

## **1.Executive Summary**

1.1 The following report will set out allegations of the deportation and transfer of protected persons from areas occupied by the Russian Federation, in breach of international humanitarian law, during the course of the current armed conflict between Russia and Ukraine. It will then identify state practice in this area by examining the actions and responses of states and international organisations to the allegations detailed in order to outline what states' actions indicate they believe to be customary international law with regards to the transfer and deportation of civilians.

1.2 The report will focus on a number of areas relating to the transfer and deportation of civilians:

- The deportation and transfer of civilians from the occupied Crimean peninsula, in particular those transferred or deported due to the application of Russian citizenship and immigration laws and the deportation of parts of the Crimean prison population. It will also consider the transfer of Russian civilians into Crimea and the encouragement of this practice by Russian Federation authorities.
- Allegations related to forced displacements and forcible transfers and deportation and abuses related to filtration.
- Allegations relating to the transfer, deportation and use of filtration on vulnerable groups including disabled people, older people, women and children.
- The creation of a coercive environment through acts such as the targeting of the civilian population and infrastructure and through conflict-related sexual violence.

## **2. Introduction**

We have been tasked by Hickman and Rose Solicitors to write a report summarising customary international law in relation to the deportation and transfer of civilians from occupied areas in the context of international armed conflicts. Specifically, it was requested that we locate reports of the forced transfer and deportation of protected persons from occupied areas of Ukraine in the current international conflict between

the Russian Federation (RF) and Ukraine by Russia, and examine the response of states and intergovernmental organisations to these allegations to establish what, if anything, customary international law tells us in relation to the various aspects of deportation and transfer identified.

## **2.1 Background to conflict**

2.1.1 The Ukraine is Europe's second largest country, located between Russia and a number of Eastern European countries which have become North Atlantic Treaty Organization (NATO) members over the preceding few decades.

2.1.2 In February 2014, in response to the ousting of the pro-Russian Ukrainian President, Viktor Yanukovich, Russian forces annexed the Crimean peninsula (Gessen, 2022).

2.1.3 In March 2014, Russian authorities reported that residents of Crimea had voted overwhelmingly in favour of integration into the Russian Federation (Human Rights Watch, 2014a), however the results of this referendum were not accepted by the international community.

2.1.4 United Nations General Assembly (UNGA) resolution 68/262 declared the referendum invalid,<sup>1</sup> and UNGA resolution 71/205 made it clear that Crimea is regarded as Ukrainian territory temporarily occupied by the Russian Federation.<sup>2</sup>

2.1.5 Russian-backed separatists seized Ukrainian government buildings throughout mainland Ukraine's Eastern Donbas region in March 2014 and declared the "people's republics" of Donetsk (DNR) and Luhansk (LNR) as independent states.

2.1.6 On 24<sup>th</sup> Feb 2022, Russian forces launched an armed attack against Ukraine, occupying the DNR and LNR and besieging many other cities.

2.1.7 The international community had repeatedly condemned Russia's invasion of Ukraine, for example UNGA Resolution A/RES/ES-11/1<sup>3</sup> and the European Council

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<sup>1</sup> UNGA Res 68/262 (27 March 2014) UN Doc A/RES/68/262, para. 5

<sup>2</sup> UNGA Res 71/205 (19 December 2016) UN Doc A/RES 71/205, para. 158

<sup>3</sup> UNGA Res ES-11/1, (2 March 2022) UN Doc A/RES/ES-11/1

Declaration of 25<sup>th</sup> February 2022 (Council of the European Union (EU), 2022) demands that the Russian Federation immediately cease its use of force and withdraw all troops.

## **2.2 International Humanitarian Law and Customary International Law**

2.2.1 The area of law we have been asked to consider is the law of occupation in relation to the deportation and transfer of civilians from occupied areas. The law of occupation is a branch of international humanitarian law (IHL), also often referred to as the law of war, which governs the conduct of parties during armed conflict. It does not address the legality of the use of armed force in itself, which is instead regulated by the UN Charter (International Committee of the Red Cross (ICRC), 2022).

2.2.2 Although IHL is also governed by a number of international conventions, we have been tasked with focussing on customary international law (CIL) which, is formed when there is evidence of a general practice amongst states which has come to be regarded by them as a legal obligation (Dinstein, 2004, p.5)

2.2.3 There are two elements of CIL: the objective element of the general practice of states; and the subjective element which requires that states feel the practice is obligatory due to a rule of law requiring it. State practice is primarily indicated by conduct in the form of acts and omissions, but can additionally be identified through declarations and statements from states explaining their own behaviour or challenging the conduct of another state. Not all states need to participate in the general practice for it to amount to CIL, but where certain states have not contributed to the establishment of an international norm, it is still binding upon them (Dinstein, 2004, p. 6)

2.2.4 Conclusion 5 of the International Law Commission's Draft Conclusions on the identification of customary international law explains that state practice consists of the conduct of the State, whether in the exercise of its executive, legislative, judicial or other functions, whilst Conclusion 6 maintains that state practice may take a wide range of forms including both physical and verbal acts and even inaction (International Law Commission, 2018)

## **2.3 Law on deportation and transfer of protected persons**

2.3.1 One of the primary treaties covering international humanitarian law is IV Geneva Convention Relative to the Protection of Civilian Persons in time of war (IV Geneva Convention),<sup>4</sup> which both Russia and Ukraine are party to. Article 49 of IV Geneva Convention prohibits individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, regardless of their motive and also states that ‘the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies’.<sup>5</sup>

2.3.2 In the International Criminal Tribunal for the Former Yugoslavia case of *Krnjelac*, the court held that deportation requires the displacement of persons across a national border, whilst forcible transfer implies forced displacement within national boundaries.<sup>6</sup>

2.3.3 Article 85(4)(a) of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), provides that the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory may be a grave breach of the Convention.<sup>7</sup>

2.3.4 Whilst IV Geneva Convention does not set out the criteria to be met to determine when an occupation begins, Human Rights Watch (2014a) explains that certain criteria have been recognised by IHL experts which include the presence of foreign troops, exercise of authority over the relevant territory, lack of consent to occupation by the occupied state and indirect control through de facto control over local authorities or another controlling group.

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<sup>4</sup> IV Geneva Convention Relative to the Protection of Civilian Persons in time of war (12 August 1949)

<sup>5</sup> IV Geneva Convention Relative to the Protection of Civilian Persons in time of war (12 August 1949), Art. 49.

<sup>6</sup> Prosecutor v *Krnjelac* (Judgment) IT-97-25-T (15 March 2002) para. 474

<sup>7</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), (8 June 1977), Art 85(4)

2.3.5 The Rome Statute of the International Criminal Court (ICC) (Rome Statute)<sup>8</sup> also contains provisions in relation to the transfer and deportation of civilians. Article 6 identifies forcibly transferring children of one national, ethnical, racial or religious group to another group as genocide if committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.<sup>9</sup> Whilst Article 7 identifies deportation or forcible transfer of population as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.<sup>10</sup>

2.3.6 Whilst neither Russia nor Ukraine are party to the Rome Statute, since 2014 Ukraine has twice exercised its prerogatives to accept the Court's jurisdiction over alleged crimes under the Rome Statute occurring on its territory (Embassy of Ukraine, 2014; Minister of Foreign Affairs for Ukraine, 2015).

### **3. Crimea contextual background**

3.0.1. As noted above, the UNGA regards Crimea as temporarily occupied by the Russian Federation.<sup>11</sup> Similarly, the Office of the Prosecutor of the International Criminal Court (2016, para. 158) found Crimea to be under the occupation of the Russian Federation and stated it will apply the law of international armed conflict legal framework to the situation.

3.0.2 Since the occupation of Crimea, numerous reports by both non-governmental organisations (NGOs) and international organisations document a decline in the human rights situation in the region, as well as multiple breaches of IHL, many of which relate to the persecution of minority groups and individuals perceived as pro-Ukrainian (Human Rights Watch, 2014b; Organization for Security and Co-operation (OSCE), 2015). They also consistently report that access to the peninsula for the

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<sup>8</sup> Rome Statute of the International Court, (adopted 17 July 1998, entered into force on 1 July 2002), United Nations Treaty Series, vol. 2187, No. 38544.

<sup>9</sup> Rome Statute of the International Court, (adopted 17 July 1998, entered into force on 1 July 2002), United Nations Treaty Series, vol. 2187, No. 38544, Art. 6.

<sup>10</sup> Rome Statute of the International Court, (adopted 17 July 1998, entered into force on 1 July 2002), United Nations Treaty Series, vol. 2187, No. 38544, Art. 7.

<sup>11</sup> UNGA Res 71/205 (19 December 2016) UN Doc A/RES 71/205, para. 158

purpose of human rights monitoring has been severely restricted so that the full extent of breaches of IHL, such as the deportation of civilians, is likely to be significantly greater than those which they have been able to evidence (Amnesty International, 2017, pp. 1-2; OSCE, 2015, para. 4)

### **3.1 Imposition of Russian citizenship and use of Russian Federation immigration rules to transfer and deport Crimean residents.**

3.1.1 A report by international NGO Human Rights Watch (HRW) documents a coercive process by which Russian citizenship was imposed on many residents of the Crimea (HRW, 2014b).

3.1.2 After 18<sup>th</sup> April 2014, Russian law applied to Crimea and those who were unwilling or unable to become Russian citizens or gain permanent residency status were subject to different rights and entitlements, including being regarded as foreigners under Russian immigration law, putting them at risk of deportation (HRW, 2014b)

3.1.3 A United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) report documents the court-ordered deportations for breach of Russian immigration legislation of one resident with Ukrainian citizenship to mainland Ukraine, despite him owning property in Sevastopol, and another with a wife and child in Crimea (UN OHCHR, 2017, para. 65).

3.1.4 Additionally, the Crimean-born chairman of an NGO who was unable to gain Russian Federation citizenship due to the cancellation of his Crimean passport on procedural grounds in 2012, was convicted of “illegal stay”, deported to mainland Ukraine and banned from entering Crimea for a number of years, despite his wife and child residing there (UN OHCHR, para. 126).

3.1.5 The report goes on to say that the OHCHR has information that 20 to 25 other Ukrainian citizens were deported from Crimea to mainland Ukraine in 2016, and has reason to believe the total number deportation since annexation is significantly higher (UN OHCHR, 2017, para. 127).

3.1.6 A report from the OSCE’s Office for Democratic Institutions and Human Rights and High Commissioner on National Minorities documents the use of RF citizenship rules to deport Sinaver Kadyrov, a co-ordinator of the informal Committee on the

Rights of the Crimean Tatar People, as a foreigner who had overstayed under Russian law (OSCE, 2015, para. 136).

### **3.2 State practice regarding use of Russian Federation immigration rules to transfer and deport Crimean residents.**

3.2.1 In response to the allegations of the use of RF immigration rules to deport Crimean civilians, the OHCHR states that such instances of the forced transfer and deportation of protected persons from occupied territory contravene international humanitarian law rules and makes recommendations to the Government of the Russian Federation to end deportations of Crimean residents pursuant to Russian Federation immigration rules, and to return to Crimea all protected persons transferred to the territory of the Russian Federation (UN OHCHR, 2017, para. 226(k)).

3.2.2 Whilst the UN Security Council has discussed the situation in Crimea in numerous meetings, the topic of deportation and transfer does not appear to have been directly addressed. As with all aspects of the armed conflict between Russia and Ukraine, the UNSC has been unable to adopt resolutions in relation to Crimea due to the power of Russia to veto these (UN News, 2014)

3.2.3 UNGA Resolution 75/192,<sup>12</sup> adopted by 64 votes to 23, with 86 abstentions,<sup>13</sup> condemned the deportation of those who have rejected Russian citizenship and urged the RF to allow the return, without preconditions, those transferred or deported across internationally recognized borders from Crimea to the Russian Federation. No direct reference was made to deportation or transfer by any state at either the UNGA plenary session at which the Resolution was adopted,<sup>14</sup> or at the meeting of the UNGA Social Humanitarian & Cultural Issues (Third Committee)<sup>15</sup> at which the draft resolution was approved, although speaking at the Third Committee meeting, the

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<sup>12</sup> UNGA Res 75/192 (16 December 2020) UN Doc A/RES/75/192

<sup>13</sup> UNGA 46<sup>th</sup> Plenary Meeting (16 December 2020) UN Doc A/75/PV.46, p.26

<sup>14</sup> UNGA 46<sup>th</sup> Plenary Meeting (16 December 2020) UN Doc A/75/PV.46

<sup>15</sup> UNGA Third Committee Summary record of the 12th meeting (18 November 2020) UN Doc A/C.3/75/SR.12

Georgian representative did state that consistent reports that the RF promoted policies and conducted practices aimed at changing the demographic structure in Crimea were particularly alarming.<sup>16</sup>

3.2.4 UNGA Resolution 76/179,<sup>17</sup> adopted with 65 votes to 25, with 85 abstentions,<sup>18</sup> condemned the imposition of citizenship on protected persons in Crimea and the deportation of those who reject it, and called on the RF to end the practice of deportation of Ukrainian citizens for not taking Russian citizenship, including on the basis of the application of RF migration and correctional legislation. Individual speakers at the UNGA meeting at which the Resolution was adopted did not address the allegations of deportation or transfer.<sup>19</sup> At the Third Committee meeting which drafted the Resolution, representatives of states such as the UK, US and Georgia condemned human rights abuses in Crimea, in particular the oppression of minority groups, but made no specific reference the transfer and deportation of civilians.<sup>20</sup>

3.2.5 The states who voted against the UNGA Resolutions in relation to Crimea are broadly the same including Belarus, Eritrea, Kazakhstan, Kyrgyzstan, Syria, India, Iran and North Korea, and are generally those with close links to the RF either geographically and militarily, or because they are dependent on Russia for energy and trade (The Economist, 2023). When setting out their positions regarding the Resolutions, they do not address the allegations in relation to deportation and transfer, or other breaches of IHL, but state more generally that they are opposed to country-specific resolutions and the politicization of Human Rights .<sup>21</sup>

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<sup>16</sup> UNGA Third Committee Summary record of the 12th meeting (18 November 2020) UN Doc A/C.3/75/SR.12, para. 105

<sup>17</sup> UNGA Res 76/179 (16 December 2021) UN Doc A/RES/76/179

<sup>18</sup> UNGA 53rd Plenary Meeting (16 December 2021) UN Doc A/76/PV. 53, p.31

<sup>19</sup> UNGA 53rd Plenary Meeting (16 December 2021) UN Doc A/76/PV. 53

<sup>20</sup> UNGA Third Committee Summary record of the 13th meeting (17 November 2021) UN Doc A/C.3/76/SR.13

<sup>21</sup> UNGA Third Committee Summary record of the 12th meeting (18 November 2020) UN Doc A/C.3/75/SR.12, paras. 100-104; UNGA Third Committee Summary record of the 13th meeting (17 November 2021) UN Doc A/C.3/76/SR.13, paras. 73, 75-77



3.2.6 In response to the evidence in relation to Kadyrov, the OSCE (2015, para.178-180) stated that the Russian Federation and Crimean de facto authorities should refrain from the transfer and deportation of Crimean residents outside of Crimea.

3.2.7 In Resolution 2133, the Parliamentary Assembly of the Council of Europe (PACE) urged the RF to bring an end to the displacement from the territory of Crimea to the territory of the Russian Federation people that do not have Russian citizenship who have, whatever the circumstances, found themselves under the control of the Russian Federation in Crimea (PACE, 2016, para 17.2.7). The Resolution was passed with 87 votes in favour, 6 against and 11 abstentions, receiving broad support from most COE states, other than Switzerland and Italy, almost all of whose representatives abstained.

### **3.3 Transfer of parts of the prison population from Crimea to the Russian Federation**

3.3.1 The UN OHCHR (2017, para. 117) documents the transfer of a sizeable number of the prison population from Crimea to facilities in Russia (UN OHCHR, 2017, para 111). It also reports that some pre-trial detainees were sent to the RF, such as filmmaker Oleh Sentsov who was accused of “plotting terrorist acts” and was transferred to prisons in Russia, before being sent to a high security penal colony in Siberia on conviction.

3.1.2 An OHCHR report from 2021 also documents the deportation from Crimea of at least two Jehovah's Witnesses to serve prison sentences in the Russian Federation (UN OHCHR, 2021, para 103).

3.3.3 UA wire, a website which reports on news affecting the Ukraine and Russia, published an article on 1 June 2016 detailing the transfer of 2,200 prisoners from Crimea to Russia to serve their sentences, with unconfirmed reports placing the number as high as 7,000 (UA Wire, 2016)

3.3.4 A document of 22 June 2016 produced by the Russian Federal Penitentiary Service for the Republic of Crimea and the city of Sevastopol records the transfer of 240 women convicted by Crimean ‘courts’ to the Russian Federation to serve their sentences UN OHCHR (2016, para. 181).

### **3.4 State practice in relation to the transfer of parts of the prison population from Crimea to the Russian Federation**

3.4.1 In response to the above reports, the OHCHR noted that detainees are included in the IHL prohibition on forcible transfers of protected persons from occupied territory to the territory of the occupying power and asserted that the imposition of RF citizenship does not alter their status as protected persons (UN OHCHR, 2017, para 118).

3.4.2 UN General Assembly Resolution 71/205 condemned the reported serious violations and abuses committed against residents of Crimea, including transfer of detainees from Crimea to the RF, and urged the RF to uphold all of its obligations under applicable international law as an occupying Power.<sup>22</sup> The Resolution was adopted by 70 votes to 26, with 77 abstentions,<sup>23</sup> and with those states voting against the Resolution having links to Russia as detailed above. No direct reference was made to deportation and transfer of civilians by any of the representatives who spoke in explanation of their position at the UNGA plenary at which the Resolution was adopted.<sup>24</sup> During the Third Committee meeting at which the Draft Resolution was considered, many states amongst those who voted for the Resolution, as well as those who abstained, expressed their concerns about the human rights situation in Crimea but none referred directly to deportation or transfer of civilians.<sup>25</sup>

3.4.3 UNGA Resolution 76/179 (see further details at para. 3.2.4 ), urged the RF to take immediate action to allow the voluntary return of individuals deported from Crimea to the RF to serve prison sentences.<sup>26</sup>

3.4.4 PACE Resolution 2387 also called on the RF to end the transfer of detainees, including Crimean Tatars, from Crimea to RF territory and to ensure their return to Crimea or mainland Ukraine. (PACE, 2021, para 13.2.4). The Resolution was passed

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<sup>22</sup> UNGA Res 71/205 (19 December 2016) UN Doc A/RES/71/205

<sup>23</sup> UNGA 65th Plenary Meeting (19 December 2016) UN Doc A/71/PV.65

<sup>24</sup> UNGA 65th Plenary Meeting (19 December 2016) UN Doc A/71/PV.65

<sup>25</sup> UNGA Third Committee Summary record of the 49th meeting (15 November 2016) Un Doc A/C.3/71/SR.49

<sup>26</sup> UNGA Res 76/179 (16 December 2021) UN Doc A/RES/76/179

with 73 votes in favour, 17 against and 2 abstentions, with all those voting against being representatives of the Russian Federation.

3.4.5 PACE Resolution 2133 (as detailed in para. 3.2.7) made direct reference to those sentenced to imprisonment when calling on the RF to end the displacement of those without Russian citizenship from Crimea to the territory of the RF (PACE, 2016, para 17.2.7)

3.4.6 A March 2016 Declaration by the High Representative of the Council of the EU addressed the case of Oleh Sentsov specifically, stating that he should be immediately released and his safe return to Ukraine guaranteed. (Council of the EU, 2016). Declarations have been issued on a regular basis by the Council in relation to breaches of IHL since the annexation of the Crimea, but these have not directly addressed the deportation and transfer of other Crimean civilians (Council of the EU, 2017; Council of EU, 2018; Council of EU, 2020)

3.4.7 European Parliament Resolution 2017/2596 condemned the prevailing practice of transferring detainees to distant regions of Russia (European Parliament, 2017)

3.4.8 The 2015 OSCE report states that Russian Federation and de facto authorities should refrain from the transfer or deportation of Crimean residents to outside of Crimea, including detainees, convicts, and other persons residing in social-care institutions (OSCE, 2015, para. 180).

### **3.5 Transfer of parts of the Russian civilian population into Crimea.**

3.5.1 A report from December 2017 states that the Russian Federation had increased the number of Russian military and state officials moving into the Crimea and supports migration from the territory of the RF to Crimea, and that according to different data, between 100,000 and 300,000 citizens of the Russian Federation have moved to the territory of the Crimea since the period of annexation (The Foreign Policy Centre, 2017).

3.5.2 The OHCHR (2017, para. 52) asserts that the demographic structure of Crimea continues to change, due to the continuous influx of Russian citizens into Crimea

since the 2014 referendum, which it described as being primarily pensioners, public servants and servicemen and their families.

3.5.3 An article on a Ukrainian news website reported that the Russian National Commercial Bank (RNCB) had initiated a large-scale program in Siberia to lend to those who want to buy "housing by the sea" in the Crimea (Removskaya, 2019).

3.5.4 A report from members of a number of human rights groups states that job vacancies in the Crimea have been advertised on official state websites in a number of Russian regions, with employment offered in numerous sectors and with some roles including accommodation (Zayets et al, 2016, pp. 93-94).

### **3.6 State practice in relation to the transfer of parts of the Russian civilian population into Crimea.**

3.6.1 In response to reports of the transfer of Russian civilians to Crimea, the OHCHR (2017, para. 226(e)) calls on the Government of the RF to comply with the international humanitarian law prohibition on deporting or transferring parts of the civilian population of the Russian Federation into Crimea.

3.6.2 UNGA Resolution 75/192 (see para, 3.2.3) expressed deep concern at the practice and urged the RF to stop both the transfer its own civilian population to Crimea and the encouragement of this practice.<sup>27</sup>

3.6.3 UNGA Resolution 76/179 (as detailed in para. 3.2.4) stated that the General Assembly was deeply concerned by consistent reports that the RF promotes policies and practices aimed at changing the demographic structure in Crimea and urged the RF to stop transferring its own civilian population to Crimea, in breach of IHL, to end the practice of encouraging such transfers and to take measures to limit free migration of RF citizens to Crimea.<sup>28</sup>

3.6.4 The Council of the EU (2022) also responded in February 2022 with a Declaration by the High Representative on behalf of the EU which stated that the RF must stop changing the demographic structure of the peninsula through resettlement

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<sup>27</sup> UNGA Res 75/192 (16 December 2020) UN Doc A/RES/75/192

<sup>28</sup> UNGA Res 76/179 (16 December 2021) UN Doc A/RES/76/179

of its own civilian population in Crimea and by the persecution of Crimean Tatars and ethnic Ukrainians.

### **3.7 The Russian response to allegations of transfer and deportation of protected persons from Crimea.**

3.7.1 When speaking in response to draft proposals on Crimea at the UNGA, Russia has not sought to justify or explain allegations of transfer or deportation of civilians, but has dismissed the contents of the draft resolutions arguing that they do not reflect the real state of affairs in Crimea and that the resolutions are politically motivated.<sup>29</sup>

## **4.0 Forced displacements in Ukraine by Russia**

**4.0.1** The war in Ukraine started in February 2022 and ever since there have been wide reporting of Russian forces directly involved in violation of international law and used the population transfers and deportation as one of its strategies of war with over 3.6 million Ukrainian citizens now in Russia (Colvin, Victoria & Orchard, Phil., 2023).

**4.0.2** This section will analyse what the state practice is in relation to forced displacements and forcible transfers and deportation and abuses related to filtration.

### **4.1 How Russian Combatants use forced displacements**

**4.1.1** Russia's strategies have been deliberate from the beginning of this conflict whereby combatants use forced displacement in three ways. First use of indiscriminate violence, second, use of forced displacement as a way of gaining information and last is the use of forced displacement can be used to target specific groups that are seen as long-term security threats to the state and their interests (Colvin, Victoria & Orchard, Phil., 2023).

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<sup>29</sup> UNGA Third Committee Summary record of the 49th meeting (15 November 2016) Un Doc A/C.3/71/SR.49, para. 78; UNGA Third Committee Summary record of the 12th meeting (18 November 2020) UN Doc A/C.3/75/SR.12, para. 95

## **1.Nature of the use of indiscriminate violence relating to forced displacement in Ukraine**

1.1 There have been reports about Russia committing indiscriminate violence since starting the invasion on 24 February 2022.

1.2 Indiscriminate violence its meaning, violence in situations of international or internal armed conflict which presents a serious and individual threat to a civilian's life (European Commission, 2023). Denoted to the source of the specific type of serious harm explained in the directive 2011/95/EU of the European Parliament and of the Council on 13 December 2011, in the Judgement of the Court of Justice of the European Union (CJEU), *Elgafaji v Netherlands* [2009]<sup>30</sup>.

1.3 On the 15 March 2023, the Independent International Commission of Inquiry on Ukraine released a report pursuant to a Human Rights Council resolution 49/1, where it found and documented indiscriminate and disproportionate attacks, and a failure to take precautions, in clear violation of international humanitarian law (United Nations Human Rights Council, 2022).

1.4 Based on its investigations there have been two reports into events in the regions of Kyiv, Chernihiv, Kharkiv and Sumy, the Independent International Commission of Inquiry on Ukraine has concluded that war crimes have been committed in Ukraine (United Nations 2023b).

1.5 The Commission has documented violations, such as the illegal use of explosive weapons, indiscriminate attacks, violations of personal integrity, including executions, torture, and ill-treatment, and sexual and gender-based violence. It also found that the rights of children have been violated (United Nations 2023c).

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<sup>30</sup> CJEU C-465/07 *Elgafaji vs the Netherlands* [2009] CJEU European Court Reports 2009 I-00921ECLI identifier: ECLI:EU:C:2009:94

1.6 A Q &A report on March 29<sup>th</sup>, 2023, Ukraine: International Justice Response highlights the need for coordinated efforts to address grave abuses which has taken place and is still taking place in Ukraine. The report states that Russian forces have committed numerous violations of international humanitarian law, including indiscriminate and disproportionate bombing, and shelling of populated areas. (Human Rights Watch, 2023) .

## **2.0 State Practice regarding indiscriminate violence relating to forced displacement in Ukraine**

2.1 A statement released by the Ministry of Foreign Affairs of the People's Republic of China on China's position on the political settlement of the Ukraine crisis has no mention on the use of forced displacement by way of indiscriminate violence by Russia nor in any other statements before or since this statement was released on the 24<sup>th</sup> February 2023 ( Ministry of Foreign Affairs of the People's Republic of China, 2023).

2.2 In a French foreign policy press release on 30 March 2023, it reiterates its support OSCE'S invocation of the Moscow mechanism to address the deportation of Ukrainian children in the Russian war of aggression in Ukraine, and earlier in 2022 on April 13 and 14 it will be using the findings published on these dates which concerned human rights violation of international humanitarian law in Ukraine; those reports contained credible accounts of Russia's forced transfer and deportation of Ukrainian civilians including unaccompanied children (France Diplomacy, 2023).

2.3 The OSCE report released on April 13<sup>th</sup>, 2022, on violation of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity was supported by 45 participating States out of the 57 states listed on its website which includes Ukraine. This includes 4 permanent member countries on the UN Security Council, Russian Federation, France, UK, and the United States (France Diplomacy, 2023).

2.4 Russia is the only OSCE participating State blocking the expansion of the mandate of the OSCE Observer Mission, which is now deployed at two Russian border crossing points “Gukovo” and “Donetsk”, to the entire section of the Russian-Ukrainian state border, adjacent to the territory in Donbas, which is out of control by the Ukrainian government (Ministry of the Foreign Affairs of Ukraine, 2019).

2.5 Russia refuses to fulfil its obligation under paragraph 4 of the Minsk Protocol of 5 September 2014 on the establishment of security zones in border areas of Ukraine and Russia with ensuring permanent border monitoring and verification by the OSCE (Ministry of the Foreign Affairs of Ukraine, 2019).

2.6 Moreover, there was a meeting coverage of the Security Council in February 2022 in the issues amid violence, mass forced displacement, lives of millions of Ukrainian civilians are at stake, Martin Griffiths, the Under-Secretary-General for Humanitarian Affairs Chief tells Security Council in the meeting. This was done in his bid to increase aid brought on by the Russian Federation’s military offence (United Nations 2023c). France’s representative stressed that the Russian Federation is violating the principles of the Charter of the United Nations and “riding roughshod” over the Geneva Conventions of its military offence in Ukraine (United Nations 2023c). The United Kingdom’s delegate decried Russian Federation President Vladimir V. Putin’s decision to invade Ukraine, which has resulted in the threat of a humanitarian disaster for 44 million people (United Nations 2023c).

### **3. Nature of forced displacement used as way of gaining information.**

3.1 When it came to researching for specific examples of forced displacements relating to gaining information, this was covered under ‘Filtration’ which is covered in the topics in the latter part of this report.



#### **4. State Practice regarding forced displacement used as way of gaining information**

4.1 When it came to researching for state practice of forced displacements relating to gaining information, this was covered under 'Filtration' which is covered in the latter part of this report

#### **5. Nature Forced displacements which can be used to target specific groups.**

5.1 According to Statement released by Rescue.org on 23 February 2023 on protection of civilians whilst fleeing Ukraine includes people at risk of discrimination, including LGBTQTI+ individuals, Roma, and Third Country Nationals, (Rescue.org/EU, 2023).

5.2 Civilians with links to Ukrainian forces (Amnesty International, 2022a).

5.3 In a Los Angeles Times news article, Zi Faamelu could not escape the war in Ukraine as on her passport she is male the sex assigned to her at birth and Ukraine has prohibited men of fighting age from leaving the country. She can be quoted as saying, that it was a very bleak situation for trans people in Ukraine but in Russia it is even worse (Los Angeles Times, 2022).

5.4 In an Aljazeera news report on the Russia-Ukraine war, titled Ukraine's Roma refugees recount discrimination on route to safety, the story was reported from Chisinau, Moldova. The story is old from an indoor running track at the Manej Sport Arena and now it is home to 800 Roma people who fled Ukraine after the Russian invasion. A woman named Cristina, 41 years old was one of them, who lost everything she owned after Russia bombed her house in Ukraine's eastern city of Kharkiv. She now recounts Kharkiv is like my palm now, flattened and city is absolutely destroyed. She did not have

time to grab anything during the bombing, she took her children and fled. Now she is left without documents and has travelled from Kharkiv to Lviv then to the Moldova border. At the border she spent four days in the cold awaiting to enter Moldova, no food or water, and once they found shelter, she and other Roma were chased out of their tents by the Ukrainian border authorities (Aljazeera, 2022).

5.5 Third Country Nationals have been discriminated against since the Russian invasion, out of 1.4million fleeing Ukraine about 78,800 are third-country nationals. And most have found themselves in legal limbo with little to no options to stay in Europe. Third-country nationals are defined by the EU as “any person who is not a citizen of the European Union within in the meaning of the Art.20(1) of the TEFU<sup>31</sup>.

5.6 Milena, 33, was in Kalmiuskyi District when the factory where she was sheltering came under the control of Russian forces on 2 or 3 April. Milena wanted to flee with her husband and two children towards the village of Manhush on the western outskirts of the city, where evacuations to Ukrainian government-held territory were ongoing. Milena said that even when she pretended to be from Manhush, Russian soldiers said she could not flee in that direction. The family then walked with 20 others to a neighbouring area, hoping to find somewhere to spend the night, when they were stopped again by Russian soldiers. Milena said: “Russian soldiers said: ‘Don’t walk here, go in that direction, there will be evacuation.’ It’s not good to argue with soldiers, especially in a situation where my husband is in danger... We started to ask questions about evacuation, where it is possible to go, etc., and I was told that it was only possible to go to the DNR or to Russia. Another girl asked about other possibilities [to evacuate], for instance to Ukraine... The answer came straight away; the soldier interrupted and said: ‘If you don’t go to the DNR or the Russian Federation, you will stay here forever.’”<sup>42</sup> Russian forces’ refusal

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<sup>31</sup> Article 20(1) TEFU

to allow Milena and her children to flee toward Ukrainian government-controlled areas and the coercion applied to their transfer to other Russian-controlled areas amounts to the war crime of unlawful transfer. Milena and her husband decided to cross the border with Russia. A former marine for the Ukrainian military, her husband was detained at the border and has been in detention in the self-proclaimed DNR ever since (Amnesty International, 2022a).

## **6.State Practice of forced displacement which can be used to target specific groups**

6.1 The Council of the European Union on Activation of the Temporary Protection Directive (TPD) 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof which is no in force in all EU Member Countries for Ukrainian citizens<sup>32</sup>.

6.2 Poland, Moldova, Romania, Slovakia, Hungary, Belarus, Germany, Czech Republic, Italy, Russia, some of the EU countries that have taken on displaced Ukrainian since February 24, 2022 (Aisle Project, 2022).

6.3 The Council Decision leaves it open to individual EU member states whether to apply the TPD or 'adequate protection under their national law' for a further group of persons, namely stateless persons without refugee status and other third country nationals with permanent residence in Ukraine who are unable to return in safe and durable conditions to their country of origin (Aisle Project, 2022).

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<sup>32</sup>Council Directive 2001/55/EC 20 July 2001

6.4 Finally, Article 2 (3)<sup>33</sup>of the Council Decision gives Member States the option of applying the TPD to stateless persons and third country nationals with temporary residence in Ukraine who cannot safely return to their country of origin. The extent to which this discretion will be exercised in favour of a broader scope of beneficiaries remains to be seen, though as noted above, there are already reports of ethnic and racial discrimination at the point of access to EU territory, targeted against both persons of non-European background and of Roma background (Aisle Project,2022).

6.5 The United Kingdom has created three visa schemes for displaced people fleeing the war in Ukraine: the Ukraine Extension scheme, the Ukraine Family Scheme, and the Ukraine Sponsorship Scheme. Each of the sponsorship scheme have different arrangements for sponsorship in each of the devolved states in the UK. (UK Visas and Immigration and Home office, 2023).

6.6 On the plight of third country nationals there has been no measures found in any state practices to date on how countries are dealing with them. This is supported by IOM Director General on the issue of discrimination and racism against third country national fleeing Ukraine where he has pleaded with UN member states to end this and on its websites, encourages reading its guidelines on how to protect migrants (IOM, 2022).

**4.1.2** According to an IOM UN Migration, Ukraine Internal Displacement Report on a general population survey, round 12 released 23 January 2023, an estimated that 5.4 million internally displaced people across Ukraine (IOM, 2023).

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<sup>33</sup> Council Implementing Decision (EU) 2022/382 of 4 March 2022; Article 5 of Directive 2001/55/EC

**4.1.3** A report by the Amnesty International titled, Ukraine: “Like A Prison Convoy”: Russia’s Unlawful Transfer and Abuse of Civilians in Ukraine During ‘Filtration’ was released on November 2022, in which 48 civilians were interviewed from Mariupol who were forced to escape towards the self-proclaimed DNR and nearly all cases, then to Russia (Amnesty International, 2022a).

## **4.2 The ICC regarding deportation & transfers and state practices on the situation in Ukraine.**

4.2.1 Role of ICC have key importance by which Russia could be held to account for its actions through prosecution.

4.2.2 Ukraine lodged two declarations with the ICC with first accepting ICC jurisdiction over crimes committed in Ukrainian territory from 21 November 2013 to 22 February 2014, and the second extending this time-period from 20 February 2014. To date a total of 43 State Parties, referred situation in Ukraine to the ICC and the Prosecutor opened investigation on 2 March 2022. This was referred to the ICC by 43 State Parties between March- April 2022.

4.2.3 On 1 March 2022, the Office received a State Party referral from the Republic of Lithuania. On 2 March 2022, the following coordinated group of States Parties put forward a joint referral: Republic of Albania, Commonwealth of Australia, Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Canada, Republic of Colombia, Republic of Costa Rica, Republic of Croatia, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, Republic of France, Georgia, Federal Republic of Germany, Hellenic Republic, Hungary, Republic of Iceland, Ireland, Republic of Italy, Republic of Latvia, Principality of

Liechtenstein, Grand Duchy of Luxembourg, Republic of Malta, New Zealand, Kingdom of Norway, Kingdom of the Netherlands, Republic of Poland, Republic of Portugal, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, Kingdom of Sweden, Swiss Confederation, United Kingdom of Great Britain and Northern Ireland (International Criminal Court, 2023).

4.2.4 On 2 March 2022, the Prosecutor announced he had proceeded to open an investigation into the situation in Ukraine based on the referrals received. In accordance with the overall jurisdictional parameters conferred through these referrals, and without prejudice to the focus of the investigation, the scope of the situation encompasses any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person from 21 November 2013 onwards (International Criminal Court, 2023).

4.2.5 On 11 March 2022, the Prosecutor confirmed that two additional States, Japan and North Macedonia, have referred the Situation in Ukraine to the Office. On 21 March 2022, Montenegro further informed the Office of its decision to join the group State Party referral, and on 1 April 2022, the Republic of Chile joined the group State Party referral of the situation (International Criminal Court, 2023).

4.2.6 On the 17 March 2023, Pre-Trial Chamber II of the international Criminal Court issued warrants of arrest for two individuals in the context of the situation in Ukraine: Mr Vladimir Vladimirovich Putin and Ms Maria Alekseyeva Lvova-Belova (International Criminal Court, 2023). This will be covered in more detail in the latter part of this report.

4.2.7 The ICC and Ukraine signed an agreement to open an office in the country announced by the ICC Ukrainian General Prosecutor in the beginning of March 2023.

### **4.3 Forcible Transfers and Deportation of Ukrainian Civilians**

4.3.1 Since the illegal invasion of Ukraine by Russia there has been wide reporting of transfers of Ukrainian civilians.

4.3.2 Center for Civil Liberties' (CCL) Oleksandra Drik cited several documented cases during a September 2022 address to the U.N Security Council. In April 2022, for example, a man and his family were detained and interrogated by the Russian military. Upon learning that his wife was donating money to support the Ukrainian military, the Russian soldiers called her a fascist and a Nazi and attempted to take away their child to send to a so-called re-education camp. They assaulted the husband, striking him in the groin area, and tortured him with electricity. The man also saw evidence of torture that apparently had been meted out to others before him – blood on the floor and white pieces that looked like bone fragments. He was saved mainly because the Russians wanted him to work for them. The family ultimately was able to flee to Europe (Matviichuk, Oleksandra & Arno, Natalia & Cameron, Jasmine D, 2023).

4.3.3 In another case, a 21-year-old student from the southern Ukrainian port city of Mariupol, which was under a brutal siege for months before falling to Russian forces in May 2022, went through unimaginable suffering when his father was shot by Russian soldiers, and he had to hide in his basement for 30 days as his home city was destroyed, before being taken by force through two filtration camps (one in Donetsk and one at the Russia border) with his 80-year-old, cancer-stricken grandmother. At the filtration camps, he was fingerprinted, photographed, and interrogated. The Russians also demanded he surrender his Ukrainian passport, a request he refused. Fortunately, four days later he was able to escape, traveling to Georgia, Turkey, and finally Germany (Matviichuk, Oleksandra & Arno, Natalia & Cameron, Jasmine D, 2023).

4.3.4 Another case cited by CCL was that of a 16-year-old male who was trying to flee Melitopol in south-eastern Ukraine and was detained by the Russians. They kept him for three months in a prison cell with no working toilet and forced him to watch the torture of other detainees and clean blood from cells after interrogations ( Matviichuk, Oleksandra & Arno, Natalia & Cameron, Jasmine D, 2023).

4.3.5 OHCHR reports documented 16 cases where civilians (involving 90 men, 28 boys, 18 girls and 2 women) were transferred without their consent, or the consent of their parents, guardians, or other legal representatives, from the occupied parts of Donetsk, Kharkiv, Kherson, Kyiv and Odesa regions to the Russian Federation. Three of those cases involved dozens of civilians. In four other cases, dozens of civilians, including children, being detained by Russian armed forces were transferred to Belarus. Some of these civilian detainees were further transferred to the Russian Federation. In five further cases, civilians were transferred from occupied territory to Government monitored territory as a form of punitive “expulsion” (Report on the Human Rights Situation in Ukraine, 2023).

4.3.6 OHCHR reports documented that approximately 1,600 civilian prisoners who had been serving sentences in different penal colonies in the Kherson region before February 2022 were transferred to the Russian Federation in early November and sent to penal colonies in Krasnodar, Rostov, and Volgograd regions. OHCHR was able to ascertain the identity and general whereabouts of 75 of them. A family member of one such detainee told OHCHR that the man was first transferred from where he was serving his sentence to the Northern Penal Colony No 90 in Kherson, where detainees were forced to work repairing equipment for Russian military needs.<sup>30</sup> In early November, he and other prisoners were deported to the Russian Federation. Families were not informed about the deportation of their loved ones. The authorities did not provide information about their fate and whereabouts, which may also amount to enforced disappearance. Relatives were not able to send them letters or money directly. OHCHR has information about 27 transferred prisoners who were released upon the end of their sentence and immediately placed in detention centres for foreign nationals, based on decisions of the Russian authorities



ruling their stay in the Russian Federation undesirable and their deportation to Ukraine (Report on the Human Rights Situation in Ukraine, 2023).

#### 4.3.7 State Practice on forcible transfers and deportation of Ukrainian Civilians

All state practices on forcible transfers and deportation were attributed and similar to the ones in the forced displacement in relation to indiscriminate violence.

Finding state practices relating to forcible transfer and deportation of civilians has been scarce though it is not exhaustive.

Adding that forced transfers have been used in filtration check points to transfer civilians within Ukraine and then most are then deported to Russia.

The United States and 44 other countries invoked the OSCE Moscow Mechanism for a second time on June 2, 2022, where it established an expert mission to examine the further human rights abuses and humanitarian impacts of Russia's war of aggression in Ukraine.

#### **4.3.8 Abuses related to 'Filtration'**

4.3.8.1 A report by Human Rights Watch interviewing 18 people who went to Russia<sup>15</sup> from the Mariupol area, 1 from Donetsk, and 2 from the Kharkiv region — 10 of whom also underwent the filtration process. Human Rights Watch interviewed another 8 people who went through the filtration process in the DNR but were able to continue on to Ukrainian-controlled areas and avoided being transferred to Russia. Those who failed 'filtration' were detained in the DNR and there were reports of screening process where authorities captured vast amounts of personal data about Ukrainian civilians, including their biometrics (Human Rights Watch, 2022b).

#### **4.3.9 What is Filtration and its processes?**

4.3.9.1 A significant amount of have fled their homes and in many cases, it is left as an only option left to them where many are subjected to Russian filtration camps set up in Russia-held parts of Ukraine or along the Ukraine-Russia border

(Orchard and Colvin, 2023) where they are forced into invasive screening processes known as “filtration” (Amnesty International, 2022).

4.3.9.2 The processes of filtration do not justify the reasons given by the Russian authorities as imperative military reasons or for security of the population (Human Rights Watch, 2022a). Orchard and Colvin stated that this might be a stance taken by Russia to constitute a defence regarding war crimes, and is extensive and organised, a required element of crimes against humanity (Colvin & Orchard, 2023).

4.3.9.3 There have been at least twenty-one filtration facilities identified (Yale Humanitarian Research Lab, 2022). The “Donetsk People’s Republic” (DNR), an area of the Donetsk region controlled by Russian-controlled armed groups and is under Russian occupation, through its “Ministry of Internal Affairs” has claimed that filtration activities are carried out to stop people that have military affiliation to Ukraine’s military, law and security agencies, nationalist battalions, sabotage, and intelligence groups from entering the republic (Human Rights Watch, 2022b).

#### **4.3.9.4 State Practices relating to Filtration.**

1. Ilze Brands Kehris, Assistant Secretary-General for Human Rights and Head of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in New York, reported that OHCHR has verified that Russian armed forces and affiliated armed groups are subjecting civilians to so-called “filtration” — a system of security checks and personal data collection (United Nations, Security Council, 2022).

2. In the 9126<sup>th</sup> Security Council meeting, Albanian representative said that today’s briefing shows that strong concerns over the past six months about the possible detention of Ukrainian civilians are no longer allegations. Rather, they are painstakingly verified facts. Noting that these filtration camps are rooted in Russian history, he stressed that if the Russian Federation has nothing to hide it should give United Nations bodies unrestricted access (United Nations, Security Council, 2022).

## **5. Transfer and deportation of vulnerable groups**

The impact of forcible transfer and deportation is not a universal experience for all victims of war. This section focuses on the forcible transfer of protected persons who have intersecting characteristics compounding their vulnerability. Although there may be instances of complete denouncement of this act, this section will analyse what the state practice is in relation to these specific vulnerable groups.

### **5.1 Disabled People**

5.1.1 Disabled people were already deemed as highly vulnerable pre-conflict (EPRS, Nov 2022, pp. 1). According to the European Disability Forum (Feb 2022), there are 7.2 million disabled people in Ukraine. As the conflict has involved mass destruction of the built environment and essential infrastructure, it can be inferred that disabled people have been disproportionately impacted by the conflict and are particularly vulnerable.

5.1.2 The UN Committee for People with Disabilities (CRPD) actively monitors the global implementation of the UN Charter for the Rights of People with Disabilities (UNCRPD) which states that 'State Parties should take...all necessary measures to ensure the protection and safety of people with disabilities...including situations of armed conflict.'<sup>34</sup>

5.1.3 Amnesty International (2022, pp.5) highlights an incident from the 23rd of March 2023 where workers in a residential facility were trying to evacuate 92 disabled people from Mariupol. They were intercepted by Russian forces at a camp in Yur'ivka. Russian forces directed the bus load to Donetsk, a Russian controlled territory, rather than allow transport elsewhere.

5.1.4 Amnesty International reports a volunteer worker stating that forced transfer of disabled people being deported to Russian-run institutions were widespread. Due to

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<sup>34</sup> Article 11 UN Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007

their disabilities, they noted it was significantly difficult to find and reunite these people with their families (2022, pp. 29).

5.1.5 At the CRPD session in August 2022, Ukraine stated that many disabled people had been forcibly transferred. They stated that over 50 institutions were located in Russian controlled territory which they did not have access to (CRPD Session, August 17th 2022).

5.1.6 The CRPD has been the loudest international voice condemning the transportation and forcible transfer of disabled people. As early as February 2022, the CRPD commissioned a report. The Committee noted with concern the forcible transfer of disabled people by Russian forces. The committee urged Russia to notify officials of the location of those forcibly transferred or deported (CRPD Session Report, Feb 24th 2022).

5.1.7 However, at the 17th of August 2022 CRPD session, there was no reference by states to the specific act of forcible transfer and deportation for disabled people. Latvia and Turkey and the European Union gave holistic responses that they would support disabled people in Ukraine, but no comment in relation to these breaches of International Humanitarian Law.

5.1.8 Ilze Brands Kehris (UN Security Council, 7th Sep 2022), specifically condemned the forcible transfer of disabled people in her brief to the security council.

5.1.9 At the 8<sup>th</sup> March 2023 CRPD Session, there was condemnation of the forcible transfer of disabled people and supporting tribunals to investigate these breaches.

5.1.10 Some condemnation has been in relation to specific groups. For instance, the European Disability Forum, which is made up of EU member states, published a letter where they condemned the forcible transfer of disabled children in particular (9th March 2023).

5.1.11 The European Parliament passed a resolution<sup>35</sup> calling for Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy and the Member States to speak out about the forcible transfer of disabled people.

5.1.12 As the UN response is so strong, there is a customary law against forcible transfer for people with disabilities.

## **5.2 Older People**

5.2.1 Older people are also disproportionately at risk of transfer and deportation due to their vulnerability.

5.2.2 There is evidence of elderly disabled people in residential homes being transferred. Amnesty spoke to one woman whose mother was transferred to a Russian-ran nursing institution in Donetsk. The daughter was able to flee from Mariupol to Ukrainian ran territory but was separated from her mother. She was not allowed to speak to her mother, but friends in Donetsk conveyed the location of her mother to her (Amnesty International, 2022, pp. 29).

5.2.3 However, the tactics used has varied. There is some evidence of Russian forces encouraging elderly people to locate themselves in Donetsk during filtration by highlighting that pensions are higher in Russia than Ukraine. (HRW, 2022, Page 31-32).

5.2.4 There is also the availability of medicine being used as a pulling tactic where the idea of being able to get them more easily than in Ukrainian territory meant relocation (Amnesty International, 2022, pp. 19).

5.2.5 There is also cultural identity being used to manipulate people into moving. One man gives an account where he states that Russian forces used the historical

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<sup>35</sup> S.11 EU Resolution 2022/2825(RSP)

links of the USSR as a ploy to attract him to relocate to Russia. He said that refusal, may leave him vulnerable to attack from Ukrainian Forces who may deem him a Russian sympathiser (Human Rights Watch, 2022, pp. 70).

5.2.6 At the UN Security Council meeting on the 7<sup>th</sup> of Sep 2022, several countries condemned the forcible transfer of civilians. This included Slovakia, Albania, Norway, UK and USA. Latvia was the only country to specifically condemn the forcible transfer of elderly people.

5.2.7 The EU passed a resolution, condemning the forcible placement of elderly people in Russian ran facilities and called on the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy and the Member States to bring attention to these atrocities<sup>36</sup> .

5.2.8 There is clear state practice that condemns the forcible transfer of the elderly. However, this one area which may develop more as more evidence comes to light.

### **5.3 Women**

5.3.1 At an international level, there is a high focus on how war and conflict has a disproportionate impact on women and can make them incredibly vulnerable, including the act of forced transportation, filtration, and transportation.

5.3.2 There is extensive evidence of women being filtrated and forcibly transported during the ongoing conflict.

5.3.3 At a UN Security Council meeting on 7th Sep 2022, Ilze Brands Kehris, highlighted that women and girls were being forcibly deported and subject to filtration and that filtration exposed women and girls to an increased risk of sexual violence and abuse.

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<sup>36</sup> s. O and s. 11 EU Resolution 2022/2825(RSP)

5.3.4 The case of Iryna Horobtsova, a resident of Kherson and Human Rights activist is one of note). Iryna was a vocal voice against the Russian Occupation, and it is believed that she was filtered and taken to Russian-controlled Crimea where she has been forcibly disappeared. (Gorbunova, Human Rights Watch, 2022).

5.3.5 The UN has heard testimony from 17-year old Marya Vynchenko, who testified that she was subjected to threats of sexual violence through the filtration process (UN Security Council, 7th September 2022).

5.3.6 Enforced disappearance has been a tactic used in tandem with the acts of filtration and forced transfer/deportation. A report from May 2022, stated that 34 women were highlighted as being forcibly disappeared (Michelle Bachelet, UN High Commissioner for Human Rights, OHCHR, 12th May 2022).

5.3.7 There has been condemnation of these acts from a gendered perspective.

5.3.8 The UK has strongly condemned the use of filtration and forcible deportation on women, further stating that Russia had a complete disregard for the UN and its obligations (UN Security Council meeting, 7th September 2022).

5.3.9 Italy has spoken out against deportation of women on both the 6th of June 2022 and 7th September 2022 sitting of the UN Security Council.

5.3.10 Latvia has also strongly condemned the forcible transfer of women (UN Security Council – 6th June 2022 and 7th September 2022).

5.3.11 Although not in specific reference to transportation, there were well established comments that any response to the Ukrainian conflict must have a gendered perspective and response (UN Security Council, 7th September 2022). This was echoed by Gabon, India, China, Brazil, Ghana, Mexico, Ireland and the UK.

5.3.12 This sentiment has been established at the UN, with a specific sitting of the UN Security Council dedicated to highlighting the plight of women in Ukraine. As well as Italy and Latvia, as highlighted above, Albania strongly condemned forced

transportation of women. (6th June 2022) condemned forced transportation of women among other human rights abuses.

5.3.13 The EU have also strongly condemned the forcible transfer of women from Ukraine to Russian ran territories<sup>37</sup>. This resolution called for women to be returned immediately to Ukraine<sup>38</sup>. This directive also specifically called for women prisoners to be located by the International Red Cross and returned as they are at increased risk of gender-based violence<sup>39</sup>. This is important given the use of filtration on protected people by Russian forces in this conflict.

5.3.14 There is clear state practice opposing the forcible transfer and deportation of women.

## 5.4 Children

5.4.1 Due to their vulnerability, children have been a massive focus of humanitarian effort in the Russia-Ukraine Conflict. In International Humanitarian Law, there is increased protection for this group<sup>5</sup> especially against forcible transfer and deportation<sup>40</sup>.

5.4.2 There has been numerous examples of forcible transfer and deportation. NGOs have been engaging with civilians, noting examples, and writing reports of these acts.

5.4.3 The OSCE has not been able to verify the exact number of children deported (14 July 2022, pp. 30).

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<sup>37</sup> Council Resolution on The impact of the war against Ukraine on women (2022/2633)

<sup>38</sup> S. 9 Council Resolution on The impact of the war against Ukraine on women (2022/2633)

<sup>39</sup> S. 10 Council Resolution on The impact of the war against Ukraine on women (2022/2633)

<sup>40</sup> Article 11, United Nations Convention on the Rights of the Child, 20 November 1989; Article II United Nations Convention on the Prevention and Punishment of the Crime of Genocide



5.4.4 For example, there is an instance where 17 children aged, between 2-17, were being moved from a residential facility in Mariupol by volunteers that were trying to take these children to their families. The bus was intercepted by Russian Forces who took them to Russian controlled territory in Donetsk (HRW, 2022, pp. 54-55).

5.4.6 There are also accounts of children being separated from mothers during the filtration process (Amnesty International, 2022, pp. 11). They have noted significant barriers that families face trying to get children back with families once they are in Russian controlled territory. There is a second-hand account of two children being separated from their mother during filtration due to her links with the Ukrainian military. Her two children, aged 18 and 13, were forcibly removed to Russia and by sheer luck, their father was Russian and able to be re-united with them. Failure to get them would mean the 13-year-old would be placed in a Russian orphanage. (HRW, 2022, pp. 43).

5.4.5 At a UN Security council meeting in Oct 2022, Ukrainian representatives claimed that 200,000 Ukrainian children had been forcibly placed in Russian controlled territory.

5.4.6 There has been at least 43 camps that have been identified for alleged political re-education and there is evidence of children being sent back to Ukraine suspended (Khoshnood et. al, 2023, pp. 5).

5.4.7 There are multiple instances where this has been condemned at UN Security Council by various states.

5.4.8 Malta has strongly condemned the forcible transfer of children and forced adoption on multiple occasions at the UN Security Council (13th January 2023, 6th February 2023, 24th February 2023, 14th March 2023). On the 24th of February sitting, they called for children to be returned to their family in Ukraine without delay.

5.4.9 Germany has commented on this act several times at the UN Security Council (6th February 2023, 24th February 2023). They have stated that 'kidnapping children' should not become international norm (24th February 2023).

5.4.10 Latvia condemned the deportation of children. (UN Security Council, 7th September 2022, 6th February 2023).

5.4.11 Netherlands condemned the abduction of children and placement in Russian controlled territories (UN Security Council, 24th February 2023).

5.4.12 Mexico condemned the forcible transfer, deportation and adoption of Ukrainian children sent to Russian territory (UN Security Council, 7th September 2022).

5.4.13 Gabon called for an investigation into the impact the war is having on children, particularly the use of filtration (UN Security Council, 7th September 2022).

5.4.14 Condemnation from the US has also been expressly stated with press releases circulated on several state department websites (Ambassador Linda Thomas-Greenfield, United States Mission to the United Nations, 6th February 2023; United States Mission to the United Nations, US Department of State, 14th February 2023).

5.4.15 The USA condemned the forcible transfer and deportation of children at the UN Security Council (7th September 2022, 24th February 2023).

5.4.16 The European Disability Forum (2023) wrote a clear letter condemning the forcible transfer and deportation of Ukrainian children into Russian-controlled territory.

5.4.17 At a UN Security Council meeting on the 24th of February 2023, the High Representative of the EU for Foreign Affairs and Security Policy, stressed that they denounced the crime of forcibly transporting tens of thousands of Ukrainian children.

5.4.20 The UN also specifically condemned the forcible transfer of disabled children to Russian institutions<sup>41</sup>.

5.4.21 The UK has outright condemned the forcible transfer of children in Ukraine (UN Security Council, 7th September 2022 and OSCE committee, 30th March 2023).

5.4.22 Ireland condemned the use of deportation and transfer of children and called for immediate access to filtration camps to tackle this (UN Security Council, 7th September 2022).

5.4.23 The ultimate condemnation of this act has been that the ICC has issued an international arrest warrant against Vladimir Putin and other officials for the illegal transfer and forced adoption of children (International Criminal Court, 17th March 2023). This strong action by the ICC shows that it is recognised that state practice condemns the forcible transfer and deportation of children.

5.4.24 Since the issuing of the warrant, states have upheld their objections to Russia's Actions. At a UN Security Council Meeting on the 5th April 2023, the US, UK, Albania and Malta walked out in objection to the Russian Representative being present (A. Goodwin, CNN, 5th April 2023).

5.4.25 There is strong and well-established state practice condemning the forcible transfer and deportation of children.

## **5.5 Conclusion**

Overall, there is clear condemnation of forcible transfer and deportation of vulnerable protected people. However, some intersections have caused a louder and more publicised condemnation than other sectors. As more evidence is uncovered, state practice may develop further.

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<sup>41</sup> UN Resolution A/HRC/S-34/2 12th May 2022

## 6 Coercion and Conflict Related Sexual Violence (CRSV)

Populations, do not through choice, decide to leave their home, friends' family and travel through war zones and run the risk of deportation and filtration and the abduction of their children. It should be established how the aggressor, in this case Russia, creates a situation where people are forced to make such decisions and become entrapped.

### 6.1 Case Law in Relation to Coercion

6.1.1 As noted by ICTY Trial Chamber in *The Prosecutor v. Radovan Karadžić* (1)

"489. **To establish deportation and forcible transfer, there must be a forced displacement of persons carried out by expulsion or other forms of coercion. The term "forced" may include physical force, as well as the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, or the act of taking advantage of a coercive environment.** 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. (para. 489-491)

6.1.2 The Muthaura, *Kenyatta* and Ali ICC Pre-Trial Chamber stated that (2):

"[T]he evidence establishes 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", amounted to coercion**, which caused the attacked residents of Nakuru and Naivasha to leave their homes and seek shelter in IDP camps." ( para. 244)

6.1.3 According to the Trial Chamber in *Krnjelac*:

"Deportation is illegal only where it is forced. 'Forced' is not to be interpreted in a restrictive manner, such as being limited to physical force. It may include the ***'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'***. ***The essential element is that the displacement be involuntary in nature, where the relevant persons had no real choice. Forced displacement is only illegal when it occurs without grounds permitted by international law.***" (3) para 475

**6.1.4** As a backdrop to this paper, it is important to gain an overview of the aggressor's stance in relation to Ukraine as seen through the eyes of ruling government. A paper from the Reiss Center at New York University catalogues (but not verified) statements made by political leaders and very senior Russian politicians on Ukraine and reflects the mindset of the aggressor. (4)

## **6.2 Physical Coercion**

**6.2.1** As early as the 11th of March 2022 UN was questioning whether or not Russia was targeting infrastructure. The report notes attacks on schools, hospitals nurseries, psychiatric facilities and notes the effect on the civilian population. Large areas of Ukraine are now no longer inhabitable. (5,6,7,8)

**6.2.2** A report published 24<sup>th</sup> March 2023 on the Human Rights Situation in Ukraine (9) catalogues verified acts by Russia and Ukraine in violation of International Law. The report states.

***35 . OHCHR has serious concerns about the scale and frequency of destruction of medical facilities. Some incidents may also amount to a violation of the rules of IHL which afford them a special protection status. During the reporting period, OHCHR documented that military attacks destroyed 20 healthcare facilities and damaged 87 more. Actual figures are likely higher. Of them, 57 were attributed to Russian armed forces, 45 to Ukrainian armed forces.***

**39. On 10 October, Russian armed forces initiated a series of strikes by cruise missiles, ground-to-air missiles (used against ground targets) and loitering munitions targeting critical infrastructure, and in particular energy objects across Ukraine. As of 31 January 2023, they had launched 14 of these attacks. OHCHR received credible reports that the attacks damaged or destroyed at least 76 objects of energy infrastructure in 19 regions of Ukraine and Kyiv, mostly cogeneration plants and electricity substations.**

**6.2.3** There are also reports of Russia threatening to attack critical infrastructure. The Kherson Oblast dam is a critical piece of infrastructure. If the dam was destroyed it would cause significant damage downstream and could affect the large nuclear reactor at Zaporizhzhia which is Europe's largest and is water cooled. Without power and water, a Chernobyl incident could happen and strikes fear with the civilians.

**6.2.4** The UK envoy to the OSCE conference delivered a speech 7<sup>th</sup> March 2023 stated that the attacks by Russia on the infrastructure were specifically **'designed to spread terror amongst civilians'** In Emma Logan's address to the conference (10), she stated,

***'Russia illegally seized control of Zaporizhzhia Nuclear Power Plant, subjecting its staff to horrific treatment and increasing the risk of a nuclear incident. IAEA Director General Grossi last week underlined the persistent safety and security risks. The Russian Federation is solely responsible for the "dangerous, precarious and challenging situation" at the Plant – direct consequences of its illegal invasion. This, from a supposed responsible nuclear actor. As Director General Grossi outlined, the sound of artillery falling is never far away.'***

The bombardment of Mariupol resulted in 90% destruction of infrastructure; the city was levelled. The Russian army used various statements to the civilians such as *'leave now or die'*.

**6.2.5** Some said that after weeks of uncertainty they didn't care where they ended up – that anywhere would be safer than Mariupol, in their view. (11,12)

## **6.3 State Practice on Civilian Targeting**

### **6.3.1 United Nations**

The Security Council Resolution adopted 27<sup>th</sup> April 2021 some ten months prior to the conflict (13).

***5. Strongly condemns the unlawful denial of humanitarian access and depriving civilians of objects indispensable to their survival in situations of armed conflict, as well as the misuse of objects indispensable to the survival of the civilian population in violation of international law by all parties to armed conflict.***

***6. Urges all parties to armed conflict to protect civilian infrastructure which is critical to the delivery of humanitarian aid including for the provision of essential services concerning vaccinations and related medical care and other essential services to the civilian population in armed conflict and to ensuring the proper functioning of food systems and markets in situations of armed conflict.***

6.3.2 The UN General Assembly adopted a resolution which called for the end of the conflict but also stated (14):

***7. Calls for full adherence by the parties to the armed conflict to their obligations under international humanitarian law to take constant care to spare the civilian population and civilian objects, to ensure safe and unhindered humanitarian access to those in need, and to refrain from attacking, destroying, removing, or rendering useless objects indispensable to the survival of the civilian population.***

***8. Also calls for an immediate cessation of the attacks on the critical infrastructure of Ukraine and any deliberate attacks on civilian objects, including those that are residences, schools and hospitals.***

6.3.4 An attack on Ukraine was reported 11<sup>th</sup> October 2022. The spokesperson for the UN was referring to a missile attack on Kyiv, Dnipro, Zaporizhzhia areas. They stated (15):

***We are gravely concerned that some of the attacks appear to have targeted critical civilian infrastructure. Many civilian objects, including dozens of residential buildings and vital civilian infrastructure – including at least 12 energy facilities – were damaged or destroyed in eight regions, indicating that these strikes may have violated the principles on the conduct of hostilities under international humanitarian law. Damage to key power stations and lines ahead of the upcoming winter raises further concerns for the protection of civilians and in particular the impact on vulnerable populations. Attacks targeting civilians and objects indispensable to the survival of civilians are prohibited under international humanitarian law.***

## 6.4. International Criminal Court

6.4.1 The International Criminal Court in a Preliminary Report (2019) into the Russian invasion of Eastern Ukraine at (16 at para 280) states:

***In addition, if the conflict was international in character, there is a reasonable basis to believe that the following war crimes were committed: intentionally launching attacks that resulted in harm to civilians and civilian objects that was clearly excessive in relation to the military advantage anticipated (disproportionate attacks), pursuant to article 8(2)(b)(iv); and unlawful confinement, pursuant to article 8(2)(a)(vii) of the Statute.***

## Amnesty International

6.4.2 Marie Struthers, Amnesty International's Director for Central and Eastern Europe stated (17):

***“Russia’s targeting of Ukrainian civilian infrastructure is unlawful. The morale of the civilian population is not a lawful target, and carrying out these attacks with the sole purpose of terrorizing civilians is a war crime. All those responsible for ordering and committing these criminal attacks must be held to account. With Russia ramping up its efforts to terrorize civilians in Ukraine, the international community must urgently respond and condemn these heinous attacks.”***

## European Union

6.4.3 On 4<sup>th</sup> March 2023 at a conference United for Justice (18), a statement from President von der Leyen, on the establishment of the International Centre for the Prosecution of Crimes of Aggression against Ukraine stated.

***‘There is increasing evidence of direct attacks against civilians as well as on energy and other infrastructure. Torture, ill-treatment, sexual violence, and summary executions are known to have been committed by Russian forces. Not even children are being spared’.***

A further report from the Diplomatic Service of the EU 17<sup>th</sup> March 2022 (19)

***The European Union condemns in the strongest possible terms the Russian Armed Forces and their proxies continued targeting of Ukraine’s civilian population and civilian infrastructure, as well as their siege of the city of Mariupol. The Mariupol Drama Theatre was heavily shelled on Wednesday,***



*despite having served as a well-known and clearly marked shelter for civilians including children. Human Rights Watch reports that Russian forces attacked the city of Mykolaiv with cluster munition rockets in three separate attacks. Such deliberate attacks on civilians and civilian infrastructure are shameful, reprehensible and totally unacceptable. They constitute serious violations of international humanitarian law.*

## **6.5 Conflict Related Sexual Violence (CRSV)**

**6.5.1** *'Ultimately, rape ceased to be perceived as the unrestrained sexual behaviour of individuals and was recognised as a powerful tool of war, used to intimidate, persecute and terrorise the enemy'. (20)*

There have been numerous reports of CRSV made against Russian forces during the conflict. With the ongoing situation it is difficult to get verifiable witness evidence but organisations such as the UN have made some progress.

**6.5.2** A report by the European Council 7th March 2023 (21) The report, although brief and lacking in detail states:

*'The listings will also target high-ranking members of the Russian armed forces, whose units systematically participated in acts of sexual and gender-based violence in Ukraine in March/April 2022, in the context of Russia's unprovoked and unjustified military aggression against Ukraine'.*

**6.5.3** Reports have also been carried by the press. A BBC report from 11<sup>th</sup> April 2022 gives a victim statement which states:

*"At gunpoint, he took me to a house nearby. He ordered me: 'Take your clothes off or I'll shoot you.' He kept threatening to kill me if I didn't do as he said. Then he started raping me,"*

**6.5.4** A report from CNN 3<sup>rd</sup> November 2022 gives a witness that stated:

*He pinned her against the wardrobe, she says, and tore at her clothes. "I was crying, begging him to stop, but with no success," she says. "The only thought I had was to stay alive."*

**6.5.5** A report at the UN 6<sup>th</sup> June 2022 remarks (22,23):

*Allegations of sexual violence by Russian troops in Ukraine are mounting, a senior UN official told the Security Council on Monday, expressing regret over a stark discrepancy between that painful reality, and the global community's ambition to end the use of rape as a weapon of war.*

**6.5.6 From 24 February 2022 to 31 January 2023, OHCHR documented 133 cases of Conflict Related Sexual Violence (CRSV) 85 men, 45 women, 3 girls), 109 of them perpetrated by Russian armed forces, law enforcement authorities or penitentiary staff, either in Russian-occupied territory of Ukraine or in the Russian Federation itself. Most of the documented cases occurred either in a context of deprivation of liberty or in villages and communities that were controlled by Russian armed forces. (Cases were documented in Kyiv, Kharkiv, Kherson, Chernihiv and Zaporizhzhia regions) (24)**

## **6.6 CRSV State Practice**

### **United Nations**

**6.6.1** The United Nations Security Council received a report from the Secretary General covering the early part of 2020 (25).

**. The term “conflict-related sexual violence”, as used in the present report, refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. This link may be evident in the profile of the perpetrator, who is often affiliated with a State or non-State armed group...’**

### **United Kingdom**

**6.6.2** The UK government whilst too early to comment on the current position in Ukraine released a press report in which the government sanctioned six individuals and entities as a direct result of CRSV (26).

### **International Ministerial Conference 41 Nations**

**6.6.3** In December 2022 there was an International Ministerial Conference on Preventing Sexual Violence in Conflict Initiative 2022: national commitments. In total 41 countries from across the globe signed the policy paper. Each country made their own statement below is an extract from the Australian statement (27).

***Conflict-related sexual violence is an appalling aspect of conflicts. It is an abuse of human rights and is happening across current crises, including Afghanistan, Iran, Myanmar, the Sahel region and Ukraine.***

(An extract from the Australian National Commitment)

**6.6.4** A further UK government report (28)

***Sexual violence is a deeply inhumane and illegal tactic of warfare, shattering lives and scarring communities. As we launch this strategy, sexual violence continues in conflicts across the world, including in the Democratic Republic of the Congo, Syria and Myanmar. There is also mounting evidence of rape and other heinous crimes committed by Russian forces in Ukraine.***

### **6.6.5 Russian State Practice**

From the International Humanitarian Law Database, the practice relating to Rule 93, Rape and other forms of Sexual Violence states (29):

The Russian Federation's Regulations on the Application of IHL (2001) states:

Under any circumstances international humanitarian law ensures humane treatment during an armed conflict of persons not directly involved in combat operations ... In particular, the following shall be prohibited with regard to such persons: ... outrages upon personal dignity, in particular humiliating and degrading treatment ... [and] threats to commit any of the above acts.

Russian Federation, *Regulations on the Application of International Humanitarian Law by the Armed Forces of the Russian Federation*, Ministry of Defence of the Russian Federation, Moscow, 8 August 2001, § 4.

With regard to internal armed conflict, the Regulations states:

The following acts against [all persons who do not take a direct part or who have ceased to take part in hostilities] are and shall remain prohibited at any time and in any place whatsoever: ... outrages upon personal dignity, in particular ... rape, enforced prostitution and any form of indecent assault [and] threats to commit any of the foregoing acts.

Russian Federation, *Regulations on the Application of International Humanitarian Law by the Armed Forces of the Russian Federation*, Ministry of Defence of the Russian Federation, Moscow, 8 August 2001, § 81.

## **7. Conclusion**

7.0.1 This report has set out state practice in relation to a number of areas related to the deportation and transfer of civilians from occupied areas in the context of international armed conflict, however as the conflict is ongoing and the situation continues to be monitored, it likely that state practice regarding transfer and deportation may continue to develop and adapt.

7.0.2 The war in Ukraine has had a devastating toll on the civilian population. This has been amplified by the deliberate targeting of civilians by the destruction of their homes, hospitals, schools and in fact the entire social fabric of Ukrainian society. This has seen over 7 million refugees and displaced persons, not by choice. The actions of the aggressor have forced the population to move. Those who have been unlucky enough to be on the wrong side of the front line have endured horrors and war crimes for needless reasons. Russia, in many areas, has reduced the land to rubble, forcing the inhabitants to run the gauntlet of merciless Russian forces who have carried out crimes against humanity.

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