

RISK 1

ABDUCTION, KIDNAPPING, ENFORCED DISAPPEARANCE, ARBITRARY OR UNLAWFUL ARREST AND/OR DETENTION



WHAT ACTS OR SITUATIONS CONSTITUTE THE PRESENCE OF THE RISK?

This protection risk covers different acts and measures of detention, meaning the state of being deprived of liberty and being detained in a confined space and not being permitted to leave. **Abduction and kidnapping** refer to removal, seizure, capture, apprehension, taking or enforced disappearance of a person either temporarily or permanently, without support or acquiescence of the State. In conflicts, when the victims are children, it constitutes a grave violation. **Abductions and kidnappings** engage obligations of the State to investigate and to prosecute those responsible. **Enforced disappearance** is constituted by three cumulative elements: 1) the person is detained or otherwise deprived of liberty; 2) the deprivation of liberty is carried out by State agents, or by persons or groups of persons acting with their support or acquiescence; and 3) those responsible refuse to acknowledge the detention, or conceal the concerned person's fate or whereabouts, placing the person outside the protection of the law. **Unlawful arrest** describes the initial act of taking a person into detention that is not based on either a criminal charge or another reason provided for by law (established in national law and carried out in accordance with procedures). **Arbitrary arrest** or arbitrary detention refer to the situation where the arrest or detention is not justified by a legitimate purpose, reasonable, appropriate and necessary in the individual's particular circumstance.



WHAT FACTORS MUST BE IDENTIFIED FOR MONITORING?

While monitoring this protection risk, it is fundamental to understand the nature and the conditions of detention. A detention is considered unlawful when is not in accordance with national laws and the procedures established by law. A detention is arbitrary when it is inappropriate, unjust, unreasonable, or unnecessary in the circumstances. Independently from incidents and cases, it is essential to identify factors of unlawfulness and arbitrariness. Examples include: a detention based on counter-terrorism laws which provides for long administrative detention to bypass normal criminal justice processes; the detention as a punishment for human rights defenders or based on discriminatory grounds; arrests linked to a possible criminal charge where there is no reasonable suspicion that a person has committed the offence; a person due to appear before a court arrested even though the person's presence could have been secured by other means; arrest on a criminal charge without arrest warrant (except if a person is about to commit a crime or is caught in the act). Child abduction may also constitute a form of child trafficking where the child is exploited in whatever form, requiring an investigation of the related protection risk.



WHAT INFORMATION & DATA CAN ILLUSTRATE THE PRESENCE OF THE RISK?

Generally, in situation of armed conflict there is information on such types of incidents and targeting, but not during the period when the risk is occurring. This data and information is often collected by human rights partners, actors and mechanisms, or by UN missions or other protection of civilians mechanisms. National institutions, ombudsman or special bodies pertaining to the legal and justice system may have information and data. Research and analysis centres, media and protection monitoring can provide additional indication on possible presence of cases and incidents. Often it may not be possible to have precise numbers or statistics, due to access and other constraints. It is therefore important to use observation, expert judgement, triangulate available information, and ensure reporting on the protection risk, independently from available statistics.