



ROADMAP FOR THE INVESTIGATION OF CRIMES AGAINST HUMANITY COMMITTED BY RUSSIAN FORCES IN UKRAINE IN THE CONTEXT OF THE FULL-SCALE INVASION

**CRIMES OF TORTURE, ENFORCED
DISAPPEARANCE, PERSECUTION, AND
RELATED CRIMES AGAINST CIVILIANS**

ABOUT THE OMCT

The World Organisation Against Torture (OMCT) works with nearly 200 member organisations that make up a SOS-Torture Network to end torture, fight impunity, and protect human rights defenders around the world. Together, we make up the largest global group actively opposing torture in more than 90 countries. By helping local voices be heard, we support our partners on the ground and provide direct assistance to victims. Our international secretariat is based in Geneva, with offices in Brussels and Tunis.

OMCT International Secretariat Geneva, Switzerland

OMCT, Rue du Vieux-Billard 8, 1205 Geneva

Tel: +41 22 809 49 39

omct@omct.org

www.omct.org

Follow the OMCT on social media:



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AUTHORS: Maryia Kvitsinskaya, Eugenia Andreyuk

EDITING: Evindar Başboğa, Charlotte Mancini, François Loncke, Yelyzaveta Sokurenko, Tetiana Pechonchyk.

DESIGN: Eva Angelova

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INTRODUCTION AND METHODOLOGY

1. Since the beginning of the Russian Federation's full-scale invasion of Ukraine in 2022, the OMCT and its partners have been documenting systematic, large-scale torture and related violations committed and perpetrated by the Russian military and other Russian authorities against civilians in Ukraine.¹
2. In 2014, Ukraine recognised the jurisdiction of the International Criminal Court (ICC) over crimes committed on its territory since November 21, 2013. Today, the ICC is investigating crimes committed in Ukraine since November 2013, including those committed by Russian authorities² after February 2022.³ On August 24, 2024, Ukraine ratified the Rome Statute of the ICC.⁴
3. Given the number of crimes and the limited resources of Ukrainian law enforcement agencies and the ICC, Ukrainian and international civil society organisations play a crucial role in documenting and investigating war crimes and crimes against humanity committed in Ukraine.
4. In 2022, OMCT developed a [methodology](#)⁵ for conducting in-depth interviews with survivors of torture in the context of armed conflict, specifically for Ukrainian civil society organisations. It aligns with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁶ the OHCHR Manual on Human Rights Monitoring⁷ and international humanitarian law. The methodology was developed with consideration of the local socio-political and cultural context to enable the documentation of torture and other ill-treatment during the Russian Federation's invasion of Ukraine.
5. Since 2022, OMCT and its partner organisations have been applying the aforementioned methodology in their interviews of civilians who were detained by Russian forces. The analysis of the first 57 interviews⁸ conducted between 2022 and 2023 with the survivors from the Kyiv, Chernihiv, Zaporizhzhia, Donetsk, Kharkiv, and Kherson regions of Ukraine that were or still are under the Russian occupation suggests that

¹ The patterns of these crimes are analysed in more detail in the report of the OMCT, the Media Initiative for Human Rights and the ZMINA Human Rights Center: **'You're loyal to Ukraine – are you a Nazi?' Torture and other violations as crimes against humanity by the Russian Army in Ukraine.**

² 'Russian authorities' or 'Russian forces' covers all military forces that operated under the de facto control of the Russian Federation, including special and intelligence services, the penal execution service, national guard, the armed forces of the so-called "Donetsk" and "Luhansk people's republics", etc.

³ ICC. **'Situation in Ukraine.'** January, 2022.

⁴ Рада Верховнарада України. **'Проект Закону про ратифікацію Римського статуту Міжнародного кримінального суду та поправок до нього.'** August 15, 2024

⁵ [Also available in Turkish.](#)

⁶ OHCHR. **'Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 edition).'** June 29, 2022

⁷ OHCHR. **'Manual on Human Rights Monitoring (Revised edition).'** January 1, 2011.

⁸ ZMINA. **'Tortures and abductions: ZMINA with partners submitted a report to the Universal Periodic Review.'** April 06, 2023.

crimes against civilians in the occupied territories of Ukraine, as well as crimes against Ukrainian residents forcibly transferred from the occupied territories to the Russian Federation, may constitute crimes against humanity. These include murder, unlawful deprivation of liberty, enforced disappearance of persons, torture, sexual violence, persecution and other inhumane acts committed against a broad political group of civilians in the Russian-occupied territories of Ukraine.⁹ Similar conclusions were reached by the Organization for Security and Cooperation in Europe¹⁰ and the UN Independent International Commission of Inquiry on Ukraine.¹¹

6. Given the foregoing, the OMCT has developed a roadmap for the structural investigation of these crimes as crimes against humanity, which includes recommendations for conducting interviews with victims. It does not, however, cover the collection of other types of evidence, such as OSINT or insider interviews. The objective of this roadmap is to increase the capacity of OMCT member and partner organisations in Ukraine to conduct investigations of these crimes, taking into account the standards of evidence and jurisprudence of the ICC and other international criminal tribunals. The authors acknowledge that civil society organisations are not entities in a position to carry out criminal proceedings and cannot replace the work of national and international prosecutors and investigators. Therefore, the goal of this roadmap is to serve as a tool for civil society organisations to improve the data collection process and the quality of the collected evidence that will ultimately help the ICC and national jurisdictions effectively investigate these crimes.
7. This roadmap refers to the elements of crimes set out in the Rome Statute of the ICC and is based on OMCT's investigation strategy developed for the situation in Ukraine. It is intended for human rights defenders, journalists, and other civil society investigators conducting documentation and working with primary evidence. The roadmap provides practical guidance on investigating and proving contextual elements of torture as both a standalone crime against humanity and an element of crimes against humanity of persecution.
8. It aims to verify and identify new patterns related to the goals, objectives, resources, means, and the implementation of the Russian authorities' alleged policy of attacking the civilian population of Ukraine. It also provides recommendations for reconstructing the chain of command, identifying perpetrators, and establishing evidentiary standards for civil society investigators. These recommendations are not exhaustive and may evolve as events develop in the context of the Russian aggression.

⁹ The patterns of these crimes are analysed in more detail in the report of the OMCT, the Media Initiative for Human Rights and the ZMINA Human Rights Center: **'You're loyal to Ukraine – are you a Nazi?' Torture and other violations as crimes against humanity by the Russian Army in Ukraine.**

¹⁰ ODIHR. **'Moscow Mechanism: "Report on violations and abuses of international humanitarian and human rights law, war crimes and crimes against humanity, related to the arbitrary deprivation of liberty of Ukrainian civilians by the Russian Federation"'** April 19, 2024.

¹¹ OHCHR. **'Report of the UN Independent International Commission of Inquiry on Ukraine.'** October 29, 2024.

I. PROVING CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY

9. According to the Rome Statute of the ICC, a “crime against humanity” refers to any of the acts outlined in Article 7 of the Statute¹² committed as part of a widespread or systematic attack directed against any civilian population, with the perpetrator having knowledge of such an attack.¹³

CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY¹⁴

- An attack.
- Directed against any civilian population.
- A systematic or widespread attack.
- An attack in accordance with or in support of a State or organisational policy.
- Connection between the attack, the perpetrator’s actions, and the perpetrator’s knowledge of the attack.

1. ELEMENTS OF AN “ATTACK DIRECTED AGAINST ANY CIVILIAN POPULATION”

10. It is necessary to prove that, in addition to military aggression and the occupation of territory, there is also an attack on the civilian population. Verifying whether the **primary** target of the attack is the **civilian population** that did not **directly participate** in hostilities is essential to establishing this contextual element. Firstly, this means that the attack must be *deliberately* directed at the civilian population rather than merely affecting it as a consequence of targeting the enemy’s military forces. Secondly, international humanitarian law, applicable in times of conflict, establishes that civilians

¹² Murder, extermination, slavery, deportation or forced displacement of the population, imprisonment or other severe deprivation of physical liberty for violation of fundamental norms of international law, torture, rape, persecution, etc.

¹³ ICC. ‘Elements of Crimes.’ 2013, Art. 7

¹⁴ ICC. ‘Elements of Crimes.’ 2013, Art. 7, para. 1

who take direct part in hostilities lose their protection against attack for the duration of such participation.¹⁵ It also permits the internment of civilians when absolutely necessary for the security of the detaining power.¹⁶ Therefore, cases of civilians who take direct part in hostilities should be excluded from the analysis. Actions of civilians are considered direct participation when:

- 1) there is a direct causal link between the actions of the civilian and the damage to a party to the conflict;
- 2) the harm reaches a certain threshold;
- 3) the act is intentionally aimed at causing harm to one party to the conflict in support of the other.¹⁷

HOW TO PROVE IT?

11. One way to establish this element is through in-depth interviews, during which it is important to isolate cases that provide reasonable grounds to believe that the affected civilians may have directly participated in hostilities by providing information or in any other way cooperating with the Ukrainian Armed Forces.
12. It is also necessary to analyse the categories of victims of these crimes among the civilian population, including the aggregate percentage or number of victims who are ordinary residents and do not belong to groups such as veterans of the Ukrainian Armed Forces, local authorities, and locally known public and political figures. This is necessary to strengthen the argument that the attack was specifically directed at the civilian population, including those whom the Russian forces had no immediate reason to suspect of cooperating with the Ukrainian Armed Forces.
13. It is necessary to investigate the channels and methods through which Russian-controlled forces identified civilians disloyal to the invasion. In particular, attention should be paid to evidence of raids on residential buildings (how often and on what scale they were carried out), filtration infrastructure (its elements and functioning), wiretapping, monitoring of residents' activity on social media, and interrogations with torture to obtain information about civilians disloyal to the Russian invasion, etc.
14. It is necessary to analyse and compare the messages and vocabulary of Russian politicians and State-owned or State-affiliated Russian media about the civilian population of Ukraine¹⁸ with the messages and vocabulary of Russian authorities about the persons against whom they committed crimes at all stages of the interaction. This is necessary to establish that representatives of the Russian authorities knew or should have known that they were dealing with civilians. In-depth interviews with victims can provide evidence of the perpetrators' rhetoric.

¹⁵ OHCHR. 'Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I).' June 8, 1977, Art. 51 (3).

¹⁶ OHCHR. 'Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949.' Article 42.

¹⁷ See below for a detailed explanation of these criteria: ICRC. 'Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law.' 2009, p. 46.

¹⁸ See also FIDH. 'Communication pursuant to Article 15 of the Rome Statute of the International Criminal Court, Situation in Ukraine: Hate Speech as the Crime Against Humanity of Persecution.' June 2024.

ADDITIONAL INTERVIEW RECOMMENDATIONS

- The victim's occupation before the arrest.
- The victim's occupation after the beginning of the full-scale invasion and before the arrest.
- Was the victim in contact with representatives of the Ukrainian Armed Forces or law enforcement agencies to pass on information or for other personal reasons?
- How did the victim look at the time of the arrest (clothing, presence/absence of weapons) and who were they with (other details of the situation)?
- In the victim's opinion, why were they arrested and detained, and how was this confirmed/manifested during the subsequent stages of detention?
- Can the victim reproduce verbatim (or as close as possible) the statements of the Russian forces at the time of the arrest, transfer, detention, interrogation, release, etc.?

2. ELEMENTS OF A “SYSTEMATIC” AND “WIDESPREAD” ATTACK PURSUANT TO OR IN FURTHERANCE OF A STATE OR ORGANISATIONAL POLICY

15. Whether an attack is “widespread” or “systematic” can be assessed by looking at, for example, (i) the impact of the attack on the civilian population, (ii) the number of victims, (iii) the nature of the acts; (iv) the possible involvement of officials or authorities or the use of any identifiable patterns of crimes.¹⁹
16. The patterns of crimes must be examined in order to demonstrate these contextual elements. The high frequency of their recurrence in different locations at a different time may indicate that Russian Federation's military and political leadership knew or should have known about the crimes committed by Russian-controlled forces against civilians in the occupied territories. Still, the situation on the ground remained unchanged. Thus, these circumstances shaped the State's policy on the attack.

¹⁹ ICTY. 'Prosecutor v. Dragolub Kunarac and others, ICTY, Appeal Judgment.' June 12, 2002, para. 95.

HOW TO PROVE IT?

17. Analyse various characteristics of the crimes (e.g., methods and equipment used for torture, how events unfolded from the moment of arrest onwards, what made the witness think that the perpetrators were State agents, units involved in the crimes, questions asked during interrogations, conditions of detention and release, etc.); identify patterns and frequency of their recurrence in different places of detention, settlements, occupied regions and time periods. When researching patterns, it is recommended to pay attention to small but potentially important details that may be repeated in various cases.
18. At the same time, one should avoid asking leading questions, such as: “Did the perpetrators use a topik (military field phone) for electrocution?” It is also not recommended to inform victims about previously identified patterns, as this may influence their responses and lead them to incorrect answers.
19. It is necessary to analyse the ratio of the number or the territory of certain settlements where crimes against civilians were documented to the number or the territory of settlements that were or are under the occupation. This will help analyse whether these crimes occurred in all or nearly all occupied territories.
20. OSINT or in-depth interviews can help investigate the resources involved in committing crimes. This way, it is possible to establish the approximate number and types of vehicles and military personnel directly involved, present, and aware of the situations of arrests, abductions, torture, and transportation of victims within Ukraine and the Russian Federation (in separate locations). It is also worth looking into the sources of funding for the network of detention centres, transportation, and personnel.
21. It is also necessary to analyse how Russian prosecutorial and investigative authorities respond to official complaints about torture and enforced disappearances/arbitrary detention of Ukrainian civilians within the Russian legal framework, including
 - 1) complaints filed by released persons with the assistance of Russian lawyers;
 - 2) complaints filed during detention with detention facility staff or investigative/prosecutorial authorities during their visits — especially if there is a difference in the treatment of Ukrainians compared to that of Russians detained outside the context of the armed conflict.

3. CONNECTION BETWEEN THE ATTACK AND THE PERPETRATOR'S ACTIONS AND THE PERPETRATOR'S KNOWLEDGE OF THE ATTACK

22. The perpetrator should know that a widespread or systematic attack directed against the civilian population is taking place and that their actions are part of the attack. The perpetrator does not need to know the details or share the purpose of the attack. It is also irrelevant whether the perpetrator intended to direct their actions against a target group or an individual victim. According to the ICC, the perpetrator's knowledge can be inferred from circumstantial evidence, such as (i) their position in the military hierarchy and role in the broader criminal campaign, (ii) the perpetrator's presence at the crime scene; (iii) the perpetrator's reference to the superiority of their group over the adversary's group; (iv) the general historical and political environment in which the acts took place.²⁰

HOW TO PROVE IT?

23. It is necessary to prove that the perpetrators were aware that, in addition to the military attack, there was also an attack on the civilian population. For example, it could be shown that the aggressors understood that they were "fighting Nazis" on the territory of Ukraine and that by "Nazis," they meant anyone who opposed the ideology of the "Russian world"²¹ and supported the existence of an independent Ukrainian State—not just those directly involved in hostilities. **See also paragraphs 11 and 12.**
24. Attention should be drawn to the chain of command among the Russian military or members of the Russian Federal Security Service (FSB) or the Federal Penitentiary Service (FSIN). The presence of senior military officers and their role in coordinating the process may also indicate that the criminal acts were part of the attack and that the perpetrators were aware of this. This can be established by asking the victim about the perpetrators' roles, relationships, and subordination: who gave orders, who was in charge, etc. It must also be shown, for example, that FSIN officers knew that certain detainees were Ukrainian civilians and that they understood why they were in their facility.
25. In addition to understanding how the victim was treated during detention and interrogation, what the perpetrators said, and how they commented on their actions, investigators should also pay attention to any documents referring to detention for "opposition to the special military operation." These documents can be considered,

²⁰ ICC. 'Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Decision on Confirmation of Charges'. September 30, 2008, para. 402.

²¹ Reuters. 'Putin approves new foreign policy doctrine based on the ideological concept of the "Russian world"'. September 5, 2022.

but only if it is established that the victim was a civilian, did not directly participate in hostilities, and was detained for their pro-Ukrainian views or, for example, participation in pro-Ukrainian protests. Importantly, it is again necessary to distinguish and exclude cases of active resistance that were of a military nature, as the contextual element of crimes against humanity is an attack on the civilian population.

II. INVESTIGATING TORTURE AS A SEPARATE CRIME AGAINST HUMANITY AND AS AN ELEMENT OF THE CRIME OF PERSECUTION

ELEMENTS OF THE CRIME²²

1. The perpetrator caused severe physical or mental pain or suffering to one or more persons (NOTE: for torture as a crime against humanity under the Rome Statute and ICC jurisprudence, it is not necessary to establish the “purpose” of torture, which is mandatory in human rights law (or for torture as a war crime).
2. The person or persons were in custody or under the perpetrator’s control.
3. Such pain or suffering did not arise solely as a result of/is not an integral part of lawful sanctions.
4. The conduct was committed as part of a widespread or systematic attack against the civilian population.
5. The perpetrator knew that the conduct was part of, or intended to make the conducting part of, a widespread or systematic attack against the civilian population (for points 4 and 5, see Section I, Proving Contextual Elements of Crimes Against Humanity).

²² ICC. ‘Elements of Crimes.’ 2013, Art. 7(1)(f)

26. The following basic circumstances of the crimes should be established: methods of torture; equipment used for torture; duration of torture; physical and psychological suffering of the victim; interrogation scenarios (if any); distribution of the roles of perpetrators during interrogations; whether there were specially designated (military) structures for interrogations; interrogators' awareness of the origin and details of the victims' personal/professional life; rooms/spaces equipped for interrogations; detention or registration upon arrival at the place of detention — the deliberate creation of long-term intolerable physical and emotional conditions, including through constant intimidation and psychological violence; elements of sexual and gender-based violence (SGBV) provided the investigators have undergone necessary training.

ADDITIONAL INTERVIEW RECOMMENDATIONS

- **How and under what circumstances did the arrest take place?**
- **In the victim's opinion, what exactly was the reason for the detention/torture/abduction? Why did they come to such conclusions?²³**
- **The general profile of the victim: their activities before/after the full-scale invasion; whether they had any interactions with pro-Russian residents, and if so, how those went; what the Russian forces were saying during detention, custody, and especially interrogation. It is recommended to record interrogations as verbatim as possible, keeping in mind that the first few are likely conducted to "warm up the victim." Therefore, the real purpose of torture may not be revealed immediately but rather during subsequent interrogations.**
- **Detailed information about the perpetrators: possible structure, distribution of roles, subordination, any names or specific features that victims or witnesses have heard/seen. Conversations between perpetrators: all communication and statements should be recorded as much as possible, especially if the perpetrators referred to the victims in any specific way or if there is information about subordination between perpetrators.**
- **Detailed information about the filtration infrastructure and filtration measures in the area (filtration points, "regular" checkpoints, house raids; any measures to check phones and other media, checks for marks or tattoos on the body; interviews and interrogations outside of detention; checks of personnel of public and private institutions, etc.). The use of surveillance technologies, wiretapping, and monitoring of social networks of the local population.**
- **The estimated number of people held in a particular place simultaneously as the victim and the likely reasons for their detention.**

²³ While purpose is not a required element of torture as a crime against humanity, it must be established to prove the contextual elements, as well as crime of persecution.

27. In addition to the main elements, it is also recommended to pay attention to such components of the objective side of the crime of torture as both rape-related and non-rape-related sexual and gender-based violence and, in certain cases, enforced disappearance. Meanwhile, some actions of perpetrators can reach the threshold of torture only cumulatively with other cruel and inhumane acts.

HOW TO PROVE IT?

28. Interviews and analyses should focus on forms of SGBV such as forced nudity, electrocution, and any other genital injury; threats of rape and genital injury; male guards peeping at naked women during sanitary procedures; unwanted touching of intimate body parts, insults with sexual connotations; gender-based violence against men, women and the LGBTIQ+ community, etc. Teams are recommended to undergo additional training on documenting SGBV. It is essential that in-depth interviews of sexual violence survivors be conducted only by investigators who have undergone proper training.
29. It is necessary to identify and document cases of moral damages caused to relatives of the victims of enforced disappearances who actively searched for abducted loved ones and, without any information about their fate, suffered severe emotional distress and possibly damage to their physical or mental health. To properly document moral suffering, investigators should engage qualified experts to conduct psychological examination in accordance with the Istanbul Protocol.

III. INVESTIGATING THE CRIME OF PERSECUTION AS A CRIME AGAINST HUMANITY

ELEMENTS OF THE CRIME OF PERSECUTION²⁴

1. The perpetrator has seriously deprived one or more persons of fundamental rights in violation of international law.
2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
3. The attacks were based on political, racial, national, ethnic, cultural, religious, and gender, as defined in Article 7, paragraph 3, of the Rome Statute, or other grounds that are universally recognised as impermissible under international law.
4. The conduct was committed in connection with any act referred to in Article 7, paragraph 1, of the Rome Statute or any crime falling within the jurisdiction of the ICC.
5. The conduct was committed as part of a widespread or systematic attack directed against the civilian population.
6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against the civilian population (for points 5 and 6, see Section I, Proving Contextual Elements of Crimes Against Humanity).

- 1) **Given the elements of this crime, the investigation should be conducted on three levels:** general (or contextual) elements (see section I, “Proving Contextual Elements of Crimes Against Humanity”)
- 2) the element of discriminatory intent and consequences specific to persecution;
- 3) elements of specific gross violations of rights.

²⁴ ICC. ‘Elements of Crimes.’ 2013, Art. 7(1)(f)

Based on the analysis of the first 57 testimonies,²⁵ the OMCT and its partners formed a hypothesis that requires further verification:²⁶

1. Russian forces implement large-scale filtration measures as a way to identify and separate residents of the occupied territories disloyal to the Russian occupation.
2. Russian forces then detain individuals perceived as disloyal to the Russian occupation authorities in official or unofficial places of detention (arbitrary detention or enforced disappearance).
 - 2.1. Russian forces subject detained individuals to one or a series of interrogations involving physical and/or psychological torture, including sexual violence, to obtain information about other members of the group and to force them to cooperate. In some cases, psychological violence during interrogation was classified as having amounted to cruel or inhuman treatment, as it did not reach the required threshold of torture. There were cases where no interrogations were conducted.
 - 2.2. In places of detention, inhumane conditions and continuous psychological violence (torture or ill-treatment outside of interrogation) are created and maintained.
3. Release of a detained person takes place:
 - a) after the Russian forces have obtained the desired information; or
 - b) once the Russian forces have determined that obtaining the information was impossible; or
 - c) when, based on the results of interrogations, the Russian forces assessed that the victim did not pose a threat to the Russian military, political, and ideological control over the occupied territory.
4. In some cases, detainees die as a result of torture or become victims of extrajudicial executions.
5. Some detainees are transferred to places of detention on the territory of Russia or in territories occupied before 2022 for the following reasons:
 - a) to initiate criminal proceedings and subsequent trials as punishment for the victim's political opinions; and/or
 - b) to label civilians as "prisoners of war"; and/or
 - c) to exchange them for Russian prisoners of war under political agreements with the Ukrainian government; or
 - d) for further detention without any apparent reason or known purpose.

²⁵ ZMINA. 'Tortures and abductions: ZMINA with partners submitted a report to the Universal Periodic Review.' April 06, 2023

²⁶ Relevant for the eastern and southern regions, where the Russian forces have managed to establish administration. For the rapidly liberated northern and central regions, a deeper study is needed (it seems that the plan might have been partially different).

Attention: The results of the preliminary analysis show that the following theses are likely untrue:

1. Russian forces persecute only those categories of the population that are directly affiliated with the military or engaged in active political opposition (veterans, local authorities who refused to cooperate with them, those correcting the fire for the Ukrainian Armed Forces, civil and political activists, relatives of military personnel, etc.). Since the full-scale invasion, the OMCT and its partners have been documenting cases of detention and torture of various categories of the civilian population, including people who were not actively involved socio-political life.
2. Russian forces persecute Ukrainians as an ethnic group. Instead, according to the documented and analysed data, the general pattern shows that the Russian Federation does not target all ethnic Ukrainians but rather those who do not support their ideological vision of the world. In other words, Russian forces are committing crimes with discriminatory intent against a broad group of Ukrainians perceived to favour economic, geopolitical, linguistic, and cultural independence from the Russian Federation. It is a political, not an ethnic, characteristic.

NECESSARY TO PROVE THAT

30. First, it must be established that the target of persecution is a **group of people that are united by a particular characteristic and identifiable as such**. The identification of the group can be based on neutral criteria, such as geography or place of residence, and does not necessarily have to be based on discriminatory grounds, such as racial or ethnic composition. According to the latest jurisprudence of the ICC, a group may be defined **positively or negatively**—by the perpetrator either targeting members of a particular group or collective or targeting individuals for not belonging to a specific group or collective. Thus, it is not necessary for the members of the targeted group to hold common views or consider themselves part of an identifiable group.²⁷
31. Next, it must be established that the perpetrators carry out an attack against this group or its members with a clear intent to discriminate. In fact, victims are discriminated against based on their perceived membership in the group described above, as determined by the perpetrators' subjective perception.
32. It is necessary to prove that the cumulative effect of the violations of this group's member's rights has led to significant discriminatory consequences for the entire group, not just for individual members. Those consequences may vary in nature, including the

²⁷ ICC. '**Prosecutor v. Al Hassan Ag Abdul Aziz Mohamed Ag Mahmoud.**' June 26, 2024, para. 1206. **Comment:** "It is not necessary to define a group on the basis of the discriminatory grounds listed in Article 7(1)(h) of the statute: this article rather lists prohibited reasons for targeting a group."

following: **1) effects on the physical and mental health** of direct and indirect victims²⁸ and witnesses; **2) economic consequences**²⁹ for direct and indirect victims, their households, and local communities due to the long-term imprisonment of individuals, their total or partial incapacity for work, or the costs of treatment and rehabilitation. Attention should be paid to both short-term (immediately or shortly after the crime) and medium- and long-term consequences (harm that persists months or years later). It is also important to consider the broader impact on the targeted group (e.g., panic, fear, intimidation, multiple mental health disorders, etc. —that can be inferred from interviews and medical statistics).

33. It is necessary **to investigate whether Russian forces specifically intend to target residents of the occupied territories for their political views, namely, their support for economic, geopolitical, linguistic, and cultural independence from Russia.**
34. This can be done by conducting expert political science and linguistic analysis of official Russian programmatic and doctrinal documents (e.g., foreign policy doctrine), as well as statements by Russian military and political leadership and State media representatives to justify and call for discriminatory attacks on this political group of Ukrainians. It is vital to find a way to ensure that digital evidence is securely stored even after it has been removed from the source (*see the **Berkeley Protocol***³⁰).
35. **See also paragraphs 11 and 12.**
36. At the same time, it is necessary to collect information about and analyse the causes of victimisation/markers that lead Russian forces to consider civilians as targets for their attack.³¹ Reconstructing the logic by which these markers, in the minds of the Russian forces, indicate that a civilian belongs to a particular political group is a key part of the process. It is necessary to test the thesis that the presence of several markers in one person might have led to a more brutal attack on them, as the perpetrators believed this to be stronger evidence of the victim's belonging to the relevant group.
37. To better understand the logic of targeting, investigators could analyse the categories of the victims of these crimes among the civilian population, as discussed in paragraph 11. This will show the ratio of the number of victims who were highly "visible" to Russian-controlled forces at the local community level because they openly opposed the Russian invasion to the number of victims who were latently disloyal to Russia or were mistakenly perceived as such.

²⁸ Indirect victims are close relatives and sometimes friends of victims of enforced disappearances, extrajudicial executions, arbitrary detention and torture if they have suffered severe psychological suffering, significant deterioration in physical health or significant material damage due to the fact of a crime against their relatives.

²⁹ Note: It is important to distinguish between the economic consequences of crimes against civilians and the consequences of hostilities or military attacks on infrastructure and business entities.

³⁰ OHCHR, Center for Human Rights, University of California, Berkeley School of Law. '**Berkeley Protocol on Digital Open Source Investigations: A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law.**' 2022.

³¹ So far, the OMCT and its partners identified the following markers: digital phone content indicating the person's potential pro-Ukrainian sympathies; participating in pro-Ukrainian demonstrations and distributing pro-Ukrainian leaflets; family or friendly ties with Ukrainian military personnel or government officials, etc.

ADDITIONAL INTERVIEW RECOMMENDATIONS

- **In your opinion, what exactly was the reason for the detention/treatment? Why did you come to these conclusions?**
- **A general profile of the victim: activities after the full-scale invasion; issues with pro-Russian residents if any?**
- **Words of the Russian military during detention, custody, and especially interrogation. Conversations between perpetrators: it is necessary to record all communication and statements as much as possible, especially if the perpetrators called the victims by any name or if there is information pertaining to the chain of command.**

38. As part of this investigation, it is necessary to examine large-scale filtration measures designed to identify and single out members of the group. This process includes reconstructing the full range of measures used to identify members of the persecuted group; examining the logic behind them and how they functioned and complemented each other. It is important to investigate the coordination of these measures, who led them (chain of command), and determine whether there were political or military structures specifically designed to carry out the filtering measures; analysing what logistical, technical, human and financial resources were involved in supporting these operations.

39. Investigating and gathering evidence in relation to filtration measures includes gathering information about:

- 1) Raids in residential buildings, including searches of private areas, checking identity documents and electronic devices, and extracting information from them. Based on the preliminary analysis results, the devices were checked for photos and videos, the content of social networks and messaging applications, and to track banking transactions.
- 2) Creating and operating a network of filtration facilities, which includes several interconnected and well-organized checkpoints and civilian detention facilities. Preliminary analysis has shown that at filtration points, Russian forces checked vehicles, personal belongings, identity cards, and electronic devices; conducted interviews, collected biometric data; and forced civilians to undress for inspection.
- 3) Obtaining information through interrogation with the use of torture, including forcing victims to gather further information and report on others. Attention should be paid to cases where individuals who did not support the Russian invasion were tortured and coerced into providing information about other like-minded people.

- 4) Encouraging residents loyal to the Russian invasion to report on members of the persecuted group to Russian forces.
- 5) Wiretapping of local residents' mobile phones, monitoring of social networks and chats in messengers.
- 6) Unauthorised access to databases of State and local authorities, as well as databases of educational, medical, and administrative institutions.
- 7) Usage of forced passportisation as a means to identify those disloyal to the Russian Federation.
- 8) Checks at ordinary checkpoints to detect "markers" of disloyalty.
- 9) Police control measures, etc.

40. **The investigation of the patterns of arbitrary detention and enforced disappearances is an important component of the investigation into the crime of persecution committed by Russian authorities in Ukraine or against Ukrainian civilians.** It is necessary to determine the number of the incidents of arbitrary detention (AD) and enforced disappearance (ED) separately; collect and analyse relevant data disaggregated by region, including the dynamics of cases over time, typical profiles of victims, the number of those released, the number of those transferred to the Russian Federation, Crimea, and the so-called "Donetsk and Luhansk people's republics."

41. In all documented cases of AD, where possible, it is necessary to analyse the circumstances of the crimes, in particular:

1. Where and how the arrest took place; the forces that carried it out.
2. Whether a warrant or other decision of the occupying power was presented during the arrest and subsequent detention (if so, by which authority and what was in these documents), and whether a court hearing was held.
3. Whether the victim was informed of the actual and legal reasons for the detention.
4. Where the victims were held, and which units controlled these places of detention.
5. How the victim's relatives were able to officially learn about the fact and location of their detention.
6. Whether the victim or their relatives were provided with any **official** documents about their detention.
7. Whether visits from relatives, an independent lawyer, representatives of the International Committee of the Red Cross, and the Public Oversight Commission in the Russian Federation were allowed after the fact of detention was recognised.
8. What efforts have been made by Ukrainian authorities, foreign states, and international organisations to ensure release or gain access to civilian detainees, and how the Russian Federation responded to these efforts (in as much detail as possible).

42. In all documented cases of ED, where possible, investigators should analyse all circumstances of the crime, including:

1. Relevant points from the AD+ section (***see paragraph 42***).
2. What efforts the relatives made to establish the victim's whereabouts through Ukrainian or Russian authorities and/or international organisations and the results (detailed description of where, when they applied, what results they received, etc.)
3. If the fact of detention or whereabouts became known through unofficial sources, please indicate which ones.
4. What measures the Russian authorities took to conceal the detention of specific civilians and to worsen their isolation from the outside world (for example, frequent transfers to different places of detention; the creation of special isolated units for Ukrainian civilians in places of detention in the Russian Federation; creating obstacles to sending letters, receiving parcels or visits by lawyers and monitoring mechanisms, etc.)
5. Investigators should pay attention to any evidence from the testimonies of released persons regarding psychological pressure aimed at aggravating the suffering in incommunicado detention. For example, there may have been speculative or false statements that could cause deep moral pain, as the victim was not in a position to verify their truthfulness in a situation of incommunicado detention. These statements could include claims such as Ukraine or the victim's relatives allegedly forgetting about the victim and not seeking their release, the fall of Ukraine, or the death of loved ones, etc.

43. In the context of Ukraine, given the current hypothesis in relation to the crime of persecution, it is also necessary to investigate the network of official and unofficial places of detention of civilians in the newly occupied territories, Crimea, the so-called "Donetsk and Luhansk people's republics," Belarus, and the Russian Federation. In particular, one should pay attention to:

- 1) The structure and logic of the functioning/interaction of the network of these places as one system, as well as the structure and functioning within individual places of detention (mainly in the territories occupied after the full-scale invasion), including their location, especially in relation to command headquarters and commandant's offices.
- 2) Re-creation of the chain of command, distribution of roles among actors, and the way the network was coordinated as a whole as well as within individual places of detention: whether senior military officers were present and what their function was in coordinating the processes from the moment of arrest until release; whether there were any political or military structures specifically designed to execute arrests and enforce detention.
- 3) Logistical routes as well as technical and human resources involved in transfers between places of detention.
- 4) Infrastructural, technical, human, and financial resources (including prizes and awards that Russian soldiers received for their participation in the so-called "special military operation" in Ukraine) provided to create and maintain the network.

44. It is necessary to investigate the reasons, conditions, and logic of the release/exchange of civilian detainees, as well as their transfer to Crimea, the so-called “Donetsk and Luhansk people’s republics”, and the Russian Federation.
45. Investigators should collect and analyse evidence of the involvement of various departments of the legislative, executive, judicial, prosecutorial, presidential, and military branches in the unlawful deprivation of civilians’ liberty or denial of the restoration of their rights.
46. For more on investigating patterns of torture as part of the crime of persecution, see Section II, Investigating Torture as a Separate Crime Against Humanity and as an Element of the Crime of Persecution.
47. To investigate the patterns of the violations of the right to a fair trial as part of the crime of persecution, the following issues need to be examined:

- 1) Which body (in the case of the newly occupied territories, one should look into the organisational and legal framework of the judicial body) and what the legal basis for its judicial competence it had.
- 2) The facts and the legal framework of the charges considered in court.
- 3) Whether the court hearings were public (if the hearings were closed, on what grounds).
- 4) Whether relatives, defence counsel, and/or independent observers could attend the hearing.
- 5) Whether the victim had access to a lawyer of their choice (or the choice of the relatives). If so, did the lawyer sign a non-disclosure agreement, or were there other reasons why they refused to disclose information about the facts and charges to the relatives?
- 6) Whether the victim and the lawyer had access to the case file and had sufficient time and opportunity to familiarise themselves with the charges brought against the victim and prepare their defence.
- 7) How much time passed between the arrest and the trial³².
- 8) Whether there is any indication that the victim was coerced to testify against themselves or others.
- 9) Whether there were any other procedural violations, including the use of evidence obtained under torture.
- 10) What decision the court took (if any.)

³² A prolonged delay between arrest and trial may constitute a denial of justice under international human rights law. In the case of Ukraine, compliance with or violation of specific procedural standards does not change the fact that all such proceedings are unlawful under international criminal and human rights law; however, it remains important for analysing patterns.

IV. STRUCTURE AND CHAIN OF COMMAND, IDENTIFICATION OF PERPETRATORS

48. The peculiarity of international crimes is the complex scheme of their perpetration, which entails specific categories of perpetrators: direct (for example, a soldier who tortures, an officer of the Federal Security Service who coordinates it); intermediate (the head of a detention centre or the commandant of a settlement where systematic torture is taking place with their knowledge) and senior (leaders of the State, the Federal Security Service or the Federal Penitentiary Service, etc.) instigating and developing the plan for the attack. The investigation should include an analysis of this structure and the identification of perpetrators in line with it.
49. Civilians can also be included in these categories if they have the authority to facilitate the commission of a crime.

HOW TO INVESTIGATE IT?

50. **Direct perpetrators.** This category covers individuals who physically commit acts of crime, as well as direct commanders and supervisors of those who physically commit a crime if they were directly involved in the planning or execution of a particular crime or encouraged it. Information about direct perpetrators is collected through:

- 1) Careful analysis of in-depth interviews and matching of individual details/clues in a large array of data that are linked to the units and agencies involved in the crime (even if the victim/witness cannot fully identify the perpetrators, accents, call signs and names, uniform patterns, equipment, physical characteristics, etc. are important);
- 2) Comparing information received from victims with data from the Russian media and social networks, which contain information about specific military personnel based in the vicinity of a crime scene;
- 3) Searching for and analysing military reports and other internal documents that may identify specific military personnel “responsible for working with the local population” and then comparing their physical appearance with the description provided by the victims.

51. **Intermediate perpetrators.** This category includes commanders and managers who are not directly involved in the commission of the crime but are aware of such behaviour and have an objective capacity to support the crime logistically or, conversely, to stop it and punish the perpetrators. They are identified based on the results of the analysis of the subordination and structure of the organized group that committed the crime, as well as the identification of all representatives of this group who had authority by studying legislation, departmental documents of the executive branch, decree of appointment of public officials, internal regulations, correspondence, orders for awards and other internal documents of the perpetrators' group.
52. **Senior perpetrators.** This category includes leaders and senior officials of political, military, and other State institutions involved in initiating and developing the overall plan and who have the appropriate authority. Senior perpetrators may not know the details and victims of a specific criminal act carried out as part of the overall plan. They are identified through analysis of the following:
- 1) public speeches of high-ranking officials and doctrinal documents (for example, the official foreign policy doctrine based on the concept of the "Russian world"³³).
 - 2) official documents, such as legislation, internal regulations, decree of appointment, minutes of official meetings, orders, including awards, etc.;
 - 3) information from insiders, including that which could have been unintentionally made public by them in the midst of a conflict with senior perpetrators.
53. The following questions should be asked to analyse the received information:
1. What actions of the officials have or could have contributed to the perpetration of the crime?
 2. What did a high-ranking official know or could have known about the overall plan of attack and their influence on the implementation of that plan?
 3. What influence and authority did the senior officials have over the direct and intermediate perpetrators?

³³ Kremlin. 'Указ об утверждении Концепции внешней политики Российской Федерации.' March 31, 2023

V. RECOMMENDATIONS ON THE STANDARDS OF EVIDENCE TO BE USED BY INVESTIGATORS

54. The testimony of victims and witnesses obtained by national law enforcement agencies or civil society organisations using proper methodology can be reliable evidence for international tribunals.
55. The testimony should be recorded as direct speech, in the first person, or in a question-and-answer format unless the victim says something unrelated to the case. Investigators are highly discouraged from recording testimony as a paraphrase of the victim/witness's words in the third person and from asking leading questions during the interview. For analytical purposes, it is advisable to structure interview transcripts into a chronological and coherent narrative.
56. After each field mission or a certain number of documented interviews, investigators should prepare an internal summary of 0,5-1 A4 pages to enhance the effectiveness of preliminary analysis and investigation. This summary would include a "group" case overview, patterns identified as well as dates, locations, and other important features. This will help community investigative teams track the discovery of substantial evidence more effectively and quickly adjust their investigation strategy, if necessary.
57. Although this map refers mainly to victim/witness interviews, it is worth noting that as part of their investigations, civil society organisations can collect/store originals or copies of official documents and public statements by government officials (it is essential to store them properly in case they are removed from the original source), insider testimonies and properly collected physical evidence, etc.

58. UNRELIABLE EVIDENCE:

- 1) testimonies published in the mass media, unless they have been verified through direct contact by the documenting officer with the person who gave the testimony, including verification of all details reflected in the media report;
- 2) low-quality interviews that contain contradictions, inaccuracies, or ambiguous wording, hearsay evidence, or that were conducted with a significant number of leading questions;

- 3) copies of documents published in the media if it is impossible to verify their authenticity;
- 4) statements of private individuals who are not government officials;
- 5) intelligence obtained by Ukrainian law enforcement agencies if it is impossible to verify its authenticity;
- 6) anonymous testimonies of alleged insiders published in unreliable sources;
- 7) physical evidence that was not properly collected.

OMCT INTERNATIONAL SECRETARIAT

P.O Box 21, 8 rue Vieux-Billard

1211 Geneva 8 Switzerland

Tel: + 41 22 809 49 39

omct@omct.org

OMCT EUROPE

Rue Franklin 111

1000 Brussels, Belgium

Tel: + 32 2 218 37 19

omcteuropa@omct.org

MEDIA INITIATIVE FOR HUMAN RIGHTS

Derevlianska Street 13

04119 Kyiv, Ukraine

Tel: +38 095 415 95 46

info@mipl.org.ua

HUMAN RIGHTS CENTRE ZMINA

Yaroslaviv Val Street 33B, 3rd floor

01054 Kyiv, Ukraine

Tel: +38 067 502 08 01

info@zmina.ua

