

Analytical note on categories of Ukrainian citizens held in detention facilities in the Russian Federation and in the occupied territories of Ukraine as a result of full-scale military invasion of Ukraine, and problems related to providing legal guarantees to Ukrainians

This document has been prepared by a group of experts within the transnational platform *Women's Initiatives for Sustainable Peace, Dialogue and Democracy*

Summary

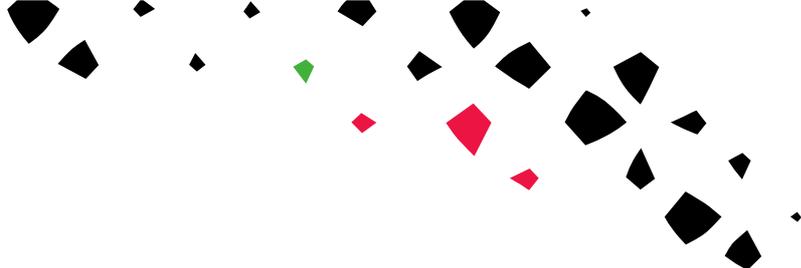
The paper describes the current situation and defines categories of Ukrainian citizens deprived of their liberty by the Russian Federation. Since the beginning of military conflict in 2014, and especially since the start of full-scale invasion of Ukraine in 2022, the Russian Federation has been refusing to acknowledge the detention of thousands of Ukrainian citizens (both military and civilian) on a systematic basis.

The main purpose of this document is to ensure that the citizens of Ukraine, who have been unjustly, illegally, and unreasonably deprived of their liberty, or have become hostages to unlawful decisions, or are being held captive in Russia, are not forgotten in any kind of ongoing or upcoming political process.

The paper shows that the detention of Ukrainian citizens in the Russian Federation and in the temporarily occupied territories of Ukraine represents a large-scale and systematic problem affecting the lives of thousands of people. Violations of international humanitarian law and international human rights law become institutionalized in this context.

Restricted information on the whereabouts and detention conditions of Ukrainian citizens, the denial of access to international monitoring missions, the lack of transparent and legal procedures for identification, confirmation of identity and establishment of the legal status of detainees create a situation of legal vacuum for the victims of these violations, which deprives them of basic guarantees of protection.

The authors suggest forming a group of interdisciplinary and international (including Ukrainian and Russian) experts. Their efforts should be aimed at restoring violated rights, ensuring access to legal protection, recognizing the legal status of each person held in captivity, and, most crucially, liberating wrongfully detained persons, exchanging prisoners of war and, ultimately, providing everyone with the opportunity to return home and reunite with their families.



Contents

1 Introduction.....	2
1.1 Introduction.....	2
1.2 Methodology and limitations.....	3
2 Applicable national and international standards.....	3
3 Categories of Ukrainian citizens subjected to deprivation of liberty by the Russian Federation	4
3.1 Prisoners of war	4
3.1.1 War prisoners unlawfully prosecuted for participation in hostilities	5
3.1.2 War prisoners held <i>incommunicado</i>	6
3.1.3 Missing (unconfirmed) prisoners of war	6
3.1.4 Ukrainian civilians who put up organized resistance against the occupying forces	7
3.2 Civilian persons	7
3.2.1 Missing citizens of Ukraine	8
3.2.2 Ukrainian Civilians held <i>incommunicado</i> (without communication with the outside world)	9
3.2.3 Ukrainian civilians subjected to criminal prosecution or held in places of detention in the Russian Federation or in the occupied territories of Ukraine	10
3.2.4 Ukrainian citizens – prisoners forcibly transferred in 2022 by the Russian armed forces from correctional facilities located in the then-occupied areas of Kherson and Mykolayiv oblasts to correctional institutions in the Russian Federation	11
3.2.5 Ukrainian citizens held in TDCFN (temporary detention centers for foreign nationals).....	12
4 Conclusion.....	15

1 Introduction

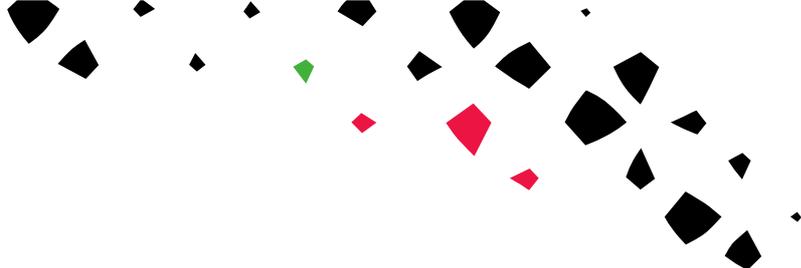
1.1 Introduction

The main purpose of this document is to ensure that the citizens of Ukraine, who have been unjustly, illegally, and unreasonably deprived of their liberty, or have become hostages to unlawful decisions, or are being held captive in Russia, are never forgotten. These are the people whose names probably have not appeared on any official list.

Since the beginning of military conflict in 2014, and especially since the start of full-scale invasion of Ukraine in 2022, the Russian Federation has been refusing to acknowledge the detention of thousands of Ukrainian citizens (both military and civilian) on a systematic basis. These people disappear in the shadows of war: they are not included in the prisoner exchange lists, they do not become the subjects of public campaigns, and their names are not mentioned in negotiations. In a best-case scenario, they may be recognized as political prisoners several months or years later, provided that the human rights organizations find out about them. In the worst case, they will remain missing forever.

Nevertheless, we may be talking about tens of thousands of people held in Russia and in the occupied territories of Ukraine. The very fact of their physical existence, living and suffering does not fit into bureaucratic formulations. They are “nobody” from the system’s point of view, but they are everything to those who are obliged - ex officio or by vocation - to protect human dignity.

We believe it is vitally important to identify the categories of persons who remain invisible to the negotiating parties at a time when exchange of war prisoners, civilians and dead bodies is becoming one of the key subjects of international and bilateral negotiations. They must not be forgotten, and they must be released from captivity.



This document is not intended to be an exhaustive expert analysis of the complexity of the problem of military and politically motivated captivity. Its purpose is to provide an overview of possible groups of detainees that might slip through the cracks: the persons who are likely to be missing from official lists or to be misclassified.

1.2 Methodology and limitations

Preparation of this document was based on the analysis of open sources: reports of UN and OSCE monitoring missions, analytical materials of human rights organizations, and media publications.

The authors of this document did not have access to official registers of the Russian Federation, lists of persons involved in prisoner swaps with Ukraine, or the lists submitted to the International Committee of the Red Cross (ICRC).

The classification of categories of persons is based on:

- monitoring of court proceedings,
- analysis of available information from international and intergovernmental organizations,
- reports by human rights NGOs.

Given these limitations, the classification contained herein reflects the practices known to the authors and is not intended to be exhaustive.

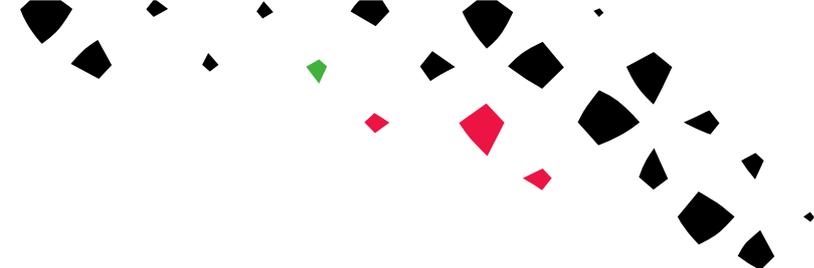
2 Applicable national and international standards

A. The Russian Federation has obligations under international treaties and customary norms of International Humanitarian Law (hereinafter IHL) applicable to international armed conflicts, including the four Geneva Conventions of 1949 in their latest version, namely:

1. The First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;
2. The Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
3. The Third Geneva Convention relative to the Treatment of Prisoners of War;
4. The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War;
5. Protocol I (1977) additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts, as well as the Hague Convention IV of 1907 respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land.

Following the dissolution of the USSR, which had signed and ratified the Geneva Conventions of 1949 and Protocol I (1977) thereto, the Russian Federation confirmed its legal succession to all the above-mentioned international documents, as well as reaffirmed its participation in the Hague Convention IV of 1907.

B. International Human Rights Law (hereinafter - IHRL) continues to apply in situations of international armed conflict. States have an obligation to respect and uphold IHRL in all circumstances within their jurisdiction, including areas under their effective control or occupation. This obligation extends to ensuring that any restrictions on human rights comply with applicable IHRL requirements. The International Covenant on Civil and Political Rights (ICCPR) is the most efficient and specific IHRL instrument applicable to the Russian Federation. Other ICCPR instruments and norms also have significance and should be applied, but the ICCPR is a document that imposes obligations on the Russian Federation under the Optional Protocol (No. 1) to the ICCPR, which was ratified by the USSR on October 1, 1991, and which has a binding effect on the Russian Federation by virtue of succession since January 1, 1992. These obligations reside in the fact that a State that has become a party to the Optional Protocol (No. 1) to the ICCPR recognizes the right to submit individual complaints of human rights violations to the UN Human Rights Committee (UNHRC) and, at the same time, recognizes the competence of the Committee to consider these complaints and make decisions that have a binding effect on the State. Article 7 of the ICCPR prohibits torture and ill-treatment. Article 9 of the ICCPR provides that “no one shall be subjected to arbitrary arrest or detention”. Articles 10 (conditions of detention) and 14 (guarantees of fair trial rights) of the IC-



CPR are equally relevant to this report. The most commonly violated rights of Ukrainian citizens (prisoners of war and civilians) derive from the above-mentioned articles of the ICCPR. Human rights treaties allow a State to derogate from certain obligations in time of emergency that threatens the life of the nation, but this procedure is strictly regulated. The States may take measures derogating from their obligations in the field of human rights, but only “to the extent required by the exigencies of emergency situation, provided that such measures are not incompatible with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin”¹. At the same time, international law prohibits derogation from certain fundamental obligations. In particular, this refers to the prohibition of arbitrary deprivation of life and the prohibition of torture. Another important condition for legally valid derogation from international obligations is the immediate notification of such derogation. The Russian Federation has not declared any derogation from its obligations under the IHRL, meaning that all of Russia’s international human rights obligations remain in force.

C. Observance of human rights is also guaranteed by Russian national legislation. The Constitution of the Russian Federation (Article 2) proclaims human rights and freedoms to be the supreme value, and places the Russian State under a duty to recognize, respect and protect human rights and freedoms. Article 15 of the Russian Constitution explicitly states that “the generally recognized principles and norms of international law and international treaties of the Russian Federation form an integral part of its legal system. If an international treaty of the Russian Federation establishes rules other than those provided for by law, the rules of the international treaty shall apply”. According to article 17 of the Constitution, human rights and freedoms are recognized and guaranteed in accordance with the universally recognized principles and norms of international law. Article 19 of the Constitution provides for equality of all before the law and the courts, thereby prohibiting any form of discrimination on the grounds of sex, race, ethnicity, language, origin, property and official status, place of residence, religion, beliefs, membership in voluntary associations and other circumstances. According to article 21 of the Constitution, no one shall be subjected to torture, violence or other cruel or degrading treatment or punishment. The principle of the inadmissibility of arbitrary arrest is enshrined in article 22 of the Constitution. Thus, human rights are to be protected regardless of a person’s nationality or any other status. Criminal procedure and penal enforcement legislation of the Russian Federation, as well as norms of criminal and administrative law, guarantee the rights of detainees and prisoners, including their right to healthcare and legal defense, prohibition of torture, cruel or degrading treatment.

However, in practice, Ukrainian prisoners of war and civilians who are being held under the control of the Russian authorities experience systematic violations of guaranteed rights, which demonstrate Russia’s failure to comply with its own legal obligations.

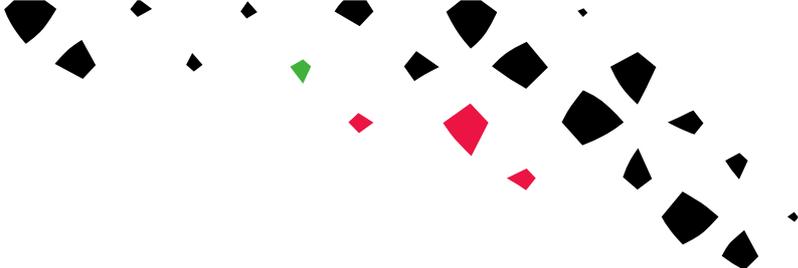
Specific cases of violation of IHL, IHRL and Russian legislation with regard to Ukrainian civilians and military personnel require a separate large-scale study and thorough analysis, which falls beyond the scope of this report. When describing the situation of certain categories of persons, the experts confined themselves to mentioning the relevant facts with an indication of their conformity or non-conformity with the applicable standards of law.

3 Categories of Ukrainian citizens subjected to deprivation of liberty by the Russian Federation

3.1 Prisoners of war

The 1949 Geneva Convention relative to the Treatment of Prisoners of War establishes the basic principles for humane treatment of persons captured during international armed conflict. Prisoners of war (POWs) are entitled to respect for their persons and honor (article 13), protection from torture, cruel and degrading treatment (article 17), as well as medical care (article 29) and detention conditions in accordance with established standards (article 25). POWs are guaranteed the right to contact their relatives through the International Committee of the Red Cross (article 70) and the right to a fair trial (articles 82-108). The Convention prohibits the forced participation of POWs in military operations or propaganda (article 23). An important element of protection is the provision that POWs cannot be held criminally liable for

1 Article 4 of the International Covenant on Civil and Political Rights.



participating in lawful hostilities (article 82), which precludes the possibility of prosecution and conviction for performance of military duty. The Convention mandates the immediate release and repatriation of POWs after the cessation of active hostilities (articles 118-119).

Description of the actual situation

The Russian Federation does not provide any information on the places and conditions of internment of Ukrainian POWs. International monitoring missions (UN Office of the High Commissioner for Human Rights (UN OHCHR), OSCE) have never been granted access to Ukrainian POWs who are held captive by Russia. The only sources of information are interviews with Ukrainian POWs released as a result of prisoner exchanges between Ukraine and the Russian Federation, testimonies of lawyers and lawyer interviews, and statements made in an open court session.

Ukrainian POWs are being held in temporary internment facilities located in the Russian Federation or in the occupied territory of Ukraine. The conditions of detention and treatment in these facilities are appalling. The majority of Ukrainian POWs interviewed by OHCHR was subjected to various forms of torture, ill-treatment or sexualized violence, such as forcing POWs to strip naked or attaching clamps to their genitals during electric shock torture.

In many cases, the Russian authorities deny Ukrainian POWs the right to communicate with their families. There is a lack of transparent and proven mechanism for POWs to communicate with the outside world. Rare cases of selective actions in the form of delivery of messages and postcards cannot be considered as compliance with the requirements of the Convention.

OHCHR has documented² several cases involving members of Ukrainian military medical personnel detained/held captive by the Russian authorities, which may constitute a violation of International Humanitarian Law. IHL allows for the retention of military medical personnel, but only to the extent necessary to care for the POWs taking into account their quantity and health condition³. OHCHR has not received any information indicating that retained medical personnel was involved in caring for wounded and sick POWs in any of the internment facilities in 2023. If the captured members of medical personnel are not used to provide medical assistance to POWs, they should be released and repatriated.

3.1.1 War prisoners unlawfully prosecuted for participation in hostilities

International humanitarian law grants combatants immunity from criminal prosecution for their mere participation in hostilities, provided that they adhere to the rules of warfare, and for acts committed within the law during an armed conflict, even if such acts would constitute a crime under domestic legislation in peacetime.

Furthermore, deliberate denial of a POW's right to a fair and impartial trial constitutes a gross violation of the provisions of the Third Geneva Convention as well as article 14 of the ICCPR.

Despite these provisions of IHL, Ukrainian POWs are predominantly convicted by the courts of Russia and the Russian-appointed judges in the occupied territory of Ukraine under "terrorist" and "extremist" articles of Russian Criminal Code for committing acts that should be recognized as legitimate participation in hostilities.

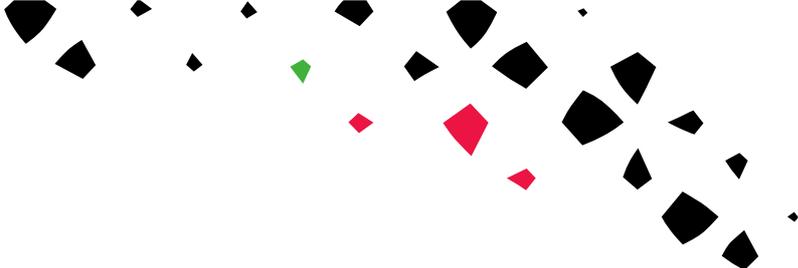
The results of monitoring conducted by human rights organizations⁴ and the data from international monitoring reports⁵ are indicative of systemic violations of the right to a fair trial in such criminal cases.

2 <https://www.ohchr.org/sites/default/files/2023-12/23-12-12-OHCHR-37th-periodic-report-ukraine-en.pdf>

3 Medical personnel, including the military who are exclusively engaged in caring for the sick and wounded, shall not be considered prisoners of war, but they may be detained for the sole purpose of providing medical assistance to POWs. See Article 33 of the Geneva Convention relative to the Treatment of Prisoners of War.

4 <https://graty.me/ru/rossiya-otkazyvaet-plennym-i-grazhdanskim-ukrainczam-v-spravedlivom-sudebnom-razbiratelstve-chem-soversaet-prestuplenie-protiv-chelovechnosti-i-voennoe-prestuplenie-issledovanie/>

5 <https://graty.me/ru/rossiya-otkazyvaet-plennym-i-grazhdanskim-ukrainczam-v-spravedlivom-sudebnom-razbiratelstve-chem-soversaet-prestuplenie-protiv-chelovechnosti-i-voennoe-prestuplenie-issledovanie/>



Given the closed nature of Russian judiciary system, the lack of access to judicial bodies in the occupied territories of Ukraine, and the gravity of crimes imputed to Ukrainian POWs, the information on court proceedings and criminal sentences in respect of these cases is extremely limited. As of this writing, human rights activists know about at least 6,000 POWs held in Russia and the occupied territories, who are prosecuted or may be subject to criminal prosecution.⁶

3.1.2 War prisoners held incommunicado

Incommunicado detention is a situation where a person is formally recognized as a POW by the detaining state, but he/she is deprived of communication with the outside world, including:

- denial of contact with family;
- prohibition of ICRC visits;
- lack of access to lawyers or international observers.

Incommunicado detainee is formally recognized as a POW, but his/her right to humane treatment and protection under the Geneva Conventions is violated. This does not necessarily equate to enforced disappearance. However, if such detention lasts for a long time and is accompanied by concealment of the person's whereabouts, it can be classified as enforced disappearance.

A significant proportion of Ukrainian POWs are held in complete isolation by the Russian Federation. They have no access to their families, ICRC assistance or any means of legal defense. Although it is possible to formally recognize the fact of their detention (for example, through the use of video footage on Russian TV channels and propaganda resources, or the exchange of POW lists between the belligerent parties), they remain outside the legal protection zone.

Such practices violate the provisions of the Geneva Conventions, which place the belligerent under an obligation to:

- notify the ICRC of each POW;
- ensure regular communication for POWs with the outside world;
- guarantee humane treatment and international supervision;
- ensure that POWs are not subjected to torture or ill-treatment.

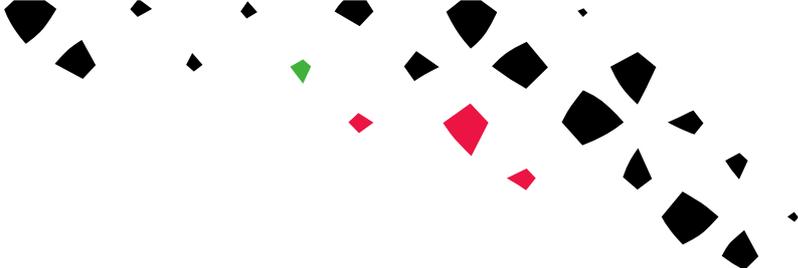
Incommunicado detention is almost always accompanied by torture and degrading treatment, and may amount to enforced disappearance in the case of concealment of POW's whereabouts. Furthermore, on October 31, 2024, the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances issued a Joint Statement on so-called "short-term enforced disappearances" emphasizing that "duration is not a constitutive element of enforced disappearance under international human rights law". The Statement recognizes that, regardless of the duration of enforced disappearance, it produces serious harm and consequences for the disappeared and their families, and also presents practical challenges as regards seeking protection and defending their rights⁷. Thus, concealment of whereabouts of a prisoner of war, even if for a short period of time, can be recognized as an enforced disappearance.

3.1.3 Missing (unconfirmed) prisoners of war

- These are the persons **whose captivity is not recognized by Russia**, despite the existence of indirect or direct evidence (photos, videos, witness testimonies).
- The ICRC and the families of such captives **are not officially notified** of their current status, effectively making them **victims of enforced disappearance** under international standards.
- This is a more difficult category in terms of international law, as it implies **the detaining State's refusal to recognize the very fact of detention**, which puts these persons outside the legal environment.

6 <https://zmina.ua/publication/analitychne-doslidzhennya-vidmova-v-pravi-na-spravedlyvyj-sud-yak-mizhnarodnyj-zlochyn-pid-chas-vijny-rosiyi-proty-ukrayiny-kontekst-praktyka-pravo-ta-perspektyvy/>

7 <https://www.ohchr.org/sites/default/files/2023-12/23-12-12-OHCHR-37th-periodic-report-ukraine-en.pdf>



According to the Ukraine's Coordination Headquarters for the Treatment of Prisoners of War, about **25 percent of POWs** returned in January 2024 were initially **listed as missing persons**⁸ because Russia did not confirm their capture. This suggests a **systematic practice of enforced disappearance** of Ukrainian military.

Amnesty International has documented⁹ numerous cases of Russia's refusal to admit the existence of Ukrainian POWs despite compelling evidence of their captivity, including video recordings, messages to relatives, and testimonies of persons who were released from captivity. For example, one of the captives sent a message from a prison colony in Olenivka (Yelenovka), where more than 50 Ukrainian military were killed in explosion later on. His POW status was never recognized by Russia.

According to international law, enforced disappearance is defined as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law” (Article 2 of the UN Convention for the Protection of All Persons from Enforced Disappearance).

Such practices:

- violate **accepted norms of international law**;
- may amount to a **war crime** (inhuman treatment);
- may constitute a **crime against humanity**, if found to be systematic and widespread.

3.1.4 Ukrainian civilians who put up organized resistance against the occupying forces

Numerous cases of criminal prosecution of Ukrainian civilians who resisted the Russian occupation forces are indicative of systematic violations of international humanitarian law. A significant portion of inhabitants of the temporarily occupied territories of Ukraine spontaneously organized armed resistance, guided by patriotic sentiments and the desire to protect their homeland in the conditions of sudden military aggression and foreign occupation. Article 4 A(6) of the Third Geneva Convention of 1949 extends the combatant status to such individuals, even if they are not part of the regular forces, provided that they carry arms openly and respect the laws and customs of war.

“Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces... shall likewise be treated as prisoners of war” (Article 4 A(6) of the Third Geneva Convention).

Despite this, Russian law enforcement practice ignores the international humanitarian law by treating such individuals as civilians and qualifying their actions as “**terrorist acts**”, “**sabotage**” or “**espionage**”. This contradicts the provisions of Geneva Conventions, which prohibit the prosecution of combatants for participating in hostilities provided that they meet the basic conditions of lawful resistance. The application of provisions of criminal law instead of recognizing the POW status of such individuals violates their right to fair treatment and the general principles of warfare. They are de facto placed into one of the following categories of civilians while being held captive by the Russian authorities.

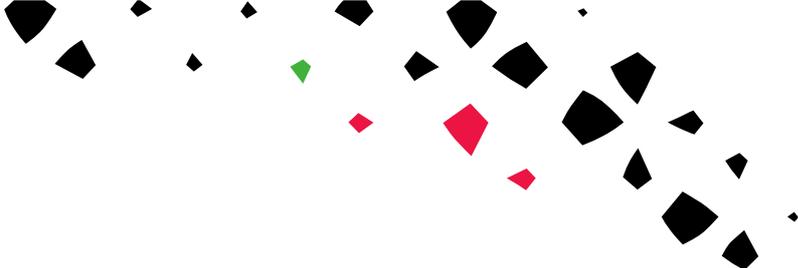
3.2 Civilian persons

This section of the report focuses on Ukrainian civilians who have been deprived of liberty as a result of the armed conflict and find themselves in the territory under the effective control of the Russian Federation. We are talking about detentions both in Russia and in the occupied territories of Ukraine.

This category includes persons who have been subjected to arbitrary and/or forcible detention since 2014, including cases that occurred in the Autonomous Republic of Crimea, certain areas of Donetsk and Luhansk oblast, Russian-occupied territories of Kherson and Zaporizhzhia oblasts, as well as liberated territories of Kyiv and Chernihiv oblasts that were under occupation in 2022. According to international law, these territories are still considered an integral part of sovereign state of Ukraine. Accordingly, civilian

8 https://t.me/Koord_shtab/3690

9 <https://www.amnesty.org/en/wp-content/uploads/2025/03/EUR-50.9046.2025-A-deafening-silence-2.pdf>



persons that were detained or went missing in these territories are protected by international humanitarian law.

It should be noted separately that this section **does not provide full coverage of** other categories of civilians that were forcibly displaced from occupied territory of Ukraine and relocated deep into the Russian Federation, including **children, patients of psycho-neurological boarding schools, psychiatric institutions, nursing homes and other vulnerable groups**. Given the specificity of legal situation and the degree of vulnerability, these categories need to be analyzed separately within the framework of specialized studies.

The Geneva Convention relative to the Protection of Civilian Persons in Time of War and applicable norms of international humanitarian law stipulate that persons taking no direct part in hostilities, including detainees, wounded and interned persons, shall in all circumstances be treated humanely without discrimination (articles 3, 27 of the Fourth Geneva Convention). It also ensures that civilians are protected from violence, torture, degrading treatment and punishment without a lawful trial (articles 3, 5, 147). Furthermore, the Convention guarantees the right to communicate with the outside world (articles 25-26), as well as provides for access of ICRC representatives to places of detention (article 143).

Description of the actual situation

The Expert Mission established in February 2024 to investigate the arbitrary deprivation of liberty of Ukrainian civilians on the part of Russia, operating under the OSCE Moscow Mechanism (hereinafter – the Mission), specifically notes that “many Ukrainian civilians have been detained by the Russian authorities since Russia’s attack on Ukraine in 2014.”

“The scale and complexity of these phenomena increased following the full-scale invasion in 2022, across multiple places of detention, primarily in the temporarily occupied territories of Ukraine, but also in the Russian Federation and Belarus. Aside from the timeline, the phenomena of detaining Ukrainian civilians should also be considered from a geographical perspective, given that the scale of detentions in Crimea differs from those in temporarily occupied territories of Kyiv, Kherson or Zaporizhzhia oblasts following Crimea’s illegal annexation in March 2014”, the Mission’s report says.

The Mission’s experts arrived at the conclusion that “the vast majority of these cases qualify as arbitrary deprivation of liberty under international law either due to the lack of permissible grounds for detention or breach of procedural requirements for lawful detention, or both.”

The Mission documented mass-scale cases of torture, cruel and inhuman treatment, sexual violence, harsh conditions of detention, incommunicado detention, and enforced disappearances.¹⁰

Victims of such violations must be released immediately and unconditionally. Furthermore, they must be provided with the opportunity to return to Ukraine and obtain access to effective means of legal defense, including compensation and rehabilitation. However, Russia does not fulfill these obligations.

3.2.1 Missing citizens of Ukraine

According to the authors of current document, this category includes Ukrainian civilians who disappeared without a trace under Russian occupation or during the conduct of military operations. We are talking about persons that left home and never returned, as well as those who were forcibly displaced, and there is no more information about them. The OHCHR report also documented cases of mass disappearances in frontline zones.¹¹

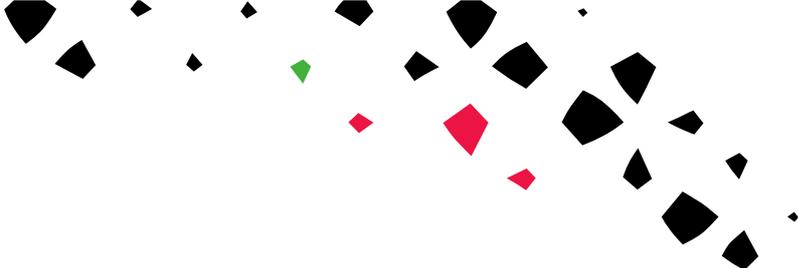
All these people may be dead or they may be alive, but for some reason they are not making contact with anyone, they are hiding in fear of various kinds of prosecution, or they went abroad and got lost in third countries. They may be forcibly detained in the Russian Federation or in occupied territories of Ukraine.

Experience of armed conflicts in other countries^{12, 13} suggests that finding and returning these people or their bodies home is a time-consuming task. The ICRC has been dealing with this problem for years, if not

10 ODIHR.GAL/19/24/Corr.2

11 <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/23-10-04-OHCHR-36th-periodic-report-ukraine-en.pdf>

12 <https://www.icrc.org/ru/news-release/coordination-mechanism-continues-work-search-people-missing-connection-armed-conflicts>



decades, after the end of armed conflicts. The section titled “Conclusion” contains a list of preventive measures that need to be taken now.

3.2.2 Ukrainian Civilians held *incommunicado* (without communication with the outside world)

In this section, we focus on the category of civilians, who were deprived of liberty by the Russian Federation in the conditions of military conflict and foreign occupation, but they were not awarded the formal procedural status of suspect, accused or convicted person. These individuals are held in complete isolation (*incommunicado*), without access to means of legal defense, without notifying their relatives and without legal certainty of their current situation¹⁴. In most cases, Russia does not recognize the fact of their detention, and they are considered missing in Ukraine.

The situation of Ukrainian civilians detained by Russia is one of the most worrying and legally uncertain forms of deprivation of liberty. The Geneva Convention relative to the Protection of Civilian Persons in Time of War expressly prohibits the taking of hostages and does not permit holding civilians in captivity. The Convention allows for temporary detention of protected persons, but it must be based on legal grounds and accompanied by legal safeguards, including family notification, access to a lawyer and judicial control.

The current Russian legislation provides for detention of civilian persons:

- under the articles of administrative law (Code of Administrative Offences of the Russian Federation) – for a maximum of 3 hours, the detention can be extended up to 48 hours in exceptional cases;
- under the articles of criminal law (Criminal Procedure Code of the Russian Federation) – for a maximum of 48 hours without a court decision, after which the investigator must file a request for imposition of a measure of restraint; the court may extend the detention up to 72 hours

Failure to keep within these time limits without following procedural procedures and executing procedural documents detailing the time and reasons for the detention of a particular civilian leads to arbitrary deprivation of liberty and may qualify as enforced disappearance from the perspective of international law.

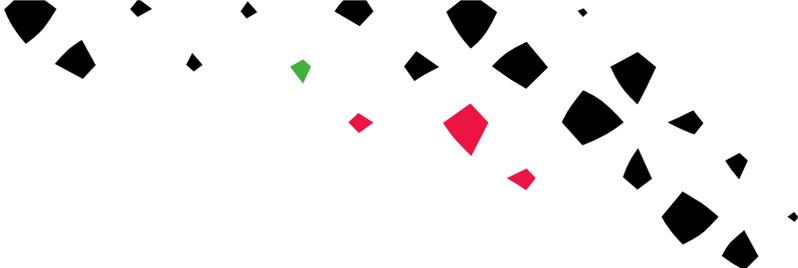
However, in practice, Ukrainian civilians often disappear without being documented, prosecuted or served with charges. Instead of granting an official status, the reason for their arrest is vaguely formulated as “detained for opposing the Special Military Operation”. This “status” is not enshrined in criminal or administrative legislation, which allows law enforcers to hold them in custody for long periods of time without judicial control and without access to lawyers. It is impossible to obtain legal access to such detainees, even if their whereabouts are known – they remain outside the legal environment, which precludes the possibility of any procedural actions. Military and civil courts refuse to consider complaints about their detention, citing the lack of a procedural basis.

The *de facto* lack of legal status makes such persons “invisible” to judicial system – they are deprived of legal assistance from lawyers and they have no access to mechanisms of release from custody. They cannot be included in exchange lists because they are not recognized as POWs or suspects. At the same time, the conditions of their detention are often comparable to the custodial control of convicts and POWs – isolation, lack of communication with the outside world, inability to receive medical care. In the occupied territories, such persons are usually held at the premises of abandoned enterprises, hangars, basements, which are basically secret prisons.

Numerous testimonies collected by Ukrainian and international human rights organizations go to prove that we are dealing with systematic practices of enforced disappearance, illegal deprivation of liberty and, in some cases, *de facto* hostage-taking. According to Ukrainian Ombudsman, more than 140 civilians were liberated during the war, and a few others were released without explanation. However, the actual magnitude of the problem remains unclear: we don’t know anything about the fate of hundreds, if not thousands of people, and the accounts of released persons serve as the only source of information about them.

13 https://www.icrc.org/ru/document/nagorno-karabahskiy-konflikt-mkkk-sodeystvuet-peredache-tel-kombatantov-pogibshih-v-hode?utm_source=chatgpt.com

14 <https://www.bbc.com/russian/articles/cgekzjykvpk0>



Thousands of Ukrainian civilians are being held in prison colonies and pre-trial detention facilities located in Russia and in the occupied territories of Ukraine. They were detained while undergoing filtration procedures or simply while walking down the street. Their situation is characterized by a total absence of investigative activities, charges, court decisions and clearly defined period of detention. There are no official mechanisms for finding and liberating such people.

There are numerous documented cases of torture, cruel and degrading treatment, sexual violence, incommunicado detention and enforced disappearances. Deaths and disappearances that also qualify as enforced disappearances occur in the process of prisoner transfer: such a person suddenly stops making contact, and there aren't any official bodies that can confirm his/her whereabouts. Russian law enforcement agencies do not ensure investigation of such violations – not a single case has been dealt with effectively, and their official responses are reduced to purely formal replies.

These civilians find themselves in a situation that calls for international attention and inclusion on the agenda of negotiation processes. Their “invisibility” in the humanitarian and legal environment makes it necessary to take urgent steps to ensure their protection.

3.2.3 Ukrainian civilians subjected to criminal prosecution or held in places of detention in the Russian Federation or in the occupied territories of Ukraine

In this section, citizens of Ukraine shall be understood to mean:

- Ukrainian passport holders permanently residing on the territory of Ukraine as of the beginning of 2014 (regardless of involuntary acquisition of Russian citizenship);
- Ukrainian passport holders residing on the government-controlled or temporarily occupied territories of Ukraine after 2014 (regardless of involuntary acquisition of Russian citizenship);
- Ukrainian passport holders residing in Russia.

Such an approach meets the criteria of international humanitarian law and complies with the principle of national origin applicable to the categories of persons, who are protected under foreign occupation (Article 4 of the Fourth Geneva Convention).

Categories of criminal prosecution of Ukrainian civilians:

1. Politically motivated criminal prosecution

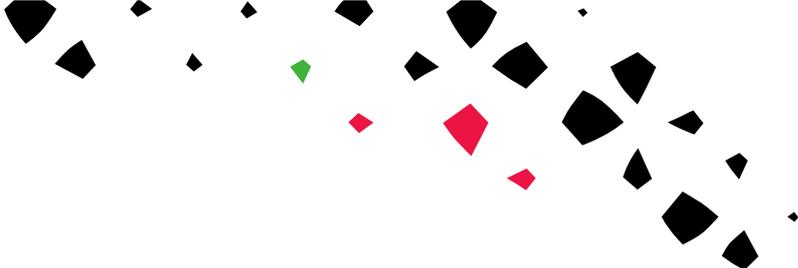
Politically motivated criminal prosecution is a form of abuse of criminal justice in which the state bodies initiate criminal proceedings in order to exert pressure, intimidate or eliminate a person for political reasons, rather than for committing an actual crime, as well as to justify illegal and unfounded detention.

The most common charges brought against Ukrainian citizens in the Russian Federation and in the occupied territories of Ukraine:

- Participation in terrorist or extremist activities (as well as facilitation, encouragement or financing thereof).
- Espionage.
- Committing an act of sabotage (organizing an explosion, arson or other actions aimed at destroying or damaging the enterprises, facilities, transportation infrastructure and means of transport, means of communication, critical infrastructure, or causing harm to human health and (or) components of the natural environment).
- High Treason.
- Public actions aimed at discrediting the armed forces of the Russian Federation.
- Dissemination of knowingly false information under the guise of reliable facts (“fakes”).

Many criminal cases are initiated arbitrarily and without merit. They are not supported by objective evidence, while confessions are usually obtained with the use of psychological pressure, torture and sexualized violence.

It is worth noting that Ukrainian passport holders have been prosecuted under article 275 of the Criminal Code of the Russian Federation (“High Treason”) on a massive scale due to the fact that the court sentences of LPR and DNR were brought in line with the Russian legislation.



The practice of considering criminal cases against Ukrainian citizens demonstrates a departure from the principle of basic guarantees of proper legal procedure. Until recently, accused Ukrainians were transported in droves deep into the Russian Federation, which contradicts the principle of considering the case at the place of the alleged commission of the crime. Even after suffering conviction, Ukrainians are often sent by prisoner transport to serve their sentences in Siberia and Russia's Far East, which is a long ways from their home. Climatic conditions in these remote regions are nothing like the ones they are accustomed to, which can adversely affect their health.

Meanwhile, the websites of above-mentioned judicial instances are either out of order or they do not publish information about relevant proceedings, which makes it impossible to exercise public control and violates the principle of openness of justice.

2. Prosecution for pro-Ukrainian views

A separate category is made up of criminal cases initiated in connection with expressing or supporting a pro-Ukrainian civic stance. A number of cases involve fabrications and provocations leading to charges of hooliganism, obstruction of Special Military Operation, espionage¹⁵, extremism or other provisions of criminal law, such as possession of prohibited substances or drugs. These cases are usually initiated by FSB officers for the purpose of intimidation or imposition of demonstrative punishment.

3. Participation in associations (organizations) recognized as terrorist in the Russian Federation and in the unrecognized states of LNR and DNR, or financing of organizations recognized as terrorist in the Russian Federation

Ukrainian citizens who were members of religious or political associations recognized as terrorist organizations in the Russian Federation are also subject to criminal prosecution. These include:

- supporters of the Islamic party Hizb ut-Tahrir organization (which is not recognized as terrorist in Ukraine, but it was recognized as terrorist by the Russian Federation in 2003);
- members of the Ukrainian organization "Right Sector", which was recognized as terrorist by the Russian Federation in 2015.

Following the occupation of Crimea and certain areas of Donbass region, such charges were pressed retrospectively without proper analysis of each individual case. In most cases, this resulted in sentencing to long terms of imprisonment and transfer to prison colonies located in the Russian Federation. As of today, these articles of criminal law are being actively used to persecute persons in the occupied territories of Ukraine.

4. Prosecution of former members of Ukrainian paramilitary formations

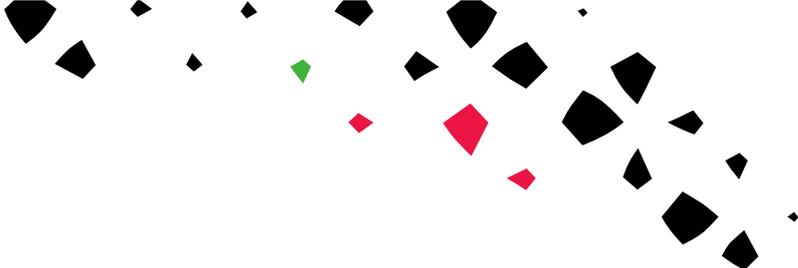
A separate category is made up of persons who were affiliated with the volunteer battalions of the AFU and the Ministry of Internal Affairs of Ukraine (in particular, "Azov", "Aidar", and "Donbass"). However, they left these paramilitary units long before their detention. Despite holding civilian status at the time of imprisonment, these persons are often accused of participation in terrorist organizations.

3.2.4 Ukrainian citizens – prisoners forcibly transferred in 2022 by the Russian armed forces from correctional facilities located in the then-occupied areas of Kherson and Mykolayiv oblasts to correctional institutions in the Russian Federation

The exact number of forcibly displaced Ukrainian prisoners is unknown. Rough estimates vary, depending on the source: according to Ukrainian investigative agencies, more than 1,700 prisoners were displaced, according to human rights activists – about 2,500 prisoners, according UN mission – about 1,600 prisoners¹⁶. According to the report of the UN Monitoring Mission (paragraph 80), in November 2022, about 1,600 persons (all men) were transferred from prison colonies of Kherson and Mykolayiv oblasts to penal institutions located in Krasnodar, Rostov and Volgograd regions of the Russian Federation. The Russian authorities did not inform the families of displaced prisoners about the fate of these individuals. In some cases, they refused to respond to information requests, citing the Russian law on personal data.

15 <https://khpg.org/ru/1608814005>

16 <https://www.opendemocracy.net/en/odr/ukrainian-prisoners-stuck-in-russia-forced-deportation-kherson-stolen-liberation/>



After completing their sentences, dozens of prisoners were immediately transferred to temporary detention centers for foreign nationals on the grounds of court decisions on violation of the regime of stay on the territory of the Russian Federation with the imposition of a penalty in the form of administrative deportation from the Russian Federation. They were held in these facilities for several months without access to legal assistance or appeal procedures. In February 2022, Ukraine severed diplomatic relations with the Russian Federation. In the conditions of the armed conflict, it has become impossible to carry out forced expulsion and deportation of Ukrainian citizens to Ukraine. As a result, Ukrainian civilians find themselves in a situation of legal vacuum. The UN OHCHR qualifies such detentions as arbitrary deprivation of liberty¹⁷.

On July 31, 2023, Russia adopted Law No. 395-FZ¹⁸, which retrospectively extended its criminal jurisdiction over the occupied territories, including the recognition of validity of Ukrainian judgments of conviction delivered on or before September 30, 2022 (the day of annexation of Donetsk, Luhansk, Zaporizhzhia and Kherson oblasts of Ukraine). According to this law, any acts committed “in the interests of the Russian Federation, LNR and DNR” shall not be considered as criminal offences, which undermines the principle of legality. A similar approach has been applied by Russia since 2014 following the annexation of Crimea¹⁹.

The UN emphasizes that article 49 of the Fourth Geneva Convention allows for displacement of civilians, only if absolutely necessary (in the presence of national security threat or out of imperative military necessity) and with the obligatory condition that the displaced persons must be returned to their homes at the first opportunity. However, these conditions were not met by the Russian Federation, meaning that the forcible transfer of prisoners to Russia constitutes a gross violation of international humanitarian law.

Russian occupation of Ukraine’s penal institutions eliminated legal grounds for the detention of Ukrainian citizens: they were convicted by Ukrainian courts, meaning that continuation of their imprisonment in Russia without adopting new court decisions qualifies as arbitrary deprivation of their liberty. Detention of Ukrainian citizens following their transfer to the Russian Federation without reviewing their sentences in accordance with the principles of fair trial and observance of procedural guarantees is considered to be even more illegal.

The attempt to “legalize” this situation through the Law No. 395-FZ violates the rules of international law, including those enshrined in articles 9 and 15 of the International Covenant on Civil and Political Rights. Retroactive application of national legislation and automatic recognition of Ukrainian judgments of convictions without judicial examination violates the right to legal defense and renders detention unlawful.

Therefore, the forcible displacement of Ukrainian prisoners and their detention in the territory of Russia constitutes a cumulative violation of international humanitarian and human rights law. Given the massive scale and systemic nature of these actions, they may be considered a war crime in the context of international criminal law.

According to available data, some of the displaced persons have already been released, but they were immediately arrested and put into temporary detention centers for foreign nationals on the grounds of court decisions on violation of the regime of stay in Russia with the imposition of punishment in the form of administrative deportation from the Russian Federation. Others continue to serve their sentences (including life imprisonment) in Russian prison colonies. Based on available evidence, we may conclude that coercion into taking up Russian citizenship has also become common practice.

Following the adoption of Law No. 395-FZ, criminal sentences previously handed down in Ukraine were actively reviewed by Russian courts. In most cases, Russian judges upheld the sentences delivered by their Ukrainian colleagues. Some of the prisoners that were transferred from Kherson colonies to the correctional institutions of the Russian Federation continue to serve their sentences in accordance with the revised judgments. They are held mainly in Volgograd Oblast and Krasnodar Krai.

17 https://www.ohchr.org/sites/default/files/2023-07/2023-06-27-Ukraine-thematic-report-detention-ENG_0.pdf

18 <http://publication.pravo.gov.ru/document/0001202307310011>

19 <http://publication.pravo.gov.ru/Document/View/0001201405050079>

3.2.5 Ukrainian citizens held in TDCFN (temporary detention centers for foreign nationals)

The following categories of Ukrainian citizens may be held in TDCFNs:

- Persons who committed crimes on the territory of the Russian Federation and completed their sentences in Russian prison colonies, in respect of whom a decision on undesirability of further stay in the Russian Federation has been made following their release from prison;
- Persons sentenced to imprisonment by Ukrainian courts, who completed their sentences in prison colonies located in the temporarily occupied territories, who were forcibly transferred to Russian penitentiary institutions, in respect of whom a decision on administrative expulsion (deportation) from the Russian Federation has been made following their release from prison;
- Persons sentenced to imprisonment by the authorities of the occupied territories (Donetsk and Luhansk oblasts) in the 2014-2022 timeframe, who retained only Ukrainian citizenship, and who have been held in Russian penitentiary institutions since 2022. Such persons are also subject to administrative expulsion (deportation) from the Russian Federation upon release from prison;
- Persons who committed administrative offenses. In accordance with the Code of Administrative Offenses of the Russian Federation (CoAO RF), foreign nationals, including citizens of Ukraine, who have violated the following articles of the CoAO RF, and in respect of whom courts or departments of the Ministry of Internal Affairs have issued rulings imposing punishment in the form of administrative expulsion from the Russian Federation, may be put into TDCFNs.

Foreign nationals may be deported from the Russian Federation as a punishment for violating the following articles of the CoAO RF:

- Article 18.8 of the CoAO RF - violation by foreign citizens of the rules of entry, residence regime (including lack of registration, overstayed visa),
- Article 18.10 of the CoAO RF - illegal labor activity of foreign citizens,
- Article 18.11 of the CoAO RF - violation by a foreign citizen of the rules of transit through the territory of the Russian Federation,
- Article 18.9 of the CoAO RF - failure by a foreign citizen to provide information or provision of false information,
- Part 5 of article 5.26 of the CoAO RF - violation by a foreign citizen of the legislation on freedom of conscience
- Part 2 of article 6.8 of the CoAO RF - illegal trafficking in narcotic drugs, psychotropic substances or their analogues by a foreign national
- Part 2 of article 6.9 of the CoAO RF - consumption by a foreign national of narcotic drugs or psychotropic substances without a doctor's prescription
- Part 2 of article 6.13 of the CoAO RF - propaganda of narcotic drugs, psychotropic substances and precursors by a foreign citizen
- Part 2 of article 6.16.1 of the CoAO RF - illegal acquisition, storage, transportation of precursors of narcotic drugs by a foreign citizen
- Parts 5, 6, 7, 8 of article 6.21 of the CoAO RF - propaganda of non-traditional sexual relations by a foreign citizen.
- Parts 3, 4 of article 6.21 of the CoAO RF - propaganda of pedophilia by a foreign citizen
- Parts 3, 4 of article 6.21.2 of the CoAO RF - dissemination by a foreign citizen among minors of information demonstrating non-traditional sexual relations
- Part 2 of article 18.1 of the CoAO RF - violation of the State border of the Russian Federation by a foreign citizen
- Part 1.1 of article 18.2 of the CoAO RF - violation by a foreign citizen of the border regime in the border zone

- Part 2 of article 18.4 of the CoAO RF - violation by a foreign national of the regime at State border checkpoints of the Russian Federation.
- Part 2 of article 18.17 of the CoAO RF - failure by a foreign citizen to comply with restrictions on the exercise of certain types of activity established in accordance with federal law in respect of foreign citizens
- Part 1 of article 18.18 of the CoAO RF - violation by a foreign citizen of mandatory rules related to the execution of a decision on expulsion
- Part 1 of article 19.27 of the CoAO RF - provision of false information by a foreign citizen in the course of migration registration
- Part 9 of article 19.34 of the CoAO RF - violation by a foreign citizen of the procedure for the activities of a foreign agent
- Part 2 of article 19.34.2 of the CoAO RF - participation by a foreign citizen in the activities of a foreign or international non-profit organization in the Russian Federation whose structural subdivisions are not listed in the register of branches and representative offices of international organizations and foreign non-profit non-governmental organizations.
- Part 3 of article 20.20 of the CoAO RF - consumption of alcoholic beverages by a foreign citizen in prohibited places
- Part 3 of article 20.25 of the CoAO RF - evasion of administrative punishment by a foreign citizen
- Parts 4, 5 of article 20.31 of the CoAO RF - violation by a foreign citizen of the rules for holding sports competitions

Foreign nationals or stateless persons shall be transferred to TDCFN in the following circumstances:

- adoption of a court judgment on administrative expulsion (deportation);
- adoption of a judgment on (administrative or interstate) deportation or readmission;
- lack of identity documents allowing for voluntary leave from the Russian Federation;
- the opportunity for immediate expulsion (deportation) has not been ensured (e.g. due to lack of tickets, home country's refusal of readmission, imposition of epidemiological or political restrictions).

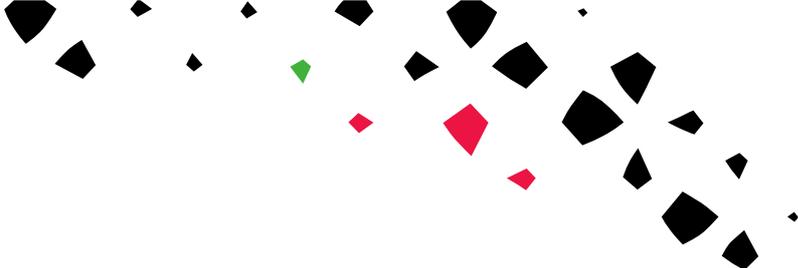
The period of detention - **up to 90 days** - can be extended by the court in the presence of objective obstacles to expulsion (deportation). However, the rupture of diplomatic relations in the early days of Russia's full-scale invasion of Ukraine means that Ukrainian citizens will have to stay in TDCFNs for an indefinite period of time. Refusal to cooperate with the Ukrainian consulate or the lack of Ukrainian documents is used as a reason for prolongation of the term of detention - despite the impossibility of expulsion (deportation).

It is known that the mechanism of deportation of Ukrainian citizens via Georgia has been operating at least until October 2023. The procedure worked with varying degrees of success, and the parties by no means always ensured close coordination of their actions. Nevertheless, the mechanism allowed Ukraine to liberate dozens of its citizens from the TDCFN. As of today, the authors of this document are not aware of any third countries through which the expulsion or deportation of Ukrainian citizens is carried out.

Ukrainian citizens held in TDCFNs encounter the following problems:

- lack of access to a lawyer,
- lack of information about their rights,
- lack of understanding of procedures,
- limited contacts with the outside world,
- inadequate conditions of detention,
- inadequate access or a lack of access to medical care.

Detention in TDCFN beyond a reasonable time in the absence of realistic prospect of expulsion (deportation) is recognized as arbitrary deprivation of liberty under international human rights law (article 9 of the ICCPR). According to the UNHRC decision in the case of *A. v. Australia (1997), prolonged administrative detention without the possibility of appeal or review is a violation of Article 9 of the ICCPR. Inadequate



conditions of detention and insufficient or non-existent medical care can violate either article 7 or article 10 of the ICCPR, depending on the gravity of violations. The lack of opportunity for an objective judicial review of the decision on de facto indefinite detention, as well as difficulties in accessing effective remedies, constitute a violation of Russia's international obligations, including guarantees of the right to habeas corpus provided for in part 4 of article 9 (individuals deprived of liberty by way of arrest or detention shall have the right to seek their release in court, if the detention is deemed unlawful), and in part 3 of article 2 of the ICCPR (effective means of legal defense).

4 Conclusion

- The situation with respect to detention of Ukrainian citizens - both military and civilians - in places of deprivation of liberty located in the Russian Federation and in the temporarily occupied territories of Ukraine represents a large-scale and systemic problem affecting the lives of thousands of people. Violations of international humanitarian law and international human rights law become institutionalized in this context. The Russian Federation is not fulfilling its obligations under the Geneva Conventions, including the obligation to protect prisoners of war, prohibit deportations, forced displacement and arbitrary detention of civilians.
- Restricted information on the whereabouts and detention conditions of Ukrainian citizens, the denial of access to international monitoring missions, the lack of transparent and legal procedures for identification, confirmation of identity and establishment of the legal status of detainees create a situation of legal vacuum for the victims of these violations, which deprives them of basic guarantees of protection. This, in turn, hinders the efforts to ensure protection of their rights, as well as inflicts additional suffering on their families, who are deprived of access to any kind of information about the fate of their loved ones.
- Each of the categories identified in the document – POWs, “criminal” prisoners, civilian detainees, deported persons, prisoners of TDCFNs, and others – requires a separate study and in-depth legal and humanitarian analysis, as well as the development of legal protection mechanisms. This calls for organizing systematic work of interdisciplinary and international expert groups – Russian-Ukrainian, international and, where necessary, mediation panels. Their work should be aimed at restoring violated rights, ensuring access to legal protection, recognizing the legal status of each person held in captivity, and, most crucially, to liberate wrongfully detained persons, exchange prisoners of war and, ultimately, enable everyone to return home and reunite with their families.
- Preventive measures for finding and returning the remains of deceased should at a bare minimum be based on the creation and launch of body search and identification mechanisms from the onset of armed conflict, including organization and implementation of bilateral measures to establish a special commission for identification, maintenance of registers of all missing persons and bodies with the mandatory inclusion of DNA identification of each human remains, imposition of a ban on burying bodies in mass graves, the exchange of registers or the creation of a common DNA database.