Uruguay*, Comm’n No. 52/1979 (1981), para. 13)

territory or the Russian Federation, not only do they violate numerous international laws prohibiting unlawful or forced transfer and deportation, but they also may constitute arbitrary arrest and detention in violation of ICCPR Article 9.

Filtration-related detention may also violate Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention). Article 5 guarantees everyone the right to liberty and security of person, with limited exceptions that do not apply to the context in which Russian forces and proxies are detaining Ukrainian civilians.<sup>84</sup> Although the Russian Federation withdrew from the European Convention on September 16, 2022, the European Court of Human Rights (ECtHR), which decides cases brought under the European Convention, “remains competent to deal with applications against Russia concerning actions or omissions occurring up until” that date.<sup>85</sup> Thus, it may be held accountable for human rights abuses that violate the European Convention, including in relation to filtration, between February 24, 2022 and September 16, 2022.

## 2. The War Crime of Unlawful Confinement

In addition to the human rights violations resulting from the detention of Ukrainian civilians during and after filtration, filtration-related detention also likely constitutes a war crime under international criminal law. Pursuant to Rome Statute Article 8(2)(a)(vii), a perpetrator commits a war crime when they confine one or more protected persons to a certain location during—and in association with—an international armed conflict.<sup>86</sup>

As stated above, Ukrainian civilians not participating in the hostilities are protected persons under the Geneva Conventions of 1949 and filtration-

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84 See European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 5.

85 <https://www.coe.int/en/web/portal/-/russia-ceases-to-be-party-to-the-european-convention-on-human-rights>

86 ICC Elements of Crimes, Rome Statute, Article 8(2)(a)(vii)-2. The additional elements required under this article are that the perpetrator was aware of the factual circumstances that establish the individual(s)' protected status and “[t]he perpetrator was aware of the factual circumstances that established the existence of an armed conflict.” *Id.*, Elements 2 and 5. See also ICC, Pre-Trial Chamber I, *Situation in Georgia*, ICC-01/15, para. 40 (March 10, 2022) (noting that international humanitarian law permits confinement of civilians by an occupying power in only two circumstances: “(i) where previously established by the criminal law of the occupied territory” (citing Fourth Geneva Convention, arts. 64, 68, and 71-73) and “(ii) where they are assigned residence or interned in strict conformity with the requirements of the Fourth Geneva Convention.” (citing Fourth Geneva Convention, arts. 78-79).

related detention is taking place in the context of, and in association with, the ongoing international armed conflict between the Russian Federation and Ukraine. Civilians are reportedly being held prior to screening for a matter of days or weeks; they may be detained during a period of interrogation, and if they fail to pass filtration, they are likely detained for a prolonged period of time.

The information coming out of Ukraine suggests that thousands of those detained during and after the filtration process are not armed or engaged in active hostilities.<sup>87</sup> It also suggests that filtration-related detention, even at the “holding” stage, is not intended to protect the safety of the civilians.<sup>88</sup> Rather, it is believed that despite the pretense of safety-based evacuations (during which Ukrainian civilians undergo filtration), the Russian military and proxy groups are not genuinely intending to protect the safety of those civilians.<sup>89</sup> As such, filtration-related detention appears at this preliminary stage to amount to the war crime of unlawful confinement.

### **3. Potential Crime Against Humanity of Imprisonment or Severe Deprivation of Liberty**

If it is determined that Russia’s filtration processes—including filtration-related detention and forced relocation of Ukrainian civilians—is being carried out as part of a widespread or systematic attack on the civilian population of Ukraine, that conduct may constitute the crime against humanity of imprisonment or severe deprivation of physical liberty. Pursuant to Article 7(1)(e) of the Rome Statute, when a perpetrator imprisons or otherwise severely deprives one or more persons of their physical liberty in a manner that violates “fundamental rules of international law,” and that conduct is “committed as part of a widespread or systematic attack directed against a civilian population,” the conduct amounts to a crime against humanity.<sup>90</sup>

A potential crime against humanity exists not only where Ukrainian civilians are formally detained during or after filtration, but also for all those forced to stay in specific areas while waiting to undergo filtration procedures. The

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87 Information provided by FRF. See also ICC, Pre-Trial Chamber I, *Situation in Georgia*, ICC-01/15, para. 41 (March 10, 2022).

88 *Id.* at para. 42.

89 *Id.*

90 See ICC, Elements of Crimes, Rome Statute, Article 7(1)(e) Elements 1, 2 and 4. The additional two elements are that the perpetrator knew “of the factual circumstances that established the gravity of the conduct” and knew “that the conduct was part or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.” *Id.* at Article 7(1)(e) Elements 3 and 5.

ICC’s Pre-Trial Chamber III explained in a 2017 decision that the unlawful restriction “of a person’s movements to a specific area, such as a ghetto, camp or house” may amount to the type of severe deprivation of liberty prohibited by Article 7(1)(e).<sup>91</sup> According to the Pre-Trial Chamber, the crime against humanity of imprisonment or severe deprivation of liberty “does not require the imprisonment or the deprivation of liberty to be for a prolonged period of time.”<sup>92</sup> Moreover, “[t]he brevity of detention alone cannot be used as an argument to deny the severity of the deprivation of physical liberty.”<sup>93</sup>

Russia’s filtration procedures are being undertaken outside of any formal procedure recognized by domestic or international law and without due process of law. Civilians waiting to go through filtration are often forced to wait in specific areas—including in schools, community centers, or government buildings—for a matter of hours or days or even weeks.<sup>94</sup> Those civilians who do not pass filtration are then detained for longer periods of time and possibly transferred to Russian-controlled territories of Ukraine or the Russian Federation.<sup>95</sup> Many are subject to torture and other inhuman conditions during confinement. Thus, based on the evidence gathered to date, it appears that Russia’s filtration process involves a severe deprivation of liberty as understood by Article 7(1)(e) and that the gravity of the conduct by Russian forces and Russian-affiliated authorities violates fundamental rules of international law.

Furthermore, as discussed above, it appears that filtration has been—and continues to be—carried out by Russian forces and Russian-affiliated authorities on both a widespread and systematic basis (though only one is

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91 ICC Pre-Trial Chamber III, *Decision on the Situation in 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. 68.

92 ICC Pre-Trial Chamber III, *Decision on the Situation in Burundi*, para. 68.

93 *Id.*

94 See e.g., Human Rights Watch, “*We Had No Choice*”, *supra* note 1 (reporting that in the villages of Bezimenne and Kozatske in the so-called Donetsk People’s Republic (DNR), “almost 200 people were effectively interned after they completed the filtration process. . . . For over 40 days, DNR personnel refused to return their passports and prevented them from leaving the village, where they sheltered in local schools or a cultural center in unsanitary conditions with meager food rations.”); Amnesty Int’l, “*Like a Prison Convoy*”, *supra* note 17, at 19 (“People who fled Mariupol on evacuation buses in the most acute phases of the fighting said they often waited at least a week for filtration. . . . They were held in schools or other facilities and their liberty was restricted during this time.”).

95 Information provided by FRF; see also Saidel, *Russia Holds 3,000 Civilians in Town Where Mariupol Fighters Were Taken*, *Kyiv Says*, *supra* note 24; 5:00 AM Coalition Report, *supra* note 19 at p. 11.



required to satisfy that element of the crime<sup>96</sup>). The information gathered to date suggests that filtration is being conducted on a large scale and affecting large numbers of Ukrainian civilians.<sup>97</sup> As discussed above, at least 21 filtration camps have been identified in the Donetsk region alone.<sup>98</sup> Filtration of civilians also has been documented in the Russian-occupied regions of Kharkiv, Kherson, Luhansk, and Zaporizhzhia.<sup>99</sup> And local NGOs suggest that filtration is being carried out in all Russian-controlled regions—at checkpoints, in border crossings, and in homes.

Evidence also suggests that Russia’s filtration operations in Ukraine are being carried out systematically, possibly as part of an official plan or policy of the Russian Federation. Numerous accounts suggest that the filtration procedures were planned in advance of the full-scale invasion<sup>100</sup> and are being carried out in an organized manner<sup>101</sup>—from what the occupiers are searching for during filtration (e.g., photos or monetary transactions or tattoos linking the civilians to the Ukraine military or Azov Battalion)<sup>102</sup> to the type of torture reportedly used during interrogations and detention (e.g., electric shocks) to the processing of “filtration receipts” that people need to then show to pass through checkpoints.<sup>103</sup> Thus, there may be sufficient evidence to support charges for the crime against humanity of imprisonment or severe deprivation of liberty.

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96 See, e.g., ICTY, *Prosecutor v. Kunarac, Kovač and Vuković*, Appeals Judgement, IT-96-23-T and IT-96-23/1-A, June 12, 2001, para. 93 (noting that “[t]he requirement that the attack be ‘widespread’ or ‘systematic’ comes in the alternative.”) (internal citation omitted).

97 See discussion, *supra*, in Part II: Background. See also ICTY, *Prosecutor v. Kunarac, Kovač and Vuković*, Judgement, IT-96-23-T and IT-96-23/1-T, Feb. 22, 2001, para. 428; ICTY, *Prosecutor v. Tadić*, Judgement, IT-94-1-T, May 7, 1997, para. 648; ICTY, *Prosecutor v. Kunarac, Kovač and Vuković*, Appeals Judgement, IT-96-23-T and IT-96-23/1-A, June 12, 2001, para. 94.

98 See Yale School of Public Health Humanitarian Research Lab, *System of Filtration*, *supra* note 13.

99 OHCHR June 2023 Report on Detention of Civilians, *supra* note 6 at para. 57.

100 See discussion, *supra* in Part II: Background.

101 See, *Prosecutor v. Kunarac, Kovač and Vuković*, Appeals Judgement, para. 94 (noting that “[t]he phrase ‘systematic’ refers to ‘the organized nature of the acts of violence and the improbability of their random occurrence.’”) (internal citation omitted).

102 See ICC, Pre-Trial Chamber II, *Situation in the Republic of Kenya in the Case of the Prosecutor v. Muthaura, Kenyatta and Ali*, Decision on the Confirmation of Charges, ICC-01/09-02/11, para. 176, Jan. 23, 2012 (stating that “the precise identification of targets by the attackers is indicative of the planned and systematic nature of the violence”).

103 See 5:00 AM Coalition Report, *supra* note 19 at p. 8.

## B. Torture and other Cruel or Inhuman Treatment

Numerous accounts from survivors, relatives, and eyewitnesses give insights into the treatment of civilians undergoing filtration—during interrogations as well as the conditions in which they are held while in filtration-related detention (whether while waiting to be screened or after failing to pass). By all accounts, the treatment of Ukrainian civilians going through filtration and the conditions in which they are held violate the fundamental human right to be free from torture and other cruel, inhuman and degrading treatment and may amount to a war crime or crime against humanity under the Rome Statute and customary international law.

### 1. Human Rights Law Protections Against Torture and Inhuman Treatment

The prohibition against torture and other cruel, inhuman and degrading treatment is set forth in ICCPR Article 7<sup>104</sup> and Article 2 of the Convention Against Torture (CAT).<sup>105</sup> It is also a matter of customary international law. The prohibition set forth in ICCPR Article 7 includes both “acts that cause physical pain” and “acts that cause mental suffering to the victim.”<sup>106</sup> Perpetrators cannot invoke as justification “an order from a superior officer or public authority” to excuse a violation of ICCPR article 7 or the Convention Against Torture.<sup>107</sup>

The prohibition against torture under international human rights law is absolute. No derogation from the rights protected by ICCPR Article 7 and CAT

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104 ICCPR, Art. 7 (stating in part, “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”).

105 U.N. Convention Against Torture and Other Cruel Inhuman or Degrading Treatment, art. 2(1) (requiring all state parties to take effective measures to prevent torture in any territory under their jurisdiction).

106 HRC General Comment 20, para. 5; *see also id.* at para. 2 (noting that the aim of ICCPR article 7 “is to protect both the dignity and the physical and mental integrity of the individual.”). In the case of *Bousroual v. Algeria*, the Human Rights Committee found that anguish and stress caused by the disappearance of a woman’s husband violated the woman’s rights under Article 7 as well as that of her husband. Human Rights Committee, *Bousroual v. Algeria*, Communication No. 992/2001 (2006), para. 9.8

107 HRC General Comment 20, para. 3; Committee Against Torture, General Comment No. 2, para. 26 (stating that “an order of a superior or public authority can never be invoked as a justification of torture.”).

Article 2 is allowed<sup>108</sup>—“even in situations of public emergency”<sup>109</sup> or “a state of war or a threat of war.”<sup>110</sup> Moreover, since the adoption of CAT, “the absolute and non-derogable character” of the prohibition against torture has become a matter of customary international law.<sup>111</sup>

Physical beatings, electric shocks, and psychological pressure, as well as unsanitary and overcrowded conditions have been repeatedly associated with filtration-related detention in Russian occupied territories of Ukraine and the Russian Federation.<sup>112</sup> To the extent that Russian and Russian-affiliated forces are subjecting civilians who undergo filtration to torture and other inhuman acts and/or degrading treatment, they are committing gross human rights violations against these individuals and impermissibly derogating from Russia’s treaty obligations under the ICCPR and CAT.

## **2. Inhuman Treatment and Great Suffering or Serious Injury Constitute War Crimes**

The torture and other inhuman treatment of civilians during the filtration process may also amount to war crimes under international criminal law. Article 8(2)(a)(ii) of the Rome Statute qualifies torture or inhuman treatment as a war crime when it is committed against protected persons under the Geneva Convention, which includes civilians.<sup>113</sup> As set forth by the ICC, inhuman treatment occurs where the perpetrator inflicts “serious physical

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108 See Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, CAT/C/GC/2 (Jan. 24, 2008), para. 5.

109 ICCPR, art. 4(2); UN Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, para. 3 (“[E]ven in situations of public emergency . . . no derogation from the provision of article 7 is allowed and its provisions must remain in force.”); Human Rights Committee, *Baruani v. Congo*, Communication No. 1890/2009 (2014), para. 6.4 (“recalling that Article 7 allows no limitation, even in situations of public emergency”); Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, CAT/C/GC/2 (Jan. 24, 2008), para. 5.

110 CAT, Art. 2(2) (stating that “[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”); Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, CAT/C/GC/2 (Jan. 24, 2008), para. 5 (noting that the absolute nature of CAT Article (2)(2) includes international and non-international armed conflict).

111 Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, CAT/C/GC/2 (24 Jan. 2008), para. 1

112 See UNODC, International human rights instruments: International Covenant on Civil and Political Rights, <https://www.unodc.org/e4j/zh/terrorism/module-9/key-issues/international-covenant-on-civil-and-political-rights.html>.

113 ICC, Art. 8(2)(a)(ii).

or mental pain or suffering” upon the person or persons.<sup>114</sup> The Rome Statute also characterizes willfully causing great suffering or serious injury to body or health as a separate prosecutorial offense under Article 8(2)(a)(iii).<sup>115</sup>

In its Elements of Crimes, the ICC created a partial overlap between the war crime of willfully causing great suffering and the war crime of inhuman treatment, identifying the first element of the crime under Article 8(2)(a)(iii) as: “The perpetrator caused great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons.”<sup>116</sup> However, it is a separate war crime for which the perpetrators of torture and other physical and psychological violence during filtration procedures can be held accountable.

There is little question that if survivors’ and witnesses’ accounts are substantiated, the physical beatings, electric shocks, and psychological manipulation and threats reportedly committed against civilians undergoing filtration result in great physical or mental pain or suffering and/or serious injury to the civilian’s body or health. Thus, for the same reasons that Russian forces’ treatment of many detained as part of Russia’s filtration process violate human rights law, the conduct also qualifies as a crime under international criminal law.

Moreover, to the extent that the torture described above is being committed as part of a widespread or systematic attack against the Ukrainian civilian

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114 ICC, Elements of Crimes, reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session, New York, Sept. 3-10, 2002, p. 10, <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf> (Element 1 of the war crime of inhuman treatment). The other elements that must be satisfied are: “2. Such person or persons were protected under one or more of the Geneva Conventions of 1949. 3. The perpetrator was aware of the factual circumstances that established that protected status. 4. The conduct took place in the context of and was associated with an international armed conflict. 5. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.”).

115 Rome Statute, Article 8(2)(a)(iii).

116 ICC, Elements of Crimes, p. 10, <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf> (with the same additional elements as for the war crime of inhuman treatment: 2. Such person or persons were protected under one or more of the Geneva Conventions of 1949. 3. The perpetrator was aware of the factual circumstances that established that protected status. 4. The conduct took place in the context of and was associated with an international armed conflict. 5. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.”).

population, it may also amount to a crime against humanity under Article 7 of the Rome Statute.<sup>117</sup>

### C. Deportations and Forced Transfers

The relocation of civilians associated with Russia's filtration process appears to amount to unlawful and forcible transfers and deportations, which are war crimes under both IHL and ICL and may constitute crimes against humanity.

#### 1. War Crimes Under IHL and ICL

The unlawful deportation or transfer of civilians, as a grave breach of the 1949 Geneva Convention concerning the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), is a serious violation of IHL and a war crime.<sup>118</sup> Article 45 of the Fourth Geneva Convention provides that “[i]n no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.”<sup>119</sup> Article 49 states that “[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power . . . are prohibited, regardless of their motive.”<sup>120</sup> And Article 147 specifically qualifies the “unlawful deportation or transfer” of a protected person as a grave breach of the Convention.<sup>121</sup> Additional Protocol I, Article 85(4) further provides that “the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth [Geneva] Convention” is a grave breach of the Protocol.<sup>122</sup> And pursuant to Additional

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117 See Rome Statute, art. 7(1)(f).

118 ICRC, IHL Databases, Rule 156. Definition of War Crimes, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule156>.

119 Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Article 45, para. 4.

120 Fourth Geneva Convention, Art. 49, para. 1.

121 Fourth Geneva Convention, Art. 147.

122 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 85(4)(a), June 8, 1977. Article 85 was adopted by consensus. See CDDH, *Official Records*, Vol. VI, p. 291, CDDH/SR.44, May 30, 1977. See also <https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e-3.htm>. Under Article 49, “the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. . . . Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.”

Protocol II, Article 17, civilians cannot be “compelled to leave their own territory for reasons connected with the conflict.”<sup>123</sup>

State practice establishes the rule that serious violations of IHL constitute war crimes “as a norm of customary international law applicable in both international and non-international armed conflict.”<sup>124</sup> And the Rome Statute criminalizes deportations and forced transfers as war crimes in two separate provisions: Article 8(2)(a)(vii) (unlawful deportation or transfer) and Article 8(2)(b)(viii) (“the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory”). An unlawful deportation or transfer under Article 8(2)(a)(vii) takes place where “[t]he perpetrator deported or transferred one or more persons to another State or to another location.”<sup>125</sup> A deportation or transfer violative of Article 8(2)(b)(viii) takes place where the perpetrator “[d]eported or transferred all or parts of the population of the occupied territory within or outside this territory.”<sup>126</sup>

The ICC has already acknowledged that there are reasonable grounds to believe that the forced transfer and deportation of Ukrainian children constitute war crimes under Article 8. On March 17, 2023, the ICC’s Pre-Trial Chamber II issued arrest warrants for Russian President Vladimir Putin and Maria Alekseyevna Lvova-Belova, the Russian Federation’s Commissioner for Children’s Rights, “for war crimes of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation,” allegedly committed in Ukrainian

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123 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Art. 17, June 8, 1977. Article 17 was adopted by consensus. CDDH, *Official Records*, Vol. VII, p. 144, CDDH/SR.53, June 6, 1977.

124 ICRC, IHL Databases, Rule 156. Definition of War Crimes, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule156>.

125 ICC, Elements of Crimes, p. 11, <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>. The other elements of the crime include: (i) “[s]uch person or persons were protected under one or more of the Geneva Conventions of 1949;” (ii) “[t]he perpetrator was aware of the factual circumstances that established that protected status;” (iii) “[t]he conduct took place in the context of and was associated with an international armed conflict;” and (iv) “[t]he perpetrator was aware of factual circumstances that established the existence of an armed conflict.” *Id.*

126 ICC, Elements of Crimes, p. 15, <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>. The other elements of this crime include: (i) “[t]he conduct took place in the context of and was associated with an international armed conflict” and (ii) “[t]he perpetrator was aware of factual circumstances that established the existence of an armed conflict.” *Id.*

occupied territory since Russia's invasion.<sup>127</sup> The charges are brought under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute.<sup>128</sup>

Based on the evidence gathered from the various organizations and inter-governmental bodies cited in this report, Russian and Russian-affiliated forces are not only unlawfully transferring and deporting children, but in many cases, they are committing the same crime against the adult civilian population, including against many civilians undergoing filtration.<sup>129</sup> Both the transfers of civilians to Russian-occupied areas as well as the deportation of Ukrainian civilians to the Russian Federation are being conducted in violation of Article 8(2).

## 2. Potential Crimes Against Humanity

Forced transfers and deportations carried out in connect to filtration procedures may also amount to crimes against humanity. Pursuant to Rome Statute Article 7(1)(d), the deportation or forcible transfer of a population constitutes a crime against humanity “when committed as part of a widespread or systematic attack directed against any civilian population with the knowledge of the attack.”<sup>130</sup> The Rome Statute defines “deportation or forcible transfer of population” as: “forced displacement of persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”<sup>131</sup> To prosecute perpetrators of a crime against humanity under Article 7(1), person or persons transferred must be lawfully present in the area from which they are deported or transferred and the deportation or forcible transfer (to

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127 ICC, Press Release, *supra* note 12.

128 *Id.*

129 Information provided by FRF; see also U.S. Dept. of State, Press Release, *Russia's "Filtration" Operations, Forced Disappearances, and Mass Deportations of Ukrainian Citizens*, *supra* note 9; U.N. Security Council 9126<sup>th</sup> Meeting, *supra* note 11; OSCE July 2022 Report, *supra* note 4 at 30.

130 Rome Statute, Art. 7(1)(d).

131 Rome Statute, Art. 7(2)(d).

another State or location) must take place “without grounds permitted under international law . . . by expulsion or other coercive acts.”<sup>132</sup>

As noted by the Preparatory Commission for the International Criminal Court and emphasized in numerous ICTY judgments, “[t]he term ‘forcibly’ is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.”<sup>133</sup> In *Prosecutor v. Bosco Ntaganda*, ICC Trial Chamber VI echoed the standard set forth in ICTY jurisprudence—that in order to satisfy “the forced character of displacement” element of the crime, “it must be demonstrated that there was a genuine lack of choice on the part of the individuals transferred.”<sup>134</sup>

Moreover, “[w]hile individuals may agree, or even request, to be removed from an area, ‘consent must be real in the sense that it is given voluntarily

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132 ICC, Elements of Crimes, Article 7(l)(d) Crime against humanity of deportation or forcible transfer of population, Elements 1 and 2. See also ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Trial Chamber VI, Judgment, July 8, 2019, para 1046. The other elements of the crime against humanity of deportation or forcible transfer of population are: “3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence. 4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population. 5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population. 6. The perpetrator’s conduct was deliberate and the perpetrator: (i) meant to cause the consequence; or (ii) was aware that it would occur in the ordinary course of events.” *Id.*

133 See Report of the Preparatory Commission for the International Criminal Court, Finalised Draft Text of the Elements of the Crimes, p. 11, U.N. Doc. PCNICC/2000/INF/3/Add.2, July 6, 2000. See also ICTY, *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgment, Appeals Chamber, March 22, 2006, para. 281; ICTY, *Prosecutor v. Vlastimir Dordevic*, Case No. IT-05-87/1-A, Judgment, Appeals Chamber, Jan. 27, 2014, para. 727; ICTY, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Judgment, Trial Chamber, March 24, 2016, para. 489.

134 ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Judgment, Trial Chamber VI, July 8, 2019, para 1056. See also ICTY, *Prosecutor v. Vlastimir Dordevic*, Case No. IT-05-87/1-A, Judgment, Appeals Chamber, Jan. 27, 2014, para. 727 (recalling “that forced displacement requires, inter alia, that the victims had no genuine choice” and noting that “the determination as to whether a transferred person had a genuine choice is one to be made within the context of the particular case being considered.”); ICTY, *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Judgment, Trial Chamber, May 29, 2013, para. 50 (“The Tribunal’s case-law does not go so far as to require that forcible removal occur “by force” in the strict sense of the word. . . . It is the absence of genuine choice that renders removal unlawful. To determine whether the victims of a forcible removal faced a genuine choice, the circumstances surrounding their removal must be assessed.”)



and as a result of the individual's free will."<sup>135</sup> However, it is important to note that consent "does not necessarily render forcible removal lawful" because the circumstances surrounding the given consent "may deprive it of any potential value."<sup>136</sup> For example, "detaining a person in a climate of terror and violence obviates any and all value arising from the consent."<sup>137</sup> Similarly, while "displacement for humanitarian reasons is justifiable in certain situations, . . . it is not justifiable where the humanitarian crisis that caused the displacements is itself the result of the accused's own unlawful activity."<sup>138</sup>

ICC Pre-Trial Chamber II noted in *Prosecutor v. Samoei Ruto* that a "perpetrator may commit several different conducts which can amount to 'expulsion or other coercive acts', so as to force the victim to leave the area where he or she is lawfully present[.]"<sup>139</sup> Thus, in order to establish that the crime against humanity of deportation or forcible transfer has been committed, a Prosecutor must "prove that one or more acts that the perpetrator has performed produced the effect to deport or forcibly transfer the victim."<sup>140</sup> For example, in *Prosecutor v. Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, the ICC Pre-Trial Chamber found that evidence sufficiently established "that the destruction of homes in residential areas, the brutality of the killings and injuries, the rape of perceived ODM supporters, and the public announcements to the effect that 'all Luos must leave',

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135 ICC, *Prosecutor v. Bosco Ntaganda*, para. 1056 (citing ICTY, *Prosecutor v. Milomir Stakić*, IT-97-24-A, Judgement, Appeals Chamber, March 22, 2006, para. 279). See also ICTY, *Prosecutor v. Radovan Karadžić*, IT-95-5/18, Judgement, Trial Chamber, Public Redacted Version of Judgement Issued on March 24, 2016, available at: <https://www.legal-tools.org/doc/173e23/> ("The forced character of the displacement is determined by the absence of genuine choice by the victim in his or her displacement. As such, while persons may consent to, or even request, their removal, any consent or request to be displaced must be given voluntarily and as a result of the individual's free will, assessed in light of the surrounding circumstances of the particular case.")

136 ICTY, *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Judgement, Trial Chamber, May 29, 2013, para. 51.

137 *Id.*

138 ICTY, *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, Appeals Chamber, March 22, 2006, para. 287.

139 ICC, *Prosecutor v. Samoei Ruto, et al.*, Case No. ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, Pre-Trial Chamber II, para. 244.

140 *Id.* at para. 245.

amounted to coercion, which caused the attacked residents . . . to leave their homes[.]”<sup>141</sup>

Russian troops’ forcible transfers and deportations of civilians in Ukraine bear all the hallmarks of a crime against humanity under Article 7(d)(1). Many of the transfers and deportations took place through organized mass transfer of civilians by Russian forces—at times under the guise of humanitarian evacuations.<sup>142</sup> Ukrainian civilians are being removed from places where they are lawfully present and taken to another area, including Russian-controlled territories and the Russian Federation. And as discussed above, according to numerous accounts of individuals who have undergone filtration and been relocated in connection thereto, such transfers and deportations are either physically forced or coerced and those subjected to them lack any genuine choice.<sup>143</sup>

Thus, if it is established that the filtration-related forced transfers and deportations are part of a widespread or systematic attack on the Ukrainian population, they may amount to crimes against humanity under international criminal law.

#### **D. Violations of Rights Specific to Children**

As numerous reports and statements have emerged in recent months specifically condemning the forced transfer and deportation, adoption, and re-education of Ukrainian children—at times connected to the filtration process—this report will not analyze each of those violations in depth.

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<sup>141</sup> ICC, *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Case No. ICC-01/09-02/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, Pre-Trial Chamber II, Jan. 23, 2012, para. 244. The Pre-Trial Chamber ultimately concluded that there was “sufficient evidence to establish substantial grounds to believe” that the accused were criminally responsible for deportation or forcible transfer of population within the meaning of article 7(1)(d) of the Rome Statute for “the displacement of perceived ODM supporters[.]”

<sup>142</sup> Forced transfers and deportations are reportedly taking place both in connection with filtration and in some instances without filtration. See Human Rights Watch, “*We Had No Choice*”, *supra* note 1 (reporting that the civilians interviewed who were transferred from the Kharkiv region did not undergo filtration).

<sup>143</sup> *Id.* (reporting that a woman from the Livoberezhnyi suburb of Mariupol and her mother were taken on April 10, 2022 from her mother’s apartment building and with other people sheltering in the basement of the building taken “to the DNR to undergo the filtration process.”); Human Rights Watch also recounted the experience of another woman from Mariupol who was taken by Russian forces with neighbors from the basement in which they were sheltering, put on buses, and then taken to Taganrog, Russia “without giving us another choice”. *Id.*

However, the extensive human rights violations being committed by the Russian Federation and its proxies vis-à-vis Ukrainian children in this regard cannot be wholly ignored. In addition to the potential war crimes under the Rome Statute for forcible transfer and deportation, Russia's filtration process and associated circumstances contravene a host of children's human rights. Moreover, the forced transfer and deportation of Ukrainian children by Russian and Russian-backed forces are indicative of genocide.

- ◆ In terms of international human rights law, the primary treaty imposing obligations on the Russian Federation (and all state actors) to respect and promote the rights of children is the Convention on the Rights of the Child (CRC). As a State Party to the CRC, the Russian Federation must *inter alia* prioritize the best interest of the child in all actions (Article 3),<sup>144</sup> respect children's right to identity, including nationality, name, and family relations (Article 8),<sup>145</sup> ensure that children are not separated from their parents against their will without judicial review (Article 9),<sup>146</sup> and combat the illicit transfer and non-return of children abroad (Article 11).<sup>147</sup>
- ◆ As set forth in CRC Article 3(1), "the best interests of the child shall be a primary consideration" in "all actions concerning children."<sup>148</sup> The Committee on the Rights of the Child explained in its General Comment No. 14 that the best interest of the child is both a rule of procedure and a substantive right.<sup>149</sup> As a substantive right, States must guarantee that this right is implemented any time a decision is made concerning a child.<sup>150</sup> According to the Committee, CRC Article 3(1) "creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court."<sup>151</sup> The Russian Federation's obligations under CRC Article 3 do not cease in times of armed conflict.

In addition, CRC Article 8 mandates that States Parties "undertake to respect the right of the child to preserve [their] identity, including nationality, name

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144 CRC, Art. 3.

145 *Id.* at Art. 8.

146 *Id.* at Art. 9.

147 *Id.* at Art. 11(1).

148 *Id.* at Art. 3(1).

149 UN Committee on the Rights of the Child, CRC General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), UN Doc. CRC/C/GC/14 (29 May 2013), para. 6.

150 CRC General Comment No. 14, para. 6(a).

151 CRC General Comment No. 14, para. 6(a).

and family relations as recognized by law without unlawful interference.”<sup>152</sup> And Article 9 obliges the Russian Federation to ensure that children are not separated from their parents “against their will, except when competent authorities *subject to judicial review* determine . . . that such separation is necessary for the best interests of the child.”<sup>153</sup> In proceedings related to such separation, all interested parties—including the child’s parents—must be given an opportunity to participate and express their views on the matter.<sup>154</sup> Even in instances where separation may be the result of State action such as “detention, imprisonment, exile, deportation or death” of one or both parents, the State Party must upon request provide the parents, child, or other family member where appropriate “with essential information concerning the whereabouts of” the absent family member(s) unless the provision of such information “would be detrimental to the well-being of the child.”<sup>155</sup> Finally, CRC Article 11 sets forth in no uncertain terms that “States Parties shall take measures to combat the illicit transfer and non-return of children abroad.”<sup>156</sup>

Russian forces and their proxies are in violation of CRC Articles 3, 8, 9 and 11 for detaining or separating families during filtration, forcibly transferring or deporting families with children or separated or unaccompanied children to the Russian Federation and Russian-controlled territory, and facilitating the “re-education” or adoption of Ukrainian children once in Russia.

Furthermore, another area of concern specific to children is whether the forced transfer and deportation of Ukrainian children, and the surrounding circumstances once in Russia, may ultimately amount to genocide. The Russian Federation is a state party to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (“Genocide Convention”). The forcible transfer of children from one group to another group—when committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”—constitutes genocide under the Genocide Convention.<sup>157</sup> It similarly constitutes genocide under the Rome Statute.<sup>158</sup> Moreover, changing the children’s personal status, including nationality, is prohibited under Article 50 of the Fourth Geneva Convention.<sup>159</sup>

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152 CRC, Art. 8(1)

153 *Id.* at Art. 9(1) (emphasis added).

154 *Id.* at Art. 9(2)

155 *Id.* at Art. 9(4)

156 *Id.* at Art. 11(1).

157 Convention on the Prevention and Punishment of the Crime of Genocide, Art. II(e), Dec. 9, 1948, 78 U.N.T.S. 277.

158 See Rome Statute, Art. 6(e).

159 Fourth Geneva Convention, Art. 50; see also <https://press.un.org/en/2022/sc15023.doc.htm>.

## ■ IV. RECOMMENDATIONS



In light of the gross violations of international law being committed by Russian and Russian-affiliated forces in Ukraine in connection to filtration, as set forth above, the authors urge the Russian Government, Russian forces and Russian-affiliated forces to:

- ◆ Respect the Russian Federation's obligations under international law, including international human rights law and international humanitarian law;
- ◆ Ensure that Ukrainian civilians are able to leave warzones freely and safely and enter Ukrainian controlled territories,<sup>160</sup> without subjecting them to filtration processes;
- ◆ Immediately stop the forcible transfer and deportation of civilians, including children, from Ukraine to the Russian Federation or Russian-controlled areas of Ukraine;<sup>161</sup> and
- ◆ Grant the international community access to filtration sites and facilities.

They also recommend that local civil society actors, NGOs and the international community:

- ◆ Coordinate efforts to gather and examine the mounting evidence of atrocities committed in Ukraine by Russian and Russian-affiliated forces, including those associated with filtration, that may be taken by the International Criminal Court, the U.N. Commission of Inquiry, and the U.N. Human Rights Monitoring Mission in Ukraine, among others;<sup>162</sup> and
- ◆ Support Ukraine's investigations and prosecutions of perpetrators of war crimes and other international law violations related to filtration.<sup>163</sup>

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<sup>160</sup> Amnesty Int'l, *Russia: 'Filtration' of Ukrainian civilians a 'shocking violation' of people forced to flee war*, Sept. 8, 2022, <https://www.amnesty.org/en/latest/news/2022/09/russia-filtration-of-ukrainian-civilians-a-shocking-violation-of-people-forced-to-flee-war/>.

<sup>161</sup> Amnesty Int'l, Petition, *Stop the forcible transfer of civilians in Ukraine to Russia*, <https://www.amnesty.org/en/petition/stop-the-forcible-transfer-of-civilians-in-ukraine-to-russia/> (last accessed Aug. 23, 2023).

<sup>162</sup> U.S. Dept. of State, Press Release, *Accountability for War Crimes and Other Atrocities in Ukraine: Recent Reporting on Unjust Detentions and Disappearances in Kherson Oblast*, Nov. 18, 2022, <https://www.state.gov/accountability-for-war-crimes-and-other-atrocities-in-ukraine-recent-reporting-on-unjust-detentions-and-disappearances-in-kherson-oblast/>.

<sup>163</sup> *Id.*



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