

**INTERNATIONAL COURT OF JUSTICE**

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**CASE CONCERNING  
APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION  
OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL CONVENTION  
ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

**(UKRAINE V. RUSSIAN FEDERATION)**

**VOLUME XX OF THE ANNEXES  
TO THE MEMORIAL  
SUBMITTED BY UKRAINE**

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# Annex 764

OHCHR, Report on the Human Rights Situation in Ukraine (15 June 2014)



**Office of the United Nations High Commissioner  
for Human Rights**

**Report on the human rights situation in Ukraine  
15 June 2014**

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## I. EXECUTIVE SUMMARY

1. The present report is based on findings of the United Nations (UN) Human Rights Monitoring Mission in Ukraine (HRMMU) covering the period of 7 May – 7 June 2014. It follows two reports on the human rights situation in Ukraine released by the Office of the UN High Commissioner for Human Rights (OHCHR) on 15 April and 16 May 2014.
2. During the reporting period, the human rights situation in the Donetsk and Luhansk regions has continued to deteriorate. The 11 March “referendum” on “self-rule” held by the self-proclaimed “Donetsk People’s Republic” and “Luhansk People’s Republic”,<sup>1</sup> albeit without effect under international law, was seen by their representatives as the first step to the creation of a “Novorossia”. In addition, armed groups have continued to physically occupy most of the key public and administrative buildings in many cities and towns of the Donetsk and Luhansk regions, and have declared virtual “independence”, however, the provision of administrative services to the local population remains with the State.
3. The presence of armed people and weapons in the regions of Donetsk and Luhansk has increased. Representatives of the “Donetsk People’s Republic” have recognised the presence within their armed groups of citizens of the Russian Federation, including from Chechnya and other republics of the North Caucasus. In the period following the elections, the HRMMU observed armed men on trucks and armoured vehicles moving around downtown Donetsk in daylight.
4. The escalation in criminal activity resulting in human rights abuses is no longer limited to targeting journalists, elected representatives, local politicians, civil servants and civil society activists. Abductions, detentions, acts of ill-treatment and torture, and killings by armed groups are now affecting the broader population of the two eastern regions, which are now marked by an atmosphere of intimidation and consequent fear. Armed groups must be urged to stop their illegal activities and lay down their arms.
5. There has also been more regular and intense fighting as the Government has been trying to restore peace and security over the eastern regions of Donetsk and Luhansk through security operations involving its armed forces. Local residents of areas affected by the fighting are increasingly being caught in the cross-fire between the Ukrainian military and armed groups, with a growing number of residents killed and wounded, and damage to property. The HRMMU is concerned at the increasing number of reports of enforced disappearances as a result of the security operations. The Government must further use restraint of force, and ensure that its security operations are at all times in line with international standards.<sup>2</sup>
6. As a result of these developments, residents of the Donetsk and Luhansk regions live in a very insecure environment, coupled with social and economic hardships. Daily life is more and more of a challenge. The HRMMU is gravely concerned that the combination of the increased number of illegal acts by the armed groups, and the intensification of fighting between armed groups and Ukrainian forces is raising serious human rights

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<sup>1</sup> Hereafter referred to as the “Donetsk People’s Republic” and the “Luhansk People’s Republic”.

<sup>2</sup> Human Rights Watch Letter to former Acting President Turchynov and President-Elect Poroshenko dated 6 June 2014, on the conduct of security operations in south-eastern Ukraine in light of the growing number of credible reports regarding Ukrainian forces’ use of mortars and other weapons in and around populated areas, and the recent intensifying of hostilities between Ukrainian forces and armed groups.

concerns, including but not limited to, the fate of the general population, especially women and children, in the areas under the control of armed groups.

7. As of 6 June, the departments of social protection in Ukraine's regions had identified over 12,700 internally displaced persons (IDPs)<sup>3</sup>. However, the actual number of people who have fled the violence and fighting in the regions of Donetsk and Luhansk is believed to be higher and increasing daily.
8. Freedom of expression continues to be threatened, particularly in the eastern regions, where journalists face ongoing intimidation and threats to their physical security. Hate speech, particularly through social media, continue to fuel tensions and to deepen division between communities.
9. In Crimea, the introduction of Russian Federation legislation, in contradiction with the United Nations General Assembly resolution 68/262 and applicable bodies of international law, hampers the enjoyment of human rights and fundamental freedoms. It has created a legislative limbo as, while Ukrainian legislation was supposed to remain in force until 1 January 2015, the legal institutions and framework are already required to comply with the provisions of legislation of the Russian Federation.
10. Residents in Crimea known for their "Pro-Ukrainian" position are intimidated. The HRMMU is concerned that many may face increasing discrimination, particularly in the areas of education and employment. Leaders and activists of the indigenous Crimean Tatar people face prosecution and limitations on the enjoyment of their cultural rights. During the reporting period, the situation of all residents of Crimea has deteriorated with regard to their right to freedoms of expression, peaceful assembly, association, religion or belief.
11. From 14 to 19 May, Assistant Secretary-General (ASG) for Human Rights Ivan Šimonović travelled to Ukraine. During his visits to Kyiv, Donetsk and Odesa, he discussed the 16 May report with the Government, regional and local officials, the Ombudsperson and representatives of civil society, and the international community. The ASG highlighted the importance of prompt follow-up to the recommendations made in the OHCHR report as a means to de-escalate tensions, in particular ahead of the Presidential elections.
12. The investigations under the Office of the Prosecutor General into the Maidan events continued. On 28 May, a Kyiv court sentenced two police officers who subjected a Maidan demonstrator to ill-treatment. On 15 May, relatives of those killed on Maidan, dissatisfied with the perceived slowness of the official investigation, created an initiative group to conduct their own investigation. The HRMMU remains in regular contact with the Office of the Prosecutor General and emphasizes the need for the investigation to be transparent, comprehensive and timely.
13. With respect to the incidents that took place in Odesa on 2 May, it should be noted that six official investigations have been established. The main bodies undertaking such investigations are the Ministry of Interior (MoI) and the State Security Service in Ukraine (SBU). It is with regret that the HRMMU reports a lack of cooperation from both governmental bodies, particularly at the central level with the HRMMU, which has been preventing the HRMMU from conducting a proper assessment of the progress

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<sup>3</sup> As of 16 June, UNHCR estimate there to be 34,336 IDPs in Ukraine.

According to the Russian Federation Federal Migration Service, as of 6 June, 2014, 837 persons had applied and were granted refugee status; and 3,750 persons had applied and were granted Temporary Asylum. Approximately 15% were minors under the age of 18. These figures do not include people from Crimea.

made. The HRMMU reiterates the need for prompt and thorough investigations into the violent incidents on 2 May in Odesa. Some key questions must be addressed to ensure confidence in the investigation and to guarantee accountability, due process and to enable the communities to accept fully the results of such an investigation. Among those questions are the conduct of the police on 2 May: why it, and the fire brigade, either did not react, or were slow to react; what caused the fire in the Trade Union building; who are the perpetrators of the killings in the afternoon and the fire in the evening; and what measures are being taken to guarantee justice for the victims, and due process for the people detained in connection with these events. Furthermore, the Government must pay particular attention to ensure social media is not used for hate speech or incitement to hatred.

14. A key development during the reporting period was the Presidential election held on 25 May 2014. There were 21 candidates officially on the ballot. On 3 June, the Central Election Commission (CEC) confirmed that Mr. Petro Poroshenko had won with 54.7% of the vote. In the regions of Donetsk and Luhansk, attacks had taken place every day during the week preceding the elections and multiplied on election day, with violent obstruction of polling stations. The pattern of such attacks consisted of representatives of the “Donetsk People’s Republic” and the “Luhansk People’s Republic” and armed men entering the premises of the district election commissions, threatening staff and sometimes beating and/or abducting them, often taking away voters’ lists, computers and official documents. In some cases, the premises of these commissions were seized and blocked; others had to close either because they became inoperative, or for security reasons the staff were frightened to come back. Several attacks against district election commissions and polling stations were reported just prior to, and on, the election day, with armed men entering polling stations, forcing them to close and/or destroying or stealing ballot boxes. These illegal acts prevented many people living in the Donetsk and Luhansk regions to exercise their right to vote.
15. Residents of Crimea had to go to mainland Ukraine to vote. The HRMMU monitored the situation in the Kherson region, where most of the Crimean voters had registered, and spoke to representatives of the Crimean Tatars. As they crossed the administrative border by car to go to vote, representatives of “self-defence forces” reportedly recorded various personal details, including car license plates and passport numbers. The HRMMU was informed that many Crimean Tatars did not go to vote due to the cost of travelling, concerns about crossing the administrative border, and fear of reprisals by the authorities in Crimea.
16. During the reporting period, the Government of Ukraine continued to implement the Geneva Statement.<sup>4</sup> National roundtables on constitutional reform, decentralization, minority rights and the rule of law were held in Kyiv on 14 May, in Kharkiv on 17 May, and in Mykolaiv on 21 May. These meetings brought together former Presidents Kravchuk and Kuchma, Prime Minister Yatsenyuk, political party leaders, members of the business community and other civil society organizations. In Kharkiv, Prime

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<sup>4</sup> The Geneva Statement on Ukraine was issued on 17 April 2014 by representatives of the European Union, United States, Ukraine and the Russian Federation. It sets out the agreed initial concrete steps to de-escalate tensions and restore security for all: (1) All sides must refrain from any violence, intimidation or provocative actions; (2) All illegal armed groups must be disarmed; all illegally seized buildings must be returned to legitimate owners; all illegally occupied public offices must be vacated; (3) Amnesty should be granted to the protestors who left seized buildings and surrendered weapons, with the exception of those found guilty of capital crimes; and (4) The announced constitutional process will be inclusive, transparent and accountable carried out through a broad national dialogue.

Minister Yatsenyuk declared that the Constitution should be amended in order to provide a special status for the Russian language and national minority languages.

17. On 13 May, the Parliament adopted the Law “On amending some legislative acts in the area of state anti-corruption policy in connection with the implementation of the European Union (EU) Action Plan on the liberalisation of the visa regime for Ukraine”. The Law provides for more stringent penalties for corruption offences committed by individuals or legal entities.
18. On 20 May, Parliament adopted by resolution № 4904 the Memorandum of Concord and Peace, which was drafted during the roundtable on national unity in Kharkiv on 17 May, and discussed on 21 May in Mykolaiv. Supported by 252 votes (all deputies except the Communist Party of Ukraine and Svoboda), the document foresees that the adoption of a constitutional reform package, including the decentralization of power and a special status for the Russian language; judicial and police reform, and the adoption of an amnesty law for anti-government protesters in the east who would accept giving up weapons, except for those who have committed serious crimes against life and physical integrity. The Parliament called on all to work together to protect, promote and build a democratic Ukraine, and the peaceful coexistence of all nationalities, religions and political convictions.

## II. METHODOLOGY

19. The present report was prepared by the HRMMU on the basis of information collected during the period of 7 May to 7 June 2014. During this period, the HRMMU continued to operate pursuant to the objectives as set out at the time of its deployment in March 2014, and in accordance with the same methodology as outlined in its second monthly report on the situation of human rights in Ukraine issued by OHCHR on 16 May.<sup>5</sup> The present report does not intend to present an exhaustive account of all human rights concerns in Ukraine that have been followed by HRMMU during the reporting period. It rather focuses on those violations and developments which represent particular human rights challenges at the current juncture or demonstrate trends for potentially longer-term human rights concerns in the country.
20. The HRMMU continued to work closely with the United Nations entities in Ukraine. It is grateful for the support and contributions received for the report from the Office of the United Nations Resident Coordinator, the Department for Political Affairs (DPA), the United Nations High Commissioner for Refugees (UNHCR), the World Health Organisation (WHO), the United Nations Children’s Fund (UNICEF), the United Nations Development Fund (UNDP), the World Food Programme (WFP), the United Nations Population Fund (UNFPA), the United Nations Office on Drugs and Crime (UNODC), the International Labour Organisation (ILO), the International Organisation for Migration (IOM), and the Office for the Coordination of Humanitarian Affairs (OCHA).
21. The HRMMU appreciates the close cooperation with international and national partners, including among others, the Organisation for Security and Cooperation in Europe (OSCE).

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<sup>5</sup> <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15May2014.pdf>



### III. ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS

#### A. Investigations into human rights violations related to Maidan protests

22. Five separate initiatives are ongoing in connection with the investigations into human rights violations committed during the Maidan events: (1) the official State investigation is undertaken by the Office of the Prosecutor General of Ukraine in cooperation with the MoI; (2) a temporary “*commission on the investigation of illegal actions of the law enforcement bodies and individual officials and attacks on the rights and freedoms, lives and health of citizens during the events connected with the mass actions of political and civil protests that have been taking place in Ukraine since 21 November 2013*” was established by Parliament on 26 December 2013; (3) the Secretary-General of the Council of Europe initiated, in December 2013, a three-member International Advisory Panel to oversee that the investigations of the violent incidents which have taken place in Ukraine from November 2013 onwards meet the requirements of the European Convention on Human Rights and the case-law of the European Court of Human Rights; (4) a Public Commission on the investigation and prevention of human rights violations in Ukraine was created on 27 January 2014, initiated by a group of Ukrainian legal academics; and (5) an initiative group comprising family members of people who died on Maidan.
23. The Ukrainian Ombudsperson issued a special report on “Infringement of Human Rights and Freedoms in Ukraine - The Events of November 2013 – February 2014”.<sup>6</sup>  
*Forceful dispersal of Maidan protesters on 30 November 2013*
24. As noted in the previous reports, the violent dispersal of protesters on 30 November was the first instance of the excessive use of force against peaceful demonstrators, and triggered further protests.
25. On 14 May, the Kyiv Pechersky Court postponed a hearing of Oleksandr Popov, former Head of the Kyiv City administration, and of Volodymyr Sivkovich, former Deputy Secretary of the National Security and Defence Council, who are under suspicion of being responsible for the forced dispersal of Maidan protesters on the night of 30 November 2013. The hearing was scheduled after the Kyiv city Court of Appeal cancelled the decision of the Kyiv Pechersky Court of 31 January 2014 to amnesty persons responsible for ordering the crackdown of demonstrators by the “Berkut” riot police under the law of 19 December, which has since then been rescinded.
26. The hearing planned for 14 May eventually took place on 26 May but was followed by an incident. About 15 members of the “Maidan self-defence” attacked Oleksandr Popov after he left the court room. He was doused with water, alcohol and iodine, and insulted. Members of the police, who were standing by, did not intervene.
27. During the following hearing, on 5 June, the plaintiffs (representing Maidan victims) submitted a petition for the revocation of the judge considering the case. The petition was accepted by the court, leading to the postponement of the hearings until a decision on the revocation.

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<sup>6</sup> Ukrainian Parliament Commissioner for Human Rights, Special Report on ‘Infringement of Human Rights and Freedoms in Ukraine - The events of November 2013 – February 2014’, issued on 28 February, 2014.

*Criminal proceedings into the killings of 19-21 January and 18-20 February 2014*

28. During 19-21 January 2014, fierce clashes broke out in central Kyiv between the police and protesters, resulting in the first three casualties among demonstrators. The death toll rose significantly between 18-20 February, with confrontations taking the lives of dozens of persons, mostly protesters.
29. Different figures continue being reported regarding the number of deaths during the protests in January and February. According to information from the Office of the Prosecutor General communicated to the HRMMU on 27 May, 76 protesters were killed as a result of firearm wounds on Hrushevskoho and Institutaska streets due to armed confrontations. On 21 May, the Ministry of Health announced that 106 demonstrators had died during the protests. Information from the NGO “Euromaidan SOS”, dated 3 June, refers to 113 casualties among protesters (109 in Kyiv and 4 in the regions).
30. There are also discrepancies concerning casualties among law enforcement officers: 14 according to the Office of the Prosecutor General; 17 according to the Investigation Commission of the Parliament of Ukraine on the Maidan events; and 20 according to the NGO “Euromaidan SOS”.
31. For investigation purposes, all the killings of protesters by firearms were merged by the Office of the General Prosecutor into one criminal proceeding. As of 24 April, three “Berkut” officers had been arrested and officially charged with Article 115 (Murder) of the Criminal Code. The situation has not changed over the past month and a half. The killing of law enforcement officers is being investigated by a separate team within the Office of the Prosecutor General. As of 6 June, no suspects had been identified.
32. On 20 May, the deputy head of the Kyiv Department of the MoI, Sergiy Boyko, declared that all documentation related to the activities of the special police unit “Berkut” during Maidan had been destroyed upon the order of the unit commander in the last days of February 2014.
33. On 5 June, the HRMMU met with a representative of an initiative group claiming to represent about 320 relatives of people killed on Maidan. The group held its first meeting on 15-16 May, and is planning to initiate an independent investigation into the events, with the involvement of lawyers and journalists. They consider their initiative as necessary as they are not satisfied with the ongoing investigations. The group, which plans to register an NGO entitled “Family Maidan” also intends to support families of Maidan victims.
34. On 21 May, the Head of the Parliamentary Investigation Commission on the Maidan events reported that two persons who had participated in the protests were still missing. Eleven persons suspected in the killing of demonstrators have been identified, of whom three were arrested and eight remain at large, allegedly in the Russian Federation. The Commission is seeking to obtain full and reliable information on violations during Maidan and will forward evidence to the General Prosecutor’s Office. It has a one-year mandate and must issue a report to Parliament no later than six months after its establishment that is by 26 June 2014.
35. The International Advisory Panel (IAP) of the Council of Europe overseeing the Maidan investigations held two working sessions in Strasbourg on 9-11 April and 5-7 May 2014. On 16 May, it issued guidelines for NGO submissions and requested input by 11 June 2014. It also decided to request ‘certain authorities’ to submit information

mainly concerning the Maidan investigations. The first meetings of the IAP in Kyiv will take place at the end of June 2014.

*Torture and ill-treatment*

36. On 28 May, the Kyiv Pechersky Court sentenced two police officers for abuse of power and violence against a demonstrator, Mykhailo Havrylyuk, during the Maidan protests. Mr. Havrylyuk had been stripped naked in the street by the police in freezing conditions and forced to stand in the snow while being mocked, assaulted and filmed with a mobile phone. During the hearings, the defendants pleaded guilty. One of them was sentenced to three years of imprisonment with a probation period of one year, and the other to two years, including a one-year probation period.

**B. Investigations into human rights violations related to 2 May Odesa violence**

*Summary of events*

37. The most serious single incident of significant loss of life in Ukraine since the killings on Maidan occurred in Odesa on 2 May 2014.<sup>7</sup> The events occurred on the same day that a football match was due to take place between the Kharkiv football team “Metallist” and the Odesa football team “Chernomorets”. On 1 May, the police authorities issued an official statement announcing that due to possible disorder because of the football game, an additional 2,000 police officers would patrol the streets of Odesa.
38. Early in the morning of 2 May, at least 600 football fans arrived from Kharkiv. Football fans from both teams are known to have strong “Pro-Unity”<sup>8</sup> sympathies. A pre-match rally for “United Ukraine” had been planned for 3.00 p.m. on Sobornaya square and gathered, at least, 2,000 people, including supporters of the two football teams, Right Sector activists, members of so-called self-defence units, and other “Pro-Unity” supporters. Right Sector and “self-defence” unit supporters were observed by the HRMMU wearing helmets and masks, and armed with shields, axes, wooden/metallic sticks and some with firearms. By 3:00 p.m. the HRMMU had observed 15 police officers on Sobornaya square and two buses of riot police officers parked nearby.
39. Meanwhile, the HRMMU observed that about 450 metres away from Sobornaya street, “Pro-Federalism” activists, comprising approximately 300 activists from “Odesskaya Druzhina” (radical “Pro-Federalism” movement), had also gathered one hour earlier. They reportedly intended to prevent the “Pro-Unity” rally; and were wearing helmets, shields, masks, axes, wooden/metal sticks and some of them with firearms.
40. The HRMMU observed an insufficient and inadequate police presence to manage and ensure security, and crowd control of the “United Ukraine” march towards the football stadium. The HRMMU noted that additional police officers arrived at the scene, but were unable to stop the violent confrontation.
41. At 3.15 p.m., the “Pro-Federalism Odesskaya Druzhina”, “Narodnaya Druzhina” and other activists approached the Sobornaya square and started to provoke the participants of the “United Ukraine” rally. Clashes arose and quickly turned into mass disorder, which

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<sup>7</sup> See also OHCHR report on the human rights situation in Ukraine, 15 May 2014 (<http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15May2014.pdf>)

<sup>8</sup> The terms “Pro-Unity” and “Pro-Federalism” are used in the context as describing the motivations and orientation of the supporters / activists.

lasted for several hours until 6.30 p.m. Police officers and supporters from both sides were injured during the afternoon. Six men were killed by gunshots fired by activists.

42. The HRMMU observed that following the clashes in the city centre, some “Pro-Federalism” activists ran from the area chased by “Pro-Unity” supporters. Approximately 60 “Pro-Federalism” activists took refuge in the “Afina” shopping centre, which had been closed during the day. The “Afina” shopping centre was then surrounded by “Pro-Unity” activists. Riot police (Special Forces “SOKOL”) arrived on the scene, and reportedly took away 47 “Pro-Federalism” activists, while letting women out of the complex. Other “Pro-Federalism” supporters ran from the clashes to the tent camp at the Kulikovo Pole square, where approximately 200 supporters had gathered (including all the “Pro-Federalism” leaders) during the afternoon.
43. Some “Pro-Unity” politicians called upon their supporters to march towards the Kulikovo Pole square. At 7.00 p.m., the “Pro-Unity” supporters marched in that direction, accompanied behind them by approximately 60 riot police.
44. The “Pro-Federalism” leaders were informed that “Pro-Unity” supporters were heading towards the tent camp, and between 6.00 – 6.30 p.m., they decided to take refuge in the nearby Trade Union Building.
45. At 7.30 p.m., when the “Pro-Unity” supporters reached Kulikovo Pole square, they burned all the “Pro-Federalism” tents. The “Pro-Federalism” activists, who had hidden in the Trade Union Building, and the “Pro-Unity” activists, then reportedly started throwing Molotov cocktails at each other. Gunshots could reportedly be heard coming from both sides. At around 8.00 p.m., the “Pro-Unity” activists entered the Trade Union Building where the “Pro-Federalism” supporters had sought refuge.
46. During the evening a fire broke out in the Trade Union Building. At 7.43 p.m., the HRMMU called the fire brigade, which has its base located 650 metres from the Trade Union Building. Reportedly, the fire brigade only arrived 40 minutes after receiving the first phone call about the fire. According to fire brigade officials, this was due to the fact that the police did not create a safe and secure perimeter allowing the fire brigade to easily access the Trade Union Building. The cause of the fire remains unclear at this stage.
47. As a result of the fire, officially 42 people died: 32 (including 6 females) were trapped and unable to leave the building and 10 (including one female and one minor) died jumping from windows.
48. The HRMMU has received information from credible resources that some “Pro-Unity” protesters were beating up “Pro-Federalism” supporters as they were trying to escape the Trade Union Building, while others were trying to help them.
49. 247 other people were brought from the scene requiring medical assistance: 27 people with gunshot wounds, 31 with stab wounds, 26 with burns and intoxication caused by combustible products and 163 with injuries by blunt objects. Of these, 99 people were hospitalised, including 22 policemen, with 35 in serious condition. According to various sources, all those who died were Ukrainian citizens. There are no more official reports of people missing in relation to 2 May events. Seven of those injured remain in hospital. The HRMMU received allegations that many who were treated in hospitals did not give their real names and addresses. Moreover, some people who were heavily injured from the violence did not go to hospital for fear of retaliation.

50. During the evening, it was reported to the HRMMU that a bare minimum police force was present at the Kulikovo Pole square. Even when the special riot police force arrived at the scene, the officers did not intervene in the violence that took place on the Kulikovo Pole square. The HRMMU was told by high ranking police officers that the reason for this is that they did not receive any formal order to intervene.

#### *Detentions*

51. The HRMMU has noted slight discrepancies regarding the number of people arrested/detained/transferred during, and in the aftermath of, the 2 May violence. The Regional Prosecution Office and the Regional Ministry of Interior present different figures relating to these events. For example, figures for those arrested in the centre of town vary from 42 to 47 people, and figures for those arrested at the Trade Union Building from 63 to 67 people.
52. Criminal investigations have been launched under the following articles of the Criminal Code of Ukraine: Article 115/1 (Intentional homicide); Article 194/2 (Intentional destruction or damage of property); Article 294/2 (Mass riots/unrest); Article 296 (Hooliganism); Article 341/2 (Capturing of the state or public buildings or constructions); Article 345 (Threat or violence against a law enforcement officer), Article 365 (Excess of authority or official powers) and Article 367 (Neglect of official duty).
53. The 47 “Pro-Federalism” activists who took refuge in the “Afina” shopping centre were taken away (for so-called protection reasons) by Police Special Forces “SOKOL” and transferred to two police stations outside Odesa (Ovidiopol and Bilhorod-Dnistrovki) where they were detained for two days.
54. During this 48 hour period in police custody, detainees were not given food or water on a regular basis, nor were they provided a one-hour walk per day, as per internal MoI regulations<sup>9</sup>.
55. On 4 May, all 47 detainees were transferred to Vinnitsa (424 km from Odesa). According to information provided to the HRMMU by credible sources, during the transfer, which lasted for 12 hours, they received neither food nor water, nor were they allowed to use toilet facilities (they had to urinate in the detainees van). According to Ukrainian internal regulations, detainees during transfer should receive food and water.
56. On 6 May, video court hearings of the “Pro-Federalism” activists were organised with the Primorsky District Court of Odesa. All were charged with Article 294 (Mass riots) and/or Article 115 (Intentional homicide) of the Criminal Code; and during the following days some were given additional criminal charges of either: Article 194/2 (Intentional destruction or damage of property); Article 296 (Hooliganism); Article 341/2 (Capturing of the state or public buildings or constructions); or Article 345 (Threat or violence against a law enforcement officer). According to the court decisions of the 47 arrested, 14 were placed in the Vinnitsa pre-trial detention centre. Four of these, after appealing the court decision, were placed under house arrest and have since reportedly returned to Odesa. 33 of the 47 individuals originally arrested were placed under house arrest as of 10 June 2014. Late in the evening of 2 May, 67 people were arrested at the Trade Union Building and transferred to the Odesa City Police Station, where they were detained for two days. On 2 and 3 May, all were

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<sup>9</sup> Ministry of Interior regulation Number 60 dated 20/01/2001: warm food three times per day, and one hour walk per day.



charged with either Articles 115 (Intentional homicide) or Article 294 (Mass riots) of the Criminal Code. On 4 May at 5.00 p.m., the Odesa City Police Station was stormed by relatives and friends of the “Pro-Federalism” movement. Under unclear circumstances all of the 67 detainees were “released” by the police.

57. In addition to those arrested on 2 May, the MoI arrested at least four other people. On 6 May, one of the leaders of the “Pro-Federalism” movement was arrested and charged under Article 294 of the Criminal Code. He is currently detained in a pre-trial detention centre. On 18 May, a “Pro-Unity” activist was arrested, accused of firing at, and injuring several people in the city centre on 2 May, including police officers, “Pro-Federalism” activists and journalists. He was first transferred to the Investigation Department of Odesa Regional Police Office, before being transferred to Kyiv. He is accused under Article 115 (Murder) and Article 294-2 (Mass riots) of the Criminal Code and on 21 May, he was placed under house arrest in Odesa by the Kyiv Pechersky District Court.
58. Of the arrests conducted between 2 May and 3 June, in connection with the investigations into the 2 May violence, 13 persons remain in pre-trial detention centres under the Penitentiary Services (either in Vinnitsa, Odesa or Kyiv) charged with one or more of the following six articles of the Criminal Code: Article 115/1 (Intentional homicide); Article 194/2 (Intentional destruction or damage of property); Article 294/2 (Mass riots/unrest); Article 296 (Hooliganism); Article 341/2 (Capturing of the state or public buildings or constructions); and Article 345 (Threat or violence against law enforcement officer).
59. In addition, reportedly 40 people were placed under house arrest in Odesa charged with the following articles of the Criminal Code: Article 115/1 (Intentional homicide); Article 194/2 (Intentional destruction or damage of property); Article 294/2 (Mass riots/unrest); Article 296 (Hooliganism); Article 341/2 (Capturing of the state or public buildings or constructions); and Article 345 (Threat or violence against law enforcement officer).
60. Two cases concerning “Pro-Unity” activists suspected of shooting and killing persons during the 2 May violence, were heard by the Pechersky District Court of Kyiv, following the arrest of two suspects on 18 and 26 May. Both were given house arrest; both are charged under Article 294 (Mass riots), and one has been additionally charged under Article 115 (Murder) of the Criminal Code.

*Due process rights during, and after, the 2 May violence*

61. The HRMMU visited detainees held in the pre-trial detention centre in Odesa. The Penitentiary Services administration fully cooperated with the HRMMU and granted access to several detainees (including one female) with whom private interviews were carried out. The detainees did not complain about their conditions of detention or physical treatment in the pre-trial detention centre in Odesa. They confirmed they were able to meet privately with their lawyers.
62. The HRMMU also met with lawyers, victims, witnesses, detainees and relatives with regard to the 2 May violence. It also held numerous meetings with the Ombudsperson’s team, as well as representatives of law enforcement agencies, mass media, local politicians and officials, activists and local officials. Through its monitoring, the HRMMU has identified various human rights concerns with regard to the on-going criminal investigations, which include some of the following.

*Timely notification of reasons for arrest and charges within short period of time*

63. On 15 May, the SBU apprehended five additional people. Although this took place at 9.00 a.m., the official arrest time has been recorded as 11.50 p.m. – over 12 hours later. According to Article 208/4 of the Criminal Procedure Code ‘a competent official who apprehended the person, shall be required to immediately inform the apprehended person, in a language known to him, of the grounds for the apprehension and of the commission of what crime he is suspected’. Furthermore, the procedure applied for the arrest was not in line with Articles 9.2 and 9.3 of the International Covenant on Civil and Political Rights (ICCPR).
64. Similarly eight people apprehended by the SBU on 27 May at the Odesa railway station did not receive prompt notification of the reasons for their arrest.

*Right to a fair trial*

65. Law enforcement agencies resorted to an illegal practice in order to prevent prompt access to legal counsel. Indeed, during criminal interrogation procedures, police and SBU officers summoned individuals as “witness” and later then substituted their status as “suspect” and/or substituted their interrogation by interviewing. This resulted in violating the persons’ right to see and consult a legal counsel (as provided for in Article 208/4 of the Criminal Procedural Code) and gave an opportunity to “delay” the official time of apprehension.
66. For instance, the eight people who were arrested by the SBU at the Odesa railway station were transferred to the SBU for an alleged “interview”. They were not informed about their rights with regard to apprehension, nor were they provided with legal counsel, nor could they contact their lawyers before and during interrogation.
67. The HRMMU observed, based on interviews with detainees and their relatives, that the governmental Free Legal Aid scheme (established in connection with the new Criminal Procedural Code of November 2012) encountered gaps in its system. For the legal defence of detainees arrested during and after 2 May violence, the Free Legal Aid system could not provide enough lawyers.
68. As of 4 June, the legal status of the 67 “detainees” released on 4 May from Odesa city Police Station remained unclear. Due to procedural gaps following their alleged illegal release (i.e. without a court decision), they remain suspects. The measure of restraint was not applied to them as required in accordance with the Criminal Procedural Code.

*Right to medical care*

69. In Ovidiopol and Bilhorod-Dnistrovskiyi Police Stations medical care was not provided to those among the 47 detainees who required such assistance due to illness. The relatives of detainees placed in custody in the Vinnitsa pre-trial detention centre also reported about the lack of medical care provided to their kin.

*Personal data*

70. Concerns have been raised with the HRMMU that on 19 May, the presumption of innocence may have been violated during an official press conference of the MoI, by the Deputy Minister of Interior/Head of Main Investigation Unit by disclosing personal data of 12 detainees. The HRMMU reminds the authorities of the importance of respecting international standards concerning the presumption of innocence and the prohibition of arbitrary interference with one’s privacy or attacks upon his/her honour and reputation.

71. Also on 3 May, the SBU published the names and passports of three citizens from the Russian Federation allegedly involved in the 2 May violence.

*Legality of arrest*

72. On 15 May, the SBU conducted an illegal search of an apartment from 8.00 p.m. to 3.00 a.m., without a search warrant and without preparing a report/protocol on the search. During the search, they broke the door, forced the family, including a girl to lie down on the floor. A woman (wife/mother) was subsequently arrested and taken to the SBU Office. The next day she was transferred to the Odesa Police Station. On 17 May, the Primorsky District Court placed her in custody under Articles 294 (Mass riots) and 110 (Trespass against territorial integrity and inviolability of Ukraine) of the Criminal Code. She is currently detained in Odesa pre-trial detention centre.

*Accountability: Update on investigations into the Odesa incidents*

73. Six official investigations have been initiated to look into the incidents of 2 May in Odesa and are ongoing: 1) a criminal investigation by the MoI; 2) an investigation of the General Prosecution Investigation Unit into police conduct; 3) a criminal investigation by the SBU into alleged state level crimes (including actions aimed at forceful change or overthrow of the constitutional order); 4) an investigation by the Ombudsperson; 5) an investigation by the Parliamentary Commission; and 6) an investigation by a commission comprising civil society representatives under the auspices of the Governor. During his visit in May, ASG Šimonović met with interlocutors involved in these various investigations.
74. These parallel investigations by different bodies present a high risk of miscommunication between the various law enforcement agencies' commissions, which may impact the integrity of the criminal investigations. Furthermore, there appear to be widespread concerns among citizens regarding the ability of local law enforcement agencies to conduct independent and thorough investigations due to the politicisation of the 2 May events. The day after the violence, the former acting President dismissed several local high-ranking officials on the grounds of Article 365 (Excess of authority or official powers) and Article 367 (Neglect of official duty) of the Criminal Code). An interim government and new officials were appointed at the local level: the Governor of Odesa, the Head of the Regional MoI, the Head of the Odesa City Police, and the Head of the Regional Prosecution Office.

*Governmental Commission on the issues of numerous deaths of people during "Pro-Ukrainian" protests and fire in the Trade Union Building in Odesa City*

75. During the late evening of 2 May, Vice-Prime Minister Vitalii Yarema was appointed Head of the Governmental Commission on the issues of numerous deaths of people during "Pro-Ukrainian" protests and the fire in the Trade Union Building in Odesa City, which is responsible for overseeing the investigation carried out by the law enforcement agencies at the Odesa regional and city level. The HRMMU has officially requested to meet with this Commission, but had not received a response as of 7 June 2014.

*Criminal investigation by the Ministry of Interior Investigation Unit*

76. On 2 May, a criminal investigation was launched by the Odesa Regional Police Investigation Department. On 6 May, the responsibility for the investigation was transferred to the Main Investigation Department of the MoI in Kyiv (under the lead of Deputy Minister of Interior). According to the law, the investigation process should be



completed in 60 days. Investigators from Kyiv, Odesa and other regions are cooperating on this investigation, which has been launched under the following articles of the Criminal Code of Ukraine: Article 115/1 (Intentional homicide); Article 194/2 (Intentional destruction or damage of property); Article 294/2 (Mass riots/unrest); Article 296 (Hooliganism); Article 341/2 (Capturing of the state or public buildings or constructions); and Article 345 (Threat or violence against law enforcement officer).

*General Prosecution Investigation Unit regarding police duty performance*

77. On 3 May, the Odesa Regional Prosecutor Office launched a criminal case against four police officials under Article 365 (Excess of authority or official powers) and Article 367 (Neglect of official duty) of the Criminal code. On 6 May, this investigation was transferred to the Investigation Unit of the General Prosecutor.
78. According to information provided to the HRMMU by credible sources, the regional MoI did not enforce the special police tactical plan called “Wave” (“Khvyliya”), which would have allowed the use of special police means and forces, and ensured coordination of all official emergency units (e.g. health, and the department of emergency situations).
79. Furthermore, there are credible reports that during the 2 May violence, all high ranking officials from the Regional MoI and Regional Prosecutor’s Office were holding a meeting and were unavailable.
80. Since then, several criminal proceedings have been initiated against high-ranking police officials and policemen. The Deputy Head of the Regional MoI was placed under house arrest in relation with the 2 May violence and the “release” of the 67 detainees held in the Odesa Police Station on 4 May. His current whereabouts remain unknown but he is thought to be outside Ukraine. On 8 May, the Head of the Odesa City Police, the Head of the Odesa Police Detention Centre and the duty officer were apprehended and transferred to Kyiv. On 9 May, the Head of the Odesa City Police was released on bail. Both The Head of the Odesa Police Detention Centre and the duty officer were also released under obligations to make a personal commitment not to leave Ukraine.

*Criminal investigation under the State Security Service of Ukraine (SBU)*

81. In mid-March, the SBU initiated a criminal investigation throughout the country under Articles 109 (Actions aimed at forceful change or overthrow of the constitutional order or take-over of government) and 110 (Trespass against territorial integrity and inviolability of Ukraine) of the Criminal Code in relation to threats to national security and national integrity. As of 15 May, the SBU arrested several people in Odesa region. According to the HRMMU informal sources, 18 people were placed under investigation by the SBU and detained in the Odesa pre-trial detention centre between 2 May and 3 June.
82. On 15 May, the SBU arrested five people (four male and one female) who were allegedly leaving the Odesa region to join armed groups in eastern Ukraine. The woman was placed under house arrest. Later that day another female “Pro-Federalism” supporter, allegedly the organiser of the expedition, was arrested and placed in pre-trial detention in Odesa. One more person was arrested the following day in connection with the same case. As of 7 June, the HRMMU had no information on his whereabouts.
83. On 27 May, eight men were arrested at the Odesa railway station from a train about to depart for Moscow. The SBU stated that these people were planning to attend a “paramilitary training” in Moscow before joining the armed groups in eastern Ukraine.

On 29 May, the Primorsky District Court charged all of them under Articles 109 (Actions aimed at forceful change or overthrow of the constitutional order or take-over of government) and 110 (Trespass against territorial integrity and inviolability of Ukraine) of the Criminal Code. They have been placed in custody in the pre-trial detention centre in Odesa. One more person was arrested the following day in connection with the same case. As of 7 June, the HRMMU had no updated information on his whereabouts.

84. On 28 May, three men, members of the NGO "Orthodox Cossacks", were arrested in Odesa and on 31 May, they were charged by the Primorsky District Court under Articles 109 and 110 of the Criminal Code, and placed in custody at the pre-trial detention centre in Odesa.

*Parliamentary Interim Commission of inquiry into the investigation of the death of citizens in the cities of Odesa, Mariupol and other cities of the Donetsk and Luhansk regions of Ukraine.*

85. On 13 May, the Parliament adopted decision 4852 establishing an "Interim Inquiry Parliamentary Commission on the investigation of the death of citizens in the cities of Odesa, Mariupol and other cities of the Donetsk and Luhansk regions of Ukraine", further to a proposal by parliamentarians representing the Odesa region. The mandate of this Commission expires on 15 June, by which date it is to submit its report to Parliament.

86. The Commission informed the HRMMU that it had already gathered a lot of information on the violence of 2 May in Odesa, which should be properly analysed and processed. According to the Head of the Parliamentary Commission, its members met with officials from Odesa, including the regional SBU divisions, MoI, Prosecutor's Office, independent experts, NGOs and suspects under house arrest. He believes many people are still frightened by the events with some afraid to share important information. Moreover, he highlighted that the situation in Odesa is not stable yet, and it is important to optimise the activities of law enforcement bodies in the investigation. According to him, the criminal investigation by the MoI had only conducted approximately 7% of the necessary work. The perpetrators of the Odesa events have still not been identified, with some suspects detained for a few days and then released by courts. From information gathered by the Commission, there is much questioning within local communities as to why this happened. There is also a fear that the local population will use reprisals against suspected persons for the restoration of justice. Thus, according to the Head of the Commission, the Special Interim Parliamentary Commission has intensified its contacts with the local community representatives.

*Investigation by the Ombudsperson's Office*

87. The Ombudsperson's Office initiated an evaluation on human rights violations by law enforcement agencies during the 2 May violence in Odesa. The Ombudsperson and her team visited Odesa on several occasions and were provided with official documents from all law enforcement agencies.<sup>10</sup>

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<sup>10</sup> The Ombudsperson submitted a report of her findings to the Prosecutor General on 10 June 2014. It is not a public document.

### *Commission investigating the 2 May violence*

88. A commission was established under the auspices of the Head of the Odesa Regional State Administration (Governor). This commission, which includes civil society activists, journalists and experts, is conducting its own investigation and intends to play a public oversight role concerning the official investigation.
89. The commission members are undertaking their work through open sources, without interfering with the official investigation. It is foreseen that their conclusions will be published only if all members agree on its content. A first official briefing took place on 30 May.

### *Specialised Headquarters providing assistance in the aftermath of 2 May*

90. In the aftermath of the 2 May events, the former acting Mayor of Odesa established an emergency headquarters (HQ) encompassing various departments of the City Council Executive Committee. It provided assistance to victims and their relatives, such as healthcare, information, social services. It also ran an emergency hotline in the aftermath of 2 May incidents. The HRMMU has been in daily contact with the staff on follow-up required, and to enquire about the situation of the victims, particularly medical care and the list of those declared missing. As of 7 June, the Social Welfare Department remained the only operational part of this emergency HQ.
91. After the 2 May violence the HRMMU has been monitoring the criminal proceedings launched by the Office of the General Prosecutor, the MoI and the SBU.
92. As the investigations continue, some key questions must be addressed to ensure confidence in the investigation and to guarantee accountability, due process and to enable the communities to fully accept the results of such an investigation. Issues to be clarified include:
  - a. the identification of the perpetrators who were shooting at protesters during the afternoon;
  - b. the conduct of the police on 2 May - why the police and the fire brigade either did not react, or were slow to react and who ordered what action;
  - c. what happened in the Trade Union Building and what caused the fire there;
  - d. what was the cause of the deaths in the Trade Union Building;
  - e. the identification of the perpetrators of the incidents and violence surrounding the fire in the Trade Union Building;
  - f. the need to guarantee justice for the victims and due process for the detainees.
92. The HRMMU regretfully reports the lack of cooperation from the MoI and the SBU at the central level.
93. The HRMMU reiterates the need for prompt, thorough and impartial investigations into the events so as to ensure accountability of all those concerned and to provide redress and reparations for victims and their families. This process is critical to restore people's confidence in the authorities.

### **C. Investigation into other human rights violations**

94. The HRMMU continues to follow closely the investigation into the human rights violations that occurred in March in 2014 in Kharkiv, including into the "Rymarska case", a clash between pro-Russian and pro-Ukrainian organizations "Oplot" and "Patriots of Ukraine" on 13 March. On 7 May, it was confirmed that the case had been transferred from the police to the SBU. Investigations were opened in connection with

the role of the police in this case, as well as during the attack by protesters against the ATN TV station on 7 April. On 5 June, the Deputy Head of the regional SBU informed the HRMMU that the investigation into “Rymarska case” was ongoing - there were two suspects, who still had to be detained. The challenging aspect of the investigation is that many minors participated in the incident, which requires additional measures to ensure due process.

#### IV. HUMAN RIGHTS CHALLENGES

##### A. Rule of law

95. During the reporting period, the HRMMU monitored legal and policy developments affecting human rights and the rule of law. These include the adoption of a “Memorandum on Concord and Peace” resulting from national roundtable discussions; legislative amendments to combat discrimination, corruption, and on the situation of refugees; developments relating to amnesty, lustration of judges, language rights, internally displaced persons (IDPs) from Crimea, ethnic policy, torture and ill-treatment, the media and the reform of law enforcement agencies.

##### *Constitutional reform*

96. Pursuant to an Order of the Cabinet of Ministers of 17 April 2014, debates were organized on constitutional amendments proposing the decentralization of power to regions. In accordance with the Geneva Statement of 17 April, roundtables on national unity, co-organized by the Government of Ukraine and the OSCE, were held on 14, 17 and 21 May. At the first roundtable in Kyiv, the eastern regions of the country were largely under-represented, with the only official being the Mayor of Donetsk, Mr. Lukyanchenko (Party of Regions). During the roundtable in Kharkiv, acting Prime Minister Yatsenyuk declared that the constitution should be amended in order to provide a special status for the Russian language and national minority languages. With more representatives present from the east, including local parliamentarians, various perspectives were raised; at the same time, this brought to the fore an array of diverging views on the way forward. The roundtable also prepared a Memorandum containing provisions for a unified society, changes to the Constitution, increasing the local authorities’ role, and decentralisation of state power.
97. On 20 May, through resolution 4904, Parliament adopted the “Memorandum of Concord and Peace”, which was drafted during the second roundtable discussion in Kharkiv. This document foresees the adoption by Parliament of a constitutional reform package, including the decentralization of power, a special status for the Russian language, judicial and police reform, and an amnesty law for anti-government protesters in the east who accept to give up their weapons (except for the perpetrators of serious crimes against life and physical integrity). The Parliament called on all to work together to protect, promote and build a democratic Ukraine, and the peaceful coexistence of all nationalities, religions and political convictions.

##### *International Criminal Court*

98. On 23 May, former acting President Oleksandr Turchynov requested the Constitutional Court to assess whether the Constitution of Ukraine would preclude the ratification of the Rome Statute of the International Criminal Court (ICC). The document was signed on 20 January 2000. On 25 February 2014, the Parliament recognised the jurisdiction of the ICC for acts committed in Ukraine from 21 November 2013 to 22 February 2014.

On 9 April, Ukraine informed the Registrar of the Court about this decision. On 25 April, the Office of the Prosecutor of the ICC announced a preliminary examination on the situation in Ukraine to establish whether all the statutory requirements for the opening of an investigation are met.

99. A Member of the Parliament of Ukraine from Odesa, Sergey Kivalov, registered on 15 May a draft resolution which aims to create the legal and institutional conditions for those responsible for the deaths of dozens of people in Odesa, on 2 May, to be tried by the ICC. As of 7 June, the draft resolution<sup>11</sup> had not been considered by Parliament.

#### *Crimea*

100. On 5 June, Parliament adopted, on first reading, amendments to the Law of Ukraine “On Securing Citizens’ Rights and Freedoms and the Legal Regime on the Temporary Occupied Territory of Ukraine”. These amendments aim at making the registration procedure for those displaced from Crimea easier and faster, especially for those who wish to re-register their business. Thus, IDPs from Crimea in mainland Ukraine will no longer need other documents than the national passport.

#### *Amnesty*

101. During the reporting period, no actual progress was made in adopting an amnesty law in relation to the events in the east of the country. On 18 April 2014, the Cabinet of Ministers prepared a draft law “On the prevention of harassment and punishment of persons in relation to the events that took place during mass actions of civil resistance which began on 22 February 2014”. The text would exempt from criminal liability all those who attempted to overthrow the legal government; took part in riots; seized administrative and public buildings; and violated the territorial integrity of Ukraine, provided they agreed to voluntarily cease all illegal actions and were not guilty of “particularly serious crimes”. Four other so-called “amnesty laws” were registered in Parliament by different political parties between 9 and 23 April. On 6 May, a draft resolution was registered, calling on Parliament to make the draft law submitted by the Cabinet of Minister the basis for the adoption of an amnesty law. During his inauguration speech, on 7 June, President Poroshenko offered to amnesty protesters who did not have “blood on their hands”.

#### *Discrimination*

102. On 13 May, Parliament adopted amendments to the Law “On preventing and countering discrimination”. The amendments bring the definitions of direct and indirect discrimination in line with Ukraine’s obligations under the ICCPR and other international human rights instruments. They include, in particular, the prohibited grounds listed in Article 2(1) of the Covenant (except “birth”). It should be noted, however, that the amendments do not integrate the jurisprudence of the UN Human Rights Committee on the prevention of discrimination on the basis of sexual orientation. The amendments also provide for criminal, civil and administrative liability in case of discrimination. While these are positive changes, other legal texts, notably the Criminal Code, must be brought in line with the anti-discrimination amendments in

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<sup>11</sup> Draft resolution “On the recognition by Ukraine of the jurisdiction of the International Criminal Court concerning crimes against humanity having led to very serious consequences, deliberate and planned of mass killing of citizens in a particularly brutal and cynical way during the peaceful protests on 2 May 2014 in Odesa, and concerning all perpetrators of these crimes, and on the request to the International Criminal Court to bring the perpetrators to justice”.



order to ensure effective remedies for victims and contribute to enhanced prevention of discrimination.

#### *Anti-corruption*

103. On 13 May, Parliament adopted the Law "On amending some legislative acts Ukraine in the area of state anti-corruption policy in connection with the implementation of the EU Action Plan on the liberalisation of the visa regime for Ukraine". The Law provides for more stringent penalties for corruption offences committed by individuals or legal entities. In particular, the liability for providing knowingly false data in the declaration of assets, income and expenses is introduced to the Code on Administrative Offences. The Law also strengthens the protection of persons reporting on corruption, for instance, providing for anonymous phone lines for reporting corruption. An external control of declarations of assets, income, expenses and financial obligations is also to be introduced. While the amendments are welcome, the key to combatting corruption lies in the readiness of all government institutions to effectively tackle this phenomenon and to implement anti-corruption norms in place. In this regard, the HRMMU recalls that in its concluding observations adopted in May 2014, the UN Committee on Economic, Social and Cultural Rights called on Ukraine to "make politicians, members of parliament and national and local government officials aware of the economic and social costs of corruption, and make judges, prosecutors and the police aware of the need for strict enforcement of the law".

#### *Torture and ill-treatment*

101. On 3 June, the Minister of Justice announced at a press-conference the establishment of a Special Committee to carry out random inspections of penitentiary institutions, with broad powers to check violations of human rights and the detention conditions of prisoners. The Committee will be a permanent body and is to produce monthly reports. It will comprise representatives of the Ministry of Justice and representatives of civil society.
102. While welcoming this step, the HRMMU notes that the Ombudsperson was designated by law as the National Preventive Mechanism (NPM) against torture, in line with the Optional Protocol to the United Nations Convention against Torture. As such, it is entrusted to conduct visits to places of deprivation of liberty, with the involvement of civil society, and with a view to preventing human rights violations affecting detainees or contributing to their elimination. Due to the obvious similarities between mandates of the Special Committee and the NPM, proper coordination and consultations between these bodies will be required to ensure the effectiveness of efforts to combat torture and ill-treatment.

#### *Lustration*

103. The Interim Special Commission on the vetting of judges was established on 4 June, pursuant to Article 3 of the Law "On the restoration of trust in the judiciary in Ukraine", which entered into force on 10 May. The Commission consists of five representatives from the Supreme Court, the Parliament and the Governmental Commissioner on the Issues of the Anti-Corruption Policy. Legal entities and individuals will have six months from the date of advertisement of the establishment of the Commission in the newspaper "Voice of Ukraine" to request examination (vetting) of judges. Public information about the activities of the Interim Special Commission will be published on the official website of the High Council of Justice of Ukraine. The HRMMU reiterates its concern that the immediate dismissal of judges by the Special

Commission may put in jeopardy the administration of justice. Any lustration initiatives should be pursued in full compliance with the fundamental human rights of the people concerned, including the right to individual review and the right of appeal.

*Ethnic and national policy*

104. The Minister of Culture stated on 4 June that the Cabinet of Ministers decided to establish a ‘Council of interethnic consensus’ and to create the position of a Government commissioner for ethnic and national policy. This official, who has not been appointed yet, will reportedly be responsible for the implementation of the ethnic and national policy developed by the Government.

*Language*

105. On 4 June, a draft law was submitted to Parliament “On the official status of the Russian language in Ukraine”. The draft law proposes to give “official status” to the Russian language without compromising the position of Ukrainian as the state language. The bill proposes to introduce the wide usage of Russian language in state institutions, courts, educational institutions, mass media, official publications of legislation and by-laws, pre-trial investigation, advertising and labelling of goods.

*Media*

106. On 4 June, the Cabinet of Ministers instructed the State Committee on television and radio broadcasting to prepare a draft law "On Amending Certain Legislative Acts of Ukraine regarding resisting informational aggression of foreign states". Other ministries and agencies that will participate in the drafting of the bill will include the Ministry of Economic Development, Ministry of Finance, Ministry of Justice, Ministry of Foreign Affairs, MoI, State Security Service, the National Council on Television and Radio Broadcasting, and the State Committee on Entrepreneurship of Ukraine. This development comes after a Ukrainian court banned, in March 2014, broadcasting by four Russian TV channels in Ukraine, and armed groups in the east having disrupted broadcasting of Ukrainian channels.
107. The HRMMU is of the view that professional journalism and critical thinking, not prohibition, are the proper answers to the attempts to distort or manipulate facts. Everyone, in accordance with article 19 of the ICCPR, should have the right to hold opinions without interference and to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers.

*Refugees*

108. On 13 May, Parliament adopted amendments to the refugee Law extending the definition of complementary protection to include persons fleeing armed conflict and other serious human rights violations. This brings the definition of complementary protection into line with international and European standards.
109. The HRMMU notes, that certain legal gaps remain, affecting particularly the quality of due process in the asylum procedure and the reception conditions for asylum-seekers. The quality of decision-making on asylum applications also remains of concern, as well as the fact that State funding for asylum matters is inadequate.

*Martial law*

110. On 3 June, former acting President Oleksandr Turchynov signed decree № 936/2014 “About considering the question of the introduction of martial law in certain areas of Ukraine”. The decree requests the Secretary of the Council of the National Security and

Defence of Ukraine to “*immediately cooperate with the Ministry of Defence of Ukraine, the Ministry of Interior of Ukraine, the Security Service of Ukraine, the Administration of the State Border Service of Ukraine to consider the question about the need to impose martial law in the Donetsk and Luhansk Regions, where the security operation is taking place, to prevent further development and ensure the ending of the armed conflict on the territory of Ukraine, to prevent mass deaths of civilians, military personnel and members of law enforcement agencies, to stabilize the situation and restore normal life in these regions*”.

#### *Law enforcement sector reform*

111. On 4 June, Prime Minister Arseniy Yatseniuk instructed the Cabinet of Ministers to set up a working group that will prepare legislation to reform the law enforcement system by 1 August 2014. The working group will be headed by First Vice-Prime Minister, Vitaliy Yarema, who stressed the need to develop draft laws on the police, the security service and the prosecutor’s office. Experts from the European Commission and Poland will assist the working group.
112. On 5 June, Parliament adopted the Law "On Amendments to the Law of Ukraine on combating terrorism". The law provides a definition of a Counter-Terrorist Operation (CTO), the authority of the CTO participants and other innovations. It also prescribes the possibility of "physical elimination of the terrorists" in case of resistance. Speaking at a press conference, the former acting Head of the Presidential Administration gave his support to the introduction of martial law in the Donetsk and Luhansk regions, as well as in the border areas of seven other regions of Ukraine.

#### **B. Freedom of peaceful assembly**

113. After the 2 May events in Odesa, a police presence has been highly visible during peaceful assemblies in all major cities of Ukraine. However, the real or perceived inaction of law enforcement is a further challenge to ensuring accountability at such events such as demonstrations, rallies and pickets.
114. Ahead of 9 May (Victory Day), for instance, security was heightened with numerous checkpoints on roads in several cities the programme of celebrations was changed in order to avoid situations that could provoke unrests, for example by cancelling parades. Public commemorations and rallies took place in Kyiv, Kharkiv, Lviv and in many cities in western and central Ukraine. In Donetsk, a rally gathering 2,000 persons went peacefully.
115. However, legislation is required to regulate the conduct of assemblies in line with international standards, as previously recommended by the HRMMU.<sup>12</sup>
116. A trend of local administration requesting courts to take measures to prevent peaceful assemblies illustrates the need for relevant legislation. For instance, on 4 June, the Mykolaiv District Administrative court decided to ban until 30 June all rallies planned in the city centre further to a request from the City Council. The Mykolaiv City Council had requested such a prohibition after 2 June when the police intervened to prevent clashes between participants of two rallies running in parallel. The court justified the ban, arguing that the right to life and health was more important than the right to peaceful assembly.

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<sup>12</sup> The OHCHR report on the human rights situation in Ukraine report, 15 April 2014, paras. 52-54.



### **C. Freedom of expression**

117. The HRMMU remains concerned about the curtailment of freedom of expression, including harassment and threats to targeting journalists working in Ukraine, mostly in eastern regions (see section C, in Chapter V).
118. During the reporting period, a few isolated cases of obstruction to media work and attacks on journalists were registered across Ukraine.
119. On 23 May, two journalists of “Russia Today”, who were travelling to Ukraine to cover the elections, were denied entry at Odesa airport. The border officers reportedly forced them to buy return tickets to Moscow and fly back, without providing any reason.
120. On 25 May and shortly after, journalists were prevented from filming the vote counting. The HRMMU is aware of such cases having occurred in Sumy, Dnipropetrovsk, Kremenchuk (Poltava region), Lviv, Mykolaiv, Uzhgorod and Kyiv. To the knowledge of the HRMMU, none of these instances resulted in physical violence or damage to equipment.
121. On 23 May, the holding “Multimedia invest group”, based in Kyiv, reported that the accounts of the company were blocked and its building was searched by tax police. The management sees this as pressure against its media outlets (newspaper and website “Vesti”, TV Channel UBR and Radio Vesti) which are critical of the Government.
122. In general, the developments in eastern and southern regions of Ukraine and the large number of casualties have generated an escalation of hate speech and tension between the two rival sides. This is particularly obvious in social media.

### **D. Minority rights**

123. The HRMMU regularly meets representatives of various minorities in Ukraine. In the reporting period no major incidents and human rights violations were reported in that regard.

#### *National and Ethnic minorities*

124. Ethnic minorities generally speak of positive relations and atmosphere conducive to exercising their human rights, including cultural rights. Some communities, particularly Russian, expressed concerns with the lack of financial allocations for the needs of ethnic minorities or bureaucratic obstructions by local authorities, for example, in establishing additional schools, churches, newspapers, etc.
125. On 20 May, during a press-conference, Josyf Zisels, the Head of the Association of the Jewish Organisations and Communities of Ukraine, underlined that there was no increase in anti-Semitism in Ukraine. He noted that the number of anti-Semitic incidents is declining since 2007. While pointing out that in the first half of 2014 more Ukrainian Jews had migrated to Israel compared to the previous year, he attributed this to the social-economic impact of the situation in Crimea and in the eastern regions.

#### *Linguistic rights*

126. The guarantees of using one’s mother tongue freely in private and public life without discrimination remain high on the public agenda. The Law “On the Basics of State Language Policy” currently in force (provides for the introduction of a “regional language” based on ethnic composition). However, the Government has recognised that a new language law was needed, reflecting broad consensus as well as the

expectations of the Russian-speaking population. There have been attempts to amend legislation and a draft law has been developed. The latest draft law was submitted on 4 June, which proposes to provide Russian language with “official status” through extensive usage in State institutions and public documents (see section D, Chapter IV).

127. On 30 May, the Ministry of Education amended the framework curriculum and study plans for secondary school students of grades 5-9 for the learning of minority languages, such as Armenian, Bulgarian, Crimean Tatar, Gagauz, Greek, German, Hebrew, Hungarian, Korean, Moldovan, Polish, Romanian, Russian and Slovak. The Ministry also increased significantly the number of hours prescribed for learning of a minority language in schools where the relevant language is the working one (it is now equal to the hours of learning Ukrainian language).

#### *Sexual minorities*

128. The HRMMU continues to receive reports from the LGBT community regarding lack of tolerance and daily discrimination based on their sexual orientation and gender identity, mainly bullying at school/university, difficulties in finding and/or preserving employment especially when persons disclose their sexual orientation and gender identity; access to health services, particularly for transgender people; and physical attacks.
129. On 7 May, the High Specialized Court of Ukraine for Civil and Criminal Cases issued a letter (N 10-644/0/4-14) to appellate courts, explicitly prohibiting discrimination in employment on the basis of sexual orientation. The Court stressed that, when considering cases of labour discrimination, it is important to take into consideration the existing anti-discrimination law, which prohibits discrimination on any basis.

### **E. Political rights**

#### *Human rights in the electoral process*

130. On 25 May, the population of Ukraine voted to elect a new President among 21 candidates. On 3 June, the Central Election Commission (CEC) confirmed that Mr. Petro Poroshenko had won with 54.7% of the vote.
131. The elections took place in a challenging political, economic and, in particular, security environment, due to continued unrest and violence in the east of Ukraine, where armed groups control some areas, and the Government has been conducting security operations. This situation affected the general human rights situation and seriously impacted the election environment, also obstructing meaningful observation.
132. Notwithstanding, elections were characterised by a 60% voter turnout and the clear resolve of the authorities to hold elections in line with international commitments and with a respect for fundamental freedoms in the vast majority of the country. The voting and counting process were transparent, despite large queues of voters at polling stations in some parts of the country.
133. Despite efforts of the election administration to ensure voting throughout the country, polling did not take place in 10 of the 12 election districts in Luhansk region and 14 of the 22 election districts in Donetsk region. This was due to illegal activities by armed groups before, and on, the election day, including death threats and intimidation of election officials, seizure and destruction of polling materials, as well as the impossibility to distribute ballots to polling stations due to the general insecurity caused

by these groups (see Chapter V). The majority of Ukrainian citizens resident in these regions were thus deprived of the right to vote. Elsewhere, a few isolated attempts to disrupt voting were reported.

134. The HRMMU followed the participation of Crimean residents in the Presidential elections. Simplified registration procedures were put in place to ensure that residents of Crimea and persons who resettled from Crimea to other regions could take part in the elections. According to the CEC, 6,000 Crimean residents voted on 25 May.

*Political parties/ Freedom of association*

135. On 7 May, several political parties were allegedly banned in Luhansk region by a decision of the “people’s council”, including Batkivchyna, Udar, Svoboda and Oleg Lyashko’s Radical Party, as well as Right Sector. It also inferred “extended powers” on Valeriy Bolotov, the self-proclaimed “people’s governor”.
136. On 13 May, the Kyiv District Administrative Court banned the party Russian Bloc based on the fact that the party leaders had called for the overthrow of the constitutional order and violations of the territorial integrity of the country.<sup>13</sup>
137. It appears that the Communist Party of Ukraine is coming under increasing pressure. On 7 May, the Communist faction of the Parliament was expelled from a closed-door parliamentary hearing, which was denounced by the Party of Regions faction, allegedly, because of the “separatist” statements by its head, Petro Symonenko. The hearing was reportedly about the security operations in the east. Party of the Regions pointed out that information on these security operations should be made public.
138. On 18 May, former acting President Turchynov called on the Ministry of Justice to review documents gathered by the law enforcement bodies relating to the alleged illegal and unconstitutional activities of the Communist Party of Ukraine aimed at violating the sovereignty and territorial integrity of the country, undermining State security and illegal seizure of State power. On 19 May, the Ministry of Justice sent a request to the General Prosecutor’s Office and the SBU to investigate possible crimes by the leadership of the Communist Party of Ukraine.

**F. Internally displaced persons**

139. As of 6 June, the departments of social protection in the Ukrainian regions had identified over 12,700<sup>14</sup> internally displaced persons (IDPs)<sup>15</sup>. However, the actual number of people who have fled the violence and fighting in the regions of Donetsk and Luhansk is believed to be higher and increasing daily. According to various estimates, around 64% are women; many are with children, including infants. The IDPs live dispersed across the entire territory, with significant concentrations in Kyiv and Lviv.

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<sup>13</sup> On 15 April, the Ministry of Justice filed a lawsuit to prohibit the activities of the political parties Russian Bloc and Russian Unity in Ukraine. The activity of Russian Unity was banned on 30 April. According to Ukrainian law, a court can ban the activities of a political party upon a request filed by the Ministry of Justice.

<sup>14</sup> UNHCR estimated that, as of 16 June, there were 34,336 IDPs in Ukraine, with 15,200 located in the Donetsk and Luhansk regions.

<sup>15</sup> According to the Russian Federation Federal Migration Service, as of 6 June 2014, 837 persons had applied and were granted refugee status; and 3,750 persons had applied and were granted Temporary Asylum. Approximately 15% were minors under the age of 18. These figures do not include people from Crimea.

140. People have left Crimea for different reasons. The majority have economic, professional or family ties within Ukraine and do not wish to acquire Russian citizenship, which many feel compelled to do in order to continue a normal life in Crimea. Some Crimean Tatars fear limitations to their religious and cultural expression. Activists and journalists have been exposed to, or fear, harassment.
141. The main difficulties the IDPs from Crimea continue to face are: lack of temporary and permanent housing; access to social allocations, medical and educational services; access to bank accounts / deposits; possibility to continue entrepreneurship activity, and employment opportunities.
142. Despite efforts made, some of these issues, particularly housing, are very difficult to resolve without systemic changes and involvement of the Government. The HRMMU has been made aware of some instances when IDPs had to return to Crimea, since their basic needs could not be met in Ukraine.
143. Displacement from the Donetsk and Luhansk regions started in the days leading up to the “referendum” held in both regions on 11 May. People have been trying to leave the violence affected areas, particularly Slovyansk and Kramatorsk, after witnessing violence on the streets. Armed groups and increasing criminality have generated fear.
144. The HRMMU interviewed several IDPs from the eastern regions, who reported that apart from random violence, there were targeted attacks and intimidation of activists and increasingly of “ordinary” residents, known for their “Pro-Ukrainian” stance. Local NGOs confirmed that while seizing administrative buildings, armed groups obtained access to personal data of activists who participated in rallies. The latter and their families were reportedly being threatened and harassed.
145. One of the few interviewed activists reported being threatened and having to stay in a friend’s house for nine days without food, as her own apartment was under surveillance. Then other activists helped her escape and settle in another town. She has no information about her family and suffers from insomnia and anxiety attacks.
146. Political activists and journalists began to feel pressure from the armed groups who were consolidating their position in the region. After the “referendum” and with the intensification of violence, other residents of the region have started leaving their homes in areas affected by violence due to the illegal activities of armed groups and the security operations, particularly in the areas of Slovyansk and Kramatorsk. Many remain within the eastern regions in rural areas, as IDPs have been reporting harassment at checkpoints if they were perceived to be leaving the region to seek protection.
147. The majority of international humanitarian actors, due to security reasons, are unable to access persons displaced within the Donetsk and Luhansk regions and thus only some very limited assistance has been provided. IDPs, who leave the eastern regions, have generally maintained a low profile, fearing retribution against their relatives who have remained at home.
148. There are considerable gaps in the State’s ability to protect IDPs. The central authorities have not issued formal instructions regarding how to register and assist persons displaced from Donetsk and Luhansk regions, leading to different practices across the country. The system for registering the IDPs is rudimentary, so the number and profile of IDPs and their needs remain largely invisible. As a result, the actual number of displaced persons is difficult to estimate.

149. Regional authorities are waiting for instructions on funding allocations for IDPs from the Luhansk and Donetsk regions. Temporary accommodation, while theoretically available, cannot be paid for and is thus rationed in many regions. Several administrative matters remain unresolved, hindering IDPs' ability to resume a normal life: many cannot obtain temporary residence registration; register business activities; or in the case of IDPs from Crimea, who have not registered on the mainland, they may find that they cannot access their personal savings in bank accounts in Crimea.
150. IDPs from the Donetsk and Luhansk regions describe leaving the region with few personal belongings in order to disguise the purpose of their departure. Many report having witnessed violence and experiencing feelings of fear. In dozens of interviews with UNHCR, IDPs have reported significant deterioration of the humanitarian situation in the areas affected by violence and the security operations. They are mostly concerned about security: people report staying in cellars to keep away from the fighting, facing harassment at checkpoints and fearing the increasingly common abductions, threats and extortion. They have been reporting to UNHCR and the HRMMU about the serious social and economic impact of the conflict. Families have run out of money since jobs are lost, banks closed and pensions unpaid. Public utilities like electricity and water work only intermittently. Thus, the IDPs from the eastern regions are particularly vulnerable. There are multiple reports that thousands of people are eager to escape the areas affected by violence and the security operations as soon as they can safely move.
151. Many IDPs have exhausted their resources. Having originally been hosted by friends, family or even generous strangers identified through social networks, they find themselves under pressure to move out of these temporary housing arrangements, as conditions are overcrowded and hospitality reaches its limits. Without sufficient support to find jobs and housing, IDPs report increasing levels of frustration and humanitarian needs. Increasingly, IDPs are trying to self-organise into NGOs to help each other, as illustrated by Crimea SOS, Vostok SOS, the Unified Coordination Centre of Donbas. On 23 May, the HRMMU attended the first all-Ukrainian meeting organized by an initiative group of IDPs from Crimea to bring the problems faced by IDPs to the attention of the Government and local authorities so as to develop joint solutions.

## **V. PARTICULAR HUMAN RIGHTS CHALLENGES IN THE EAST**

### **A. Impact of the security situation on human rights**

#### *Deterioration of the security situation*

152. The reporting period was marked by a significant deterioration in the security situation in eastern Ukraine. The HRMMU received credible reports illustrating an escalation of abductions, arbitrary detentions, ill-treatment, looting, as well as the occupation of public and administration buildings (with certain fluctuations, as some buildings are recovered by the Ukrainian military and law enforcement bodies, and some then again re-seized by armed groups). The period since the Presidential elections can be characterized by an increase of fighting in eastern Ukraine, with fluctuations in intensity.



153. The regularity and intensification of fighting between the armed groups and Ukrainian armed forces raises serious human rights concerns, including but not limited to: the fate of persons not involved in the fighting, especially children; the necessity and proportionality of the use of force; and the large-scale destructions, which only add to the social and economic hardship and a general lack of respect for international humanitarian law, when and where applicable to the fighting.
154. Violence and lawlessness have spread in the regions of Donetsk and Luhansk. Having gained access to deposits of weapons, including from the SBU building, the armed groups increasingly started spreading violence. Abductions of persons not involved in any fighting and related acts of arbitrary detentions, looting, and killings of persons not involved in any fighting and other activities in violation of international law have been carried out by the armed groups. Moreover there are reports of victims being subjected to degrading treatment, random shooting and provocations, particularly near the Ukrainian-Russian border. Increasingly, attacks target ordinary people, who take no part in the fighting.
155. The security operations by the Government, with military and National Guard forces particularly concentrated around the town of Slovyansk, are present in the regions of Donetsk and Luhansk. With their superior manpower and military hardware, the Ukrainian armed forces have controlled access to the cities through multiple layers of check-points.
156. Skirmishes between armed groups and the Ukrainian military also saw the inclusion of various territorial defence battalions under the command of the MoI.
157. The HRMMU observed an increasing presence of armed men on trucks and armoured vehicles moving around the city of Donetsk during daylight. For the first time, the HRMMU team members were stopped as they drove in their vehicle through Donetsk by armed persons who demanded to see their identity.
158. In the two regions, the situation has been made complex as some of the armed groups operating in the regions have reportedly slipped out of the control and influence of the self-proclaimed republics and their leaders. Examples of this can reportedly be found with the armed groups in the area surrounding the town of Horlivka<sup>16</sup> in the Donetsk region, and the armed groups operating in the border area of the Luhansk region near the border with the Russian Federation. Moreover, on the “official” “Donetsk People’s Republic” media outlet “Anna Info News”, the Slovyansk commander “Strelkov” Igor Girkin referred to “criminal groups” operating in the regions and that the “Donetsk People’s Republic” was lacking volunteers.
159. Regardless of the veracity of this information, the proliferation of armed groups has clearly exacerbated threats to the security of the population, posing a further challenge in ensuring the rule of law and accountability for the numerous illegal acts committed. The “Donetsk People’s Republic” has reported the presence among them of citizens of the Russian Federation, including from Chechnya and other republics in the North Caucasus. A particular call for women to join the armed groups was made on 17 May through a video released with Igor Girkin “Strelkov”, urging women of the Donetsk region to enlist in combat units.

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<sup>16</sup> Now reportedly under the control of an armed group led by Igor Bezler.

*“Referendum” on “self-rule” held in the Donetsk and Luhansk regions on 11 May*

160. On 11 May, a “referendum” on “self-rule” that was neither in accordance with the Constitution of Ukraine nor with effect under international law, took place in the Donetsk and Luhansk regions. The following question was asked: “Do you support the act of self-rule of the People’s Republic of Donetsk / People’s Republic of Luhansk?” The Government of Ukraine deemed the “referendum” illegal.
161. Reports suggest that there were a limited number of polling stations for the two regions. The official voter registration of the Central Election Commission was not used as a basis for the vote. Media outlets and journalists observing the “referendum” reported a number of violations (e.g. one person filling out several ballots; multiple voting; voting without documentation).
162. In the aftermath of the “referendum” of 11 May, the level of violence by armed groups intensified. At the same time, a new “government” was formed, and Alexander Borodai, a Russian citizen, nominated as “prime minister” of the “Donetsk People’s Republic”. A call was made for Ukrainian troops to leave the region.

*Casualties due to the escalation in intensity of fighting as Government aims to gain control of the territory*

165. Reports illustrate that over the past month, attacks and fighting have been intensifying with an increased number of casualties. Fighting remained concentrated in the northern part of the Donetsk region and the border areas and south of the Luhansk region. In the Kharkiv region, one Ukrainian serviceman was killed in an ambush, near the city of Izyum, on the border with the Donetsk region, which serves as a basis for the security operations of the Ukrainian forces.
166. On 3 June, the Prosecutor General Oleg Mahnitsky announced that 181 people had been killed since the start of the Government’s security operations on 14 April to regain control of the eastern regions. Of those killed, 59 were Ukrainian soldiers; the others were reported to be residents. 293 were wounded as a result of these security operations in the Donetsk and Luhansk Regions. This is a considerable increase since 14 May, when the Prosecutor General had announced 68 killed (servicemen and residents).
167. The HRMMU is trying to verify these allegations and to obtain disaggregated data on the victims and perpetrators. This is, however, difficult to obtain due to either a lack of, or contradictory, information.
168. On 13 May, a Ukrainian military unit was ambushed near Kramatorsk, killing seven Ukrainian soldiers. On 22 May, 17 Ukrainian servicemen were killed and 31 injured near Volnovakha (south of Donetsk); that same day another soldier was killed and two others injured in an attack by armed men on a convoy of military vehicles near Rubizhne in the Luhansk region. On 23 May, the territorial defence battalion “Donbas” was ambushed and attacked by an armed group, reportedly controlled by Igor Bezler, near the town of Horlivka close to Donetsk. Nine soldiers were wounded and detained by Bezler’s group; one was reportedly killed. On 29 May, a Ukrainian military helicopter was shot down near Slovyansk, which killed 12 service personnel who were on board, including a General.
169. On 26 May, fighting broke out for control of the Donetsk airport between the armed groups and the Ukrainian military. Ukrainian military planes and helicopters were used against the armed groups who eventually conceded control. The airport terminal and the runway were damaged as a result of aerial bombing. According to the Interior Minister, there were no losses within the Ukrainian military but according to various sources, the

armed groups suffered over 50 casualties, of these at least 31 volunteers were reportedly from the Russian Federation, including from Chechnya and other republics in the Northern Caucasus. Out of these casualties, 30 bodies of those fighting with the armed groups have not been recovered.

170. During the fighting around Donetsk airport on 26 May, the Mayor called on the population not to leave their apartments unless absolutely necessary. Notwithstanding, residents did become victims. A woman was killed by a shell at a bus stop. A man was killed as a result of an incoming explosion near the Children's Hospital, with a further six people wounded, including a seven-year-old boy who was at home. A criminal case was opened under Article 258, Part 3 of the Criminal Code of Ukraine ("Terrorist act that led to the death of a person").
171. On 2 June, an explosion of an unknown nature took place at the occupied building of Luhansk Regional State Administration. According to various accounts, it was either a failed attempt by the local armed groups to hit a Ukrainian fighter plane, or the bombardment of the occupied building by a Ukrainian plane. Seven people in, and around, the occupied building were reported killed as a result of the shelling, including the "minister of health" of the "Luhansk People's Republic", Nataliya Arkhipova.
172. The Ukrainian National Guard took control of the town of Krasnyi Liman (20 km North-West of Slovyansk) after fierce fighting on 3 June. The town hospital was badly damaged reportedly by shelling and most patients were evacuated to the basement of the hospital. Two civilians were killed. The chief surgeon of the hospital was gravely wounded, and died on 4 June.
173. IDPs from Slovyansk have described to the HRMMU the situation they have faced for the past weeks. They claim that the Ukrainian air force was shelling the city and bombed a kindergarten. They also said that for two months they did not receive any social benefits. Some of them left male members behind, and/or their parents or grandparents. A hotline at the disposal of IDPs or people who are considering leaving the areas affected by fighting is run by a few Red Cross activists. Transport of people who come to the check points is mostly organized by "Auto-Maidan" activists. Reception centres for arriving IDPs organised the initial assistance they received, including psycho-social.

*Widening protection gap and erosion of the rule of law*

174. With the presence of armed groups in seized and occupied government buildings, and checkpoints, which shift hands as they are taken over by armed groups or the Ukrainian security and law enforcement units involved in the security operations, the human rights of the residents of the northern part of Donetsk region and parts of the Luhansk region are threatened.
175. With the demise of security, the rule of law and governance, the protection gap is widening. Armed groups physically occupy key public and administrative buildings in many cities and towns of the Donetsk and Luhansk regions, and have declared virtual "independence". However, they are not undertaking any governing responsibilities. In addition, the atmosphere of fear and intimidation, particularly following the abductions and killing of town councillors and public civil servants, prevent many local officials from going to work.
176. Of particular concern is the continued erosion of the rule of law and the limited capacity of the Government to protect residents from the ever increasing acts of violence. Many of the attacks and abductions by armed groups target journalists, elected representatives and civil



society activists. The number of armed robberies and shootings of residents has also been increasing.

177. The difficulty of providing public services impacts the daily life of residents of the regions, including the disruption of public transport (airports remain closed and rail services are disrupted); numerous checkpoints on the roads; lack of access to cash through banks; and earlier reports of schools and kindergartens being repeatedly closed before the summer holidays began in early June. Regional governments have endeavoured to make the necessary arrangements so that local residents are able to carry on with their daily lives. While this remains possible in the larger cities of Donetsk and Luhansk, and the less affected southern part of the Donetsk region, this is a challenge in the northern part of the Donetsk region. As a consequence, there are reportedly increased numbers of people leaving the area, in particular in the areas of Slovyansk; primarily women with children (see section B, Chapter V).
178. In the main cities, there were a few rallies supporting or opposing the self-proclaimed republics. On 13 May, hundreds of local residents of the Luhansk region addressed a petition to the Government of Ukraine, stating that they did not recognise the results of the “referendum”, and demanding more proactive and effective action to free the region from “terrorists who do not allow us to live in peace” and to pay more attention to the concerns of the population.
179. According to NGOs, the week preceding the “referendum” of 11 May, over 500 apartments were reportedly put up for sale in Donetsk in just a few days as people were seeking means to leave. Since then, an average of 20 families leave the region every day.

#### *Presidential elections*

180. After the “referendum”, representatives of the “Donetsk People’s Republic” openly declared their intention to obstruct the 25 May Presidential election. Physical attempts to disrupt the election in these two regions were stepped up, with reports of attacks against electoral commissions. As a result, the CEC stated that in 24 districts of the Donetsk and Luhansk regions the election was obstructed due to illegal acts by armed groups and supporters of the self-proclaimed “People’s Republics”. According to official CEC figures, 82 % of the voters in the Donetsk region, and 88 % of voters in Luhansk region were thus deprived of their right to vote. Elections of Mayors due to take place in Antratsyt, Lisichansk and Severodonetsk in the Luhansk region also had to be cancelled due to such illegal activities.
181. There was a similar pattern of attacks on District Election Commissions (DEC) and Precinct Election Commissions (PEC). An armed group of between five to fifteen people representing the “Donetsk People’s Republic” would come to a Commission or polling station. Claiming that the Presidential election was illegal, they would seize office equipment and DEC/PEC protocols and stamps. Generally, they would detain the head of the commission for several hours or, in some cases for several days, subjecting individuals to interrogation and reportedly at times ill-treatment and torture.
182. On 13 May, representatives of the “Donetsk People's Republic” reportedly entered a DEC in Horlivka, demanding documents and office equipment and requesting that the staff leave the premises. The electoral staff refused to obey this. Two hours later the men returned, armed with baseball bats. The staff left, grabbing the most important documents and official stamps. A similar incident occurred in a DEC in Starobeshevo (Luhansk region) on 14 May. The DEC members were ordered to leave the building with threats to their families, should they return.

183. On 7 May, unknown groups of people broke into a DEC in Kuybyshevskiy district, seizing equipment containing electoral information. Upon arrival at the scene, the police did not intervene. Other examples of attacks by armed groups on DEC and TECs include incidents in Artemivsk, Donetsk and Metalist (near Amrosiyivka) on 20, 21 and 25 May.
184. Election commission members also faced attacks, with many abducted and detained. On 9 May, an armed group abducted a member of the DEC in Kramatorsk. He was taken to the occupied City Council and released after being interrogated. On 20 May, a member of the PEC in Mariupol was detained by armed persons, beaten up and then released.
185. Skirmishes around the electoral process included an incident on 25 May, when a group of armed people of the “Luhansk People’s Republic” reportedly attacked and stole the ballots from the PEC in Novoaydarsk in the Luhansk region. Ukrainian soldiers pursued the armed group. A violent confrontation took place, during which two members of the armed group were reportedly killed and three Ukrainian army servicemen were allegedly wounded. 14 people were subsequently detained by the Ukrainian army. Other accounts claim that three people were injured and one person was killed.
186. On the election day, five election commission members from Donetsk were detained by armed persons and taken to the SBU building. Following an intervention by the HRMMU with representatives of the “Donetsk People’s Republic” at the occupied SBU building, they were released the next day.
187. Such attacks prevented DEC and PECs to continue their preparations for the Presidential election, which led to widespread limitations to exercise of the right to vote in eastern Ukraine, notably in the regions of Donetsk and Luhansk.
188. On 26 May, the “speaker” of the “Donetsk People’s Republic”, Denis Pushylin, announced that a visit of the newly-elected President Petro Poroshenko to the Donbas would “heat up” the situation in the Donetsk region, and that dialogue was possible only through mediation by the Russian Federation. According to him, the “Donetsk People’s Republic” had proclaimed “martial law” on “its” territory and that a curfew might be imposed in certain areas.

## **B. Right to life, liberty and security**

189. On 9 May, as reported by the MoI, some 60 men armed with automatic weapons stormed and seized the Mariupol Department of the MoI. The security operations which involved the National Guard, the special unit “Azov”, the special unit “Dnepr” and the armed forces of Ukraine, tried to take back the building. As a result, nine people were killed and many were wounded, primarily residents.
190. Unidentified armed persons reportedly started firing from the second floor of the building, and the Ukrainian forces fired back. Reportedly, the National Guard servicemen who were outside started firing at the building with machine guns and rocket propelled grenades. As a result, a fire started in the building. The fire brigade arrived. Those who were inside started running out the building and dispersing in the city.
191. In the early afternoon, while retreating, the special unit “Azov” came across local “Pro-Russian” demonstrators who reportedly tried to stop them. Members of the special unit “Azov” reportedly fired warning shots, first into the air, and then at people’s legs. The HRMMU is verifying this information.

192. After the armed forces left the military base in Mariupol, it was looted by “Pro-Russian” activists, who reportedly took an unknown number of weapons, ammunitions and two armoured vehicles. The Ukrainian security and law enforcement forces were relocated outside the city in an effort to decrease tensions, and for the safety of residents.
193. According to the MoI, 20 armed persons were killed and four captured; while the Public Health Department of the Donetsk Regional State Administration asserts that three persons were killed. The Chief of the Traffic Police was confirmed killed; and the Chief of Police was abducted and illegally detained. On his release on 11 May, confirmed by the MoI, he was found to have multiple injuries. The HRMMU is trying to verify this information.
194. Human rights activists from the NGO Memorial who visited Mariupol on 11 May reported finding 15 wounded men at Mariupol City Clinic Hospital № 1. Six police officers were hospitalised and the first civilian victims were brought later to the hospital. The Mariupol Emergency Hospital received 10 wounded persons, of whom one (a police officer) died. 15 wounded people were brought to Mariupol City Clinic Hospital № 2. As reported to the HRMMU by the human rights defenders, the majority of those wounded were not involved in the fighting.
195. The HRMMU continues to highlight the need for a prompt and comprehensive investigation into these events.

*Abduction and detentions*

196. In the regions of Donetsk and Luhansk, a reported escalation of violence and violations of international law (abductions and acts of arbitrary detention targeting persons not involved in the fighting, intimidation and harassment, torture and killings) by armed groups illustrated the growing erosion of law and order. The HRMMU is increasingly concerned about guarantees for the protection of human rights of the general population. According to the MoI, from April to 7 June 2014, armed groups in the eastern regions abducted 387 people, among them 39 journalists.
197. Below are some of the many cases reported to the HRMMU during the period covered by the present report. The HRMMU is keeping track of reports of abductions and acts of arbitrary detention targeting persons not involved in the fighting, intimidation and harassment, torture and killings in eastern Ukraine. It is trying to verify such reports through direct contacts with the victims and/or relatives or through other reliable sources. From its own records, the HRMMU is aware of 222 cases of abductions and detentions by armed groups since 13 April. Of these, 4 were killed; 137 released; and 81 remained detained as of 7 June.
198. The pattern of abductions consists of groups of armed men taking people away and detaining them in one of the buildings they occupy on the grounds that they are members of the Right Sector and “spies”. Some are released after a few hours, some after a few days, and there are numerous accounts of allegations of ill-treatment and torture.
199. According to local activists from Kramatorsk, on 9 May, about 40 residents of the city were abducted by the “Donetsk People’s Republic”. On 10 May, three “Pro-Ukrainian” female activists not involved in any fighting were abducted and detained by armed persons in Kramatorsk. One of them was released the next day after being reportedly subjected to torture during interrogation. She was subsequently hospitalised in Sloviansk, suffering from broken ribs, a pierced liver, a head injury and multiple bruises. The other two women were released on 13 May and placed under so-called “house arrest”, reportedly prohibited from leaving Kramatorsk.

200. On 8 May, a woman went to Slovyansk to try to secure the release of her son detained by the “Donetsk People’s Republic” and was reportedly abducted by the same armed persons. She has cancer and was undergoing chemotherapy. The whereabouts of a female interpreter was unknown from 4 to 18 May. Upon her release, she reported having been detained by armed groups in Donetsk and to having being subjected to ill-treatment and sexual assault.
201. On 26 May, the OSCE Special Monitoring Mission (SMM) lost contact in the town of Antrazyt, with one of its Donetsk-based teams, consisting of four persons. On 29 May, contact was lost with another team of four in the Luhansk region. As of 7 June, the eight remained detained and their whereabouts unknown. 11 other OSCE SMM members were stopped on 28 May for a few hours at a checkpoint in Mariynka (Donetsk region) before being able to return safely to Donetsk.
202. On 25 May, two officers of the SBU were reportedly detained by the “Luhansk People’s Republic” while attempting to negotiate the release of their colleagues who were being detained. Their current location remains unknown. On 2 June, three police officers of the Amvrosievka District Department of the MoI were reportedly abducted; their whereabouts remain unknown although there are reports they might be detained by armed groups in Horlivka. Two senior police officers went to Horlivka to negotiate their release. They have not returned and their whereabouts is also unknown.
203. The HRMMU was involved in efforts to negotiate the release of individuals detained by the armed groups under the control of the “Donetsk People’s Republic and the “Luhansk People’s Republic”. Following repeated interventions, several civic activists and members of district election commissions were released from the SBU building in Donetsk on 27 May. During the night of 29-30 May, 20 civilians detained in the SBU building were released following discussions between the HRMMU and representatives of the “Donetsk People’s Republic”.
204. The HRMMU appealed to the leadership of the “Luhansk People’s Republic” on 26 May for the release of two detained journalists at the occupied building of the SBU in Luhansk. A similar release took place of a third journalist. They were all detained by armed groups for having covered the elections in the Donetsk region. While in detention, two of the journalists were badly beaten, and were hospitalised upon their release.
205. The emergence of ransom demands is a worrisome trend, following abductions of people from their homes and in some cases accompanied by looting and stealing of valuables, including cars. For example, on 9-10 May, an armed group together with police officers allegedly abducted the parents of a local activist from “Svoboda”, from their home in the village Khanzhenkovo (near Makyivka, Donetsk region). On 10 May, the home of an activist from Kramatorsk was allegedly attacked and items stolen by armed persons. Applicable international law prohibits the taking of hostages for purposes of demanding ransom or political concessions, regardless of whether the victims are of the general population or involved in the fighting.
206. On 26 May, three deputy prosecutors were abducted by armed men, but two were immediately released. The third was subsequently exchanged for three supporters of the “Donetsk People’s Republic” who were being detained in the Lukyanovskoe pre-trial detention centre in Kyiv. That same day, a traffic police officer was taken hostage by an armed group of “Cossacks” in Antratsyt in Luhansk region. The family was asked for a ransom of one million UAH (approximately 80,000 USD).

207. Although most of the persons detained are activists, journalists, and town councillors, NGOs in Donetsk have highlighted to the HRMMU a growing pattern of the systematic persecution against civil society. According to them, fear is spreading in the Donetsk and Luhansk regions, with an increasing number of acts of intimidation and violence by armed groups, targeting “ordinary” people who support Ukrainian unity or who openly oppose the either of the two “people’s republics”.
208. Among cases brought to the attention of the HRMMU, on 14 May, four armed men in camouflage reportedly abducted the principal of a school in Luhansk from the school premises. Allegedly, she had opposed holding the “referendum” on the school premises. She was released a few hours later, but refused to speak about the incident. The same day in Kramatorsk, armed men came to the apartment of an employee and reportedly abducted him. Reportedly they were looking for his 16-year old son, allegedly because of his active “Pro-Ukrainian” position, including in the social media. Since the son was not to be found, they took the father to the occupied building of the Kramatorsk City Council where he was beaten. Allegedly, they eventually found the son and took him to the city council. Both were released a few hours later, and the whole family left the region the same day.

### *Killings*

209. Increasingly residents have been killed by armed groups. On 8 May, the burned body of Valeriy Salo, a farmer and head of a local cultural organization known as a “Pro-Maidan” activist, was found a day after he had been abducted by armed persons from his village. There have also been several reports of killings at checkpoints held by armed groups. That same day, an Orthodox priest was shot dead at a checkpoint near his hometown of Druzhivka, and a couple was also shot dead in their car at a checkpoint in the Luhansk region. Their daughter survived with head injuries. In the same region, on 23 May, a woman who allegedly did not stop at a checkpoint died when heavy gun fire was opened at her car.
210. The HRMMU is also concerned about reports of “summary executions” by representatives of the “Donetsk People’s Republic”. On 18 May, in a village near Slovyansk an elderly farmer was accused of bringing food to the Ukrainian forces, taken out of his house into the yard, where according to witnesses a “sentence” was read in the name of the “Donetsk People’s Republic” and shot dead, in front of his family and neighbours. Reportedly, on 26 May, by order of Igor Strelkov, Dmytro Slavov (“commander of a company of the people’s militia”) and Mykola Lukyanov (“commander of a platoon of the militia of ”Donetsk People’s Republic”) were “executed” in Slovyansk, after they were “sentenced” for “looting, armed robbery, kidnapping and abandoning the battle field”. The order, which was circulated widely and posted in the streets in Slovyansk, referred to a decree of the Presidium of the Supreme Council of the USSR of 22 June 1941 as the basis for the execution.

### *Torture*

211. The HRMMU has been following cases of individuals who have been abducted and detained by armed groups in eastern Ukraine. Several interviews conducted with persons who were abducted provide vivid accounts of human rights abuses committed by representatives of the “Donetsk People’s Republic” and the “Luhansk People’s Republic”, including beatings, psychological torture and mock executions. There are instances of relatives of detained persons, including women and children, having been threatened and terrorised. Witnesses also mention having seen supporters of the “Donetsk People’s



Republic” and “Luhansk People’s Republic” being detained and subjected to harsh punishment for looting or insubordination.

212. Among the numerous cases reported to the HRMMU, a journalist from Lutsk who was abducted by armed groups in Donetsk on 25 April, stated that during 23 days of his detention, he suffered from permanent lack of drinking water. He was reportedly tortured with electric shocks, beaten repeatedly over the head with a heavy book, and his captors reportedly tried to cut off one of his fingers.
213. An activist of “Batkivschyna”, abducted on 22 May and detained by supporters of the “Donetsk People’s Republic” in Donetsk, reported being subjected to torture and forced labour while in detention. He stated that he only received food twice in the five days he was detained. He was interrogated about affiliation with the “Right Sector”, with “Euromaidan”, and trips to Kyiv. During one of the interrogations he was reportedly subjected to a mock execution.
214. Three activists of a local human rights NGO were detained in Donetsk on 27 May and released on 1 June. They were taken to the occupied building of the Makiyivka Department of Organized Crime Control, and interrogated on a daily basis, accused of being affiliated to the “Right Sector” and the Ukrainian military. Both of them allege having been tortured.

#### *Enforced disappearances*

215. The HRMMU has received credible reports of individuals being detained in conditions that amount to enforced disappearance, and has a list of 11 such cases.
216. On 10 May, units of the Ukrainian armed forces allegedly detained a streamer, who was covering the activities of armed groups, in particular, the attacks on the government buildings in Donetsk region. The HRMMU filed a request to the Ministry of Foreign Affairs (MFA), asking about the current location of the individual. On 15 May, the HRMMU was informed by the MFA that a criminal case was opened by the MoI under the Article 115 (Murder) of the Criminal Code.
217. In an earlier case of concern, working with the National Preventive Mechanism (NPM), the HRMMU was able to identify the location of an individual whose whereabouts had been unknown for nine days. The location of an activist of the “Donetsk People’s Republic” was identified on 26 May, after he had been allegedly detained by the National Guard on 17 April in the area of Amvrosiyivka. After enquiries made by the NPM, the activist was located in the pre-trial detention centre in Dnipropetrovsk. It remains unknown who exactly arrested the activist and why access was not granted to him for nine days. The NPM confirmed that he had no health complaints, besides having "a few minor bruises" on his body. It is checking on access to legal counsel for him. It is also unclear whether the activist has been officially charged.
218. This has put in motion a good practice for partnership with the NPM on such cases, which was key in drawing attention to the case of the enforced disappearance for six days of two LifeNews journalists, Oleg Sidyakin and Marat Saychenko. Both were detained on 18 May near Kramatorsk during a raid by Ukrainian forces against armed groups. The whereabouts of the two journalists was unknown until their release on the evening of 24 May, when they were flown to Moscow via Grozny. All attempts by their lawyers to be in contact with them, and gain some access to the two individuals, had failed. The HRMMU worked with the lawyers of the two journalists, and with others including the Ombudsperson, the NPM and the MFA. Through these institutions, requests were made on the case to the General Prosecutor, MoI and SBU. Upon their release, the journalists



asserted that they were beaten in the first two days of their detention, initially held in a hole, blindfolded with hands tied, and then transferred to Kyiv. For the period from 18 May to 24 May, the journalists were effectively held in conditions that amounted to enforced disappearance.

219. The HRMMU was also looking into the detention conditions of supporters of the “Donetsk People’s Republic” and “Luhansk People’s Republic” detained by the Ukrainian forces during the security operations. Regular visits to places of detention take place, including in Kyiv when persons arrested have been transferred to detention facilities in the capital. The HRMMU actively cooperates with the Ombudsperson and the NPM to make sure the human rights of detained persons are upheld, including from the point of view of access to medication and to the services of a lawyer.

#### *Children*

220. The HRMMU is particularly concerned about the impact of the situation in eastern Ukraine - especially in the area between Donetsk and Slovyansk - on the human rights of women, and the most vulnerable persons - children and persons with disabilities, including those in institutional care, older persons, and those needing medical assistance.
221. According to a rapid psychological assessment of 204 children conducted by the UNICEF<sup>17</sup> in four cities of the region of Donetsk from 15 to 22 May, nearly every second child experienced fear, anger, sadness or problems with sleep. Other behavioural changes were also observed in a number of children.
222. According to Donetsk Regional State Administration, in the period between 9 – 30 May, seven children had been wounded as a result of the illegal activities of the armed groups. According to credible reports received by the HRMMU, 14 children from the children’s institution in Slovyansk have been evacuated from the city. An NGO in Kharkiv expressed concern that there were no evacuation plans for persons with disabilities living in closed institutions. On 7 June, the Ministry of Social Policy informed the HRMMU that out of 1,494 children who are in closed institutions (children’s institutions, shelters, and so forth) in Donetsk region, 663 have been evacuated; in Luhansk region out of 760 children, 464 have been evacuated.
223. As fighting intensifies and with the end of the school year on 30 May, parents are reportedly increasingly looking for ways to evacuate their children to safety. There is information that a group of children from Slovyansk has arrived in Crimea and most recently on 6 June to Odesa. On 30 May, various media outlets informed that a group of 148 children from Slovyansk was taken to a summer camp in Crimea. There were also reports that on 31 May, a group of 21 children crossed into the Russian Federation on foot, after having to disembark from their bus at the border. This information cannot be verified by the HRMMU.

#### **C. Freedom of expression**

224. Journalists’ safety continues to be a serious issue in the Donetsk and Luhansk regions due to fighting between the Government’s security forces and armed groups. On 24 May, an Italian photojournalist, Andrea Rocchelli, and his interpreter, Andrey Mironov, Russian citizen, were killed under mortar fire, while covering fighting between government forces and armed groups in Andreyevka near Slovyansk, Donetsk region. On 9 May, it was

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<sup>17</sup> UNICEF, Rapid Psychosocial Assessment of Children in Donetsk Oblast, 2014.

reported that a freelance cameraman of the video agency RUPTLY, which is part of the TV channel Russia Today, was wounded while filming events in Mariupol. Reportedly, he received necessary medical treatment and is in satisfactory condition.

225. The working environment for journalists has become increasingly dangerous, with the threat of abduction and illegal detention by armed groups. On 7 May, it was reported that armed groups in Luhansk offered a reward of USD 2,000-10,000 for each detained journalist. The HRMMU continues to closely monitor cases of detentions of journalists in Donetsk and Luhansk regions. Although all but one of the journalists abducted and known to the HRMMU before 6 May (cut-off date of the previous report) have been released, the HRMMU is aware of new cases abducted after that date. The HRMMU interviewed many of the released journalists, who reported ill-treatment, beatings, and sexual harassment (of women). They also confirmed the fact that other detainees were being kept in the seized administrative buildings; but the exact number and their identities remain unknown.
226. Also, journalists and editorial offices continue to be threatened and intimidated by armed groups. For instance, on 14 May, the HRMMU received credible reports that those journalists who work in the region but refuse to comply with the orders of the “Donetsk People’s Republic” are threatened and harassed. Reportedly, the state regional television is in a particularly difficult situation; its office has been practically blocked by approximately 100 heavily armed men. On 21 May, an unidentified man called the editorial office of the Public television of Donetsk region and threatened its journalists.
227. Local journalists have reported having to flee Donetsk and Luhansk regions due to such threats and intimidation. On 8 May, two journalists from Donetsk had to move to Lviv out of fear of persecution and threats. On 13 May, an internet resource in Severodonetsk (Luhansk region) announced the forced suspension of activities and advised its journalists to leave the town because of growing pressure and threats against their lives from the armed groups. On 27 May, the editorial office of another local web-based outlet was forced to relocate to a different town, reportedly, due to threats from the self-proclaimed “Army of the South-East”. On 26 May, it was reported that the publisher and editor in chief of one of the local newspapers in Kramatorsk was forced to flee the region with his family due to threats they were receiving after he had refused to publish materials armed representatives of “Donetsk People’s Republic” demanded him to publish.

#### *Arbitrary arrests of journalists*

228. In the reporting period, Ukrainian and Russian journalists have been arbitrarily arrested; this raises concerns about the possibility for journalists to conduct their professional activities safely.
  - On 10 May, a journalist of Russian TV channel Kuibishev 61, was allegedly detained by the Ukrainian security forces at a checkpoint on the road between Slovyansk and Kramatorsk. His whereabouts remain unknown to the family. On 22 May, the HRMMU sent an official inquiry to the MoI (via the MFA) about the case. On 5 June, the HRMMU was informed that as of 15 May a criminal investigation had been opened under Article 115 (Murder) of the Criminal Code. The HRMMU has requested more information on this case.
  - On 15 May, a journalist and cameraman of the ICTV Ukrainian channel were arrested on the border (Kharkiv / Belhorod) while performing editorial tasks by the Border Service and Federal Security Service of the Russian Federation,. Reportedly, after more than 15 hours of questioning without water and food and deleting all photo and video materials, the journalists were released.

- Two LifeNews journalists, Oleg Sidyakin and Marat Saychenko, were detained on 18 May near Kramatorsk during a raid by Ukrainian forces against the armed groups. They were released on 24 May (see section B, chapter V).
- The HRMMU also followed closely the case of a British journalist working for Russia Today detained by the National Guard in Mariupol on 20 May for allegedly filming military objects. He was released on 21 May and transferred to the Consulate of the United Kingdom in Kyiv. After his release he tweeted details of his detention, including that he had been treated fairly.
- On the night of 6 June, two journalists of the Russian TV station “Zvezda” were detained by the National Guard of Ukraine (NGU) at a checkpoint near Slovyansk. According to their driver, who was also initially detained and later released, the journalists were cuffed, balaclavas were put on their heads, and they were forced to kneel down in a ditch (allegedly, to protect them from possible shooting). On 7 June, the NGU issued a statement saying that journalists were suspected of monitoring and collecting information. The MFA of the Russian Federation reportedly filed a note of protest to the MFA of Ukraine. On 8 June 2014, the TV station “Zvezda” received information from the SBU that the two journalists were in good health. They were released on 9 June and transferred to the Russian Federation.

*Obstruction to lawful professional journalist activities*

229. On 11 May, it was reported that Ukrainian journalists were not allowed to photograph or film the voting process during the “referenda” in the Donetsk and Luhansk regions.
230. The same instances were reported prior and during the election day on 25 May. For instance, the journalists of the Voice of America were warned not to film the seizure of one of the polling stations in Donetsk.

*Attacks on editorial offices and TV towers*

231. In the reporting period, there has been a growing number of armed attacks on the editorial offices of the local media outlets by armed men. Some of the examples are provided below.
- On 7 May, the office of the local newspaper “Hornyak” in Torez (Donetsk Region) was reportedly attacked and its equipment was broken and damaged.
  - On 8 May, the independent newspaper “Provintsiya” in Kostyantynivka was attacked by armed, masked men, allegedly members of the “Donetsk People’s Republic”. The editors were told the paper was “closed” and taken to the “city commander’s office” situated in the occupied building of the City Council, where they were threatened and suggested to leave the town. The police was called, but did not interfere or arrested the attackers. The editors did not file a complaint because they do not trust the police will act and because they feel threatened and fear for their lives.
  - On 11, 13, 19 and 20 May, armed groups shelled the TV tower in Slovyansk, which led to interruptions in broadcasting. On 14 May, in Kramatorsk, the armed groups blocked the TV tower, which transmits the channels not only for Kramatorsk, but also Slovyansk, Horlivka and Makiivka.

### *Censorship / access to information*

232. According to NGOs, freedom of media in the Donetsk region is severely curtailed, with Ukrainian TV channels switched off by the “Donetsk People’s Republic” and replaced by the its own media programmes and Russian TV. Some of the examples include the following:
- On 8 and 25 May, armed group stormed the office of the local TV Channel “Union” with demands to report about the activity of “Donetsk People’s Republic” and declared their intent to control the activity of journalists. The target audience of the channel is about 3 million people in nine towns of Donetsk region.
  - On 8 May, under threat of physical violence from the armed groups, the company “Vokar Holding” was forced to stop retransmission of Ukrainian TV Channels: “Inter”, “Ukraine”, “1+1”, ICTV, STB, “New Channel”, “5<sup>th</sup> Channel”, “112 Ukraine”, and “TVI” in Severodonetsk, Luhansk region. Instead the Russian channels were broadcasted. The same incidents occurred throughout May in Luhansk and its region (Krasnyi Luch, Alchevsk).
  - On 2 June, armed members of the so-called “Donbas People’s Militia” arrived at the office of the newspapers “Donbas” and “Vecherniy Donetsk” and blocked all entrances and exits. They abducted the editor-in-chief of the “Donbas” and his deputy and the editor-in-chief of “Vecherniy Donetsk”. The armed men reportedly used psychological pressure and death threats to change the editorial policy of the newspapers and ensure more positive coverage of the “Donetsk People’s Republic”. The three editors were eventually released on 3 June after which all the “Donbas” employees were sent on leave and the newspaper stopped its publication. Also, the HRMMU has noted specific hate speech on the “official” media outlet of the “Donetsk People’s Republic” “Anna Info News”. On 20 May Oleksandr Mozhayev, known as "Babai" (a fighter participating in the armed groups) referred to the on-going operations as a “Holy War” and spoke of exterminating America.
  - On 5 June, a local cable TV and Internet network provider in Donetsk terminated the broadcast of Ukrainian channels: “1+1”, “Donbas”, “UBR” and “News24” at the demand of “Donetsk People’s Republic” representatives.

### *Propaganda*

233. The HRMMU reiterates the importance to counter misinformation, incitement to hatred, discrimination, and violence. As an example, the “Donetsk People’s Republic” denied all responsibility for the attack near Volnovakha, claiming that it was the National Guard “paid by Kolomoiskiy” which perpetrated this attack on the Ukrainian military. On 27 May, LifeNews posted a photo of a wounded child stating he was shot in the Donetsk International Airport; however the StopFake.org experts discovered that the photo was from the Syrian city of Aleppo in April 2013. Although the original publication in twitter was deleted, the photo was widely used for similar posts on alleged shootings of children. A different photo with a dead boy's body in a coffin was used for similar messages of alleged shooting of children in eastern Ukraine. The photo, however, was made in 2010, in the Crimean city Dzhankoy, of a boy killed by a local criminal.
234. Similarly, various videos became viral, allegedly showing either atrocities by the Ukrainian army, seizing of "Grad" complexes by armed groups, or of the use UN symbols on Ukrainian helicopters used in the security operations. It was also demonstrated that originals of such videos were also filmed earlier in the Russian Federation or in other countries, and had nothing to do with the current events in Ukraine.

235. Misinformation adds to the instability and fear which affect the lives of people in the region, and all sides should refrain from using it, especially to the extent that it amounts to advocacy to national hatred that constitutes incitement to discrimination, hostility or violence, which is prohibited under Article 20 of the ICCPR.

#### **D. Freedom of religion or belief**

236. On 15 May, the Ukrainian Orthodox Church of the Kyiv Patriarchy (UOC-KP) condemned the violence and threats to the life and health of the clergy and the faithful of eastern Ukraine by armed groups. The statement by the Holy Synod of the UOC-KP calls for the Moscow Patriarchate to condemn collaboration with the supporters of the self-proclaimed “people’s republics” and distance itself from it. The UOC-KP requested the Government of Ukraine to protect the clergy and congregation of the Kyiv Patriarchy in the Donetsk and Luhansk regions from the attacks and threats of the “criminals”.
237. In the statement, the Church also appeals to the international community and inter-religious social human right organizations to pay attention to the infringement of rights of the believers of UOC-KP in the eastern parts of Ukraine and in Crimea.
238. In Donetsk, numerous attacks against the inter-religious Prayer Marathon (attended by all major denominations except the Moscow Patriarchy) took place almost on a daily basis in May, including heavy beatings of participants, the destruction of property, and threats to organisers and volunteers. On 23 May, after a repeated attack by 15 representatives of the “Donetsk People’s Republic”, in an attempt to discuss security arrangements for the Prayer Marathon, its coordinator allegedly went to the occupied building of the Donetsk Regional State Administration. While there he was allegedly heavily beaten and had to seek medical assistance. The Prayer Marathon has continued gathering in June. No incidents have been reported.
239. Reports have also been received of other denominations being attacked, for example, Protestants.

#### **E. Economic and social rights – impact of the violence**

240. As background to the situation in the eastern regions and the current impact on economic and social rights being faced by the local population, the HRMMU recalls that Ukraine is a middle-income country, ranked 78 in the Human Development Index in 2013.
241. The recent evaluation of the UN Committee on Economic, Social and Cultural Rights (ESCR) published on 23 May 2014, highlighted the positive steps of the Government in ratification of, or accession to, various human rights instruments. At the same time the Committee identified major problems that have an adverse impact on the enjoyment of all human rights, including the large extent of corruption, discrimination against Roma and Crimean Tatars, a low level of social standards, unemployment among youth, around 30% gender pay gap, employment in the informal economy, a stable poverty rate of 24.7%, absence of a health insurance system, and low expenditure on health care.
242. The Committee made related recommendations to address the root causes of the aforementioned challenges.
243. The violence and security operations in the eastern regions has had a direct impact on the existing level of enjoyment of economic, social and cultural rights, and has also influenced



the State capacity to progressively realize the rights and comply with the Committee's recommendations in the areas struck by the conflict.

#### *Right to education*

244. Despite the efforts of the Donetsk Department of education and science, as well as school administrations, studies had to be suspended in several towns of the Donetsk region in May. In Slovyansk, Krasnyi Lyman and Krasnoarmiysk, 62 schools and 46 kindergartens were not functioning, which affected 21,700 students and 5,600 children, respectively. On 28 May, it was reported that during the fights in Slovyansk two school buildings have been damaged; no one was injured.
245. In other towns in the Donetsk region schools remained open, but attendance varied from 25% in Slovyansk district to 98% in Makiivka district.
246. Most schools in the Donetsk and Luhansk regions managed to complete the academic year, which finished on 30 May. The main concern had been the organisation of the "External Independent Assessment"<sup>18</sup> for the students of these eastern regions. On 29 May, the Ministry of Education announced that testing in these regions would be postponed until 11 July to 27 July, and if necessary could be postponed again.
247. Following instructions issued by the Ministry of Education and Science, all universities in the eastern regions had to ensure that foreign students finished their studies earlier, by 20 May, so that they could leave the country.<sup>19</sup>
248. Reportedly, school administrations have faced various forms of pressure from representatives of the "Donetsk People's Republic" including in the preparation and holding of the "referendum" of 11 May, as well as establishing temporary "hideouts" in school premises.

#### *Right to health*

249. Due to the growing number of wounded, hospitals are overcrowded and understaffed. As of 28 May, in order to minimize the risk to life and security of patients, the Regional Hospital of occupational diseases in Donetsk partially discharged patients whose medical condition did not require in-ward treatment. A sanatorium for children with cerebral palsy was closed in Donetsk due to its proximity to the occupied Security Service of Ukraine building. On 26 May, Children's Hospital Nr 1 and city hospital Nr 18 had to close due to the proximity to Donetsk airport<sup>20</sup>.
250. Access to medical services, treatment and supplies for residents in areas most affected by the fighting is becoming more and more challenging. This is of particular concern as more residents are caught in the crossfire between the armed groups and Ukrainian forces. The

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<sup>18</sup> A final test for the high school students to enter universities in Ukraine.

<sup>19</sup> On 29 and 30 April, The Ministry of Education and Science issued two letters Nr 1/9 - 228 and Nr 08.01-47/12033 instructing all universities of Ukraine, particularly in the East, to terminate the studies of all foreign students by 20 May, which is much earlier than usually. Reportedly, the decision was made upon request of the embassies of foreign countries so that foreign students could complete exams and leave the country if they wish so due to the security situation. Allegedly, at the end of April there were two attacks in eastern regions on foreign students; however the HRMMU could not verify these facts.

<sup>20</sup> On 26 May 2014, approximately 20-30 armed representatives of the "Donetsk People's Republic" reportedly arrived at Donetsk International Airport. According to the Press-Secretary of the Donetsk International Airport Dmytro Kosinov, they demanded the Ukrainian Armed Forces, which were guarding the airport, to withdraw. Fighting broke out at 7.00 a.m. and at that time the airport was closed. It was reported that it will stay out of service till 30 June. According to some reports the main terminal was partially destroyed and some fighting is still on-going there.



situation is most difficult in Slovyansk. The overcrowded, understaffed and under resourced hospitals are only admitting those who are severely injured. Primary Health Care services are overloaded and at times called to provide treatments and care that are within their capacity. Patients from the Mental Health Hospital (229 persons) were evacuated from Slovyansk. All emergency services have been relocated to the nearby village of Mykolayivka, with a number of medical number units set up in Svyatohirsk (location of a large Russian Orthodox monastery - the Lavra). Some patients were transferred to Poltava region. Pharmacies are open only a few hours per day.

251. The delivery of supplies, particularly medicines, becomes more complicated every day; especially with the Donetsk airport being out of service. Reports and requests sent to the UN agencies indicate the lack of specific medications, including some antibiotics, pain-killers, vaccines and consumables. In Donetsk, insulin was distributed to various locations; however, such deliveries are becoming more difficult. Supplies of food in hospitals are running low.
252. There have been reported difficulties to ensure uninterrupted provision of opioid substitution therapy (OST)<sup>21</sup>. This directly affects 759 persons (56% of whom are HIV positive) in Donetsk region and 609 (13% are HIV positive) in Luhansk region. According to the HIV/AIDS Alliance and the World Health Organisation, in a number of cities, such as Slovyansk, the healthcare facilities providing OST are completely controlled by armed groups. The fact that pharmaceuticals in the healthcare facilities in the districts have fallen beyond the legitimate authorities' control, is in its essence a certain risk factor for medical staff and patients. On 30 May, OST treatment was stopped for more than 100 patients in Mariupol, due to drugs not being delivered because of the security situation. As of 2 June, HIV service organisations reported that for some patients such an interruption in treatment had resulted in people using illegal drugs. In the long run, this may lead to an increase in cases of HIV and hepatitis infections due to intravenous drug use. Due to the numerous check-points and blocked roads, as well as interruptions in public transport, the specialized hospital for HIV/AIDS patients in Yasynovata, Donetsk region, is practically inaccessible.

#### *Conditions for treatment of patients*

253. The conditions for the treatment of patients, including those who have been wounded in fighting and violence, are precarious. As the security situation deteriorates, so does the access to hospital care and the quality that can be provided by medical professionals. For example, in Slovyansk, medical personnel were already highlighting the problems with the delivery of medical supplies to the city. In the regions affected by violence and the ongoing security operations, hospitals are trying to allocate what funds they have to purchase the medical supplies they require. In early June, some hospitals in Donetsk discharged patients, except those in critical condition or those who were immobile, leaving the hospitals almost empty.
254. Due to the lack of trust regarding law enforcement, both the medical personnel and patients try to conceal the facts and nature of wounds (the standard protocol is that medical institutions have to report any gunshot and/ stab wounds to the police). The HRMMU has received credible reports that doctors are at times trying to ensure the security of the wounded.

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<sup>21</sup> This has been an integral part of the widespread implementation of harm reduction programmes. These programmes are an essential element in controlling HIV/AIDS and other infectious diseases among injecting drug users in Ukraine, as elsewhere in Eastern Europe.

255. Cooperation with local civil society and community volunteers is an important part of treatment of those who suffered in the recent months. The volunteers, local NGOs, political parties and priests donated money, clothes, food, and medical drugs and provided psychological support. In some cases, when expensive purchases were necessary – such as plates for head surgery – they were purchased by charitable organizations, which also provided financial support to the victims after they were discharged from the medical institutions – to receive rehabilitation treatment in sanatoria. In the local hospitals where the wounded were brought – such as after the shooting on 22 May near Volnovakha in the Donetsk region – there were instances when the local community cared and protected the wounded, bringing them medical drugs, food and clothes.
256. Security in hospitals has been reported to the HRMMU as a concern with patients having to be protected from potential abductions by armed groups. The officials from the Donetsk Regional State Administration confirmed that such kidnappings of the wounded had taken place, however there is no official record of such cases, thus no exact figure could be provided. There is also an increased risk for healthcare professionals themselves, particularly if it involves moving around in the case of ambulance medical teams.

*Right to an adequate standard of living*

257. Since 17 May, prices for basic commodities (including bread) have been rising by a minimum 0.73 Hryvnia (UAH) and 1-2 UAH on average due to higher risks of production and delivery of goods into the occupied towns through numerous checkpoints. Seasonal vegetables and fruits are 4-5 UAH more expensive than usual.
258. Also, due to increased cases of looting, private businesses and retailers prefer to close down, which creates scarcity of supply. Consequently, while the minimum set of products is always available, the variety is much less. Often times there are interruptions in delivery of dairy products, fruits and vegetables, and non-alcohol drinks.

*Housing*

259. The HRMMU is concerned when security operations take place in residential areas of towns and villages of the Donetsk and Luhansk regions. As of 30 May, there had been reports of ruined residential buildings in Slovyansk, Kramatorsk and Donetsk. Additionally, on 7 June, it was reported that nine houses were damaged by the Ukrainian army shelling in Semyonovka near Slovyansk.
260. The HRMMU will raise this and other similar issues with the Ukrainian Government, including advocating for monetary compensation to be awarded to the victims for damages to their property in the course of these security operations.

*Electricity and water supply*

261. As of 18 May, in the Slovyansk region, 22 electrical sub-stations stopped functioning. As a result, more than 2,000 households were left without access to electricity. According to the Press-service of the company “Donetskoblenergo”, the company has all the necessary material and human resources for reconstruction. However, repair crews are unable to access the site due to the ongoing security operations.
262. In the northern part of the Donetsk region, the supply of water supply is increasingly under threat, with regular interruptions. Moreover, as of 3 June, residents of Slovyansk, Konstyantynivka, Druzhkivka and Kramatorsk (cities in Donetsk region) had no access to running water, due to damage to the water supply reportedly as a result of the security operations.

*Social security (services and benefits)*

263. Due to the deteriorating security situation in the Donetsk and Luhansk regions, it is a growing challenge to ensure continuous work of State institutions. On 14 May, the Pension Fund department resumed its work (after the seizure of its building on 5 May) in Slovyansk, but the department's office hours were cut. On 15 May, it was reported that the National Bank of Ukraine suspended<sup>22</sup> the operations of its office in Donetsk region due to the threats by the representatives of the "Donetsk People's Republic". On 15 May, the Ministry of Revenue and Duties of Ukraine also evacuated the staff of its directorate and tax inspections in the region.
264. On 7 June, the Ministry of Social Policy informed the HRMMU that all social payments had been made to the regions of Donetsk and Luhansk. However, there were major challenges in delivering cash to Antratsyt in Luhansk region and Slovyansk and Kramatorsk in Donetsk region. The Ministry has already addressed the MoI and SBU to develop a mechanism of the safe delivery of cash to these regions if the situation remains the same or aggravates.
265. On 30 May, the head of Department of Marketing Communications of the Novokramatorskiy Machine-Building Plant Volodymyr Zhuliy spoke of the imminent "humanitarian catastrophe" in Kramatorsk, due to the termination of the work of the city department of the State Treasury of Ukraine since 20 May. In particular, Mr Zhuliy mentioned that thousands of the city's pensioners, local governance workers, educators and public health workers were deprived of the means for existence. Reportedly, the Treasury's debt to the workers and pensioners in Kramatorsk for the payments due in May already amounted to UAH 61.4 million.

*Increased lawlessness resulting in loss of individual property*

266. On 15 May, the Parliament Commissioner for Human Rights informed the HRMMU that there are numerous incidents in Donetsk and Luhansk regions when the armed groups' members seize personal phones and especially cars from ordinary citizens. The police rarely intervene or take any action, as they are usually unarmed and thus unable to perform their functions in the current situation. Consequently, although criminality is increasing, there is nobody to apply to in case of an alleged crime, and no effective means to intervene for police. It also becomes dangerous for persons to report about such crimes, so in most cases they chose to leave the region. The increase in criminality is, in the view of some, returning the regions to the "lawlessness of the 1990s":
- For example, on 8 May, the private residence of a local activist was allegedly shot at from a car; the attackers broke into the house and looted everything of value. The police called by the neighbours, allegedly made several photos of the location, but did not even walk into the building. Reportedly, the activist left the region to Kharkiv with his family, due to previous threats to his life, including attempted arson of his home with Molotov cocktails on 4 May.
  - On 15 May, owners of car-dealerships in the cities of Donetsk and Luhansk regions formed rapid response groups to protect their businesses against attacks aimed at robbery that have multiplied since the beginning of May.
  - On 28 May, the HRMMU spoke to one of the local political leaders in the Donetsk region. He reported that his legal firm's office was ruined when attackers took his computers, documentation on the legal cases and stole the firm's car. He

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<sup>22</sup> The staff of the Bank was evacuated, and online banking in the region was reportedly suspended.

was also detained for 7-8 hours and subjected to life threats, inhumane treatment and beating. After his release he fled the region together with his family.

#### *Labour rights*

267. There are growing concerns about the ability of enterprises in Donetsk and Luhansk regions to continue functioning due to the on-going fighting, targeted attacks and intimidations by the armed groups.
268. The presence of uncontrolled armed groups and rise of criminality obstruct the business activity of entrepreneurs, which first of all affects small companies in the sphere of services and retail (banks, logistic companies, stores, petrol stations, and bakeries).
269. On 20 May, the Mayor of Donetsk, Oleksandr Lukyanchenko, stated that a wide range of enterprises do not work in full capacity and some of them suspend production, in particular, “Donetsk Metallurgical Plant” employing approximately 2,100 persons.
270. On 29 May, the Secretary of the National Security and Defence Parliamentary Committee, Sergey Kaplin, stated that due to the current events in the Donetsk and Luhansk regions, approximately 60 % industrial enterprises of companies were forced to suspend their work, leaving thousands of employees without regular income.
271. There also have been armed attacks on mining companies, which constitute the main share of the regions’ economy. On 9 May, it was reported that local miners repelled an attack by the pro-Russian supporters of the “Donetsk People’s Republic”, who attempted to take down the Ukrainian flag and threatened the miners that they would throw explosives into the mine’s shafts for their disobedience. Allegedly, the miners decided to organize their own “self-defence” to protect themselves. On 19 May, there were armed attacks on the operational and closed coal mines in Horlivka, Donetsk region. On 22 May, a group of unidentified armed individuals allegedly captured four operating mines of the JSC "Lysychanskvuhillya" in Luhansk region. All of the four attacked mines temporarily suspended production activities. Reportedly the armed men pointed guns at the mines’ workers, demanding to supply them with explosives. The Ministry of Energy of Ukraine appealed to the SBU demanding that necessary steps be taken to protect the mines. Previously, on 26-27 May, due to pressure by the armed representatives of the “Donetsk People’s Republic” on the “Donetsk Coal-Mining Company”, coal production was suspended at several mines, including “Octyabrskiy Rudnik”, “E. Abakumov”, “A. Skochinskogo” and “Trudovskaya”.
272. On 20 May, Denys Pushylin, “speaker” of the “Donetsk People’s Republic”, announced the launch of the nationalization campaign in the region. According to their official sources, Mr. Pushylin blamed the local oligarchs’ unwillingness to pay taxes to the “republic’s” budget, and their opposition to the interests of Donbas as the reason for the adopted decision to start the nationalization. In particular, Mr Pushylin blamed Renat Akhmetov, owner of the company System Capital Management.

#### *The broader impact of the crisis in the eastern regions of Ukraine*

273. Recent developments in the country have already negatively affected the financial and banking system. In the first quarter of 2014, the national currency depreciated by 27%, dramatically reducing incomes and salaries. Whereas the average monthly wage in December stood at \$453, by March it had dropped to \$343. This also puts significant pressure on those who have loans in foreign currencies.

274. After remaining quiescent for more than two years, inflation rates have shot up with a 6.8% increase in consumer prices reported for the beginning of May being the highest year-on-year inflation rate recorded since 2011.
275. Food prices have increased by 8.2% above 2013 levels, bringing the socio-economic crisis to many households in Ukraine. Large price hikes were reported for sugar (59%), vegetables (33%), and dairy products and eggs (10%).
276. Other inflationary pressures are now gathering, for example in the form of increases in communal service tariffs. Household gas prices shot up 56% on average in May; a 40% increase in heating tariffs is scheduled for July. These higher tariffs are projected to increase the numbers of low-income households from 1.4 to 4 million during this time.
277. Should these tariff increases be accompanied by a further weakening of the UAH, Ukraine's inflation rates could dramatically accelerate. Even in the best case scenario, consumer and food price inflation rates seem likely to remain in double figures for the rest of 2014, and going into 2015. These developments will place increased pressure, and need, for Ukraine's social welfare system to cushion the impact, particularly for the most vulnerable.
278. The 63 billion UAH deficit recorded on the consolidated government budget in 2013 (some 9% of GDP) is regarded as unsustainable by both the Government and the International Monetary Fund (IMF). Fiscal austerity in 2014 is therefore required. Although a justified measure, it may do little to boost the country's long term competitiveness or development prospects. Already in the first quarter of 2014 Government expenditure<sup>23</sup> in the health sector declined by 5%, and in the education sector by 8%, compared to the budget allocations in 2013. At the same time, the Government has been able to increase spending on social protection by 2% (which includes expenditures on both social assistance and social insurance) for 2014, which may lessen the hardships and pressures that many Ukrainian households are now facing.
279. The economy of the eastern region has already been in decline since April 2014, and it is likely to deteriorate further in any protracted situation of violence and fighting. Business is in decline in the region; personal income is decreasing; investments are dwindling. Compared to 2013, in the first quarter of 2014 investments in the eastern regions had significantly declined. In the annual rating Donetsk region moved from third place in 2013 to twenty-second place in 2014, and the Luhansk region from ninth to twenty-third.
280. Any exacerbation of the violence will lead to the further decline of industrial production in the region and Ukraine as a whole. The industries of the Donetsk and Luhansk regions account for 18.5% and 6.1% of all production in the country respectively. Such a decline would therefore increase the imbalance between the income of the state budget from the Donbas and expenditure provided to the region. This will augment the budget deficit. One result could be that it would jeopardise compliance with the agreed parameters of the IMF loan.
281. Official statistics released in May indicate that Ukraine's GDP dropped 1% in the first quarter of 2014. The recession is expected to worsen over the course of the year: IMF and the Ministry of Economic Development and Trade forecast a 3% decline in GDP, while other, more pessimistic forecasts point to 5-10% declines in output and income. The largest decline in exports (70-85%—relative to the fourth quarter of 2013) has already

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<sup>23</sup> Changes are given in real terms: changes in nominal expenditure amounts divided by changes in the consumer price index.



been recorded in the regions of Donetsk, Luhansk, Cherkasy, and Khmelnytskyi, as well in the Autonomous Republic of Crimea. Any collapse in exports could trigger a decline in industrial output, and subsequently in household incomes and livelihoods. These trends should be closely monitored.

282. There are concerns that if these macro-economic tendencies continue, the State will no longer be able to guarantee existing social standards, which could lead to the social unrest spreading throughout the country.

## VI. PARTICULAR HUMAN RIGHTS CHALLENGES IN CRIMEA

### A. Civil and political rights of Crimean residents

283. Crimean residents faced difficulties in exercising their civil and political rights. A very small number participated in the Presidential elections of 25 May. Simplified registration procedures had been put in place to ensure that residents of Crimea and persons who resettled from Crimea to other regions can take part in the vote. Ukrainian citizens living in Crimea had to register in person at any polling station on the mainland no later than five days prior to the elections. The HRMMU monitored the situation near Kherson, where most of the Crimean voters had registered. Some 20 cars had left Crimea and were welcomed by local authorities. They drove to the polling station in a column with Crimean and Ukrainian flags. Prior to the election they had been summoned by the Crimean police for “conversations” and issued ‘warnings’ about the unacceptability of ‘extremist activities’. While the cars were crossing the administrative border, representatives of the Crimean ‘self-defence’ reportedly wrote down license plates, passport numbers and driving licenses’ details. Among those who intended to vote, many allegedly did not do so because of the cost of travelling, the uncertainty linked to having to cross the administrative border and the fear of reprisals by the authorities in Crimea.
284. During its month-long monitoring of events in Crimea, the HRMMU noted a continuation of worrying trends, including instances of enforced disappearances, arbitrary detentions, violence and ill-treatment committed by the so-called ‘Crimean self-defence’, often targeting journalists, human rights defenders and political opponents, and impunity for human rights violations. Furthermore the enforcement of the Russian Federation law on the territory of Crimea, at variance with UN General Assembly resolution 68/262 and applicable bodies of international law, is creating difficulties for Crimean residents to enjoy their human rights, as there are many differences with Ukrainian laws.

#### *Rule of law and the judiciary*

285. The judicial system remains practically paralyzed. Ukrainian laws will be in effect in Crimea until 31 December 2014<sup>24</sup>. Nevertheless, the judicial system is already being transformed to use Russian laws: restriction measures are implemented pursuant to the Criminal Procedural Code of the Russian Federation, and judicial decisions are adopted in the name of the Russian Federation. Pending cases that have not been decided by 18 March 2014 must be tried in accordance with the laws of the Russian Federation. This poses numerous problems in practice, especially in administrative and criminal cases, when Russian and Ukrainian legislation differs on the existence, nature and scope of rights

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<sup>24</sup> Paragraph 2 of Article 23 of the Federal Constitutional Law of 21 March 2014 N 6-FCL “On Acceptance of the Republic of Crimea into the Russian Federation and the Creation of the New Constituent Entity within the Russian Federation - the Republic of Crimea and the Federal City of Sevastopol”.



and obligations; and remedies and sanctions available. The outcome of court decisions that are currently being appealed is unclear.

286. There are reports that, at least, 15,000 judicial cases are in legal limbo between Ukrainian and Russian laws. The Ukrainian “Law on the occupied territories” allows the transfer of judicial cases from the peninsula to Kyiv. However, in practice, this is unlikely to happen. The HRMMU notes that the current situation has detrimental consequences affecting access to justice, the right to fair trial and due process for Crimean residents.

*Right to life, liberty and security*

287. The Russian Security Service (FSB) confirmed on 30 May, the detention of four Ukrainian citizens in Simferopol (Crimea), including film-maker Oleg Sentsov. The other three are Aleksandr Kolchenko, Gennady Afanasiev and Aleksei Chyrnyi. The HRMMU spoke to Mr. Sentsov’s lawyer who stated that while his client had been arrested on 11 May, he managed to speak to him for the first time on 27 May. He also claims his client has been tortured while in detention to confess to criminal intentions he did not have. According to the FSB press release, the people detained are members of the Ukrainian ‘Right Sector’ party and were planning acts of sabotage and terrorism in Simferopol, Yalta and Sevastopol. On 6 June, Sentsov was, according to his lawyer, officially charged with terrorism and arms trafficking under Article 205, Part 2; Article 205.4, Part 2; and Article 222, Part 3 of the Criminal Code of the Russian Federation.
288. On 26 May, Timur Shaimardanov (born in 1980) left his home in Simferopol and did not return. He had participated in campaigns against Crimea becoming a part of the Russian Federation. The day before he went missing, he allegedly said that the whereabouts of one of his friends, Leonid Korzh, (born in 1990) had not been known for 3-4 days. On 30 May, Seiran Zinedinov, who had been coordinating the efforts to find Korzh and Shaimardanov also went missing.
289. Mr. Mustafa Dzhemilev, former head of the Crimean Tatar Mejlis (Assembly) who was banned from the authorities in Crimea to enter the peninsula on 3 May, informed the HRMMU that the “Crimean police” had brought to his Crimean house a summons for an interrogation related to illegal possession of weapons. Dzhemilev assumes that this could be an attempt to initiate a criminal case against him. Ms. Ella Panfilova, Ombudsperson of the Russian Federation, announced that her office has requested from the relevant Governmental bodies an explanation of the actions undertaken by officials towards Mustafa Dzhemilev, particularly regarding his ban on entering Crimea.
290. The Head of the Kurultai (Congress) of the Crimean Tatars, Zayr Smedlyaev, informed HRMMU that he had received a written “warning” from the Crimean police about the “inadmissibility of extremist activities and unlawful assemblies”, in line with Russian legislation. The notice says that on 3 May, the leaders of the Mejlis publicly spoke in support of ‘extremist statements’ by Mustafa Dzhemilev and provoked extremist manifestations from people.
291. On 15 May, three houses of Crimean Tatars in Simferopol were searched by FSB officials. Two houses belong to the head of the External Relations Department of the Mejlis, Ali Khamzin. The searches were performed at his actual place of residence (Bakhchysarai) and his place of registration (Strogonovka village, Simferopol region). FSB officials explained that these persons were suspected of preparing terrorist attacks.
292. On 15 May, the “Chairman” of the Council of Ministers of Crimea, Sergey Aksyonov, announced that the so-called “Crimean self-defence” would become regular and receive budgetary support to ensure public security. The HRMMU underlines that such an

intention raises concern as the “Crimean self-defence” has reportedly been involved in numerous human rights violations.

#### *Accountability*

293. The HRMMU is concerned that after more than two months of investigation of the murder of 39-year-old Reshat Ametov, the Crimean law-enforcement authorities have not yet established the identities of perpetrators, although a video of the attackers is available that would allow their identification. Crimean Tatar Reshat Ametov was abducted by unidentified persons wearing military uniform in the centre of Simferopol in early March during a picket near the Council of Ministers of Crimea. On 17 March, his corpse was found with traces of torture in the Zemlyanichnoye village of the Belogorsk district.
294. The acting Prosecutor General of Ukraine reported on 27 May that an interagency ‘working group for legal issues relating to the temporarily occupied territory of Crimea’ had been established. The working group will coordinate the activities of the Ukrainian authorities on a wide range of legal issues connected with the violations that took place after the March “referendum”.

#### *Citizenship*

295. The HRMMU received worrisome information that, in some cases, Crimean residents were forced to give up their Ukrainian citizenship, which may amount to arbitrary deprivation of nationality. Judges of the Crimean Commercial Court in Simferopol and the administrative staff, who were granted Russian citizenship on a priority basis, were reportedly compelled to complete application forms renouncing Ukrainian citizenship. In general, the procedure of issuing Russian passports is slow. According to different calculations, providing passports to the whole population of Crimea will take up to 15 months while Russian laws allocated only three months for this procedure. Besides, it is unclear how citizenship issues, applications for social benefits and payments and other rights and entitlements are organised for persons in closed institutions: orphanages, geriatric institutions, psycho-neurological hospitals, penitentiaries, and others.
296. The status of refugees and asylum seekers has not been regulated. Prior to the “referendum” there were 18 refugees on the territory of Crimea. It is unclear how their situation will be affected by the changed legal regime.
297. On 4 June, the President of the Russian Federation signed amendments to the law “On citizenship of the Russian Federation”, introducing criminal responsibility for concealment of dual citizenship. According to the amended law, those concealing their second citizenship will be fined up to 200,000 Rubles (\$5,700) or subjected to compulsory community service of up to 400 hours in case of a failure to notify the Federal Migration Service within two months from the date of the acquisition of the second citizenship. The new provisions will become effective on 1 January 2016.

#### *Freedom of expression*

298. The HRMMU is alarmed by excessive limitations placed on freedom of information and expression in Crimea. Journalists, human rights defenders and other individuals must be able to freely exercise their right to freedom of expression, in accordance with article 19 of the International Covenant on Civil and Political Rights. Any restrictions should comply with the strict requirements of article 19, paragraph 3 of the Covenant.
299. On 15 May, a photojournalist of the "Crimean telegraph" newspaper Maksim Vasilenko was briefly detained and ill-treated by members of the "self-defence of Crimea" in Simferopol while preparing a report about the training of the special police forces before

the commemoration of the 70<sup>th</sup> anniversary of the Crimean Tatar Deportation. A cameraman of the "FM" television channel was also attacked; his phone was taken and his equipment was broken.

300. On 18 May, Osman Pashayev, Chief Editor of "Open Crimean Channel" internet project, and his crew (correspondent, cameraman and driver) were detained by members of the "Crimean self-defence" during the mourning events related to the anniversary of the Crimean Tatar Deportation. They were deprived of their equipment, phones and personal belongings, and subjected to physical and psychological pressure for four hours. No reasons were given for the detention. After being brought to the central district police station of Simferopol, they saw their lawyers and were released. Their money and personal belongings were not returned. Russian Human Rights Ombudsperson Ella Pamfilova condemned the incident, saying that the detention and interrogation of Pashayev and his crew without the presence of a lawyer for several hours constituted a human rights violation.
301. On 19 May, the "Crimean self-defence" detained for a short period of time Petr Ruzavin, a correspondent of Russian television company "Dozhd", subjected him to violence and damaged his equipment. According to Ruzavin, camouflaged people approached him when he was filming the central square of Simferopol and they were filmed as well. They requested him to delete his records, which he did. Ruzavin said he was beaten and his equipment was damaged. After being interrogated he was released.
302. On 2 June, the "Acting Prosecutor" of Simferopol summoned the Chief Editor of the Crimean Tatar newspaper "Avdet" Shevket Kaybullayev for questioning over possible "extremist activity". According to the notice, Kaybullayev had to appear on summons to the Prosecutor's Office. As written in the summons, the Prosecutor is investigating violation of the Russian law "On counteraction to extremist activity". The 'Avdet' newspaper is a press organ of the Mejlis of the Crimean Tatar people, published since 15 June 1990.
303. On 2 June, the Editor of the "Crimean Centre for Investigative Journalism", Sergey Mokrushyn, and his cameraman Vladlen Melnikov were attacked by members of the "Crimean self-defence" in Simferopol, taken to their headquarters (on Kirova 26) and beaten. They were eventually transferred to the police station for questioning, and released without any explanation being given for their detention and or any protocol of detention having been drawn up by the police.
304. The HRMMU recalls that acts of aggression, threats and intimidation against journalists must be investigated, prosecuted and punished and victims provided with appropriate remedies.
305. In the period of 12-25 May, the Russian Ministry of Communication and Mass Media and the Federal Service for Supervision of Telecom, Information Technologies and Mass Communications held seminars for Crimean journalists to explain requirements of Russian legislation with respect to the media. The HRMMU is concerned that the imposition of Russian media legislation is already negatively impacting the conditions for journalists to freely perform their functions. There is also concern that media representatives can be subjected to criminal prosecution pursuant to Article 280 (Public calls for extremism), Article 282 (Organisation of the activities of an extremist organisation) and Article 319 (Insult of a public servant) of the Criminal Code of the Russian Federation, which are too broad and can be used to criminalize conduct that is protected under international human rights law.

### *Freedom of movement*

306. While air connections between other parts of Ukraine and Crimea were suspended in March 2014, it still remains possible to travel by train and car. However, freedom of movement is affected by a number of factors related to the status of Crimea and different regulations - Russian Federation and Ukraine's - being applied. This creates difficulties to maintain personal and professional ties.
307. Pursuant to the Law of "On guaranteeing citizens' rights and freedoms and legal regime in the temporarily occupied territory of Ukraine", which entered into force on 10 May, foreigners and stateless persons may enter and leave Crimea through security check-points only subject to special permission. The procedure for obtaining such permission remains unclear. On 16 May, the Press Secretary of the Chairman of the State Border Service of Ukraine, Sergey Astakhov, confirmed that Ukrainian border guards around the Melitopol checkpoint (in the Kherson region bordering Crimea) obliged persons going from Crimea to continental Ukraine with Russian passports and Crimean residence permits to get off trains. He reported that the Crimean residents with Russian passports are considered as foreign citizens and, consequently, shall enter into Ukraine and leave it only through special border points. According to him, the administrative border of Kherson and established control line is not a border of Ukraine. Therefore, the foreign citizens, including Russian citizens, may not be allowed via this line. He also noted that the Crimean residents with Russian passports who wish to enter Ukraine shall go to the Russian Federation first, for example, to Rostov-on-Don, and cross the borders there.
308. The Russian Federation illegally established its State border at the northern entrance to Crimea on 25 April. Citizens of Ukraine who are not registered in Crimea are regarded as foreigners and obliged to fill out an immigration card. Such a category also comprises the people who permanently reside in Crimea, own real estate or are employed there, but whose place of registration is mainland Ukraine. The Federal Immigration Service issued warnings that foreign nationals must promptly (within 90 days) leave the territory of Crimea and re-enter it pursuant to Russian laws applicable to foreign nationals. Inter alia, such regulations will create inconveniences for students who study in other regions of Ukraine and are temporarily registered there. While returning home to the territory of Crimea during summer vacations, they will be regarded as foreigners with an admitted stay of up to 90 days.

### *Freedom of association*

309. Since the "referendum" on 16 March, many NGOs and human rights activists left Crimea out of fear of being prosecuted, detained and subjected to ill-treatment. Legislation of the Russian Federation - the so-called "foreign agents" law - has discouraged the activities and development of NGOs. Besides, Crimea does not yet have an institution to register civil society organisations; consequently, those that have not been registered before the Crimean "referendum" are deprived of such a possibility.

### *Freedom of peaceful assembly*

310. Dozens of Crimean Tatars have been summoned to courts for participating in protest actions against the prohibition imposed on 3 May by the Crimean authorities on their leader, Mustafa Dzhemilev, to enter the peninsula. As of 8 May, the courts of Crimea had examined 55 cases related to those events. In 52 cases, the activists were fined on the basis of Article 20.2.2 (Public disorder) of the Code on Administrative offences of the Russian Federation.

311. On 16 May, the authorities in Crimea issued a decree prohibiting all mass events until 6 June. A similar prohibition was issued in Sevastopol. The decrees were motivated by security developments in south-eastern Ukraine and the need to prevent "possible provocations of extremists which can penetrate into the Republic of Crimea". The HRMMU recalls that under Article 4 of the ICCPR, a derogation from the right to freedom of assembly and association is only permissible "in time of public emergency" and "to the extent strictly required by the exigencies of the situation" and would require immediate notification to the other State Parties to the ICCPR through the UN Secretary-General.

*Freedom of religion or belief*

312. The HRMMU is concerned about reports of violations of freedom of religion and belief on the territory of Crimea.
313. On 8 May, the League of Muslim Women "Insaf" informed the HRMMU that some 150 persons from Kirovskoye and Stary Krym, including women, were being called in for interrogations. Reportedly, they were being invited to the local police stations for "a conversation". They were reportedly fingerprinted and photographed.
314. On 20 May, the Head of the Ukrainian Greek Catholic Church made a statement expressing concern for the safety of the Greek Catholic priests remaining in Crimea. He reported that all five Crimean parishes had experienced pressure, allegedly from the representatives of the Orthodox Church of the Moscow Patriarchate.
315. On 1 June, men in Russian Cossack uniforms reportedly broke into the local Orthodox church of the Kyiv Patriarchate in the village of Perevalnoe (Crimea), shouting and terrorizing churchgoers. The car of the priest was allegedly damaged. The "Cossacks" said they were seizing the building for the Moscow Patriarchate. After three hours, the "Crimean self-defence" arrived with assault rifles and sided with the attackers. The police were called but reportedly did not show readiness to properly investigate the incident. On 2 June, the local authorities of the city of Evpatoriya conducted a check of the church documentation and called it an "illegal building". In addition, the authorities in Crimea significantly raised the rent for the main Ukrainian Orthodox Cathedral in Simferopol. The rent increase has not affected Crimean Tatar mosques or Russian Orthodox churches. Mosques and Russian churches on the peninsula either belong to the religious communities (mosques) or to the Moscow Patriarchate (Russian churches) or are rented for a token fee.

**B. Economic, social and cultural rights**

316. Crimean residents face serious challenges in realizing their rights under the International Covenant on Economic, Social and Cultural Rights (ESCR). This can be attributed, in part, to the complicated transition between two different legal systems, but also to the absence of appropriate reactions of the authorities in Crimea to human rights violations affecting certain communities. This concerns, in particular, the Ukrainian and Crimean Tatar communities who are being harassed, assaulted and prosecuted for speaking Ukrainian or Tatar languages in public places or using national symbols. Such conditions are also reflected in the diminishing possibilities to receive education in another language than Russian, particularly in Ukrainian.

*Language and education*

317. There are only two Ukrainian schools in Crimea: in Yalta and Simferopol. According to the head of the Department of Education in Simferopol, three out of four classes in the



Simferopol gymnasium will now use the Russian language. The decision is motivated by the decision of 86 % of the parents who reportedly decided to switch to Russian-language studies. The director of the gymnasium was allegedly forced to resign. There is information that the local authorities in Sevastopol are planning to close the only Ukrainian boarding school/orphanage.

318. On 14 May, the press service of the Ministry of Education and Science of the Russian Federation reported that teachers of the Ukrainian language and literature of general educational institutions could be re-trained to become teachers of the Russian language and literature. The Presidential Council for Civil Society Development and Human Rights of the Russian Federation recommended to keep the study in the Simferopol Ukrainian gymnasium in Ukrainian language and to resume the work of the Faculty of Ukrainian and Crimean-Tatar Philology in the Tavrida National University.
319. In light of Article 27 of the ICCPR, the HRMMU recalls that all the national communities in Crimea must be supported to preserve, develop and promote their identity, language and culture, and to use their mother tongue in education and daily life.

#### *Property rights*

320. In early March, public notaries stopped documentation of property acquisition and sale deals in Crimea, when Ukraine blocked access to the peninsula for the State Register of Real Estate and Land Plots. Crimean residents face serious difficulties in exercising their right to property due to the pending court decisions, transactions, and the privatisation process. On 10 May, the Russian Minister of Crimean Affairs stated at a press conference that the Russian authorities would deal with cases of unauthorized acquisition of land in Crimea "with full responsibility and caution". On 28 May, a draft law "On the special procedure for real estate registration in Crimea" was introduced in the Russian Parliament. The text proposes to delegate to the local authorities, during a two-year transitional period, the right to resolve land issues.
321. The HRMMU stresses that decisions concerning such important issues as land and property must be taken through an inclusive, transparent and fair process that will eliminate the risk of corruption and tensions.

#### *Right to an adequate standard of living*

322. On 13 May, the Ukrainian State Water Resources Agency stated that Ukraine shut off water supplies to Crimea via the North-Crimean Canal, which accounts for 85% of all fresh water on the peninsula. The Canal water is mostly used for irrigation purposes, and its closure could severely impact agricultural land and the upcoming harvest. This situation has reportedly had no negative implications for drinking water, according to the 'First Deputy Chairman' of the Council of Ministers of Crimea, Rustam Temirgaliyev. Having no access to Crimea, the HRMMU does not have additional information about the impact of the shut-off of water supplies on the economic and social rights of the Crimean residents.

#### *Banking*

323. Access to banking services remains complicated for Crimean residents. On 7 May, the National Bank of Ukraine (NBU) decided to suspend operations of Ukrainian banks in Crimea until 6 June. However the activities of Ukrainian banks were terminated on 2 June, by decision of the Central Bank of Russia motivated by the need to protect the interests of depositors and customers. Compensation payments will reportedly be made by a non-profit organization, the "Depositor Protection Fund", which acquired the rights to deposits.



### **C. The rights of indigenous peoples**

324. The 18 May marked the 70<sup>th</sup> anniversary of the massive deportation of Crimean Tatars and other minorities by the Soviet authorities. A Decree of the President of the Russian Federation, in force on 21 April, had instructed the authorities in Crimea and Sevastopol to support events commemorating the deportation. However, referring to security considerations linked to the events in south-eastern Ukraine, the authorities in Crimea issued on 16 May a decree prohibiting all mass events until 6 June. Eventually, the “Council of Ministers” of Crimea decided on 17 May that the commemoration could go ahead, although not in the centre of the capital of Crimea, Simferopol. The commemorations passed without incidents, albeit with significant and sometimes intimidating police presence.
325. On 29 May, the State archive of the SBU handed over the documents on Crimean Tatar deportation from Crimea in 1944 to the representatives of the Crimean Tatar Mejlis. The head of the SBU, Valentyn Nalyvaichenko, and the former head of the Crimean Tatar Mejlis, Mustafa Dzhemilev, participated in this event.
326. On 4 June, the Crimean Parliament adopted a Decree providing for social guarantees to the people who were deported on an ethnic basis in 1941-1944 from the Crimean Autonomous Socialist Soviet Republic. The Decree will provide social benefits in the form of one-time payments to the Crimean Tatars, Armenians, Bulgarians, Greeks and Germans, along with their families and children who were born in exile. This document was adopted pursuant to a Decree signed by Russian President Vladimir Putin on 21 April 2014, rehabilitating formerly deported people from Crimea.

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

327. During the reporting period, the HRMMU identified acute human rights concerns particularly in the eastern regions, Crimea and in the aftermath of the Odesa 2 May violence. They are symptomatic of the particular local contexts, not least involving the presence of armed groups, the breakdown in law and order and on-going security operations. As highlighted in the report issued on 15 April 2014 by OHCHR, short-term human rights concerns should be addressed within the broader and longer term framework that will see institutional reform and enable change that will impact on the enjoyment of all rights – civil, cultural, economic, political, and social. The root causes of the current crisis were initially due to the systematic and structural curtailment of human rights and widespread corruption. The way out of the current crisis, to ensure reconciliation of communities through peaceful and democratic means, will be through the accountability for violations and the full respect and guarantee of all human rights for all.
328. With the election of President Poroshenko, there is the opportunity for the Government of Ukraine to prioritise addressing these systemic and structural concerns through institutional reform focusing on human rights challenges in the short-term, and progressively paving the way for the establishment of a system that promotes and protects human rights for all, ensures justice, good governance and the rule of law through inclusive, non-discriminatory and participatory means. A comprehensive national human rights action plan reflecting all recommendations from the international and regional mechanisms is highly recommended, as well as the creation by the Government of a senior level coordination mechanism of implementation open to state institutions, civil society

and having the combined support of the UN, regional organisations and the international community.

329. Recommendations have been made below on Crimea to both the authorities in Crimea and the Russian Federation, which exercises de facto control over the peninsula. With the negative impact of the current situation, including the legal uncertainty, on the full enjoyment of human rights by the residents of Crimea, the HRMMU is advocating for the legal framework of Ukraine to remain in force, considering the adverse human rights impact of legislative changes imposed and also bearing in mind UN General Assembly resolution 68/262.
330. The recommendations should be read in conjunction with - and seen as complimentary to - those outlined in the OHCHR reports on the human rights situation in Ukraine, issued on 15 April and 16 May 2014, which have not yet been fully implemented.
331. The HRMMU takes note of the joint report by the OSCE Office for Democratic Institutions and Human Rights and the OSCE High Commissioner on National Minorities issued on 12 May 2014, and calls upon all relevant parties to implement its recommendations.

#### **To the Government of Ukraine and other stakeholders**

- a) There should be constitutional inclusive and meaningful consultations with all political parties, regardless of their ideology, as well as representatives of civil society and minority (national and ethnic, linguistic, religious and other) groups and indigenous peoples in order to embrace all components of society, including women in the dialogue for the new constitution, which will reflect the new reality of the country with a full-fledged system of checks and balances. The peaceful population of the east should participate in these consultations.
- b) As a representative body of the country, the Parliament should reflect the new political and social reality of the country; therefore there is a need for new parliamentary elections.
- c) All armed groups must immediately put an end to their violent activities and lay down their arms.
- d) The Government must ensure that its armed forces refrain from using excessive force, and ensure that its ongoing security operations are at all times in line with the relevant international standards applicable to different types of operations. In all circumstances, it must ensure the protection of those who are not involved in the fighting.
- e) All people detained in the context of the security operations should be treated in line with international norms and standards and guaranteed their human rights under the International Covenant on Civil and Political Rights and other applicable bodies of international law. In order to protect its security personnel and persons not involved in the fighting, the Government should consider providing assurances that acts of abduction and detention by armed groups will not be prosecuted provided that they do not target people not involved in the fighting and the victims are treated humanely at all times.
- f) The role and position of the Ombudsperson and National Preventive Mechanism, as the main bodies / institutions working towards the strengthening of the national human rights system and the protection and guarantee of human rights for all, should be enhanced.

- g) All gaps of legislation should be brought in line with the recommendations of the international human rights mechanisms (treaty bodies, universal periodic review and special procedures); the Judiciary, Office of the Prosecutor General and the Bar Association should operate in line with relevant international norms and standards in order to ensure fair trial without which it is impossible to tackle corruption.
- h) The Constitutional Court should be enhanced – legal, social and all other guarantees need to be elaborated in order to ensure the genuine independence of the Constitutional Court.
- i) The State Migration Service should propose amendments to bring the refugee law in line with international standards, and to allocate sufficient funds to ensure due process in the asylum procedure, as well as reception conditions meeting humanitarian needs.
- j) A language law should be adopted in line with international standards that enables the promotion of the official national language as well as other languages.
- k) A central authority should be established to respond to the humanitarian needs of IDPs, including by establishing a comprehensive registration system, formulation of legislative and regulatory acts to ease access to important social and economic rights, establishing public assistance programmes, mobilization and coordination of civil society-initiated relief efforts, and cooperation with international donors and technical assistance.
- l) All stakeholders should refrain from using messages of intolerance or expressions, which may incite hatred, violence, hostility, discrimination or radicalisation.
- m) Access for international organisations to the areas affected in eastern Ukraine by the security operations (urban areas in the epicentre of the fighting) should be facilitated so that the real needs of the population can be assessed and addressed.
- n) Normative acts to ensure freedom of movement for residents of Crimea should be enacted as soon as possible.

**To the authorities in Crimea and the de facto governing authority of the Russian Federation**

- o) Reaffirming UN General Assembly resolution 68/262, entitled “Territorial integrity of Ukraine”, measures must be taken to protect the rights of persons affected by the changing institutional and legal framework, including on issues related to citizenship, right of residence, labour rights, property and land rights, access to health and education.
- p) Journalists, human rights defenders and individuals must be able to fully exercise their right to freedom of expression, in accordance with Article 19 of the International Covenant on Civil and Political Rights.
- q) Ukrainian legislation should remain in force, considering the adverse human rights impact of legislative changes imposed and also bearing in mind UN General Assembly resolution 68/262.
- r) Intimidation, harassment and abductions of residents must stop, with guarantees ensured for the respect for the right to life, liberty and security
- s) Criminal and administrative liability should not be used as a mechanism of intimidation against Crimean Tatars and other residents of Crimea, but used in line with international law.

- t) Human rights violations should be independently, promptly and comprehensively investigated and perpetrators brought to justice.
- u) All forms of intimidation and harassment of religious communities must be put to an end and all incidents, including those where there have been attacks on Ukrainian Orthodox Church, Greek Catholic Church and the Muslim community must be properly investigated, thus enabling the effective promotion and protection of the freedom of religion or belief.
- v) The promotion and protection of the rights of national minorities, including the Crimean Tatars and other indigenous peoples must be ensured, enabling them to participate fully and inclusively in public and political life.
- w) The deployment of independent and impartial human rights monitors, including by the HRMMU, should be agreed upon.

# Annex 765

OHCHR, Report on the Human Rights Situation in Ukraine (16 September 2014)





**Office of the United Nations High Commissioner  
for Human Rights**

**Report on the human rights situation in Ukraine  
16 September 2014**

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## I. EXECUTIVE SUMMARY

1. This is the sixth monthly report of the Office of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine, based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU). It covers the period from 18 August to 16 September 2014.

2. By 18 August, the Government of Ukraine regained control of some areas in the Donetsk and Luhansk regions that had earlier been seized by the armed groups, and had restored law and order. Residents of these areas, who had fled the fighting, started returning home as of early August. Government ministries and volunteer groups began restoring essential services, clearing away rubble and unexploded ordinance, and rebuilding damaged areas. In Slovyansk, basic services were restored and residents started receiving social welfare benefits and pensions that had not been paid since April when the city first fell under the control of the armed groups. As the cities of Donetsk and Luhansk remained under the control of the self-proclaimed 'Donetsk people's republic' and 'Luhansk people's republic',<sup>1</sup> the Ukrainian armed forces tightened the blockade around both of these cities in an effort to take them back.

3. Between 24 August and 5 September, fighting escalated in the east. Armed groups of the self-proclaimed 'Donetsk people's republic' and 'Luhansk people's republic' were bolstered by an increasing number of foreign fighters, including citizens of the Russian Federation<sup>2</sup>. On 27 August, the so-called 'prime minister' of the 'Donetsk people's republic', Alexander Zakharchenko, stated on Russian State television that 3,000-4,000 Russians were fighting alongside the armed groups, including former or serving Russian soldiers, on leave from their posts. Incursions were made by the armed groups into areas that the Government forces had recently regained particularly in the Donetsk region. In a number of areas, Ukrainian armed forces reported being bombarded by the armed groups with advanced weaponry. Ukrainian forces were pushed back from their positions in other areas of the southeast, including the border town of Novoazovsk, captured from Ukrainian armed forces on 27 August.

4. The escalation of hostilities led to a sharp increase in casualties among civilians, members of the armed groups and Ukrainian servicemen. From mid-April to 16 September, at least 3,517 people had been killed (including the casualties of the Malaysian airlines MH17 crash) and at least 8,198 wounded.<sup>3</sup> While the HRMMU has not been able to obtain disaggregated data on casualties among civilians and armed elements, it appears that the majority of civilian victims were killed due to indiscriminate shelling in residential areas and the use of heavy weaponry. There were continued reports of armed groups positioning, and intermingling, within urban communities, endangering civilians. Some of the reported cases of indiscriminate shelling in residential areas can be attributed to the Ukrainian armed forces. The unknown number of military casualties has increased anxiety within communities, and is fuelling protests.

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<sup>1</sup> Henceforth referred to as either the 'Donetsk people's republic' or the 'Luhansk people's republic'.

<sup>2</sup> On 7 September, Amnesty International stated that it believed the Russian Federation to be fuelling the conflict through direct and indirect interference. It reported that it had compelling evidence that the fighting had burgeoned into what it considered to be an international armed conflict. It also accused both the 'Ukrainian militia and separatist forces' of being responsible for war crimes.

<sup>3</sup> These are very conservative estimates by the UN HRMMU and World Health Organization based on the official data, where available. These totals include: casualties of the Ukrainian armed forces as reported by the Ukrainian authorities; the 298 people killed in the crash of the Malaysian Airlines flight MH17 on 17 July; and casualties reported by civil medical establishments and local administrations in the Donetsk and Luhansk regions. The casualties reported by medical establishments include civilians and some members of the armed groups (without distinguishing them). Only a fraction of them have been reported by medical establishments. OHCHR and WHO estimate that the actual numbers of fatalities may be much higher.

5. During the reporting period, international humanitarian law, including the principles of military necessity, distinction, proportionality and precaution continued to be violated by armed groups and some units and volunteer battalions<sup>4</sup> under the control of the Ukrainian armed forces. It is critical for all those involved in the conflict to comply with international humanitarian and human rights law, and to be fully aware of the consequences of their actions, and the concept of command responsibility.

6. In late August, the Trilateral Contact Group comprising senior representatives of Ukraine, the Russian Federation and the OSCE Chairperson-in-Office, established to facilitate a diplomatic resolution to the fighting and introduced into their talks the political representatives of the ‘Donetsk and Luhansk peoples’ republics’. After the first face to face meeting on 1 September, a consultation process began, during which the Presidents of Ukraine and the Russian Federation discussed and tabled elements of a peace plan. On 5 September, at a meeting in Minsk the representatives of Ukraine, the Russian Federation, and the ‘Donetsk and Luhansk peoples’ republics’ signed a 12-point Protocol<sup>5</sup>, and declared a ceasefire, to be implemented on the same day.

7. This ceasefire is increasingly fragile, with daily reports of skirmishes, shelling and fighting. Although there have been fewer casualties, civilians and military personnel continue to be killed on a daily basis. Some areas in the conflict zone report calm, such as Luhansk city, while others have been the scene of increasing fighting and hostilities, such as Donetsk airport, which has seen a surge in fighting as of 13 September. Since the ceasefire, there are reports that the Ukrainian military has been shelled by the armed groups many times. Reportedly, 49 servicemen have been killed and 242 wounded.

8. Two key human rights priorities emerged from the 12-point-Protocol: the immediate release of all hostages and detainees<sup>6</sup> and an amnesty<sup>7</sup> in connection with the conflict in parts of the Donetsk and Luhansk regions. Both elements have been included in a draft law on ‘the prevention of persecution and punishment of participants of events on the territory of Donetsk and Luhansk regions’ adopted on 16 September pursuant to the Minsk Protocol. The law excludes amnesty for crimes, including genocide, terrorism, murder and infliction of serious bodily injuries, sexual crime, hostage-taking and human trafficking. Also on 16 September, Parliament adopted a law offering special status to parts of the Donetsk and Luhansk regions, thereby fulfilling another requirement of the Minsk Protocol aimed at strengthening the ceasefire and advancing peaceful solutions. The two Bills need to be signed by the President to enter into force. While both have the potential to play a critical role in reconciliation and creating an environment for sustainable peace, strategies for their implementation need to be developed with the participation of victims and civil society more broadly. These should be designed to enable implementation of the legislation to be in accordance with international norms and standards, including UN General Assembly resolution 68/262, through the assistance and guidance of

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<sup>4</sup> This is a generic term applied to type of ‘military’ battalions recently created, which are currently fighting in the conflict in the east. They have been formed on the basis of the voluntary participation of individuals. These battalions comprise those placed under the command of the Ministry of Defence (known as territorial battalions), and those under the Ministry of Internal Affairs (known as special police battalions).

<sup>5</sup> Protocol on the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, Petro Poroshenko and the initiatives of the President of the Russian Federation, Vladimir Putin. It was signed by the Swiss diplomat and OSCE representative Heidi Tagliavini, Former president of Ukraine and Ukrainian representative Leonid Kuchma, Russian Ambassador to Ukraine and Russian Federation representative Mikhail Zurabov, ‘Donetsk peoples’ republic and Luhansk peoples’ republic’ leaders Aleksandr Zakharchenko and Ihor Plotnytskyi respectively.

<sup>6</sup> Point 5, of the above-mentioned protocol ‘Release immediately all hostages and illegally detained persons’.

<sup>7</sup> Point 6, of the above-mentioned protocol ‘Adopt the law on non-prosecution of persons in connection with events that took place in some parts of Donetsk and Luhansk regions of Ukraine’.

relevant international organisations, and with a view to guaranteeing due process. The President publicly advocated for the two draft laws during their passage, both before the Government and Parliament. The response of the leaders of the so-called 'Donetsk and Luhansk peoples' republics' has been mixed, with the former stating that he found that the document contained 'certain points to start a dialogue', but he still challenged any measure to remain with Ukraine, while the latter stated that the draft law gave a 'peaceful settlement its first chance'<sup>8</sup>.

9. Armed groups continued to terrorise the population in areas under their control, pursuing killings, abductions, torture, ill-treatment and other serious human rights abuses, including destruction of housing and seizure of property. They abducted people for ransom and forced labour and to use them in exchange for their fighters held by the Ukrainian authorities. They also continued to practice forced mobilisation of civilians and threatened the local population with executions. Reports also continued of parallel governing structures being set up in the 'Donetsk and Luhansk peoples' republics'. An unlawful 'criminal code' was adopted by the so-called 'presidium of the council of ministers' of the 'Donetsk people's republic'; and entered 'into force' on 18 August. Modelled on the criminal code of the Russian Federation, its provisions include the establishment of military tribunals to implement death sentences to be applied in cases of aggravated murder.

10. There have also been continued allegations of human rights violations committed by some volunteer battalions under Government control, which have been undertaking police functions in many of the liberated towns and villages. The Government needs to exercise more control over all of its forces, including the volunteer battalions, and to ensure accountability for any violations and crimes committed by their members.

11. With the increasing number of reports of grave violations of international humanitarian and human rights law committed in the conflict area, it is crucial to establish accountability. The humanitarian situation in the areas controlled by the armed groups remained precarious, even after the ceasefire, especially in the Luhansk region. Humanitarian assistance largely depends on volunteers and a few international organisations, namely the International Committee of the Red Cross (ICRC) and *Médecins Sans Frontières* (MSF). Despite the ceasefire, many people in the conflict area remained for a second month deprived of water and electricity, with limited access to healthcare and educational services. On 22 August and 13 September, the Russian Federation authorities sent white-truck convoys to eastern Ukraine, without the consent of the Government of Ukraine. Such humanitarian convoys must be undertaken in full compliance with international standards, and the procedures of relevant international organisations, including proper inspections, before entering the territory of Ukraine.

12. The ceasefire encouraged many internally displaced persons (IDPs) to go back to their homes in the regions of Donetsk and Luhansk. Some went back to their homes just to collect belongings, others have remained. Those who have returned face serious difficulties besides the volatile security situation, private property has been destroyed or damaged, and employment is limited as many business or industries have now closed down.

13. At the same time, more than 275,489 registered IDPs<sup>9</sup> remained partly without the commensurate assistance and care. Most IDPs still live from their savings and the generosity of family and friends willing to host them. The conflict in the east has triggered a wave of solidarity among Ukrainians, but the capacity of absorption within host communities has been weakening. There have been some reports of increased tensions between residents and IDPs mostly due to a growing distrust vis-à-vis persons coming from the areas controlled by the armed groups, and

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<sup>8</sup> According to the 'prime minister' of the 'Luhansk People's republic', the law is "largely in line with our negotiating position ... Therefore, although there is still much uncertainty, it can be said that a peaceful settlement has its first chance".

<sup>9</sup> State Emergency Service, 18 September, 2014.

suspicious of potential connections with such groups. It is crucial for the authorities to defuse such tensions. It is also important that the draft IDP law under review by Parliament be adopted promptly so as to allow the provision of basic services, including the possibility for IDPs to access health care, education and employment, in line with the UN Guiding Principles on Internal Displacement.

14. Some protests against mobilization have been reported and the lack of rotation for soldiers at the front is allegedly leading some servicemen, on 'leave', not to return.

15. Authorities and residents throughout Ukraine are particularly concerned about the coming winter months, especially because of the expected gas shortages. This is a particular issue for those living in temporary shelters and camp sites that are ill-equipped, and for those who have returned to areas affected by the conflict, where properties have been damaged.

16. On 27 August, a presidential decree announced the holding of extraordinary parliamentary elections on 26 October 2014. It is critical for these elections to be held transparently, freely and fairly in an environment which allows the participation of the electorate throughout the country. Ensuring the protection of freedoms of expression, peaceful assembly and association will be particularly crucial. Elections are an opportunity to encourage greater participation of women in political life, as they only constitute 10 per cent of all parliamentarians. How people will be able to exercise their right to vote in the eastern regions under the control of the armed groups is unclear. The precedent of the Presidential election raises serious grounds, as well as with the ongoing curtailment on the freedoms of expressions and peaceful assembly in these areas, which are an essential element for a free and fair electoral process.

17. The investigations into the unlawful killing of protesters and the Maidan violence of November 2013 – February 2014 continued. On 5 September, an 'Interim Parliamentary Commission' report, including on the 2 May Odesa violence, was published and is now under consideration in Parliament. It has highlighted some new elements, such as the use of chloroform in the Trade Union Building. Other investigations into the 2 May violence continue, including by the Office of the General Prosecutor and the Ministry of Internal Affairs (MoIA). It remains critical to ensure the impartiality of all ongoing judicial processes in order to guarantee accountability and justice for the victims.

18. In the Autonomous Republic of Crimea, the human rights situation continued to be marked by multiple and ongoing violations. As previously reported, the introduction of Russian Federation legislation, in contravention with General Assembly resolution 68/262, continued to curtail freedoms of expression, peaceful assembly and association, religion or belief. Property rights have been violated through 'nationalisation' and the illegal seizure of property by decision of the de facto authorities and actions by the so-called 'Crimean self-defence'. Law enforcement personnel continued to conduct searches, particularly among the Crimean Tatar and Ukrainian population, claiming to look for 'extremist' material. The number of IDPs from Crimea on mainland Ukraine has further increased to 17,794.<sup>10</sup> The HRMMU continued to seek access to Crimea, and reiterated a request to establish a sub-office there.

19. On 16 September, the Parliaments of Ukraine and the European Union ratified the EU Association Agreement in simultaneous sessions, moving towards the establishment of political association and a free-trade area between the two parties. The key provisions on free trade will not be implemented until December 2015 at the earliest.

## **II. RIGHTS TO LIFE, LIBERTY, SECURITY AND PHYSICAL INTEGRITY**

20. Intense hostilities in the Donbas region continued during the reporting period, and intensified between 24 August and 5 September, causing numerous military and civilian

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<sup>10</sup> Ibid.



casualties, and damage to infrastructure. Following the 5 September ceasefire, the scale and intensity of hostilities dramatically decreased, although not completely. The civilian population in Debaltseve, Donetsk, Horlivka, Ilovaisk, Luhansk, Pervomaisk, Shchastya and a number of other settlements continued to be caught in the crossfire and cross-shelling.

21. The intensification of hostilities between 24 August and 5 September led to an increase in casualties largely due to the use of heavy weaponry and indiscriminate shelling of densely populated areas. An increasing number of foreign fighters were reported to be participating in the fighting, including citizens of the Russian Federation, allegedly “former servicemen” or active duty personnel “on leave”.

22. One emblematic case of such casualties was around the town of Ilovaisk (Donetsk region). As a result of an offensive that started on 19 August, part of the town came under the control of the Ukrainian armed forces. By 27 August, the Ukrainian troops in Ilovaisk were completely surrounded by the reinforced armed groups. The same day, a safe corridor was allegedly negotiated with the parties involved in the fighting. However, at least one column of Ukrainian troops was heavily shelled while leaving Ilovaisk. Many Ukrainian units and individual servicemen managed to break out from the encirclement. According to various official reports, between 107 and more than 200 Ukrainian servicemen were killed, hundreds were wounded, several hundreds have been detained by the armed groups, and many remain reportedly missing.

23. On 22 August and 13 September, the Russian Federation authorities sent separate large white-truck convoys to eastern Ukraine. Both entered Ukraine at the Izvaryne crossing point, located in armed group controlled territory. This was without the full consent or inspection of Ukraine, and the exact destination and content of the convoy could not be verified. The first convoy reached the border under an agreement whereby a visiting Ukrainian team of border and customs officials would check the vehicles, along with Russian counterparts. This broke down however, after only 34 vehicles of the 227 assorted vehicles that made up the convoy were inspected. The remaining vehicles proceeded to just drive across the border without the Ukrainian officials having any way to enforce their control. The crossings were monitored by OSCE. The convoy on 13 September consisted of 216 assorted vehicles.

#### *Indiscriminate shelling*

24. Indiscriminate shelling of populated areas, both by armed groups and the Ukrainian armed forces continued to be reported. This, combined with the continued intermingling of armed groups in civilian areas, endangered the local population. In the reporting period, the Department of Internal Affairs of the Donetsk region started investigations into several cases of shelling which resulted in at least 12 civilian deaths and 44 wounded. Shelling of civilians trying to leave the conflict areas was reported to the HRMMU. On 18 August, a column of vehicles with civilians evacuating from Luhansk was allegedly targeted and shelled by the armed groups, between the settlements of Novosvitlivka and Khryashchuvate. As a result, at least 17 people were killed and six were wounded. Prison facilities were also targeted. On 20 August, two artillery shells hit Makiivka Penitentiary Colony No. 32 (Donetsk region) killing two inmates and wounding six.

### **A. Casualties**

25. The number of reported casualties caused by the conflict in eastern Ukraine increased by almost one and a half times since the cut-off date of the last HRMMU report issued on 17 August. Prior to the ceasefire, from 18 August to 5 September, at least 42 people were killed on average every day. Since mid-April, and as of 16 September, at least 3,517 people (including at least 36 children) were killed, and at least 8,198 (including at least 82 children) wounded. This is

a conservative estimate by the HRMMU and the World Health Organization based on the official data, where available.

26. These totals include: Ukrainian armed forces (at least 1,078 killed and 3,277 wounded) as reported by the National Security and Defence Council and the Prosecutor-General; the 298 people killed in the crash of the Malaysian Airlines flight MH17 on 17 July; and casualties reported by civil medical establishments and local administrations (at least 1,299 killed and 2,245 wounded in the Donetsk region, and at least 842 killed and 2,676 wounded in the Luhansk region).

27. The casualties reported by medical establishments include civilians and some members of the armed groups (without distinguishing among them). The HRMMU and WHO deem that casualties among Ukrainian armed forces, civilians and of the armed groups (including foreign servicemen and volunteer fighters) have been under reported during the whole period of the security operation.

28. The reporting of Ukrainian military casualties remained imprecise and contradictory. By 4 September, according to the National Security and Defence Council, 837 servicemen were killed and 3,044 wounded during the whole period of the security operation. On 5 September, the National Security and Defence Council reported that the previous day seven servicemen were killed and 59 wounded and indicated that total of 846 servicemen were killed and 3,072 wounded since April 2014 (while arithmetic would imply 844 killed and 3,103 wounded). The National Security and Defence Council reported an increase of 151 Ukrainian servicemen killed from 24 August to 12 September, while, according to the Minister of Defence only in Ilovaisk and some other locations of most intense hostilities, 181 persons were killed during that period. While the Minister reported being aware of 107 servicemen killed in Ilovaisk, the Prosecutor-General indicated that at least 200 servicemen had perished there. On 29 August, the National Security and Defence Council spokesperson reported 11 Ukrainian servicemen missing in action, while first-hand reports from Ukrainian soldiers suggest that tens, if not hundreds, of Ukrainian servicemen remained missing.

29. The level of under reporting of military casualties by the Government can be grasped by comparing the figures on wounded provided by the National Security Defence Council (3,277) with the number of servicemen treated in major military and civilian hospitals closest to the fighting – Dnipropetrovsk, Kharkiv and in Zaporizhzhya region. They amounted to at least 4,800 in these three locations by earlier reporting dates (until 3 September, 26 August and 13 August respectively). Further, some lightly wounded who are treated in the field with their units, are probably not accounted for in these totals. Estimates for the number of wounded, therefore, could be two times higher than the figure reported by the National Security and Defence Council.

30. As during previous reporting periods, insecurity prevented people from seeking medical aid. Many of those killed were buried without being taken to morgues or offices with forensic expertise. The armed groups increasingly buried their members in separate burial sites in fields. Reportedly, many bodies were taken to the Russian Federation.<sup>11</sup> Therefore reports of medical establishments only partially covered casualties among civilians and armed groups. In the Donetsk region, women comprised 15 per cent of those killed and 15 per cent of those wounded as reported by medical establishments by 16 September (11 per cent and 13 per cent respectively as of 11 August).<sup>12</sup> At the same time, the indiscriminate use of weapons accounted for the

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<sup>11</sup> According to the Committee of Soldiers' Mothers in the Stavropol region of the Russian Federation, about 400 servicemen of the Russian Armed Forces were killed and wounded in Ukraine as of 28 August.

<sup>12</sup> The breakdown of statistics is not available for the Luhansk region as not reported to the WHO by medical establishments from region.

majority of civilian deaths, which affected men and women equally.<sup>13</sup> Although women and children comprised the majority of those who have fled the security operation area, the proportion of one killed woman to six-seven killed men suggest that members of the armed groups (who are predominantly men) constitute a considerable part of casualties (up to 50 per cent) reported by medical establishments. From this, it can be considered that the majority of those killed and wounded in hostilities comprised servicemen of the Ukrainian armed forces and members of the armed groups.

## **B. Summary, extrajudicial or arbitrary executions**

31. During the reporting period, alleged torture and executions of detainees by the armed groups and the volunteer battalions continued to be reported. These reports require thorough verification.

32. On 22 August, Lithuania's Honorary Consul in Luhansk was abducted and killed. On 9 September, the Security Service of Ukraine (SBU) reported on the detention, in Kramatorsk (Donetsk region), of a Ukrainian citizen who admitted that he had voluntarily "become part of the firing squad No.1 of the NKVD ['Donetsk people's republic's secret service] at the Druzhkivka commandant's office". Local people reportedly have named at least five people executed by that squad in the nearby forest.

## **C. Missing persons, enforced disappearances and arbitrary detention<sup>14</sup>**

### *Detainees*

33. The escalation of hostilities between 24 August and 5 September resulted in a sharp increase in detentions by the armed groups. According to the SBU<sup>15</sup>, the law enforcement agencies registered 30 to 50 submissions on missing or abducted persons per day, both military personnel and civilians. Between 5 and 10 September, an inter-departmental centre at the SBU created to assist citizens regarding detainees, hostages, and missing persons received 1,290 submissions. By 11 September, its database included about 700 names.

34. Point 5 of the Minsk Protocol agreed upon on 5 September foresees that 'all hostages and illegally detained people shall be released without delay'. On 6 September, the National Security and Defence Centre reported that at least 200 Ukrainian servicemen were kept by the 'Donetsk people's republic'. According to the 'acting minister of state security' of the 'Donetsk people's republic' about 1,000 people were being detained by the 'Donetsk people's republic' as of 7 September. On 8 September, the Press Secretary of the President of Ukraine, referring to the Army Chief of Staff, reported that 648 people were released by the armed groups during the whole period of the security operation, while more than 500 remained to be released. On 11 September, the HRMMU shared with Ukrainian authorities a list of more than 400 people (mainly civilians) alleged to be held by the armed groups.

35. Between 6 and 16 September, at least three exchanges took place, during which at least 130 people were released by the armed groups. The exact number of people released by the Ukrainian side is unknown, though it is believed to be comparable with the number of detainees released by the armed groups. On 12 September, the HRMMU was informed by some families that three detainees were released from the Odesa pre-trial detention centre and driven by the

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<sup>13</sup> This is supported by figures provided to Human Rights Watch by a senior figure in the Luhansk medical system in early September; the city morgue had received more than 300 bodies of civilians, about half of them female, since the shelling started.

<sup>14</sup> The United Nations Working Group on Arbitrary Detention regards as detention all forms of deprivation of liberty.

<sup>15</sup> In a meeting with the United Nations Assistant Secretary-General for Human Rights on 29 August in Kyiv.

SBU to Kharkiv in order to be exchanged, despite the alleged refusal of two of them to be exchanged. The HRMMU was granted access to them and held private talks with each detainee. They were released the following day by the Ukrainian authorities.

36. A number of exchanges and unilateral releases occurred before the signature of the Minsk agreements. Reportedly, more than 200 Ukrainian servicemen were unilaterally released by the ‘Donetsk people’s republic’ during the night of 30 to 31 August. On 5 September, hours before the ceasefire was announced, the ‘Donetsk people’s republic’ released 10 detainees. On 7 September, 15 people were unilaterally released by the ‘Donetsk people’s republic’ but this was allegedly not related to the Minsk Protocol.

#### *Detentions by armed groups*

37. On 21 August, the HRMMU talked to relatives of two people who went missing on 7 August near Makiivka, Donetsk region. Reportedly, three armed men came to the victims’ residence and abducted them. On 21 August, in an interview, the son of a Donetsk businessman described the abduction of his father from his office. On 24 August, a pastor and a parishioner from a town in the Donetsk region were abducted by the ‘Donetsk people’s republic’ supporters – one for his allegedly ‘anti-Donetsk people’s republic’ views and the other for having relatives in the United States. On 25 August, a member of a Protestant church who delivered humanitarian assistance to elderly residents of Donetsk, and had been vocal about his pro-Ukrainian views, went missing. On 5 September, a Druzhkivka resident was detained by ‘Donetsk people’s republic’ supporters on his way home from Komsomolskoe. His wife was told that “there were reasons” for his detention, and that “he would be released after circumstances are clarified”. As of 16 September, the whereabouts of all these people remained unknown.

38. In early September, three local administration officials of the town of Kirovsk (Luhansk region) were abducted by the armed ‘Luhansk people’s republic’ supporters, allegedly because of their refusal to provide a school building for the ‘Luhansk people’s republic’ needs. On 11 and 16 September, two senior officials of the Luhansk National University were abducted by the armed groups. At the same time, the ‘Luhansk people’s republic’ leadership had ordered earlier that the university lecturers return to work or they would otherwise be fired.

39. A number of people released by the armed groups reported being transferred to the Russian Federation for interrogation, and then returned to Ukraine. Ukrainian servicewoman Nadiya Savchenko, allegedly captured in the Luhansk region in July, remains in a detention facility in the Russian Federation. Ms. Savchenko is charged with killing Russian journalists in Ukraine, while on duty. On 27 August, the Voronezh Court decided that she would remain in custody until the end of October 2014, and refuted the motion of her defence to initiate an investigation concerning her abduction from Ukraine. The court ordered, at the same time, that the Ukrainian lieutenant undergo a so-called compulsory psychiatric examination in Moscow. The referral to a psychiatric examination means that she will be deprived of contact with the outside world – including her lawyers and the consular services of Ukraine. For two other Ukrainian citizens detained in Crimea in May, please see section X on human rights issues in Crimea.

#### *Torture and ill-treatment of detainees by armed groups*

40. The HRMMU continued to document cases of torture and ill-treatment in the custody of the armed groups in the Donetsk and Luhansk regions. A woman suspected of acting as an artillery spotter for the Ukrainian armed forces was abducted at the end of August. She was subjected to beatings (including with rifle butts) and shooting near her ears. She was forced to stretch her arm in a Nazi salute and shout “Sieg Heil”, threatened with rape and handcuffed to a radiator for several days. Two civil society volunteers were abducted while transporting humanitarian aid. They spent 22 days in detention in late August. They were reportedly beaten, including with truncheons and rifle butts, whilst cigarettes were crushed on their noses and their



nails were broken. Two other civil society volunteers (in detention from 28 July to 27 August) experienced mock execution with guns placed to their heads and knives pointed at their eyes. They were also reportedly beaten (including with baseball bats), poorly fed, and received no medical assistance. Another volunteer was abducted, and taken to a nearby forest where he was ordered to dig his own grave. After refusing to do so, he was hit several times on the head, and his nose was broken. All these people were later released.

*Detention and enforced disappearances by Ukrainian armed forces and police*

41. According to the SBU, from mid-April to 25 August, at least 1,000 individuals have been detained on suspicion of being ‘militants and subversives’. Most of these detainees have been accused of violating territorial integrity or constitutional order, terrorism, espionage, diversions and State treason. After 25 August, at least 52 other people were detained throughout the country on suspicion of such crimes. The HRMMU remains concerned over the situation of these individuals. On 12 September, a number of people released by the Ukrainian forces reported ill-treatment in custody, such as beatings, poor nutrition and lack of medical assistance.

42. The HRMMU has also remained concerned over the enforced disappearances, arbitrary detention and ill-treatment allegedly perpetrated by members of the volunteer battalions, in particular by ‘Aydar’, ‘Dnipro-1’, ‘Kyiv-1’ and ‘Kyiv-2’. This includes the enforced disappearance of a man detained at a checkpoint, whose whereabouts remained unknown, despite the battalion commanders maintaining that he was released after several days; the enforced disappearance and ill-treatment of a man who was suspected of being a ‘separatist’ because of his mobile phone records of calls around the Donetsk region; the killing of a driver who was passing by a column of Ukrainian military vehicles; the extortion of large sums of money from businessmen at checkpoints; and the enforced disappearance of relatives of suspected supporters of the ‘Donetsk people’s republic’, as well as demands of ransom for their release.

43. On 13 September, the HRMMU interviewed a Donetsk resident who had been detained on 29 July in Starobesheve (Donetsk region) while passing a checkpoint manned by the National Guard. During the search a St. George’s ribbon, an ID of a Communist Party member and a Communist Party newspaper were found in his car. For the first three to four days he was reportedly held in a pit in or near Starobesheve, and then transferred to a base allegedly shared by the ‘Dnipro’ and ‘Donbas’ battalions and the ‘Right Sector’ unit in Pokrovske district (Dnipropetrovsk region). He was reportedly held in a basement cell together with 19 persons, including three women. The detainees were urinated on; forced to carry each other naked, covered in foam; boiling water was poured over their legs; and logs were thrown at them, while his hands were cut with a knife. According to the victim, a superior officer noticed what his subordinates were doing and ordered them to stop the torture and cruel, inhuman and degrading treatment. At some point, the detainee interviewed received medical aid, allegedly ahead of the visit of a ‘Right Sector’ leader. The latter was reportedly appalled by the treatment of the detainees and ordered that the perpetrators be sent to the front. On 5 September, the victim was released. According to him, many other detainees were left on the base.

### **III. FREEDOMS OF EXPRESSION AND PEACEFUL ASSEMBLY**

## A. Freedom of expression

44. Foreign and domestic journalists continued to face threats and abductions, with an obvious impact on their work and freedom of expression. Journalists have an important role to play when reporting from conflict zones, as they disseminate information to which the general public would otherwise not have access. However, some unprofessional and biased media fuel the conflict, contributing to the division of society and exacerbating tensions.

### *Safety of journalists*

45. Media professionals continued to risk their safety while working in the Donetsk and Luhansk regions. On 3 September, ‘Russia Today’ photographer Andrei Stenin, who went missing on 5 August near Snizhne, was confirmed dead<sup>16</sup>. He was allegedly traveling in a convoy of civilians fleeing the conflict zone when it came under heavy fire. The police opened a criminal investigation into his death. On 21 August, a Ukrainian photographer was wounded during the fighting in Ilovaisk. To limit casualties among media professionals, some NGOs continued to hold security training sessions for journalists<sup>17</sup>.

46. As in previous months, journalists were detained by armed groups and the ‘volunteer’ battalions. A journalist and a cameraman from TV channel ‘112 Ukraine’ were detained on 21 August by armed men of the ‘Luhansk people’s republic’ while reporting on the exchange of hostages. Both were released two and a half weeks later, following an intervention by Russian journalists. A journalist of the media outlet ‘Road control’ and a cameraman of ‘Espresso TV’, upon their release on 2 September, reported that they were abducted by Russian servicemen on 25 August near Ilovaisk. Some media professionals have yet to be released, such as two Kharkiv journalists, who have been detained by the ‘Luhansk people’s republic’ armed groups on 17 August and a journalist of ‘Espresso TV’ detained by the ‘Donetsk people’s republic’ armed groups on 25 August<sup>18</sup>.

47. On 25 August, the ‘Aydar’ territorial defence battalion detained a female editor-in-chief of a Luhansk-based newspaper near Shchastya, allegedly for “supporting terrorists, inciting war and serving the interests of the Party of the Regions”. Her whereabouts remained unknown as of 16 September. That same day, two journalists (a man and a woman) of the weekly *Crimean Telegraph* went missing near Donetsk after being allegedly removed from a bus by representatives of the ‘Right Sector’. At the time, one of them called her editorial office, but since then there has been no contact with either of the two. On 1 September, two Russian correspondents from TV ‘Dozhd’ and Forbes were abducted at a checkpoint by the ‘Azov’ battalion. They were held for several hours. After their release they reported being taken to a basement with bags on their heads, whilst their documents and accreditations were checked.

### *Disinformation / media regulation*

48. As fighting intensified in August, the instances of media disinformation significantly increased. On 21 August, the Russian TV channel ‘Zvezda’ aired a report alleging shelling of Makiivka by the Ukrainian forces in order to liberate it by Independence Day on 24 August. The video was later removed from the channel’s website. The same day, the National Security and Defence Council Information and Analysis Centre and the public initiative StopFake tracked

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<sup>16</sup> This is the seventh registered death of a journalist since the beginning of 2014.

<sup>17</sup> Media professionals working in the security operation area often do not use personal safety equipment. Of concern are a number of instances where reporters are seen in their own recordings wearing camouflage and elements of military attire, beyond just protective helmets and body armour.

<sup>18</sup> According to the study of the NGO ‘Institute of Mass Information’ presented on 16 September, in the period from beginning of March to end of August 2014, 70 media professionals have been detained by ‘self-defence’ units and armed groups in Crimea and eastern regions of Ukraine respectively.



down the actual footage of the supposed rocket blast and established that it was filmed on 2 July 2013 in Baikonur (Kazakhstan).

49. On 28 August, the press services of the ‘Donetsk and Luhansk people’s republics’ claimed that Osypenko settlement near Berdyansk, Zaporizhzhia Region, was seized by their armed units. However, Ukrainian journalists found out that the town was under the control of the Government. The mayor of Berdyansk stated that ‘pro-Russian’ supporters are reporting non-existent victories in order to sow panic among the population.

50. The Ukrainian authorities continued to take measures to regulate and, in some cases, to censor the media. On 19 August, an adviser to the MoIA confirmed that the police would monitor whether cable TV providers complied with an earlier ban on 12 Russian channels<sup>19</sup>. On 28 August, the National Council on TV and Radio Broadcasting stated that it had transmitted to the SBU a list of 49 Russian media professionals, who should be banned from entering Ukraine, allegedly for inciting hatred, violence and war propaganda. As of 11 September, 35 persons on the lists had been denied entry to Ukraine for three to five years. While such measures may be required, it is necessary to ensure that such steps are not arbitrary and in accordance with article 20 of the International Covenant on Civil and Political Rights.

51. On 11 September, the SBU searched the offices of *Vesti* newspaper, in Kyiv, and confiscated equipment, materials and journalists’ personal belongings<sup>20</sup>. The SBU reportedly conducted the search as part of a criminal investigation into *Vesti* publications, which allegedly contained information infringing Ukraine’s territorial integrity. After the search, the newspaper published pictures of the consequent damage to its property. On 11 September, the SBU searched the Mega-Polygraph printing house, where *Vesti* is printed. According to the printing house, the search resulted in delays in the printing of *Vesti* and other media publications.<sup>21</sup>

52. On 12 September, the leadership of the ‘Donetsk people’s republic’ reportedly obliged all media outlets in the Donetsk region, including branch offices of all-Ukrainian channels, to register at the so-called ‘ministry of information’, threatening that their editorial offices would otherwise be forced to stop working.

53. The ongoing conflict continued to be accompanied by propaganda, disinformation, lack of objective, unbiased reporting, and use of charged terminology (‘junta’, ‘fascist’, ‘terrorists’) by all sides to the conflict. This has contributed to exacerbating tensions, fuelling a dual narrative of ‘us versus them’ which has led to polarising society and spreading intolerance among some communities.

#### *Manifestation of intolerance*

54. Two instances of humiliation and manifestation of intolerance through symbols occurred in Donetsk at the end of August, causing particular outrage. On Independence Day, armed group members forced some 50 of their detainees, believed to be Ukrainian servicemen, to march through the centre of Donetsk, exposing them to crowds who threw items at them and shouting insults. Afterwards, public road-cleaning vehicles washed the road behind the detainees while driving over Ukrainian flags<sup>22</sup>.

55. On 26 August, armed supporters of the ‘Donetsk people’s republic’ subjected a Ukrainian female activist from Yasynuvata, Donetsk region, to public humiliation. She was held

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<sup>19</sup> See paragraph 68 of the OHCHR report on the human rights situation in Ukraine, 17 August 2014.

<sup>20</sup> This is not the first time *Vesti* has been searched. These offices were previously threatened by an MP and his supporters, demanding that it change its editorial policy. It was later vandalised by masked and armed demonstrators. In the past, ‘Vesti’s’ management expressed to the HRMMU its concern that political pressure was being applied to prevent its criticism of Government policies.

<sup>21</sup> Following the incident, the OSCE Representative on Freedom of the Media called on the Ukrainian authorities to respect media. The full text is available at: <http://www.osce.org/fom/12352>.

<sup>22</sup> Such a practice was applied in the Soviet Union to German prisoners of war.

in captivity for a day, beaten and threatened with rape and death. After that she was forced onto the street, draped in a Ukrainian flag and with a sign reading ‘she is killing our children’. The passers-by spat in her face, kicked and beat her with sticks, took pictures of her and verbally abused her. A Russian and foreign journalist witnessed and recorded this incident<sup>23</sup>.

56. Such incidents, as well as a growing number of videos of torture of Ukrainian servicemen by armed groups, provoke anger. In this climate, those questioning or not supporting the security operation or a military solution are often viewed as supporting the ‘Donetsk or Luhansk people’s republics’. At the same time, there is a shrinking public space for people to express their dissatisfaction, frustration and views that may be different. Generally, incidents of intolerance have become more frequent.

57. The HRMMU noticed an increased use of hate speech and incitement to violence in social networks by ‘pro-Unity’ supporters in Odesa, particularly targeting high ranking officials and parliamentarians connected to the Party of Regions<sup>24</sup>. There has also been an increased use of hate speech during ‘pro-Federalism’ assemblies, with some participants calling for the death of active ‘pro-Unity’ supporters, and labelling them as ‘fascists’ and ‘Nazis’. In general, the use of hate speech has fostered an antagonistic and aggressive environment, limiting space for dialogue and reconciliation.

### **B. Freedom of peaceful assembly**

58. During the reporting period, the right to peaceful assembly was generally exercised without restrictions in most of Ukraine, with the exception of eastern Ukraine and the Autonomous Republic of Crimea. The number of peaceful protests increased, while the number of police officials who attend such events declined compared to previous months. However, there was an increase of prohibitions of protests by courts or local authorities in the name of public order and safety. In particular, rallies were prohibited in Kyiv and Odesa on the grounds of preventing rival protests that could potentially turn violent,<sup>25</sup> on Independence Day.

59. Public calls for lustration gained momentum throughout Ukraine. In Kyiv, people gathered near the Parliament buildings to demand the adoption of the lustration law. A number of rallies took place in western Ukraine expressing dissatisfaction with local institutions or regional state officials and demanding lustration and the dismissal of heads of local institutions. In most cases, local authorities demonstrated openness to dialogue with protesters and no violent incidents were reported. In some cases, protesters blocked major roads.

60. Protests over the reporting period generally pertained to issues connected to the conflict, particularly demanding peace or protesting against the deployment of military units to the east, or the conditions of deployment, or rallies demanding that IDPs residing in western Ukraine do not evade mobilisation. Many also related to social and economic concerns, and support to either ‘pro-Unity’ or ‘pro-Federalism’ positions.

## **IV. ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS**

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<sup>23</sup> The Russian journalist contacted the local brigade commander who expressed outrage at the incident and ordered the activists to be released. He guaranteed her free passage and she has since reached Ukrainian controlled territory.

<sup>24</sup> For example, on 9 August, a Facebook group posted the following – ‘Lustration may start by itself, it is enough just to shoot Efremov, cut the throat of Lena Bondarenko, chop off Chechetov’s hands, hang Kivalov, announce a hunt for Liovochkin, publicly hang three brothers Litvinov, burn alive Shufrych and I assure you, they will run, they will leave Ukraine the next day’.

<sup>25</sup> This increase for now may be viewed in the context of the larger numbers of public manifestations marking Independence Day, which fell in the reporting period.

## **A. Accountability for human rights violations in the east**

### *Command responsibility*

61. With the increasing number of reports of grave violations of international humanitarian and human rights law committed in the conflict area it is crucial to establish accountability, including command responsibility. Command responsibility is applicable to both the military and political leadership. No matter who the perpetrators or the victims are, efforts must be made to ensure that anyone who has committed any serious violation of international law is brought to justice, and appropriate remedies provided for victims.

### *Reprisals*

62. With the shift in control of territory during the reporting period between Government forces and the armed groups the risks of reprisals against individuals for collaborating with ‘the enemy’ or for such perceived collaboration has increased.

63. The escalation of hostilities after 24 August resulted in armed groups recapturing some territories they had previously lost to Ukrainian forces. People with expressly ‘pro-Ukrainian’ views are thus at risk of reprisals. On 7 September, the HRMMU learned that several officials of the Telmanove district administration (Donetsk region) were abducted by armed supporters of the ‘Donetsk people’s republic’ on 3 September.

64. There have been allegations of reprisals against people who collaborated with the armed groups of the ‘Donetsk and Luhansk people’s republics’ who now find themselves in territory under the control of the Ukrainian armed forces. On 4 September, 33 legislators of the Artemivsk city council and three members of the Donetsk regional council signed an appeal to the President, the Prosecutor-General and the MoIA, asking for a legal assessment of the actions of the ‘Artemivsk’ battalion. Concerns remained regarding the continued detention of the former mayor of Slovyansk, Ms. Nelya Shtepa. On 9 September, the HRMMU observed the court hearing in Chervonoavodsky, Kharkiv, on the prolongation of the measure of restraint imposed on Ms. Shtepa. The court extended this measure for a further 60 days, until 12 November. The defence announced that they would appeal the decision of the court.

### *Accountability for human rights abuses and violations*

65. Point 6 of the Minsk Tripartite Protocol requires adoption of a “law on prevention of persecution and punishment of individuals in connection with events which took place in certain select areas of Donetsk and Luhansk regions”. It will be critical that such legislation does not result in impunity from prosecution, including for grave crimes and most severe human rights violations (see section V on legislative developments and institutional reforms).

66. On 2 September, the Chief Military Prosecutor of Ukraine<sup>26</sup> announced that the overall number of criminal proceedings opened by the military prosecutors had reached 1,700 for the entire period of the security operation. The Office of the Military Prosecutor may only conduct investigations into crimes committed by servicemen of the armed forces, as well as voluntary battalions of territorial defence under the Ministry of Defence, but not those committed by the voluntary battalions subordinated to the MoIA. Most of the criminal proceedings opened concern disobedience and insubordination. The office of the military prosecutors initiated investigations into 82 crimes committed by 881 servicemen under article 402 of the Criminal Code (insubordination), 350 crimes committed by 514 servicemen under article 407 of the Criminal Code (absence without leave from a military unit or place of service), and 109 crimes committed by 2,605 servicemen under article 408 of the Criminal Code (desertion). So far more

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<sup>26</sup> The Office of the Military Prosecutor was introduced into the system of the Office of the Prosecutor General by a new law amending ‘the Law on the Office of the Prosecutor general’, which came into force on 23 September 2014.

than 380 indictments were submitted to courts, and some 30 individuals have already been subjected to sanction.

67. The SBU, which is the competent body to conduct investigations into crimes aimed at State security, reported that up until 25 August, it was investigating more than 1,000 criminal proceedings into trespass against the territorial integrity of Ukraine, actions aimed at forceful change or overthrow of the constitutional order or take-over of Government, acts of terrorism, high treason, and other unnamed crimes. SBU investigators have submitted 49 indictments against 52 people, and 10 individuals have so far been sentenced to different terms of deprivation of liberty.

68. At the same time, the HRMMU has been receiving complaints from people who were abducted by the armed groups both in the Luhansk and Donetsk regions. In a number of cases people submitted applications with the SBU or MoIA, which were not duly considered but were transferred to the local MoIA departments where the abductions took place (see section II on rights to life, liberty, security and physical integrity).

69. Three people who were allegedly abducted and tortured by the armed groups in the Luhansk and Donetsk regions, filed applications with the MoIA but were denied the opening of criminal proceeding due to lack of territorial jurisdiction. The case was forwarded to the respective local MoIA where the alleged crimes occurred, irrespective of the fact that these crimes were committed with either the direct involvement of, or with failure of local police officers to prevent the crime.

#### *Introduction of the death penalty in the 'Donetsk people's republic'*

70. A 'criminal code' adopted by the 'presidium of the council of ministers of the 'Donetsk people's republic' entered into force on 18 August. It is modelled after the Russian Federation criminal code, and includes the establishment of military tribunals to implement the death penalty. According to the 'Prosecutor General' of the 'Donetsk people's republic', the 'death sentences' would be applied to cases of aggravated murder; such as the murder of two or more persons, with particular cruelty; of a minor, or a pregnant woman; and to a number of other crimes; as well as for certain military offences committed in time of war or in a combat situation, such as the transfer of technology or means of warfare to the enemy, desertion, and other crimes, such as those related to violations of the laws or customs of war. The current 'prime minister' of the 'Donetsk people's republic' claimed that death sentences would be an exceptional measure. The 'Donetsk people's republic' would make its legislation "more humane", once the war would be over. The HRMMU has no confirmed information on the implementation of 'death sentences' implemented after 17 August.

### **B. Investigation into the 2 May violence in Odesa**

71. The MoIA and the Office of the General Prosecutor continued their investigations into the 2 May violence in Odesa. No new official elements have been presented. The measures of restraint (custody or house arrest) have been prolonged for an additional 60 days for all suspects in connection with 2 May violence. Until now there is no will among the law enforcement agencies (MoIA, Office of the General Prosecutor and SBU) to cooperate with each other. Furthermore, the HRMMU received direct evidence that the judicial system and law enforcement agencies have been facing great political pressure to not cooperate regarding the investigation. The incident continues to divide the Odesa, with each political side accusing the other of initiating the mass disorder.

72. On 12 September, the deputies of the Odesa Regional Council dissolved the "Temporary Oversight Commission of the Odesa Regional Council" upon an initiative by members of this Commission due to lack of authority and competence to oversee the official investigation



process. All the materials gathered by the ‘Temporary Oversight Commission’ have since been transmitted to the ‘Interim Parliamentary Commission investigating the facts of citizens’ deaths in Odesa, Mariupol and other cities in the Donetsk and Luhansk regions of Ukraine.

73. The ‘Interim Parliamentary Commission’ registered its final report on 5 September. However, the secretary of the Commission withdrew her signature from the report due to discrepancies in the text submitted to the members of the Commission and the final version. These differences were confirmed by the head of the ‘Interim Parliamentary Commission’. Indeed, it appears that some of the Commission members altered the final draft by removing names of Kyiv and Odesa high ranking officials (including ‘pro-Unity’ leaders), reducing their level of responsibility in the 2 May violence. Furthermore, the work of the ‘Interim Parliamentary Commission’ was impeded by the limited cooperation from the MoIA, the SBU and the Prosecution Office, allegedly due to the confidentiality of the official investigation.

74. The ‘Interim Parliamentary Commission’ final report highlights some new elements: the use of chloroform in the Trade Union Building; the delay in putting out the fire due to the interference of protesters; the visit of the Secretary of the National Security and Defence Council to Odesa a few days before the 2 May, and his alleged involvement in the violence.

75. As of 16 September, the report was under consideration in the Parliament. The ‘Interim Parliamentary Commission’ members recommended that the Parliament widely distribute the report and invite all relevant law enforcement agencies for hearings on it. They also recommended that all law enforcement agencies present their comments on the report to the Parliament within two weeks.

76. The MoIA Special Investigation Unit (based in Odesa) also continued its investigation. It underlined having little experience in investigating mass riots involving various political groups, and large numbers of suspects (114). The ‘pro-Unity’ movement has reportedly attempted on several occasions to interfere in the investigation, for example by proposing to assist in arresting people. There is evidence that changes of measures of restraint (from custody to house arrest) were introduced following pressure on judges by ‘pro-Unity’ activists. So far, only one person has been arrested under article 115 of the Criminal Code (murder) and placed under house arrest. The Head of the Investigation Unit, however, has reasserted that all perpetrators, regardless of their political affiliation, would be brought to justice.

77. On 12 September, the Ukrainian Parliament Commissioner for Human Rights submitted an updated report to the Office of the General Prosecutor, highlighting human rights violations by law enforcement agencies during the 2 May violence.

78. The Office of the General Prosecutor has not yet transmitted the criminal investigation materials to the court concerning the four police officers accused of the illegal “release” of detainees on 4 May<sup>27</sup>.

79. The SBU has so far, appeared reluctant to share any information regarding 2 May violence with other law enforcement agencies and the Parliamentary Commission.

80. On 16 September, the Independent Commission held a press-conference on the 2 May violence in Odesa. It noted reliable information that there might be four additional deaths during the 2 May violence: two people were allegedly shot at the Trade Union Building (one in and one near); and two died from heavy burns at the Odesa Military Hospital. The MoIA is examining these allegations. The Independent Commission continued to underline that the authorities have been reluctant to conduct an objective and impartial investigation. It stressed that most of the evidence was destroyed very soon after the 2 May violence. Finally, it noted that following the

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<sup>27</sup> On 4 May, pro-federalism protesters massively gathered in front of the Odesa Police Station in order to claim the release of those arrested on 2 May. They stormed the police station and, following the decision of the Deputy Head of the Regional MoIA, together with other high ranking MoIA officials, 63 detainees were illegally released.

leak of personal data, some witnesses and activists had been intimidated by opponents, and some had to leave the region or the country.

### **C. Investigations into human rights violations committed during the Maidan protests**

#### *Investigations into mass killings of protesters (January and February 2014)*

81. The Office of the Prosecutor General continued its criminal investigations into the killings of four protesters on 19 and 21 January, and of at least 98 people between 18 and 20 February. These are combined into a single proceeding under which three former servicemen of the ‘Berkut’ special police unit, out of 26 suspects, are currently being held in custody since 4 April.

82. According to the Office of the General Prosecutor, the pre-trial investigation into the mass killings of peaceful protesters has been completed, and files of the proceedings were disclosed to the three former ‘Berkut’ officers. This marks a shift in the criminal proceedings to the trial stage. This is the first time all case files will be disclosed for familiarization, not just to the three suspects, but to all parties. This should clarify whether all required procedural inquiries were made and if this was in accordance with the law. Some lawyers consider that certain inquiries are yet to be done and that the case will not go to trial soon.

#### *Investigations into killings of law enforcement officers on 18 and 20 February*

83. Investigations into the killings of police officers between 18 and 20 February have not significantly progressed. The latest official development was the release of the report of the Provisional Investigating Commission of the Ukrainian Parliament on Maidan events (PIC Report), on 7 July 2014. This document reports that 196 officers and servicemen of the MoIA received gunshot wounds from 18 to 20 February, and that 17 of them (10 police officers and 7 servicemen of MoIA interior troops) died. Reportedly, none of them were carrying service weapons.

84. According to the PIC Report, for unknown reasons, the initial investigative group did not visit the hospitals where the wounded police officers were brought, as required by standard procedure. Bullets removed from the victims were not preserved according to regular procedure, but were stored in a single container, which made it impossible to identify which bullet hit which particular victim.

85. The Office of the Prosecutor General of Ukraine transferred all materials relating to gunshot wounds suffered by the MoIA staff to the MoIA. The PIC report found the MoIA negligent in undertaking any investigation into the killings, and furthermore the Commission has distanced itself from such an investigation.

### **D. Administration of justice**

86. On 2 September, the High Specialized Court of Ukraine for Civil and Criminal Cases pursuant to the law passed a regulation changing the venue for cases to be heard, in cases where a court was located on the territory controlled by the armed groups. According to the regulation, all civil, administrative and criminal cases subject to trial in the Luhansk Regional Court of Appeals are to be considered in the Kharkiv Regional Court of Appeals, and cases of the Donetsk Regional Court of Appeals, are to be considered in the Zaporizhzhia Regional Court of Appeals<sup>28</sup>. The regulation also changes the venue for cases considered in the first instance courts located in territory controlled by the armed groups. Cases are now heard in other courts located within the Donetsk and Luhansk regions, which are under control of the Government.

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<sup>28</sup> Except for those previous criminal cases at the Donetsk Regional Court of Appeals that remained with this court when it was temporarily relocated to Mariupol.



87. Activists who mostly support a ‘pro-Unity’ position have been placing significant pressure on judges during the trial of a ‘pro-Unity’ activist who was detained in Odesa on 20 August for beating people who had jumped from the windows of the burning Trade Union building on 2 May. He was then transferred to Kherson (in order to avoid mass protests during the court trial) where the court placed him into custody for two months. On 29 August, during the trial at the Court of Appeals of Kherson Region, a rally took place protesting against his pre-trial detention.

## **V. LEGISLATIVE DEVELOPMENTS AND INSTITUTIONAL REFORMS**

88. During the reporting period, draft legislation on IDP rights and corruption was submitted to Parliament. In addition, before the Tripartite Contact Group talks, which led to a ceasefire, draft laws were registered or adopted in the context of the security operation. Policy areas for reform were also outlined by the authorities. There have been no new developments in the sphere of constitutional reform.

### **A. Changes to the legislative framework**

#### *Draft legislation in follow up to the Minsk Protocol of 5 September*

89. On 16 September, Parliament passed two draft laws pursuant to the Minsk protocol of 5 September. The draft law on the ‘special status’ of certain areas of the Donetsk and Luhansk regions was submitted by the President of Ukraine by 16 September. The status is envisaged for a period of three years. The document provides for local authorities to facilitate the use of Russian and other languages in public life. It rules out criminal or administrative responsibility for those who took part in the events on the territory of the Luhansk and Donetsk regions, where the law applies. The law provides that local elections would take place on 7 December 2014.

90. The powers of the local authorities will be greater than those enjoyed by other local authorities in Ukraine. In particular, they will have the right to take part in the appointment of heads of courts and of prosecution offices. The special status allows for the creation of voluntary people’s police, accountable to the local authorities. The draft law provides for specific financing to be allocated to these areas, without the possibility to diminish this financing, even in case of amendments to the State budget. The territory enjoying special status will be able to establish closer cooperation with the Russian Federation. The law will enter into force once signed by the President and published in the ‘Official Gazette’.

91. The implementation of this law requires one legal clarification. In particular, the competencies of the new local authorities would have to be defined, as well as the areas where those competencies would be shared with the central Government, and those that would be exclusively attributed to the local authorities.

92. The draft law on ‘the prevention or punishment of participants in events on the territory of Donetsk and Luhansk regions’ cancels criminal and administrative liability for people who took part in the activities of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’ from 22 February until the moment the law enters into force. However, certain conditions must be met for the cancellation to take place: all hostages must be released within a month and weapons and ammunition must be surrendered. Responsibility, however, will not be waived in a wide range of cases. These include: “crimes against life and health (murders and infliction of serious bodily harm); sexual crimes; hostage taking; human trafficking; banditry; smuggling; acts of terrorism; violation of graves, burial places, or corpses; attacks against the life of a law enforcement officer, a judge, an official or a citizen performing his/her public duty, a defence attorney, or a foreign State representative; threats or violence against a public official or a citizen

who performs his/her public duty, internationally protected persons and institutions in connection with their activity related to the administration of justice; genocide; and persons who committed a crime connected with the crash of the ‘Malaysia Airlines’ flight MH17”.

93. All newly adopted legislation needs to be undertaken in accordance with international norms and standards and be implemented in consultation with civil society and local communities; guarantees for due process must also be ensured, including through the involvement of relevant organisations. Strategies for their implementation need to be developed with the participation of victims and civil society more broadly. These should be designed to enable implementation of the legislation to be in accordance with international norms and standards, including UN General Assembly resolution 68/262, through the assistance and guidance of relevant international organisations, and with a view to guaranteeing due process.

*Draft law on ensuring rights and freedoms of internally displaced persons*

94. On 28 August, Parliament registered a draft law regarding IDPs. The draft was elaborated in cooperation with the United Nations, the OSCE, the State Migration Service and representatives of NGOs on the basis of a draft by the Ukrainian Helsinki Human Rights Union, following amendment by the Ministry of Justice. The document simplifies the procedure of temporary registration of IDPs; reduces the deadlines for registration; prolongs social benefits for IDPs; and guarantees their access to social and medical services. It also aims at establishing legal grounds to develop special government programmes for IDPs; a unified register and database; information on available accommodation and employment opportunities in the regions; and provide for the application of the state system on social security, pensions and financing of expenses connected with temporary settlement of IDP families in State and municipal institutions. On 2 September, the Human Rights Committee of the Ukrainian Parliament voted to recommend that Parliament adopt the draft with an accelerated procedure of seven days between the first and second readings. The first preliminary reading of the draft law was scheduled for 16 September, but was postponed to 16 October.

*Draft law countering corruption*<sup>29</sup>

95. On 4 September, President Poroshenko submitted a draft law to Parliament on the establishment of a national anti-corruption bureau<sup>30</sup>. The bureau would have the status of a law enforcement body and would carry out pre-trial investigations, and conduct operative and search measures. With an envisaged staff of up to 700 employees, it would cover cases of alleged corruption crimes involving UAH 500,000 (USD 37,000-38,000) or more, and implicating high-level officials, at presidential and cabinet level, including judges and senior officials within the MoIA, the Army, and the customs. The anti-corruption bureau would be competent to investigate new cases, as well as relevant crimes committed under the mandate of former President Yanukovich.

96. A special commission for the selection of the bureau director and employees will be established, as well as a procedure envisaging ‘monitoring of lifestyle’ and ‘virtuousness checks’ of State authorities and the bureau itself, which is not line with international norms and standards. The draft law provides for the use of controversial methods, including polygraph examination and ‘provocation of bribe’, which should be applied to the employees of the bureau. Registering of the draft and its adoption by the end of October was one of the conditions set by the International Monetary Fund (IMF) of the reform process in Ukraine. On 16 September, Parliament did not adopt the draft law.

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<sup>29</sup> Law on the system of special authorised bodies in the field of countering corruption.

<sup>30</sup> The draft was submitted as part of a package of anti-corruption measures adopted by the Cabinet of Ministers on 2 July 2014.

97. On 16 September, Parliament passed an amended version of the draft law ‘on cleaning up the State authorities’, which had been adopted on its first reading on 14 August. The law seeks to create the legal framework for a comprehensive lustration or vetting of State officials of all levels who held office during the period of the administration under former President Yanukovich, including parliamentarians, ministers and judges of the Constitutional Court of Ukraine, as well as officials of other state agencies and local self-government. The first draft adopted in August had been criticized by civil society groups as opening the way to arbitrary dismissals<sup>31</sup>. A parliamentary working group prepared a new draft with civil society, which includes approximately 400 amendments. According to a parliamentarian who co-authored the new draft, the latest version excludes lustration for certain elected positions (members of Parliament, the ombudsman, and constitutional court judges). At the time of writing, the text of the law was not available. The HRMMU will be able to properly assess it once it is published<sup>32</sup>.

#### *Legislation in the context of the security operation*

98. On 19 August, Parliament registered a draft law aimed at ensuring the equal mobilization of citizens from all regions in the context of the security operation, including those areas formerly under the control of armed groups. The law aims at meeting concerns about the lack of mobilization of IDPs and others from the east.

99. On 2 September, Parliament adopted in a first reading a draft law on ‘amendments to certain legislative acts regarding ensuring mobilisation and guarantees to citizens who serve in the army during mobilisation’. The draft law proposes to set up criminal liability (imprisonment for two-five years) for company directors who do not provide company vehicles if requested by the military commissariats. It envisages the preservation of jobs and an average salary for employees who are mobilised, as well as exemption from taxes and fees for entrepreneurs who are also mobilised. Such measures come after strong public requests.

### **B. Judicial and governance reform**

100. On 10 September, the interim special commission, established on 4 June 2014 according to the Law on the Restoration of Confidence in the Judiciary in Ukraine, published its second monthly report. This body is mandated to assess the decisions and conduct of general court judges who considered civil, administrative or criminal cases related to the ‘Maidan’ mass protests held throughout Ukraine from November 2013 and until the law entered into force on 11 April 2014. The Commission had reviewed 579 complaints, of which 504 were dismissed and 75 were declared admissible. The commission can also review the decisions and conduct of judges who ruled on cases which were assessed by the European Court of Human Rights as having violated the European Convention on the Protection of Human Rights and Fundamental Freedoms. Any person or legal entity can request a judge to be assessed by the Commission. The HRMMU will attend the first public hearing of judges against whom complaints were accepted, tentatively scheduled for 24 September 2014.

101. Another initiative to strengthen public confidence in the courts was a countrywide campaign launched in September by the Ukrainian Council of Judges, the State Judicial

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<sup>31</sup> In the 5th monthly report, the HRMMU had highlighted a number of shortcomings: the draft law did not create a single independent lustration body; responsibility for carrying out lustration was given to the heads of each body concerned. It proposed to dismiss virtually all state officials occupying leading posts in previous years, thus entailing wholesale dismissal within certain departments. There was no mechanism for ensuring that those removed would be replaced by qualitatively different persons.

<sup>32</sup> It is believed to contain an ‘improved’ formulation of the provision regarding lustration of the ex-President of Ukraine, the President’s administration, the Prime-Minister and his deputies, heads and deputy heads of the state regional administrations, officials connected with the Maidan events as well as judges and prosecutors who adopted illegal decisions in regard of Maidan activists.

Administration and the Centre of Judicial Studies. Visitors to each court will be asked to complete an anonymous form, containing questions on the organizational and procedural activity of the court. Simultaneously, judges, lawyers, prosecutors, scientists, representatives of NGOs and the mass media will be questioned on the level of judicial independence in Ukraine.

#### *Effective State administration*

102. The Government of Ukraine has started to reduce the number of State institutions as part of an institutional reform package aimed at decreasing the cost and size of State administration, under reforms required by the IMF. On 2 September, President Poroshenko thus issued a decree terminating the functions of 22 state bodies in an advisory or supporting role<sup>33</sup>. These bodies were largely ineffective or duplicating other existing functions. Besides, they did not have a clear role and impact on the protection of human rights.

103. On 10 September, the Cabinet of Ministers adopted a decree ‘On the Optimisation of the System of Central Executive Bodies’ that reduces supervisory State authorities by approximately 50 per cent, either by completely terminating them or by merging their functions and reducing the number of control functions performed by these bodies by 34 per cent.

## **VI. POLITICAL RIGHTS**

### *Right to vote and to be elected*

104. On 27 August, a Presidential Decree<sup>34</sup> dissolving Parliament and announcing extraordinary elections for 26 October entered into force. The current Parliament is to function until the new members of Parliament take oath.

105. According to current legislation, voters cast ballots both for a member of parliament (MP) elected under the majority system, and for one elected under the proportional system<sup>35</sup>. Voting under the majority system is dependent on a voter having a permanent or temporary residence. Due to this, some groups of people may face difficulties in realizing their right to vote. For example, IDPs registered at their places of temporary residence will be able to vote for candidates under both systems; however those who are not registered at their temporary residence can vote only for the candidates on the party lists under the proportional system<sup>36</sup>.

106. According to the Law on Temporary Occupied Territory<sup>37</sup>, elections cannot be administered on the territory of the Autonomous Republic of Crimea. Thus, those who currently reside in Crimea and who wish to vote, will only be able to do so if they travel to mainland Ukraine. However, they will not be able to vote for candidates under the majority system, as explained above. The May Presidential elections showed that many people hesitated or did not

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<sup>33</sup> It affects the committee of economic reforms, the committee on reforming state enforcement bodies, the interagency working group on the analysis of observance of legislation on freedom of expression and protection of freedom of the media, the council of regions, the expert council on questions of Ukrainian and Russian relations, the working group on implementing the concept of criminal justice for under 16-s in Ukraine and the working group on criminal justice reform.

<sup>34</sup> Decree of the President № 690/2014, as of 27 August, on Dissolving Parliament and announcing early Parliamentary elections.

<sup>35</sup> On 12 August, three draft laws related to the electoral process were proposed, but none were adopted. One aimed at establishing a proportional system with open lists of candidates, another proposed to introduce a proportional system and a third one with partial modernization of current mixed electoral system.

<sup>36</sup> The Human Rights Committee stated in its General Comment No. 25 on article 25 that ‘Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable [...]’ (para 11).

<sup>37</sup> Law on Ensuring Rights and Freedoms of Citizens on the Temporary Occupied Territory of Ukraine No. 1207-VII, dated 15 April 2014.

have the possibility to travel to electoral districts on the mainland. Thus, under the current legal framework, theoretically only 438 of 450 national parliamentarians can be elected, considering that 12 electoral districts are located in Crimea.

107. In case the ceasefire is maintained and a peace agreement is reached, a procedure would be required to ensure the security of residents in the eastern regions occupied by the armed groups so that they can safely and freely exercise their right to vote. This would be important to avoid situations as witnessed in the context of the Presidential elections.

108. Court hearings to ban the Communist Party of Ukraine based on a lawsuit from the Government are pending, as the scheduled hearings were postponed. If the court has to adopt a decision banning the Communist Party before the elections, this will prevent its candidates' participation in elections. This comes alongside State officials continuing to accuse Communist Party representatives of supporting 'Crimean annexation' and the 'Luhansk and Donetsk people's republics'.

109. Regarding ethnic minorities, the Hungarian community in the Zakarpattia region has concerns over the limited feasibility to elect its own ethnic representatives. According to article 18(2) of the Law on the Elections, boundaries of single-mandate election districts are established taking into account, inter alia, the interests of national minorities. Thus, bordering administrative entities, where ethnic minorities reside shall be included in the same electoral district; whereas in the Zakarpattia region, the Central Election Committee has so far divided the territory of the compact residence of Hungarians between separate electoral districts.<sup>38</sup> The Hungarian community addressed the administrative court of appeal in Kyiv with a request for the decision of the Central Election Committee to be reviewed.

110. Within civil society, concern has been raised about the need for women to be properly represented in the new parliament, as the gender quota legislation was not passed<sup>39</sup> and no systematic efforts have been made to encourage women's participation in political life.

## VII. ECONOMIC AND SOCIAL RIGHTS

111. The security situation in the east seriously affects the right of over five million residents in those areas directly affected by violence<sup>40</sup>. More, generally budget resources across the whole country are being depleted, which is impacting on various groups in other regions of Ukraine.

### A. Right to an adequate standard of living (including food, clothing and housing)

112. In spite of the ceasefire declared on 5 September, local administrations continued to report about the further destruction of houses and infrastructure caused by shelling. According to preliminary estimates from the Ministry of Regional Development, 4,501 residential buildings and 4,733 energy and water systems facilities and structures have been damaged as a result of fighting or destroyed deliberately by armed groups. Despite efforts made to restore damaged infrastructure, as of 12 September, there was still no running water in at least 22 settlements of the Donetsk region, nor electricity in 93 settlements. The HRMMU has received first-hand reports about the illegal seizure of movable and immovable property in the eastern regions. The majority of reports suggest that the property (apartments, businesses and cars) was expropriated

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<sup>38</sup> As stated by the Human Right Committee, the "drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely."

<sup>39</sup> The draft law to establish a 35 per cent quota for women was registered in Parliament in October 2013, but never adopted. Currently women hold approximately 9.8 per cent of the 450 seats in Parliament.

<sup>40</sup> Estimate provided by OCHA, situation report No.11, as of 12 September 2014.



by armed groups. In some cases, when residents refused to give their property away, they were reportedly immediately shot or detained. On 12 September, it was reported that the leadership of ‘Donetsk people’s republic’ planned to nationalize the property of those who had fled the area, based on lists received of those who had requested refugee status in the Russian Federation. On 16 September, the National Security and Defence of Ukraine reported that ‘Luhansk people’s republic’ created a special commission to keep record of all abandoned apartments, which further would be nationalized for the needs of the ‘republic’.

113. On 9 September, the HRMMU received a complaint that on 4 August, Ukrainian soldiers evicted inhabitants from a number of houses in Mariinka (Donetsk region) near a Ukrainian controlled checkpoint. A complaint about this was recently filed with the Office of the Military Prosecutor.<sup>41</sup> All incidents of illegal seizure of property must be promptly investigated; clear procedures should be developed to return the property to the lawful owners.

114. Uninterrupted food supply and access to potable water remained priorities. Local administrations in the regions of Donetsk and Luhansk reported that the delivery of basic commodities was complicated due to fighting; but a minimum choice of products was available thanks to the efforts of the Government, private entrepreneurs and volunteers, as well as humanitarian aid, which reached the region in August. The situation slightly improved in these areas following the ceasefire. At the same time, on 15 September, the HRMMU was informed that there had been no food delivery to Yenakievo prison No.52 in Olenivka, Donetsk region, for almost two months, leaving 450 inmates at the point of starvation.

## **B. Right to work**

115. The Government estimates that 39,985 small and medium businesses in the Donetsk and Luhansk regions have ceased activity due to fighting. This has directly affected 54 per cent of entrepreneurs in these regions, leaving many of their employees without income. Due to the destruction of industrial companies and mines<sup>42</sup>, more than 30,000 residents of Donbas are currently without jobs. Even if the fighting stops, many will not be able to immediately return to work, as the re-launch of many technological processes in some of these companies requires significant time and resources.

116. Many of those who have left the region may not receive unemployment benefits, as their work contracts have not been officially terminated, which is a main requirement for registering as unemployed. Also, according to existing legislation, those who terminated their contracts unilaterally (even due to personal safety concerns) may not apply for benefits for three months. Additionally, some may lack motivation to search for new work, especially in areas such as Kyiv where newly received unemployment benefits are higher than the minimum wage being offered to most IDPs. The influx of IDPs has been increasing the rate of unemployment in host communities. In some regions the unemployment rate has increased by 1 per cent monthly and has led to tensions.

117. The Prosecutor’s Offices in Ternopil reported about the case of the unlawful dismissal of a mobilized soldier from his workplace. The man was mobilized in March and due to his absence from the work place, was unlawfully fired as a manager of a local store. The Prosecutor filed a request to the employer to reinstate him in his position and pay his wage arrears starting from the time of his dismissal. The Military South Region Prosecution Office has reported

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<sup>41</sup> Other allegations of theft and expropriation of property by members of the ‘volunteer’ Aydar battalion, from earlier in the summer, have become more prominent recently, following the 8 September release of an Amnesty International report into range of alleged human rights violations by members of this battalion.

<sup>42</sup> On 12 September, the Donetsk State Regional Administration stated that at least 14 state-owned mines have completely ceased working, with coal production now reduced by almost 50 per cent.



similar violations of labour rights in Kherson region. Measures were taken to reinstate the servicemen in their posts.

### **C. Social rights**

118. On 23 August, the State Treasury in Luhansk region resumed its work, enabling 232 regional state institutions covering healthcare, education, culture and social protection to fund salaries and expenditures, along with the payment of social benefits, budget allocations and subsidies from the state budget. As of 11 September, funds were transferred for social benefit payments for the months of July and August. These are for families in poverty, families with children, adults and children with disabilities living in Donetsk city. Pensions are being paid in 21 and 13 districts/towns of Donetsk and Luhansk regions.

119. As the number of wounded and killed soldiers increased, the regional authorities have had to allocate more resources to respond to the needs of service personnel and their families. For example, over the reporting period, regional councils in Lviv, Volyn, Chernivtsi, Ternopil, and Ivano-Frankivsk regions have developed special social programmes for these groups. These foresee one-time social benefits, provision of land, social and rehabilitation services and exemption from certain utility payments, etc.

120. In Mykolaiv, officers' wives have established an NGO aimed at protecting servicemen's rights. In particular, it will help soldiers to overcome the bureaucratic procedures required to receive social benefits, land and housing; and for the adjustment of housing for the special needs of wounded soldiers.

### **D. Right to the highest attainable standard of physical and mental health**

121. Lack of security and safety affected access to, and the provision of, health services in part of Donbas controlled by the armed groups. Health care in Donetsk, Horlivka, Makiivka, Torez and Luhansk was reported to be limited. According to NGOs, in some of these areas, ambulances refuse to respond, as they lack fuel. At least, 32 hospitals are no longer functioning, whilst 45 medical buildings have been damaged or destroyed. It is estimated that the restoration of these would require UAH 467 million<sup>43</sup> (USD 36 million).

122. People with HIV/AIDS, tuberculosis and drug users have faced interrupted treatment. In Luhansk region, the delivery of required treatment has been relocated from Luhansk to Siverodonetsk, from where it is distributed to towns controlled by the Ukrainian authorities. Antiretroviral therapy (ART) treatment has not been delivered to penitentiary institutions on the territory controlled by the 'Donetsk people's republic'. Overall, in the two regions there is a critical deficit of children's ART formulas and test systems for virus load, including for pregnant women. This poses a serious risk for the life and health of people who are living with HIV/AIDS and those infected with TB. In addition, this increases the risk of an uncontrolled spread of infection, especially considering the reported rapid growth of the heroin market in these regions since the spring.

123. In addition, the Government delayed<sup>44</sup> the launching of tenders for procurement of ART and other life-saving medicines. Some tuberculosis treatments and vaccines have not been available since the end of spring 2014. Besides, due to the national currency's devaluation, the Ministry of Health may not be able to procure sufficient amounts of the required medicines.

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<sup>43</sup> Preliminary estimates of the Ministry of Regional Development.

<sup>44</sup> These tenders are normally announced in April. This year, the proposal was opened only in August. Only three tenders for ART have been accepted, the other 20 were denied due to high prices. The tenders were re-opened and will be considered by the Ministry on 19 September.

124. As the number of servicemen wounded in the east has been increasing, hospitals across Ukraine have found growing difficulties in providing quality healthcare. In many regions, the military hospitals are understaffed and do not have sufficient experience and resources, often relying on volunteer help. NGOs have reported a lack of psychological services, needed mostly for non-professional servicemen. There have been reports of doctors refusing to document serious wounds properly, to reduce future state benefit payments<sup>45</sup>.

125. The situation of people in institutional care is very difficult in all regions of Ukraine. On 25 August, the Civil Commission on Human Rights published the results of an assessment of one psycho-neurological nursing home, which revealed a range of human rights violations<sup>46</sup>: lack of proper treatment, usage of punitive measures and punishment, forced labour for 9-12 hours a day, and unjustified usage of strong psychotropic drugs, which often cause physical suffering. It was also established that many patients who did not appear to have any pathology had been placed in the institution without their consent or with gross violations of their procedural rights. Consequently they had been recognised as incapable by the court and cannot appeal their ‘treatment’. Such conditions do not only violate the right to health, but also raise concerns for protection against inhuman and degrading treatment. Following the findings, a special medical commission was established by the Regional State Administration to further study the conditions in the nursing home. The examination of all patients showed that 80 per cent should not have been placed in this nursing home, but rather treated without any isolation. Similar conditions are believed to be observable in most psycho-neurological homes under the Ministry of Social Policy. This illustrates the need for an in depth reform of the institutional care system in Ukraine.

### **E. Right to education**

126. According to the Ministry of Education, on 1 September, only 547 (out of 1,091) schools in the Donetsk region and 250 (out of 690) in the Luhansk region were opened, allowing 196,300 children<sup>47</sup> to resume their studies at the start of the school year. The remaining 984 schools in both regions could not be opened either due to substantial damage as a result of fighting or due to the security situation. This prevented access to education for approximately 270,000 children, mainly on the territory controlled by the armed groups.

127. A preliminary assessment of the Ministry of Regional Development<sup>48</sup> suggests that at least 217 educational buildings have been damaged, reconstruction of which requires at least UAH 103 million (approximately USD 8 million). In settlements which are controlled by armed groups, the Ministry of Education tentatively postponed the commencement of the school year until 1 October or until the situation stabilizes so as to ensure the safety of children. Alternatively, distance-learning courses have been offered for children in grades 5-11 in these regions. The security situation also limited the right to education for school graduates. Only 20,000 of 36,000 graduates could pass the ‘external independent assessment’ which is required to enter university.

128. On 1 September, the ‘ministry of education’ of the ‘Donetsk people’s republic’ issued an order on the re-subordination of the educational institutions located on the territory of the

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<sup>45</sup> The Decree of the Cabinet Ministers N413, adopted on 20 August 2014, foresees the procedure of obtaining the status ‘of a military action participant’, which also enables application for certain social benefits.

<sup>46</sup> The results of the study of the Velykobrulskyi Psycho-neurological Nursing Home, initiated by Odesa State Administration, are available at: <http://cchr.org.ua/>

<sup>47</sup> According to the State Statistics Service, in 2013/2014 school year, there were 509,100 school children in Donetsk and Luhansk regions.

<sup>48</sup> Information provided by UNDP, on 4 September, during the meeting of the UN Sector Group on Early Recovery and Livelihood.

‘Donetsk people’s republic’. The teachers were forced to sign a statement about being ‘aware of the order’ and were threatened to be otherwise fired. Additionally, teachers were asked to provide their personal data in order to allow the ‘Donetsk people’s republic’ to pay out wages. The Ministry of Education of Ukraine made a public statement on 1 September stressing that ‘the participation of teaching staff in such provocative actions (coming to work, giving classes, educational activities and others) is unacceptable and will have legal consequences.’ This is potentially putting local educators in an impossible position of facing either sanction from the leadership of the ‘Donetsk people’s republic’ or from the Ukrainian authorities, whilst all the time having to balance their duty of care to their pupils.

129. On 10 September, the representatives of armed groups seized the building of the Donetsk National University, fired the rector for his “unconstructive position” and appointed a new one. They also reminded the staff about the ‘Donetsk people’s republic’s decrees on re-subordination of educational institutions.

130. Schoolchildren of some rural parts of Kherson, Mykolaiv, Volyn and Rivne regions have limited access to schools, as their school busses were transferred to the army according to mobilization plans. The distance between some villages and the nearest school is significant and requires such transport. The regional authorities are trying to resolve this by hiring private carriers.

## VIII. SITUATION OF INTERNALLY DISPLACED PERSONS

131. The number of IDPs increased in the last month to 275,489<sup>49</sup>, reflecting a rise in displacement, including from new regions like Novoazovsk in the south of Donetsk region, and an increase in registration of previously displaced persons, possibly due to the need to enrol children into schools and State support. Nevertheless, the absence of a uniform, State-wide registration procedure and of a clear system of benefits associated with registration, many IDPs have still not registered.

132. According to the State Emergency Service, as of 8 September, 32 per cent of IDPs were children and 14 per cent were elderly persons or persons with disabilities. The average family consists of three persons; and two-thirds of adult IDPs were women. Such a composition implies specific needs, as most IDP families include elderly and unaccompanied women with children.

133. The protracted crisis is taking an increasing psychological toll on IDPs. Many had hoped to return to their homes by the end of the summer, but since early September have realized that they need to make plans for a longer period of displacement.

### *Right to education*

134. Despite concerns as described in paragraph 135, the process of enrolment of IDP children in schools went smoothly, with education authorities showing flexibility regarding the procedures. According to the Ministry of Education, the number of IDP children attending school and pre-school facilities in all regions is approximately 49,195 (as of 8 September). Local authorities and civil society groups are aware of families who have not yet enrolled their children in school, hoping to return home in the near future, especially after the ceasefire was declared. The actual number of out-of-school children is not yet available. There have also been reports that IDP children are traumatised and have difficulties adapting to new schools; while pupils coming from host communities also reportedly hesitate to engage actively with children from the Donetsk and Luhansk regions. On 4 September, the Ministry of Education issued a

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<sup>49</sup> State Emergency Service, 18 September 2014.

special instruction to remind school administration and teachers to be particularly sensitive and tolerant towards IDP children.

#### *Separated children*

135. Some IDP children from the Donbas region are unaccompanied and separated from their families. Many of them were sent by their families for “summer” retreats to avoid danger and violence in the affected regions. Initial plans were that children would return after the holidays, but with escalating violence, the situation changed. Ministries, international and local organisations are trying to join their efforts to locate such children and ensure that they are united with their families.

#### *Returnees*

136. Returns to the Donetsk and Luhansk regions started taking place during July, mainly to areas that are under the control of the Ukrainian Government. Returns to the areas controlled by the armed groups started in August, and significantly increased after the 5 September ceasefire. UNHCR witnessed long lines of cars passing a checkpoint entering Slovyansk on the weekend preceding the start of the school year. With winter approaching and recent reports about seizures of property by armed groups, some people are returning for short periods, even to areas where the conflict is ongoing, in order to get warm clothing, blankets or other possessions and to check on their property.

#### *Social benefits*

137. Many IDPs have experienced significant delays in receiving benefits, thus having been deprived of any money for weeks or months. It will continue to be difficult for IDPs to receive back-pay for missed payments, since there is no electronic registry of past payments and the records must be checked manually. The Ministry of Social Policy is adapting procedures that would allow for prompt solutions. The issue of social benefits is critical, considering the proportion of women, children, elderly and persons without disabilities, and lack of employment opportunities.

138. Access to Government services is particularly difficult for Roma IDPs. A legal aid organization in Dnipropetrovsk reports that over 60 per cent of Roma that it assists lack identity documentation, and therefore cannot register and receive support.

#### *Accommodation*

139. The State Emergency Services reported that 20 per cent of IDPs were living in state-sponsored collective centres, while the rest were hosted in private apartments or centres. Financing of the state-run centres remains problematic, since the central authorities have not yet allocated resources for payment of utilities at collective centres hosting IDPs from Donetsk and Luhansk. According to Government data as of 12 September, at least 25,500 IDPs were living in State-supported collective centres that are not suitable for residence in winter.

140. Several NGOs reported instances of violence among IDPs living in collective centres, attributing such behaviour to post-traumatic stress disorder, poor living conditions and uncertainty about the future. Healthcare professionals are concerned that where population density is high, there is a heightened risk of epidemics of tuberculosis or infectious diseases.

#### *Civil society response*

141. In the absence of a predictable State assistance programme, most IDPs have been seeking assistance from grassroots civic or religious groups. The response from these groups has been tremendous, supported by private donations, active use of social media and civic spirit. However, many of the volunteers were students and teachers who are no longer available since the start of the school year; the remaining appear to be at the edge of exhaustion, squeezed between the increasing number of IDPs and the dwindling levels of support.

## IX. WOMEN'S HUMAN RIGHTS

142. Although women constitute 53.8 per cent of the population, inequalities between women and men in Ukraine have generally been significant. It has been manifested through their low participation and representation in political life, in particular at high-level positions, salary discrepancies, and disproportionate levels of poverty suffered by women<sup>50</sup>. Prevalent societal stereotypes about female roles within the family and in society foster to a large extent these manifestations of discrimination and gender inequality against women.

143. The Maidan protests showcased women as equal, active participants, able to coordinate and lead in fighting for their rights. Many civil society representatives believed that it created a momentum to address pre-existing power imbalances based on gender and review the gender policies, promote the effective participation of women in public and political life and to empower them. However, the five months of the conflict have led to a major set-back in this regard. As the HRMMU pointed out in its previous reports, the budget cuts have disproportionately affected women and two-thirds of IDPs are women with children, living in precarious conditions.

### *Sexual and gender-based violence*

144. The HRMMU has received allegations of incidents of sexual and gender-based violence in the east. An NGO reported that women who remained in the area are forced to clean, cook and wash clothes for the members of armed groups. Groups of volunteers helping to evacuate people received first-hand reports of rape or detention of women at check-points. There have also been incidents of abductions of women, by armed groups, whose whereabouts remain unknown.

145. During a filmed interrogation, the member of an armed group detained by the Security Service of Ukraine mentioned that at the checkpoint where he served, local women were subjected to gang rape and then killed. The NGO La Strada has received several calls on its hotline from victims of rape or their relatives and provided psychological help to them. On 15 September, one of the regional NGOs working with IDPs informed the HRMMU about two reported cases of rape by members of the 'Donetsk people's republic' armed groups, allegedly from the Caucasus. Credible allegations of rape by members of the territorial defence battalions were also reported.

146. Details about such incidents are limited and difficult to verify. The lack of reports can be attributed to the difficulties of speaking about rape and other forms of sexual abuse, fear of reprisals and the stigma attached to rape. The Ukrainian Foundation for Public Health and NGO Health Right International, which voluntarily provides services to IDPs, reported that women were often reluctant to request any psychological support until their basic needs (shelter, clothing, and food) were met, while work with victims of sexual violence requires at least several psychological consultations before women can 'open up'. There are also difficulties in gathering information in the context of the ongoing conflict in the east, where police presence is limited and experienced civil society organisations have either been forced to leave or have been unable to effectively carry out their tasks. Considering the situation, La Strada runs a campaign to prevent sexual exploitation and trafficking in human beings. Information materials were sent to Slovyansk for further distribution in the eastern region.

### *Domestic violence*

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<sup>50</sup> Please see the fourth and fifth OHCHR reports on the human rights situation in Ukraine. Available at: <http://un.org.ua/en/information-centre/news/1870>.



147. According to NGOs, women coming from eastern regions mentioned that conflicts regularly occurred in their families due to ‘ideological’ differences. La Strada received calls from women complaining that their husbands, active supporters of ‘Donetsk or Luhansk people’s republics’, tried to prevent them from fleeing the region, including in cases when they had young children.

148. Women are at heightened risk of domestic violence due to the return of soldiers from the security operation area. Doctors treating wounded Ukrainian servicemen reported that many have resorted to alcohol to cope with psychological trauma. Volunteers in hospitals also reported about the need for professional and experienced psychologists. NGOs providing social and psychological services for women mentioned that some have requested assistance due to the acts of violence committed against them by their husbands, who were fighting in the east and have now returned; at the same time these women generally justify the behaviour of their partners, on the grounds of post-traumatic stress. Ukrainian Foundation for Public Health and Health Right International noted that women themselves do not always perceive violence as such; battering and psychological pressure are considered ‘normal’.

149. In addition, the constant exposure of violence in the media appears to be raising the threshold for tolerating cruelty and aggressiveness. Women’s NGOs expect a rise of domestic violence across Ukraine. This requires the Government to ensure that necessary mechanisms are in place to prevent domestic violence, raise awareness about the problem and provide support and assistance to victims. Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) represents an important step to be taken in this regard.

## **X. HUMAN RIGHTS IN THE AUTONOMOUS REPUBLIC OF CRIMEA**

150. On 14 September, ‘local elections’ were held in the Autonomous Republic of Crimea and the City of Sevastopol, reportedly without incident. These were carried out as part of local elections held across 14 areas of the Russian Federation. Ukraine declared that those elections were unlawful and the results would not have any legal impact on the status of the Autonomous Republic. The Central Election Commission of the Russian Federation published preliminary results showing a turnout of 52.69 per cent in Crimea and 48.03 per cent, in the city of Sevastopol. The Mejlis of the Crimean Tatar People had called for a boycott of these elections. On 9 September, the press service of the Office of the Prosecutor General of Ukraine qualified the conduct of the election as an attempt to form illegal government authorities, and stated that criminal proceedings would be opened against its organizers.

151. In the lead up to the elections, an all-Crimean conference ‘On the status of the Crimean Tatar people in the modern period’ was held in Simferopol on 6 September, attended by the leadership of the Crimean de facto authorities. The conference created a working group to “neutralize political confrontation, interethnic and interreligious tensions”. According to the head of the working group one of the main objectives of the conference was to encourage Crimean Tatars to participate in the elections. Crimean ‘prime minister’ Sergey Aksyonov stressed that the conference should mark a new stage in the relations between Crimean Tatars and the de facto authorities. The ‘Representative of the President of the Russian Federation in Crimea’, at the conference, informed that Crimean Tatars would be offered posts in his office. The Crimean Tatar community, however, ignored the event. According to the leadership of the Crimean Tatars, this conference was organised to split the Tatar community. The head of the Crimean Tatar Mejlis, Refat Chubarov, issued a statement criticizing the conference at which his deputy head was not allowed to speak at the conference. He also highlighted that among the

Crimean Tatars who attended this event were Tatar state officials who had been reportedly forced to do so.

152. During the reporting period, there have been numerous human rights violations committed in the Autonomous Republic of Crimea by representatives of the de facto authorities.

#### **A. Rule of law**

153. Crimean law enforcement bodies continued and intensified their searches, particularly for so-called 'extremist' literature and activity, mainly among the Crimean Tatar population. On 19 August, the Russian Federal Security Service (FSB) conducted a house search of a Crimean Tatar family (practising Muslims) in Bakhchisaray. 'Extremist literature' and a gun were allegedly found. On 26 August, the director of the Dzhankoi madrassa was fined 2,000 RUB (approximately 50 USD) under the Code on Administrative Offences of the Russian Federation for alleged storage and distribution of extremist literature. On 28 August, several policemen as well as people in camouflage and in civilian clothes entered the house of a Crimean Tatar family in Bakhchisaray. Upon showing a court decision, they searched the house illegally for drugs and weapons, but instead confiscated books listed under the so-called 'list of extremist literature', prohibited under Russian anti-extremism legislation.

154. A group of Crimean human rights activists and the local media confirmed that, on 9 September, the Crimean gymnasium in Tankove (Bakhchysarai district) was searched by people in civilian clothes. They searched the library and classes, looking for 'extremist literature'. Two Turkish language teachers were taken for questioning after 'prohibited literature' was found. Other teachers alleged such books had never been in the library and were planted as fake evidence by the FSB. Similarly, on 11 September, five officers of Crimean Prosecutor's office searched the library of Crimean Engineering and Pedagogical University (CEPU) for banned literature.

155. On 10 September, the houses of two Crimean Tatars were searched in the village Kamenka (Leninskiy district). As in earlier cases, armed men broke into the houses in the early morning, showed a warrant, but refused to invite independent witnesses. The men searched for weapons, drugs and 'extremist literature'. Two notebooks, a mobile phone and two religious books from a list of 'extremist literature' were confiscated. The home-owners were taken to Simferopol for interrogation and later released after 18 hours. They were forced to sign a statement stating that 'there was no moral or physical harm'; however their notebooks were not returned.

156. On 4 and 5 September, at least 10 Crimean Tatar houses were searched by police officers and FSB officials in Simferopol, Nizhnegorsk, Krasnoperekopsk and Bakhchisaray. The homes searched belonged both to ordinary people and to Mejlis (the Crimean Tatar Assembly) members, including regional Mejlis heads. The police, who had warrants, found no weapons and drugs, but confiscated religious literature. On 16 September, FSB officers and the police searched the building of the Mejlis in Simferopol and seized documents, religious books, computers, hard discs, and some personal belongings of Mustafa Jemiliev, the former head of the Mejlis, including money and a 'non-lethal pistol'. The editorial office of the Crimean Tatar *Avdet* newspaper was also searched. The same day, FSB officers searched two houses of Crimean Tatars, including the head of the Belohorsk office of the Mejlis.

157. On 8 September, the house of a well-known ethnic Ukrainian activist was searched by law enforcement officers. Electronic items were confiscated for further examination, whilst she was detained at the Department for Countering Extremism for six hours before being released. She was questioned about her involvement in protests during May, against the entry-ban imposed on Mustafa Jemiliev. She was also questioned about her 'anti-Russian' publications on

the Internet, which were suggested to be “extremism and inciting people to inter-ethnic enmity”. She has since left Crimea, fearing the fabrication of terrorism charges that may lead to her arrest as an ‘extremist’. There are also reports of Crimean Tatars having been summoned to police stations and interrogated for their reported involvement in the May protests.

158. On 1 September, the Ukrainian Ombudsperson received information from the Office of the Prosecutor General of the Russian Federation regarding the detention conditions and the alleged use of torture against Ukrainian citizens Oleg Sentsov, a Crimean filmmaker, and A. Kolchenko. Both, along with two others, were previously detained in Crimea on terrorism charges and transferred to an FSB detention facility in Moscow. According to the Prosecutor of the Russian Federation, the detention conditions of A. Kolchenko meet the standards under Russian legislation, and there is no basis for the torture allegations. The reports of torture against Oleg Sentsov are still to be investigated.

## **B. Freedoms of peaceful assembly, expression, religion and movement**

### *Freedom of peaceful assembly*

159. Limitations to the exercise of the right to freedom of assembly continued to be observed. The authorities in Simferopol refused to grant permission for a Crimean Tatar assembly planned by the NGO Kardashlyk for 23 August near the memorial complex for the victims of the World War Two Crimean Tatar deportation. The official reason for this refusal was that the extremely high temperatures could negatively affect the health of participants. Other outdoor events went ahead as planned. On 24 and 25 August, Crimean local authorities, law enforcement agencies and the FSB took actions to prevent or limit participation in the Ukrainian Flag and Independence Day events in Sevastopol and Simferopol. This included banning rallies, and detentions and summons for ‘preventive talks’. On 26 August, the police in Sevastopol prohibited the conduct of an anti-corruption meeting in the main square.

### *Freedom of expression*

160. On 10 September, the Institute of Mass Information released its August monthly analysis of freedom of expression by the de facto authorities in Crimea, finding that violations to freedom of expression had increased from one case in July to nine cases in August.

161. On 12 September, the ‘Broadcasting Centre of Crimea’ refused to return the equipment of Chornomorska TV Company, which it had previously confiscated despite the decision of the Commercial Court of Crimea. The confiscation of equipment had disabled the work of the channel. The OSCE Representative on Freedom of the Media, Dunja Mijatović, stated that this was “an attempt to pressure independent media in Crimea, which provides space for critical voices and this was a “clear sign of censorship”.

### *Freedom of religion or belief*

162. On 12 September, in an interview with Hrmodaske.TV, Metropolitan Kliment of the Ukrainian Orthodox Church of the Kyiv Patriarchate stated that the FSB was exerting moral coercion against its priests who remained in Crimea. They were reportedly forced to sign papers on cooperation with the FSB and asked to report about various anti-Russian actions, as well as everything connected with Metropolitan Kliment himself. The HRMMU earlier reported about acts of violence and intimidation targeting priests, believers and the property of the Orthodox Church of Kyiv Patriarchate. Since the March ‘referendum’ in the Autonomous Republic of Crimea, six out of 15 priests of the Orthodox Church of the Kyiv Patriarchate have left the peninsula and four out of 12 churches have closed.

163. Religious communities faced challenges related to the de facto application of Russian law in Crimea. It is not clear whether religious communities' previous registration under Ukrainian law remains valid in the eyes of the de facto authorities. The Russian authorities are

requiring all religious communities which register under Russian law. In August, all but five of 23 Turkish imams and religious teachers invited by the Crimean Muftiyat, under a 20-year-old programme, were forced to leave Crimea as Russia's Federal Migration Service refused to extend their residence permits. The residence permits of the remaining five are to expire in the next three months.<sup>51</sup> According to sources in the Russian Migration Service, lack of registration of the Muftiyat implies that they cannot invite foreign guests. On 22 August, an Islamic group in Crimea supported by the Religious Administration of Muslims in Russia established a Tavrida Muftiyat religious leadership body. Its leader, Ruslan Saitvaliev, said in an interview to a Russian newspaper, that the majority of mosques in Crimea were led by supporters of “non-traditional Islam”, specifically ‘wahhabites’ or members of the Hizb-ut-Tahrir group, which is banned in Russia. The establishment of the Tavrida Muftiyat is viewed by the leadership of the Crimean Tatar Mejlis as an attempt by Russian authorities to weaken the Crimean Muftiyat, which is supported by the Mejlis, who had opposed the March 2014 ‘referendum’. Already, the Khan-Cami mosque in Evpatoria, previously subordinated to Crimea’s Muftiyat, has been included in the new Tavrida Muftiyat.

### **C. Rights of indigenous peoples**

164. On 20 August, an institute of the President's Commissioner on Crimean Tatars was established in Kyiv with the aim of preserving and developing the ethnic, cultural, linguistic and religious identity of the Crimean Tatar people within Ukraine. This is a new body with an advisory function. Ukraine has no law on indigenous peoples. Mr. Mustafa Jemilev was appointed to the position. He has since urged Crimean Tatars to report human rights violations to Ukrainian state bodies and to apply to local Mejlis offices in Crimea for legal aid. He also called on victims to collect evidence, including official correspondence and witness reports. According to the Head of the Mejlis of the Crimean Tatar people, Refat Chubarov, FSB officers are examining Crimean bookshops and removing books about Crimean Tatars, including the book of Crimean historian Gulnara Bekirova *Mustafa Jemilev: Crimean Tatar voice was not heard for decades*.

### **D. Economic and social rights**

165. The process of ‘nationalization’ and illegal seizure of property has been ongoing for several months. On 24 August, the ‘people’s militia’ entered Zaliv shipbuilders in Crimea and prevented the company management entering its working places. Then a new administration was introduced to the firm, from Zelenodolsk (Tatarstan), one of the biggest Russian shipbuilders. On 27 August, members of the ‘people’s militia’ entered the headquarters of Ukrainian gas company Krymgas and expropriated all documents and stamps. The entrances were blocked and the employees were advised either to quit or to sign applications for transfer of their jobs to a newly created gas company. On 3 September, the ‘state council’ of Crimea passed a decree nationalising 82 (mainly PrivatBank) objects owned by Ihor Kolomoiskyi and 28 Crimean markets owned by others. Mr. Kolomoiskyi is the current governor of Dnipropetrovsk region who actively finances some battalions of the security operation. Instances of illegal seizure and transfer of property were also reported before the adoption of the decree.

#### *Right to an adequate standard of living*

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<sup>51</sup> There is also uncertainty about the ability of the priest of the Catholic parish in Simferopol to stay. His residence permit expires on 25 October 2014. In the second half of August, he lodged an application to the Crimean branch of Russia's Federal Migration Service in Simferopol in order to extend his residence permit. In a reply obtained on 3 September, the priest was recommended to apply later. Under Ukrainian law, residence permits were often automatically renewed. Under Russian law, there is no automatic renewal.



166. The Ukrainian National energy company officially informed Crimean and Sevastopol authorities about the restriction of energy supplies (with new quotas) for the Crimean peninsula starting on the week of 1 September. It threatened to cut power altogether if these quotas were breached by consumers. 80 per cent of the electric power in Crimea comes from the mainland. The same preventive cuts are expected across the rest of Ukraine. Fighting in the east, however, has disrupted supplies to thermal power plants, which provide around 40 per cent of Ukraine's electricity. The looming winter and energy crisis are increasingly coming to the fore in domestic political social discourse.

#### *Right to education*

167. The HRMMU is in the process of collecting information on the new school year in the Autonomous Republic of Crimea. According to preliminary information obtained in Yalta, Russian is the only language of instruction in that city. This is also true of the 'Ukrainian gymnasium' in Yalta, which used Ukrainian as the language of instruction before the March 'referendum'. Ukrainian language can still be taught as an option twice a week, although such optional teaching still violates the right of Ukrainians to study in their native language. The director of this school was dismissed from her post on 9 September.

168. On 9 September, students of the Crimean State Medical University (CSMU), among them foreigners, protested against their institute joining the Crimean Federal University, following a decree of Russian Prime Minister Dmitry Medvedev issued on 13 August. There is concern that if this occurs CSMU's international status will be lost<sup>52</sup> and graduates will no longer receive an international certificate admissible for employment opportunities in other countries. Reportedly, more than 300 national students have transferred to medical schools in mainland Ukraine.

### **E. Situation of internally displaced persons and other groups in a position of vulnerability**

#### *IDPs*

169. The number of registered IDPs from Crimea continued to grow with officially 17,794 Crimean IDPs registered on mainland Ukraine<sup>53</sup>. This constitutes an increase of almost 7 per cent in less than a month. According to sources in the Ukrainian Government, this could be partly attributed to unregistered IDPs on the mainland having registered; to some Crimean entrepreneurs leaving the peninsula after having sold their property; and to the arrival of families who object to their children attending school under the education system of the Russian Federation.

170. According to the so-called Crimean authorities, there were more than 7,000 "refugees" from eastern Ukraine in special temporary accommodation facilities throughout the peninsula. These facilities were closed on 1 September and the "refugees" were to be resettled in Russia's central and eastern regions. The HRMMU is verifying claims that some were resettled against their wishes.

#### *LGBTI*

171. On 2 September, during a meeting of the de facto authorities in Crimea, while discussing the demographic development of Crimea, the Crimean 'prime minister' Sergey Aksyonov stressed that representatives of the LGBTI community will not receive support from authorities. Moreover, according to him, if they try to conduct any street actions, they will be prosecuted.

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<sup>52</sup> According to the Ukrainian Health Ministry, the transformation of the CSMU as a structural subdivision of the Crimean Federal University will ruin its educational process and technical base.

<sup>53</sup> State Emergency Services, 18 September 2014.



### *Domestic violence*

172. On 10 September, the NGO La Strada informed the HRMMU that in the first six months of this year, 3.1 per cent of phone calls received on domestic violence and gender discrimination issues came from the Autonomous Republic of Crimea. While the Criminal Code of the Russian Federation foresees liability for intentional crimes against the life, health and sexual integrity of citizens, Russia, unlike Ukraine, has no domestic violence law. In view of the general reluctance of the police to react to complaints of domestic violence, the absence of a specific law makes it even more difficult for family members to secure an intervention from law enforcement officials.

## **XI. CONCLUSIONS AND RECOMMENDATIONS**

173. The sharp increase in civilian casualties towards the end of August is largely due to the intensified fighting, including the use of heavy weaponry and indiscriminate shelling in densely populated areas, as a result of the influx of an increasing number of foreign fighters, including citizens of the Russian Federation, as well as former or current servicemen ‘on leave’, in support of the armed groups of the self-proclaimed ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. In this context, the principles of international humanitarian law on the conduct of hostilities should be recalled and respected, including the principles of military necessity, distinction, proportionality and precaution in order to ensure the protection of civilians. There needs to be accountability for crimes committed. No matter who the perpetrators or the victims are, efforts must be made to ensure that anyone who has committed a serious violation of international law is brought to justice. This is essential to overcome divisions and pave the way for national reconciliation.

174. The situation remains fragile and while all efforts should be made to support a ceasefire that will have a direct positive effect on the human rights situation, it is equally important to support the Government in preparing for the social effects of a possible escalation in the hostilities. Legislation adopted on 16 September pursuant to the Minsk Protocol furthering the points on the immediate release of all hostages and detainee and an amnesty, as well as with regard to an offer of the special status to parts of the Donetsk and Luhansk regions is to be welcomed. Respect for human rights, good governance and the rule of law are key to peace and security, and economic and social development. An environment conducive to the promotion and protection of human rights in Ukraine depends on respect for General Assembly resolution 68/262 on the sovereignty and territorial integrity of Ukraine, the absence of armed conflict, and the effective control of the State borders between Ukraine and the Russian Federation.

175. As OHCHR has consistently highlighted in its reports, the Government of Ukraine should prioritise addressing systemic and structural issues affecting human rights through institutional reform, with the aim of establishing governance and justice systems that are effective and accountable, promote and protect human rights for all in line with international standards.

176. OHCHR continued to appreciate the good cooperation extended by the Government of Ukraine to the HRMMU, and welcomed the some initial steps taken to implement some previously issued recommendations. The HRMMU will continue to monitor and report on the evolving situation, with a view to contributing towards the establishment of an objective assessment of the human rights situation and a stronger and more effective national human rights protection system.

177. All recommendations contained in the OHCHR reports issued since 15 April remain valid. In addition, OHCHR calls upon all those involved in the situation in Ukraine to implement the following recommendations:

- a) Maintain the ceasefire and ultimately seek a sustainable peaceful solution for the Donbas region, to end the loss of life and avoid a large scale humanitarian disaster.
- b) Ensure that all those involved in the situation in Ukraine adhere to norms and principles of international humanitarian law and provide free and safe passage for civilians and humanitarian relief in strict compliance with existing international standards, and in any situation refrain from indiscriminate shelling of populated areas or positioning in areas that put civilians in danger.
- c) All violations of international law, including war crimes, must be fully investigated and accountability guaranteed, including for command responsibility; perpetrators must be promptly brought to justice and victims provided with remedies and reparations.
- d) Adopt effective prosecutorial strategies to bring to justice the perpetrators of violations of human rights and humanitarian law. All allegations of sexual violence, which under some circumstances constitute international crimes (war crimes, crimes against humanity), must be fully investigated, with regard to the needs of victims and specific methodologies (e.g. the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict).
- e) All incidents of illegal seizure of property must be promptly investigated; clear procedures should be developed to return the property to the lawful owners.
- f) Treat all detainees humanely and in accordance with international human rights standards and international humanitarian law to ensure their rights, including access to legal aid.
- g) Ensure informed consent of detainees who are to be exchanged as a result of the Minsk protocol of 5 September and ensure that these exchanges are monitored and are in accordance with international norms and standards.
- h) Establish a transparent and accessible mechanism for families seeking to find missing persons, including military personnel.
- i) Ensure that all those living in Ukraine are provided with basic assistance, services and shelter/heating needs in accordance with international norms and standards and that the necessary legal institutional framework to support this is enacted.
- j) Ensure the equal provision of services and utilities, as well as humanitarian and social assistance where needed, for both those who have remained and returnees.
- k) Collect and make publicly available comprehensive and reliable gender-disaggregated statistics concerning IDPs and other people affected by the conflict (including those killed and wounded).
- l) Conduct national consultations, with the involvement of civil society, to develop a national action plan in accordance with Security Council resolution 1325 to promote women's equal and full participation as active agents in the prevention and resolution of conflicts, peace-building and peacekeeping, as well as incorporate gender perspective in all areas of peace building.
- m) Encourage adoption of temporary measures to ensure greater participation of women in public life, including in Parliament.
- n) Ensure freedom of the media and regulatory monitoring of media professionalism, disinformation, and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

- o) Take immediate action to facilitate access to, and the provision of, treatment for HIV/AIDS and Tuberculosis, as well as of essential medicines, particularly in conflict-affected areas, in order to prevent the interruption of treatment.

178. With regard to the situation in the Autonomous Republic of Crimea, OHCHR notes with concern the continued human rights violations that are generated by the introduction of Russian Federation legislation, in contravention of General Assembly resolution 68/262. Recommendations from previous report remain unimplemented. To the authorities in Crimea and the de facto governing authority of the Russian Federation, OHCHR makes the following recommendations:

- p) End pressure and intimidation against the Crimean Tatars linked to the Mejlis, including the multiplication of searches of private property under the pretext of combatting extremism.
- q) Strengthen the security of Crimean residents by acting to curb human rights violations committed by the “Crimean self-defence” groups.
- r) Guarantee all fundamental rights to all persons in the Autonomous Republic of Crimea, including freedoms of peaceful assembly and association, expression, religion and movement, as well as right to education and guarantees of economic and social rights. Investigate the cases of alleged killing and enforced disappearances of Crimean civil activists (Reshat Ametov, Timur Shaimardanov, Seiran Zinedin, Leonid Korzh, Vasyl Chernysh) and hold accountable the perpetrators.
- s) Ensure that citizens of Ukraine who fled the conflict in the east of the country and go to Crimea are not forcefully resettled in the Russian Federation.
- t) Ensure monitoring of the human rights situation in Crimea by the UN HRMMU.



# Annex 766

OHCHR, Report on the Human Rights Situation in Ukraine (15 November 2014)





**Office of the United Nations High Commissioner  
for Human Rights**

**Report on the human rights situation in Ukraine  
15 November 2014**

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## I. EXECUTIVE SUMMARY

1. This is the seventh report of the Office of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine, based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU). It covers the period from 17 September to 31 October 2014.

2. There were major developments during the reporting period that significantly impacted on the human rights situation.

3. Despite the ceasefire, which entered into force on 5 September, hostilities in the east and related human rights violations and abuses continued. On 19 September, in Minsk, the Trilateral Contact Group<sup>1</sup>, with political representatives of the self-proclaimed 'Donetsk people's republic'<sup>2</sup>, and the self-proclaimed 'Luhansk people's republic'<sup>3</sup> agreed on a Memorandum to implement 'the Peace Plan of the President of Ukraine and the initiatives of the President of the Russian Federation'. Despite the announcement of 'silent regimes'<sup>4</sup> by the Ukrainian Government (on 5 and 7 October) and by the 'Donetsk people's republic' (on 11 October), violations of the ceasefire were reported by the Ukrainian security forces and the armed groups. Fighting was particularly severe around the Donetsk airport, Debaltseve and Mariupol (Donetsk region), and Shchastia (Luhansk region), causing casualties among civilians, military servicemen and members of the armed groups. On average 13 people were killed every day between 6 September and 31 October. Since the beginning of the hostilities in mid-April until 31 October, at least 4,042 people were killed and 9,350 were wounded in the conflict affected area of eastern Ukraine<sup>5</sup>.

4. There are credible reports from different sources, including the OSCE Observer Mission, that hundreds of people in military-style clothing have been observed crossing the two border crossing points of Gukovo and Donetsk in both directions<sup>6</sup>. The Ukrainian Government and some civic groups report the delivery of weapons from the Russian Federation to the eastern regions. On 19 September and 31 October, two further convoys were sent by the Russian Federation to territory under the control of the 'Donetsk people's republic' and 'Luhansk people's republic'. As on the previous occasions, the convoys crossed at the Izvaryne border crossing point without the authorisation of Ukraine, and were not inspected.

5. In the territories under the control of the 'Donetsk people's republic' and 'Luhansk people's republic' there continues to be a total breakdown in law and order, and a lack of any human rights protection for the population under their control. In addition, parallel governance structures are being set up, with so-called 'ministries', as well as legislative and administrative procedures being established. Both 'republics' announced plans to hold 'presidential and parliamentary elections' on 2 November, outside the legal framework of Ukraine<sup>7</sup>. There were strong objections to these initiatives from the Government of Ukraine, some Member States and international organisations, including the United Nations.

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<sup>1</sup> The Group is composed of senior representatives of Ukraine, the Russian Federation and of the OSCE Chairperson-in-Office.

<sup>2</sup> Hereafter referred to as 'Donetsk people's republic'.

<sup>3</sup> Hereafter referred to as the 'Luhansk people's republic'.

<sup>4</sup> During which armed hostilities and shelling should cease in the conflict zone.

<sup>5</sup> This is a very conservative estimate by the HRMMU and WHO based on available official data. Both believe that the casualties have been under reported, and that their actual numbers are considerably higher.

<sup>6</sup> From 24 September to 31 October 2014, the OSCE Observer Mission at Russian checkpoints Gukovo and Donetsk has reported 2,751 persons in military-style clothing crossing the border in both directions at the two aforementioned border crossing points.

<sup>7</sup> Further observations on these 'elections' will be documented in the eighth HRMMU report.



6. In territories under the control of both ‘republics’<sup>8</sup>, cases of serious human rights abuses by the armed groups continued to be reported, including torture, arbitrary and incommunicado detention, summary executions, forced labour, sexual violence, as well as the destruction and illegal seizure of property. These violations are of a systematic nature and may amount to crimes against humanity.

7. On 23 September, reports of the discovery of alleged mass graves near the village of Nyzhnia Krynka not far from Donetsk city (Donetsk region) received much attention. One grave contained five bodies; two further graves found on the territory ‘Komunarska’ No. 22 mine contained two bodies each. The bodies in the first grave were identified as members of the armed groups, killed in action. With regard to the four bodies found in the two graves, there are allegations of forensic evidence of a summary execution, according to the ‘Donetsk people’s republic’. The Ukrainian Government has denied the involvement of its security forces in the allegations of summary executions. On 26 September, the National Security and Defence Council announced the continuation of investigations into the alleged ‘mass crimes’ committed against civilians by the armed groups in the Luhansk and Donetsk regions, including an investigation into the three ‘mass graves’ found in July in the town of Sloviansk (Donetsk region).

8. The reports on the use of cluster munitions in the hostilities in both urban and rural areas are a matter of concern. Due to their wide radius and indiscriminate impact, their use in areas with a civilian presence would constitute a violation of international humanitarian law and may amount to a war crime. The Government has denied the use of cluster munitions. Reports on the use of cluster munitions, as well as those of indiscriminate shelling, need to be investigated promptly and thoroughly.

9. The exchange of persons deprived of their liberty, as foreseen by the Minsk Protocol, was largely non-transparent. The Government of Ukraine claimed that by 20 October, 1,509 people had been released by the armed groups. Priority was given to military personnel, while an unknown number of civilians continued to remain in the captivity of the armed groups. There were worrying reports of individuals being included in the exchange process by the Ukrainian authorities who had not been involved in the conflict: some were already in detention facilities; others were deprived of their liberty for the purpose of exchange.

10. There have also been allegations by victims and their relatives, as well as civil society representatives of secret and illegal places of detention being operated by the armed groups, as well as some being maintained by some volunteer battalions outside of judicial oversight. The HRMMU continued to receive credible reports of persons deprived of their liberty being subjected to torture and ill-treatment while being illegally held or detained by either the armed groups or by Ukrainian law enforcement agencies and some volunteer battalions.

11. Procedural rights of detainees are of concern. Some volunteer battalions continued to arrest people and detain them incommunicado, with many cases amounting to ‘enforced disappearance’. For those who appear before the judiciary there have been many due process concerns from the moment of their arrest, with systematic violations of the relevant national legislation and fair trial guarantees, provided in international norms and standards.

12. The overall number of IDPs increased from 275,489 as of 18 September to 436,444 on 29 October according to the State Emergency Service of Ukraine. Of these 417,410 people have come from the conflict affected areas, including 62,306 and 29,727 people who are now in the

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<sup>8</sup> The territory under the control of the two ‘republics’ is approximately 16,400 square km, about one-third of the territory of the Donetsk and Luhansk regions, including the two major cities of Donetsk and Luhansk. It is estimated that approximately 3.1 million people live on this territory. Some armed groups operating on the territory do not see themselves as being under the control of either the ‘Donetsk people’s republic’ or the ‘Luhansk people’s republic’, such as the self-proclaimed ‘Stakhanov Republic’ in the Luhansk region.

Government controlled territories of the Donetsk and Luhansk regions respectively; as well as 19,034 IDPs from Crimea. IDPs who were living in summer camps or sanatoria have had to move to warmer shelters. In the absence of a countrywide assistance programme, relocation efforts have depended on local resources and approaches. Given that they are mainly dependent on unsustainable assistance from civil society, IDPs are faced with legal barriers to access employment and social welfare benefits. Some families have returned home to conflict-affected areas, encouraged by the ceasefire but also due to scarce resources in their host communities. While some remain, others just visit.

13. The situation in Crimea, the status of which is prescribed by General Assembly resolution 68/262, is marked by reports of increasing human rights violations and protection challenges, especially for minority and indigenous groups and those in a position of vulnerability, for example the growing number of enforced disappearances of Crimean Tatars.

14. The so-called authorities in Crimea continued to conduct raids actively searching for weapons and religious literature, with a focus on literature considered to be of an extremist nature. These overwhelmingly target Crimean Tatar properties.

15. The space for freedom of expression in Crimea has further shrunk due to the activities of the so-called authorities, in particular with the disruption to the work of more media outlets, including that of *Avdet* (the weekly Mejlis newspaper), and the Crimean Tatar ATR television channel.

16. There has been no significant progress in the investigations of crimes committed during the Maidan protests, except for limited progress in the investigation into mass killing of protesters by officers of the former *Berkut* police unit, with three former officers having been accused of killing 39 protesters on 20 February 2014. On 25 September, the Ministry of Internal Affairs (MoIA) announced the completion of the pre-trial investigation into the 2 May violence in the centre of Odesa. Twenty-four suspects have been named as either organising or participating in the disorder; and nine people are on a wanted list. The investigation into the violence and fire in, and around, the Trade Union building is reportedly in its final stage.

17. The parliamentary elections of 26 October resulted in political parties with pro-reform and pro-European agendas (Petro Poroshenko Block, the People's Front and the Self-Reliance Party) gaining the majority of votes. These parties are in discussions over forming a coalition Government. The 'Donetsk people's republic' and the 'Luhansk people's republic' denied, as for the May 2014 Presidential elections, all those living in these eastern territories under their control their right to vote by preventing the elections from being held.<sup>9</sup> In order to vote, residents of Crimea had to cross to mainland Ukraine, which limited their participation in the election due to the distance, cost and difficulties in crossing the administrative boundary line, as well as due to fears of possible repercussions.

18. The armed conflict in the eastern regions continued to negatively affect the economic situation in Ukraine and access to, and the quality provision of, basic services. GDP dropped by 4.6 per cent compared to the previous year. Inflation reached 102.9 per cent in the first nine months of 2014. Unemployment increased to a level of 8.4% as of 1 October, 2014. Growing numbers of IDPs and wounded decreased the accessibility to healthcare services not only in the conflict areas, but also in adjacent regions. Overall in the country, one of the most pressing concerns relates to the threat of the interrupted treatment as of 1 January 2015 of more than 59,448 HIV-positive and approximately 11,600 multi-drug resistant tuberculosis patients in all

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<sup>9</sup> It is estimated that between 50-60 per cent of registered voters in the Donetsk and Luhansk regions were not able to participate in the 26 October parliamentary elections, either because their residence was in areas controlled by the armed groups, or because they were displaced or refugees, and so if they voted, it was not in their domiciled location. From Crimea, only 2,800 residents voted, which is 0.2 per cent of the pre-March 2014 total of registered voters in the peninsula.

regions, due to the non-completed tenders for the purchase of needed live-saving medication.

19. On a positive note, parliament adopted legislation that should introduce reform in the rule of law area and for the protection of human rights. This includes reform of the Office of the Prosecutor and the introduction of an anti-corruption package.

20. On 20 October, the law on IDPs was adopted by parliament and is to be signed by the President. It should guarantee specific rights, provide access to low-cost housing loans, and simplify the procedures for access to various economic and social rights. On 1 October, the Cabinet of Ministers adopted two resolutions establishing regulations for the registration and assistance of internally displaced persons. Parliament adopted a law providing special status to certain territories in the Donetsk and Luhansk regions, including more powers to local authorities as foreseen in the Minsk Protocol.

21. More laws were adopted or came into force, including the law on lustration, which seek to ban from public office some State employees who had worked under the administration of the former President Yanukovich, which could affect up to one million people.

22. On 15 October, President Poroshenko signed a Decree tasking the Government to elaborate a national human rights strategy for Ukraine by 1 January 2015. At the end of October the Government tasked the Ministry of Justice, with the support of the Ombudsman's Office, to elaborate a draft strategy by 1 December. The HRMMU is working with the UN Country Team and the Council of Europe to support the Government and the Ombudsperson towards the elaboration of the strategy.

23. In addition, on 25 September, President Poroshenko presented his 'Strategy 2020', promising that Ukraine would apply for European Union membership by 2020. The strategy foresees more than 60 reforms in that context, prioritising the fight against corruption, decentralization and energy independence, as well as the modernisation of the judiciary and the defence system.

## II. RIGHTS TO LIFE, LIBERTY, SECURITY AND PHYSICAL INTEGRITY

### *Hostilities*

24. Following the 5 September ceasefire agreement, fighting between the Ukrainian armed forces and various armed groups continued almost on a daily basis due to breaches of the ceasefire. The main flashpoints were: the Donetsk airport and the surrounding northwest suburbs of the city; the Ukrainian-controlled Debaltseve salient (Donetsk region) which intersects the main road and rail links between the Donetsk and Luhansk; the town of Shchastia (Luhansk region); and the area around Smile (Luhansk region) along the south bank of the river Siverskyi Donets, which the armed groups captured on 28 October after the Ukrainian military withdrew. After the announcement of a so-called 'silence regime' (for example, "cease of armed hostilities and shelling") by the Ukrainian Government, on 5 and 7 October, and by the 'Donetsk people's republic' on 11 October, the intensity of hostilities somewhat decreased, especially by the time of the parliamentary elections. According to the Ukrainian Government, since 5 September, its armed forces were shelled and attacked more than 2,000 times by the armed groups.

### *Use of explosive weapons in populated areas - Indiscriminate shelling*

25. Before, as well as after, the announcement of a 'silence regime', residential areas continued to be indiscriminately shelled by various artillery and multiple launch rocket systems (MLRS) throughout the whole reporting period. This led to military and civilian casualties. Targeting of military positions occurred in the immediate vicinity of residential areas, but areas which were not located near military positions were also shelled, particularly in the city of

Donetsk.

26. The reported use of cluster munitions in fighting between Ukrainian forces and the armed groups in more than 12 urban and rural locations in early October is of concern<sup>10</sup>. The use of cluster munitions in populated areas violates the laws of war due to the indiscriminate nature of the weapon and may amount to war crimes. It is imperative that such reports be investigated promptly and thoroughly, as well as the reports of indiscriminate shelling of residential areas by conventional weapons.

27. The Government of Ukraine continued to blame the armed groups for the use of heavy weapons in populated areas, notably for the following incidents: the 29 September shelling of the town of Popasna (Donetsk region), which killed four civilians; the 1 October rocketing of the centre of Donetsk, which hit a bus and a bus stop, killing six civilians and wounding 25; the rocketing of a school, on the same day, which killed two civilians and wounded five; and the 2 October shelling near the ICRC office in Donetsk, which killed an ICRC administrator. On 14 October, the village of Sartana (north-east of Mariupol in the Donetsk region) was reportedly shelled with mortars and a MLRS 'Grad'. According to the Mariupol city council, shells hit a funeral procession, killing seven civilians and wounding 18. According to the Ukrainian army, a Ukrainian checkpoint 1 km away from the village was the supposed target. On 10 October, the Government of Ukraine accused armed groups of targeting an ambulance near the village of Shyroke (Donetsk region) which killed two medical personnel and a patient<sup>11</sup>. The Government of Ukraine attributed some attacks on the populated areas to armed groups that report neither to the 'Donetsk people's republic' nor to the 'Luhansk people's republic'.

28. The armed groups have declined any responsibility for the aforementioned incidents and other instances where residential areas were shelled, blaming the Ukrainian armed forces. For instance, the 'Donetsk people's republic' claims that the Ukrainian army killed four civilians in Kuibyshevskiy and Kyivskiy districts of Donetsk city by shelling.

29. Since the start of the ceasefire, between 6 September and 31 October, at least 718 deaths were reported<sup>12</sup>. Among them, at least 84 women were killed by indiscriminate shelling in Donetsk region<sup>13</sup>. The share of women among casualties reported by medical establishments of Donetsk region remained at the same level as during the peak of hostilities in August (approximately 15%). Between 9 September and 28 October, the number of children killed in Donetsk and Luhansk regions increased by 28%, from 28 to 36 deaths, whilst the number of wounded increased by 82%, from 56 to 102 cases.

#### **A. Missing persons and the identification of their remains**

30. The Security Service of Ukraine (SBU) reported that between 5 September and 1

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<sup>10</sup> Ukraine: widespread use of cluster munitions, Human Rights Watch, 20 October 2014.

<sup>11</sup> The ambulance was to deliver a wounded civilian from a territory controlled by the Ukrainian Government to a hospital in Donetsk.

<sup>12</sup> Some of the individuals may have been killed prior to the period under review with data recorded at a later stage. Thus, between mid-April and 31 October, a total of at least 4,042 people have been killed and 9,350 wounded in the conflict area of eastern Ukraine. This is a conservative estimate by the HRMMU and the World Health Organization (WHO) based on the available official data and the actual numbers of fatalities may be much higher. These numbers include casualties within the Ukrainian armed forces (at least 1,167 killed and 3,808 wounded) as reported by the National Security and Defence Council, the Prosecutor-General, the Chief Military Prosecutor and the Ministry of Foreign Affairs; civilians and elements of the armed groups reported without distinction by civil medical establishments and local administrations: at least 1,719 killed (including 22 children) and 2,797 wounded (including 64 children) in the Donetsk region, and at least 858 killed (including 14 children) and 2,745 wounded (including 38 children) in the Luhansk region; the 298 passengers of flight MH17.

<sup>13</sup> The breakdown of statistics is not available for the Luhansk region as there have been no reports to the WHO by medical establishments from the region.



October its Inter-agency Centre for Assistance in Release of Captives, Hostages and Search of Missing Persons had received 2,600 requests for the search of military personnel and civilians from individuals and families. On 3 October, the ‘Donetsk people’s republic’ head of the ‘commission on issues of prisoners of war and refugees’ reported that at least 1,300 people (members of the armed groups and civilians) were recorded as missing.

31. There may be some duplications in the lists of missing persons maintained by the Government of Ukraine and by the armed groups as relatives of some missing people may have filed applications both to the Inter-agency Centre at the SBU and to the ‘commission on issues of prisoners of war and refugees’. The Government of Ukraine, the armed groups, NGOs and local communities have intensified their efforts to search and collect the unburied remains of those killed in hostilities. Additionally, there have been exhumations of *ad hoc* graves so as to establish the identities of those found and to hand over their bodies to relatives.

32. Between 3 September and 11 October, members of an NGO, the People’s Memory Union, reported finding and exhuming the remains of over 150 Ukrainian servicemen and two civilians in Donetsk region (the bodies were subsequently taken to the territory controlled by the Government of Ukraine). Of 31 *ad hoc* graves exhumed by the Union in Donetsk region, 11 contained two or more bodies with the largest one containing 12 bodies.

On 1 October, the first deputy head of the Main Investigative Department of the MoIA stated that more than 1,000 bodies had been found in the territory of Donbas, with the identity of more than 200 determined. On 29 September, the ‘deputy prime minister’ of the ‘Donetsk people’s republic’ reported that about 400 unidentified bodies were awaiting forensic examination in Donetsk and other towns of the region. In this regard, more systematic efforts have been initiated by the Government of Ukraine and the armed groups to identify the bodies delivered to the forensic offices, including through proper documentation and DNA sampling, before burial.

33. On 25 September, an adviser to the SBU Head stated that “on the territories freed from terrorists, law enforcement officials continue to find newer and newer burials of those who were tortured to death by the punitive organs of the so called ‘people’s republics’. Thanks to local residents, we establish locations of these burials and carry out exhumation of bodies”.

34. On 26 September, the National Security and Defence Council announced that law enforcement agencies “continued to investigate mass crimes against civilians perpetrated by the armed groups in the Luhansk and Donetsk regions”. It claimed that three “mass graves” had been found in the town of Sloviansk, and that bodies had been exhumed and were awaiting official forensic examination. Twelve people had reportedly been identified. According to the Council, these people perished in the first half of June, when the town was controlled by the armed groups. On 2 October, a grave with three bodies (one female and two male) was found in the town of Mykolaivka (Sloviansk district). According to the acting press secretary of Sloviansk police department, “efforts to identify illegal graves on the territory of local cemeteries continue”.

#### *Allegations of mass graves*

35. On 23 September, the ‘Donetsk people’s republic’ announced the discovery of graves in the vicinity of the village Nyzhnia Krynka, 35 km north east of Donetsk. These graves were initially described by the ‘Donetsk people’s republic’ as graves or ‘fraternal graves’, but later referred to as ‘mass graves’<sup>14</sup>.

36. One of these graves (located near the entrance to the village) contained five bodies. Two

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<sup>14</sup> There is no internationally agreed definition of ‘mass grave’. The former United Nations Rapporteur on extra-judicial, summary or arbitrary execution, Bacre Ndiaye, defined mass graves as locations where three or more victims of extra-judicial, summary or arbitrary executions were buried, not having died in combat or armed confrontations (1991). This definition was used by the UN tribunals for Rwanda and former Yugoslavia.

further graves discovered on the territory of the ‘Komunarska’ No 22’ mine contained two bodies each. People whose bodies were found in the first grave were identified as members of the armed groups, reportedly killed in action. Currently to the knowledge of the HRMMU, there are no allegations that they were summarily executed. As regards to the four people from the two graves near the mine, according to the ‘Donetsk people’s republic’, there allegedly exists forensic evidence that they could have faced a summary execution. On 15 October, an HRMMU team visited the three grave locations, and interviewed relatives of two people whose bodies were reportedly identified, having been exhumed from one of the two graves where those buried could have faced a summary execution. Their testimonies indicate that these people may have previously been detained by Ukrainian forces. This has been denied by the Ukrainian Government. The alleged summary execution of four people found in the graves near ‘Komunarska No 22’ mine needs to be investigated, and all measures should be taken for the preservation of evidence.

37. On 3 October, an adviser to the SBU Head presented a map marking the location of “concentration camps, torture sites of punitive bodies of terrorist organisations, places of torture and executions of local population”. According to him, the map is based on the testimonies of witnesses received through an SBU hotline, and the locations were “verified by satellite photos, intercepted telephone calls between members of the armed groups, SBU intelligence data, and by testimonies of detained and arrested perpetrators”.

38. The map lists five places where ‘local residents were tortured, killed and buried’ by the armed groups: ‘five bodies in a pit in Nyzhnia Krynka’ (it is not clear whether this is the same grave as the one mentioned below); ‘mass graves’ in Sloviansk (described above); ‘numerous hastily made graves close to fighters’ camp near the Iziurm-Sloviansk highway’; and ‘the burial of 30 civilians in Telmanivskyi district’.

39. The requests of the HRMMU to the SBU to provide additional details concerning these cases have so far not been met. The HRMMU was only informed that criminal cases had been initiated and an investigation was being carried out.

## **B. Deprivation of liberty and enforced disappearance<sup>15</sup>**

### *By the armed groups*

40. On 8 October, the head of the ‘commission on issues of prisoners of war and refugees’ of the ‘Donetsk people’s republic’ publicly declared that “about 600 Ukrainians” were held by the ‘Donetsk people’s republic’. The number of people held by the ‘Luhansk people’s republic’ and by other armed groups is not known.

41. According to the SBU, as of 30 September, there were at least 21 new ad hoc places of detention set up since the conflict started in the areas controlled by the armed groups (in the cities of Donetsk and Luhansk, as well as Horlivka, Makiivka and Shakhtarsk). In addition, the ‘minister of internal affairs’ of the ‘Donetsk people’s republic’<sup>16</sup>, claims that it controls all penal colonies, pre-trial detention centres and temporary detention facilities which existed before the hostilities started in its territory. However, there are also places of detention managed by the ‘military police’ subordinated to the ‘ministry of defence’, and some managed by the ‘ministry of state security’. There are also numerous detention facilities, which are reportedly maintained

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<sup>15</sup> 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 International Convention for the Protection of All Persons from Enforced Disappearance).

<sup>16</sup> The information was given to HRMMU in a meeting on 12 October in Donetsk.



by various armed groups operating under the auspices of either the ‘Donetsk people’s republic’ or the ‘Luhansk people’s republic’, as well as ad hoc detention facilities that are operated by armed groups not under the control of either of the aforementioned ‘republics’.

42. On 6 October, an unknown group of people reportedly abducted the warden of Penal Colony № 82, in Selidove (Donetsk region), from his home in Donetsk. On 11 October, it became known that, on 29 September, a civil activist and deputy of Novoazovsk district council (Donetsk region) who provided assistance and accommodation to IDPs, was taken by armed men. He had previously also been deprived of his liberty on 29-30 August by the armed groups, and taken to a forest where he was forced to dig his own grave, but later released. His current whereabouts are unknown.

43. On 8 October, the HRMMU was informed about the deprivation of liberty of the head of the Independent Miners’ Trade Union of the Kalinin mine, and of his two sons. Allegedly, on 6 October, his private apartment was stormed by eight armed men who introduced themselves as the ‘Donetsk people’s republic’ police. They reportedly claimed having received a complaint that an “enemy of the republic” was living in the apartment, and that they had to detain him to “clarify circumstances”. When contacted by his wife, neither the local ‘police department’ where he and his sons were supposedly taken, nor the ‘state security committee’ of the ‘Donetsk people’s republic’ had any information about the individual.

*By the Government of Ukraine*

44. The Ukrainian law enforcement agencies continued to detain people in relation to the hostilities in the east, particularly on the grounds of terrorism and separatism. The number of those detained is constantly in flux due to detainees being released and new detentions, including in the context of the exchanges as foreseen under the Minsk Agreement. The SBU declared that as of 17 October, it was carrying out about 1,500 investigations cases with the aforementioned allegations although the number of people in detention is unknown. On 7 October, an adviser to the Minister of Internal Affairs reported that MoIA servicemen in the Luhansk region had put 99 persons under arrest or home arrest for suspicion of ‘crimes related to terrorism and separatism’.

45. There continue to be allegations that the Ukrainian law enforcement agencies and volunteer battalions maintain secret and illegal detention facilities outside of judicial oversight with reports of arbitrary detention and enforced disappearances. An illustrative example is the case of a man who was suspected of organizing riots which led to the seizure of the Kharkiv Regional State Administration in March. On 26 April, he was arrested and kept in a pre-trial detention facility in Poltava. He was to be released on 12 September, upon a decision of the Kyivskiy District Court but according to his lawyer, he was immediately detained by the SBU without any order. The next day, the MoIA posted on his Facebook page that the man was placed in an “SBU isolation facility”. On 17 September, his lawyer filed a complaint to the investigative judge in the Kyivskiy District Court<sup>17</sup>. In an official answer to the court, the SBU denied that the man was in its custody. However, the HRMMU was informed by a credible source received on 18 September that the man was being held in a secret SBU facility in Kharkiv. The HRMMU inquiries to the SBU and the prosecutor’s office have not produced any results.

46. The HRMMU has also been following the case of a professor in Kharkiv – a well-known opponent to Ukraine’s association with the European Union – who was arrested by the SBU during the night of 29 to 30 June. After spending two and a half months in pre-trial detention in Poltava, he was supposed to be released on bail, but his whereabouts have remained unknown

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<sup>17</sup> In accordance with article 206 of the Criminal Procedure Code: ‘Each investigating judge of the Court within the territorial jurisdiction of which a person is held in custody has the right to pass a resolution which obliges any organ of State power or service person to ensure observance of the rights of such persons’.

since 18 September.

47. On 2 October, a deputy of the Luhansk Regional Council<sup>18</sup> was reportedly taken by soldiers of the 24<sup>th</sup> Voluntary Territorial Defence Battalion *Aidar* in Sievierodonetsk (Luhansk region). The MoIA reported that two battalion members transferred the man to Kyiv reportedly in accordance with an earlier agreement with the Luhansk regional department of the SBU. On 3 October, following a report of the deprivation of his liberty made by his wife to law enforcement agencies, the *Aidar* soldiers were apprehended by the police in Kyiv. The office of the Military Prosecutor initiated a criminal investigation under article 146 (Illegal deprivation of liberty) of the Criminal Code. The whereabouts of this individual remain unknown.

#### *Exchanges of persons deprived of their liberty*

48. Between 5 September and 31 October, about 20 exchanges of persons deprived of their liberty, as part of the Minsk Protocols, were reported by various Ukrainian officials and/or civil initiatives, with 400 to 420 people (predominantly members of the Ukrainian military) released by the armed groups. There are no official figures as to how many have been released by the Government of Ukraine. Meanwhile, the SBU reports that from 5 September to 20 October, 1,509 people have been released by the armed groups. The SBU reported having secured the release of 822 people, including 628 soldiers or police officers of various formations and 194 civilians, including five journalists. The number of people released by the Government of Ukraine is not known.

49. Some credible reports question the voluntary nature of the exchanges, which has not always been observed, with some detainees following their exchange reporting that they were forced to participate in the process. For example, the HRMMU received information that on 25 September, some ‘pro-federalism’ detainees held in the pre-trial detention facility in Odesa were forced by the SBU to participate in detainee exchanges. At that time they were notified that the criminal charges against them were dropped. Although they were warned unofficially by the SBU that if they did return to Odesa they would again face prosecution. On 16 October, the HRMMU was informed by the relatives and lawyers of the detainees, that having been exchanged, criminal proceedings had indeed been reopened against them.

### **C. Torture and ill-treatment**

50. During the reporting period, the HRMMU continued to receive reports of torture and ill-treatment by the Ukrainian law enforcement agencies and volunteer battalions and by the armed groups, including beating, death threats, cruel, inhuman and degrading treatment, and lack of access to medical assistance. Some detainees who had been selected by the Government of Ukraine to be released, under the Minsk agreements, reported spending several days in detention without food and water.

#### *By the armed groups*

51. A serviceman of the 24<sup>th</sup> Voluntary Territorial Defence Battalion *Aidar*, released by armed groups on 27 September, after being wounded and detained in an ambush on 26 September, reported being beaten and that his right arm marked with a tattoo of the Ukrainian coat of arms and ‘Glory to Ukraine’, was cut off with an axe.

52. On 24 October, the HRMMU interviewed a man who had been detained for 48 days by the ‘Donetsk people’s republic’ for ‘espionage’, and was released on 27 September. At a detention facility managed by the ‘ministry of state security’ (a former plant of isolation materials), the man reported seeing several dozens of people, most of whom were beaten. He reported that there was no separation between men and women; that detainees were poorly fed;

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<sup>18</sup> He had recently been the ‘deputy minister of health’ of the ‘Luhansk people’s republic’.

with limited or no access to water; humiliating sanitation arrangements; extremely limited access to medical care; and no opportunity to communicate with relatives. A further HRMMU interview with a Donetsk resident who had been detained on 6 August by an armed group because of his 'anti-governmental propaganda subversive activities', revealed that he was taken to the former Donetsk regional SBU building. There he was heavily beaten, for two days, with wooden bats and rubber sticks, and threatened to be shot. His abductors allegedly started cutting off his ear. He was reportedly kept in a very small cell with three Ukrainian servicemen, and then transferred to another place where he was beaten again and then imprisoned in an iron box already containing one man, with little capacity to even hold one person. They were left there for a day under the sun, which caused him to lose consciousness. After the detainees began banging the box, they were eventually let out for a short while, received pain killing injections and given some water, but were later put back in the box again. They were subsequently taken to a garage, handcuffed and beaten for 10 days.

*By the Ukrainian forces*

53. On 6 October, the HRMMU contacted the Head of the National Preventive Mechanism (NPM) with regard to the allegations of ill-treatment of detainees by the Ukrainian authorities in the pre-trial detention facility (SIZO) №18, located in Starobilsk (Luhansk region). Further to an inspection, the NPM reported on 10 October that it could not confirm the allegations but it had found that some detainees bore signs of physical abuse on the arrival to the SIZO, as recorded by SIZO officials.

54. On 13 October, the HRMMU interviewed a resident of Debaltseve (Donetsk region) who claimed that when with the armed groups, he was involved in building and guarding checkpoints and roadblocks. On 16 September, he was allegedly detained at home by Ukrainian servicemen of the 25<sup>th</sup> Territorial Defence Battalion 'Kyivska Rus' and was reportedly kicked repeatedly. He was then taken to the Debaltseve department of the MoIA, where he was allegedly interrogated and beaten for three days, and urged to tell where weapons, ammunition and supporters of the 'Donetsk people's republic' were located. He was suffocated with a plastic bag; he was hanged from an opened door and pulled by a rope tied to his hands on his back; he was also beaten on the head with a rubber hammer. He was threatened to be taken back to the *Kyivska Rus* battalion to be shot dead. After two weeks, he was transferred to the Iziium department of MoIA, where he was again beaten on his back with wooden sticks for a couple of hours. At the end of September, he was the subject of a detainee exchange.

55. On 14 October, the HRMMU interviewed a resident of Krasnoarmiisk (Donetsk region) who claimed that he never participated in armed hostilities and only manned an unarmed anti-Maidan checkpoint. On 5 August, some military servicemen pulled him out of his car and took him to a location in Krasnoarmiisk, where he was kept in a basement. He was accused of operating checkpoints with weapons, and of 'engagement in terrorism'. He was beaten, and death threats towards his family were made. The servicemen reportedly wore balaclavas, camouflage, with Ukrainian flags and the inscription *Donbas* on their chevrons. He was later transferred to an official detention facility after his detention was sanctioned by a court. On 17 September, he was put in a cell where 15-25 persons were detained. They were allegedly ordered to crawl to another cell, while on each side of the corridor guards and operatives were standing and beating them with clubs. On 28 September, the detainee was the subject of a detainee exchange.

### III. FREEDOMS OF EXPRESSION, PEACEFUL ASSEMBLY, RELIGION OR BELIEF

#### A. Freedom of expression

56. In the period covered in this report, violations of freedom of expression continued. The number of reported incidents involving media workers in conflict affected area has decreased compared to previous months; nevertheless the working conditions of media professionals in Donetsk and Luhansk regions remain dire due to security concerns. Instances of intimidation of journalists became more frequent in other regions of Ukraine during the Parliamentary elections campaign.

##### *Safety of journalists and media workers in the conflict affected area*

57. As of 31 October, the HRMMU was aware of at least six more journalists and media workers that remain held by armed groups of the 'Luhansk people's republic': a local journalist and a public relations specialist of the Stakhanov town council, captured on 31 July; a journalist of the Kharkiv-based magazine *Ukrainian Space* and his aide, captured at a check point on 15 August; an editor-in-chief of internet-based outlet Politics 2.0, captured on 28 July, in Luhansk region; and a journalist of a pro-Russian newspaper *Donetskii Kriazh* who went missing on 1 August and was last seen in the office of the Commandant of the 'Donetsk people's republic' in Horlivka.

58. During the period covered by this report, five journalists who had been held by armed groups were released. On 25 September, a blogger of Ukrainian Truth was released after 48 days of being held by an armed group of the 'Donetsk people's republic'. On 30 September, a freelance journalist of the *Vesti* newspaper and the Reporter magazine, together with a free-lance photojournalist, who had been held by the armed groups since 22 September, were released in Sverdlovsk, Luhansk region. On 6 October, a journalist of Espresso TV was released after 38 days of detention by an armed group in Makiivka, Donetsk region. He was reportedly ill-treated and forced to give a false testimony on camera about the Ukrainian Armed Forces. He was later forced to make video reports as a pre-condition for his release, under the supervision of members of the Don Cossack unit that was holding him. On 11 October, a freelance journalist from the Lviv-based agency ZIK had been released after he had been held by armed groups in Luhansk region since 23 July, along with a group of priests with whom he was travelling to report on their missionary work in the conflict area. All were held in the basement of the Luhansk State Administration for more than two months and severely beaten. On 27 October, a local civic activist and blogger captured on 22 September by armed groups of the 'Donetsk people's republic', was released during a detainee exchange.

59. There have been cases of detention of journalists by Ukrainian forces. On 12 October, the HRMMU interviewed a Russian photographer of the *New York Times*, who was reportedly beaten up by servicemen of the Ukrainian army or of the National Guard on 4 October. He and a journalist for Deutsche Presse-Agentur were detained at a Ukrainian checkpoint in Mariynka (Donetsk Region) for taking a picture of a Ukrainian tank. Both journalists were ordered to get out of the car and forced to lie on the ground for half an hour, while their documents were checked. Both were beaten. They were then escorted to a camp, where their documents were checked again. After the arrival of SBU officials, the *New York Times* journalist was allowed to pass through the checkpoint, but was asked to sign a paper that he had no complaints. The other journalist did not have proper accreditation and was escorted by the SBU to a hotel. He reportedly managed to reach Donetsk on 6 October.

60. On 26 September, during a meeting with the OSCE Representative on freedom of the media in Vienna, representatives of media organisations of Ukraine and the Russian Federation



released a joint statement, condemning incidents of killing, beating and detention of journalists in the conflict-affected areas. They also agreed to ‘continue ... cooperation and to undertake the necessary efforts regarding matters such as the safety of journalists, the development of professional media and de-escalation of the conflict in Ukraine’. Such efforts are welcome as disinformation presented in the media has contributed to deepen tensions within society

61. In addition to international human rights law, in the context of armed conflict also international humanitarian law provides protection for journalists. In armed conflict, journalists are entitled to all the protections afforded to all other civilians. Journalists will lose this protection if they directly participate in hostilities for as long as they take direct part. It is therefore prohibited to target journalists who carry out their lawful professional activities.

*Attacks, harassment and intimidation of journalists*

62. During the Parliamentary election campaign, some journalists, mainly those dealing with authorities and political issues, were attacked, harassed and threatened in some parts of the country. Some incidents seemed to be an attempt to restrict freedom of expression, particularly regarding corruption issues or what is perceived as a pro-Russian stance – with arbitrary judicial and administrative measures targeting individual journalists, editors and heads of media companies. Others were individual acts of violence against journalists and media workers.

63. On 23 September, a Kyiv-based journalist for the programme *Our Money* and her family were threatened by a man who demanded the non-airing of a video report about one of the deputies of the Office of the General Prosecutor, suspected of embezzlement. The police have opened an investigation into the incident.

64. On 1 October, the general director of the Odesa-based TV Channel Seven reported being threatened by two unknown young men demanding a change to the editorial policy. The general director noted that over the last couple of months the channel had been preparing and broadcasting programmes aimed at combatting corruption, extortion, and bribery. It was also the only local channel that refused to broadcast any political advertisements, but which provided free-of-charge space for interviews and debates involving authorities at all levels.

65. On 21 October, the editor of the Odesa website ‘INFO-centre’ – and member of the Journalists Union of Ukraine – was arrested by the SBU on the street. Immediately after, his house was searched, and he was brought to the SBU on the grounds that files related to the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ were found in his home. His lawyer was informed about the arrest the following day. On 23 October, he was placed in custody for two months as a measure of restraint, accused of complicity with terrorist organizations and concealment of a crime, based on electronic files related to his journalist activities. On 31 October, the court prolonged the journalist’s custody until 23 December.

66. On 24 October, the MoIA Main Investigation Department searched the offices of three media companies in the context of an investigation into “funding actions aimed at overthrowing the constitutional order or seizing State power). The MoIA stated that it had established that the companies had violated the decision of the District Administrative Court, which banned broadcasting of Russian TV channels in Ukraine, and that they had “used the funds received from the sale of advertising time on the specified channels to fund terrorist groups in Ukraine”. Based on a court decision, the accounts of the companies were blocked, whilst the financial documents and some technical equipment were seized.

67. On 23 September, unknown persons in camouflage attacked the editor of the magazine *Political Critique* and severely beat him in the centre of Kyiv, accusing him of separatism.

68. On 6 October, five men wearing uniforms of the Territorial Defence Battalion *Donbas* came to the office of the Internet and TV provider LLC Matrix in Krasnoarmiisk. They reportedly instructed everybody to kneel, whilst one of them struck the senior office manager

with a rifle, accusing him of collaboration with pro-Russian armed groups by broadcasting Russian TV channels. All office equipment and documentation was seized and taken away. According to the Press Office of the Krasnoarmiisk City Police Department, an investigation was opened into the incident. On 8 October, the deputy commander of the *Donbas* Battalion stated that all equipment and documentation had been returned, and that the serviceman who had acted aggressively was “punished”.

69. On Parliamentary Election Day, 26 October, the NGO Institute of Mass Information registered nine instances of obstruction of journalists’ professional activity, mainly in southern regions of Ukraine. They included physical threats and intimidation of journalists and their crews, as well as preventing their access to, and filming of, polling stations.

## **B. Freedom of peaceful assembly**

70. On 26 September, the Kharkiv State Administration and a local court banned a ‘peace march’ planned by the Communist party on the following day, arguing that this measure sought to ‘ensure safety ‘due to notifications about alleged provocations of conflict’. Despite this ban, the rally took place and activists were detained.

71. On 28 September, a large crowd of ‘pro-unity’ protestors was able to gather in Freedom Square in Kharkiv and tore down the statue of Lenin. Several clashes occurred on 29 September between rival groups of activists but the police did not appear at the scene.

72. As a general rule, neither a perceived or potential risk of public disorder, nor the presence of a hostile audience should justify the banning of peaceful assembly.<sup>19</sup> It is preferable to detain and prosecute people later for any outbreak of violence, rather than impose prior restraints on an assembly based upon the possibility of violence. At the end of September, in a new development, protests emerged in parts of Luhansk and Donetsk regions controlled by the armed groups. Citizens of Stahanov, Antratsyt, and Rovenky (Luhansk region) on 14 September, 22 September, and 27 September respectively, demanded that the Government of Ukraine address the issue of pensions as armed groups were not able to provide such payments. On 12 October, in Donetsk, activists protested against the upcoming elections of self-proclaimed ‘top officials’ of the ‘Donetsk people’s republic’.

73. The armed groups responded to some of these movements with acts of intimidation. For example, on 5 October, in Sverdlovsk (Luhansk region) during a protest to demand payments of salaries and other social payment by the ‘Luhansk people’s republic’, armed supporters of the ‘republic’ tried to prevent the gathering by shooting at people, injuring three citizens. Similarly, on 22 October in Brianka (Luhansk region), armed supporters of the ‘Luhansk people’s republic’ prevented pensioners who had not received pensions for four months from rallying by shooting in the air.

74. The protest in Kyiv on 13 October of uniformed National Guard conscripts demanding their demobilisation (they had been mobilised beyond their terms of initial conscription or had later been remobilised). In case this demand could not be met, they asked to be paid their due cash benefits and to be provided with winter clothing. The demands of the conscripts were transmitted to the President. The Office of the General Prosecutor initiated criminal proceedings against the organisers of the protest for absence without leave. Servicemen in 10 other locations supported the protest.

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<sup>19</sup> See the decision of the European Court of Human Rights, ‘Makhmudov v. Russia. See also Report of the Special Report of the Special Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, para.25.



### **C. Freedom of religion or belief**

75. There have been increasing reports of violations of freedom of religion or belief in the areas controlled by the armed groups. All faith traditions, except for the Orthodox Church of the Moscow Patriarchate, appear to be targeted by the armed groups through the persecution and detention of clergy members and believers, as well as the seizure of church property.

76. Thus, on 27 September, armed men abducted a Protestant pastor of the Seventh-day Adventist church in Horlivka, Donetsk region, reportedly stating that “this is Orthodox land and there is no place for various sects”. The pastor was released on 16 October.

77. On 23 September, the Evangelical Christian Baptist Church announced on its website that from the beginning of April until September, seven Baptist church buildings had been seized by the armed supporters of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’.

78. On 4 October, armed Don Cossacks seized the Holy Trinity Cathedral (Orthodox Church of Kyiv Patriarchate) in Luhansk and gave the clergy one hour to “get out”, declaring that the Church would be used as their dormitory.

79. On 18 September, the Metropolitan of Luhansk and Alchevsk, Mytrofan, issued an official statement claiming that the local Orthodox clergy had nothing to do with the forcible seizure of religious buildings, which was exclusively the initiative of the armed groups. He stated that diocese bishops disapproved of such actions and would not accept any buildings belonging to Baptists or any other confessions that had been seized by the armed groups and offered to his denomination for use.

## **IV. ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

80. The hostilities continue to severely affect the enjoyment of economic, social and cultural rights. In the first nine months of 2014 prices increased by 16.2 per cent, utility rates by 24.3 per cent on average, whilst the average salary increased by 4.9 per cent<sup>20</sup>. The situation of the approximately 5.2<sup>21</sup> million people living in the conflict and post conflict affected areas is particularly difficult due to the considerable breakdown and disruption of the economic infrastructure and social services. The availability of healthcare in those areas is increasingly limited, with particularly serious consequences for the most vulnerable people.

### **A. Right to the highest attainable standard of physical and mental health**

81. The hostilities have exposed some more systemic problems in the healthcare system affecting patients across the country. One of the most pressing concerns relates to the threat of interrupted treatment of HIV-positive and multi-drug resistant tuberculosis patients in all regions as of 1 January 2015, due to the non-completed tenders for the purchase of the life-saving medication<sup>22</sup>. As of 31 October, only 25 per cent of the required amount of medication had been purchased. Now even if the tenders are finalised shortly, the medications may be delivered only in April 2015. The National Council on Tuberculosis and HIV/AIDS prevention has already requested the Global Fund to provide treatment for the first three months of 2015; however civil society service providers are greatly concerned that the life-saving medication will not be delivered in time. The absence of treatment will directly affect 59,448 HIV-positive patients and

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<sup>20</sup> According to the data of the State Statistics service released on 31 October.

<sup>21</sup> As of 31 October according to the *Situation Report No. 18*, of the UN Office for the Coordination of Humanitarian Affairs.

<sup>22</sup> This year the Ministry of Health of Ukraine has not completed tenders for procuring life-saving medications for more than five months. For this, the Minister has been suspended from his position in September.

approximately 11,600 multidrug resistant tuberculosis patients. Ukraine is a country with high HIV as well as multi-drug resistant tuberculosis burden<sup>23</sup>. Thus discontinuation of treatment is life-threatening for more than 70,000 patients and may lead to the uncontrolled spread of epidemics. Provision of essential medicines is one of the core obligations of the State to ensure the satisfaction of the minimum essential level of the right to health<sup>24</sup>. While some disruption may be unavoidable, the conflict may not be used to justify long delays or large scale disruption in the provision of essential drugs.

*Access to healthcare in the conflict affected area*

82. Access to healthcare services in Donetsk and Luhansk regions, especially in areas controlled by armed groups, remained limited. At least 45 hospitals out of 601 medical establishments in Donetsk and Luhansk regions are destroyed or damaged and many other are partially functioning or not operational. Access to specialized care, including for non-communicable diseases, diabetes, cancer, palliative care, maternal and new-born care and safe blood transfusion, is significantly limited due to a lack of staff and medications. Specialized care is concentrated in Luhansk and Donetsk cities, which are now controlled by armed groups, and hence not at present accessible for residents in the two regions, particularly those in towns controlled by Ukrainian Government. Shifting the provision of such care to other hospitals is complicated and resources-consuming. Whilst local antiretroviral therapy-sites<sup>25</sup> and the regional tuberculosis (TB) dispensary in Luhansk are non-operational, the Donetsk and Luhansk regional AIDS centres are providing limited services. However, the provision of tests for timely diagnosis of HIV is critical, for those who are entitled to this service free of charge: pregnant women, blood donors, individuals with positive results of first tests, and children under 18 months born from HIV positive mothers. In addition, residents of the conflict-affected areas report on the lack of medications available for purchase in pharmacies, especially for heart diseases and high blood pressure, sedatives, and antiviral treatment.

83. Although many medical professionals have left the conflict affected area, most hospitals still seem staffed by some doctors and nurses. In the areas controlled by armed groups, a shortage of paramedics<sup>26</sup> is reported. This is likely to have an impact on the quality of services provided as such personnel play an important role in the post-surgery recovery of patients. As reported by local doctors to *Médecins Sans Frontières* (MSF) and WHO, one of the main concerns in the conflict affected area is the increasing lack of medical supplies including anaesthetic, vaccination, insulin, consumables, solutions, surgical instruments and equipment, TB, HIV and cancer drugs, and reagents for haemodialysis.

84. The growing numbers of IDPs, wounded and disabled, are also putting additional pressure on hospitals across Ukraine, leading to limited access and low quality of healthcare, including rehabilitation. On 29 October, the HRMMU has received reports that, in several instances, ambulances refused to drive to collective accommodation for IDPs due to the lack of fuel. Also, many have access to doctors, some cannot obtain specialized care, and many are unable to buy the medicines prescribed<sup>27</sup>. There are also constraints in accessing dental care, which is mainly provided by private dental clinics and are paid out-of-pocket. This has a particularly negative effect on groups in a position of vulnerability, such as people living in poverty, older persons, and some IDPs.

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<sup>23</sup> WHO Tuberculosis profile, Ukraine ([http://www.who.int/gho/countries/ukr/country\\_profiles/en/](http://www.who.int/gho/countries/ukr/country_profiles/en/)).

<sup>24</sup> CESCR General Comment on the right to health, paragraph 43.

<sup>25</sup> Located in Krasnyi Liman, Shakhtarsk, Snizhne in Donetsk region.

<sup>26</sup> According to the regular surveys of WHO in the 'Luhansk people's republic' there are only 30 cent of non-professional medical staff available.

<sup>27</sup> Due to the absence of the system of medical insurance and limited financing of hospitals, most medications, even prescribed, are not available free of charge.

## **B. Right to an adequate standard of living (including food, clothing, housing, water and sanitation)**

85. As of 31 October, 36 settlements in Donetsk region remained without electricity as a result of the continued fighting. Electricity was only partially available in Mariinka, Avdiivka, Donetsk and Horlivka. Information about the situation in Luhansk region was not available. In the last days of October, there were reports of more frequent shelling of electric power stations in Schastia, Luhansk and Donetsk cities, which depending on the circumstances may constitute a violation of International Humanitarian Law.

86. Access to water in Donetsk and Luhansk regions has been improving, although water utility companies continued to face difficulties in inspecting and repairing pipelines due to insecurity in many places. The majority of the regions still had only a partial flow of water and, in some areas people were digging shallow wells to cope with the shortage. As of 31 October, 29 settlements in the Donetsk region had limited access to water supply.

87. Humanitarian aid delivery in September slightly improved in the conflict-affected area. Due to an ongoing shortage of cash, residents in the areas of the Donetsk and Luhansk regions under the control of the 'Donetsk people's republic' and the 'Luhansk people's republic' have continuing fears of being unable to buy the limited food and commodities that are available. Residents of five towns (Kirovske, Pervomaisk, Avdiivka, Stanytsia Luhanska and Stakhanov) reported a shortage of food, especially cereals, dairy, meat and fish products. Hygiene items were reported to be lacking in Novotoshkivske, Stanytsia Luhanska, Pervomaisk, Avdiivka and Yunokomunarivsk.

## **C. Right to property**

88. The HRMMU continued to receive reports about illegal seizure of property in the areas controlled by armed groups. On 30 September, the spokesman of the Information Centre stated that the armed groups of 'Luhansk people's republic' organised the sale of about 100 cars stolen from local residents or dealerships and had been forcing local residents of Lutugino to sell their homes for as little as USD 100 to USD 1,000.

89. On 28 October, the HRMMU learned that private entrepreneurs and those trading on local food markets had to 'urgently' re-register with the so-called 'ministry of revenues and duties' of the 'Donetsk people's republic' and pay taxes in order to further carry out their activities. Earlier in October, it was reported that entrepreneurs in Rovenky and Antratsyt towns (Luhansk region), were required respectively, to either pay a specific sum, or pay a 20 % tax on profits to support the armed groups. On 28 October, the self-proclaimed 'Ataman of Antratsyt District of the Great Don Cossacks Army Major-General' stated that entrepreneurs should now maintain at their own expense the Cossack units, which reportedly took control of the Krasnyi Luch (Luhansk region). Due to the absence of law-enforcement in the areas controlled by the armed groups, the residents are left without any real means to protect their rights. All of these demands amount to extortion.

## **D. Right to work and favourable working conditions**

90. Unemployment is growing in Ukraine. As of 27 October, there were 1.7 million

unemployed<sup>28</sup> (8.4 per cent of economically active population) including 1,147,425 who were officially registered as such. The largest number of unemployed was registered in the Donetsk region<sup>29</sup> (87,097 persons) and in the regions with the highest influx of IDPs, namely Dnipropetrovsk (81,875 persons), Kharkiv (70,752), Lviv (62,547) and Zaporizhzhia (62,179). Women accounted for 57.6 per cent of registered unemployed.

91. As of 29 October, wage arrears amounted to UAH 1.9 billion (approximately USD 148 million)<sup>30</sup> across Ukraine. The highest rates of unpaid salaries were registered in Donetsk, Luhansk, Kyiv and Kharkiv regions. In some regions, particularly in the south, the illegal practice of sending teachers on unpaid leave was identified by respective authorities. For example, in Kherson region, the teachers were proposed to go on unpaid leave for 5 or 10 working days due to the lack of funding for wages. The non-payment of salaries is an acute issue in those areas controlled by the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’, especially for teachers and doctors. Until August, the Government of Ukraine attempted to transfer money to those areas. In some medical establishments, workers received payments for August and September, while in others, for example in Shakhtarsk and Torez, employees have not received their salaries since July. In September, the ‘leadership’ of the ‘Donetsk people’s republic’ made attempts to pay salaries, however there is no specific data as to how many people received the payments.

92. The HRMMU continued to receive worrying reports about abuses of the right to work and favourable working conditions in the east. The medical and educational institutions continued to be subordinated to the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ in areas under their control, leading to numerous violations. Medical employees and teachers in several towns controlled by armed groups were dismissed without being duly informed about the reasons: the employees of the Luhansk City Hospital № 9 were forced to write letters of resignation and sign papers pledging their loyalty to the ‘Luhansk people’s republic’ should they wish to continue working at the hospital.

93. The HRMMU was informed that in September and October, armed groups forced medical personnel of medical institutions to terminate their labour contracts and to sign new ones with ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. Those unwilling to do so were threatened with dismissal.

#### *Reprisals*

94. On 17 October, the Deputy Minister of Internal Affairs stated that 17,000 police officers had been dismissed in Luhansk and Donetsk regions for ‘failure to comply with the oath, obeying the enemy, or merely for being supported [sic i.e. paid] while waiting to see what would happen’. A number of dismissed officers interviewed by the HRMMU consider this decision to be a punishment for not abandoning their posts and continuing to fulfil their law enforcement duties in the absence of direction from the central authorities, when they found themselves in areas controlled by the armed groups.

### **E. Right to social security**

95. Due to the suspended work of the State Treasury and the breakdown of banking system in the areas controlled by armed groups, the delivery of social benefits remained limited in the settlements controlled by armed groups. The payment arrears to citizens in these areas amounted to UAH 6.6 billion (approx. USD 508 million)<sup>31</sup>. As of 31 October, most residents had not

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<sup>28</sup> According to the data released by the State Statistics Service on 27 and 31 October.

<sup>29</sup> In the 6<sup>th</sup> OHCHR report, the HRMMU noted that enterprises and business had to close due to security situation.

<sup>30</sup> According to the data of the State Statistics Service, released on 29 October.

<sup>31</sup> According to the Ministry of Social Policy, as of 24 October.

received benefits for more than three months, which is particularly difficult for older persons and persons with disabilities.

96. The Ministry of Social Policy of Ukraine has developed simplified procedures to enable residents of Donetsk and Luhansk regions under the control of armed groups to access their benefits, but according to the regulations, social benefits can only be received by in the areas under control of the Government. The HRMMU learned that some social workers in the territories controlled by armed groups have organized schemes, unlawfully charging retirees money (UAH 300 per person) for processing their applications to receive pensions from Ukraine on a bank card, and to organize trips for retirees to the Government-controlled towns to submit such applications in person.

97. Reportedly, the ‘Donetsk people’s republic’ has commenced disbursing social benefits in the territory it controls. But people have to submit application forms to claim their benefits and must present a passport, and a photo. Such social benefits have been disbursed reportedly varying between UAH 900 and 1800 (approximately USD 69 and 138). But they have not been systematic and have not reached all those who are entitled to social benefits.

## **F. Right to education**

98. The Administration of big cities continues facing difficulties to accommodate children in pre-school facilities; for example, in Kyiv 8,000 children were left without a place in kindergarten, in Odesa 10,000 are waiting for placement<sup>32</sup>. The Ministry of Education and Science reported that no problems occurred with accommodation of children in the schools, even in the areas with the highest influx of IDPs. However funding to cover the salaries of additional staff was lacking dramatically.

99. Across Ukraine, access to education facilities in remote areas remained complicated, as many school buses remained mobilized for the military operation in the east<sup>33</sup>. This especially affects children in rural areas. In the territories controlled by the armed groups, schooling is limited, mainly due to the destruction of buildings and insecurity. On 10 October, the ‘minister of education’ of ‘Donetsk people’s republic’ stated that on the territory controlled by the ‘republic’, 85 educational buildings, 26 kindergartens and 51 schools had been damaged or destroyed. In Donetsk city, 48 out of 150 secondary schools and 54 out of 185 kindergartens were reportedly damaged. As of 13 October, in Luhansk city, 5 out of 60 schools had been destroyed completely and 43 had been damaged. Out of 63 kindergartens, 38 had been damaged. The overall number of children, who still had no access to secondary education in both regions, remained unknown<sup>34</sup>.

100. In these areas, the curricula have been altered to exclude the teaching of Ukrainian language and history, which makes it problematic to obtain State school diplomas. This also violates the cultural rights of Ukrainian speaking children.

## **G. Groups facing discrimination**

### *Roma*

101. Roma NGOs continued to report about difficulties faced by members of their community face seeking to access social services or employment. The main underlying reason seems to be a

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<sup>32</sup> Lack of places in the kindergartens will also have a negative impact on women’s economic situation and their right to work.

<sup>33</sup> In paragraph 130 of the 6<sup>th</sup> OHCHR report, the HRMMU stated about such problems in Kherson, Mykolaiv, Volyn and Rivne regions.

<sup>34</sup> As of 16 September, the number of children who were not able to resume their studies on 1 September was 260,000 children; primarily in the territories controlled by armed groups.



lack of education and absence of identity documents. It is particularly the case for Roma IDPs. Insufficient outreach activities, lack of coordination among volunteer initiatives, limited awareness among the Roma concerning available assistance and lack of documents, exacerbates their vulnerability.

*People living with HIV/AIDS*

102. On 14 October, UNAIDS and UNODC raised concerns about reckless disclosure of the status of people with HIV/AIDS in Donetsk and Luhansk regions, as medical records have often become available to non-medical staff while hospitals are being seized by armed groups.

103. On 10 October, the NGO All-Ukrainian Network of People Living with HIV/AIDS confirmed to the HRMMU that most people living with HIV and former drug users had left the region due to fear of persecution, as well as the lack of available services.

*Persons deprived of their liberty*

104. The HRMMU regularly receives reports from civil society organisations regarding the situation of people deprived of their liberty in areas controlled by armed groups. As of 31 October, approximately 15,000 people reportedly remained in detention facilities in the conflict affected area. Most of them are reportedly at the point of starvation, as humanitarian aid rarely reaches them due to the insecurity.

*LGBTI*

105. The prevalence of negative stereotypes vis-à-vis LGBTI remains quite high. For example, on 22 September, an NGO from Lviv informed the HRMMU that it had recently exposed a social network that requested users to share information about LGBTI members, sex workers and drug dealers in the town and to vote as to whether such people should be attacked and beaten. The NGO also reported a case of police officers collecting information about LGBTI persons and extorting UAH 3,000 (approx. USD 230) from each, threatening to otherwise reveal their sexual orientation to their family and friends. The LGBTI community is often reluctant to report threats and violations of their rights.

106. The HRMMU is particularly concerned about the safety of the LGBTI community in the Donetsk and Luhansk regions. In the ‘Luhansk people’s republic’ a law<sup>35</sup> was passed, which criminalizes homosexuality with a prison term of two to five years.

*Trafficking in persons*

107. The armed hostilities, the deterioration of the economic situation, including growing unemployment, significant wage arrears, and the large numbers of IDPs create an environment that is propitious to increased trafficking in human beings. The International Organization for Migration (IOM) in Ukraine reported about the identification of 642 victims of trafficking (282 women and 360 men) in January-September 2014 throughout Ukraine, which is fewer than the number reported by IOM in the respective period of last year. This, however, may indicate gaps in the identification mechanism of victims, as the responsible ministries, as well as key NGOs, have concentrated their efforts on addressing other immediate and acute issues arising from the conflict.

108. The HRMMU welcomes the steps undertaken by the Government of Ukraine to prevent trafficking in human beings from the conflict affected area. For example, the creation of a working group under the Ministry of Social Policy to draft a new national action plan aimed to protect civilians, including against the risks of trafficking; as well as the strengthened control over the movement of children out of the country, given the numerous attempts of illegal movement of orphans and children deprived of parental care who have not reached the age of 16

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<sup>35</sup> ‘Law on the protection of Christian values of the ‘Luhansk people’s republic’ from the negative influence of the customs of hostile states such as Ukraine, the European Union, Canada and the USA’.

abroad, especially to the territory of the Russian Federation.

## V. HUMAN RIGHTS IN THE ELECTORAL PROCESS

109. According to legislation<sup>36</sup>, voters can directly vote both for one national deputy under the majority system and for a party list of candidates under the proportional system. However, voting under the majority system requires a permanent residence in Ukraine. Some IDPs from Crimea and those who left their electoral districts due to the hostilities in the eastern regions, and conscripts or soldiers and volunteers located out of their home areas, faced difficulties in exercising their right to vote, particularly under the majority system. The Central Electoral Commission (CEC) facilitated a special procedure to allow IDPs to vote at least for the party lists under the proportional system, IDPs from Donetsk and Luhansk regions<sup>37</sup> and from Crimea<sup>38</sup> could apply to any office of the State Register of Voters to change their place of voting with their valid internal passports.

110. The Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea informed Crimean residents wishing to vote at the parliamentary elections that they needed to register at a local polling station no later than 20 October. Crimean residents were to produce an internal passport showing that they came from Crimea. According to the CEC 2,864 IDPs from Crimea, 21,704 IDPs from Donetsk region and 11,119 IDPs from Luhansk region changed their voting places before the parliamentary elections. Approximately 80 per cent of servicemen were able to vote on Election Day according to the National Security and Defence Council (NCSD).

111. On 25 September, the CEC closed the deadline for applications of candidates wishing to stand in the parliamentary elections. Twenty-nine political parties contested 225 seats in proportional voting for party lists and 3,321 candidates contested 198 out of the 225 remaining seats, under the majority electoral system. Fifteen seats from the areas of Donetsk and Luhansk regions controlled by the armed groups and the 12 seats for Crimea remain vacant according to the law<sup>39</sup>. It was possible to hold elections in 12 out of 21 single-mandate electoral districts in Donetsk region and in 5 out of 11 single-mandate electoral districts in Luhansk region. On 10 October, the Chairman of parliament announced the possibility of holding by-elections within those single-mandate electoral districts of Donetsk and Luhansk regions under the control of armed groups as well as in Crimea. As the election campaign became more active, the public lustration campaign (see Chapter on Administration of Justice) against allegedly corrupt officials became more aggressive, with some actions targeting some parliamentary candidates. The HRMMU received at least 20 reports of attacks (not lustration-related) against candidates or parliamentary deputies, which resulted in injuries. Violence was also reported against political party campaign workers, their relatives, and electoral workers and monitors, as well as destruction of or damage to party offices, and of promotional material in public places.

112. On 23 October, a law aimed at strengthening penalties for violations of electoral rights,

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<sup>36</sup> Law as of 17 November 2011 ‘On elections of national deputies in Ukraine’.

<sup>37</sup> Resolution as of 7 October No. 1529 ‘On questions of temporary change of voting place by voters whose address belongs to the territory of Donetsk or Luhansk regions for the period of holding of early parliamentary elections in Ukraine on 26 October 2014’.

<sup>38</sup> On 29 April, the CEC adopted Resolution No. 415 that allows changing an address of voting without changing the place of registration for residents of the Crimea and the city of Sevastopol where SRVs are not functioning.

<sup>39</sup> The Law of 15 April 2014 No. 1207-VII On Ensuring Rights and Freedoms of Citizens and Legal Regime on the Temporary Occupied Territory of Ukraine’.

including for bribery of voters entered into force<sup>40</sup>. On 30 October, the MoIA stated that 300 criminal cases had been registered for breaching the electoral process, including 71 (until 21 October) for bribery of voters<sup>41</sup>.

On Election Day incidents were few and isolated. According to the MoIA, there were 19 cases of temporary disruption of voting with bomb and mine threats at polling stations, including seven incidents in the Mykolaiv Region; voting was resumed after the police conducted security checks. Incidents reported on Election Day included cases of: bribery of votes<sup>42</sup>; attacks in Kryvyi Rih (Dnipropetrovsk region) or threats to members of the election commissions in Rubizhne and Sieverodonetsk (Luhansk region); abduction of a member of an election commission in Volnovakha (Donetsk region); provocation of violence at polling stations; and interference in the vote counting. The OSCE/ODIHR led International Election Observation Mission, in its preliminary findings, stated that “in most of the country Election Day proceeded calmly, with few disturbances. Voting and counting were transparent and assessed positively overall.”

## VI. SITUATION OF INTERNALLY DISPLACED PERSONS

113. Despite the proclaimed ceasefire an average of more than 2,000 new IDPs registered each day during the reporting period as people continued to flee the hostilities. The overall number of IDPs increased thus from 275,489 as of 18 September to 436,444 on 29 October, according to the State Emergency Service of Ukraine. This includes 417,410 people coming from the east, and 19,034 IDPs from Crimea.

114. According to UNHCR, as of 24 October, the overall number of people who had fled the conflict affected areas to other states since April reached 454,339 people 387,355 of them went to the Russian Federation.

### *Returnees*

115. On 24 October, the OSCE SMM has observed that at the Russian Checkpoints Gukovo and Donetsk [sic] (in the Rostov Region of the Russian Federation) there has been a clear reverse flow of people back to the eastern regions of Ukraine for the last two months since the ceasefire agreement.

116. According to the Minister of Social Policy, as of 26 October, approximately 135,000 people had returned to their homes on territories back under the control of the Government of Ukraine.

117. IDPs have been also returning to the territories controlled by the armed groups. Some go back temporarily to visit relatives, inspect property or take items. Others return because they have been unable to find a job or shelter, or for fear that their property will be confiscated by either the ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’.

### *Accommodation*

118. With the onset of autumn, IDPs who were living in summer camps or sanatoria have had to move to warmer shelter. According to statistics from the Government of Ukraine, fewer than 1,500 IDPs remained in non-winterized shelters as of the middle of October; but this number

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<sup>40</sup> The law ‘on amendments to the Criminal Code of Ukraine regarding strengthening of penalties for violations of electoral rights of citizens’.

<sup>41</sup> The largest numbers of such cases was reported in Zaporizhzhia, Kyiv, Kharkiv, Odesa, Zhytomyr, Donetsk regions and Kyiv city.

<sup>42</sup> The cases of bribery or attempted bribery of voters mostly occurred in Kyiv city and region, Kharkiv and Odesa regions.

only includes IDPs who have registered and not others who may be living in various forms of private shelters like those run by religious organizations, some of which may not be suitable for winter conditions.

119. On 1 October, the Cabinet of Ministers adopted Resolutions No 505 and No 509 establishing regulations for the registration of, and financial assistance to, IDPs. According to resolution No 509, the Ministry of Social Policy will be responsible for the registration of IDPs, and will maintain a centralized database on the profile and specific needs of the IDPs. This should help better identify needs for IDPs, and plan and coordinate the response.

120. According to resolution No 505 IDPs will be eligible for monthly financial assistance as long as they fulfil certain conditions, including the requirement for adults to actively seek employment. The assistance will be UAH 884 (approximately 68 USD) per month for individuals not able to work (for example, children, elderly, disabled persons), and UAH 442 (approximately 34 USD) per month for working-age adults. The assistance is limited to six months and is intended to help families pay for housing.

121. The registration process started on 15 October and according to the Ministry of Social Policy, as of 26 October more than 70,000 IDPs were registered, more than 35,000 families had applied for financial assistance and 19,000 started receiving it.

#### *Employment*

122. Despite significant attempts undertaken by the State Employment Bureau (SEB)<sup>43</sup> IDPs continued to face barriers to finding employment and receiving unemployment benefits. In order to receive unemployment benefits, IDPs need to provide the SEB with their employment record books (a system inherited from the Soviet Union). However, these are normally retained by the employer. IDPs, having fled the conflict-affected areas, have often not taken their employment record books, and are consequently not eligible to obtain unemployment benefits. The SEB accepts letters of resignation as formal evidence of unemployment for IDPs, which allows them to receive the benefits.

123. In addition, some IDPs have complained of facing discrimination, with claims that they are usually offered worse working conditions than normal, and expected to work for a lower salary due to the lack of other options.

#### *Financial assistance to IDPs*

124. Many IDPs owe loans for cars or homes, which they are not in a position to reimburse. Parliament partially sought to address this issue through the adoption of legislation to excuse interest payments on outstanding loans<sup>44</sup>. This law would decrease the risks of IDPs losing their homes due to foreclosure.

## **VII. WOMEN'S HUMAN RIGHTS**

### **A. Women affected by the hostilities in the east**

125. Women may be particularly affected by the short and long-term effects of the hostilities in the eastern regions. This is due to a number of factors including: gender inequality, their status in society, and the lack of structures to protect them.

#### *Displaced women*

126. Women comprise two thirds of the IDPs in Ukraine. Women continue fleeing with

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<sup>43</sup> The SEB is under the Ministry of Social Policy, which keeps a record of all job vacancies in Ukraine.

<sup>44</sup> Law of Ukraine on Temporary Measures for a Period of Anti-Terrorist Operation as entered into force on 15 October 2014.

children, elderly or relatives with disabilities, without male relatives. Thus, they often carry a heavy burden of caring for others and trying to make decisions about the future. Many women report<sup>45</sup> feeling overwhelmed by the magnitude of their daily tasks. Their general problem is a lack of support from the State or local authorities and unemployment. Some of them managed to find a job but none of those who are registered in Donetsk and Luhansk regions could obtain legal employment.

#### *Sexual and gender-based violence*

127. The HRMMU continued to receive allegations of sexual and gender-based violence in the eastern regions.

128. On 13 October, the HRMMU interviewed a woman from Donetsk, who was “arrested” in May for violating a curfew by the ‘Vostok Battalion’. She was intimidated, forced into a car and brought to a place, which, she thought, was a police department seized by the armed groups. She was beaten with metal sticks for three hours, suspected of being a Ukrainian sniper because of callosities on her fingers, and released the next day. The woman referred to being raped by several men from the ‘Vostok Battalion’.

129. The HRMMU spoke with other women who were detained by armed groups or Ukrainian forces and who stated that while not physically abused, they were often threatened with rape and in some cases forced to undress. For example, on 14 October, the HRMMU interviewed an activist of the ‘Donetsk people’s republic’ activist and medical volunteer, who was detained by Ukrainian forces in July along with four other persons. She reported that she and another female detainee were regularly threatened with rape, and were once ordered to undress and interrogated while standing naked and blindfolded. They were later transported to the Kharkiv SBU, and one of the women reported being slapped on the back of her head several times during interrogation. On 2 August she was subject of a detainee exchange, after being asked to sign an undated protocol of detention.

130. On 14 October, an NGO informed the HRMMU that a couple was detained by armed groups at an opioid-replacement-therapy site on the grounds of being former drug users. While the man was forced to dig trenches, the woman was reportedly forced to cook meals for members of a ‘Donetsk people’s republic’ unit and provide sexual services to them. Both were later released.

131. On 15 October, the ‘authorities’ of the ‘Donetsk people’s republic’ informed the HRMMU of two cases of alleged rape. In Torez, a member of an armed group reportedly kidnapped a local female resident, raped her and at the same time placed a grenade in her mouth. Members of the local armed group reportedly caught and detained the perpetrator; the ‘General Prosecutor’ of the ‘Donetsk people’s republic’ has opened a criminal case. The second case of rape reportedly took place in Dokuchaivsk (Donetsk Region) while it was under the control of Ukrainian armed forces. Ukrainian policemen reportedly detained the suspect, and placed him in a pre-trial detention, but he was released when the Ukrainian troops retreated from Dokuchaivsk. The ‘police’ of the ‘Donetsk people’s republic’ claimed its ‘officers’ have detained the perpetrator, and have opened a criminal case after the victims’ relatives filed a complaint.

132. On 23 September, it was reported that a member of a ‘Luhansk people’s republic’ armed group raped a 22-year old girl. He was later subjected to public humiliation by his commanders as punishment. On 25 October, in Alchevsk (Luhansk region) the ‘Phantom Brigade’ organised ‘the first people’s trial’, which considered two cases of sexual violence. In the first case, a 37-year old man, also a member of an armed group was accused of raping a 15-year old girl on 12 September. In the second case, a man was accused of raping a 20-year old girl on 27

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<sup>45</sup> Such reports are received by the UNHCR and NGOs and volunteer initiatives that provide services to IDPs.



September<sup>46</sup>. The ‘trial’ was filmed and clearly did not meet any fair trial standards. The death penalty was pronounced in both cases. Following a vote of the 340 residents who had gathered, the first perpetrator was allowed to “go to the front-line to pay his guilt with blood”. While the second was sentenced to death. It is not known whether the death penalty has been implemented. During this ‘trial’, the commander of the ‘Phantom Brigade’, presiding over the proceedings, made some derogatory comments regarding women and stated that ‘from now on any woman seen in a cafe or bar will be immediately detained’, adding that women should sit at home (see Chapter VIII, section D Administration of Justice).

## **B. Participation and representation of women**

133. The Constitution of Ukraine guarantees equal rights between men and women, including in public and political life. This is further protected by the Law on Ensuring Equal Rights and Opportunities of Women and Men. However, the level of women’s representation in political and public life remains low.

134. The Ministry of Social Policy reported that due to austerity measures, in 2014 only 10 per cent of the required state contribution was allocated for the implementation of the two State programmes On Ensuring Equal Rights and Opportunities for Women and Men until 2016 and Support of the Family until 2016.

135. The demand of civil society to introduce gender quotas was only partially implemented in the amendments to the Law on Political Parties in Ukraine. Article 8 of the Law, since 1 February 2014, obliged all political parties to amend their statutes to ensure that at least 30 per cent of their candidates on their election lists are women; though the majority of political parties have not complied with this requirement<sup>47</sup>.

136. Women comprised around a quarter of the candidates on party lists. Women are represented the least in the following political parties: Svoboda (14 per cent), Civic Position (12 per cent), Right Sector (9 per cent), *Vidrodzhennia* (8 per cent) and Congress of Ukrainian nationalists (0 per cent). Among majoritarian candidates, women accounted for only 13 per cent. A key reason for this, according to the IEOM observers, was the difficulty women candidates faced in securing funding for their campaigns. Women were well-represented at the District election committees, where they accounted for 54 per cent of all members and held many senior positions<sup>48</sup>. In the Central Election Commission, five of the 15 members, including one of the two deputy chairpersons and the secretary, were women. Issues of equal participation of men and women in elections and the country’s political life more broadly, were generally not part of the campaign and did not feature prominently in most candidate or party programmes.

## **VIII. ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS AND ABUSES**

### **A. Accountability for human rights violations and abuses in the east**

#### *Command responsibility*

137. As of 28 October, the Office of the Military Prosecutor had opened three criminal investigations into inaction of the military authorities concerning the failure of the command of the Voluntary Territorial Defence Battalion ‘Aidar’ to prevent and stop the crimes committed by

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<sup>46</sup> See the administration of justice section of this report for more details on this trial.

<sup>47</sup> The data was presented on 7 October during the press-conference in frames of the USAID-supported project *Gender monitoring of the 2014 elections*, which is implemented by the NGO *Women’s Consortium of Ukraine*.

<sup>48</sup> These included 99 committees chaired by women, with 107 female deputy chairpersons and 144 secretaries.

its subordinates, and to notify law enforcement regarding such crimes.

138. On 15 October, the SBU announced that a criminal investigation had been opened against both the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’ for ‘crimes against peace and security of mankind’.<sup>49</sup> The SBU is to investigate cases of inhuman treatment of civilians and captured military servicemen, notably torture, forced labour and looting of national treasures in the captured territories.

#### *Military prosecutions*

139. Only three criminal proceedings for violence against the population in the areas of hostilities<sup>50</sup> were opened by the Office of the Military Prosecutor as of 18 September. The current status of these proceedings is unclear, as according to the Office of the Military Prosecutor, it has not conducted investigations into these crimes as of 27 October.

140. In response to reports of violations committed by Ukrainian volunteer battalions, the Minister of Internal Affairs announced on 16 October that the Voluntary Special Police Patrol Battalion ‘Shakhtarsk’ had been disbanded due to multiple cases of looting committed by 50 out of its 300 members.

141. On 21 October, servicemen of the Voluntary Special Police Patrol Battalion ‘Slobozhanshchina’ filed an open submission to the head of Kharkiv Regional Department of the MoIA and to the Prosecutor’s Office in relation to violence, looting, intimidation of servicemen, and other acts allegedly committed by their commander.

#### *Investigations into the use of explosive weapons in populated areas*

142. According to the MoIA, from 1 August to 26 October, more than 300 criminal proceedings were opened into indiscriminate shelling of residential areas in Donetsk region. The Ministry claims that all necessary investigative actions have been taken, but that has been hampered by the hostilities and lack of access to the territories controlled by the armed groups.

143. On 4 October, the HRMMU was informed that the Office of the Military Prosecutor of the Southern Region had initiated a criminal investigation under terrorism charges into the shelling of residential areas in Debaltseve (Donetsk region).

#### *Investigations into detention by the armed groups*

144. As more people have been released by the armed groups, the HRMMU is concerned that some of these people have not been interviewed by the law enforcement agencies, which may lead to a failure to collect all necessary information and evidence to ensure accountability for crimes committed.

#### *Case of Nadiia Savchenko*

145. The HRMMU is following the case of Nadiia Savchenko, a Ukrainian servicewoman and newly elected member of Parliament, who was reportedly captured on 17 June and moved to Voronezh in the Russian Federation,. She was then moved to pre-trial detention centre in Moscow. Ms Savchenko is charged with killing two Russian journalists in Ukraine, while on duty. On 27 October, Basmanyi District Court of Moscow ruled in a closed hearing to hold Ms Savchenko in custody until 13 February 2015. On 30 October, on the basis of an allegedly compulsory psychiatric examination, Ms Savchenko was declared sane. The investigation into her case will therefore proceed.

146. On 29 October, Ms Savchenko’s lawyer informed that she had recognized Ihor Plotnitskyi, the head of the ‘Luhansk people’s republic’ as one of those involved in her abduction. Mr Plotnitskiy is a former commander of the ‘Zaria Battalion’ and a ‘minister of

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<sup>49</sup> Chapter 20 of the Criminal Code of Ukraine.

<sup>50</sup> It was not clear which particular charges they faced apart from violence. Article 433 of the Criminal Code of Ukraine, also encompasses illegal destruction and taking of property as well as robbery against local population.

defence' of 'Luhansk people's republic' whom Ms Savchenko mentioned in her 17 July appeal to the Consul General of Ukraine, after she was moved to the Russian Federation<sup>51</sup>. As a result, on 30 October, the Office of the Prosecutor General of Ukraine has notified Ihor Plotnitskyi and Aleksandr Popov (a Russian Federation citizen who was allegedly involved in the attack on the 'Aidar' battalion that resulted in Ms Savchenko's detention) of being suspects in committing crimes under article 146, part 3 (illegal deprivation of liberty), article 258, part 2 (terrorist act), and article 332, part 3 (illegal conveying of persons through the state border of Ukraine) of the Criminal Code.

#### *Case of Nelia Shtepa*

147. The HRMMU is also concerned over new developments in the case of the former mayor of Sloviansk, Nelia Shtepa, who was previously found in pre-trial investigation to be an accessory to the trespassing of the territorial integrity and inviolability of Ukraine, resulting in death of people. On 8 October, Ms Shtepa was presented an amended notice of suspicion, saying that she was also suspected of membership in a terrorist organisation – the 'Donetsk people's republic'. Ms Shtepa had also been held in detention for more than two months by that same 'Donetsk people's republic'.

148. On 31 October, the Kharkiv Regional Prosecutor's office submitted an indictment to the court, accusing Ms Shtepa of calls to change the boundaries of Ukraine, assisting in the conduct of a so-called 'referendum' on the separation of the Donetsk region from Ukraine, and setting the stage for activities of terrorist groups and organisations. The maximum sanction for such crimes is life sentence.

149. Ms Shtepa has informed the HRMMU that she was attacked and beaten while in the bathroom of the Office of the Kharkiv Regional Prosecutor. She immediately complained of the assault but was threatened with a lawsuit for slander. She was examined by the doctor at the pre-trial detention facility she is being held in, who observed and documented a number of bruises on her thighs and forearms. The HRMMU visited Ms Shtepa in detention and observed and documented the bruises on her body as a result of the alleged ill-treatment.

150. According to the Office of the Kharkiv Regional Prosecutor, the pre-trial investigation is completed and it is expected that the case materials will be submitted to court for consideration in the near future.

### **B. Investigation into the 2 May violence in Odesa**

151. The MoIA investigation into the 2 May violence in Odesa has been split into several criminal proceedings: on mass disorder in the city centre, on the mass disorder at the Trade Unions building (the Kulikovo Pole square), and against the single 'pro-unity' activist charged with murder.

152. While the investigations into the second and third criminal proceeding are on-going, the investigation into the mass disorder in the city centre was completed on 24 September. 24 'pro-federalism' supporters were charged with mass disorder, and 9 suspects were put on a wanted list. The MoIA expects the court trial to commence in early November.

153. Further, the SBU has started its own investigation on five criminal cases, in relation to the 2 May violence, but due to the secrecy of investigation, it is reluctant to provide any information.

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<sup>51</sup> Yet in her appeal to the Consul General of Ukraine in the Russian Federation of 17 July, Ms. Nadiia Savchenko stated that she was taken prisoner by the armed groups of the 'Luhansk people's republic' on 17 June and was attended by *inter alia* a man who introduced himself as a commander of the 'Zaria Battalion' and 'minister of defence' of the 'Luhansk people's republic'.

154. On 17 October, the local media disclosed phone transcripts from the Odesa fire brigade registered on 2 May, which may constitute evidence of negligent behaviour on the part of the firemen. Numerous emergency phone calls reporting the fire at Kulikovo Pole, including from police officers, appeared not to have been fully addressed. However, there has so far been no investigation of this element. The Independent Commission investigating the 2 May violence reiterated that the results of the official investigation process cannot be deemed reliable. In particular, it objects to the fact that the forensic examinations were conducted by the municipal forensic bureau, which is not a governmental institution as required by Ukrainian legislation. It also noted that according to experts who received copies of the autopsies, the post mortem examinations had not been properly conducted in terms of quantitative and qualitative samples of the deceased people. This concern is all the more serious as all bodies have been buried or incinerated.

155. Following research, some members of the Independent Commission consider that the 2 May violence was planned by all parties for political purposes: the Regional State Administration – to disperse the ‘pro-federalism’ tent camp; the MoIA – to disperse the camp with the help of football fans in order to avoid responsibility; the ‘pro-unity’ movement – to disperse the ‘pro-federalism’ tent camp and show the strength and unity of local ‘pro-unity’ forces; and the ‘pro-federalism’ movement - to obtain evidence of the impartial attitude of the local authorities by exposing the intimidation of the ‘pro-unity’ movement and the violation of their rights (freedom of peaceful assembly and freedom of speech). However, those in the Independent Commission who hold this opinion believe that the plan to disperse the ‘pro-federalism’ tent camp at Kulikovo Pole square went out of control, with none of the parties expecting such grave consequences.

156. On 29 October, the Main Investigations Directorate of the Investigative Committee of the Russian Federation opened a criminal case against members of ‘the Right Sector, Maidan Self-defence, as well as Ukrainian football fans and some officials of the Ukrainian MoIA, as well as the SBU’ for attempts to commit, murder and torture under the Criminal Code of the Russian Federation, against a Russian citizen.

157. According to the Directorate’s statement, a Russian citizen was apprehended on 2 May by the Odesa city department of the MoIA near the Trade Union Building. He was later interrogated by the SBU, notified of suspicion in participating in mass disorder and placed in custody as a measure of restraint. It reported serious violations by Ukrainian law enforcement officials, including ill-treatment, failure to provide a translator (being a Russian-speaker he did not understand the contents of the procedural documents drafted in Ukrainian), and refusal to grant him official victim status (having been exposed to carbon monoxide in the Trade Unions building instead of being treated as a victim he was perceived as a suspect). The lawyer stressed that the law enforcement agencies and the court had shown a negative and biased attitude towards his client based on his Russian citizenship.

### **C. Investigations into crimes committed during the Maidan protests**

158. The HRMMU is particularly concerned about a lack of significant progress into investigations of crimes committed during the Maidan protests. Three major criminal proceedings have resulted from these events: an investigation into forceful dispersal of protesters on 30 November 2013; investigations into mass killings of protesters on 19-21 January and 18-20 February; and an investigation into the killings of police officers on 18-20 February. However, so far the only result in these high profile cases was the outcome of the investigation into mass killing of protesters by members of the *Berkut* officers. The Office of the Prosecutor General found grounds to believe that three former members of the unit committed killings of 39 protesters on 20 February 2014 and noted that the main obstacle to the effective investigation

was the impossibility of locating most of the suspects, many of whom had fled Ukraine. In such a case, the Criminal Procedure Code provides that criminal proceedings be suspended until the suspects are tracked down.

*Investigations into mass killings of protesters (January and February 2014)*

159. There is a risk that very few individuals will be brought to justice for their role in the mass killings of demonstrators in January and February 2014, especially among those in positions of command. This probability has been strengthened with the news of the apparent escape of the former *Berkut* commander.

160. The commander, one of only three suspects identified and detained for the killing of 39 demonstrators at Instytutska Street on 20 February, was placed under house arrest on 19 September. According to the Office of the Prosecutor General this allowed him to escape and to presumably flee Ukraine<sup>52</sup>. The decision of the Pecherskyi District Court (in Kyiv) to change the commander's measure of restraint from custodial detention to house arrest is now under scrutiny. According to the Criminal Procedure Code, an investigating judge enjoys great discretion in deciding on this issue. However, according to the Office of the Prosecutor General, this is not the usual practice and judges are normally extremely cautious when it comes to such grave crimes. The judge has been notified that she is now under suspicion of rendering a knowingly unjust decision. Results of a pre-trial investigation into this will be soon submitted to the court. A further high-profile case from the night of 18 to 19 February may also reveal shortcomings in the Kyiv courts to adequately handle the Maidan cases. This involves the killing of a journalist by a group of *Titushky* (thugs hired by the then authorities to disperse demonstrators) and the infliction of bodily harm to two other people. On 15 October, the Shevchenkivskiy District Court of Kyiv in a closed judicial session released from detention the only suspect located so far. The six other suspects have been put on an international wanted list. The victims and activists believe that the accused is now free to escape following the example of the *Berkut* commander, thus creating another example of impunity.

161. In the meantime, the Office of the Prosecutor General has been conducting investigations into other crimes committed by the law enforcement officers during Maidan protests. On 17 October, a high-profile case of bodily harm and humiliation inflicted to a Maidan demonstrator was sent to the Pecherskyi District Court (of Kyiv) with an indictment against an officer of the MoIA internal troops. He is accused of not stopping the attack against the demonstrator. This is already the fourth law enforcement officer brought to account for committing this act.

*Investigations into killings of law enforcement officers on 18 and 20 February 2014*

162. An investigation into the murder of 13 police officers and MoIA interior troops, and injuries to some 600 law enforcement officers on 18 - 20 February in Kyiv is on-going. The HRMMU is concerned that the Law on Prevention of Persecution and Punishment of Individuals in Respect of Events which have Taken Place during Peaceful Assemblies<sup>53</sup>, passed immediately after former President Yanukovich fled, may block this investigation. According to Article 3 of this Law "all criminal proceedings, opened in respect of crimes, envisaged in Article 1 of this Law, in which no person was notified of suspicion, shall be closed" and "all individuals who have committed a large number of crimes, including murder and attempted murder of police officers due to their activities, shall be exempted from criminal responsibility".

#### **D. Administration of justice**

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<sup>52</sup> Although, according to the MoIA, there is no data that he has legally crossed the border of Ukraine.

<sup>53</sup> Law of Ukraine on prevention of persecution and punishment of individuals in respect of events which have taken place during peaceful assemblies, and recognising the repeal of certain laws of Ukraine, as adopted by the Parliament on 21 February 2014.



### *Establishment of parallel structures*

163. In the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ various armed groups have performed quasi-judicial functions: issuing arbitrary sentences, deciding on the detentions of civilians and members of the armed groups on charges of looting, desertion, drinking, and other alleged acts. Detention by the armed groups is often accompanied by ‘correctional labour’, and physical punishment. Armed groups have also established ad hoc martial tribunals as was the case in Sloviansk in May-June, rendering death sentences against their own members and civilians suspected of activities directed against the ‘Donetsk people’s republic’. A ‘resolution on field courts’ apparently adopted on 17 August by the ‘supreme council’ of the ‘Donetsk people’s republic’ provided for the establishment of field and martial courts. So far, the HRMMU has received no information on the existence of such bodies.

164. The ‘Donetsk people’s republic’ is also reportedly in the process of establishing its own ‘judiciary system’, with two key officials already appointed. On 23 September, the former ‘prosecutor general’ of the ‘Donetsk people’s republic’ was appointed as ‘head’ of the ‘supreme court’ and a ‘minister of justice’ of the ‘Donetsk people’s republic’ was also appointed. On 10 October, the ‘Donetsk people’s republic’ invited all eligible candidates with a background in law to apply for the vacant positions in its ‘supreme court’.

165. In areas controlled by the Government of Ukraine, the HRMMU was presented with numerous due process violations, both in civil and administrative cases. Public authorities and courts sometimes justified non-compliance with international human rights standards by the “actual state of war” in the country. The HRMMU is also concerned with the neglect of procedural rights of detainees. In the Odesa region in particular, the HRMMU collected evidence of systematic violations of the Criminal Procedure Code, which should lead to the immediate release of the detainee (for example, the late presentation of a written notice of suspicion and/or violation of the terms of detention, apprehension and house search without the order of an investigating judge or a court). However, during the court hearings judges have tended to systematically ignore these violations, which in turn constitute a violation of fair trial standards.

## **IX. LEGISLATIVE DEVELOPMENTS AND INSTITUTIONAL REFORMS**

166. On 25 September, President Poroshenko presented his ‘Strategy for the Sustainable Development of Ukraine - 2020’, a roadmap enabling the country to apply for EU membership by that date. The strategy foresees over 60 legislative and institutional reforms, prioritising fighting corruption, decentralizing government and energy independence, and modernising the judiciary and defence system. Legislative developments during the reporting period touched upon some key reform aspects of this Strategy, notably the fight against corruption and the powers of the Office of the Prosecutor General. In addition, the President also created a Council for Judicial Reform and tasked the government to elaborate a national human rights strategy.

167. The popular demand for lustration voiced during the Maidan protests resulted in a law that would ban public office primarily for some State employees who worked within the administration of the former President Yanukovich. A separate lustration procedure applies to judges. Parliament also passed a law allowing absentee trials, which could be applied to former President Yanukovich and government officials who fled the country. While the issue of decentralization has not been addressed by parliament, the Venice Commission published an opinion on draft constitutional amendments dealing partly with it.

### **A. Constitutional reform**

168. The Venice Commission of the Council of Europe has reviewed the draft law amending

the Constitution of Ukraine, as submitted by President Poroshenko to Parliament on 2 July 2014. It delivered an Opinion on 27 October. One of the positive aspects noted by the Commission is that the draft eliminates the power of the Prosecutor's Office to supervise respect for human rights and fundamental freedoms and observance of laws by the authorities. These powers are, according to the Commission, a 'reminiscence of the old system of the Soviet *prokuratura*'.

169. Advances, according to the Venice Commission, also concern decentralization of powers towards more local self-governance. The draft proposed that regional and district councils independently elect their own executive bodies and that State administration at the regional and district level be removed. New levels of territorial units are defined; the principle of subsidiarity is introduced; planning powers and taxes go to the community. A new provision empowers villages, settlements, cities, districts and regional councils to provide a special status for the Russian language and other languages of national minorities.

170. The Venice Commission also recommended improvements. It found that some competencies under the draft law gave the President significant power or overlapped with governmental functions and could be a source of conflict. The President would be able to appoint and dismiss certain key state officials without the involvement of any other State organs. In addition, his representatives in the regions and districts would be able not only to supervise compliance by local self-government bodies with the law and constitutional principles but also to ensure coordination of the inter-action between the central government authorities. Further, the principle of financial support by the State for local self-government is not given clear constitutional entrenchment and the amendments do not address reform of the judiciary. In respect of the new provision on the special status of Russian and other minority languages, the Venice Commission notes that it 'raises issues of harmonization' with relevant international norms and standards and statutory guarantees for the use of languages 'irrespective of the support of more than 50% of the local government council'. Finally, the Commission notes that Ukrainian civil society has neither been informed nor consulted on the amendments, which should be prepared in an inclusive manner and submitted to public discussion.

## **B. Lustration**<sup>54</sup>

### *Lustration of government*

171. A law 'On the Purification of Government' aimed at subjecting officials who performed State or local self-government functions to a screening procedure entered into force on 16 October. The intention behind the law was to revive people's trust in the authorities and respond to demands expressed during the Maidan protests to address past human rights violations and curb corruption in various levels of power.

172. Article 1.1 of the law states that 'Purification of government (lustration) shall be the prohibition set by the Law or by court decision for some individuals to hold certain positions in state authorities and local self-government bodies'. It is to be applied to people who implemented or contributed to measures aimed at "usurpation of power" by former President Yanukovich, undermining national security or violating human rights and freedoms.

173. The law provides for *ex-officio* prohibition of holding office for a period of 10 years after the law comes into force for people who occupied for at least one year between 25 February

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<sup>54</sup> Lustration (from Latin lustration - 'purification by sacrifice') is an evaluation and examination process used in order to eliminate abusive and corruptive officials through due procedure. To define lustration very broadly, it is a measure barring officials of a former regime from positions of public influence in a country after a change of government.

2010 and 22 February 2014, a number of high level positions enumerated in the law<sup>55</sup>. It also provides for a five year *ex-officio* prohibition from holding office for those who occupied positions during the same period in the judiciary and law enforcement spheres and who, through their actions or omissions, enabled human rights violations or threatened national security<sup>56</sup>.

174. In addition, several categories of public officials will be subjected to screening regarding the reliability of data on their property and its value as indicated in the declaration of assets, and income submitted for the tax year obtained from legal sources.

175. The vetting envisioned under one of the forms indicated above could apply to tens of thousands of people who held certain positions or executed decisions in various official capacities at central, regional and local levels.

176. According to the law, the Ministry of Justice shall be the body authorized to carry out the vetting procedure. It shall elaborate and submit for approval to the Cabinet of Ministers a list of bodies and the procedure and plans of vetting for each state authority and local self-government body where those to be inspected currently work. The body conducting the vetting sends the vetting opinion to the head of the institution, whose terms of reference include dismissal for the person subject to vetting from the position. The vetting opinion can be appealed to court. In case the unreliability of the data reviewed on property and income is traced during the inspection, the vetting body sends a copy of the vetting opinion to the Ministry of Justice for official publication on the web-site of the Ministry of Justice and for recording of the person in the Unified State Register. The official who fails to pass the screening or did not agree to it shall be dismissed by the inspection body and prohibited to hold the post for 10 years after dismissal. An advisory body of the Ministry of Justice for lustration issues, including representatives of the mass media and the public, will also be established in order to guarantee independent monitoring and control over the process.

177. On the same day the law entered into force, the Government started applying it. The first decisions applied to 39 individuals who will have to leave high level civil servant positions. The President's administration and the Ministry of Defence also announced that they had started vetting their employees under the new law.

178. Since the start of implementation of the law there have been a number of complaints about its application, particularly regarding the dismissal of those who are pregnant or are on paternity leave.

179. Several provisions of the law are questionable from the point of view of their compliance

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<sup>55</sup> The list of prohibitions covers several hundred positions in the State, as well as regional and local administrations. They include the President, Prime Minister, first Vice Prime Minister, Vice Prime Minister, Ministers, heads of central bodies of executive authority who are not members of the Cabinet of Ministers, the Governor of the National Bank of Ukraine, chairs of all state committees, commissions, directorates and funds, the Prosecutor General of Ukraine and agencies related to the prosecutor's office, the heads of all law enforcement agencies and military institutions, tax and customs institutions, members of judicial institutions, heads and deputy heads of regional, district and city administrations. The prohibition also applies to persons who were elected and worked in supervisory functions in the Communist Party of the USSR, of Ukraine and other republics of the former USSR, or were staff members or secret agents of the KGB.

<sup>56</sup> The five year prohibition to hold office for positions to which lustration applies concerns judges, public prosecution and law enforcement officials who permitted detention, passed guilty verdicts, or implemented measures aimed at prosecution of persons to whom amnesty has been applied under the amendments to the Law 'On Amnesty in Ukraine Concerning Full Rehabilitation of Political Prisoner' of 27 February 2014. It also includes all public officials who implemented measures aimed at power usurpation, undermining national security and infringing human rights, as established by a court decision as well as any official concerning whom it has been established by court decision that he collaborated with the secret services of other countries, implemented measures undermining national security, defence and territorial integrity of Ukraine, or called for violation thereof, and led to the infringement of human rights and fundamental freedoms as determined by a decision of the European Court of Human Rights.

with international standards. The vetting grounds are overly broad in scope and establish a principle of collective responsibility, which is contrary to international human rights law and Recommendation 7568 of the Council of Europe<sup>57</sup>. This recommendation contains Guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a State based on the rule of law.

180. The Guidelines also indicate that lustration should be administered by ‘a specifically created independent commission of distinguished citizens nominated by the head of State and approved by parliament’<sup>58</sup>. However, the law gives responsibility for carrying out lustration to a multiplicity of public government bodies under the control of the Ministry of Justice. The law also prohibits the possibility to maintain or obtain positions for those whose past work has violated the right to peaceful assembly or curtailed the right to life, as proven by court. Return to government service would, in some cases, be banned for 10 years while the Guidelines state that disqualification based on lustration should not exceed five years. Finally, prohibition from holding office on the sole basis of having occupied certain functions, rather than as a consequence of a proven violation or abuse can be viewed as contravening the presumption of innocence<sup>59</sup>.

#### *Lustration of judges*

181. On 24 September and 24 October, the temporary special commission on the Inspection of Judges, which was established according to the Law on Restoration of Trust in the Judicial System, conducted its first public hearings. Pursuant to its mandate, it examined cases involving 12 judges<sup>60</sup> who considered civil, administrative or criminal cases regarding defendants who had participated in the Maidan protests. Several plaintiffs or lawyers representing them were in attendance. All were given the opportunity to make statements. The commission found that eight judges were guilty of a ‘violation of oath’ due to their decisions which the commission viewed as: politically motivated, in violation of procedural rules, or made on the basis of falsified materials. Two judges were found to have taken decisions which, while not constituting violations of oath, were considered as deserving disciplinary sanctions. One judge was acquitted and consideration of one case was postponed upon the request of the plaintiff. In its decisions<sup>61</sup> the commission mentioned violations of national and international legal acts and the practice of the European Court of Human Rights.

182. The commission is not competent to decide on sanctions and its decisions are advisory in nature. Thus, cases involving findings about violations of oath were submitted to the High Council of Justice and those where disciplinary measures are recommended were addressed to the High Qualification Commission of Judges. However, none of these institutions currently function, as their members were dismissed by the same law that established the temporary special commission on the inspection of judges. The HRMMU will continue following the work of the Commission.

#### *So-called ‘public lustration’*

183. The HRMMU is concerned about an increased number of acts of ‘public lustration’<sup>62</sup>,

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<sup>57</sup> See also PACE Res. 1096 (1996), paras. 11-12.

<sup>58</sup> See also Rule of Law Tool for Post Conflict States, ‘Vetting: An operational Framework’ also requesting a specially created mechanism in the form of a commission.

<sup>59</sup> See PACE Res. 1096 (1996), para. 12; ECtHR decision of 30 May 2006, *Matyjek v. Poland*, app. No. 38184/03, paras. 48 et seq; decision of 24 October 2006, *Bobek v. Poland*, app. No. 68761/01, para.2.

<sup>60</sup> The cases regarded ten judges in Kyiv and two in Dnipropetrovsk.

<sup>61</sup> Most cases involved decisions limiting the right to take part in protests or applying measures of restraint in the form of pre-trial detention.

<sup>62</sup> Public lustration or the ‘rubbish container challenge’ came to the fore during the month. Under the slogan “that ‘rubbish’ should be in rubbish containers” it aims to publicly lustrate (i.e. purify) state and regional authorities of corrupt officials and politicians, or those who served under the former President Yanukovich. This has usually



and other actions by groups of people deciding to take justice into their own hands<sup>63</sup>, which circumvents the law, placing public officials perceived to be involved in corrupt activities in rubbish containers, and at times forcing them to resign from their positions.

### C. Corruption

#### *Anti-corruption legislation*

184. On 14 October, the Parliament passed a package of laws aimed at uprooting the country's deeply embedded corruption. The legislation was drafted in cooperation with anti-corruption organizations, including Transparency International, which in 2013 ranked Ukraine among the 30 world's most corrupt nations (144 out of 177). The laws, signed by the President, have different dates of entry into force.

185. The package foresees the creation of a State anti-corruption bureau<sup>64</sup>, competent to conduct investigations of crimes believed to have been committed by high level public officials, including judges and prosecutors. After an investigation, the bureau will be able to file cases in court through specially trained prosecutors to be appointed by the Office of the Prosecutor General and responsible to the head of the anti-corruption bureau. The law creating the anti-corruption bureau will enter into force on 25 January 2015.

186. Another law<sup>65</sup> aims at revealing company ownership by requiring disclosure of all information about the actual owners of commercial entities and real estate registered in Ukraine, and creates a public register of assets. A mandatory e-declaration of income and expenditures of all public officials is introduced<sup>66</sup> and a National commission on preventing corruption is created, with responsibilities that include, in particular, checks on the lifestyle and declarations of officials. The law creating the national commission on the prevention of corruption will become applicable on 26 April 2015.

187. Further a law<sup>67</sup> creates conditions for implementing international recommendations on combatting money laundering and the financing of terrorism or proliferation of weapons of mass destruction, and another law provides for a three-year National Anti-corruption Strategy<sup>68</sup>, defining Ukraine's objectives, policy and tools in the fight against corruption until 2017. The law containing the new anti-corruption strategy came into force on 26 October.

188. The adoption of the anti-corruption package should improve Ukraine's ability to fight corruption. It provides new instruments to identify and investigate corruption practices. It enables enhanced transparency and public information about the owners or beneficiaries of assets and properties. It creates specialized anti-corruption bodies, such as the anti-corruption bureau and the commission for prevention of corruption. Civil society will be able to exercise 'civil control' of the new anti-corruption agencies by monitoring their work and assessing their

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involved a mob forcing a particular civil servant into a rubbish container. The actions appear to be led by the Right Sector political party and the 'Automaïdan' activist group, but other parties and groups have also since conducted their own public lustration events. In certain cases where victim refused to be 'dumped', they were beaten. The most emblematic cases are beating of members of the parliament Yurii Miroshnychenko on 17 September in Kyiv and Nestor Shufrych in Odesa on 30 September. There have been numerous events of public lustration in Odesa.

<sup>63</sup> Within the reporting period the 'Right Sector' of Odesa and Kherson also attacked up to ten private shops allegedly involved in drug trafficking. In most cases, the sales assistants were publicly humiliated and tied to trees.

<sup>64</sup> Law No. 1698-VII 'on national anti-corruption bureau'.

<sup>65</sup> Law 1701-VII 'on amendments to several legislative acts of Ukraine on determining ultimate beneficiaries of legal persons and public figures'.

<sup>66</sup> Law No. 1700-VII 'on preventing corruption'.

<sup>67</sup> Law No. 50671702-VII 'on prevention and fighting legalization (laundering) of incomes received illegally, financing of terrorism and financing the spread of weapons of mass destruction'.

<sup>68</sup> Law No. 1699-VII 'on the principles of state anti-corruption policy in Ukraine (anti-corruption strategy) for 2014-2017'.



performance. The new three year anti-corruption strategy contains, for the first time, a clear set of success indicators and performance measurements.

189. While all these novelties constitute clear advances, they are not a panacea. The new legal framework will have to be accompanied by a genuine political commitment to implement it. Corruption investigations of high-level officials conducted by the anti-corruption bureau may turn out to be effective, but the decision on their outcomes remains with the courts, which at times in the past have lacked independence and integrity. The police and the prosecutor's office continue to be responsible for investigating corruption cases involving non-senior public officials, despite very limited success in the past. Eradicating corruption is also inextricably linked to improving the functioning of other institutions. This includes amendments to the legal framework governing public procurement procedures and reforming the public administration and civil service. In all these areas, progress still remains to be made.

#### *National Council on Anti-Corruption Policy*

190. On the same day that Parliament adopted the anti-corruption legislation, President Poroshenko signed a Decree 'On the National Council on Anti-Corruption Policy' (NCACP). This new body placed under the authority of the President replaces the National Anti-Corruption Committee, which was established in 2010 but never became operational. The role of the NCACP will be to analyse the situation of corruption in Ukraine, as well as to coordinate and monitor state anti-corruption policy, including the implementation of the national anti-corruption strategy and Ukraine's international anti-corruption obligations. The NCACP will consist of 17 members, 9 of whom will be from civil society.

191. The creation of an independent anti-corruption body with monitoring functions was a long-standing requirement of international anti-corruption institutions (such as the Council of Europe's anti-corruption monitoring body: the GRECO). Ukraine had been urged to establish a body distinct from the law enforcement bodies, with the responsibility of overseeing the implementation of national anti-corruption strategies and related action plans, as well as proposing new strategies and measures against corruption. Such a body should be given the necessary level of independence to perform an effective monitoring function. While the 2010 anti-corruption committee had been given appropriate functions, its composition reflected a very low representation of civil society, which cast doubt about the level of independence of the commission. The composition of the NCACP appears to have addressed this concern.

#### **D. Reform of the judiciary**

192. On 16 October, President Poroshenko issued a decree establishing the Council for Judicial Reforms pursuant to his Strategy for Sustainable Development 'Ukraine – 2020'. The task of this consultative body is to prepare and submit to the President a draft strategy on reforming the judiciary, the administration of justice and legal institutions. This is to be done by the President-appointed Coordinator of the Council within three months, following the appointment of the other Council members who include the heads of appropriate central government bodies and judicial institutions, the Prosecutor General, representatives of legal and scientific institutions, NGOs and international organizations. The Decree abolishes the Working Group on Judicial Reforms established in 2010.

#### **E. Office of the Prosecutor**

193. On 14 October, the Parliament adopted a Law on the Office of the Prosecutor General. The law eliminates prosecutorial functions with regard to the supervision of the observance and application of the laws, the so-called *nadzor* ('general supervision'). It contains amendments in respect to the recruitment of prosecutors, their appointment for administrative positions and

hierarchical and disciplinary measures and procedures. The main body of the prosecutorial authorities is the National Conference of Prosecutors. It is to address issues related to the internal activities of the Prosecution Service and to appoint members of its qualification and disciplinary commissions, which, in turn, will carry out the functions of selecting candidates for vacant posts and disciplinary proceedings. This law will enter into force on 25 April 2015. However, a few provisions, including those eliminating the ‘general supervision’ function of the Prosecution became effective on 26 October.

194. While in previous amendments Parliament had considerably limited the overly broad powers of the Prosecution Service not related to the criminal justice process, this new law appears to take into account most of the remaining international recommendations regarding the attributes, internal organization and guarantees for an independent functioning of Office of the Prosecutor General. In particular, a key concern addressed regards the general supervisory powers (*nadzor*) of the Office of the Prosecutor General related to the observance and application of laws. This function used to give the Office extensive ability to interfere with the interests and activities of private individuals and organizations. This capacity was compounded by the entitlement of the Prosecutor General and other public prosecutors to participate in the proceedings of the Parliament, boards of ministries, central executive agencies, local councils and other administrative bodies. These powers and rights ran counter to the separation of powers and posed a threat to rights and freedoms.

195. The new law, however, maintains a function relating to the representation of the interests of the individual and the State in court that go beyond the criminal justice sphere. This ability to represent the interests of citizens is problematic because it confers the right to participate in any legal proceedings where such interests are seen to arise regardless of the wishes of the individual. Furthermore, the Prosecutor General is also mandated to act in pursuit of the State interest, which does not necessarily coincide with the interests of the individual being represented.

#### **F. Criminal proceedings in absentia**

196. On 7 October, the Parliament adopted a draft law on criminal proceedings *in absentia*<sup>69</sup> for persons who are accused of crimes and have fled the country. The law entered into force on 31 October. The intention behind this law was to create the legal conditions to try the former President of Ukraine and other high level officials who left the country, and to recover the vast assets they are accused of having usurped. The law allows for proceedings *in absentia* to be opened for defendants who seek to avoid court hearings, but with the presence of their lawyer for the following crimes: overthrow of the constitutional order, violation of the territorial integrity or its financing, high treason, attempt against the life of a statesman, sabotage, espionage, murder, murder committed as a crime of passion, murder in excess of necessary defence, and a list of corruption crimes.

197. In its General Comment № 32, the United Nations Human Rights Committee declared that proceedings in the absence of the accused ‘may in some circumstances be permissible in the interest of the proper administration of justice’, and added that these circumstances emerge when the accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present. In international judicial practice, trial in absentia is usually avoided. Article 63 of the Rome Statute of the International Criminal Court (ICC) provides that such trials are permitted only where the defendant is removed from the proceedings on the

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<sup>69</sup> The draft law ‘On Amendments to the Criminal Code and Criminal Code of Procedure of Ukraine regarding Inevitability of Punishment for Certain Crimes against the Fundamentals of National and Public Security and Corruption-Related Crimes’.

grounds that he has repeatedly and continually disrupted them. In the current document the grounds for prosecution in the absence of the accused are very wide, making the frequent use of this procedure a real possibility. The provisions stipulated to inform the accused in a timely manner of a court hearing, as well as to request attendance, are not in line with international norms and standards, as they do not provide adequate procedures to inform the accused in a timely manner of the date and place of the trial.

### **G. Legislation in follow up to the Minsk Protocol of 5 September 2014**

198. On 16 September, Parliament passed two laws pursuant to the Minsk Protocol of 5 September.

#### *The Amnesty Law*

199. The draft law on ‘the prevention or punishment of participants in events on the territory of Donetsk and Luhansk regions’ cancels criminal and administrative liability for acts committed by ‘armed formations’ from 22 February 2014 until when the law enters into force, although it lists a number of crimes to which amnesty will not be extended<sup>70</sup>. It should be noted, however, that the law does not explicitly include torture and other ill-treatment in the list of exceptions, which means that such acts could be amnestied. This must be avoided as it would contravene the prohibition under international law of amnesties for international crimes and other gross violations of human rights. The acts of all those suspected of having committed or ordered these acts must be investigated, perpetrators must be brought to justice, and victims should be given full reparation. The law is to be signed by the President.

#### *The Law on Special Status*

200. The other law passed on 16 September and which entered into force on 18 October is the Law ‘On the Special Procedure of Local Self-Government in Some Districts of Donetsk and Luhansk Regions’, which is to be in force for three years. The law provides for local authorities to facilitate the use of Russian and other languages in public life and for local elections to take place on 7 December 2014. The law provides for powers for the local authorities greater than those enjoyed by other local authorities in Ukraine. In particular, they will have the right to take part in the appointment of heads of courts and prosecution offices at local level. The special status allows for the creation of voluntary people’s police, accountable to the local authorities. The law provides for specific financing to be allocated to these areas, without the possibility to diminish this financing, even in case of amendments to the State budget. The territory enjoying special status will be able to establish closer cooperation with administrative and territorial units of the Russian Federation on the basis of treaties on trans-border cooperation.

### **H. Law on Internally Displaced Persons**

201. On 20 October, the Parliament passed a law “On ensuring the rights and freedoms of internally displaced persons”. It has yet to be signed by the President. The law establishes a unified IDP database, simplifies residence registration and voting rights, prohibits discrimination, protects the rights of IDPs with disabilities and obliges the state to provide free temporary accommodation for 6 months (although the IDPs need to pay for utility fees). It also

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<sup>70</sup> These include: ‘crimes against life and health (murders and infliction of serious bodily harm); sexual crimes; hostage taking; human trafficking; banditry; smuggling; acts of terrorism; violation of graves, burial places, or corpses; attacks against the life of a law enforcement officer, a judge, an official or a citizen performing his/her public duty, a defence attorney, or a foreign state representative; threats or violence against a public official or a citizen who performs his/her public duty, internationally protected persons and institutions in connection with their activity related to the administration of justice; genocide; and persons who committed a crime connected with the crash of the ‘Malaysia Airlines’ flight MH17’.

makes provisions to return home voluntarily and access to social housing or home loans on favourable terms for those who wish to settle elsewhere. Another positive initiative concerning IDPs was the adoption of amendments<sup>71</sup> to the Tax Code of Ukraine exempting IDPs of income tax payment for charitable aid received for the purchase of drug costs, medical items and supplies, and technical and other means of rehabilitation, among others.

202. The new legislation generally conforms to international legal standards, in particular the United Nations Guiding Principles on Internal Displacement. It should be noted, however, that the law does not provide for an on-line registration system for IDPs, which makes the process unnecessarily burdensome and time-consuming. In addition, internally displaced stateless persons as well as foreigners legally residing in Ukraine who have been displaced are not covered by the provisions of this law. This contravenes earlier resolutions of the Cabinet of Ministers of Ukraine on registration of IDPs and on monthly targeted financial support to IDPs, both of which apply to stateless and foreign IDPs legally residing in the country. This contradiction will need to be clarified. Another aspect of these resolutions is that they apply to people coming from the Autonomous Republic of Crimea as well as the 'anti-terrorist operation area'. On 30 October, the Cabinet of Ministers of Ukraine defined a list of territories that are comprised in the 'anti-terrorist operation area'. The list encompasses territories of the Luhansk and Donetsk regions, but also some districts, towns and villages in the neighbouring Kharkiv region. Thus, it would appear that people from territories that have not been directly affected by the fighting in the east could be eligible to be recognized as IDPs. Finally, considering that two thirds of the IDP population are women, specific attention should be devoted to ensure their specific needs and fundamental rights, including access to quality healthcare, the provision, where required, of social security, food, water and sanitation, as well as access to justice.

### **I. Human rights strategy**

203. On 15 October, President Poroshenko signed a Decree tasking the Government to elaborate a draft national human rights strategy for Ukraine by 1 January 2015. The document is to be prepared with the participation of state and local authorities, civil society and international experts on the basis of international experience.

204. The elaboration of a national human rights strategy could ensure greater prominence and attention to the promotion and protection of human rights in the country.

### **J. Police reform**

205. On 22 October, the Minister of Internal Affairs organized a conference to inform about his proposals for police reform. They include: renaming the militia (the current name) as the police; reducing the number of police officers according to United Nations defined standards (from 376 officers to 222 officers per 100,000 people); authorising the MoIA to only conduct the functions of law enforcement, protection of territorial integrity, civil protection, fire and rescue, migration control and protection of the state border; merging of certain departments; terminating separate special police units and instead setting up unified rapid response units; establishing a municipal police accountable to local self-government bodies and the MoIA; demilitarising the police by keeping 'officers in uniform' only for practical law enforcement functions; and re-assessing of staff through the use of the lustration law.

206. Following the conference, the Cabinet of Ministers held a meeting where several provisions of the police reform concept were adopted as decrees<sup>72</sup>. The next steps are to

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<sup>71</sup> In force since 26 September 2014.

<sup>72</sup> The first decree concerns termination of several departments of the police, such as the General Department on Combating Organized Crimes, the veterinary police and the transport police. The second decree concerns

implement the adopted decrees and to draft an act on the general structure and quantity of staff in the MoIA.

## **X. HUMAN RIGHTS IN THE AUTONOMOUS REPUBLIC OF CRIMEA**

207. The situation in Crimea was marked by the continued implementation of the policy aimed at integrating the peninsula into the legal and political system of the Russian Federation and by persistent acts of intimidation targeting the Crimean Tatars, as well as those who opposed the March ‘referendum’ or were critical of the *de facto* ‘authorities’. As a result, the number of people leaving Crimea is constantly increasing.

208. On 23 September, the ‘Crimean prosecutor general’ posted a statement mentioning that all actions aimed at the non-recognition of Crimea as part of the Russian Federation will be prosecuted. The position of the United Nations on the status of Crimea and Sevastopol is guided by General Assembly resolution 68/262 of 27 March 2014 on the Territorial Integrity of Ukraine, which calls on all states and international organizations “*not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol*”.

209. Key developments in the period included a new wave of disappearances of Crimean Tatars. Vivid disquiet over this led to the establishment by the *de facto* ‘authorities’ of a ‘contact group’ to tackle the issue of missing people and other instances of human rights violations against Crimean Tatars. Furthermore, following months of intrusive searches (supposedly to fight extremism) affecting dozens of properties and other facilities owned mostly by Crimean Tatars, a ‘moratorium’ on police raids, was announced by the *de facto* ‘authorities’. Nevertheless, the Mejlis<sup>73</sup> continued to be seen as an illegal organization and had to leave its premises in Simferopol. In general, freedom of expression in Crimea remains stifled as a result of actions seeking to influence media content.

210. On 27 October the report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, was made public following his mission to Kyiv, Moscow and Crimea from 7 to 12 September 2014. This was the first *in situ* assessment by an international organisation of the human rights situation in Crimea since March 2014. Mr. Muižnieks noted that more resolve is needed in investigating all cases of serious violations of human rights that have occurred in Crimea since February 2014, including recent abductions. The Commissioner expressed concern about groups rendered vulnerable by events unfolding in the region, including Crimean Tatars, ethnic Ukrainians and all those who have refused Russian citizenship. He also stressed the urgent need to ensure “free and unconditional access of international humanitarian and human rights organizations to Crimea” as well as “unimpeded international monitoring”.

### **A. Civil and political rights**

#### *Rule of law*

211. On 29 September, a Moscow city Court extended the detention until 11 January 2015 of the Ukrainian citizen and film maker Oleg Sentsov, arrested in Simferopol (Crimea) in May 2014 and accused by the FSB under terrorism charges. On 13 October, the same Court upheld the ban on Mr Sentsov’s lawyer from commenting on his criminal case. Mr Sentsov’s defence considers these actions to be a violation of his rights. He also informed that his client’s name has recently been placed on a list of suspected terrorists and extremists on the web-site of the

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identification of police officers by placing special badges on uniform, and the last decree concerns ceasing certain administrative functions for the traffic police, for example the issuance of driver’s license, and so forth.

<sup>73</sup> Crimean Tatar Assembly.



Russian Federal Financial Monitoring Service, under number 2,460 in the section 'Private persons – Russian citizens'. The prosecution asserts that Mr Sentsov 'automatically' became a Russian national as he did not formally and in person indicate his wish to retain Ukrainian citizenship.

*Impunity for human rights violations*

212. Between 27 September and 31 October, five Crimean Tatars disappeared in unclear circumstances. One of them, Edem Asanov, who went missing on 29 September, was later found hanged in a deserted sanatorium in the city of Evpatoria. Other disappearances include two Crimean Tatars cousins, Islyam Dzhapparov and Dzhevdet Islyamov, who are relatives of a former Mejlis member and were abducted on 27 September by unknown men in military uniform in the town of Belogorsk. In October, two more Crimean Tatars from Simferopol went missing on 3 and 23 October respectively.

213. On 1 October, the so-called 'prime minister' of Crimea, Sergei Aksionov, met with relatives of the two cousins abducted on 27 September and pledged to create a 'contact group' to investigate cases of abduction as well as other incidents involving Crimean Tatars.

214. On 14 October, the first meeting of the 'contact group' was chaired by Mr. Aksionov and the deputy head of the Crimean branch of the Russian Federation Investigation Department for especially serious crimes. Five relatives of victims attended. Information was provided on actions undertaken in relation to both recent and earlier disappearances, including the cases of two other Crimean Tatars, Timur Shaimardanov and Seiran Zinedinov, who disappeared in late May. Both were members of a pro-Ukrainian group – 'Ukrainian House' and went missing a few days after another group member, Leonid Korzh, also disappeared. Regarding Shaimardanov and Zinedinov, where no witnesses were found, the Crimean police opened criminal proceedings under article 105 (murder) of the Criminal Code of the Russian Federation. In the cases of Dzhapparov and Islyamov, where some witnesses claim to have seen the two being pushed into a car, criminal proceedings were initiated under article 126 (abduction). The investigations, initially conducted by the Crimean police, were subsequently transferred to the Russian Federation Investigation Department. During the meeting, it was decided that this Department would similarly take over the investigation concerning the case of enforced disappearance of 3 October. The 'prime minister' stated he was interested in an objective investigation of all criminal acts and invited the contact group to closely cooperate with the investigation bodies.

215. The establishment of the contact group, coupled with the direct involvement of Russian Federation investigative organs and the presence of relatives of the disappeared, are important developments. Investigating all disappearances both before and after the March 'referendum' is a duty of the *de facto* authorities. The HRMMU is aware of nine cases of disappearances and two deaths<sup>74</sup> since early March 2014. It would appear that some investigations have not taken place while others were inconclusive, a situation which supports impunity and creates tensions. The HRMMU sent a letter urging the *de facto* authorities to provide information on the state of the investigations regarding all disappearances and deaths in Crimea since March 2014, including those that have not been reviewed during the first meeting of the contact group.

216. Civil society groups and some witnesses claim that the so-called 'Crimean self-defence' was directly involved in most cases of abductions, deaths and other human rights abuses in the past six months. Its members supported the takeover of public buildings in the peninsula in late February and early March 2014 and are said to have been responsible for multiple human rights abuses during and after that period, including torture and ill-treatment. However, the *de facto*

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<sup>74</sup> In addition to Edem Asanov who was found hanged on 6 October, another Crimean Tatar, Reshat Ametov, had been found dead, on 16 March, in the village of Zemlyanichne apparently with signs of torture. See HRMMU report of 15 April, pp. 20-21

authorities have always treated these groups with respect due to their active opposition to the Ukrainian authorities and support to the March ‘referendum’.

217. Further, on 11 June, the so-called ‘parliament of Crimea’ passed a law which resulted in the integration of the ‘self-defence’ into a ‘people’s militia’, with powers to assist the police in keeping law and order. More recently, on 2 October, a draft law was submitted by the *de facto* authorities of Crimea to the Parliament of the Russian Federation proposing to amnesty ‘militants’ and members of the ‘self-defence forces’ in Crimea. According to the draft, the actions of the ‘self-defence forces’ and ‘militants’ committed between 27 February 2014 and 1 January 2015, including those which caused physical and moral damage, should be acknowledged as having been ‘of extreme necessity’. The amnesty should also cover suspects, defendants and those convicted in criminal cases. Excluded from the amnesty would be actions committed for financial gain, as well as other self-serving motives<sup>75</sup>. It should be noted that it contravenes the prohibition under international law of amnesties for international crimes and other gross violations of human rights. The acts of all those suspected of having committed or who ordered such crimes or violations must be investigated, perpetrators must be brought to justice, and victims should be enabled full reparation.

*Actions targeting Crimean Tatar institutions and their supporters*

218. On 16 September, FSB officers and the police searched the houses of two Mejlis officials, seizing notebooks, computers and hard drives. Later that day, they conducted an 11-hour search of the Mejlis building in Simferopol. Mejlis session protocols were seized, as well as religious books, computers, hard discs, and some personal belongings of Mustafa Jemiliev, the former head of the Mejlis. On 17 September, a court writ was served on the charitable organization Crimea Fund which owns the Mejlis building, giving it 24 hours to evacuate the building. The document prohibits the charity from carrying out its powers as owner of the building and six other premises. On 19 September, the Mejlis members left the building. On 29 September, the Central District Court of Simferopol upheld a request of the Crimean ‘Prosecutor’s Office’ to exclude Mustafa Jemiliev from the founders of the Crimea Fund.

219. The Mejlis opposed the March ‘referendum’ and has repeatedly criticized human rights violations committed in Crimea since that time. Its supporters consider the actions of the Crimean *de facto* authorities to be part of a concerted effort to undermine the authority and influence of this institution among the Crimean Tatar community. On 22 September, in an interview to a Russian media, ‘prime minister’ Aksionov stated that the Mejlis had no legal existence as it was not properly registered under Russian law.

220. On 22 October, the Crimean ‘police’ arrested Tair Smedlyaev, brother of Zair Smedlyaev, the head of the *Kurultai*’s election committee. The *Kurultai* is the parliament of the Crimean Tatars. Tair Smedlyaev was accused of violating article 318 (violence against police officer) of the Criminal Code of the Russian Federation during the 3 May action in Armyansk, when Crimean Tatars gathered in support of Mr Jemilev’s attempts to enter the Crimea<sup>76</sup>. On 24 October, a Simferopol Court in a closed session ordered the two month pre-trial detention for Mr Smedlyaev as a measure of restraint.

*Actions targeting possession and dissemination of ‘extremist’ literature*

221. The Crimean authorities continued actively searching for weapons, guns and religious literature. Dozens of raids reportedly took place since August, focusing on literature considered

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<sup>75</sup> On 16 October, during a press conference in Moscow, the so-called Crimean ‘prime minister’ Sergei Aksionov said that if the amnesty bill was not passed over 100,000 members of the ‘Crimean Self-Defence’ could be judged and sentenced on the basis of the current legislation.

<sup>76</sup> The protest involved thousands of Crimean Tatars gathering at the Crimean administrative border with the mainland, to meet Crimean Tartar leader Mustafa Jemilev, who earlier had been banned by the Crimean ‘authorities’ from entry to Crimea because of his alleged ‘extremist activity’.

to be of an extremist nature, as listed on a federal list of extremist materials. While the searches have overwhelmingly concentrated on Crimean Tatar properties - mosques, madrassas (Islamic religious school), schools, libraries and private homes - there have also been reports of raids on Jehovah's Witness Kingdom Halls.

222. Possession or distribution of 'extremist material' is punishable under article 20.29 of the Administrative Code of the Russian Federation<sup>77</sup> with a fine or imprisonment of up to 15 days and confiscation of banned literature. For example, on 26 August, the Dzhankoi District Court fined with RUB 2,000 (approximately USD 50) one of the deputy heads of the Crimean *Muftiyat* in charge of education issues after the police raided a madrassa he oversaw in the settlement of Azovskoe and seized religious literature. On 7 October, a librarian of a boarding school in the village of Tankovoe (Bakhchisaray district) was fined RUB 1,000 (approximately USD 25) because the school library contained three books from a collection of sermons by a Turkish Muslim theologian, and one Jehovah's Witnesses booklet. About a dozen other cases have been opened under article 20.29 between August and October 2014 and most have led to fines being imposed.

223. The Crimea 'ministry of education, science and youth' is participating in the campaign to remove extremist religious literature and other banned books. In a letter dated 12 September, the ministry 'orders the administrations of educational organizations to conduct [...] an analysis and audit of literature present in libraries and educational premises on the subject of the presence of materials on the Federal List, with the aim of its removal and destruction'.

224. Confronted with mounting criticism from the Crimean Tatar community<sup>78</sup>, the *de facto* 'authorities' have attempted to lower tensions. On 13 October, whilst meeting 150 Crimean Tatars, including the head of the *Muftiyat*, who returned from the Hajj pilgrimage to Mecca, 'prime minister' Sergei Aksionov announced a three month moratorium indicating that no punishments for possessing such literature would be imposed during that time. Furthermore, in an interview given to a Russian news agency on the following day, 'prime minister' Aksionov stated that the *de facto* authorities would conduct "educational work" among Muslims in cooperation with the *Muftiyat* during the moratorium and that the media would publish a list of materials whose possession was prohibited.

225. The HRMMU is not aware of instructions having been issued to law enforcement organs to halt raids and prosecutions until January 2015. However, the moratorium appears to be respected. Furthermore, on 21 October, in one case involving a schoolteacher from Belogorsk, the 'supreme court' of Crimea cancelled a District Court decision of 16 September, which had found the schoolteacher guilty under article 20.29 of the Administrative Code of the Russian Federation. She allegedly 'repented' and, instead of a fine, was given a 'verbal warning'.

#### *Freedom of expression*

226. The space for free media in Crimea continued to shrink. The latest media outlet whose activities were disrupted by actions of the *de facto* 'authorities' was the weekly Mejlis newspaper, *Avdet*. On 17 September, *Avdet* editor was given an official warning by the FSB for 'actions that might incite extremist activities'. A day earlier, the paper's offices in Simferopol were searched and on 18 September the FSB forced all tenants, including *Avdet's* staff, to vacate the premises. In June and July, the editor had received written and oral 'warnings' related to the newspaper's reporting. *Avdet* continues to regularly publish but from different premises. The

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<sup>77</sup> This article punishes the "mass distribution" of items on the Federal List, as well as their "production or possession for the purposes of mass distribution".

<sup>78</sup> The Council of Europe's Commissioner for Human Rights visited Crimea on 10-11 September and heard complaints from many Muslims about raids. He reported to local officials that he regarded these raids as "disproportionate and excessive".

editor in chief of the Crimean Tatar ATR television channel informed the HRMMU that a letter from a Russian Federation media supervisory body to the Russian MoIA claimed that ATR was disseminating false rumours about repression on an ethnic and religious basis and promoting extremism. ATR was subsequently instructed by the police to show all documentation and a list of employees. Like *Avdet*, ATR continues operating, but with the understanding that the channel could be subject to legal or administrative actions should the content of its programmes be deemed by the *de facto* ‘authorities’ to question that Crimea is part of the Russian Federation.

227. In an apparent attempt to limit freedom of expression, Nadir Bekirov, the head of the Fund for Research and Support of the Indigenous Peoples of Crimea, was attacked in Crimea on 19 September. He was travelling to New York to take part in the UN General Assembly World Conference on Indigenous Peoples. On his way to catch a train to Kyiv, a minivan blocked the road and four masked men pulled him out of the car. He was beaten up and his passport and mobile phone stolen. The Crimean police are investigating the incident.

228. On 30 September, the Crimean ‘vice-minister of internal policy, information and communications’ informed that starting from 1 January 2015, the Russian Federation Service for Supervision in the Sphere of Communications, Information Technology and Mass Media will apply sanctions to any of the Crimean mass media which conducts a ‘provocative policy’. An example given was the Crimean on-line news agency Crimean Events, which publishes pro-Ukrainian articles.

229. On 1 October, six editors and journalists of Crimean Tatar programmes on the Crimean State TV and Radio Company Krym were dismissed from their posts due to ‘restructuring’. According to the former chief editor, the authorities in Crimea appointed a new editor, who announced the enrolment of new staff in order to change the content of the Crimean Tatar programs.

#### *Freedom of movement*

230. The HRMMU travelled to Chongar, a crossing point on the administrative boundary line between the region of Kherson and the Autonomous Republic of Crimea, and spoke to representatives of the State Border Service of Ukraine. According to the information obtained on the rules governing the entry of vehicles and passengers from Crimea into mainland Ukraine, holders of Russian passports issued in Crimea and cars with Crimea-issued Russian license plates are not allowed to cross the boundary line. Additionally a foreigner will not be allowed to enter mainland Ukraine from Crimea because access to Ukraine can only be from a recognized State border crossing.

231. An average of 300 vehicles circulate daily between Crimea and mainland Ukraine on both sides and about three to five persons per day are denied entry into mainland Ukraine due to one of the reasons cited above. However, the HRMMU learned from reliable sources that there were also instances of Ukrainian nationals prevented from entering mainland Ukraine from Crimea. This is in violation of the law “On Guaranteeing the rights and freedoms of citizens and on the legal regime on the temporarily occupied territory of Ukraine”, which provides that ‘Citizens of Ukraine have the right to free and unimpeded access to the temporarily occupied territory and exit from it through the control points of entry and exit upon presentation of a document confirming the identity and citizenship of Ukraine’<sup>79</sup>. This may also constitute a violation of the right to enter one’s own country, as provided for in article 12(4) of the International Covenant on Civil and Political Rights.

#### *IDPs*

232. According to the State Emergency Service of Ukraine, 19,056 IDPs (including 5328 children) from Crimea and Sevastopol were registered in mainland Ukraine on 31 October.

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<sup>79</sup> See Article 10 of the law.



233. The HRMMU met with Natalia Popovych, the Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea. Her office informs IDPs and Crimean residents about their rights and entitlements and provides advice and support in legal, civil or administrative matters as required. As of 1 October, Ms. Popovych's office had received 312 requests, mostly on employment issues and the issuing of identification documents, including passports. Other claims include education, property, pensions, banking deposits, and various social benefits and entitlements. The Permanent Representative initiated the establishment of a consultative council, made up of representatives of 13 civil society organizations, mainly from Kherson region to discuss IDP issues and agree on joint solutions.

*Persons deprived of their liberty*

234. As of 10 September there were 2,671 inmates from the Autonomous Republic of Crimea serving sentences in various institutions throughout Ukraine. Of that number, 287 have expressed the wish to return to Crimea after having served their prison term, but 56 did not have identification documents enabling them to travel. A penitentiary institution in Kherson claims it assists inmates with obtaining Ukrainian passports. However, an NGO in the region which assists former prisoners maintained that they often leave prison with nothing but a document confirming their discharge. They have no place to go to and, for those wishing to return to Crimea, no possibility to travel. In this situation, they often become homeless.

**B. Economic and social rights**

*Property rights*

235. Using various pretexts, the self-proclaimed local authorities in Crimea and Sevastopol continued to conduct actions amounting to forcible seizure of private property from individuals or companies maintaining links to Ukraine. On 25 September, the public company *Ukrtelecom JSC* informed that unknown persons had seized its premises and equipment. Employees' access was restricted, while the director was handed over a decree from the Sevastopol authorities announcing that he was discharged from office.

236. Between 18 September and 9 October, the 'state council' of Crimea nationalized over 20 facilities, including health resorts, pensions and hotels, owned by the entrepreneur and Governor of Dnipropetrovsk, Ihor Kolomoiskyi.

237. On 23 October, the Minister of Justice of Ukraine announced that Ukrainian investigatory authorities had initiated criminal cases against judges, law enforcements officials and Crimean executive service employees who had violated Ukrainian citizens' rights in Crimea and were involved in expropriations. A law adopted by the Crimean 'Parliament' on 31 July 2014 regulating property and land relations bans Ukrainian citizens, including those Crimean residents who rejected Russian citizenship from using agricultural land which they own. They are required to sell their land plots to Russian citizens only or to Russian legal entities. According to Russian legislation, agricultural land includes horticultural, market-gardening and dacha (cottage) cooperatives, as well as lands of former collective farms which were divided between village residents and former workers of the collective farms.

*Right to education*

238. According to information obtained on 21 October from Ms. Natalya Popovich, the Permanent Representative of the Ukrainian President in the Autonomous Republic of Crimea, out of the 600 secondary schools in the peninsula, only 20 teach Ukrainian language and literature three hours per week. Teachers of Ukrainian language and literature have been forced either to retrain on their own account or to resign. In the last six months, the number of high schools teaching Ukrainian has dropped from 96 to 12. According to Ms. Popovich, this would be explained by a cessation of funding to schools that refused to join the newly created Crimean



### **C. The rights of indigenous peoples**

239. The HRMMU travelled to Novooleksiivka (Kherson region), a town of 10,000 inhabitants of whom almost 4,000 are ethnic Crimean Tatars. The head of the regional Mejlis in Kherson, Asan Aliev, explained that the greatest danger faced by the Crimean Tatar community on the mainland was assimilation. Over 90% of the Crimean Tatars allegedly do not speak their native language and communicate in Russian. There are two schools where the Crimean Tatar language is taught, but only for two hours per week.

240. Several Crimean Tatars mentioned to the HRMMU that they considered themselves to be an indigenous nation, entitled to recognition by law and to specific rights, such as the right to have its own self-government institutions. They noted that the law on national minorities adopted in 1992 did not provide for such recognition and that Ukraine did not have a law on indigenous peoples. They expressed the hope that the new parliament elected on 26 October would be more open to the adoption of legal measures confirming the status of the Crimean Tatars as an indigenous people, which is a category recognized by the Constitution of Ukraine.

## **XI. CONCLUSIONS AND RECOMMENDATIONS**

241. A peaceful solution must be found to end the fighting and violence in the eastern regions, to save lives and to prevent further hardship for those people living in the conflict affected area and in the neighbouring regions. With the tenuous respect for the ceasefire and the Minsk Protocols, people continue to be killed, and violations of international human rights law and international humanitarian law persist. The situation in the conflict affected area is becoming increasingly entrenched, with the total breakdown of law and order and the emergence of parallel governance systems in the territories under the control of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’. The continuing presence of a large amount of sophisticated weaponry, as well as foreign fighters that include servicemen from the Russian Federation, directly affects the human rights situation in the east of Ukraine. Guaranteeing the protection of those who live within the conflict affected area must be of the highest priority, so too the control and respect of the Ukrainian borders with the Russian Federation.

242. The impact of the hostilities on the whole of Ukraine, the economic downturn and the potential energy crisis require timely and dedicated attention, to heal divisions within families and communities, and to ensure that all human rights concerns are addressed. Accountability and an end to impunity are at the core of ensuring peace, reconciliation and long term recovery. Violations and abuses of international human rights law and violations of international humanitarian law must be investigated and, where there is evidence of crimes, the perpetrators brought to justice.

243. The situation for those living in Crimea, the status of which is prescribed by General Assembly resolution 68/262, remains of particular concern with increasing violations occurring for vulnerable and minority groups, including intrusive searches of mainly Crimean Tatar properties. New cases of enforced disappearances are a matter of great concern and could further fuel mistrust and increase tensions.

244. The root causes of the Maidan protests were the systematic and structural curtailment of human rights and widespread corruption. As peace is pursued, Ukraine should be commended for the steps already undertaken as outlined in this report, yet it must continue to meaningfully

reform its governance and legislative system to effectively enable the change that will promote and guarantee human rights protection.

245. Recommendations made in the OHCHR reports published since April 2014 that have not yet been acted upon or implemented remain valid and are reiterated. In addition, OHCHR calls upon all parties to implement the following recommendations:

**To all parties involved in the hostilities in the eastern regions of Donetsk and Luhansk**

- a) Immediately release all persons illegally or arbitrarily deprived of their liberty.
- b) Guarantee transparency regarding the release of detainees, and prevention of abductions, enforced disappearances, trafficking in persons and other human rights violations and abuses.
- c) Ensure the treatment with due respect and dignity of the bodies and remains of people killed as a result of hostilities. Free and safe access to the areas where such bodies and remains can be found must be provided to collect them and ensure their identification and a dignified and decent burial, and return them to their families.
- d) Increase efforts to search for missing people, ensure unfettered access by independent experts and preserve evidence of possible mass graves.

**To the Government of Ukraine**

- e) Investigate promptly and systematically allegations of summary, extra-judicial or arbitrary executions in the conflict zone, and take all measures to ensure the preservation of evidence.
- f) All allegations of sexual and gender-based violence must be promptly investigated, perpetrators held accountable and victims provided with an effective remedy, as well as the required help and support.
- g) Close all secret and ad hoc detention facilities and ensure that detainees are kept only in officially recognised and supervised places of detention, and that all their rights are fully respected.
- h) Guarantee that all detainees can communicate with and be visited by their families, have access to doctors and legal counsels. Lawyers must have access to the information concerning: 1) the authority that ordered the detention; 2) the date, time and place where the person was arrested and admitted to the detention place; 3) the authority responsible for supervising the detention place; 4) the whereabouts of the detainee, including, in the event of a transfer to another detention place, the destination and the authority responsible for the transfer; 5) the date, time and place of release; and 6) elements relating to the state of health of the detainee.
- i) Urge the expedient signature and implementation of the law on IDPs.
- j) Initiate wide public consultations to ensure that the law on lustration fully complies with the relevant international norms and standards and provides adequate guarantees against human rights violations affecting those concerned by this procedure.
- k) Urge that the draft law ‘on the prevention or punishment of participants in events on the territory of Donetsk and Luhansk regions’ is further amended in line with international norms and standards, and to clearly prevent acts of torture and ill-treatment committed by armed groups from being subject to amnesty, before being signed into law.
- l) Call on all the authorities to support the drafting of a national human rights strategy for Ukraine by 1 January 2015.

**To the self-proclaimed authorities of Crimea and the de facto governing authority of the Russian Federation**

- m) Urge the ‘contact group’ to make progress on investigations of cases of disappearances and deaths and ensure that perpetrators of crimes are held to account.
- n) Reconsider the legislative initiative to grant amnesty to the ‘Crimean self-defence’ group and reiterate that all allegations of gross human rights violations and abuses must be investigated, their perpetrators identified and punished and their victims duly compensated.
- o) Put an end to selective searches of facilities and the confiscation of property belonging mostly to Crimean Tatars.
- p) Promote inter-ethnic harmony, and put an end to intimidation and persecution.
- q) Promote and protect freedom of expression, guaranteeing full and non-discriminatory access to information for all.



# Annex 767

OHCHR, Report on the Human Rights Situation in Ukraine (1 December 2014 to 15 February 2015)





**Office of the United Nations High Commissioner for  
Human Rights**

**Report on the human rights situation in Ukraine**

**1 December 2014 to 15 February 2015**

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## I. EXECUTIVE SUMMARY

1. This is the ninth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine based on the work of the Human Rights Mission in Ukraine (HRMU)<sup>1</sup>. The report covers the period from 1 December 2014 to 15 February 2015. The report presents the outstanding and emerging human rights challenges in the eastern regions of Ukraine and in the Autonomous Republic of Crimea<sup>2</sup> (hereafter Crimea) as well as other parts of the country. It considers the human rights situation of all population groups affected by the ongoing current conflict and political developments, including internally displaced persons and other vulnerable groups.

2. The impact of the conflict on the human rights of those living in areas affected by the fighting in the eastern regions is dramatic and frequently life threatening in areas where fighting and indiscriminate shelling take place. OHCHR calls for intensified efforts by all parties to the conflict to achieve a peaceful solution and to comply fully with the Minsk agreement, and allow civilians remaining in areas affected by fighting to be evacuated on a voluntary basis. Statements by representatives of armed groups rejecting any ceasefire agreement and to scale-up offensives have been deeply worrying<sup>3</sup>. It is imperative that indiscriminate shelling of civilian areas and targeting of civilians and civilian property and infrastructure must cease immediately.

3. Non-implementation of all the provisions of the Minsk agreement concluded in September 2014 has had a serious impact on the human rights situation, especially the number of civilians killed and wounded and persons displaced. The situation in numerous localities affected by fighting has been characterized by the increasing use of heavy and sophisticated weaponry, including multiple launch rocket systems (MLRS), new offensives in several areas and indiscriminate shelling. Credible reports indicate a continuing flow of heavy weaponry and foreign fighters throughout the reporting period, including from the Russian Federation, into areas of the Donetsk and Luhansk regions controlled by armed groups. This has sustained and enhanced the capacity of armed groups of the self-proclaimed 'Donetsk people's republic' and 'Luhansk people's republic'<sup>4</sup> to resist Government armed forces and to launch new offensives in some areas, including around the Donetsk airport, Mariupol and Debaltseve.

4. The peace talks on 11-12 February 2015 in Minsk resulted in agreement, *inter alia*, to a new ceasefire starting from 15 February; the withdrawal of heavy weaponry from the contact line; the establishment of 50-140 km security zone; and the withdrawal of foreign armed formations, mercenaries and weapons from the territory of Ukraine. OHCHR welcomes the provision regarding an 'all for all' release of hostages and unlawfully detained persons. OHCHR has advocated for this at the highest levels with representatives of the armed groups, Government and the facilitators. Regarding the provision on amnesty for those involved in the conflict, OHCHR reiterates the long-standing position of the United Nations that amnesty must not be granted for international crimes, including gross violations of international human rights and humanitarian law.

5. Following a relative lull in the hostilities in December under the 'silence regime', the security and human rights situation in the east dramatically deteriorated in January and early February 2015. **In areas of hostilities, there is continuing and indiscriminate shelling of highly**

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<sup>1</sup> The Human Rights Monitoring Mission in Ukraine has evolved into the Human Rights Mission in Ukraine due to its enhanced work, which includes technical cooperation.

<sup>2</sup> The United Nations' position on the status of the Autonomous Republic of Crimea is guided by General Assembly resolution 68/262 of 27 March 2014 on the Territorial Integrity of Ukraine.

<sup>3</sup> The 'prime minister' of the self-proclaimed 'Donetsk people's republic', Aleksandr Zakharchenko, stated in January that they would continue to push back government forces to the limits of the eastern Donetsk region. "Attempts to talk about a ceasefire will no longer be undertaken by our side," he said.

<sup>4</sup> Hereafter 'Donetsk people's republic' and 'Luhansk people's republic'.

populated civilian areas by all parties and an escalating toll of civilian casualties killed and injured on a daily basis, including women, children and elderly people. From mid-April 2014 until 15 February 2015, at least 5,665 people were killed (including 298 from MH-17 flight) and 13,961 were wounded in the east of Ukraine<sup>5</sup>.

6. Heavy civilian tolls of dead and wounded have resulted from indiscriminate shelling of residential areas in both Government-controlled areas, such as in Avdiivka, Debaltseve, Popasna, Shchastia and Stanychno Luhanske, as well as cities controlled by the armed groups, including Donetsk, Luhansk and Horlivka. On 13 January, 13 civilians were killed and 18 wounded, when a bus was hit by an MLRS GRAD rocket at a Ukrainian checkpoint near the Government controlled town of Volnovakha. At least 31 people were killed, including 2 children, and 112 wounded in the Government controlled city of Mariupol, following deadly attacks on 24 January by multiple launch rocket systems. An intensification of hostilities was evident immediately prior to the February peace talks. On 10 February seven civilians were killed and 26 injured in attacks on Kramatorsk, the headquarters of Ukraine's 'anti-terrorism operation'.

7. The fighting and indiscriminate shelling have caused heavy damage to civilian property and vital infrastructure, leaving civilians in highly precarious situations and often without electricity, gas, heating, water or food. Hospitals, schools and kindergartens were hit by shelling of residential areas, including in Avdiivka, Donetsk city, Horlivka, Luhansk, Mariupol and other settlements, raising suspicion that civilian objects have been targeted or at the minimum indiscriminate shelling of such areas had been conducted in the knowledge of and with stark disregard for international humanitarian law and civilian lives.

8. Despite welcome steps by the Government of Ukraine to continue to supply gas and electricity to some of the areas held by the armed groups, the impact of the destruction in these areas is severe in freezing winter temperatures, particularly affecting older persons, persons with disabilities and others with limited mobility. Many civilians have remained trapped in conflict zones. Locally agreed ceasefires and evacuation efforts have been inconsistent and reports suggest inadequate evacuation modalities, including provision of transport and other assistance, have been made available by the Government or by armed groups in areas under their control. Civil society volunteers continued to play a vital role in the evacuation of civilians. Many persons remaining in areas controlled by armed groups lack the capacity, resources or assistance to leave such areas voluntarily.

9. Evacuees interviewed by the HRMU highlighted the lack of information on evacuation opportunities and further steps. Some said that they had to arrange their own travel out of the conflict zone, although there was an organized evacuation from some towns. As of 12 February, the Ministry of Social Policy reported that since 24 January, 1,898 children had been evacuated from the immediate vicinity of fighting in Donetsk and Luhansk regions. Many of these children were unaccompanied and the HRMU emphasizes the importance of keeping families together wherever possible.

10. Guaranteeing the protection of those who live within the conflict-affected area must be the highest priority. Thousands of civilians remain trapped in locations including Debaltseve, sheltering in basements and lacking drinking water, food, heating, electricity and basic medical supplies. Evacuations have been hampered by lack of information and consistent shelling. A ceasefire agreement on 6 and 7 February allowed many hundreds to leave Debaltseve and adjacent villages. However, according to some of the evacuees, approximately

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<sup>5</sup> This is a very conservative estimate by the HRMU and the World Health Organization based on available data. These totals include casualties within the Ukrainian armed forces as reported by the Ukrainian authorities and casualties reported by civil medical establishments of Donetsk and Luhansk regions: civilians and some members of the armed groups (without distinguishing them). The actual number of casualties is likely to be far higher since military and civilian casualties remain under-reported.



20 per cent of the original 26,000 residents have remained in the area, mostly older persons, but also some families with children. Electricity, water and telephone connections are disrupted and people have little food. Some underground shelters are reportedly now flooded and unusable.

11. On 11 January 2015, the State Security Service of Ukraine (SBU) announced the introduction of a temporary order to regulate travel in and out of the conflict area, which became effective on 21 January<sup>6</sup>. This requires that movement into and out of the areas controlled by armed groups must be through seven government-designated transport corridors. Furthermore, special passes are required based on the necessity to travel and may be refused, including on grounds related to national security or public order. IDPs reported inconsistent practice and corruption in securing the vitally needed passes to leave the area of armed conflict. This temporary order is particularly concerning in light of the Government decision in November 2014 to discontinue providing State services in the territories controlled by armed groups, which has had a severe effect on the most vulnerable groups, such as older people, mothers with young children and persons with disabilities, who depend heavily on social benefits. For humanitarian reasons the Government continues to supply gas and electricity to the areas under the control of armed groups. On 26 January, the Government introduced an 'emergency situation' regime in Donetsk and Luhansk and a state of 'high alert' throughout the rest of Ukraine. OHCHR notes that this does not diminish the human rights obligations of the State.

12. Ensuring the safety and security of persons, as well as access to humanitarian aid for vulnerable persons, and non-discriminatory delivery of humanitarian aid are therefore critical concerns. The United Nations and other humanitarian organizations continue to seek assurances of free and unimpeded access to all areas to perform their essential humanitarian functions.

13. In many locations, reception centres for internally displaced persons (IDPs) are overwhelmed, under-resourced and unprepared for potentially high levels of expected new arrivals. Since the beginning of hostilities in April 2014 there has been massive displacement. On 13 February, the Ministry of Social Policy reported that the number of registered IDPs had exceeded one million people. According to UNHCR, 60 per cent of IDPs are pensioners<sup>7</sup>. Those internally displaced by recent fighting commonly flee their homes with very few possessions, inadequate warm clothing and with few financial resources. They are consequently entirely reliant on assistance provided by the Government, the self-proclaimed 'Donetsk people's republic' and 'Luhansk people's republic', the United Nations, international and national humanitarian actors and volunteers.

14. Allegations of violations of international human rights law and international humanitarian law have persisted over the reporting period. Credible reports of arbitrary detentions of civilians, torture and enforced disappearance have been alleged against the armed groups and the Government. The HRMU interviewed victims and verified numerous accounts of acts that may amount to torture or other cruel, inhuman or degrading treatment or punishment. The arbitrary detention of civilians regrettably remains a feature of the hostilities, including for the purpose of prisoner exchanges. In areas controlled by the armed groups, 'parallel structures' have been established and the break down in law and order in these areas

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<sup>6</sup> Temporary Order on the control of movement of people, transport vehicles and cargoes along the contact line in the Donetsk and Luhansk regions.

<sup>7</sup> Many reportedly continue to live on the territories controlled by the armed groups and register as IDPs in Government-controlled areas for the sole purpose of receiving social payments. The Cabinet of Ministers issued an unofficial instruction to regional offices of social protection to check actual places of residence, but the local authorities informed the HRMU that they lack capacity to conduct such checks.

accommodates persistent violations of the rights of civilians, including abductions, arbitrary detention, beatings and alleged torture.

15. Following a Presidential decree on the fourth wave of mobilization on 19 January 2015, there were public appeals against mobilization. Local groups organized rallies and tried to block conscription offices in several towns. Subsequently a wave of anti-mobilization protests took place in numerous Government controlled areas, particular in Severodonetsk, Kramatorsk, Mariupol, several villages in Zaporizhzhia, Odesa, Volyn and Ivano-Frankivsk regions. In some cases people were prevented from protesting, facing opposition from other groups and rival activists. In most cases no violence was reported. Criminal charges have been brought against some individuals who openly oppose mobilization. Conscientious objection to military service should be respected by the authorities, with opportunities provided for non-armed service.

16. Little progress has been made in achieving accountability for violations of human rights committed in the context of the continuing conflict in the eastern regions of Ukraine. While recognizing challenges due to the ongoing conflict, the HRMU urges that all possible steps be taken to pursue investigations and prosecutions as appropriate, including into possible international crimes and gross violations of international human rights and humanitarian law.

17. Measures to achieve accountability for grave human rights violations committed during the Maidan protests, in which at least 104 demonstrators and 13 law enforcement officers were killed, and in 2 May violence in Odesa when 48 persons were killed, remain inadequate with poor progress over the reporting period. According to the Prosecutor General, the main obstacle impeding investigations into the Maidan violence remains the impossibility to locate suspects who fled Ukraine and the lack of expertise in investigating this type of cases. Regarding the 2 May violence in Odesa similar obstacles prevail and there is no measurable result into the investigation of police and fire brigade negligence.

18. During the reporting period the Government continued to develop the human rights strategy for Ukraine; a working group was established to amend the law on lustration of public officials; and a national anti-corruption bureau was established. On 29 January, Parliament registered a draft law establishing criminal responsibility for public calls to avoid mobilization, which, if adopted, may contravene the rights to freedom of opinion and expression and freedom of peaceful association.

19. The United Nations' position on the status of the Autonomous Republic of Crimea is guided by General Assembly resolution 68/262 of 27 March 2014 on the Territorial Integrity of Ukraine. The situation in the Autonomous Republic of Crimea<sup>8</sup> continues to be characterized by systematic human rights violations affecting mostly Crimean Tatars and those who opposed the March 'referendum'. The application of Russian Federation laws, which contravene resolution 68/262, also has human rights implications. Arrests and detention of Crimean Tatar activists on charges related to demonstrations and disruption of the activities of their civil society organizations and media outlets on the grounds of prevention of 'extremist activities' have been evident. Arrests, prosecution and deportation of Crimean Tatar leaders, including leaders of the Crimean Tatar Mejlis and the Committee on the Protection of the Rights of the Crimean Tatars, have been criticized by Crimean Tatar leaders and those affected as politically motivated.

20. The exercise of the rights to freedom of opinion and expression and of peaceful assembly continued to be curtailed, particularly for Crimean Tatars. Limitations are imposed on the freedom of religion or belief in Crimea due to restrictive registration requirements. This situation, and instances of police raids on places of worship, has created anxiety among

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<sup>8</sup> Hereafter referred to as Crimea.

the religious groups and questioned the commitment of the *de facto* authorities in Crimea to the protection of religious freedoms. In addition, on 26 December 2014 the Government of Ukraine stopped train and bus connections from mainland Ukraine into Crimea, which particularly affects older persons and persons with disabilities, on the grounds of ensuring the safety of passengers and to prevent the penetration of ‘subversive groups’ from the peninsula.

## II. RIGHTS TO LIFE, LIBERTY, SECURITY AND PHYSICAL INTEGRITY

### *Armed hostilities*

21. The ‘silence regime’ between Ukrainian armed forces and armed groups declared on 9 December 2014, resulted in several weeks of relative calm. In January 2015, usage of tanks, heavy artillery and multiple launch rocket systems (MLRS) resumed and spread to populated areas along or near the line of contact. From mid-January, armed hostilities escalated to a degree unseen since the 5 September Minsk agreement. Major flashpoints were the Donetsk airport, the nearby village of Pisky and the town of Avdiivka; areas around the town of Debaltseve and cities of Horlivka and Mariupol (Donetsk region); and the town of Shchastia and the village of Stanychno Luhanske (Luhansk region). On 10 February, the Ukrainian forces launched an offensive east of Mariupol, seizing control of several settlements. By 15 February, a number of Ukrainian units in Debaltseve ‘pocket’ (including the town and surrounding areas) were cut-off from the main Government-controlled territories.

22. The peace talks held on 11 and 12 February in Minsk resulted in agreement, *inter alia*, to a ceasefire to enter into force from 15 February; the withdrawal of heavy weaponry from the contact line; the establishment of a 50-140km security zone; and withdrawal of foreign armed formations, mercenaries and weapons from the territory of Ukraine. OHCHR welcomes the provision regarding an ‘all for all’ release of hostages and unlawfully detained persons. OHCHR has advocated for this at the highest levels. Regarding the provision on amnesty for those involved in the conflict, OHCHR reiterates the long-standing position of the United Nations that amnesty must not be granted for international crimes, including gross violations of international human rights and humanitarian law.

23. Indiscriminate shelling of populated areas, both Government-controlled and those controlled by the armed groups continued to be widespread. Although, in some cases, imprecise targeting of military positions occurred in the immediate vicinity of built-up areas (especially in Debaltseve area), there were also numerous cases of shelling of residential areas not located near military positions.

24. On 13 January, 13 civilians were killed and 18 wounded, when a bus was hit at a checkpoint near the Government-controlled town of Volnovakha (Donetsk region). The bus was hit by a MLRS ‘Grad’ rocket launched from territory controlled by the ‘Donetsk people’s republic’. On 24 January, at least 31 people were killed and 112 wounded following MLRS attacks on the city of Mariupol (Donetsk region). The rockets were allegedly fired from the territory controlled by the ‘Donetsk people’s republic’. On 4 February, a hospital in the city of Donetsk held by the armed groups, was hit with six people killed and wounding 25. The MLRS rockets reportedly came from areas controlled by the armed groups.

25. On 22 January, at least 13 civilians were killed and 12 wounded in Donetsk, most of them after a trolleybus and public transport stop were hit by mortars. On 29 January, eight civilians were killed and 19 wounded amidst heavy shelling in city of Horlivka held by the armed groups. The armed groups attributed responsibility for these and other cases of shelling of residential areas to the Ukrainian armed forces. In January and February 2015, several cases of usage of cluster munitions were reported. It is imperative that reports of shelling of residential areas (either by conventional or prohibited weapons) be investigated promptly. In

all cases, verification of the origin of the attacks remains required. All possible measures must be undertaken to prevent civilian casualties and the targeting of civilians.

#### **A. *Casualties***

26. Between 1 December 2014 and 15 February 2015, at least 1,012 people were killed and at least 3,793 were wounded in the conflict area of eastern Ukraine. Due to the dramatic escalation of hostilities (13 January – 15 February), at least 842 deaths were reported, including at least 359 civilians. Of at least 3,410 reported wounded during this period, at least 916 were civilians. From mid-April 2014 to 15 February 2015, at least 5,665 people (including at least 375 women<sup>9</sup> and 63 children) were killed and at least 13,961 (including at least 630 women<sup>10</sup> and 159 children) were wounded. These totals include Ukrainian armed forces (at least 1,756 killed and 5,505 wounded); 298 from flight MH-17; and casualties reported by medical establishments: at least 2,420 killed and 4,919 wounded in the Donetsk region, and at least 1,185 killed and 3,573 wounded in the Luhansk region. Casualties reported by medical establishments include civilians and some members of the armed groups<sup>11</sup>.

27. Many of those killed (especially members of armed groups) have been buried without being taken to morgues, and insecurity prevented many wounded people from accessing medical establishments. Hundreds are considered missing with numerous bodies pending recovery and identification. Through interviews conducted in the Lviv region, HRMU noted the lack of an effective system to inform relatives of deceased Ukrainian servicemen about their rights and entitlements prescribed by the law. Moreover, family members of the missing and captured servicemen also report lack of information from and contact with the relevant authorities.

#### **B. *Evacuation of civilians***

28. Since the upsurge in hostilities in late January, the State Emergency Service of Ukraine has reported evacuations of civilians from residential areas in the vicinity of the armed conflict, including Avdiivka, Debaltseve and Svitlodarsk in Donetsk region and Chornukhyne, Popasna and Shchastia in the Luhansk region. According to Government figures, the overall number of evacuated civilians from 28 January until 13 February was 8,429 people, including 1,923 children and 265 persons with disabilities. The armed groups have also reported evacuations, including of some 1,100 civilians, mainly older persons and children, from Vuhlehirsk (Donetsk region) and 272 people from the village of Chornukhyne and nearby areas (Luhansk region) to safe locations in territories under their control.

29. Evacuations were hampered by constant shelling of Government controlled territories and evacuation routes. Reports suggest that some incidents of shelling coincided with the evacuation of civilians and may have been targeted to prevent it. In view of the temporary order regulating transit across the line of contact and the requirement for individuals to have an official pass, the State Emergency Service indicated to the HRMU that evacuations were conducted with a simplified procedure that did not require passes. Individuals making their own way out of territories controlled by armed groups continue to require the official passes,

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<sup>9</sup> Breakdown of casualties by sex is not available for the Luhansk region and is not reported by medical establishments.

<sup>10</sup> As in footnote 9.

<sup>11</sup> As in previous reports, these are conservative estimates by the HRMU and the World Health Organization (WHO) based on the available official data. Actual fatalities are probably much higher. Military casualties remain under reported by the Ukrainian Government and by the armed groups and there is evidence that some killed and wounded members of the armed groups have been taken to the Russian Federation.



although some people described inconsistent enforcement of requirements and incidents of the payment of bribes at border crossings.

30. The HRMU monitored reception and transit points for evacuees in Kharkiv, Dnipropetrovsk and Kyiv. Evacuees informed about problems they had encountered, including a lack of information about evacuation opportunities, especially for those living in the suburbs of towns where organized evacuations were conducted. Due to the constant shelling, people were frequently hiding in basements with no electricity or communication with the outside world. Some were not aware of organized evacuations and had to find ways to leave by their own means. The HRMU is aware of some cases when civilians had to walk to adjacent villages and cities in order to be evacuated, because neither volunteers nor authorities could reach their settlements due to intensive fighting. Civil society volunteers continued to play a vital role in the evacuation of civilians and many have relied heavily on their assistance provided at great personal risk to themselves.

31. Evacuation from social care institutions is particularly difficult as many patients, mostly older persons, have not consented to evacuation. High numbers of bedridden persons who require special assistance or transportation also remain in conflict-affected areas. Members of armed groups have on several occasions stated that they will not allow the evacuation of people from such institutions to Government controlled areas. They have also demanded the return to Donetsk of 260 orphans who were evacuated in the summer of 2014. In addition, no steps have been taken for the evacuation of inmates of the penitentiary system.

### ***C. Alleged summary, extrajudicial or arbitrary executions***

32. A number of media reports and social media postings of videos have raised concern over possible incidents of summary, extrajudicial or arbitrary executions. On 24 January, armed groups claimed control over the settlement of Krasnyi Partyzan (30 km north of Donetsk), which had been previously controlled by the Ukrainian armed forces. The video footage made by the armed groups soon after the fight for the settlement and disseminated through social media gives grounds to allege the execution of up to three Ukrainian servicemen taken captive in Krasnyi Partyzan. Following fighting for Donetsk airport in January and the subsequent taking of the airport by armed groups of the ‘Donetsk people’s republic’, media reports suggested that the bodies of Ukrainian military personnel were found in the airport with “their hands tied with white electrical cable.”<sup>12</sup> OHCHR underlines that all evidence of summary, extrajudicial or arbitrary executions must be fully investigated and perpetrators prosecuted without the possibility of amnesty.

### ***D. Illegal and arbitrary detention, enforced disappearance, and torture and ill-treatment***

#### *By the armed groups*

33. Estimates of the number of people held by armed groups vary continuously and reflect the constantly evolving pattern of detentions and releases. Several hundred were thought to be detained at any given time between December 2014 and mid-February 2015. On 9 December, the Head of the Security Service of Ukraine (SBU) Main Investigative Department stated that 684 people were held by armed groups. On 11 December, the non-governmental organization, The Centre for Release of Captives estimated the number of people held by the armed groups to be 632. In addition to Ukrainian servicemen (as of 25 January, the Ukrainian Government estimated the number still held as 184), people held by the armed groups include those suspected of ‘subversive’ activities. On 22 January, the ‘head’ of the ‘Donetsk people’s republic’ declared that up to five Ukrainian ‘subversives’ aged between 18 and 35 were

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<sup>12</sup> See <http://blogs.channel4.com/alex-thomsons-view/bodies-shells-snow-ruins-donetsk-airport/8993>



detained every day. On 22 January, a dozen Ukrainian servicemen captured at Donetsk airport were forced to march through the streets of Donetsk. Several were physically assaulted by an armed group commander and by onlookers.

34. As of 4 February, civilians held by armed groups are estimated by the Government of Ukraine to number over 400. Some are held for minor offences and substance abuse. However, civil society activists, journalists and staff of international NGOs continue to be illegally detained. A Donetsk-based journalist was abducted on 8 January while observing a 'humanitarian convoy' from the Russian Federation and released on 7 February. On 31 January, a freelance journalist was abducted in Donetsk. His whereabouts were unknown as of 15 February.

35. On 30 December, according to the 'prosecutor general's office' of the 'Luhansk people's republic', a 'criminal case' was initiated against armed group commander Aleksandr Biednov (call sign 'Batman') and his subordinates for illegal detention and torture resulting in the death of a detainee. On 2 January, videos were released showing members of Biednov's group who confessed to running a facility in the basement of a university library in Luhansk and taking part in the ill-treatment of captives. The 'head' of the facility (call sign 'Maniac') allegedly used a hammer to torture prisoners and surgery kit to scare and extract confessions from prisoners.

36. The Ukrainian female pilot, Nadiia Savchenko, Member of the Parliament of Ukraine (since November 2014) and Ukrainian delegate to Parliamentary Assembly of the Council of Europe (since December 2014), has been in detention in the Russian Federation since July 2014 after being reportedly captured by armed groups in June. She is awaiting trial on charges of involvement in the deaths of two Russian journalists killed during the conflict in eastern Ukraine. On 10 February 2015, the Basmany court in Moscow extended her pretrial detention until 13 May. A motion to have her released on bail was rejected. She has now been on hunger strike since 13 December and reportedly is being kept in solitary confinement in the Matrosskaya Tishina detention centre in Moscow. On 9 February, EU foreign ministers launched a plea for the Russian Federation to release her.

*By the Ukrainian Government*

37. Ukrainian law enforcement agencies continued to report on the detention of people suspected of separatism and terrorism. On 10 December, the SBU announced that since March 2014, it was carrying out over 3,000 criminal proceedings related to crimes against national and public security. In the context of these proceedings, 1,043 people had reportedly been notified of being officially suspected; of them, 703 people had been arrested and 198 indictments (in relation to 254 people) had been submitted to the courts<sup>13</sup>. Information received by the HRMU from the detainees, their relatives and lawyers reveals a pattern of enforced disappearances, secret detention and ill-treatment by Ukrainian law enforcement agencies in the security operation area and adjacent territories.

38. In December 2014, the HRMU interviewed a man who was unofficially detained by unidentified Ukrainian servicemen and allegedly severely beaten for several days. Another detainee claimed to have been beaten by SBU officers and kept in incommunicado detention where he met detainees who had been beaten and subjected to mock executions. A freelance journalist claimed that during his detention and SBU interrogation, masked men forcefully raised his handcuffed arms behind his back and hung him in that position urging him to confess to working for the Russian secret services. Several other detainees interviewed by the HRMU alleged incommunicado detention and ill-treatment that may amount to torture.

39. As of 15 January, a joint database of the civil society initiatives included 37 cases of people who had disappeared on the territory controlled by the Ukrainian armed forces. These

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<sup>13</sup> It shall be noted that exactly the same figures were released by the SBU on 22 January 2015.

cases had been filed by relatives, some of whom reportedly saw missing persons being detained by people in military uniform.

40. On 17 December, the pro-federalism activist Ignat ‘Topaz’ Kromskoi was reported by the SBU to have been detained at the Ukrainian/Russian Federation border. He had previously been detained and formally released from custody by a Kharkiv court on 12 September, however he was taken away from the court room by the same guards who brought him there and no one saw him free afterwards. His location was officially unknown and he was put on a wanted list<sup>14</sup>. On 18 December 2014, during a court hearing to decide on his measure of restraint (he was detained for two months), Mr Kromskoi stated that from 12 September until 17 December he had been held incommunicado in cell No. 5 of an SBU building in Kharkiv (the SBU denies the existence of this facility). He claimed that he had taken a hidden video of the cell, and had left notes on the walls, as well as hair and other traces to confirm his presence there. According to him, on 17 December, the SBU took him from his cell, put him on a bus and, as it approached the border, he was officially arrested. On 22 January, he informed the HRMU of his alleged secret detention. He said he saw up to 90 other people kept there. The HRMU also received other testimonies alleging the existence of this illegal detention facility in Kharkiv. Regarding this issue, the SBU has denied the allegations of a secret detention facility in Kharkiv.

#### *Exchanges of detainees and captives*

41. Exchanges of detainees and captives have continued over the reporting period. On 26 December, an exchange took place of 222 persons released by the Ukrainian Government in exchange for 145 persons (members of voluntary battalions, National Guard, civilian volunteers and civilians; all men) released by the armed groups. The exchange included persons whose cases were followed by the HRMU and who allege secret and incommunicado detention and ill-treatment while in custody. On 27 December and 2 and 5 January, at least ten people were released by the Ukrainian Government and 16 captives were released by the armed groups. On 6 January, there was reportedly the exchange of new lists of people for a future exchange in the coming weeks. According to ‘the ombudsperson’ of the ‘Donetsk people’s republic’, the armed groups requested to release 168 members of the armed groups and 380 ‘political prisoners’. Detention of persons not associated with the conflict for the purpose of exchanges has been reported. In February, representatives of the armed groups reiterated their intention to conduct exchanges based on ‘serviceman to serviceman’. The HRMU received information that some exchanged detainees were not given back their ID documents. On 11-12 February, it was agreed in Minsk to “ensure the release and exchange of all hostages and illegally detained persons based on ‘all for all’ principle”.

#### ***E. Measures limiting movement in and out of the conflict area***

42. On 21 January 2015, a temporary order regulating travel into and out of the conflict area came into effect<sup>15</sup>. With reference to national security concerns, it limited the movement of civilians, passenger and cargo vehicles to seven corridors in the Donetsk and Luhansk regions. The order also introduced special passes issued at ‘coordination centres’ located in four district police departments. Those wishing to travel are required to provide their itinerary and duration of stay in the area – whether it be in Government-controlled territory or territory under the control of armed groups; a valid passport; and a copy of a document justifying the necessity to travel (e.g. proof of residence; proof of illness of a relative; certificate of

<sup>14</sup> Mr Kromskoi is suspected of committing crimes under articles 28 and 294 (participation in mass disorders accompanied by pogroms, arson and destruction of property), article 110 (encroachment on the territorial integrity of Ukraine) and articles 28 and 289 (illegal seizure of the vehicle) of the Criminal Code of Ukraine.

<sup>15</sup> Temporary order on control of the movement of people, transport vehicles and cargos along the contact line in Donetsk and Luhansk regions.

employment, etc.). The HRMU was informed of various problems in implementing the order: hotlines providing information on the procedures could not be reached or did not work; passes were not provided to offices authorized to issue them; coordination centres were overwhelmed with up to 3,000 applications in each in the first days of their operation. Lack of a specific provision for civilians wishing to move solely due to security concerns largely left such crossing at the discretion of local security officers, frequently leading to the payment of bribes. No legal procedure has been established to appeal against the refusal to issue a pass.

43. Civilians living in and wishing to leave territories controlled by armed groups have to travel to the checkpoints at least twice: to submit documents and to receive a pass. They have faced constant danger as shelling and attacks on Ukrainian checkpoints intensified. On 26 January, at a checkpoint near Mariinka, an explosive device in a car went off killing the driver and one Ukrainian soldier. Mortar shelling began simultaneously. The discontinuation of State services<sup>16</sup>, including postal service, in areas controlled by armed groups added to the difficulty of providing required documents. No alternative provisions were envisaged for people whose identification documents were lost or taken away, which is a widespread problem. Interviews conducted indicate that some people who experienced problems obtaining passes to leave via the line of contact are leaving the conflict zones through the Russian Federation territories and then having to bribe Ukrainian border officials to re-enter Ukraine (some paying 10 times the official fine of UAH 170). On 27 January, the Commissioner of the President of Ukraine for Children's Rights announced that families with children may leave the territories without a special pass and reports received by the HRMU indicate that this has been the case.

### **III. ECONOMIC AND SOCIAL RIGHTS**

44. The impact of the conflict on the enjoyment of economic and social rights has been devastating for those living in conflict-affected areas and internally displaced persons, in particular women, children, older persons and persons with disabilities. An escalation in the hostilities since January 2015, including heavy and indiscriminate shelling, has caused, in addition to the increased numbers of casualties, significant additional displacement, destruction of infrastructure and housing, leading to the almost total economic and infrastructure breakdown in some of the worst affected localities. Since 10 January, at least 27 schools, kindergartens and hospitals have been damaged, in some cases leading to casualties, both in towns controlled by both the Government and armed groups. In the towns regularly shelled, at least 50 residential buildings are damaged on a weekly basis. As of 15 February, 77 settlements in the conflict affected area with approximately 202,000 residents remained completely without electric power supply and heating. Due to the shelling of water facilities, 461,350 people in Donetsk region and 86,862 people in Luhansk region do not have access to safe drinking water.

#### **A. *Social welfare, food, health, education***

45. The payment of salaries, pensions and social benefits for those living in territories controlled by the armed groups stopped in November 2014, making it difficult for local residents to purchase essential goods. At the very least, 600,000 pensioners<sup>17</sup> in Luhansk and

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<sup>16</sup> Pursuant to the Presidential Decree 'On Immediate Measures aimed at the Stabilization of the Socio-Economic Situation in Donetsk and Luhansk Regions' as of 14 November 2014 enacting an earlier decision of the National Security and Defence Council of Ukraine.

<sup>17</sup> The estimates are very conservative and the actual number affected is likely to be higher. In Ukraine 'pensioners' include not only the elderly but also other categories, for example persons with disabilities.

Donetsk regions have been left without regular income due to the cessation of the allocations from the State budget. Often the only income, its termination makes these persons extremely vulnerable. As described below, many pensioners had to register as IDPs in order to receive pensions while still living in areas controlled by the armed groups.

46. Access to food is increasingly challenging in conflict-affected areas and humanitarian actors have expressed their concern about their impeded access to the conflict area. Humanitarian actors reported that they have supplies in warehouses, while access to areas of need is hampered by roads being closed, due to shelling and restrictions imposed on the Government side of the line of contact. In December 2014, some battalions of the Ukrainian armed forces - 'Dnipro-1', 'Donbas' and 'Kryvbas' - blocked access of a humanitarian organization to the areas controlled by armed groups, demanding the release of prisoners held by armed groups. On 29 January, the volunteer initiative, 'Humanitarian Mission of Aid to the Civilians from Conflict Area', noted that due to the new rules, it has become more difficult for Ukrainian volunteers to deliver aid. It is reportedly difficult to provide the package of documents required by customs services. In Artemivsk, a control point for cargo transport, trucks are reportedly held up for several days. It is also difficult to pass through other control points: Stanychno Luhanske, Shchastia, Avdiivka; the latter has been regularly shelled.

47. On 30 January, the Cabinet of Ministers issued Decree No. 21<sup>18</sup>, regulating the provision of humanitarian aid to residents of Donetsk and Luhansk regions. However, it does not provide clear guidance on how to deliver aid to conflict affected areas and does not facilitate the efforts of humanitarian actors, as was its intention. Child and infant nutrition is a constant need in all conflict-affected areas as well as in IDP centres. The November 2014 Presidential Decree ending Government financing of State institutions, such as hospitals, in territories controlled by armed groups has potentially serious implications for a wide range of economic and social rights. It is recalled that Ukraine has continuing obligations to the realization of such rights as a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR).

48. In January, most hospitals in conflict affected territory remained open but reported severe shortages of various drugs, particularly painkillers, antibiotics and other essential medical supplies. Patients suffering from chronic conditions, including HIV/AIDS, TB and drug dependency are likely to run out of essential medicines upon which their lives depend.

49. Penitentiary institutions, nursing homes, psycho-neurological and other facilities continue to function albeit without State financing and depend entirely on humanitarian aid. Humanitarian actors report a constant shortage of medicine and hygiene kits. The situation is particularly dire in the psycho-neurological facilities due to a severe shortage of drugs crucial for its patients. On 30 January, the HRMU learned that 2,332 persons remain in the institutional care of such facilities in territories controlled by the self-proclaimed 'Luhansk people's republic'. According to Ukrainian ministries, 577 children remain in orphanages and some 5,000 children in family foster care in territories controlled by armed groups.

50. Access to education in conflict-affected areas has been severely curtailed. School buildings have been damaged and heating and power cut-off, forcing schools in many towns to close. As of 15 February, all schools in Donetsk city were closed. In Horlivka 16 schools and four kindergartens were reported to have been damaged by shelling. Numerous education sector workers have left the eastern regions. As of 13 February, in 'Luhansk people's republic' all schools and kindergartens were reported to be closed. Evacuees interviewed by the HRMU reported that schools have not been functioning for over three weeks in towns controlled by the Ukrainian Government in the conflict area due to shelling.

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<sup>18</sup> This resolution was adopted according to the Presidential decree as of 14 November (on urgent measures for the east and relocation of state institutions) by which the President instructed the Cabinet of Ministers to adopt the procedure on provision of the humanitarian aid and its marking with state symbols.



51. The Ministry of Education and Science of Ukraine made provisions to facilitate access to education for students living in the areas controlled by armed groups. The enrollment of IDP children into schools is done based on the written application from their parents with no other documentation required. As of 15 February, 71,632 IDP children were registered in schools of Donetsk (territories under Government control), Kharkiv, Dnipropetrovsk regions and Kyiv city. To enable children who remain in territories controlled by the armed groups as well as Crimea to continue their education and sit exams, the registration deadline for the independent assessment (exams required to enter universities) has been prolonged to 20 April for school graduates from these areas.

### ***B. The situation of internally displaced persons***

52. As of 13 February the Ministry of Social Policy reported that the number of registered IDPs in Ukraine had exceeded one million people, more than a twofold increase in their number since the beginning of December 2014. Approximately 60 per cent of the IDPs are reported to be pensioners. At the same time, the State Emergency Service, responsible for accommodation of IDPs reported that the number of people displaced from the east had reached 731,422 people as of 15 February (711,209 from Donetsk and Luhansk regions and 20,213 from Crimea), This figure includes 133,178 children and 328,770 persons with disabilities. The discrepancy in the IDP numbers provided by the different Government bodies may be partly explained by so called 'pension tourism'. Government Resolution No. 637 states that pensions are to be paid only to those who are registered IDPs residing in the Government controlled territory. Some pensioners who still live in territories controlled by the armed groups register with the Ministry of Social Policy to continue receiving their pensions.

53. The accommodation capacities in regions neighbouring the conflict area are almost exhausted. New IDPs from conflict-affected regions who arrive at locations such as Sloviansk or Kharkiv have been encouraged by the State Emergency Service to travel to western and southern regions of Ukraine. Authorities provide IDPs with free onward train tickets. New arrivals have little choice but to accept them. The HRMU recalls that under international standards, all authorities should ensure the voluntariness of the displacement process, including respecting decisions of IDPs to travel to locations of their choice. In view of new and potential future displacement flows, new winterized accommodation options may be required in eastern regions and information should be provided to IDPs to assist their decisions and ensure, to the extent possible, their right to freely decide upon the location of their temporary resettlement.

54. In October 2014, Parliament adopted the law on IDPs, however many concerns remain regarding their rights and welfare. While many desire an early return to their homes when conditions allow it, recognition of the likely protracted nature of the displacement for many IDPs is essential. The elaboration of a programme to ensure durable solutions for IDPs is essential. IDPs unable to return to their homes must be properly integrated into other regions of Ukraine on a voluntary basis and in full consultation with them. Article 2 of the law on IDPs guarantees the right of a displaced person to return and to reintegration, however, it sets no guarantees for integration in other parts of Ukraine as required by international standards, including the Guiding Principles on Internally Displaced Persons.

55. Despite the efforts of regional authorities, IDP reception centres in many locations are overwhelmed, under-resourced and under-prepared for possible high levels of expected new arrivals following the upsurge in fighting in some areas and essential evacuations. IDPs and those supporting them continue to stress their urgent needs, which include winter clothes, hygiene kits, diapers, food and non-food items, and medicines (including for chronic conditions). There is a lack of disease monitoring and control at IDP reception and transit



points for contagious diseases such as tuberculosis. Reports indicate that there is a lack of shelter to accommodate people, particularly those with special needs or limited mobility, who cannot be sent to other regions.

#### IV. OTHER HUMAN RIGHTS ISSUES

##### A. *Right to peaceful assembly*

56. During the reporting period, the right to peaceful assembly was generally exercised in most of the country, with the exception of territories controlled by the armed groups and Crimea. Nevertheless a number of prohibitions of protests by courts in Kharkiv and Odesa regions in the name of public order and safety were reported. Public appeals for peace and protests against mobilization gained momentum throughout Ukraine in the reporting period.

57. After the fourth wave of mobilization was announced on 14 January, there were attempts to oppose mobilization and initiate a dialogue with State authorities in some cities, which were then followed by anti-mobilization protests in cities including Ivano-Frankivsk, Kyiv, Kherson, Mariupol, Odesa, Zaporizhzhia, and parts of Donetsk controlled by the Government. In some cases protestors were opposed by rival activists, as noted in Kramatorsk, Mariupol and in Zaporizhzhia region. A recent initiative, ‘People of Peace’, calling for the reconciliation of two sides to the conflict, received criticism in social media and its public events were prevented from being held on several occasions. It has also been noted that those who oppose mobilization and the conflict report increasing antagonism towards them. In January, the HRMU followed the cases of prosecutions of people who publically opposed mobilization. On 29 January, Parliament registered a draft law establishing criminal responsibility for public calls to avoid mobilization<sup>19</sup>. On 8 February, a man who recorded a public video appeal to the President of Ukraine ‘I refuse mobilization’ and published it on ‘Youtube’ was sentenced to a 60-day detention as a preventive measure. Criminal proceedings have been initiated against him under article 111 (high treason) and 114 (espionage) of the Criminal Code. The video was widely disseminated by several Russian TV channels, which also invited him to participate in programmes on the situation in Ukraine, classified by the prosecution as ‘propaganda’. The HRMU is concerned about these measures, which can be considered as criminalization of dissenting political views.

##### B. *Freedom of expression*

58. The HRMU is concerned about continuing attacks on journalists in Ukraine, particularly in eastern areas controlled by armed groups and in Crimea (see below). On 11 February, the State Committee on TV and Radio Broadcasting addressed the issue of freedom of expression and protection of the rights of Ukrainian and foreign journalists in Donetsk and Luhansk regions, as well as the Autonomous Republic of Crimea. It was stated that since March 2014, at least 78 journalists have been held by armed groups and at least 60 attacks on media offices have been documented. Many journalists were forced to leave Crimea, and the Donetsk and Luhansk regions due to constant threats. In addition the State Committee stated that “there is also a large-scale and aggressive Russian propaganda campaign.”

59. In other regions of Ukraine some journalists or media offices were attacked due to their alleged ‘separatist’ views. On 10 January, the editorial office of *Slavianka* newspaper in Kharkiv, was attacked by unknown masked men who broke windows and threw Molotov cocktails into the office. On 22 January, a journalist of a local ‘pro-federalism’ website,

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<sup>19</sup> Draft law ‘On Introduction of Amendments to the Criminal Code of Ukraine (regarding liability for public appeals to avoid mobilisation)’ No. 1886 as of 29 January.

covering the preparatory trial hearing on the 2 May violence in Odesa, was beaten outside the Malynovskiy city court in Odesa.

60. In other cases, journalists were attacked for criticizing local authorities or law enforcement officials. On 26 January, a journalist of the Internet outlet *Traffic Control* from Chernihiv reported an attempt on his life, which he assumed, was related to his work on the lustration of police serving under the Yanukovych government. On 11 February a Ukrainian journalist from Dnipropetrovsk region working for the Russian Federal news agency and St. Petersburg-based news agency *Nevskiiie Novosti* was detained in Mykolaiv region for allegedly gathering data about the defence industry of Ukraine. On 12 February, the central district court of Mykolaiv ordered his detention for pre-trial investigation until 11 April under article 111 (high treason) of the Criminal Code.

### C. *Women's rights and gender issues*

61. With the prolongation of the conflict and displacement, women are increasingly vulnerable to various human rights violations and abuses both in Government and armed group controlled areas. The economic consequences of the conflict also acutely affect women. Those trapped in areas of fighting are at a heightened threat of sexual violence. Information from NGOs and IDPs that young women and men are being taken off buses leaving the conflict zone require further investigation. The HRMU is concerned that cases of violence against women may go unreported. The NGO La Strada, which operates a national hotline, reported only few calls related to sexual violence. Yet cases continue to emerge: one IDP woman reported sexual violence against her by members of the armed groups and members of an unidentified Ukrainian battalion, and remains severely traumatized.

62. Women may be at increased risk of domestic violence, as servicemen return from the conflict area without receiving proper social and psychological services. La Strada registered an increase in calls relating to domestic violence over the reporting period (72.2 per cent of total calls). It reported that incidents of psychological violence are increasing in families of IDPs, as well as within those remaining in the conflict area.

63. Women, including those internally displaced, may be at heightened risk of being exposed to trafficking, sexual violence and resorting to prostitution as a means of survival. In the reporting period, the HRMU became aware of cases of trafficking involving IDPs. On 19 January a man in Lviv was arrested on suspicion of allegedly recruiting four women, one Lviv resident and three IDPs, for sex work in Israel. One of the IDPs stated that she was desperate for any income, as it was impossible to find employment and she had to provide for her two children. The case highlights the need for all actors working with IDPs to be alert to the threat of trafficking facing displaced women. The International Organization for Migration was providing services for two IDP women from Luhansk region who were allegedly in the process of being trafficked to Turkey for sex work.

64. Some incidents of discrimination continued against the LGBTI community, especially in the territories under the control of the armed groups. On 19 December, the HRMU succeeded in evacuating a transgender man from the areas controlled by armed groups who was in fear of persecution and isolated at home without access to either food or medicine. As a transgender man, he was believed to be at risk of detention and violence if attempting to leave the area himself, as his identification documents did not reflect his gender identity. The HRMU negotiated with officials from the 'Donetsk people's republic' and the Ukrainian Ministry of Internal Affairs and Ukrainian military to escort him to safety.

#### ***D. Rights of minorities and groups facing discrimination***

65. The HRMU continues to monitor the human rights situation of minority groups and incidents of discrimination throughout Ukraine and to identify trends in this regard. As noted by the Special Rapporteur on minority issues following her visit in April 2014, Ukraine has a legislative, policy and social environment that is generally conducive to the protection of minority rights, including linguistic and cultural rights<sup>20</sup>. Nevertheless the Special Rapporteur recommended the further strengthening of Ukraine's legislative and institutional frameworks for minority rights protection. The HRMU continued receiving reports of alleged **discrimination against Roma** who frequently face additional challenges including lack of documents. On 11 December in Sverdlovsk (under control of the 'Luhansk people's republic'), a group of armed men reportedly broke into Roma homes, robbed them and took their passports. On 15 December, a Roma NGO reported that two police officers, in civilian clothes, came to the collective centre and harassed and threatened Roma IDPs and demanded money from them.

66. The HRMU received reports of targeting of religious minorities in the areas controlled by armed groups. **On 10 January, in Horlivka, five Jehovah's Witnesses ministers were taken to the office of a 'Donetsk people's republic' commander and accused of betraying the Orthodox religion.** They were allegedly punched and kicked and subjected to mock execution. After several hours, they were released while threatened with being shot if they continued their religious activities. On 22 January, in Donetsk city, a Jehovah's Witnesses minister was abducted at his workplace by members of the Oplot battalion, a military unit of 'Donetsk people's republic'. He was blindfolded and interrogated several times before being released on 23 January. On 5, 11 and 20 December 2014, Kingdom Halls (prayer houses of Jehovah's Witnesses) were seized by armed groups in Krasnyi Luch, Telmanove and Zuhres.

67. **On 15 January a synagogue was vandalised in Ivano-Frankivsk with offensive inscriptions.** The HRMU spoke with the local Jewish community representatives, who informed them that similar incidents had occurred previously, but never received appropriate attention by the law enforcement officials, and that such cases have always been categorized by police as hooliganism and the persons responsible have never been found. The written complaints and applications of representatives of the community concerning similar incidents were left without response. At the same time, the community does not perceive such instances as posing any threat or having some wider anti-Semitic context.

68. On 15 January, residents of Mykolaiv originally from Azerbaijan and Armenia filed a complaint to the Office of the Prosecutor General for racial discrimination, as they were refused to be served in a local restaurant and were told that "Caucasians were not welcome". A criminal investigation was launched under article 161 of the Criminal Code (violation of equality of citizens based on their race, national origin and religion).

#### **V. ACCOUNTABILITY**

##### *Accountability for human rights violations in the east*

69. **The Ministry of Internal Affairs as well as the SBU conducted investigations into cases of indiscriminate shelling of residential areas in Donetsk and Luhansk regions. The Ministry collected all available evidence relating to major incidents, but emphasized that a core obstacle barring the investigation remained the lack of access to the territories shelled. The HRMU also noted that a further obstacle to accountability is that many witnesses/victims**

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<sup>20</sup> A/HRC/28/64/Add.1 available online in English and Russian and all UN languages at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>

are reluctant to file complaints to the police for fear of reprisals and in the absence of trustworthy protection schemes.

70. While a significant percentage of criminal proceedings in regard to human rights violations in the east were opened under charges of terrorist acts, the Government reported only one case where a person was convicted of such act. On 13 January the district court of Sloviansk delivered the first judgment against a member of the armed groups of the self-proclaimed 'Donetsk people's republic', recognising the latter as a 'terrorist organization' and sentencing him to eight years imprisonment for membership of such a group under article 258-3 of the Criminal Code (membership of a terrorist organisation) and related charges. This judgment may set a precedent for subsequent judgements against those suspected of affiliation with the 'Donetsk people's republic' identifying them as terrorists.

71. The HRMU has been following the case of the former mayor of Sloviansk, Nelia Shtepa, who remains in custody charged under articles 110 (trespassing the territorial integrity of Ukraine) and 258 (creation of a terrorist organization) of the Criminal Code<sup>21</sup>. In a concerning development, Ms Shtepa's deputy, who was one of the main witnesses for the defence, was abducted on 30 January and subsequently found dead along with his driver. The HRMU learnt from the lawyers that other defence witnesses - around 40 persons - have since become reluctant to appear as witness in the proceedings.

72. As of 4 February, offices of the military prosecution conducted 49 criminal proceedings against servicemen of the National Guard and Armed Forces of Ukraine and 26 criminal proceedings into human rights violations, including arbitrary detentions and illegal deprivation of liberty committed by the 'Aidar' and 'Donbas' battalions in the conflict area. On 11 February, the Office of the Military Prosecutor reported the completion of pre-trial investigations against four servicemen of the 'Aidar' battalion accused of killing a civilian who refused to stop his car at a checkpoint on 19 November. The HRMU repeatedly come across instances where the military prosecutor's office investigators refused to pursue a case, arguing that civil prosecutor's office investigators had to prove first that servicemen had been involved in these crimes. Since not all combatants are provided with chevrons or other identification marks, investigations can be significantly impeded.

73. The 'ombudsperson' of the self-proclaimed 'Donetsk people's republic' reported on 3 February (having collected evidence in the 'White Book' project) of military crimes committed by Ukrainian armed forces. The 'White Book' reportedly includes almost 3,000 documents, victim and witness reports and video footage. According to the 'ombudsperson' almost 2,000 individual applications have been received which will be submitted to the European Court of Human Rights in a case against Ukraine.

74. The Office of the Prosecutor General, which is responsible for observation of compliance with the law by law enforcement bodies, reported that its investigations into allegations that the Kharkiv Regional Office of the SBU was used as a place of illegal detention, had not led to the identification of cases of illegal detention at that location, despite witness testimonies received by the HRMU.

#### *Accountability for human rights violations committed in the context of Maidan protests*

75. Progress in accountability for serious human rights violations committed during the Maidan protests in which at least 104 demonstrators and 13 law enforcement officers were

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<sup>21</sup> In addition to this case, the law enforcement agencies of Ukraine have reported prosecution of at least six high level national and local politicians. These include former Head of Kharkiv Regional State Administration, Mykhailo Dobkin, Kharkiv City Mayor, Hennadii Kernes, Mayors of Stakhanov – Yuri Borysov, of Debaltseve – Volodymyr Protsenko, and of Kurakhove – Serhii Sazhko, and former head of the faction of the Party of Regions in the Parliament – Oleksandr Yefriemov. All of them were suspected of trespass on the territorial integrity of Ukraine under Article 110 of the Criminal Code, however, no case has yet been brought to court.



killed and 1,200 people were injured (including 1000 who sustained gunshot wounds), remains inadequate with poor progress over the reporting period. According to the Prosecutor General of Ukraine, the main obstacle to investigations remained the difficulty in locating suspects who fled Ukraine as well as the lack of expertise in investigating this type of cases. An investigation into the forceful dispersal of Maidan protestors on the night of 30 November 2013, when 84 people were injured, has established that the former head of the Kyiv City State Administration, Oleksandr Popov, was responsible for the violent actions of the police. He is charged under the Criminal Code with illegal impediment of public meetings and collusion with the purpose of abuse of power. Four 'Berkut' officers were suspended and placed under house arrest for their alleged role in the 30 November events.

76. On 6 February, the Prosecutor General reported that approximately 1,000 criminal proceedings were ongoing into human rights violations and abuses committed during Maidan protests. Eight indictments in cases related to killing of protestors were submitted to the court. On 20 January, the Prosecutor-General informed the HRMU of submission of the indictment on the case of killing of 39 protestors by a group of law enforcement officials (including three Berkut servicemen) on 20 February 2014. On 23 January two servicemen remanded in custody had their detention extended until 23 March 2015. The Berkut commander was released from custody and placed under house arrest by the court in September 2014, however he subsequently escaped, raising serious questions regarding the appropriateness of his house arrest for such serious charges. The suspects are charged under the Criminal Code articles 115 (murder), 262 (theft of firearms) and 365 (abuse of power by the law enforcement). On 2 February the Ministry of Internal Affairs reported that its investigations into the killing of protestors in February 2014, had established that firearms used by the *tytushky*<sup>22</sup> against protestors in Kyiv were obtained from the Ministry.

77. On 20 January, the Kharkiv Regional Prosecutor's Office informed the HRMU of the completion of pre-trial investigations in relation to a former senior official of the Kharkiv Regional Department of Internal Affairs who allegedly ordered the dispersal of pro-Maidan protestors in Kharkiv on 19 February 2014, in which protestors were injured as a result of violent police action.

#### *Accountability for the 2 May violence in Odesa*

78. No essential progress has been reported in investigations into the killing of 48 persons and inflicting bodily harm to 247 people (including 22 police officers) during the clashes and burning of the Trade Union Building in Odesa on 2 May 2014. During preliminary court hearings by the Malynovskyi District Court of Odesa from 16 January, lawyers for the defendants (mostly 'pro-federalism' activists) drew attention to human rights violations and procedural omissions contained in the indictment: failure to provide Russian Federation citizens with Russian translation of indictment; failure to specify the action of each accused during mass disorder; failure to indicate information on conducted investigative actions, and incorrect personal data of participants of the trial. On 2 February 2015, the panel of judges ruled that the indictment regarding organising mass disorder in the city centre violated the right to fair trial and did not comply with the Criminal Procedure Code, and should be returned to the Office of the Prosecutor General for revision and correction. The preparatory trial hearings were held in a tense atmosphere with threats by 'pro-unity' supporters. There is no measurable result into the investigation of police and fire brigade negligence on 2 May, which is chaired by the Office of the Prosecutor General and the Ministry of Internal Affairs.

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<sup>22</sup> Organized groups of young men used to attack peaceful rallies or stage provocations.



## VI. LEGISLATIVE DEVELOPMENTS AND INSTITUTIONAL REFORMS

### *Legislative developments related to the situation in the east*

79. Confronted with a surge in hostilities from January 2015 the authorities introduced measures designed to prevent the further destabilization of the security situation, including the temporary order regulating travel in and out of the security operation area,<sup>23</sup> which became effective on 21 January 2015. The temporary order may contravene elements of international standards for freedom of movement, restrictions to which must be based on clear legal grounds and meet the test of strict necessity and proportionality. Whereas it is acceptable to restrict access into the security operation area, making it hard or impossible for civilians to leave the area of conflict is not in compliance with article 12 of the International Covenant on Civil and Political Rights<sup>24</sup>. The Guiding Principles on Internally Displaced Persons (articles 14 and 15) also establish that IDPs are free to move anywhere within a country. As the shelling and fighting has intensified, impeding movement of civilians out of the conflict areas contravenes the international humanitarian law customary norm regarding removal of civilians from the vicinity of military objectives. The temporary order has also created difficulties for the delivery of humanitarian aid, contrary to international humanitarian law, which obliges the parties to a conflict to allow rapid and unimpeded passage of humanitarian relief for civilians<sup>25</sup>.

80. Another legislative development related to the situation in the east is the elaboration of a draft law that would empower the High Administrative Court of Ukraine to decide whether an organization should be considered as ‘terrorist’<sup>26</sup>. Requests for recognition can be submitted by the Office of the Prosecutor General or prosecution offices in the regions based on documentary evidence. The decision of the High Administrative Court cannot be appealed and would enter into force immediately. The draft law provides that in a crisis situation the decision to recognize an organization as terrorist may be taken by the National Security and Defence Council of Ukraine (NSDC). This draft law raises serious questions as it enables a non-judiciary body with links to the executive branch to make a legally binding determination of an organization as terrorist and lacks internationally recognized fair trial guarantees, including due process and the right to appeal. The draft should be significantly amended in order to comply with international standards.

81. On 26 January, the Government introduced an ‘emergency situation’ regime in the regions of Donetsk and Luhansk under Government control, and a state of ‘high alert’ throughout the rest of Ukraine<sup>27</sup>. The purpose of this measure was reportedly to ensure proper identification of the needs of the population in the conflict affected areas and efficient coordination of State assistance, and to strengthen the protection of civilians. On the basis of this regime, local authorities in government-controlled areas will have enhanced powers to use State funds, notably to rebuild infrastructure destroyed during the fighting. The emergency situation regime is regulated by the Code of Civil Protection of Ukraine, which deals with the tasks, role and responsibilities of the State in connection with the protection of the population in emergency situations. OHCHR reiterates that this ‘emergency situation’ regime must neither diminish the human rights obligations of the State nor must it affect the enjoyment of fundamental rights and freedoms.

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<sup>23</sup> Temporary Order on the control of movement of people, transport vehicles and cargos along the contact line in the Donetsk and Luhansk regions.

<sup>24</sup> General Comment 27 of the Human Rights Committee (paragraph 16).

<sup>25</sup> See Rule 55 on Access for Humanitarian Relief to Civilians in Need.

<sup>26</sup> Draft Law No. 1840 ‘On Introducing Amendments to Certain Legislative Acts of Ukraine on the Recognition of Organizations as Terrorist ones’, registered in parliament on 26 January 2015.

<sup>27</sup> Order No. 47-r ‘On the establishment of regimes of high alert and emergency’.

82. A State commission was created to streamline civilian protection efforts,<sup>28</sup> including to draw up an inventory of State facilities that can be used for the protection of civilians and a registry for the delivery of equipment as well as humanitarian and other supplies. Regional emergency commissions will support and complement the civilian protection measures that already form part of the legal obligations of the State,<sup>29</sup> namely activities necessary for evacuation, safety and health. In a resolution of 30 January, a procedure for rendering humanitarian assistance to the population was elaborated which provides for assistance to be distributed through the State administrations of the Donetsk and Luhansk regions in areas controlled by the Government and in areas controlled by armed groups'. While the intention to provide and ensure access to humanitarian assistance without discrimination is a positive signal, no procedures for coordination and delivery to areas controlled by armed groups are elaborated.

83. On 3 February, Parliament adopted a law 'On military-civilian administrations' aimed at ensuring the functioning of local administrations in the conflict area. The law allows the State-appointed regional administrations in Donetsk and Luhansk to nominate civilian and military personnel to run local self-government bodies. This measure applies to territories under the control of the Ukrainian armed forces. It appears to be aimed at making up for the absence of local people to fill local government positions as a result of the ongoing conflict.

*Other legislative and institutional developments*

84. On 9 February, the Kyiv District Court of appeal partially cancelled the Government decision adopted in November 2014 that discontinued pension and social security payments for residents in the areas controlled by armed groups. The court declared illegal the provisions of paragraph 2 which state that "in cities of Donetsk and Luhansk regions where State authorities temporarily cannot exercise or cannot exercise at all their functions, payments from the State budget, budget of the Pension Fund of Ukraine and other budgets of funds of social insurance will be conducted only after the Government regains control over these territories". If after 10 days no appeal is received, the Government will become liable to resume payments and retroactively pay pensions and other social payments suspended since November 2014 when the decision entered into force.

85. On 12 January, President Poroshenko signed a decree 'On the Strategy of sustainable development – Ukraine 2020'. The strategy foresees 62 reforms including on the fight against corruption, decentralization, energy independence, and modernising the judiciary, the public administration and the defence system. A national council on reforms, involving civil society representatives, was established and tasked to submit strategies and other draft documents concerning the administration of justice and legal institutions. Several anti-corruption laws were adopted<sup>30</sup> and the powers of the prosecution were reduced.

86. Under the leadership of the Ministry of Justice, the Government continued working on the development of the national human rights strategy. Upon the request of civil society, the deadline of 1 January 2015 for its adoption was extended until 31 March 2015 to provide additional time for consultations. The elaboration of the strategy has been based on a consultative process involving representatives of the Government, civil society, the Ombudsman's Office, UN agencies and regional organizations. Over a dozen meetings in plenary sessions and sub-working groups were held in December, January and February.

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<sup>28</sup> Resolution No. 18 'On the State Commission on technogenic and environmental security and emergencies'.

<sup>29</sup> See Resolution No. 11 of the Cabinet of Ministers of Ukraine 'On approval of the Regulation on the unified state system of civil protection' (9 January 2014).

<sup>30</sup> See the HRMMU report of 31 October 2014.

### *Lustration law and anti-corruption measures*

87. A government-led working group was established on 12 January 2015 to prepare amendments to the law ‘On the purification of Government’ (lustration law) adopted on 16 September 2014<sup>31</sup>. The ‘lustration’ of public officials was demanded during the Maidan protests to address corruption and human rights violations by officials under the Yanukovich government. Assessment of the law by the Venice Commission revealed several shortcomings, including: an overly broad timeframe for its application; collective guilt by virtue of belonging to a category of public officials; and a lack of fair trial guarantees. By 12 February 2015, 395 high-ranking State officials had been dismissed, including heads and deputies of ministries, government agencies and State bodies at central, regional and local levels. More than 200 decisions have been appealed in court. Eight decisions were confirmed, while three were overturned, leading to reinstatements. The remaining cases are on hold pending a Constitutional Court ruling on the constitutionality of the law<sup>32</sup>.

88. A law ‘On fair trial’ adopted on 12 February aims to improve the impartiality and professionalism of judges. It provides for a complete re-attestation of judges; elaborates in detail procedures for membership of the bodies in charge of appointing, dismissing and initiating disciplinary proceedings against judges; enhances the powers of the Supreme Court as the ultimate cassation authority; and widens the scope of disciplinary proceedings that can be initiated against judges. The provisions are conducive to improving the functioning and independence of the judiciary, however, constitutional changes have been recommended<sup>33</sup> to ensure that judges are elected by their peers rather than by parliament; and to make the lifting of judicial immunity the prerogative of an independent authority rather than parliament.

89. On 31 January, amendments to the lustration law<sup>34</sup> came into force enabling the selective exemption of high ranking military and security officers from the lustration procedure due to the ongoing conflict. At least one case resulted in the reinstatement of a general previously dismissed under the lustration law. The amendment may be abused and carries the risk of exemptions being obtained through corruption or other illicit means.

90. The law establishing a National Anti-Corruption Bureau (NACB) entered into force on 25 January 2015 while legal acts are being adopted for its functioning. The NACB is a specialized law enforcement agency to fight corruption among senior officials, including ministers, judges and heads of public administrations. It can conduct investigations and open criminal proceedings for corruption cases involving more than UAH 600,000. Its creation constitutes a positive development but should be combined with other necessary reforms, including of the courts, which have lacked independence and integrity. The police and the prosecutor’s office remain responsible for investigating corruption cases involving non-senior officials and smaller amounts, despite very limited success in the past.

### *Law on criminal proceedings in absentia*

91. Amendments to the law on criminal proceedings *in absentia*<sup>35</sup> became effective on 31 January. Trials in the absence of the defendant will be possible when a suspect has left the country and for individuals known to be in the area of the security operation or in Crimea. Amendments widen the scope of the law to include parts of Ukraine which the authorities neither have access to nor control. The HRMU notes that the grounds for prosecution in the absence of the accused, as provided for in the law on criminal proceedings *in absentia*, are

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<sup>31</sup> For a description and analysis of the law, see the HRMMU report of 31 October 2014.

<sup>32</sup> Requests to assess the constitutionality of the law was made by the External Intelligence Service of Ukraine (18 October 2014), the Supreme Court of Ukraine (20 November 2014) and 47 deputies (20 January 2015).

<sup>33</sup> See Opinion No. 639/2011 of the Venice Commission of 18 October 2011.

<sup>34</sup> Law No. 132-VIII ‘On Introducing Amendments to the Law of Ukraine on the Purification of Government’ Regarding Additional Measures to Secure the Defense Capabilities of the State’.

<sup>35</sup> The law was analysed in the HRMMU report of 31 October 2014.

very wide<sup>36</sup>, making possible a frequent resort to this procedure. International law recognizes the right of the accused to be present in person at trial<sup>37</sup>.

## VII. HUMAN RIGHTS IN THE AUTONOMOUS REPUBLIC OF CRIMEA

92. Political pressure and intimidation continued against Crimean residents opposing the *de facto* authorities in Crimea and in particular Crimean Tatars and human rights activists. In addition, for the first time, the *de facto* authorities in Crimea have opened legal proceedings in relation to incidents that occurred prior to the March ‘referendum’ in application of Russian laws in the Autonomous Republic of Crimea, contrary to General Assembly resolution 68/262 on the territorial integrity of Ukraine. The exercise of the rights to freedom of opinion and expression and of peaceful assembly continued to be curtailed while registration requirements imposed limitations on the exercise of freedom of religion or belief.

93. The *de facto* authorities in Crimea started legal actions in relation to the events of 26 February 2014 when supporters of Ukraine’s territorial integrity, mostly Crimean Tatars, and pro-Russia demonstrators, clashed in front of Crimea’s parliament building. Two individuals died in the scuffles and about 30 were injured. On the following day, armed men took over Crimea’s parliament. On 29 January 2015, the Crimean police arrested the Deputy Chairman of the Crimean Tatar Mejlis, Akhtem Chiigoz, who took part in the demonstrations. A Simferopol court ordered his detention until 19 February and later extended it until 19 May. Mr Chiigoz is accused under article 212 of the Criminal Code of the Russian Federation (Organization and participation in mass disturbances), which carries a maximum prison sentence of 10 years. On 7 February another Crimean Tatar, Eskender Kantemirov, was detained and accused under the same charges. On 8 February, a court placed him in pre-trial detention for two months.

94. On 26 January 2015, armed masked men raided the premises of the Crimean Tatar TV channel ATR. Equipment was confiscated and some staff members were detained for several hours. According to Crimea’s prosecution office, the channel had been warned against violating the Russian Federation law on extremist activities. Sources within ATR stated that the searches involved video materials related to the events of 26 February 2014.

95. The *de facto* authorities in Crimea started legal proceedings in relation to Crimean participants of the Maidan events. On 8 February, Oleksandr Kostenko was remanded in custody for two months accused under article 115 of the Criminal Code of the Russian Federation<sup>38</sup> of having injured a Berkut special police officer during demonstrations in Kyiv. In this case, as well as the case involving the deputy chairman of the Mejlis, legal proceedings relate to events preceding the March ‘referendum’ and the *de facto* application of Russian legislation in Crimea. This seems to be against article 15(1) of the ICCPR, which states that “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”

96. A Crimean Tatar activist, Edem Osmanov, was arrested by the Crimean police on 19 January 2015 in connection with the events of 3 May 2014 when thousands of Crimean Tatars

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<sup>36</sup> The law allows trial *in absentia* for: overthrow of the constitutional order; violation of territorial integrity or its financing; high treason; attempt against the life of a statesman; sabotage; espionage; murder and corruption.

<sup>37</sup> Proceedings *in absentia* are in some circumstances (for instance, when the accused person, although informed of the proceedings sufficiently in advance, declines to exercise their right to be present) permissible in the interest of the proper administration of justice (See Daniel Monguya Mbenge v. Zaire, Communication No. 16/1977, U.N. Doc. CCPR/C/OP/2 at 76 (1990))

<sup>38</sup> Article 115 concerns “deliberate infliction of mild damage to health for motives of political, ideological, racial, ethnic or religious hatred or enmity, or hatred or enmity in relation to a social group”.



came to the administrative border with Ukraine to greet the former head of the Crimean Tatar Mejlis, Mustafa Jemilev, who had been banned from entering Crimea by the *de facto* authorities on 22 April 2014. A tense standoff with the Crimean police ensued, with the Crimean Tatars briefly blocking a few roads. A court placed Mr Osmanov in pre-trial detention for two months. He is the fifth Crimean Tatar activist detained in relation to these events since October 2014 on charges of using force against a police officer<sup>39</sup> despite eyewitness reports that the action was largely peaceful.

97. On 25 December 2014, Gennady Afanasiev was sentenced to seven years imprisonment by a Moscow city court. Together with Ukrainian film director Oleh Sentsov and pro-Ukrainian activists Oleksandr Kolchenko and Oleksii Chorny, he was arrested in May 2014 in Simferopol, accused of a ‘terrorist plot’, and later transferred to a pre-trial detention centre in Moscow. Mr Afanasiev had confessed to the charges while in police custody in Simferopol without access to family or a lawyer. On 28 January, a court in Simferopol refused Oleksandr Kolchenko’s request to keep his Ukrainian citizenship. It stated that he had applied for Russian citizenship, a claim denied by his lawyer. On 3 February, in addition to the accusation that he organized a ‘terrorist plot’, Oleh Sentsov was also charged with illegal possession of weapons under article 222-3 of the Criminal Code of the Russian Federation (unlawfully obtaining, selling, possessing weapons, explosive substances and devices).

98. Intimidation of civil society activists has continued over the reporting period. On 23 January 2015, Sinaver Kadyrov, Eskender Bariiev and Abmedzhit Suleimanov, three coordinators of the Committee on the Protection of the Rights of the Crimean Tatar people, a Crimea-based NGO, were stopped by Russian border guards as they were crossing the administrative boundary line with mainland Ukraine. After being interrogated by FSB officials, two were released but Mr Kadyrov was detained and taken to a court, which fined him and ordered his deportation from Crimea for “violating migration legislation and the passport regime”. On 17 January 2015, the three had organized a conference in Simferopol that adopted a resolution calling on the Ukrainian authorities and the international community to protect the Crimean Tatar people. In December 2014, they had tried unsuccessfully to hold a public event on Human Rights Day.

99. On 23 January, officials of the Federal Security Service (FSB) arrested three Crimean Tatars near Simferopol on suspicion of belonging to Hizb ut-Tahrir, a religious organization banned in the Russian Federation for extremism. Their arrest followed searches of their houses. They were placed in pre-trial detention for two months in accordance with article 205-5 of the Criminal Code of the Russian Federation (planning and participation in the activities of a terrorist organization). These are the first cases known to the HRMU of charges for belonging to a banned religious organization since the March ‘referendum’.

100. On 30 January, the Crimean ‘head’ adopted a decree enacting a ‘Comprehensive Plan to counter the terrorist ideology in the Republic of Crimea for the period 2015 to 2018’ developed on the basis of an analogous document of the Russian Federation. The plan aims to ‘effectively decrease the threat of terrorism’ through measures designed to prevent the radicalization of various population groups, ‘in particular the youth’. The measures include identifying people who participated in the armed conflicts in the northern Caucasus of the Russian Federation and other states, including Syria and Ukraine; disseminated terrorist and extremist ideology and information discrediting the Russian Federation; or are members of non-traditional religious organizations and sects. Other measures include terrorism prevention programmes in the media and educational spheres, and activities to promote tolerance, inter-ethnic and religious harmony.

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<sup>39</sup> The other four were remanded in custody for two months in October 2014 and released in December but are still facing charges of using force against a police officer.



101. Freedom of peaceful assembly continued to be restricted by actions of the *de facto* authorities in Crimea. The Committee on the Protection of the Rights of the Crimean Tatars, a Crimean NGO, was prohibited by the *de facto* authorities of the city of Simferopol from holding an event to mark Human Rights Day (10 December) on the grounds that it could block public transportation and access to public buildings as well as “constitute a real threat to the life and health of the population”. An appeal against the ban was rejected and the organizers notified the Simferopol city administration about a planned protest rally instead, also on 10 December. This notification was also rejected and the protest could not go ahead due to a strong police presence. At a press conference later that day, members of the Committee were doused in green paint by a group of young men. The police did not investigate the incident.

102. The Ukrainian authorities restricted the movement of people to and from Crimea. On 26 December 2014 train and bus connections from mainland Ukraine into Crimea were stopped. The decisions of the Railway Transport of Ukraine (‘Ukrzaliznytsia’) and the State Inspection on Safety of Overland Transport mentioned the need ‘to ensure the safety of passengers’ and to prevent the penetration of ‘subversive groups’ from the peninsula. Passenger cars and trucks are still allowed to move in and out of Crimea. However, this situation has created very long lines of vehicles. There are reports of people needing to walk through the two custom services and border guard check-points, which are separated by a five kilometre-long ‘security area’, by foot. Suspension of bus and train connections particularly affects older persons and those with disabilities, who used to travel by train to the mainland.

103. Religious communities in Crimea currently operate based on Ukrainian registration, which the *de facto* authorities in Crimea have neither recognized nor formally denounced. Russian Federation law requires religious communities and civil society organizations to register by 1 March 2015. Registration is essential to open a bank account or rent premises and is a pre-condition for inviting foreign citizens. Non-registration of the Roman Catholic Church in Crimea has led to the departure of a Polish priest and nuns of the Roman Catholic parish in Simferopol after their Ukrainian resident permits expired in late 2014. Similarly, 23 Turkish imams residing in Crimea under a 20-year-old programme with the Crimean Tatar Mejlis had to leave due to non-registration of the Mejlis under Russian law. This situation, and instances of police raids on places of worship, has created anxiety among religious communities and questions the commitment of the *de facto* authorities in Crimea to the protection of the right to freedom of religion or belief.

## **VIII. CONCLUSIONS AND RECOMMENDATIONS**

104. In view of the serious escalation of the conflict in eastern Ukraine since January and its devastating impact on civilians caught in indiscriminate shelling and other hostilities, it is essential that the fighting be brought to an end without further delay. Credible reports indicate a continuing influx of heavy and sophisticated weaponry to armed groups in the Donetsk and Luhansk regions, as well as foreign fighters, including from the Russian Federation. This has fuelled the escalation of the conflict and new offensives by armed groups, undermining the potential for peace as armed groups extend their areas of control. This has resulted in further and significant increases in civilian and military casualties. All parties to the conflict must implement fully the provisions established under the Minsk agreement including: a new ceasefire to have entered into force from 15 February; the withdrawal of heavy weaponry by both sides to create a 50-140km security zone; the withdrawal of foreign armed formations, mercenaries and weapons from the territory of Ukraine; and the reinstatement of full control of the state border by the Government of Ukraine throughout the conflict area.

105. Travel restrictions imposed by the Government of Ukraine on movement across the line of contact have created new threats to civilians in affected areas already in extremely precarious situations, adding to their vulnerability. Assumptions that those who remain on territory controlled by armed groups have made their choice to remain, are worrying and misguided. Many of those who remain do so in fear for their lives due to indiscriminate shelling of homes and evacuation routes, to protect children or other family members, or lack the physical means to leave, including elderly persons, those with disabilities and others. All of those who remain have a right to protection according to international human rights and humanitarian law, which must be respected for all, by all relevant authorities, everywhere.

106. Despite previous warnings that continuing conflict in eastern Ukraine could potentially result in new waves of internally displaced persons, national responses to new displacement over the reporting period remained inadequate, unprepared and largely in the hands of volunteers and humanitarian organizations. The Government must do more to meet the needs of internally displaced persons, in conformity with their rights under international standards, including to ensure winterized accommodation in locations preferred by IDPs, provision of social benefits, and ensuring all their basic needs are met. It is essential to recognize that for many, displacement is likely to be protracted and that durable solutions with regard to housing, employment and integration must be promptly put in place.

107. The impact of the conflict on the economic and social rights of civilians is massive and long-term. All parties to the conflict should strive to guarantee economic and social rights as required by international human rights law and to minimize the restriction of access to basic social services, including health, education, social security as well as access to housing. Interruption of access to such services could have life-threatening or life-long impact on a large portion of the population and would hinder post-conflict recovery of the society. In times of resource constraint, it is essential to mobilize maximum available resources and avoid retrogressive measures.

108. OHCHR continues to appreciate the cooperation extended by the Government of Ukraine to the HRMU during the reporting period. The HRMU will continue to monitor and report on the evolving situation with a view to contributing to an unbiased and accurate assessment of the human rights situation throughout Ukraine. It will work closely with the Government and other national, regional and international actors, including the United Nations system, and will endeavour to assist all actors to fulfil their commitments with respect to international human rights and humanitarian law.

109. While all previous recommendations contained in OHCHR reports issued since 15 April 2014 remain valid, OHCHR calls upon all those involved in the conflict in Ukraine to implement the following recommendations:

- a) Guarantee efforts to abide by and implement the Minsk agreement to end the conflict in the Donbas region and urgently bring an end to the fighting and violence in all localities.
- b) Ensure the protection of civilians in conflict affected regions in full conformity with international human rights and humanitarian law, including an immediate end to indiscriminate shelling of populated areas that puts civilians at risk.
- c) Ensure free and unimpeded access for humanitarian actors to all necessary areas as well as the rapid and non-discriminatory delivery of humanitarian assistance, while adhering to international norms and ensuring the protection of humanitarian actors.
- d) Lift restrictions on free movement across the line of contact on the grounds of security to ensure that civilians wishing to leave conflict affected areas can do so promptly and safely without undue restrictions or delays that may put them at risk due to indiscriminate shelling and attacks at checkpoints.

- e) Enhance evacuation measures, including for those in institutional facilities, to ensure that all individuals wishing to leave conflict affected areas have access to information, transport and essential needs. Respect ceasefire agreements to ensure the safe and voluntary evacuation of civilians.
- f) Provide all necessary assistance to internally displaced persons according to international standards such as the Guiding Principles on Internally Displaced Persons, including with regard to their freedom of movement and the need for durable solutions.
- g) Release all those unlawfully or arbitrarily detained without delay and in conditions of safety. Treat all detainees, civilian or military humanely and according to international human rights and humanitarian law and standards, including those regarding women in detention.
- h) Investigate and prosecute according to law any person found to be responsible for serious human rights violations, including torture and other cruel, degrading or inhumane treatment or punishment of detainees, summary or arbitrary execution, or enforced or involuntary disappearance, including those with command responsibility.
- i) Mechanism for the reporting of violence against women should be established and referral and support systems put in place to ensure the protection of women and girls who may be highly vulnerable to sexually-based or other forms of violence, trafficking and prostitution as a means of survival and ensure prompt investigation of all cases.
- j) Ensure the protection of family unity and that wherever possible children are not separated from their parents, including in the context of evacuation of civilians.
- k) Implement measures in the field of education to ensure to the fullest extent possible that students, including those living in areas controlled by armed groups, who wish to do so, may continue their education, sit exams and obtain Ukrainian diplomas and certificates.
- l) Ensure freedom of the media and the liberty, security and rights of journalists to freely conduct their legitimate professional activities.
- m) Guarantee the rights to freedom of peaceful assembly, freedom of opinion and expression and freedom of association for those legitimately protesting, including for those who object to military mobilization.
- n) Law-enforcement agencies should ensure prompt and effective investigation of crimes motivated by ethnic or religious hatred, including desecration of property and places of worship and acts of violence.

110. With regard to the situation in the Autonomous Republic of Crimea, OHCHR notes a continuing deterioration of the human rights situation for some persons belonging to the Crimean Tatar indigenous group, in particular political and human rights activists and community leaders. Measures have been implemented that undermine the legitimate rights of this and other communities, including freedom of religion or belief and freedom of association and peaceful assembly, and the rights of minorities. To the *de facto* authorities in Crimea and to the Russian Federation, OHCHR makes the following recommendations:

- o) Review of the judicial legitimacy of criminal cases brought against Crimean Tatar leaders and activists and deportations of some leaders should be conducted to answer challenges that cases are politically motivated.
- p) Freedom of religion or belief should be fully respected and protected, including the right of religious communities to freely function without undue administrative or legislative hindrance, harassment or other restrictions, including by law enforcement bodies.

- q) The right to freedom of peaceful assembly and association should be fully restored and measures should be taken to protect that right in practice and to ensure that organizations may hold events including commemorations and demonstrations freely and without hindrance.

# Annex 768

OHCHR, Report on the Human Rights Situation in Ukraine (16 February–15 May 2015)





**Office of the United Nations High Commissioner  
for Human Rights**

**Report on the human rights situation in Ukraine  
16 February to 15 May 2015**

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## I. EXECUTIVE SUMMARY

1. This is the tenth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine, based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)<sup>1</sup>. It covers the period from 16 February to 15 May 2015.

2. The reporting period covers the time span that marked one year since the events which had dramatic impact on the human rights situation in Ukraine and which have triggered its subsequent deterioration: February 2014 events at Maidan; the so-called ‘referendum’ in the Autonomous Republic of Crimea of 16 March; the start of the Government’s security operation in the eastern regions of Donetsk and Luhansk on 14 April to re-gain control of territory and buildings seized by the armed groups in March and April 2014, which was met with resistance and reportedly bolstered by the influx of foreign fighters and weapons from the Russian Federation; the violence on 2 May in Odesa; and the so-called ‘referendums’ on self-rule in Donetsk and Luhansk regions on 11 May, which contravened the Constitution of Ukraine and international norms and standards.<sup>2</sup>

3. For more than a year, the lack of protection and justice for victims and the impunity of perpetrators have prevailed in Ukraine. Accountability for gross human rights violations committed during the Maidan protests, in which at least 104 demonstrators and 13 law enforcement officers were killed, and in the 2 May violence in Odesa, when 48 persons died, is pending. No perpetrators have been brought to justice, and the investigation into these cases remains slow. Though the Office of the Prosecutor General claimed that it had identified all senior Government officials involved in decision making during Maidan events, no one is informed that they are a suspect in the case. Only seven people suspected of killing protestors on 18-20 February 2014 have been detained so far with two of them being tried. Investigations in Odesa by the Ministry of Internal Affairs and the Office of the Prosecutor General are widely believed to be unreliable, particularly because of the inability or unwillingness of law enforcement bodies to bring to justice those responsible for the violence. The prosecution of perpetrators is also reportedly hampered by the fact that some of them have fled Ukraine.

4. Collapse of law and order on the territories controlled by the self-proclaimed ‘Donetsk people’s republic’<sup>3</sup> and the self-proclaimed ‘Luhansk people’s republic’<sup>4</sup> continued to be aggravated by on-going armed hostilities between the Ukrainian armed forces and armed groups. The hostilities continue to be accompanied by violations of international humanitarian law and have had a devastating impact on the overall enjoyment of human rights by an estimated five million people living in the area. In places directly affected by the fighting, such as Debaltseve, Donetsk and Horlivka, people pleaded to the HRMMU: “*we just want peace*”.

5. The current ceasefire in eastern Ukraine is not fully respected. Agreed upon on 12 February 2015 as part of a Package of Measures for the Implementation of the Minsk Agreements with participation of representatives of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’, it entered into force on 15 February. The Package also foresees the withdrawal of heavy weaponry from the contact line; the establishment of a 50-140 km security zone; the withdrawal of illegal and foreign armed formations from the territory of

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<sup>1</sup> The HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address emerging human rights issues. For more details, see paragraphs 7-8 of the report of the UN High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

<sup>2</sup> For more details on these events, see paragraphs 3-6 and 9-10 of the abovementioned report.

<sup>3</sup> Henceforth referred to as the ‘Donetsk people’s republic’.

<sup>4</sup> Henceforth referred to as the ‘Luhansk people’s republic’.

Ukraine; and an ‘all for all’ release of “hostages and unlawfully detained persons”. On 17 February, by resolution 2202 (2015), the Security Council called on all parties to the conflict to fully implement the Package. On 17 March, the Parliament of Ukraine adopted a resolution approving the application to the Security Council and the Council of the European Union about deployment of the international peacekeeping and security operation in Ukraine.

6. In the days following the abovementioned agreement on a ceasefire, attacks by the armed groups against Ukrainian troops continued around the town of Debaltseve (Donetsk region) until 19 February causing new casualties among the remaining civilian population which had already spent several weeks in basements. Between 19 February and 10 April, the ceasefire was generally upheld, though isolated skirmishes and clashes were reported daily. While some areas in the conflict zone have remained calm, such as the city of Luhansk, others have become the scenes of escalating hostilities since 11 April<sup>5</sup>. The vicinity of Donetsk airport and the contested village of Shyrokyne (Donetsk region) remained the major flashpoints where heavy weapons were intensively used. Reports of sophisticated heavy weaponry and fighters being supplied from the Russian Federation persisted.

7. The overall decrease in indiscriminate shelling of populated areas after 15 February resulted in a decrease in civilian casualties. Casualties of Ukrainian armed forces and armed groups continued to grow. In total, since the beginning of the hostilities in mid-April 2014 until 15 May 2015, at least 6,362 people (including at least 625 women and girls) were documented as killed and 15,775 as wounded in the conflict area of eastern Ukraine<sup>6</sup>. Many people remain missing; bodies continue to be recovered.

8. Serious human rights abuses, intimidation and harassment of the local population perpetrated by the armed groups continued to be reported. The HRMMU received new allegations of killings, torture and ill-treatment, as well as cases of illegal deprivation of liberty, forced labour, looting, ransom demands and extortion of money on the territories controlled by the armed groups. Persecution and intimidation of people suspected of supporting the Ukrainian armed forces or being pro-Ukrainian remained widespread. At times, the armed groups did not permit the HRMMU to access areas where violations of human rights have reportedly been taking place, or it was not possible for security reasons.

9. The armed groups and the so-called ‘governance structures’ of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ are accountable for human rights abuses committed on territories under their control. Steps taken by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to establish their own ‘legislative’ frameworks and systems of ‘administration of justice’ (‘police’, ‘prosecutors’ and ‘courts’) are contrary to the Constitution of Ukraine and international law, and jeopardize the Minsk Agreements.

10. Residents of the territories controlled by the armed groups continued to be increasingly isolated from the rest of Ukraine since the so-called 2 November ‘elections’ held by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ at variance with provisions of the Minsk Agreements and the Constitution of Ukraine due to the subsequent decisions of the Government of Ukraine to temporarily relocate all State institutions and organisations from these territories and to stop allocations and disbursements (including social payments) to the institutions and individuals located there<sup>7</sup>. On 17 April, the

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<sup>5</sup> Such as Avdiivka, Dokuchaivsk, Donetsk, Horlivka, Hranitne, Krasnohorivka, Krymske, Luhanske, Olenivka, Opytne, Pisky, Popasna, Shchastia, Shyrokyne, Slovianoserbsk, Spartak, Stanychno Luhanske, Svitlodarsk, Vesele, Vodiane, Volnovakha, Yasynuvata and Zolote.

<sup>6</sup> This is a conservative estimate by the HRMMU and WHO, based on available official data. It is believed that casualties have been under reported and that the actual number is higher.

<sup>7</sup> For more details, see paragraph 12 of 8<sup>th</sup> HRMMU report.



Parliament of Ukraine recognized these territories as “temporarily occupied”. The situation of the most vulnerable, particularly older persons, persons with disabilities, families with children and people in institutional care, remains dire with many of them having no source of income or being deprived of access to basic social services. In early April, reports emerged of some pensions and salaries being paid in Russian roubles by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’.

11. The permit system introduced through a Temporary Order on 21 January by the Security Service of Ukraine continued to significantly limit the freedom of movement across the contact line. It was even the case during the height of hostilities in February as many tried to leave the conflict zone. Those seeking to obtain permits face corrupt practices and delays of up to three months. International and national organizations have advocated for the revision of the permit system with no avail to date.

12. The safety and security of journalists remained precarious in the conflict zone with several of them killed during the reporting period. The armed groups continued to limit freedom of expression and impede the work of media professionals on the territories they control. The Government of Ukraine identified over 100 media outlets (including TV channels, information agencies, newspapers and Internet resources) from the Russian Federation that are not allowed anymore to attend press events of the state bodies until the end of the security operation.

13. The HRMMU is concerned that the efforts of the Government to safeguard territorial integrity of Ukraine and to restore law and order in the conflict zone continue to be accompanied by persistent allegations of arbitrary and secret detentions and enforced disappearances of people suspected of separatism or terrorism. The HRMMU continued to receive allegations of ill-treatment and torture of people detained by the Ukrainian armed forces and law enforcement agencies. It is also concerned that investigations into allegations of gross human rights violations by the Ukrainian military and law enforcement personnel have yet to be carried out.

14. More than 1.2 million people internally displaced since the beginning of the conflict suffer from impeded access to healthcare, housing and employment. The proliferation of arms, the lack of job opportunities, limited access to medical care and psycho-social services for demobilised soldiers and a deep anxiety that the ceasefire may not hold have a serious impact on the population and the prospects for reconciliation. Further deterioration of the overall economic and financial situation is affecting the whole population of Ukraine.

15. On 3 March, the President established a Constitutional Commission to elaborate amendments to the Constitution of Ukraine on the basis of broad public consultations. Three working groups started their work in April to outline proposals related to the functioning of the State and its institutions, decentralization, self-government, fundamental freedoms and human rights. On 26 April, amendments to the laws on the judiciary were adopted, *inter alia*, to strengthen the role of the Supreme Court as the guarantor of the unity of the jurisprudence.

16. On 15 May, the President of Ukraine signed a package of four laws which denounce Communist and Nazi regimes as “criminal under the law”, ban propaganda in their favour and all public display of their symbols. They also require replacing communist-inspired names for cities, streets, squares and other places and providing for public recognition to all those who “fought for Ukrainian independence in the twentieth century”. The HRMMU notes that there is a serious risk that some provisions of the package could limit the freedom of expression and deepen divisions in society.

17. Despite the many challenges that the Government of Ukraine faces, there has been some progress in reforms concerning business deregulation, state procurement, education and anti-corruption. On 18 March, a National Agency on the Prevention of Corruption was

created to conduct the mandatory e-declaration of incomes and expenditures of all public officials. On 16 April, the Director of the National Anti-Corruption Bureau, a body which will conduct investigation into crimes committed by high level public officials, including judges and prosecutors, was appointed by the President.

18. The situation in the Autonomous Republic of Crimea<sup>8</sup>, the status of which is prescribed by General Assembly resolution 68/262, continued to be characterized by human rights violations committed by the *de facto* authorities applying the laws of the Russian Federation. The HRMMU was informed about the ill-treatment and torture of a detained former Maidan activist by or with the acquiescence of Crimean ‘law enforcement’. Harassment and arrests of Crimean Tatars and other ‘pro-unity’ supporters continued. A ‘court’ ordered corrective labour for three Crimean activists after they unfurled a Ukrainian flag with the inscription “Crimea is Ukraine” during an authorized rally to commemorate the anniversary of the national poet Taras Shevchenko.

19. Control of the media in Crimea was tightened. At least seven media outlets using Crimean Tatar language, including a TV station and a newspaper, which are most popular among the Crimean Tatar community, were denied re-registration under the law of the Russian Federation and have ceased operating. Freedom of religion has been jeopardized by limitations resulting from re-registration requirements. Only 51 religious communities currently have a legal status under the law of the Russian Federation compared to over 1,400 under the law of Ukraine before the March 2014 ‘referendum’. The situation of some vulnerable groups, such as people with drug addiction, is dramatic. About 800 of them are currently without life-saving opioid-substitution therapy and up to 30 have died since March 2014. Treatment provided is inadequate as it involves simple detoxification and, occasionally, a follow-up rehabilitation.

## **II. RIGHTS TO LIFE, LIBERTY, SECURITY AND PHYSICAL INTEGRITY**

### **A. Armed hostilities**

20. The entry into force of a ceasefire as of 15 February 2015 which was part of the Package of Measures for the Implementation of Minsk Agreements of 12 February led to a considerable decrease in the intensity and geographic scope of hostilities in eastern Ukraine, except for the vicinity of the town of Debaltseve (Donetsk region), where several thousand Ukrainian armed forces remained under sustained attack by the armed groups. On 18 February, Ukrainian units were ordered to withdraw from the Debaltseve area. On 17 March, the Parliament of Ukraine adopted a resolution on the approval of an application to the United Nations Security Council and the Council of the European Union about deployment of the international peacekeeping and security operation to Ukraine.

21. Between 19 February and 10 April, the ceasefire was generally upheld, although isolated clashes were reported, mainly through the use of small arms, grenade launchers and mortars<sup>9</sup>. This was to a considerable extent due to the withdrawal of heavy weapons from the contact line, which the Government of Ukraine and the armed groups claimed to have completed by beginning of March, but which the OSCE Special Monitoring Mission (SMM)

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<sup>8</sup> Henceforth referred to as Crimea.

<sup>9</sup> The locations where ceasefire violations were reported most frequently: Avdiivka, Dokuchaivsk, Donetsk, Horlivka, Hranitne, Krasnohorivka, Krymske, Luhanske, Olenivka, Opytne, Pisky, Popasna, Shchastia, Shyrokyne, Stanychno Luhanske, Slovianoserbsk, Spartak, Svitlodarsk, Vesele, Vodiane, Volnovakha, Yasynuvata, Zolote and the area of Donetsk airport.

was unable to fully verify due to the lack of access to certain locations. Reports of sophisticated heavy weaponry and fighters being supplied from the Russian Federation persisted.

22. Between 11 and 15 April, fighting considerably escalated in the vicinity of the Donetsk airport and near the contested village of Shyrokyne (Donetsk region), where the use of heavy weapons, including mortars, artillery and tanks, resumed. On 13 April alone, the Ukrainian armed forces reported six soldiers killed and 12 wounded, while the armed groups of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ claimed four of their members killed and 17 wounded. Further escalation occurred from 3 to 8 May. On 3 May, two Ukrainian soldiers were reported killed and three wounded, while the armed groups claimed three of their members killed and six wounded.

23. On 25 March, the Head of the Security Service of Ukraine (SBU) said that members of armed formations “which do not want to join the Armed Forces, Ministry of Internal Affairs, National Guard or SBU shall forfeit arms and choose another mode of operation – to leave the security operation zone and, moreover, not create or participate in any illegal military or paramilitary formations”. On 30 March, the ‘heads’ of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ issued ‘decrees’, which obliged all persons not belonging to ‘official’ military or law enforcement units to forfeit all their weaponry by 4 April, announcing that those who would not comply would be considered as “members of illegal gangs”, “forcefully disarmed” and “brought to criminal responsibility”.

24. In other areas of Ukraine, security continued to be challenged by explosions. On 22 February, an explosive device killed three people and wounded 15 in the city Kharkiv during a rally. The SBU reported the arrest of possible perpetrators. On the night of 12 March, an explosion near the office of the political party *Samopomich* occurred in Odesa. No casualties were reported. The Ministry of Internal Affairs qualified both incidents as terrorist acts. On 30 and 31 March, two explosions occurred at railway stations near the city of Kharkiv (with no casualties), bringing the total number of such incidents in the region to more than 45 since July 2014.

## **B. Casualties**

25. Since the beginning of the hostilities in mid-April 2014 until 15 May 2015, at least 6,362 people (including at least 625 women and girls) were documented as killed and at least 15,775 as wounded in the conflict area of eastern Ukraine<sup>10</sup>.

26. Even with the decrease in hostilities, civilians continued to be killed and wounded. On 22 February, an artillery shell killed three civilians in the Government-controlled town of Avdiivka (Donetsk region). On 4 March, a woman was killed when her apartment was hit by a shell during a mortar attack on Avdiivka. During the night from 28 to 29 April, a man was reported killed and a woman wounded by shelling of the city of Horlivka controlled by the armed groups (Donetsk region). On 22 February, three civil volunteers were reportedly killed by a mine blast on the route between the town of Debaltseve controlled by the armed groups (Donetsk region) and the Government-controlled town of Artemivsk (Donetsk region). On 29 April, a civilian was wounded after stepping on a booby trap near the Government-controlled village of Zolote (Luhansk region). On 31 March, the Ministry of Health stated that “starting from March 2014, at least 109 children were heavily wounded and 42 killed as a result of

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<sup>10</sup> As in previous reports, these are conservative estimates by the HRMMU and the World Health Organization based on the available official data. The number includes casualties among the Ukrainian armed forces as reported by the Ukrainian authorities; casualties reported by civil medical establishments of the Donetsk and Luhansk regions (civilians and some members of the armed groups, without distinguishing among them), and the 298 casualties from flight MH-17. The actual number of fatalities is probably higher.

tripping landmines and explosive objects, which remained from the armed hostilities in Donetsk and Luhansk regions” (referring to Government-controlled territories<sup>11</sup>).

27. On 8 May, President Poroshenko stated that 1,675 Ukrainian soldiers had been killed since the beginning of the conflict; meanwhile according to *Knyga Pamyati* (Book of Memory), a civil initiative, which cooperates with the Ministry of Defence, 1,926 soldiers had been killed prior to 12 February 2015. As of 18 April, 222 unidentified bodies (presumed to be mainly those of soldiers) were reported to be held in morgues of Dnipropetrovsk region. Also, 170 bodies of Ukrainian soldiers had been buried, of which only 47 were identified.

28. Recovery of the bodies of those killed (both military and civilian) continued on the conflict-affected territories. Between January and March 2015, the NGO *Soyuz ‘Narodnaya Pamiat’* (People’s Memory Union) reported recovering 340 bodies, mainly of Ukrainian soldiers, from the conflict area. By 7 May, the total number of bodies recovered by the Union since 5 September 2014 had reached 560, mainly from those areas of the Donetsk region, which are controlled by the armed groups. The search for bodies in former areas of hostilities in the Luhansk region, which are currently under the control of the ‘Luhansk people’s republic’, is still pending.

#### *Missing persons*

29. The absence of a unified database of missing persons in the east of Ukraine since mid-April 2014 makes it difficult to estimate their number. By 10 May, the open database of the Ministry of Internal Affairs contained the names of 1,331 people (1,218 men and 113 women) who went missing on the “territory of the anti-terrorist operation”<sup>12</sup>. On 6 May, the representative of Ukraine in the Trilateral Contact Group stated that 1,460 people were considered to be missing. As of 8 May, the database of the NGO *Mirnyi Bereg* included data on 378 missing Ukrainian soldiers and 216 missing civilians. The HRMMU notes that Governmental bodies do not effectively coordinate their activities related to the search of missing persons, both among themselves and with various civil initiatives.

### **C. Alleged summary, extrajudicial or arbitrary executions**

#### *By the armed groups*

30. During the reporting period, the HRMMU became aware of new allegations of summary executions of people in the captivity of the armed groups. Some of these allegations have been supported by testimonies of witnesses and by forensic examinations and photographic materials.

31. The HRMMU interviewed a number of witnesses and relatives in the case of Ukrainian soldier Ihor Branovytskyi, who was allegedly summarily executed on 21 January while in captivity of the armed groups of the ‘Donetsk people’s republic’. According to them, when the Ukrainian military retreated from the Donetsk airport, a group of 12 soldiers, including Mr. Branovytskyi, was captured by the armed groups of the ‘Donetsk people’s republic’. En route to the former SBU premises in Donetsk, members of the armed groups took the captives to the former military base currently used by the so-called ‘Sparta battalion’. They were reportedly beaten and subjected to interrogation under torture and ill-treatment. All captives were allegedly lined up along a wall and beaten one after the other for a few hours by some 20 people with metal pipes, wooden batons and butts of rifles. Perpetrators were reportedly looking for a machine gunner and when Mr. Branovytskyi said that he was the one they were looking for, he was separated from the other captives, beaten with a blunt

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<sup>11</sup> There is no available numbers of civilians killed or wounded by mines and unexploded ordnance on the territories controlled by the armed groups.

<sup>12</sup> Whereabouts of some of these people have been already established, but their names have not been removed from the list.



hard object and sustained shot wounds with a traumatic gun, according to a forensic examination received by the HRMMU<sup>13</sup>. After Mr. Branovytskyi collapsed and fainted, the commander of ‘Sparta battalion’<sup>14</sup> reportedly refused to call an ambulance and fired two shots in the head of the victim. In addition to physical torture and ill-treatment, the other captives were also subjected to mock executions with members of the ‘Sparta battalion’ firing shots above their heads.

32. On 8 May, the HRMMU interviewed a Ukrainian soldier, who was released by the armed groups of ‘Donetsk people’s republic’ the previous day. He was one from the group of seven captured soldiers, two of whom were wounded. Five of them, including the interlocutor, were kept in one dug-out shelter, while one wounded soldier was in the other dug-out shelter and the other wounded – in a trench. The interlocutor heard a number of shots fired by the members of the armed groups. When passing by those places, he saw these two soldiers lying on the ground showing no sign of life. The remaining soldiers were forced into a hole, which was allegedly a shell crater, where they remained for some time, until members of the so-called ‘international Piatnashki battalion’ took one of them out. The interlocutor heard a shot accompanied with scream and a second shot shortly thereafter. When four captives were leaving the hole, the interlocutor saw the soldier lying on the ground with blood on his back. The HRMMU is examining this case.

33. In February and March, nine Ukrainian soldiers captured by the armed groups in the village of Krasnyi Partyzan (Donetsk region) on 22 January were released. Some of them confirmed earlier allegations of the summary execution of four of their fellow soldiers<sup>15</sup>. In April, the HRMMU was provided with photographs of a Ukrainian soldier whose body was delivered to Dnipropetrovsk morgue on either 20 or 21 February. The body had visible signs of torture and execution (two bullet marks on the face shot from a very close range and a cut throat). The HRMMU is examining these cases.

#### *By the Government forces*

34. In April, the HRMMU received information about bodies of two members of the armed groups exhumed in autumn 2014 near the former checkpoint of Ukrainian armed forces (on the territory then controlled by the armed groups) with their hands tied behind their back and gunshots to the heads. Another case confidentially reported to the HRMMU was that of a member of the armed groups who was beaten to death while detained at a Ukrainian army checkpoint in autumn 2014. The HRMMU works to verify these allegations.

### **D. Illegal and arbitrary detention, and torture and ill-treatment**

#### *By the armed groups*

35. Estimates of the number of people held by armed groups vary continuously, notably due to the evolving pattern of continued abductions and releases. People held by armed groups are mostly Ukrainian soldiers, civilians suspected of ‘espionage’ or ‘pro-unity’ sympathies, civilians suspected of criminal activities<sup>16</sup> and members of the armed groups

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<sup>13</sup> According to the forensic examination, he had multiple bone fractures and bruises all over his body.

<sup>14</sup> Arsenii Pavlov (call sign Motorola).

<sup>15</sup> As previously reported by the HRMMU (paragraph 3 of the 9<sup>th</sup> report), on 24 January 2015, the armed groups claimed control over the settlement of Krasnyi Partyzan (30 km north of Donetsk). The video footage made by the armed groups soon after the fight for the settlement was disseminated through social media and gave grounds to allege the execution of several Ukrainian soldiers taken captive in the village.

<sup>16</sup> According to the ‘head of investigation department of the ministry of internal affairs’ of the ‘Luhansk people’s republic’ (interviewed by the HRMMU on 1 May), in February and March, 325 people were “arrested” in the city of Luhansk on criminal charges: 249 were reportedly sanctioned by a ‘prosecutor’ to be placed in ‘custody’, and 64 were placed under ‘house arrest’.



themselves (for various disciplinary and criminal misdeeds). On 8 May, the Ukrainian representative on humanitarian issues in the Trilateral Contact Group claimed that 399 people (both civilian and military) were in captivity of the armed groups and in the Russian Federation. As of 8 May, database of the NGO *Mirnyi Bereg* contained data on 260 soldiers and 71 civilians allegedly in captivity of the armed groups. All figures mentioned above concern people whose identity the Government of Ukraine and/or civil initiatives have managed to determine. On 5 May, a Ukrainian civil volunteer, who is engaged in the process, estimated the total number of people held by the armed groups at up to 1,000.

36. On 23 April, the HRMMU interviewed a Ukrainian soldier who was taken captive near the contested town of Vuhlehirsk (Donetsk region) and held by the armed groups from 29 January until 6 April. On 30 January, he was reportedly transferred to the city of Horlivka and placed in the basement of the so-called ‘ministry of state security’ of the ‘Donetsk people’s republic’, in a cell two by three metres, together with three other Ukrainian soldiers. While being there, the man had a bandage on his eyes because of burns. He heard a detainee being taken out of the cell where he was, and brought back approximately two hours later that evening. He could hear him breathing heavily, and the next morning he was reportedly dead. He claims he was heavily beaten, including with rifle butts. Within two weeks, he was transferred to Donetsk to the former premises of SBU regional department, where he was hospitalized and reportedly “treated properly”.

37. On 5 May, the HRMMU interviewed a woman, who had been abducted on 22 May 2014 and illegally deprived of liberty for five days by the ‘traffic police’ and members of the armed groups of ‘Donetsk people’s republic’ for assisting the Ukrainian armed forces. She reported having been blindfolded and beaten every two hours on the head and the legs, including with a blunt object which she could not identify. During her interrogation, she was reportedly tied to a chair, with her arms twisted behind the back of the chair. She claims that her captors beat another detainee to death in her presence. They also reportedly subjected her to a mock execution twice: once she was shot with a blank cartridge; another time, shots were fired above her head while she stood against a wall; and she was forced to play ‘Russian roulette’. She also reported an attempted rape by a group of men.

38. On 6 May, the HRMMU interviewed a man who had been illegally deprived of liberty in a “base” of a “Cossack” armed group in Donetsk from 1 to 28 February. He reportedly witnessed other captives being beaten, including with rifle butts. His cellmate told him he had been tortured with electric current and had his ears cut. Some captives reportedly told him that another detainee (with whom he shared the cell) was taken for interrogation and was probably tortured to death. The victim also spent 10 days in an isolated cell with a temperature of approximately 5 C°. The HRMMU is examining the case.

39. On 8 May, the ‘head’ of the ‘Donetsk people’s republic’ stated that 200 “looters, rapists and kidnappers” had been “arrested” through a massive “law enforcement campaign against crime and corruption”, which reportedly resulted in “finding 13 civilian hostages and eight Ukrainian servicemen”. The HRMMU was informed that up to 300 people may have been captured. There are allegations that these people have been subjected to torture and ill-treatment.

*By the Ukrainian law enforcement agencies*

40. Between 17 February and 18 April, the number of people under SBU whose arrest was sanctioned by courts since the beginning of the conflict increased from 720 to 753, and the number of people officially in SBU custody rose from 118 to 134.

41. On 14 March, the SBU Head reported that during the whole conflict, the Government had released 1,553 “detained traitors, spies and subversives” so as to secure the release of people held by the armed groups. As a court decision is required by law to detain a person

beyond 72 hours, and since the Office of the Prosecutor General claims that the so-called ‘preventive detention’ of 30 days without a court order (introduced in August 2014) has never been applied, these figures suggest that a considerable number of people apprehended by SBU have been kept in arbitrary (and often secret, as former detainees testify) detention prior to being released in the context of ‘simultaneous release’ arrangements with the armed groups.

42. In March 2015, a resident of the Government-controlled town of Sloviansk (Donetsk region) approached the Ombudsperson’s Office in relation to the abduction of her husband on 28 February by a group of unidentified people. On the same day, she filed a complaint with the police. A criminal investigation was opened under Article 146 (illegal confinement or abduction of a person) of the Criminal Code of Ukraine. On 26 March, she received a response from the SBU, saying that her husband was detained by Dnipropetrovsk Regional Department of the SBU. The detainee informed the Ombudsperson’s Office that after abduction, he was taken to a bomb shelter in Sloviansk, and kept in a room of approximately 1.2x1.5 metres for 26 days. During this period he was held incommunicado and systematically tortured to confess to illegal activities in support of the ‘Donetsk people’s republic’. This case reflects a continued pattern of cases of enforced disappearance. The man remains in pre-trial detention.

43. On 10 March, the ‘Donetsk people’s republic’ reportedly transmitted three lists of “prisoners of war” to the Ukrainian authorities of people they believe are held by the Ukrainian law enforcement bodies. The lists include 220 members of the armed groups, 800 “political prisoners” and 900 “civilians”. On 6 April, the ‘Donetsk people’s republic’ claimed that 1,378 of its ‘supporters’ remained in detention under the Government of Ukraine.

44. During the reporting period, the HRMMU continued to receive allegations concerning violations of the rights of people in custody or detention of the Government of Ukraine. The HRMMU is verifying them.

45. From 10 to 16 April, the HRMMU interviewed lawyers and relatives of ‘pro-federalism’ activists detained by SBU in Odesa in April. In April and May, the HRMMU visited the Odesa pre-trial detention centre (SIZO) and privately interviewed detainees arrested on suspicion of terrorism. They informed the HRMMU that searches of their homes were carried out without warrants and with excessive use of force; they were not informed of their rights and access to legal aid was provided with delays of up to 70 hours; SBU was bringing their own witnesses and did not record all seized belongings. They were officially notified about their detention only the next day after the apprehension or even later with no possibility to inform relatives and without access to legal aid. In addition, the HRMMU received allegations that during interrogation, some detainees were subjected to ill-treatment and torture (beatings, suffocation with bag on the head, electric shocks and deprivation of sleep, food and water for more than 24 hours). The people arrested were not provided with a defense lawyer and were mocked at when requesting one. The Government of Ukraine claimed that all allegations of torture and ill-treatment would be duly investigated.

46. On 9 April, the HRMMU interviewed a resident of a Government-controlled town in Donetsk region who claimed to have been kidnapped in October 2014 by a man in civilian clothes who put a bag over his head, handcuffed him and placed him in a vehicle. Then he was held in detention in a basement. For three days, he was reportedly beaten and electrocuted by masked assailants. He was forced under torture to sign a confession stating he had been “transferring intelligence information” to the ‘Donetsk people’s republic’. Then the man was taken to another basement, which he later discovered as located in Poltava. There, an SBU investigator, in the presence of witnesses, compiled a protocol about his detention “as a person who was caught while committing the crime”. Two days after, a Poltava court

decided to place him under house arrest. In February, the investigator tried to force him to enter a plea bargain, which he refused to do. In the beginning of April, while meeting with the investigator, he was given a mobile phone and recognized the voice of one of the individuals who had tortured him in October. The man said that if he would not sign a plea bargain, they would meet again. Later, the interlocutor informed the HRMMU that he had signed the plea agreement.

47. On 10 April, the HRMMU was informed by the Kharkiv Military Prosecutor that it had investigated allegations on the existence of a secret detention facility in the premises of Kharkiv SBU Department. The Prosecutor, having visited the premises in March, announced he had found the cells empty. As reported earlier, the HRMMU interviewed a number of people who claim to have been kept in this facility, and who described how, prior to the visit of the Military Prosecutor, they had been removed by SBU officers from their cells and placed in the basement or other places within the building.

48. On 24 March, the HRMMU interviewed a ‘pro-unity’ activist from Donetsk region who referred to human rights violations committed by elements of the Ukrainian armed forces (especially former volunteer battalions, such as Dnipro-1) on the Government-controlled territories, such as abductions for ransom and arbitrary detentions, particularly in the towns of Krasnyi Liman and Selidove (both in Donetsk region). On 24 March, the Head of Luhansk Regional State Administration accused soldiers of Aidar battalion of abducting and torturing the deputy head of Novoaidar district state administration. He was reportedly abducted on 25 November 2014, held in captivity (together with some other people) for five days. He was threatened and accused of separatism, and then delivered to the district hospital, where his numerous injuries, including a firearm wound, were documented.

49. In mid-March, the NGOs Foundation for the Study of Democracy, the Russian Public Council for International Cooperation and Public Diplomacy and the Russian Peace Foundation issued a report entitled “*War Crimes of the Armed Forces and Security Forces of Ukraine: Torture and Inhumane Treatment: Second Report*”. The report is claimed to be based on “interviews with over 200 prisoners released by the Ukrainian side”, reportedly conducted between 25 August 2014 and 20 January 2015. In April, Chief Military Prosecutor of Ukraine initiated eight criminal proceedings to investigate allegations contained in the report. The HRMMU is also verifying the allegations contained in this report.

#### *Releases of detainees and captives*

50. During the reporting period, a piecemeal approach in the release of “hostages and unlawfully detained persons” was continued under the auspices of the implementation of the ‘all for all’ scheme foreseen in the Minsk Agreements.

51. On 21 February, the armed groups released 139 Ukrainian soldiers while the Government of Ukraine released 52 people. On 24 February, four Ukrainian soldiers were released. On 28 February, the Ministry of Defence of Ukraine announced the release of two Ukrainian soldiers and eight civilian volunteers. On 7 March, five Ukrainian soldiers were reportedly released from the captivity of the armed groups.

52. On 14 March, the SBU Head reported that since mid-April 2014, the release of 2,483 people from the captivity of the armed groups had been secured. By 23 April, the SBU was reporting that 2,586 people had been released. On 5 May, the Head of the United Centre for the Release of Captives at the Ministry of Defence of Ukraine reported the total of 2,667 people being released. The claim of an additional 184 people being released between 14 March and 5 May does not correspond to the public announcements during the same timeframe on releases of detainees and captives. This suggests either discrepancies in the official data, or the non-transparent character of ‘simultaneous releases’ in which many actors are involved.

53. On 26 March, the HRMMU met with the ‘deputy head’ of the ‘commission on prisoner’s exchange’ and with the ‘ombudsperson’ of the ‘Donetsk people’s republic’. According to them, people released by the Government of Ukraine were often in poor health and bearing signs of ill-treatment. Approximately 70 per cent of all people proposed by the Government of Ukraine for ‘simultaneous releases’ were “civilians”, while only 30 per cent are “military” or “political activists”. Interlocutors claimed that the Government of Ukraine continues to detain and then release random civilians to inflate the number of releases. A person from the Government-controlled town of Sloviansk (Donetsk region) was reported to have been ‘exchanged’ three times. According to interlocutors, many people released by the Government had not been given back their passports, and the criminal cases against them reportedly have not been closed or have been re-opened. A group of at least 22 individuals released by the Government in January 2015 continued to be trapped in the city of Donetsk during the reporting period, with their passports reportedly held by the SBU. The HRMMU interviewed several of them.

54. The Ukrainian pilot, Nadiia Savchenko, member of the Parliament of Ukraine (since November 2014) and Ukrainian delegate to the Parliamentary Assembly of the Council of Europe (since December 2014) has remained in detention in the Russian Federation since July 2014 after being captured by armed groups in June. She is awaiting trial on charges of involvement in the deaths of two Russian journalists killed during the conflict in eastern Ukraine. On 24 April, Ms. Savchenko was additionally charged with the illegal crossing of the border. Having been on hunger strike (with a few suspensions) since 13 December 2014, she was transferred from the Moscow pre-trial detention facility to a civilian hospital on 28 April. On 6 May, Basmani court of Moscow extended her pre-trial detention until 30 June.

55. On 2 May, the Head of the United Centre for the Release of Captives at the Ministry of Defence of Ukraine stated that “several dozens” of Ukrainian soldiers continued to be kept in captivity on the territory of the Russian Federation since August 2014.

#### **E. Trafficking in persons**

56. In the difficult economic conditions there is an increased risk of trafficking in persons. In 2015, the hotline of NGO *La Strada* registered an increased number of calls related to trafficking. Compared to 2014, more people, predominantly women, sought consultation regarding employment, studies, and going abroad to marry. An Odesa-based women’s NGO informed the HRMMU that it had documented nearly 60 cases of trafficking in 2014. Meanwhile in 2015, the International Organisation for Migration (IOM) has already identified 230 victims of trafficking.

57. The main destinations are the Russian Federation and Poland. Victims are most often from rural areas and low income groups, either young women crimped for sexual exploitation or older persons, mostly women, forced to become street beggars. In some IDP collective centres and in settlements in the conflict affected areas, recruiters have been known to offer to adult men and women services for asylum claims and ‘employment’ abroad, predominantly in the Russian Federation, without any guarantees, which may lead to labour exploitation. Cases are poorly investigated as victims rarely report for various reasons, including lack of legal knowledge, stigma and fear, perpetuated by harmful gender stereotypes. In 2015, 75 have been registered by the police.



### III. FUNDAMENTAL FREEDOMS

#### A. Freedom of movement

58. Although criticized by international and national organizations, the system of permits, introduced on 21 January 2015 by the Temporary Order<sup>17</sup>, remained operational and continued to limit the freedom of movement of civilians across the contact line, isolate residents of the areas controlled by the armed groups, generate corruption and impede humanitarian aid. On 6 April, the Kyiv Circuit Administrative Court rejected a lawsuit that was brought by two individuals from Luhansk region, ruling that the Temporary Order was adopted legally. According to the ICCPR and the Constitution of Ukraine, however, freedom of movement may be limited only by law.

59. According to the SBU, from 21 January to 6 May, 349,496 people applied for permits and 274,755 received them. Despite the fact that the President and the Ombudsperson of Ukraine<sup>18</sup> declared the need to simplify the procedure for civilians to obtain permits, the process remained arduous and inconsistent. On 20 March, the SBU allowed the electronic submission of documents to apply for permits and receive them electronically. The majority of people, however, continued to apply in person, due to lack of information on the electronic system (especially in the areas controlled by the armed groups), low computer literacy, interrupted Internet access, and a distrust towards online applications. Also, the coordination centres issuing permits have been overwhelmed with applications due to limited capacity: lack of computer equipment, problems with connectivity, and of trained staff. Some applicants reportedly had to stay in the street near to a coordination centre for up to four days before being able to submit their documents. During this time some people approached them with offers to issue a permit faster for a price varying from UAH 600 to 1,500 (US\$ 29 to 71).

60. The HRMMU interviewed people, mostly older persons, who had applied for permits at the end of January and still had not received them by mid-May. Prisoners in penitentiary institutions in the cities of Horlivka and Yenakieve controlled by the armed groups and older persons from two geriatric facilities in Luhansk (visited by the HRMMU in March and April) reported that their relatives could not visit them any longer as they could not obtain permits.

61. Irregular application of rules at check-points has caused confusion and frustration among residents. To cross the contact line, vehicles and passenger buses have, at times, to spend up to 11 hours at check points, without access to water and sanitation facilities. Reports suggest that exceptions are made more often for women with children than for a man. On 25 April, the HRMMU learned from a bus driver who regularly drives across the contact line that at some Ukrainian checkpoints people with Donetsk license plates were not allowed to pass although they had permits. Consequently, people often circumvent the checkpoints, which may be dangerous, as shown in the case of a bus travelling from the Government-controlled town of Artemivsk to the city of Horlivka controlled by the armed groups, which hit a land mine, resulting in the death of three passengers. On 28 April, the head of the Luhansk Regional Military-Civil Administration stated that since 1 May, only passenger vehicles and pedestrians were allowed to pass through the check point in Luhansk region.

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<sup>17</sup> The Order was developed and approved by the joint entity ‘the Operational Headquarters of Management of the Anti-Terrorist Operation’ composed of various structures, including the SBU, Ministry of Defence, Ministry of Internal Affairs, the National Guard, Migration, Emergency and Fiscal Services of Ukraine. For more information, please see previous HRMMU report on the human rights situation in Ukraine covering the period from 1 December 2014 to 15 February 2015, paragraphs 42-43.

<sup>18</sup> On 4 March, during the meeting of the National Security and Defence Council, the President of Ukraine stressed the need to simplify the procedure of obtaining passes for civilians. On 3 April, the Ombudsperson of Ukraine stated that the current system of special passes “inhumane”, and urged the SBU to simplify the system.



The movement of buses and cargo was stopped until the Government of Ukraine fully regulates the permit system. The exceptions were made for humanitarian aid and specialised transport, including medical and that of companies restoring infrastructure and utilities (gas, water, electricity).

62. On 12 May, the head of the Luhansk Regional Military-Civil Administration, issued an order further limiting the movement of civilians from the territories controlled by armed groups. It instructed that only people holding a Ukrainian passport would be allowed to pass across the contact line; no provisions were made for people who have lost their documents.

63. On 5 May, the SBU established a working group that included NGOs to improve the permit system and prevent human rights violations.

64. The HRMMU is concerned that no arrangements have been made so far to allow civilians to flee the conflict area in accordance with international law. Those seeking safety and security must be allowed to do so without having to apply for a permit in advance, and without going through pre-designated check-points, which exposes them to risks and arbitrary decisions. The permit system severely limits civilians' access to safe areas and life-saving assistance.

## **B. Freedom of expression**

### *Safety of journalists*

65. Safety of media professionals remains a serious issue in the conflict area due to fighting. On 28 February, a photographer of the Ukrainian newspaper *Segodnia* (Today) was killed during the mortar shelling attack by armed groups near the village of Pisky (Donetsk region). He was the eighth journalist killed in the east of Ukraine since the beginning of the conflict. On 12 April, two local media professionals were wounded near Donetsk airport when their car was hit by a shell. On 14 April, a local Donetsk journalist working for the Russian TV channel *Zvezda* was seriously wounded when he tripped a mine trap in the contested village of Shyrokyne (Donetsk region).

66. The HRMMU continued to receive reports of media professionals held by armed groups. On 11 March, a journalist from the city of Makiivka (Donetsk region), controlled by the armed groups, was reportedly abducted by armed groups. After his 80-year-old mother filed a complaint to 'local police', the armed groups conducted a search of her house and intimidated her. The journalist was released on 10 May.

67. On 16 April, Oles Buzyna, a Ukrainian journalist, writer and former editor of the newspaper *Segodnia*, was killed close to his home in Kyiv by two unknown masked men. He was known for his criticism of the Government, in particular in relation to the Maidan events and the conflict in the east. The President of Ukraine called the murder of Mr. Buzyna "a provocation", aimed at destabilization of the situation in Ukraine. He also called for prompt investigation into two killings and regular reporting on its progress. The police initiated investigation into the incident under Article 115 (intentional homicide) of the Criminal Code of Ukraine.

68. On 14 May, the Parliament passed a law<sup>19</sup> amending the Criminal Code of Ukraine, strengthening accountability for the threats to or violence against journalists. In addition to existing provision of Article 171 (preclusion of legal professional activities of journalists), which was rarely applied in practice, due to its ambiguity, four additional articles were added. They envisage criminal liability for threats and infliction of injuries to journalists or their

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<sup>19</sup> The Law On Amending Some Legislative Acts of Ukraine to Increase Guarantees of Legal Professional Activity of Journalists.

families, intentional damage of property of a journalist, trespass against life and hostage taking of a journalist. The HRMMU notes that the law may positively contribute to the protection of media workers and promote freedom of expression in Ukraine.

#### *Access to information / media regulation*

69. The armed groups continued to limit freedom of expression and impede the work of media professionals on the territories they control. On 10 March, the so-called ‘council of ministers’ of the ‘Luhansk people’s republic’ issued an order demanding telecommunications operators to remove 23 Ukrainian TV channels and the Russian TV channel *Dozhd* from the broadcasting network on the grounds that they “pose threat to ‘state’ security”. The ‘ministry of infrastructure, transport and communication’ was assigned to control the implementation of the decision.

70. Residents in the territories controlled by the armed groups often reported to the HRMMU that available media outlets presented only biased information. As many people did not have access to the Internet for technical reasons, access to any alternative sources of information was difficult. Journalists informed the HRMMU that during interviews with the so-called local ‘authorities’ only pre-cleared questions are allowed. Reportedly, journalists are sometimes demanded not to include parts of the interviews in their reports. On 1 May, two journalists from the Russian Federation were reportedly abducted by the armed groups in Donetsk and forced to delete some photos from a public rally. They were then released.

71. The Government of Ukraine also attempted to impose restrictions on some media outlets. Following the resolution by the Parliament, adopted on 19 February<sup>20</sup>, the SBU identified over 100 media outlets (including TV channels, information agencies, newspapers and Internet resources) from the Russian Federation that are not allowed anymore to attend press events of the State bodies until the end of the security operation. The resolution instructed the State bodies to implement the decision by 21 February. While no suspension has reportedly occurred, a number of reporters from the Russian Federation have not been allowed to enter Ukraine and banned from entry for the next five years<sup>21</sup>. Also, the resolution ordered the Government to develop the procedure of accreditation of all foreign media professionals in Ukraine; however as of 15 May this has not yet been done.

#### *Criminal proceedings against journalists*

72. The HRMMU continued to follow the case of the journalist, Ruslan Kotsaba<sup>22</sup> charged with high treason for publishing an anti-mobilisation video on 17 January. On 6 April, the Ivano-Frankivsk city court extended his detention for another 60 days (until 6 June). Hearings on the merits started on 16 April. During the last hearing on 29 April, seven

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<sup>20</sup> Parliamentary Resolution No. 1853 of 12 February 2015 ordered the temporary suspension of the accreditation of journalists and representatives of some media outlets of the Russian Federation until the end of the security operation.

<sup>21</sup> For example, on 25 February, the SBU confirmed that three Russian media professionals (a journalist from the NTV Channel and a cameraperson from the *Lifenews* Channel) have not been allowed to enter the territory of Ukraine and banned from entry for the next five years. On 3 May, a journalist of the Russian media agency RBC was taken off the train Moscow-Odesa by the State Border Service of Ukraine and sent back to the Russian Federation.

<sup>22</sup> On 29 January, the Chief Military Prosecutor’s Office announced the opening of criminal investigations into obstruction of the lawful activity of the Armed Forces of Ukraine and other military formations. The investigations are based on the results of media monitoring and identification of public appeals to avoid mobilisation. On 5 February, Ivano-Frankivsk SBU Regional Department arrested Mr. Kotsaba for charges under Article 111-1 (high treason) and 114-1 (preclusion of lawful activity of the Armed Forces of Ukraine) of the Criminal Code of Ukraine for his public statements against mobilisation. The Ombudsperson of Ukraine expressed her concerns regarding the case of Mr. Kotsaba.

of the 30 witnesses in the case were questioned, but none could provide specific facts to support the prosecution. The court hearing was also attended by the members of some of the Ukrainian battalions, which may have created pressure on judges.

73. On 14 May, the SBU Department of Odesa region conducted searches in apartments of six journalists of the website *Timer*, known for its ‘pro-federalism’ views, and seized several of their computers and documents<sup>23</sup>. The journalists were then taken to the SBU, questioned there and released in the evening. The *Timer* website faced connection problems on 1–3 May and on 8–10 May, and since 14 May has stopped functioning.

#### *Incitement to hatred and violence*

74. The HRMMU is concerned about the recurring increase of hate speech and incitement to violence on social media and the Internet. On 6 March, supporters of armed groups in the city of Horlivka controlled by the armed groups announced on their social networks the “beginning of cleansing of ‘ukrops’ [an offensive word used for Ukrainians]”, including those who allegedly acted as artillery fire spotters during hostilities. The call, initially published by the social media group with 88,000 subscribers, was widely disseminated, calling supporters to make lists of all those sympathetic to Ukraine and Ukrainians, and asking residents “to report on their neighbours, friends, and strangers”. A website *Tribunal* lists over 1,300 individuals – allegedly Ukrainian soldiers, police staff and civilian volunteers – who are labelled as “punishers” and “accomplices”.

75. Similarly, the HRMMU is concerned about the activities of the website *Myrotvorets* (Peacemaker), on which various contributors created a list of people (with their personal data) who are allegedly related to the armed groups and labelled as “terrorists”. Such a list violates the presumption of innocence, right to privacy and personal data protection.

#### **C. Freedom of peaceful assembly**

76. During the reporting period, in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, an atmosphere of intimidation imposed by the armed groups continued to prevent people from demonstrating publicly. On 6 April, the rally of miners of the Kirov mine in the city of Makiivka controlled by the armed groups (Donetsk region), who protested against the increase of the working hours from six to eight, was reportedly dispersed.

77. On the territory controlled by the Government, freedom of peaceful assembly was generally respected although the authorities imposed some restrictions in some instances, invoking security concerns. In some cases, law enforcement officials did not prevent ‘pro-unity’ supporters from disturbing gatherings of people supporting other political views, and in a few instances, police even took part in such disruptions.

78. On 16 April, the NGO *Police of Odesa*, which officially notified the authorities of a rally in advance, was prevented by the police and ‘pro-unity’ supporters from gathering in front of the Odesa City Council to protest against the increase in utility payments. The HRMMU observed the detention of 50 protestors, including 17 minors; some were handed to the police by ‘pro-unity’ activists. Adult activists (all male)<sup>24</sup>, minors and their parents<sup>25</sup> were later charged for administrative offences.

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<sup>23</sup> On 3 January, the SBU initiated criminal investigation under Article 110 (trespass against territorial integrity and inviolability of Ukraine) of the Criminal Code of Ukraine. A court decision on the search stated that the media outlet has had “negative informational influence... In particular, in 2014, the media outlet has posted informational materials, which substantiated the historical roots of the term ‘Novorossia’, its right to existence and the historic need to implement the ‘Russian World’ project”.

<sup>24</sup> Under Article 185-1 (breach of order on the organization and conduct of assembly, meetings, street campaigns and demonstrations) of the Code of Administrative Offences of Ukraine

79. On 16 April, a group of approximately 20 people who identified themselves as activists of *Narodna Rada Besarabii* (National Council of Bessarabia) rallied in Odesa. Soon after the beginning of the rally, police appeared at the scene and arrested about 20 activists. According to the police, the activists had not notified the authorities in advance about the rally, and they stopped the event. These twenty people were charged under Article 185-1 (breach of the order of the organization and conduct of assembly, meetings, street campaigns and demonstrations) of the Code of Administrative Offences of Ukraine. The procedure of notification concerning upcoming rallies foresees the submission of an application prior to a rally but their prohibition can only be declared by a court. Yet the police had not presented the activists with a court decision when stopping the rally.

80. On 6 May, Kharkiv Administrative Court decided to ban a traditional procession in Kharkiv, which was scheduled to be held on 9 May by the NGO *Soyuz Sovetskikh Ofitserov* (Union of Soviet Officers). A lawsuit was filed by the Kharkiv City Council because of the “security situation and terrorist threats”.

#### IV. ECONOMIC AND SOCIAL RIGHTS

81. The impact of the conflict on the enjoyment of economic and social rights continued to be devastating for about five million people living in the conflict-affected area and for more than 1.2 million internally displaced persons (IDPs). Older persons, persons with disabilities, families with children and people in institutional care have faced particular difficulties. Discrimination against IDPs, especially Roma, has often impeded their access to healthcare, housing and employment. More than 25,000 demobilised soldiers experience difficulties in accessing medical care and psycho-social services.

82. The overall deterioration in the economic situation affects a large proportion of the population of Ukraine. Compared to December 2014, the real income of the population has dropped by 8.4 per cent, prices have grown by 20.3 per cent, wage arrears have increased by 2.7 per cent, and the unemployment rate reached 9.7 per cent<sup>26</sup>.

##### A. Right to an adequate standard of living

83. Heavy, indiscriminate shelling of populated areas in January and February led to significant destructions in the affected localities. In some towns, like Debaltseve and Vuhlehirsk (Donetsk region) controlled by the armed groups, visited by the HRMMU on 20 March, up to 80 per cent of residential buildings and public facilities were destroyed. A compensation mechanism for civilians whose property has been destroyed has yet to be developed.

84. Despite the ceasefire, the humanitarian situation remains grim. Lack of food, clean water, hygiene items, and children’s clothes is reported in most settlements controlled by armed groups. Residents remaining in towns and villages divided by the contact line (such as Dzerzhynsk, Mykolaivka, Novohnativka, Pisky and Shyrokyne) are in the most precarious position, as they are rarely reached by humanitarian actors due to the security situation.

85. On the territories controlled by the armed groups, the so-called ‘authorities’ and many national humanitarian NGOs distribute aid based on ‘social cards’<sup>27</sup> for people below 18 and

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<sup>25</sup> Under Article 184 (for default by parents or persons who substitute them, of duties regarding child guidance) of the Code of Administrative Offences

<sup>26</sup> According to the information of the Statistical Service of Ukraine released on 30 April.

<sup>27</sup> The ‘Luhansk people’s republic’ and ‘Donetsk people’s republic’ began to issue so-called ‘social cards’ in November 2014, which reportedly entitle people to humanitarian aid, social benefits and access to free medical care.



over 60 years, and for those who do not receive salaries, but work voluntarily. Adults who have lost their jobs and have grown-up children, are not entitled to aid, and are becoming increasingly vulnerable. The conflict has had a detrimental impact on isolated bed-ridden older persons in small towns and villages; with the collapse of social services, many have not been identified and thus have not or may not have had access to any kind of assistance for long periods. For instance, in mid-March, the HRMMU was informed of at least 30 older persons found dead in their homes a month after the ceasefire in Debaltseve, Donetsk city, Krasnyi Luch, Luhansk and some other populated areas.

86. The situation of approximately 10,000 people in institutional care facilities remains of concern. On 29 and 30 April, the HRMMU visited two geriatric facilities in Luhansk: one with 242 residents and the second with 174 (in both there were more women than men). The management of the institutions stated that the Government of Ukraine had not facilitated the evacuation of the centres during the shelling, although it was requested. The staff also reported an increasing death rate attributed to stress and malnutrition.

87. Civilians continued to suffer from the lawlessness and impunity of the armed groups. For example, on 18 and 26 March, the HRMMU interviewed residents of Kuibyshevskiyi district of Donetsk city, who reported that an armed group (allegedly part of the so-called ‘Vostok battalion’) occupied a local kindergarten and a chemical factory on 17 January. On 18 March, members of this armed group prevented the HRMMU from visiting this part of the district. They also reportedly prevented people from returning to their own homes even to take their own belongings. A local resident reported that on 22 March, a couple went to the home of their 82-year-old grandmother to collect some belongings. Although they had all documents proving their ownership of the property, they were detained by members of the armed group for looting and taken to the basement of the seized chemical factory, where they were kept for several hours. Afterwards, they visited the building and found that most of the apartments were looted.

88. Reportedly, the armed groups, regularly detained civilians, particularly young men and women spotted with alcohol. Allegations of sexual violence, which were also reported to the HRMMU, have to be verified.

89. Reports of looting of abandoned property are commonplace in many other towns located in the conflict area, both those controlled by the armed groups and by the Ukrainian armed forces (such as Azov regiment). As of 1 May, the HRMMU learned that the so-called ‘ministry of internal affairs’ of the ‘Luhansk people’s republic’ has been investigating 700 cases of looting on the territory it controls.

90. The HRMMU also received reports<sup>28</sup> of armed groups seizing property of religious communities. On 3 March, in the town of Yenakieve controlled by the armed groups (Donetsk region), three armed men ordered the community of Jehovah’s Witnesses to hand over the keys to the Kingdom Hall (place of worship) so that they could use them as barracks. On 26 March, armed men broke in to the Kingdom Hall in the town of Brianka controlled by the armed groups (Luhansk region) and took away all the furniture from the building. They reportedly removed the sign ‘Kingdom Hall of Jehovah’s Witnesses’ and put up a new one – “The All-Great Don Army”.

## **B. Right to social protection**

91. Following the so-called ‘elections’ held on 2 November 2014 in the areas controlled by armed groups, which violated the Minsk Agreements and the Constitution of Ukraine, the

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<sup>28</sup> For more cases, please see paragraph 66 in the OHCHR report on the human rights situation in Ukraine covering the period from 1 December 2014 to 15 February 2015.



Government of Ukraine adopted two resolutions<sup>29</sup> suspending allocations and disbursements from the State budget (including social payments) to the territories controlled by armed groups<sup>30</sup>. This has seriously affected at least 400,000 pensioners (predominantly women), depriving them of vital resources – sometimes the only financial means of existence.

92. On 2 April, the Kyiv Administrative Court of Appeal upheld the decision<sup>31</sup> of the first instance court, which acknowledged that resolution No. 595 of the Cabinet of Ministers (which stopped payment of pensions) was illegal and had thus to be cancelled. It also obliged the Cabinet to resume the payments. Nevertheless, the court decision has not been implemented yet<sup>32</sup>. Many pensioners, while continuing to live in the territories controlled by the armed groups, travelled to the Government-controlled areas to collect their pensions, but this has been made difficult due to the system of permits. On 24 April, the HRMMU interviewed an employee of a ‘pension fund’ of the ‘Donetsk people’s republic’ who alleged an increase in mortality rates among pensioners (due to shelling, stress and malnutrition).

93. Since early April, the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ started paying pensions from unknown resources. In April, 200,000 people living in the areas controlled by armed groups reportedly received some pensions in Russian roubles. Reportedly, postal workers delivered payments home for pensioners over 70 years old; all others could collect their pensions at ‘local banks’ and ‘postal service departments’. Many local residents indicated having to queue for seven days and not managing to receive their pensions, because of a lack of cash. Reportedly, on 16 April in the town of Stakhanov, pensioners started protesting near the post office, demanding the so-called ‘authorities’ pay their pensions. The demonstration was dispersed by the so-called ‘people’s police’. On 30 April, the HRMMU learned that older persons in the institutional care facility of Luhansk had received only 25 per cent of their pensions. Earlier, there were also reports that the armed groups had paid salaries on an irregular basis to medical staff, teachers, employees of social care institutions and penitentiary services. None had received salaries from the Government of Ukraine since July 2014.

94. As of 13 May, the Ministry of Social Policy of Ukraine registered 1,283,735 internally displaced persons (IDPs) from the conflict-affected areas of Donetsk and Luhansk regions and from Crimea. Out of 361,895 IDP families who applied for financial assistance to cover accommodation and utilities, 302, 581 families have already started receiving it. The precondition for obtaining financial assistance is registration with the Ministry; available reports suggest that some IDPs still face problems with obtaining registration. In particular, this relates to people moving within the Government-controlled areas of Donetsk and Luhansk regions to safer location away from the contact line. In such cases, the Ministry applies the geographical criteria to accept or deny IDP registration based on Government Resolution No. 1085 of 7 November 2014, which contains a list of settlements that are fully or partially not controlled by the Government. Therefore, IDPs fleeing settlements not included in the list have faced problems with obtaining registration.

95. Another category of IDPs deprived of access to social security is unaccompanied or separated children, who travel to the territory controlled by the Government. According to

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<sup>29</sup> Presidential Decree No. 875 and Resolution No. 595 of the Cabinet of Ministers.

<sup>30</sup> The Government reports of allocating 100 percent of pensions to the residents living in the territories controlled by armed groups, with should be paid after the Government regains control over these territories.

<sup>31</sup> On 9 February, the Kyiv Circuit Administrative Court found in favour of a lawsuit of 16 pensioners from the city of Donetsk against the Cabinet of Ministers of Ukraine, who had demanded the cancellation of governmental resolution No. 595 of 7 November 2014.

<sup>32</sup> According to the Government the decision of the court may not be implemented due to the security situation in the areas controlled by armed groups.

Government Resolution No. 509 on registration of IDPs, children can only be registered with a legal guardian or a parent. Legal guardianship can only be established with a special document certified by a notary. This is nearly impossible to obtain on behalf of a child travelling from the territories controlled by the armed groups, as notaries on these territories have been suspended by the Government.

96. On 18 February, the Parliamentary Committee for Human Rights, National Minorities and Interethnic Relations registered a draft law<sup>33</sup> amending the current legislation on IDPs. The draft broadens the list of authorities responsible for registration of IDPs and simplifies the procedure. Particularly, it allows using other documents, including employment record book, educational or medical certificates, to prove that an IDP resided in conflict area, in case a passport is unavailable or does not have registration stamp. It also obliges the state to create conditions for voluntary integration into host communities as well as voluntary return. The HRMMU notes that the draft law would positively contribute to the protection of IDPs.

### **C. Right to the highest attainable standard of physical and mental health**

97. As reported by local health and penitentiary institutions, humanitarian actors and local residents, the lack of medication remained the major constraint to healthcare in the areas controlled by armed groups. Medication for patients with diabetes, cancer, genetic diseases, and those in need of haemodialysis, were purchased by the Ministry of Health of Ukraine on 24 November 2014. However, as of 15 May, it was still stocked in the Government-controlled town of Sieverodonetsk (Luhansk region) and not transported to the areas controlled by armed groups. To date, there are no systematic and sustainable mechanisms to deliver psychotropic drugs for psychiatric institutions, as well as to guarantee consistent treatment of HIV/AIDS and tuberculosis in the areas controlled by armed groups.

98. Lack of vaccines continued to be a major problem, leading to the risk of an outbreak of measles, diphtheria or polio. Given the low quality of water there is a constant danger of outbreak of infectious diseases, including hepatitis A and rabies due to the high number of stray animals. Luhansk, which even before the conflict had been one of the regions with the highest spread of tuberculosis, lacks BCG vaccine for children. It has also been impossible to diagnose tuberculosis in penitentiary institutions for more than six months.

99. As of 15 May, there were more than 25,000 demobilised Ukrainian soldiers. They return traumatized, display signs of depression, anxiety and post-traumatic stress disorder, resorting to alcohol, drug abuse and the use of violence as coping mechanism. In interviews with the HRMMU, many of them reported experiencing difficulties in obtaining an official status as a 'participant of security operation' and thus accessing psycho-social assistance, medical and rehabilitation services free of charge.

100. The rehabilitation of former soldiers is important, including for the prevention of domestic violence. The NGO *La Strada* notes that as demobilisation is ongoing, cases of domestic violence have been increasingly reported. More instances of physical and sexual domestic violence have been reported compared to 2014, including from the territories controlled by the armed groups.

## **V. ACCOUNTABILITY AND ADMINISTRATION OF JUSTICE**

101. The reporting period covers the anniversaries of three events which most negatively impacted the human rights situation in Ukraine: Maidan killings of 18–20 February 2014, the

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<sup>33</sup> The draft law No. 2166 On Amending Certain Laws of Ukraine in Relation to Strengthening Guarantee of Compliance with the Rights and Freedoms of the Internally Displaced Persons of 18 February 2015.

beginning of the security operation in the east on 14 April 2014 and the violence in Odesa on 2 May 2014. Although some results in the investigations into Maidan events and the 2 May violence have been reported by the law enforcement agencies of Ukraine, only a few of the alleged perpetrators have been brought to account<sup>34</sup>. Also, investigations into human rights violations committed in the conflict zone have also not produced tangible results.

#### **A. Accountability for human rights violations committed in the east**

102. The Ministry of Internal Affairs of Ukraine has opened a number of criminal proceedings into the killings of servicemen of Ukrainian armed forces and civilians in the security operation area under Article 115 (intentional homicide) of the Criminal Code of Ukraine. Investigations into deaths that were caused by the hostilities are hampered by the difficulty to identify perpetrators and weapons. The Ministry also explains the lack of progress in these investigations by the lack of access to the crime scenes and to victims. The HRMMU believes that releases of members of the armed groups of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ (within implementation of Minsk Agreements) by the Ukrainian Government have complicated the investigations further. So far, the HRMMU is unaware of any investigations that have been completed.

103. The SBU is carrying out investigations into the alleged extrajudicial killing of a Ukrainian soldier, Ihor Branovytskyi, on 21 January, and into other alleged aggravated human rights violations by the members of the armed groups.

104. On 30 April, following the adoption of the resolution of the Parliament on admission of jurisdiction of the International Criminal Court<sup>35</sup>, the Office of the Prosecutor General of Ukraine reported that the analytical summary of the crimes which fall under Articles 7 and 8 of the Rome Statute has been completed and sent to the Cabinet of Ministers of Ukraine for review and deciding of whether it should be submitted to the ICC.

#### *Investigations into human rights violations allegedly committed by Ukrainian armed forces and law enforcement personnel*

105. On 17 April, the Chief Military Prosecutor of Ukraine, who is responsible for investigating crimes committed by the Ukrainian armed forces, has reported opening 7,560 criminal investigations into crimes committed by the Ukrainian soldiers since the beginning of the year. These include 1,964 criminal proceedings under Article 407 (absence without leave from a military unit or place of service), 948 – under Article 408 (desertion), 107 – under Article 409 (evasion from military service) of the Criminal Code of Ukraine. However, the HRMMU is unaware of any criminal investigations conducted by the Office of the Military Prosecutor into human rights violations against civilians and violations of international humanitarian law in the east.

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<sup>34</sup> These include five police officers who were found guilty in ill-treatment of Maidan protestor Mykhailo Havryliuk on 22 January 2014 in Kyiv, and a number people found guilty by the courts under Articles 110 (trespass against territorial integrity and inviolability of Ukraine), 258-3 (creation of a terrorist group or terrorist organization), 260 (creation of unlawful paramilitary or armed formations) and 263 (unlawful handling of weapons, ammunition or explosives) of the Criminal Code of Ukraine for membership in the armed groups of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. The HRMMU is unaware of the exact number of convictions under the above charges to date.

<sup>35</sup> Resolution of the Parliament No. 145-VIII of 4 February 2015, on the admission of the jurisdiction of the International Criminal Court over crimes against humanity and military crimes committed by senior officials of the Russian Federation and heads of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, which resulted in grave consequences and mass killing of Ukrainian citizens.

106. An illustrative case of impunity of perpetrators is the death of Oleksandr Agafonov on 14 November<sup>36</sup>. On 10 April, the Kharkiv Regional Military Prosecutor informed the HRMMU that there had been suspects in the case, but that no one has been prosecuted yet. The only person whose identity was established (an SBU officer) is not a suspect in the allegations of torture of Mr. Agafonov.

107. The ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ have claimed that their members and people suspected of being affiliated with them have been subjected to torture and ill-treatment by the Ukrainian armed forces and law enforcement agencies (especially SBU) while in custody (some of these cases have been described in the report mentioned in paragraph 50 above). The HRMMU is verifying these allegations. As of 15 May, the HRMMU is unaware of investigations into such allegations by the Ukrainian authorities. Alleged victims are unlikely to seek justice under the Ukrainian legal framework<sup>37</sup> for fear of possible detention<sup>38</sup> or reprisals and lack of trust in it.

### **B. Accountability for human rights violations committed during the Maidan protests**

108. Over a year after Maidan protests, during which at least 117 people died and more than 2,295<sup>39</sup> were wounded, no significant progress has been achieved to bring perpetrators to account.

#### *Lack of progress in investigation*

109. On 1 April, the Prosecutor General of Ukraine stated that all senior Government officials involved in decision making during the Maidan events had been identified. However, the HRMMU is concerned about the lack of cooperation between the SBU, Ministry of Internal Affairs and the Office of the Prosecutor General, which are involved in the investigation, as well as about loss of evidence and the impossibility to locate some of the suspects who have fled Ukraine.

110. On 29 April, the Prosecutor General of Ukraine reported the initiation of criminal proceeding under Article 365 (abuse of powers or official misconduct) of the Criminal Code of Ukraine in relation to interference of the law enforcement agencies into investigation of crimes committed against Maidan protestors. According to the Prosecutor General, certain

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<sup>36</sup> In the morning of 14 November, Oleksandr Agafonov was stopped at the Iziurm check-point in Kharkiv region while going by car with his wife and an infant to Donetsk. They were asked to go to the police station for an interview. Mr Agafonov was not formally detained, but from that time was under control of the police. At 5 pm, a so-called ‘filtering group’ composed of two uniformed masked men and an SBU officer entered the police station and took Mr. Agafonov away. At 9 pm masked people and the SBU officer brought him back. Mr. Agafonov was still alive, even able to sit on a bench, but complained about feeling bad. An hour later the ambulance called by the policemen declared his death of shock and a closed blunt injury of the chest. On 2 December, the Kharkiv Military Prosecutor confirmed to the HRMMU that the identity of the SBU agent had been determined, but that it was established that he had not taken part in torture. The other suspects in the investigation were not yet identified “because the men who committed the crime wore masks”. As not a suspect, the SBU officer was not suspended.

<sup>37</sup> According to Ukrainian legislation and internal regulations of the law enforcement agencies, formal complaints can only be filed: (i) personally; (ii) through a trustee empowered with a power of attorney certified by the notary; and (iii) via postal mail. Residents of the territories controlled by the armed groups cannot resort to the latter two means as notaries’ powers as well postal communications have been suspended by the Government.

<sup>38</sup> Prior to ‘simultaneous releases’ the law enforcement agencies change a measure of restraint for the suspects, but do not terminate cases and keep them on wanted lists, so that they will be detained should they come to the territory controlled by the Government. ID documents of the released remain with the investigation as the cases are not closed.

<sup>39</sup> According to the Office of the Prosecutor General, 185 protestors sustained gunshot wounds and more than 1,000 had other types of injuries, 210 policemen and servicemen of internal troops sustained gunshot wounds, and more than 900 suffered other types of injuries.



officials of the Office of the Prosecutor General, Ministry of Internal Affairs and the SBU had intentionally interfered with the investigations and destroyed evidence.

111. On 31 March, the International Advisory Panel on Ukraine, constituted by the Secretary General of the Council of Europe, issued the report on its review of the Maidan investigations. The Panel stated that no substantial progress had been made and described the same impediments barring the investigation, in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights. The Panel also found that information delivered by the authorities to the public on the investigations was insufficient, as were the steps taken to involve victims and next-of-kin in criminal investigations. In February 2015, a coalition of civic organisations and initiatives published a report entitled *Price of Freedom* ‘on crimes against humanity’ committed during Maidan protests based on materials the coalition submitted for examination to the Office of the Prosecutor of the International Criminal Court.

112. Similarly, no progress in the investigation into the killing of 13 police officers and servicemen of internal troops during the Maidan protests has been reported.

*On-going trial of two Berkut servicemen*

113. On 24 February, the Kyiv City Court of Appeals issued a ruling to refer the case of two Berkut servicemen charged with the killing 39 protestors at Instytutska Street on 20 February 2014 for trial to the Sviatoshynskyi District Court of Kyiv. The accused have been in custody since 5 April 2014 and will remain there until 26 June. The next court hearing has only been scheduled for 3 June due to the inability to form the panel with two people’s assessors<sup>40</sup> as requested by the accused. Media reporting on the case has not been always compliant with the presumption of innocence, and the HRMMU is concerned that it may impact on the objectivity and impartiality of the people’s assessors participating in the trial.

114. The HRMMU obtained a copy of the indictment in the case of one of the accused. According to the document, the pre-trial investigation established that both of the accused were firing shots towards the crowd of protestors going up Instytutska Street, as a result of which 39 protestors were killed. The HRMMU is concerned that the prosecution has not yet established individual responsibility and is leaning towards an approach that would aim at establishing collective responsibility. The HRMMU will continue monitoring the trial and report on this issue.

115. The whereabouts of the third suspect, a Berkut commander, who was detained on 5 April 2014 and escaped from house arrest on 3 October 2014, has not yet been established. The Office of the Prosecutor General claimed on 29 April that it had enough evidence that he had fled to the Russian Federation, but his extradition cannot be invoked as he is not on an international wanted list<sup>41</sup>.

*Detention and charges to five Berkut officers and servicemen*

116. As the Maidan investigations are on-going during the reporting period, the Office of the Prosecutor General reported the detention of five Berkut servicemen under the charges of killing and injuring of protestors in February 2014. On 23 February, the Office of the

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<sup>40</sup> Form of participation of society in the administration of justice inherited by some countries of the former USSR in a limited number of cases, including criminal cases where accused may face lifetime sentence. The panel consists of three judges and two people’s assessors.

<sup>41</sup> On 29 April, the Head of the Special Investigation Department with the Office of the Prosecutor General Serhii Horbatiuk reported that Interpol had refused to put the suspect on a wanted list, although there was enough evidence that he fled Ukraine.



Prosecutor General reported that all 23 Berkut servicemen (including those mentioned in paragraphs 110-112 above), involved in killing of 39 protestors at Instytutska Street on 20 February 2014, have been identified. The same day two former Berkut servicemen were detained, and following a ruling of Pecherskyi District Court of Kyiv of 24 February, they were placed in custodial detention, where they currently remain. The other 19 servicemen were put on a wanted list as they have been hiding from justice.

117. On 23 April, Pecherskyi District Court of Kyiv detained three other former Berkut servicemen on charges under Articles 365 (abuse of powers) and 115 (intentional homicide) of the Criminal Code of Ukraine. As it was alleged by the pre-trial investigation, the detained servicemen were involved in the killing of five protestors, the infliction of gunshot wounds to 62 protestors as well as other types of injuries to more than 400 people on 18 February 2014 at Hrushevskoho Street in Kyiv.

### **C. Accountability for the 2 May violence in Odesa**

118. Two official investigations have been initiated to look into the 2 May violence in Odesa, when 48 persons died (six killed in the city centre and 42 – from the effects of the fire at the Trade Union Building), one by the Ministry of Internal Affairs and the other by the Office of the Prosecutor General. However, these investigations are widely believed to be unreliable, particularly because of the inability or unwillingness of law enforcement bodies to bring to justice those responsible for the violence. The HRMMU believes that with no obstacles in the investigation of the 2 May violence, the prosecution of perpetrators is only hampered by the fact that some suspects have reportedly fled Ukraine, including the former Deputy Head of Odesa Regional Department of the Ministry of Internal Affairs<sup>42</sup>.

#### *Investigation led by Prosecutor General Office on police and fire brigade negligence*

119. On 30 April 2015, the Office of the Prosecutor General notified the former Head of the Odesa Regional Department of the Ministry of Internal Affairs about suspicions of official negligence, by failing to ensure public security which resulted in clashes between ‘pro-federalism’ and ‘pro-unity’ supporters during the march ‘*For United Ukraine*’. On 13 May, the Pecherskyi District Court of Kyiv placed the former Head of the Odesa Regional Department of the Ministry of Internal Affairs under house arrest.

120. No progress has been achieved in a criminal investigation into the negligence of the fire department, which having received numerous phone calls about the fire, took 40 minutes to arrive at the scene – the Trade Unions Building, where 42 people died of suffocation, burns and as a result of jumping out of the windows – despite being located in its immediate vicinity.

#### *Investigation led by the Ministry of Internal Affairs*

121. The investigation headed by the Investigation Unit of the Ministry of Internal Affairs on mass disorder in the city centre and at the Trade Union Building continues to raise grave concerns. In September 2014, the investigation was split into several criminal proceedings, including three major ones: on the mass disorder at the Trade Union Building (Kulykove Pole Square), on mass disorder in the city centre and against a ‘pro-unity’ activist charged with murder.

#### *Investigation regarding the mass disorder at the Trade Union building*

122. The investigation led by the Ministry of Internal Affairs into mass disorder at the Trade Union Building is still on-going. By 15 May, no substantive progress has been observed in the investigation into the death of 42 people, and no suspect had been identified.

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<sup>42</sup> He is charged under Articles 365 (excess of authority or official powers) and 367 (neglect of official duty) of the Criminal Code of Ukraine for unlawful release of 63 perpetrators on 4 May detained the day before.

At the same time, on 9 February, the Office of the Prosecutor General closed the criminal investigation for lack of evidence against a ‘pro-unity’ activist, accused of beating ‘pro-federalism’ supporters, jumping out of the burning Trade Union Building. On 19 August, he was arrested and transferred to the SIZO in Kherson. On 26 August, the District Court of Kherson ruled on placing him in custodial detention. However, on 30 August, due to the pressure from ‘pro-unity’ activists, the Court of Appeal of Kherson Region changed the measure of restraint to an obligation not to leave Odesa without the investigator’s permission. On 17 February, victims appealed this decision as being groundless and politically motivated with no result to date as the trial on the matter is on-going.

#### *Investigation into mass disorder in the city centre*

123. On 25 March, the Office of the Prosecutor General submitted a revised indictment against 20 ‘pro-federalism’ supporters charged under Article 294 (mass disorder) of the Criminal Code of Ukraine (one of whom had reportedly fled to Crimea) to the Malynovskyi District Court of Odesa. The defence lawyers maintain that in addition to previously mentioned numerous omissions, including violation of the principle of fair trial, the revised indictment contained new procedural mistakes and referred rather to the political views of the accused, than to evidence of their participation in the mass disorder. The court ruled to return the indictment to the Office of the Prosecutor General for the second time.

124. Consideration of the motion of the ‘pro-federalism’ suspects regarding the returned indictment was carried out in the absence of some of defence lawyers (due to failure of the court to properly notify the parties of the hearing in advance). The Court of Appeals of Odesa region also disregarded a request from defendants for legal aid which was hampered by the absence of their lawyers. On 26 March, a judge of the Malynovskyi District Court of Odesa extended the detention of 10 ‘pro-federalism’ detainees without a full panel of judges as prescribed by law when considering grave crimes. Furthermore, the court session was not public and transparent since none of the defenders and their lawyers were notified of the court date and, they were thus unable to participate.

125. On 27 April, the Malynovskyi District Court of Odesa ruled once again to return the indictment to the Office of the Prosecutor General due to numerous omissions and procedural mistakes. On 15 May, the Court of Appeals of Odesa Region considered the appeal of the prosecution against the decision of the Malynovskyi District Court. The HRMMU observed numerous procedural violations during the hearing which was held in the absence of several defence lawyers. Appeals for legal aid of the defendants, including minor, were ignored by the court. The panel of judges seemed prejudiced against the defence and decided to submit the indictment to the Malynovskyi District Court of Odesa for a new consideration.

#### *Investigation regarding the ‘pro-unity’ activist charged with murder*

126. On 22 April, almost one year after the opening of the criminal investigation, the indictment against the single ‘pro-unity’ activist, charged with participation in mass disorder, murder and injuring a law enforcement officer in the city centre, was submitted to the Prymorskyi District Court of Odesa.

#### **D. Investigation into the Rymarska case**

127. The investigation into the shooting at Rymarska street in Kharkiv on 14 March 2014 due to a conflict between activists of the ‘pro-federalism’ group *Oplot* and activists of the ‘pro-unity’ group *Patriots of Ukraine* which resulted in two people killed and several wounded including a police officer, has shown little progress. More than a year after the event, no perpetrators have been identified.

128. In 2014, the SBU informed the HRMMU that there would be no indictments in the case, as according to the pre-trial investigation, the shooting was a case of self-defence. At

the same time, the HRMMU is not aware that the case has been officially closed. Information from the SBU, Ministry of Internal Affairs, and Kharkiv Regional Prosecutor's Office suggests that the majority of the members of the Patriots of Ukraine, allegedly involved in shooting, are now serving with the Azov Regiment in the conflict zone, and therefore cannot be reached.

## **E. Administration of justice**

### *Parallel 'administration of justice' systems on the territories controlled by the armed groups*

129. The armed groups and the so-called 'governance structures' of the 'Donetsk people's republic' and 'Luhansk people's republic' are accountable for human rights violations committed on territories under their control. Steps taken by the 'Donetsk people's republic' and 'Luhansk people's republic' to establish their own 'legislative' frameworks<sup>43</sup> and systems of 'administration of justice' ('police', 'prosecutors'<sup>44</sup> and 'courts'<sup>45</sup>) are contrary to the Constitution of Ukraine and international law, and jeopardize the Minsk Agreements.

130. Although there is no legal framework for the activity of 'lawyers' in the 'Donetsk people's republic', on 19 March, the 'supreme court' and the 'prosecutor general' issued a joint instruction to ensure the right to a public defender in criminal 'proceedings' initiated since December 2014. Meanwhile, the Law On Advocacy of Ukraine is still in force in the 'Luhansk people's republic', but is still not applied due to lack of established 'judiciary'.

131. A 'court system' started functioning in the 'Donetsk people's republic' as of 9 January with the appointment of 42 'judges', including 12 assigned to the 'supreme court' and its 'head', and two 'arbitrators'. Majority of cases are those which remained pending from Ukrainian courts<sup>46</sup> and cases filed by the 'penitentiary service' for revision of the term of detention of those remaining there since 2005. The 'supreme court' has already made 'decisions' in 20 'criminal cases'. 'Courts of general jurisdiction' are 'hearing' 61 civil cases; and issued 'decisions' in eight cases.

132. The 'court system' of the 'Luhansk people's republic' has not started functioning yet<sup>47</sup>. There have been, however, 'cases' awaiting 'trial'. They include the 'case' of Maria Varfolomieieva who was captured in January for allegedly taking pictures of the buildings that were allegedly subsequently shelled, accused of 'espionage' and is expected to be 'tried' in a 'court' as soon as the 'court system' starts functioning. The HRMMU is concerned that a 'trial' over Ms. Varfolomieieva would 'legitimize' her unlawful deprivation of liberty and urged the 'Luhansk people's republic' to release her – as well as other captives.

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<sup>43</sup> 'Donetsk people's republic' and 'Luhansk people's republic' apply a Criminal Procedural Code of the Ukrainian Soviet Socialist Republic of 1960.

<sup>44</sup> 'Prosecutor's offices' in the 'Donetsk people's republic' have been vested with broad powers, including the right to decide on a measure of restraint (including 'detention' of up to two months which can be extended to 20 months).

<sup>45</sup> While the 'court system' has not yet started functioning in the 'Luhansk people's republic', the same has been introduced in the 'Donetsk people's republic' based on the Soviet Union model. The 'supreme court' started functioning on 23 September 2014 with the primary aim of development of a 'legislation framework' for 'administration of justice'. 'Courts of first instance' started working on 9 January, with the appointment of 42 'judges' based on the interview; this includes 12 'judges' of the 'supreme court' and its 'head', 2 'arbitrators'.

<sup>46</sup> Currently the archive of 'supreme court' (previously Court of Appeal of Donetsk region) has 498 unconsidered criminal 'cases' and 1,837 civil 'cases'. 'Courts of the first instance' have 1,602 unconsidered criminal 'cases' and more than 1,000 civil 'cases'. Some of the 'cases' have already been heard.

<sup>47</sup> Member of 'people's council' of the 'Luhansk people's republic' informed the HRMMU that on 30 April, several 'laws' on the 'judiciary' had been 'adopted' in the 'second reading'. These included 'laws' 'on the court system', 'on the creation of courts', which set up 'courts' at the 'republican' level: 'supreme court', 'court of appeals', 'martial court', four 'district courts' in Luhansk, eight 'city courts', two 'city/county courts', and three 'district (county) courts'.

### *Law enforcement tolerating illegal action by 'pro-unity' supporters*

133. The HRMMU is concerned that illegal activities of 'pro-unity' activists have been tolerated by Ukrainian law enforcement agencies. On 26 March, the HRMMU witnessed the abduction by 'pro-unity' activists of two lawyers representing 'pro-federalism' activists. This occurred during a protest organised by the lawyers as they attempted to enter the Odesa SIZO, where their clients were held<sup>48</sup>. The police at the scene made no attempt to intervene. Moreover, as observed by the HRMMU, while the perpetrators were clearly identified on the spot, no investigation was open. The abduction appeared to have been stopped due to the intervention of the HRMMU which immediately reported on the incident to a police officer prompting him to eventually take action.

134. Several 'rubbish container lustration' incidents took place during the reporting period. On 11 April, members of the Right Sector, Self-Defence and other local civil activists who claim poor implementation of the Lustration Law forcefully put the head of Ivano-Frankivsk Regional Department of Justice into a rubbish container. The police initiated criminal investigation under Article 296 (hooliganism) of the Criminal Code of Ukraine. On 24 April, Right Sector activists took the deputy of the city council of Dniprodzerzhynsk from his office and pushed him in a rubbish container. He was also hit, including with a five litre bottle filled with water.

### *Alleged intimidation of judges*

135. The HRMMU is highly concerned about the lack of independence of the judiciary. Due to direct intimidation and threats against judges, the judiciary fails to ensure impartial and fair trial. On 27 February, the Odesa Court of Appeal held a general meeting with all judges of Odesa region to discuss the increased pressure on the judiciary system by 'pro-unity' activists. The pressure reportedly includes death threats, physical attacks and forcefully putting judges into trash containers. In addition to the pressure from 'pro-unity' activists, the judges referred to pressure from the SBU to take 'right' decisions during hearings involving 'pro-federalism' activists suspected of terrorism and committing crimes against national security.

### *High profile cases*

136. The HRMMU continued to follow up on the prosecutions of former senior and Government officials, with no progress to date. These include the cases of Yurii Borisov, Nelia Shtepa and Oleksandr Yefremov. On 3 March, the Chervonozavodskyi Court of Kharkiv started hearings on the case of Ms. Shtepa and has since held several sessions where witnesses were questioned. While Ms. Shtepa insisted that many possible defence witnesses refused to testify after the abduction and killing of her deputy in January 2015, the prosecutor's witnesses stated that she was not abducted and forcefully detained by the armed groups as she had claimed, but that she collaborated with them. The HRMMU reiterates the necessity to ensure impartiality and objectivity of the process against current and former officials.

137. The HRMMU is concerned with the deaths over the reporting period of several politicians at various levels connected to the previous regime. These include the former Mayor of Melitopol Serhii Valter, who committed suicide on 25 February, former deputies of the Parliament Mykhailo Chechetov<sup>49</sup> and Stanislav Melnyk, who committed suicide on 28

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<sup>48</sup> On 26 March, Malynovskyi District Court of Odesa extended detention for 10 'pro-federalism' detainees, accused in the mass disorder on 2 May 2014 in the city centre whose term of detention expired at 5 am that day. A single judge instead of a panel of three judges considered the issue on detention without holding a court hearing and without notifying the defence team.

<sup>49</sup> On 20 February, the Office of the Prosecutor General notified Mykhailo Chechetov of suspicion in committing a crime under Article 364 (abuse of power) of the Criminal Code of Ukraine during voting for the laws aimed at limitation of civil rights and freedoms on 16 January 2014. On 21 February, Pecherskyi District



February and 9 March respectively, the former Head of Zaporizhzhia Regional State Administration Oleksandr Peklushenko, who committed suicide on 12 March, and the killing of former deputy of the Parliament Oleh Kalashnikov on 15 April.

## **VI. LEGISLATIVE DEVELOPMENTS AND INSTITUTIONAL REFORMS**

### **Constitutional reform**

138. On 3 March, the President of Ukraine established a Constitutional Commission to prepare a draft law on constitutional reform that would result from wide public consultations. The Commission is chaired by the Chairperson of the Parliament and made up of 73 members, both women and men, including the Minister of Justice, former presidents of Ukraine, parliamentarians, academics, judges and other members of the legal profession, representatives of the civil society, and 13 foreign legal experts and representatives of international organizations, including the Council of Europe, European Union, OSCE and the HRMMU representing the United Nations.

139. The first meeting of the Commission was held on 6 April and several meetings were held in May. Three working groups have been set up to review issues related to: human rights and freedoms; the judiciary, legal institutions and law enforcement; and constitutional principles of state governance, local self-government, administrative and territorial organization and decentralization.

140. While no deadline for the work of the Commission is mentioned in the decree establishing it, this process would need to be completed before the country-wide local elections of October 2015 as amendments regarding decentralization and local self-governance bodies would be required. In addition, the Package of Measures for the Implementation of the Minsk Agreements of 12 February 2015 states that a new constitution must enter into force “by the end of 2015” and that it should provide for “decentralization as a key element”.

### **Reform of the judiciary**

141. On 26 February, the Law on Ensuring the Right to a Fair Trial, which amends the laws on the Judicial System and the Status of Judges, on the High Council of Justice, the Code on Administrative Offences and different procedure codes, entered into force.

142. The HRMMU considers that this law brings some positive elements. In particular, it strengthens the role of the Supreme Court as the guarantor of the unity of the jurisprudence. At the same time, the HRMMU notes that the legislator was limited in the nature and scope of amendments it could introduce due to constitutional provisions preventing fundamental changes in the judicial system. Therefore, as highlighted by the Venice Commission<sup>50</sup>, the HRMMU recommends that the Constitution of Ukraine should be amended to achieve effective judicial reform. The HRMMU is of the view that amendments should eliminate or at least limit the influence of non-judiciary institutions on judicial matters. This applies to the powers of the Parliament to appoint judges to permanent posts, dismiss them and lift their immunities. It also includes the exclusive power of the President to establish and liquidate courts. Furthermore, the composition of the High Council of Justice should be modified to ensure that a substantial part or a majority of its members are judges elected by their peers, which is currently not the case.

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Court of Kyiv ruled on a measure of restraint in the form of custodial detention with a right to bail. On 23 February, upon settling the bail, he was released.

<sup>50</sup> See Opinion No 801/2015 of 23 March 2015.



## **Reform of the law enforcement**

143. On 13 May, the Government submitted to the Parliament a draft Law On the National Police after the deputies had withdrawn an earlier draft prepared with the civil society. The HRMMU notes that the new text has not been discussed and that it contains some questionable provisions presented as measures of a preventive character. In particular, it gives wide discretion to the police to enter private premises without a court decision. This can be done “in urgent cases” to track suspects, neutralize a threat to the life of occupants and verify the presence of a person under home arrest. Another provision would authorize the police in the area of the security operation to shoot at a person without a warning. The HRMMU also recalls that the UN Basic Principles on the use of force and firearms by law enforcement officials stipulate that intentional use of firearms may only be made when strictly unavoidable in order to protect life and that in such cases, officials shall identify themselves as such and give a clear warning of their intent to use firearms.

## **International human rights commitments**

144. On 30 April, the Parliament of Ukraine registered a draft resolution<sup>51</sup> requesting the Ministry of Foreign Affairs and the Ministry of Justice to notify the Secretary-General of the United Nations and the Secretary-General of the Council of Europe about the derogation by Ukraine from certain obligations enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the Convention for the Protection of Human Rights and Fundamental Freedoms. The derogation is proposed in response to the “military aggression of the Russian Federation” and will be in place until the “complete termination” of the “aggression”. The proposed derogation from State obligations is envisaged in relation to the right to liberty and security, fair trial, effective remedy, respect for private and family life and freedom of movement, including the right to choose one’s residence. It is proposed to be applied to certain districts of the Donetsk and Luhansk regions determined by the Anti-Terrorist Centre of the Security Service of Ukraine. In accordance with Article 4 of the ICCPR, a State may take measures to derogate from their obligations under the Covenant in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed. The State then shall notify the UN Secretary-General. The HRMMU is concerned that such a derogation could further complicate the protection of human rights for those living in the conflict area.

## **Package of Measures for the Implementation of the Minsk Agreements of 12 February**

145. On 17 March, the Parliament adopted amendments to the Law On the Temporary Procedure of Local Self-Government in Certain Parts of the Donetsk and Lugansk Regions, which was passed on 16 September 2014 pursuant to the Minsk Protocol of 5 September 2014. The March amendments provide that temporary self-rule provisions under the September law would be enacted only after local elections are held in certain parts of the Donetsk and Luhansk regions in accordance with the Ukrainian Constitution and legislation. The amendments also mention the need for free, fair and internationally supervised elections meeting OSCE standards; enabling IDPs to vote; equal access to the media, including a resumption of the work of the Ukrainian media; and withdrawal of foreign weapons, military and mercenaries from the territory of Ukraine. The representatives of the self-proclaimed ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ condemned the amendments, insisting that self-rule provisions should be implemented without pre-conditions.

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<sup>51</sup> The Resolution On the Approval of the Notification of Ukraine about the Derogation from Certain Obligations Determined by the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights was adopted by the Parliament on 21 May.

146. On 17 March, the Parliament adopted two resolutions. One resolution (No. 252) identifies the area of the Donetsk and Luhansk regions to be provided with temporary special status. The other resolution (No. 254) recognizes that the districts, cities, settlements and villages located inside the area enjoying temporary special status are considered to be “temporarily occupied”<sup>52</sup>.

147. It should be noted that, during the reporting period, no significant progress has been made in implementing the provisions of the Package directly affecting human rights. They include: releasing all “hostages and unlawfully detained persons”, based on the ‘all for all’ principle; ensuring pardon and amnesty by enacting the law prohibiting the prosecution and punishment of persons in connections with the events that took place in the east; ensuring safe access, delivery, storage and distribution of humanitarian assistance to those in need; and defining modalities for a full resumption of socio-economic ties, including banking services, payment of pensions and various social allocations.

### **Humanitarian aid**

148. As of 15 May, the working group of a parliamentary Committee on Issues of Veterans, Participants of Combat Operations, Participants of the Anti-Terrorist Operation and Persons with Disabilities was finalising a concept for a law on humanitarian aid. The concept proceeds from the recognition that the existing legal framework is inadequate and needs to be brought in compliance with international standards. The concept envisages delivery of and access to humanitarian supplies to all civilians affected by conflict, including but not limited to IDPs, no matter where they are geographically. The concept also stipulates the creation of an inter-ministerial Agency for the Coordination of Humanitarian Aid and measures to facilitate the provision of humanitarian aid, notably through tax exemptions and simplification of administrative procedures.

### **Martial law**

149. On 12 May, the Parliament adopted amendments to the Law On the Legal Regime of Martial Law articulating in greater detail the legal mechanisms to introduce and cancel martial law and the organs in charge of enacting it. They also increase the number of restrictive measures that may be taken under martial law. One new measure includes “interning (forcibly expelling) nationals of a foreign state which threatens to attack or carries out aggression against Ukraine”. In light of the resolution of the Parliament of 27 January 2015 recognizing the Russian Federation as an “aggressor state”, the HRMMU is of view that this provision could apply in particular to nationals of the Russian Federation in Ukraine. It also appears to provide a legal basis to detain and expel foreign citizens legally staying in Ukraine who have not committed any crime.

### **Law on Civil-Military Administrations**

150. One regional and five local military-civil administrations have been established in the Donetsk region and one regional and seven local ones in the region of Luhansk during the reporting period. These administrations are temporary State bodies functioning within the Anti-Terrorist Centre of the SBU. They can be established in localities where self-government bodies are unable or fail to carry out their functions pursuant to the Law On Civil-Military Administrations, which entered into force on 28 February.

151. Civil-military administrations cumulate the executive and legislative powers of local self-government organs. They are vested with powers to limit freedom of movement; prohibit

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<sup>52</sup> According to the document, the qualification will remain valid “until the withdrawal of all illegal armed formations, military hardware, militants and mercenaries from the territory of Ukraine and the restoration of full control over the state border of Ukraine”.

the activities of political parties and public organizations; control the work of enterprises and media outlets; terminate the functions of local bodies and cancel their decisions.

152. The HRMMU notes that some safeguards have been introduced to counter-balance these wide powers and the risks of abuse they carry. The decisions of civil-military administrations must be published and can be appealed in court. In addition, communal property cannot be disposed of (privatized), which implies that property transactions frequently giving rise to corruption schemes at the local level are prohibited. On the other hand, the establishment of such administrations is left at the discretion of the President and does not seem to result from a clear set of criteria. Furthermore, the head of a military-civil administration in a locality is appointed and dismissed by a central body, the National Security and Defence Council of Ukraine. This means that in addition to being unelected, this official is not accountable to the local community where her or his functions are exercised.

### **De-communization laws**

153. On 15 May, the President of Ukraine signed a package of four laws<sup>53</sup> relating to Ukraine's history. They denounce the Communist and Nazi regimes as "criminal under the law", ban propaganda in their favour and all public display of their symbols. They also require replacing communist-inspired names for cities, streets, squares and other places. The package of laws include provisions for opening all archives of Soviet-era security organs and provides public recognition to all those who fought for Ukrainian independence. Thus, in addition to Soviet war veterans, the State and local governments are to provide social benefits to members of very diverse groups enumerated in the law, ranging from human rights activists to members of ultra-nationalist movements which committed mass atrocities during World War II, such as the Organization of Ukrainian Nationalists (OUN) and the Ukrainian Insurgent Army (UPA).

154. The HRMMU notes that there is serious risk that some legal provisions could discourage debate about Ukraine's past and limit the freedom of expression in a way that could deepen divisions. For example, the Law On the Legal Status and Honouring of Fighters for Ukraine's Independence in the Twentieth Century' states that "publicly expressing disrespect" for any mentioned group that fought for Ukraine's independence and the legitimacy of this struggle is "illegal" and will result in "liability" under Ukrainian legislation. The Law On Condemning Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibiting Propaganda of their Symbols is even more explicit in imposing sentences in the form of restriction of liberty or imprisonment for up to five years for the preparation, circulation and public use of Communist or Nazi symbols. It should be noted that similar provisions adopted in other countries were found by the European Court of Human Rights<sup>54</sup> to violate the right to freedom of expression. According to Article 20 of the ICCPR, States parties are only required to prohibit by law "propaganda for war" and "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".

### **Anti-corruption**

155. On 18 March, the Cabinet of Ministers created a National Agency on Prevention of Corruption, as foreseen under the legal anti-corruption package adopted in October 2014. The Agency is to conduct mandatory e-declaration of incomes and expenditures of all public

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<sup>53</sup> See the laws On Condemning Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibiting Propaganda of their Symbols; On the Legal Status and Honouring of Fighters for Ukraine's Independence in the Twentieth Century; On Perpetuating the Victory over Nazism in World War II 1939 – 1945; On Access to the Archives of the Repressive Bodies of the Totalitarian Communist Regime 1917-1991.

<sup>54</sup> See, for example, *Vajnai v. Hungary* (2008), where the Court found that fining a demonstrator for wearing a red star was in breach of his right to freedom of expression.

officials. A public council was created within the agency to monitor its work. On 16 April, President Poroshenko appointed Artem Sytnyk, a former prosecutor, as Director of the National Anti-Corruption Bureau (NACB), a body which will conduct investigation into crimes committed by high level public officials, including judges and prosecutors. The Bureau will be able to file cases in court through specially trained prosecutors to be appointed by the Office of the Prosecutor General and responsible to the Bureau Director.

## **VII. HUMAN RIGHTS IN THE AUTONOMOUS REPUBLIC OF CRIMEA**

156. The situation in the Autonomous Republic of Crimea continued to be characterized by human rights violations targeting mostly those who opposed the unlawful ‘referendum’ in March 2014 and the arrival of ‘authorities’ applying the laws of the Russian Federation.

157. During the reporting period, the HRMMU was informed about ill-treatment and torture perpetrated by or with the acquiescence of the Crimean ‘law enforcement’. Harassment and arrests of Mejlis members or supporters and civic activists continued. Control of the media was tightened after a number of media outlets, particular Crimean Tatar ones, were forced to cease operating. The freedom to practice one’s religion has been jeopardized by limitations resulting from re-registration requirements.

### **Torture and ill-treatment**

158. During the reporting period, the HRMMU obtained new information, including medical and court records, concerning the case of Oleksandr Kostenko. As previously reported<sup>55</sup>, Mr. Kostenko was arrested by the ‘police’ on 8 February 2015 on suspicion of wounding a Berkut police officer on 18 February 2014 during the Maidan protests in Kyiv. New information suggests that on 5 February 2015 he was abducted by two men, possibly affiliated to the Federal Security Service (FSB) of the Russian Federation, blindfolded, hit and tortured, including through electric shocks, to extort a confession of guilt he made after being delivered to the ‘police’ on 8 February. The HRMMU has a copy of Mr Kostenko’s medical examination revealing multiple fractures, a dislocated shoulder and a broken elbow.

159. On 9 February 2015, Mr. Kostenko was provided with a lawyer and placed by a ‘court’ in pre-trial detention<sup>56</sup> for two months. This term has later been prolonged until 3 June. According to his lawyer, he was beaten up by other detainees. His lawyer requested the ‘court’ to exempt from the case file all the evidence obtained under duress. On 3 April, the ‘court’ rejected the request as unfounded, stating that the evidence obtained and the allegations made, including torture claims, should be examined together in future court proceedings, in order not to compromise the establishment of facts and responsibility. On 15 May, Mr. Kostenko was found guilty of inflicting deliberate injury and possession of firearms by a ‘court’ in Simferopol and sentenced to four years and two months of imprisonment. His lawyer said he would appeal the decision. The HRMMU considers that in addition to evidence of confessions obtained under torture, the case points to an absence of conditions for a fair trial and legal safeguards for the accused.

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<sup>55</sup> See paragraph 95 of the 9<sup>th</sup> HRMMU report on the human rights situation in Ukraine.

<sup>56</sup> He is charged under Article 115 (deliberate infliction of mild damage to health for motives of political, ideological, racial, ethnic or religious hatred or enmity, or hatred or enmity in relation to a social group) of the Criminal Code of the Russian Federation.



160. On 20 April, FSB officers detained Emir-Usein Kuku, a member of the ‘human rights contact group’<sup>57</sup>, and informed him that he was suspected under Article 282 (incitement of hatred or enmity) of the Criminal Code of the Russian Federation. He claims that he was repeatedly hit while being convoyed to the FSB department in Yalta. His house was also searched. On 21 April, a medical examination found that Mr. Kuku suffered injuries to the head and one kidney.

### **Persecution of Crimean Tatars and ‘pro-Ukraine’ supporters**

161. Pressure and intimidation against all those who oppose the *de facto* authorities or officially sanctioned views about events in Crimea continued. They usually take the form of arbitrary arrests, house searches, abusive questioning as suspects or witnesses, the imposition of fines and job dismissals. They also frequently involve the vague and unsubstantiated accusation of promoting extremism and intolerance.

162. During the reporting period, another four Crimean Tatars<sup>58</sup> were arrested and placed in pre-trial detention in connection with the events of 26 February 2014<sup>59</sup>. All four Crimean Tatars were charged with participation in mass riots and risk prison terms of three to eight years. On 23 March, several other Crimean Tatars, including two senior Mejlis officials<sup>60</sup> and a businessperson were also summoned for questioning as witnesses in relation to the February 2014 events, and the ‘police’ searched their houses. These actions followed the arrest of the deputy head of the Mejlis, Ahtem Chygoz, on 29 January 2015, who was placed in detention until 19 May on suspicion of organising mass riots, a charge which carries a prison sentence of four to 10 years.

163. On 11 March, a ‘court’ in Simferopol ordered 40 hours of corrective labour for three Crimean activists and 20 hours for another one after they unfurled a Ukrainian flag with the inscription “Crimea is Ukraine” during a rally, which had been authorized by the Simferopol ‘city administration’, to commemorate the 201<sup>st</sup> anniversary of the national poet of Ukraine Taras Shevchenko on 9 March. The ‘court’ found that, by failing to mention the use of Ukrainian symbols in the request form for the event, the activists had violated “legal provisions regulating the conduct of mass events”. On 11 March, the organizer of the event, Leonid Kuzmin, was dismissed from his job as teacher of history for behaviour “inconsistent with his position”. On 17 April, he was attacked by a group of young men, including one of his former students, who allegedly accused him of being a *Right Sector* member and hit him with a bottle. Mr. Kuzmin reported the case to the Crimean ‘police’.

164. On 21 April, Oleksii Chorny, one of four Ukrainian citizens arrested in Crimea and transferred to the Russian Federation in May 2014, was found guilty of planning terrorist acts and smuggling weapons by a Russian court and sentenced to seven years imprisonment. Mr. Chorny, who risked up to 12 years of imprisonment, entered a plea agreement. In December 2014, another co-accused, Hennadii Afanasiev, did the same and received an identical prison sentence. The two other people arrested include a ‘pro-Ukrainian’ activist, Oleksandr Kolchenko and film-maker Oleh Sentsov, who are currently awaiting trials on charges under Article 222-3 (unlawfully obtaining, selling, possessing weapons, explosive substances and devices) of the Criminal Code of the Russian Federation.

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<sup>57</sup> The group is a coordination body established in October 2014 by *de facto* authorities of Crimea to contribute to the search for several Crimean Tatars who went missing in 2014. It is composed of ‘police officers’, officials of the Investigative Committee of the Russian Federation and relatives of those who went missing.

<sup>58</sup> Eskender Emirgaliyev was arrested on 18 February, Talyat Yunusov on 11 March, Ali Asanov on 15 April and Eskender Nebiev on 22 April.

<sup>59</sup> For more details see paragraph 93 of the HRMMU report of 1 December 2014 -15 February 2015.

<sup>60</sup> Nariman Dzhelal and Ilmy Umerov.



## Freedom of expression

165. On 1 April, the deadline for re-registration of all Crimean media outlets under the law of the Russian Federation expired. *Roskomnadzor*, the Russian Federation media registration agency, registered 232 media. The HRMMU has analysed the situation of the Crimean Tatar media and identified at least seven media outlets which were denied registration. They include the television channels *ATR* and *Lale*, radio stations *Meydan* and *Lider*, news agency *QHA*, the newspaper *Avdet* and the Internet site *15minut*. *Roskomnadzor* cited procedural violations as the main reasons for rejection. Some media were unsuccessful despite submitting several requests. On 30 and 31 March, dozens of people gathered outside the *ATR* studio and several were briefly detained for trying to make a video clip in support of the channel. A Simferopol ‘court’ imposed a fine on one of the protesters for “infringing the rules for holding mass protests” and “resisting arrest”. On 14 May, *Roskomnadzor* published a list of 30 media outlets using Crimean Tatar language, which were registered. They include nine newspapers, eight journals, five TV and eight radio stations where Crimean Tatar is used as the sole language or one of the languages of communication.

166. The HRMMU notes that although some media outlets arguably continue operating in Crimean Tatar language, the TV channel mostly watched by the Crimean Tatar community (*ATR*) and the mostly read newspaper (*Avdet*) were denied licenses to continue their work. The HRMMU recalls that undue restrictions on the right to seek, receive and impart information and ideas of all kinds gravely undermine media pluralism and violate freedom of expression, which is protected under Article 19 of the Universal Declaration of Human Rights and Article 19 of the ICCPR.

167. The Crimean ‘law enforcement’ also acted to discourage critical reporting on Crimea from media that left the peninsula for mainland Ukraine. On 2 April, the HRMMU interviewed Anna Andrievska, a journalist from the Crimean Centre for Investigative Journalism who now lives in Kyiv. She informed that on 13 March, the Crimean ‘police’ opened a criminal case against her for an article she wrote in December 2014 on a Crimea volunteer battalion of the Ukrainian armed forces. They also searched the house of her parents in Crimea, seized some personal notes and questioned former colleagues of hers. Ms. Andrievska is accused under Article 280-1 (public calls for the infringement of the territorial integrity of the Russian Federation) of the Criminal Code of the Russian Federation, which carries a prison sentence of up to five years.

## Freedom of religion

168. Public organizations, including religious communities also had to re-register under Russian Federation law to obtain legal status. The deadline for re-registration was extended twice<sup>61</sup> and is now 1 January 2016. Religious communities requesting re-registration need to submit the statutes of the organization, two records of community meetings, a list of all the community members, and information on the “basis of the religious belief”.

169. Almost 200 religious communities applied for re-registration so far and many requests are still being processed. As of 8 May, 51 communities have been re-registered, including two with the largest number of Christian Orthodox and Muslim believers on the peninsula, the Russian Orthodox Diocese for Simferopol and Crimea and the Spiritual Administration of Muslims of the Republic of Crimea and the City of Sevastopol (i.e. the *Mufiyat*). Other registered organizations include Protestant and Jewish communities. The Ukrainian Orthodox Church of the Kyiv Patriarchate did not lodge an application for registration, while the

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<sup>61</sup> The first deadline was 1 January 2015 and the second one – 1 March 2015.

Roman Catholic Church had to re-submit applications after the initial ones were rejected due to some documents being in Ukrainian.

170. The HRMMU notes with concern that the obligation of religious communities to re-register under Russian Federation law, the strict requirements of the procedure, and the lengthy verifications it entails, have adversely affected the right to freedom of thought, conscience and religion of hundreds of thousands of Crimean residents. Without registration, religious communities can congregate but cannot enter into contracts to rent state owned property, employ people or invite foreigners<sup>62</sup>.

### **Vulnerable groups**

171. The situation of some vulnerable groups, such as people with drug addiction, is dramatic. About 800 of them are currently without life-saving opioid-substitution therapy in Crimea. Under Ukrainian legislation, Crimean doctors provide intravenous drug users with methadone, an opioid substitute, and buprenorphine, a drug used to ease dependence. According to Russian legislation substitution therapy is not a legal option for treatment of drug dependence and needle-exchange programs are not supported. The HRMMU has information that patients who have stayed in Crimea have been offered treatment in Russian hospitals, but that usually includes simple detoxification and, occasionally, a follow-up rehabilitation. By May 2015, up to 30 people have died in Crimea due to complications related to drug overdose or chronic illness since March 2014. Dozens have fled to mainland Ukraine mostly with the help of the International HIV/AIDS Alliance, an NGO network.

## **VIII. CONCLUSIONS AND RECOMMENDATIONS**

172. All measures need to be taken to end the fighting and violence in the eastern regions of Ukraine to save lives and to prevent further hardship for those people living in the conflict affected area. With the tenuous respect for the 15 February ceasefire, people continue to be killed, and violations of international human rights law and international humanitarian law persist. The situation in the conflict-affected areas is becoming increasingly entrenched, with the local population more and more isolated, without any rule of law, meaningful protection for dissenting views or access by vulnerable groups to effective remedies. OHCHR believes that the full implementation of the Package of Measures for the Implementation of the Minsk Agreements of 12 February is the only viable strategy for achieving a peaceful solution in Donbas, which would pave the way for fuller respect of the rights of people both in the conflict area and elsewhere in Ukraine. As noted in previous reports, the control of the borders between Ukraine and the Russian Federation, the withdrawal of foreign fighters and the cessation of the flow of weapons from the Russian Federation would have a significant impact on law and order and the implementation of other provisions of the Minsk Agreements.

173. The impact of the conflict on the economic and social rights of civilians continues to be dramatic. Guarantees of economic and social rights have progressively weakened, especially on the territories controlled by the armed groups. The interruption of access to

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<sup>62</sup> See the thematic report of the Independent Expert on minority issues, Rita Izsák, concerning the protection and promotion of the rights of religious minorities (A/68/268, paragraph 61: “It is essential to ensure that all procedures for registration are accessible, inclusive, non-discriminatory and not unduly burdensome. Registration procedures designed to limit beneficiaries due to political or social intolerance run afoul of human rights standards”). See also the thematic report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt (A/HRC/22/51, paragraph 42: “failure to register, or re-register periodically, could lead to legal vulnerability that also exposes the religious minorities to political, economic and social insecurity”).

basic services is life-threatening and can have a life-long impact on a large portion of the population, hindering the post-conflict recovery of the society.

174. The situation of human rights in the Autonomous Republic of Crimea remains very concerning. Arrests, ill-treatment, torture and intimidation continue being perpetrated against political opponents, primarily in the Crimean Tatar community, with the knowledge or participation of the 'law enforcement' or affiliated groups. Legal safeguards for detained persons are all but inexistent. The exercise of the rights to freedom of expression, assembly and religion is mostly limited to groups or individuals being loyal to the *de facto* authorities. Administrative measures, including registration requirements, are used as control mechanisms and tools to prevent the spread of dissenting views.

175. Accountability and an end to impunity are at the core of ensuring peace, reconciliation and long term recovery in Ukraine. Violations of human rights must be investigated and, where there is evidence of crimes, the perpetrators brought to justice.

176. OHCHR appreciates the good cooperation extended by the Government of Ukraine to the HRMMU. The HRMMU will continue to monitor and report on the evolving situation, with a view to contributing to an unbiased and accurate assessment of the human rights situation and a stronger and effective national human rights protection system.

177. OHCHR notes the progress made by the Government of Ukraine in the implementation of some recommendations contained in previous HRMMU reports, in particular, the adoption of the legislation on Judiciary and the Office of the Prosecutor General, some progress on the law-enforcement reform, anti-corruption and development of the National Human Rights Strategy. OHCHR also welcomes the development, under the leadership of the Ministry of Social Policy, of the National Action Plan on implementation of the UN Security Council Resolution 1325, which promotes role of women in conflict resolution and peace-building.

178. Recommendations made in the HRMMU reports published since April 2014, that have not yet been acted upon or implemented, remain valid and are reiterated. In addition, OHCHR calls upon all parties to implement the following recommendations:

**To all parties involved in the hostilities in the eastern regions of Donetsk and Luhansk**

- a) Seek common ground, through a sustained dialogue, in order to fully implement the Package of Measures for the Implementation of Minsk Agreements of 12 February. In particular, work in good faith towards the implementation of the provisions of the Package directly affecting human rights.
- b) Prioritise demining activities, in particular, in places of expected returns of IDPs and conduct mine risk awareness outreach to children and communities.
- c) Allow full and unhindered access, delivery, storage and distribution of humanitarian agencies in the conflict area.
- d) Provide additional security guarantees for humanitarians accessing settlements divided by the contact line.

**To the Government of Ukraine**

- e) Investigate all violations of human rights and international humanitarian law committed in the east, including by the Government forces.
- f) Guarantee independence and impartiality of judges within their mandate, especially with regard to Maidan events and the 2 May violence in Odesa.
- g) Conduct impartial and objective investigations into the recent killings of the former members of parliament and a journalist and regularly report on its progress.
- h) Revoke the Temporary Order of 21 January. Limitations on freedom of movement must be based on clear legal grounds and meet the tests of necessity and proportionality.

Those seeking safety and security must be allowed to do so without having to apply for a permit in advance or go through only pre-designated check-points.

- i) Develop mechanisms to ensure that people on the territories controlled by armed groups have access to justice.
- j) Develop compensation mechanisms for people whose property has been damaged in the conflict.
- k) Take measures for securing assemblies rather than prohibiting them; facilitating assemblies, including spontaneous assemblies, as long as these are peaceful in nature.
- l) Ensure that the process of development of a new constitution of Ukraine is transparent, open and inclusive, with the full participation of the civil society including women, minorities and indigenous peoples.
- m) Speed up the process of the adoption of the National Human Rights Strategy and start the development of the National Human Rights Action Plan.
- n) Re-engage in a dialogue with the civil society in order to ensure wide grass-root support for the reform of the law enforcement.
- o) Amend the provisions of the de-communization laws so that they fully comply with international standards related to freedom of expression.
- p) Develop special procedures for early identification, registration and documentation of unaccompanied or separated internally displaced children and ensure their access to assistance and services.
- q) Develop state programme to support social adaptation of IDPs and envisage durable solutions for them, as prescribed by the paragraph 3 of Article 10 of the law on IDPs.

**To the *de facto* authorities of Crimea and to the Russian Federation**

- r) Put an end to arbitrary arrests and detentions of political opponents in Crimea and investigate all claims of human rights violations by the ‘law enforcement’, particularly ill-treatment and torture.
- s) Cancel, in particular, the decision to deny licenses to Crimean Tatars media outlets, which disproportionately affects this community and may additionally amount to discrimination on the basis of ethnicity.
- t) End the practice of imposing cumbersome re-registration requirements in Crimea, which have been applied mainly to the media and religious organizations and limited the exercise of the right to freedom of expression, thought, conscience and religion.

# Annex 769

OHCHR, Report on the Human Rights Situation in Ukraine (16 May–15 August 2015)





**Office of the United Nations High Commissioner  
for Human Rights**

**Report on the human rights situation in Ukraine  
16 May to 15 August 2015**

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## I. EXECUTIVE SUMMARY

1. This is the eleventh report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine, based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)<sup>1</sup>. It covers the period from 16 May to 15 August 2015<sup>2</sup>.

2. During the reporting period, the situation in Ukraine continued to be marred by ongoing armed hostilities in some areas of Donetsk and Luhansk regions reportedly fuelled by the presence and continuing influx of foreign fighters and sophisticated weapons and ammunition from the Russian Federation. These hostilities continued to result in violations of international human rights law and international humanitarian law. Lack of accountability for such acts persisted, particularly in areas affected by the conflict, including territories controlled by the self-proclaimed ‘Donetsk people’s republic’<sup>3</sup> and self-proclaimed ‘Luhansk people’s republic’<sup>4</sup>, and other parts of Ukraine under the control of the Government.

3. Despite the absence of large-scale offensives since mid-February 2015, locally-contained escalations of fighting occurred in various places, notably in the Government-controlled town of Mariinka (Donetsk region) on 3 June, and near the Government-controlled village of Starohnativka and the village of Novolaspa controlled by the armed groups (both in Donetsk region), on 9 and 10 August. The withdrawal of heavy weapons from the contact line as foreseen in the Minsk Agreements remained partial with the armed groups and the Ukrainian military using mortars, canons, howitzers, tanks and multiple launch rocket systems in daily clashes and exchanges of fire along the contact line.

4. Shelling of populated areas on both sides of the contact line, especially of the cities of Donetsk and Horlivka (controlled by the armed groups) and of the Government-controlled towns of Avdiivka and Mariinka – all in Donetsk region – persisted and, together with explosive remnants of war (ERW) and improvised explosive devices (IEDs) continued to claim civilian lives. In total, since mid-April 2014 until 15 August 2015, at least 7,883 people (Ukrainian armed forces, civilians and members of the armed groups) have been killed, and 17,610 injured in the conflict area in the east of Ukraine<sup>5</sup>. HRMMU noted an increase in civilian casualties in this three month reporting period with 105 civilians killed and 308 injured compared to the previous three month reporting period when 60 civilians were killed and 102 civilians were injured. In the post-ceasefire period of 16 February to 15 August 2015, HRMMU recorded 165 civilian deaths and 410 civilians injured.

5. More centralized civilian ‘administrative structures’ and ‘procedures’ continued to develop in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. These include the ‘legislature’, ‘judiciary system’, ‘ministries’ and ‘law enforcement’. ‘Donetsk people’s republic’ reportedly began issuing passports to residents of the territories under its control. Among other ‘laws’, ‘legislative bodies’ of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ have adopted a number of ‘legislative acts’ governing criminal prosecution<sup>6</sup> in the territories under their control. The HRMMU notes that all these ‘structures’ and ‘procedures’ in neither way conform to international law and national legislation of Ukraine.

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<sup>1</sup> HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address emerging human rights issues. For more details, see paragraphs 7-8 of the report of the UN High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

<sup>2</sup> The report also updates with recent developments included on cases reported in previous reporting periods.

<sup>3</sup> Henceforth referred to as the ‘Donetsk people’s republic’.

<sup>4</sup> Henceforth referred to as the ‘Luhansk people’s republic’.

<sup>5</sup> This is a conservative estimate of HRMMU based on available data.

<sup>6</sup> See paragraphs 129-132 of the 10<sup>th</sup> HRMMU report on the human rights situation in Ukraine covering period 16 February – 15 May 2015.

6. HRMMU continued to receive and verify allegations of killings, abductions, torture and ill-treatment, sexual violence, forced labour, ransom demands and extortion of money on the territories controlled by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. It also received reports of isolated incidents where armed groups disrupted religious services and intimidated several religious communities. An estimated three million people continue to reside in the territories under control of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ without protection from the human rights violations and abuses of the armed groups and their supporters. The estimated hundreds of people held by the armed groups are at particular risk of being tortured, ill-treated or otherwise abused.

7. Very limited progress has been achieved so far into investigations of human rights violations committed by the armed groups in the east. Ukrainian law enforcement entities claim that investigations are impeded by the lack of due access to the sites and the difficulty in identifying suspects and weapons. Available court decisions sanctioning members of the armed groups are mainly linked to charges of trespassing and violating the territorial integrity of Ukraine as well as the illegal handling of weapons; most defendants have pleaded guilty and been handed down a prison sentence with a probation period. HRMMU has received testimonies of plea bargains being made by individuals under torture or duress.

8. HRMMU continued to observe a persistent pattern of arbitrary and incommunicado detention by Ukrainian law enforcement officials (mainly by the Security Service of Ukraine) and military and paramilitary units (primarily by former volunteer battalions now formally incorporated into the Ukrainian armed forces, National Guard and police), which is often accompanied by torture and ill-treatment of detainees, and violations of their procedural rights. HRMMU continues to advocate for proper and prompt investigation of every single reported case, and for prosecution of perpetrators.

9. Accountability continued to be sought for the killing and other human rights violations committed during the Maidan protests in Kyiv, and for the deaths which occurred on 2 May 2014 in Odesa. With regard to Maidan, the jury trial<sup>7</sup> in the case of the two Berkut (special riot police) officers accused of killing 39 protestors in Kyiv on 20 February 2014 during the Maidan protests, started on 6 July 2015. Seven other Berkut officers have been in pre-trial detention charged with killing of protestors on 18 and 20 February. Investigations into the involvement of other identified Berkut officers and former senior Government officials in the killing of protestors have been protracted. Likewise, limited progress has been observed in accountability into the 2 May 2014 violence in Odesa. OHCHR is concerned with the protracted investigation into the negligence of the police and fire brigade surrounding the violence in the city centre and fire at the Trade Unions building, which resulted in 48 deaths that day. To date, only ‘pro-federalism’ supporters have been charged with mass disorder in the city centre, which resulted in six deaths.

10. On 16 June, the Temporary Order<sup>8</sup> issued by the Government of Ukraine on 21 January 2015 to impose movement limitations for individuals and cargo between the Government-controlled territories and territories controlled by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, was revised further following advocacy by national and international organizations. On 7 July, the Government launched a web-portal to

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<sup>7</sup> In the courts of first instance criminal proceedings into crimes for which a person can be sentenced to life imprisonment, upon request of accused, are tried by a bench of three juries and two professional judges, who take procedural decisions unanimously.

<sup>8</sup> The Temporary Order on control of the movement of people, transport vehicles and cargos along the contact line in Donetsk and Luhansk region was developed and approved by the ‘Operational Headquarters of the Anti-Terrorist Operation’, a joint entity of the Security Service, Ministry of Defence, Ministry of Internal Affairs, and the State Migration, Emergency and Fiscal Services. It required special permits for civilians to be able to cross the contact line in either direction.



obtain electronic permits required for crossing the contact line. The full enjoyment of the freedom of movement, however, has remained problematic. Civilians still spend hours, and even overnight, at check points located along one of the three transport corridors. With the cessation of bus services between the Government-controlled territories and territories under the control of the armed groups, those without private means of transport have to walk several kilometres. While waiting at check points over long periods of time, civilians are exposed to shelling as well as ERW and IEDs along the roads.

11. The regulations of the revised Temporary Order, particularly the prohibition of commercial cargo of food and medicine, taxation of humanitarian aid, and the availability of only one transport corridor for cargo, have complicated the delivery of food and medicine to the territories controlled by the armed groups. Furthermore, the process of ‘registration’ of humanitarian organisations introduced by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ in June 2015, has complicated the operation of external or externally supported humanitarian actors in the areas controlled by armed groups. Since mid-July, such humanitarian assistance has been severely curtailed as the armed groups consider registration as a pre-condition to operate. This lack of access and delivery of humanitarian assistance is of particular concern with the approach of winter. It is also of concern that the Russian Federation has continued to send white-truck convoys without the full consent or inspection of Ukraine, and their exact destination and content could not be verified.

12. People living in the territories controlled by armed groups continued to face obstacles in exercising any type of rights: civil, political or economic, social and cultural. They experience particular problems in accessing quality medical services and social benefits. In order to receive their benefits, people have to either move or regularly travel across the contact line to the Government-controlled areas. Adults aged from 21 to 60 years old and families with one or two children in the territories controlled by the armed groups are becoming increasingly vulnerable due to their limited access and entitlement to social and humanitarian assistance. The quality of food and water available to the population affected by the conflict is also deteriorating, leading to a decreasing standard of living.

13. The situation for those residing on both sides of the contact line is especially dire, as their access to humanitarian and medical aid is impeded due to security reasons and the prohibition of the transportation of cargo. This has resulted in an increase in prices on the available goods. HRMMU notes that the National Human Rights Strategy<sup>9</sup> stresses the necessity of “ensuring the rights of persons living in the settlements of Donetsk and Luhansk regions where state authorities temporarily do not perform or partially perform their duties”.

14. The conflict aggravates the overall economic deterioration in the country causing further hardship for the population. Since the beginning of the year, real income dropped by 23.5 per cent, wage arrears reached UAH 1.9 billion (approximately USD 87 million), while prices for basic commodities have increased by 40.7 per cent. Deterioration of the economic situation makes it more difficult for the Government to progressively realize economic and social rights.

15. The growing number of internally displaced persons (over 1.4 million)<sup>10</sup> and of wounded civilians and soldiers, have created new challenges for the Government of Ukraine to ensure proper access to quality medical care. So far, Ukrainian and international volunteers, private donors and charity foundations have provided most of the rehabilitation services and necessary equipment.

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<sup>9</sup> Adopted on 25 August 2015.

<sup>10</sup> Ministry of Social Policy figures on registered IDPs.

16. In July and August, HRMMU observed two transfers<sup>11</sup> to the Government-controlled areas of convicts and pre-trial detainees, who due to the conflict had fallen within the ‘penitentiary system’ of the ‘Donetsk people’s republic’. Initiated by the Ombudsperson of Ukraine, the transfers resulted from her negotiations with the ‘ministry of justice’ and the ‘penitentiary administration’ of the ‘Donetsk people’s republic’. HRMMU facilitated the process, using its good offices to act as an initial intermediary between the parties, which enabled a group of foreign prisoners and detainees to be transferred to the Ukrainian penitentiary system and thus returned to the judicial system under which they were sentenced or were facing trial.

17. As reported previously<sup>12</sup>, on 5 June, the Government of Ukraine notified the United Nations and the Council of Europe about its decision to derogate from certain obligations under the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The derogation will have a negative impact on the enjoyment of human rights in certain areas of the Donetsk and Luhansk regions. A positive development was the signing on 6 July by President Poroshenko of a law enabling Ukraine to join the International Convention for the Protection of All Persons from Enforced Disappearance<sup>13</sup>.

18. On 31 July, the Constitutional Court approved a package of constitutional amendments on decentralization developed by the Constitutional Commission<sup>14</sup>, which is expected to be adopted by the Parliament before the local elections on 25 October 2015. Another package of constitutional amendments concerns the judiciary and is aimed, *inter alia*, at increasing its independence from the President and the Parliament. The package incorporates comments from the European Commission for Democracy through Law and is pending final approval by the Constitutional Commission. A package on human rights, which is to increase conformity of the Constitution with the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union and UN human rights instruments is under development.

19. On 14 July, the Parliament of Ukraine adopted a law on local elections which will govern nation-wide local elections scheduled for 25 October 2015 (except for the “territory of the Autonomous Republic of Crimea” and “certain territories<sup>15</sup> of Donetsk and Luhansk regions” where elections will not be held “because of temporary occupation and armed aggression of the Russian Federation and impossibility to ensure the observance of OSCE standards regarding elections”). The ‘Luhansk people’s republic’ announced its ‘local elections’ would be held on 1 November, while the ‘Donetsk people’s republic’ is still to determine a date; should these ‘elections’ be held, they would contravene the Constitution of Ukraine and the Minsk Agreements.

20. The situation in the Autonomous Republic of Crimea<sup>16</sup>, the status of which is prescribed by General Assembly resolution 68/262, continued to be characterized by human rights violations committed by the *de facto* authorities. Former Maidan activists resident in Crimea continued to be under scrutiny of the ‘investigative’ bodies. Dissenting voices continued to be effectively silenced and denied any public space, especially as regards to

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<sup>11</sup> They concerned nine and twenty people, accordingly.

<sup>12</sup> See paragraph 144 of the 10<sup>th</sup> HRMMU report on the human rights situation in Ukraine covering period 16 February – 15 May 2015.

<sup>13</sup> The Convention will enter in force for Ukraine on 13 September 2015.

<sup>14</sup> The package of constitutional amendments on decentralization stipulates, *inter alia*, that “special order of self-governance of certain districts of Donetsk and Luhansk regions shall be set forth in a separate law”.

HRMMU participated in the work of the commission as an observer.

<sup>15</sup> These territories are enlisted in the Resolution of the Parliament of Ukraine of 17 April 2015.

<sup>16</sup> Henceforth referred to as Crimea.

those Crimean Tatars organizations which the *de facto* authorities consider non-loyal or claim to be extremist. HRMMU notes with concern that the increasingly restrictive conditions placed by the *de facto* authorities applying legislation of the Russian Federation on the activities of civil society organizations could lead to the impossibility for them to re-register and operate in Crimea, and, as a result, significantly infringe full enjoyment of freedoms of expression, peaceful assembly and association by local population. The right to the enjoyment of the highest attainable standard of physical and mental health continues to be affected by problems in obtaining medical treatment and delays in assisting patients.

21. OHCHR positively notes the efforts of the Government of Ukraine in bringing together the Ministries of Defence, Justice, Social Policy and Office of the Prosecutor General under the auspices of the Ministry of Foreign Affairs, to discuss and respond to the findings of the tenth OHCHR report. A number of actions are to be welcomed; in particular, OHCHR notes the decision to strengthen the human rights training of members of the Armed Forces of Ukraine and the Ministry of Internal Affairs of Ukraine.

## **II. RIGHTS TO LIFE, LIBERTY, SECURITY AND PHYSICAL INTEGRITY**

### **A. Casualties**

22. While within the reporting period there have been no large-scale offensives since mid-February 2015, a number of local escalations of armed hostilities occurred. The most notable incidents took place in the Government-controlled town of Mariinka (Donetsk region), on 3 June, and near the Government-controlled village of Starohnativka and the village of Novolaspa controlled by the armed groups (both in Donetsk region) on 9 and 10 August. Clashes and exchanges of fire along the contact line between the armed groups and the Ukrainian armed forces were reported daily. The major flashpoints were the cities of Donetsk and Horlivka, controlled by the armed groups, and the nearby Government-controlled towns of Avdiivka and Mariinka, the contested villages of Pisky and Shyrokyne (all in Donetsk region), as well as the Government-controlled towns of Shchastia and Strychko Luhanske (Luhansk region).

23. The withdrawal of heavy weapons from the contact line stipulated by the Minsk Agreements remained partial with the armed groups and the Ukrainian military continuing to use mortars, canons, howitzers, tanks and multiple launch rocket systems<sup>17</sup>. They routinely did not comply with the international humanitarian law principles of distinction, proportionality and precautions, with numerous incidents of indiscriminate shelling of residential areas causing civilian casualties observed. Explosive remnants of war (ERW)<sup>18</sup> and improvised explosive devices (IEDs) continued to claim numerous civilian lives in Government-controlled areas and in territories controlled by the armed groups.

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<sup>17</sup> Such weapons may be classified as explosive weapons which are not explicitly defined by international law. Explosive weapons generally consist of a casing with a high explosive filling and whose destructive effects result mainly from the blast wave and fragmentation produced by detonation. The use of heavy weapons in and around residential and urban areas generally violates the international humanitarian law principles of distinction, proportionality and precautions and reduces civilian protection.

<sup>18</sup> Explosive remnants of war refer to unexploded ordnance (UXO) and abandoned explosive ordnance (AXO).

## **B. Civilian casualties<sup>19</sup>**

*Current reporting period: 16 May – 15 August*

24. During the current three-month reporting period, HRMMU recorded 413 civilian casualties in the conflict zone of eastern Ukraine with 105 civilians killed (30 women and two girls, 52 men and three boys), and 308 civilians injured (99 women and eight girls, 141 men and nine boys)<sup>20</sup>.

25. Of the 413 civilian casualties recorded, 156 (37 deaths and 119 injured) occurred in the Government-controlled territories of Donetsk and Luhansk regions. Two hundred and fifty-seven (257) civilian casualties (68 deaths and 189 injured) were recorded on territories controlled by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’.<sup>21</sup>

26. The majority of these 413 casualties were caused by shelling with 342 casualties (81 deaths and 261 injuries) recorded. Fifty-two (52) casualties (16 killed and 36 injured) resulted from ERW and IEDs<sup>22</sup>. Compared to the previous reporting period of 16 February to 15 May, the number of civilians killed by shelling more than doubled (from 29 to 81) with a huge increase in injuries (from 38 to 261).

*Post-ceasefire reporting period: 16 February – 15 August 2015*

27. During the post-ceasefire six-month period of 16 February to 15 August, HRMMU recorded 575 civilian casualties in the conflict zone of eastern Ukraine: 165 civilians killed (37 women and four girls, 85 men and nine boys; three children whose gender is unknown)<sup>23</sup>, and 410 injured (127 women and nine girls, 195 men and 17 boys).

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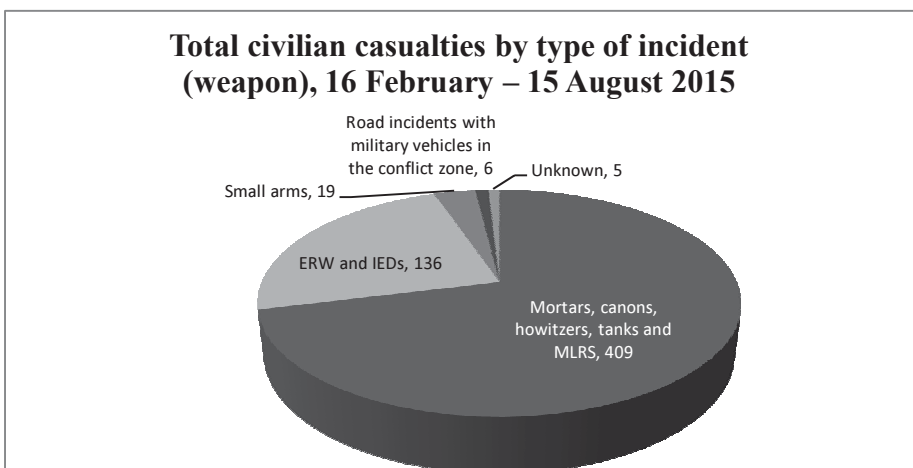
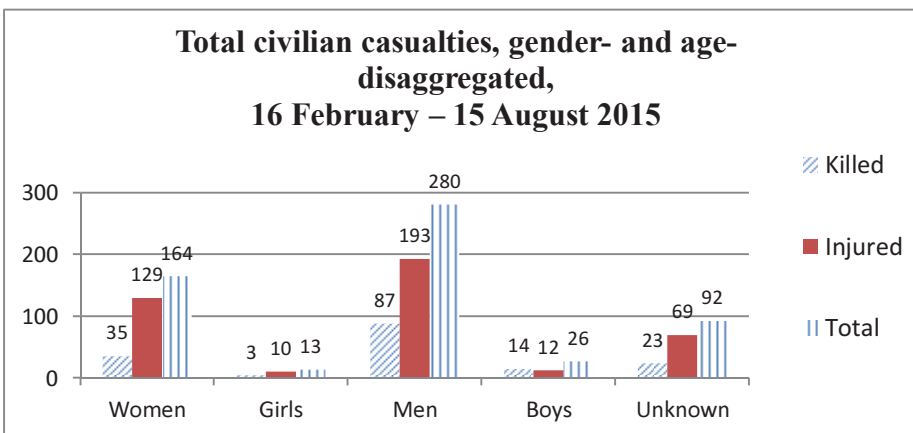
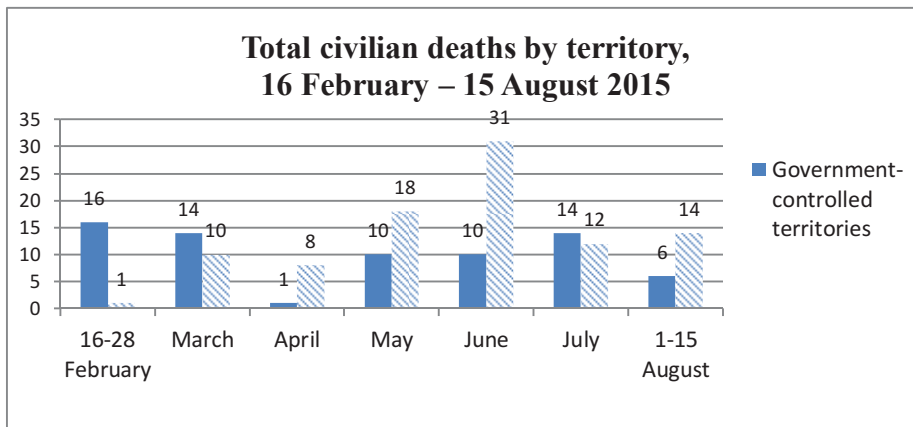
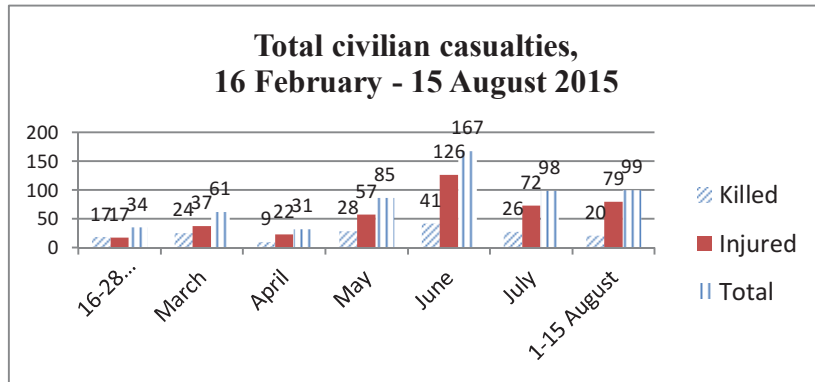
<sup>19</sup> For this report, HRMMU investigated reports of civilian casualties by consulting a broad range of sources and types of information that are evaluated for their credibility and reliability. In undertaking documentation and analysis of each incident, HRMMU exercises due diligence to corroborate and cross-check information on casualties from as wide range of sources as possible including OSCE SMM public reports, accounts of witnesses, victims and directly affected persons, military actors, community leaders, medical professionals and other interlocutors. Where HRMMU is not satisfied with information concerning an incident, it is not reported. In some instances, investigations may take weeks or months before conclusions can be drawn. This may mean that conclusions on civilian casualties may be revised as more information becomes available. Where information is unclear, conclusions are not drawn until more satisfactory evidence is obtained. The increases in the numbers of casualties between different reporting dates do not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date. HRMMU does not claim that the statistics presented in this report are complete and may be under-reporting civilian casualties given limitations inherent in the operating environment including gaps in coverage of certain geographic areas and time periods.

<sup>20</sup> The gender and age of 18 civilians killed and 51 civilians injured are unknown but it is believed they are adults as practice to date has shown that the Ukrainian authorities and the armed groups single out civilian casualties that are children.

<sup>21</sup> HRMMU is not in a position at this time to attribute specific civilian casualties recorded to the armed groups, Ukrainian armed forces or other parties. It is worth noting however that in the post ceasefire period of 16 February to 15 August, 71 percent of civilian casualties were caused by shelling from mortars, canons, howitzers, tanks and MLRS with the majority of these civilian casualties recorded in the territories controlled by the armed groups.

<sup>22</sup> In addition, four people were killed and seven were injured from small arms fire; three people were killed in a road incident with an armoured military vehicle; and the causes of death of one person and of injuries of four are unknown.

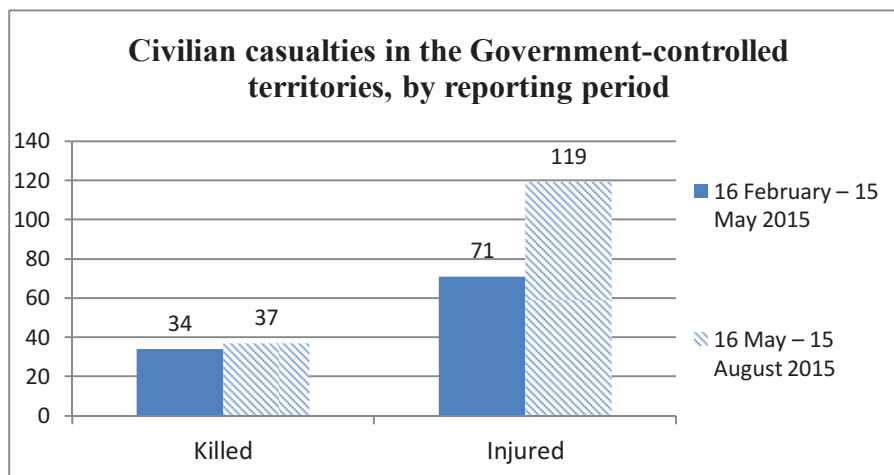
<sup>23</sup> The gender and age of 27 civilians killed and 62 injured are not known.



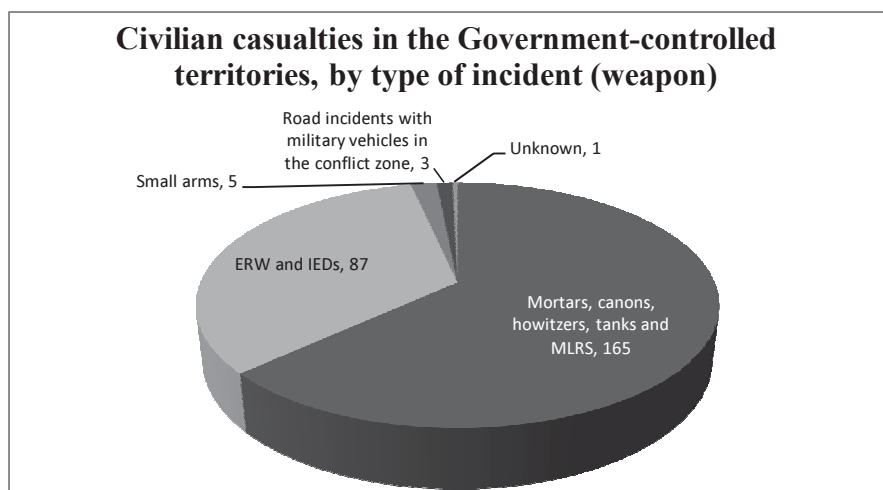


*Government-controlled territories of Donetsk and Luhansk regions*

28. Of the 575 civilian casualties, HRMMU documented 261 civilian deaths and injuries in the Government-controlled territories of Donetsk and Luhansk regions during this period. Seventy-one (71) civilians were killed (14 women and one girl, 49 men and three boys), and 190 injured (65 women and three girls, 117 men and 10 boys)<sup>24</sup>.



29. These 261 civilian casualties were caused mainly by shelling and ERW and IEDs with 165 civilian casualties (41 killed, 124 injured) from shelling, and 87 (28 killed, 59 injured)<sup>25</sup> from ERW and IEDs.



30. Of the 261 civilian deaths and injuries recorded in the Government-controlled areas of Donetsk and Luhansk regions, 221 (61 killed and 160 injured) occurred in the Donetsk region. Forty (40) civilian casualties (10 killed and 30 injured) were documented in the Luhansk region. The locations most affected by shelling<sup>26</sup> were the towns of Avdiivka (13

<sup>24</sup> The gender and age of four civilians killed and four injured are unknown.

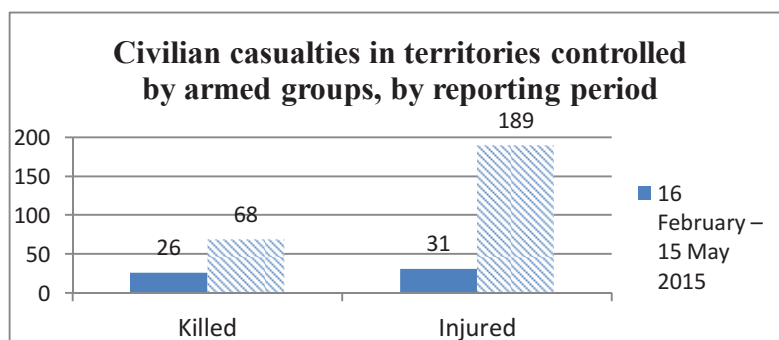
<sup>25</sup> In addition, five men were injured from small arms fire; one girl was killed and one woman and one girl were injured in a road incident with an armoured military vehicle; and the cause of death of one person is unknown.

<sup>26</sup> Casualties from ERW and IEDs in these locations are not included.

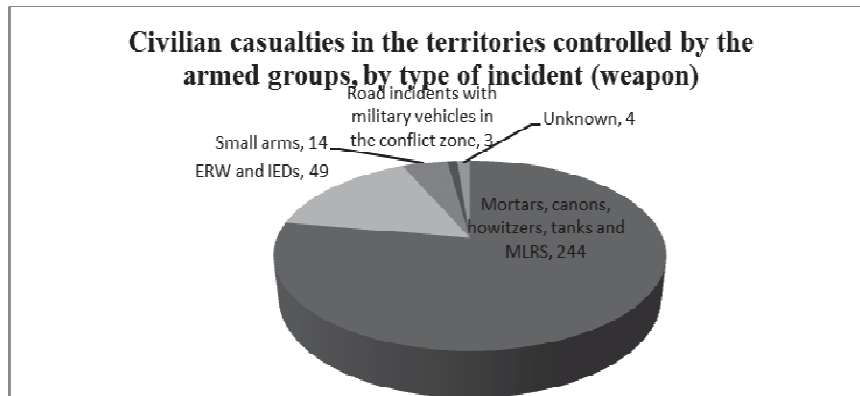
civilians killed and 28 injured), Mariinka (four killed and 15 injured) and Dzerzhynsk (four killed and 10 injured), all in the Donetsk region.

*Territories controlled by the armed groups*

31. HRMMU recorded 314 civilian casualties between 16 February and 15 August in these areas: 94 civilians were killed (23 women and three girls, 36 men and six boys), and 220 civilians were injured (62 women and six girls, 87 men and seven boys).



32. These 314 civilian casualties resulted mainly from shelling, ERW and IEDs, and small arms fire.<sup>27</sup> Shelling caused 244 civilian casualties (69 killed and 175 injured); ERW and IEDs caused 49 civilian deaths and injuries (16 killed and 33 injured) with 14 civilian casualties (six killed and eight injured) from small arms fire.



33. In the territories controlled by the ‘Donetsk people’s republic’, 286 civilian casualties (84 killed and 202 injured) were recorded. Twenty-eight (28) civilian casualties (10 killed and 18 injured) were documented in territories controlled by the ‘Luhansk people’s republic’. The locations most affected by shelling<sup>28</sup> were the cities of Horlivka (25 killed and 43 injured) and Donetsk (22 killed and 84 injured).

<sup>27</sup> In addition, three women were killed in a road incident with an armoured military vehicle and the cause of injuries of four civilians is not known.

<sup>28</sup> Casualties from ERW and IEDs in these locations are not included.

### C. Total casualties (civilian and military) from mid-April 2014 to 15 August 2015

34. In total, from mid-April 2014 to 15 August 2015, HRMMU recorded at least 25,493 casualties (Ukrainian armed forces, civilians and members of the armed groups) that include at least 7,883 people killed and at least 17,610 injured in the conflict area of eastern Ukraine<sup>29</sup>.

#### *Missing persons*

35. According to the representative of Ukraine to the Trilateral Contact Group, the Government estimated that as of 8 June 1,200 people were missing in the conflict zone. In her most recent regular update on missing persons, the ‘ombudsperson’ of the ‘Donetsk people’s republic’, estimated that as of 11 August, more than 400 people were missing on both Government-controlled territories and on territories controlled by the ‘Donetsk people’s republic’.

36. HRMMU believes that many of those who are reported as missing are dead, with their bodies either not found or unidentified<sup>30</sup>. They are victims of the armed hostilities or of summary executions or of criminal killings. HRMMU is also confident that some people recorded as missing are alive<sup>31</sup>, either in the territories controlled by the armed groups – in their ‘official places of detention’ or in other places, or in detention (often secret or incommunicado) of the Security Service of Ukraine (SBU), or Ukrainian military or paramilitary units, especially in the security operation zone<sup>32</sup>.

37. A male pensioner was reported as missing by his wife on 14 August 2014, having been last seen leaving his house in the city of Horlivka (controlled by the armed groups; Donetsk region), with two armed men in camouflage who were pointing their rifle at him<sup>33</sup>. Another woman claimed that her husband went missing in May 2015 while driving his expensive car in the town of Debaltseve (controlled by the armed groups in Donetsk region). She informed all the ‘law enforcement institutions’ of the ‘Donetsk people’s republic’ about her husband’s disappearance and a ‘criminal case’ was initiated with no results so far. His whereabouts remain unknown<sup>34</sup>.

38. In the Government-controlled village of Velyka Novosilka (Donetsk region), several armed men dressed in camouflage and masked reportedly entered a house on 4 June, beat the male resident in front of his wife, and detained him. No further information was provided to his wife despite numerous requests filed to different law enforcement agencies. Following

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<sup>29</sup> This is a conservative estimate of HRMMU based on available data. These totals include: casualties of the Ukrainian forces as reported by the Ukrainian authorities; 298 people from flight MH-17; civilian casualties on the territories controlled by the Government of Ukraine as reported by local authorities and regional departments of internal affairs of Donetsk and Luhansk regions; and casualties among civilians and members of the armed groups on the territories controlled by the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’ as reported by the armed groups, so-called ‘local authorities’ and local medical establishments. This data is incomplete because of lacunas in coverage of certain geographic areas and time periods and because of overall under reporting, especially of military casualties. The increases in the numbers of casualties between the different reporting dates do not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date.

<sup>30</sup> Hundreds of unidentified bodies remain in morgues or have been buried in either Government-controlled territories or in territories controlled by the armed groups.

<sup>31</sup> This HRMMU has observed a number of cases when people who went missing reappeared later either in detention of the Government, or in detention of the armed groups.

<sup>32</sup> This territory has not been defined by the Government in public documents; according to an internal regulation of the ‘Anti-Terrorist Operation’ Headquarters of 7 October 2014, it covers territories of Donetsk and Luhansk regions (those which are Government-controlled and those which are controlled by the armed groups).

<sup>33</sup> HRMMU interview, 2 June 2015.

<sup>34</sup> HRMMU interview, 1 June 2015.

HRMMU intervention, his whereabouts were established on 25 June, in Dnipropetrovsk pre-trial detention centre (SIZO), reportedly under SBU investigation<sup>35</sup>.

#### **D. Unlawful and arbitrary detention, summary executions, and torture and ill-treatment<sup>36</sup>**

##### *By the armed groups*

39. HRMMU continued to document cases of killings, abductions, torture and ill-treatment, sexual violence, forced labour, ransom demands and extortion of money, committed by the armed groups.

40. Estimates of the number of people held by the armed groups vary continuously, notably due to the fluctuating pattern of continued abductions, detentions and releases. According to SBU, as of 15 August, 172 people were held by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. This figure, however, concerns those whose whereabouts have been established by the Government of Ukraine, and whose release has been sought.

41. A number of simultaneous releases (so-called ‘exchanges’) took place during the reporting period. This process lacked transparency and has not led to a tangible number of releases. OHCHR continues to advocate for the ‘all for all’ release of “hostages and unlawfully detained persons” as stipulated by the Package of Measures for the Implementation of the Minsk Agreements of 12 February 2015.

42. During the reporting period, HRMMU learned about two incidents of summary execution of civilians in the village of Peremozhne (controlled by the armed groups; Luhansk region) reportedly committed by members of the so-called separate special brigade *Odessa* operating in the area under the control of the ‘Luhansk people's republic’. On 10 August 2014, eight armed men in camouflage without any signs of distinction stormed the house of local volunteers who were providing food to Ukrainian soldiers<sup>37</sup>. After searching and looting the house, the armed men took away a man and a woman. Over the following ten days the armed men returned three times to the house and looted it, holding the 75-year-old father of one of the abducted at gun point. The family had no information of the whereabouts of those who were abducted until January when their bodies were found near the village of Piatyhorivka; confirmed by forensic examinations only in June 2015. The forensic expertise showed that cause of death of the two victims to have been two to three fire gun shots to the head, with head injuries sustained by beating. In the same village, on 22 August 2014, four members of a family were executed outside their house for their alleged assistance to the Ukrainian armed forces, and their property then looted<sup>38</sup>.

43. There have been allegations of summary executions documented by HRMMU during the reporting period. An IDP from Luhansk region claimed that he witnessed the killing of a family of four and the torture of another civilian by the armed groups in August 2014<sup>39</sup>. A resident of Odesa region informed HRMMU that in September 2014, while he was a member of an armed group, he witnessed the execution of three captured Ukrainian soldiers<sup>40</sup>. A resident of the city of Cherkasy, who had spent more than three months in the captivity of the armed groups in the Luhansk region, claimed that on 20 September 2014, while being kept in

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<sup>35</sup> HRMMU interviews 5 June, 25 June and 1 July 2015.

<sup>36</sup> During the reporting period, a number of victims and witnesses reported allegations of human rights violations and abuses that had taken place in 2014 and beginning of 2015. These highlight how the human rights situation deteriorated in Ukraine, particularly in the eastern territories.

<sup>37</sup> HRMMU interview, 18 August 2015.

<sup>38</sup> HRMMU interview, 27 May 2015.

<sup>39</sup> HRMMU interview, 2 June 2015.

<sup>40</sup> HRMMU interview, 20 July 2015.

a basement in the town of Rovenky (Luhansk region), he witnessed the death of a detainee who had been beaten by the members of the armed groups<sup>41</sup>.

44. A former Ukrainian soldier reported about his detention in the conflict zone, in August 2014, allegedly by fighters from the Russian Federation who then handed him over to the armed groups<sup>42</sup>. He reportedly spent six months held by the armed groups on the territory of the ‘Donetsk people’s republic’ where he was subjected to beatings and forced labour. Another man claimed that he was deprived of his liberty for more than four months by the armed groups of ‘Luhansk people’s republic’ after being stopped at a check point in July 2014, near the city of Luhansk, on suspicion of ‘subversive activities’. During interrogations, armed men beat him with rifle butts and a rod, and employed electric shock. Between the ‘interrogations’, he was made to hang from parallel bars, to which he was tied with handcuffs. Four days later, he was transferred to the ‘military commandant’s office’, where he was kept in a 16 square metres room in a basement, with up to 40 other individuals. All were forced to work at the training ground and in various localities where they discharged munitions and dug trenches<sup>43</sup>.

45. In February 2015, an Orthodox priest who was delivering food to Ukrainian soldiers and civilians in the Government-controlled town of Artemivsk (Donetsk region), mistakenly drove to a check point controlled by armed groups. He was forced to lie on the ground, and several fighters started jumping on his body. They also shot at the asphalt near his head. He was then transferred to a nearby village for interrogation which lasted several hours and during which he was beaten. He was detained for 50 days in various places, along with approximately 70 other detainees<sup>44</sup>.

46. A young woman with a disability was taken from her home in Donetsk city, in June 2015 by three armed men in civilian clothes from the ‘ministry of state security’ of the ‘Donetsk people’s republic’. She was accused of being a “sniper of the Right Sector” and kept incommunicado for over a month in the former premises of a cultural centre in Donetsk. The woman, who was three months pregnant, claimed she was subjected to beatings. She was also forced to give a press conference issuing false statements to the media, and to testify against ‘pro-unity’ activists<sup>45</sup>. Following HRMMU advocacy with the ‘Donetsk people’s republic’, she was released in July 2015. HRMMU also facilitated her evacuation to the Government-controlled territory. Another Donetsk resident detained by the armed groups in the ‘Donetsk people’s republic’ in May 2015 claimed that she was kept for four days in a one-by-two metres cell. She reported that male detainees kept in adjacent cells were forced to work. She was transferred after four days to an ‘official’ detention facility and released a month and a half later<sup>46</sup>.

47. A woman from the town of Debaltseve (Donetsk region) informed HRMMU that on 2 June 2014, several masked men stormed her house and abducted her son-in-law who has a disability status due to impaired vision. In August 2015, his whereabouts still remained unknown. Allegedly, on the same day, seven other young men were kidnapped from the same residential building. She also claimed that on 5 September 2014, her husband (a police officer) was executed (shot dead) by members of the armed groups in front of the police station, allegedly for his ‘pro-unity’ position<sup>47</sup>.

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<sup>41</sup> HRMMU interview, 4 August 2015.

<sup>42</sup> HRMMU interview, 26 June 2015.

<sup>43</sup> HRMMU interview, 11 August 2015

<sup>44</sup> HRMMU interview, 10 July 2015.

<sup>45</sup> HRMMU interview, 13 July 2015.

<sup>46</sup> HRMMU interview, 11 August 2015.

<sup>47</sup> HRMMU interview, 2 July 2015.



48. HRMMU also interviewed a woman who had been held twice by the armed groups of the ‘Luhansk people’s republic’, from July to October 2014 and from February to July 2015. In July 2014, she was detained with three men at a check point manned by the ‘Cossacks’ Union’ of the ‘All-Great Don Army’. During her first two weeks of detention, she and others were interrogated and tortured. The woman was severely beaten with rifle butts and bullet proof vests until she lost consciousness. As a result, four ribs were fractured, and her nose and most of her teeth were broken. During interrogation, perpetrators were reportedly extinguishing cigarette butts against her wrist, and threatening the life of her child and mother. She also reportedly survived an attempted gang rape. She witnessed the summary execution of two Ukrainian soldiers – one was shot, a second was beaten to death on the head. During the first two weeks of captivity, she and other detainees received no food and almost no water. She received medical care and food after being transferred to the ‘military commandant’s office’ in Luhansk city. There, she was not ill-treated but witnessed the beatings of male detainees<sup>48</sup>.

*By Ukrainian law enforcement and security entities*

49. HRMMU continued to observe a persistent pattern of arbitrary and incommunicado detention by the Ukrainian law enforcement (mainly by the Security Service of Ukraine) and by military and paramilitary units (first and foremost by the former volunteer battalions now formally incorporated into the Armed Forces of Ukraine, the National Guard and the police). These cases were often accompanied by torture and ill-treatment, and violations of procedural rights. HRMMU continues to advocate for proper and prompt investigation of every single reported case, and for prosecution of perpetrators. HRMMU also urges the Security Service of Ukraine, the Ministry of Internal Affairs and the Ministry of Defence to put an end to such practices, and to strengthen human rights training of their staff.

50. HRMMU interviewed a woman reportedly working for the newspaper of the ‘Donetsk people’s republic’ *Novorossia*. She claimed to have been detained following her arrest at a check point of the Ukrainian armed forces on 24 August 2014, until her exchange on 21 September. She was subjected to torture, ill-treatment, a mock execution and an attempted rape.<sup>49</sup> A former member of the armed groups detained by Ukrainian armed forces in August 2014 claimed that he had been tortured and ill-treated while in official custody on charges of terrorism. After being convicted to five years of imprisonment, with a suspended sentence of three years, he was reportedly kept in the SBU premises in Kharkiv<sup>50</sup> for over two months, and released (as part of an ‘exchange’) in May 2015<sup>51</sup>.

51. A man, who had been detained by the Ukrainian military in November 2014, in the Government-controlled village of Soloviove (Donetsk region), claimed to have been brought to the village of Pisky, where he was kept in a basement for two days. Four masked men kicked him and beat him with a wooden board, cut with electro shocks and pointed a gun to his head. He was also allegedly threatened with sexual violence<sup>52</sup>. A man, who had been arrested by unidentified Ukrainian servicemen in the Government-controlled city of Mariupol on 24 November 2014, claimed that for 11 days, he was subjected to torture and mock executions at Mariupol airport. He was later charged with terrorism and illegal possession of weapons, and detained in the Mariupol SIZO. In March 2014, he signed a plea bargain and

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<sup>48</sup> HRMMU interview, 10 August 2015.

<sup>49</sup> HRMMU interview, 1 June 2015.

<sup>50</sup> HRMMU has regularly attempted to check the information on detainees kept in SBU premises in Kharkiv. Various SBU officials repeatedly denied presence of detainees in this building, though HRMMU has credible information from people who had been previously kept in this unofficial detention facility for periods of time varying from several days to several months.

<sup>51</sup> HRMMU interview, 3 June 2015.

<sup>52</sup> HRMMU interview, 4 June 2015.

was kept in SBU premises in Kharkiv from 13 March until released as part of an ‘exchange’ on 27 May 2015<sup>53</sup>. A man, who had been arrested in September 2014 in the city of Ternopil, informed the HRMMU that he was kept incommunicado for a day, severely beaten and forced to confess that he belonged to a “separatist and terrorist organization”. He was then formally detained by SBU and released within an ‘exchange’ in November 2014<sup>54</sup>.

52. A man interviewed by HRMMU claimed that in October 2014, 10 to 12 masked men entered his house in the Government-controlled town of Avdiivka (Donetsk region), threw him to the table and stepped on his spine, ordering him to be quiet if he did not want his children to see his brain all over the table. For approximately a week he was kept in a place that he could not identify, apparently in a very confined place, with a bag on his head, and most of the time hung up, handcuffed, and beaten randomly by those passing by. He was interrogated and videotaped. During interrogation, the masked men would be sitting in front of him or behind him, forcing him to confess that he had killed and tortured civilians, looted their homes, and burnt a column of Ukrainian soldiers. He was reportedly beaten, subjected to electroshocks (with wires put to his fingers and genitals), and twice to a mock execution. Then he was taken to Mariupol and afterwards transferred to Kharkiv, where he was kept in SBU premises for about three months. In May, he was released within an ‘exchange’ with the ‘Donetsk people’s republic’<sup>55</sup>.

53. A woman, who had been arrested by SBU in Kyiv in December 2014 for allegedly carrying an explosive, claimed that after the apprehension, she was held incommunicado for 24 hours, beaten, dragged by the hair on her knees across a corridor and threatened with sexual violence. She was also forced to read a ‘confession’ on camera. In the evening of 18 December, over 24 hours after her arrest, she was notified as a suspect under article 258-2 (attempt to commit a terrorist act by a group of persons upon prior conspiracy) of the Criminal Code. On 27 February 2015, the pre-trial investigation was completed and the case was sent to court<sup>56</sup>.

54. Seven people held in the Odesa SIZO on charges under article 258 (terrorism) of the Criminal Code informed HRMMU that they were arrested on 7 July 2015 with excessive use of force by SBU special unit Alpha<sup>57</sup>. Four of them claimed that they were tortured and ill-treated while in custody: handcuffed, with a bag on the head, forced to stand against a wall, beaten with sticks and subjected to verbal assaults and threats. The detainees were not informed about their rights and were not provided with legal aid during the first day of detention. One of the detainees was forced to sign a confession dictated to him (regarding his involvement in possible explosions in the city of Mykolaiv), as well as a document stating that he had not been ill-treated or threatened at SBU. Another detainee was forced into confessing that he had placed explosions at Odesa railway station. HRMMU has been informed that since the beginning of 2015, the Prosecutor’s Office of Odesa region has received 68 reports from the Odesa SIZO regarding detected traces of bodily injuries on detainees<sup>58</sup>. 56 criminal investigations were initiated in this regard.

55. A woman residing in the Government-controlled Krasnoarmiisk district (Donetsk region) claimed that on 23 December 2014, unidentified armed people burst into her house and took her to the Government-controlled city of Kramatorsk (Donetsk region) where she was

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<sup>53</sup> HRMMU interview, 5 June 2015.

<sup>54</sup> HRMMU interview, 22 June 2015.

<sup>55</sup> HRMMU interview, 22 June 2015.

<sup>56</sup> HRMMU interview, 17 July 2015.

<sup>57</sup> HRMMU interview, 20 July 2015.

<sup>58</sup> According to the order of the Ministry of Justice and Ministry of Health of Ukraine No 239/5/104 of 10 February 2012, “within 24 hours the management of the SIZO shall inform in writing the public prosecutor about the detected bodily injuries of a person taken into custody”.

kept for two days in a basement. She was allegedly threatened with sexual violence and forced to sign a confession, which was video-recorded, stating that her sons were members of the armed groups and that she had transmitted information to them about Ukrainian military vehicles. She then was transferred to the Kharkiv SBU where she spent almost two months, without going outdoors and unable to contact any relatives. No official charges were ever brought against her and she was never presented in court. In February 2015, she was released as part of an ‘exchange’<sup>59</sup>.

56. A resident of a village located near the town of Debaltseve (Donetsk region) claimed that on 20 November 2014, while the area was still under the Government’s control, she was taken to the police station in Debaltseve where she was interrogated, threatened and beaten, allegedly by SBU officers from Kyiv. She was accused of cooperating with the armed groups and manning a check point. She was officially charged only eight days after her apprehension. Soon after, the court decided to place her in pre-trial detention in Kharkiv for two months. It is only at that stage that her relatives were able to find out about her whereabouts. A week after the court decision, the detention was extended by another 30 days. She was taken to the investigator in the town of Iziium and informed that the criminal case against her had been closed and that she would be released. The investigators offered to take her to Kharkiv to collect her belongings but she was taken to a basement in Iziium where she was kept incommunicado for 15 days before being released within an ‘exchange’ in February 2015<sup>60</sup>.

#### *Arbitrary detention in the context of mobilization*

57. HRMMU documented several cases of arbitrary detention in relation to continuing mobilization into the Ukrainian armed forces (in particular, in Kharkiv, Mykolaiv and Odesa). For instance, on 24 June, it interviewed a man who had been apprehended by people in military uniform in Derhachi, a suburb of Kharkiv. They took him to the Kharkiv military collecting point and requested his passport and other documents they needed to draft him. The man was forbidden to leave. Officers later forced him to sign a document stating that he had volunteered to serve in the army. According to the witness, there were then more than a hundred young men at the point. His relatives reported to the police that he had been kidnapped. The case was filed but no action was taken. Having spent two days in detention, the man managed to escape and has since been hiding.

#### *Other cases*

58. On 22 May 2015, the Shevchenkivskyi District Court of Kyiv sanctioned pre-trial detention of two servicemen of the Armed Forces of the Russian Federation on suspicion under article 258-3 (creation of a terrorist group or terrorist organization) of the Criminal Code (in July, their pre-trial detention was extended until September). They had been detained by the Ukrainian military in a skirmish near the town of Shchastia (Luhansk region), in which one Ukrainian serviceman was killed. Both of them were wounded and have been undergoing medical treatment in Kyiv.

59. On 29 July, SBU announced the arrest, on charges under article 258 (terrorism) of the Criminal Code, of an officer of the Armed Forces of the Russian Federation who was apprehended in Donetsk region on 25 July. According to the State Border Guard Service of Ukraine, he holds the rank of major. He was arrested together with a member of the armed groups as they were approaching the check point in Berezove, in the direction of the territory controlled by the armed groups. Reportedly, the truck in which they were travelling was carrying 192 boxes of grenades, cartridges and rocket-propelled grenades.

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<sup>59</sup> HRMMU interview, 22 July 2015.

<sup>60</sup> HRMMU interview, 26 July 2015.

60. Following the announcement of the completion of the investigation into the case of Nadiia Savchenko on 28 May, the Investigative Committee of the Russian Federation reported on 7 July that it had amended the charges against her from involvement in the killing, to the killing of two Russian journalists on 17 June 2014, in the village of Metalist in Luhansk region. On 25 July, she was transferred to the Novocherkassk SIZO (Rostov region of the Russian Federation), where she was visited by the Ombudsperson of the region who stated that she had reported of no complaints regarding her conditions of detention. On 10 June, the Basmannyi District Court of Moscow extended her detention until 10 September.

### III. FUNDAMENTAL FREEDOMS

#### A. Freedom of movement

61. The restrictions on freedom of movement imposed by the Temporary Order of 21 January 2015<sup>61</sup> continued to separate people living in the areas controlled by armed groups from the Government-controlled territories, and to impede the delivery of humanitarian aid<sup>62</sup>.

62. With the de-escalation of armed hostilities, civilians have shown an increased intent to move back and forth across the contact line, including to check on their property and to visit relatives in the areas controlled by armed groups. Many travel regularly to the Government-controlled territory to collect their social benefits, withdraw cash, to seek medical care and purchase food and medicine.

63. Further to advocacy by national and international organisations, a revised version of the Temporary Order entered into force on 16 June. Although it waived the requirement to obtain a permit for emergency situations, crossing the contact line in such situations essentially remained at the discretion of officers at checkpoints, while international human rights law requires using precise criteria<sup>63</sup>. In all other cases civilians still need to apply for permits in advance. The web-portal for applying and receiving permits online, launched by the Government of Ukraine on 7 July, has significantly simplified this procedure for civilians.

64. The revised Temporary Order facilitated movement of children from the areas controlled by armed groups who still have not obtained their identification documents. However, for a child to cross the contact line from the Government-controlled area, a notarized power of attorney issued by both parents is required, and it is impossible to obtain one if one parent lives in the areas controlled by armed groups<sup>64</sup>. Crossing to the Government controlled areas was also simplified for people having completed their prison sentence<sup>65</sup>.

65. Overall, the crossing of the contact line remained arduous. As of 15 August, three out of the six transport corridors were operational – all in Donetsk region<sup>66</sup>. In Luhansk region,

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<sup>61</sup> For more information, see OHCHR reports on the human rights situation in Ukraine covering 1 December 2014 to 15 February 2015 (paragraphs 42-43) and 16 February to 15 May 2015 (paragraphs 58-64).

<sup>62</sup> For the effects of the Temporary Order on the humanitarian situation, See chapter IV of this report.

<sup>63</sup> General Comment 27 to article 12 of the Human Rights Committee, paragraph 13, states: “the laws authorizing restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution”.

<sup>64</sup> Order Nr.1351/5 of the Ministry of Justice of Ukraine issued on 28 July completely blocked access to the notary registries for citizens of Ukraine living in the areas controlled by armed groups.

<sup>65</sup> On 14 July, further to the revised Temporary Order, and with the facilitation of the National Preventive Mechanism, a special Inter-Agency Order No 53okv\1539\310\185\20\62 was issued regulating the crossing of the contact line by people who served their prison sentence and were released from the penitentiary institutions controlled by the ‘Donetsk people’s republic’.

<sup>66</sup> Two corridors in Luhansk region closed down in March 2015 as the main bridges were destroyed. The Cargo and passenger corridor of Kurakhove (Donetsk region) was closed in early June. Despite advocacy by international organizations and lengthy negotiations with the Government, no alternative routes have been proposed to date.



residents have no other choice but to use the destroyed bridge in the town of Stanychno Luhanske to cross the contact line by foot, or if travelling by vehicle, to go through the Donetsk region, which takes more time and resources.

66. On 16 June, the Government of Ukraine prohibited the movement of all public transport across the contact line. Since then, civilians who do not possess a private vehicle have had to walk for up to 15 kilometres between the public transport stops on both sides of the contact line. People generally spent several hours in the heat, with no drinking water and no sanitation facilities. On 5 August, obligatory checks of ID documents and vehicles were also introduced at checkpoints controlled by the ‘Donetsk people’s republic’ – this has further slowed down the crossing of the contact line. Lines of between 200 to 1,000 personal vehicles have been observed at all checkpoints, often in both directions. With such queues, civilians are exposed to the risk of shelling, as the checkpoints are often targeted. Therefore, the idea of the Government of Ukraine to establish logistical centres/markets near the contact line raises grave protection concerns. On 13 August, the head of the civil-military administration of Luhansk region stated that the construction sites of the prospective logistic centres had been actively shelled over the last days.

67. Due to the long queues, people often seek by-pass roads, which may not be cleared from mines and explosive remnants. For instance, on 22 July, a woman was wounded by a mine while trying to by-pass the checkpoint near the town of Volnovakha (Donetsk region).

68. The situation of people living in the so-called ‘grey area’<sup>67</sup> is particularly difficult. Due to the location of roads and checkpoints, residents of such Government-controlled settlements as Kominternove, Lebedynske and Vodiane can only reach other Government-controlled settlements via the territory controlled by the ‘Donetsk people’s republic’, and crossing the contact line. There is no special simplified crossing procedure for local residents.

## **B. Freedom of expression**

### *In the territories controlled by armed groups*

69. The safety and conditions of work of media professionals in the Donetsk and Luhansk regions remain difficult due to the overall security situation and continuing human rights abuses by the armed groups. On 14 June, a local reporter working for *Agence France-Presse*, covering the conflict in eastern Ukraine, was injured in the leg by shrapnel during shelling in Donetsk. On 16 June, a journalist of the Russian newspaper *Novaia Gazeta* was captured in Donetsk by the ‘ministry of state security’ of the ‘Donetsk people’s republic’. He was interrogated, beaten and then released at the border with the Russian Federation. A Ukrainian freelance journalist, Mariia Varfolomieieva, is being held by the armed groups of the ‘Luhansk people’s republic’ since 9 January 2015<sup>68</sup>.

70. On 9 June, the company *Donetsk Cable Television* confirmed that it had blocked access to 39 Internet-based media outlets, upon an ‘order’ from the ‘ministry of information’ of the ‘Donetsk people’s republic’ issued on 3 June 2015.

### *In the territories controlled by the Government*

71. HRMMU continued to follow the case of journalist Ruslan Kotsaba, charged with high treason for publishing an anti-mobilisation video on 17 January<sup>69</sup>. The Ivano-Frankivsk General City Court authorized the prolongation of his detention until 28 August. During the

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<sup>67</sup> Areas along the contact line where no local authorities are present although nominally controlled by the Government of Ukraine.

<sup>68</sup> For more information, see OHCHR report on the human rights situation in Ukraine covering 16 February to 15 May 2015 (paragraph 132).

<sup>69</sup> For more information, see OHCHR report on the human rights situation in Ukraine covering 16 February to 15 May 2015 (paragraph 72).



reporting period, four court hearings took place. On 3 and 4 June, activists of the *Right Sector* party present in the court room brandished posters “No getting away with separatism”, “Kotsaba to jail, Montian [one of his lawyers] as well”, which may amount to pressure on judges. During a hearing on 17 July, one witness threatened to shoot Kotsaba for being a “traitor to the country”.

### **C. Freedom of peaceful assembly**

#### *In the territories controlled by the armed groups*

72. On 15 and 16 June, hundreds of residents of Donetsk gathered in the city centre demanding that the ‘Donetsk people’s republic’ pay pensions and stop its armed groups from placing their weapons in residential areas so as to prevent counter fire from the Ukrainian military. On 16 June, a rally was dispersed by the ‘police’ of the ‘Donetsk people’s republic’ who urged the protestors “not to violate public order”.

#### *In other parts of Ukraine*

73. During the reporting period, a number of rallies were held throughout Ukraine with participants demanding to lower utility prices and to increase salaries. The ‘Finance Maidan’ movement held rallies in Kyiv, urging the Parliament to adopt a law allowing payment of loans taken in foreign currencies in UAH at lower exchange rates.

74. A number of rallies were organized by the Right Sector party to express distrust to the Government, demanding to “stop persecution of members of volunteer battalions”, to put an end to corruption and to call for the introduction of martial law. The biggest rally of 3 July (over a thousand of participants) called for the annulment of the Minsk Agreements, cessation of all relations with the Russian Federation and “punishment of all the criminals of Yanukovich’s regime”. A series of Right Sector rallies also took place across the country (in Cherkasy, Dnipropetrovsk, Ivano-Frankivsk, Kherson, Khmelnytskyi, Kramatorsk, Kyiv, Lviv, Mariupol, Odesa, Poltava, Rivne, Sumy, Ternopil and Zaporizhzhia) following an incident in Mukacheve<sup>70</sup>. Participants of these rallies demanded to stop “persecution of patriots”.

75. On the night of 7 June, several dozens of persons joined Rustam Tashbaiev who, since mid-May, had been protesting at Maidan square in Kyiv against the lack of investigation into the 2014 Maidan events. They also demanded the indexation of social payments and a decrease of utility payments. In the night, the tents of the protestors were forcefully dismantled by a group of unidentified persons in masks. The police arrived to the scene and detained Tashbaiev, claiming that the protestors had not informed the local authorities about the rally. He was released the next day and claimed that he had been ill-treated and tortured by SBU.

76. Several local councils have adopted regulations limiting freedom of assembly, in contradiction with the Constitution of Ukraine and ICCPR which allow limitations of rights and freedoms only by law. As of mid-June, such regulations were put in place in 33 cities and towns of Ukraine, according to a research by the Ukrainian Independent Centre for Political Studies. During the reporting period, this NGO managed to obtain the annulment of such regulations through court litigation in the towns of Krasnohrad (Kharkiv region) and Novi Petrivtsi (Kyiv region). It also filed four other cases in Bucha (Kyiv region), Kharkiv, Korosten (Zhytomyr region) and Poltava.

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<sup>70</sup> On 11 July, 20 armed members of the Right Sector shot a man on the premises of ‘Antares’ sport complex, in the town of Mukacheve (Zakarpattia region). They destroyed three police cars with machine guns and grenade launchers, blocked the Kyiv-Chop highway. The Governor of the region reported that 11 people were wounded, including six police officers and two members of the Right Sector. Two members of the Right Sector surrendered to the police and remain under investigation, while location of the others remains unknown. Right Sector claims that the confrontation occurred as they were attempting to stop illicit trafficking in the region that allegedly involves a deputy and ‘Antares’ owner, whom they demanded to detain.

77. On 6 June, the March of Equality in Kyiv which brought together representatives of the LGBTI community and civil society activists was attacked by a group of people who threw firecrackers and smoke grenades filled with shrapnel. Ten participants and nine police officers were injured. Seven attackers were charged under article 296 (hooliganism) of the Criminal Code. On 13 August, the Odesa Circuit Administrative Court prohibited an Equality March, which was planned by the local LGBTI community within the Equality Festival, motivating its decision by security concerns and the inability of the police to ensure the security of participants. On 15 August, activists of the political party *Svoboda* wearing masks attacked a local LGBTI community center with fire crackers. The police intervened and detained ten activists who were charged under article 173 (minor hooliganism) of the Code of Administrative Offences.

78. On 22 July, a peaceful rally organised by the NGO *Syla Natsii* demanded the resignation of the Prosecutor of Zaporizhzhia region for failure to perform his duties and corruption. The gathering was forcefully dispersed by a group of men, some of whom wore camouflage and balaclavas. Police did not interfere and the Prosecutor of Zaporizhzhia region later stated that the attackers were “patriots”. Some attackers bore insignia of the right-wing *UNA-UNSO* and Right Sector parties; the head of the local branch of the latter, however, denied the party’s involvement in the incident. HRMMU notes that the State should protect the exercise of freedom of assembly even if attacks come from private individuals.

79. In Odesa, ‘pro-federalism’ supporters continued to be prevented from conducting their weekly rallies near the Trade Unions building (where 42 people died on 2 May 2014). The police claimed either that the square was under a bomb threat, or that drill training was taking place at the exact day and time of the announced rally. The rallies were thus conducted at the bus stop near the square, with participants being routinely confronted by ‘pro-unity’ activists. On 2 August, following a ‘pro-unity’ attack, one ‘pro-federalism’ activist used tear gas and was apprehended by the police, whereas actions of ‘pro-unity’ supporters remained unchallenged.

80. On 3 August, clashes were reported in Kharkiv, where some 100 people (mostly women) demanded that local authorities register the local branch of the political party *Opposition Bloc* (whose members are associated with the former President’s regime) for the local elections scheduled for 25 October. ‘Pro-unity’ activists, including members of the Right Sector party, attacked the rally using batons and gas guns. The police did not interfere. As some protestors hid in the office of the *Opposition Bloc* party, the attackers threw stones and smoke grenades into the office. The police then cordoned off the building and arranged for the safe exit of the people from the premises. One *Opposition Bloc* supporter was reportedly abducted on his way to the rally by men wearing masks and uniforms who drove a military vehicle with the inscription “Azov”,<sup>71</sup>. He was allegedly beaten at the city cemetery and left there. The police initiated criminal investigations under articles 294 (riots), 296 (hooliganism) and 146 (illegal confinement or abduction of a person) of the Criminal Code of Ukraine.

#### **D. Freedom of association**

81. On 14 August, the *Opposition Bloc* succeeded to challenge in District Administrative Court a decision adopted by the Ivano-Frankivsk Regional Council in mid-April, prohibiting the activities of the *Opposition Bloc*, *Development of Ukraine* political parties and the *Ukrainian Choice* organizations on the territory of the region and instructing the regional Ministry of Justice to de-register it<sup>72</sup>. The Court ruled that the suit should be satisfied in the part that relates only to the plaintiff (the *Opposition Bloc*). A political party can be lawfully prohibited only when it or any of its candidates uses violence or advocates for violence or

<sup>71</sup> Name of the regiment of the National Guard of Ukraine.

<sup>72</sup> According to article 5 of the law ‘On Political Parties’, only a court may take decision on prohibition the political party.

national, racial or religious hatred constituting incitement to discrimination, hostility, or when it carries out activities or acts aimed at the destruction of the rights and freedoms enshrined in international human rights<sup>73</sup>.

82. The head of the Odesa branch of the Communist Party informed HRMMU that on 13 June, representatives of the Right Sector and of the *Odesa AutoMaidan, Self-Defence and Council of Public Security* groups raided the party's office. Representatives of the Right Sector reportedly stole technical equipment and some party materials, and occupied the premises until 26 July. The police initiated investigation into the case under article 356 (unauthorized action) of the Criminal Code, despite the court decision to open a criminal case under article 170 (preclusion of legal activities of labour unions, political parties, and non-governmental organizations).

#### **E. Freedom of religion or belief**

##### *In the territories controlled by armed groups*

83. In a statement issued on 20 May, the head of the 'Donetsk people's republic' threatened to "brutally fight sects" and stated it did not recognize any religions apart from Orthodoxy, Roman Catholicism, Islam and Judaism. HRMMU was informed by the clergy of minority Christian denominations in Donetsk city that, overall, they have been able to operate and practice. Nevertheless, HRMMU continued to receive reports about isolated incidents of armed groups attacking community members and places of worship, and disrupting religious services.

84. The Jehovah's Witnesses community appears to have been particularly targeted. Since the beginning of the conflict, the armed groups have abducted and ill-treated 26 elders and members of community. On 17 May, armed men detained four Jehovah's Witnesses members in Novoazovsk, blindfolded them and delivered them to their 'local headquarters'. For two hours, they beat them and conducted a mock execution, persuading the detainees to "acknowledge Orthodoxy as the only true religion" and to join the armed groups. All four were released the following day. On 21 May, the 'police' detained two Jehovah's Witnesses while they were engaged in their religious ministry (having Bible-based conversations with local residents) in the town of Stakhanov, controlled by the 'Luhansk people's republic'. They were accused of disturbing peace by forcing their religious convictions on others, and were illegally detained for 15 days. On 21 June, in the town of Torez, controlled by the 'Donetsk people's republic', two armed men entered the Kingdom hall during a prayer, attacked the preacher and verbally abused the audience, including women and children. The community elders reported the incident to the local 'police' but no follow-up action was taken.

85. As of 15 August, 12 prayer houses of the Jehovah's Witnesses community had been taken over by armed groups. Representatives of the 'Donetsk people's republic' in the towns of Yenakiieve and Zhdanivka (Donetsk region) stated that these would never be returned to the religious community and would be turned into "more important things, such as gyms".

#### **IV. ECONOMIC AND SOCIAL RIGHTS**

86. As of 15 August, approximately five million people remained in Donetsk and Luhansk regions (on Government-controlled territories and those controlled by the armed groups). Over 1.4 million internally displaced persons (IDPs) throughout Ukraine continued to face obstacles in exercising economic and social rights. Also, the conflict impacts negatively on the overall economic situation affecting population across the country. Compared to December 2014, real income has dropped by 23.5 per cent while prices for basic commodities have increased by 40.7 per cent. The unemployment rate has reached 10 per

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<sup>73</sup> Paragraph 38, Report of Special Rapporteur on Freedom of Peaceful Assembly and Association (A/68/299).

cent, while wage arrears amounted to UAH 1.9 billion (approximately USD 87 million)<sup>74</sup>. The situation in the areas controlled by armed groups is even worse.

87. According to a survey by the International Organisation for Migration (IOM) released on 30 July 2015, Ukrainians (both men and women) are increasingly vulnerable to the risk of trafficking. The results of the survey suggest that approximately three million residents of Ukraine intend to seek work abroad. Due to the deteriorating economic situation and the conflict, they tend to disregard terms of contracts<sup>75</sup>.

#### **A. Right to an adequate standard of living**

##### *Right to food and access to humanitarian assistance*

88. The regulations of the Temporary Order severely restricted the delivery of food and medicine to the areas controlled by armed groups – particularly the prohibition of commercial cargo of food and medicine, the tedious registration procedures for humanitarian assistance providers, and the taxation of humanitarian aid. Only one transport corridor remained open for cargo. In the absence of simplified procedures for the delivery of humanitarian aid, humanitarian convoys are blocked for up to 24 hours at checkpoints while documents are checked.

89. The process of ‘accreditation’ of humanitarian organisations introduced by the ‘Donetsk people’s republic’ on 29 June 2015, coupled with an increased animosity and pressure, complicates the operation of external or externally supported humanitarian actors in the areas controlled by armed groups. For instance, on 16 July, a World Food Programme convoy was stopped at a checkpoint and obliged to turn back because the organisation had not been “accredited” for delivering humanitarian assistance.

90. The restrictions by the Government of Ukraine and accreditation procedures by the ‘Donetsk people’s republic’ may amount to violations of the obligation to allow and facilitate rapid and unimpeded passage of humanitarian relief.

91. In the urban areas controlled by armed groups, basic commodities generally of rather low quality have been available in the shops, but the purchasing power of the average person has been steadily decreasing. Categories of people traditionally not entitled to social or humanitarian assistance (i.e. adults aged 21-60, and families with one or two children) have become vulnerable.

92. As reported to HRMMU, in the ‘Luhansk people’s republic’, young men (sometimes under 18) joined the armed groups or ‘militia’ because it is one of the very few means to receive income. Observations by various organizations suggest that women may see themselves obliged to resort to harmful survival strategies, including engaging in sexual relationships with soldiers in exchange of material support or money. This may lead to a rise in sexual and gender-based violence. HRMMU has received secondary reports of a number of such incidents; however survivors refused to be interviewed for the fear of reliving the trauma again, especially in the absence of specialised services in the areas controlled by the armed groups.

##### *Right to clean water*

93. According to UNICEF, up to 1.3 million children and adults are facing a serious water crisis, due to damaged or destroyed water lines and acute water shortages, in the conflict-affected areas of eastern Ukraine. In particular, over 470,000<sup>76</sup> people, including 118,000 children, are facing serious problems in accessing safe water in the territories of Luhansk region controlled by the armed groups. Since main water pipes and filtration

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<sup>74</sup> According to the State Statistics Service of Ukraine.

<sup>75</sup> <http://www.iom.org.ua/en/ukrainians-are-increasingly-vulnerable-threats-human-trafficking-iom-commissioned-survey-reveals>

<sup>76</sup> Affected population number is an estimate, as it varies daily as damages are recurrent and repairs are ongoing.



systems, as well as electricity infrastructure, are located along the contact line, they are frequently damaged by shelling and it is difficult to carry out timely repairs due to the lack of security on the ground and diminishing resources<sup>77</sup>. The situation has been especially dire in the south west of Luhansk region (Brianka, Kirovsk, Pervomaisk and Stakhanov). In addition, from 3 to 10 June and from 23 June to 3 July, for no technical reasons, water supply was cut off at the filter and pumping stations located in the Government-controlled areas of Luhansk region, affecting approximately 165,000 people in the areas controlled by armed groups<sup>78</sup>. They either relied on water trucking (if available), or had to travel to neighbouring villages, which posed additional risks to their security, especially for women. People also revert to alternative water sources which may not be fit for human consumption and hence put public health at risk.

#### *Right to adequate housing*

94. As of 15 August, 1,437,967 IDPs were registered by the Ministry of Social Policy in Ukraine. For those who continue to be displaced, the issue goes beyond humanitarian assistance, with long term solutions needed, including related to housing, employment and social protection. This trend underlines again the importance of long-term solutions, particularly regarding shelter. HRMMU is concerned that in the regions with the highest influx of IDPs (such as Dnipropetrovsk, Kharkiv, Odesa and Zaporizhzhia) specialised settlements, particularly for persons with disabilities, are discussed as a viable alternative for accommodation. Such a strategy may prevent the integration of IDPs into society and their meaningful participation in political and public life. This would be in contravention with international human rights law, including the Convention on the Rights of Persons with Disabilities.

95. IDPs staying in collective centres often have poor living conditions – no running water, and lack heating or cooking facilities. On 24 June, HRMMU visited a sanatorium in Serhiivka village, Odesa region, which hosts 198 IDPs with disabilities from the conflict area, including 38 children. Volunteers working in this centre reported dire humanitarian conditions, poor nutrition, lack of medication and medical services, and a shortage of non-food items. The centre had not received any State budget allocation since October 2014, whereas according to the UN Guiding Principles on Internal Displacement, the competent authorities are responsible to ensure access of IDPs to essential food and medical services.

#### **B. Right to social security and protection**

96. The civil registration system has not been functioning in the areas controlled by armed groups. Therefore people who have lost their identification or other administrative documents or wish to obtain them, they have to travel to Government controlled areas, often detouring checkpoints, in order to apply for documents. IDPs with disabilities face particular difficulties in accessing and obtaining social and medical services, especially when they do not have the necessary documents confirming their disability, or if their documents are certified by a stamp of the ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’. They have to undergo lengthy examinations to confirm their disability and await a decision by a special commission.

97. HRMMU interviewed civilians who had been detained in the Government-controlled areas for being perceived as “separatists” or holding “pro-Russian views” and transferred to the areas controlled by armed groups after their identification documents were confiscated.

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<sup>77</sup> International Humanitarian Law particularly instructs for the special protection of water sanitation and distribution installations.

<sup>78</sup> UNICEF data.



They have since remained trapped in the areas controlled by armed groups, often without relatives or friends, and unable to find legal employment or to apply for social assistance.

98. Following the 2014 decisions of the Government of Ukraine<sup>79</sup>, there have been no allocations from the State budget for social benefits, including pensions, as well as for the social care institutions which continued to operate in the areas controlled by the armed groups.

99. Lawyers of the Donetsk-based NGO *Spravedlyvist* (Justice) prepared 6,812 applications from people in the areas controlled by armed groups who have had no access to their social benefits. 3,312 of these cases have been transferred to courts, with no action taken to date.

100. The Resolution of the Cabinet of Ministers No 595 of 7 November 2014, which required people to register and live in the Government controlled areas to receive their social benefits, was effectively challenged in court. The decision of the Kyiv Administrative Court of Appeal in April 2015 acknowledged the resolution as illegal and obliged the Government to resume payments to people regardless of their registration and residence<sup>80</sup>. The court decisions remained unimplemented<sup>81</sup> and the Government has filed a cassation appeal. In order to receive their benefits, people have to either move or regularly travel across the contact line to the Government controlled areas. As of July 2015, pensions for 233,900 people have been suspended as they were not identified at their place of residence in the Government-controlled areas. The deprivation of pensions to people based on their place of residence is unconstitutional and violates international law. The Government should take proactive measures to ensure equal access to social security regardless of the place of residence, particularly in a situation of armed conflict<sup>82</sup>.

101. According to available data, approximately 523,000 pensioners living in territory under the control of the ‘Donetsk people’s republic’ received a pension payment for July 2015 in roubles<sup>83</sup>. Allegedly, persons with disabilities in the ‘Donetsk people’s republic’ have not received any social benefits. It is reported that payment of pensions started in the ‘Luhansk people’s republic’ but the number of beneficiaries has not been made available.

102. As of 15 August, out of 1,126,508 registered IDP families, 455,566 were receiving financial support from the Government of Ukraine<sup>84</sup>. HRMMU received reports of isolated cases of people who were denied registration as IDPs. Due to inconsistencies in the legislation<sup>85</sup>, people coming from the Government controlled areas, even those close to the contact line, have difficulties in obtaining the IDP status.

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<sup>79</sup> The Decision of the National Security and Defence Council of 4 November On Immediate Measures Aimed at the Stabilization of Socio-Economic Situation in Donetsk and Luhansk Regions, enacted by the Decree of the President of Ukraine No. 875/2014 on 14 November 2014, and the consequent resolution of the Cabinet of Ministers of Ukraine No.595 as of 7 November 2014, On the Issues of Financing of State Institutions, Payment of Social Benefits to Citizens and Provision of Financial Support for Some enterprises and Organizations of Donetsk and Luhansk region. See OHCHR report on the situation of human rights in Ukraine covering 1 to 30 November 2014, paragraphs 47-50.

<sup>80</sup> For more information, see paragraph 92 of the OHCHR Report on the Human Rights Situation in Ukraine covering the period from 16 February to 15 May 2015.

<sup>81</sup> In its reply to the plaintiff as of 30 April 2015, the Ministry of Finance stated its readiness to implement the court decision.

<sup>82</sup> General Comment No19 regarding article 9 (the right to social security) of the Committee on Economic, Social and Cultural Rights.

<sup>83</sup> According to the ‘pension fund’ of the ‘Donetsk people’s republic’.

<sup>84</sup> Ministry of Social Policy.

<sup>85</sup> Government Resolution No 509 On Registration of Persons who are moving from the Temporarily Occupied Territories, districts of antiterrorist operation and localities which are situated at the contact line foresees that, among other reasons, people may be registered as IDPs if they come not only from the areas controlled by armed groups, but also districts of the ‘anti-terrorist operation’, localities situated at the contact line or where state bodies temporarily do not exercise their powers (grey zone), while the Government Order No 1085-p,

103. Soldiers that served in the so-called ‘volunteer battalions’<sup>86</sup> and the families of deceased soldiers continued to face difficulties in obtaining the official status of security operation participants, precluding them from accessing social and medical services. On 11 June, HRMMU interviewed a widow who had not received any support for almost a year, although at the time of her husband’s death, his battalion had been included into the structure of the Ministry of Defence.

### **C. Right to the highest attainable standard of physical and mental health**

#### *Access to medical services in the areas along the contact line*

104. HRMMU is concerned about the continued damage caused by the ongoing armed hostilities to medical facilities, often in violation of international humanitarian law. This also constitutes one of six grave violations against children during armed conflict. According to information available, more than 150 healthcare facilities have been partly or completely destroyed in the conflict area as a result of indiscriminate shelling<sup>87</sup>. On 22 July, HRMMU visited Donetsk hospital No 23, which was shelled for the third time since the beginning of the armed conflict. Despite damages to the building, patients continued to be treated. On 4 August, the Government-controlled towns of Krymske (Luhansk region) and Avdiivka (Donetsk region) were shelled, damaging the tuberculosis and general city hospitals. Individuals interviewed by HRMMU reported that since the beginning of the conflict, medical facilities and ambulances continued to come under fire, although clearly marked and easily identifiable.

105. Access to healthcare is particularly dire along the contact line. Due to the small numbers of inhabitants, professional medical care was already limited before the conflict. Regular shelling impedes access for ambulances and the delivery of humanitarian aid to this area. Furthermore, due to the location of the checkpoints, some of the villages are cut off from the nearest hospitals. The pharmacies have not received necessary stocks of medication.

#### *Access to healthcare in the areas controlled by armed groups*

106. Compared to previous months, a variety of basic medicines can be found in the pharmacies of Donetsk, but treatment for chronic diseases remains largely limited, as well as surgeries, reproductive health and paediatrics. The situation in rural areas is much more difficult, especially in Luhansk region –already the case before the conflict.

107. The administration of local health care facilities, and social and penitentiary institutions controlled by the ‘Donetsk people’s republic’ reported to HRMMU about the constant shortage of consumables, reagents, testing systems, maintenance and spare parts for medical equipment, and that they were increasingly dependent on humanitarian aid. Social care institutions, particularly for older people, reported not having the most basic medicines.

108. Pursuant to Decree No 875 of the President of Ukraine of 14 November 2014, ordering the relocation of all State institutions to territories under Government control, almost all hospitals located in areas controlled by the armed groups have changed their legal address and formally registered in Government-controlled territories, although they remain in the areas controlled by armed groups. Specialised treatment (anti-retroviral, tuberculosis, insulin and haemodialysis) purchased by the Government has remained in store houses in

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which approves the exact list of localities from which IDPs may be registered includes only those that are controlled by armed groups.

<sup>86</sup> These battalions were integrated into the official structures under the MoIA or the Ministry of Defence by the end of 2014.

<sup>87</sup> This is a rough estimate of HRMMU based on data provided by the Ministry of Health of Ukraine, city and regional administrations of Donetsk and Luhansk regions (Government-controlled areas and areas under the control of the armed groups, as well as the statements made by the representatives of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’.

Government-controlled areas and has not been delivered to the medical facilities which continue to operate in the territories controlled by armed groups<sup>88</sup>. This particularly affects the approximately 8,000 people living with HIV, including children and prisoners. To prevent therapy interruption, since July 2014 some people have been transporting antiretroviral treatment into areas controlled by armed groups via checkpoints and non-official roads, risking their life including due to the increased presence of ERW and IEDs.

#### *Access to healthcare in other parts of Ukraine*

109. The growing number of IDPs, wounded civilians and demobilised soldiers has created new challenges for the Government to ensure access to quality medical care. So far, most of the rehabilitation services and necessary equipment have been provided by volunteers, private donors and charity foundations. HRMMU received a number of individual complaints from IDPs in Odesa region regarding denial of access to medical care. For example, ambulances refused to go the IDP collective centre, as well as discriminating against and avoiding visits to Roma communities. Also, hospitals have refused to admit IDPs. Some cases were addressed following HRMMU interventions with the regional authorities.

110. On 21 July, the Ombudsperson of Ukraine presented the results of monitoring of places of deprivation of liberty in Ukraine. According to the report, approximately one million people are deprived of their liberty, with limited access to healthcare, which is due to poor staffing, lack of medication, and inaccessibility of professional medical services. The Ombudsperson stressed that in many cases, this may amount to ill-treatment.

#### *Mental health*

111. Mental health services are lacking on both sides of the contact line – including a growing need for individual psycho-social support for children, detainees, and combatants who have been traumatised. The psychological and physical rehabilitation of at least 40,000 demobilized soldiers in the Government-controlled areas is still largely provided by volunteers. Services for survivors of sexual and gender-based violence are not available in the areas controlled by the armed groups and are insufficient in the Government-controlled areas.

112. In the areas controlled by armed groups, psychiatric and psycho-neurological facilities are still in need of specialised medication, particularly sedatives and neuroleptics.

113. During the reporting period, HRMMU received alarming information about inhumane conditions in psychiatric institutions across Ukraine. Apart from appalling accommodation and poor nutrition, there were reports of cases of ill-treatment, forced labour, misappropriation of pensions, and access to medical services being denied. As most of the people in these institutions have been acknowledged by court as legally incapable, they cannot even file a complaint or access legal remedies.

## **V. ACCOUNTABILITY AND ADMINISTRATION OF JUSTICE**

### **A. Accountability for human rights violations committed in the east of Ukraine**

#### *For violations and abuses committed by the armed groups*

114. Since the launch of the security operation by the Government on 14 April 2014, the MoIA opened 6,006 criminal investigations into the killing and injuring of civilians and Ukrainian military personnel in the conflict-affected areas of Donetsk and Luhansk regions, under article 115 (intentional homicide) of the Criminal Code of Ukraine.

115. The MoIA and SBU have initiated investigations into cases of indiscriminate shelling of residential areas by the armed groups under article 258 (act of terrorism) of the Criminal

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<sup>88</sup> Insulin and haemodialysis are purchased from the budget of the regional administrations of Ukraine, whereas MDR-TB and ARVs are approximately 50% Government supplied and 50% are Global Fund supplied.

Code. They have also continued to investigate crimes related to the unlawful deprivation of liberty and ill-treatment of civilian and military detainees by the armed groups. To date, the law enforcement agencies have collected testimonies of victims upon their release and any available evidence. No further progress is reported in these cases with perpetrators still to be brought to account for these crimes. The main impediments to investigation, as reported by law enforcement entities, are the lack of access to crime scenes due to the ongoing hostilities, and the impossibility to identify and locate suspects and weapons. HRMMU learnt that some of the civilians released by the armed groups intentionally have not reported their cases because of a lack of trust in the law enforcement.

116. Access to crime scenes may be at times problematic. Over the past year, however, the Government has regained control over certain territories previously held by the armed groups, and investigations into crimes they had committed in these areas should be possible. The town of Sloviansk, where grave human rights violations and abuses reportedly took place from April to June 2014, is particularly emblematic in this regard. As of 5 July 2014, it came back under the control of the Government. HRMMU is concerned, as are human rights activists and lawyers of victims, about the lack of progress in investigations by MoIA and SBU into alleged human rights violations and abuses committed in the city while it was under the control of the armed groups.

*For violations committed by Ukrainian armed forces and law enforcement entities*

117. HRMMU noted little progress in the investigations of human rights violations committed by the Ukrainian armed forces and law enforcement entities. Although the Criminal Procedure Code provides for two grounds for opening a criminal case, notification of a crime; and discovery of the fact by the law enforcement – the latter is mostly used in high profile cases, which gain resonance among the public and therefore cannot be ignored. Most criminal cases are opened following the notification of a crime. Victims of human rights violations alleged to have been committed by members of the Ukrainian military or law enforcement have been reluctant to file complaints fearing persecution if they are to remain in Government-controlled territory; or have been simply unable to file a complaint from the territories controlled by the armed groups, in the absence of functioning postal service between areas under Government control and those under the armed groups<sup>89</sup>.

118. In the absence of any formal notification of a crime, law enforcement officers are reluctant to open an investigation. The case of the Mariupol airport is illustrative. It is allegedly used as a military base, where numerous human rights violations have been reported, including illegal detention, and ill-treatment amounting to torture committed by the Ukrainian military against alleged members of the armed groups. HRMMU submitted a letter to the Office of the Military Prosecutor of the Southern Region to examine the place in relation to these allegations. On 10 July, HRMMU received an official response stating that the Office of the Military Prosecutor had not received any complaints or notifications regarding human rights violations committed at the airport and that no investigative actions had therefore been conducted. According to the Military Prosecutor for the Southern Region, criminal prosecution is highly dependent on submissions from victims, as a basis on which investigations may be launched. In the course of the reform of the Office of the Prosecutor General in 2014, its general supervision powers were removed, precluding prosecutors from verifying allegations of human rights violations without opening criminal cases.

119. As of 1 June, the Office of the Military Prosecutor had opened 31 criminal proceedings under article 365 (excess of authority or official powers) of the Criminal Code of

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<sup>89</sup> According to Ukrainian legislation and internal regulations of the law enforcement agencies, formal complaints can only be filed: (i) personally; (ii) via postal mail; and (iii) through a trustee empowered with a power of attorney certified by a notary.



Ukraine for use of physical force by the Ukrainian military and law enforcement against people detained in the course of the armed conflict in the east. By the beginning of June, the Office submitted nine cases to courts with indictments, while the investigation of the other 22 cases was ongoing.

120. On 22 April, HRMMU submitted to the Prosecutor General of Ukraine a list of 34 detainees who were allegedly exposed to ill-treatment. Following examination of the facts, the Office reported opening criminal investigations under article 365 (excess of authority or official powers) of the Criminal Code into the use of force against four persons by SBU and Ukrainian military, and one by members of the Right Sector under article 129 (threat to kill) of the Criminal Code. HRMMU is concerned that the said cases of physical abuses against detainees are investigated under article 365 instead of article 127 (torture) of the Criminal Code<sup>90</sup>.

121. HRMMU is concerned about the slow progress in the investigation into torture by Ukrainian servicemen and the consequent death of a man in the town of Iziium (Kharkiv region) in November 2014<sup>91</sup>. On 7 August, the Military Prosecutor for the Kharkiv Garrison informed HRMMU that two identified suspects would be interrogated as soon as they were located as they were currently serving in the security operation area. In the meantime, notifications of suspicion were sent to their commanders.

122. On 25 June, the Head of the Military Police of the Armed Forces of Ukraine reported that approximately 110 criminal proceedings had been opened into crimes committed by the battalion *Aidar* in 2014-2015. These include the abduction and ill-treatment of people allegedly affiliated with the armed groups and engaged in separatism-related activities. The former commander of Aidar battalion is being investigated under article 426 (inaction by military authorities) of the Criminal Code for failing to prevent crimes committed by his subordinates. According to the Office of the Prosecutor General, he is also suspected under articles 146 (illegal confinement or abduction of a person), 345 (threats or violence against a law enforcement officer) and 382 (failure to comply with a judgment) of the Criminal Code for organising the abduction of the director of the State enterprise *Ukrspyrnt*, on 19 December 2014. On 28 June, the Prosecutor General of Ukraine informed that the pre-trial investigation into the incident was completed.

123. On 16 June, the Prosecutor General of Ukraine reported that his Office was investigating a number of crimes committed by other former voluntary battalions which were operational in the east of Ukraine. On 17 June, the MoIA department for internal security jointly with the Office of the Military Prosecutor detained the commander and seven servicemen of the special police patrol battalion *Tornado*, which incorporated personnel of the *Shakhtarsk* police battalion disbanded for looting in October 2014. The same day, the Chief Military Prosecutor stated that a “criminal gang” of servicemen of the battalion *Tornado* used the basement of a school in the town of Pryvillia (Luhansk region) to unlawfully detain local

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<sup>90</sup> In its concluding observations to the sixth periodic report of Ukraine (November 2014), the Committee against Torture expressed its concern that “while article 127 of the Criminal Code relates to torture, acts amounting to torture are often prosecuted under articles 364 (abuse of authority or office), 365 (excess of authority or official powers) and 373 (compelling to testify) of the Criminal Code, which do not provide for the criminal liability of all individuals who inflict torture. It is also concerned that torture is punishable by two to five years of imprisonment and at the low number of persons convicted for having committed acts of torture (arts. 2 and 4). The State party should amend its legislation to ensure that persons who are alleged to have committed acts of torture are prosecuted under article 127 of the Criminal Code and that appropriate penalties for acts of torture are applied that are commensurate with the gravity of the crime, as set out in article 4, paragraph 2, of the Convention” (CAT/C/UKR/CO/6).

<sup>91</sup> For more details, please see paragraph 106 of the OHCHR report on the human rights situation in Ukraine covering the period 16 February – 15 May 2015.



residents. Servicemen of the battalion allegedly tortured and ill-treated people unlawfully deprived of their liberty, and raped some men, recording these acts on video. The crimes are investigated under articles 146 (illegal confinement or abduction of a person), 255 (creation of a criminal organisation) and 365 (excess of authority or official powers) of the Criminal Code. On 10 July, the Office of the Military Prosecutor reported that a number of Tornado servicemen were suspected of debauchery of minors. On 18 June, the Minister of Internal Affairs of Ukraine ordered to disband the battalion. On 23 July, the battalion was withdrawn from the security operation area but was not effectively disbanded. As of the date of this report investigations were ongoing.

#### **B. Accountability for human rights violations committed during the Maidan protests**

124. Limited progress has been achieved in the investigation into the incidents of excessive use of force during the dispersal of protestors at Maidan on 30 November 2013 and the killing of protestors in Kyiv between 18 and 20 February 2014, when special police units used firearms.

##### *Forceful dispersal of Maidan protestors on 30 November 2013*

125. On 26 June, the Office of the Prosecutor General submitted the indictment in the case of forceful dispersal of Maidan protestors, on 30 November 2013, according to which four Berkut officers are charged under articles 340 (illegal interference with the organization or holding of assemblies, rallies, marches and demonstrations) and 365 (excess of authority or official powers) of the Criminal Code. The preliminary hearing in the case was scheduled by the Shevchenkivskyi District Court of Kyiv on 17 August.

126. On 27 February, the Shevchenkivskyi District Court resumed consideration of the case of the former head of the Kyiv City State Administration, accused of the same crimes, for ordering the forceful dispersal of the peaceful protest. The court is still collecting witness testimonies and its next hearing is scheduled for 17 September.

##### *Prosecution of Berkut servicemen accused of killing of protestors*

127. The two Berkut servicemen accused of killing 39 protestors on 20 February 2014, in Kyiv, remain in custody since 4 April 2014 when they were detained along with their commander. Whereabouts of the latter have been unknown since he fled from house arrest on 3 October 2014. Although preliminary hearings in the case began on 20 February 2015, the Sviatoshynskyi District Court of Kyiv only finalized the appointment of the jury on 6 July. The process was protracted due to the failure of the Kyiv city council to submit a list of jury candidates and procedural flaws that, according to the lawyers, could have eventually affected legitimacy of the court decision. On 6 July, the court started the trial on the merits, hearing testimonies of relatives of the killed protestors.

128. On 26 June, the Office of the Prosecutor General reported the detention of the acting Berkut Lieutenant Colonel who is also suspected in the killing of the 39 protestors. Two other Berkut servicemen facing the same charges have been in detention since 23 February 2015. In total 25 Berkut servicemen are suspected in the killing of the 39 protestors; 20 of whom were put on a wanted list. To date the prosecution did not determine the individual responsibility of each of them. HRMMU is concerned that the approach taken by the Office of the Prosecutor General may result in establishing collective responsibility.

129. The investigation into the killing of three and injuring of 69 Maidan protestors on 18 February 2014 in Kyiv is ongoing. Three suspected Berkut servicemen have been in detention since 22 April 2015.

#### **C. Accountability for the 2 May violence in Odesa**

130. More than 15 months after the events of 2 May 2014 in Odesa, which resulted in the death of 48 people due to clashes of supporters of federalisation of Ukraine ('pro-federalism'

supporters), supporters of unitary Ukraine ('pro-unity' supporters)<sup>92</sup> and football fans, only limited progress has been observed in the investigations. None of the officials then responsible for maintaining public order in the city have been brought to account.

131. As of 15 August, 22 'pro-federalism' supporters have been accused of mass disorder in Odesa city centre; 11 of them<sup>93</sup> have spent 15 months in the Odesa SIZO. One 'pro-unity' activist was accused of murder in the city centre, and another 'pro-unity' activist is suspected of mass disorder near the Trade Unions building. Currently they are not under any measure of restraint due to the expiration of the maximum terms of the application of the measure of restraint under the Code of Criminal Procedure; one of them is awaiting trial and the second one is still under investigation.

132. On 18 May, a draft law was registered in Parliament suggesting that all those accused of the mass disorder on 2 May 2014 in Odesa should be exempted from criminal responsibility, whereas those suspected or accused of grave crimes should be prosecuted.

#### *Investigations by the Office of the Prosecutor General*

133. Although a criminal case had been opened against the former head of the Odesa Regional Department of the MoIA<sup>94</sup>, no particular progress in the investigation has been reported. In addition, only a few relatives of the deceased or injured have been granted the status of victims in the case.

#### *Investigations by the Ministry of Internal Affairs*

134. No suspects have been identified in the criminal case opened by the MoIA into the slow response and inaction of the fire brigade, which took 45 minutes to arrive at the scene despite the numerous emergency calls. The MoIA investigative unit claims to be still waiting for the results of the forensic examination of the Trade Unions building.

135. In September 2014, the investigation into the 2 May events in Odesa carried out by the MoIA was split into three major criminal proceedings: mass disorder at the Trade Unions building (Kulykove Pole square), mass disorder in the city centre, and a case of homicide opened against a 'pro-unity' activist for shooting dead a protestor in the city centre.

#### *Investigation regarding the mass disorder at the Trade Unions building*

136. In June 2015, the MoIA identified the last body discovered after the fire of the Trade Unions building. All 48 people who died during the 2 May violence have thus been identified.

137. On 3 July, following the appeal filed on 17 February 2015 by the victims, the Prymorskyi District Court in Odesa overturned the decision of the Office of the Prosecutor General to cease criminal proceedings against a 'pro-unity' activist, accused of beating 'pro-federalism' supporters, jumping out of the burning Trade Unions Building. The judge decided that the necessary investigative measure had not been taken and ruled to resume the pre-trial investigation against the activist.

#### *Investigation into mass disorder in the city centre*

138. As of 15 August 2015, the criminal case into the mass disorder on 2 May 2014 in Odesa had been in court for eight months. Numerous procedural violations have been

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<sup>92</sup> Six people were killed in mass disorder in the city centre of Odesa and 42 people died at the Trade Unions building.

<sup>93</sup> In November 2014, 21 'pro-federalism' supporters were accused of participating in mass disorder during the 2 May violence. In July 2015, the Prosecutor General Office brought charges against one more 'pro-federalism' activist for participating in mass disorder and illegal possession of weapons.

<sup>94</sup> On 13 May 2015, the former Head of the Odesa Regional Department of the Ministry of Internal Affairs was placed under house arrest for official negligence, by failing to ensure public security which resulted in clashes between 'pro-federalism' and 'pro-unity' supporters during the march *For United Ukraine*.

reported, as well as the non-appearance of lawyers and the poor quality of case materials – all of which have significantly delayed the process. Consideration on the merits started on 2 July. At this stage the trial remains protracted due to failure of the Office of the Prosecutor General to provide a simultaneous interpreter for two citizens of the Russian Federation, accused of mass disorder in the city centre.

*Investigation regarding the ‘pro-unity’ activist charged with homicide*

139. A court hearing in the case of the only ‘pro-unity’ activist accused of shooting dead a protestor and injuring a police officer in Odesa city centre on 2 May, which started on 23 June, was disrupted by other ‘pro-unity’ activists (mostly men, many in paramilitary uniform). The ‘pro-federalism’ supporters and relatives of the victims (mostly women and elderly people) have been violently prevented by ‘pro-unity’ from entering the court room.

140. On 3 August, HRMMU observed how prior to the beginning of the hearing, a member of Parliament supported by a group of some 40 ‘pro-unity’ activists verbally threatened two judges from the panel, accusing them of lack of impartiality and objectivity and forcing them to recuse themselves from the case.

141. It was the third court hearing adjourned because of the disqualification of judges, which resulted in transferring the case to another court. HRMMU is concerned about the inaction of the police and has intervened with the Odesa Regional Department of the MoIA to take all necessary measures to ensure the safety of trial participants in compliance with national and international human rights standards.

**D. Administration of justice**

142. HRMMU analysed a number of court decisions related to acts committed by members of the armed groups of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ or people affiliated thereto. Most of the perpetrators are prosecuted under articles 110 (trespass against territorial integrity and inviolability of Ukraine) or 263 (unlawful handling of weapons, ammunition or explosives) of the Criminal Code of Ukraine. In the vast majority of these cases, the accused agreed to plead guilty in exchange for a sentence with a probation period, which along with numerous reports of ill-treatment of detainees, some of which have been interviewed by HRMMU during the reporting period, may indicate that they could have been forced to confess<sup>95</sup>.

143. Moreover, HRMMU has noted a lack of uniformity in the qualification of similar crimes. While in certain cases members of the armed groups were accused under article 258-3 (participation in a terrorist group or terrorist organisation), in other cases courts found them guilty under article 260 (participation in the illegal paramilitary or armed formations) of the Criminal Code of Ukraine, emphasising that neither ‘Donetsk people’s republic’ nor ‘Luhansk people’s republic’ were recognised as terrorist organisations under Ukrainian legislation. Although in both types of cases perpetrators were sentenced for the same crime, *i.e.* participation in the armed groups, those found guilty under article 258-3 were sentenced to longer terms of imprisonment than those accused under article 260 of the Criminal Code.

144. For example, on 10 August, the Prosecutor of the Donetsk region reported sentencing a member of the armed groups of the ‘Donetsk people’s republic’ to four years of imprisonment under article 260 of the Criminal Code for participation in the unlawful activity of paramilitary armed formation *Oplot*. The next day, the Slovianskyi District Court in Donetsk region sentenced another member of the armed groups of the ‘Donetsk people’s republic’ to nine years of imprisonment under article 258-3 of the Criminal Code for setting up check points, trench shelters and other fortification installations and keeping the armed watch there.

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<sup>95</sup> See paragraphs 46 and 164 of OHCHR report on the human rights situation in Ukraine covering 16 February to 15 May 2015.

145. The HRMMU noted the development of more centralized civilian ‘administrative structures’ and ‘procedures’ continued to develop in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. These include the ‘legislature’, ‘judiciary system’, ‘ministries’ and ‘law enforcement’. ‘Donetsk people’s republic’ reportedly began issuing passports to residents of the territories under its control. Among other ‘laws’, ‘legislative bodies’ of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ have adopted a number of ‘legislative acts’ governing criminal prosecution<sup>96</sup> in the territories under their control. Prosecution of Ukrainian citizens under these ‘laws’ by these ‘courts’ would constitute violation of their right to fair trial. In general, all these ‘structures’ and ‘procedures’ do not conform to international law and the Constitution of Ukraine.

#### *High profile cases*

146. On 28 July, the Prosecutor General of Ukraine reported the opening of an *in absentia* trial against former senior officials for corruption – the former President Yanukovich, former Head of the National Bank Arbuzov, former Minister of Revenues and Duties Klymenko and his former deputy Ihnatov, former Minister of Health Bohatyriova and her former deputy Stashchenko. Most of them have fled Ukraine and are allegedly in the Russian Federation. All of them were put on an international wanted list, which is the main prerequisite for launching a trial *in absentia*. According to the procedure, the suspects are to be officially notified through a summons published in the official Gazette and on the website of the Office of the Prosecutor General of Ukraine, inviting them to the interrogation and notifying them that the investigation and trial shall otherwise take place in their absence. This is the first time a trial *in absentia* procedure has been applied in Ukraine since October 2014, when amendments were introduced to the Criminal Procedural Code.

147. In its General Comment No 32, the Human Rights Committee declared that proceedings in the absence of the accused ‘may in some circumstances be permissible in the interest of the proper administration of justice’, and added that these circumstances emerge when the accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present.

148. On 18 June, the Minister of Internal Affairs reported that the case of the killing of the editor-in-chief of the daily newspaper *Siegodnia* Oles Buzyna (shot dead in Kyiv on 16 April 2015) was “solved”. According to the Minister, two suspects were identified and detained in the course of the investigation. On 18 June, the Shevchenkivskyi District Court in Kyiv ruled to hold one of them – a member of police battalion *Kyiv-2* who participated in the armed conflict in the east – in custodial detention until 18 August. The other was released on bail for UAH 5 million (approximately USD 235,000). The pre-trial investigation of the case is ongoing.

149. HRMMU continued to monitor the case of Nelia Shtepa, the former mayor of the town of Sloviansk (Donetsk region), who is charged under articles 110 (trespass against territorial integrity and inviolability of Ukraine) and 258-3 (creation of a terrorist group or terrorist organization) of the Criminal Code for cooperation with and rendering support to the “separatists”; and failure to secure the city police department, where 479 units of firearms were stored in April 2014. According to the indictment, these actions led to the takeover of the town and the subsequent killing of 117 people and injuring of 198. Ms Shtepa has been in custody since 11 July 2014, after the Ukrainian armed forces regained control over the town of Sloviansk on 7 July (she had previously spent nearly three months as a detainee of the armed groups). The trial is moving slowly, with approximately one hearing per month, and is at the stage of collection of testimonies from prosecution witnesses.

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<sup>96</sup> See paragraphs 129-132 of the 10<sup>th</sup> HRMMU report on the human rights situation in Ukraine covering period 16 February – 15 May 2015.



150. Another high-profile case monitored by HRMMU is that of the mayor of Kharkiv, Hennadii Kernes, who is charged under articles 127 (torture), 129 (threat to kill) and 146 (illegal confinement or abduction of a person) of the Criminal Code for abduction and ill-treatment of pro-Maidan activists in Kharkiv which he allegedly conducted along with two of his bodyguards, in March 2014. Although the indictment was submitted to the court on 26 March 2015, the hearing on the merits has not yet commenced. Preliminary hearings in the case are closely followed by activists, with all sittings accompanied by their demonstrations, demanding that the defendant be imprisoned. In some cases, activists attempted to enter the court room, and clashed with the police.

#### *Transfer of prisoners*

151. Approximately 9,300 prisoners sentenced before the conflict remain in penitentiary institutions located on the territory controlled by the ‘Donetsk people’s republic’. This includes over 760 prisoners from different regions of Ukraine and foreign citizens. In March 2015, the Ombudsperson’s Office of Ukraine initiated a discussion on the transfer of such pre-conflict prisoners to Government-controlled territories. At this time, HRMMU acted as an intermediary between the ‘penitentiary administration’ of the ‘Donetsk people’s republic’ and the Office of the Ombudsperson in this operation. This enabled a group of foreign prisoners, and a group of detainees who had been in the process of being transferred prior to the start of the armed conflict to return to the judicial system under which they were sentenced or had been facing trial<sup>97</sup>.

152. As of 15 August, two transfers had taken place. On 8 July, nine male prisoners (seven citizens of the Russian Federation, one citizen of the Republic of Moldova, and one citizen of Georgia) were transferred from the ‘Donetsk people’s republic’ to the Government-controlled territories (three of them await further transfer to the states of their nationality). On 5 August, a group of 20 (19 men and one woman) were transferred from the ‘Donetsk people’s republic’ to Government-controlled territory. HRMMU presence during both transfers fostered trust between the parties.

## **VI. LEGISLATIVE DEVELOPMENTS AND INSTITUTIONAL REFORMS**

### **Constitution of Ukraine**

#### *Decentralization*

153. On 31 July, the Constitutional Court of Ukraine published its opinion on a draft law on constitutional amendments relating to decentralization, finding it in line with the Constitution and international human rights standards. The European Commission for Democracy through Law (the Venice Commission) found the amendments “largely compatible with the European Charter of Local Self-Government”<sup>98</sup>.

154. The amendments enshrine the principle of subsidiarity and the duty of the State to ensure adequate financial resources for the local self-government units. It clearly separates and defines the functions of the State and local self-government. Prefects are to assume the oversight functions of the State at local level. The President and the Prefect can suspend the powers of local government bodies if they believe their decisions are illegal, and the Constitutional Court is to rule on the issue of such decisions.

155. It should be noted that the draft amendments do not address the territories controlled by the armed groups and foresee that “special order of self-governance of certain districts of

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<sup>97</sup> This concerned nine (in July) and 20 (in August) people respectively.

<sup>98</sup> See Paragraph 38 of the Preliminary Opinion on the Proposed Constitutional Amendments Regarding the Territorial Structure and Local Administration of Ukraine, the Venice Commission, 24 June 2015.



Donetsk and Luhansk regions shall be set forth in a separate law”. Commenting on the draft amendments, President Poroshenko said that they “do not envision and cannot envision any special status for the Donbas”. The Venice Commission regretted that the amendments “do not provide a constitutional basis for proposals aimed at settling the present conflict in Ukraine. The Commission considers that the authorities should add a provision to the effect that “some categories of administrative/territorial units or special arrangements for or within administrative/territorial units may (only) be created by law”. This formula, albeit neutral, would nonetheless enable future legal developments in line with the Minsk agreements”<sup>99</sup>.

### *Judiciary*

156. Amendments aimed at reforming the judicial system and the status of judges were developed by a working group of the Constitutional Commission and foresee the removal of long-standing constitutional obstacles to the independence of the legal system. In particular, judges will no longer be elected and dismissed by Parliament but appointed by the President upon the submission of the High Council of Justice, which will also be empowered to decide on the termination of their term. The High Council of Justice is to be composed of a majority of judges (10 out of 19). Probationary periods for judges, which made them vulnerable to political pressure, are abolished. The broad supervisory powers of the Public Prosecutor not related to his prosecutorial functions have been cancelled and the competence of the Parliament to declare no confidence in the Prosecutor General has been removed. The amendments also mention that “Ukraine may recognize the jurisdiction of the International Criminal Court as provided by the Rome Statute of the International Criminal Court”. The amendments largely reflect the recommendations of the Venice Commission and of United Nations human rights mechanisms<sup>100</sup> to improve strengthening the independence of the judiciary, to fight corruption and to improve access to justice. To date, these amendments have not yet been approved by the Constitutional Commission.

157. The working group of the Constitutional Commission dealing with human rights issues is in the process of developing draft amendments to the Constitution in this area based on the European Convention on Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union and UN human rights instruments.

### **Accession to international conventions**

158. HRMMU welcomes the adoption, on 17 June, of a law signed by the President of Ukraine on 6 July, enabling Ukraine to join the International Convention for the Protection of All Persons from Enforced Disappearance. On 14 August, Ukraine transmitted to the UN Secretary-General the Instrument of Accession to the Convention which will enter into force for Ukraine on 13 September 2015. While acceding to the Convention, Ukraine made a declaration recognizing the competence of the Committee on Enforced Disappearances under articles 31 and 32 of the Convention.

### **Derogation from certain human rights obligations**

159. On 5 June 2015, the Government of Ukraine informed the Secretary-General of the United Nations and the Secretary-General of the Council of Europe<sup>101</sup> that it would derogate from certain State obligations under the ICCPR and the European Convention for the Protection of Human Rights and Fundamental Freedoms. According to the text of the

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<sup>99</sup> Ibid, paragraph 27.

<sup>100</sup> See, in particular, paragraph 17 of the Concluding Observations of the Human Right Committee (CCPR/C/UKR/CO/7) of 22 August 2013, and paragraphs 7-13, 14, 15, 88, 90-92, 95 and 96 of the Report of the Working Group on the Universal Periodic Review (A/HRC/22/7).

<sup>101</sup> See paragraph 144 of HRMMU report on the human rights situation in Ukraine for 16 February – 15 May 2015.

resolution of the Ukrainian Parliament of 21 May 2015<sup>102</sup>, it was adopted in connection with “annexation and temporary occupation by the Russian Federation” of Crimea and “military aggression of the Russian Federation” “on the territory of certain districts of Donetsk and Luhansk regions”.

160. The derogation is envisaged in relation to the right to liberty and security, fair trial, effective remedy, respect for private and family life and freedom of movement, including the right to choose one’s residence, which should be applied in certain districts of the Donetsk and Luhansk regions determined by the Anti-Terrorism Centre of the Security Service of Ukraine. In addition, the Resolution does not define clearly the territory to which the derogation applies but states that Ukraine shall inform the Secretary-General of the United Nations and the Secretary General of the Council of Europe about “the alteration of the territory” to which the derogation shall apply. The resolution envisages derogations from some rights which have been interpreted by the United Nations Human Rights Committee as being non-derogable. They include the right to an effective remedy and procedural rights, such as the supervision by a judicial body of the lawfulness of detention.

161. The derogation will have a negative impact on the enjoyment of human rights in certain areas of the Donetsk and Luhansk regions. The derogation in regard of ICCPR is effective since 16 July. According to the Secretary General of the Council of Europe, “the derogation does not mean that Ukraine is no longer bound by the European Convention on Human Rights, that it is no longer a member of the Council of Europe, or that our co-operation is being put on hold. The European Court of Human Rights will assess in each case whether the derogation is justified”. HRMMU notes that the armed groups and the so-called ‘governance structures’ of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ are accountable for human rights abuses committed on territories under their control.

### **National Human Rights Strategy**

162. During the reporting period, the Government and the Presidential Administration, in cooperation with Ombudsperson office and civil society, finalized the draft of the National Human Rights Strategy. The draft was analysed by OHCHR, the Council of Europe and other organizations, and was approved by the Cabinet of Ministers in the end of March 2015. The draft was further amended following comments made by civil society organizations and the Ombudsperson office and submitted to the Presidential Administration for approval<sup>103</sup>.

### **Freedom of movement**

#### *Movement of people*

163. On 4 June 2015, the Government adopted Regulation No 367 which organizes the movement of foreigners and stateless persons to and from Crimea. The adoption of this regulation was a legal requirement deriving from the law ‘On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of

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<sup>102</sup> The Resolution On the Approval of the Notification of Ukraine about the Derogation from Certain Obligations Determined by the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

<sup>103</sup> On 25 August, the President of Ukraine approved the Strategy and tasked the Government to develop a relevant Action Plan within three months. The Strategy was developed through collaborative efforts that have involved, since November 2014, the Government, civil society groups, the Ombudsperson and international organizations. It provides a five-year roadmap to address both systemic human rights challenges and more recent conflict-related issues that have followed Maidan events. The Strategy outlines 24 strategic areas, including torture and ill-treatment, impunity, fair trial rights, fighting discrimination, national minorities, gender equality, fundamental freedoms, right to health, rights of IDPs and those living in the territories controlled by the armed groups.

Ukraine' of 15 April 2014<sup>104</sup>. It provides that foreigners and stateless persons shall enter or leave Crimea through designated checkpoints and in possession of passports as well as special permits issued by the State Migration Service of Ukraine. The delivery of a special permit requires the submission of a number of documents and mention of the purpose of the visit. The Regulation contains a limited list of grounds for entering Crimea for foreigners and persons without citizenship which may negatively impact freedom of movement for this category and be assessed as discriminatory as no grounds for the restriction is being provided. The refusal to deliver a permit must be motivated and in writing. HRMMU interviewed one foreign citizen who was refused a permit without any justification and is aware of another case of permits delivered to some but not all members of a family traveling together, without providing arguments for this difference in treatment.

#### *Movement of goods*

164. On 8 August, law No 649-VIII<sup>105</sup> was published, instructing the Government of Ukraine to adopt a legal act (to be developed by SBU) regulating the movement of goods to and from the area of the “anti-terrorist operation” until 22 August. The Temporary Order already includes such a procedure and the adoption of a new legal act would duplicate it and further tighten the control of movement across the contact line. Additionally, the law introduces administrative responsibility for violating the procedure of cargo movement in the form of fines ranging from UAH 121,800 (approximately USD 5,800) to UAH 243,600 (approximately USD 11,380), as well as the confiscation of goods. HRMMU emphasizes that restrictions to the movement of goods should not lead to violations of the right to an adequate standard of living, including adequate food, clothing, housing and the right to health<sup>106</sup>. HRMMU also recalls that the parties to the conflict, in line with international humanitarian law, must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their control<sup>107</sup>.

#### **Police reform**

165. On 4 August, the President of Ukraine signed the law on the national police, defining the legal and organizational framework for the activities of the police. It states that the national police shall be headed by a chief of police appointed and dismissed by the Cabinet of Ministers. The law regulates the use of physical force, firearms, special equipment, as well as the procedures for arrest, questioning and document check. It also requires for police measures to be necessary and proportionate. The law also provides that police officers having committing illegal acts shall be brought to criminal, administrative, civil and disciplinary liability.

166. The law clearly defines the powers, status and obligations of police officers, covering a wide range of police activities. In addition, it regulates the application of measures of restraint and the use of force, while such aspects were previously covered by Government regulations. On the negative side, the law provides that firearms can be used without warning

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<sup>104</sup> Article 10-2 of this law states that the movement of foreigners and stateless persons to and from Crimea should take place in accordance with a “regime” applicable to those categories and only through “special permission” established by the Government of Ukraine.

<sup>105</sup> Law on Amendments to Some Legislative Acts of Ukraine Regarding Order of Movement of Goods to and from the Territory of Anti-Terrorist Operation Area.

<sup>106</sup> See articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.

<sup>107</sup> Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.

in the area of the “anti-terrorist operation”<sup>108</sup>. Moreover, it does not foresee independent complaints and oversight mechanisms of police activities, which would strengthen accountability and public trust<sup>109</sup>.

### **Law on local elections**

167. On 14 July, the Parliament adopted a law on local elections which will be first applied to the nation-wide local elections scheduled for 25 October 2015<sup>110</sup>. The elections will take place under a proportional system, with open party lists, except for city mayors and village councils which will be chosen under the majoritarian system. A person will only be able to vote in his or her place of registration. This means that IDPs will not be able to vote in their place of displacement, which will *de facto* prevent many of them from taking part in the process. According to Principle 22 of the UN Guiding Principles on Internal Displacement, IDPs have the “right to vote and to participate in government and public affairs, including the right to have access to the means necessary to exercise this right”. To be noted, the law determines a 30 per cent quota on the proportional system lists for candidates “of either gender”<sup>111</sup>. In practical terms, this will apply to women. The law does not provide for any sanctions for political parties that fail to comply with this rule. The critical issue is the gap between the *de jure* and *de facto*, or the right as against the reality of women’s participation in politics and public life generally. Research demonstrates that if women’s participation reaches 30 to 35 per cent (generally termed a “critical mass”), there is a real impact on political style and the content of decisions, and political life is revitalized<sup>112</sup>.

## **VII. HUMAN RIGHTS IN THE AUTONOMOUS REPUBLIC OF CRIMEA<sup>113</sup>**

### **Rights to life, liberty, security and physical integrity**

168. On 29 May, ‘the prosecutor of Crimea’ announced identification of at least 50 leaders and participants in the Maidan protest movement, alleging that they were involved in attacks against Berkut servicemen in 2014 in Kyiv. She stated that information on these people would be submitted to the investigative authorities for further actions. As of 15 August, some people from the list have been already summoned to the Investigative Committee of the Russian Federation. HRMMU is concerned in this regard that in Crimea conditions for a fair trial and proper legal safeguards are often absent, and recalls in this regard sentencing by a Crimean ‘court’, on 15 May 2015, of the Crimean ‘pro-unity’ activist Oleksandr Kostenko<sup>114</sup>.

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<sup>108</sup> See UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (principles 9 and 10).

<sup>109</sup> See United Nations Committee against Torture, Concluding Observations on the Sixth Periodic Report of Ukraine (CAT/C/UKR/CO/6), 12 December 2014, p. 4.

<sup>110</sup> The elections will not be held in the “territory of the Autonomous Republic of Crimea” and in “certain territories<sup>110</sup> of Donetsk and Luhansk regions” “because of temporary occupation and armed aggression of the Russian Federation and impossibility to ensure the observance of OSCE standards regarding elections”.

<sup>111</sup> The attainment of a minimum ratio of 30 per cent of leadership positions for both genders was first recommended in a 1990 resolution of the United Nations Economic and Social Council. The role of women in democratic processes was also emphasized in the 2011 United Nations General Assembly resolution on Women’s Political Participation (A/RES/66/130).

<sup>112</sup> CEDAW General Recommendations No. 23: Political and Public Life, XVI Session of the Committee on the Elimination of Discrimination against Women in 1997, A/52/38.

<sup>113</sup> The *de facto* authorities of Crimea rejected HRMMU request to establish a sub-office in the peninsula. HRMMU maintains direct contacts with residents of Crimea as well as with IDPs from Crimea on the mainland Ukraine. HRMMU obtains first-hand information from ‘pro-unity’ activists, Crimean Tatars, leaders of Mejlis and Qurultay of Crimean Tatars people, lawyers of those who had been detained in Crimea as well as from local teachers, doctors and private entrepreneurs. HRMMU continued to seek access to Crimea.

<sup>114</sup> For more details, see paragraphs 158-159 of 10<sup>th</sup> HRMMU report on the human rights situation in Ukraine covering period 16 February – 15 May 2015.

169. On 11 June, the Deputy Prosecutor General of the Russian Federation approved the indictment of Crimean residents Oleh Sentsov and Oleksandr Kolchenko<sup>115</sup>. On 17 June, the North Caucasian Military District Court started to consider the case on the merits. Between 21 July and 15 August, ten court hearings were held<sup>116</sup>. During one of them, the main prosecution witness, Hennadii Afanasiev, revoked his earlier testimony as forced under torture. Mr Afanasiev also informed the court of threats from the Federal Security Service (FSS) of the Russian Federation against himself and his mother. He was taken back to prison on 6 August and, according to his lawyer, was beaten by an FSS officer. HRMMU is deeply concerned about possible further reprisals against Mr Afanasiev and risks to his personal safety.

170. The pre-trial detention of the Deputy Head of the Mejlis of Crimean Tatars Akhtem Chiigoz<sup>117</sup>, who was arrested on 29 January 2015 on suspicion of organizing mass riots on 26 February 2014<sup>118</sup>, was extended until 19 November 2015.

171. The HRMMU is concerned about the lack of accountability in the case of two ‘pro-unity’ Crimean Tatars, Timur Shaimardanov and Seiran Zinedinov, who disappeared in May 2014 in Crimea<sup>119</sup>. On 9 June 2015, the Main Investigative Department of the Investigative Committee of the Russian Federation for Crimea suspended the preliminary investigation into the case, opened on 24 July 2014, because the perpetrator of the crime had not been identified.

### **Freedom of movement**

172. On 4 June, the Government of Ukraine adopted Regulation No 367<sup>120</sup>, introducing additional requirements for children below 16 years of age to cross the administrative boundary line (ABL) between mainland Ukraine and Crimea. According to the new Regulation, children must be in possession of an international passport and, in case he or she is accompanied by only one of his parents, must have the consent of the other parent certified by a notary. Prior to the adoption of the Regulation, the only requirement for Ukrainian children under 16 years to cross the ABL was to have a birth certificate, which was not deemed by the Ukrainian authorities as a proof of citizenship.

173. The absence of information about the new rule has caused long queues at crossing points, with people waiting for hours and many with children being turned away by Ukrainian Border Guards. Crossing points on the Ukrainian side of the ABL are particularly ill-suited to handle the transit of people as there are no toilets, no facilities for children, older persons or persons with disabilities to rest, and no shelter in case of bad weather conditions.

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<sup>115</sup> Four Crimean residents, including film-maker Oleh Sentsov and a ‘pro-unity’ activist Oleksandr Kolchenko, were arrested in Crimea on suspicion of planning terrorist acts and transferred to the Russian Federation in May 2014. Two other detainees related to the case, Hennadii Afanasiev and Oleksii Chyryni, entered a plea agreement and were sentenced to seven years of imprisonment.

<sup>116</sup> On 25 August, Oleh Sentsov was sentenced to 20 years of prison for setting up a terrorist group and being involved in two attempted arson attacks in Crimea. The HRMMU notes that the process was marred by violations of fair trial rights and the presumption of innocence. The court dismissed credible allegations of torture and ill-treatment of Sentsov during pre-trial detention and passed the guilty verdict notwithstanding the fact that the main prosecution witness recanted in the courtroom, saying his testimony had been extorted under torture. Oleksandr Kolchenko, who was being tried with Sentsov and also denied the charges, received a 10-year prison sentence for his participation in the ‘terrorist plot’ organized by Sentsov.

<sup>117</sup> For more details, see paragraph 162 of the 10<sup>th</sup> HRMMU report covering period of 16 February to 15 May 2015.

<sup>118</sup> For more details, see paragraph 93 of the 9<sup>th</sup> HRMMU report covering period of 1 December 2014 – 15 February 2015.

<sup>119</sup> For more details, see paragraph 218 of the 7<sup>th</sup> HRMMU report covering period of 17 September to 31 October 2014.

<sup>120</sup> On Entry/Exit to/from the Temporarily Occupied Territory of Ukraine.



## Freedom of expression<sup>121</sup>

174. The imam of a mosque in the Bakhchysaraiskyi district was sentenced to two years of probation for stating his views in a private conversation at his workplace. The imam allegedly told three people that Crimea will be returned to Ukraine, after which “a war will start in which the Russians will be massacred and many Muslims will be killed”. The Imam denied using these words. The ‘court’ found him guilty of “inciting inter-ethnic animosity” after criminal proceedings were opened by the ‘centre for combating extremism’ of the Crimean ‘ministry of interior’ based on a complaint made by the three individuals. The court decision also prohibits the imam, during the period of his sentence, “to conduct activities related to the dissemination of any information”.

## Freedom of peaceful assembly<sup>122</sup>

175. On 18 May, commemorative events were held throughout Ukraine to mark the 71<sup>st</sup> anniversary of the deportation of the Crimean Tatars<sup>123</sup>. In Crimea, the *de facto* authorities organized official ceremonies and visited the construction site of a future memorial complex dedicated to the victims of the deportation. However, they prohibited all rallies planned by the Crimean Tatar Mejlis, invoking the necessity to avoid political manipulation of the commemoration. In addition, about 60 Crimean Tatars taking part in an unauthorized motorcade in Simferopol were arrested by the Crimean ‘police’, interrogated for several hours, and released after being fined. Restrictions were also applied to the commemoration of the Crimean Tatar Flag Day on 26 June. While Crimean Tatar organizations loyal to *de facto* authorities were able to organize a car rally and deploy a huge Crimean Tatar flag, ‘pro-unity’ activists and members of the Mejlis were formally warned by the Crimean ‘prosecutor’s office’ not to organize any events dedicated to the celebration.

## Freedom of association

176. HRMMU notes with concern that the increasing restrictive conditions placed by the legislation of the Russian Federation on the activities of civil society organizations could lead to the impossibility to re-register and operate in Crimea, and, as a result, infringe enjoyment of freedoms of expression, peaceful assembly and association by local population.

177. For instance, the Crimean association *Ecology and the World* managed to re-register and obtain legal status as required by the *de facto* authorities applying the law of the Russian Federation, while its Feodosia branch was denied registration due to its reported failure to comply with “administrative requirements”. Some NGOs operating with funding from abroad decided to suspend their activities. This is the case, for instance, of the *Association Gurzuf-97*, *Centre for the Animals* and *Crimean Association of Support to Animals* which were reluctant to register as a “foreign agents”, as required by the *de facto* authorities

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<sup>121</sup> On 31 March 2015, in its concluding observations on the seventh periodic report of the Russian Federation, the Human Rights Committee expressed concern about reported violations of the Covenant in the Autonomous Republic of Crimea and the city of Sevastopol that are under effective control of the Russian Federation including “(b) Alleged violations of freedom of expression and information, including harassment of media, blockage of Ukrainian internet sites and forced relocation of local internet sites, threats and intimidation against journalists” (CCPR/C/RUS/CO/7, paragraph 23).

<sup>122</sup> On 31 March 2015, the Human Rights Committee, in its concluding observations on the seventh periodic report of the Russian Federation, expressed concern about “(e) Allegations of discrimination and harassment of members of minorities and indigenous peoples, in particular Crimean Tatars, including a ban on entry into the territory of Crimea for five years of some of their leaders, Mustafa Dzhemiliev, Ismet Yuksel and Refat Chubarov” (CCPR/C/RUS/CO/7, paragraph 23).

<sup>123</sup> A concert-requiem, attended by the President and the Prime Minister of Ukraine was organized in the National Opera and a nationwide mourning rally was held in Kyiv; a collective “Prayer of memory and unity” also took place, gathering representatives of various religious faiths; and the Ministry of Education and Science recommended all schools to read a lecture dedicated to the commemoration of the deportation.

applying the 2012 amendments to the law on non-profit organizations of the Russian Federation.

### **Freedom of religion**<sup>124</sup>

178. As of 23 July, 55 religious organizations from Crimea were listed on the website of the Ministry of Justice of the Russian Federation as having obtained State registration, including Christian Orthodox, Muslim, Protestant and Jewish communities. HRMMU is aware of at least 30 more communities, including 22 Jehovah's Witnesses denominations, which gained registration but have yet to be listed on the Ministry's website.

179. Registration, however, does not grant an automatic right to conduct pastoral activities under the law of the Russian Federation. HRMMU has been informed of a number of incidents, including the case when eight Baptists from the Council of Churches from the town of Saki were detained in May by the Crimean 'police'. They had travelled to the village of Marianivka (Krasnohvardiiskiy district) on the occasion of the Easter celebrations. A 'court' found that they had violated "the established procedure for organizing or conducting a gathering, meeting, demonstration, procession or picket" and fined them. On 2 July, in the city of Simferopol, eight Jehovah's Witnesses, who erected tents and disseminated religious literature, were brought to administrative responsibility (fines) for unsanctioned pickets.

180. HRMMU stresses that the use of such repressive measures contravenes the obligation to respect freedom of religion, which may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

### **Civil registration**

181. HRMMU observes that residents of the peninsula cannot organize their lives without interacting with the institutions that function in Crimea. The Ukrainian legal framework applying to Crimea penalizes those who wish to maintain a continued bond to the mainland and can lead to the development of fraudulent practices.

182. In July 2015, a civil registration office in Kharkiv refused to issue a Ukrainian birth certificate to a child born in Crimea in May 2014, although the mother had a copy of the birth registration statement issued by the Crimean maternity using a Ukrainian form and stamp. The Kharkiv officials argued that after the March 2014 'referendum', the Government of Ukraine stopped recognizing civil registration documents issued on the peninsula and closed the Crimean branch of the Single Registry of Civil Acts. They also stressed that the April 2014 Law 'On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine' proclaims that all documents and decisions issued by *de facto* authorities or bodies are deemed null and void.

### **Right to an adequate standard of living**

183. As of 1 July, the price of commodities rose in Crimea. The increase amounted to 15 per cent for water and 14.4 per cent for electricity. For consumers who opted for wholesale payment of gas consumption amounting to less than 6,000 cubic meters per year, tariffs rose by 10 per cent.

184. Crimea is dependent on supplies from mainland Ukraine for electricity (85 per cent) and water for agricultural and industrial products (80 per cent). In addition, due to the difficult economic situation prevailing in Crimea, many private businesses and retailers have

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<sup>124</sup> On 31 March 2015, the Human Rights Committee, in its concluding observations on the seventh periodic report of the Russian Federation, expressed concern about "(f) Reports of violations of freedom of religion and belief on the territory of Crimea, such as intimidation and harassment of religious communities, including attacks on the Ukrainian Orthodox Church, the Greek Catholic Church and the Muslim community" (CCPR/C/RUS/CO/7, para.23).

closed, contributing to a scarcity of supply and higher prices, including for seasonal vegetables and fruits. Basic products are available but their variety is reduced. There are also interruptions in the delivery of dairy products and other products of necessity.

185. The substantial dependence of Crimea on Ukraine is aggravated by other factors, including diminished trade between the peninsula and continental Ukraine, and threatens the right to an adequate standard of living of the most vulnerable, particularly the unemployed and people with scarce economic resources.

### **Right to health**

186. Long delays are reported in obtaining a medical diagnosis or treatment in free-of-charge public health care institutions on the peninsula. There are also reports that some medicines in public hospitals are lacking. According to the ‘human rights commissioner’ of Crimea, Crimean penitentiary institutions lack medical personnel and are short of necessary medicines, including for people with tuberculosis or HIV. Specific problems of access to medicines were reported in the city of Kerch. According to its residents and medical workers, city hospitals do not have painkillers for patients suffering from cancer.

### **Cultural rights**

187. On 21 May, four Crimean activists and three Ukrainian journalists of the Ukrainian TV channel *Inter* were arrested in relation to a flash mob on Ukrainian Embroidery Day, in the city of Armiansk, close to the ABL. The activists intended to take pictures of themselves clad in traditional Ukrainian clothes and post them on social networks. The Ukrainian TV crew arrived to film them in a separate car. The Crimean ‘police’ started searching the vehicles for “prohibited items”. They did not find anything but took the journalists and Ukrainian activists to the police station where they were held for five hours, photographed and released after having their fingerprints taken. The protocol drawn up stated they had been detained “to establish their identity”. This incident illustrates the difficulties that some groups in Crimea, particularly ethnic Ukrainians, face to maintain their culture and identity.

## **VIII. CONCLUSIONS AND RECOMMENDATIONS**

188. An environment conducive to the promotion and protection of human rights in Ukraine dramatically depends on putting an end to the armed conflict and achieving a peaceful solution in the east, and on respect for General Assembly resolution 68/262 on the sovereignty and territorial integrity of Ukraine. Continuing presence of foreign fighters, with some identified by the Government of Ukraine as servicemen from the Russian Federation, as well as the reported influx of heavy and sophisticated weaponry from the Russian Federation and the lack of effective control by the Government of Ukraine of the state border with the Russian Federation remain the major impediments to this solution. In this regard, more has to be done to ensure that the Minsk Agreements are faithfully implemented by all parties. The protection of human rights and accountability must be at the core of efforts towards long term justice for all, genuine reconciliation within the population, and the recovery of Ukraine.

189. The daily lives of citizens who live on both sides of the contact line remain one of hardship. Despite efforts to ease freedom of movement, the practicalities at checkpoints continue to hamper the daily lives of citizens of Ukraine as they try to access social welfare payments and medical healthcare, and maintain family ties and contact. The unresolved armed conflict coupled with the continued economic crisis in the country only leads to further insecurity in the lives of those who live in Ukraine – leading to more hardship and making the population more vulnerable to human rights violations in all spheres of their lives.

190. Despite certain improvements made by the Government of Ukraine, the delivery of humanitarian aid to the areas controlled by armed groups is still complicated. Access and

unimpeded activities of the humanitarian organisations are pre-conditions for addressing the urgent needs of the target population. Additional efforts must be undertaken to facilitate the work of international and national humanitarian organisations in the conflict area.

191. OHCHR appreciates the continued cooperation extended by the Government of Ukraine to HRMMU during the reporting period. OHCHR positively notes the efforts of the Government to discuss the findings of the tenth OHCHR report and to address recommendations made by HRMMU. In particular, OHCHR welcomes the Government's decision to strengthen human rights training for the Armed Forces of Ukraine and the Ministry of Internal Affairs.

192. The OHCHR also notes the progress made by the Government of Ukraine in the implementation of the law-enforcement reform and the adoption of the National Human Rights Strategy and the development of the National Action Plan on implementation of the Security Council Resolution 1325 to promote women's equal and full participation as active agents in the prevention and resolution of conflicts, peace-building and peacekeeping. The proposed Constitutional changes, in general, are positive from the human rights perspective and are welcomed by OHCHR.

193. Recommendations made in HRMMU reports published since April 2014, that have not yet been acted upon or implemented, remain valid. OHCHR calls upon all parties to implement the following recommendations:

**To all parties involved in the hostilities in Donetsk and Luhansk regions:**

- a) Put an end to any form of fighting and violence in Donetsk and Luhansk regions in compliance with provisions of the Package of Measures for Implementation of the Minsk Agreements of 12 February 2015.
- b) Respect international humanitarian law, particularly by complying with the principles of distinction, proportionality and precaution and, in any situation, refraining from indiscriminate shelling of populated areas, and refraining from locating military objectives within or near densely populated areas and damaging objects indispensable to the survival of the civilian population (i.e. water facilities), as well as protect medical personnel, ambulances and facilities.
- c) Promptly and effectively investigate all allegations of violations and abuses of international humanitarian law and international human rights law, with perpetrators held accountable and victims provided with access to effective remedies and justice.
- d) Ensure treatment with due respect and dignity of the bodies and remains of persons killed as a result of hostilities, provide free and safe access to the areas where bodies and remains can be found, ensure their identification, a dignified and decent burial, and return to their family, and preserve evidence of possible summary executions.
- e) Ensure and facilitate rapid and unimpeded passage of humanitarian relief, in particular by facilitating delivery, storage and distribution of humanitarian aid to the affected population, particularly in the settlements along the contact line, as well as the safe passage for civilians in strict compliance with international norms and standards.
- f) Ease freedom of movement across the contact line for civilians.

**To the Government of Ukraine**

- g) Ensure consistency of charges against members of the armed groups and proportionality of sanctions to them to ensure their right to equal treatment before the law.
- h) Proactively investigate violations of the international humanitarian law and international human rights law committed by the Ukrainian armed forces and law

enforcement agencies based on own identification of such cases in addition to complaints of the victims.

- i) Ensure access of victims of human rights violations to medical services and social protection.
- j) Develop special simplified procedures for people who have been deprived of their identification documents due to the conflict to obtain temporary travel documents.
- k) Develop procedures for delivering specialised medicines which have been purchased by the Government to medical institutions in the territories controlled by armed groups.
- l) Ensure the presence of law enforcement officials and medical personnel to secure the protection of participants in peaceful demonstrations.

#### **To the *de facto* authorities of Crimea and to the Russian Federation**

- m) Implement recommendations of the Human Rights Committee, in particular on issues related to nationality, right of residence, labour rights, property and land rights, access to health care and education, as well as the rights to freedoms of expression, association, religion, and peaceful assembly.
- n) Stop all acts of discrimination and harassment of representatives of minorities and indigenous peoples, in particular Crimean Tatars, and other Crimean residents who did not support the ‘referendum’ of March 2014.
- o) Investigate the killing of Crimean Tatar Reshat Ametov and enforced disappearances of Crimean civil society and human rights activists Timur Shaimardanov, Seiran Zinedinov, Leonid Korzh<sup>125</sup> and Vasyl Chernysh<sup>126</sup>, and bring perpetrators to justice.
- p) Ensure full observance of and compliance with fair trial and due process rights in criminal proceedings against the Deputy Head of Mejlis Akhtem Chiigoz and ‘pro-unity’ activists Oleh Sentsov and Oleksandr Kolchenko.
- q) Provide HRMMU and other international human rights missions with full access to the territory of Crimea and the city of Sevastopol.

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<sup>125</sup> See paragraph 214 of the 7th HRMMU report on the human rights situation in Ukraine covering period 17 September – 31 October 2014.

<sup>126</sup> See paragraph 80 of the 8<sup>th</sup> HRMMU report on the human rights situation in Ukraine covering period 1–30 November 2014.



# Annex 770

OHCHR, Report on the Human Rights Situation in Ukraine (16 August–15 November 2015)



**Office of the United Nations High Commissioner  
for Human Rights**

**Report on the human rights situation in Ukraine  
16 August to 15 November 2015**

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## I. EXECUTIVE SUMMARY

1. This is the twelfth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine, based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)<sup>1</sup>. It covers the period from 16 August to 15 November 2015<sup>2</sup>.

2. During the reporting period, despite a reduction in hostilities, the armed conflict in eastern Ukraine continued to significantly affect people residing in the conflict zone and all their human rights. The absence of effective control<sup>3</sup> of the Government of Ukraine over considerable parts of the border with the Russian Federation (in certain areas of Donetsk and Luhansk regions) continued to facilitate an inflow of ammunition, weaponry and fighters from the Russian Federation to the territories controlled by the armed groups, which carries latent risks of a resurgence of hostilities.

3. The ‘ceasefire within the ceasefire’<sup>4</sup> agreed upon in Minsk on 26 August 2015 led to a considerable decrease in the hostilities, especially in September and October. The withdrawal of certain heavy weapons by the Ukrainian military and the armed groups contributed to a significant reduction of civilian casualties. In the first half of November, however, increasing skirmishes occurred along the contact line, including with the use of artillery systems. Alarming reports of the gradual re-escalation of hostilities in some particular flashpoints, especially around the city of Donetsk, have raised fears that there could be a resumption of indiscriminate shelling of populated areas, which previously plagued the conflict zone.

4. The number of civilian casualties recorded by HRMMU between 16 August and 15 November was 178 (47 deaths and 131 injured). This is a 232 per cent decrease compared to the previous reporting period (16 May – 15 August) when 413 civilian casualties (105 killed and 308 injured) were recorded. Explosive remnants of war and improvised explosive devices caused 52 per cent of all civilian casualties during the reporting period, underscoring the urgent need for extensive mine clearance and mine awareness actions on both sides of the contact line. In total, from mid-April 2014 to 15 November 2015, HRMMU recorded at least 29,830 casualties (Ukrainian armed forces, civilians and members of the armed groups) in the armed conflict area of eastern Ukraine, including at least 9,098 killed and at least 20,732 injured<sup>5</sup>.

5. Serious human rights abuses against the population residing in the territories controlled by the self-proclaimed ‘Donetsk people’s republic’<sup>6</sup> and the self-proclaimed ‘Luhansk people’s republic’<sup>7</sup> continued to be reported, with new allegations of killings, torture and ill-treatment, illegal detention and forced labour received by HRMMU. Local residents continued to remain without any effective protection of their rights. Places of detention maintained by the armed groups remained virtually inaccessible for independent oversight, and international organizations, including HRMMU, did not have access to detainees.

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<sup>1</sup> HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address human rights concerns. For more details, see paragraphs 7–8 of the report of the UN High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

<sup>2</sup> The report also provides an update of recent developments on cases that occurred during previous reporting periods.

<sup>3</sup> The Russian Federation has continued to send white-truck convoys without the full consent or inspection of Ukraine, and their exact destination and content could not be verified.

<sup>4</sup> For the first time, the ceasefire was agreed upon on 5 September 2014; in December 2014, because of continued hostilities, the agreement on a ‘silence regime’ was reached; and after the new escalation of hostilities in January-February 2015, a new ceasefire was agreed upon on 12 February 2015. The agreement of 29 August was also preceded by the escalating hostilities in June – August 2015.

<sup>5</sup> An HRMMU conservative estimate based on available data. For more details, see footnote 32.

<sup>6</sup> Henceforth referred to as the ‘Donetsk people’s republic’.

<sup>7</sup> Henceforth referred to as the ‘Luhansk people’s republic’.



At times, it was not possible for HRMMU to access areas, where violations or abuses of human rights have reportedly been taking place, for security reasons.

6. HRMMU observed the further strengthening of parallel ‘governance structures’ of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’, with their own legislative frameworks, including parallel systems of law enforcement and administration of justice (‘police’, ‘prosecutors’ and ‘courts’), in violation of the Constitution of Ukraine and in contravention of the spirit of the Minsk Agreements. HRMMU reiterates that the ‘officials’ of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’ are responsible and shall be held accountable for human rights abuses committed on territories under their control. This particularly applies to people bearing direct command responsibility for the actions of perpetrators.

7. Efforts of the Government of Ukraine to safeguard the territorial integrity of Ukraine and restore law and order in the conflict zone continued to be accompanied by allegations of enforced disappearances, arbitrary and *incommunicado* detention as well as torture and ill-treatment of people suspected of trespassing against territorial integrity or terrorism or believed to be supporters of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. Elements of the Security Service of Ukraine appear to enjoy a high degree of impunity, with rare investigations into allegations involving them.

8. HRMMU reiterates that a proper and prompt investigation of every single reported case of a violation of international human rights law and international humanitarian law by Ukrainian military and law enforcement elements should be carried out, perpetrators brought to justice, and victims receive compensation. Without this, impunity will remain widespread. The independence of the judiciary in the face of such cases is often challenged by pressures and threats of political activists who consider those indicted as patriots.

9. Imposed in January 2015, restrictions on movement across the contact line remained one of the major challenges for people living in the conflict area, leading to their isolation, impeding their access to medical care and social benefits, and disrupting family links, with no clear benefits in terms of security. With only four transport corridors being operational in the Donetsk region, and just one recently opened corridor for pedestrians in Luhansk region, movement back and forth and around the contact line has been very limited, congested and time-consuming. People often spend hours and even nights waiting in queues to pass checkpoints, with limited access to water and sanitation facilities. The presence of mines alongside the official transport corridors is a security risk, and constitutes a particular threat along other roads crossing the contact line. Approaching winter poses additional hardship to people waiting to cross the contact line.

10. An estimated 2.9 million people living in the conflict area<sup>8</sup> continued to face difficulties in exercising their economic and social rights, in particular access to quality medical care, accommodation, social services and benefits, as well as compensatory mechanisms for damaged, seized or looted property. Many people continued to rely on humanitarian assistance, which has been further restricted. An earlier prohibition of cargo travelling from Government-controlled territory to the territories controlled by the armed groups initially affected the flow of goods. The more recent registration requirement introduced by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ for organizations delivering humanitarian assistance has resulted in a decrease in the number of humanitarian organisations operating in the territories under the control of the armed groups. The hardship already faced by many residents, including those in state institutions, is further aggravated

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<sup>8</sup> 2.7 million living in the territories controlled by the armed groups, including 600,000 along the contact line, and 200,000 residents of the Government-controlled territories along the contact line (Humanitarian Country Team).

with the onset of winter and a shrinking humanitarian space. The situation for an estimated 800,000 people living along both sides of the contact line has been particularly difficult.

11. Media professionals working in the territories controlled by the armed groups have reported that self-censorship for personal security reasons was widespread among local journalists. The procedure for accreditation of foreign journalists by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ has become more complicated, with some being refused accreditation on the grounds that they were “propagandists”. At the same time, the list of foreigners, including media professionals, banned by the Government from entering Ukraine for alleged promotion of terrorist activities or undermining territorial integrity, continued to expand.

12. Rallies to challenge the policies of the ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’ have been extremely rare because people are afraid to assemble and speak out. In the Government-controlled territories, the conduct of police during ‘pro-unity’ counter-demonstrations has been of concern, as illustrated on 2 November 2015 in Odesa, when no action was taken to prevent ‘pro-unity’ activists from attacking ‘pro-federalism’ supporters commemorating victims of the 2 May 2014 violence.

13. Accountability has yet to be achieved for the killing of protestors and other human rights violations committed during the Maidan events in Kyiv, from November 2013 to February 2014. Although the involvement of senior officials in the killing of protestors has been confirmed, no one has been brought to justice so far. Similarly, there has been no progress in ensuring accountability for the death of 48 people (six women and 42 men) during the violence of 2 May 2014 in Odesa.

14. A decision by the Supreme Administrative Court of Ukraine, in October, ordering the Government of Ukraine to resume the payment of pensions and benefits for people living in the areas controlled by the armed groups, has remained unimplemented.

15. In the Autonomous Republic of Crimea,<sup>9</sup> the status of which is determined by General Assembly resolution 68/262<sup>10</sup>, residents of the peninsula continued to be affected by broad curtailment of their rights due to the application of a restrictive legal framework imposed upon them by the Russian Federation. Their right to citizenship has been violated. Although they may keep their Ukrainian passports and will not be sanctioned for not disclosing this fact, Crimean residents were granted Russian Federation citizenship by default and given no choice but to take up Russian Federation passports or lose their employment and social entitlements. HRMMU documented new cases reflecting the lack of fair trial guarantees, effective investigations into human rights violations and human rights protection for persons in detention. These cases concern mostly Crimean Tatars and people supporting Crimea as an integral part of Ukrainian State.

16. On 20 September, upon the initiative of the Crimean Tatar leadership, a trade blockade of Crimea from mainland Ukraine started, to call international attention to human rights violations in Crimea and to request an international monitoring presence in the peninsula. From its observations at the three checkpoints on the administrative boundary line in mid-November, HRMMU noted actions to enforce the blockade by Ukrainian activists in uniforms illegally performing law enforcement functions. The activists reportedly have an unofficial list of “traitors”, which serve as a basis to illegally arrest and detain people. The law enforcement officers present at the checkpoints were often or generally passive, merely observing the situation.

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<sup>9</sup> Henceforth referred to as Crimea.

<sup>10</sup> <http://www.un.org/ru/documents/ods.asp?m=A/RES/68/262>.

17. On 25 August, the President of Ukraine adopted the first National Human Rights Strategy of Ukraine. In order to move ahead with its implementation, work has been underway to develop a Human Rights Action Plan. Since November 2014, the Government, civil society groups, the Ombudsperson and international organizations have been cooperating to design a five-year roadmap to address systemic human rights challenges and conflict-related issues.

18. On 8 September, Ukraine accepted the jurisdiction of the International Criminal Court with respect to alleged crimes committed on its territory after 20 February 2014. This was the second declaration lodged by Ukraine following its acceptance, in April 2014, of the Court's jurisdiction over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014, during the Maidan events.

19. The Parliament adopted several laws required under the European Union visa liberalization action plan, including anti-corruption laws and the explicit prohibition of discrimination on the grounds of sexual orientation and gender identity in employment relations. It also adopted a law establishing a State Bureau of Investigations tasked to investigate serious crimes and human rights violations committed by law enforcement, military and Government officials. There was also some progress in reforming the Constitution after the adoption by Parliament on the first reading of the constitutional amendments on decentralization.

## **II. RIGHTS TO LIFE, LIBERTY, SECURITY AND PHYSICAL INTEGRITY**

### **A. Alleged violations of international humanitarian law**

20. The reporting period was marked by a sharp de-escalation of hostilities in the conflict zone of eastern Ukraine, following the revamped agreement on the ceasefire agreed upon in Minsk, which started to be implemented on 1 September<sup>11</sup>. While frequent in August, exchanges of fire from artillery and light weapons almost ceased in September and October.

21. The withdrawal of heavy weapons by the Ukrainian military and armed groups from the contact line, which took place before the reporting period, as well as the removal of weapons with calibre below 100mm, which began in September under the oversight by the Organization for Security and Cooperation in Europe (OSCE), contributed to a considerable decrease in civilian casualties. Indeed, during the previous reporting periods, most casualties were caused by shelling.

22. The absence of effective control of the Government of Ukraine over considerable parts of the border with the Russian Federation (in certain areas of Donetsk and Luhansk regions) continued to facilitate an inflow of ammunition, weaponry and fighters to the territories controlled by the armed groups. Robust military presence on both sides of the contact line carried persistent risks of resurgence of hostilities. Despite the general observance of the ceasefire, the presence of military equipment near civilian facilities continued to threaten the security of the local population.

23. During the first half of November, increasing skirmishes occurred along the contact line, including with the use of artillery systems. Alarming reports about the gradual re-escalation of hostilities, especially around the city of Donetsk, raised fears of a resumption of large-scale indiscriminate shelling of populated areas.

24. There is an urgent need to raise people's awareness to the dangers posed by explosive remnants of war (ERW) and improvised explosive devices (IEDs) in the conflict zone. Mapping of the minefields is so far incomplete and inaccurate, and signs posting is urgently required to warn the population about their presence. Rapid interventions are also required as the snow will

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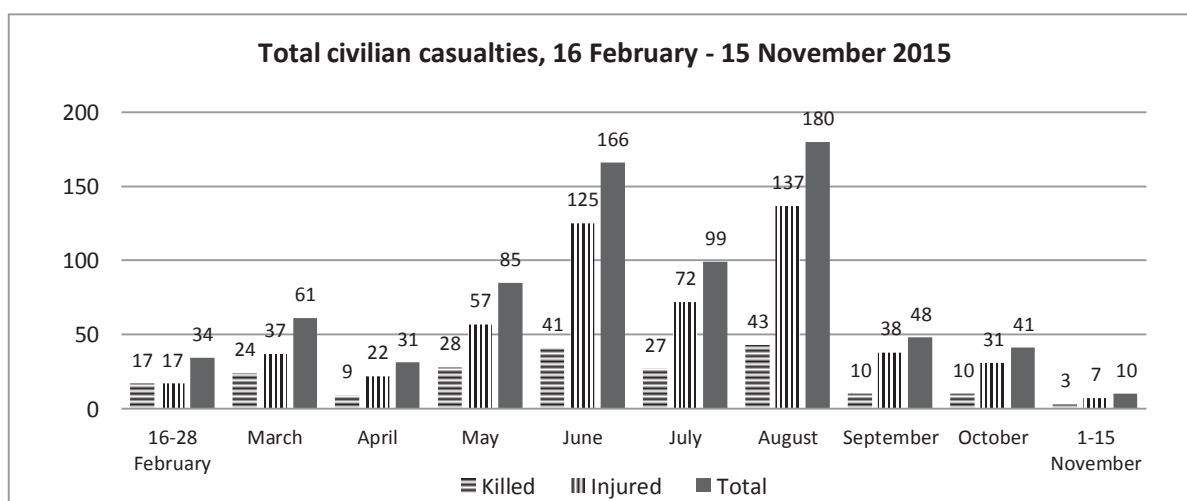
<sup>11</sup> For the first time, the ceasefire was agreed upon on 5 September 2014; in December 2014, because of continued hostilities, the agreement on a 'silence regime' was reached; and after the new escalation of hostilities in January-February 2015, a new ceasefire was agreed upon on 12 February 2015. The agreement of 26 August was also preceded by the escalating hostilities in June – August 2015.

cover and displace booby-traps. There is a lack of equipment for mine clearance on both sides of the contact line, as well as insufficient safety trainings for the staff of emergency services.

25. Ukraine is party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, which categorically prohibits the use of anti-personnel mines “under any circumstances”. It is therefore important that the Government fulfils its obligations under the Convention.

#### *Civilian casualties*<sup>12</sup>

26. Between 16 August and 15 November 2015, HRMMU recorded at least 178 civilian casualties in the armed conflict zone of eastern Ukraine: 47 killed<sup>13</sup> and 131 injured<sup>14</sup>. This represents a 232 per cent decrease in the total number of casualties (223 per cent decrease in killed and 235 per cent decrease in injured), compared to the previous reporting period of 16 May – 15 August 2015 with 413 civilian casualties recorded (105 killed and 308 injured).



27. On the Government-controlled territories, 87 civilian casualties (24 deaths and 63 injured) were recorded. The 24 fatalities included 22 adults<sup>15</sup> and two children<sup>16</sup>. Of 63 injured: 57 were adults<sup>17</sup> and six were children<sup>18</sup>.

28. In the territories controlled by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, 91 civilian casualties (23 deaths and 68 injured) were recorded. Of 23 killed: 22 were adults<sup>19</sup> and one was a child<sup>20</sup>. Of 68 injured: 64 were adults<sup>21</sup> and four were children<sup>22</sup>.

<sup>12</sup> For this report, HRMMU investigated reports of civilian casualties by consulting a broad range of sources and types of information that are evaluated for their credibility and reliability. In undertaking documentation and analysis of each incident, HRMMU exercises due diligence to corroborate information on casualties from as wide range of sources as possible, including OSCE public reports, accounts of witnesses, victims and other directly affected persons, military actors, community leaders, medical professionals, and other interlocutors. In some instances, investigations may take weeks or months before conclusions can be drawn. This may mean that conclusions on civilian casualties may be revised as more information becomes available. HRMMU does not claim that the statistics presented in this report are complete. It may be under-reporting civilian casualties given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods. HRMMU is not in a position at this time to attribute specific civilian casualties recorded to the armed groups, Ukrainian armed forces or other parties.

<sup>13</sup> 44 adults (14 women, 27 men and three adults whose gender is unknown) and three children (two girls and a boy).

<sup>14</sup> 121 adults (25 women, 60 men and 36 adults whose gender is unknown) and ten children (a girl, eight boys and a child whose gender is unknown).

<sup>15</sup> Seven women, 14 men and an adult whose gender is unknown.

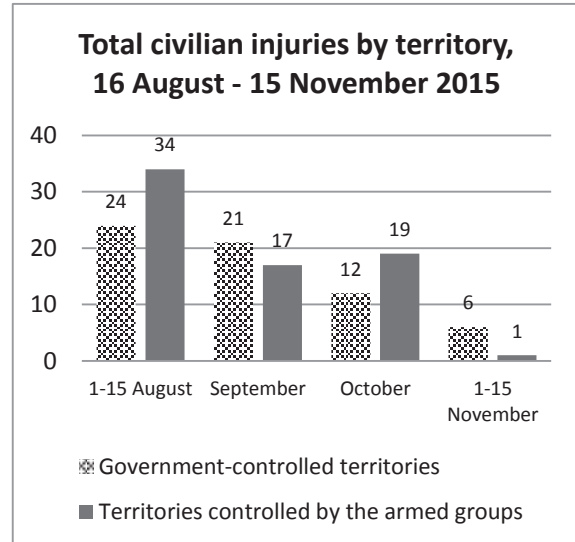
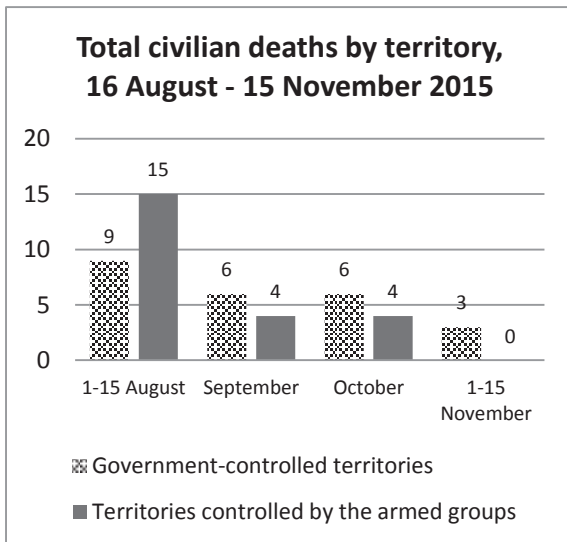
<sup>16</sup> A girl and a boy.

<sup>17</sup> 15 women, 38 men and four adults whose gender is unknown.

<sup>18</sup> A girl, four boys and a child whose gender is unknown.

<sup>19</sup> Seven women, 13 men and two adults whose gender is unknown.

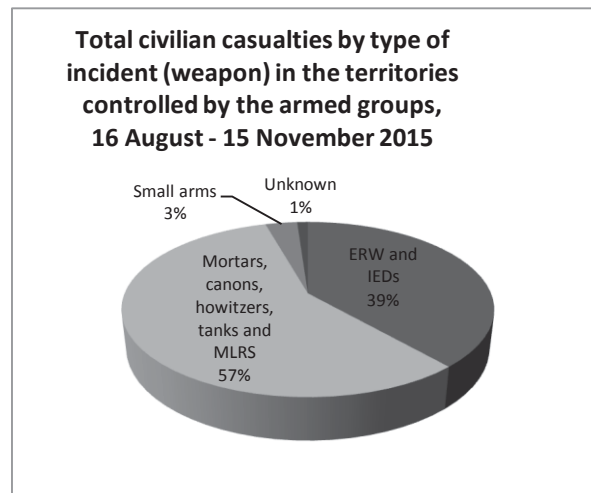
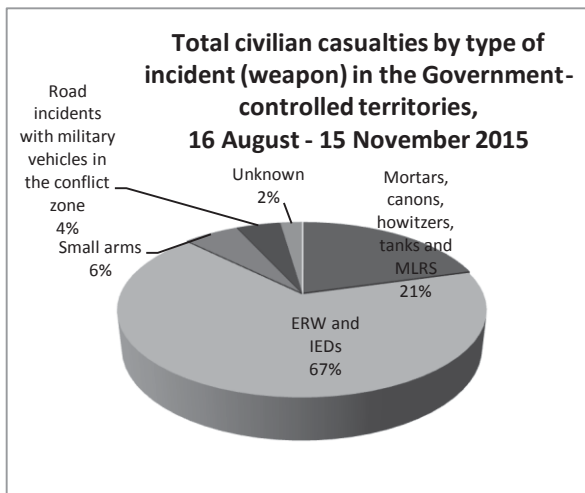
<sup>20</sup> A girl.



29. The majority of civilian casualties on 16 August – 15 November were caused by ERW and IEDs: 93 (17 deaths and 76 injuries). Of 17 killed: 15 were adults<sup>23</sup> and two were children<sup>24</sup>. Of 76 injured: 68 were adults<sup>25</sup> and eight were children<sup>26</sup>.

30. During the reporting period, 70 casualties (22 killed and 48 injured) resulted from shelling<sup>27</sup>. Of 22 killed: 21 were adults<sup>28</sup> and one was a child<sup>29</sup>. Of 48 injured: 47 were adults<sup>30</sup> and one was a child<sup>31</sup>.

31. Besides, six people were killed and two were injured from small arms in the conflict zone. Other conflict-related casualties included two people killed and two injured in road incidents with military vehicles in the conflict zone; and the exact causes of conflict-related injuries of three people are unknown.



<sup>21</sup> Ten women, 22 men and 32 adults whose gender is unknown.

<sup>22</sup> All boys.

<sup>23</sup> Six women and nine men.

<sup>24</sup> A girl and a boy.

<sup>25</sup> 19 women, 40 men and nine adults whose gender is unknown.

<sup>26</sup> All boys.

<sup>27</sup> From mortars, canons, howitzers, tanks and multiple launch rocket systems.

<sup>28</sup> Six women, 12 men and three adults whose gender is not known.

<sup>29</sup> A girl.

<sup>30</sup> Four were women, 16 were men and 27 adults whose gender is unknown.

<sup>31</sup> A girl.



32. During his visit to Ukraine from 20 to 25 September, the United Nations Assistant Secretary-General for Human Rights urged the Government and the armed groups to investigate incidents, which have led to civilian casualties, in particular those from an exchange of fire. He also encouraged the Government and the armed groups to establish civilian casualty mitigation cells within their competent bodies to prevent violations of international humanitarian law leading to civilian casualties.

#### *Total casualties*

33. In total, from mid-April 2014 to 15 November 2015, HRMMU recorded at least 29,830 casualties (Ukrainian armed forces, civilians and members of the armed groups) that include at least 9,098 people killed and at least 20,732 injured in the conflict area of eastern Ukraine<sup>32</sup>. HRMMU estimated the total number of civilians killed during the conflict period to be up to 2,000<sup>33</sup>, with an additional 298 passengers killed as a result of the MH-17 plane crash.

#### **B. Summary executions, enforced disappearances, unlawful and arbitrary detention, and torture and ill-treatment<sup>34</sup>**

##### *By the armed groups*

34. During reporting period, HRMMU received new allegations of killings, torture and ill-treatment, illegal detention and forced labour perpetrated by members of the armed groups.

35. HRMMU received information concerning the alleged killings or attempted killings of captured Ukrainian soldiers. In one case dating back to the beginning of the conflict (May 2014), an injured Ukrainian soldier was stabbed to death after surrendering, despite a pledge that his safety would be guaranteed<sup>35</sup>. In another case, in May 2015, a Ukrainian soldier was stabbed after being captured and survived thanks to the medical personnel of a hospital, having been taken to its morgue<sup>36</sup>. On 20 October, HRMMU received additional details concerning the alleged summary execution of three members of Ukrainian volunteer battalions in the yard of the former premises of the Security Service of Ukraine (SBU) in Donetsk, in mid-September 2014<sup>37</sup>.

36. Some allegations received by HRMMU concern beatings to death or the execution of armed group members by other armed group members. A former detainee at the SBU premises in Donetsk alleged that in mid-September 2014, a detained member of the armed groups was beaten to death by guards for not fulfilling their orders<sup>38</sup>. Another allegation

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<sup>32</sup> This is a conservative estimate of HRMMU based on available data. These totals include: casualties among the Ukrainian forces, as reported by the Ukrainian authorities; 298 people from flight MH-17; civilian casualties on the territories controlled by the Government of Ukraine, as reported by local authorities and the regional departments of internal affairs of Donetsk and Luhansk regions; and casualties among civilians and members of the armed groups on the territories controlled by the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’, as reported by the armed groups, the so-called ‘local authorities’ and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and due to overall under reporting, especially of military casualties. The increase in the number of casualties between the different reporting dates does not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date.

<sup>33</sup> This estimate is based on the number of civilian casualties recorded by HRMMU during the period of 16 February – 15 November 2015, and on the estimated share of civilian casualties among the casualties reported by medical establishments of Donetsk and Luhansk regions between mid-April 2014 and 15 February 2015 (their reports did not distinguish between military and civilian casualties). HRMMU continues to work to produce a more exact estimate of civilian casualties caused by the conflict in eastern Ukraine.

<sup>34</sup> During the reporting period, a number of victims and witnesses reported allegations of human rights violations and abuses that had taken place in 2014 and during the first half of 2015. These highlight how the human rights situation deteriorated in Ukraine, particularly in the eastern territories.

<sup>35</sup> HRMMU interview, 23 October 2015.

<sup>36</sup> HRMMU interview, 12 November 2015.

<sup>37</sup> HRMMU interview, 20 October 2015.

<sup>38</sup> HRMMU interview, 15 October 2015.

received by HRMMU concerns the execution of members of Cossack units who were kept in the premises of the former ‘Izolyatsia’ art centre in Donetsk, in April and May 2014<sup>39</sup>.

37. HRMMU also received allegations of enforced disappearances on the territories controlled by the armed groups. One case concerns a former member of the ‘Vostok’ battalion who disappeared in May 2015, allegedly after witnessing the killing of three Ukrainian soldiers in January 2015. Threatened by his commander that he would be accused of the killings if he spoke, he deserted in January 2015 and went into hiding in Donetsk. After his disappearance, his mother learnt he was detained by the ‘Vostok’ battalion, but she was never formally informed of his whereabouts<sup>40</sup>. Another case concerns the disappearance of a member of an armed group who was last seen on 5 December 2014 being taken away from a party by an armed group commander from Horlivka (Donetsk region). In spring 2015, his mother was informed that the commander had been detained by the ‘general prosecutor’s office’ of the ‘Donetsk people’s republic’ and charged with enforced disappearances, kidnapping and killings, and that her son’s disappearance was included in charges against him<sup>41</sup>. One more case concerns two men who travelled from Donetsk to the Government-controlled territories and went missing on 8 September 2015. According to relatives, they have not crossed the contact line, and their last known whereabouts were in the Telmanivskiy district (Donetsk region, controlled by the armed groups)<sup>42</sup>.

38. Places of detention maintained by the armed groups remained virtually inaccessible for independent oversight, and international organizations, including HRMMU, did not have access to detainees. During the reporting period, HRMMU was only able to visit the Donetsk pre-trial detention centre (SIZO) but did not have access to detainees. Given the considerable number of cases of torture and ill-treatment of detainees documented by HRMMU since the beginning of the conflict, including in 2015, and poor detention conditions, there is an urgent need for independent monitoring of detention facilities in the territories controlled by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’.

39. A man, who spent a year in the armed groups’ captivity, described in detail the conditions in the former SBU premises in Donetsk – namely overcrowding, insufficient nutrition and lack of adequate medical treatment – as well as ill-treatment, torture and forced labour. He described the conditions as particularly bad in 2014 and noted some improvement in 2015. He also reported numerous incidents when he and other detainees, including women, were tortured: mock executions, beatings and electrocution<sup>43</sup>. Another former detainee reported poor nutrition and lack of medical aid in a detention facility of one of the ‘military units’ in Donetsk in the summer of 2015<sup>44</sup>. A man released from penal colony No 97 in Makiivka (Donetsk region) reported about a room called by inmates the “tram” because it looks like a very small and narrow metal tram carriage, with a metal tube in it. When an inmate was considered to have misbehaved, he would be hung to the tube, wrapped in a sticky tape, sometimes for three to five hours, but often for a whole night. The witness also described cases of repeated negligence in providing medical assistance to inmates, and reported that in January 2015, one inmate died as a result of not receiving timely medical assistance<sup>45</sup>.

40. On 25 September, HRMMU interviewed the mother of a man with mental disability who had been in detention since 26 February 2015. Before being placed in the Donetsk SIZO, he had spent some time in a temporary detention centre where he was reportedly beaten for

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<sup>39</sup> HRMMU interview, 16 October 2015.

<sup>40</sup> HRMMU interview, 30 September 2015.

<sup>41</sup> HRMMU interview, 5 October 2015.

<sup>42</sup> HRMMU interview, 26 September 2015.

<sup>43</sup> HRMMU interview, 15 October 2015,

<sup>44</sup> HRMMU interview, 6 October 2015.

<sup>45</sup> HRMMU interview, 18 September 2015.

three days. He was allegedly forced to sign a paper stating he had hit himself against the wall. His parents reported that in SIZO, while his health deteriorated, he did not receive any adequate medical treatment<sup>46</sup>.

41. On 19 October, HRMMU interviewed the mother of a man who was abducted on 12 July 2014 near his home, in the city of Donetsk. On 16 July 2014, he was found in another district of the city, handcuffed, with gunshot wounds and blunt force trauma wounds on his head. His mother first saw him at the hospital on 16 July. The victim stated that armed men in camouflage had stopped him on the road, forced him into their car and then held him in a dark space where he was beaten and accused of being a spy due to his skin colour (he is half-Congolese). After three days, during the night, he was taken outside to a cornfield where he was fired at. In July 2014, police refused to record his statement and closed the investigation into the earlier case that had been opened on his disappearance. On 16 April 2015, his mother received a notice from the Leninskyi district 'police department' of the city of Donetsk which stated that the investigation was focusing on perpetrators from a "Ukrainian subversive armed group"<sup>47</sup>.

*By Ukrainian law enforcement and security entities*

42. HRMMU remains concerned that the Government's efforts to safeguard the territorial integrity of Ukraine and restore law and order in the conflict zone continued to be undermined by allegations of enforced disappearances, arbitrary and *incommunicado* detention and torture and ill-treatment of people suspected of trespassing against territorial integrity or terrorism or believed to be supporters of the 'Donetsk people's republic' and 'Luhansk people's republic'.

43. HRMMU consistently documents reports throughout the country of recurrent allegations of ill-treatment during arrest and the first hour interrogations that are led by SBU. A man, detained by SBU on suspicion of preparing a terrorist act in Zaporizhzhia, claimed to have been repeatedly and heavily beaten, including in the SBU building<sup>48</sup>. A woman who was detained by SBU on suspicion of preparing a terrorist act claims that during her interrogation, she was hung by her hands handcuffed in the back until her elbow joints were torn apart. About 20 times, a gas mask was reportedly put on her head, with the inhaler closed<sup>49</sup>.

44. A man who, as of 15 November was tried under articles 113 (sabotage), 258-3 (creation of a terrorist group) and 263 (illegal possession of weapons) of the Criminal Code, claimed that after his apprehension on 9 July 2014, he was delivered to the Zaporizhzhia SBU Regional Department. There, he was reportedly beaten with sticks on his heels, subjected to waterboarding and tortured with electric shocks by two electric wires connected to his genitals and to his mouth. As a result, one of his teeth was knocked out, and his ribs and a little finger were broken. He was coerced into confessing to committing the crimes for which he was charged. He was constantly threatened by the SBU officers that if he did not plead guilty in court, he would be killed. He was so frightened by these threats, that for one year he feared complaining of the torture and ill-treatment he had been subjected to, including to his lawyer. It was only on 1 July 2015 that he reported to a judge about the torture and ill-treatment he was subjected to<sup>50</sup>.

45. HRMMU notes that SBU officers appear to enjoy a high degree of impunity, systematically escaping from investigations into alleged violations. In one case, dating from September 2014, a man was apprehended by armed men in the city of Mariupol in the

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<sup>46</sup> HRMMU interview, 25 September 2015.

<sup>47</sup> HRMMU interview, 19 October 2015.

<sup>48</sup> HRMMU interview, 3 September 2015.

<sup>49</sup> HRMMU interview, 3 September 2015.

<sup>50</sup> HRMMU interview, 11 November 2015.

presence of witnesses. The following day, his body, bearing signs of violence, was found dead on the outskirts of the city. According to witnesses, one of the armed men had introduced himself to the victim as an SBU officer, showing his ID. During the investigation into this case the police requested SBU whether they had a staff member with such a name or a similar one serving in Donetsk region, and whether SBU had detained the victim. SBU responded that they had neither detained the victim nor initiated any investigation regarding the victim, and refused to answer any questions concerning the name of the alleged perpetrator. The investigation was reportedly transferred to the Military Prosecutor of the Southern region, with no progress as of November 2015.

46. The conduct of those elements of Ukrainian law enforcement which are under the Ministry of Internal Affairs is also of concern. Three men detained by police in Donetsk region claimed that for more than eight hours after their detention they were subjected to beatings, death threats, and mock executions during which they were forced to dig their own graves. In a city police department they were tortured with a gas mask (so-called ‘elephant torture’) and forced to sign a confession to incriminate themselves. Two of them claimed that they had been electrocuted with an electric wire connected to their genitals<sup>51</sup>. A man detained by Azov regiment (then battalion) of the National Guard, claimed that his legs were pierced with a bayonet knife, he was hit in the face and his ribs were broken. He also reported being threatened with rape and subjected to a mock execution<sup>52</sup>.

47. During his visit to Ukraine in September 2015, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions recommended that a system of independent overview of the conduct of all those who perform law enforcement functions be established. He added that it should have a particular focus on allegations of ill-treatment by SBU, and that it should be “empowered to conduct investigations into suspected informal detention facilities, including comprehensive power of search within military or SBU facilities”<sup>53</sup>.

48. Continued reports of detainees being held in unofficial places of detention remain of high concern, with more acute risks of torture and ill-treatment, and no indication that this practice has been decreasing. These places are clearly not accessible to Ukraine’s National Preventive Mechanism and international organizations. HRMMU received reports that in November 2015, 27 detainees were being kept in the SBU premises in Kharkiv, with allegations that some were subjected to torture and ill-treatment<sup>54</sup>. One of the detainees was allegedly repeatedly detained after having been sentenced to a conditional sentence<sup>55</sup> by a court in Pavlohrad. HRMMU interviewed a member of an armed group who, as he was seeking to leave Mariupol in June 2014, was arrested at a checkpoint operated by the Azov battalion. He reported having been taken to the Mariupol airport, where he was allegedly tortured and ill-treated for a month and a half<sup>56</sup>. In September, the United Nations Special Rapporteur on summary executions was denied access to the military base in Mariupol airport where, according to reports received by HRMMU, detainees have been kept and ill-treated since summer 2014.

49. HRMMU continued to receive reports of *incommunicado* detention. For instance, in Lysychansk (Luhansk region), on 19 July 2014, the Ukrainian army detained a man. On 20 July 2014, photographs of his identification documents (passport and military documents) were published on non-governmental websites supporting the security operation, with a

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<sup>51</sup> HRMMU interview, 25 September 2015.

<sup>52</sup> HRMMU interview, 28 August 2015.

<sup>53</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16460&LangID=E#sthash.OIrAXYnl.dpuf>

<sup>54</sup> HRMMU interview, 2 November 2015.

<sup>55</sup> Conditional sentence implies the release from custody.

<sup>56</sup> HRMMU interview, 22 October 2015.



caption stating that he had been captured and was being detained as a terrorist. Inquiries by his family as to his whereabouts with various law enforcement bodies produced no results<sup>57</sup>.

50. A former member of a Ukrainian volunteer battalion was detained by police in Dnipropetrovsk and transferred to Mariupol. According to his former spouse, the victim witnessed a deal involving illegal property confiscations in the Government-controlled territories of Donetsk region, after which he was subjected to persecution for refusing to be involved. He was reportedly beaten, forced to lie and was not granted access to a lawyer for two weeks. Although he suffers from an ulcer and other health problems, he was allegedly denied medical assistance. Defense witnesses in his case have reportedly received anonymous threats and have therefore been afraid to testify<sup>58</sup>.

51. HRMMU also continued to receive alarming reports of poor detention conditions and ill-treatment of pre-trial detainees. For instance, on 5 October 2015, a man died in the Mariupol SIZO. He had been detained since February 2015 on suspicion of spying for the armed groups. During his nine months in custody, he was allegedly sent several times to an isolation cell and was repeatedly beaten. His health condition dramatically deteriorated several days before his death, and he was transferred to the hospital. According to the official report, he died of pancreatic cancer. His daughter was not allowed into the morgue to see his body; when the body was returned to the family for burial, his relatives saw his ears bruised and stitches on his head<sup>59</sup>.

### III. FUNDAMENTAL FREEDOMS

#### A. Freedom of movement

52. Although revised, the Temporary Order of 21 January 2015<sup>60</sup> continued to limit the freedom of movement of civilians across the contact line. Originally introduced with reference to national security concerns, the Temporary Order and its implementation through a permit system to cross the contact line and pass through the Government controlled check points, has been one of the major challenges for people living in the conflict-affected areas of Donetsk and Luhansk regions, leading to an increased sense of isolation for many people, impeding their access to medical care and social benefits, as well as disrupting family and communal links. The International Covenant on Civil and Political Rights recognises that in exceptional circumstances, the necessity to protect national security and public order may justify some restrictions of freedom of movement. However, as stated by the United Nations Human Rights Committee, such restrictions may be authorized only by law using precise criteria, be limited in time, consistent with other human rights and fundamental principles of equality and non-discrimination, meet the test of necessity and the requirements of proportionality<sup>61</sup>.

53. With the ceasefire and approaching winter, the movement of civilians across the contact line increased as people travelled to areas controlled by armed groups to visit relatives, check on their property or collect warm clothes. Those living in the areas controlled

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<sup>57</sup> HRMMU interview, 23 October 2015.

<sup>58</sup> HRMMU interviews, 25 August and 10 September 2015.

<sup>59</sup> HRMMU interview, 15 October 2015.

<sup>60</sup> The Temporary Order on the control of movement of people, transport vehicles and cargoes along the contact line in the Donetsk and Luhansk regions was developed and approved by the joint entity 'the Operational Headquarters of Management of the Anti-Terrorist Operation'. For more information, see OHCHR reports on the human rights situation in Ukraine covering periods from 1 December 2014 to 15 February 2015 (paragraphs 42-43), from 16 February to 15 May 2015 (paragraphs 58-64), and from 16 May to 15 August 2015 (paragraphs 61-68). For more information, see OHCHR reports on the human rights situation in Ukraine covering periods from 1 December 2014 to 15 February 2015 (paragraphs 42-43), from 16 February to 15 May 2015 (paragraphs 58-64), and from 16 May to 15 August 2015 (paragraphs 61-68).

<sup>61</sup> United Nations Human Rights Committee, General Comment No 27, CCPR/C/21/Rev.1/Add.9 (1999).



by armed groups regularly travelled to the Government-controlled territories to purchase food, medicine, withdraw cash, obtain documents or renew lost ones, access social benefits, and receive medical care.

54. Compared to the previous reporting period, in addition to three operational transport corridors in Donetsk region, two more were reopened; including one in Luhansk region (Stanychno Luhanske), allowing only pedestrians and no private or public vehicles. Nevertheless, with increased movement, the capacity of the checkpoints remained insufficient especially as working hours were reduced due to the shortened daylight period. Long queues of up to three kilometres at the contact line, in both directions, were registered at all checkpoints. In October, reports of people having to spend nights in cars became more frequent. With the temperature below zero at night, lack of water and sanitation facilities in between the checkpoints and the absence of medical services, the waiting time was particularly difficult for people with disabilities, the elderly, pregnant women and children.

55. Upon the President's instruction<sup>62</sup>, authorities of Donetsk and Luhansk regions opened three "logistic centres" near the contact line where civilians living in the areas controlled by armed groups can buy food, medicine and withdraw cash. However, civilians still could not reach them easily, as the requirement to have a permit to reach the centres was not waived. Furthermore, the centres are located between the contact line and the first Government-controlled checkpoint, in the area where shelling used to be the heaviest, and where the risk for exposure to ERW and IED is the highest. While visiting two logistical centres in Donetsk region, HRMMU noted lack of appropriate protection for civilians in case of shelling.

56. The situation of people residing in the area between the contact line and the first checkpoints in the area controlled by the Government remains unduly complicated. They have to apply for permits required to cross the contact line, or prove that their village belongs to the areas controlled by the Government. Entry/exit through checkpoints often depends on the familiarity of the soldiers with the area; for example, whether they know which side of the contact line a particular village belongs to, sometimes even whether the street of the official registration belongs to the area controlled by the Government<sup>63</sup>. Rotation of personnel at checkpoints has often resulted in increased delays. Due to the lack of infrastructure in these localities, such as stores, pharmacies or health facilities, people have to cross Ukrainian checkpoints on a regular basis and spend long periods in queues. This was further aggravated by the absence of public transport in these areas.

## **B. Freedom of expression**

### *Territories controlled by the armed groups*

57. Media professionals interviewed by HRMMU continued to report restrictions on their work. A Donetsk-based media professional stated to HRMMU that there was no freedom of speech in the 'Donetsk people's republic', as "no one from local media would even think to express a critical opinion"<sup>64</sup>. To ensure their safety, journalists working in the areas controlled by armed groups reportedly have increasingly resorted to self-censorship.

58. Foreign journalists must be accredited at the 'Donetsk people's republic' press centre. According to them, the procedure became more complicated over the summer of 2015 with the creation of the 'special analytical department', responsible for monitoring all the reporting of journalists working in the 'Donetsk people's republic'. For example, in September, two foreign journalists were refused accreditation and invited for an 'interview' at the analytical department. One of the reporters was accused of being 'a propagandist' and

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<sup>62</sup> The decision was announced on 6 August.

<sup>63</sup> Some settlements are spilt by the contact line.

<sup>64</sup> HRMMU interview, 21 October 2015.

ordered to leave Donetsk city. Other nine media outlets informed HRMMU of having difficulties with ‘accreditation’.

59. Ukrainian freelance journalist Maria Varfolomieieva has been held by armed groups of the ‘Luhansk people’s republic’ since 9 January 2015, accused of ‘espionage’ for taking pictures of the administrative buildings in Luhansk city, which were allegedly subsequently shelled.

60. Overall, reports indicate that people trying to express alternative views are facing a non-conducive environment. Preclusion of professional activities of independent media professionals was followed by the suspension of the operations of most international humanitarian organizations.

#### *Territories controlled by the Government*

61. On 16 September, the President of Ukraine signed an order enacting a decision of the National Security and Defence Council (NSDC) of 2 September 2015, which added 41 foreign journalists and bloggers (mainly Russian) to a list<sup>65</sup> of 388 other persons (media professionals, artists, politicians) banned from entering Ukraine for one year. The authorities claimed that “their activity or public statements promoted terrorist manifestations on the territory of Ukraine and misinformed the international community about the situation at the occupied territory, or who illegally crossed the Ukrainian border to access the occupied territory”. On 17 September, NSDC removed six foreign journalists from BBC and European media outlets from the list, following statements made by the media outlets and public opinion.

62. While recognizing the Government’s right to protect national security, HRMMU is concerned that such unjustified broad restrictions are applied without clear procedures and criteria.

63. HRMMU continued to follow the case of blogger Ruslan Kotsaba, charged by SBU with high treason for publishing an anti-mobilisation video on 17 January<sup>66</sup>. On 1 October, Ivano-Frankivsk City Court prolonged the term of his custodial detention, which was to end on 16 October, until 29 November. The defence lawyers noted an unreasonable protraction of the court hearings. For example, on 27 October, the Court adjourned the planned hearing to 13 November, stating that law enforcement officials could not transport the defendant to the court, as all of them were busy ensuring public order during the local elections.

### **C. Freedom of peaceful assembly**

#### *Territories controlled by the armed groups*

64. Freedom of peaceful assembly continued to be significantly infringed in the territories controlled by the armed groups. Rallies to challenge the policies of the ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’ were extremely rare because people have been reportedly afraid to assemble for fear of reprisals. On 5 September, approximately 70 people (including media representatives) gathered in Donetsk to protest against the dismissal of the ‘speaker of the parliament’ of the ‘Donetsk people’s republic’. When the protestors tried to block the road, the rally was dispersed by men in camouflage.

#### *Territories controlled by the Government*

65. HRMMU continued to follow up the case related to the prohibition of the LGBT Equality March in Odesa, in August. As of 15 November, the LGBT Community Centre was still waiting for the decision of the Supreme Administrative Court of Ukraine on the complaint challenging the legality of the prohibition. The Odesa Regional Prosecutor’s

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<sup>65</sup> See paragraph 50 of the 6<sup>th</sup> OHCHR report on the human rights situation covering the period from 18 August to 16 September 2014.

<sup>66</sup> See paragraph 71 of the 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015.

Office informed HRMMU that eight ‘Svoboda’ activists were fined for attacking the Centre on 15 August 2015.

66. On 31 August, while the Parliament was voting on the draft constitutional amendments related to decentralization, a crowd of an estimated 3,000 people gathered outside the Parliament. They objected to a constitutional provision foreseeing that “special order of self-governance for certain areas of Donetsk and Luhansk regions” would be determined by law, arguing this would provide “special status” to the areas controlled by the armed groups and constitute a betrayal of national interests. After the amendments were adopted, protestors started to burn tires and wood in front of the main entrance of the Parliament and to confront the police cordons. One of the protestors launched a combat grenade which killed four police officers. In total, 187 people (mostly policemen) were injured during the clashes. Police forces failed to adequately protect demonstrators and themselves. The incident illustrates the challenges in securing the physical security and right to life or participants of mass gatherings, which is of particular concern given the unregulated outflow of small arms and explosive weapons from the conflict area.

67. HRMMU also witnessed cases of police failure to ensure public order and safety during counter-demonstrations. For instance, on 2 November, in Odesa, ‘pro-unity’ activists conducted a non-notified counter-demonstration at the same time and place as the 2 May notified commemoration organized by ‘pro-federalism’ supporters and victims’ families. Despite previous provocations from ‘pro-unity’ supporters, police intervened and formed a cordon between the two groups only after ‘pro-unity’ activists attacked their opponents and burned a banner with the names and photos of victims of the 2 May violence. No one was arrested during or following the incident.

#### **D. Freedom of association**

##### *Conflict-affected area*

68. In the areas controlled by armed groups, key civil society actors, especially human rights organizations, had been targeted at the onset of the conflict and forced to leave. Those few local NGOs which remained have been carrying out predominantly humanitarian activities as human rights protection and promotion may put them at risk.

69. In addition to restrictions imposed by armed groups, local staff and activists of the NGOs operating in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ also faced persecution from Ukrainian authorities and groups affiliated with them. During the reporting period, HRMMU learnt that the names and personal data of at least 34 civil society activists operating in the areas controlled by armed groups were publicized on the ‘Myrotvorets’ (‘Peace-maker’) website, allegedly due to the fact that they have been collaborating and communicating with the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. Some of these NGOs had been founded before the conflict to provide services to HIV positive people, orphans and other vulnerable groups. Officially, the website is presented as a centre to track signs of crimes against the national security of Ukraine, peace, humanity, and the international law. However, the website is known in the public as a database of alleged ‘separatists’ and ‘terrorists’<sup>67</sup>. In the absence of a court decision, such labels have a defamatory character, violate the presumption of innocence, and expose people listed to threats. In addition, people included into the list cannot cross the contact line, and are detained under charges of terrorism.

#### **E. Freedom of religion or belief**

70. During the reporting period, HRMMU documented a number of violations of freedom of religion or belief. In territories controlled by armed groups, minority Christian denominations

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<sup>67</sup> In April 2015, the Ombudsperson of Ukraine demanded to close the website. However, no reaction followed.

continued to be targeted. In other parts of Ukraine, a series of violations against the Jewish community were committed, with a failure of police to investigate the majority of cases.

*Territories controlled by the armed groups*

71. HRMMU continued to receive reports about the persecution of Jehovah Witnesses in the territories controlled by armed groups. On 25 August, in the city of Luhansk, four local members of the community (all men) were interrogated for six hours at the office of the “ministry of state security”, and forced to state that they were connected to foreign intelligence services. The interrogators forbade them to distribute religious literature and to publicly practice their religion. On 21 September, in the town of Vuhlehirsk (Donetsk region), two representatives of the local ‘military police’ ordered the community of Jehovah’s Witnesses in the region to stop religious services and distribution of religious literature until a law on religion was passed, threatening that members would otherwise be sanctioned by arrests or high fines. On 29 September, in the town of Shakhtarsk (Donetsk region) a group of people came to the Kingdom Hall to protest against the activity of the religious community and put up signs on the facade that read: “Away with the Sect!” and “No place for sects!” The local ‘police chief’ was present during the protest, but did not intervene.

*Territories controlled by the Government*

72. HRMMU is concerned about the incidents across Ukraine which targeted the Jewish community. On 5 September, approximately 30 men attacked a camp of Hassidic Jews in Uman (Cherkasy region), a few days before the beginning of the Rosh Hashannah pilgrimage. The attack took place on Shabbat, when the Jewish community could not defend themselves. The police reportedly observed the attackers dismantling the fence around the camp but did not intervene. On 6 September, investigation into the incident was initiated under article 356 (unauthorized action) of the Criminal Code with no progress achieved as of 15 November 2015.

73. Also, the HRMMU became aware of five other attacks on Jewish cemeteries or Holocaust memorials, occurring across Ukraine in the period from 27 August to 19 September 2015. In all of the incidents the criminal investigation was launched; however with no progress as of 15 November.

#### **IV. ECONOMIC AND SOCIAL RIGHTS**

74. The situation of estimated 2.9 million people living in the conflict area<sup>68</sup> remained particularly difficult. Absence of the rule of law and legitimate civil authorities, coupled with intense military presence, continued to create tension and uncertainty for the population. Despite the ceasefire, civilians still largely relied on humanitarian assistance while their needs remain very high. Housing, land and property issues, including damaged and looted houses, were one of the most often reported problems.

75. Humanitarian assistance for those people who have been directly affected by the armed conflict in territories under the control of the armed groups remains limited. The prohibition of cargo travelling from the Government-controlled territory to the territories controlled by the armed groups impedes the general movement flow. The registration requirement introduced in June by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ for organizations delivering humanitarian assistance on the territories controlled by the armed groups has limited the number of humanitarian organizations providing assistance – medicine, food, shelter and other items. The impact of such restrictive access to healthcare and daily needs for many living in both the urban and rural areas should not be under

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<sup>68</sup> 2.7 million living in the territories controlled by the armed groups, including 600,000 along the contact line, and 200,000 residents of the Government-controlled territories along the contact line (Humanitarian Country Team).



estimated, particularly with the onset of winter. HRMMU considers that both the Government and the armed groups need to ensure the critical needs of the most affected population are met to prevent any decline in their health and welfare<sup>69</sup>.

76. As of 15 November, the Ministry of Social Policy of Ukraine had registered 1,578,925 internally displaced persons (IDPs) throughout Ukraine. A number of registered IDPs permanently live in the Government-controlled areas, others regularly move across the contact line; however many of them continue to face precarious economic and social conditions, with particularly limited access to quality medical care, social services and benefits and long-term accommodation.

77. Demobilized soldiers still faced difficulties in obtaining official status as security operating participants allowed to access social aid, medical and psychological services free of charge. This particularly affects those requiring expensive treatment and rehabilitation. For example, on 13 November, HRMMU interviewed the mother of a mobilized soldier who had been in hospital in critical condition for five months after sustaining multiple injuries, including while being in captivity of armed groups. Although all necessary documents had been submitted in August, they had not yet been processed as of 15 November. Thus, the family had so far received no State social support and required medications have been purchased by volunteers.

78. HRMMU is concerned that no attention and support have been given so far to the needs of victims of torture, especially civilians, due to the absence of relevant legislative provisions, and lack of knowledge and skills in dealing with the survivors. HRMMU interviewed victims of torture who could not undergo proper forensic examination, receive medical care, rehabilitation, psychological and social services in State institutions. While soldiers may receive treatment and some rehabilitation services at military hospitals, civilian victims rely on the help from NGOs and private donors.

#### **A. Right to an adequate standard of living**

79. On the Government-controlled side, as of 15 November, an estimated 200,000 people were living along the contact line<sup>70</sup>, mostly in rural settlements. In many of these areas, local authorities have not returned and public services remained unavailable. Local residents had to manage on their own to restore the supply of water, gas and electricity.

80. In addition, access to these areas remained a major challenge, including due to the presence of IEDs and ERWs, and continued limitations of freedom of movement imposed by the Temporary Order. Public transport was also limited or unavailable, complicating access to medical, social and educational services. For example, before the conflict, residents of Lopaskyne settlement were receiving such services in Slovianoserbsk (now controlled by armed groups), which was only two kilometres away, while they now have to travel for at least 15 kilometres to access basic services.

81. Compared to previous months, the choice and quality of available basic commodities and food improved in the areas controlled by armed groups. However, the prices on average were 40 per cent higher than at the national level, and unaffordable to many. Furthermore, the suspension of the operations of organizations delivering humanitarian aid in the areas controlled by armed groups for more than four months significantly affected the estimated 2.7 million people residing in these territories, including 600,000 living along the contact line. Residents of Donetsk city whose houses were damaged or destroyed, as well as IDPs from other towns and villages, suffer from poverty, lack of warm clothes and heating, and from limited access to humanitarian aid.

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<sup>69</sup> Rule 55 of the Customary International Humanitarian Law invokes the obligations to the parties to the conflict to allow and facilitate the rapid and unimpeded humanitarian access, subject to their right of control.



### *Rights to housing, land and property*

82. Damaged, seized or looted property and lack of any justice and compensation mechanisms remained one of the major concerns for civilians living in the conflict area and for IDPs wishing to return.

83. On 12 October, HRMMU interviewed three residents of the Pisky village, whose property had been allegedly looted and used for military purposes. Although the owners reported their case to the Ministry of Defence of Ukraine, the Military Prosecutor's office and the Prime Minister of Ukraine, there has been no follow-up. In addition, the Ukrainian armed forces did not allow people to go to Pisky to visit their property and take their belongings, presumably because the settlement was still on the contact line.

84. The absence of housing programmes and job opportunities necessary for the sustainable integration of IDPs in the host communities remained a major concern in the Government-controlled territories.

85. HRMMU also noted a general absence of accessibility for persons with disability in collective centres. For example, in the Sergiivka and Kuyalnik sanatoria of the Odesa region, living conditions were not suitable due to the lack of access ramps for people in wheelchairs, and no access to toilets and bathrooms. In addition, the Odesa Regional Administration has not secured budget funds to cover accommodation fees, and IDPs could consequently be evicted in January 2016.

### **B. Right to social security and protection**

#### *For people from the territories controlled by armed groups*

86. Payment of pensions to people living in the areas controlled by armed groups remained suspended despite a decision of the Supreme Administrative Court of Ukraine, on 16 October, repealing Resolution No 595 of the Cabinet of Ministers, and obliging the Government to resume the payments<sup>71</sup>. The International Covenant on Economic, Social and Cultural Rights requires States to ensure progressive realization of all envisaged rights. Retrogressive measures cannot be justified solely on the basis of the existence of an armed conflict or other emergency<sup>72</sup>. The States must ensure that their policies and actions are not discriminatory<sup>73</sup> and do not reduce access to social security benefits<sup>74</sup>, including based on the place of residence or origin of its citizens.

87. In order to receive their social benefits, people still had to be registered and reside in the Government-controlled areas, which has been especially difficult for the elderly and people with disabilities. Furthermore, the Migration Service of Ukraine continued conducting unannounced checks to verify IDPs' places of residence. Those not found at their registration addresses were notified of the need to confirm residence to the State Migration Service within 10 days. The names of those who did not meet the requirement were submitted to a social security department for discontinuation of social payments, which was the sole source of income for some. During the reporting period, HRMMU learnt that such checks had led to suspension of financial assistance to 3,247 registered IDPs in Dnipropetrovsk region.

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<sup>71</sup> The Court heard the cassation appeal filed by the Cabinet of Ministers of Ukraine to the April 2015 court decision, which acknowledged the suspension of pensions illegal and ordered the Cabinet of Ministers to resume the payments. See paragraph 100 of the 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period of 16 May to 15 August 2015.

<sup>72</sup> See paragraph 26 of the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2015/59.

<sup>73</sup> Committee on Economic, Social and Cultural Rights, General Comment No 20, 2 July 2009.

<sup>74</sup> See paragraph 41 of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2013/82.

Previously, HRMMU reported of more than the pensions of 230,000 people had been suspended on the same grounds<sup>75</sup>.

88. Civil registration documents issued on the territories controlled by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ – birth, death, marriage, divorce and medical certificates – are considered invalid by Ukrainian authorities. This precludes people from accessing basic social and medical services. For example, on 3 November, HRMMU interviewed a woman who was refused to be paid for maternity leave, because she had given birth in a hospital in the town of Sverdlovsk (Luhansk region, controlled by armed groups) – although she worked for a company registered on Government-controlled territory.

89. IDPs continued to face difficulties in proving their work experience, affecting their possibility to receive special pension or unemployment benefits and to find new employment. An official electronic database of employment records has been functioning in Ukraine only since 2002, and any prior employment records exist only in hard copy. Many IDPs did not take such documents with them while fleeing the conflict area. Documents bearing the ‘stamps’ of the ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’ are considered invalid.

90. The Presidential Decree of 14 November 2014 ordering State institutions and enterprises to relocate to the Government-controlled area continued to affect economic and social rights. Due to the impossibility of implementing the Decree, enterprises re-registered in the Government-controlled territories, but continued to function in the areas controlled by armed groups, hindering their employees’ rights to social guarantees and favourable conditions of work, especially in case of work-related injury.

91. For example, 16 injured coalminers and the relatives of 34 coalminers who died during an explosion which occurred on 4 March 2015 in Zasiadko mine, Donetsk, reported to HRMMU that they could not receive any social benefits or compensation. They were informed that no payments will be made by the ‘Donetsk people’s republic’, as the company was not ‘registered’ there and did not pay ‘taxes’ or contribute to the ‘republican social security fund’. The Ukrainian Fund of Social Insurance covering accidents at work informed the Zasiadko mine management that the conclusions about the accident made by the commission of the ‘Donetsk people’s republic’ would not be recognized by Ukraine and that compensation would therefore not be made. They also stated that, the injured coalminers were not eligible for the status of persons with disabilities and would not receive benefits linked to this status.

#### *Situation in social care institutions*

92. HRMMU visits to social care institutions in Donetsk and Luhansk regions controlled by armed groups revealed that a number of their patients had not been able to receive their social entitlements since June 2014. Due to their physical condition, some of the elderly patients or persons with disabilities simply could not travel to the Government-controlled territories to re-register and receive their benefits. Guardians or custodians of legally incapacitated patients or minors could not perform actions on their behalf and obtain social benefits as the notarial services have been discontinued in the areas controlled by armed groups.

93. It was also brought to the attention of HRMMU that under the Ukrainian social welfare system, 25 per cent of financial allocations spent by the Government to support an individual in a social care institution was transferred to their individual bank accounts and could be used for personal needs. In addition to the fact that social care institutions in the areas controlled by armed groups have not received any financial support from the Government of Ukraine since November 2014, its patients also have had no access to their personal savings.

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<sup>75</sup> See paragraph 100 of the 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2015.

### **C. Right to the highest attainable standard of physical and mental health**

#### *Territories controlled by the armed groups*

94. The suspension of the operation of organizations delivering humanitarian aid in the areas controlled by the armed groups, as well as continuous restrictions of the Temporary Order to move cargo across the contact line, has had a negative impact on access to medicines, consumables, expert medical services, including psycho-social support.

95. On 25 September and 12 October, *Médecins Sans Frontières* (MSF) was ordered to stop all its activities in the territories controlled by the ‘Luhansk people’s republic’ and ‘Donetsk people’s republic’ respectively. These decisions threaten the lives of many residents who face chronic and serious health problems. In the territory controlled by the ‘Donetsk people’s republic’, MSF was providing 77 per cent of the insulin needed for adult living with diabetes and 90 per cent of supplies required for haemodialysis treatment vital for patients suffering from kidney failure. 146 patients with drug-resistant tuberculosis in penitentiary institutions will no longer receive treatment provided to these institutions since 2011. Coupled with the lack of food and poor detention conditions, this could lead to an eventual deterioration of their health. Interruption of TB treatment is particularly worrying in Donetsk region, which had one of the highest rates of TB prevalence countrywide before the conflict, and raises a broader public health concern. The physician of one of the detention facilities stated to HRMMU that local NGOs had less experience and could not make up for the capacities of international relief agencies. Finally, since the termination of MSF activities, more than a hundred medical facilities no longer receive supplies from MSF for treating emergencies resulting from the conflict, chronic conditions, and mental illnesses.

96. In the areas controlled by armed groups, 7,665 people living with HIV, including 209 children, were on anti-retroviral therapy. As of 15 November, required medicines were included in humanitarian deliveries, coordinated by the World Health Organisation, but the supplies are low and given the difficulties to operate, the risk of interrupted treatment is high.

97. The situation in social care and specialized medical institutions remained critical, especially in the areas controlled by the ‘Luhansk people’s republic’. HRMMU visited several institutions, including one in Rovenky (Luhansk region; controlled by the armed groups) hosting 192 persons with disabilities, including 23 children. The institution was in urgent need of psychotropic medicine, particularly for 39 patients suffering from epilepsy. HRMMU has referred the needs to international organizations whose operations were then stopped for an undetermined period of time.

98. HRMMU interlocutors in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ claimed hospitals and medical staff faced frequent harassment and threats by fighters, who openly carry weapons in medical facilities. Although reportedly ‘the ministry of defence’ took some steps to address this situation, during one of its recent visits to a hospital, HRMMU witnessed a car with four armed group members at the hospital entrance, heavily armed, harassing female medical staff. Such a conduct endangers medical personnel and patients.

#### *Territories controlled by the Government*

99. Lack of financial allocations from the State budget to cover healthcare expenses for IDPs remained one of the biggest challenges in ensuring their access to healthcare. Regions with a high influx of IDPs could not meet the existing needs, especially for vaccination or specialised medical care.

100. There are still few possibilities for IDPs, especially persons with disabilities, to receive psychological support, and they are at high risk of psychological distress due to poor living conditions, disability, destroyed family links, and lack of funds to cover basic needs. One NGO reported that alcohol addiction among IDPs was high, especially those staying in

collective centres. There was also reportedly a high rate of domestic violence among IDPs, as well as families of demobilised soldiers due to psychological stress and lack of social support.

101. In addition, IDPs with mental impairments who require special care in psychiatric or social care institutions, are sometimes placed in sanatoria, where staff was not capable or addressing their special needs. Reportedly, funds for their treatment are often insufficient, which leads to a deterioration of their condition.

## V. ACCOUNTABILITY AND ADMINISTRATION OF JUSTICE

102. The lack of protection and justice for victims and the impunity of perpetrators continued to prevail. Accountability for human rights violations committed during the Maidan protests of November 2013 – February 2014 and during the violence of 2 May 2014 in Odesa was pending at the end of November 2015. No perpetrators had been brought to justice, and investigations remained slow. Accountability for human rights violations and abuses in the conflict zone has been progressing with a number of perpetrators being tried or sentenced. However, impunity overall remains widespread, as mentioned in various sections of the present report.

### A. Accountability for human rights violations and abuses in the east

#### *Investigations into human rights abuses committed by the armed groups*

103. As previously articulated by the Ukrainian law enforcement<sup>76</sup>, the lack of access to the territories controlled by the armed groups remained the major impediment to investigate human rights abuses committed there. It has been challenging for the Ukrainian authorities to identify and locate perpetrators and weapons given lack of access to the crime scene, and limited opportunity to question witnesses and victims in the course of an investigation.

104. Members of the armed groups who have been detained by Ukrainian law enforcement (SBU or the national police) are usually charged under articles 258-3 (participation in a terrorist group or terrorist organization)<sup>77</sup> or 260 (creation of or participation in unlawful paramilitary or armed formations) of the Criminal Code of Ukraine. It is largely at the discretion of prosecution to decide which of these two categories of charges applies. Recent court decisions suggest that those who resorted to plea bargain were charged under article 260 and sentenced to deprivation of liberty with a probation period<sup>78</sup>, while those who did not<sup>79</sup> were sentenced to imprisonment under article 258-3 of the Criminal Code. The court decisions in such matters so far are largely based on confessions of the accused. HRMMU is not aware of any progress in cases of killings, torture, ill-treatment or other crimes against liberty and physical integrity of a person committed by the armed groups.

105. Many detained members of the armed groups are charged under article 263 (unlawful handling of weapons, ammunition or explosives) of the Criminal Code. In one case, a person was accused of illegal storage of up to 30 cartridges for Kalashnikov assault rifle<sup>80</sup>. In the other

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<sup>76</sup> See paragraphs 115 and 116 of the 11<sup>th</sup> OHCHR report on human rights situation in Ukraine covering period from 15 May to 15 August 2015.

<sup>77</sup> The ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ are publicly referred to by Ukrainian law enforcement as terrorist organizations, despite the fact that no court or administrative decision has formally recognized them as such, as there is no clear procedure for doing so. The security situation in the east has been officially called “anti-terrorist operation”.

<sup>78</sup> See the decision of Dzerzhynskiy District Court of Donetsk region of 21 October 2015 and decision of Slovianskyi District Court of Donetsk region of 21 October 2015.

<sup>79</sup> See the decision of the Kramatorsk City Court of Donetsk region of 12 October 2015 and decision of Volnovaskiy District Court of Donetsk region of 13 October.

<sup>80</sup> See the decision of Slovianskyi District Court of Donetsk region dated 30 October 2015 and decision of Druzhkivskiy District Court of Donetsk region of 15 October 2015.



two cases, the suspects' bags were seized and only after found containing a hand grenade and an IED. HRMMU is concerned that cartridges or hand grenades can easily be planted and used as a tool to secure 'confessions' of persons on their affiliation with the armed groups.

106. HRMMU also notes limited efforts of investigative bodies to establish command responsibility for crimes committed by the armed groups. 'Senior officials' of the 'Donetsk people's republic' and 'Luhansk people's republic' have rarely been mentioned in the investigations into grave human rights abuses, although in some cases there appeared to be enough evidence to initiate an investigation<sup>81</sup>. On 11 November, MoIA reported putting on a wanted list a former commander of an armed group which controlled the city of Horlivka (Donetsk region) in 2014. On suspicion of killing a serviceman of 'Artemivsk' special police patrol battalion on 14 July 2014, he has been charged under article 115 (intentional homicide in collusion by a group of people) in addition to previous charges under article 258 (act of terrorism) of the Criminal Code. The victim's father collected testimonies of witnesses as MoIA had appeared reluctant to open an investigation into the incident. Along with the case of Ihor Branovytskyi<sup>82</sup>, this is one of few cases in which the alleged perpetrator has been identified.

107. Investigations into human rights abuses committed by the armed groups have particular significance in the context of renewed discussions of the Trilateral Contact Group on the 'all for all' mutual release of detainees. The armed groups insist that this issue will be discussed only after the Government of Ukraine honours its obligation to "provide pardon and amnesty by way of enacting a law that forbids prosecution and punishment of persons in relation to events that took place in certain areas of Donetsk and Luhansk regions of Ukraine"<sup>83</sup>. HRMMU reiterates that amnesty cannot be provided for individuals responsible for war crimes, crimes against humanity and grave human rights violations, including summary executions, torture or similar cruel inhuman or degrading treatment, and enforced disappearances.

*Investigations into human rights violations by the Ukrainian military and law enforcement*

108. According to MoIA, 1,448 claims for violations of rights, including 298 for bodily injuries due to excessive use of force and ill-treatment of detained individuals, were submitted to the MoIA departments of internal security between early January and late August 2015. MoIA reported that 80 criminal investigations had been opened into these allegations. In general, as of 28 September, MoIA had opened 141 criminal proceedings into human rights violations by police officers, including 98 for infliction of bodily injuries, 13 concerning arbitrary detention and seizure of property, and six for torture. 29 police officers were notified of being suspected of involvement in human rights violations.

109. On 22 October, the Military Prosecutor for the Southern region (covering, *inter alia*, Donetsk and Luhansk regions) reported to HRMMU that 460 criminal proceedings had been opened since early 2015 into crimes committed by the Ukrainian military. 300 cases concerned desertion and 63 cases relate to crimes against civilians. Only 14 of these cases have been completed and submitted to courts.

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<sup>81</sup> For instance, according to a witness, in January 2015, a high level 'official' of the 'Donetsk people's republic' "pointed out to three Ukrainian captives – ..., ... and Ihor Branovytskyi, and said, to put it mildly, that he will make them 'girls'. Then he ordered to take them to the cemetery to dig graves for themselves". According to other witness, "three of us (Branovytskyi, myself and ...) were pointed out by [the name of the high level 'official' of the 'Donetsk people's republic'] and ordered to take us on a long circuit. We three were taken in a bus with our faces down on the floor to the cemetery to be shot, to dig graves for ourselves. At the cemetery we were lined up and fired shots by or above our heads".

<sup>82</sup> See paragraph 31 of the 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 February to 15 May 2015.

<sup>83</sup> Paragraph 5 of the Package of Measures for the Implementation of the Minsk Agreements of 12 February 2015.



110. HRMMU is concerned that despite the concluding observations of the Committee against Torture (Ukraine, December 2014)<sup>84</sup>, many cases of alleged ill-treatment or torture continue to be qualified as mere “abuse of power”.

111. HRMMU takes note of the establishment of two units within the structure of the Office of the Prosecutor General in mid-August: the Office of the Military Prosecutor for the ATO Forces and the Department on investigation of crimes against, peace, security and humanity. With the focus of investigation of crimes committed in the security operation area committed by the Ukrainian military and of the “military invasion of the Russian Federation on the territory of Ukraine and facilitation of activities of the armed groups”, it is expected that more efforts will be dedicated to documenting grave human rights violations abuses on both sides of the contact line. HRMMU also believes that re-enabling of the Office of the Military Prosecutor to exercise general oversight over the military and law enforcement would further strengthen accountability mechanisms<sup>85</sup>.

112. On 30 September, the Office of the Military Prosecutor reported the completion of pre-trial investigation into crimes committed by members of the special police patrol battalion “Tornado”. Eight of them are accused of creating a criminal gang, abuse of power, abduction and illegal confinement of a person, torture, violent unnatural gratification of sexual desire, resistance to law enforcement officers and unlawful appropriation of a vehicle<sup>86</sup>. The case is to be submitted to court once all suspects have reviewed the case files.

113. HRMMU is concerned over the approach taken by the prosecution in some cases of killings allegedly committed by the Ukrainian military, with investigations appearing to focus on more minor offences. The case of Volodymyr Kulmatytskyi, former deputy mayor of Sloviansk, illustrates this pattern. He and his driver were abducted by armed men in the Government-controlled town of Sloviansk (Donetsk region) on 28 January 2015. On 31 January, they were found dead in Kharkiv region with gunshot wounds on their heads. On 21 September, after a one-day court hearing, three out of the four alleged participants in the murder (all servicemen of Dnipro-1 battalion) were sentenced for kidnapping and illegal handling of weapons to four years of imprisonment, with a three-year probation period, and were released from custody. The fourth suspect – the only suspect in the murder – was killed (or killed himself) during the attempt of the police to apprehend him.

114. Very limited progress was achieved in the investigation into death of Oleksandr Agafonov who was beaten to death in November 2014<sup>87</sup>. The lawyer of the victim’s family’s informed HRMMU that two officers of the Central SBU Office in Kyiv had been notified of suspicion under articles 146 (kidnapping) and 365 (abuse of authority) of the Criminal Code. On 28 October, Dzerzhynskyi District court of Kharkiv released both of them on a bail of UAH 91,000 (approximately USD 3,800) for each. Allegedly, the suspects have not been suspended from their work. HRMMU notes that it took almost a year for the investigation to establish the identity of the suspects. An additional concern is that the suspects face charges that may not lead to the accountability for the death of the victim.

#### **B. Accountability for human rights violations committed during the Maidan protests**

115. While most of the human rights violations committed during the Maidan protests have been investigated and alleged perpetrators identified, accountability continued to be sought

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<sup>84</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=5](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=5).

<sup>85</sup> See paragraphs 117 and 118 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015.

<sup>86</sup> See paragraph 123 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015.

<sup>87</sup> See paragraph 121 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015.

for the killing of protestors on 18-20 February 2014. Indeed, only few perpetrators located and are being prosecuted as the majority have fled Ukraine. None of the former senior officials found responsible have been brought to account for organizing the killing of protestors in January-February 2014.

*General overview of Maidan investigations*

116. On 17 October, the Prosecutor General of Ukraine reported that his office had established the chronology of all events that had taken place during the Maidan protests, and identified all individuals involved in the organization of unlawful counteraction to protests that resulted in the death of protestors<sup>88</sup>. However, none of these individuals has been brought to account as they all allegedly fled Ukraine on 20 February 2014 or shortly afterwards. Moreover, most of the material evidence has been destroyed, especially in central Kyiv.

117. On 10 November, the Chief Military Prosecutor reported that 20 Berkut servicemen had fled Ukraine immediately before the launch of a special operation to arrest them at the beginning of August 2014, assuming that they had either received an order or were warned. No progress has been observed to locate Berkut commander Dmytro Sadovnyk who fled Ukraine after the authorities changed the measure of restraint against him from custodial detention to house arrest on 6 October 2014. It would be important to investigate the destruction of evidence of killings around the Maidan events, as well as the escape of people involved in these incidents.

118. The Office of the Prosecutor General investigated 14 different episodes of the crimes committed during the Maidan protests<sup>89</sup>. HRMMU is concerned that the dispersal of investigative efforts among various criminal proceedings may undermine the investigation as all the incidents and individuals involved were closely linked.

*Ongoing trial of Berkut servicemen (killing of protestors)*

119. The investigation into the killing of 39 protestors (all men) on 20 February 2014, at Instytutska Street, Kyiv, has not progressed since the previous HRMMU report<sup>90</sup>. Zinchenko and Abroskin remained the only two Berkut servicemen whose case had been submitted to court. Two other servicemen have remained in detention since 23 February 2015, when they were detained under the same charges (killing of 39 protestors). 18 other Berkut servicemen have been put on a wanted list for killing the 39 protestors. Investigations were ongoing into the alleged involvement of three Berkut servicemen in killing three protestors and injuring 69 on 18 February, in Kyiv<sup>91</sup>. Two former SBU officials have been detained in February and

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<sup>88</sup> The following individuals were reportedly notified by the office of the Prosecutor General of Ukraine: the former President of Ukraine Viktor Yanukovich, former Prosecutor General Viktor Pshonka, former Prime Minister Mykola Azarov, former Minister of Internal Affairs Vitalii Zakharchenko, former SBU Head Oleksandr Yakymenko, former Deputy Minister of Internal Affairs Viktor Ratushniak, former Commander of the Internal Troops of the Ministry of Internal Affairs Stanislav Shuliak, former First Deputy Head of the SBU Volodymyr Totskyi, former Head of Public Security Militia in Kyiv Petro Fedchuk and former commander of special police unit 'Berkut' Serhii Kusiuk. The Prosecutor General deemed them suspects for organizing unlawful counteraction to the protest actions.

<sup>89</sup> Dispersal of Maidan protest on 30 November 2013; confrontation on 1 December 2013 at Bankova street; dispersal of Maidan protest into the night of 11 December 2013; mass killings of protestors in January-February 2014; counteraction to protest actions of 'tityshky'; adoption of 'dictatorship' laws on 16 January 2014; supplies and enhanced use of riot control weapons; persecution for participation in the protests; travesty of justice; upholding unjust court decisions; non-enforcement of court decisions; prosecution of members of the 'AutoMaidan' movement; killings and infliction of bodily injuries to law enforcement during the protests; illegal resistance to the investigation of crimes committed during the Maidan protests.

<sup>90</sup> See paragraph 127 of 11<sup>th</sup> OHCHR report on human rights situation in Ukraine covering period from 15 May to 15 August 2015.

<sup>91</sup> See paragraph 129 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015.

April 2015 under suspicion of running an anti-terrorist operation on 18 February in Kyiv, which led to the death of protestors.

120. The legality of the composition of the jury panel hearing the case of Zinchenko and Abroskin has been challenged before court. Claiming that Zinchenko and Abroskin have not committed the crimes they are accused of, their lawyers stated to HRMMU that in the course of the investigation, the Office of the Prosecutor General had not examined the legality of the use of force by the Berkut servicemen should it be established that they had killed any of the 39 victims. The lawyers maintained that as three law enforcement were shot dead or injured in the morning of 20 February 2014, the use of force by Berkut' may have been justified.

121. HRMMU also reiterates earlier concerns<sup>92</sup> about the lack of progress in the investigations into the killing of 13 law enforcement officers on 18-20 February 2014, with no alleged perpetrators identified thus far.

### **C. Accountability for the violence of 2 May 2014 in Odesa**

122. More than 18 months after the violence of 2 May 2014 in Odesa, which resulted in the death of 48 people (including six women who died during the fire at the House of Trade Unions) due to clashes between supporters of federalisation of Ukraine ('pro-federalism') and supporters of unitary Ukraine ('pro-unity'), no progress has been observed in the investigations. Only 'pro-federalism' supporters were accused of mass disorder, and one 'pro-unity' activist was accused of a murder in the city centre (in total, six people were killed there). The investigation into the gravest episode – the fire at the House of Trade Unions which claimed lives of 42 people – is ongoing.

123. On 4 November, the Council of Europe International Advisory Panel on Ukraine<sup>93</sup> presented its report on the investigations of the events of 2 May 2014 in Odesa. The Panel noted a worrying decrease in the staffing of the investigating teams, underlining the detrimental effect on the progress, quality and effectiveness of investigations. It also expressed serious concern about the decisions to terminate the proceedings against two suspects for lack of evidence. The Panel concluded that "[t]he challenges confronting those responsible for the investigations into the events in Odesa on 2 May 2014 have been significant and their impact on the investigations cannot be under-estimated. However, these challenges cannot excuse any failings which did not inevitably flow from them"<sup>94</sup>. HRMMU fully shares these concerns.

124. The investigation into the 2 May violence has been dispersed between the Office of the Prosecutor General and MoIA, raising concerns of protracted investigation due to lack of communication among these entities. The MoIA Investigation Unit on the 2 May events, created on 6 May 2014, and comprising a dozen high-ranking investigators from Kyiv and other cities, has practically stopped functioning.

#### *Investigations by the Office of the Prosecutor General*

125. No progress has been reported concerning the investigation into the case of the former head of Odesa Regional Department of Internal Affairs<sup>95</sup> charged with neglect of official duty for failure to ensure public order in the city.

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<sup>92</sup> See paragraphs 83-85 of 6<sup>th</sup> OHCHR report on human rights situation in Ukraine covering period from 18 August to 16 September 2014, and paragraph 162 of 7<sup>th</sup> OHCHR report on human rights situation in Ukraine covering period from 17 September to 31 October 2014.

<sup>93</sup> The Panel was established in April 2014, to oversee that the investigations of the violent incidents which had taken place in Ukraine from 30 November 2013 onwards met all the requirements of the European Convention on Human Rights and the case-law of the European Court of Human Rights.

<sup>94</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048851>

<sup>95</sup> On 13 May 2015, the Pecherskyi district Court of Kyiv placed the former head of the Odesa Regional Department of MoIA under house arrest for 60 days. On 28 August, the investigative judge of the Pecherskyi district Court of Kyiv refused to extend the duration of the house arrest. Currently, the former head of the Odesa Regional Department of MoIA is under no measure of restraint.

### *Investigations by the Ministry of Internal Affairs*

126. No suspects have been identified in the criminal case opened by MoIA into the slow response and inaction of the fire brigade, which contributed to cause the death of 42 people. Allegedly, the former head of the Odesa Region Fire Brigade Department left Ukraine in February 2015.

127. 23 ‘pro-federalism’ supporters have been accused for mass disorder in the city centre in a trial that has been ongoing for 11 months. Numerous procedural violations observed in this case, non-attendance of lawyers, poor quality of case files, failure to provide interpreter, have significantly delayed the process. While consideration on the merits started on 2 July 2015, as of 15 November, the court continued announcing the indictment.

128. The only ‘pro-unity’ activist accused of killing of a protestor and injuring a police officer and a journalist has not been subjected to any sanction since his indictment in November 2014. HRMMU notes essential pressure that ‘pro-unity’ supporters exert on the court. Due to their obstructive behaviour, the court hearings in this case, which started on 23 June 2015, were several times disrupted. This resulted in the transfer of the case to another court in Odesa, in August 2015, but hearings have not yet started. Following threats by ‘pro-unity’ activists and a member of Parliament<sup>96</sup>, a judge (relocated from Donetsk to Odesa in 2014) decided to return to Donetsk, fearing for his life.

#### **D. Administration of justice**

##### *Parallel ‘administration of justice’ systems in the territories controlled by the armed groups*

129. During the reporting period, HRMMU observed the further strengthening of parallel ‘governance structures’ of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’, with their own legislative frameworks, including parallel systems of law enforcement and administration of justice (‘police’, ‘prosecutors’ and ‘courts’), in violation of the Constitution of Ukraine, and in contravention with the spirit of the Minsk Agreements. HRMMU reiterates that the ‘officials’ of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’ are responsible and shall be held accountable for human rights abuses committed on territories under their control. This particularly applies to people bearing direct command responsibility for the actions of perpetrators.

##### *Pre-trial detainees in the territories controlled by the armed groups*

130. Pre-trial detainees who find themselves trapped in the territories controlled by the armed groups since the outbreak of the armed conflict in April 2014 remain in legal limbo, without recourse to justice and with their right to a trial within a reasonable time or release being violated, resulting in their arbitrary detention.

##### *Deprivation of documents of detainees released by the Government*

131. HRMMU is concerned about the situation of 22 former detainees from Dnipropetrovsk who were handed over to the ‘Donetsk people’s republic’ in the context of ‘simultaneous releases’ in December 2014, and whose passports remain with SBU. In October 2015, HRMMU received an official reply from SBU stating that their passports were held by SBU investigators (except for one individual whose mother applied to obtain the passport) pending investigations.

##### *Investigation into 31 August violence near the Parliament*

132. MoIA identified 27 people suspected of being involved in violent actions on 31 August 2015, in front of the Parliament, in Kyiv, including one person suspected of throwing a combat grenade at the police. All suspects are charged under articles 258 (act of terrorism), 263 (unlawful handling of weapons, ammunitions or explosives), 293 (group violation of

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<sup>96</sup> See paragraph 140 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015



public order), 294 (riots) and 345 (violence against a law enforcement officer) of the Criminal Code. Lawyers representing 10 of the suspects informed HRMMU that their clients were still held in the temporary holding facility of MoIA, while they should have been relocated to the SIZO under the Penitentiary Service. They also claimed lack of access of their clients to legal and medical aid and ill-treatment. The Ombudsperson's Office visited the suspects and sent an official letter to MoIA concerning the alleged violations of their rights.

#### *Case of Nelia Shtepa*

133. HRMMU continued to follow the case of former mayor of Sloviansk (Donetsk region) Nelia Shtepa, who has remained in detention since 9 July 2014, charged under articles 110 (trespass against territorial integrity) and 258-3 (creation of a terrorist group or terrorist organisation) of the Criminal Code<sup>97</sup>. As of 15 November, the court was cross-examining witnesses in the case.

134. HRMMU is concerned that following the killing of Shtepa's former deputy Kulmatytskyi – who was the main defence witness – and the release of three men involved in his and his driver's murder, witnesses would be reluctant to testify. On 22 September, the victim's lawyer informed HRMMU that Kulmatytskyi had been questioned by the prosecutors, who told them at length about Shtepa's attempts to draw the attention of the then head of Donetsk Regional State Administration about the need to prevent capture of the city by the armed groups, as well as about her abduction.

135. On 6 October, the High Council of Justice (HCJ) of Ukraine found that the presiding judge in the case of Shtepa had violated the oath when he ruled on the arrest of Maidan activists in Kharkiv in February 2014. HCJ approved a petition for the dismissal of the judge. Should the President of Ukraine dismiss the judge, trial in the case will start from the beginning.

#### *Case of Hennadii Korban*

136. On 31 October, the leader of 'UKROP' party, and former candidate for mayor of Kyiv Hennadii Korban was apprehended by SBU at his home in Dnipropetrovsk, and taken to the Office of the Prosecutor General in Kyiv for interrogation, facing charges of misappropriation of property, creation of a criminal organization, unlawful appropriation of a vehicle and hostage taking of a representative of public authorities. On 3 November, upon elapse of the maximum term of detention (72 hours), he was released and immediately taken by SBU to the Office of the Prosecutor General for interrogation under new charge of preclusion of the right to vote. HRMMU notes that the practice of "repeated arrest"<sup>98</sup> constitutes a violation of article 5(4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>99</sup>. Korban's lawyers allege violations of "the right to lawful arrest"<sup>100</sup>, failure to inform the relatives about his arrest, absence of timely information on charges, delayed access to a lawyer. On 3 November, after visiting Korban at the SBU pre-trial detention centre, the Ombudsperson stated that the violations alleged in the case reflected systemic violations of human rights in criminal proceedings in Ukraine.

#### *Prosecution of Ukrainian citizens in the Russian Federation*

137. HRMMU continued to follow the cases of 11 Ukrainian citizens<sup>101</sup> who are held in detention and prosecuted in the Russian Federation, including the case of Nadiia Savchenko,

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<sup>97</sup> See paragraph 149 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 1 May to 15 August 2015.

<sup>98</sup> Particularly, when a person has been detained immediately after the court ruled on his release.

<sup>99</sup> See *Feldman v. Ukraine* (application 42921/09) judgment 14 April 2012.

<sup>100</sup> According to his lawyers, Korban was arrested without any court order, which is only permissible for individuals arrested at the crime scene immediately after committing a crime or in the course of a hot pursuit.

<sup>101</sup> Nadiia Savchenko, Oleh Sientsov, Oleksandr Kolchenko, Oleksii Chyryni, Hennadii Afanasiev, Yurii Yatsenko, Serhii Lytvynov, Mykola Karpiuk, Stanislav Klykh, Yurii Soloshenko and Valentyn Vyhovskiy.



who has been in detention in the Russian Federation since July 2014, facing charges of killing two Russian journalists<sup>102</sup>. On 22 September, the Donetsk District Court of Rostov region (the Russian Federation) commenced hearing the case on the merits and extended Savchenko's pre-trial detention until January 2016.

## VI. RIGHTS TO VOTE AND TO BE ELECTED

138. On 25 October, local elections were held in most of the territory of Ukraine. Over 350,000 candidates competed for 168,450 positions of mayors of cities, villages and settlements and for councillors of villages, settlements, cities, city districts, districts (*rayon*) and regional councils. According to the Central Election Commission of Ukraine (CEC), the turnout was 46.62 per cent. A second round took place on 15 November to elect the mayors of cities of more than 90,000 voters where no candidate obtained more than 50 per cent of the votes in the first round.

139. The election law established three electoral systems and introduced a requirement of at least 30 per cent representation of each gender on a party list, without providing for any sanction for failure to comply. According to CEC, women comprised about 35 per cent of all registered candidates for the proportional races and 13 per cent in mayoral races. Based on these figures, and while the final election results were not yet known when this report was being finalized, they are likely to confirm a significant under-representation of women.

140. The electoral process was monitored by local and international observation missions, including the International Election Observation Mission (IEOM), which assessed the elections as competitive, well organized and respectful of the democratic process. However, it noted the influence of powerful economic groups over the electoral process, the fact that the legal framework fell short of international commitments and standards, and some problems with the printing and distribution of ballots which prevented or led to the cancelling of elections in several Government-controlled districts of eastern Ukraine<sup>103</sup>.

141. HRMMU is also concerned that millions of Ukrainian citizens could not exercise their right to vote. Indeed, local elections were not conducted in the Autonomous Republic of Crimea, the city of Sevastopol and in certain areas of the Luhansk and Donetsk regions controlled by the armed groups. CEC declared that for security reasons, holding elections was not possible in some territories of the Donetsk and Luhansk regions controlled by the Government<sup>104</sup>. In addition, the law on local elections of 14 July 2015 did not foresee the possibility for IDPs<sup>105</sup> to vote<sup>106</sup>.

142. The '*Opposition Bloc*' branch in Kharkiv was prevented from registering for the local elections. HRMMU learned from the leadership of the party and their lawyer that the Regional Department of the Ministry of Justice had actively obstructed and prevented the members of the party to hand over registration documents. The Regional Department of Ministry of Justice also refused to implement a decision of the Regional Administrative Court

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<sup>102</sup> For more information, see paragraph 60 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015, and paragraph 54 of the 10<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 February to 15 May 2015.

<sup>103</sup> See Statement of Preliminary Findings and Conclusions of the International Election Observation Mission (IEOM), Ukraine – Local Elections, 25 October 2015.

<sup>104</sup> CEC resolutions 207 and 208 declared that it was not possible to organize elections in 91 local councils in the Donetsk region and 31 local councils in the Luhansk region. These decisions were based on the information provided by the military/civil administrations and affected 525,588 voters.

<sup>105</sup> UN Guiding Principles on Internal Displacement<sup>105</sup> and Recommendation Rec(2006)6 of the Committee of Ministers of the Council of Europe to Member states on internally displaced persons

<sup>106</sup> See paragraph 167 of the 11<sup>th</sup> HRMMU report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2015.

in Kyiv. The ‘Opposition Bloc’ was prevented from conducting its electoral campaign and its candidates were only partially able to take part in the local elections.

## VII. HUMAN RIGHTS IN THE AUTONOMOUS REPUBLIC OF CRIMEA<sup>107</sup>

143. A trade blockade of Crimea, initiated by the Crimean Tatar leadership and enforced by ‘pro-unity’ activists, including Crimean Tatars and former member of voluntary battalions, has been in place since 20 September. HRMMU is concerned about the legality of this action and human rights abuses that have accompanied it, including illegal identity checks, vehicle searches, confiscation of goods, and arrests. Other important developments related to Crimea have included the sentencing of Ukrainian film-maker Oleh Sientsov by a Russian Federation military court, the issuing of the first verdict by a court in Crimea in relation to the violent protests on 26 February 2014 involving pro-Ukrainian and pro-Russian groups, and the Ukrainian parliament resolution of 12 November recognizing the 1944 deportation of the Crimean Tatars as an act of genocide.

### A. The blockade of Crimea

144. Since 20 September, hundreds of Ukrainian activists, including Crimean Tatars and members of nationalist battalions, have been blocking the flow of goods between mainland Ukraine and Crimea in both directions. The trade blockade was initiated by the former and current heads of the Crimean Tatar Mejlis, Mustafa Dzhemiliev and Refat Chubarov, and has been conducted simultaneously at all three crossing points on the Ukrainian-controlled side of the administrative boundary line (ABL): in Chaplynka, Chongar and Kalanchak. The objective of this action was to call international attention to human rights violations in Crimea – including the alleged persecution of Crimean Tatars – and to request an international monitoring presence in the peninsula. The organizers also demand that the Ukrainian authorities repeal an August 2014 law<sup>108</sup> which regulates trade between Ukraine and the peninsula, and demanded that the next step should be to halt energy supplies to Crimea.

145. HRMMU travelled to the area of the blockade on 12-13 November. It noted that the blockade was designed to prevent the movement of commercial cargo transported by trucks without hindering the movement of people and private vehicles. However, the volunteers enforcing the blockade – uniformed men sometimes wearing masks and balaclavas – have been systematically stopping private vehicles. They reportedly have lists of people considered to be ‘traitors’ due to their alleged support to the *de facto* authorities in Crimea or to the armed groups in the east. In one case, two people were arrested for allegedly carrying drugs and explosives and kept in illegal detention for hours before being handed over to the police. In another incident, a Crimean resident with a Russian passport issued in Crimea was beaten up. The activists have also established improvised roadblocks at the crossing points. Their behavior has in some cases been threatening when drivers refuse to show their identification documents or allow their vehicles to be searched. HRMMU is aware of the case of a driver who had his windows smashed for refusing to unload vegetables.

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<sup>107</sup> HRMMU has not been granted access to Crimea and has no *in situ* presence. However, it has been able to monitor the human rights situation by establishing and maintaining contacts with Crimean residents on the peninsula and mainland Ukraine and relying on a variety of interlocutors of different ages and genders including representatives of political, religious, civil society organizations, victims, relatives and witnesses of alleged human rights violations, members of the legal profession, journalists, entrepreneurs, teachers, doctors, social workers, human rights activists and other categories, including individuals with no specific affiliations. HRMMU continues to seek access to Crimea.

<sup>108</sup> The law “On the Establishment of the Free Economic Zone ‘Crimea’ and Peculiarities of Providing Economic Activity on the Temporary Occupied Territory of Ukraine” (12 August 2014).

146. The activists have been enforcing the blockade in the presence of the police and border guards who observed the situation without intervening. HRMMU is concerned about instances of human rights abuses near the ABL. It is also worried that activists enforcing the blockade have been illegally performing law enforcement functions, such as identity checks and vehicle searches, with the apparent acquiescence of the Ukrainian authorities.

### **B. Citizenship**

147. On 30 October, the Federal Migration Service (FMS) of the Russian Federation issued a statement indicating that the legal requirement to inform FMS about a second citizenship, in addition to Russian citizenship, did not apply to Crimean residents. This requirement derived from amendments to the law “On citizenship of the Russian Federation”<sup>109</sup>, which obliged Crimean residents to disclose a second citizenship before 1 January 2016.

148. HRMMU notes that FMS did not refer to any legal act or official policy supporting its statement. This development would be welcome as it would mean that Crimean residents who chose not to disclose their Ukrainian citizenship will not be sanctioned.<sup>110</sup> However, HRMMU also recalls that Russian citizenship has been imposed upon all Crimean residents following the unrecognized ‘referendum’ of March 2014, and that such automatic attribution has led to human rights violations, including claims that people were dismissed or threatened to be dismissed from their posts for refusing to take up Russian Federation passports<sup>111</sup>.

### **C. Rights to life, liberty, security and physical integrity**

149. Another case, involving a Crimean Tatar disappearing in circumstances reminiscent of abduction, has been reported. On 27 August, a witness claimed he saw two men in uniform forcing Muhtar Arislanov into a minivan, after which he went missing. On 3 September, the Investigative Committee of the Russian Federation in Crimea opened a criminal case under the qualification of murder. HRMMU notes that other Crimean Tatars, including Islyam Dzheparov and Dzhevdet Islyamov<sup>112</sup>, were also seen by witnesses to be kidnapped by uniformed men and that none of them has been found to this day.

### **D. Due process and fair trial rights**

150. Crimean residents continued to be subjected to Russian Federation laws and in some cases they were transferred to the Russian Federation to undergo trial. This was the case with Ukrainian film-maker Oleh Sientsov who on 25 August, was sentenced by a Russian Federation military court in the city of Rostov-on-Don to 20 years of prison for setting up a terrorist group and involvement in two attempted arson attacks in Crimea. HRMMU notes that the process was marred by violations of fair trial standards and of the presumption of innocence. The court dismissed allegations of torture and ill-treatment which Sientsov experienced during pre-trial detention, and delivered a guilty verdict despite the fact that the main prosecution witness recanted in the courtroom, stating his testimony had been extorted under torture. Oleksandr Kolchenko, who was being tried with Sientsov and also denied the charges against him, received a 10-year prison sentence for participation in the ‘terrorist plot’ organized by Sientsov. Both verdicts were appealed and will be examined by the Supreme Court of the Russian Federation on 24 November 2015.

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<sup>109</sup> See Federal Law of the Russian Federation No 142-FZ “On Amendments to Articles 6 and 30 of the Federal Law ‘On Citizenship of the Russian Federation’ and certain legislative acts of the Russian Federation” (4 June 2014, entered into force 4 August 2014).

<sup>110</sup> In all other cases, concealing a second citizenship will expose to a fine of up to RUB 200,000 (USD 5,700) or compulsory community service of up to 400 hours.

<sup>111</sup> For more information, see paragraph 295 of the 3<sup>rd</sup> OHCHR report on the human rights situation in Ukraine covering period from 7 May to 7 June 2014.

<sup>112</sup> For more information, see paragraph 216 of the 7<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 17 September to 31 October 2014.

151. On 12 October, a ‘court’ in Simferopol sentenced Eskender Nebiyev, a cameraman of the Crimean Tatar TV channel ‘ATR,’ to two years and six months of prison for “participation in mass riots” The sentence was immediately commuted by court to a suspended sentence as Nebiyev had allegedly cooperated with the investigation and admitted his guilt. Nebiyev was arrested by the Crimean “police” on 22 April 2015, and accused of participating in a violent demonstration organized by the Crimean Tatar Mejlis in front of the Crimean parliament building, on 26 February 2014. This was the first verdict issued in relation to these events, during which two ethnic Russians died and over 40 people were injured. Five other Crimean Tatars, including the deputy head of the Mejlis, Akhtem Chiigoz, were arrested in 2015<sup>113</sup> for organizing or participating in the February 2014 clashes between supporters and opponents of Ukraine’s territorial integrity and await trial. HRMMU notes that the arrests have only concerned ethnic Crimean Tatars, which raises questions about the impartiality of the criminal proceedings under way.

#### **E. Freedom of expression**

152. Crimean residents continued to be pressured, intimidated and sanctioned for expressing views challenging Crimea’s status as a part of the Russian Federation or expressing attachment to Ukraine publicly or via social media networks.

153. On 23 September, a ‘court’ in Crimea prolonged for two months the pre-trial detention of a pro-Ukrainian activist, Yurii Ilchenko, for having published on a social network an article condemning the “annexation” of Crimea and calling for an “end to the war allegedly waged by the Russian Federation against Ukraine”. Ilchenko was arrested on 2 July 2015 in Sevastopol, and accused of “inciting national, racial or religious enmity”.

154. On 14 October, the ‘police’ in Crimea prevented the head of the unregistered Ukrainian cultural centre in Simferopol and two other residents from paying tribute to Bogdan Khmelnytsky, a 17<sup>th</sup> century ruler of Ukraine. Before the men could lay flowers at the monument in Simferopol, they were approached by ‘police officers’ and men in civilian clothes who asked to check their documents and took them to the ‘police centre for countering extremism’. They were questioned for two hours, allegedly for holding an unauthorized rally, told that the Ukrainian cultural centre was considered to be an extremist organization, and released without being charged with any offense. HRMMU observes that the actions of the ‘police’ seemed to be designed to intimidate and discourage what amounted to a peaceful public display of attachment to a national identity.

155. On 29 October, the head of the Mejlis and Ukrainian deputy Refat Chubarov, received a notification from a court in Simferopol informing him that the court had granted a request of the ‘prosecutor’ of Crimea to remand him in custody. The notification mentions that Chubarov was charged for “public calls for action aimed at violating the territorial integrity of the Russian Federation”, and applies to any statements made on the Internet. The ‘prosecutor’ of Crimea stated that Chubarov had been placed on a wanted list and could be immediately arrested should he appear on the territory of Crimea. He also declared that a five-year entry ban that applied to Chubarov since 5 July 2014 had been lifted, without providing further information.

#### **F. Right to education in native language**

156. 1 September marked the beginning of the new school year in Crimea where the education curriculum of the Russian Federation has continued to be applied. Information from the Crimean ‘ministry of education’ concerning the language of education confirms the

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<sup>113</sup> Akhtem Chiigoz was arrested on 29 January 2015, Eskender Kantemirov on 7 February 2015, Eskender Emirgaliyev on 18 February 2015, Talyat Yunusov on 11 March 2015, and Ali Asanov – on 15 April 2015.



trend already noticed last year that the overwhelming majority of children (96.4 per cent) use Russian language in their school curriculum.

157. Education in Ukrainian language dropped significantly in the past two years. In 2013, when the curriculum of Ukraine was last used, the number of children educated in Ukrainian was 12,694; in 2014, it was 2,154; and in 2015, it is 949. Twenty-two schools across the peninsula are currently providing teaching in Ukrainian but only two schools – in Alushta and Feodosiya – offer full primary and secondary education (grades 1 to 9) in that language. The number of children educated in Crimean Tatar language has remained relatively stable. In 2015, Crimean Tatar is the language of education of 5,334 children. In 2014 the figure was 5,146, and in 2013, it was 5,551. Currently, teaching is done exclusively in Crimean Tatar language in 15 Crimean schools.

158. Some Ukrainian and Crimean Tatar parents told HRMMU that the *de facto* authorities were discouraging the use of minority languages, notably by preventing the grouping of children by language preference and placing them in classes with Russian language education. This claim is disputed by the *de facto* authorities. The ‘minister of education, science and youth’ of Crimea stated in September that separate classes were opened for minority language education if at least seven parents would request it.

#### **G. Access to services**

159. On 1 September, the Kyiv administrative court of appeal revoked Item 1 of Resolution No 699 adopted by the National Bank of Ukraine (NBU) on 3 November 2014, which identified Crimeans as “non-residents” from the point of view of Ukrainian law. A practical implication of the non-resident status was that Crimeans could not open foreign currency accounts and purchase foreign currency.

160. On 18 December 2014, following criticism by civil society, NBU issued another Resolution (No 810) allowing Crimeans registered as IDPs to retain resident status. However, this resolution did not change the situation of Crimeans not registered as IDPs. A September 2015 decision of the Kyiv administrative court of appeal remedied this by recognizing the right of all Crimean residents, without distinction, to equal treatment in accessing banking services. Despite this decision, many banks continued in September and October to deny Crimean residents not having the IDP status the right to purchase foreign currency and open foreign currency accounts. On 30 October, NBU sent an official note to all banks informing them that all prior restrictions applying to Crimean residents were lifted. HRMMU will monitor whether access to banking services is afforded to Crimean residents without discrimination.

### **VIII. LEGAL DEVELOPMENTS AND INSTITUTIONAL REFORMS**

#### **A. Constitutional reform**

161. Constitutional amendments on decentralization were adopted on first reading by the Parliament on 31 August 2015. They enshrine the principle of subsidiarity, simplify the territorial structure of the State and separate the functions of the State and those of local self-governments, which are all positive aspects. They also refer to a law, which was adopted in 2014 but never implemented, providing for the transfer of some competencies to the territories of the Donetsk and Luhansk regions controlled by the armed groups. This specific aspect triggered a violent reaction from supporters of far right groups who clashed with the police outside the parliament building, leading to the death of four members of the National Guards and over 100 people being injured. The final adoption of the law requires a constitutional majority of deputies (at least 300).



162. As of 15 November, constitutional amendments related to the judiciary had not been registered at the Parliament of Ukraine. The current version of the amendments removes some constitutional obstacles to an independent judiciary, notably by requiring that the institution in charge of appointing and removing judges be made up of a majority of representatives of the judicial branch. The amendments also remove the broad powers of the public prosecutor, which have often been abused, to oversee the implementation of the law.

163. In November 2015, the amendments to the human rights chapter of the Constitution were still under development by a working group of the constitutional commission in charge of constitutional reform. One of the major novelties envisaged in the current draft is to enable citizens to initiate a constitutional review of laws.

#### **B. Adoption of a National Human Rights Strategy**

164. On 25 August, President Poroshenko approved the first National Human Rights Strategy of Ukraine. This document was developed through collaborative efforts that have involved, since November 2014, the Government, civil society groups, the institution of the Ombudsperson and international organizations, including HRMMU. The document describes 24 priority areas<sup>114</sup> and provides a five-year roadmap to address systemic human rights challenges and more recent issues related to the conflict. The Government was tasked by the President to elaborate an Action Plan to implement it. HRMMU supports the development of the Action Plan.

#### **C. Cooperation with the International Criminal Court**

165. On 8 September 2015, the Registrar of the International Criminal Court received a declaration lodged by Ukraine accepting the Court's jurisdiction with respect to alleged crimes committed in its territory since 20 February 2014. The declaration was lodged under article 12(3) of the Rome Statute, which enables a State not party to the Statute to accept the exercise of jurisdiction of the Court. This is Ukraine's second declaration under article 12(3) of the Statute. On 17 April 2014, it accepted the Court's jurisdiction over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014. Based on the latest declaration, the Court may exercise jurisdiction over crimes that were committed after the Maidan events, on the entire territory of Ukraine. HRMMU views this development as a significant contribution towards the establishment of accountability for human rights violations and justice for victims and their relatives.

#### **D. Visa liberalization package**

166. From 10 to 12 November, the parliament of Ukraine adopted several laws and measures bringing positive changes, and which were requested under the European Union visa-liberalization Action Plan. They include anti-corruption measures, such as the establishment of a national Asset Recovery Office and guarantees against corruption risks when property is seized or confiscated. Legislative amendments were passed to limit the pre-trial investigative functions of SBU to crimes against national security. In the area of migration management, amendments adopted on first reading provide for an immediate judicial review of decisions to expel or detain foreigners and stateless persons. The issue of the reintegration of migrant workers was regulated by a law on external labour migration.

167. The most divisive topic was the requirement under the visa liberalization action plan to explicitly prohibit discrimination on the grounds of gender identity and sexual orientation in labour relations. It took several rounds of votes for deputies to adopt this amendment to the labour legislation.

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<sup>114</sup> The 24 priority areas include, among other issues, torture and ill-treatment, impunity, fair trial rights, fighting discrimination, national minority rights, gender equality, fundamental freedoms, the right to health, IDP rights and those of the population living in the territories not controlled by Ukraine.

## **E. Labour Code**

168. Amendments to the Labour Code were passed on first reading on 5 November. Guarantees were introduced to strengthen the protection of workers, such as the obligation to conclude an employment contract in writing, the prohibition to change working conditions unilaterally, a higher salary for night work, a two-month notice and a higher compensation package in case of dismissal.

169. Nonetheless, some provisions seem to contravene the principle of equality before the law. For example, the transitional provisions foresee the right for legal entities in the area of the security operation to regulate employment issues pertaining to working hours, resting time and salaries, without taking into consideration the provisions of the Labour Code. HRMMU recalls that, pursuant to article 7 of the International Covenant on Economic, Social and Cultural Rights, State Parties must “recognize the right of everyone to the enjoyment of just and favorable conditions of work”. HRMMU also notes that the adoption, on 12 November, of labour legislation prohibiting discrimination on the grounds of sexual orientation needs to be reflected in the Labour Code.

## **F. Criminal justice reform**

170. On 12 November, the Parliament adopted a law<sup>115</sup> creating a State Bureau of Investigation (SBI) defined as a central executive body with special status and law enforcement functions. SBI is mentioned in the Criminal Procedure Code of Ukraine as an instrument to improve the independence and effectiveness of pre-trial criminal investigations. It is mandated to investigate organized crime, excess of authority, torture, inhuman, degrading or other cruel treatment or punishment committed by members of the law enforcement and the military; crimes which may give rise to a life imprisonment sentence; war crimes; crimes committed by high-ranking officials, prosecutors and judges<sup>116</sup>, members of the National Anti-Corruption Bureau and the Special Anti-Corruption Office of the General Prosecution<sup>117</sup>. The law stipulates that SBI will have seven regional offices<sup>118</sup>. SBI will issue annual activity reports which will be subjected to review by a public oversight council consisting of 15 members of the public. HRMMU views the adoption of the law as an important step in the creation of an independent criminal justice system. However, it notes with concern that the law gives the executive authority the main prerogative in the selection of the Bureau director and the two deputies<sup>119</sup>.

## **G. Protection of internally displaced persons**

171. Two Government resolutions (Nos 615 and 636) adopted in August 2015 could affect IDPs’ rights and limit their ability to obtain IDP status. A new rule obliges people seeking to be recognized as IDPs to sign a declaration of non-participation in the commission of criminal activity. Another one provides that IDP registration may be denied if the circumstances that led to the displacement “are absent” or have significantly changed. HRMMU is of the view that the unclear meaning and consequences of such provisions increase the risk of arbitrary decisions regarding the attribution or removal of IDP status. Another provision, subject to different interpretations, specifies that unaccompanied children may be registered as IDPs in case of non-performance of parental obligations. In addition to creating legal uncertainty, this may lead to the deprivation of parental rights.

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<sup>115</sup> Draft Law No 2114 ‘On the State Bureau of Investigation’.

<sup>116</sup> Except for cases falling under the jurisdiction of the National Anti-Corruption Bureau.

<sup>117</sup> Except for cases falling under the jurisdiction of an internal oversight mechanism of the National Anti-Corruption Bureau.

<sup>118</sup> In Lviv, Khmelnytskyi, Mykolaiv, Poltava, Melitopol, Kramatorsk and Kyiv.

<sup>119</sup> The law provides that the Government appoints the Director of the Bureau and its two Deputies upon a submission of the Prime Minister based on the proposal of a Selection Commission consisting of nine persons: three persons chosen by the government, three by the president and three by the parliament.

172. Progress was made to ensure the legal protection of IDPs. HRMMU observes that the amendments to the law on IDPs<sup>120</sup>, adopted on 3 November, reflect key provisions of the United Nations Guiding Principles on Internal Displacement. Accordingly, the amendments extend the scope of the law to heretofore excluded categories, such as internally displaced foreign nationals and stateless persons who legally reside on the territory of Ukraine and are eligible for permanent residence in Ukraine. The amendments also stipulate that the Government should support the integration of IDPs in new communities, as well as their voluntary return to their previous place of residence. They also recognize the rights of IDPs to family reunification and to information about the fate and whereabouts of missing relatives. Furthermore, the amendments simplify the procedures for IDP registration and revocation of labour relations prior to displacement.

#### H. Civil documents

173. On 5 November, the Parliament adopted on first reading Draft Law No 3171<sup>121</sup>, which is to regulate the recognition by Ukraine of facts of birth and death occurring on the territories controlled by the armed groups in the east, as well as in Crimea, by amending the Civil Procedure Code. Indeed, under the current legislation, all acts issued by *de facto* authorities are considered to be invalid by Ukrainian authorities<sup>122</sup>. This situation has prevented people from the territories concerned from enjoying the same rights as other citizens of Ukraine.

174. The draft law creates a simplified procedure of court review pertaining to the registration of civil acts. In particular, it waives the principle of territorial jurisdiction by allowing any Ukrainian court to examine a request for recognition. Birth and death certificates will be issued by the civil registration body upon receipt of a copy of the judgment authorizing it.

175. HRMMU notes that the draft law covers some but not all civil documents. Furthermore, in the absence of postal services between the territories controlled by the armed groups (and Crimea) and the rest of Ukraine, a claimant would need to be physically present on Government-controlled territory to file for recognition or to empower a representative to do so.

176. The International Court of Justice (ICJ) in its Namibia Advisory Opinion<sup>123</sup> provided that while official acts performed by *de facto* authorities “are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the [t]erritory”. This exception was upheld by the European Court of Human Rights in its case law regarding the “TRNC”<sup>124</sup> and “MRT”<sup>125</sup>. Thus, it would appear that the solution proposed by the draft law falls short of the standards supported by international

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<sup>120</sup> Law of Ukraine ‘On Ensuring the Rights and Freedoms of Internally Displaced Persons’, No 1706-VII of 20 October 2014.

<sup>121</sup> Law of Ukraine ‘On amendments to the Civil Procedural Code of Ukraine concerning the establishment of the fact of birth or death on the temporary occupied territory’, No. 3171 of 22 September 2015.

<sup>122</sup> On 16 October 2015, Ukraine informed the United Nations Secretary-General as the depository of international treaties that “documents or requests made or issued by the occupying authorities of the Russian Federation, its officials at any level in the Autonomous Republic of Crimea and the city of Sevastopol and by the illegal authorities in certain districts of the Donetsk and Luhansk oblasts of Ukraine, which are temporarily not under control of Ukraine, are null and void and have no legal effect regardless of whether they are presented directly or indirectly through the authorities of the Russian Federation”. See note of the Ministry of Foreign Affairs of Ukraine №72/22-612-2486 of 12 October 2015).

<sup>123</sup> ICJ Advisory Opinion of 21 June 1971 – *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, paragraph 125.

<sup>124</sup> *Loizidou v. Turkey* (Merits), Judgment of 18 December 1996, ECHR (1996), para. 45; *Cyprus v. Turkey* (Merits), Judgment of 10 May 2001, ECHR (2001), para. 90.

<sup>125</sup> *Ilascu and Others v. Moldova and Russian Federation*, Application n. 48787/59, Judgment of 8 July 2004, para. 458-461.

jurisprudence, which imply direct recognition by Ukraine's institutions of the registration of births, deaths and marriages performed by *de facto* authorities.

### **I. Freedom of movement**

177. On 16 September, the Government of Ukraine amended<sup>126</sup> decree No 367 of 4 June 2015 concerning the procedure of entry into and exit from Crimea for foreigners and stateless persons. The amended decree widens the category of people who can move across the ABL if they are in possession of special permits. In addition to the categories mentioned under the previous decree<sup>127</sup>, the new one includes journalists, human rights defenders, representatives of international NGOs, religious officials and persons taking part in the activities of the Mejlis.

178. The procedure, however, to obtain a permit remains cumbersome and requires the approval of a relevant Ukrainian Ministry. In addition, the request for a permit cannot be filed from abroad but only on the Ukrainian territory. It should be noted that the amended decree maintains provisions regarding restrictions of freedom of movement for Ukrainian children below 16, who are required to travel with an international passport and to obtain the notarized authorization of the second parent when traveling with only one.

## **XI. CONCLUSIONS AND RECOMMENDATIONS**

179. All measures need to be taken to prevent the resumption of hostilities in the eastern regions of Ukraine, to save lives and to prevent further hardship for those people living in the conflict-affected area. With the tenuous respect for the ceasefire agreed upon on 29 August, people still continue to be killed and injured.

180. OHCHR reiterates that the full implementation of the Minsk Agreements remains the only viable strategy for achieving a peaceful solution in Donbas, which would pave the way for fuller respect of the rights of people, both in the conflict area and elsewhere in Ukraine. Continuing presence of foreign fighters, with some having been established by a Ukrainian court or identified by the Government of Ukraine as servicemen from the Russian Federation, as well as the reported influx of heavy and sophisticated weaponry from the Russian Federation and the lack of effective control by the Government of Ukraine of the state border with the Russian Federation remain the major impediments to this solution<sup>128</sup>.

181. The impact of the conflict on economic and social rights for people residing in the conflict areas of Donetsk and Luhansk regions remains significant. The interruption of access to basic services is life-threatening and can have a life-long impact on the affected population, hindering the post-conflict recovery. It is especially worrying with the onset of winter. In this regard, unimpeded access to humanitarian assistance for those people who have been directly affected by the armed conflict in territories controlled by the armed groups remains vital. HRMMU considers that both the Government and the armed groups have the obligation to ensure the critical needs of the affected population are met to prevent the decline

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<sup>126</sup> Decree No 722.

<sup>127</sup> People who could obtain a permit included those with relatives living or buried in Crimea, having property on the peninsula, participating "in the defence of national interests of Ukraine", performing diplomatic or consular functions and railway system employees.

<sup>128</sup> On 25 September, Dzerzhynskiy District Court of Donetsk region sentenced a citizen of the Russian Federation, who confessed to being an acting officer of the Armed Forces of the Russian Federation, to 14 years of imprisonment, under article 437 (planning, preparation and waging of an aggressive war) of the Criminal Code. The man was apprehended by the State Border Guard Service of Ukraine on 25 July 2015, as the truck he was driving approached the check-point of 'Berezove' (Donetsk region) carrying boxes with grenades, cartridges and rocket-propelled grenades. For more information on his case and on the case of two other citizens of the Russian Federation alleged to be acting servicemen of the Armed Forces of the Russian Federation, see paragraphs 58-59 and 188 of the 11<sup>th</sup> HRMMU report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2015.



in their health and welfare, including through the provision of humanitarian assistance, in line with obligations under international humanitarian law.

182. Accountability and an end to impunity should remain at the core of efforts to ensuring peace, reconciliation and long-term recovery throughout Ukraine. All violations and abuses of human rights must be investigated and the perpetrators, whoever they are, should be brought to justice. This concerns events dating back to 2014 and the first half of 2015, and the new cases. Investigations into allegations of killings, summary executions, torture and ill-treatment, and enforced disappearance and illegal detention shall become a priority.

183. The human rights situation in Crimea continues to be of great concern due to persistent allegations of violations of the rights to life, liberty, security and physical integrity, and non-respect of due process, fair trial rights and the rights to freedoms of expression and peaceful assembly. The trade blockade of Crimea has human rights implications and affects more acutely some vulnerable groups. The lack of HRMMU access to Crimea continues to be an impediment for OHCHR to effectively fulfil its mandate in Ukraine. OHCHR also reiterates that an environment conducive to the promotion and protection of human rights in Ukraine depends on respect for General Assembly resolution 68/262 on the sovereignty and territorial integrity of Ukraine.

184. OHCHR has noted progress made by the Government of Ukraine in the implementation of some recommendations contained in previous HRMMU reports, including their declaration to extend the jurisdiction of the International Criminal Court beyond the Maidan events, the adoption of the country's first human rights strategy, and of various laws, including legislation mentioning gender identity and sexual orientation as prohibited grounds of discrimination in employment relations.

185. Recommendations made in OHCHR previous reports on the human rights situation in Ukraine published since April 2014, that have not yet been acted upon or implemented, remain valid. OHCHR calls upon all parties to implement the following recommendations:

**To all parties involved in the hostilities in Donetsk and Luhansk regions:**

- a) Guarantee efforts to abide by and implement the Minsk Agreements to end the conflict in the Donbas region and bring an end to the fighting in all localities.
- b) Ensure the protection of civilians in conflict affected areas in full conformity with international human rights and humanitarian law, including complete avoidance of indiscriminate shelling of populated areas.
- c) Report on, and investigate all cases and incidents of civilian casualties caused by military action.
- d) Establish civilian casualty mitigation cells within their competent bodies to prevent violations of international humanitarian law leading to civilian casualties.
- e) Prioritize demining activities and conduct mine risk awareness outreach to children and communities.
- f) Release all those unlawfully or arbitrarily detained without delay and in conditions of safety.
- g) Treat all detainees, civilian or military, humanely and according to international human rights and humanitarian law standards.
- h) Investigate and prosecute any person found to be responsible for serious human rights violations or abuses, including torture and other cruel, degrading or inhumane treatment or punishment, summary or arbitrary executions, or enforced or involuntary disappearances, including those with command responsibility.
- i) Ensure freedom of the media and the liberty, security and rights of journalists to freely conduct their legitimate professional activities.



- j) Facilitate the work of humanitarian actors, both individuals and institutions, to ensure that the population has access to relief aid, particularly those delivering medication, providing medical care and basic services.
- k) Provide additional security guarantees for humanitarians, both individuals and institutions, accessing settlements divided by the contact line.

#### **To the Government of Ukraine**

- a) Enable the Office of the Military Prosecutor to exercise general oversight over the military and law enforcement.
- b) Ensure prompt and effective investigations of all crimes motivated by ethnic or religious hatred.
- c) Reconsider restrictions of freedom of movement imposed by the Temporary Order vis-à-vis ICCPR provisions, particularly legality and proportionality of the restrictions. Meanwhile, facilitate the movement of civilians across the contact line by increasing the number of transport corridors, especially in Luhansk region, restore public transportation between the checkpoints and nearest towns, equip all checkpoints with medical services, water, sanitation and heating facilities to create favorable conditions for crossing, including during winter.
- d) Facilitate and ensure access of the victims of torture, especially civilians, to medical, rehabilitation, social and employment services.
- e) Develop legal mechanism for civilians whose property has been damaged, looted or seized for military purposes to seek and receive compensation.
- f) Seek ways to ensure progressive realization of economic and social rights, especially right to social security and protection for the people living in the conflict areas, including by ensuring continuity in public social services.
- g) Exclude from the draft Labour Code discriminatory provisions allowing waiving in the security operation area the application of certain rules regulating employment relations.
- h) In line with the jurisprudence of the International Court of Justice and the European Court of Human Rights, recognize civil registration documents (birth, death and marriage certificates) issued in territories controlled by the armed groups.
- i) Ensure the rule of law on the territory of the Kherson region adjacent to the three crossing points between mainland Ukraine and the Crimean peninsula.
- j) Take steps to remove the illegal roadblocks, guarantee the safety of passengers and pedestrians, and prevent unauthorized people from carrying out law enforcement functions in the areas adjacent to the crossing points between mainland Ukraine and the Crimean peninsula.

#### **To the *de facto* authorities of Crimea and to the Russian Federation**

- k) Permit HRMMU to access Crimea in order to ensure effective fulfilment of its mandate;
- l) Stop using law enforcement bodies and the justice system as instruments of political pressure, blackmail and intimidation of opponents.
- m) Guarantee impartial investigations and fair trial conditions for Crimean Tatars undergoing criminal proceedings in relation to the protests of 26 February 2014.
- n) Investigate the killing of Crimean Tatar Reshat Ametov and enforced disappearances of Crimean civil society and human rights activists Timur Shaimardanov and Seiran Zinedinov<sup>129</sup> and Vasyl Chernysh<sup>130</sup>, and bring perpetrators to justice.

<sup>129</sup> See paragraph 214 of the 7<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 17 September to 31 October 2014.

<sup>130</sup> See paragraph 80 of the 8<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 1 to 30 November 2014.

- o) Release Ukrainian citizens Oleh Sientsov and Oleksandr Kolchenko who were sentenced by a Russian Federation court in denial of due process and fair trial proceedings.
- p) Allow unimpeded exercise of the freedoms of peaceful assembly, expression and religion by all Crimean residents and to accept and protect all non-violent forms of expression.
- q) Ensure the continued availability of education in the Ukrainian language.

# Annex 771

OHCHR, Report on the Human Rights Situation in Ukraine (16 February to 15 May 2016)



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**Office of the United Nations High Commissioner  
for Human Rights**

**Report on the human rights situation in  
Ukraine 16 February to 15 May 2016**





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# Ukraine



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Plotting date: 29 Feb 2016  
 Source: UNHCR  
 Feedback: [mapping@unhcr.org](mailto:mapping@unhcr.org)  
 Filename: UNHCR\_AFRSIS\_Template\_A4L-presence



OHCHR HRMMU office locations in Ukraine



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Sources: OHCHR HRMMU reports  
Feedback: gis.ukraine@sheltercluster.org  
Filename: UNHCR\_ArcGIS\_East\_Buffer\_Zone\_OCHCHR\_A3P



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## I. Executive Summary

1. The fourteenth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine, based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)<sup>1</sup> covers the period from 16 February to 15 May 2016<sup>2</sup>. This report also marks two years since the start of the human rights crisis in Ukraine.

2. When the conflict broke out in spring 2014 with the influx<sup>3</sup> of foreign fighters, including citizens of the Russian Federation, ammunition and heavy weaponry into east Ukraine from across the border with the Russian Federation and the Government of Ukraine's security 'anti-terrorism operation' response, OHCHR witnessed major violations and abuses of human rights. The lack of security and at times intense military hostilities contributed to a total breakdown in the rule of law, leading to lack of any real protection for those opposing the presence of armed groups and a worsening human rights situation in certain areas of Donetsk and Luhansk regions. Since mid-2014, OHCHR has recorded some 1,500 accounts from victims, witnesses and relatives. These accounts show that all parties are responsible for human rights violations and abuses and violations of international humanitarian law. Above all, these testimonies – and the civilian casualty data collected – demonstrate that civilians have paid the greatest price for this conflict.

3. From mid-April 2014 to 15 May 2016, OHCHR recorded 30,903 casualties in the conflict area in eastern Ukraine, among Ukrainian armed forces, civilians and members of the armed groups. This includes 9,371 people killed and 21,532 injured<sup>4</sup>. After two years, the situation in the east of Ukraine remains volatile and may develop into a 'frozen conflict', creating a protracted environment of insecurity and instability; escalate, with dire consequences for civilians living in the conflict-affected area; or move towards sustainable peace through the meaningful implementation of the Minsk Package of Measures. The stakes are high, and it is essential that human rights abuses and violations are addressed to prevent further abuses and to build confidence toward a durable solution to the crisis.

4. Since the start of the security operation, hundreds of people accused of involvement in or affiliation with the armed groups have been detained and charged

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<sup>1</sup> OHCHR was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address human rights concerns. For more details, see paragraphs 7–8 of the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

<sup>2</sup> The report also provides an update of recent developments on cases that occurred during previous reporting periods.

<sup>3</sup> *The declaration of the self-proclaimed 'Donetsk people's republic' and the self-proclaimed 'Luhansk people's republic' have not only precipitated the escalation of armed conflict in certain districts of Donetsk and Luhansk regions, but also brought in an influx of fighters from abroad that have had significant influence on human rights in Ukraine. .... The Working Group was informed that foreigners joined combat to support all parties to the conflict. These foreigners came from various countries, mostly in Europe, and joined volunteer battalions on the side of the Government and the armed groups of the self-proclaimed 'Donetsk people's republic' and the self-proclaimed 'Luhansk people's republic'. References to the use of mercenaries by all parties to the conflict, and these require further analysis by the delegation, in light of the specified definition of mercenary in international law.* Preliminary findings by the UN Working Group on the use mercenaries on its Mission to Ukraine, 18 March 2016, Kyiv, Ukraine

<sup>4</sup> This is a conservative estimate of OHCHR based on available data. These totals include: casualties among the Ukrainian forces, as reported by the Ukrainian authorities; 298 people from flight MH-17; civilian casualties on the territories controlled by the Government of Ukraine, as reported by local authorities and the regional departments of internal affairs of Donetsk and Luhansk regions; and casualties among civilians and members of the armed groups on the territories controlled by the 'Donetsk people's republic' and the 'Luhansk people's republic', as reported by the armed groups, the so-called 'local authorities' and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and due to overall under-reporting, especially of military casualties. The increase in the number of casualties between the different reporting dates does not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date.



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under existing counter-terrorism provisions. Individuals detained by Ukrainian authorities in connection with the armed conflict have been tortured and ill-treated, and continue to face systematic violations of their due process and fair trial rights. In many cases, criminal proceedings against individuals charged with terrorism offenses have brought the lack of independence and impartiality of the judiciary and legal profession into harsh relief. Further, in conducting the security operation and armed conflict, Ukrainian authorities have often run afoul of the principle of non-discrimination through adopting policies that distinguish, exclude, and restrict access to fundamental freedoms and socio-economic rights to persons living in the conflict-affected area<sup>5</sup>. The Government has applied special measures to the conflict zone, lowering human rights protection guarantees and derogating from a number of international treaty obligations.

5. Maintaining a presence in Donetsk has allowed OHCHR to monitor the human rights situation under armed group control and to advocate for human rights protection. The self-proclaimed ‘Donetsk people’s republic’ and self-proclaimed ‘Luhansk people’s republic’<sup>6</sup> have undermined the human rights of the estimated 2.7 million people residing under their control. They have imposed an arbitrary system of rules, established a network of places of deprivation of liberty where detainees are tortured and ill-treated, and cracked down on dissent. The ‘ministry of state security’ of the ‘Donetsk people’s republic’ has emerged as the main entity responsible for carrying out repressive house searches, arrests, and detentions. In a worrying pattern of behaviour, the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ continued to deny international organizations and external observers unfettered access to places of deprivation of liberty. Subjected to unaccountable rule and excluded from the legal system applying to the rest of Ukraine, the population living in the territories controlled by the armed groups has been effectively denied basic protection and deprived of basic human rights and freedoms.

6. The conflict has severely impacted economic and social rights on either side of the contact line. Many depend on humanitarian assistance, which has been severely curtailed following decisions by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to deny the majority of humanitarian actors access to territories under their control, particularly those conducting protection activities. A large number of internally displaced persons (IDPs) continue to meet daily obstacles in exercising their economic and social rights due to discrimination, barriers to receiving payments and entitlements, and finding appropriate housing. The number of cases where civilian housing and property have been damaged, looted or occupied has increased, demonstrating an urgent need for a mechanism to address the needs of those affected for remedy, including reparation. Victims of torture, especially civilians, and families of missing continue to struggle in accessing State medical and social services.

7. The conflict has also led to widely felt restrictions on fundamental rights to freedoms of expression, association, peaceful assembly and religion across Ukraine. There have been concerning developments related to fundamental freedoms in the territory controlled by the Government of Ukraine, including the use of counter-terrorism legislation to curtail the activities of those that may express views differing from the authorities’. In armed group-controlled areas, the lack of freedom of expression, freedom of association and freedom of assembly leads OHCHR to have serious concerns about the ability to implement free and fair elections in Donetsk and Luhansk regions as prescribed in the Package of Measures for the Implementation of the Minsk Agreements.

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<sup>5</sup> The Temporary Order on the control of movement of people, transport vehicles and cargoes along the contact line in the Donetsk and Luhansk regions was developed and approved by ‘the Operational Headquarters of Management of the Anti-Terrorist Operation’, and entered into force as of 21 January 2015. After consultations with civil society it was amended on 12 June 2015.

<sup>6</sup> Hereinafter ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’

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8. Following the extension of Russian Federation control over the Autonomous Republic of Crimea and the City of Sevastopol<sup>7</sup> on 16 March 2014, OHCHR was denied access but has continued to monitor the human rights situation on the peninsula from Kyiv through a wide network of contacts and monitoring visits along the administrative border, guided by United Nations General Assembly Resolution 68/262 on the territorial integrity of Ukraine. In the two years after the Russian Federation extended its jurisdiction over Crimea, the human rights situation in the peninsula has sharply deteriorated. Russian Federation laws and citizenship have been compulsorily imposed on the population of the peninsula. Those who have refused to accept this state of affairs have faced harassment and discrimination in their daily life, including through the denial of access to free health care and other social services. Treatment of people living with HIV and drug-users has become inadequate. Fundamental freedoms of assembly, speech, association, conscience and religion have been significantly curtailed. Anti-extremism and anti-terrorism laws have been used to criminalize non-violent behaviour and stifle dissenting opinion, while the judicial and law enforcement systems have been instrumentalized to clamp down on opposition voices. The majority of victims have been Crimean Tatars and Ukrainians who publicly opposed Crimea's unrecognized 'accession' to the Russian Federation. On the other hand, human rights abuses committed by paramilitary groups, such as the Crimean self-defense, remain unpunished. The expression of Ukrainian culture and identity and the use of Ukrainian language are viewed with suspicion, discouraged and sometimes banned by the *de facto* authorities.

9. There has no meaningful progress in the investigation into the Maidan events in Kyiv and ensuing violence<sup>8</sup>. High-level officials that bear responsibility for ordering and overseeing the violence have to date eluded justice. While there has been some progress in the investigation into the 2 May 2014 violence in Odesa and the resulting death of 48 individuals, serious concerns remain. These cases represent a barometer in how Ukraine is able to bring perpetrators to account and ensure justice for victims and their families.

10. Throughout the last two years, OHCHR has constructively engaged with the Government of Ukraine and its various organs. OHCHR has supported their efforts to fulfil their international human rights obligations, through sharing information regarding documented human rights violations, advising on the incorporation of international human rights standards into draft legislation and policies, strengthening national institutions that promote and protect human rights under the rule of law, and counselling on the National Human Rights Action Plan and Strategy. OHCHR has issued concrete recommendations and engaged with relevant authorities on the status and progress of their implementation. OHCHR has also engaged with the armed groups in Donetsk and Luhansk regions in advocating for the protection of and respect for the rights of people under their control and in their custody, as well as raising awareness of international human rights standards and humanitarian law. The abuses and violations documented in this report indicate that at this juncture, despite the lower intensity and frequency of hostilities, the full cessation of hostilities and meaningful implementation of the Minsk Agreements is critical to improving the overall human rights situation in Ukraine.

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<sup>7</sup> Hereinafter 'Crimea'

<sup>8</sup> The International Advisory Panel constituted by the Secretary-General of the Council of Europe commended the "genuine efforts, especially on the part of the representatives of the prosecuting authorities to address more closely the international requirements which should govern the investigations." Among the encouraging changes, the panel cited the creation of the Special Investigation Division in the Prosecutor General's Office and more active position adopted by the parliament to improve the quality of the investigations into the Maidan events.

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## II. Rights to life, liberty, security and physical integrity

*“When evening starts, I cower and sit in the corridor. There’s rustle, and a rocket is flying. I pray, God, please, let it miss the house, let it miss the house.”*

- Female resident of Makiivka

11. Since mid-April 2014, up to 2,000 civilians have been killed in armed hostilities, mostly as a result of indiscriminate shelling of populated areas from various artillery systems. Dozens of individuals were subjected to summary executions and killings, or died of torture and ill-treatment in custody. Hundreds of people remain missing – either in secret detention or, most likely, killed – with their bodies pending recovery or identification.

12. Arbitrary deprivation of liberty has reached an unprecedented scale in the territories controlled by the armed groups, with a broad network of unrecognized detention facilities. Thousands of people have gone through these places of deprivation of liberty, subjected to inhuman conditions of detention combined with the absence of access by external observers, torture and ill-treatment. In Government-controlled territories, OHCHR continues to receive allegations about unofficial places of detention in the conflict zone where conflict-related detainees are kept *incommunicado* and subjected to torture and ill-treatment, which the authorities systematically deny.

### A. Violations of international humanitarian law in the conduct of hostilities

13. Since 16 February 2016, the ceasefire in the east of Ukraine has slowly unravelled. The skirmishes in Avdiivka and Yasynuvata (both in Donetsk region) that erupted in the beginning of March 2016 are ongoing, affecting both towns on either side of the contact line, with populations of 35,000 each. Since mid-April, an increase in heavy weaponry use has been observed by monitors of the Organization for Security and Co-operation in Europe (OSCE) near the contact line. The presence of tanks and anti-aircraft missiles in residential areas<sup>9</sup> endangers civilians and indicates that the risk of a re-escalation in hostilities remains high. A renewed “cessation of fire” reached in late April (ahead of the Orthodox Easter) stymied the spike in hostilities, but remains precarious. The armed conflict between the Government of Ukraine and the armed groups of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ continues to be fought without due regard for civilian protection.

14. Ukrainian armed forces and armed groups continue to lay landmines, including anti-personnel mines, despite Ukraine’s obligations as a State party to the 1997 Mine Ban Treaty<sup>10</sup>. Credible estimates indicate that mines contaminate large areas of agricultural land in east Ukraine, often in areas which are poorly marked, near roads and surrounding civilian areas. This has resulted in civilians being killed and maimed, often while walking to their homes and fields. These risks are particularly acute for people living in towns and settlements near the contact line, as well as the 23,000 people who cross the contact line every day.

15. Water filtration stations and other essential infrastructure have been damaged in hostilities in the shelling of densely-populated civilian areas, as the parties to the

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<sup>9</sup> Daily Report, Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30hrs, 15 May 2016; Daily Report, Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30hrs, 1 May 2016; Daily Report, Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30hrs, 27 April 2016

<sup>10</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997

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conflict have failed to take all feasible precautions in attacks to protect and prevent the destruction of objects indispensable to the survival of the civilian population<sup>11</sup>. In Krasnohorivka, a village under Government control, there has been no heating and no hot water for two years following the shelling of a gas pipeline in 2014. The pipeline cannot be repaired due to ongoing hostilities in that area. In early May 2016, it was reported that in parts of Debaltseve and nearby Vuhlehirsk, residents have no access to water due to damaged pipelines. As of April 2016, residents of Mariinka, who relied on the Petrovskiy district water station in Donetsk, have sporadic access to potable water. It is alleged that armed groups are deliberately limiting access to water for residents of Government-controlled areas. Depriving people of access to safe water denies them a fundamental human right.

16. Ukrainian armed forces and armed groups have appropriated residential property of local residents for military use (See: Housing, land, and property rights). In many cases, this has forced the owners or residents to leave their homes and in some cases, their communities. On 22 April 2016, OHCHR witnessed Ukrainian armed forces members occupying residential houses in Luhanske. Residents complained that they were forced to leave their homes, which had been damaged and looted by soldiers. In response to OHCHR advocacy, soldiers vacated the houses, reportedly moving closer to the contact line. People living in contested areas close to the contact line are most exposed to military forces and armed groups and are most vulnerable to coercion. Female-headed households are at particular risk of losing their homes to military use, especially in areas close to the contact line where there is little rule of law or law enforcement presence. OHCHR recalls the general protection afforded to the civilian population and individual civilians against the dangers arising from military operations<sup>12</sup>.

17. Hostilities have also endangered medical personnel evacuating the wounded, medical facilities, and journalists, with disregard to their special protection under international humanitarian law<sup>13</sup>. On 16 March 2016, a female medical first responder with the ‘Luhansk people’s republic’ was injured in Kalynove, when a shell hit her unmarked vehicle. According to the ‘ombudsperson’ of the ‘Donetsk people’s republic’, 67 medical facilities in the areas controlled by armed groups remain damaged as the result of hostilities. In addition, OHCHR continued to receive reports about the military occupation of medical facilities. The sole polyclinic in Trudovskii neighbourhood in Petrovskiy district of Donetsk city continued to be used by armed groups<sup>14</sup>. Such conduct violates binding international humanitarian law<sup>15</sup>.

18. OHCHR is concerned about the application of counter-terrorism laws and the security regulatory framework to the provision of medical assistance to the sick and wounded in armed group-controlled areas. The Temporary Order has for a year caused delays in the delivery of humanitarian aid and basic medical necessities, resulting in continued shortages of supplies for civilians living in armed group-controlled areas, particularly affecting among children. Judicial decisions have also recast medical care as impermissible support to the armed group-controlled areas<sup>16</sup>.

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<sup>11</sup> Article 15, Additional Protocol II to the four Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 54

<sup>12</sup> Article 13(1), Additional Protocol II to the four Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 22.

<sup>13</sup> Article 9, Additional Protocol II to the four Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 28.

<sup>14</sup> HRMMU interview, 30 March 2016.

<sup>15</sup> Article 11, Additional Protocol II to the four Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 22.

<sup>16</sup> In January 2015, a court in Lysychansk, Luhansk region, rules that the provision of medicine by an owner of a pharmacy to a hospital in armed group-controlled areas amounted to the crime of providing “assistance to members of a criminal organization” through “creating conditions for medical treatment of members of

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19. Due to ongoing heavy shelling in the western outskirts of Donetsk near the contact line, some residents still use bomb shelters on a regular basis, sleeping in damp, damaged basements on a nightly basis. Over the reporting period, OHCHR recorded civilian casualties caused by artillery shelling and the use of small arms and light weapons in the Government-controlled towns Avdiivka and Mariinka, and the villages of Novooleksandrivka, Pisky and Vodiane (all in Donetsk region). Civilian casualties were also recorded in the contested village of Zaitseve (Donetsk region), as well as in the cities of Donetsk, Horlivka and Makiivka, and the villages of Kominternove, Mykolaivka, Olenivka and Yakovlivka (all controlled by the ‘Donetsk people’s republic’).

20. On 27 April 2016, civilians waiting to cross a checkpoint in Olenivka village, on the road between Mariupol and Donetsk city, were hit by shelling at night. Four civilians were killed and eight others injured. According to OSCE crater analysis, the mortar rounds were fired from the west-south-westerly direction<sup>17</sup>. This indicates the responsibility of the Ukrainian armed forces. The checkpoint is routinely – both during day and night time – surrounded by passenger vehicles waiting to cross the contact line due to the restrictions imposed by the Temporary Order<sup>18</sup>. This is a stark illustration of the impact of the limitations on freedom of movement, which have compelled civilians to spend prolonged periods exposed to the violence and risks of ongoing hostilities near the contact line.

21. Humanitarian assistance rarely reaches the villages and towns in the “grey” and “buffer” zone. According to the World Food Programme (WFP)<sup>19</sup>, the two-year long conflict in eastern Ukraine has left 300,000 people severely food insecure and in need of immediate food assistance. It added that people living in the armed group-controlled territories of Luhansk region and near the conflict line were most affected by food insecurity with over half of the population, in both the Government-controlled and non-Government controlled areas, having experienced a complete loss or a significant reduction of income. The ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ denial of access to humanitarian actors and resulting lack of protection activities, at a time when the civilian population in armed group-controlled territories is experiencing undue hardship, further violates norms of international human rights and humanitarian law<sup>20</sup>.

22. OHCHR positively notes the efforts of the Government of Ukraine to include in the training of its armed forces personnel humanitarian law, including by holding some 25 training workshops with the support of the International Committee of the Red Cross.

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a criminal organization”. Lysychansk city court, 19 January 2015, № 415/4328/14-к (accessible at: <http://reyestr.court.gov.ua/Review/42468935>)

<sup>17</sup> Spot Report by the OSCE Special Monitoring Mission to Ukraine (SMM): Shelling in Olenivka, 28 April 2016

<sup>18</sup> HRMMU interview, 27 April 2016.

<sup>19</sup> World Food Programme, Conflict In Eastern Ukraine Leaves 1.5 Million People Hungry, 4 April 2016 (accessible at: <https://www.wfp.org/news/news-release/conflict-eastern-ukraine-leaves-15-million-people-hungry>)

<sup>20</sup> Article 18, Additional Protocol II to the four Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 55

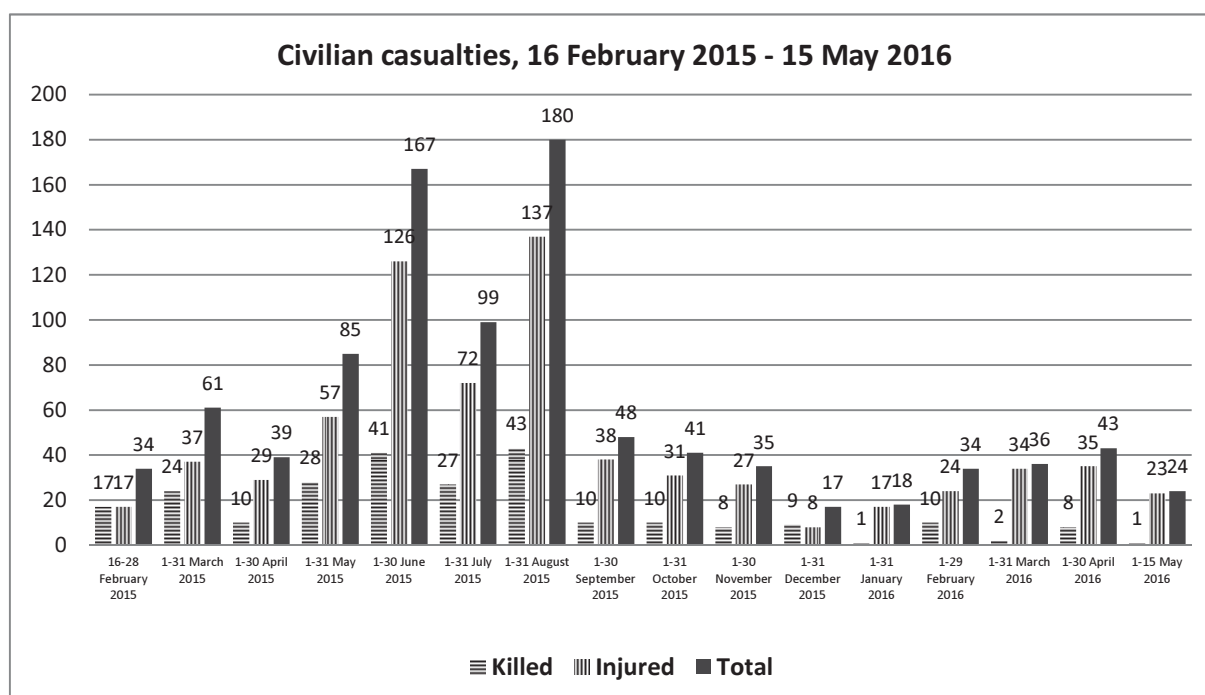


## B. Casualties

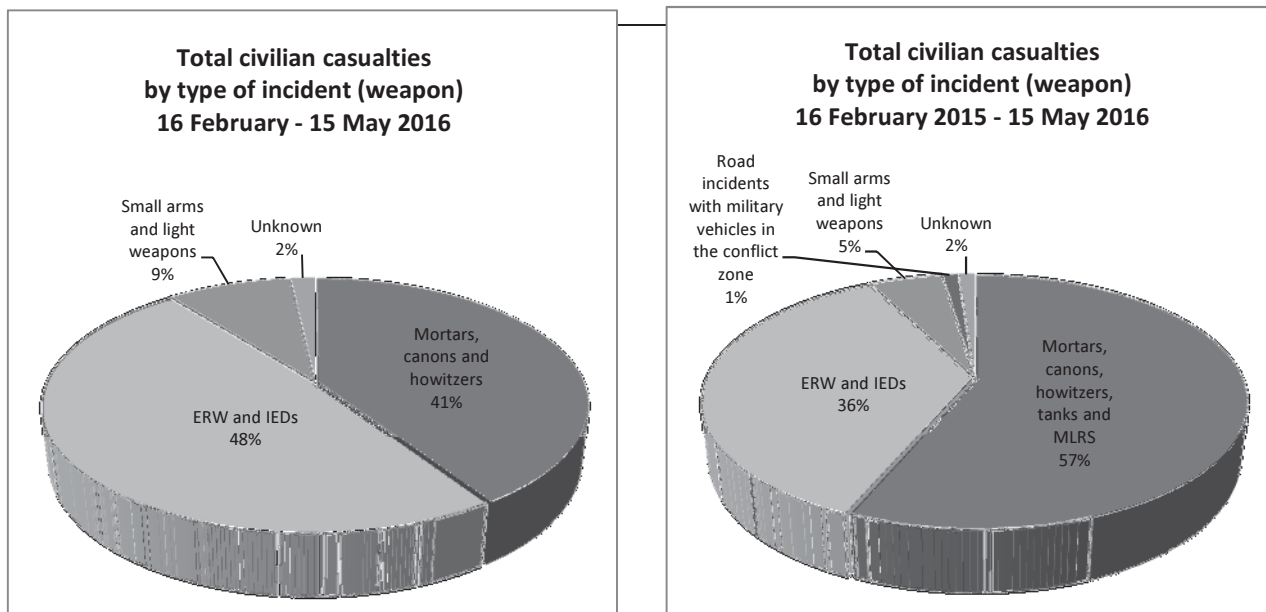
23. In total, from mid-April 2014 to 15 May 2016, OHCHR recorded 30,903 casualties in the conflict area in eastern Ukraine, among Ukrainian armed forces, civilians and members of the armed groups. This includes 9,371 people killed and 21,532 injured<sup>21</sup>.

24. The overall trend of relatively low levels of civilian casualties, observed since the ceasefire of 1 September 2015, continued. During the reporting period, average monthly civilian casualties remained to be among the lowest since the beginning of the conflict in mid-April 2014. Between 16 February and 15 May 2016, OHCHR recorded 113 conflict-related civilian casualties in eastern Ukraine: 14 killed (three women, ten men and one adult whose sex is unknown) and 99 injured (24 women, 57 men, and seven adults whose sex is unknown; six girls, four boys and one child whose sex is unknown).

25. Compared to the previous reporting period, the share of casualties resulted from shelling increased: five killed (three women and two men) and 41 injured (14 women, 19 men and five adults whose sex is unknown; two boys and a child whose sex is unknown). Explosive remnants of war (ERW) and improvised explosive devices (IEDs) continued to account for the majority of civilian casualties: eight deaths (a woman, six men and an adult whose sex is unknown) and 47 injuries (seven women, 30 men and two adults whose sex is unknown; six girls and two boys). Small arms and light weapons accounted for ten casualties: a man was killed and three women and six men were injured. Two adults were injured from unspecified firearms.



<sup>21</sup> This is a conservative estimate of OHCHR based on available data. These totals include: casualties among the Ukrainian forces, as reported by the Ukrainian authorities; 298 people from flight MH-17; civilian casualties on the territories controlled by the Government of Ukraine, as reported by local authorities and the regional departments of internal affairs of Donetsk and Luhansk regions; and casualties among civilians and members of the armed groups on the territories controlled by the 'Donetsk people's republic' and the 'Luhansk people's republic', as reported by the armed groups, the so-called 'local authorities' and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and due to overall under-reporting, especially of military casualties. The increase in the number of casualties between the different reporting dates does not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date.



### C. Missing persons and the recovery and identification of mortal remains

26. As of 1 April 2016, 3,687 criminal cases had been initiated by the National Police of Ukraine into cases of missing people in Donetsk and Luhansk regions since the beginning of the security operation. Besides, 2,755 criminal investigations into abductions or kidnappings had been initiated. The whereabouts of the majority of the missing or abducted persons have been established; hundreds of people, however, remain missing or believed to be in detention (recognized or secret) by the armed groups or Ukrainian authorities.

27. Since 1 April 2014, 1,351 unidentified bodies have been recovered in Government-controlled territories of the conflict zone. As of 1 April 2016, 523 of these bodies have been identified while 828 were pending identification. The armed groups have also publicly reported on a number of unidentified bodies in morgues or buried in unmarked graves on the territories they control. In early April 2016, a dozen of bodies of Ukrainian servicemen and members of armed groups were recovered in the Government-controlled territories and in the territories controlled by the armed groups. There are still many bodies of fallen soldiers and members of armed groups that have not yet been recovered. In the 'Donetsk people's republic', at least 430 families are looking for their missing relatives.

28. A draft law 'On prevention of disappearance of people and facilitation in tracing the missing persons' has been developed under the auspices of the Ministry of Justice of Ukraine. This marks an important step toward streamlining relevant national procedures and the implementation of international human rights and humanitarian law obligations<sup>22</sup>. However, it requires further development, such as the establishment of a centralized entity or institution dealing with missing persons.

### D. Summary executions, enforced disappearances, unlawful and arbitrary detention, and torture and ill-treatment

29. Enforced disappearances, arbitrary detention, torture and ill-treatment remain deeply entrenched practices. Though new cases documented by OHCHR mostly fall outside of this reporting period, OHCHR believes that this demonstrates the hidden character of the phenomenon and delayed reporting by victims and witnesses, rather than a genuine improvement in the conduct of relevant actors. Enforced

<sup>22</sup> Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 117.

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disappearances are continuing offences, as long as the perpetrators continue to conceal the fate and whereabouts of the disappeared persons<sup>23</sup>.

*Ukrainian law enforcement, armed and security forces*

30. OHCHR received allegations of enforced disappearances, arbitrary and *incommunicado* detention, torture and ill-treatment committed by Ukrainian law enforcement. Among these were over 20 cases of arbitrary detention and ill-treatment<sup>24</sup>. OHCHR communicates well-founded information to the relevant Ukrainian authorities and requests investigations into the allegations. Many of the victims of these cases approach OHCHR demanding justice for the violations they suffered. Until there is genuine investigation and prosecution of those responsible, these victims continue to have their rights to access to justice and redress mechanisms violated.

31. The majority of cases documented during the reporting period concerned incidents in the conflict zone. While the cases from 2014 and early 2015 suggest that volunteer battalions (often in conjunction with the Security Service of Ukraine (SBU)) were frequent perpetrators, information from the late 2015 and early 2016 mostly implicate SBU. Many of these cases concern *incommunicado* detention in unofficial detention facilities where torture and ill-treatment are persistently used as means to extract confessions or information, or to intimidate or punish the victim. SBU continued to deny practicing secret or *incommunicado* detention, the mere existence of unofficial detention facilities, and the whereabouts and fate of individuals who were forcibly disappeared. SBU officials continue to maintain that allegations documented by OHCHR are “unfounded insinuations” made by criminals trying to portray themselves as victims.

32. On 20 February 2016, a Mariupol resident was transferred to Donetsk as part of a simultaneous release of detainees. Since March 2015, he had been held *incommunicado* at the Kharkiv SBU. He was apprehended in Mariupol on 28 January 2015 and kept in an illegal detention facility. There, he was reportedly severely tortured and electrocuted by three men who wanted him to identify supporters of the ‘Donetsk people’s republic’ in Mariupol. On 8 February 2015, he was charged under article 258 (terrorism) of the Criminal Code. The following day, the court placed him in Mariupol SIZO. On 12 March 2015, he was released from custody under house arrest and, while leaving the courthouse, was apprehended by SBU and transferred to Kharkiv SBU. At the time of his arrival, 72 individuals were held there; 17 when he was released on 20 February 2016.

33. As of March 2016, OHCHR was aware of the names of 15 men and one woman disappeared in Kharkiv SBU. On 20 April, the Ombudsperson’s Office of Ukraine conducted an unannounced inspection visit and found that there were no detainees held at the Kharkiv SBU. A few days later, OHCHR learned from a reliable source that on 20 April, detainees were told to pack their belongings and were taken to a different location for 24 hours.

34. On 18 February 2016, a woman disappeared in the village of Zhovanka (Donetsk region), located in the so-called grey zone, after she went to check on her house. Local Ukrainian armed forces told her neighbours she had been taken to hospital for medical treatment. On 22 February, a video was released of her confessing to being an informant for the armed groups,<sup>25</sup> suggesting she had been apprehended and detained, while local forces concealed her fate and whereabouts for four days.

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<sup>23</sup> Article 17(1) of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance

<sup>24</sup> HRMMU interview, 24 March 2016; HRMMU interview, 25 February 2016; HRMMU interview, 24 March 2016; HRMMU interview, 18 March 2016; HRMMU interview, 18 March 2016.

<sup>25</sup> HRMMU interview, 25 February 2016.

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### *Armed groups*

35. OHCHR recorded new allegations of killings, abductions, arbitrary detention, torture and ill-treatment perpetrated by members of the armed groups. The accounts most often referred to incidents that took place outside the reporting period. Some victims delayed reporting until they left the areas under the control of the armed groups. In other cases, the relatives of those deprived of their liberty or otherwise abused by the armed groups requested that their cases remain confidential for fear of retribution.

36. Despite repeated requests to the ‘authorities’ of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to grant OHCHR access to places of deprivation of liberty on the territories they control, such access was not provided. All these factors considerably limit OHCHR’s ability to report on human rights abuses perpetrated on the territories controlled by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. Due to the absence of due process, redress mechanisms, and denial of access to external observers, OHCHR remains particularly concerned about the situation of individuals deprived of their liberty by armed groups. The information that has been obtained by OHCHR indicates poor conditions of detention, arbitrary and *incommunicado* detention, torture and ill-treatment.

37. A woman informed OHCHR that on 16 July 2014, her son was deprived of his liberty at the ‘Staryi Most’ checkpoint, in the town of Stanychno Luhanske (Luhansk region), controlled by the ‘Luhansk people’s republic’. She was later informed that he and another man were deprived of their liberty by a ‘mobile group’ of the ‘Luhansk people’s republic’. On 17 July, she received a phone call from a man who informed her he had been kept with her son in a house located approximately a 10 minute drive from the ‘Staryi Most’ checkpoint. The whereabouts of the man remains unknown<sup>26</sup>.

38. A serviceman of the Ukrainian Armed Forces was captured on 10 August 2015 by four members of the so-called ‘Vostok’ battalion of the ‘Donetsk people’s republic’, near the village of Verkhnioteretske (Donetsk region). They put a plastic bag on his head, handcuffed him, and drove him to a private house. He was then tied to a tree with wristbands, severely beaten, threatened, and tortured with electrical shocks at 220 volts. He lost consciousness on several occasions. After three hours of torture inflicted by some 10 men wearing masks and camouflage with the insignia of the ‘Donetsk people’s republic’, he was interrogated. No medical aid was provided to him. He was then transferred to a military base in the centre of Makiivka. In October 2015, he was taken to a sports hall, apparently in a school, not far from the military base in Makiivka and placed in a cell with two local civilians and two members of the armed groups. Within a month, he was taken to a basement of an office centre in Makiivka where he was held until his transfer to Government territory as part of a simultaneous release of detainees on 20 February 2016<sup>27</sup>. OHCHR documented a number of cases when people were deprived of their liberty by armed groups while crossing the contact line. For instance, on 14 February 2016, while crossing the contact line in Stanychno Luhanske, a man was deprived of his liberty at a check point of the ‘Luhansk people’s republic’. As of 12 May, his relatives were not informed about reasons of his deprivation of liberty, and the place where he is kept.

39. On 5 March 2016, while travelling to Donetsk through the Zaitseve/Maiorsk checkpoints, a man went missing after passing Government checkpoints. Reports indicate that he was deprived of his liberty at the checkpoint of the ‘Donetsk people’s republic’ and would have been transferred to the department of the ‘ministry of state security’ in the city of Makiivka. To date, his whereabouts remain

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<sup>26</sup> HRMMU interview, 2 March 2016.

<sup>27</sup> HRMMU interview, 4 March 2016.

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unknown. Before the conflict, the man was working in the Donetsk State University of Management. He was known for his strong pro-Ukrainian views, which he expressed at the beginning of 2014. He moved to Kyiv in 2014 as the security situation was deteriorating, and started working in the National University<sup>28</sup>.

40. OHCHR continues to receive reports of human rights abuses committed in penal colonies in the territory controlled by the 'Donetsk people's republic'. For instance, OHCHR interviewed a man sentenced to life imprisonment prior to the conflict, who was formerly held in penal colony No. 52, in the city of Yenakiieve (Donetsk region) under the control of the armed groups. In February 2015, several such prisoners in Yenakiieve were reportedly subjected to mock execution for their alleged pro-unity Ukrainian views. The first deputy of the head of the colony allegedly carried out the mock execution. Several detainees were forced to kneel in the 'square' near the administration building. After a short speech on "proper political views", the first deputy reportedly fired shots above the heads of the detainees<sup>29</sup>. Four former detainees from penal colony No. 52 informed OHCHR about an incident involving two prisoners in May 2015, where they were severely beaten for three days with the involvement of local 'police' to "teach them a lesson."<sup>30</sup>

41. Another man sentenced to life imprisonment prior to the conflict, who was formerly held in penal colony No. 52 and then transferred to Government-controlled territory, informed OHCHR that in January-February 2015, he witnessed how one detainee died. His cellmate had kidney problems, was denied treatment, and was transferred to a cell with tuberculosis patients. One day before his death, his legs were severely swollen. The head of medical staff at the facility ignored his deteriorating health condition<sup>31</sup>.

42. OHCHR welcomes the efforts by the Ombudsperson's Office to facilitate the transfer of such pre-conflict prisoners to the territory controlled by Ukraine, to allow prisoners better access to and communication with their families.

*Release of persons deprived of their liberty*

43. During the reporting period, there has been no progress regarding the release of "hostages and illegally-held persons" under the 'all for all' principle foreseen by the Minsk Agreements, although a number of simultaneous releases took place, such as a three to six release on 20 February 2016. OHCHR continues to advocate for the 'all for all' release of detainees with representatives of the armed groups, Government and facilitators.

44. According to OHCHR's Government interlocutors, the absence of a legal framework for simultaneous releases of detainees contributes to human rights violations. The release process takes place outside the protection of the law and is directly linked to *incommunicado* detention and enforced disappearance, contributes to conduct that is tantamount to hostage-taking. Moreover, the role of the SBU in coordinating the simultaneous releases compromises judicial independence.

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<sup>28</sup> HRMMU interview, 11 March 2016.

<sup>29</sup> HRMMU interview, 20 February 2016.

<sup>30</sup> HRMMU interview, 20 February 2016.

<sup>31</sup> HRMMU interview, 7 March 2016.



## E. Sexual and gender-based violence

*“They invited a notary to the building. I was offered to sign papers to surrender all my real estate. At first I refused, but then the terrorists’ chief “Vasilevich” told me that he will bring my wife and my daughter here; Chechen fighters will rape them both in front of me. Then of course I said that they can take everything they want – just don’t harm my girls.”*

- A man detained by armed groups in Donetsk region in 2014

*“They asked me if I had given birth. When I replied ‘yes, three times’ they said that it meant I was able to endure pain. So they started hitting me on the top and on the side of my head. They didn’t beat me in the face. They also hit me on the chest, legs. They beat me with their fists and with a heavy flat object.”*

- A woman detained by police in Government-controlled Donetsk region in 2015

45. Details about incidents of sexual and gender-based violence are limited and often difficult to verify. Due to the collapse of law and order in conflict-affected areas, as well as a lack of capacity of law enforcement and service providers to deal with such cases, victims rarely appeal for help. Forensic examinations have not been conducted in any of the cases documented by OHCHR. As a result, survivors may feel deterred from seeking recourse to police protection in a context where victims of sexual and gender-based violence are often confronted with inaction from state authorities or armed groups who exercise control over certain areas. The lack of services for survivors on both sides of the contact line is of particular concern, and international humanitarian actors specialized in the provision of such services are not allowed to operate in the territories controlled by armed groups.

46. Moreover, underreporting of sexual and gender-based violence can be attributed to the difficulty many women and men feel to speak about rape and other forms of sexual abuse, fear of reprisals and the stigma attached to rape. The cases documented below have been recorded in the reporting period, while the actual incidents may have taken place in 2014 and 2015. As the conflict reaches its two-year mark, it seems that survivors of sexual and gender-based violence are increasingly able to speak about their experiences in detention during the early stages of the conflict.

47. During the reporting period OHCHR continued to document cases of conflict-related sexual and gender-based violence<sup>32</sup>. While certain cases may be attributed to general lawlessness, the majority of allegations suggest that threats of rape and other forms of sexual violence are used as a method of ill-treatment and torture in the context of arbitrary or illegal detention, both towards men and women. It was also noted that threats of sexual violence, injury or death towards female relatives, or their detention, are often used as a means to compel male detainees to confess, relinquish their property, or perform other actions demanded by the perpetrators, as an explicit condition for their safety or release.

### *Ukrainian law enforcement, armed and security forces*

48. In the majority of cases documented by OHCHR, law enforcement employed threats of sexual violence against individuals detained under charges of terrorism,

<sup>32</sup> ‘Conflict-related sexual violence’ refers to incidents or patterns of sexual violence, that is rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, against women, men, girls or boys, including as a tactic of war or tool of political intimidation. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g., political strife). They also have a direct or indirect nexus with the conflict or political strife itself, i.e. a temporal, geographical and/or causal link. Broader acts of gender-based violence that are not related to a situation of conflict are generally beyond the scope of the present document.

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along with other forms of torture and ill-treatment during interrogation. Two of the documented cases took place in or around Avdiivka in April and May 2015. A male detainee who was subjected to torture and forced to confess to his involvement in the armed groups on camera, was subsequently threatened with sexual violence, told that he would be handcuffed and raped by a homosexual man<sup>33</sup>. Two women from the same family, aged 18 and 41, were tortured and repeatedly threatened with sexual violence.

49. Other documented cases appear to be linked to the military presence in densely populated civilian areas, such as towns near the contact line, and general impunity. A man with a mental disability was subject to cruel treatment, rape and other forms of sexual violence by eight to 10 members of the 'Azov' and 'Donbas' battalions in August-September 2014. The victim's health subsequently deteriorated and he was hospitalized in a psychiatric hospital<sup>34</sup>.

50. On 17 October 2015, a couple was attacked by two drunken soldiers from the 92<sup>nd</sup> Brigade in Kalanchak, Kherson region. As a result, the wife's arm was broken. On 5 December 2015, her property was attacked by intoxicated members of the 'Aidar' battalion (some of them armed), reportedly involved in the 'civil blockade' of Crimea<sup>35</sup>. On 18 December 2015 the same perpetrators attacked her on the street, chased her, beat her, "saying dirty sexual words". The police did not take any measures, and according to the victim were afraid to protect her for fear of antagonizing the perpetrators<sup>36</sup>. This case is now being investigated by the Prosecutor's office in Kherson region.

#### *Armed groups*

51. On 9 December 2015, in Donetsk a man was beaten and raped in SIZO No. 5. He was taken outside for his daily walk, where he was confronted by a group of 'masked riot police', who hit his legs and back twice with a baton and insulted him. Following the assault, the police stripped him down completely and forced him to bend over in front of them. He described standing naked in front of the camouflaged men in below 0 degree Celsius temperature. The 'riot police' mocked and insulted him, and subjected him to a "rectal examination". The victim named the perpetrators and believes he was subjected to such treatment in retaliation for applying to be transferred to Government-controlled territory to serve the remainder of his sentence<sup>37</sup>.

52. Some Ukrainian soldiers who were held by armed groups for several months also provide accounts suggesting sexual violence against women in armed group custody. One of them, who was kept<sup>38</sup> in the building of the 'ministry of state security' in Donetsk city, reported that some local women were deprived of their liberty for having violated the curfew or other violations of the 'laws'. He referred to the frequent turnover of the women, "sometimes [they were] taken somewhere and never returned". Although he never witnessed any incidents, he had serious concerns that those women could have been subjected to sexual violence. Another soldier, who was deprived of his liberty in Donetsk from February to April 2015, was kept in a cell with a man and a woman who had come to Donetsk to register their marriage. One day, drunken members of the armed group took the woman with them and brought her back several hours later. She was intoxicated, her hair and clothes were dishevelled and she was silent. The witness suspects that she was raped<sup>39</sup>. OHCHR will attempt to obtain more information on the situation of women

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<sup>33</sup> HRMMU interview, 2 March 2016.

<sup>34</sup> HRMMU interview, 2 February 2016.

<sup>35</sup> See 12<sup>th</sup> HRMMU report, covering 16 August to 15 December 2015, pp. 29-30.

<sup>36</sup> HRMMU interview, 22-28 February 2016.

<sup>37</sup> HRMMU interview, 2 March 2016.

<sup>38</sup> HRMMU interview, 5 April 2016.

<sup>39</sup> HRMMU interview, 1 March 2016.

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kept by armed groups, but remains constrained by the lack of access to places of deprivation of liberty in armed group-controlled territories.

### **III. Accountability and the administration of justice**

53. Two years since the beginning of the security operation on 14 April 2014 in Donetsk and Luhansk regions, there remains a lack of accountability for human rights abuses and violations committed in the course of the conflict. The human rights aspect of crimes has not been adequately addressed, and as a result, the conflict continues to be fought with little consideration for human rights. None of the cases brought against the armed groups members to the courts have contained charges for human rights abuses. All charges heard in courts pertain to violations against the territorial integrity of Ukraine or crimes against public safety.

54. Impunity of law enforcement and security elements for human rights violations remains widespread, and is often justified by the challenges posed by the ongoing armed conflict. In territories controlled by the armed groups, law and order has collapsed and illegal parallel structures have developed. These structures are wielded as tools to intimidate and control the population under armed group control, and to perpetrate further human rights abuses. OHCHR is cognizant of the constraints faced by Ukrainian authorities, particularly due to their lack of access to territories controlled by the armed groups and resulting inability to establish direct perpetrators<sup>40</sup>. In many cases, starting in September 2014 under the Minsk framework, persons detained in connection with the conflict have been exchanged in the course of ‘mutual releases’, preventing accountability for potential human rights violations. OHCHR also continued to follow a number of high-profile individual investigations and prosecutions linked to the human rights crisis.

#### **A. Accountability for human rights violations and abuses in the east**

55. OHCHR notes the efforts of the Government to bring perpetrators from its own ranks to justice. Since 15 March 2014 until February 2016, the Office of the Military Prosecutor has investigated 726 crimes committed by members of the territorial defence battalions, including 11 crimes of killing, 12 – torture, 27 – arbitrary deprivation of liberty, 29 – creation of a criminal gang, 6 – banditry and 18 – unlawful appropriation of a vehicle. 622 people were charged, of them 381 – indicted. Courts have heard and ruled on cases concerning 272 persons.

56. OHCHR is following the case of special police patrol battalion ‘Tornado’, 13 members of which have been charged with torture and illegal confinement or abduction of a person<sup>41</sup>. 11 servicemen of the battalion have been indicted. Two others were detained on 13 April 2016. The Office of the Military Prosecutor is also investigating criminal cases against servicemen of the 24 territorial defence battalion ‘Aidar’ on charges of intentional homicide, illegal abduction or confinement of a person, brigandism, gangsterism and illegal appropriation of a vehicle. In the course of investigation five ‘Aidar’ servicemen were charged, four of them were placed in custody, and one was put on a wanted list. On 6 April, two servicemen were indicted for several acts, including the abduction of a person.

57. OHCHR remains concerned about the administration of justice toward persons accused of involvement in the armed groups. From the beginning of the armed

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<sup>40</sup> The Office of the Chief Military Prosecutor informed OHCHR that it is carrying out pre-trial investigations into alleged cases of killing, torture and ill-treatment of Ukrainian soldiers and civilians by members of the armed groups of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ in 2014-2016. The Office informed OHCHR that 3,000 victims have been identified, including those deprived of their liberty by members of the armed groups; over 450 victims have provided testimonies of having been tortured or ill-treated.

<sup>41</sup> See 11<sup>th</sup> HRMMU report covering 16 May to 15 August 2015, paragraph 123.

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conflict, SBU has qualified any acts involving membership in, organization or support of, or participation in, the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ as involvement in a terrorist organization under article 258-3 or the “creation of unlawful paramilitary or armed formations” under article 260 of the Criminal Code. Many of those detained in pre-trial detention have been deprived of their liberty because the current provisions of the Code of Criminal Procedure do not envision non-custodial measures for terrorism-related offenses<sup>42</sup>. This runs counter to European Court of Human Rights jurisprudence<sup>43</sup>, and contributes to a perception among detainees that pre-trial detention is employed to punish those suspected of being affiliated with the armed groups or maintaining links with persons residing in armed group-controlled territory. Further, the application of a counter-terrorism and security framework to conflict-related detention has created a permissive environment and climate of impunity.

58. OHCHR documented allegations of unidentified armed men detaining people living near the conflict zone due to their alleged affiliation with armed groups. They complained about being subjected to ill-treatment and torture in order to extract confessions that they assisted armed groups. Following their confessions, they were taken to SBU premises and officially charged. OHCHR has consistently observed that the SBU fails to inquire into the condition of detainees and the circumstances of their capture. This pattern of conduct suggests that SBU investigators may either be involved in certain cases of arbitrary detention, or fail to act to prosecute perpetrators.

59. A resident of Mariupol was detained by three servicemen of the ‘Azov’ battalion on 28 January 2015 for supporting the ‘Donetsk people’s republic’. He was taken to the basement of Athletic School No. 61 in Mariupol, where he was held until 6 February 2015. He was continuously interrogated and tortured. He complained about being handcuffed to a metal rod and left hanging on it, he was reportedly tortured with electricity, gas mask and subjected to waterboarding and he was also beaten in his genitals. As a result he confessed about sharing information with the armed groups about the locations of the Government checkpoints. Only on 7 February, he was taken to the Mariupol SBU, where he was officially detained.

60. Allegations of torture and ill-treatment are rarely investigated. There are few prospects for accountability for abuses perpetrated by members of law enforcement agencies. In some cases, attempts by victims of torture to complain to judges in the course of a hearing have been met with inaction and callousness, with judges frequently ignoring or dismissing complaints, revealing the judiciary’s lack of impartiality.

61. On 11 March 2016, when considering a case<sup>44</sup> of a person indicted under article 258-3 (facilitation of activity of a terrorist organisation) of the Criminal Code, the Dobropilskyi District Court of Donetsk region disregarded the defendant’s claims that he was actually apprehended two days before his official date of detention. The court also disregarded the statements of an eyewitness to his apprehension, challenging them with the statements of law enforcement members who detained him. The court also disregarded the defendant’s claim that he was tortured and ill-treated during those two days saying that he was mistreated prior to his apprehension.

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<sup>42</sup> The law ‘On Amendments to the Criminal and Criminal Procedure Code of Ukraine Regarding Unavoidability of Punishment for Certain Crimes Against National Security, Public Order and Corruption Crimes’ precludes to apply any other non-custodial measures of restrains to the persons suspected in abovementioned crimes

<sup>43</sup> *Kharchenko v. Ukraine*, European Court of Human Rights, no. 40107/02

<sup>44</sup> Dobropilskyi District Court, 11 March 2016, 227/2128/15-к (accessible at: <http://reyestr.court.gov.ua/Review/56350801>)

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62. In another case<sup>45</sup> on 12 February 2016, Prymorskyi District Court of Mariupol admitted that the accused “was actually detained on 19 September 2015, and until 29 September 2015 was deprived of liberty without any court decision”, failing, however, to take any action in relation to his unlawful detention.

63. In certain cases, courts fail to initiate criminal investigations into allegations of torture, which appears to be due to a lack of an effective mechanism<sup>46</sup>. Allegations of torture that arise in the course of court proceedings are referred to the prosecution, which can more easily initiate a criminal investigation. Prosecutors, however, are required to supervise the legality of the entire investigative process. Thus, they are at risk of professional reprimand should the allegations of torture or ill-treatment – rendering the obtained evidence inadmissible – be confirmed at a later stage of the proceedings. As a result, the availability of a remedy for torture is compromised at its initial stage, as allegations of ill-treatment raised during trial either do not trigger any investigative actions, or do not yield any results.

64. OHCHR also notes that the armed groups have also taken steps to ‘prosecute’ perpetrators from their own ranks. On 17 March, the ‘office of the prosecutor general’ of the ‘Luhansk people’s republic’ reported that ‘pre-trial investigations’ into the ‘criminal cases’ against the ‘Batman’ armed group and an armed group headed by Serhii Kosohorov were completed. The criminal cases were submitted to the ‘military court’ of ‘Luhansk people’s republic’. Reportedly, members of the two armed groups are accused of committing 53 crimes, including illegal detention, torture, banditry, seizure of cars, drugs and weapons smuggling<sup>47</sup>.

## **B. Parallel structures of administration of justice**

65. OHCHR continued to monitor the development of parallel ‘administration of justice’ structures in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. These structures have been established to impose the authority of the armed groups over the population residing on the territories under their control and to legitimize human rights abuses by the armed groups. Such structures contravene the spirit of the Minsk Agreements.

66. On 6 April 2016, the ‘supreme court’ of ‘Donetsk people’s republic’ reported that, from the beginning of 2016, ‘courts of general jurisdiction’ had ‘considered’ 3,318 criminal cases, including 11 pre-conflict cases. The ‘courts’ had reportedly delivered ‘decisions’ in 461 cases, including two convictions regarding seven pre-conflict detainees. In 2015, the ‘courts’ had reportedly ‘considered’ 18,678 criminal cases and delivered decisions in 1,935 cases, including in 60 cases initiated before the conflict. OHCHR has not been able to verify that the ‘judicial system’ of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ meets the key due process and fair trial standards in particular in relation to the non-derogable writ of habeas corpus to provide a person deprived of liberty with an opportunity to challenge the lawfulness of detention<sup>48</sup>. OHCHR is concerned that the development of parallel structures of ‘administration of justice’ leads to systematic abuses of the rights of persons deprived of their liberty by the armed groups and issuance of decisions which contravene human rights norms.

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<sup>45</sup> Prymorskyi District Court of Mariupol, 12 February 2016, №234/18927/15-к (accessible at: <http://reyestr.court.gov.ua/Review/55707736>)

<sup>46</sup> HRMMU interview, 15 April 2016.

<sup>47</sup> Luhansk Information Centre, “General Prosecution of the LPR hands over case materials on the case of “Batman” and “Kosogora” to a LPR military court,” March 2016, (accessible at: <http://lug-info.com/news/one/genprokuratura-lnr-peredala-materialy-po-delam-betmena-i-kosogora-v-voennyi-sud-lnr-11660>)

<sup>48</sup> Working Group on Arbitrary Detention’s “Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court”.



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67. In the context of an armed conflict, only an impartial and regularly constituted court may pass judgment on an accused person<sup>49</sup>. Unfair trials cannot provide justice to victims of serious human rights abuses and violations of international humanitarian law, and further contribute to the lack of rule of law and accountability that has come to characterize the armed group-controlled areas.

### C. Individual cases

#### *Nadiia Savchenko*

68. On 22 March, the Donetsk City Court of the Rostov region, Russian Federation, sentenced a Ukrainian citizen, Nadiia Savchenko<sup>50</sup>, to 22 years of imprisonment for her complicity in the death of two Russian Federation journalists in eastern Ukraine and the attempted murder of another. She was also fined 30,000 RUB for crossing the border illegally. Ms. Savchenko chose not to appeal the court decision. As of 10 May Nadiia Savchenko remains in a pre-trial detention facility in Novochoerkassk, Russian Federation. Without access to the territory of the Russian Federation, OHCHR relies on the official statements of the Russian Federation authorities and Ms. Savchenko's defense lawyers. One of Ms. Savchenko's defense lawyers submitted a communication to the United Nations Working Group on Arbitrary Detention (WGAD) and the United Nations Special Rapporteur on Human Rights Defenders. On 20 April, the Ministry of Justice of the Russian Federation confirmed having received a request from the Ministry of Justice of Ukraine for the transfer of Ms. Savchenko to Ukraine in line with the 1983 Convention on the Transfer of Sentenced Persons. According to one of Ms. Savchenko's lawyers, on 29 April Nadiia Savchenko formally consented to her transfer. According to her lawyers, the health of Ms. Savchenko deteriorated significantly as a consequence of previous hunger strikes. OHCHR is very concerned about reported breaches of due process and fair trial rights in this case as well as the humanitarian consequences of Ms. Savchenko's continued detention. On 25 May, Ms. Savchenko was pardoned by the President of the Russian Federation and transferred to Ukraine. She was released at the same time as two Russian citizens, Aleksandr Aleksandrov and Yevgenii Yerofieiev, who were pardoned by the President of Ukraine after being sentenced to 14 years of imprisonment for 'waging an aggressive war' against Ukraine<sup>51</sup>.

#### *Nelia Shtepa*

69. OHCHR continued to follow the case of Nelia Shtepa, the former mayor of Sloviansk, Donetsk region, who remains in detention on charges related to seizure of Sloviansk by armed groups in 2014<sup>52</sup>. Due to the dismissal of the presiding judge, who was found to have violated his oath<sup>53</sup>, the court proceedings in Ms Shtepa's case have re-commenced in March 2016. Ms. Shtepa remains in detention in the Kharkiv pre-trial detention centre, where she has been held for over 22 months. During the reporting period Ms. Shtepa has had no complaints of

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<sup>49</sup> Article 3 common to the four Geneva Conventions, and Article 6(2), Additional Protocol II to the four Geneva Convention; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 100

<sup>50</sup> Nadiia Savchenko is a Ukrainian military pilot, who has been in detention in the Russian Federation since July 2014, after being allegedly apprehended and transferred from Ukraine by armed groups. For more information, see paragraph 88 of the 13<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 November 2015 to 15 February 2016, paragraph 137 of the 12<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 August to 15 November 2015, paragraph 60 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015, and paragraph 54 of the 10<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 February to 15 May 2015.

<sup>51</sup> This development falls outside of the reporting period, but has been exceptionally included as a critical development.

<sup>52</sup> See 13<sup>th</sup> HRMMU report covering 16 November 2015 to 15 February 2016, paragraph 87; 12<sup>th</sup> HRMMU report covering 16 August to 15 November 2015, paragraph 133.

<sup>53</sup> See 12<sup>th</sup> HRMMU report covering 16 August to 15 November 2015, paragraph 135.

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conditions of detention. OHCHR has not observed breaches of due process and fair trial rights after the resumption of court proceedings against Ms. Shtepa.

*Oleh Kalashnikov and Oles Buzyna*

70. Oleh Kalashnikov, an opposition politician from the Party of Regions affiliated with President Yanukovich, was assassinated on 15 April 2015. After one year<sup>54</sup>, no suspects have been identified and there has been no progress in the investigation. Similarly, the killing of chief editor of *Segodnya* newspaper, Oles Buzyna, on 16 April 2015, continues to be investigated. Buzyna<sup>55</sup> was a critic of the Maidan protests and a proponent of close ties between Ukraine and the Russian Federation. The investigation into his killing, which has been going on for over a year, has been marred by procedural irregularities. The case has not yet been submitted to court. Two suspects arrested on 18 June 2015 were released from detention in December 2015, subject to summonses to appear in court. In April 2015 the Minister of Internal Affairs stated that he would personally oversee investigations into the death of Oleh Kalashnikov and Oles Buzyna. OHCHR observes a lack of progress in criminal cases involving persons affiliated with or perceived as political and ideological supporters of the Government of President Yanukovich. It is essential for justice to be impartial and to hold those responsible for the killings to account.

#### **D. High-profile cases of violence related to riots and public disturbances**

*November 2013 – February 2014 demonstrations at Maidan, Kyiv*

71. Two years after the mass killing of protesters and law enforcement officials at the Maidan protests, there has been no meaningful progress in bringing those responsible to justice, in particular individuals who were in positions of authority and exercised control over those who shot at and killed protesters. Many former senior officials left Ukraine for the Russian Federation. Numerous extradition and judicial cooperation requests filed to the Russian Federation have been simply ignored. Trial in absentia, which were introduced into the Criminal Procedural Code of Ukraine in late 2014, are also not an option due to the strict requirement envisaged in the Code that the suspect must be wanted by Interpol. Requests filed to Interpol to issue international warrants for the suspects have been denied under article 3 of its Constitution, which strictly forbids the Organization to undertake any intervention or activities of a political character<sup>56</sup>. OHCHR notes progress made by the Office of the Prosecutor General in relation to investigation into human rights violations committed during Maidan protests. Despite fleeing of a large number of suspects and loss of most of the documents and material evidence the criminal case encompasses some 1,200 volumes, which allowed to file charges against a number of former senior officials, including President Yanukovich, the Minister of Internal Affairs, the Head of the Security Service<sup>57</sup>.

72. On 16 February 2016, the Sviatosynskyi District Court of Kyiv decided to merge two episodes<sup>58</sup> of killing 48 Maidan protestors at Instytutska street in Kyiv on 20 February 2014 into one criminal case. In these circumstances charges against two Berkut servicemen indicted on 24 February 2015, have been extended – they have been accused of killing nine more protestors, whose death as established by

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<sup>54</sup> See 10<sup>th</sup> HRMMU report covering 16 February to 15 May 2015, paragraph 137.

<sup>55</sup> See 11<sup>th</sup> HRMMU report covering 16 May to 15 August 2015, paragraph 148; 10<sup>th</sup> HRMMU report covering 16 February to 15 May 2015, paragraph 67.

<sup>56</sup> INTERPOL Constitution, Article 3: "It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character."

<sup>57</sup> See 12<sup>th</sup> HRMMU report covering 16 August to 15 November 2015, paragraph 116

<sup>58</sup> The initial episode, where two Berkut servicemen were accused with killing 39 protestors, which was submitted to Sviatosynskyi District Court of Kyiv on 24 February 2015 and the second episode, where two other Berkut servicemen and a Berkut commander were accused of killing 48 protestors at Instytutska street, in Kyiv on 20 February 2014.

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the investigation have resulted from the same type of weapons and in the similar circumstances. As of the date of this report they are reviewing the new case files.

73. Such decision of the court allowed to bring five accused (four servicemen and a commander of 'Berkut' special police regiment) before a jury panel and may contribute to expedite the proceedings. All those accused remain in custody and the court continues to hear witness testimony in the case. Twenty other 'Berkut' servicemen, also charged with involvement in the killing of 48 protesters and inflicting bodily injury to 80 others, are on a wanted list as they have evaded the investigation.

74. Two 'Berkut' servicemen are awaiting trial for excessive use of force resulting in the killing of three Maidan protestors at Instytutska Street and Kriposnyi Lane, on 18 February 2014. Other servicemen have also been prosecuted for abuse of power against Maidan protestors.

75. OHCHR is following the case of the only senior official currently undergoing trial in relation to the Maidan events, the former head of SBU for the city of Kyiv and Kyiv region. He is accused of leading an 'anti-terrorist operation' in central Kyiv which inter alia resulted in the arson of the House of Trade Unions, aimed at the forceful dispersal of Maidan protestors, which resulted in the death of 17 people. On 21 April, Shevchenkivskiy District Court of Kyiv ruled to return the indictment to the Prosecutor General for revision of inaccuracies, which the prosecution has appealed on 28 April 2016. In particular the court came to a conclusion that while the defendant is accused of intentional homicide of 10 persons, the indictment does not contain specific information on time, place, modus operandi, motive of a crime and other essential factors. The indictment according to the court contains only statement of certain facts and list of victims. The court also ruled to extend his custodial detention until 19 June 2016.

#### *2 May 2014 demonstrations in Odesa*

76. According to the Office of the Prosecutor General, 27 individuals have been indicted on charges under articles 115 (intentional homicide of two or more persons, based on profit-gaining motives committed to conceal or facilitate another crime), 263 (illegal handling of weapons) and 294 (mass disturbances) of the Criminal Code of Ukraine in relation to their involvement in the violent events which took place on 2 May 2014 in Odesa and resulted in the death of 48 people. OHCHR has noted that in addition to the shortcomings of the pre-trial investigation, interference in the independence of the judiciary remains an obstacle to bringing perpetrators to justice.

77. Despite the large number of casualties caused by the violence, only one perpetrator, Serhii Khodiiak, an active member of 'pro-unity' movement, has been identified and accused of shooting one person to death in the city centre of Odesa, on 2 May. However, due to the pressure of other 'pro-unity' activists on the court, he was released after two days in custody. Furthermore, although the pre-trial investigation was completed in August 2015, the trial has not started. Over the reporting period two district courts of Odesa refused to consider the case and appealed to the Court of Appeals of Odesa Region, alleging that judges were intimidated by both the claimant and the defendant camps, and warning of possible clashes in the courts. On 29 February, the case was transferred to the Kyivskiy District Court of Odesa. With only four district courts in Odesa<sup>59</sup>, should the

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<sup>59</sup> On 5 August 2015, the Court of Appeals of Odesa Region ruled to transfer the case from Prymorskiy District Court of Odesa to Malynovskiy District Court of Odesa; on 27 January 2016, the Court ruled to transfer the case to Suvorovskiy District Court of Odesa; on 29 February 2016, the Court ruled to transfer the case to the Kyivskiy District Court of Odesa. The National Police launched an investigation into allegations of pressure and interference with the judiciary under article 376 (interference with activity of judicial authorities) of the Criminal Code of Ukraine concerning the incident of 27 November 2015, when a group of 'pro-unity' supporters pressured judges in Malynovskiy District Court of Odesa not to release

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Kyivskyi District Court also refuse to hear this case, it will be transferred to another region. On 10 May, the Kyivskyi District Court of Odesa adjourned the preliminary hearing for the second time due to the absence of victims and the defendant's lawyer. OHCHR observed approximately 50 'pro-unity' activists, who behaved aggressively toward the panel of judges, the prosecutor and a journalist from a 'pro-federalism' media website. The police presence in the courtroom was insufficient to protect those involved in the proceedings.

78. On the other hand, the 'pro-federalism' supporters who were detained in connection with the 2 May 2014 violence have been held in custody for up to two years, pending trial. Moreover, through monitoring court hearings in the case of 'pro-federalism' activists accused of mass disorder in the city centre of Odesa on 2 May 2014, OHCHR noted serious shortcomings: the prosecution failed to provide sufficient evidence against both accused citizens of the Russian Federation, it failed to ensure the presence of witnesses and, after a year of hearings, requested to recuse the panel of judges. Both citizens of the Russian Federation launched a hunger strike. The panel of judges notified the General Prosecutor of Ukraine several times about the low quality of the prosecution and reprimanded the prosecution for delaying the proceedings. OHCHR is concerned about failure of the police to prevent the attack of 'pro-unity' activists on a few 'pro-federalism' accused near the court building on 10 March. The skirmish led to hospitalization of one of the accused.

79. OHCHR is also concerned about the lack of progress in the investigation into the House of Trade Unions fire and the failure of the fire brigade to respond. It took the Office of the Prosecutor General almost six months to open a criminal investigation into the negligence of the State Emergency Service of Odesa region and another five months to charge its head under article 135 (leaving in danger) of the Criminal Code. On 1 March 2016, the suspect fled after his deputy and two other subordinates were detained by the police on the same charges. He has since been put on a wanted list.

80. OHCHR welcomes the progress made in the investigation into failure of the police to ensure public safety on 2 May 2014. On 26 February, the Office of the Prosecutor General filed an indictment against former Head of Odesa Regional Police, Petro Lutsiuk. He is accused of committing crimes under articles 136 (failure to provide assistance to people whose life is in danger), 364 (abuse of authority or office) and 366 (forgery in office) of the Criminal Code. He is also accused of not implementing a special plan ('Volna' - wave) aimed at counteracting public disorder at mass assemblies and gatherings, which led to the death of 48 people and injuries of more than 200. He is also accused of intentionally leaving people in danger. However, as of the date of this report, the court has not completed the preliminary hearing due to procedural delays caused by the absence of the parties to the trial and failure to duly notify all victims about the date of the court hearing. The relatives of victims of the violence and the defendant's lawyers denounced the poor quality of the indictment in the case and have requested that the court return it to the prosecution for revision.

#### **IV. Fundamental freedoms**

81. Since the Maidan events in 2014, Ukrainians have gained greater freedom to exercise individual liberties, including their rights to freedoms of association, peaceful assembly and expression. The last two years have seen a notable increase in active civil society groups and volunteer engagement.

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<sup>20</sup> 'pro-federalism' defendants from custody on interim conditional release (for more details on the incident see 13<sup>th</sup> HRMMU report covering 16 November 2015 to 15 February 2016, paragraph 100).

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82. At the same time, there are cases where counter-terrorism legislation has been used to arrest and detain members of political parties, NGOs and media professionals. Also, journalists and civil society organizations, including humanitarian organizations, continued to face significant challenges in operating in the conflict-affected area. Civil society actors, even those working in the areas controlled by the Government, have described self-censorship. This includes choosing not to discuss in public concerns related to the military occupation of civilian homes, or media professionals limiting themselves when reporting from areas near the contact line.

83. Almost all who publicly opposed the self-proclaimed ‘republics’ left the armed group-controlled territories in 2014 due to intimidation and fear, including human rights activists, members of some religious communities, media workers and civil society. The few civil society actors remaining in these territories continued to be targeted (see OHCHR 13<sup>th</sup> report), leading to the stifling of public scrutiny and discourse.

### **A. Violations of the right to freedom of movement**

84. Civilians’ freedom of movement remained restricted in the conflict-affected area, including due to the Temporary Order and further controls imposed by the armed groups. The period under review has been marked by two key developments: a significant increase in the number of people crossing the contact line, reaching an average of 30,000 people per day in mid-April 2016; and the temporary closure of checkpoints reportedly due to deteriorating security and the first instance in which civilians waiting to cross the contact line were killed by shelling.

85. New Government regulations concerning payments of social entitlements have increased a sense of insecurity among people living in armed group-controlled territories. As they can only receive their social entitlements in the Government-controlled territories, this leads to more frequent travel across the contact line as many had to renew documentation to access entitlements, including pensions. Persons also continue to cross the contact line to access health services, reunite with family members, and for their livelihoods.

86. OHCHR regularly crosses the contact line and observes queues of 150 to 500 cars. At the Maiorsk entry-exit checkpoint, people reported spending up to 30 hours in queues, often having to stay overnight in their cars between the checkpoints, without access to water, food or sanitation facilities in an area contaminated by UXOs and landmines. On 27 April, four civilians (three men and a woman) were killed and at least eight (a woman, two men, 15-years-old boy, gender unknown for the other four) were injured by shelling while queuing overnight at the Mariupol-Donetsk transport corridor, near Olenivka, controlled by the ‘Donetsk people’s republic’. The mortar shells hit an area where approximately 50 vehicles were parked along the road. Following the incident the transport corridor was closed for approximately one month, leaving only three operational corridors in Donetsk region, which became severely overcrowded.

87. During the reporting period, OHCHR continued to document cases of people detained at checkpoints by armed groups on the basis of ‘wanted lists’ or by Government forces based on the ‘*Myrotvorets*’ (‘Peace-maker’) website database<sup>60</sup>.

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<sup>60</sup> It was announced that the website was closed on 13 May but was opened for access on 15 May 2016. The website includes personal data and information available in social media about people, who are allegedly involved in the activity of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. It is allegedly maintained by volunteers, but is actively used by the Government forces at the checkpoints. As previously noted by OHCHR, it not only includes armed groups members, but also the civil servants, who decided not to move to the Government-controlled areas, as well as members of civil society who provide humanitarian assistance in the areas controlled by armed groups. See 12<sup>th</sup> HRMMU report covering 16 August to 15 November 2015, paragraph 69.



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OHCHR documented three new cases of civilians detained by armed groups of ‘Donetsk people’s republic’ based on such lists (See Right to life).

88. OHCHR continued receiving complaints regarding corruption at the checkpoints, whereby bribes are demanded or goods confiscated to ease passage.<sup>61</sup> In a few cases, when passengers say they will complain to the ‘Headquarters of the Anti-Terrorist Operation’ hotline, they have been allowed to pass freely.

89. The situation of civilians in Luhansk region is particularly severe as there are still no functioning official vehicle crossings between Government and armed group-controlled territories. On 8 April, due to the deterioration of the security situation, the Government temporarily closed the Stanychno Luhanske entry-exit checkpoint, which was the only operational crossing in Luhansk - a pedestrian crossing over a collapsed bridge. On average, between 3,000 and 5,000 people use this crossing daily. Civilians started taking roundabout routes, with a high risk of exposure to ERW and UXO. On 30 April 2016, the ‘Headquarters of the Anti-Terrorist Operation’ of Ukraine re-opened the crossing in Stanychno Luhanske.

90. The Government’s attempt to open an additional, vehicular transport corridor in Luhansk region with the entry-exit checkpoint in Zolote, on 31 March, has been unsuccessful. The armed groups of the ‘Luhansk people’s republic’ let civilians onto their territory and proceeded to block their further movement, claiming they had agreed to the opening of a different corridor, which would also allow cargo<sup>62</sup>. Consequently, 179 people were trapped for several hours between checkpoints controlled by the Government and the armed groups of the ‘Luhansk people’s republic’. Some civilians reported being verbally assaulted by members of the armed groups. Reportedly, the State Emergency Service of Ukraine and the Regional State Civil Military Administration organized buses to take people back and put them up in tents for the night. As of 15 May 2016, the corridor remained closed. OHCHR calls for additional checkpoints to be opened, for them to remain operational to the maximum extent possible, and for simplified procedures to be adopted to facilitate more efficient movement of civilians.

## **B. Violations of the right to freedom of religion or belief**

91. Overall, during the reporting period, the majority of religious communities in Ukraine could exercise their freedom of religion or belief. However, law enforcement failed to ensure effective investigations into the few incidents concerning violations of the right to freedom of religion or belief were documented.

92. According to a Muslim religious leader, on 5 February 2016, in Vinnytsia city, worshippers leaving the Islamic cultural centre (which also serves as a mosque) following Friday prayers, were confronted by 10 officials from SBU and the Migration and State Border Services. They were requested to present their identification documents and allowed to leave but the officials then inspected the premises of the centre without providing grounds for such action. The Muslim community has been uniquely targeted for such ID-checks and inspections of places of worship.

93. On 24 March 2016, in Cherkasy city, at the beginning of the Jewish holiday of Purim, graffiti were found on a building in the city centre (calling for “*Death to the Jews*” and alleging that “*the Jews have occupied Ukraine*”). The same night, a wreath that had been laid by the Israeli Minister of Justice at the Holocaust memorial in Kyiv was burnt down. A representative of the Jewish community also reported that in Kyiv, graffiti of swastikas were often painted on Jewish kindergartens and schools. The community is not aware of investigations into these incidents, despite security camera footage of the incidents being available.

### *Territory controlled by armed groups*

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<sup>61</sup> HRRMU interview, 3 April 2016.

<sup>62</sup> HRMMU meeting, 22 April 2016.

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94. The situation of minority Christian communities in armed group-controlled territories remained precarious. Three members of the Jehovah Witnesses community were captured<sup>63</sup> in Horlivka, on 17 January, by the ‘ministry of state security’ of the ‘Donetsk people’s republic’, and released on 16 February. While in captivity, the victims were interrogated and accused of being members of a “prohibited” “sect”<sup>64</sup>. Although the Jehovah Witnesses in Horlivka continue holding meetings, the number of parishioners regularly attending the church has decreased. During the reporting period, OHCHR was informed that the majority of one of the Christian Charismatic communities had to leave Luhansk in 2014 because they were persecuted by the armed groups<sup>65</sup>.

95. On 18 March 2016, the ‘Donetsk people’s republic’ ‘national council’ passed a ‘draft law’ on ‘freedom of consciousness and religious unions’, which is not publicly available. A representative of the ‘Donetsk people’s republic’ stated that “1400 religious organizations were registered in Donbas [before 2014], the majority of which were imposed from abroad”, adding they were “mainly sects, which aim to brainwash people”<sup>66</sup>. Religious communities that continue to operate in the territory controlled by armed groups fear that the ‘law’ may announce a new wave of persecution against them, as was observed after the adoption of the ‘constitution’ in May 2014<sup>67</sup>. Since the beginning of the conflict, the Muslim, Jewish, Greek-Catholic and other religious minorities in areas controlled by the armed groups has significantly decreased. OHCHR recalls that religious minorities should be respected in their freedom of religion or belief without any administrative registration procedures<sup>68</sup>.

96. The Ukrainian Orthodox Church – Kyiv Patriarchate continued facing intimidation in the ‘Luhansk people’s republic’. In February 2016, two representatives of the ‘ministry of state security’ of the ‘Luhansk people’s republic’ demanded that a local priest in the ‘Luhansk people’s republic’ sign a ‘cooperation agreement’. A priest stated that parishioners did not feel safe at their place of worship and were sometimes the targets of insults from local residents and the armed groups.

### **C. Violations of the right to freedom of peaceful assembly**

97. On 19-22 February 2016, people across Ukraine held assemblies<sup>69</sup> to commemorate the two-year anniversary of violent clashes and civil unrest that led to the death of over 100 people on Maidan Nezalezhnosti (Independence Square) in Kyiv. OHCHR monitored the assemblies across the country, observing their largely peaceful nature. Law enforcement appeared well-prepared to address possible provocations and generally did not interfere with the assemblies.

98. However, OHCHR observed increased tensions between ‘pro-unity’ and ‘pro-federalism’ activists in Odesa. ‘Pro-unity’ activists acted aggressively during mass gatherings on 27 March, 2 April and 10 April, leading to clashes with ‘pro-federalist’ protesters. OHCHR observed that police failed to ensure adequate security, impacting most severely ‘pro-federalism’ supporters, a majority of which were elderly and female.

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<sup>63</sup> For more information, see 13<sup>th</sup> HRMMU report covering 16 November 2015 to 15 February 2016, paragraph 123.

<sup>64</sup> HRMMU interview, 29 February 2016.

<sup>65</sup> HRMMU interview, 18 March 2016.

<sup>66</sup> Official Site of the National Council of the Donetsk People’s Republic, “Member of Parliament Nikolai Ragozin urges action to prevent the activities of destructive religious organizations on the territory of the DPR,” 24 March 2016, (accessible at: <http://dnrsovet.su/deputat-nikolaj-ragozin-prizval-ne-dopustit-deyatelnosti-destruktivnyh-religioznyh-organizatsij-na-territorii-dnr/>)

<sup>67</sup> See 4<sup>th</sup> HRMMU report covering 8 June to 15 July 2014, paragraph 156.

<sup>68</sup> Thematic report of the UN Independent Expert on Minority Issues, A/68/268, paragraph 61.

<sup>69</sup> HRMMU interview, 19-22 February 2016.

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99. During the reporting period, OHCHR interviewed supporters of ‘anti-Maidan’<sup>70</sup> in Zaporizhzhia, who claimed that their fear of being assaulted by ‘pro-Maidan’ supporters and the inaction of police had resulted in a total absence of ‘anti-Maidan’ gatherings in Zaporizhzhia and Melitopol. On 21 February 2016, ‘anti-Maidan’ demonstrators from Melitopol who gathered in Zaporizhzhia to protest against the demolition of a Lenin monument were physically prevented by ‘pro-Maidan’ supporters from conducting a gathering, which resulted in clashes and injuries of several ‘anti-Maidan’ protesters. The police did not intervene. During the clashes, OHCHR witnessed an elderly woman lying on a bench while a ‘pro-unity’ activist threatened her. In a conversation with OHCHR, police officers observing the incident openly refused to protect the ‘anti-Maidan’ activists, referring to them as “separatists”. OHCHR interviewed a participant in the demonstration<sup>71</sup> who claimed to have been illegally arrested and taken to the Zaporizhzhia Regional SBU where was allegedly interrogated without the presence of a lawyer, and intimidated. On 22 April 2016, the leader of the ‘Union of Left Forces’ was physically prevented by ‘pro-Maidan’ activists from conducting a press conference in Zaporizhzhia. He was assaulted by ‘pro-Maidan’ supporters and received bodily injuries in front of the police officers who intervened but did not apprehend the assailants. OHCHR interviewed an associate of the victim who was also beaten by ‘pro-Maidan’ activists; he stated that about 15 police officers were present nearby but did not react. The prosecutor’s office in Zaporizhzhia region conducted an inquiry into the allegations, but found that no violations had taken place.

100. Overall the celebrations on 1, 2 and 9 May across Ukraine passed relatively calmly with no major incidents reported and with heavy police presence securing the main localities. In larger cities on 9 May, including Kyiv, Odesa, Lviv, Kharkiv, and Dnipropetrovsk, tensions did however lead to skirmishes between demonstrators with Communist symbols and flags, and the St. George ribbon (associated with ‘anti-Maidan’ and pro-federalist camps) and people of opposing views, including members of the Azov Civil Corps in Kharkiv and Mykolaiv. The police prevented several incidents from escalating by isolating aggressive demonstrators. In Odesa and Mykolaiv police detained mostly ‘pro-federalism’ supporters and did not respond adequately to breaches of public order committed by ‘pro-unity’ activists. In several instances, the police asked demonstrators to take off the St. George ribbon and explained the legal prohibition on the use of Communist symbols and flags<sup>72</sup>. According to the Head of National Police, 100 persons were detained throughout Ukraine, and the deputy Minister of Internal Affairs reported that six police officers were injured. They also reported that most protesters were detained for using prohibited Communist symbols and distributing ‘provocative’ leaflets.

101. OHCHR was informed that the SBU in Odesa conducted house searches and interrogated ‘pro-federalism’ activists on 2 and 9 May, thus preventing them from participating in the commemorative demonstrations. Furthermore, during the 2 May commemoration, police in Odesa closed the symbolic Kulykove Pole square, where 42 pro-federalists died, for relatives of the victims and ‘pro-federalism’ supporters intending to lay flowers. This was done allegedly after receiving two bomb threat calls. OHCHR notes that law enforcers in Odesa have also in the past used allegations of bomb threats to prevent participation of ‘pro-federalism’ activists in public events.

*Territory controlled by armed groups*

102. OHCHR continued to observe an absence of open and free assemblies in territories controlled by armed groups. The space to articulate alternative views is

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<sup>70</sup> HRMMU interview, 21 February 2016.

<sup>71</sup> HRMMU interview, 24 February 2016.

<sup>72</sup> Law of Ukraine "On condemning the communist and national socialist (Nazi) totalitarian regimes in Ukraine and prohibition of propaganda of their symbols", No. 317-VIII of 9 April 2015.

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severely limited and people are concerned that they may be ‘arrested’ if they organize protests or assemblies against the policies of the armed groups.

103. The only assemblies that OHCHR observed in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ have been in support of the local authorities. In April, a few dozen young people organised two protests in front of the OSCE office in Luhansk, calling the OSCE staff “agents of Kyiv” and accusing them of encouraging the conflict. There are reasons to believe that the armed groups organized these rallies, as all demonstrators arrived at the same time at the OSCE office and did not appear to be informed about the substance of their demands nor OSCE’s mandate.

104. Attempts to organize public protest to express disagreement with actions or decisions of the armed groups have been met with restrictions. For instance, OHCHR interviewed a coal miner who explained that, in December 2015, in Makiivka, mine workers organized a protest to denounce their deteriorating working conditions, the low or partial and irregular salaries, and violations of safety rule.<sup>73</sup> The ‘ministry of state security’ threatened the protesters and seven of them were deprived of their liberty and subjected to forced labour. The ‘ministry of state security’ of the ‘Donetsk people’s republic’ then prohibited miners to protest.

105. On 9 April 2016, OHCHR monitored a demonstration in Donetsk celebrating two years since the establishment of the ‘Donetsk people’s republic’ observing several thousand protesters gathered near the ‘house of government’ (former regional administration) and along nearby streets. Each group of demonstrators was organized by an entity in the ‘Donetsk people’s republic’, such as universities, districts, professional unions, and departments of the ‘republic’. When asked about the purpose of the gathering many people were not able to provide an answer, indicating that demonstrators may have been requested or compelled to participate. There was a presence of ‘police’ and some uniformed men, and the central street and a few others streets were blocked by the ‘police’. No public unrest or violence has been reported. A similar situation was observed during the 1 May demonstrations, where approximately 2,000 people were assembled representing their respective professional unions, educational institutions and the ‘communist party of the Donetsk people’s republic’. The participants were chanting “*No to fascists*”.

#### **D. Violations of the right to freedom of association**

106. In Kharkiv, OHCHR observed an increasing number of incidents involving political and activist groups. These groups appear to be employed by political and business actors to suppress political and social demands of the populace through intimidation and violence.

107. In Dnipropetrovsk, the space to articulate alternative views, particularly support to communism, remained limited. OHCHR interviewed<sup>74</sup> the leader of two organizations who stated that after March and April 2014, he and members of his organization were subjected to threats and attacks by right-wing activists. The State Registration Service within the Ministry of Justice submitted a claim to the Dnipropetrovsk circuit administrative court with a request to prohibit the activities of both organizations, accusing their representatives of publically campaigning against the territorial integrity of Ukraine during demonstrations in 2014. The head of the organization claimed that SBU had conducted approximately 60 searches in the apartments of members of the NGO but had not brought charges against them.

108. In Dniprodzerzhynsk, OHCHR is following the case of two members of the ‘Communist party’ who were charged with trespassing the territorial integrity

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<sup>73</sup> HRMMU interview, 11 March 2016.

<sup>74</sup> HRMMU interview, 23 March 2016

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of Ukraine and unlawful possession of weapons in September 2014. Both were held in custody in the Dnipropetrovsk SIZO until 19 April 2016 when the court released them on bail. OHCHR observed that the case was marked by procedural violations.

*Territory controlled by armed groups*

109. Civil society organizations, including human rights defenders, cannot operate freely or in the territory controlled by armed groups. Some Donetsk residents informed OHCHR that they were being prosecuted (or afraid of being prosecuted) by the ‘ministry of state security’ for their pro-Ukrainian views or previous affiliation with Ukrainian NGOs.

110. In the ‘Donetsk people’s republic’, there is allegedly a continuing process whereby ‘state employees’, ‘officials’, coal miners, doctors, and teachers are compelled to join the so-called ‘public movement’ ‘Free Donbas’ (‘Svobodnyi Donbass’). The NGO’s website is frequently updated, and members’ names are put online, raising concerns about their security should they wish to cross the contact line. OHCHR received information from residents of the ‘Donetsk people’s republic’ that members of armed groups demand that employees of companies operating in armed group-controlled territory either join the above ‘NGO’ or resign. Allegedly, members of armed groups, accompanied by representatives of the ‘Free Donbas’, conduct visits to offices and businesses to strongly advertise employees join the ‘public movement’. Most report joining so as to not lose their jobs. OHCHR is also aware that students of Donetsk State University of Management have been forced to join the ‘Young Republic’ association.

111. OHCHR continued to follow the deprivation of liberty by the armed groups of a citizen journalist from Kyiv, detained in early 2016, and a man with open pro-Ukrainian views who was captured in 2015. A religious scholar detained in January 2016 remains deprived of his liberty and continues to be denied access to legal counsel. Meanwhile, the co-founder of a humanitarian organization who was deprived of his liberty in the ‘Donetsk people’s republic’ was released<sup>75</sup>.

## **E. Violations of the right to freedom of opinion and expression**

112. Journalists face restrictions when covering conflict-related issues on the territories under Government control including increased pressure on journalists by the owners of media outlets, as well as self-censorship of journalists working near the contact line.

113. Journalists and civil society activists who criticise various state authorities may also be targeted for investigation. On 25 March 2016, the General Prosecutor’s Office opened criminal proceedings against the NGO Anticorruption Centre<sup>76</sup>. Pecherskyi District Court of Kyiv granted prosecutors the power to seize the documents in possession of the NGO and allowed them to inspect their financial records. On 11 May the General Prosecutor’s Office reportedly addressed Pecherskyi District Court of Kyiv requesting permission to access further documents of the organization. The NGO is well known for its public statements on anti-corruption, and believes that they have been targeted in retaliation. Reportedly no illegalities have been confirmed at this stage. A well-known TV host whose political talk shows provided a platform for participants to express diverse opinion, including heavy criticism of authorities, had his work permit cancelled on 26 April and went on a two-day hunger strike after deeming this cancellation “politically motivated”. Some media experts believe<sup>77</sup> such behaviour by law enforcement and state bodies is meant to obstruct independent and critical journalism.

114. In Zaporizhzhia, the ‘Social Zaporizhzhia’ NGO has faced pressure from the Zaporizhzhia Regional SBU. In December 2015, four members of the

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<sup>75</sup> See 13<sup>th</sup> HRMMU report covering 15 November 2015 to 15 February 2016, paragraphs 136-139, 143-147.

<sup>76</sup> HRMMU interview, 22 April 2016.

<sup>77</sup> HRMMU interview, 27 April 2016.



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NGO were granted witness status in a terrorism case, where they are expected to testify about the activities of the NGO and whether they carried out acts against the territorial integrity of Ukraine. One of the members told OHCHR that the NGO has suspended all public activity, fearing that they may “go from being witnesses to becoming the accused”<sup>78</sup>.

115. OHCHR has monitored attacks on the offices of three TV channels: ‘*Inter*’, ‘*TV 17*’ and ‘*TRK Ukraina*’. According to media reports, on 21 February 2016, unknown individuals attacked *TV 17* journalists. In addition, the channel’s office was partially destroyed and equipment looted. On 22 April a group of young people entered the lobby of the office of the TV channel ‘*TRK Ukraina*’ and scattered leaflets with the inscription: “*There will be blood.*” On 25 February around 50 people associated with the civil corps of the Azov regiment blocked the building of the largest Ukrainian TV channel *Inter*. This was apparently triggered by explicit remarks on air by a Russian journalist working at *Inter*, perceived as offensive towards those who died during the Maidan events. The previous day, the SBU had forcibly returned the journalist to the Russian Federation following her statements on air. In all three cases the police either launched an investigation or opened criminal proceedings against suspects for the obstruction of journalistic activities.

116. OHCHR continued to follow the case of two journalists<sup>79</sup> detained in the Zhytomyr SIZO since 24 November 2015, accused of creating a terrorist organization. The lawyer of one of the journalists alleged procedural irregularities, including unnecessary prolongation by the court of the pre-trial detention, which has been extended until 25 May 2016. The indictment was filed on 28 April 2016. The court proceedings are ongoing.

117. On 12 May 2016, the Ivano-Frankivsk city court sentenced the journalist Ruslan Kotsaba, accused of treason and impeding the work of the Armed Forces of Ukraine, to 3 years and 6 months of imprisonment. The court found that Ruslan Kotsaba was preparing propaganda material on the request of Russian mass media aimed at preventing activities of the Armed Forces of Ukraine. According to the court’s ruling, the judges took into account the public prosecutors’ information on Kotsaba’s links with the armed groups. At the same time the court excluded from the charge the accusation of high treason. The lawyers of the journalist indicate that an appeal will be filed.

118. The Ukrainian Parliament approved amendments<sup>80</sup> to the February 2015 law on the ban of Russian-produced films. Though minor, this and other similar decisions indicate a tendency toward further restrictions on the free flow of information.

119. On 10 May 2016 the Ukrainian website “*Myrotvorets*” published the personal data of 4068 Ukrainian and international journalists supposedly accredited to work in the ‘Donetsk people’s republic’. The information included their names, telephone numbers and addresses. One media professional based in the ‘Donetsk people’s republic’ indicated to OHCHR<sup>81</sup> that the list includes individuals who are not journalists and who were working in Donetsk also prior to the conflict. It is of concern that those on the list are portrayed in the Government controlled areas as cooperating with terrorists, something which may endanger the individuals. OHCHR recalls the importance of ensuring that personal data is protected to avoid misuse, and also notes that the website publishing this data is the same which publishes data utilized by Government forces at the check-points at the contact line.

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<sup>78</sup> HRMMU interview, 22 April 2016.

<sup>79</sup> HRMMU interview, 28 March 2016.

<sup>80</sup> Law on Amendments to the Law of Ukraine "On Cinematography" on movies from a state-aggressor (№ 3359)

<sup>81</sup> HRMMU interview, 10 May 2016.

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120. The Ministry of Information Policy established an inter-departmental working group as part of the implementation of the Human Rights Action Plan. The working group will propose amendments to legislation concerning freedom of speech with the goal of harmonizing legislation in the field of media and freedom of expression with European standards. It is vital that this process be transparent and involves consultations with civil society.

*Territory controlled by armed groups*

121. In the territories controlled by the armed groups, freedom of expression, including the ability to openly express dissenting views, remained severely restricted. Persons living in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ know that expressing their opinion freely and publicly is not acceptable in armed group-controlled territory. When asked why no one would protest and publicly speak out against the ‘republics’, residents inform OHCHR that such actions would be unimaginable.

122. On 3 March 2016, the freelance journalist Maria Varfolomeieva – who was abducted by armed groups of the ‘Luhansk people’s republic’ on 9 January 2015 – was released following the exchange for a detained female member of the armed groups. To many journalists seeking to report from the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, her prolonged deprivation of liberty was a signal of the intolerance and danger of free opinion and expression in areas under the control of the armed groups.

123. On 8 March 2016 a group of five Russian journalists of ‘Russia Today’, ‘Pervyi Canal’, ‘Pyatyi Canal’, ‘RIA Novosti’ came under fire near Yasynuvata checkpoint of the ‘Donetsk people’s republic’ on the Yasynuvata-Horlivka highway. Reportedly, the journalists were not injured. The journalists were identifiable and reportedly had communicated their coordinates to the military forces present in the area. OHCHR recalls that journalists enjoy special protection during armed conflict under international humanitarian law.

124. On 1 May 2016, at the Kurakhove checkpoint several ‘officers’ of the ‘ministry of state security’ of the ‘Donetsk people’s republic’ denied entry to two British and one Australian journalists working for the Turkish media outlet ‘TRT World’ despite having received accreditation on 29 April. The reason for the denial is not confirmed.

125. OHCHR has observed a further stifling of media providers who operate on the territories controlled by the armed groups. In addition to the 150 websites that were previously banned by the ‘ministry of justice’ of the ‘Luhansk people’s republic’ on 22 March 2016, the ‘ministry of information, press and mass communications’ registered an ‘order’<sup>82</sup> prohibiting operators and providers of telecommunications services to disseminate information in violation of the ‘Luhansk people’s republic’ rules. According to the ‘ministry of justice’, such restrictive measures had been taken to further protect the ‘national security of the republic’.

126. OHCHR received information that armed groups are directly influencing and shaping the content in local media when it comes to depicting the leaders of the armed groups as well as the conflict-related developments. According to local journalists only a very few Internet websites or online channels provide a platform where people and media professionals can freely express their views without censorship.

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<sup>82</sup> Order’ of the ‘Ministry of Information, Press and Mass Communications’ of the ‘LPR’ on March 22, 2016 № 10-OD "On the prohibition of the dissemination of information resources that publish information in violation of the ‘Luhansk People's Republic’ legislation and ban of broadcasting" registered in the Ministry of Justice LC April 25, 2016 for № 181/528

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## V. Economic and social rights

*“Why us, why us? It is not a life. We are a family of six surviving on two pensions. Neither of us can afford medication. They would have better killed us here than suffering like this”*

- Elderly woman with cancer living in Donetsk city

127. Two years of conflict have significantly affected the enjoyment of social and economic rights of civilians throughout Ukraine. Measures introduced by the November 2014 decisions<sup>83</sup> of the Government of Ukraine continue having a detrimental impact on civilians living in the areas controlled by armed groups. The withdrawal of all public services resulted in decreased protection and greater vulnerability of the population. Unless registered in the Government-controlled areas, citizens cannot access their social entitlements, bank accounts or civil registration documents.

128. According to the Ministry of Social Policy of Ukraine, there are 1.78 million registered internally displaced persons (IDPs). Many IDPs are denied their rights and equal protection under the law. The law on local elections of 14 July 2015 excluded IDPs from voting in the October 2015 local elections. OHCHR interviewed a Crimean IDP who through multiple court procedures received the right to vote in one of the rounds of the 2015 local elections. OHCHR urges the Parliament to adopt legislative acts to ensure the voting rights of IDPs, and calls attention to the fact that durable solutions that would ensure their integration have not yet been developed. IDPs continue to live in great insecurity and may be at risk of becoming second-class citizens.

129. Victims of torture, families of the missing and demobilized soldiers have difficulties accessing necessary rehabilitation services. Adequate State services remain largely unavailable.

130. The entire population of Ukraine has been affected by the deteriorating economic situation. According to a World Bank report<sup>84</sup>, the ongoing armed conflict has put a significant burden on the national budget. Military expenditure represents an estimated 5 per cent of GDP for 2016 (almost four billion USD). On 1 March 2016, the NGO Patients of Ukraine organized a peaceful demonstration outside the Cabinet of Ministers to raise awareness about the budget currently lacking UAH four billion (USD 157,201.96) for life-saving medication. On 7 April, the World Bank<sup>85</sup> set out that the annual GDP growth rate for Ukraine in 2015 was negative 10 percent, with the sharpest decline in private consumption in all of Eastern Europe and Central Asia<sup>86</sup>.

131. On 16 March 2016, the Cabinet of Ministers adopted the national Strategy to Overcome Poverty<sup>87</sup>, indicating that 23.8 per cent<sup>88</sup> of the population lived under the relative poverty line.

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<sup>83</sup> The Decision of the National Security and Defence Council of 4 November On Immediate Measures Aimed at the Stabilization of Socio-Economic Situation in Donetsk and Luhansk Regions, enacted by the Decree of the President of Ukraine Nr. 875/2014 on 14 November 2014, as well as the consequent resolution of the Cabinet of Ministers of Ukraine Nr.595 as of 7 November 2014, On the Issues of Financing of State Institutions, Payment of Social Benefits to Citizens and Provision of Financial Support for Some enterprises and Organizations of Donetsk and Luhansk regions.

<sup>84</sup> 25 February 2016 – World Bank Workshop report: Conflict in Ukraine and the road ahead

<sup>85</sup> World Bank, “The economic outlook for Europe and Central Asia,” 7 April 2016 (accessible at: <http://pubdocs.worldbank.org/pubdocs/publicdoc/2016/4/684961459973316876/Presentation-ECA-Economic-Update-April-2016.pdf>)

<sup>86</sup> UNDP January: Socio-Economic Risk and Vulnerability Assessment

<sup>87</sup> The Order of the Cabinet of Ministers Nr. 161-p, 16 March 2016.

<sup>88</sup> The estimates were made in 2015.

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132. The International Organization for Migration (IOM) is concerned that the continued deterioration of the economic situation in Ukraine may create conditions that encourage the growth of human trafficking. NGOs providing services to victims of trafficking in regions with a high influx of IDPs reported to OHCHR that while the number of identified victims remains low, it was noted that local men are more eager to go abroad (predominantly to the Russian Federation and Poland) to find employment as there are very few opportunities in the region. It is particularly concerning that due to the same factors even those who have experienced exploitation in the past still continue to accept labour that may lead to repeated exploitation. Traffickers are also targeting IDPs, who are often most economically vulnerable. Currently, a counter-trafficking NGO in Kharkiv is providing rehabilitation services to two sisters from Torez who were trafficked to Finland and three young men from Donetsk region, who reportedly were exploited in the Russian Federation.

### **A. Right to social security and protection**

133. On 17 February 2016, the Parliament held its first hearing since the start of the conflict on the situation of IDPs and citizens of Ukraine living in the territory not controlled by the Government. Based on this hearing and in coordination with civil society<sup>89</sup>, the Parliament adopted a comprehensive set of recommendations, foreseeing the establishment of a central coordination body on IDP matters. This has materialized with the establishment of a new Ministry on temporarily occupied territories and IDPs, on 14 April 2016<sup>90</sup>.

134. On 21 February 2016, the Cabinet of Ministers announced a residence verification process for IDPs as a condition for entitlements and benefit payments. On 16 February, the Ministry of Social Policy instructed its regional offices and local departments to suspend all social payments for IDPs, pending verification of their presence in Government-controlled territory, with the view to combating fraud. Previous regulations introduced in November 2014 linked eligibility to social entitlements (pensions, disability benefits, maternity leave and assistance to single parents and families with more than three children), to IDP registration. As a result, persons internally displaced but not registered as an IDP are denied entitlements, which is in violation of the 16 October 2015 Supreme Administrative Court decision.

135. Available information indicates that following the Cabinet of Ministers' decision, SBU provided regional administrations with lists of individuals, recommending that their social entitlements be revoked pending verification. OHCHR reviewed a list which SBU submitted to the regional administration in Kharkiv. It seems to have been developed based on information from the SBU database of individuals who received permits to cross the contact line. OHCHR has interviewed IDPs in Donetsk, Luhansk, Kharkiv, Dnipropetrovsk, Kramatorsk and Zaporizhzhia regions about the impact of the verification process, and has noted widespread concern about the criteria and their application.

136. According to international human rights law<sup>91</sup>, the usage of personal data must not be discriminatory. Furthermore, even in the context of fighting terrorism, data collection and processing should be proportionate to the aim for which the collection and processing are foreseen. Such misuse of information about the people who have applied for permits has adversely affected their ability to enjoy

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<sup>89</sup> Resolution of the Parliament of Ukraine 'On recommendations of the parliamentary hearings on human rights situation of the internally displaced people and citizens of Ukraine living in the temporarily occupied territory of Ukraine and the territory uncontrolled by the Ukrainian authorities in the area of the anti-terrorist operation', No. 4273 of 18 March 2016.

<sup>90</sup> Cabinet of Ministers Resolution 4424, 14 April 2016

<sup>91</sup> ICCPR General Comment No. 16: Article 17 (Right to Privacy) of the Human Rights Committee, The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, adopted on 8 April 1988; Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies.

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their economic and social rights and raises concerns as to how such information may be further used. OHCHR also conducted an interview<sup>92</sup> with IDPs from Crimea who allege their right to privacy has been violated by the administration of the temporary facility where they reside, whose administration allegedly opened their correspondence.

137. On 1 April, the local department of social protection in Berdiansk published a post on its website encouraging residents of the city to verify the factual residence of IDPs according to a published list of addresses. The representatives of the department argued that their intent was to ease the verification process for IDPs and avoid long queues. Yet, it is of serious concern that a host community was encouraged by officials to provide information on IDPs in this manner, potentially impacting prospects for local integration and exposing IDPs to negative sentiments. The post was removed on the same day, but led to negative reactions in social media.

138. The new regulations have had a particular impact on older persons and people with disabilities whose limited mobility impedes their access to social protection departments and/or pension funds to verify whether they have been included in the lists or to prove their residence address. As a result, vulnerable IDPs have suffered from groundless suspension of their social entitlements and pensions without prior notification, depriving some of any means and exposing them to impoverishment. OHCHR interviewed a woman<sup>93</sup> with disabilities in Kramatorsk, who is an IDP and the single parent of a 13-year-old daughter. She incidentally discovered that she was on the “suspicion list” and, when she went to the pension fund, found that all her other social payments had also been cut, including her disability pension.

139. On 28 March and 5 May 2016, OHCHR and the United Nations High Commissioner for Refugees addressed a joint letter to the Government of Ukraine, recommending a transparent process be put in place for IDP status verification, a mechanism to appeal such decisions, and de-link social entitlements, which are not connected to displacement, with IDP status. The Government of Ukraine has not yet responded to the letter.

140. In addition, contradicting provisions of recent legislative acts further hinder internally displaced persons from accessing their social entitlements and rights. Amendments to the IDP law of 24 December 2015 simplified procedures for IDP registration by cancelling the requirement to have a stamp from the State Migration Service in their IDP certificate to prove their place of residence. However, the Cabinet of Ministers failed to meet the three-month transitional period to amend its bylaws and procedures to comply with the new state of legislation. Reinstatement of benefit procedures has varied by location, creating confusion. As a result, social protection departments at the local level still require a stamp from the State Migration Service. At the same time, according to the amendments to the Law “On the Freedom of Movement and free choice of residence”, which entered into force on 4 April, the Migration Service no longer can confirm the place of residence, as this function was delegated to the administrative service centres.

141. The requirement that IDPs be physically present to renew bank cards to receive social entitlements, as set out in the Cabinet of Ministers Resolution 167, further discriminates against people with disabilities or limited mobility, and those living in areas controlled by the armed groups.

*Territories controlled by armed groups*

142. Access to employment remains one of the biggest challenges in the areas controlled by armed groups. According to the ‘employment centre’ in Donetsk

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<sup>92</sup> HRMMU interview, 22 April 2016.

<sup>93</sup> HRMMU interview, 8 April 2016.



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city, in the period from 1 January to 3 May 2016, some 29,000 people were officially registered as unemployed, out of them only 5,600 were able to find permanent employment.

143. Coal miners and railway employees appear to be among the most affected by the armed conflict, as their two industries have either ceased operations or dramatically reduced their activities. Many receive reduced salaries with severe delays, or not at all. Most are not eligible for humanitarian assistance as they are not considered to be of a vulnerable demographic. Railway workers in Yenakiieve and Debaltseve have been officially registered on the Government-controlled side and had to cross the contact line in order to get paid; however they have not received salaries from the Ukrainian Government since February 2016. The employees are concerned about the lack of payment as well as the lack of clarity regarding their future. Approximately 70 per cent of the railway employees are women.

## **B. Civil registration and access to public services**

144. Civil registration documentation, such as birth and death certificates, issued in the territories controlled by the armed groups are not valid in Ukraine. Such documentation remains a prerequisite to access certain types of public services. The documents are only recognized by Ukraine after a court procedure, in violation of international jurisprudence requiring recognition through an administrative procedure – rather than a court.

145. The new simplified court procedure introduced by the Ministry of Justice set out that individuals have to travel to the territory controlled by the Government of Ukraine, pay a court fee of approximately UAH 275.60 (USD 10), and that the process will take on average between one and three days. This has reportedly reduced the waiting time to access entitlements conditional upon a recognized birth certificate.

146. Interviews conducted by OHCHR show that identification documents impact people's access to entitlements and social services. OHCHR was informed that orphans evacuated from areas controlled by the armed group- and former detainees transferred from such areas often do not have identity documents, which prevents them from accessing education, employment, humanitarian or social assistance. While this has been known since 2014, the Government of Ukraine has still not developed a procedure on how to restore documents. People living in the areas controlled by armed groups who need to renew their passports face further complications.

### *Territories controlled by armed groups*

147. OHCHR is concerned that civilians who return to the territories controlled by the armed groups may be at risk of discrimination and viewed as “traitors”. According to HRMMU interlocutors, a special procedure of ‘public voting’ can be applied to decide whether a returnee can or cannot be employed, especially as a doctor, teacher or a civil servant.

148. Since 16 March 2016, the ‘Donetsk people’s republic’ started issuing its own ‘passports’. Priority was given to those who reached the age of 16, 25 or 45 (age at which the passport is issued for the first time or requires an update) or those who lost their identification documents. Reportedly, 34,000 ‘passports’ will be issued by June 2016<sup>94</sup> and will be required for people to be able to vote, but will not affect access to other public services. It is of concern that unless children aged between 16-18 living in armed group-controlled areas cross the contact line to apply

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<sup>94</sup> Donetsk News Agency, “More than 34 thousand passports of ‘republican’ issue will be issued to young citizens of the DPR by summer,” 16 March 2016, (accessible at: <http://dan-news.info/politics/bolec-34-tysyach-pasportov-respublikanskogo-obrazca-do-leta-poluchat-molodye-grazhdane-dnr-zaxarchenko.html>)

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and obtain Ukrainian passports, they will not have any identification documents recognized outside the areas controlled by the armed groups.

### **C. Housing, land, and property rights**

149. Housing, land and property rights remain a major concern for civilians living on either side of the contact line. The Ukrainian Government has not yet established a comprehensive response, including compensation mechanisms. Continued fighting and occupation of houses constitute impediments for people to permanently return to their homes. Furthermore, checking on their property is reportedly one of the main reasons IDPs return to the conflict affected area due to the reports of looting and further damage of civilian property.

150. During the reporting period OHCHR conducted a number of interviews revealing the use and seizure of private houses by the Ukrainian military. OHCHR also witnessed the military occupation of residential homes in Luhanske<sup>95</sup>. A house was occupied from 7 January 2015 to March 2016, looted and partially damaged by members of ‘Aidar’, ‘Dnipro-1’ battalions and soldiers of the Ukrainian armed forces. UAF left following the victims complaint about the occupation of her house submitted to the Department of the National Police of Ukraine, in Novoaidar. However, the property is occupied by other groups. A private house<sup>96</sup> has been used by the military in Pshenychno village of Stanychno Luhanske district (Luhansk oblast) since December 2014, reportedly until present time. The police have not taken any measures following the complaints of the owner against the servicemen occupying his home. OHCHR observes that the local police and law enforcement is often unwilling to investigate violations of housing, land and property rights committed by the Ukrainian military.

151. During the reporting period a resident of Sloviansk successfully litigated damages to private housing inflicted in the course of the conflict. Unlike previous rulings on this matter, on 15 March 2016, the Donetsk Regional Court of Appeals in Bakhmut, ordered the State to compensate for the damage caused to a property as a result of shelling in June 2014. Referring to domestic anti-terrorism legislation<sup>97</sup>, the court reaffirmed the Government’s obligation to compensate for property damage resulting from “a terrorist act” regardless of the perpetrator. OHCHR welcomes this court decision and will monitor its implementation.

152. OHCHR welcomes the fact that on 25 March 2015 the Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine created<sup>98</sup> a working group to develop the mechanism for compensation for property that was damaged as a result of the conflict, as envisaged in the National Human Rights Action Plan. During the reporting period, several legislative initiatives to pave the way for ensuring remedy for civilians whose property has been damaged were introduced for consideration by the Parliament. OHCHR urges the Government of Ukraine to put in place an effective mechanism for restitution and compensation for damaged property, taking into account relevant international human rights standards and best practices.

153. OHCHR met with IDPs residing in the collective centre on Kustanaiska Street, in Kyiv (under the auspices of the Ministry of Justice), including families with children, people with disabilities and elderly. The IDPs stated that they felt discriminated based on their origin. They referred to the disruption of communal services, such as electricity, heating and hot water, during harsh winter conditions. OHCHR observed a similar situation in Odesa’s collective centre where the Odesa Regional State Administration and the centre’s

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<sup>95</sup> HRMMU interview, 22 April 2016.

<sup>96</sup> HRMMU interview, 7 March 2016.

<sup>97</sup> Article 19 of the Law of Ukraine “On Combating Terrorism”, No. 638-IV of 20 March 2003.

<sup>98</sup> Order of the Ministry of Regional Development, Construction, Housing and Communal services of Ukraine №69 of 25 March 2016.

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administration failed to agree upon the accommodation terms of several dozens of IDPs with disabilities as was promised to the IDPs. As a result, at the end of April about 50 IDPs were served with eviction notices. As of 10 May, several families have already moved to another collective centre to avoid eviction. In these cases, IDPs cannot fully enjoy their right to housing.

*Territory controlled by armed groups*

154. In the territories controlled by armed groups, looting, seizure, damage and military use of property continues. During the reporting period OHCHR interviewed people who reported that their property had been looted and partially or fully destroyed by the armed groups in 2014 or 2015.

155. Some of the victims believed they were targeted due to expressing pro-Ukrainian positions<sup>99</sup>. A couple from Alchevsk in Luhansk region reported that their neighbour had witnessed the looting of their property by armed groups and heard them saying that “pro-Ukrainian” were living there, using a derogatory word (“Ukropy”). A similar case was reported by a man<sup>100</sup> from Sverdlovsk in Luhansk region who is a former serviceman and currently an IDP. On 27 June 2014 the man was allegedly detained by armed groups and subsequently interrogated and tortured by three persons who identified themselves as representatives of the Main Intelligence Directorate of the Russian Federation. He alleged that the armed groups destroyed his logistics business including 30 trucks, several stocks, garages, cars and equipment worth 20,000,000 UAH (approximately 780,000 USD) in total. According to the witnesses of the complete destruction of his property the armed groups used explosive devices jeopardizing the lives of peoples residing nearby.

156. In July 2014, a businessman in Druzhkivka<sup>101</sup> was kept for five days by the armed groups and tortured for resisting his business expropriation and refusing “to cooperate with new authorities”. His wife and daughter were threatened with sexual abuse and his business and property were looted.

#### **D. Right to the highest attainable standard of physical and mental health**

157. The health care system in Ukraine generally suffered systemic challenges prior to the conflict and the situation of patients requiring lifesaving treatment has further deteriorated since 2014. The State budget allocated to the health sector only covers treatment for 30 per cent of people living with HIV, 37 per cent of patients with tuberculosis, 9 per cent of patients with hepatitis, 66 per cent of children with cancer and 27 per cent of adults with haemophilia<sup>102</sup>. In addition, tenders for the purchase of such treatment remains protracted, which may lead to interruption and therefore to serious risks for the patients.

158. The need for psychological assistance remains high both for many civilians and soldiers. OHCHR was informed about a dramatic increase in heart diseases and cancer, on both sides of the contact line, attributed by medical specialists to psychological hardship and stress. The Ministry of Defence reported that out of 200,000 soldiers who obtained the status of participants in the ‘anti-terrorist operation’, only 20,000 have received psychological services. Among civilians, children remain at particular risk and have specific psycho-social support needs in time of conflict which are largely unmet. Statistics from a well-known hotline for children, which averages 4,000 calls per month, shows that more than 40 per cent of the calls pertain to mental health issues.

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<sup>99</sup> HRMMU interview, 18 March 2016.

<sup>100</sup> HRMMU interview, 5 May 2016.

<sup>101</sup> HRMMU interview, 3 April 2016.

<sup>102</sup> NGO Patients of Ukraine, accessible at: <http://patients.org.ua/2016/03/01/uryad-spisav-pomirati-bilshe-100-tisyach-smertelno-hvorih-patsiyentiv/>

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159. Whereas soldiers released from armed group captivity can access basic medical diagnostics and treatment free of charge, State services for civilians remain largely unavailable and are exclusively provided by civil society organizations. There is a crucial need to ensure the availability of tests for hepatitis and other blood-borne communicable diseases as conditions of detention combined with physical torture and ill-treatment make detainees particularly vulnerable to such illnesses. Currently, civilians who were deprived of their liberty by armed groups and have been released are not eligible for free testing or treatment, which is prohibitively expensive.

160. OHCHR received alarming reports about the lack of medical care in pre-trial detention facilities, sometimes leading to death in custody; particularly SIZO No. 7 in Mariupol, Stryzhavke SIZO No. 81 in Vinnytsia region, SIZO in Dnipropetrovsk No. 4, pre-trial detention facilities in Zaporizhzhia and Mariupol. Only basic medication is available for detainees and no proper diagnostic procedures are in place. Protracted pre-trial investigations and trial proceedings often result in detainees spending up to one year in these facilities. Without proper medical assistance, their health deteriorates dramatically due to a combination of poor nutrition, lack of fresh air and heating.

*Territory controlled by armed groups*

161. In the areas controlled by armed groups, medication remained largely unavailable and unaffordable. While in the main cities, private pharmacies offer a wide variety of basic medication, patients rarely can afford prescribed medication due to limited financial resources and high prices.

162. Access to specialized care remains extremely limited. Since November 2014, due to the Government's decisions<sup>103</sup> on the relocation of all public institutions, hospitals in the areas controlled by armed groups have not received life-saving medication. According to local interlocutors, the healthcare system there survived thanks to humanitarian assistance, which has enabled the provision of basic medical care. In the reporting period, OHCHR received information about the lack of HIV tests, diagnosis and anti-retroviral treatment for new patients, as well as of tuberculosis and oncological treatment.

163. Organizations working in the self-proclaimed 'Donetsk people's republic' reported that approximately 62,000 children and adults needed treatment against cancer and that 9,810 of these patients were in a critical condition. Some patients even come from the Government-controlled areas as the Donetsk oncology centre used to be one of the best in Ukraine. In February 2016, hospitals in the territories controlled by the armed groups ran out of specialized life-saving oncological medication which had been delivered by international humanitarian organizations in November 2015. Currently, it is no longer possible to provide radiotherapy, and the number of surgeries has decreased by half due to lack of equipment compared to the pre-conflict level. Moreover, 85 per cent of the diagnosis equipment is out of order. Access to quality healthcare services is further affected by the state of medical equipment, most of which could not be maintained during the conflict.

164. The World Health Organisation, as well as NGOs, reported that 15,000 people living in the 'Donetsk people's republic' and 7,000 in 'Luhansk people's republic' are in daily need of insulin, while the supplies are insufficient. The

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<sup>103</sup> The Decision of the National Security and Defence Council of 4 November On Immediate Measures Aimed at the Stabilization of Socio-Economic Situation in Donetsk and Luhansk Regions, enacted by the Decree of the President of Ukraine Nr. 875/2014 on 14 November 2014, as well as the consequent resolution of the Cabinet of Ministers of Ukraine Nr.595 as of 7 November 2014, On the Issues of Financing of State Institutions, Payment of Social Benefits to Citizens and Provision of Financial Support for Some enterprises and Organizations of Donetsk and Luhansk regions. For more information see 8th OHCHR report in the Human rights situation in Ukraine, covering the period from 1 to 30 November 2014, paragraph 47.

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mortality rate among children with diabetes has increased due to the fact that the type of insulin delivered from the Russian Federation is of a different type to what patients used to receive before the conflict<sup>104</sup>.

165. The situation in the rural areas and the outskirts of cities is even more alarming due to the lack of professionals and/or the absence of medical facilities. Due to the shortage of medical personnel, remaining doctors are overstretched, telling OHCHR that they routinely receive 50-70 patients per day.

166. In Horlivka, it was reported that doctors refused to attend to elderly people unless paid and that some were not admitted at hospital due to their age. For instance, OHCHR interviewed a woman, whose elderly husband passed away on 27 February, after he was refused to be hospitalised due to the “lack of space for such patients”<sup>105</sup>. The ‘authorities’ told OHCHR that anyone could receive the care free of charge; however even on the outskirts of Donetsk civilians reported that if admitted to the hospital, patients are expected to cover all medical expenses, which is often unaffordable for many<sup>106</sup>.

167. The need for psycho-social services remained high. In the outskirts of Donetsk, Horlivka and Makiivka, which continue to be shelled, OHCHR noted that civilians, mainly women, often cry and show visible signs of distress while talking about their lives. The situation of approximately 400,000 children living in the territories controlled by the armed groups is most alarming, particularly as humanitarian actors face restrictions in providing psycho-social support.

## VI. Legal developments and institutional reforms

168. The reporting period was characterized by a number of legal developments which could positively affect rights-holders. Ukraine ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, thus opening the way for enhanced protection of children’s rights. The implementation of the National Human Rights Action Plan, adopted in November 2015 has started. Ukrainian citizens living in territories not controlled by the Government of Ukraine appear to have generally benefited from the simplified court procedure for the recognition of civil documents. The Government established a State Bureau of Investigation (SBI) whose work is expected to assist criminal justice reform. On the other hand, one year after its establishment, the National Agency on the Prevention of Corruption has not started operating. In addition, no noticeable progress has been achieved in amending the Constitution of Ukraine.

### A. Ratification of United Nations treaties

169. On 16 March, the Parliament of Ukraine ratified the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure<sup>107</sup>. While welcoming the recognition of the competence of the Committee on the Rights of the Child to receive and consider individual and inter-State communications, OHCHR notes that the ratification was accompanied by a declaration whereby the Government stated that the application and implementation by Ukraine of its obligations under the Optional Protocol was “*limited and not guaranteed*” on territories deemed to be occupied and uncontrolled, and that this

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<sup>104</sup> HRMMU meetings on 19 and 21 April 2016.

<sup>105</sup> HRMMU interview, 13 April 2016.

<sup>106</sup> HRMMU interview, 20 April 2016.

<sup>107</sup> Ukraine also ratified the 1952 ILO Social Security (minimum standards) Convention No. 102. It accepted obligations under the following parts of the Convention: Part II – Medical care, Part III – Sickness benefit, Part IV – Unemployment benefit, Part V – Old age benefit, Part VI – Unemployment injury benefit, Part VII – Family benefit, Part VIII – Maternity benefit, Part IX – Invalidity benefit, and Part X – Survivor’s benefit.



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situation would apply until the complete restoration of constitutional order in, and the effective control of the Government over this territory. This raises concern that people living in Crimea and in certain areas of the Donetsk and Luhansk regions controlled by armed groups may be prevented from submitting individual communications to the Committee.

## **B. Implementation of the Human Rights Action Plan**

170. During the reporting period, Government agencies began to implement the National Human Rights Action Plan, adopted on 23 November 2015. The Ministry of Justice published the quarterly implementation report gathering the inputs of all responsible authorities. The report indicates that the implementation of most of the 44 activities that were to be accomplished in the first quarter of 2016 is still on-going, while some activities have been implemented ahead of the expected period.

171. According to a preliminary OHCHR assessment and the monitoring conducted by some civil society organizations, some activities that were marked as completed in the report, in fact, were implemented only partially or not in substance. One of them is the development of amendments to the national anti-discrimination legislation. Paragraph 105(1) of the National Human Rights Action Plan provides for the elaboration of amendments to legislation so as to bring the list of prohibited grounds for discrimination in line with European Union directives, including sexual orientation and gender identity. In November 2015, the Parliament adopted amendments to the labour legislation introducing such prohibited ground in employment relations<sup>108</sup>. OHCHR urges the authorities to also reflect this provision in the general anti-discrimination legislation.

## **C. Criminal justice**

172. On 29 February, the Government formally established<sup>109</sup> the State Bureau of Investigation (SBI)<sup>110</sup>, which is mandated to investigate crimes committed by high-ranking officials, members of law enforcement, judges and members of the National Anti-Corruption Bureau and the Special Anti-Corruption Office of the General Prosecution, as well as military crimes, with the exception of disclosing military information constituting a state secret, which remains under the jurisdiction of the SBU. According to the law, the Head of SBI is to be selected by a special commission<sup>111</sup> whose composition was finalized on 29 March. Until the operationalization of SBI<sup>112</sup>, investigators of the relevant law enforcement bodies, prosecution system and security service will continue exercising investigative functions, which they were temporarily vested with, according to the transitional provisions of the Criminal Procedural Code<sup>113</sup>. The establishment of the SBI is an important step in the creation of an independent criminal justice system.

173. On 12 May, the Parliament made amendments to the transitional provisions of the Criminal Procedure Code modifying the conditions allowing for criminal proceedings to be carried out *in absentia*<sup>114</sup>. According to the amendments, which were enacted on the day of adoption, a lower threshold for proceedings *in*

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<sup>108</sup> Law of Ukraine ‘On amendments to the national labour legislation concerning harmonisation of anti-discrimination provisions with the law of the European Union’, No. 785-VIII of 12 November 2015.

<sup>109</sup> Decree of the Cabinet of Ministers ‘On the establishment of the State Bureau of Investigation’ No. 127, of 29 February 2016.

<sup>110</sup> Law of Ukraine “On the State Bureau of Investigation”, No. 794-VIII, of 12 November 2015.

<sup>111</sup> Selection Commission consists of nine persons: three persons chosen by the government, three by the president and three by the parliament.

<sup>112</sup> The Criminal Procedural Code of Ukraine provides that it shall take place no later than 20 November 2017.

<sup>113</sup> The amendments to the transitional provisions of the Criminal Procedure Code made on 12 May enable the investigators of the prosecution system to complete the investigations in the cases that were opened before the launch of the SBI, but no longer than two years after the SBI has started to operate.

<sup>114</sup> Law of Ukraine ‘On amendments to legislation concerning the activity of the Prosecutor General’s Office’, No. 1355-VIII of 12 May 2016.

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*absentia* will be applicable temporarily, until 15 April 2017. The modified conditions, however, appear to lack sufficient safeguards, which may lead to violations of due process and fair trial rights. For instance, an individual staying in the area of “anti-terrorist operation”, which includes the localities controlled by the Government, may be subjected to the proceedings *in absentia* having no knowledge about criminal charges against him/her.

#### **D. Civil registration**

174. The first results of the implementation of the simplified court procedure for the recognition of births and deaths occurring in the territories controlled by the armed groups in the east, as well as in Crimea show that during the first two months of implementation of the relevant amendments to the Civil Procedure Code of 4 February 2016, the Ukrainian registration authorities issued 1,085 birth certificates and 1,138 death certificates on the basis of court decisions, which are generally in favour of the applicants.

175. OHCHR recognizes progress resulting from the amendments to the Civil Procedure Code but is concerned about the cost of the procedure<sup>115</sup>, which frequently appears to be prohibitive for people with limited economic means. The National Human Rights Action Plan envisages the introduction of an administrative procedure to recognize births and deaths occurring in the temporary occupied and uncontrolled territories<sup>116</sup>. OHCHR encourages the Government to follow through by implementing this measure.

#### **E. Reform of the civil service**

176. On 1 May, the law “On the civil service” of 10 December 2015 entered into force. In general, OHCHR positively assesses the law as it enables a comprehensive reform of the civil service system and aims to eradicate corruption at State and local levels of government. It establishes a competitive system of selection for all civil service positions. The law provides for clear distinction between the civil service positions and other (political or patronage) posts. It also introduces an institute of professional managers at the Ministries - so called Secretaries of State. However, OHCHR remains concerned that the provisions of the law concerning the staff selection procedure may affect the independence of the Ombudsperson’s Office by authorising an external commission to nominate the Chief of Staff of the institution and entitling that person to appoint other staff members.<sup>117</sup> This also conflicts with the existing provisions of the law “On the Ukrainian Parliament Commissioner for Human Rights”.

177. On 28 March, draft amendments to the law ‘On the civil service’ were registered that would allow the Ombudsperson to recover his or her competence to appoint staff, had been compromised by the law “On the civil service”. OHCHR supports these amendments as they would prevent the risk of undermining the independence of the Ombudsperson’s Office and would reaffirm the autonomy of the institution, in accordance with the requirements of the Paris Principles<sup>118</sup>.

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<sup>115</sup> The court fees amount to 275.60 UAH.

<sup>116</sup> Paragraphs 126(3) and 129(1) of the National Human Rights Action Plan provide that in the second quarter of 2016, the Ministry of Justice is to elaborate “with the participation of non-governmental organizations and international experts, and taking into account international experience (Moldova), and submit for consideration to the Cabinet of Ministers, a draft law on amending the law of Ukraine ‘On the State Registration of Acts of Civil Status’ which shall establish administrative procedures for the registration of acts of civil status” occurring in Crimea and in certain districts of the Donetsk and Luhansk regions where State authorities temporarily cannot exercise their powers or do not exercise their powers in full.

<sup>117</sup> See the 13<sup>th</sup> HRMMU report covering 16 November 2015 to 15 February 2016, paragraph 180.

<sup>118</sup> See “Composition and guarantees of independence and pluralism,” Principles relating to the status of national institutions (the Paris Principles), approved by the General Assembly in 1993, annexed to General Assembly resolution, 48/134.

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## VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol<sup>119</sup>

178. Two years ago, the Russian Federation assumed control over Crimea after a “referendum”, which was not authorized by Ukraine and had “no validity” according to UN General Assembly Resolution 68/262, was held on the peninsula. Since then, Crimean residents have witnessed a sharp deterioration of the human rights situation, including the imposition of a new legal framework restrictive of civil liberties, abductions and disappearances, the shutting down of opposition media outlets and the silencing of dissenting voices through the initiation of repressive measures, including abusive criminal proceedings, targeting mainly pro-Ukrainian activists and Crimean Tatar institutions.

179. During the reporting period, the activities of the Crimean Tatar Mejlis were banned after a ‘court’ declared the Mejlis to be an extremist organisation. Several ‘police’ operations targeted members of the Crimean Tatar community. A deputy head of the Mejlis was arrested. Court proceedings were held involving a Maidan activist. Freedom of expression contributed being curtailed as one journalist was accused under separatism charges and the Simferopol city authorities issued a decision to ban all public assemblies.

### A. Rights to life, liberty, security and physical integrity

180. Thus far in 2016, there have been no reports of disappearances due to possible criminal or political causes. However, nine people who went missing in 2014 and 2015 remain unaccounted for<sup>120</sup>. There are grounds to believe that they were abducted, allegedly by members of the so-called Crimean self-defence paramilitary group, while most were known for their pro-Ukrainian positions. There has been no progress in investigations into the death of Crimean Tatar activist Reshat Ametov, who was killed in March 2014 after being pulled out of a peaceful protest by men in military-style uniforms. Likewise, the cases of ill-treatment and torture of people illegally arrested in the run-up to, and after the March 2014 ‘referendum’, remain not investigated. The failure of the authorities to follow up on such serious cases creates an atmosphere of impunity and of insecurity, particularly for Crimean Tatars.

181. The ‘police’ arrested two Crimean Tatars in Krasnokamianka on 18 April and four in Bakhchysarai on 12 May. They were charged for their alleged membership in the Hizb-ut-Tahrir organization. A pan-Islamic religious group that is considered an extremist organisation and banned in the Russian Federation but not in Ukraine. Fourteen people in total, mostly Crimean Tatars, are currently in custody in Crimea awaiting trial for their membership in the organization. Four were arrested in 2015, and so far ten have been detained in 2016.

182. On 12 May, Ilmy Umerov, one of the three deputy heads of the Mejlis, was arrested by the Russian FSB in Simferopol and charged with the offence of making “public calls and actions aimed at undermining the territorial integrity of the Russian Federation”, an offence which carries a prison sentence of up to 5 years. The accusation against Mr. Umerov refers to statements he made to the Ukrainian media on March 2016 and internet publications. He was released on the same day but is under the obligation not to leave Crimea. Another deputy head of the Mejlis,

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<sup>119</sup> The Autonomous Republic of Crimea technically known as the Autonomous Republic of Crimea and the City of Sevastopol. OHCHR has not been granted access to Crimea and has no *in situ* presence there. It has been able to follow the human rights situation through contacts with Crimean residents on the peninsula and mainland Ukraine, and relying on a variety of interlocutors, including representatives of political, religious, civil society organizations, victims, relatives and witnesses of alleged human rights violations, members of the legal profession, journalists, entrepreneurs, teachers, doctors, social workers, human rights activists and other categories, including individuals with no specific affiliations. OHCHR has continued to seek access to Crimea.

<sup>120</sup> This number includes three ethnic Ukrainians and six Crimean Tatars

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Akhtem Chiihoz, has been detained in Crimea since 2015 for his alleged role in organizing violent protests on 26 February 2014.

183. OHCHR is increasingly worried about the growing number of large-scale ‘police’ actions conducted with the apparent intention to harass and intimidate Crimean Tatars and other Muslim believers. On 1 April, armed and masked people entered a café located in the village of Pionerske (Simferopol district) and started behaving rudely, destroying furniture, reportedly in search for drugs. They took 35 Muslim men, mostly Crimean Tatars, to the police ‘centre for countering extremism’ in Simferopol. The men were detained four hours, during which they were interrogated, photographed, asked what form of Islam they followed and what mosque they attended. Their fingerprints and DNA samples (saliva) were taken. They did not have access to legal counsel. They reported seeing other Muslim men - Chechens, Dagestanis, Azeris - who had previously been detained. Before being released, all had to sign protocols stating they had no complaints against the police. Attempts were reportedly made to recruit some as police informants. The Crimean ‘prosecutor’ declared on 2 April 2016 that actions of a ‘preventive’ character had been conducted in various night clubs and places of entertainment in the peninsula, stating that the police were looking for people who appeared in various ‘wanted’ lists.

184. On 6 May 2016, about 50 armed men stormed into a mosque in Molodizhne village of the Simferopol district after Jumu’ah service (Friday prayers). According to a Crimean Tatar lawyer, approximately 100 Muslims were taken in an unknown direction. Later, all were released but issued summonses to appear before the police in the coming days.

185. On 7 May 2016, the ‘police’ detained 25 Muslim men at a central market in Simferopol. The action was reportedly linked to the search for suspects in a murder case which occurred in Russia’s Krasnodar region. There was no explanation of the reason why Muslim residents had been targeted. After being interrogated, they were released and no charges were brought against them.

## **B. Minority and indigenous peoples’ rights**

186. On 26 April, the ‘supreme court of Crimea’ declared the Mejlis - a self-governing body of the Crimean Tatar people - to be an extremist organization and banned its activities in Crimea. In addition to prohibiting any public activity and the use of bank accounts, the decision means that the estimated 2,500 members of the national and local Mejlis bodies can now incur criminal liability and could face up to eight years in prison for belonging to an organization recognized as ‘extremist’. The judgment was passed following a petition filed on 15 February 2016 by the ‘prosecutor of Crimea’ who accused the Mejlis of inciting violence and actions aimed at disrupting the territorial integrity of the Russian Federation. Earlier, on 13 April 2016, the ‘prosecutor of Crimea’ had suspended the activity of the Mejlis pending the ‘supreme court’ decision and the Ministry of Justice of the Russian Federation had included the Mejlis in the general list of public and religious associations whose activity in the Russian Federation has been suspended.

187. The chairman of the Mejlis, Refat Chubarov, informed OHCHR that prior to the Mejlis ban, on 19 February, a majority of its members (23 out of 33) had given him the power to issue decisions on behalf of this institution if “insurmountable circumstances” would prevent its normal functioning. Using this authority, Mr. Chubarov set up on 26 April a 9-member “special council”<sup>121</sup> with decision-making powers, which have assumed the functions of the Mejlis. The council is based in Kyiv.

188. OHCHR considers that the decision to outlaw the Mejlis confirms the significant restrictions already imposed by the *de facto* authorities on this institution

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<sup>121</sup> The “special counsel” includes Mustafa Dzhemilev and eight Mejlis members, including Refat Chubarov,

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since March 2014. The ‘judgment’ refers to Russian Federation anti-extremism legislation of 2002, which allows for a wide interpretation of what may constitute extremism and unduly restricts internationally recognized freedom of speech standards. In addition, the ‘ruling’ appears to be based on prejudicial evidence and could be perceived as a collective punishment against the Crimean Tatar community.

### **C. Due process and fair trial rights**

189. OHCHR has been following legal proceedings involving Andrii Kolomiiets, a Maidan activist arrested in the Russian Federation on 15 May 2015, and transferred to Crimea (Simferopol), where he has been held in custody since 13 August 2015. A Ukrainian citizen from the region of Kyiv, he is accused of murder or attempted murder of a law enforcement officer during the Maidan protests in Kyiv and of possession of drugs. If found guilty, he risks a prison sentence of up to 20 years. During a court hearing, on 30 March, Mr. Kolomiiets’ lawyer stated his client had been tortured following his arrest, which was allegedly confirmed by a witness of the defence. The lawyer also claimed that the charges had been fabricated and that Mr. Kolomiiets was forced to testify against Oleksandr Kostenko.

190. The Kolomiiets case follows a pattern observed in the Kostenko case and the legal proceedings against the deputy head of the Mejlis and six other Crimean Tatars<sup>122</sup>. All have been convicted or indicted on the basis of legislation introduced after the March 2014 ‘referendum’ for facts which occurred before that date. This raises serious concerns of compliance with the principle of legality, and particularly the retroactive application of the law.

### **D. Violations of the right to freedom of peaceful assembly**

191. On 7 March 2016, the ‘head’ of the Simferopol city administration prohibited by decree all rallies and other public events on the territory of the city, with the exception of those organized by the *de facto* and local authorities. Restrictions to public events - which have been applied since 22 November 2015 due to the state of emergency proclaimed by the *de facto* authorities following the interruption of energy supplies from mainland Ukraine<sup>123</sup> - were amended to enact a total ban.

192. This blanket prohibition of public gatherings is the latest in a pattern of serious violations of the fundamental freedom to hold peaceful public assemblies. No recent deterioration of public order in Simferopol would justify such a drastic measure.

193. In the other Crimean territorial unit, the city of Sevastopol, a protest action planned by the “Union of Entrepreneurs of Sevastopol” on 15 April was banned by reference to a decree of the Governor imposing a state of emergency limiting the conduct of public events in the city of Sevastopol as of 22 November 2015. However, the protestors who intended to criticize the policy decisions of the Governor of Sevastopol in the socio-economic sphere, defied the ban. They conducted their protest rally, which was peaceful and did not lead to any ‘police’ intervention.

### **E. Violations of the right to freedom of opinion and expression**

194. On 1 April 2016, a new television channel (*‘Millet’*) in the Crimean Tatar language started satellite broadcasts from Crimea. Ruslan Balbek, a ‘deputy prime minister’ of the *de facto* government, declared that the aim of the channel was to counter “anti-Russian propaganda.”

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<sup>122</sup> See 13<sup>th</sup> HRMMU report covering 16 November 2015 to 15 February 2016, paragraph 187.

<sup>123</sup> See 13<sup>th</sup> HRMMU report covering 16 November 2015 to 15 February 2016, paragraphs 199-200



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195. On 1 April, during a search at the Department of All-Ukrainian Shevchenko Society “Prosvita” (“Enlightenment”) in Sevastopol, Russian Federal Security Service (FSB) officers seized over 250 books. FSB officials stated that 18 copies of 9 editions figured in the federal list of extremist material, claiming the confiscated literature was meant to propagate “Ukrainian nationalism and separatist ideas among the inhabitants of Russia.”

196. On 19 April, Mykola Semena, a contributor to a news site about Crimea run by Radio Free Europe/Radio Liberty (RFE/RL) was arrested in Crimea by the ‘police’ acting upon a request of the ‘prosecutor of Crimea’. He was accused of issuing “calls for undermining the territorial integrity of the Russian Federation via mass media” and faces up to 5 years in prison. After being interrogated, Mr. Semena was released but ordered as a pre-trial measure of restraint not to leave the peninsula while investigations are underway. On the same day, the ‘police’ also searched the homes of several local journalists and confiscated computers and data allegedly proving that materials of an extremist character had been under preparation.

## **F. Violation of the right to freedom of movement**

197. In addition to the absence of air, maritime or railway links between mainland Ukraine and Crimea, freedom of movement was further restricted by a decision taken on 1 April 2016 of the *de facto* authorities affecting the use of vehicles. All Crimean residents were required to re-register their vehicles by switching to Russian number plates by 1 April 2016, or face administrative sanctions, including the prohibition to use their vehicle for up to three months. OHCHR is aware of cases where people who temporarily left for mainland Ukraine before April 2016 without having changed their number plates were prohibited from returning to the peninsula with their vehicles after 1 April 2016. Another worrisome aspect of this decision is that re-registration is conditioned upon the possession of a passport of the Russian Federation. Those who have refused Russian Federation citizenship (and passports) will thus be denied the possibility to use a vehicle.

## **G. Transfers of persons deprived of their liberty outside of Crimea**

198. According to several sources, including the Ukrainian Ministry of Foreign Affairs, at least 179 prisoners were transferred from Crimea to penitentiary institutions in the Russian Federation since March 2014. The majority of cases concern people who were sentenced in Crimea before Ukraine ceased exercising effective control over the peninsula. This raises serious concerns about the retroactive application of laws. Moreover, while many were later amnestied under Ukrainian law, the *de facto* authorities have refused to release them.

199. A number of people transferred to the Russian Federation had been arrested by the *de facto* authorities after the March 2014 ‘referendum’, including Oleh Sientsov, Oleksandr Kolchenko, Hennadii Afanasiev and Oleksii Chyryni, all arrested in Simferopol in May 2014 and sentenced for terrorism by Russian Federation courts<sup>124</sup>. Transfers to remote facilities, often difficult to reach from Crimea, endanger the family links of detainees.

200. According to a report of the *de facto* ‘Crimean Ombudsperson’ for 2014, 22 convicts serving their sentences in Crimea filed petitions to be extradited to Ukraine after the March 2014 ‘referendum’ and 18 rejected Russian citizenship in writing. However, information at the disposal of OHCHR indicates that no prisoners have yet been sent back to mainland Ukraine.

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<sup>124</sup> Oleh Sientsov is believed to be in Yakutsk, Oleksandr Kolchenko in Kopeyska (Chelyabinsk region), and Gennady Afanasiyev in Mikuni (Republic of Komi). Aleksey Chirnyi is believed to be in a psychiatric hospital in Moscow since August 2015.

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## **H. Conscription into military service**

201. A representative of the Armed Forces of the Russian Federation stated on 31 March that close to 2,000 Crimean residents would be called to serve in the army in the spring of 2016. He added that, as in 2015, Crimean conscripts would serve on the territory of the Crimean peninsula. Crimean Tatar representatives told OHCHR that members of their community had received military notifications and that failure to present themselves at recruiting centres could expose them to criminal sanctions.

## **I. Right to the highest attainable standard of physical and mental health**

202. On 3 April, a Crimean woman died as a result of delays in getting medical treatment. The woman sought to be admitted to a public hospital in Simferopol but was initially refused access because she did not have a medical insurance. It should be noted that one can only benefit from medical insurance if she or he possesses Russian Federation citizenship and a Russian passport, which the woman had rejected in 2014. After her condition worsened due to high blood pressure, she was admitted to the hospital but died of a heart attack in the reception room. OHCHR documented a similar case occurred in December 2015<sup>125</sup>. OHCHR recalls that the refusal to hospitalize anyone with a serious health condition - including due to his or her origin or status, such as citizenship - constitutes a grave violation of the internationally protected right to the highest attainable level of physical and mental health.

## **VIII. Conclusions and recommendations**

203. Only the full implementation of the Minsk Agreements will result in conditions allowing due respect for international human rights norms. In order to ensure that Ukraine's international human rights and humanitarian law commitments have a genuine impact for individuals, OHCHR has provided support to the Government to develop the National Human Rights Strategy and Action Plan, and will continue to monitor its implementation. It will expand its work to further support and advise the Government, parliament, the Ombudsman Institution, civil society and the international community on means and ways to ensure that recommendations made by the UN Human Rights mechanisms, as well as OHCHR through its reporting, are transformed into action that bring about meaningful change in the protection of human rights.

204. OHCHR has already provided advisory services by commenting on a number of draft pieces of legislation including on missing persons, the civil service and advocated for legal amendments regarding freedom of movement for civilians and equal protection under the law for IDPs. By highlighting where draft legislation falls short of international standards, OHCHR has assisted the Government in complying with its international obligations. This has bolstered the protection afforded under Ukrainian domestic legislation. By further monitoring the implementation of legislation, OHCHR is working to ensure that all people in Ukraine benefit from equal protection under the law, particularly those in conflict-affected areas.

205. Ukraine has an important reform agenda, that OHCHR will continue monitoring, built around strengthening democratic institutions and public trust and fighting corruption. The success of reforms will depend, in large part, on the ability to establish an independent justice system, where judges will feel protected and be able to work free from political interference and other forms of pressure aimed at influencing judicial decision-making.

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<sup>125</sup> See 13<sup>th</sup> HRMMU report covering 15 November 2015 to 15 February 2016, paragraph 195.

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206. OHCHR has also advocated on critical issues which may threaten to undermine human rights, including equal access to civil documentation, *incommunicado* detention and the use of torture and ill-treatment, and arbitrary deprivation of liberty, among others. OHCHR's advocacy has yielded an improvement in some of these areas: conditions of detention in certain locations has improved following OHCHR visits, the adoption of a simplified court procedure for the recognition of civil documents for births and deaths in armed group-controlled areas, and transfers of pre-conflict detainees from armed group-controlled areas to Government-controlled territory by facilitating the work of the Ombudsperson's Office.

207. Monitoring the human rights situation in Ukraine and engaging with relevant authorities has also allowed OHCHR to identify areas where the international community can focus its support. Particular attention and resources have been dedicated to working with humanitarian actors to ensure that OHCHR's human rights findings could be utilized to shape a protection-focused response to address the needs of the most vulnerable in the conflict-affected population.

208. Bringing a meaningful end to hostilities in the eastern regions of Ukraine and fully complying with the provisions of the Minsk Agreements is critical and the only viable strategy for achieving a peaceful solution to the conflict. The parties to the conflict, as well as influential States, must ensure that civilian protection and accountability for violations and abuses of human rights and violations of international humanitarian law are discussed during the Minsk Talks. The restoration of full control by the Government of Ukraine over parts of the border with the Russian Federation in certain areas of Donetsk and Luhansk regions, the withdrawal of foreign fighters, pull-out of all heavy weaponry, pardon and amnesty through law and with due regard for human rights is critical. OHCHR reiterates that an environment conducive to the promotion and protection of human rights in Ukraine – and in particular in the Autonomous Republic of Crimea – depends on respect for General Assembly resolution 68/262 on the territorial integrity of Ukraine.

209. OHCHR's civilian casualty documentation work has also acted as a reference for many international – and national – actors seeking to understand the human cost of the ongoing armed conflict. The statistics and analysis provided by OHCHR on civilian casualties, the location of each incident, and disaggregated data on the cause of death or injury can also help inform civilian casualty mitigation efforts by the Ukrainian armed forces and armed groups.

210. OHCHR's monitoring and reporting from Donetsk and Luhansk regions serves to inform policy and decision-makers, as well as Ukrainians at large, about the realities of life under armed group control and the socio-economic conditions of those living in close proximity to the contact line. OHCHR has acted as a link between detainees in Government facilities and their families in armed group-controlled areas. OHCHR has also worked to maintain links between people across the contact line, through conducting cross-line field visits, monitoring the freedom of movement, and advocating for free and safe passage of civilians.

211. OHCHR has issued recommendations in each of its public reports. These recommendations have served as the foundation for OHCHR's engagement with Government and armed groups toward respect human rights standards. The recommendations draw from OHCHR's interviews with civilians living on either side of the contact line, their immediate protection needs and long-term human rights concerns. They include a number of immediate and medium-term domestic human rights measures that could contribute to the outcome of sustainable peace and address systemic human rights abuses and violations, as any durable solution to the ongoing crisis must also address the underlying nature of human rights abuses and violations in Ukraine. Recommendations made in OHCHR reports on the human rights situation in Ukraine published since April 2014, which have not yet

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been acted upon or implemented, remain valid. OHCHR calls upon all parties to also implement the following recommendations:

212. **To the Government of Ukraine:**

- a) **The Ministry of Defence and Ministry of Internal Affairs to ensure that its armed and constituent forces take all feasible precautions in attack, and protect civilians and persons *hors de combat*;**
- b) **Investigate and provide remedies in relation to all incidents of damage, confiscation and looting of property, including by the Ukrainian armed forces; establish a mechanism for restitution and compensation for damaged property, taking into account international human rights standards and best practices;**
- c) **The General Prosecution and Military Prosecution to ensure equal treatment under the law, including through uniform charging of criminal conduct and through requesting proportional sanctions;**
- d) **The ‘Anti-Terrorism Operation’ Prosecutor’s Office to conduct effective, independent and prompt investigation of all allegations against officials accused of extrajudicial killing, arbitrary detention, torture and other forms of ill-treatment, inhuman detention conditions, denial of the right of access to lawyer and doctor;**
- e) **The Security Service of Ukraine (SBU) to treat all persons detained in the context of the ‘anti-terrorism operation’ humanely and without adverse distinction in compliance with binding international human rights law and standards;**
- f) **The SBU to cease the practice of extracting confessions or self-incriminating statements under duress and to immediately release any individuals in unlawful detention;**
- g) **The Ministry of Justice and Penitentiary Service to facilitate contact of detainees with the outside world, including through taking measures to ensure that detainees whose families are in armed group-controlled areas can communicate with their relatives at regular intervals, both through correspondence and receiving visits;**
- h) **The Government to establish an independent and impartial, centralized State authority for tracing missing persons and identifying human remains, with sufficient capacity and reach to carry out its mandate effectively;**
- i) **The Ministry of Justice to initiate the waiving of the court processing fee in civil registration cases stemming from the armed group-controlled territories and the Autonomous Republic of Crimea, in order to ensure equal access and protection of the law without discrimination on the basis of origin and place of birth or residence;**
- j) **The Cabinet of Ministers to implement the Supreme Administrative Court decision of 16 October 2015 to pay pensions to all citizens of Ukraine, regardless of their place of origin or residence; de-linking of the payment of social entitlements such as pensions and other benefits from IDP registration;**
- k) **Parliament, the General Prosecution and the National Police to adopt and take effective measures to protect judges from interference and pressure in high-profile cases such as the ongoing 2 May 2014 violence trials in Odesa;**

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- l) The SBU to review the legality, necessity and proportionality of the provisions of the Temporary Order vis-à-vis imposed restrictions on the freedom of movement, delivery of medication and foodstuffs and other basic supplies;**
  - m) Parliament to draft and adopt legislation providing free legal aid to internally displaced persons, who are currently denied such services; and to implement the IDP law of 6 January 2016 requiring harmonisation of contradicting legislative acts concerning the registration of IDPs;**
  - n) The Parliament to amend the Law on fighting terrorism allowing a person suspected of terrorism to be held in preventive detention for up to 30 days without initiating criminal proceedings and appearing before a court; and to ensure, in particular, compliance with article 9(3) of the International Covenant on Civil and Political Rights (ICCPR);**
  - o) The Government to establish a mechanism for periodic independent review by the Parliament of the necessity of measures derogating from the ICCPR and lift the derogation as soon as it is no longer strictly required;**
  - p) Law enforcement agencies should take measures to secure assemblies and protect protesters regardless their political affiliation, sexual orientation, origin or nationality, and investigate cases of violations in due course;**
  - q) Law enforcement agencies should ensure immediate and effective investigation of allegations of hate crimes based on ethnicity, religion or other grounds, to prevent impunity and guarantee access of victims to legal redress;**
  - r) SBU, National Guard and State Border Service to facilitate free and unimpeded passage by civilians across the contact line by increasing the number of transport corridors and entry-exit checkpoints;**
  - s) Law enforcement to document and investigate all allegations of conflict-related sexual violence and ensure that services for the survivors (male, female, boys and girls) are created;**
  - t) Parliament and Cabinet of Ministers to put in place specific measures ensuring protection of civil society, journalist and whistle blowers engaged in anti-corruption work.**

213. To all parties involved in the hostilities in Donetsk and Luhansk regions, including the armed groups of the self-proclaimed ‘Donetsk people’s republic’ and self-proclaimed ‘Luhansk people’s republic’:

- a) Ensure free and unimpeded passage of civilians across the contact line;**
- b) Facilitate access for human rights monitors and legal counsel providers’ to the checkpoints established as per the Temporary Order ensuring effective mechanisms for civilians to report complaints or human rights abuses and violations;**
- c) Immediately release all persons arbitrarily deprived of their liberty without delay and in conditions of safety;**
- d) Treat all persons deprived of their liberty, civilian or military, humanely and according to international human rights and humanitarian law standards;**



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- e) **Ensure unimpeded access of OHCHR and other international monitors to the places of deprivation of liberty in the conflict zone, including unofficial and ad hoc locations;**
  - f) **Commit to not pass ‘sentences’ or carry out executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees recognized as indispensable, recalling that such acts violate binding provisions of Common Article 3 of the Geneva Conventions and incur individual criminal responsibility under international criminal law;**
  - g) **Address all allegations of conflict-related sexual violence and ensure that services for the survivors (male, female, boys and girls) are created and available, as well as services for victims of torture, including by facilitating the work of international humanitarian actors;**
  - h) **Ensure that the bodies and remains of people killed as a result of hostilities are treated with due respect and dignity, providing free and safe access to areas where bodies are buried, ensuring their identification and return to their families. Preserve evidence of possible summary executions, bearing in mind future accountability;**
  - i) **Respect the housing, land and property rights of displaced persons, including taking measures to ensure that civilian property is not used for military purposes;**
  - j) **Ensure that returnees are guaranteed their housing, land, and property rights, and do not face discrimination upon return to their homes;**
  - k) **In line with the international customary and international humanitarian law, guarantee the right to freedom of religion or belief and the right not to be subjected to discrimination on any grounds, including religious affiliation;**
  - l) **Ensure that freedom of expression, freedom of association and freedom of assembly can take place in the territories controlled by the armed groups allowing the implementation of free and fair elections envisioned as part of the Minsk Package of Measures;**
  - m) **Continue to cooperate towards the transfer of pre-conflict detainees to Government-controlled areas to serve their sentences and the transfer of pre-conflict case materials and files with a view to preventing further delay in proceedings, arbitrary deprivation of liberty, and ensuring accountability;**

214. **To the *de facto* authorities of Crimea and to the Russian Federation:**

- a) **Repeal the decision to outlaw the Mejlis and allow the Crimean Tatar community to choose its own self-governing institutions;**
- b) **Repeal the decision banning leaders of the Mejlis from entering the peninsula;**
- c) **Ensure that all persons deprived of their liberty both at the pre-trial and trial stages benefit from all legal guarantees, including equal treatment before the law, the right not to be arbitrarily detained, the presumption of innocence, and the prohibition from self-incrimination;**
- d) **Guarantee fair trial proceedings and independent judicial-making in the cases involving the Crimean Tatars accused of involvement in the protests of February 2014, alleged members of the Hizb-ut-Tahrir organization, and Maidan activists;**

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- e) **End the practice of retroactive application of laws, and the application of Russian Federation law in accordance with General Assembly Resolution 68/262;**
  - f) **Refrain from transferring people detained in Crimea to the Russian Federation;**
  - g) **Investigate all allegations of ill-treatment, torture, abductions, disappearances and killings involving members of the security forces and the Crimean ‘self-defence’; identify and punish their perpetrators;**
  - h) **End the practice of restricting free media reporting and opening criminal proceedings against journalists, bloggers and activists for expressing their views and opinions;**
  - i) **Enable Crimean residents, without discrimination, unfettered exercise of the right to freedom of assembly and lift administrative measures imposing partial or total bans on the holding of public events;**
  - j) **Ensure equal rights and non-discriminatory access to employment, healthcare, education, social services and entitlements for all Crimean residents, including those who do not have Russian Federation citizenship and passports;**
  - k) **Protect and promote the rights of all minority groups and indigenous peoples’ and enable them, in particular to maintain and develop their national identity and use their native language, including in the education sphere;**
  - l) **Ensure direct and unfettered access to the Crimean peninsula by established regional and international human rights monitoring mechanisms to enable them to carry out their mandate in full conformity with General Assembly resolution 68/262.**



# Annex 772

OHCHR, Report on the Human Rights Situation in Ukraine (16 May–15 August 2016)





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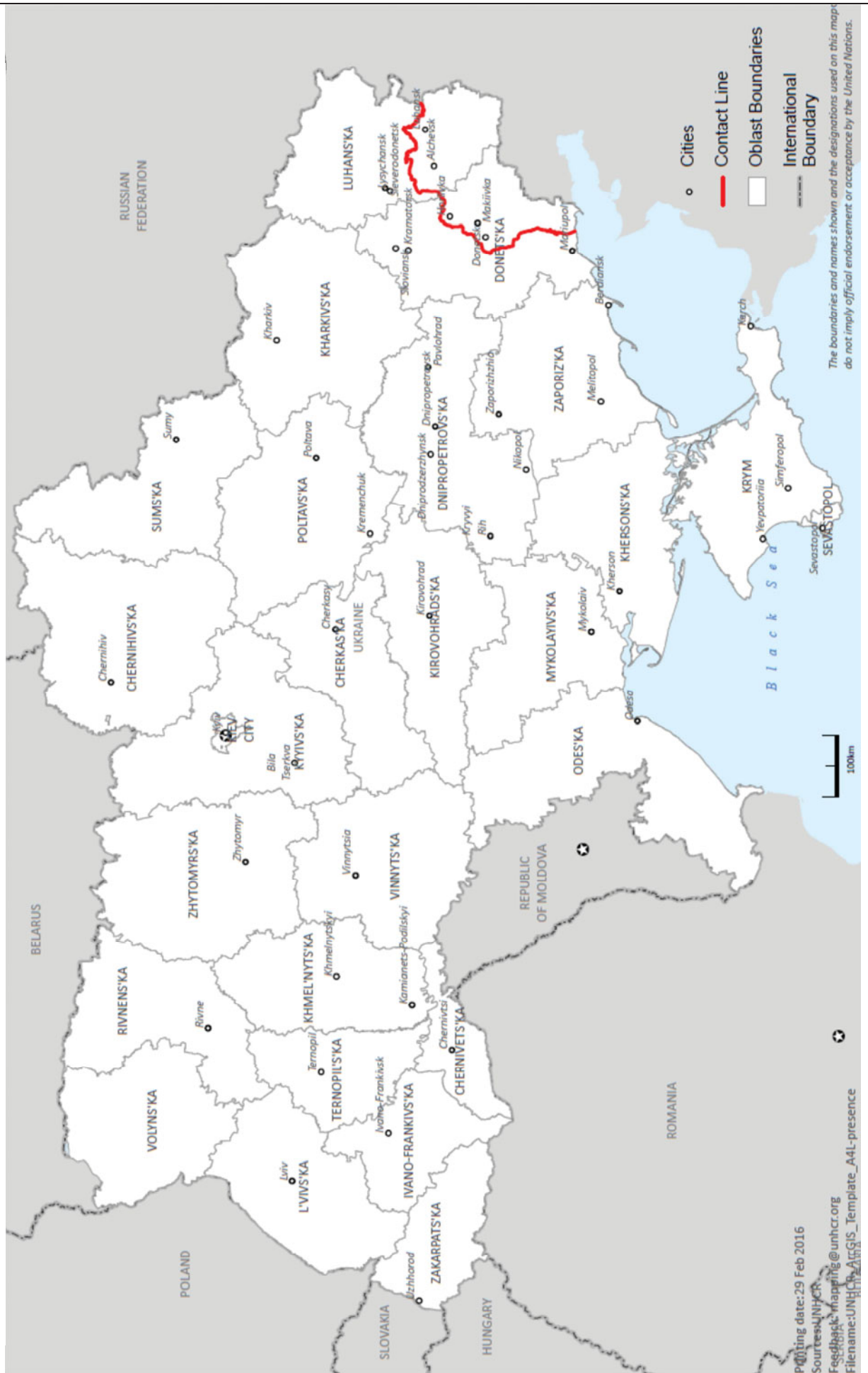
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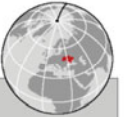
**Report on the human rights situation in Ukraine  
16 May to 15 August 2016**



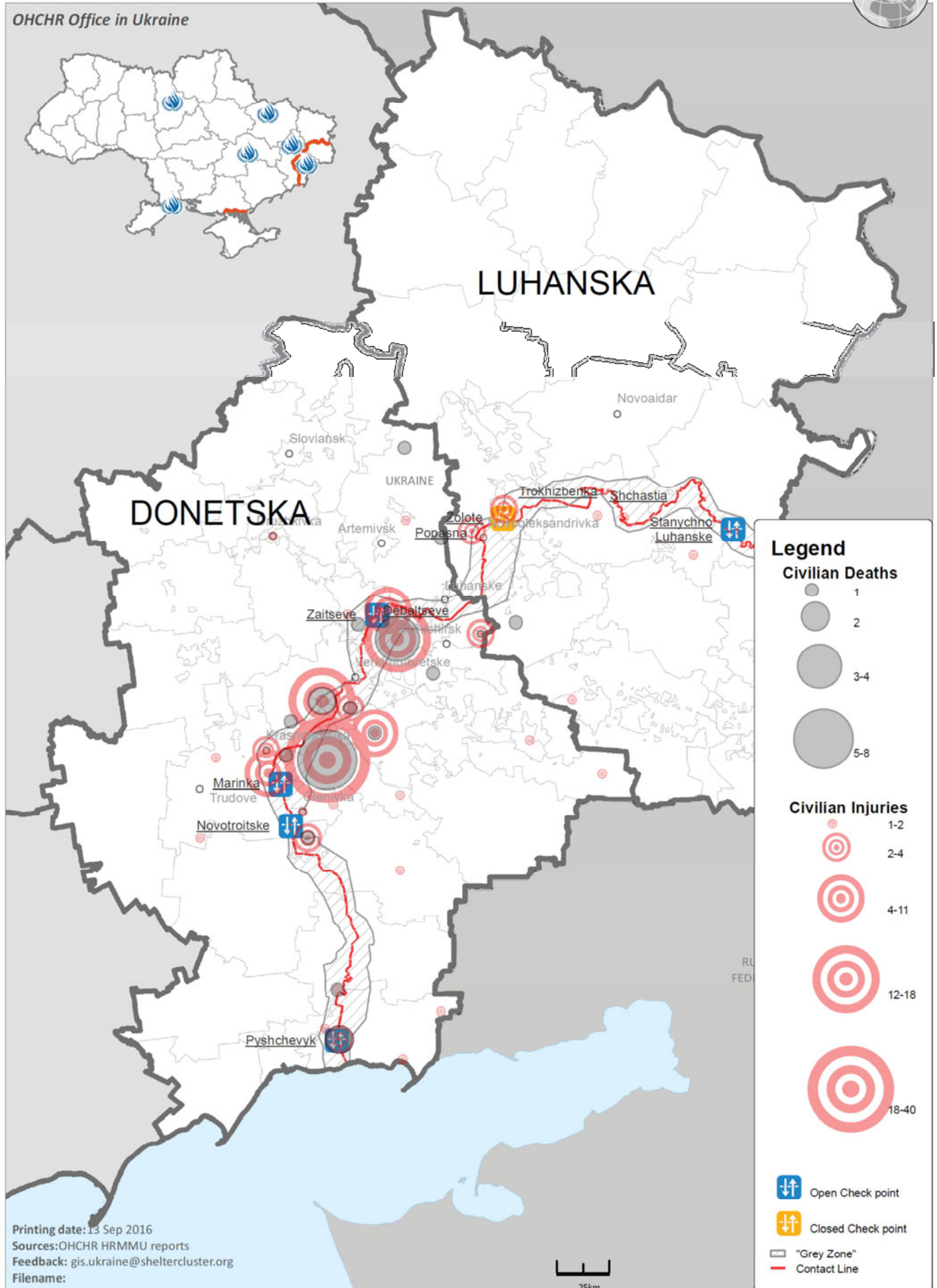
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# UKRAINE





OHCHR Office in Ukraine



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The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations

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## I. Executive Summary

1. Based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), the fifteenth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine<sup>1</sup> covers the period from 16 May to 15 August 2016. The report also provides an update of recent developments on cases that occurred during previous reporting periods.

2. During the period under review, the Government of Ukraine continued institutional reforms and adopted constitutional amendments related to the judiciary, creating an opportunity to break with the past, to protect and enforce rights and replace the arbitrary use of power. At the same time, the Government has continued to derogate from certain obligations under the International Covenant on Civil and Political Rights (ICCPR), weakening human rights protections where they are needed most (See Chapter II on Legal developments and institutional reforms). The human rights situation in certain areas of Donetsk and Luhansk regions of eastern Ukraine has worsened on both sides of the contact line due to escalating hostilities and continued disregard for civilian protection by Government forces and armed groups. The conflict in the east continues to undermine any real progress that would lead to systemic changes in the promotion and protection of human rights for the whole of Ukraine.

3. In the east, the proximity between Government forces and armed groups at the contact line – some 300 to 500 metres apart in certain locations – contributed to rising in the intensity of the hostilities during the reporting period. The practice of Ukrainian armed forces, the self-proclaimed ‘Donetsk people’s republic’<sup>2</sup> and the self-proclaimed ‘Luhansk people’s republic’<sup>3</sup> to position their fighters and weapons in populated residential areas has heightened risks and harm to civilians. The inflow of ammunition, weaponry and fighters from the Russian Federation continues to fuel the conflict. OHCHR has serious concerns that the proliferation of arms and ammunition facilitates human rights violations or abuses and violations of international humanitarian law. OHCHR is further concerned by reports of the paramilitary DUK (Voluntary Ukrainian Corps ‘Right Sector’) members positioned close to the contact line, noting that this group remains outside of the chain of command of the Ministry of Defence. Developments during the period under review demonstrated that ceasefire violations have a clear human cost and highlighted the urgent need for the warring parties to fully withdraw from the contact line (See Chapter III on Rights to life, liberty, security and physical integrity).

4. Between 16 May and 15 August 2016, OHCHR recorded 188 conflict-related civilian casualties in certain areas of Donetsk and Luhansk regions of eastern Ukraine, marking a 66 per cent increase since the previous reporting period. More than half of all civilian casualties recorded in June and July were caused by shelling around the contact line, including allegedly through the use of weapons expressly prohibited by the Minsk Agreements. The number of civilians who died as a result of the secondary effects of violence, such as lack of access to food, water or medicine and healthcare, is unknown.

5. OHCHR has noted incremental improvements in access to places of deprivation of liberty. During the reporting period, OHCHR was able to meet in the presence of local authorities some pre-conflict prisoners held in penal colony No. 124 in Donetsk region under the control of the armed groups, as well as 31 men deprived of their liberty in the context of hostilities held in colony No. 97 in Makiivka, Donetsk region. The ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ continued to deny external observers unhindered access to all places of deprivation of liberty, raising concerns that cases of torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment), including sexual and

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<sup>1</sup> HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address human rights concerns. For more details, see paragraphs 7–8 of the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

<sup>2</sup> Hereinafter ‘Donetsk people’s republic’.

<sup>3</sup> Hereinafter ‘Luhansk people’s republic’.



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gender-based violence, may be greater than reported. Following the suspension of the visit of the Subcommittee on the Prevention of Torture (SPT) on 25 May 2016 due to obstruction and denial of access to some places of detention that are under the authority of the Security Service of Ukraine, the Government of Ukraine provided assurances that allowed the SPT to resume its visit in September. OHCHR notes that the Security Service of Ukraine (SBU) has undertaken trainings for its personnel on torture prevention<sup>4</sup>. Despite this positive development, OHCHR has continued to document cases of torture and ill-treatment by the Government and armed groups, once more underscoring the urgent need for regular access to places of deprivation of liberty, provision of medical care for victims, and accountability for documented violations and abuses.

6. Civilians living in the conflict-affected area continued to be deprived of much needed protection, access to basic services and humanitarian aid, aggravated by restrictions in freedom of movement. Those living in areas controlled by the armed groups are subject to arbitrary rule and various human rights abuses. Parallel structures developed by the armed groups affect the inalienable rights of people living under their control. There is no mechanism for victims of these structures to secure protection or redress. This is rarely articulated due to the lack of space for civil society actors and for people to exercise their rights to freedom of peaceful assembly, association, opinion and expression in armed group-controlled areas (See Chapter V on Fundamental Freedoms).

7. Journalists who have reported on the conflict or from armed group-controlled areas have found themselves as targets of online attacks carried out with the tacit consent – and at times declared support – of high-ranking Government officials. Freedom of expression has become a political issue, with the Deputy Information Policy Minister resigning on 3 August 2016 over the unwillingness of Government authorities to investigate abuses against journalists. Journalists report of harassment and intimidation, leading to self-censorship, when viewed as being critical of some particular Government policies and the conduct of the Ukrainian armed forces in the conflict.

8. Together with the Government of Ukraine, OHCHR continued to work towards ensuring that those responsible for human rights violations and abuses are held to account. Under international law, Ukraine is obliged to investigate, prosecute and punish the perpetrators of such violations and abuses, regardless of their allegiance. Such efforts must be prompt, independent, impartial, thorough and effective. This report highlights again that there has been little accountability for violations and abuses committed in the course of the armed conflict between Ukrainian security forces and a number of armed groups in eastern Ukraine. In cases where conflict-related cases have been prosecuted there have been serious concerns about due process and fair trial rights<sup>5</sup>. Based on extensive trial monitoring, OHCHR finds that mandatory pre-trial detention for all defendants charged with conflict-related crimes without regard to individual circumstances violates the prohibition on arbitrary detention (See Chapter IV on Accountability and administration of justice).

9. OHCHR has advocated for victims' access to their right to reparation, which includes restitution, rehabilitation and measures of satisfaction. Allegations of military use of residential property - a trend that has been on the rise during the reporting period in villages adjacent to the contact line - have illustrated the need for the return of property and compensation to those displaced and affected by such practices (See Chapter VI on Economic and social rights). The presence of Government forces and armed groups in residential areas increases the risk of sexual and gender-based violence and militarization of summer camps on both sides of the contact line.

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<sup>4</sup> Ukrainian Parliament Commissioner for Human Rights, "Ombudsman jointly with the Swiss experts provides training on prevention of tortures in activities of the State Security Service of Ukraine," 28 July 2016 (<http://www.ombudsman.gov.ua/en/all-news/pr/28716-mx-ombudsman-jointly-with-the-swiss-experts-provides-training-on-preventi/>)

<sup>5</sup> See in particular Office of the United Nations High Commissioner for Human Rights, United Nations Human Rights Monitoring Mission in Ukraine, "Accountability for killings in Ukraine from January 2014 to May 2016," 14 July 2016.

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10. In seeking to protect the rights of civilians affected by the conflict, OHCHR has also been vocal in advocating for facilitation of freedom of movement and resolution of the ongoing denial of social entitlements to people living in the conflict-affected area and internally displaced persons (IDPs). Approximately 85 per cent of IDPs interviewed by the NGO Right to Protection residing in Government-controlled areas indicated that they were severely or critically affected by suspensions of payments of social entitlements<sup>6</sup>. In armed group-controlled areas, this concerned 97 per cent of IDPs. Equal protection of all people affected by the conflict is crucial for the peaceful reconstruction of Ukrainian society.

11. Tensions in and around the Crimean peninsula spiked after Russia's security service (FSB) announced on 10 August that it had arrested a group of people near the northern Crimean city of Armyansk, allegedly sent by the Ukrainian intelligence service to commit terrorist acts, something the Ukrainian side officially denied, including during consultations at the UN Security Council called for by Ukraine. According to the FSB, armed clashes left two Russian Federation security officers dead, and at least three members of the alleged sabotage group were arrested. Security was reinforced on both sides of the Administrative Boundary Line. OHCHR has noted a continued deterioration of the human rights situation in Crimea with the further administrative integration into the Russian Federation's southern federal district, in violation of United Nations General Assembly Resolution 68/262 on the territorial integrity of Ukraine.

12. The right to peaceful assembly has been further curtailed in the Autonomous Republic of Crimea by the *de facto* authorities and people continued to be interrogated and harassed by law enforcement agents for expressing views that are considered as extremist. A deputy head of the Crimean Tatar Mejlis was ordered by a Crimean 'court' to undergo a "psychiatric assessment". The search for missing persons remains inconclusive and investigations have yielded no results. The absence of accountability and redress for victims nurtures impunity.

13. The findings in this report are grounded in data from in-depth interviews with 214 witnesses and victims of human rights violations and abuses during the period under review. In 60 per cent of cases documented, OHCHR carried out individual response follow-up actions to secure human rights protection.

14. OHCHR has been advising duty-bearers within the Government and the armed groups on the results of its findings, works with civil society partners on how to advocate on their implications, and raises awareness and support among others in order to respond and take action. OHCHR also engaged with the Government toward ensuring the rights of victims to justice, reparation, truth, and guarantees of non-recurrence<sup>7</sup>. Through providing technical cooperation to the Government and civil society in implementing legislative, policy and institutional reforms, OHCHR contributed to bringing about greater respect for the rule of law and at strengthening the protection of human rights.

## **II. Legal developments and institutional reforms**

### **A. Notification on derogation from the International Covenant on Civil and Political Rights**

15. On 6 July 2016, the Government of Ukraine notified the United Nations Secretary-General that following a review of the security situation in certain areas of Donetsk and Luhansk regions, it would maintain its derogation from certain obligations under the International Covenant on Civil and Political Rights (ICCPR) "until further notice"<sup>8</sup>. The

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<sup>6</sup>Monitoring Report on the suspension of IDP certificates, social payments and pension payments for IDPs in Kharkiv, Donetsk, Luhansk, Zaporizhia, Dnipro regions, conducted by the NGO Right to Protection.

<sup>7</sup> See in particular General Assembly Resolution 60/147 on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights. Law and Serious Violations of International Humanitarian Law; Human Rights Council Resolution 18/7 on the creation of a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; E/CN.4/2005/102/Add.1 (2005)

<sup>8</sup> In June 2015, the Government of Ukraine submitted a communication to the United Nations Secretary-General, notifying him of its derogation from the following rights under ICCPR: Effective remedy (paragraph 3, Article 2); freedom from arbitrary arrest and detention and related procedural rights (article 9); liberty of movement and

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notification indicated that as of 14 June 2016, the territorial application of the derogation had not changed, covering the localities in Donetsk and Luhansk regions under the Government's total or partial control, including large towns and cities.

16. While welcoming this review of the derogation, OHCHR notes the importance of regular review, with a clear independent mechanism ensuring periodicity and objectivity. Moreover, OHCHR remains concerned as to the compliance of the derogation with the standards set by Article 4 of ICCPR. Article 4 requires the official proclamation of the existence of a public emergency threatening the life of the nation, and that the derogation measures must be proportionate and non-discriminatory. It also provides that their duration, geographic and material scope must be limited to the extent strictly required by the exigencies of the situation. The derogation must not be inconsistent with other obligations under international law, including applicable rules of international humanitarian law.

17. In the light of these principles, some derogation measures, particularly, the extension of the period of detention of individuals suspected of involvement in 'terrorist activities' from 72 hours to 30 days without any court decision<sup>9</sup> appear to be excessive even during an emergency. Other derogation measures grant prosecutors in the conflict area additional powers normally attributed to investigating judges, such as the authority to decide upon issues related to custodial measures, access to property, searches, and wiretapping. The derogation also allows the military and civil administrations established as temporary state bodies in Government-controlled areas of Donetsk and Luhansk regions to impose restrictions on freedom of movement (e.g. curfews), conduct security searches, checks and other measures allegedly to protect public safety. OHCHR notes that not all measures envisioned in the derogation are applied in practice<sup>10</sup>.

## **B. Constitutional amendments concerning the judiciary**

18. On 2 June, Parliament adopted amendments to the Constitution of Ukraine regarding the judiciary<sup>11</sup>. These amendments provide an opportunity to strengthen the independence of the judiciary and to build a system of governance based on the rule of law, essential for the restoration of public trust, promotion of accountability and achievement of justice.

19. The amendments give a central role and new powers to the High Council of Justice and guarantee its independence. They provide that the majority of Council members will be judges and will be empowered to make decisions on the selection, dismissal, transfer, sanctions, promotion and immunity of judges. Parliament and the President no longer have decisive roles in these processes, which limits potential interference from the legislature and executive in the judiciary. Judges are given life-long tenure, abolishing probationary periods that made judges vulnerable to pressure. A judge can no longer be dismissed for the vague offense of "breaching the oath"<sup>12</sup>. The amendments also abolish broad prosecutorial supervisory powers and institute an extended non-renewable term for the Prosecutor General.

20. The right to establish and abolish courts, formerly a presidential prerogative, has been transferred to Parliament, which has also been granted the competence to request opinions from the Constitutional Court on the constitutionality of international treaties. Upon the exhaustion of domestic remedies, an individual may also challenge the constitutionality of legislation as applied in court. Other positive aspects include the right to a hearing within a reasonable time and the obligation for courts to oversee the execution of judgments.

21. While the amendments generally form a solid basis for a reformed judiciary and administration of justice, OHCHR is concerned that some provisions of the law could be

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freedom to choose one's residence (article 12); fair trial (article 14); privacy of personal life (article 17). See HRMMU report of 16 May - 15 August 2015, paragraphs 159-161.

<sup>9</sup> One of the derogation measures referred to in the notification and introduced into national legislation through amendments to the Law "On combatting terrorism."

<sup>10</sup> HRMMU meeting with Head of Donetsk Regional Police, 2 August 2016

<sup>11</sup> Law of Ukraine "On amendments to the Constitution of Ukraine (regarding the judiciary)", No. 1401-VII of 2 June 2016, which will enter into force on 30 September.

<sup>12</sup> A new formulation was introduced: "The commission of serious disciplinary offences, grave or systematic neglect of duties that is incompatible with the status of a judge or that revealed his/her unsuitability for the post."

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restrictive. In particular, Parliament retains the competence to issue a no confidence vote to the Prosecutor General, which can affect prosecutorial independence. Constitutional Court judges will be subject to a lower level of anti-corruption scrutiny than ordinary judges.

22. In addition, some provisions will be implemented gradually following the amendments' entry into force; thus, the President will retain the right to decide on the transfer of judges for two years; Ukraine will be able to ratify the Rome Statute of the International Criminal Court after three years; and until the penitentiary service is reformed prosecutorial oversight of the execution of verdicts and custodial measures will remain.

### **C. Law on the judicial system and the status of judges**

23. Also on 2 June, a law "On the judicial system and the status of judges"<sup>13</sup> was passed to facilitate the implementation of the amendments and regulate the structure of the judicial system. A procedural framework for reforming the judiciary has yet to be adopted. Moreover, it is envisioned that the High Council of Justice will be formed in two years, which will delay the reform process.

24. The law introduces a three-tier system of courts and leaves the Supreme Court as the highest judicial body with powers to rescind and quash lower court judgements. It also provides for civil society engagement in the selection and assessment processes through a new consultative body, the Public Integrity Council. The law allows anyone to initiate disciplinary proceedings against a judge before the High Council of Justice, and imposes anti-corruption measures on judges.

### **D. Legal framework for internally displaced persons**

25. While noting improvements in the legal framework for IDPs OHCHR is concerned that amendments to Resolution No. 637 on social entitlements for IDPs may create undue obstacles to access such benefits on the basis of their place of origin, limit their choice of residence, freedom of movement and subject them to intrusive scrutiny.

26. On 8 June, the Government of Ukraine amended Resolution No.509<sup>14</sup> on IDP registration and Resolution No.637<sup>15</sup> on social benefits for IDPs to ensure their compliance with amendments to the Law on IDPs of December 2015<sup>16</sup> - the implementation of which was delayed for five months. The Government also adopted two regulations on allocating and controlling social payments and pensions to IDPs<sup>17</sup>. Amendments to Resolution No.509<sup>18</sup> are generally positive as they ease administrative burdens and increase protection for IDPs.

27. However, the Resolution No.637<sup>19</sup> amendments on social entitlements for IDPs do not reflect the provisions of the IDP law, supporting regulations or relevant international standards. The amendments retain the link between the payment of pensions and various social entitlements to IDP registration. OHCHR considers it essential to de-link the IDP situation from social entitlements, so that the loss of IDP status does not lead to denial of social entitlements.

28. Additionally, the amendments provide for inspections of "living conditions" at IDPs' place of residence every six months and on an *ad hoc* basis. If the IDP is absent at the

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<sup>13</sup> Law of Ukraine "On the judicial system and the status of judges", No.1402-VIII of 2 June 2016.

<sup>14</sup> Resolution of the Cabinet of Ministers 'On amendments to the resolution of 1 October 2014 No. 509', No. 352 of 8 June 2016.

<sup>15</sup> Resolution of the Cabinet of Ministers 'Certain issues regarding the payment of social benefits to internally displaced persons' No. 365 of 8 June 2016.

<sup>16</sup> Law of Ukraine 'On amendments to certain legal acts concerning the enhancement of human rights guarantees for internally displaced persons', No. 921-VIII of 24 December 2015. See 13<sup>th</sup> HRMMU report covering 16 November 2015 to 15 February 2016, paragraph 175.

<sup>17</sup> Regulation 'On allocation (reinstatement) of social benefits to internally displaced persons' and Regulation 'On exercise of control over the payment of social benefits to internally displaced persons at the places of their factual residence' approved by the Resolution of the Cabinet of Ministers 'Certain issues regarding the payment of social benefits to internally displaced persons' No. 365 of 8 June 2016.

<sup>18</sup> Resolution of the Cabinet of Ministers 'On registration of internally displaced persons' No. 509 of 1 October 2014.

<sup>19</sup> Resolution of the Cabinet of Ministers 'On payment of social benefits to internally displaced persons', No. 637 of 5 November 2014.

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moment of the inspection, he/she will be subject to residence verification and further administrative checks, with the risk of losing all social entitlements.

29. These provisions on verification impose significant restrictions on IDPs' right to freedom of movement, guaranteed by Article 12 of ICCPR and Principle 14 of the Guiding Principles on Internal Displacement. They also can be considered as discriminatory, as similar inspections are not foreseen on any other category of residents of Ukraine receiving social payments. The provisions could further violate the right to privacy and family life as prescribed in Article 17 of ICCPR. It should also be noted that the amended resolutions were not publicly discussed prior to their approval.

### **E. Implementation of the National Human Rights Action Plan**

30. In June 2016, in the course of implementation of the National Human Rights Action Plan (NHRAP), adopted on 23 November 2015, the Ministry of Justice held a series of consultations involving civil society and international organizations, including OHCHR. The outcome of these consultations was reflected in draft amendments to the Action Plan prepared by the Ministry of Justice in July, which have to be approved by the Government. They include the establishment of the new Ministry on Temporary Occupied Territories and IDPs as an implementing authority; clarify some responsibilities and formulations, and postpone some activities.

## **III. Rights to life, liberty, security and physical integrity**

*"We do not know who shoots. The fire comes from both sides. We can only hear 'tiokh-tiokh-tiokh' - this is an automatic rifle, and then 'gukh-gukh-gukh' - these are grenade launchers."*

- Resident of Zhovanka

### **A. Alleged violations of international humanitarian law in the conduct of hostilities**

31. The military conduct of both Government forces and armed groups in recent months precipitated an escalation in hostilities in June and July, endangering civilians. According to civilians living on either side of the contact line, Ukrainian armed forces and armed groups have engaged in hostilities from residential areas, with civilians suffering the impact of return fire<sup>20</sup>. This is a widespread practice. In the reporting period, OHCHR has documented such dynamics in the Government-controlled towns of Avdiivka, Mariinka, Krasnohorivka, and Chermalyk, and in the territory controlled by the 'Donetsk people's republic' in Petrovskii, Kuibyshevskii, Kyivskiy districts of Donetsk, Makiivka, Dokuchaievsk, Horlivka, Kominternove, Zaitseve, Spartak, Sakhanka, and Yasunuvata.

32. A woman living in Stanytsia Luhanska showed OHCHR houses used by Ukrainian armed forces and described how soldiers would drive infantry fighting vehicles to the middle of the road and fire rounds in the direction of the military positions of the 'Luhansk people's republic.' Return fire would impact nearby residential homes<sup>21</sup>. Other residents of Stanytsia Luhanska complained of being used as "human shields."<sup>22</sup> While OHCHR is not able to confirm whether this was the intent of the warring parties, the risks of such practices for civilians are of utmost concern.

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<sup>20</sup> Article 13(1) of Additional Protocol II to the Geneva Conventions stipulates that "the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations." This includes the obligation for each party to the conflict to avoid, to the extent feasible, locating military objectives within or near densely populated areas. Location military objectives in civilian areas runs counter to his obligations. Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 23.

<sup>21</sup> HRMMU interview, 28 June 2016

<sup>22</sup> HRMMU interview, 28 June 2016



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33. In Bakhmutka, Donetsk region, remaining residents told OHCHR that Ukrainian soldiers were living in empty houses<sup>23</sup>. OHCHR observed soldiers in one house as well as six armoured personnel carriers nearby, some mounted with artillery guns. In Zhovanka, one resident alleged that Ukrainian armed forces had fired at night from his garden, after which fighters of the ‘Donetsk people’s republic’ had shelled his neighbourhood<sup>24</sup>. In Lopaskine village, Luhansk region, OHCHR spoke to local residents who complained that since soldiers had moved into residential homes, exchanges of fire had increased and tensions among them and military had intensified “dramatically.”<sup>25</sup> In Kryakivka village, in Novoaidar district, Luhansk region, members of the Government-affiliated ‘Aidar’ and ‘Dnepr-1’ battalions and soldiers of the Ukrainian army have used residential homes since January 2015, when members of the ‘Aidar’ battalion threatened civilians into surrendering their house keys<sup>26</sup>. One soldier, stationed in a private home in Lopaskine, told OHCHR that his unit had been ordered to position themselves in the village by their commander based in Trokhizbenka<sup>27</sup>.

34. OHCHR has observed a notable increase in damage to critical civilian infrastructure, often with cross-line implications. Residents of Zhovanka showed OHCHR a gas pipeline that was damaged in hostilities and noted that the water supply was periodically interrupted<sup>28</sup>. Moreover, a high voltage power line was reportedly damaged in recent hostilities, leaving Zhovanka, Bakhmutka and other villages without electricity.

35. It is also of particular concern that Ukrainian forces and armed group continue to disregard the protections afforded under international humanitarian law to schools as civilian objects used for educational purposes<sup>29</sup>. On the night of 9-10 July 2016, a school in Sakhanka, School No. 84 in Mykytivka in Horlivka, and School No. 7 in Horlivka were damaged by shelling. At the time, approximately 20 local residents were hiding in the basement of School No. 84 in Mykytivka. When visiting the schools in late July 2016, OHCHR did not observe any arms or fighters inside the buildings or in their vicinity.

36. Hospitals used for medical purposes have also been frequently hit by artillery fire, in violation of their protected status under international humanitarian law<sup>30</sup>. On 24 June 2016, the children’s ward of a polyclinic on Biuriuzove Street in Donetsk city shelled, breaking windows, damaging doors and the heating system. On 23 July 2016, Hospital No. 21 in Kuibyshevskii district of Donetsk city was fired upon for two hours, while the hospital was attending to the medical needs of 60 patients. Two patient rooms and the surgical ward were severely damaged by mortar and automatic rifle fire, seriously affecting the hospital’s capacity<sup>31</sup>.

37. In some cases, Government forces and armed groups have used educational and health facilities for military purposes. For instance, in Zaitseve, armed groups of the ‘Donetsk people’s republic’ are reportedly positioned in a local school and hospital, in the immediate vicinity of the contact line. As a result, local residents must travel to nearby towns to access medical services. The proximity of the contact line, with opposing military positions less than a street away, highlights the urgent need for military forces to fully withdraw from civilian areas and refrain from using educational or health facilities for military purposes. OHCHR has verified that in July 2016 a school in Pavlopil continued to be used by Ukrainian armed forces.

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<sup>23</sup> HRMMU interview, 7 July 2016

<sup>24</sup> HRMMU interview, 7 July 2016

<sup>25</sup> HRMMU field visit, 28 July 2016

<sup>26</sup> HRMMU interview, 25 May 2016

<sup>27</sup> HRMMU interview, 27 June 2016

<sup>28</sup> HRMMU interview, 7 July 2016

<sup>29</sup> Article 13(1), Additional Protocol II to the four Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 23.

<sup>30</sup> Article 11, Additional Protocol II to the four Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 22.

<sup>31</sup> World Health Organization, Situation Report, 1 August 2016

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## B. Casualties

38. In total, from mid-April 2014 to 15 August 2016, OHCHR recorded 31,814 casualties in the conflict area in Donetsk and Luhansk regions in eastern Ukraine, among Ukrainian armed forces, civilians and members of the armed groups. This includes 9,578 people killed and 22,236 injured.<sup>32</sup> The number of civilians who died as a result of the secondary effects of violence, such as lack of access to food, water or medicine, is unknown.

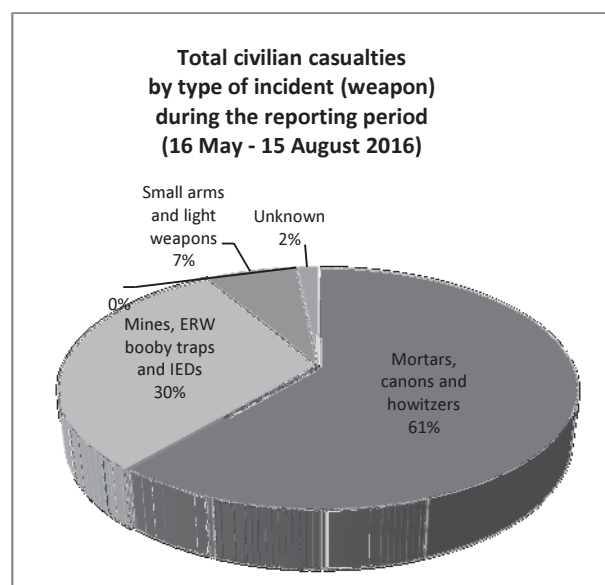
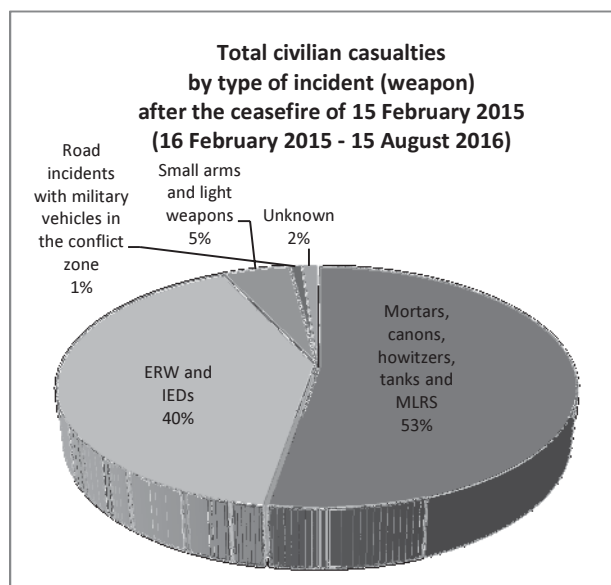
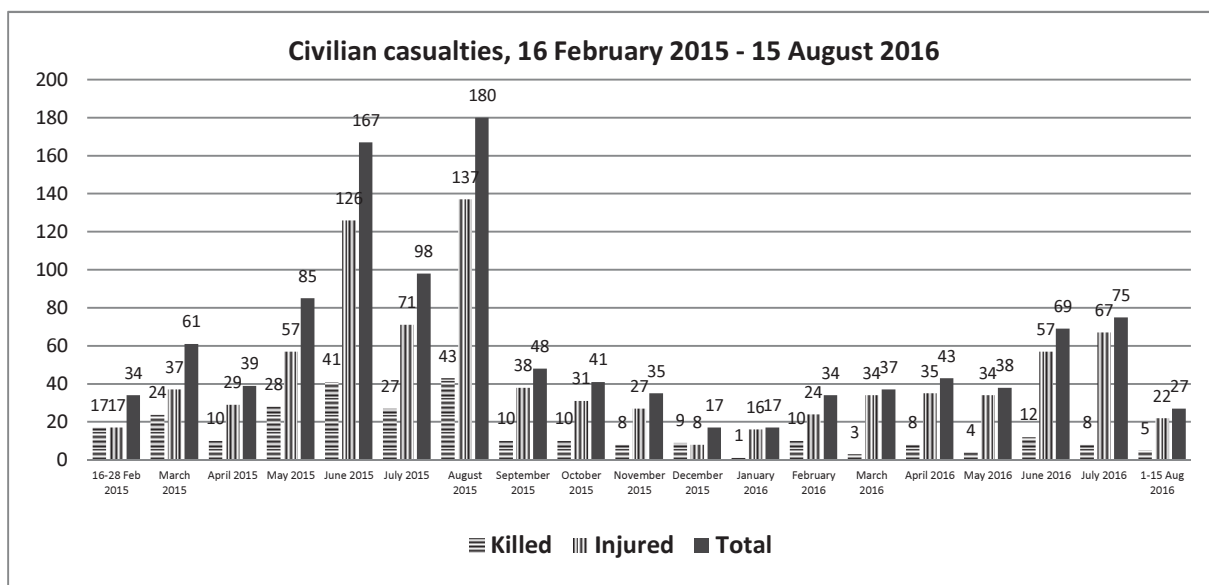
39. During the reporting period, an increase in ceasefire violations on both sides of the contact line led to a 66 percent increase in civilian casualties compared to the previous reporting period. Between 16 May and 15 August 2016, OHCHR recorded 188 conflict-related civilian casualties: 28 killed (three women and a girl, 20 men and four boys) and 160 injured (47 women and four girls, 97 men and ten boys, and two children whose sex is unknown), while between 16 February and 15 May 2016, 113 casualties were recorded (14 killed and 99 injured).

40. An increase in civilian casualties caused by shelling from various artillery systems was of particular concern. Between 16 May and 15 August 2016, OHCHR recorded 109 civilian casualties caused by shelling (11 killed and 98 injured). This is 60 per cent more than the number of casualties caused by shelling during the previous 8.5 months, between the ceasefire of 1 September 2015 and 15 May 2016, when 67 casualties from shelling were recorded (12 killed and 55 injured). Of those killed by shelling: two were women and nine were men. Besides, two boys were killed by electrocution after a power line was destroyed by shelling. Of those injured by shelling: 37 were women and three were girls, 54 were men and four were boys.

41. Mines, explosive remnants of war (ERW), booby traps and improvised explosive devices (IEDs) caused 13 deaths (a woman and a girl, nine men and two boys) and 41 injuries (five women and a girl, 29 men and four boys, and two children whose sex is unknown). Besides, seven civilians (a woman and six men) were injured by unidentified explosives (either by shelling or ERW or abandoned explosive ordnance). Exchanges of fire from small arms and light weapons and sniper shots accounted for 13 casualties: two civilians (both men) were killed and 11 (four women, five men and two boys) were injured. Three men were injured from unspecified firearms.

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<sup>32</sup> This is a conservative estimate of OHCHR based on available data. These totals include: casualties among the Ukrainian forces, as reported by the Ukrainian authorities; 298 people from flight MH-17; civilian casualties on the territories controlled by the Government of Ukraine, as reported by local authorities and the regional departments of internal affairs of Donetsk and Luhansk regions; and casualties among civilians and members of the armed groups on the territories controlled by the 'Donetsk people's republic' and the 'Luhansk people's republic', as reported by the armed groups, the so-called 'local authorities' and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and due to overall under-reporting, especially of military casualties. The increase in the number of casualties between the different reporting dates does not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date.



### C. Summary executions, disappearances, deprivation of liberty, and torture and ill-treatment

*“I wake up, I go to bed, I walk constantly carrying this uncertainty on my mind. The day he was detained, time stopped.”*

- Mother of a Ukrainian soldier detained by armed groups

42. On 14 July, OHCHR released a report on accountability for killings in Ukraine from January 2014 to May 2016<sup>33</sup>, documenting over 60 cases and 115 victims of arbitrary deprivation of life, summary and extrajudicial executions and deaths in detention. During the reporting period, OHCHR continued to document cases of summary executions that occurred before May 2016 and for which there has been no accountability.

#### *Ukrainian armed forces and law enforcement*

43. In April 2016, a married couple was apprehended by SBU in Odesa, suspected of assisting the armed groups. They were held in the premises of the Odesa SBU building,

<sup>33</sup> Office of the United Nations High Commissioner for Human Rights, United Nations Human Rights Monitoring Mission in Ukraine, “Accountability for killings in Ukraine from January 2014 to May 2016,” 14 July 2016.

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where they were reportedly subjected to a night of sleep deprivation, interrogated without the presence of a lawyer, denied requests for legal counsel and subjected to threats. OHCHR is concerned that SBU recorded their detention 20 hours after the time of their arrest. During this period, they were held incommunicado<sup>34</sup>. They are currently held in pre-trial detention. The SBU confirmed to OHCHR that the two individuals were detained and subsequently charged with terrorism-related offenses under article 258-3 of the Criminal Code of Ukraine.

44. OHCHR continued to receive information about cases of secret detention by SBU in Kharkiv, Kramatorsk, Mariupol and Zaporizhzhia<sup>35</sup>. The families of the victims often approach OHCHR afraid and desperate for information about their relatives. The secrecy, the insecurity caused by the denial of contact with the outside world, and the fact that relatives have no knowledge of their whereabouts and fate contributes to the families' suffering.<sup>36</sup> OHCHR advocates with the authorities on individual cases calling for the immediate release of all persons in secret detention.

45. Over the reporting period, approximately 70 per cent of cases documented by OHCHR contained allegations of torture, ill-treatment, and incommunicado detention prior to transfer into the criminal justice system. The majority of allegations implicate SBU officials<sup>37</sup>, police<sup>38</sup>, and members of the paramilitary DUK 'Right Sector'<sup>39</sup>. OHCHR findings indicate that Ukrainian authorities have allowed the deprivation of liberty of individuals in secret for prolonged periods of time. OHCHR confirmed the release, on 25 July and 2 August, of thirteen individuals from the Kharkiv SBU who had been subject to enforced disappearances for periods of up to two years<sup>40</sup>.

46. In April 2016, SBU allegedly detained a Russian Federation citizen after he was sentenced and released by a court in Berdiansk on 15 April. OHCHR received information that the man has since been held incommunicado in the Mariupol SBU basement<sup>41</sup>. The SBU denied this allegation.

47. In an emblematic case, armed men in camouflage bearing no insignia apprehended a man in his house in Government-controlled areas of Donetsk region in October 2015. He was handcuffed, blindfolded and taken to an indoor shooting range in the basement of the SBU building in Mariupol. There, he was beaten, suffocated with a plastic bag, submerged in cold water, and had his ribs broken by a man who jumped on his torso. He was forced to sign a confession, read it in front of a camera, and was subsequently charged under article 258-3 of the Criminal Code of Ukraine. Still in detention, he is afraid of reprisals and unwilling to complain about his ill-treatment to the authorities<sup>42</sup>. Four additional verified cases from 2015 corroborate the use of the Mariupol SBU basement indoor shooting range for incommunicado detention and torture<sup>43</sup>.

48. OHCHR received new information that detainees had been subject to torture and ill-treatment to extract confessions at the Zaporizhzhia Regional SBU Department in 2014 and 2015. One man was beaten all over his body, leaving him with two fractured bones, and was suffocated with a gas mask. Another man described being severely beaten in the basement of the SBU building, with his ribs consequently broken<sup>44</sup>. The SBU acknowledges the detention of one of the men and alleges that his injuries were caused during attempts by officers to assert security and control over the detainee. The victims' accounts make clear that the

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<sup>34</sup> HRMMU interview, 5 July 2016.

<sup>35</sup> HRMMU interviews, 27 May 2016, 31 May 2016, 13 June 2016, 23 June 2016, 29 June 2016, 11 July 2016, 12 July 2016, 5 August 2016, 11 August 2016.

<sup>36</sup> Report of the Working Group on Arbitrary Detention, 19 January 2011, A/HRC/16/47, para. 54.

<sup>37</sup> HRMMU interviews, 29 June 2016, 31 May 2016, 23 June 2016, 21 July 2016, 16 August 2016; 13 June 2016, 14 July 2016; 20 May 2016; 17 May 2016, 14 June 2016, 6 July 2016, 5 July 2016.

<sup>38</sup> HRMMU interviews, 23 May 2016, 31 May 2016, 9 June 2016, 2 July 2016, 4 July 2016.

<sup>39</sup> HRMMU interview, 31 May 2016, 15 July 2016, 15 August 2016.

<sup>40</sup> HRMMU interviews, 31 July 2016, 4 August 2016

<sup>41</sup> HRMMU interview, 18 June 2016.

<sup>42</sup> HRMMU interview, 11 May 2016.

<sup>43</sup> HRMMU interviews, 29 July 2016, 23 June 2016, 14 June 2016.

<sup>44</sup> HRMMU interviews, 20 June 2016, 6 July 2016.

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serious harm suffered continues to affect their lives, their families and communities, and that there is an urgent need for recognition, medical care and rehabilitation of torture victims.

*Armed groups*

49. During the reporting period, OHCHR documented an increase in detentions and disappearances at checkpoints controlled by the ‘Donetsk people’s republic.’ On 27 May 2016, a former armed group member went missing in Novoluhanske while travelling into the ‘Donetsk people’s republic’ from Government-controlled territory where he had been deprived of his liberty. Following repeated inquiries, his mother found that he had been deprived of liberty at a ‘Donetsk people’s republic’ checkpoint, transferred to Horlivka and then into ‘police custody’ in Donetsk. On 4 July, she was told that the ‘police’ no longer held her son. She has since been unable to ascertain his fate or whereabouts<sup>45</sup>.

50. Members of the ‘ministry of state security’ of the ‘Donetsk people’s republic’ continued to deprive individuals of their liberty and keep them incommunicado. While in some cases, relatives were allowed to deliver packages of food, medicine and clothing; none were able to visit the victims. Armed groups near Novoazovsk District Hospital apprehended a doctor from Pavlopil on 16 June 2015. The local ‘police’ told his wife that he was held by the ‘ministry of state security’, which the latter confirmed in writing. She has not heard from him since, but has been informed that his case will be ‘examined’ by the Novoazovsk ‘court’ of the ‘Donetsk people’s republic’.<sup>46</sup> OHCHR is concerned that deprivations of liberty are often accompanied by torture and other cruel, inhuman or degrading treatment or punishment, and may in itself constitute such treatment. OHCHR is concerned at the continuation of persons being deprived of their liberty and then held incommunicado in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, spreading fear among civilians, in particular because of the arbitrary nature of abductions. OHCHR notes that the Military Prosecutor’s Office is investigating many of these cases.

51. Maria Varfolomeeva, a photojournalist, was detained by the ‘Luhansk people’s republic’ on 9 January 2015 and released on 3 March 2016 to Government-controlled territory. She was deprived of her liberty after taking photos of residential houses used by the ‘Vostok’ battalion as their base. She reported having been beaten and held in poor conditions while in custody, naming the individuals responsible. The Military Prosecutor’s Office is conducting an investigation into her detention and ill-treatment. The ‘Luhansk people’s republic’ continues to deprive people of liberty in the basements of the former main department of the Ministry of Internal Affairs in Luhansk region on Polskogo Street No. 3, and the ‘ministry of state security’ of the ‘Luhansk people’s republic’ on Gradusova Street No. 1a, according to victim accounts.

52. The ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ continue to hold individuals who were detained prior to the conflict. OHCHR has received allegations that such detainees are held in poor conditions of detention and have inadequate or no access to medical assistance. On 1 June 2016, the Assistant Secretary General for Human Rights was granted access to pre-conflict prisoners held in penal colony No. 124 in Donetsk region under the control of the armed groups. OHCHR welcomes the periodic transfer of pre-conflict prisoners to Government custody under the auspices of the Ombudsperson’s Office as necessary to restore family access to detainees and ensure that persons arrested, tried or convicted are subject to a consistent legal framework in line with the principle of legality.

53. These allegations demonstrate the urgent need for the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to grant external observers unhindered access to all places of deprivation of liberty. On 6 August, OHCHR was able to meet 31 men deprived of their liberty in the context of hostilities held in colony No. 97 in Makiivka, Donetsk region in the presence of a ‘Donetsk people’s republic’ ‘official’. All had been held incommunicado for approximately two months, causing considerable suffering for their families. OHCHR has observed that many families whose fathers, husbands, or sons are in armed group detention

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<sup>45</sup> HRMMU interview, 11 July 2016

<sup>46</sup> HRMMU interview, UKR/16/0514.



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lack support networks and struggle alone as they face emotional distress and financial insecurity.

#### **D. Sexual and gender-based violence**

*“They didn’t beat me, only threatened from time to time to cut off my testicles or bury me in a forest”.*

– Conflict-related male detainee held in a Government prison

##### *Ukrainian armed forces and law enforcement*

54. OHCHR continued to document cases of sexual violence, amounting to torture, of conflict-related detainees, both men and women. It includes cases of rape<sup>47</sup>, and threats of rape or other forms of sexual violence towards victims and/or their relatives.

55. In March 2016, a man<sup>48</sup> was apprehended by eight masked individuals in camouflage and taken to an abandoned building, where he was interrogated about the positions of the armed groups. As he could not provide any information, the perpetrators undressed him and tied his legs and arms behind his back to a metal cage. One of them took the ramrod and started inserting it into the man’s urethra. He pulled it up and down, inflicting the victim severe pain. A second perpetrator filmed the torture on his mobile phone. While beating the victim, they threatened to upload the video on his social media page. He eventually signed documents admitting his guilt on all charges.

56. During the reporting period, OHCHR documented three cases following a similar pattern of women detained in 2015 in Government-controlled areas adjacent to the contact line and subjected to threats of sexual violence amounting to torture. All three cases took place in different locations but within the same geographic area. In one case, a woman<sup>49</sup> apprehended in her home on 19 January 2015 by 10 masked men wearing camouflage was kept for more than a week in the basement of an SBU building, where she was beaten and tortured with electric shocks and burning plastic. The perpetrators threatened to rape her daughter if she refused to confess to have supported the armed groups in 2014. In June 2015,<sup>50</sup> another woman was apprehended by 10 masked armed men in black uniforms without insignia and taken to the basement of an unfinished building, where she was handcuffed to a large pipe in a stress position. Two men kicked her head and body and beat her with their fists and a metal tube, threatening to rape and kill her. As of August 2016, she remained in pre-trial detention. In a third case, a woman was apprehended in her home by 10-12 armed masked men wearing military uniform without insignia. Her daughter, a minor, witnessed the arrest and search of the apartment. The victim was taken to a building in Bakhmut, where she was insulted, humiliated, and beaten. She was also threatened with being handed over to soldiers on the frontline and that her young daughter would be gang raped in front of her. After she agreed to cooperate, she was transferred to SBU premises for interrogation. The same threats continued until she recorded her confession<sup>51</sup>. As of July 2016, she remains in detention. An investigation into her allegations of torture and ill-treatment has been launched. Despite one of the victims giving testimony in court regarding being subject to sexual and gender-based violence, no charges were brought against the perpetrators. The SBU informed OHCHR that this was due to the absence of conclusive forensic evidence.

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<sup>47</sup> Rome Statute, Article 8 (2) (e) (vi)-1, War crime of rape, whose elements are defined as: (1) The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body; (2) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

<sup>48</sup> HRMMU interview, 29 June 2016.

<sup>49</sup> HRMMU interview, 13 June 2016.

<sup>50</sup> HRMMU interview, 26 May 2016.

<sup>51</sup> HRMMU interview, 13 June 2016.

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57. On 5 May 2016, SBU detained a man in one of the southern regions of Ukraine and transferred him to SBU building. Later, he was brought to an office, stripped naked and fastened to a heating battery. During the following two days, four SBU officers allegedly tortured him, making him kneel, insulting, humiliating and hitting him on the head, kidneys, groin, and applying electric shock to his tongue. Most of this time he had a plastic bag over his head, and did not receive either food or water.

58. OHCHR continued to follow the case of former member of the ‘Tornado’ special police patrol battalion. On 15 July, the Novopskovskyi District Court of Luhansk Region sentenced him to six years of imprisonment for torture and rape<sup>52</sup>. The court found that in June 2015, he had tortured, raped and threatened a woman with a hand grenade in Novopskovskyi district. OHCHR welcomes investigations into all allegations of conflict-related sexual violence.

#### *Armed groups*

59. During the period under review, it was not possible to obtain first-hand accounts regarding conflict-related sexual violence in the areas controlled by armed groups. One interlocutor reported being threatened by the ‘authorities’ if they disclosed information about the cases.

60. The incidents reported to OHCHR as second-hand accounts mostly took place in 2014-2015 and it has not been possible to contact the victims or direct witnesses. A 26-year-old woman was allegedly beaten and raped by three members of the armed groups in September - October 2015. She was deprived of her liberty while she was passing a checkpoint and could not present her passport<sup>53</sup>. The case was ‘investigated’ by the ‘military prosecutor’s office’ of the ‘Donetsk people’s republic’ and reportedly punitive steps were taken.

61. A man deprived of his liberty by armed groups<sup>54</sup> in March-April 2016 in ‘Donetsk people’s republic’ reported about two women who were kept in a room next to him. According to him, they were reportedly abducted at a checkpoint when crossing the contact line from the Government-controlled side. He heard armed groups elements harassing them and attempting to rape them. They were reportedly taken away two days later; their identities and whereabouts were unknown to the interviewee.

62. A former armed group member told OHCHR about a well-known case within his unit where a commander of the ‘Kalmius’ brigade allegedly raped a civilian woman in Hryhorivka village, Donetsk region in late May 2015 and was consequently dismissed in September 2015<sup>55</sup>.

## **IV. Accountability and the administration of justice**

*“People have no real access to justice.”*

– High-level judicial official in Government-controlled Luhansk region

### **A. Impunity for gross violations and abuses of human rights**

63. Despite efforts by the Ukrainian authorities to bring perpetrators of human rights violations and abuses in the east to account, impunity for human rights violations and abuses prevails. OHCHR has documented extensive allegations of violations by armed groups and Government forces, and notes that accountability for acts such as executions by armed groups of Ukrainian soldiers is particularly lacking<sup>56</sup>. According to OHCHR trial monitoring,

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<sup>52</sup> Articles of 127 (torture), 152 (rape), 153 (violent unnatural gratification of sexual desire) and 263 (illegal handling of munitions) of the Criminal Code.

<sup>53</sup> HRMMU interview, 15 July 2016.

<sup>54</sup> HRMMU interview, 8 July 2016.

<sup>55</sup> HRMMU interview, 29 June 2016.

<sup>56</sup> Office of the United Nations High Commissioner for Human Rights, United Nations Human Rights Monitoring Mission in Ukraine, “Accountability for killings in Ukraine from January 2014 to May 2016,” 14 July 2016.

<sup>56</sup> HRMMU interview, 5 July 2016.

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assessments of investigations and analysis of prosecutions, such impunity largely stems from pressure on the judiciary, inability and unwillingness of the Office of the Prosecutor General and Office of the Military Prosecutor to investigate gross violations and abuses of human rights perpetrated in the context of the armed conflict. OHCHR has been informed that the Office of the Military Prosecutor is carrying out pre-trial investigations into alleged cases of killing, torture and ill-treatment of Ukrainian soldiers and civilians by members of the armed groups of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, but notes that they have yet to yield any results.

64. OHCHR is particularly concerned by the lack of progress in investigations into the conduct of Ukrainian armed forces and SBU. In over two years, neither party to the conflict has taken responsibility for any civilian deaths caused by shelling. While noting significant investigative challenges, OHCHR urges the Government to take all possible steps to investigate civilian deaths that occurred during military operations.

65. OHCHR notes the absence of investigations into the 2 June 2014 aerial attack on the Luhansk Regional State Administration building in Luhansk, which resulted in the deaths of seven civilians<sup>57</sup>. According to the Office of the Prosecutor General, the date and location of the incident has been established but no subsequent investigations have been undertaken due to a lack of access to the crime scene<sup>58</sup>. OHCHR notes that military conduct can be investigated by, among others, interviewing witnesses including members of Ukrainian Armed Forces and through obtaining access to classified military information. OHCHR is also monitoring the ongoing civil suit brought by the wife of one of the victims killed in the attack. On 25 May, the Administrative Court of Appeal dismissed a claim<sup>59</sup> for pecuniary and non-pecuniary damages for the loss of life of her husband on the grounds that the court lacked relevant subject-matter jurisdiction.

66. Impunity also affects cases of enforced disappearances and of missing persons. In an emblematic case, on 12 July 2014, three men and a 17-year-old boy were detained by three soldiers at a checkpoint near Krasnoarmiisk and then allegedly handed over to an SBU officer, who took the four victims in an unknown direction. Their families have since had no information about their whereabouts and suspect that the police have been unwilling to investigate the disappearance due to pressure from SBU<sup>60</sup>. The Office of the General Prosecutor informed OHCHR that an investigation was ongoing into the detention of the 17-year-old boy but that they did not have any information regarding the apprehension and disappearance of the three men.

67. In a similar case, a man was detained by members of the ‘Aidar’ battalion on 21 July 2014 at a checkpoint near Varvarivka, Luhansk region, and disappeared. Although the police identified and arrested the perpetrators, the court released one of them later on the personal guarantee of a Ukrainian MP. The perpetrator absconded and the investigation into the disappearance has been suspended<sup>61</sup>.

68. OHCHR continued to monitor the trial of two SBU officers accused of the torture and death of Oleksandr Agafonov on 14 November 2014. At a hearing on 10 August, the accused testified to their involvement in his interrogation but denied subjecting him to any physical violence. The Military Prosecutor’s Office presented video footage showing Agafonov in clear physical distress following his interrogation. OHCHR will continue to monitor the trial<sup>62</sup>.

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<sup>57</sup> OHCHR recalls that persons affiliated with the ‘Luhansk people’s republic’ who did not have a continuous combat function, retained their civilian status, such as Nataliya Arkhipova, the ‘minister of health’ of the ‘Luhansk people’s republic’, who was killed in the attack.

<sup>58</sup> Meeting between HRMMU and Office of the General Prosecutor, 1 August 2016.

<sup>59</sup> Ruling of Kyiv Administrative Court of Appeals of 25 May 2016, available at: <http://reyestr.court.gov.ua/Review/57925068>.

<sup>60</sup> HRMMU interview, 25 May 2016.

<sup>61</sup> HRMMU interview, 25 May 2016, and HRMMU meeting, 25 May 2016, 27 July 2016. Office of the General Prosecutor confirmed to OHCHR that investigation has been stayed as suspect has absconded.

<sup>62</sup> HRMMU trial monitoring, 10 August 2016.

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69. OHCHR observed continued pressure on the judiciary in high-profile cases. A hearing at the Kyiv City Court of Appeals on 3 July, on the extension of the pre-trial detention of a commander of the ‘Aidar’ battalion, arrested and charged with abduction and other violent crimes, illustrates the nature and extent of such pressure. A group of ‘Aidar’ battalion soldiers and members of Parliament attended the hearing and demanded the defendant be released from custody. The Prosecutor General also attended the hearing and expressed doubt that the investigation had sufficiently established the material facts of the case given that they took place “near the frontline.” He supported the release of the detainee and stated that he expected Parliament to find a way to absolve soldiers from being subjected to civilian justice for acts committed in the course of their military duties. Such interventions by the Prosecutor General undermine the independence of investigations and the judiciary.

70. OHCHR welcomes efforts of the Government to prosecute members of the armed groups for alleged human rights abuses. OHCHR acknowledges that without access to areas controlled by the armed groups, Ukrainian law enforcement entities often do not have access to the crime scenes, witnesses, and material evidence.

71. However, some armed group members and commanders have been tried *in absentia*. OHCHR recalls that while trials *in absentia* are not prohibited under international law, they must adhere to international human rights standards, including the rights of the accused to be informed of the charges against them and the consequences of not appearing at trial<sup>63</sup>. This includes the obligation that sufficient steps be taken to notify the accused persons and that the notice be given sufficiently in advance to allow the preparation of a defence and presence at the hearing. *In absentia* proceedings against persons accused of being members of armed groups are increasingly frequent following the 12 May legislative amendments<sup>64</sup>. While OHCHR observes that steps are taken to apprehend or secure the appearance of the accused at trial, the *in absentia* procedure is not invoked consistently and recent changes in criminal procedure lack sufficient safeguards to protect due process and fair trial rights.

## B. Amnesty law

72. Considering the general lack of accountability for human rights violations committed by the Ukrainian military or security forces, OHCHR is concerned about the 7 July law ‘On amnesty in 2016’<sup>65</sup> which provides *inter alia* that individuals who received combatant status for participation in the ‘security operation’ in certain areas of Donetsk and Luhansk regions of eastern Ukraine will be absolved of criminal responsibility for non-grave crimes, except for crimes against life and health and certain military crimes<sup>66</sup> as well as sex offences, and crimes against peace<sup>67</sup>.

73. OHCHR is alarmed that participation in the ‘security operation’ is considered as a ground for lesser charges, more lenient sentences<sup>68</sup> and amnesty. It is essential that the conduct of military and security forces personnel, acting in their official capacity and exercising authority over civilians, armed and tasked with carrying out hostilities or detention

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<sup>63</sup> *Special Tribunal for Lebanon*, Trial Chamber, *Decision to Hold Trial In Absentia*, STL-11-01/I/TC, 1 February 2012

<sup>64</sup> See paragraph 173 of the 14<sup>th</sup> OHCHR public report, covering period from 16 February to 15 May 2016.

<sup>65</sup> Law of Ukraine ‘On amnesty in 2016’, Draft No. 4255 of 17 March 2016. The law is pending Presidential approval.

<sup>66</sup> Qualified crime of desertion (Article 408(2,3,4) of the Criminal Code of Ukraine), appropriation, extortion or fraudulent obtaining of weapons, ammunitions, explosive or other warfare substances, vehicles, military or special enginery, or abuse of office, by a military serviceman (Article 410), and wilful destruction or damage of munitions (Article 411(2,3,4)).

<sup>67</sup> In total the law enlists some 98 articles of the Criminal Code of Ukraine, to which amnesty will not apply, such as terrorism-related offences (Articles 258 - 258-5), creation of criminal organisation (Article 255), crimes against peace (Articles 437, 439, 442, 443, 446, 447), including genocide and use of mercenaries, qualified military crimes (Articles 404-406, 408, 410, 411), sex offences (Articles 252-256), some corruption crimes (Articles 368 – 368-4, 369), threats, violence or trespass against life of a journalist (Article 345-1(3,4) and 348-1), a member of law enforcement (Articles 345(3,4), 348 and 349), or a judge (Articles 347 and 379).

<sup>68</sup> OHCHR is aware of at least one court decision in which a former soldier was not sentenced to imprisonment for the commission of a grave crime as participation in the security operation was viewed as a mitigating circumstance: *e.g.* verdict of Ivankivskiyi district court of Kyiv region of 10 June 2016, available at: <http://reyestr.court.gov.ua/Review/58249890>.

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operations, be subjected to stricter scrutiny. OHCHR reiterates that no amnesty can be given to any individual suspected of, accused of, or sentenced to war crimes, crimes against humanity, or gross violations of human rights, including gender-specific violations.

### **C. Due process and fair trial rights**

74. Clear and consistent allegations documented by OHCHR suggest that conflict-related criminal investigations and prosecutions are characterized by an abuse of process. OHCHR continued to document a pattern of arbitrary detention by Government forces of civilians living near the contact line<sup>69</sup>. The victims<sup>70</sup> are usually apprehended and held for some time by unidentified armed men who, after extracting confessions under duress, bring them to local law enforcement or security forces. On 12 July, OHCHR raised concerns with SBU leadership regarding such practices<sup>71</sup>. The SBU stated that investigators had no choice but to detain people brought to them, and explained that injuries are caused in the course of arrest.

75. Moreover, the right to fair trial is frequently hampered by ineffective legal representation by lawyers from free legal aid centres. In numerous court proceedings, OHCHR has observed criminal defence lawyers decline to assist their clients in filing complaints about torture, ill-treatment and their conditions of detention<sup>72</sup>. On 20 May, OHCHR interviewed a conflict-related detainee, who claimed that he was subjected to torture by SBU during more than 48 hours; however no complaint was filed by his defence lawyer<sup>73</sup>.

76. OHCHR received numerous allegations of false evidence planted by SBU investigators in conflict-related criminal cases. In particular, defendants allege that SBU officials plant grenades or small arms during house searches to justify their detention<sup>74</sup>.

77. Government law enforcement and security forces use video and audio recordings of alleged confessions by persons accused of being members of or affiliated with armed groups to justify the arrest and detention of the accused. Various international and regional human rights bodies have recommended the installation of video and/or audio recording equipment in rooms where interrogations related to criminal investigations are undertaken, such as police stations. OHCHR recalls that the purpose of such recommendations is to effectively prevent instances of coerced confessions, torture and ill-treatment and to ensure that they will not be admitted as evidence in courts<sup>75</sup>. OHCHR has documented numerous instances when such confessions were extracted under duress, following torture and ill-treatment, without the presence of a lawyer. OHCHR is further alarmed by the practice of disseminating such video recordings online, either on the official SBU website or through leaks to media, often prior to trial. The publication of such material violates the presumption of innocence principle and the right to privacy of the suspect. The extensive scope and extent of this practice suggests that it is utilized as a war propaganda tactic. The vast majority of conflict-related detainees interviewed by OHCHR have had their ‘confessions’ filmed by the SBU and published on their website. These videos are often re-published by online and traditional broadcast media.

78. OHCHR has also observed undue delays in proceedings in apparent retaliation against those who oppose military misconduct. In Dnipro, the trial of a former member of the ‘Dnipro-1’ battalion for opposing the crimes of his commander has been repeatedly delayed. Since January 2015 only three co-defendants have been questioned and the trial has been postponed, suggesting deliberate denial of fair trial to a soldier who opposed his battalion commander<sup>76</sup>.

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<sup>69</sup> See 14<sup>th</sup> HRMMU report covering 16 February to 15 May 2016, para. 58.

<sup>70</sup> HRMMU interviews, 29 June 2016.

<sup>71</sup> 1 August 2016, OHCHR meeting with Deputy Head of Main Investigative Department of the Security Services of Ukraine

<sup>72</sup> HRMMU interview, 17 July 2016. According to the Head of Donetsk Regional State Legal Aid Service, appointed lawyers must assist their clients in preparing complaints about torture, ill-treatment and their conditions of detention. However, further legal representation is initiated by such complaints proceedings, requiring the appointment of a different lawyer from the State Legal Aid Centre.

<sup>73</sup> HRMMU interview, 20 May 2016.

<sup>74</sup> HRMMU interviews, 23 May 2016, 24 May 2016.

<sup>75</sup> Report of the Working Group on Arbitrary Detention, 16 February 2009, A/HRC/10/21, paras. 69-70.

<sup>76</sup> HRMMU interview, 14 July 2016.



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79. OHCHR continued to observe patterns of pressure on the judiciary by ‘pro-unity’ activists and the authorities. The permissive attitude of the authorities, including the Office of the Prosecutor General, towards such interference in the judicial process risks eroding the rule of law. Notwithstanding numerous appeals sent by the Court of Appeal for Odesa Region and State Judicial Administration to the state authorities, the Ministry of Internal Affairs has not provided courts and judges with sufficient security. While police reform<sup>77</sup> envisions that the judiciary will have its own security units for ensuring safety and protection, OHCHR has not observed any progress in this area<sup>78</sup>.

80. On 8 July, approximately 40 ‘pro-unity’ activists at the Suvorovskiy District Court of Odesa disturbed the trial of paramilitary DUK ‘Right Sector’ members. According to the indictment, the Head of Odesa office of the ‘Right Sector’ and one of its members are charged with kidnapping, robbery and the illegal handling of weapons. During the preliminary hearing about 15 ‘pro-unity’ activists entered the courtroom, 25 other activists stayed outside blocking the entrance, and seven police officers were posted near the courtroom and none inside. After brief deliberations, the judge, concerned by the overall aggressive atmosphere, ruled to send the case to the Court of Appeals for Odesa region to determine the relevant jurisdiction.

#### **D. Arbitrary detention in conflict-related cases**

81. OHCHR has documented a clear and consistent trend that human rights violations against persons charged with conflict-related or national security and ‘terrorism’-related offenses<sup>79</sup> often begin with arbitrary pre-trial detention. According to the Code of Criminal Procedure, as amended in October 2014, pre-trial detention is mandatory for all conflict-related or national security and ‘terrorism’-related cases<sup>80</sup>. According to the Minister of Justice, “custodial detention for separatist and terrorist crimes... increases the efficacy of a pre-trial investigation”<sup>81</sup>.

82. OHCHR recalls that the prohibition of arbitrary detention<sup>82</sup> prescribes that detention in custody of persons awaiting trial must be exceptional, based on an individualized determination that it is reasonable and necessary in all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.<sup>83</sup> Such relevant factors should be specified in law,<sup>84</sup> and should not include vague and expansive standards such as “public security.”<sup>85</sup> Critically, pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances<sup>86</sup>.

83. Through trial monitoring, OHCHR has observed that neither the prosecution nor the judges address the grounds for continued detention at review hearings. Courts rarely examine

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<sup>77</sup> Law of Ukraine “On National Police”.

<sup>78</sup> HRMMU interview, 30 May 2016.

<sup>79</sup> Articles 109 (Actions aimed at forceful change or overthrow of the constitutional order or take-over of government), 110 (Trespass against territorial integrity and inviolability of Ukraine), 1102 (financing of actions committed with the aim to forceful change or overthrow of the constitutional order or take-over of government, territorial changes or state border of Ukraine), 111 (high treason), 112 (Trespass against life of a statesman or a public figure), 113 (subversion), 114 (espionage), 114<sup>1</sup> (interference with lawful activities of the Armed Forces of Ukraine and other military formations), 258 (terrorist act), 258<sup>1</sup> (involvement in commission of a terrorist act), 258<sup>2</sup> (Public incitement to commit a terrorist act), 258<sup>3</sup> (creation of a terrorist group or terrorist organization), 258<sup>4</sup> (Facilitation to commission of a terrorist act), 258<sup>5</sup> (financing of terrorism), 260 (Creation of unlawful paramilitary or armed formations) and 261 (Attacks on objects which contain any items of increased danger to the environment) of the Criminal Code of Ukraine.

<sup>80</sup> Paragraph 5 of article 176 of the Code of Criminal Procedure.

<sup>81</sup> Explanatory note to the draft law no. 4448a of 8 August 2014, introducing amendments to article 176 of the Code of Criminal Procedure.

<sup>82</sup> Human Rights Committee, 1128/2002, *Marques de Morais v. Angola*, paras. 6.1, 6.4.

<sup>83</sup> Human Rights Committee, 1502/2006, *Marinich v. Belarus*, para. 10.4; 1940/2010, *Cedeño v. Venezuela*, para. 7.10; Human Rights Committee, 1547/2007, *Torobekov v. Kyrgyzstan*, para. 6.3; 1887/2009, *Peirano Basso v. Uruguay*, para. 10.2.

<sup>84</sup> See Human Rights Committee Concluding observations Republic of Korea 1999, para. 141; Senegal 1997, para. 63; Armenia 1998, para. 107; Kyrgyzstan 2000, para. 393.

<sup>85</sup> See Human Rights Committee Concluding observations Bosnia and Herzegovina, 2006, para. 18.

<sup>86</sup> See Human Rights Committee Concluding observations Bolivia 1997, para. 208; Argentina 2000, para. 10; Sri Lanka 2003, para. 13.

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alternatives to pre-trial detention, such as bail or other conditions to guarantee appearance for trial, which would render detention unnecessary in particular cases<sup>87</sup>.

84. OHCHR finds that the relevant provisions of the Code of Criminal Procedure providing for mandatory pre-trial detention for accused charged with conflict-related or national security or terrorism offenses are contrary to international human rights standards and result in excessive and at times arbitrary detention. In May 2015, Ombudsperson filed an appeal with the Constitutional Court, challenging the constitutionality of the amendments citing the jurisprudence of the European Court of Human Rights. However, the Ombudsperson's Office withdrew the appeal, for unexplained reasons.

### **E. High-profile cases of violence related to riots and public disturbances**

#### *Maidan*

85. OHCHR notes positive developments in pursuing accountability for human rights violations committed during the Maidan events. On 23 June 2016, the Prosecutor General's office reported that four members of the 'Berkut' special police battalion of Kharkiv region were detained in relation to the Maidan violence and charged with killing three protestors. They are accused of following illegal orders and replacing the rubber bullets with hunting ones thus killing three persons and inflicting bodily injuries to 35 persons on 18 February 2014. With this arrest, there are currently five 'Berkut' members charged with crimes against life perpetrated on 18 February at Maidan<sup>88</sup>. All have been placed in custody for 60 days pending the pre-trial investigation.

86. There has also been some progress in the investigation of the Maidan killings of 20 February 2014. On 21 June 2016, prosecutors presented evidence connecting two submachine guns to two Berkut servicemen arrested in April 2014<sup>89</sup>. According to the evidence, three people were killed and two injured with these weapons.

#### *2 May 2014 violence in Odesa*

87. There continued to be significant pressure on the judiciary regarding the 2 May 2014 violence case. OHCHR has closely monitored the judicial proceedings against one of the suspects – a “pro-federalism” activist - allegedly involved in the mass disorder in Odesa city centre. On 27 May 2016, the Malynovskyi District Court of Odesa ruled to release him from pre-trial detention and placed him under house arrest. OHCHR has since observed three instances in which ‘pro-unity’ activists have protested inside the courtroom, threatened the judges and defendant's lawyers with violence, and obstructed the course of justice. Such pressure resulted in arbitrary detention. On 27 May 2016, ‘pro-unity’ activists blocked the courtroom, trapping the ‘pro-federalism’ defendants, several of their lawyers, and searched all departing vehicles for passengers to prevent the release of the main defendant. Later that day, police charged him with threatening to kill a prosecution witness, despite the absence of probative evidence, and re-arrested him.<sup>90</sup>

88. On 7 June 2016, the Court of Appeals for the Odesa region was blocked by approximately 40 ‘pro-unity’ activists after the judges released the defendant, finding that there were no grounds for his arrest. The activists accused the judges of treason, threatened them with violence and warned that the defendant would be “torn to ribbons” if released. After several hours of being blocked in the courtroom, police put the defendant into administrative detention as a sanction for allegedly using explicit language in the courtroom. None of the ‘pro-unity’ activists were arrested or sanctioned for the disorder they caused in the court. On 8 June 2016, the ‘pro-unity’ activists who blocked the courtroom were called as witnesses for the prosecution and testified against the defendant.

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<sup>87</sup> Human Rights Committee, 1178/2003, *Smantser v. Belarus*, para. 10.3; see Concluding observations Argentina 2010, para. 16; Panama 2008, para. 12.

<sup>88</sup> See 14<sup>th</sup> HRMMU report covering 16 February to 15 May 2016, paras. 72-74

<sup>89</sup> See 14<sup>th</sup> HRMMU report covering 16 February to 15 May 2016, paras. 74.

<sup>90</sup> Under Article 208 (Lawful apprehension by a competent official) of the Code of Criminal Procedure of Ukraine.

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89. On 22 June, while the defendant's appeal was being heard, 'pro-unity' activists - some of whom were in military uniform - were present around the court and inside the courtroom. They openly threatened the defendant's lawyers and commented on their pleading before the judges. The latter refused to consider the evidence presented by the defence and, after about 10 minutes of deliberation, upheld the decision to extend the defendant's pre-trial detention. Police presence around the court and inside the courtroom was insufficient. On 1 August 2016, during a meeting with OHCHR, a high-level official from the Office of the Prosecutor General stated that the "initiative" of such activists is a critical bulwark against a biased and partial judiciary. OHCHR is concerned that such statements indicate the tacit consent of the prosecution in interference with the independence of the judiciary.

90. OHCHR is also deeply concerned about lack of progress in the trial of Serhii Khodiiak, an active member of 'pro-unity' movement, who has been identified and accused of killing one person in the city centre of Odesa on 2 May. On 31 May 2016, the Kyivskiy District Court of Odesa returned the indictment to the prosecution for revision. The court stressed that the indictment lacked critical information to justify the charges. The prosecution's appeal of the court decision is scheduled for September.

## **F. Parallel structures in armed group-controlled areas**

91. Parallel structures, including 'courts', continued to develop and operate in the 'Donetsk people's republic' and 'Luhansk people's republic'. OHCHR reiterates that these structures have no legal status under Ukrainian legislation and contradict the spirit of Minsk Agreements. Furthermore, such structures affect the inalienable rights of people living in territories controlled by armed groups, function in an arbitrary manner and present no mechanism for victims of this system to get protection or redress.

92. The 'supreme court' of the 'Donetsk people's republic' reported that from 1 January to 1 June, 'courts of general jurisdiction' accepted 37,256 'cases', including 10,444 criminal ones. Also, according to the information reported by the 'prosecutor general's office' of the 'Luhansk people's republic' 2,215 individuals were sentenced to various types of punishment, including imprisonment in the first half of 2016. OHCHR has received regular complaints from relatives of people accused of alleged crimes committed before the outbreak of the armed conflict. Having spent several years in pre-trial detention without judgment, such detainees now face 'trial' by 'Donetsk people's republic' 'courts'.

93. OHCHR was informed that 'courts' of 'Donetsk people's republic' have heard or initiated proceedings in 29 criminal cases of rape against 33 accused. Nine criminal cases on espionage are under 'consideration' by the 'supreme court'.

94. The 'criminal code' of 'Donetsk people's republic' envisages death penalty as a sanction of last resort, however, according to the 'president' of the 'supreme court' of 'Donetsk people's republic'<sup>91</sup>, in only one case did the 'supreme court' resorted to such punishment. The convict was 'found to be guilty of' a number of killings, participation in an armed gang and illegal handling and storage of weapons and ammunition. The 'sentence' has not yet been carried out.

95. All conflict-related detainees are under 'criminal investigation' for crimes against the 'Donetsk people's republic'. Having referred to principles and norms of international law which are guaranteed by the 'constitution' of the 'Donetsk people's republic', the 'president' of the 'supreme court' considered that the armed conflict, having a non-international character, does not envisage "prisoner of war" status for persons who directly participated in hostilities. He concluded that in these circumstances nothing prevents the 'prosecution' of individuals for their participation and conduct in hostilities.

96. The 'supreme court' of 'Donetsk people's republic' also reported initiating *in absentia* 'criminal proceedings' against judges, prosecutors and investigators working in various regions of Ukraine, based on provisions of the 'criminal code' of 'Donetsk people's republic'

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<sup>91</sup> Information provided on 22 August 2016 to HRMMU. Although outside the reporting period, HRMMU believes it is important to mention these findings.

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related to the ‘intentional prosecution of an innocent person’ and ‘intentional passing of illegal judgement’, in reprisal for decisions that may not have been favourable to members of the armed groups or in retaliation for the perceived political partiality of the judges.

97. As of 16 June, the ‘military tribunal’ of the ‘Donetsk people’s republic’ - whose main function is described by the ‘Donetsk people’s republic’ as the “administration of justice... for crimes committed by military servicemen” - had reportedly ‘heard’ 60 ‘criminal cases’. 41 ‘cases’ were still being considered, nine had been transferred to ‘general courts’, while a ‘decision’ on ‘exemption from criminal responsibility’ had been issued in 12 ‘cases’. The ‘military tribunal’ rendered 18 ‘sentences’ for various types of crimes, including murder.

98. The ‘Luhansk people’s republic’ has adopted several ‘legislative acts’ that foresee the establishment of a ‘supreme court’, ‘arbitration court’, ‘military court’ and 18 district, city and city-district ‘courts’ in the territory under their control. Local interlocutors in Luhansk informed OHCHR that several ‘first instance courts’ were established and are operating. While there have been no developments in the establishment’ of a ‘supreme court’, OHCHR was informed that there are persons ‘accused’ of grave crimes and deprived of their liberty in Luhansk awaiting ‘trial’ by the ‘supreme court’.

## V. Fundamental freedoms

*“I cannot trust anyone. I came to talk to you because I know you. I am afraid to talk on the phone. Everyone says that all conversations are tapped. Isn’t that prohibited?”*

- A woman living in the ‘Donetsk people’s republic’

### A. Violations and abuses of the freedom of movement

99. Civilians’ freedom of movement across the contact line remained constrained. Since early June, parties to the conflict started moving closer to each other, violating the Minsk agreement. This resulted in a relocation of checkpoints on at least three transport corridors<sup>92</sup> (two in Donetsk and one in Luhansk region) and a shrinking of the “no-man’s land” in between, which may reignite hostilities and endanger civilians. There are inadequate water, sanitary or medical facilities at the new entry-exit checkpoints. Areas around all transport corridors are mined, but not marked properly according to the International Mine Action Standards.

100. There were a number of security incidents at checkpoints, leading to the brief closure of Zaitsevo and Stanytsia Luhanska transport corridors. On 16 June, an exchange of fire was reported at the Mariinka entry-exit crossing point, with one civilian consequently wounded. The checkpoint operations were suspended until the following morning.

101. Crossing the contact line remained arduous. With 26,000-32,000<sup>93</sup> people crossing the line daily, there were long queues at all five operational transport corridors. People waited for up to 36 hours, including overnight, with not or limited access to shade, latrines, water, medical aid, or shelter in case of shelling. As temperatures exceeded 30 degrees Celsius, some people, mostly elderly, lost consciousness while standing in line.

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<sup>92</sup> On the Horlivka-Artemivsk transport corridor, the Government-controlled entry-exit checkpoint Zaitsevo was moved 800 meters towards the checkpoint controlled by ‘Donetsk people’s republic’. ‘Donetsk people’s republic’ created a new ‘military’ checkpoint 600 meters towards Government-controlled side. The distance before was of about 2 kilometres. Now the distance is of approximately 600 meters. On the Donetsk- Mariupol transport corridor, the entry-exit checkpoint Novotroitske was moved three kilometres towards the checkpoint controlled by ‘Donetsk people’s republic’. The previous distance of four kilometres, now is reduced to 1 kilometre. On the pedestrian crossing of Stanytsia Luhanska, ‘Luhansk people’s republic’ moved its checkpoint 450 meters towards that controlled by the Government of Ukraine.

<sup>93</sup> This is a conservative estimate of the average number of people crossing the contact line daily based on the data provided by the State Border Service. On some days, the number of people crossing exceeded 32,000 people.

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There is a lack of availability of ambulance service in close radius to the contact line<sup>94</sup>. During the reporting period, three civilians died<sup>95</sup> at checkpoints due to delayed emergency medical assistance.

102. OHCHR received complaints regarding corruption at the Government-controlled checkpoints to ease passage, as well as reports of derogatory treatment, particularly at Zaitseve, Stanytsia Luhanska, and Mariinka checkpoints. While there is a Government hotline and a mechanism established by an NGO to receive complaints, people are often unaware of these mechanisms. On 29 June, a media professional informed OHCHR that at the end of May, while crossing Kurakhove checkpoint, she witnessed<sup>96</sup> one of the officers of the State Border Service verbally harassing civilians. After she complained that such remarks were unacceptable, the officer arbitrarily searched her personal belongings. Other officers present at the site did not intervene<sup>97</sup>.

## **B. Violations and abuses of the freedom of peaceful assembly**

103. While monitoring the ‘Equality March’ on 12 June and Orthodox Processions<sup>98</sup> held on 27-28 July, OHCHR noted significant progress made by the National Police of Ukraine in securing peaceful assemblies. Those who wanted to protest against the ‘Equality March’ were allowed to assemble. 57 individuals were temporarily detained and released after a few hours on administrative charges of minor hooliganism. A large police presence and high level of coordination between law-enforcement agencies was also observed during the Orthodox Procession. While no major incidents occurred, police effectively responded to several threats.

104. On the evening of 4 July 2016, more than 100 persons protested peacefully against the presence of military equipment in the centre of Toretsk, Donetsk region. Police arrested eight men and charged them with wilful disobedience<sup>99</sup>, interrogated them without lawyers and did not bring them before court within three hours, as required by domestic law<sup>100</sup>. SBU officers threatened and intimidated the detainees and demanded access to their social media, interrogating them about their affiliation with the armed groups. The detainees spent the night sleeping on the floor of a small cell with only one mattress and a wooden bench. After the hearings, they were forcibly brought back to the police station although they had been officially released from custody. There, the Head of Police in Donetsk region allegedly insulted and threatened them. The Head confirmed to OHCHR that after the court hearings he ordered his subordinates to bring the eight men to him for a “disciplinary lecture.”

### *Territories under the control of the armed groups*

105. During the reporting period, OHCHR observed several rallies in the ‘Donetsk people’s republic’. While no incidents were reported, there are concerns as to whether participation was voluntary. On 10 June, OHCHR monitored a peaceful rally in Donetsk city against the deployment of an OSCE armed police mission to Donbas. Based on a range of accounts, it is evident that the gathering of about 12,000 – most of whom were employees of ‘state-funded institutions’ or students – was organized by the authorities of the ‘Donetsk People’s Republic’. OHCHR witnessed that people taking part in the protest were warned by ‘volunteers’ that if they would leave the site, their ‘misbehaviour’ would be reported to their superior or the ‘authorities’.

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<sup>94</sup> World Health Organization, Situation Report, 1 August 2016; OCHA Humanitarian Bulletin Ukraine Issue 13, 1-31 August 2016

<sup>95</sup> On 25 May, a man died of a heart attack while waiting for passage at the pedestrian crossing of Stanytsia Luhanska. On 13 June, an 82-year-old woman died of an epileptic attack at the same checkpoint. On 7 July, a 62-year-old man died at the Zaitseve checkpoint due to the deterioration of his health. Although first aid was provided, professional medical help was not available.

<sup>96</sup> HRMMU interview, 29 June 2016.

<sup>97</sup> HRMMU interview, 19 July 2016.

<sup>98</sup> The procession started on 3 July in Sviatohirsk Lavra in Donetsk region and on 9 July from Pochaiv, Ternopil oblast, and was dedicated to the day of Baptism of Rus (on 28 July 2016).

<sup>99</sup> Article 185 of the Code of Administrative Infractions.

<sup>100</sup> Article 263 of the Code of Administrative Infractions



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### C. Violations and abuses of the freedom of association

106. OHCHR continued to document repeated cases of harassment of Communist party members<sup>101</sup>. On 28 June, the apartment of a 68-year-old first secretary of the Kharkiv local branch of the Communist Party was searched and she was charged with trespassing the territorial integrity of Ukraine and bribing State officials<sup>102</sup>. On 30 June, a Kharkiv court ruled to place her in pre-trial detention. She informed OHCHR that her physical condition was stable but her health had deteriorated while in custody<sup>103</sup>.

#### *Territories under the control of the armed groups*

107. OHCHR observed continued restrictions on civil society in the areas controlled by armed groups, limiting their ability to operate and deliver humanitarian aid. According to reports, due to the absence of a ‘Donetsk people’s republic’ ‘law’ governing non-governmental organization (NGO) registration<sup>104</sup>, the ‘ministry of justice’ informs NGOs operating in armed group-controlled areas that they cannot be registered.

108. On 21 July 2016, a co-founder of a humanitarian organization in Donetsk was deprived of her liberty by people who identified themselves as members of the ‘ministry of state security’ for the second time after her release at the end of February 2016<sup>105</sup>. On 9 August 2016, OHCHR was informed of her release.

109. While independent NGOs have been facing restrictions, OHCHR observed the growth of organizations created under the auspices of the ‘Donetsk people’s republic’. For example, the number of members of the civil society “Donetsk republic” organization has reached 140,000<sup>106</sup>. The NGO ‘Peace to Luhansk Area’, which reportedly aims at “fighting fascism and aspiring to the Russian world” has a membership of 72,500, compared to 11,500 in early 2016. Reportedly, membership is required for public sector employees<sup>107</sup>. There are serious concerns concerning the mandatory nature of membership, as well as data protection issues, as the lists of members are published online.

110. There is little to no space for free trade unions not affiliated with ‘authorities’. OHCHR learnt<sup>108</sup> that only one trade union established by the ‘Luhansk People’s Republic’ was allowed in Luhansk.

### D. Violations and abuses of the freedom of opinion and expression

111. According to OHCHR interlocutors<sup>109</sup>, Ukrainian media professionals have continued experiencing pressure from SBU or the Armed Forces when reporting on sensitive matters, such as military losses or unlawful conduct of Ukrainian soldiers. Some journalists also mentioned self-censorship when they feel that certain information could harm the Ukrainian Armed Forces or fear that Russian or armed groups media could exploit such information for propaganda purposes. In a notable increase in violence against journalists, OHCHR documented three incidents in Zaporizhzhia region and three in Kyiv. The cases appeared related to the professional activities of the journalists, intended to threaten them and stifle their reporting, and are being investigated by National Police of Ukraine.

112. On 8 July, the press centre of the ‘Anti-Terrorism Operation Headquarters’ (ATO HQ) requested SBU to suspend the accreditation of two Ukrainian and one Russian journalist reporting from Avdiivka, Donetsk region. After filming attacks that killed two Ukrainian soldiers<sup>110</sup>, the journalists were requested by the Ukrainian armed forces to delay their publication by one day. The subsequent publication of the video was considered by the

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<sup>101</sup> See 14<sup>th</sup> HRMMU report covering 16 February to 15 May 2016, para. 108.

<sup>102</sup> Articles 110 and 369 of the Criminal Code of Ukraine.

<sup>103</sup> HRMMU interview, 15 July 2016.

<sup>104</sup> HRMMU interview, 22 June 2016.

<sup>105</sup> See 14<sup>th</sup> HRMMU report covering 16 February to 15 May 2016, para. 111.

<sup>106</sup> As of 24 May 2016.

<sup>107</sup> HRMMU interview, 9 August 2016.

<sup>108</sup> HRMMU interview, 16 June 2016.

<sup>109</sup> HRMMU interview, 22 June 2016.

<sup>110</sup> HRMMU interview, 19 July 2016.

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ATO HQ to be a violation of the rules of conduct of media professionals working in conflict areas<sup>111</sup> because the material disclosed the soldiers' faces, positions and weaponry. While the Government can introduce restrictions on journalists' activities along the contact line based on national security considerations, such restrictions must be provided by law, proportional and should not be arbitrarily applied. In this case, OHCHR considers that the response of the ATO HQ was disproportionate considering the measures taken by the journalists to comply with the requests of the Ukrainian armed forces.

113. On 31 May, the Presidential decree<sup>112</sup> on the enactment of the resolution of the National Security and Defence Council "on some personal sanctions" came into force, imposing sanctions<sup>113</sup> on 17 Russian journalists in addition to the previous sanction lists<sup>114</sup>. At the same time this decree lifted sanctions against 29 foreign journalists.

114. On 24 May, the website database *Myrotvorets*<sup>115</sup> published the names and contact details of an additional<sup>116</sup> 304 media professionals (300 international and 4 national), leading to adverse effects on people included in the list. Some media professionals have received offensive remarks or threats, and were labelled as 'separatists'. OHCHR interviewed several people who claim their bank accounts have been frozen due to their inclusion on the list or for anti-Maidan expressions.

115. On 14 July, journalist Ruslan Kotsaba, who had been sentenced<sup>117</sup> to three years and six months of imprisonment for having allegedly prevented activities of the Armed Forces of Ukraine, was declared innocent and released. The Ivano-Frankivsk regional court of Appeal overturned his conviction by the city court of 12 May 2016.

116. On 20 July, a prominent journalist, Pavel Sheremet working at *Ukrainska Pravda*, a popular Ukrainian online news outlet, was killed in a car bomb explosion in central Kyiv. The car he was driving belonged to one of the founding editors. The General Prosecutor stated that the incident was investigated as a murder.

#### *Territories under the control of the armed groups*

117. A media professional from Donetsk stated<sup>118</sup> that the analytical department of the 'ministry of information policy' of the 'Donetsk people's republic' thoroughly checks journalists' work and exercises strict oversight over publications, as a condition for accreditation. Media professionals in Donetsk reported that in recent months, most foreign journalists (except for Russian media professionals) were denied "accreditation" by the armed groups, leading to a drastic decrease of foreign journalists working in territories controlled by the armed groups.

118. On 21 June, the 'ministry of state security' of the 'Luhansk people's republic' published a video of a Ukrainian journalist deprived of her liberty, 'confessing' that she had

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<sup>111</sup> Rules of conduct of media professionals working in the ATO zone. published by the State Committee of TV and Radio broadcasting: [http://comin.kmu.gov.ua/control/uk/publish/article?art\\_id=129965&cat\\_id=114334](http://comin.kmu.gov.ua/control/uk/publish/article?art_id=129965&cat_id=114334)

<sup>112</sup> Presidential Decree №224 / 2016 On the decision of the National Security and Defense of Ukraine of 20 May 2016 "On some special personal restrictive measures (sanctions)"

<sup>113</sup> Denial of issuance and cancellation of visas for residents of foreign States or other means of banning their entry into the territory of Ukraine.

<sup>114</sup> National Security and Defence Council decision of 2 September 2015 "On application of special personal economic and other restrictive measures (sanctions)", enacted by presidential decree of Ukraine from 16 September 2015 №549, containing a list of 388 individuals and 105 legal entities.

<sup>115</sup> The website includes personal data and information available on social media about people who are allegedly involved in activities of the 'Donetsk people's republic' and the 'Luhansk people's republic'. It is allegedly maintained by volunteers but has been actively used since 2014 by the Ukrainian forces at the checkpoints. As previously noted by OHCHR, it includes armed groups members as well as civil servants, who did not move to Government-controlled areas, as well as members of civil society who provide humanitarian assistance in the areas controlled by armed groups. See 14th HRMMU report covering 16 February to 15 May 2016, paragraph 87.

<sup>116</sup> On 10 May 2016 the Ukrainian website "*Myrotvorets*" published the personal data of 4068 Ukrainian and international journalists supposedly accredited to work in the 'Donetsk people's republic'.

<sup>117</sup> On 12 May 2016 the Ivano-Frankivsk city court sentenced the journalist Ruslan Kotsaba accused of treason and impeding the work of the Armed Forces of Ukraine, to 3 years and 6 months of imprisonment. See more details in 14<sup>th</sup> HRMMU report covering 16 February to 15 May 2016, paragraph 117

<sup>118</sup> HRMMU interview, 29 June 2016

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been approached by SBU before travelling to Luhansk and requested to gather information about the members of a ‘municipal council’ and the armed groups. The ‘Luhansk people’s republic’ stated she had been charged for ‘espionage’, which is punishable with up to 10 to 20 years of imprisonment under article 336 of the ‘criminal code’ of the ‘Luhansk people’s republic’.

119. In Donetsk, a blogger and activist from Kyiv remains deprived of his liberty by the ‘ministry of state security’ of the ‘Donetsk people’s republic’ since January 2016 and charged with the unlawful possession of weapons<sup>119</sup>. On 27 June, there was reportedly a ‘hearing’ by a ‘Donetsk people’s republic’ ‘court’, during which the blogger plead guilty and confirmed to have brought two grenades to the ‘Donetsk people’s republic’<sup>120</sup>. During the “hearing”, he managed to give his father his sweater, which was covered with blood, raising concerns about possible ill-treatment by the ‘Donetsk people’s republic’ ‘investigators’.

120. On 1 June 2016, the ‘head’ of ‘Donetsk people’s republic’ signed a decree ‘On measures to protect state secret and official information’<sup>121</sup>. The ‘decree’ bans all ‘Donetsk people’s republic’ ‘civil servants’ from using open communication channels, including Ukrainian mobile networks, email accounts and social media, when contacting anyone outside the ‘Donetsk people’s republic’ (excluding the Russian Federation). The humanitarian community has noted the negative impact of such measures which, for instance, prohibit the sharing of necessary information on health care and social protection.

## VI. Economic and social rights

*“We sacrificed our lives working for this pension. Haven’t we earned it?”*

- Resident of Kuibyshevskii district of Donetsk city

### A. Economic and social rights and early warning

121. The entire population of Ukraine continues to be affected by the deteriorating economic situation as a result of the conflict and instability in the east. In the first six months of 2016, prices increased by 4.9 per cent. Since 1 July, utility rates for heating increased by 75-90 per cent on average<sup>122</sup>, whilst the average salary remained constant at UAH 4,934 (approximately USD 197). On 6 July, OHCHR monitored an all-Ukrainian demonstration organized by The Trade Union to demand an increase in the minimum wage<sup>123</sup> and a decrease in utility rates and rates for gas. While most demonstrators were working age men and women, there were also many older persons. Considering that 60 per cent of all pensioners receive between UAH 1,300 and 3,000 (USD 52 to 120), increased utility rates are a serious burden for most pensioners, despite Government subsidies to all households whose spending on utilities exceeds 15 per cent of their income.

122. According to the Ministry of Social Policy, 1,714,388 individuals were registered as IDPs as of 15 August 2016. Their integration has remained impeded by the absence of a State strategy and the consequent absence of allocation of financial resources, leading to the economic and social marginalisation of IDPs. Most communities hosting large numbers of IDPs have not received additional resources from the State and fully rely on humanitarian actors. Employment and accommodation are among IDPs’ most pressing needs.

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<sup>119</sup> On 16 August 2016, the ‘central city district court’ of Makiivka ‘sentenced’ him to two years of imprisonment for the ‘illegal possession of weapons’.

<sup>120</sup> HRMMU interview, 12 July 2016

<sup>121</sup> Accessible online: [http://old.dnr-online.ru/wp-content/uploads/2016/06/Ukaz\\_N155\\_01062016.pdf](http://old.dnr-online.ru/wp-content/uploads/2016/06/Ukaz_N155_01062016.pdf)

<sup>122</sup> On 1 July 2016, the cost of utilities for heating and hot water doubled.

<sup>123</sup> Recognized as the economically minimum viable salary.

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123. OHCHR has observed a worrisome trend of employers' refusing to hire former soldiers and members of volunteer battalions. Coupled with the lack of services for socio-economic rehabilitation, insufficient mental health support, proliferation of arms and substance abuse, this may destabilize communities and contribute to human rights violations. The International Labour Organisation's guidelines<sup>124</sup> on socio-economic rehabilitation of ex-combatants highlight the importance of creating employment opportunities for former soldiers, which are more sustainable and more effective than provision of short-term benefits.

*Territories under the control of the armed groups*

124. The increased hostilities during the reporting period have led to an isolation of some villages close to the contact line. For instance, in Yasne there is no public transportation, pharmacy, grocery store, medical facility, and phone reception has been very weak for more than a year. Yasne's residents have to use a taxi or walk to the closest town, Dokuchaievsk (some seven kilometres away) to buy groceries or access medical care<sup>125</sup>.

125. Limited access to water remains one of the major concerns in the 'Luhansk people's republic'. In the period under review, the water supply on both sides of the contact line has been mostly affected by damage to electricity stations as a result of indiscriminate shelling, which then affects ability of water stations to operate. Continued exchanges of fire have on several occasions prevented repair teams from accessing damaged infrastructure, and have put the lives of their staff at risk. Negotiating 'windows of silence' to allow access and restore essential services has become more difficult as parties to the conflict continue to disregard humanitarian principles protecting vital civilian infrastructure. In addition, significant financial investment is required to rehabilitate water networks that have degraded due to a lack of continuous maintenance. Water utilities are reliant on humanitarian assistance to procure basic water treatment chemicals. There are increasingly frequent water supply interruptions as a result of continued conflict-related damage aggravating pre-existing vulnerabilities stemming from aging infrastructure, operational inefficiencies and unsustainable revenue streams. Overall, this affects the continuity and quality of water for the conflict-related population, particularly in the areas controlled by the armed groups.

126. Collective centres accommodating IDPs from the conflict-affected area are reportedly overcrowded. Many people therefore prefer staying in their sometimes heavily damaged apartments or insecure areas. With the intensification of shelling in recent months and increased damage to residential houses, more people are likely to need alternative accommodation. This may result in deteriorating conditions in collective centres, rise in the level of homelessness, and increased number of violations of housing, land and property rights.

127. Employment opportunities remain very limited. Before the conflict, the majority of the male population in Donetsk and Luhansk worked in coalmines, many of which have closed. OHCHR visited Trudovska mine, which employed 1,800 people prior to the conflict. Since closing in January 2015, 800 employees still registered at the coalmine have not received any salary and are not entitled to any social payments. In Zaitseve, armed groups are stationed in the local school and hospital, the chemical plant has closed down, and the coalmines either closed or are unable to pay salaries, thus leaving the majority of residents unemployed. The situation is similar in many other towns and villages. To tackle unemployment, in some towns, local 'authorities' have organized community works, for which residents receive a monthly salary of 2,500 RUB (nearly 40 USD) or food.

128. Many people in areas controlled by the armed groups continued to report that their relatives join the armed groups for financial reasons, as a last resort, unable to find other gainful employment<sup>126</sup>.

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<sup>124</sup> Available at:

[http://www.ilo.org/wcmsp5/groups/public/@ed\\_emp/documents/instructionalmaterial/wcms\\_141276.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_emp/documents/instructionalmaterial/wcms_141276.pdf)

<sup>125</sup> HRMMU interview, 16 June 2016.

<sup>126</sup> HRMMU interview, 16 June 2016.

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## B. Social security and protection of internally displaced persons

129. IDPs continued to face impediments to their economic and social rights. During the reporting period, OHCHR interviewed IDPs whose registration certificates were cancelled and payments suspended as a result of the verification procedure initiated in February 2016<sup>127</sup>. IDPs complained that they were not informed about the decision of local authorities to suspend payments, and described difficulties in reinstating their payments. A woman<sup>128</sup> from Perevalsk, Luhansk region, was accused by the Kharkiv Department of Social Protection of being a “cheater” and instructed to return her social entitlement payments to the State.

130. Approximately 85 per cent of IDPs residing in Government-controlled areas were severely or critically affected by such suspensions. In areas under the control of the armed groups, this concerned 97 per cent of IDPs. For the vast majority of IDPs (84 per cent) the procedure to renew IDP certificates and/or access social benefits and pensions was unclear, indicating a lack of or inadequate communication from the authorities<sup>129</sup>.

131. The amendments adopted on 8 June 2016<sup>130</sup> have exacerbated the hardship experienced by IDPs, allowing automatic termination of benefits and proscribing two to six months for reinstatement, depending on the grounds for termination. OHCHR is concerned about the slow progress in the creation of special commissions for the verification of IDP residences.<sup>131</sup> For IDPs from Crimea, the situation is further aggravated by the fact that their IDP certificate is considered to be their only proof of residence in Government-controlled territory. Losing their IDP certificate leads to a loss of residency status.

132. While a recent study showed an overwhelmingly positive or neutral attitude of Ukraine’s population towards IDPs<sup>132</sup>, OHCHR has consistently observed cases<sup>133</sup> of discrimination against IDPs in accessing employment, accommodation or banking services based on the place of their origin. Checks of IDPs’ ‘living conditions’ have contributed to the reluctance of landlords to rent housing to IDPs and to evictions. OHCHR also interviewed IDPs who were denied access to their bank deposits and credit.

133. Many IDPs believe that measures taken by the Government of Ukraine, against a backdrop of decreasing standards of living and limited social services throughout Ukraine, exacerbated by the mass cancellation of social entitlements<sup>134</sup>, are aimed at forcing them to return to the armed group-controlled areas as a form of collective punishment. One woman told OHCHR that she travelled to the territories controlled by the armed groups to give birth as her payments had been suspended and she could not afford living in the Government-controlled areas anymore<sup>135</sup>.

134. By depriving IDPs of their social entitlements, the Government is further deepening the socio-economic hardships of IDPs and their dependency on humanitarian aid. The deteriorating situation caused by the IDP laws may force the State authorities and international donors to reintroduce major humanitarian projects in the Government-controlled territories instead of focusing on integration and recovery programmes.

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<sup>127</sup> See 14<sup>th</sup> HRMMU report covering 16 February to 15 May 2016, paras. 134-141. See also: <http://www.reyestr.court.gov.ua/Review/58003597>; <http://www.reyestr.court.gov.ua/Review/57907662>;  
<http://www.reyestr.court.gov.ua/Review/57705871>; <http://www.reyestr.court.gov.ua/Review/57486306>;  
<http://www.reyestr.court.gov.ua/Review/57125552>; <http://www.reyestr.court.gov.ua/Review/58009943>

<sup>128</sup> HRMMU interview, 29 June 2016.

<sup>129</sup> Monitoring Report on the suspension of IDP certificates, social payments and pension payments for IDPs in Kharkiv, Donetsk, Luhansk, Zaporizhia, Dnipro regions, conducted by the NGO Right to Protection.

<sup>130</sup> See paragraphs 26-30 in “Legal framework for internally displaced persons”.

<sup>131</sup> See paragraphs 30-31 in “Legal framework for internally displaced persons”.

<sup>132</sup> Kyiv International Institute of Sociology Studies, June 2016. The survey shows the following attitude towards IDPs across Ukraine: 43 per cent- positive, 47 per cent neutral, 6 per cent negative; and 58 per cent, 34 per cent and two per cent respectively in the five eastern regions.

<sup>133</sup> HRMMU interview 4 June 2016.

<sup>134</sup> R2P IDP monitoring report, VostokSOS monthly reports

<sup>135</sup> HRMMU interview, 17 July 2016.



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135. Several legislative changes<sup>136</sup> have imposed undue and discriminatory obstacles for IDPs to access their social entitlements. As of 1 June 2016, IDP pensioners started receiving special bank cards (meant to also serve as identity documents) from the state-owned ‘Oshchadbank’ bank. As of 1 July 2016, all social benefits and pensions must be paid to IDPs only via this bank, while all other recipients of social entitlements are free to use any other bank in Ukraine. IDP pensioners are also requested to undergo physical identification in Oshchadbank branches twice during the first year, followed by an annual visit. In case of failure to do so, all operations with the person’s account will be suspended automatically by the bank until the IDP presents himself or herself. This provision imposes an additional burden on people with disabilities as well as for IDPs living in rural and remote areas. OHCHR also received information<sup>137</sup> that people receiving pension payments into their bank accounts cannot conduct online payments or purchases with their bank cards from the territories controlled by the armed groups. Allegedly, payments are only possible from Government-controlled territory.

### C. Housing, land, and property rights

136. OHCHR has documented an increase in cases of people who are forced to pay high utility bills incurred by the use of their homes or apartments by either the Ukrainian armed forces or armed groups. Many of those affected have accumulated large debts that they cannot afford to pay. Some civil society organizations noted that this was a widespread issue in the Mariinskiy district and in areas adjacent to the Donetsk airport.

137. One woman reported how, despite repeated complaints to the Department of the National Police of Ukraine in Novoiidar District, soldiers continued to be stationed in her house during the reporting period, which was looted and damaged<sup>138</sup>. Another woman, whose house in Avdiivka was used by different groups of soldiers for over a year, received a high electricity bill in May 2016. As an ad hoc solution, she was provided a certificate by the local military commander’s office and was able to appeal to the utility company<sup>139</sup>. OHCHR continued to follow a civil claim concerning destroyed property where a resident of Sloviansk successfully litigated the damages to her house inflicted in the course of the conflict<sup>140</sup>. OHCHR notes that the Ministry of Justice has appealed the decision. These cases show that there is no mechanism of complaint and remedy for civilians whose property has been used for military purposes or damaged in hostilities. OHCHR recalls that all IDPs have the right to restitution of their housing, land and/or property, of which they were arbitrarily or unlawfully deprived and to be compensated for any loss or damage<sup>141</sup>.

138. OHCHR witnessed the use of private houses by members of Ukraine’s armed forces, in Shechastia, Staryy Aidar, Lopaskine, Trokhizbenka, Bakhmutka, Nyzhnia Zhovanka, Verkhnia Zhovanka, Kriakivka in Donetsk and Luhansk regions. In Government-controlled areas, despite complaints from the affected population to local authorities, the National Police is often either reluctant to investigate such cases or unable to do so due to lack of access to areas near the contact line.

139. The lack of a mechanism to conduct inspections and assess damage to property – which is indispensable for future justice processes – hinders victims’ ability to seek remedy in restoring their property rights. Although both the National Human Rights Action Plan and the Comprehensive IDP State programme<sup>142</sup> envisage the establishment of a compensation

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<sup>136</sup> Cabinet of Ministers, Resolution No. 167 “On Introducing Changes to some Resolutions of the Cabinet of Ministers of Ukraine”, March 2016. The Resolution amends three other Government acts regulating registration of IDPs and the provision of social benefits for IDPs.

<sup>137</sup> HRMMU interview, 7 July 2016.

<sup>138</sup> HRMMU Interview, 25 May 2016, 15 August 2016.

<sup>139</sup> HRMMU Interview, 6 July 2016, 23 July 2016.

<sup>140</sup> On 15 March 2016, the Donetsk Regional Court of Appeals in Bakhmut, ordered the State to compensate for the damage caused to a property as a result of shelling in June 2014. See 14<sup>th</sup> HRMMU report covering the period 16 February – 15 May 2016.

<sup>141</sup> Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”), Principle 2.

<sup>142</sup> Cabinet of Minister Resolution No. 1094 “On the approval of the Comprehensive state programme of support, social adaptation and reintegration of citizens of Ukraine who moved from the temporarily occupied territory of

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mechanism for damaged and destroyed housing, land and property, no concrete steps have been taken in that regard. OHCHR is concerned that Ukrainian courts have continued to reject claims on the basis of insufficient evidence establishing individual responsibility.

140. OHCHR continued to observe the alarming accommodation situation for IDPs in collective centres across Ukraine. In Odesa, since December 2015, around 400 IDPs predominantly with disabilities (including 42 persons in wheelchairs) inhabiting Kuialnyk sanatorium have been subjected to threats of forced eviction due to outstanding debts for accommodation. In addition to constant threats of eviction, owners utilize electricity and water cuts as a means to pressure regional authorities to cover the accommodation costs of IDPs.

141. On 24 June 2016, a number of IDPs, together with a ‘self-defence’ group in Odesa, seized a communal building after numerous attempts at obtaining support from the regional authority to solve their housing problems.<sup>143</sup> OHCHR notes a worrying tendency to resolve pressing socio-economic and political issues with the help of voluntary battalions and paramilitary groups.

*Territories under the control of the armed groups*

142. Armed groups continued to loot and use civilian homes and other property for military purpose. During a monitoring visit to Kuibyshevskiyi district in Donetsk, OHCHR observed that members of armed groups were present in the neighbourhood’s bomb shelter<sup>144</sup>. Some residents mentioned having been expelled from this shelter by members of the armed groups and having nowhere to go when shelling takes place. Some also indicated that armed group members used to stay in residential apartments. Residents also claimed that armed group members had looted shops and apartments. Residents did not provide any details, noting that complaints to the armed groups tended to be followed by intimidation.

143. The vast majority of private houses, dormitories and apartment buildings in Kuibyshevskiyi district have been damaged. During the reporting period, the area was further shelled. Due to the ongoing shelling and damage to civilian homes, the ‘Donetsk people’s republic’ appears reluctant to provide funding for the restoration of damaged property. The few remaining residents reported that they did not leave their homes to protect their property from looting and armed group presence. Some informed OHCHR that despite a ‘Donetsk people’s republic’ commission’s visit to the area in May 2015 and their commitment to restore the damaged buildings, no action has been taken to date.

144. Armed group-controlled parallel property registration systems are being developed or already in force, negatively affecting persons owning, inheriting, selling or buying property. According to its ‘internal regulations’,<sup>145</sup> the ‘Donetsk people’s republic’ recognizes only property registration documents issued by their ‘structures’. As a result, people either residing in or owning property in areas controlled by the armed groups are forced to register it on both sides of the contact line, paying double taxes and administrative fees. Unresolved disputes over housing, land and property prevent durable solutions for returnees, may force returns by those seeking to defend their property rights, and threaten peace and stability prospects<sup>146</sup>.

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Ukraine and the areas of anti-terrorist operation in other regions of Ukraine for the period till 2017”, 16 December 2015.

<sup>143</sup> HRMMU Interview, 8 July 2016.

<sup>144</sup> HRMMU interview, 19 May 2016.

<sup>145</sup> The ‘cabinet of ministers’ of the ‘Donetsk people’s republic’, No. 17-3, 2 September 2015, prescribes that property documents issued between 11 May 2014 and 3 September 2015 by Ukrainian authorities must be legalized by the inter-agency commission at the ‘ministry of justice’ to be regarded as having legal force. On 12 July 2016 the ‘Donetsk people’s republic’ ‘supreme court’ issued an ‘explanatory letter’ providing that property registration documents have to be “legalized” according to this procedure.

<sup>146</sup> See Early Warning and Economic and Social Rights, paragraph 23.

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## D. Right to the highest attainable standard of physical and mental health

145. Former detainees, including victims of torture, continue to face difficulties in accessing medical care. Most military personnel who had been detained by armed groups can access free specialized medical services in military hospitals, including testing and treatment. However, despite legislation guaranteeing psycho-social rehabilitation of demobilized soldiers, there is no referral procedure and there is a lack of adequate service providers. Those who had been members of volunteer battalions are not entitled to free treatment. The absence of a comprehensive State rehabilitation programme does not allow for proper integration of demobilized soldiers and members of volunteer battalions into communities.

146. Civilian conflict-related detainees face even greater challenges. Upon their release, they are unrecognized and thus not entitled to any medical, psychological or social services and support. State entities often lack the skills and capacity to deal with these groups, which can lead to their re-victimization. Consequently, civilians released from captivity and the relatives of missing persons rely on the assistance of volunteers and civil society organizations.

147. Conflict-related detainees continue to have limited access to medical treatment in detention. OHCHR has noticed the deterioration of the medical state of several detainees at SIZO premises in Mariupol and Zaporizhzhia region. At the Vilniansk SIZO, as of 21 July, a conflict-related detainee was denied medical assistance despite a 5 April 2016 court decision mandating his transfer to a medical facility and treatment.

### *Territories under the control of the armed groups*

148. In the areas controlled by the armed groups, OHCHR noted persistent difficulties with availability<sup>147</sup> and accessibility<sup>148</sup> of healthcare for civilians. Medical facilities and first aid are particularly limited along the contact line. In the village of Olenivka (near a checkpoint), controlled by the armed groups, the sole ambulance was reportedly<sup>149</sup> relocated to Dokuchaivsk (10 kilometres away), making it difficult for people to access first aid. The situation is worsened by the fact that telephone mobile networks barely function in Olenivka. In armed group-controlled Zaitseve, armed groups are positioned in the hospital (See: Alleged violations of international humanitarian law, para. 36) and the residents can only receive first aid in a polyclinic in Mykytivka (18 kilometres away); those injured can only be hospitalized in Horlivka hospital (20 kilometres away). OHCHR learned about a woman who died because the ambulance could not come to her assistance<sup>150</sup>. The residents of Kuibyshevskiy district reported similar problems.

149. In armed group-controlled Sakhanka village, 700 people (including 130 children) are without medical care or assistance. The village's only doctor left at the outbreak of the armed conflict, and a nurse resigned in early July 2016.

150. According to the chief doctor of one of the major hospitals in Donetsk city, there is shortage of nurses; approximately 80 per cent of them live in rural areas that are across or near the contact line, and are no longer able to get to the hospital.

151. Medical facilities in armed group-controlled areas still largely depend on humanitarian aid. Since humanitarian actors are not allowed to operate freely in the 'Donetsk people's republic', treatment for some groups of patients remains limited and often

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<sup>147</sup> For the purpose of this report, availability means that functioning public health and health care facilities, goods and services must be available in sufficient quantity within a State.

<sup>148</sup> For the purpose of this report, accessibility means that facilities, goods and services must be accessible physically (in safe reach for all sections of the population, including children, adolescents, older persons, persons with disabilities and other vulnerable groups), as well as financially, and in a non-discriminatory manner. Accessibility also implies the right to seek, receive and impart health-related information in an accessible format (for all, including persons with disabilities).

<sup>149</sup> As reported by OSCE SMM monitors on 2 June 2016.

<sup>150</sup> HRMMU interview, 15 July 2016.

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inaccessible. The wife of a man recently diagnosed with diabetes alleged<sup>151</sup> they could not receive insulin in two Donetsk hospitals and had to cross the contact line to purchase medication. While on 12 July 2016<sup>152</sup> the ‘minister of health’ of ‘Donetsk people’s republic’ stated that there was sufficient supply of insulin, the type available is not suitable for all patients. He did add that overall only 20 per cent of medication required by hospitalised patients is available in the medical facilities under control of the ‘Donetsk people’s republic’.

152. The need for psycho-social support remained high and largely unmet. Residents in conflict-affected areas of Donetsk have complained about sleep deprivation due to exchanges of fire every night. Civil society and international organizations providing psycho-social support remain severely restricted by the ‘Donetsk people’s republic’.

## VII. Human rights in the Autonomous Republic of Crimea<sup>153</sup>

*“They put a gas mask with a hose on my head, opened the bottom valve and sprayed gas. I started vomiting and choking. Then, they removed the mask, gave me smelling salts, and started again.”*  
- Genadii Afanasiev

### A. Rights to life, liberty, security and physical integrity

153. Tensions between Ukraine and the Russian Federation rose after Russia's Federal Security Service (FSB) stated on 10 August that it had detained a group of saboteurs on Crimean territory, near the northern city of Armyansk, and had prevented terrorist acts on the peninsula organized by the Main Intelligence Department of the Ukrainian Defense Ministry. Twenty improvised explosive devices containing more than 40 kilograms of TNT equivalent, ammunition, mines and grenades were said to have been found. An FSB officer and a Russian serviceman were allegedly killed in armed clashes with the group of infiltrators on 6 and 7 August 2016. The Ukrainian General Staff denied any involvement, and Ukrainian President Poroshenko called the FSB claims “a provocation”. On 11 and 13 August 2016, two alleged members of the group were arrested and remanded in custody for two months. A third suspect was reportedly arrested on 30 July 2016 in Simferopol airport.

154. On the night of 24 May 2016, a Crimean Tatar, Ervin Ibragimov went missing. His father found his car abandoned outside their home, with the doors open and the key left in the ignition. Ervin Ibragimov is a member of the Coordination Council of the World Congress of Crimean Tatars and of the Bakhchisaray regional Mejlis. Footage from a CCTV camera shows a group of men forcing him into a van and driving away. On 25 May 2016, Ervin Ibragimov’s father went to the FSB in Simferopol to file a complaint and provide the CCTV footage. The FSB officers allegedly refused to file the complaint and told him to send it by post. The ‘police’ in Bakhchisaray opened an investigation into the incident. A week before he disappeared, Ibragimov had told his friends he had noticed a car waiting outside his house that later followed him during the day. On 25 May 2016, he was due to travel to the town of Sudak to attend the court hearing of a group of Crimean Tatars charged for holding an “unauthorized” gathering on 18 May 2016 to mark Crimean Tatar Deportation Remembrance Day. On 1 June 2016, Ervin Ibragimov’s employment record book and passport were found near a bar in Bakhchisaray. This is the tenth case recorded by OHCHR

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<sup>151</sup> HRMMU interview, 19 May 2016.

<sup>152</sup> Roundtable chaired by the head of the ‘Donetsk people’s republic’ with the ‘minister of health’ and chief doctors of the hospitals, Donetsk city, 12 July.

<sup>153</sup> The Autonomous Republic of Crimea technically known as the Autonomous Republic of Crimea and the City of Sevastopol, in line with United Nations General Assembly Resolution 68/262 on the territorial integrity of Ukraine. OHCHR has not been granted access to Crimea and has no *in situ* presence there. It has been able to follow the human rights situation through contacts with Crimean residents on the peninsula and mainland Ukraine, and relying on a variety of interlocutors, including representatives of political, religious, civil society organizations, victims, relatives and witnesses of alleged human rights violations, members of the legal profession, journalists, entrepreneurs, teachers, doctors, social workers, human rights activists and other categories, including individuals with no specific affiliations. OHCHR has continued to seek access to Crimea.

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since March 2014 – and the first in 2016 – of a person missing in circumstances, which could indicate the existence of political motivations.

155. On 21 June, OHCHR met Larisa Shaimardanova, the mother of Timur Shaimardanov, in Strilkove, Kherson region. Timur is one of the 10 people who went missing in Crimea in circumstances that appear to be politically motivated since March 2014. When the events in Crimea began in late February 2014, he took part in pro-Ukrainian rallies. After the March 2014 ‘referendum’, he initiated the creation of ‘Ukrainsky Dom’ (Ukrainian house), a civic association promoting Ukrainian culture and language in Crimea. On the day of his disappearance, on 26 May 2014, Timur Shaimardanov called his parents, saying he had “important things to do” and would not be able to be in touch for a while. Three days later, his disappearance was reported to the police. Several seemingly unrelated facts were mentioned to OHCHR by his mother but none have proven to be decisive in shedding light on his disappearance. Timur Shaimardanov’s latest job was to advise a local politician and businessman from Simferopol on financial issues; he allegedly converted to Islam; he was acquainted with Oleg Sentsov, Gennady Afanasiyev and Oleksandr Kolchenko who were arrested by the Crimean *de facto* authorities in May 2014 and sentenced for allegedly planning terrorist acts. In March 2014, Timur Shaimardanov was trying to organize a “resistance movement” in Crimea and was reportedly trying to establish contacts in Ukraine for that purpose.

156. Two individuals reportedly told Ms Shaimardanova that her son was alive and detained in Crimea, which could not be verified. She met with the Crimean investigators in charge of her son’s case several times, but to no avail. Several hundred witnesses have allegedly been interrogated and the case file concerning Timur Shaimardanov contains 11 tomes of documents.

## **B. Due process and fair trial rights**

157. On 10 June 2016, a Crimean court sentenced Andriy Kolomiyets, a resident of Kyiv region, to 10 years’ imprisonment in a high-security prison. He was sentenced to six years for allegedly attacking a Ukrainian Berkut riot police officer in Kyiv during the Maidan events in February 2014, and to four years for possession of drugs. Kolomiyets was arrested in the Russian Federation on 15 May 2015 and transferred to Simferopol, where he has been held in custody since 13 August 2015. He is the second Maidan activist sentenced in Crimea, following Oleksandr Kostenko, who was sentenced on 15 May 2015. Both men were convicted on the basis of legislation introduced after the March 2014 ‘referendum’ for acts that occurred prior to that date. This raises serious concerns about compliance with the principle of legality, particularly due to retroactive application of the law.

158. On 22 July 2016, OHCHR interviewed Genadii Afanasiev, a pro-Ukrainian activist, in Kyiv. He was arrested in Simferopol on 9 May 2014, and sentenced to seven years on terrorism charges, allegedly for plotting terrorist acts in Crimea together with filmmaker Oleg Sentsov and Oleksandr Kolchenko. He was pardoned on 14 June 2016 and exchanged. During the interview he provided information on human rights violations relating to the right to life, and freedom from torture, as well as extensive violations of due process, procedural guarantees and fair trial rights.

159. Genadii Afanasiev stated he had not been involved in any political activities until 23 February 2014 when Russian Federation troops started blocking Ukrainian military units in Crimea. From that moment, he started organizing people to provide the Ukrainian military with humanitarian help and was an active participant of pro-Ukrainian rallies.

160. On 9 May 2014, armed men in civilian clothes abducted him on the street, pushing him into a car, putting a mask over his head and beating him on the stomach and head. He was asked to confess that he intended to blow up the Eternal Flame monument in Simferopol and knew Oleh Sentsov and Oleksandr Kolchenko, and threatened with summary execution. Ten days after a Crimean judge ordered him to be placed in remand detention, he was transferred on 19 May 2014 to an FSB prison facility in Moscow.

161. Various forms of torture – including beatings, electrical shocks, choking and threats of sexual violence – were regularly applied to him during the two years of his



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detention, both in Crimea and the Russian Federation. He was forced to incriminate himself by confessing to intentions he did not have. Having entered a plea agreement, Genadii Afanasiev was sentenced on 24 December 2014 by the Moscow City Court to 7 years of imprisonment. Physically exhausted, he also agreed to testify against Sentsov and Kolchenko. However, on 31 July 2015, during a court hearing in the Military court in Rostov-on-Don, Afanasiev revoked his earlier testimony against Kolchenko and Sentsov, stating they were extracted under duress.

162. He was later sent to a strict regime colony in Syktyvkar, Republic of Komi, located 3,000 km from Crimea. During the months that preceded his exchange on 14 June 2016, he continued being subjected to abuses and ill-treatment: he was denied medical care for weeks, refused the right to attend religious service, repeatedly placed in isolation cells, regularly insulted, and prevented from filing complaints about his treatment to the prosecution and police.

### C. Violations of the freedom of peaceful assembly

163. 18 May marked the Day of Remembrance of the victims of the Soviet deportation of Crimean Tatars. Peaceful gatherings, prayers, and requiems were organized throughout Ukraine.

164. In Crimea, a memorial complex dedicated to the victims of the deportation was inaugurated by the *de facto* authorities in the Bakhchysaray district, near the railway station that was used by Soviet authorities to deport Crimean Tatars. The complex is expected to be completed in 2019 on the 75<sup>th</sup> anniversary of the deportation. Initiatives from groups or individuals not affiliated with the *de facto* authorities were viewed with suspicion. The Crimean ‘police’ briefly detained and interrogated several people who had taken part in unauthorized motor rallies. ‘Legal proceedings’ were initiated against four Crimean Tatar men from Sudak. The ‘court’ eventually cleared them of the accusation that they had committed an administrative offense by taking part in an unauthorized motor rally during which they waved the Crimean Tatar flag. Representatives of the Mejlis could not organize any events as Crimea’s ‘supreme court’ declared it an extremist organization and banned its activities on 26 April 2016.

165. On 4 July 2016, the *de facto* ‘government’ of Crimea amended a November 2014 resolution<sup>154</sup> listing all the places in the ‘republic of Crimea’ where public events can be organized. According to the 2014 resolution, notifications for public events could be made for 665 locations in 11 cities and 14 districts throughout the ‘republic of Crimea’. The July 2016 amendments<sup>155</sup> reduce the number of locations to 366 – almost by half – without explaining the motives for the decision.

166. The city of Kerch, the second most populated city in Crimea, is the most affected with the number of locations for public events reduced by 80 per cent (from 15 to 3). In eight Crimean districts<sup>156</sup> and two cities<sup>157</sup> between 50 and 75 per cent of the places formerly designated for public gatherings can no longer be used for such purposes. In three cities<sup>158</sup> and three districts<sup>159</sup>, the reduction involves from 10 to 50 per cent of the original locations. Four cities<sup>160</sup> and two districts<sup>161</sup> retain the same number of locations for public gatherings, and in one city<sup>162</sup> and one district<sup>163</sup>, the number of places for public events has increased.

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<sup>154</sup> See Resolution of the Cabinet of Ministers of the Republic of Crimea N 452 “On approving the list of places for the conduct of public events on the territory of the Republic of Crimea”, 12 November 2014.

<sup>155</sup> See Resolution of the Cabinet of Ministers of the Republic of Crimea N 315 of 4 July 2016 “On Amending the Resolution of the Cabinet of Ministers of the Republic of Crimea N 452 of 12 November 2014”.

<sup>156</sup> The districts of Bakhchisaray, Dzhankoy, Krasnogvardeisk, Lenin, Nizhnegorsk, Razdolnensk, Saki and Chernomorsk.

<sup>157</sup> The cities of Dzhankoy and Krasnoperekopsk.

<sup>158</sup> The cities of Armyansk, Evpatoria and Sudak.

<sup>159</sup> The districts of Kirov, Simferopol and Sovietkiy

<sup>160</sup> The cities of Simferopol, Alushta, Saki and Feodosiya.

<sup>161</sup> The districts of Belogorsk and Pervomaisk.

<sup>162</sup> The city of Yalta.

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167. OHCHR notes that the July 2016 amendments further restrict the possibility of Crimean residents to organize and hold peaceful public events. They mention “specially designated places” for public gatherings. Such terminology implies that the exercise of the right to peaceful assembly applies within a reduced public space and by way of exception. The UN Human Rights Committee has noted that “the relation between right and restriction and between norm and exception must not be reversed<sup>164</sup>”. In addition, blanket legal provisions which ban assemblies at specific times or in particular locations, require greater justification than restrictions on individual assemblies<sup>165</sup>. The imposed restrictions do not appear to be necessary, in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others, and appear to be designed to dissuade the exercise of the right to freedom of assembly<sup>166</sup>.

#### **D. Violations of the freedom of opinion and expression**

168. Pressure, in the form of questioning, house searches, and warnings, continued to be exercised on people by the ‘police’ and FSB for expressing their views or engaging in activities, abusively deemed ‘extremist’.

169. On 30 May 2016, Lilia Budzhurova, deputy director of the Crimean Tatar channel ATR and a contributor to AFP, was warned by Crimean ‘prosecutors’ against expressing “extremist” views due to her criticism of the arrests of Crimean Tatars on social media.

170. On 18 July 2016, the head of the Ukrainian Cultural Centre in Simferopol, Leonid Kuzmin, was summoned for questioning by the ‘police’ in relation to his activities at the Centre. On the same day, a former Maidan activist from Yalta, Larisa Kitayskaya, was briefly detained and interrogated by the FSB and her home was searched. In both cases, the individuals are free and no charges have been pressed against them.

171. It is OHCHR view that the pattern, seen in other cases, of exposing individuals to police actions without any justification, can be considered as a form of harassment, which is often accompanied by interferences with privacy.

#### **E. Violations of the freedom of movement**

172. The three crossing points between Crimea and mainland Ukraine were closed on several occasions in early August, causing hardship and long queues for people who were prevented from freely moving across the administrative boundary. While there were rumours about unspecified ‘military activity’ inside Crimea, the situation remained unclear until the FSB declared on 10 August that a group of Ukrainian infiltrators preparing terrorist acts had been arrested. As of 15 August 2016, the movement of vehicles and people had fully resumed but was slowed by enhanced security measures, particularly in the direction of mainland Ukraine.

173. People from mainland Ukraine and Crimea complained to OHCHR of the difficulties of transporting personal belongings to and from Crimea. The issue became particularly acute following the adoption by the Ukrainian government of decree No. 1035 of 16 December 2015 prohibiting transportation of personal items, with the exception of property mentioned in a list of allowed items contained in Article 370 of the Custom Code of Ukraine. Affected people underlined to OHCHR that this feeds corrupt practices.

174. Crimean residents also faced challenges in their freedom of movement due to regulations on travel with children. In order to enter mainland Ukraine, Crimean children accompanied by one parent need to have the notarized approval of the other parent. However, ‘notary acts’ – or any other acts – issued in Crimea are not recognized by Ukraine. This means that parents must go to mainland Ukraine or the Russian Federation to obtain

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<sup>163</sup> The district of Krasnoperekopsk.

<sup>164</sup> See General Comment No 34 of the Human Rights Committee, paragraph. 21 (12 September 2011).

<sup>165</sup> See A/HRC/31/66 para. 30, A/HRC/23/39 para. 63

<sup>166</sup> A/HRC/31/66 para. 29, 34.

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notarized permission, which is time consuming and a financial burden. OHCHR interlocutors have stressed that legal and administrative barriers further isolate Crimeans from Ukraine.

175. A security issue was also noted by OHCHR at the Kalanchak and Chaplynka crossing points. It relates to the presence of insufficiently marked minefields on both sides of the road leading to the Administrative Boundary Line. The representatives of the State Border Service said they had no maps indicating mine locations near the crossing points. Although small triangular mine signs are visible, there is a real risk of accidentally walking into an ill-marked minefield.

## **F. Minority and indigenous peoples' rights**

176. In an undated letter seen by OHCHR on 29 May, the 'vice prime minister of Crimea' informed the heads of local governments in Crimea that the Mejlis was found by the "supreme court" of Crimea to be an extremist organization. The letter mentions that all activities, rallies or gatherings conducted on behalf of the Mejlis are prohibited but claims this does not affect the rights of the Crimean Tatars. It further requires local officials to report to the 'prosecutor' of Crimea any violations committed by Mejlis members or activists.

177. OHCHR notes that on 25 May the Mejlis lodged an appeal to the Supreme Court of the Russian Federation against the Crimean court 'decision'. The letter thus appears to take no account of this fact or to anticipate a rejection of the appeal. Furthermore, the ban on the Mejlis, which is a self-government body with quasi-executive functions, appears to deny the Crimean Tatars – an indigenous people of Crimea – the right to choose their representative institutions.

178. A 'court' in Crimea has ruled on 11 August that Ilmi Umerov, one of three vice-chairmen of the Mejlis, must be placed in a psychiatric clinic for examination. The court decision was based on a motion filed by the investigators. Mr. Umerov was charged with separatism in May 2016 after he made public statements denying that Crimea was a part of the Russian Federation. He was allowed to stay home during investigations into his case. During the court hearing, Mr. Umerov's tension rose and he was hospitalized.

179. On 26 May, searches were conducted by the Crimean 'police' as part of an operation allegedly targeting illegal migration. Four Crimean Tatars running a joint business were detained and released after a few hours. In total, at least 20 people, including Crimean Tatars and citizens of Uzbekistan, were interrogated in this context. The first deputy head of the Mejlis criticized the "utter arbitrariness" of the actions of the *de facto* authorities. OHCHR is concerned that a series of police actions conducted since the beginning of 2016 seem to disproportionately target members of the Crimean Tatar community.

## **G. Rights of detainees**

180. While Genadii Afanasiev is the first sentenced Crimean resident who has been transferred to mainland Ukraine, there is only fragmented information about the situation of detainees on the peninsula.

181. Crimea has one pre-trial detention centre (in Simferopol) and two penitentiary institutions, including a strict regime colony in Simferopol and a general regime colony in Kerch. There are no prisons for women in Crimea. Thus, all women sentenced to prison terms on the peninsula are transferred to penitentiary institutions in the Russian Federation. Between 18 March 2014 and 15 June 2016, 240 women convicted by Crimean 'courts' were sent to the Russian Federation to serve their sentences<sup>167</sup>.

182. The Simferopol and Kerch prisons have between 600 and 700 male convicts each. According to the Crimean ombudsperson up to 380 convicts could be Ukrainian citizens with registration in mainland Ukraine. However, many have no documents and are believed to have purposefully 'lost' them in order to get Russian Federation citizenship.

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<sup>167</sup> Information contained in a letter of the Russian Federal Penitentiary Service for the Republic of Crimea and the city of Sevastopol of 22 June 2016.

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Sixteen Ukrainian citizens are said to be held in remand in the pre-trial detention centre in Simferopol. There is no confirmed information about the number of prisoners from Crimea who rejected Russian citizenship and filed petitions asking to be extradited to Ukraine.

183. A representative of the Ukrainian Ombudsperson's institution informed OHCHR that the Ukrainian and Russian Federation Ombudspersons agreed to cooperate on the issue of prisoners. A first list of 18 prisoners who wish to be transferred to Ukraine has reportedly been drawn up and agreed upon by both sides. All were sentenced in Crimea by Ukrainian Courts at a time when Ukraine still exercised full control over the peninsula. Both sides reportedly agreed to work to establish an *ad hoc* mechanism providing practical solutions, avoiding politically sensitive formulations and any references to international conventions, to facilitate the transfers.

## **VIII. Technical cooperation and capacity-building toward the promotion and protection of human rights in Ukraine**

184. OHCHR is increasingly providing technical cooperation to and capacity-building of national and international partners in Ukraine. This is particularly relevant within the Constitutional reform framework. OHCHR advises duty-bearers within the Government and the armed groups on the results of its findings, works with civil society partners on how to advocate on their implications, and raises awareness and support among others in order to respond and take action.

185. OHCHR leads a UN human rights working group that supports the Government in a number of areas, including by providing technical cooperation and expertise for the implementation of the National Human Rights Action Plan. It has been facilitating preparations for a training session involving Government officials and UN agencies on applying a human rights-based approach to the development of the United Nations Development Assistance Framework (UNDAF). OHCHR with other UN agencies has also been supporting Ukraine to set its own development platform based on the Sustainable Development Goals (SDGs) agenda launched in September 2015, in particular by advocating for the platform to reflect international human rights instruments and standards. OHCHR has also engaged with the Government working group on judicial reform, whose work culminated in the constitutional amendments concerning the judiciary.

186. OHCHR advocated for amendments to the Law "On the civil service". The law adopted in December 2015 would deny the Ombudsperson the ability to select her staff. This situation could undermine the independence of the national human rights institution according to the 'Paris Principles'. A number of legislative initiatives are currently under discussion to address this situation.

187. OHCHR closely cooperated with the National Preventive Mechanism against torture, established by the Ombudsperson's Office in 2012 in accordance with Ukraine's obligations as a party to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In strategic cases, OHCHR has shared allegations leading to regular visits to high-risk places of detention and strengthened human rights protection. OHCHR also partnered with the Ombudsperson's Office and international NGO Physicians for Human Rights to prepare a consultative workshop on medical aspects of documenting torture to be held in early September 2016. The workshop will address challenges and technical cooperation needs in introducing the Istanbul Protocol in Ukraine. OHCHR also extended grant support to two national human rights NGOs to implement projects on recording human rights violations, advocacy and assistance to victims of the conflict in the east of Ukraine, and on comprehensive socio-psychological assistance to former conflict-related detainees, victims of torture and families of missing persons, respectively.

188. Through monitoring individual cases of IDPs requiring protection, OHCHR has noted that the absence of a State strategy and the consequent absence of allocation of financial resources have led to the economic and social marginalisation of IDPs. Working

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together with Government organs at the State and local level, OHCHR has raised the importance of protecting IDP rights within an anti-discrimination framework.

189. Throughout the reporting period, OHCHR contributed actively and substantially to a number of UN advocacy documents on human rights concerns arising directly from the conflict. This included the 2 August 2016 statement by the High Commissioner on a significant increase in civilian casualties, issued at a critical moment to bring the attention of the international community to the human cost of ceasefire violations in eastern Ukraine.

190. During the reporting period, OHCHR has rigorously advocated with the Government to combat impunity. Through issuing a public thematic report on accountability for killings<sup>168</sup>, OHCHR issued and engaged with relevant entities on a set of actionable recommendations toward effective investigations of violations committed in the context of the conflict in the east as well as during the Maidan and Odesa events in 2014, which fuelled instability.

191. Accountability is critical for stability, human rights and effective governance. It is also an important step for future reconciliation, and plays a role in achieving peace, justice, and strong institutions based on the rule of law as part of the Sustainable Development Goals, on which OHCHR will work with the Government and partners.

192. Documented cases of human rights violations and abuses and violations of international humanitarian law provide indicators of ongoing and developing trends, and their registration in a database in accordance with OHCHR best practices and methodology provides a concrete tool to support efforts toward accountability. Verification and follow-up of the violations and abuses documented in this report was undertaken through meetings with State officials at national and regional levels and members of the armed groups, to discuss, advocate and act where appropriate on these reported violations, including allegations of arbitrary detention, deprivation of liberty, torture and ill-treatment, disappearances, including enforced disappearances, and issues related to freedom of expression, association, and movement.

193. OHCHR findings on critical human rights and humanitarian challenges as well as broad sets of recommendations aim to de-escalate tensions and strengthen human rights protection. OHCHR is well positioned to carry out its mandate to monitor, report, and advocate on the human rights situation in Ukraine, as well as provide sustained technical cooperation to the Government, some State institutions, and civil society.

## IX. Conclusions and recommendations

*“I want us to live in peace. We always did. We are all brothers and sisters. For what and for whom is this war? Not for me. Not for them.”*

- Woman living in Ternopil, mother of a Ukrainian soldier

194. The escalation in hostilities and drastic increase in civilian casualties between 16 May and 15 August demonstrates the urgent need for Government forces and armed groups to recognize and act to prevent harm to civilians. OHCHR urges all parties to the conflict to take all necessary steps to protect civilians. This entails a full withdrawal of military personnel, fighters and weapons from the contact line, removing them from protected objects such as schools and specially protected facilities such as hospitals and medical centres, and refraining from using mortars and rockets in areas populated by civilians. All parties to the conflict should comply with a full ceasefire, in line with the Minsk Agreements.

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<sup>168</sup> Office of the United Nations High Commissioner for Human Rights, United Nations Human Rights Monitoring Mission in Ukraine, “Accountability for killings in Ukraine from January 2014 to May 2016,” 14 July 2016.



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195. The continued inflow of ammunition, weaponry and fighters from the Russian Federation into armed group-controlled areas of Donetsk and Luhansk regions has fuelled hostilities leading to a protracted conflict. The human rights violations and abuses and violations of international humanitarian law documented by OHCHR highlight the legal – and moral – imperative that the supply of arms and ammunition to those responsible is brought to an end.

196. In addition to the importance of respecting the fundamental values and norms embodied in international human rights and humanitarian law to protect human rights and civilians in times of armed conflict, respecting those values in the context of the armed conflict in certain areas of Donetsk and Luhansk regions can also facilitate dialogue between the warring parties and ultimately the restoration of peace.

197. As the conflict in eastern Ukraine continues, people living near the contact line suffer the cumulative effects of the conflict. Residents have told OHCHR that the life-threatening reality that they have survived for over two years has led to constant concerns about security, shelter and livelihoods. The contact line continues to severely restrict civilian freedom of movement, as Government forces and armed groups have not taken measures to ensure safe passage for the 26,000 to 32,000 civilians who cross daily.

198. People living near the contact line in armed group-controlled areas are deprived of any certainty concerning the basics of day-to-day life, or endangered while moving to seek basic necessities, including food, water, medical care, and education. Parallel structures, including ‘courts’, play an increasingly active role in the lives of people living under armed group control, adversely impacting their inalienable human rights and running counter to the spirit of the Minsk Agreements.

199. In this context, it is particularly critical for Ukrainian authorities to ensure equal protection of law towards people living in armed group-controlled areas and IDPs. The creation of obstacles toward obtaining social entitlements, including through amendments to Resolution No. 637, places undue burdens on persons on the basis of their origin, limits their freedom of movement, and subjects them to intrusive scrutiny. By depriving IDPs of their social entitlements, the Government is further deepening the socio-economic hardships of IDPs, making them dependent on humanitarian aid. Moreover, continued lack of ensuring respect and fulfilment of certain rights of the ICCPR further deprives persons living under armed group control or near the contact line of their human rights and freedoms<sup>169</sup>.

200. OHCHR monitoring of investigations into human rights violations and abuses has revealed entrenched impunity. OHCHR is concerned that without genuine investigations and effective prosecutions of persons responsible for gross human rights violations and abuses and violations of international humanitarian law committed in the context of the armed conflict, Government authorities will not be able to contribute to a real sense of justice or build the confidence of the people of Ukraine in the institutions of justice. The inability or unwillingness to prosecute perpetrators may lead to a perception of arbitrary or selective justice. OHCHR views this as wasting an important opportunity to transform Ukraine into a society with confidence in the rule of law and embrace a national political culture based on respect for human rights and accountability.

201. Victims and their families of the Maidan violence that precipitated the human rights crisis in Ukraine and the subsequent violence in Odesa continue to await justice. While there has been some progress in the complex investigation into the killings on Maidan, investigations and prosecutions of perpetrators involved in the violence in Odesa continue to be marred by interference in the independence of judges and the judicial process. The success or failure of the Ukrainian justice system to deliver accountability for victims of these events will serve as an indicator of the ability and willingness of the Government to combat impunity.

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<sup>169</sup> General Comment 32, paras 6, 16 and 59; and Human Rights Committee, General Comment 29 (States of Emergency), UN Doc CCPR/C/21/Rev.1/Add.11 (2001), paras. 7, 15.

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202. The gradual regression of fundamental freedoms in the Autonomous Republic of Crimea, whose status is defined by UN General Assembly Resolution 68/262 on the territorial integrity of Ukraine, is of serious concern. First-hand testimonies of widespread human rights abuses of detainees suggest that with increasing integration into the Russian Federation, there is a lack of accountability and redress for victims.

203. Despite incremental improvements in access to places of detention and the release of thirteen individuals subjected to enforced disappearances at the Kharkiv SBU, OHCHR continues to receive numerous allegations regarding conflict-related violations and abuses in detention perpetrated in 2014 and 2015. These accounts make clear that the serious harm suffered by persons deprived of their liberty, disappeared, tortured and ill-treated, in connection with the conflict continue to affect the lives of victims, their families and communities, and in some cases, violations have led to subsequent abuses, violations and harms, often within the criminal justice system.

204. It is thus critical that recent amendments to the Constitution of Ukraine be viewed as an opportunity to strengthen the independence of the judiciary and build a system of governance based on the rule of law. This is essential to restore public trust, achieve justice and promote accountability.

205. Through collecting and recording victim and witness accounts of human rights violations and abuses, and through documenting incidents and identifying actors bearing responsibility, OHCHR seeks to contribute to realizing the right to truth. OHCHR also reminds the Government of Ukraine that measures such as truth commissions, investigation panels, documentation of violations and the securing and declassification of archives are necessary to build a sustainable culture of accountability and rule of law.

206. In order for Ukraine to be in a position to adopt the amnesty provisions envisioned as part of the Minsk Package of Measures, it is critical for there to be an independent and robust judiciary, willing and able to prosecute war crimes, crimes against humanity or gross human rights violations and abuses, including gender-specific violations in national courts. Impunity and the inclusion of individuals responsible for serious violations in any positions of authority would directly undermine the credibility of all the parties to the conflict and the legitimate needs of Ukrainians. As human rights violations and abuses have been a problem in the conflict, so human rights protections must be part of its solution.

207. Most recommendations made in the previous OHCHR reports on the human rights situation in Ukraine have not been implemented, and remain valid. OHCHR calls upon all parties to implement the following recommendations:

208. **To the Government of Ukraine:**

- a) **Security Services of Ukraine, General Prosecutor's Office and Military Prosecutor's Office to recognize and take prompt action to investigate and prosecute allegations of torture and ill-treatment, arbitrary and incommunicado detention, and sexual and gender-based violence;**
- b) **Security Services of Ukraine to provide unhindered access to external monitors to all places where people may be detained, acting to ensure that no persons in SBU custody are held incommunicado, forcibly disappeared, or subject to torture or ill-treatment;**
- c) **Ukrainian Armed Forces and Ministry of Social Affairs, in coordination with the Security Services of Ukraine, to provide support and assistance to the families of persons deprived of liberty by armed groups in connection with the conflict;**
- d) **Security Services of Ukraine provide timely and adequate information to families of persons detained in connection with the conflict, refraining from withholding information;**
- e) **Build capacity of lawyers appointed by Free Legal Aid Centres to guarantee the right to effective legal representation and counsel to conflict-related detainees and**

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improve mechanisms of free legal aid provision, ensuring continuity of representation;

- f) National Police to take a pro-active role in securing the safety of courtrooms, and for all relevant Government organs including the Office of the General Prosecutor to ensure non-interference with the independence of the judiciary;
- g) Parliament to remain seized with amending the ‘Law on Civil Service’ (No. 2490) in accordance with the ‘Paris Principles’;
- h) Ombudsperson’s Office to pursue its challenge of the constitutionality of Article 176(5) of the Code of Criminal Procedure as it leads to arbitrary detention;
- i) Government to introduce respective legislative changes enabling persons to access justice, remedy and redress in housing, land and property matters;
- j) Parliament to establish independent transparent and non-discriminatory procedures of documentation, investigation and verification of housing, land, and property ownership, and to establish a registry of lost and damaged property;
- k) Cabinet of Ministers to de-link IDP registration from all social entitlements not related to the IDP situation, including pensions. Seek ways to ensure citizens of Ukraine living in territories controlled by armed groups have access to their pensions;
- l) Government to change the recently introduced IDP residence verification system ensuring IDPs’ right to freedom of movement and free choice of residence;
- m) National Police to ensure transparency and effectiveness of the investigation of attacks on media professionals and other civil society representatives;
- n) City administrations and courts to avoid using blanket bans of peaceful assemblies which are intrinsically disproportionate and discriminatory measures impacting all citizens seeking to exercise their freedom of peaceful assembly;
- o) Ministry of Justice to ensure that the dissolution of associations is a last resort measure and ensure that the procedure of dissolution complies with international standards. Ensure that prosecution of members of political parties on ‘terrorism’ or ‘separatism’ charges are not politically motivated and are based on legally gathered evidence;
- p) Ministry of Defense to ensure that the perimeter of the mined area near the Kalanchak and Chaplynka crossing points on the Ukrainian side of the Administrative Boundary Line is visible and well protected;
- q) State Border Service to obtain from the Ministry of Defence of Ukraine maps indicating mine locations near the Administrative Boundary Line.

209. To all parties involved in the hostilities in Donetsk and Luhansk regions, including the armed groups of the self-proclaimed ‘Donetsk people’s republic’ and self-proclaimed ‘Luhansk people’s republic’:

- a) Ensure full implementation of the ceasefire, including full withdrawal of military forces and weapons from the contact line;
- b) Respect international humanitarian law, particularly by complying with the principles of distinction, proportionality and precaution and, in any situation, refrain from indiscriminate shelling of populated areas, and refrain from locating military objectives within or near densely populated areas, including medical facilities and schools, and damaging objects indispensable to the survival of the civilian population (i.e. electricity and water filtration facilities);
- c) Allow for regular and unhindered access to external monitors to all places of deprivation of liberty;

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- d) Facilitate civilians' freedom of movement across the contact line by creating additional transport corridors, equipping checkpoints with necessary facilities, simplifying procedures, taking effective measures to fight corruption, allowing access of independent monitors, taking into account the need to ensure the safety of civilians in situations of active hostilities;**
  - e) To ensure that freedoms of expression, association and peaceful assembly are exercised freely and residents are not forced to involuntarily partake in demonstrations or organisations;**
  - f) To refrain from the practice of blocking certain residential areas, restricting civilians to access their housing and other property, unless justified by the need to protect civilians from the effect of hostilities, as well as looting and using such property for military purposes;**
  - g) Ensure that schools and hospitals are respected, including through removing any military personnel, fighters, or weapons from their territory and facilities;**
  - h) Ensure free and unimpeded access for humanitarian actors to all areas as well as the rapid and non-discriminatory delivery of humanitarian assistance, while adhering to international norms and ensuring the protection of humanitarian actors.**

**210. To the *de facto* authorities of Crimea and to the Russian Federation:**

- a) Effectively investigate the abduction of Ervin Ibragimov and other cases of abductions and bring the perpetrators to justice;**
- b) Enable the unfettered exercise of the right to freedom of assembly and ensure that any restrictions are justified by legitimate aims prescribed by international human rights instruments, which should neither be supplemented by additional legal grounds nor loosely interpreted;**
- c) Uphold fair trial rights and procedural guarantees for all persons in detention and thoroughly investigate all claims of torture and ill-treatment;**
- d) End all intimidating practices, including questioning and the issuing of warnings by the 'police', aimed at deterring people from expressing their views;**
- e) Stop invoking the anti-extremism legislation to criminalize freedom of speech, including views, comments and opinions expressed publicly, via articles or social media;**
- f) Ensure necessary medical care to Ilmi Umerov and refrain from practices, such as forcible placement in a psychiatric hospital, which may amount to ill-treatment;**
- g) Collaborate with the authorities of Ukraine to set up a mechanism for the transfer of Ukrainian prisoners who wish to serve their sentence in mainland Ukraine and enable those transferred to the territory of the Russian Federation to be visited by Ukrainian consular authorities;**
- h) Provide OHCHR and other international human rights monitors with full access to the territory of the Autonomous Republic of Crimea and the City of Sevastopol.**

# Annex 773

OHCHR, Report on the Human Rights Situation in Ukraine (16 August –15 November 2016)





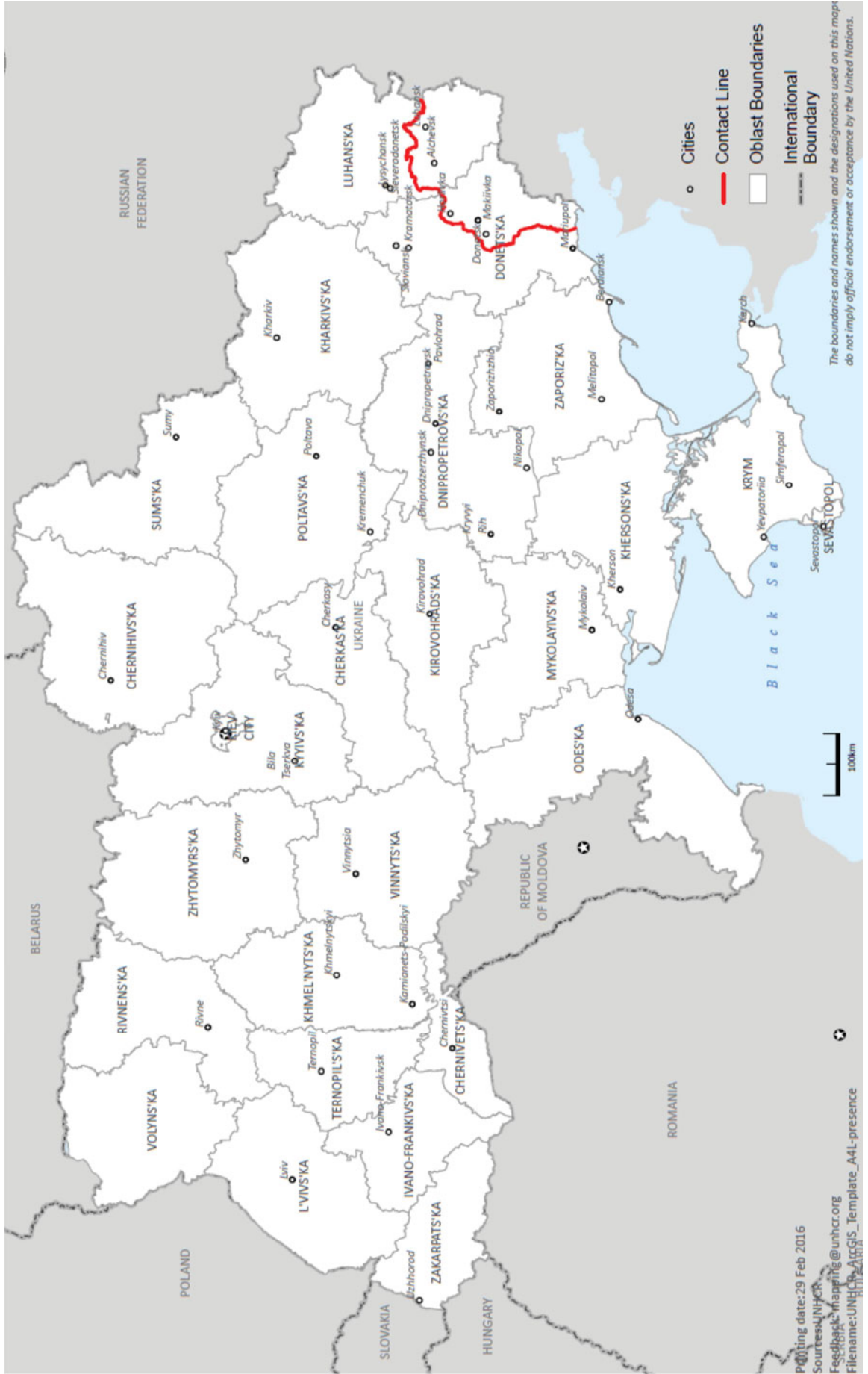
**Office of the United Nations High Commissioner  
for Human Rights**

**Report on the human rights situation in Ukraine  
16 August to 15 November 2016**



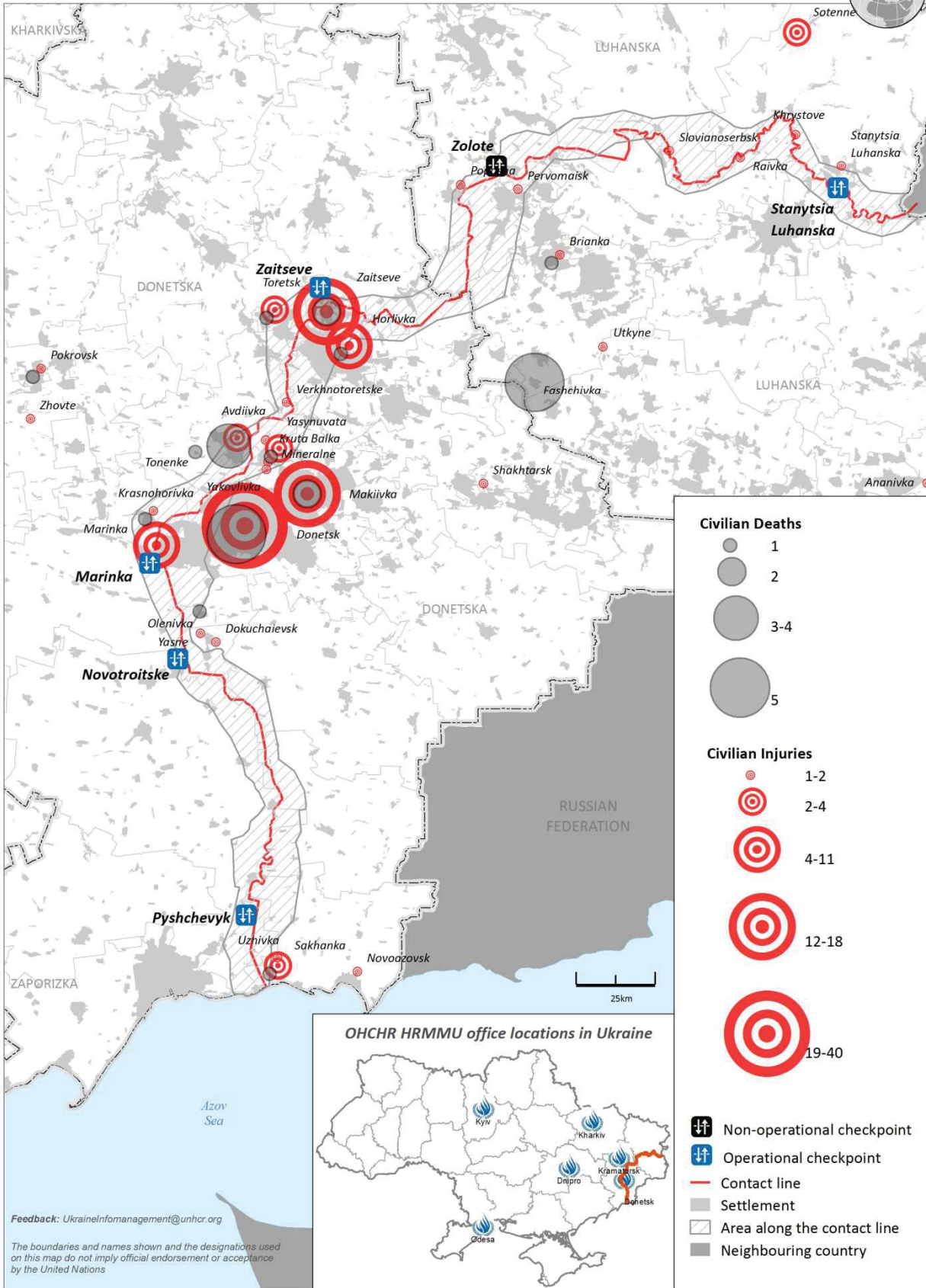
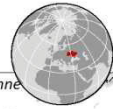
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# UKRAINE





# Ukraine: Civilian Casualties along the contact line, 16 August 2016 - 15 November 2016





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## I. Executive Summary

1. Based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), the sixteenth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine<sup>1</sup> covers the period from 16 August to 15 November 2016.

2. The findings in this report are grounded in data from in-depth interviews with 176 witnesses and victims of human rights violations and abuses during the period under review. OHCHR continues to document and report violations and abuses that occurred in 2014 and 2015 for purposes of accountability. In 75 per cent of cases documented, OHCHR carried out individual response follow-up actions to facilitate human rights protection.

3. The impact the conflict in eastern Ukraine has on the human rights situation illustrates the need for the full implementation of the provisions of the Minsk Agreements, especially the return of the full control by the Government of Ukraine over parts of the border with the Russian Federation in certain areas of Donetsk and Luhansk regions, the withdrawal of foreign fighters, pull-out of all heavy weaponry, pardon and amnesty through law and with due regard for human rights. During the reporting period, the conflict in eastern Ukraine has been marked by a surge in diplomatic efforts to de-escalate hostilities. The 21 September Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware initially limited fighting around selected areas. However, Ukrainian Armed Forces and armed groups controlling certain areas of the Donetsk region (self-proclaimed ‘Donetsk people’s republic’<sup>2</sup>) continued to exchange fire around Avdiivka and Yasynuvata, as well as north and east of Mariupol, and other places along the contact line<sup>3</sup>, resulting in a notable rise in hostilities by mid-November.<sup>4</sup> While Luhansk region has seen fewer hostilities between Government forces and armed groups of the self-proclaimed ‘Luhansk people’s republic’<sup>5</sup>, the situation remains tense and dangerous for civilians. In both regions, weapons prohibited under the Minsk Package of Measures remain in areas from which they should be withdrawn, and continue to be used.

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<sup>1</sup> HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address human rights concerns. For more details, see paras. 7–8 of the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

<sup>2</sup> Hereinafter ‘Donetsk people’s republic’.

<sup>3</sup> The contact line is a *de facto* line between last positions in government-controlled territories and armed group-controlled territories in Donetsk and Luhansk regions. Minsk documents referring to the line are not publicly available.

<sup>4</sup> OSCE Special Monitoring Mission briefing, 18 November 2016, Kyiv, Ukraine. On 11 November 2016, the OSCE Special Monitoring Mission noted that “the overall level of explosions remained high with over 800 and 200 in both [Donetsk and Luhansk] regions, respectively.” Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30, 10 November 2016 (Accessible at: <http://www.osce.org/ukraine-smm/281081>).

<sup>5</sup> Hereinafter ‘Luhansk people’s republic’.

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4. Between 16 August and 15 November 2016, OHCHR recorded 164 conflict-related civilian casualties in Ukraine. Due to the renewed commitment to the ceasefire on 1 September, there was a 13 per cent decrease compared to the previous reporting period. In October, OHCHR recorded eight times more civilian casualties in armed group-controlled territories than in Government-controlled areas of the conflict zone, indicating that civilians in territories controlled by the armed groups continue to be particularly at risk of injury and death. OHCHR interviews with families of killed and injured civilians reveal the devastation and harm caused by the ongoing armed conflict in Donetsk and Luhansk region. The reported continued flow of weapons and ammunition to the conflict area, which results in serious human rights violations and abuses and violations of international humanitarian law, compounds their suffering. In total, from mid-April 2014 to 15 November 2016, OHCHR recorded 32,453 casualties, among Ukrainian armed forces, civilians and members of the armed groups. This includes 9,733 people killed and 22,720 injured.<sup>6</sup>

5. Over two years since fighting broke out in Donetsk and Luhansk regions, causing people to flee their homes, internally displaced persons (IDPs) lack security of tenure, shelter and are subject to onerous and disproportionate obstacles to obtaining their social entitlements.

6. Disproportionate restrictions on freedom of movement across the contact line severely affect an average of 25,000 people per day (800,000 per month). As families and communities in Donetsk and Luhansk regions struggle to remain connected, their movements are sharply constrained as they can only cross through five entry-exit points and are subject to arbitrary and long delays across mined and poorly marked areas. The wooden ramp for pedestrians connecting parts of a destroyed bridge at Stanytsia Luhanska remains the sole crossing for civilians in Luhansk region. OHCHR has documented cases of sexual and gender-based violence at checkpoints.

7. The exact number of individuals who are missing as a result of the conflict is not known. The families of missing persons continue to search for their relatives, suffering from a lack of coordination between Government agencies and cooperation between the Government and armed groups in facilitating the identification of mortal remains.

8. Delays in simultaneous releases of detainees and surrounding negotiations have caused uncertainty and suffering to their families, who see them being treated as human currency between the warring parties. OHCHR has continued to document summary execution, *incommunicado* detention, enforced disappearance, arbitrary deprivation of liberty, torture and ill-treatment against persons perceived to be affiliated with the parties to the conflict.

9. The ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ armed groups continue to deprive of liberty an unknown number of people. During the reporting period, despite

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<sup>6</sup> This is a conservative estimate of OHCHR based on available data.

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repeated requests, armed groups continued to deny OHCHR unfettered access to places of deprivation of liberty. OHCHR has identified 26 penal and pre-trial detention facilities where pre-conflict detainees are held, and at least eight places of deprivation of liberty in Donetsk and three in Luhansk region, where the armed groups hold individuals captured in connection with the armed conflict. The lack of access to persons deprived of their liberty raises concerns that they may be subject to torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment), including sexual and gender-based violence. OHCHR monitoring has highlighted the vulnerability of persons living in armed group-controlled territories to arbitrary and selective sanctions from what the armed groups refer to as ‘courts’, ‘judges’, and ‘prosecutors’.

10. The human rights situation in ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ has been marked by continuing restrictions on fundamental freedoms, exacerbating the isolation of persons living in these regions and their access to information. These restrictions and a prevailing feeling of fear among residents, particularly pronounced in Luhansk region, pose obstacles for OHCHR to obtain meaningful information on the exercise and enjoyment of fundamental freedoms in armed group-controlled territories, despite repeated efforts.

11. OHCHR has noted some progress in investigations and prosecutions carried out by the Prosecutor General’s Office against sergeant and major rank perpetrators of human rights violations in the context of the violence in Maidan and the armed conflict. Proceedings into the 2 May 2014 violence in Odesa continue to be characterized by unjustified delays inconsistent with the intent to bring those responsible to justice and interference with the independence of the judiciary. The Prosecutor General’s Office has also reported progress in investigating human rights violations and abuses attributable to commanders of armed groups of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. However, incidents of large-scale violations and abuses, such as the August 2014 battle for Ilovaisk, remain largely uninvestigated.

12. OHCHR welcomes the Constitutional amendments regarding the judiciary introduced on 30 September, setting out a clear path of reform toward the restoration of public trust in the judiciary.<sup>7</sup>

13. At the same time, OHCHR notes with concern that a draft law ‘On the Temporarily Occupied Territory of Ukraine’, contains provisions that undermine human rights and are contrary to Ukraine’s international obligations. The provisions, which, if adopted, would violate *inter alia* the right to equal protection without discrimination, and in terminating water and electricity supplies to armed group-controlled territories and the Autonomous Republic of Crimea, would contravene both customary rules of international humanitarian law concerning relief and human rights law requiring the Government to ensure

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<sup>7</sup> See VII. Legal developments and institutional reforms.

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minimum essential humanitarian supplies for the civilian population.<sup>8</sup>

14. Ukraine's June 2016 decision to derogate from certain human rights obligations under United Nations and Council of Europe conventions was discussed on 19 September during a round table organized by the parliamentary committees on foreign affairs and human rights. Following broad agreement on the need to clarify *inter alia* the duration and territorial application of the derogation, the heads of the parliamentary committees committed to establish a working group. OHCHR supports this initiative and expresses readiness to take part in working group discussions.

15. OHCHR continued to actively monitor the human rights situation in Crimea, utilizing a network of contacts and conducting monitoring visits to the administrative boundary line. OHCHR documented several cases of abuses in detention and ongoing sanctions against members of the Mejlis. The continued prosecution of Crimean Hizb-ut-Tahrir members in Russian courts, and transfer of detainees from Crimea to penitentiary facilities in the Russian Federation raise serious concerns and further illustrates the human rights impact of the ongoing violation of General Assembly resolution 68/262 on the territorial integrity of Ukraine.

16. Throughout the reporting period, OHCHR bolstered its technical cooperation and capacity building activities, assisting partners, including the Government of Ukraine in operationalizing and fulfilling its obligations toward the promotion and protection of human rights.<sup>9</sup>

## **II. Right to life, liberty, security and physical integrity**

### **A. International humanitarian law in the conduct of hostilities**

*"We just want to know when will this infernal war end."*  
- Woman living in an IDP centre in Donetsk

17. In this reporting period, renewed commitments to the ceasefire and concerted efforts to withdraw forces and weapons from the contact line, including in civilian and populated areas under the Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware of 21 September 2016,<sup>10</sup> led to an initial de-escalation of hostilities in the areas covered by the Decision. However, a lack of full compliance by the warring parties – the Ukrainian Armed Forces and 'Donetsk people's republic' and 'Luhansk people's

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<sup>8</sup> See VII. Legal developments and institutional reforms, C. Draft law "On the Temporarily Occupied Territory of Ukraine".

<sup>9</sup> See VIII. Technical cooperation and capacity-building toward the promotion and protection of human rights in Ukraine.

<sup>10</sup> Organization for Security and Co-operation in Europe, "Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware," 21 September 2016 (accessible at: <http://www.osce.org/cio/266266>).

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republic’ armed groups – has continued to endanger civilians and led to intensified hostilities in October. Civilians living in areas close to the contact line continue to face daily risks due to the presence of armed forces and groups in their homes, on the streets, and suffer long-lasting effects of military damage to vital public infrastructure. Regular daytime shelling was noted as presenting particular risks for civilians, including one case on 21 September 2016 that interrupted the delivery of humanitarian aid.

18. OHCHR recalls that attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, as well as civilian objects, is prohibited under international humanitarian law.<sup>11</sup> In the Government-controlled village of Stepne, residents have had no access to water since the near-by power station in Dokuchaievsk was damaged in shelling on 15 April 2016. Water pipes across territory controlled by the ‘Luhansk people’ republic’ have been severely damaged due to shelling, limiting access to water for the population. In Makiivka, a town under ‘Donetsk people’s republic’- control, critical electrical equipment was damaged on 14 September and 5 October. Also on 14 September, a water filtration station located between Avdiivka and Yasynuvata was shelled. In Zhovanka neighbourhood of Zaitseve, residents have had no electricity since June 2016.

19. Schools and educational facilities in the conflict zone continue to be damaged in shelling and exchanges of fire. Between 13 and 14 September, two schools in territory under ‘Donetsk people’s republic’-control were hit; School No. 44 in Makiivka was shelled, and bullets from small arms hit School No. 3 in Dokuchaievsk during the school day. On 4 October, School No. 2 in Government-controlled Marinka was shelled. The following day, on 5 October, schools No. 77, and kindergarten No. 154 suffered damage from a nearby explosion.

20. OHCHR recalls that parties to the conflict have the obligation to take all feasible measures to protect the population under their control from the effects of hostilities. Residents told OHCHR that they fear that the presence of Ukrainian military positioned near their homes<sup>12</sup> endangers them and puts them at risk of attack. OHCHR has also documented a worrying case of punitive damage to property in Donetsk by members of the armed groups targeting the house of a member of the Government-affiliated ‘Dnipro-1’ battalion.<sup>13</sup>

## **B. Casualties**

21. During the reporting period, the intensity of hostilities in the conflict zone of eastern Ukraine and levels of civilian casualties varied. The second half of August was marked by an escalation of clashes in a number of hotspots in Donetsk region and rise in deaths and injuries among civilians. In September, following the renewed commitment to a ceasefire, the number of civilian

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<sup>11</sup> Article 14, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

<sup>12</sup> HRMMU interview, 2 September 2016; site visit 26 September 2016.

<sup>13</sup> HRMMU interview, 9 September 2016.



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casualties substantially decreased. In October, they once again scaled up, mirroring the new upsurge in fighting along the contact line. In the first half of November, hostilities somewhat de-escalated, and the number of civilian casualties decreased.

22. Between 16 August and 15 November 2016, OHCHR recorded 164 conflict-related civilian casualties<sup>14</sup>: 32 deaths (ten women, 21 men and a boy) and 132 injuries (44 women and two girls, 77 men and five boys, and four adults whose sex is not known). This is a 13 per cent decrease compared to the previous reporting period of 16 May – 15 August 2016 when OHCHR recorded 188 civilian casualties (28 deaths and 160 injuries).

23. Shelling from various artillery systems caused over 60 per cent of all civilian casualties: 13 killed (three women and ten men) and 88 injured (37 women and a girl, 48 men and a boy, and an adult whose sex is not known). 20 per cent of these casualties (three killed and 18 injured) were recorded in the Government-controlled territories, while 80 per cent (10 killed and 70 injured) were recorded in the territories controlled by the armed groups.

24. Mines, explosive remnants of war, booby traps and improvised explosive devices caused 10 deaths (two women and eight men) and 25 injuries (two women and a girl, 15 men and four boys, and three adults whose sex is unknown). Small arms and light weapons accounted for 21 casualties: five killed (three women, a man and a boy) and 16 injured (four women and 12 men). Two deaths (a woman and a man) and two injuries (a woman and a man) were caused by road incidents with military vehicles in the conflict zone. A man was injured from unspecified firearms. One woman and one man died of heart attacks at checkpoints, unable to obtain adequate medical care.

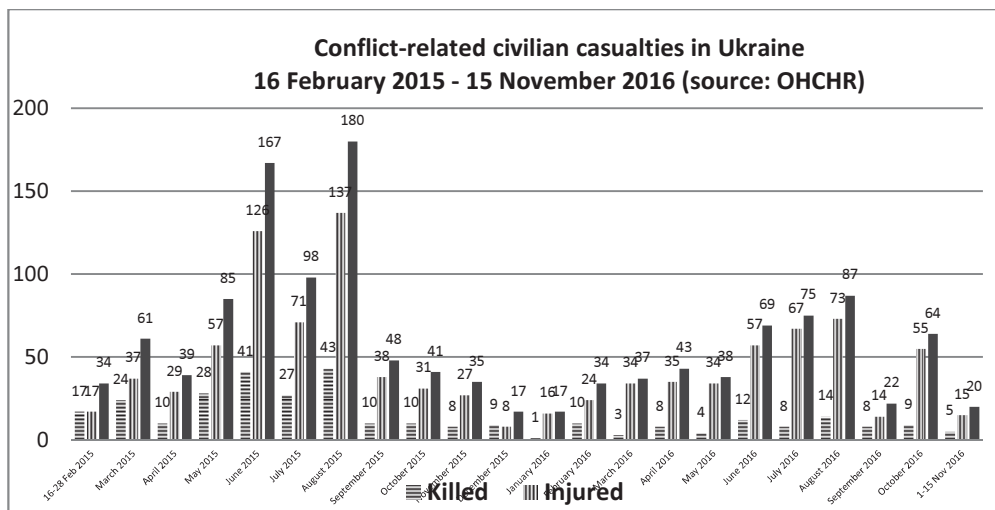
25. OHCHR estimates the total number of civilians killed during the whole conflict period (mid-April 2014 – 15 November 2016) to be over 2,000, with an additional 298 passengers killed as a result of the MH-17 plane crash. The number of conflict-related civilian injuries is estimated at 6,000-7,000.

26. In total, from mid-April 2014 to 15 November 2016, OHCHR recorded 32,453 conflict-related casualties in Ukraine, among Ukrainian armed forces, civilians and members of the armed groups. This includes 9,733 people killed and 22,720 injured.<sup>15</sup>

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<sup>14</sup> OHCHR investigated reports of civilian casualties by consulting a broad range of sources and types of information that are evaluated for their credibility and reliability. In undertaking documentation and analysis of each incident, OHCHR exercises due diligence to corroborate information on casualties from as wide range of sources as possible, including OSCE public reports, accounts of witnesses, victims and other directly affected persons, military actors, community leaders, medical professionals, and other interlocutors. In some instances, investigations may take weeks or months before conclusions can be drawn. This may mean that conclusions on civilian casualties may be revised as more information becomes available. OHCHR does not claim that the statistics presented here are complete. It may be under-reporting civilian casualties given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods.

<sup>15</sup> This is a conservative estimate of OHCHR based on available data. These totals include: casualties among the Ukrainian forces, as reported by the Ukrainian authorities; 298 people from flight MH-17; civilian casualties on the territories



### C. Missing persons and recovery of mortal remains

27. The exact number of individuals who are missing as a result of the conflict is not known. Documentation of the missing was disrupted by the conflict in 2014 and subsequently resumed separately in Government-controlled and armed group-controlled territories. Moreover, the lack of coordination between various government bodies has resulted in different accounts of the number of missing in the conflict zone, varying from 488 to 1,376.<sup>16</sup>

28. Some individuals considered missing by the Government may be held *incommunicado* in the territories controlled by the armed groups or vice versa. Hundreds of bodies remain unidentified (in morgues or buried) in the territories controlled by the Government and in the territories controlled by the armed groups. The recovery of mortal remains from areas that saw heavy fighting is ongoing. Since autumn 2014, the Government of Ukraine has carried out systematic DNA profiling of unidentified bodies and the relatives of the missing leading to the identification of hundreds of mortal remains. In the territories controlled by the armed groups, however, there is no capacity to

controlled by the Government of Ukraine, as reported by local authorities and the regional departments of internal affairs of Donetsk and Luhansk regions; and casualties among civilians and members of the armed groups on the territories controlled by the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’, as reported by the armed groups, the so-called ‘local authorities’ and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and due to overall under-reporting, especially of military casualties. The number of casualties between the different reporting dates does not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date.

<sup>16</sup> According to the Main Department of the National Police in Donetsk region, from the beginning of the Government ‘security operation’ until 26 October 2016, 865 individuals are missing in Donetsk region. The Main Department of the National Police in Luhansk region reported 572 missing persons as of 10 October. The list of missing persons maintained by the SBU contained 495 names as of 26 October 2016. The ‘Donetsk people’s republic’ recorded 488 missing persons as of 21 October 2016. Moreover, the National Police of Ukraine maintains an open – but outdated – database that lists 1,376 individuals (Accessible at: <https://www.npu.gov.ua/uk/publish/article/1141400>).

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conduct DNA sampling, and there is no exchange of forensic data between the Government of Ukraine and the armed groups.

29. In a positive development, draft legislation ‘On the legal status of missing persons’, developed under the auspices of the Ministry of Temporarily Occupied Territories and IDPs foresees the establishment of a commission for missing persons, which is crucial for the fulfillment of Ukraine’s obligation under international humanitarian law to take all feasible measures to account for persons reported missing and to provide their family members with information on their fate.

#### **D. Summary executions, disappearances, deprivation of liberty, and torture and ill-treatment**

*“We’ve got a thousand methods to make you talk. You have already managed to hold out for more than a day, it is almost a record here!”*

– Government official to a victim of *incommunicado* detention in Pokrovsk

##### *Summary executions*

30. During the reporting period, OHCHR continued to verify allegations of summary executions and wilful killings of Ukrainian servicemen, civilians and individuals associated with armed groups in the conflict zone in 2014 and 2015, namely in Ilovaisk in August 2014 and Debaltseve in February 2015. OHCHR will present its findings in its 17<sup>th</sup> report on the human rights situation in Ukraine.

31. OHCHR also documented an account that suggests that ‘Donetsk people’s republic’ members beat a man to death in October 2014. A former member of the ‘Donbas’ volunteer battalion affiliated with the Ukrainian Armed Forces, while deprived of his liberty by ‘Donetsk people’s republic’ members in the former SBU premises at 62 Shchorsa Street witnessed the severe beating of a person deprived of liberty and heard a paramedic refusing to render the victim medical assistance. He never saw the victim again and was later told that the man “kicked the bucket”.<sup>17</sup>

##### *Enforced disappearances and abductions*

32. OHCHR is concerned that the Security Service of Ukraine (SBU) continues to perpetrate enforced disappearances, holding individuals *incommunicado* and undertaking steps to conceal their fate and whereabouts. Abductions by armed groups have continued to cause suffering and uncertainty to relatives of victims.

##### *Ukrainian Armed Forces and law enforcement*

33. OHCHR interviewed a man who was allegedly detained *incommunicado* and subjected to enforced disappearance by the SBU for six months. After spending over 15 months in pre-trial detention, on 15 April 2016 a court in Berdiansk released him in

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<sup>17</sup> HRMMU interview, 4 November 2016.

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the courtroom for time served. While leaving the courthouse, he was apprehended by the SBU once again and transferred to Mariupol SBU. There, he was held *incommunicado* in an indoor shooting range and an arms room. According to the Prosecutor General's Office, on 30 August 2016 the Donetsk Regional Prosecution initiated a criminal investigation into his unlawful detention by law enforcement personnel.<sup>18</sup> Between 4 and 11 September 2016, he was relocated to a private apartment in Mariupol. He was released on 14 October 2016. The SBU denies ever having apprehended or held the victim in their custody.<sup>19</sup>

34. OHCHR is also aware of two other disappeared detainees. They were detained *incommunicado* in Mariupol SBU. In September 2016, they were temporarily moved to a private apartment.<sup>20</sup> OHCHR notes that the transfer of the above-mentioned three detainees from the Mariupol SBU to private apartments coincided with the visit of the UN Subcommittee on the Prevention of Torture (SPT) to Mariupol SBU on 7 September 2016.

35. At least five individuals held in Kharkiv SBU continued to be forcibly disappeared. One man held in Kharkiv had been abducted by the SBU after the Starobilsk district court released him from pre-trial detention on 21 April 2016.<sup>21</sup> The SBU continues to deny apprehending or holding any individuals in the Kharkiv SBU building.<sup>22</sup>

#### *Armed groups*

36. On 24 August 2014, three men aged 21, 22 and 35 were taken from their houses by Cossack armed group members. The members of armed groups handcuffed the three individuals, covered their eyes and put them in cars. Reportedly, they were taken to the Stakhanov 'komendatura' but disappeared after a few days. Since then, the relatives of the three individuals have not heard anything about their fate or whereabouts.<sup>23</sup> On 17 September 2014, a businessman was taken from his office by two armed 'Cossacks', and two hours later the same men came to the victim's office, searched it and seized his belongings. His whereabouts have been unknown since.<sup>24</sup> All three cases of abductions occurred in 2014 in Stakhanov, Luhansk region when the area was under the control of Cossack armed groups.

#### *Unlawful and arbitrary detention, torture and ill-treatment*

##### *Ukrainian Armed Forces and law enforcement*

37. During the reporting period, OHCHR also documented a number of cases demonstrating that the pattern of intimidation and coercion during the initial stages of detention has not significantly improved since 2014 and 2015.<sup>25</sup> OHCHR has

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<sup>18</sup> Under article 365-2 of the Ukrainian Criminal Code, according to information provided by the Prosecutor General's Office to HRMMU, 5 December 2016.

<sup>19</sup> Security Service of Ukraine, information provided to HRMMU, 5 December 2016.

<sup>20</sup> HRMMU interviews, 23 September, 15 and 19 October 2016.

<sup>21</sup> HRMMU interview, 26 September 2016.

<sup>22</sup> Security Service of Ukraine, information provided to HRMMU, 5 December 2016.

<sup>23</sup> HRMMU interview, 1 September 2016.

<sup>24</sup> HRMMU interview, 1 September 2016.

<sup>25</sup> HRMMU interview, 23 August 2016.

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sufficient verified information to believe that individuals detained in connection with the armed conflict are often kept in illegal and *incommunicado* detention. Upon apprehension, formal registration of their arrest is often delayed, depriving them of access to legal assistance, medical care, and the outside world.<sup>26</sup> During this period of unregistered deprivation of liberty, detainees are kept in unofficial places of detention before being transferred to police and remand facilities, such as temporary police detention centres (ITT) and pre-trial detention centres administered by the Ministry of Justice (SIZO).

38. During the reporting period, OHCHR continued to enjoy effective access to Government-administered official places of detention.<sup>27</sup> Between 5 and 9 September, the SPT visited Ukraine to complete its visit from May 2016. During the visit, the SPT was provided with full and unimpeded access, including to a number of administrative premises of the SBU.<sup>28</sup>

39. As of October 2016, OHCHR estimates that 150-250 individuals are either under investigation by the Government and in remand detention or on trial for conflict-related charges,<sup>29</sup> with a further estimated 200-300 individuals sentenced for conflict-related conduct in 2014-2016 and serving their sentences. In September 2016, the Donetsk Regional Department of the National Police reported on the detention of 220 individuals “associated with illegal armed formations”<sup>30</sup> during the first nine months of 2016. Of them, 37 were placed in remand custody.

40. On 27 June 2016, Ukrainian Armed Forces captured eight ‘Donetsk people’s republic’ members near the Government-controlled village of Shyrokyne, Donetsk region. Several of the detainees claimed that they were hooded for three days and beaten. On the fourth day of detention, they all were brought to the basement of the Mariupol SBU, where they spent the night, and then delivered to Mariupol ITT (police temporary detention facility). On 1 July 2016, all eight detainees were placed to Mariupol SIZO.<sup>31</sup> On 9 October 2016, one of the detainees was brought from Mariupol SIZO to a hospital, where he underwent

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<sup>26</sup> In one case a man was held for 10 days without his detention formally registered. HRMMU interview, 2 March 2016.

<sup>27</sup> SIZOs (pre-trial detention centres), penal colonies and ITTs (temporary police detention centres), as well as the only official detention facility of the Security Service of Ukraine (SBU) – SBU SIZO in Kyiv (all other SBU detainees shall be held in general SIZOs).

<sup>28</sup> Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, “*UN torture prevention body concludes Ukraine visit*”, 13 September 2016 (Accessible at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20475&LangID=E>).

<sup>29</sup> Charged under articles 109 (actions aimed at forceful change or overthrow of the constitutional order or take-over of government), 110 (trespass against territorial integrity and inviolability of Ukraine); 111 (high treason), 112 (trespass against life of a statesman or a public figure, 113 (sabotage), 114 (espionage), 258 (act of terrorism), 258-1 (involvement in a terrorist act), 258-2 (public incitement to commit a terrorist act), 258-3 (creation of a terrorist group or terrorist organization), 258-4 (facilitating a terrorist act), 258-5 (financing of terrorism) and 260 (creation of unlawful paramilitary or armed formations) of the Criminal Code.

<sup>30</sup> Charged under articles 260, 256, 294 and 258-3 of the Criminal Code of Ukraine.

<sup>31</sup> HRMMU interview, 7 July 2016.



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urgent surgery. The detainee told OHCHR that he “stumbled and fell” in his cell.<sup>32</sup>

41. On 28 February 2015, a member of the armed groups was detained at a checkpoint staffed by Ukrainian soldiers. There he was beaten, handcuffed and blindfolded with duct tape, and then brought to a basement of an unknown building. For two days, men in camouflage “poked him with a knife”. He was then transferred to the Mariupol SBU, where he was placed in one of the rooms in the basement and then moved to a shooting range in the building. He saw 15 other detainees, some of whom were bruised and injured.<sup>33</sup>

42. In March 2015, a detainee was taken by camouflaged men to a police precinct in Bakhmut, Donetsk region, where he was forced to kneel, and then kicked and beaten with truncheons. At some point one of the perpetrators drew a target sketch on a piece of paper and pinned it to the victim’s back. He was beaten for several hours until he agreed to give self-incriminating statements.<sup>34</sup>

43. In May 2015, a man detained by the SBU in a private apartment, was handcuffed, kicked on his legs and torso. Then an SBU officer in balaclava stepped on his chest and stood there until the victim began to suffocate. The victim’s family members were also threatened, after which he agreed to cooperate and sign a confession. Later, he complained about his treatment, but no official investigation was launched.<sup>35</sup>

44. OHCHR is concerned that medical personnel of SIZOs at times neglect their obligation to document detainee injuries such as bruises, fractures, concussions, and internal traumas. For instance, during the visit to Starobilsk SIZO on 23 August 2016, OHCHR found that the documentation of injuries was not undertaken in cases when police or SBU provided an explanation of the injuries. Medical personnel of the SIZO systematically failed to provide detainees with copies of medical certificates attesting to their injuries despite a legal obligation to do so. A similar pattern was observed in Bakhmut SIZO.

45. OHCHR also continued to document human rights violations committed by members of Ukrainian voluntary battalions in 2014, as well as continuing cases in early 2016. On 20 January, a group of ‘Dnipro-1’ battalion members raided a house in Avdiivka, severely beating a man, subjecting him to asphyxiation with a plastic bag and mock execution.<sup>36</sup>

46. In three separate cases between August and November 2014, members of the ‘Donbas’ battalion took a total of seven civilians hostage, tortured and ill-treated them at their base in Pokrovsk (formerly Krasnoarmiisk), and extracted large ransoms. One victim said, “the pain was so unbearable that I wanted to die... I really asked them to kill me, I could not stand it.”<sup>37</sup>

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<sup>32</sup> HRMMU interview, 21 October 2016.

<sup>33</sup> HRMMU interview, 6 September 2016.

<sup>34</sup> HRMMU interview, 6 September 2016.

<sup>35</sup> HRMMU interview, 23 August 2016.

<sup>36</sup> HRMMU interview, 10 November 2016.

<sup>37</sup> HRMMU interview, 31 August 2016.

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*Armed groups*

47. New allegations documented by OHCHR support a previously established pattern of armed groups routinely subjecting persons deprived of their liberty to torture and ill-treatment. Victims were often afraid or reluctant to speak about the treatment they suffered.

48. On 18 September 2016, a man was detained at the Uspenka checkpoint between ‘Donetsk people’s republic’ territory and the Russian Federation. Between 1 and 11 October, his fate and whereabouts were unknown while his family repeatedly inquired about his fate and whereabouts to the authorities of the Russian Federation and ‘Donetsk people’s republic’. By 18 October, he was transferred from a police detention facility in Taganrog, Russian Federation to the ‘Donetsk people’s republic’ ‘ministry of state security’ to a ‘pre-trial detention facility’ in Donetsk, where he was charged with espionage. OHCHR is concerned about his detention outside of the protection of the law and his treatment during a period of 10 days when his whereabouts were unknown. OHCHR further notes that the facts suggest that the authorities of the Russian Federation transferred the man into the custody of the ‘ministry of state security’ of the ‘Donetsk people’s republic’.

49. On 14 September 2016, OHCHR was able to visit four children deprived of their liberty in Donetsk city. OHCHR understands that the children were detained on 30 or 31 August 2016 and held in separate cells in the premises of the ‘ministry of state security’ on Shevchenko Street 26 in Donetsk city. OHCHR is concerned that the juvenile detainees had no contact with their families for a period of at least two weeks.<sup>38</sup> OHCHR was later informed that the children were transferred to ‘SIZO’ (‘pre-trial detention facility’) in Donetsk on 24 October 2016.

50. In June 2016, two men were abducted by armed members of the ‘Luhansk people’s republic’ and were beaten, kicked, and tortured by men wearing camouflage, who accused them of espionage. One man died.<sup>39</sup>

51. In August 2014, a resident of the city of Donetsk (controlled by the armed groups) suspected of being a gun-spotter for Ukrainian forces, was deprived of liberty in his apartment and taken to a former police academy building. There he was taken to the basement and beaten with truncheons and five litre plastic bottles filled with water all over his body. One of the perpetrators burnt his shoulder, hand and back with a cigarette.<sup>40</sup>

52. The exact number of individuals deprived of their liberty by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ armed groups is unknown. The majority of them are pre-conflict convicts kept in correctional colonies and centres (there are 14 in territories controlled by ‘Donetsk people’s republic’ and 12 in territories controlled by ‘Luhansk people’s republic’ armed groups) and individuals who were in pre-trial detention when the conflict erupted and whose cases had not yet been heard in courts (pre-trial detainees are kept in Donetsk and Luhansk SIZOs). As of November 2016, OHCHR estimates their total number at 9,500

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<sup>38</sup> HRMMU interview, 14 September 2016.

<sup>39</sup> HRMMU interview, 20 October 2016.

<sup>40</sup> HRMMU interview, 28 October 2016.

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(approximately 5,000 in ‘Donetsk people’s republic’ territory, and approximately 4,500 in ‘Luhansk people’s republic’ territory). In 2015-2016, at least 131 such persons deprived of liberty were transferred from armed group-controlled territories to Government control.

53. Another category of persons deprived of liberty comprise individuals who have been either under ‘investigation’, or already have been ‘sentenced’ by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ ‘courts’.<sup>41</sup> Their exact number is not known. According to the ‘chair’ of the ‘Donetsk people’s republic’ ‘supreme court’, as of 18 October 2016, a ‘martial court’ was considering 61 cases in regard to 72 individuals of whom 42 were in custody; 32 cases in regard to 39 individuals were already heard with 17 accused in custody. ‘Courts of general jurisdiction’ were considering 14,404 criminal cases in regard to 15,555 individuals of whom 5,013 were in custody.<sup>42</sup> They are civilians and members of the armed groups charged with criminal offences and disloyalty. A distinct group of persons deprived of liberty comprise Ukrainian soldiers and civilians suspected of supporting the Government (including ‘subversive activities’ or ‘spying’). Their exact number is not known. For instance, the ‘ministry of state security’ of the ‘Luhansk people’s republic’ reported “during nine months of 2016, they detected, proved and stopped the intelligence activity of 70 agents and trusted persons of special services of Ukraine”; their fate is not known.

54. According to the SBU, as of 26 October 2016, there were 100 such persons deprived of liberty whose release is sought by the Government. The ‘Donetsk people’s republic’ maintains that it has only 42 of these detainees. There are other conflict-related detainees whose release is not being sought by the Government.<sup>43</sup>

55. OHCHR is aware of a number of places where different categories of persons deprived of liberty are likely held. In Donetsk, these places include: SIZO at 4 Kobozeva Street; a ‘military unit’ known as “5 Molodizhna Street” at 11 Panfilova Street<sup>44</sup>; former SBU building at 62 Shchorsa Street<sup>45</sup>; premises of the ‘ministry of state security’ at 26 Shevchenko Street<sup>46</sup>, ‘department on fighting organized crime’<sup>47</sup> and IVS (isolator of temporary detention)<sup>48</sup>. In Horlivka, the ‘military commandant’s office’<sup>49</sup>; and in Makiivka – colony No. 97. In the territories controlled by the ‘Luhansk people’s republic’ these places include Luhansk SIZO at 4 24<sup>th</sup> Liniia Street and ‘department on fighting organized crime’ in Stakhanov<sup>50</sup>. The list of the places of deprivation of liberty is not comprehensive; for instance, on 7 August 2015 two men were detained in Donetsk, allegedly in relation to their business activities. They were kept in a base of

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<sup>41</sup> See paragraphs 75-81.

<sup>42</sup> These 5,013 individuals reportedly include both pre-conflict detainees and those detained since mid-April 2014.

<sup>43</sup> HRMMU interview, 14 September 2016.

<sup>44</sup> HRMMU interview, 20 September 2016.

<sup>45</sup> HRMMU interview, 20 September 2016.

<sup>46</sup> HRMMU interview, 14 September 2016.

<sup>47</sup> HRMMU interview, 20 September 2016.

<sup>48</sup> HRMMU interviews, 20 September, 7 November 2016.

<sup>49</sup> HRMMU interview, 20 September 2016.

<sup>50</sup> HRMMU interview, 7 October 2016.

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the armed groups near Abakumova mine, not far from Staromykhailivka village<sup>51</sup>.

56. During the reporting period, despite repeated requests, OHCHR continued to be denied unfettered access to places of deprivation of liberty on the territories controlled by the armed groups. Accordingly, OHCHR was not able to comprehensively assess the condition of detention in the territories controlled by the armed groups, and continued to have concerns that persons deprived of their liberty may be subject to torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment), including sexual and gender-based violence. According to former inmates, relatives of current inmates and other sources<sup>52</sup>, these conditions vary from facility to facility: in some nutrition is described as sufficiently adequate, while in one facility inmates receive mainly “barley porridge and soup without or very little meat” and bread; in some colonies, heating is inadequate and inmates suffer from low temperatures; in some colonies access to medical care and treatment remain inadequate. A standard disciplinary measure used across places of deprivation of liberty is up to 15 days solitary confinement.

57. During the reporting period, a number of individuals were deprived of their liberty on the territories controlled by the armed groups for being “Ukrainian spies and subversives”. Several young men were deprived of their liberty in October and November in Luhansk; their video “confessions” were made public by the ‘ministry of state security’ of ‘Luhansk people’s republic’ in early November. A judge from Luhansk, who moved to Government-controlled Sievierodonetsk in 2014, was deprived of liberty on 15 October 2016 while travelling to the town of Krasnodon (controlled by the armed groups) to attend the funeral of his father. He is allegedly “accused” of “state treason” by ‘Luhansk people’s republic’ armed groups. OHCHR is concerned with the conditions of detention and treatment of these detainees and has requested access to those deprived of their liberty. OHCHR has so far been denied access.

## **E. Sexual and gender-based violence**

*“If you are going to rape me, then I would prefer that you shoot me on the spot.”*

– A woman detained at a checkpoint

58. OHCHR continued to document cases of conflict-related sexual violence. In addition to a continuing pattern of sexual violence occurring in conflict-related detention, OHCHR documented cases that indicate the sexual violence and harassment of young women at Government-controlled entry-exit checkpoints along the contact line.

59. On 12 September 2016, a woman was travelling via one of the transport corridors in Donetsk region. At a Government checkpoint she was told that there is a problem with her permit and was referred to a coordination centre at the checkpoint. An

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<sup>51</sup> HRMMU interview, 9 September 2016.

<sup>52</sup> HRMMU interview, 21 October 2016.

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officer put her passport aside, asked her to enter the container, closed the window and locked the door. He told the victim that he noticed her a month ago and intentionally made an error while renewing her permit. He then said that she should go with him to a hotel; otherwise, she would be kidnapped and buried alive. Then, the perpetrator forcefully made her sit on his lap and touched her body. She told OHCHR that she was crying and begging him to let her go. After 1.5 hours, he agreed to release her on the condition that she would return to the checkpoint, threatening her with blackmail and physical violence. The victim agreed to come back because she wanted to be set free. OHCHR assisted the victim in filing a complaint to the police.<sup>53</sup>

60. In March 2016, three women<sup>54</sup> drove to Toretsk to receive humanitarian aid. They were stopped at a checkpoint controlled by the 'Aidar' battalion. The commander refused to let the car pass claiming that the husband of one of the women was on a SBU wanted list. Her passport and phone were seized. The 'Aidar' battalion commander then got into the car, put his hand on the victim's lap and said that the issue could be easily resolved. When the victim refused, the commander called armed men in camouflage without insignia, who drove the women to the nearest police station. There, the women were questioned and their phones were checked. When the victim asked police officers to present proof that her husband is on the wanted list, they failed to do so. Several hours later, following numerous appeals of the victim and the two other women, they were released.

61. OHCHR also documented additional cases that illustrate a previously identified pattern of sexual violence perpetrated in detention against those perceived to be a part of or affiliated to armed groups or their relatives in order to punish or humiliate, or extort a confession.<sup>55</sup>

62. A woman<sup>56</sup> was detained in her home in June 2015 by ten armed unidentified men and taken to the basement of the Mariupol SBU. There she was tortured, interrogated, stripped naked and humiliated. When the victim was forced to confess on camera, it was visible that she was not wearing all of her clothing. As of 15 November 2016, she remained in detention. Despite the victim testifying in court regarding her torture, the SBU informed OHCHR that there was no conclusive forensic evidence to support her allegations.<sup>57</sup> OHCHR notes that in cases of gender-based and sexual violence, evidence other than forensic findings can be considered probative.<sup>58</sup>

63. A man and his wife,<sup>59</sup> allegedly associated with the armed groups were detained in August 2014 by unidentified armed men

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<sup>53</sup> HRMMU interview, 16 September 2016.

<sup>54</sup> HRMMU interview, 16 September 2016.

<sup>55</sup> HRMMU interviews, 26 August 2016, 27 September 2016.

<sup>56</sup> HRMMU interview, 26 August 2016.

<sup>57</sup> Security Service of Ukraine, information provided to HRMMU, 5 December 2016.

<sup>58</sup> International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (accessible at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/319054/PSVI\\_protocol\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf)).

<sup>59</sup> HRMMU interview, 27 September 2016.



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and transferred into the custody of local police. There the man was interrogated, tortured and threatened with execution. Meanwhile his wife was interrogated separately; beaten and threatened with rape. Later that day both of them were released.<sup>60</sup>

*Armed groups*

64. It remains difficult to obtain first-hand accounts of conflict-related sexual violence in territories controlled by armed groups. Due to overall impunity, absence of services for survivors of sexual violence, access to justice and fear of reprisals, victims and their families are hesitant to report incidents of conflict-related sexual violence. This is aggravated by a lack of access to persons deprived of their liberty by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, which prevents any independent oversight, raising concerns that the worst may be expected, including that they may be subject to sexual and gender-based violence.

65. OHCHR recorded allegations and attempted to conduct inquiries into the killing of a 20-year-old woman found on 16 April 2016 in Alchevsk, Luhansk region. According to local sources, she was raped and strangled. Allegedly, her body was found not far from a ‘Luhansk people’s republic’ position. Relatives refused to speak to OHCHR.

### **III. Accountability and the administration of justice**

#### **A. Accountability for human rights violations and abuses in the east**

*“It was war time. We did not ask many questions. It meant that it had to be that way.”*

- SBU officer testifying in court regarding the ill-treatment of Oleksandr Ahafonov

*Accountability for abuses committed by the armed groups*

66. During the reporting period, the Prosecutor General’s Office reported progress in investigating crimes committed by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ armed group commanders.

67. On 31 August, Podilskyi District Court of Kyiv ruled in favour of a *trial in absentia* for the ‘Luhansk people’s republic’ ‘head’ for the abduction of Nadiia Savchenko. According to the Prosecutor General’s Office, 17 persons are expected to testify in the course of the trial.

68. On 14 September, the Office of the Chief Military Prosecutor reported that a preliminary investigation against the commander of the ‘Somali’ battalion of the ‘Donetsk people’s republic’ had been completed, finding grounds to charge him with abduction, unlawful deprivation of liberty, and violations of

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<sup>60</sup> Under article 258-3 of the Criminal Code of Ukraine.

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the laws of warfare.<sup>61</sup> He is accused of ill-treating captured Ukrainian soldiers, including Ihor Branovytskyi,<sup>62</sup> who according to witnesses was executed on 21 January 2015 by a citizen of the Russian Federation, the commander of the ‘Sparta’ battalion of the ‘Donetsk people’s republic’.

*Accountability for violations committed by the Ukrainian military or security forces*

69. OHCHR has followed a number of emblematic prosecutions of members of the Ukrainian armed and security forces. Despite prosecutions being carried out against a number of SBU officials on various charges, OHCHR continued to monitor cases where SBU officials enjoy impunity, particularly for human rights violations committed in the course of their duties.

70. A certain number of Ukrainian soldiers and law enforcement officials have been detained on charges related to the conflict, such as torture, excess of power and state treason, with some held in solitary confinement, in one case lasting for more than seven months.<sup>63</sup>

71. The ongoing trial of two SBU officers charged with torturing Oleksandr Ahafonov illustrates the systemic obstacles to holding state officials accountable for crimes perpetrated in connection with the armed conflict. Only two SBU officials have been put on trial, despite the involvement of two other officials from the SBU in Iziium in Ahafonov’s transfer and detention. OHCHR is moreover concerned that the heads of the Iziium police and SBU orally condoned the practice of police transferring detainees into SBU custody, but have not been charged for their involvement.

72. Most members of voluntary battalions who committed human rights violations in the early stages of the conflict in Donetsk and Luhansk have not been brought to justice. Despite victims’ and witnesses’ accounts of such violations,<sup>64</sup> it appears that investigations into these incidents often face political interference and obstruction designed to shield perpetrators.

73. Five members of the ‘Donbas’ battalion have been accused of a number of crimes against civilians including abduction, armed robbery, extortion, banditry, hooliganism, and illegal possession of weapons. Four members of parliament including a former commander of the ‘Donbas’ battalion attended one of their preliminary hearings on 30 August. They requested the court to release the defendants on their personal guarantees. The members of parliament overtly exerted pressure on the judges, threatening to initiate corruption proceedings. They also verbally insulted the victims, accusing them of separatism. Ultimately, the defendants were released on the personal guarantees of the parliamentarians.

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<sup>61</sup> Also charged under article 146 (illegal abduction or confinement of a person), 258 (terrorist act), 253 (creation of a terrorist group or terrorist organisation), 437 (planning, preparation and waging aggressive war) and 438 (violation of the rules of warfare) of the Criminal Code of Ukraine.

<sup>62</sup> OHCHR Thematic report: Violations and abuses of the right to life in Ukraine from January 2014 to May 2016, Annex I, para. 25.

<sup>63</sup> HRMMU interview, 4 October 2016.

<sup>64</sup> HRMMU interview, 31 August 2016.

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74. Twelve members of the ‘Tornado’ special police patrol battalion remain in custody pending trial accused of grave human rights violations including arbitrary detention, abduction and torture. According to the General Prosecutor’s Office, the accused are responsible for the unlawful deprivation of liberty and torture of over 10 individuals, only eight of whom have been identified. The whereabouts of two other victims are unknown.<sup>65</sup>

### **B. Human rights impact of armed group structures**

75. OHCHR continued to monitor the human rights impact of what the armed groups refer to as ‘courts’, ‘judges’, and ‘prosecutors’. These structures do not comply with the right “to a fair and public hearing by a competent, independent and impartial tribunal established by law” as enshrined in article 14 of the ICCPR. OHCHR notes that both international human rights and humanitarian law incorporate a series of judicial guarantees, such as trial by an independent, impartial and regularly constituted court. These structures in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, *prima facie*, do not meet these requirements.

76. OHCHR attempted to monitor a ‘court hearing’ on 4 October 2016 held by the ‘Donetsk people’s republic’ to verify the fate and whereabouts of the accused but was denied access as the ‘hearing’ was closed to the public.

77. The enforcement of decisions issued by such structures raises further concerns. In November 2016, a ‘court’ in the ‘Donetsk people’s republic’ ruled on a pre-conflict civil claim ordering an asset seizure. The defendant was subsequently prevented from leaving the territory of the ‘Donetsk people’s republic’ by the ‘ministry of state security’, raising serious concerns about the legality of the sanction, resulting arbitrary restrictions on movement, and the conduct of the ‘ministry of state security’ in carrying out the decisions of ‘Donetsk people’s republic’ ‘courts’.<sup>66</sup>

78. On 18 August, OHCHR held a meeting with the ‘Donetsk people’s republic’ ‘supreme court’. OHCHR was informed that not all ‘courts’ are operational, and some of them are understaffed. There are 73 ‘judges’ currently working in 13 ‘courts’ (24 in the ‘supreme court’ and 49 in ‘courts of general jurisdiction’). In two years, these ‘courts’ have heard 57,119 cases<sup>67</sup>. If accurate, tens of thousands of people living in the ‘Donetsk people’s republic’ have been subject to what appears to be summary decisions without access to legal remedy.

79. OHCHR is concerned that these structures decide on the fate of individuals detained prior to the conflict. As of 15 November, 16 pre-conflict detainees have cases pending before the ‘supreme court’ of ‘Donetsk people’s republic’. These detainees are deeply concerned about the legality of the proceedings.

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<sup>65</sup> General Prosecutor’s Office, information provided to HRMMU, 5 December 2016.

<sup>66</sup> HRMMU interview, 9 November 2016.

<sup>67</sup> HRMMU meeting, 18 August 2016.

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80. OHCHR was informed that Ukrainian soldiers captured in the course of hostilities are also ‘prosecuted’ in ‘Donetsk people’s republic’ ‘courts’. As of 15 November, nine conflict-related ‘criminal cases’ are pending in front of the ‘supreme court’. On 31 October, the ‘supreme court’ of the ‘Donetsk people’s republic’ reportedly sentenced the alleged organizer of an assassination attempt against the head of the ‘republic’ to 14 years of deprivation of liberty. The ‘ministry of state security’ of the ‘Donetsk people’s republic’ released the name of the accused and alleged that he served with the SBU. OHCHR recalls that the sentencing of an individual by the ‘Donetsk people’s republic’ without due process or basic judicial guarantees including trial by an independent, impartial and regularly constituted court, may amount to a war crime<sup>68</sup> and violations of international human rights law.

81. According to the ‘ministry of justice’, as of 13 September 150 lawyers have been admitted to the ‘Donetsk people’s republic’ bar. On 10 November and 15 November, the Prosecutor General’s Office reported that 45 ‘judges’ and 53 ‘prosecutors’ of the ‘Donetsk people’s republic’ were charged with “facilitation of the activities of a terrorist group or terrorist organization”.<sup>69</sup> Reportedly, some were Government civil servants that joined the ‘Donetsk people’s republic’ after the onset of the armed conflict.

### **C. Due process and fair trial rights, interference with independence of judiciary**

*“Everybody knows that I am innocent but no one wants to admit that they made a mistake because they do not want to be held responsible.”*

- A man from Avdiivka currently on trial for conflict-related offenses

82. Through trial monitoring and interviews with individuals accused of affiliation with armed groups, OHCHR has documented persistent and systematic violations of due process and fair trial rights in Ukraine. OHCHR has observed a consistent and ongoing pattern of violations during the initial stages of detention where a person is arbitrarily detained and his detention not recorded.<sup>70</sup> OHCHR has gathered sufficient verified information to conclude that torture and ill-treatment allegedly perpetrated by law enforcement and security forces are closely linked to the administration of justice in conflict-related cases.

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<sup>68</sup> Rome Statute of the International Criminal Court, Article 8.2.c.(iv).

<sup>69</sup> Office of the Prosecutor General, Prosecutor’s Office of Donetsk region jointly with the Donetsk regional office of the SBU charged 53 prosecutors of the terrorist organization ‘DPR’”, 15 November 2016 (accessible at: [http://www.gp.gov.ua/ua/news.html?\\_m=publications&\\_t=rec&id=196302](http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=196302)); Office of the Prosecutor General, “Prosecutor’s Office of Donetsk region charged 45 judges of the terrorist organisation ‘DPR’” (accessible at: [http://www.gp.gov.ua/ua/news.html?\\_m=publications&\\_t=rec&id=195991&fp=30](http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=195991&fp=30) - on ‘judges’, 10 November).

<sup>70</sup> Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Ukraine, CAT/OP/UKR/1, 2011, para. 50.

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83. Interviewees subjected to arbitrary detention complained about violations of a number of their due process and fair trial rights, including access to legal counsel, instruction on rights,<sup>71</sup> and right not to be compelled to testify against oneself or confess guilt.

84. OHCHR has noted that a lack of trust in law enforcement organs and the judiciary prevents victims from complaining about torture and ill-treatment to the prosecution or judges. Some interlocutors also complained that the lawyers provided by the Free Legal Aid Centres fail to take any steps to file their torture claims with the relevant authorities.

85. While many interviewees complained to OHCHR about the alleged lack of impartiality of judges, none filed formal complaints with the High Qualification Commission of Judges, which until 29 September 2016 had the mandate to carry out disciplinary proceedings against judges.

86. Interference with the independence of the judiciary remains of critical concern. OHCHR has noted patterns of political interference in the investigation and prosecution of Ukrainian military and security personnel for human rights violations committed in the context of the conflict<sup>72</sup>. Such patterns have been systematically observed in Odesa region, where members of the judiciary have openly complained about attempts by politicians and “patriotic” organizations to exercise pressure to influence the outcome of judicial decisions. Even though such pressure often takes the form of explicit threats in the courtroom during proceedings, law enforcement habitually fail to respond. OHCHR recalls that the Government of Ukraine is obligated to ensure independence of the judiciary from any interference, as it could undermine the right to fair trial and basic judicial guarantees, eroding trust in the judiciary and amounting to violation of human rights.

#### **D. High-profile cases of violence related to riots and public disturbances**

##### *Accountability for the killings of protesters at Maidan*

87. OHCHR continued to follow the prosecution of former Berkut special police regiment servicemen accused of killing protesters during the Maidan protests in Kyiv, noting some progress in bringing low and mid-level sergeants and majors to account.

88. Over the reporting period, Sviatoshynskyi district court in Kyiv held a number of hearings in the case of five former Berkut servicemen accused of killing 48 and inflicting bodily injuries to 80 protesters on 20 February 2014 at Maidan. The five accused remain in custody while the victims testify in court. As of 4 October only the relatives of 20 out of the 48 victims have testified.

89. In a different case, four Berkut servicemen are accused of inflicting bodily injuries while forcefully dispersing protesters

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<sup>71</sup> Principle 13, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>72</sup> 15th OHCHR report on the human rights situation in Ukraine, para 70.



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on 18 February 2014. After spending some 18 months in custody, the former commander of the Kharkiv Berkut unit confessed in court to failing to take any measures to prevent his subordinates from using force against protesters. He named a group of his fellow servicemen who received shotguns and shotgun shells instead of rubber bullets. He also testified to seeing them firing at the protesters. According to the Prosecutor General's Office, 110 protesters sustained bodily injuries of various levels of severity on 18 February 2014.

*Accountability for the 2 May 2014 violence in Odesa*

90. OHCHR continued to monitor the trials concerning the 2 May 2014 events in Odesa, noting that over two and a half years after the events that resulted in the death of 48 people, investigations and prosecutions have been markedly slanted in one direction against members of the 'pro-federalist' movement. OHCHR has observed that despite authorities' long-standing knowledge of the crimes committed in the course of the events, the overall investigative steps taken and evidence presented appears manifestly inadequate in light of evidence and steps available. The proceedings have also been characterized by unjustified delays inconsistent with the intent to bring those responsible to justice.

91. For over two years, the five men accused of mass disorder in the Odesa city centre have remained in pre-trial custody. Since 27 November 2014, all court hearings assessing the renewal of their detention order have been attended by a group of male 'pro-unity' activists supporting the prosecution and demanding the continued detention of the accused. OHCHR has observed instances of the group exercising pressure on the judiciary, most recently during hearings on 25 and 27 October.<sup>73</sup> Such pressure has caused delays in the proceedings.

*Accountability for the 31 August 2015 violence in Kyiv*

92. OHCHR continued to follow developments of related to the 31 August 2015 incident of violence in front of parliament when four National Guard servicemen were killed and 152 other persons injured by a hand grenade explosion and subsequent clashes, observing violations of due process and fair trial rights in the efforts of the authorities to bring those responsible to account.

93. After almost a yearlong investigation, the case has been transmitted to Pecherskyi District Court of Kyiv for review of the merits. In parallel, a local court is examining the merits of a case against 15 individuals involved in the subsequent riots and clashes.

94. OHCHR interviewed the two accused, currently held in SIZO.<sup>74</sup> Both were held in police custody at odds with Ukrainian legislation<sup>75</sup>. One of them claimed to be beaten at the moment of arrest and subjected to numerous threats at the police department on the day of detention. The administration of the facility and the investigators disregarded his requests for legal assistance and

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<sup>73</sup> 15<sup>th</sup> OHCHR report on the human rights situation in Ukraine, paras 88-90.

<sup>74</sup> HRMMU interview, 20 October 2016; HRMMU interview, 19 February 2016.

<sup>75</sup> Article 2, Internal Rules of Conduct in Temporary Detention Facilities of the Ministry of Internal Affairs.

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informally questioned him several times a week without the presence of his lawyer. The defendant believes that his ill-treatment by law-enforcement was triggered by statements to the media of the Minister of Internal Affairs<sup>76</sup>. The custodial detention of both suspects was routinely prolonged for more than one year without adequate justification and review.<sup>77</sup>

## IV. Fundamental freedoms

### A. Freedom of movement

*“I do not know how high my pension should be to make me go through all the humiliation associated with crossing the contact line again.”*

– A man in a wheel chair travelling across Zaitseve entry-exit checkpoint

95. Limitations of freedom of movement continue to cause disproportionate suffering to the civilian population in the conflict-affected area. Between August and November, approximately 25,000 civilians<sup>78</sup> crossed the contact line daily through five designated crossing points, including a wooden ramp for pedestrians connecting parts of a destroyed bridge. The number of people crossing decreased compared to the previous reporting period as the operating hours of the checkpoints were reduced and OHCHR continued to regularly observe long queues at all entry-exit checkpoints. Armed groups sometimes arbitrarily close checkpoints, adversely impacting civilian freedom of movement.<sup>79</sup>

96. The relocation of entry-exit checkpoints and a shrinking of the “no man’s land”<sup>80</sup> has also continued. On 21 October, the State Border Service of Ukraine relocated Zaitseve entry-exit checkpoint to Maiorsk checkpoint,<sup>81</sup> closer to the contact line.<sup>82</sup> On 1 November, OHCHR visited the checkpoints in Maiorsk and in the “no man’s land” between Ukrainian Armed Forces and ‘Donetsk people’s republic’-controlled checkpoints, observing long queues of civilian and cars. Several individuals, who regularly cross the checkpoints told OHCHR that the relocation did not ease civilian passage through the checkpoints. They also complained that the processing time was still long and there was lack of necessary facilities.

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<sup>76</sup> “Avakov named responsible for the terrorist act the Parliament on 31 August”, Forbes Ukraine, 17 September 2015 (accessible at: <http://forbes.net.ua/news/1402128-avakov-nazval-vinovnyh-v-terakte-pod-radoj-31-avgusta>).

<sup>77</sup> 15<sup>th</sup> OHCHR report on the human rights situation in Ukraine, D. Arbitrary detention in conflict-related cases.

<sup>78</sup> According to the State Border Guard Service of Ukraine.

<sup>79</sup> Between 10 and 12 November, the ‘Donetsk people’s republic’ closed the checkpoint between Novoazovsk and Mariupol.

<sup>80</sup> 15<sup>th</sup> OHCHR report on the human rights situation in Ukraine, para. 99.

<sup>81</sup> Horlivka – Artemivsk transport corridor.

<sup>82</sup> As a result of relocation of entrance/exit crossing point, such towns and villages as Zaitseve, Maiorsk, Kurdiuvka, Odradivka, Mykolaivka and Kodyma will no longer be in the so-called “grey zone” or “no man’s land” and its residents will not need to pass entry-exit checkpoints on the way to other Government-controlled territories.

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97. The proximity of checkpoints to the contact line increases security risks for civilians. On 27 October, the Maiorsk checkpoint was closed due to ongoing mortar shelling and exchanges of fire and in the evening another entry-exit checkpoint in Marinka was targeted by small arms fire and automatic grenade launcher. The same checkpoint was shelled on the night 8 November, while civilians were queuing nearby. No casualties were reported.

98. During the reporting period, many civilians faced technical difficulties renewing the electronic permit required for crossing the contact line. Electronic permits were introduced in July 2015 and expired after one year. Some civilians were trapped at the entry-exit checkpoint with expired permits. Many of those affected were elderly persons who required assistance renewing the permit. Bio-metric passport holders<sup>83</sup> were unable to apply for a permit online. Limited information about the renewal procedures created distress for civilians crossing the contact line.

99. Checkpoint personnel retain the ability to deny entry or exit to any person perceived to be a “threat to national security”. Without clear criteria, civilians may be arbitrarily denied movement across the contact line.

100. As temperatures fall and checkpoints operate for fewer hours, crossing the contact line for civilians who do not have personal transportation becomes more arduous.<sup>84</sup> Buses cannot go through the “no man’s land” between checkpoints, so civilians have to walk across the contact line by foot for approximately 3 kilometres. This disproportionately affects older persons and families with children. Persons with disabilities face even more difficulties while crossing the contact line. There are no toilets accessible for wheelchair users. Although railway transport corridors were initially foreseen for civilian movement across the contact line, none are functional, while freight trains cross the contact line daily.

101. Civilians living in the vicinity of the contact line, and especially those who live in the area between Government and armed group checkpoints, face disproportionate restrictions in their freedom of movement. They have to queue at official entry-exit checkpoints, or take roundabout paths that are dangerous due to the presence of mines and explosive remnants of war (ERWs). A number of villages in this “no man’s land” have no public transportation, restricting residents’ mobility. Residents of Novooleksandrivka<sup>85</sup>, which is located between Government-controlled Popasna and armed-group-controlled Pervomaiske, reported that they can only get in and out of their village by foot or bicycle as only two cars are allowed to enter or exit the village per month. Residents have to pass through checkpoints to get to the nearest shop, hospital and pharmacy located ten kilometres away.

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<sup>83</sup> Introduced on 12 January 2015.

<sup>84</sup> In June 2015, official public transportation via the contact line was prohibited for “security reasons” following amendments to the Temporary Order – para 1.6.

<sup>85</sup> HRMMU visit, 5 September 2016.

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## B. Freedom of opinion and expression

*"I am afraid to talk. I don't know who to trust."*

- A woman living in armed group-controlled territories

102. During the reporting period, there was a rise in inflammatory language and hate speech by public officials, which may contribute to discrimination against vulnerable groups including IDPs, and runs counter to the spirit of article 20 of the ICCPR.

103. On 23 September, in an official statement<sup>86</sup>, the Minister of Internal Affairs attributed an increase in the crime rate to an inflow of IDPs. On 26 September, a number of NGOs expressed<sup>87</sup> their outrage and called upon the Minister to either present supporting evidence or revoke his statement. No action followed. On 8 October<sup>88</sup>, the Deputy Head of the National Police of Ukraine highlighted that the number of thefts has grown in the regions with the highest numbers of IDPs, instigating a negative attitude towards IDPs. OHCHR addressed these issues with representatives from the Ministry of Information and Ministry on Temporarily Occupied Territories and IDPs, raising concerns about discrimination, hate speech and that such rhetoric is not conducive to future reconciliation.

104. OHCHR also noted a rise in hate speech on social networks and incitement to violence against Roma after the incident in Loshchynivka (See Rights of minorities and discrimination, paragraph 152). OHCHR identified more than 40 reports<sup>89</sup> in regional and national media outlets containing hate speech and inflammatory language, using offensive and stereotypical terms as 'gypsies'. Many reports referred to Roma as "murderers" and "criminals", contributing to further escalation of tensions and discriminatory attitude towards them. One Roma family that was forced to leave Loshchynivka has been treated as criminals and denied residence in other villages, impacting children and their access to education, and the rights of the family to adequate housing and secure tenure.

105. OHCHR remains seriously concerned about the lack of genuine investigations into high-profile killings, assaults

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<sup>86</sup> Particularly, the minister stated: "during the years of war approximately a million refugee-migrants from the Donbas territory came into Kyiv. Across the country two to three million people also create certain problems". The statement was published on the official website of the Ministry of Internal Affairs (Accessible at: [http://www.mvs.gov.ua/ua/news/2974\\_Arsen\\_Avakov\\_zaklikav\\_Radu\\_pidtrimati\\_zakonoproekt\\_pro\\_kriminalni\\_prostupki\\_FOTO\\_VIDEO.htm](http://www.mvs.gov.ua/ua/news/2974_Arsen_Avakov_zaklikav_Radu_pidtrimati_zakonoproekt_pro_kriminalni_prostupki_FOTO_VIDEO.htm)).

<sup>87</sup> 'Public position of civil society organisations with regards to the statement of the Minister of Interior of Ukraine concerning IDPs' published 26 September 2016 (Accessible at: [http://vostok-sos.org/avakov\\_hate\\_speech/#twitter](http://vostok-sos.org/avakov_hate_speech/#twitter)).

<sup>88</sup> Troian, Vadym, *Zerkalo Nedeli*, "War at the Criminal Forefront", 8 October, (Accessible at: [http://gazeta.dt.ua/internal/viy-na-na-kriminalnomu-fronti-\\_html](http://gazeta.dt.ua/internal/viy-na-na-kriminalnomu-fronti-_html)).

<sup>89</sup> Some of the examples may be found here: Newspaper Economic News, "Gypsy raped and killed 9-year-old girl in Odesa region, people destroy the community", 28 August 2016 (accessible at: [http://news.eizvestia.com/news\\_incidents/full/463-cygan-iznasiloval-i-ubil-9-letnyuyu-devochku-v-odesskoj-oblasti-lyudi-gromyat-obshhinu-fotovideo](http://news.eizvestia.com/news_incidents/full/463-cygan-iznasiloval-i-ubil-9-letnyuyu-devochku-v-odesskoj-oblasti-lyudi-gromyat-obshhinu-fotovideo)); TV channel ICTV, "In Odesa region a Gypsy raped and killed 9-year old child, unrest in the village (PHOTOS, VIDEO)", 28 August 2016 (accessible at: <http://fakty.ictv.ua/ua/index/read-news/id/1593001>).

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and violations of the rights of journalists. Little progress has been made in identifying those responsible for the killing of Oles Buzyna on 16 April 2015 in Kyiv. The killing of Pavel Sheremet on 20 July in a car bomb explosion is under investigation by the Main Investigation Department of the National Police together with an inter-agency operational group, comprised of the National Police, the SBU and officers from the U.S. Federal Bureau of Investigation (FBI).

106. According to the Main Investigation Department of the National Police of Ukraine, 159 criminal proceedings have been launched in 2016 into attacks against journalists.<sup>90</sup> While this marks a 29 per cent increase from 2015, OHCHR is concerned that criminal proceedings into such cases rarely yield results. In 2016, only seven suspects have been identified in 95 investigations into the obstruction of journalist activities.

*Territories under the control of armed groups*

107. Freedom of opinion and expression continues to be curtailed by the armed groups. Such limitations are particularly pronounced in territories under ‘Luhansk people’s republic’-control, where residents are more reluctant to speak to external monitors.

108. The registration and accreditation of foreign journalists by armed groups continues to be largely arbitrary. OHCHR interlocutors report that ‘loyal’ journalists benefit from certain privileges such as extended accreditation. One media professional relayed how the armed groups exerted pressure by sending ‘Donetsk people’s republic’ ‘police’ to the hotel where his crew was staying while preparing a report on a sensitive topic. The same media professional mentioned being apprehended not far from the Donetsk airport with a colleague, taken to a military base and questioned for 1.5 hours by members of the armed groups in March 2015<sup>91</sup> and forced to erase all their recorded material.

109. On 16 August, the ‘central city district court’ of Makiivka ‘sentenced’ a blogger<sup>92</sup> and civil society activist from Kyiv to two years of imprisonment for the ‘illegal possession of weapons’. On 24 October, his case was heard in the ‘court of appeal’ of the ‘Donetsk people’s republic’ and was sent for an additional investigation to the ‘district prosecutor’s office’ in Makiivka.

110. OHCHR observed that people living in the territories controlled by armed groups continued to have limited access to information. Ukrainian television channels are not broadcast on cable television, however they are accessible online and on satellite television. A number of websites have been blocked, hindering the free flow of and access to information.<sup>93</sup>

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<sup>90</sup> Under articles 345-1, 347-1, 348-1, 349-1 and 171 of the Criminal Code of Ukraine.

<sup>91</sup> HRMMU interview, 31 August 2016.

<sup>92</sup> 15<sup>th</sup> OHCHR report on the human rights situation in Ukraine, para. 119.

<sup>93</sup> UN General Assembly (110(II), 290 (IV), 380 (V)) addressed incitement and propaganda as containing “measures tending to isolate the peoples from any contact with the outside world, by preventing the Press, radio and other media of



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111. Considering the above-mentioned findings, OHCHR commends the endeavour of the Government of Ukraine to enlarge the broadcasting capacity of existing television towers and rebuild damaged or destroyed ones, so that people on both sides of the contact line have broader access to information.<sup>94</sup>

112. Hate speech against certain groups remains visible both in the media as well as among the general public. During the ‘simultaneous release’ of conflict-related detainees on 17 September, a foreign journalist used derogatory and offensive language towards Ukrainian journalists and detainees in a publicly available video. OHCHR recalls the limitations of article 20 of the ICCPR, which prohibit “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”

### **C. Freedom of association**

113. OHCHR continued to monitor the prosecution of Communist Party members, noting that targeted legal action continues to impact freedom of association.<sup>95</sup>

114. On 13 October, OHCHR monitored a hearing in the case of the 68-year-old head of the Kharkiv branch of the Communist Party charged with trespassing against the territorial integrity of Ukraine.<sup>96</sup> The Court of Appeals of Kharkiv region ruled to transfer her from pre-trial detention to house arrest referring to a life-threatening health condition and substantiating the decision by citing international standards. Even if international human rights law establishes that pre-trial should be the exception, OHCHR notes that national legislation does not provide alternatives for custodial detention in terrorism-related cases.<sup>97</sup>

#### *Territories under the control of armed groups*

115. Civil society and NGOs continued to face restrictions in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, impacting their work, members, and beneficiaries.<sup>98</sup>

116. OHCHR received information that NGO premises were searched and their staff questioned by the ‘ministry of state security’ and ‘military police’ of the ‘Donetsk people’s republic’. According to local interlocutors, the ‘Donetsk peoples republic’ target NGOs they consider “uncomfortable”, and stifle any civil society or humanitarian organization that does not have close links with them. This adversely impacts people relying on assistance provided by such organisations. Civil society organisations are reluctant to report incidents of interference by the armed groups in their activities fearing retribution and persecution. OHCHR has also observed the continued rapid

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communication from reporting international events, and thus hindering mutual comprehension and understanding between peoples.

<sup>94</sup> Statement of Deputy Minister Artem Bidenko, 10 November 2016.

<sup>95</sup> 15<sup>th</sup> OHCHR report on the human rights situation in Ukraine, para. 106.

<sup>96</sup> She was charged with trespassing against the territorial integrity of Ukraine and giving a bribe (under articles 110 and 369 of the Criminal Code of Ukraine).

<sup>97</sup> 15<sup>th</sup> OHCHR report on the human rights situation in Ukraine, para. 82.

<sup>98</sup> 15<sup>th</sup> OHCHR report on the human rights situation in Ukraine, para. 109.

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development of the association ‘Mir Luganshchine’ (‘Peace to Luhansk’) created by the armed groups; it now claims a membership of 77,800 persons, compared to 72,500 during previous reporting period. OHCHR is concerned that participants are being forced and coerced to partake in the organization and its activities.

#### **D. Freedom of peaceful assembly**

117. Since the Maidan events of 2014<sup>99</sup>, the number of bans of peaceful assemblies across Ukraine has steadily decreased. However, OHCHR notes that such restrictions are still used.

118. In Odesa, weekly gatherings of ‘pro-federalism’ supporters continued to face restrictions imposed by law-enforcement grounded on alleged bomb threats, despite the manifest lack of credible risk.

119. The absence of legislation protecting and regulating peaceful assembly has allowed local councils and courts to arbitrarily limit the freedom of assembly.<sup>100</sup> A decision adopted by the Constitutional Court of Ukraine<sup>101</sup> on 13 September was an important development, upholding that legal provisions requiring prior permission from authorities for religious gatherings are not compliant with the Constitution of Ukraine. The court also affirmed that any notification to the authorities is not an authorization procedure.

120. However, Ukrainian courts continue to apply arbitrary limitations on assemblies to allegedly mitigate risk to public order. Law-enforcement regularly cites the anticipated ‘polarity of views’ of participants as grounds for limiting assemblies and is selectively enforced.<sup>102</sup>

121. On 20 September, OHCHR observed assemblies organised near Russian Federation consulates in Kyiv and Odesa in response to the Russian Federation elections that were held in Crimea by the de-facto authorities in violation of General Assembly Resolution 68/262. One person who came to vote at the Russian Federation consulate in Kyiv was beaten. Those involved in the violence were taken to nearby police precincts for questioning, and subsequently released. Some of them were charged with hooliganism and resisting arrest.

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<sup>99</sup> Demonstrations which turned violent in November 2013 - February 2014 and led to a change of government in Ukraine.

<sup>100</sup> These include: the organisation/preparation of a peaceful assembly; cooperation with the police during a peaceful assembly; the terms of notification for a peaceful assembly; the appeal procedure when an assembly is rule to be prohibited.

<sup>101</sup> Decision of the Constitutional Court in case of Constitutional submission made of the Ombudsperson Office regarding compliance with the Constitution of Ukraine (constitutionality) of provisions article 21 of the Law ‘On Freedom of Conscience and Religious Organizations’ (case on advance notifications on holding of public worships, religious rites, ceremonies and processions) No. 6-пrr/2016 as 8 September.

<sup>102</sup> Decision of District Administrative Court of Lviv region adopted on 5 November 2016.

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122. OHCHR monitored two peaceful demonstrations in Kyiv demanding the release of Roman Sushchenko, a Ukrainian journalist who was detained in Moscow on 30 September.<sup>103</sup>

*Territories under the control of armed groups*

123. OHCHR monitoring found that employees of public ‘budget-funded’ institutions, as well as students and school graduates are obliged to participate in demonstrations that take place in the ‘Luhansk people’s republic’. Similar conduct has been observed in territories under control of ‘Donetsk people’s republic’ armed groups.

124. On 10 October, a rally took place in Luhansk against the deployment of an armed OSCE monitoring mission, the latest in a pattern of armed group-organized assemblies.<sup>104</sup> As reported by local media<sup>105</sup>, the protest gathered 17,000 people. Notably, ‘Luhansk people’s republic’ media emphasized that it was a ‘improvised rally’ with ‘hand-made posters’ to underline the voluntary nature of the protest. The accounts collected by OHCHR suggest that the participants had to sign a paper obliging them to participate in the rally, while ‘student trade unions’ were responsible for ensuring student participation.

## V. Economic and social rights

### A. Civil documentation and access to public services

125. People living in the territories controlled by armed groups continue to face difficulties with restoring or obtaining civil registration documents, which impedes their access to other public services.

126. In order to restore, receive or apply for civil documentation, people have to travel to Government-controlled territories at least twice for several days<sup>106</sup>. Despite the simplified procedure introduced by the Ministry of Justice of Ukraine in February 2016 for persons living in armed group-controlled territories to obtain civil documentation, it remains cumbersome and lengthy. Interviewees in several cases confirmed that the procedure takes up to two weeks,<sup>107</sup> often requires the engagement of legal representation,<sup>108</sup> and report instances of corruption.

127. The ongoing reform process has presented additional difficulties for the conflict-affected population.

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<sup>103</sup> On 30 September, Roman Sushchenko, the correspondent of Ukrainian National News Agency Ukrinform was detained in Moscow.

<sup>104</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 39.

<sup>105</sup> Donpress, “Luhansk: LPR stated that 17.000 persons attended demonstration,” published on 10 October 2016 (accessible at link: <https://donpress.com/news/10-10-2016-lugansk-v-lnr-zayavili-cto-na-miting-prishli-17-tysyach-chelovek>).

<sup>106</sup> HRMMU interview, 6 October 2016.

<sup>107</sup> As regulated by relevant amendments to the Civil Procedure Code of Ukraine introduced on 4 February 2016.

<sup>108</sup> HRMMU interview, 6 October 2016.

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According to new procedures<sup>109</sup> effective 1 June 2016, children have to obtain a new ID card at age 14 instead of a passport at 16. Both children living in territories controlled by armed groups and those internally displaced will be unable to obtain ID cards, as one of the requirements is to have an official place of residence registered in Government-controlled territories.

128. Pre-conflict detainees, who were released after serving sentences in armed group-controlled territory, whose documents were lost or expired, face additional challenges, as they must also confirm the legality of their release, which is virtually impossible due to the absence of unified register or database of prisoners. Conflict-related detainees, who were “simultaneously released” without their passport or whose passport photos have to be renewed, do not have any valid documentation and cannot travel to Government-controlled territories to renew their passports.

## **B. Right to social security**

### *Social security of internally displaced persons*

129. The suspension of social and pension payments to IDPs until verification of their residential address takes place is an ongoing concern.<sup>110</sup> This continues to have a negative impact on IDPs’ access to social entitlements. Social protection departments in the eastern regions of Ukraine face serious challenges when conducting the verification due to understaffing and lack of financial and technical resources.

130. IDPs in Berdiansk have to wait around a month to undergo the verification procedure, leading to delays in the resumption of payments. An audit conducted by the State Financial Inspection upon instruction of the Ministry of Finance concluded that 25.9 per cent of IDP housing subsidy allocations were erroneous.<sup>111</sup>

131. Many IDPs, especially those who rely on state financial support as their prime source of income, indicate that they would be forced to return to territories controlled by the armed groups due to suspension of benefits and increased utility prices in 2016. According to the Ministry of Social Policy, 88 per cent of IDP renewal claims have been processed.<sup>112</sup> However, IDPs have complained to OHCHR that the social payment resumption and verification mechanism lacks transparency and presents excessive bureaucratic obstacles.

132. While OHCHR recognises the legitimate right of the Government to combat fraud and control social payment allocation, the process should be conducted in a transparent

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<sup>109</sup> In line with the Law of Ukraine Nr. 3224 “On amending some laws of Ukraine regarding documents that confirm citizenship of Ukraine, identify a person or their special status, aimed at visa liberalisation with the European Union”, which entered into force on 1 June 2016.

<sup>110</sup> 15<sup>th</sup> OHCHR report on the human rights situation in Ukraine, paras. 129-131.

<sup>111</sup> Data was presented by the State Financial inspection during the parliamentary hearings on the results of verification organised by the parliamentary committee on social policy, employment and pensions. HRMMU attended the hearings on 19 October 2016.

<sup>112</sup> Ministry of Social Policy, information provided to HRMMU, 30 November 2016.

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manner, delinking pensions and social entitlements from residence registration and IDP certification. A comprehensive national legislative framework regulating such procedures should be developed, paying special attention to data protection. OHCHR welcomes the launch in October of the unified database of IDPs, administered by the Ministry of Social Policy, marking a positive step toward more systematic information management.

*Social protection of demobilized soldiers and injured civilians*  
133. During a parliamentary hearing,<sup>113</sup> various actors highlighted that demobilized soldiers continue to face systemic hurdles in exercising their rights due to inadequate mechanisms for implementing legislative provisions that foresee certain entitlements and services. Despite the existence of a State Agency on Veterans and Participants of the ‘Anti-Terrorist Operation’ Affairs<sup>114</sup> and a number of State programs, such as on housing, psychological rehabilitation and career counseling, former soldiers do not always have sufficient information on available social services. Furthermore, high-quality services are available in cities, with little or no assistance available in smaller towns and rural areas.<sup>115</sup>

134. Mobilized soldiers have fewer social guarantees than those serving under contract. For example, mobilised soldiers have to pay for HIV and hepatitis screening, unlike Army personnel serving under contract. As a result, a very low number of soldiers undergo such examinations, aggravated by low levels of awareness about communicable diseases. Interviews also indicate that members of volunteer battalions do not have access to free treatment in military hospitals.

135. As previously noted by OHCHR,<sup>116</sup> Ukraine lacks a comprehensive State rehabilitation programme for demobilized soldiers and members of volunteer battalions, to facilitate reintegration into communities. Most programs include short-term stays in sanatoriums for soldiers and their families. OHCHR welcomes the plans of the Ministry of Social Policy to develop a comprehensive model of assistance for soldiers with post-traumatic stress disorder. After returning from the conflict area, soldiers face unemployment, lack of job opportunities and few opportunities for requalification training. Allocation of agricultural land to demobilized soldiers, envisioned as the part of a reintegration program, remains mired in procedural hurdles.

136. Ukraine lacks a unified registry of civilians who suffered physical injuries as a result of hostilities in Donetsk and Luhansk regions. Furthermore the Government has not determined their legal status, nor allocated any entitlements to victims of the conflict. As a result, civilians injured in hostilities – often due to indiscriminate shelling – suffer both the effects of their physical injuries, and denial of social and legal protection.

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<sup>113</sup> 19 October 2016, Parliamentary hearings on ‘State Guarantees for Social Protection of ATO and Revolution of Dignity Participants and Their Family Members: Current Situation and Perspectives’.

<sup>114</sup> Resolution of the Cabinet of Ministers No. 326, 11 August 2014.

<sup>115</sup> Ministry of Social Policy, information provided to HRMMU, 30 November 2016.

<sup>116</sup> 15<sup>th</sup> OHCHR report on the human rights situation in Ukraine, para. 123.



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### C. Housing, land and property rights

137. OHCHR continues to observe the negative impact of military presence on access to housing, property and livelihoods in the conflict-affected area. During monitoring visits along the contact line, OHCHR observed military use of and shrapnel damage to houses in Government-controlled Avdiivka, Lopaskyne, Novozvanivka, Opytne and Tonenke. In Novozvanivka – a village of 77 residents – OHCHR noted significant presence of Ukrainian Armed Forces in residential areas. Several private houses were used by military personnel. OHCHR received allegations<sup>117</sup> that the military fired weapons from yards of civilian homes. This frequently attracted return fire, endangering the civilian population.

138. During a meeting with OHCHR, a deputy-commander of the ‘Anti-Terrorism Operation’ in Kramatorsk confirmed the military use of residential property in the conflict zone, stating that utilized homes belong to “separatists who escaped to the other side”<sup>118</sup>. The ‘Anti-Terrorism Operation’ command has advised individuals and families who have been affected by the military use of their homes to complain to local police, local authorities or military commanders. OHCHR notes that few victims file formal complaints, either due to fear of reprisals by the military or absence of effective remedial avenues through the judiciary for such cases.

139. In Avdiivka, individuals and families whose homes are used for military purposes by Ukrainian Armed Forces complained about high utility bills incurred by soldiers. According to the families affected, the utility company has refused several of their requests to cut off the electricity supply to their houses and continues to bill them for electricity used by soldiers.

140. One resident of Novooleksandrivka told OHCHR he was concerned about tensions with Ukrainian soldiers and military positions close to areas where civilians graze their livestock.<sup>119</sup> Agricultural land used for military purposes and contaminated by mines and ERWs has a detrimental impact on people’s access to livelihoods. A man from the village Pryovrazhne in Donetsk region expressed his despair at losing his land in 2014 when Ukrainian Armed Forces seized agricultural lands to build trenches and other fortifications, rendering the lands unsuitable for future agricultural use. Apart from the fact that residents of the village do not have access to their sole source of income, they are required to pay land taxes and rental charges.<sup>120</sup> Residents of Mykolaivka village, Donetsk region complained that 60 per cent of the land previously used for agriculture can no longer be used due to mine contamination or because the land is used for military purposes.<sup>121</sup>

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<sup>117</sup> HRMMU interview, 5 September 2016.

<sup>118</sup> HRMMU interview, 7 September 2016.

<sup>119</sup> HRMMU interview, 5 September 2016.

<sup>120</sup> The case was presented on 7 September 2016 during a round-table on “Access to Justice” organised by the Danish Refugee Council. HRMMU carried out follow-up action on 19 October 2016.

<sup>121</sup> HRMMU site visit, 7 November 2016.

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141. The lack of compensation mechanisms for destroyed, damaged and militarily utilized property remains one of the most prevalent problems faced by the conflict-affected population. Those who lost their property receive free legal aid and submit complaints to courts but with little success. When rejecting such claims, Ukrainian courts continue to find that they do not meet the minimum threshold to establish liability, either due to absence of evidence connecting destruction of property to the armed conflict or inability to establish responsibility.

*Territories under the control of the armed groups*

142. OHCHR received reports<sup>122</sup> that ‘Luhansk people’s republic’ armed groups continue to loot apartments in Luhansk city. Allegedly, in a consistent pattern of conduct, persons in camouflage or in civilian clothes enter residential buildings and seize private property after breaking into individual apartments. Armed group members cite ‘legal’ grounds related to ‘searches’ and collecting evidence for ‘criminal investigations’. According to OHCHR interlocutors, armed groups actively monitor and target apartments whose owners have left Luhansk.

143. Similar concerns arise due to the conduct of ‘Donetsk people’s republic’ armed groups. IDPs often express their fears that their property was occupied by members of armed groups or was ‘nationalized’ by the armed groups (in particular for non-payment of utilities). OHCHR observes that people take personal safety risks and travel to areas with ongoing hostilities to check on their property. According to a public statement of the representative of ‘Donetsk city authorities’, the property of ‘enemies’ who have left the territories under the control of ‘Donetsk people’s republic’ armed groups will be confiscated and made communal.<sup>123</sup>

144. OHCHR continues to document violations and abuses of housing and property rights that occurred in 2014 and 2015.<sup>124</sup> In August 2015, the ‘ministry of state security’ in Donetsk abducted a businessman<sup>125</sup> from Novoazovsk, subjected him to torture and ill-treatment, and looted his home and property. An IDP from Luhansk told OHCHR<sup>126</sup> how armed groups looted her son’s apartment in February 2015 because he participated in combat operations against the armed groups and had pro-Government views.

145. Armed groups have also targeted the property of IDPs who left armed group-controlled territories. One IDP was threatened by individuals claiming to represent a ‘bank’ of the ‘Donetsk people’s republic’ to confiscate her property if she did not pay her mortgage and fees to them.

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<sup>122</sup> HRMMU interview, 28 September 2016.

<sup>123</sup> Statement of Igor Martynov of the ‘Donetsk city administration’, 18 October 2016 (Accessible at: <http://www.62.ua/news/1408979>).

<sup>124</sup> HRMMU interview, 13 October 2016.

<sup>125</sup> HRMMU interview, 30 August 2016.

<sup>126</sup> HRMMU interview, 28 August 2016.

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## D. Situation of internally displaced people living in collective centres

*“No one listens to us. To get any help we need to go through all the circles of hell.”*

- Woman living in an IDP centre in Donetsk city

146. According to a recent study<sup>127</sup> conducted by UNHCR in Ukraine, at least 637 IDPs across Ukraine are facing threats of eviction, including in Odesa (Kuialnyk and Senetatia collective centres), in Kyiv (Kustanaiska Street, Soty and Dzherelo collective centres) in Zhytomyr and other cities. According to data<sup>128</sup> from 46 surveyed collective centres, 35 per cent saw cases of IDP evictions. 79 per cent of collective centres are not equipped to accommodate people with disabilities. 43 per cent of IDPs indicated that their health condition deteriorated since they settled in collective centres.

147. The situation in two collective centres in Odesa region – Kuialnyk and Senetatia – that have been hosting IDPs with disabilities, including mental disabilities, from the onset of the conflict until the end of September 2016 is of particular concern. Due to inhuman and degrading conditions imposed on IDPs in the collective centres – electricity and water supply cuts and no access to elevators – IDPs were forced to return to Donetsk region, including to territories controlled by the armed groups.<sup>129</sup> It is of concern that State and regional authorities did not intervene and did not provide any durable housing solutions and humanitarian assistance forcing 139 IDPs to leave their place of living. Such treatment of IDPs violates their right to equal protection and prevents their enjoyment and exercise of human rights without discrimination on account of their displacement.

148. A similar situation has been observed in a collective centre<sup>130</sup> in Kyiv where the administration of the building has cut electricity, heating and other utilities endangering the health of the IDPs, including children, older persons and persons with disabilities. Due to the absence of contracts with the owners of the premises, IDPs are often required to pay higher utility rates under the threat of eviction.<sup>131</sup>

149. OHCHR notes that much of the documented suffering of IDPs stems from the absence of a systemic approach to durable housing and comprehensive legal framework protecting the most vulnerable IDPs residing in collective centres, despite housing identified as a priority in the

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<sup>127</sup> UNHCR monitoring report on the threat of eviction of IDPs in Ukraine, presented on 12 October 2016.

<sup>128</sup> NGO “Right to Protection”, Results of Monitoring of collective centres of IDPs in Dnipropetrovsk, Donetsk, Zaporizhzhia, Luhansk and Kharkiv region, 2016 (Accessible at: <http://vpl.com.ua/uk/materials/zvit-za-rezultatamy-monitorynhu-mkp/>).

<sup>129</sup> HRMMU interviews, 18 October, 27 October and 27 October 2016.

<sup>130</sup> Kustanaiska Str 6, Kyiv.

<sup>131</sup> HRMMU interviews, 4 October and 11 November 2016.

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comprehensive state program for IDPs.<sup>132</sup> The Government has the obligation to identify and recommend free accommodation to IDPs providing the latter pay for utilities. In practice, however, only regional authorities are able to do so but often refer to a lack of available accommodation. As a result, IDPs are not offered accommodation or are evicted. Jointly with other international agencies, OHCHR has advocated with the Government of Ukraine for the maintenance of appropriate living conditions in collective centres in accordance with international standards<sup>133</sup> and development of sustainable solutions to satisfy the right to adequate housing. Despite engaging the issue, the Government of Ukraine has not taken any measures to safeguard the rights of IDPs with disabilities.

*Territories under the control of the armed groups*

150. Conditions in collective centres in territories controlled by armed groups of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ raise serious concerns. Such centres host many older persons, persons with disabilities and hundreds of children, and do not satisfy adequate standards of living and housing.<sup>134</sup> OHCHR noted that the population in collective centres is often mixed (civilian IDPs, former combatants, current members of armed groups), which raises certain protection concerns. According to available data, there are 8,160 persons ‘registered’ as IDPs in the ‘Donetsk people’s republic’; while most live in private houses or apartments, 3,024 reside in collective centres.<sup>135</sup>

151. Living conditions in collective centres vary. In one of the centres to which OHCHR was granted access, living conditions, including hygiene standards, were manifestly inadequate: the elevator was not functional, the only showers in the multi-storey building were on the ground floor, with unhygienic rooms and sanitation facilities.

## **E. Rights of minorities and discrimination**

152. Incidents of discrimination against minority groups on the basis of ethnic or sexual identity over the reporting period have highlighted the ongoing need for measures to reinforce and build confidence that minority rights are protected by law and in practice. An incident involving violent destruction of Roma houses and forced eviction of Roma families took place in Loshchynivka village, Odesa region after local police disclosed

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<sup>132</sup> Cabinet of Ministers Resolution No. 1094 “On the approval of the Comprehensive state programme of support, social adaptation and reintegration of citizens of Ukraine who moved from the temporarily occupied territory of Ukraine and the areas of anti-terrorist operation in other regions of Ukraine for the period till 2017”, 16 December 2015.

<sup>133</sup> Principle 18 of the UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2; Convention on the Rights of Persons with Disabilities, article 2.

<sup>134</sup> Principle 8, “The Pinheiro Principles,” United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons.

<sup>135</sup> The socio-humanitarian overview of the situation in the self-proclaimed ‘Donetsk people’s republic’ for the period from 29 October to 4 November 2016, 7 November (Accessible at: <http://ombudsmandnr.ru/obzor-sotsialno-gumanitarnoy-situatsii-slozhivsheysya-na-territorii-donetskoy-narodnoy-respubliki-vsledstvie-voennyih-deystviy-c-29-oktyabrya-po-4-noyabrya-2016-goda/>).

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the name and ethnicity of a man suspected of killing and raping an eight-year-old local girl on 27 August 2016. On 29 August, the local council decided to evict 24 Roma (including 15 children) without providing them alternative accommodation or any other guarantees, including ensuring continued education of children. OHCHR observed negligence by police at the scene, a lack of accountability for those who attacked and destroyed Roma homes,<sup>136</sup> and use of hate speech and false information in national and local media. OHCHR and human rights NGOs have facilitated a dialogue between the Roma community and local authorities and advocated against the eviction of people outside the protections of the law. A complaint regarding police misconduct during the incident was submitted to the Odesa regional prosecution office, and a criminal investigation was initiated on 22 September.<sup>137</sup> OHCHR is concerned that the tacit consent of the forced eviction and absence of measures taken by police or local authorities to protect Roma in Loshchynivka village may amount to collective punishment.

153. On 5 October, the Parliamentary Committee on Human Rights, National Minorities and Interethnic Relations, concluded that the Government has inadequately implemented the Strategy for the Protection and Integration of the Roma National Minority and its Action Plan, echoing the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) released on 26 August 2016.<sup>138</sup> Roma community representatives and civil society provided examples to OHCHR of difficulties that they continue to face in accessing healthcare and other basic public services. For example, in September 2016 two persons did not receive proper medical services, and authorities withheld a woman's passport upon her release from custody on the basis of her Roma ethnicity. It was also reported that Roma children still experience bullying in public schools or segregation in education.<sup>139</sup> The rates of illiteracy among Roma are persistently high.<sup>140</sup>

154. OHCHR also notes that during the reporting period people belonging to or sympathizing with the LGBTI community experienced aggressive behaviour and threats from radical groups such as 'Azov' civil corps and 'Right Sector'.<sup>141</sup> For example, members of the 'Azov' civil corps and 'Right Sector' disrupted a film screening on LGBTI issues on 18 October in Chernivtsi and on 4 November in Kremenchuk city. Law-enforcement did not intervene to protect the event from disruption.

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<sup>136</sup> Police launched investigation under article 194-2 (intentional damage to property of citizens) of the Criminal Code of Ukraine.

<sup>137</sup> Investigation initiated under article 367 (negligence of official duty) of the Criminal Code of Ukraine.

<sup>138</sup> CERD Concluding Observations, CERD/C/UKR/CO/22-23, 26 August 2016.

<sup>139</sup> There are still at least four segregated schools in Zakarpattia region. UN Committee on Economic, Social and Cultural Rights, Concluding Observations E/C.12/UKR/CO/6, 13 June 2014, p. 8.

<sup>140</sup> European Roma Rights Centre, International Charitable Organisation "Roma Women Fund "Chirikli", Written comments on Ukraine for Review by the Committee on the Elimination of all Forms of Discrimination Against Women, 20 September 2016.

<sup>141</sup> HRMMU meeting, 1 November 2016.



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## VI. Human rights in the Autonomous Republic of Crimea<sup>142</sup>

155. On 15 November, the UN General Assembly Third Committee approved a draft resolution presented by Ukraine on the “Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)”. The resolution refers to Crimea being under the “temporary occupation” of the Russian Federation and reaffirms the non-recognition of its “annexation”. It calls on the Russian Federation “as an occupying power” to bring an immediate end to “all the abuses against residents of Crimea,” and to ensure proper and unimpeded access to the peninsula. The UN Secretary General is invited, through consultations with the UN High Commissioner, “to seek ways and means” to ensure access to Crimea to regional and international human rights monitoring mechanisms, and OHCHR is requested to prepare a thematic report on the situation of human rights in Crimea before the 72<sup>nd</sup> UN General Assembly session.

156. On 14 November, the Office of the Prosecutor of the International Criminal Court released its annual report on preliminary examination activities. In its report, the Office of the Prosecutor found the Crimean peninsula to be under the occupation of the Russian Federation. Accordingly, the prosecutor will apply an international armed conflict legal framework to her analysis of facts and alleged crimes perpetrated in Crimea.<sup>143</sup>

### A. Arbitrary detention, due process and fair trial rights

157. HRMMU continued to follow the situation of people whose arrest and detention could amount to an arbitrary deprivation of liberty. Human rights concerns include abusively resorting to anti-extremism and anti-terrorism legislation to criminalize the expression of non-violent views, opinions and beliefs; cruel, inhumane or degrading treatment or punishment; and violations of due process, including the right to unimpeded access to legal counsel.

#### *Arbitrary detention of persons accused of ‘separatism’*

158. OHCHR documented several cases of abuses and ongoing sanctions against members of the Mejlis, amounting to

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<sup>142</sup> The Autonomous Republic of Crimea technically known as the Autonomous Republic of Crimea and the City of Sevastopol, in line with United Nations General Assembly Resolution 68/262 on the territorial integrity of Ukraine. OHCHR has not been granted access to Crimea and has no *in situ* presence there. It has been able to follow the human rights situation through contacts with Crimean residents on the peninsula and mainland Ukraine, and relying on a variety of interlocutors, including representatives of political, religious, civil society organizations, victims, relatives and witnesses of alleged human rights violations, members of the legal profession, journalists, entrepreneurs, teachers, doctors, social workers, human rights activists and other categories, including individuals with no specific affiliations. OHCHR has continued to seek access to Crimea.

<sup>143</sup> Office of the Prosecutor, International Criminal Court, “Report on Preliminary Examination Activities 2016,” 14 November 2016, paras. 155-158 (Accessible at: [https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE\\_ENG.pdf](https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf)).

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arbitrary detention. On 7 September 2016, Mejlis Deputy Chairman Ilmi Umerov was released from the psychiatric hospital where he was placed against his will on 18 August, following a Crimean ‘court’ decision. Umerov is accused of calls to violate the territorial integrity of the Russian Federation and risks being sentenced to a prison term of up to 5 years. OHCHR considers that his forced institutionalization in a psychiatric hospital for three weeks may have amounted to ill-treatment. Umerov is currently free but is prohibited from leaving the Crimean peninsula. On 7 November, Umerov’s Russian Federation lawyer, Nikolay Polozov, told a Ukrainian media outlet that he was “under pressure” from the Russian Federation Security Service (FSB) to drop Umerov’s case.

159. On 11 October, Suleyman Kadyrov, a member of the regional Mejlis in Feodosiia, was arrested and charged with publicly calling for actions aimed at violating the territorial integrity of the Russian Federation. As of 15 November, he is still in detention. On 29 March 2016, he had publicly stated “Crimea is Ukraine”.

*The case of the ‘Ukrainian sabotage group’*

160. Yevhen Panov is one of the suspects arrested by the FSB in Crimea for his alleged participation in a Ukrainian sabotage group.<sup>144</sup> His lawyer told OHCHR that his client had not been kidnapped in mainland Ukraine, as had long been speculated, but arrested on 7 August 2016 after entering Crimea. His lawyer told OHCHR he was held *incommunicado* for days, tortured, forced to confess to preparing a series of terrorist acts targeting vital infrastructure on the peninsula, and officially charged on 10 August.

161. On 10 October, a Crimean ‘court’ extended the pre-trial detention of Yevhen Panov and Andrii Zakhtei, another arrested suspect, until 10 December. Earlier, in August, the European Court of Human Rights had refused to order the extradition of Yevhen Panov to Ukraine, as requested by his family who invoked the Court’s Rule 39 and the risk of torture in detention. Instead, the European Court accepted the position of the Russian Federation that the Russian authorities will review the complaints of the accused and investigate the conditions under which he sustained injuries.

162. On 10 November, the FSB said it prevented a new sabotage attack plotted by Ukrainian military intelligence operatives in Crimea intended to target military facilities and critical civilian infrastructure in Sevastopol. The infiltrators allegedly had high-power explosive devices, firearms and ammunition, secure communications equipment, as well as maps of the targets. The Ukrainian Ministry of Defence released a statement rejecting the accusations. Three suspects were arrested on 9 November and placed in pre-trial detention for two months, and on 15 November, two other residents from Sevastopol were arrested.

163. OHCHR has information about various forms of violations of the right to defence and the presumption of

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<sup>144</sup> 15<sup>th</sup> OHCHR report on the human rights situation in Ukraine, para. 153.

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innocence in relation to members of the group. The accused do not enjoy regular access to their lawyers, they are pressured by the investigators to renounce their right to legal counsel, and in some cases, defence lawyers have advised their clients to confess and ‘cooperate’ with the prosecution.

*Hizb-ut-Tahrir cases*

164. The continued prosecution of Crimean Hizb-ut-Tahrir members in Russian courts raise serious concerns about the human rights impact of the ongoing violation of General Assembly resolution 68/262 on the territorial integrity of Ukraine. On 7 September, a military court in Rostov-on-Don (Russian Federation) found four Crimean Tatars arrested by the FSB in 2015 guilty of planning and participating in the activities of an illegal organization. All were recognized by the court as members of Hizb-ut Tahrir, a religious group labelled and banned as extremist in the Russian Federation, but not in Ukraine. Their defence lawyers portrayed their clients as Muslim believers and argued for their rights to freely practice their religion. Three men were sentenced to 5 years of imprisonment while the alleged organizer of a Hizb-ut-Tahrir cell received a 7-year sentence. These are the first verdicts involving alleged Hizb-ut-Tahrir members from Crimea.

165. On 12 October, the FSB forcefully broke into six Crimean Tatar houses, conducting searches in the presence of children and women, and confiscating religious literature prohibited in the Russian Federation. Five Crimean Tatar men known by their neighbours for being practising Muslims were arrested on suspicion of being members of Hizb-ut-Tahrir. All five were placed in pre-trial detention until 11 December 2016. So far, in 2016, 15 Crimean Tatars and Muslims have been detained by the *de facto* authorities in Crimea on suspicion of membership in Hizb-ut-Tahrir.

166. On 3 November, the Crimean *de facto* authorities mandated a psychological evaluation of six of the Crimean Tatars accused of membership in Hizb-ut-Tahrir.

## **B. Rights of minorities and indigenous peoples**

167. In April 2016, the ‘supreme court of Crimea’ declared the Mejlis an extremist organization and banned all its activities. On 29 September, the Supreme Court of the Russian Federation rejected an appeal against the Crimean court ‘decision’ and upheld the ban.

168. Eight members<sup>145</sup> of the Mejlis were fined by Crimean ‘courts’ for holding a meeting on 28 September. They were gathering in the house of Ilmi Umerov, one of three deputy chairmen of the Mejlis, to discuss internal issues and suspend the membership of three Mejlis members who collaborated with the *de facto* authorities.<sup>146</sup> All eight Mejlis members were found guilty of committing the administrative offense of taking part in

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<sup>145</sup> The eight Mejlis members who were fined are: Ilmi Umerov, Ali Khamzin, Sadikh Tabakh, Shevket Kaibullaiev, Bekir Mamutov, Emine Avamileva, Mustafa Mausev and Diliaver Akiiev.

<sup>146</sup> The three Mejlis members whose membership was suspended are: Emirali Ablaiiev, Aider Adzhymambetov and Ruslan Yakubov.

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an “illegal meeting” and ordered to pay fines ranging from RUB 750 (USD 12) to RUB 1,000 (USD 15).

169. The Mejlis is viewed by many Crimean Tatars as a traditional organ of an indigenous people: its members, forming an executive body, were elected by the Kurultai, the Crimean Tatars’ assembly. In addition to the national Mejlis - which has 33 members - there are about 2,500 regional and local Mejlis members in Crimea. While approximately 30 Crimean Tatar NGOs are currently registered in Crimea, none can be considered to have the same degree of representativeness and legitimacy as the Mejlis and Kurultai.

### **C. Freedom of movement**

170. On 24-25 October, OHCHR monitored the freedom of movement at the Chonhar, Kalanchak and Chaplynka crossing points on the administrative boundary line with Crimea. During this monitoring visit, OHCHR heard repeated complaints – both from people from mainland Ukraine and Crimea – about the difficulties of transporting personal belongings to and from Crimea. They claim that disproportionate legal and administrative barriers imposed by Ukraine feed corruption and unduly restrict freedom of movement. This issue became particularly acute following the adoption of Government Resolution No. 1035 in December 2015 prohibiting transportation of goods<sup>147</sup>.

171. Article 370 of the Customs Code of Ukraine contains a list of personal belongings that people can transport across the administrative boundary line. Even though Odesa district administrative court ruled on 26 September that the list was not exhaustive, people travelling between mainland Ukraine and the Crimean peninsula are often restricted in the items that they can carry when these are not listed. One Crimean resident stated that she moved from Crimea to Mykolaiv in mainland Ukraine, but was not allowed by the Ukrainian Customs Service to transport any furniture to her new place of residence due to Resolution 1035. Another Crimean resident said that he sold his apartment in Sevastopol but was not permitted to transport the proceeds from the sale because the sum exceeded UAH 10,000 (approximately USD 385), the maximum amount allowed under Ukrainian law due to limitations imposed by the Law “On the establishment of the Free Economic Zone “Crimea”<sup>148</sup>. OHCHR has also recorded reports of corruption at the Kalanchak crossing point.

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<sup>147</sup> On 9 November, a Kyiv court of appeal confirmed a first instance administrative court decision rejecting the request of a Crimean IDP to recognize Resolution No 1035 as illegal.

<sup>148</sup> See Article 12.8 (3) of the Law of Ukraine “On Establishment of the Free Economic Zone “Crimea” and Peculiarities of Providing Economic Activity on the Temporarily Occupied Territory of Ukraine” No. 1636-VII of 12 August 2014.

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## D. Rights of detainees

*“If you are sick, you are treated as if you are not even a person anymore. You can be destroyed. I want justice and to improve my health.”*

- Prisoner in pre-trial detention centre No. 1, Simferopol

172. OHCHR continued gathering information about the rights of detainees and prison conditions in Crimea. Due to a lack of specialized penitentiary facilities, many detainees could not be held on the peninsula. This situation has led to the transfer, since 2014, of a sizeable number of the prison population from Crimea to the Russian Federation into specialized penitentiary facilities. The transfers have included juvenile delinquents, convicted women, people sentenced to life imprisonment, and prisoners suffering from serious physical and mental illnesses. The transfer of detainees from Crimea to penitentiary facilities in the Russian Federation further illustrates the human rights impact of the ongoing violation of General Assembly resolution 68/262 on the territorial integrity of Ukraine.

173. According to one Ukrainian NGO representative, at least 600 women from Crimea and mainland Ukraine are currently held in mixed or female colonies in the Russian Federation. The penitentiary service of the Russian Federation has reported that 240 female prisoners were transferred from Crimea to the Russian Federation between 18 March 2014 and 15 June 2016. An unknown number of transfers have also involved prisoners and individuals held in custody who did not belong to any of the above groups.

174. Persons detained in Crimea or transferred to the Russian Federation are often denied proper medical treatment and hospitalization, in violation of their right to health. A woman from Sevastopol was sentenced on 22 May 2013 to three years of imprisonment in accordance with the Criminal Code of Ukraine, and on 18 December 2015 to two years of imprisonment in accordance with the Criminal Code of the Russian Federation. She is currently in custody in Sevastopol and is not given medical treatment despite suffering from hepatitis ‘C’ and HIV. A man from Mykolaiv, Ukraine, was sentenced in June 2015 by a Crimean ‘court’ and transferred to Penal Colony No. 1 of the Republic of Adygea (Russian Federation). He suffers from hypertension and health complications that developed as a result of head and spine injuries. He is being denied medical care. A man from Feodosiia, Crimea, was sentenced by a Crimean ‘court’ on 24 March 2015 and transferred to serve his sentence in Penal Colony No. 2 of the city of Rostov-on-Don, Russian Federation. He suffers from a third stage HIV infection, hepatitis ‘B’, tuberculosis and psoriasis. Despite complaining to the prison administration, he has not received any treatment nor been hospitalized.<sup>149</sup>

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<sup>149</sup> HRMMU interviews, 4 October 2016, 1 and 2 November 2016.



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175. OHCHR is aware of one case of a death in custody involving a detainee from Sevastopol transferred to the Russian Federation. On 8 September, Valerii Ispendiarovych Kerimov died in a prison facility in Tlyustenkhabl, a settlement in the Teuchezhsky district, Republic of Adygea, Russian Federation. Kerimov was a Ukrainian citizen residing in Sevastopol. On 2 December 2014, he was arrested in Sevastopol for theft and, on 17 July 2015, sentenced by a ‘court’ in the same city to 6 years and 1 month in prison. At the moment of his arrest, Kerimov was said to suffer from hepatitis ‘B’, ‘C’ and tuberculosis. During his time in custody and prison, he did not receive adequate treatment, and in early 2016, was transferred to a prison colony in Tlyustenkhabl, Russian Federation. However, his condition only worsened. The prison administration did not provide Kerimov’s lawyer with any documents concerning his client’s state of health and medical treatment. The Kyiv-based Regional Centre for Human Rights (RCHR) and the Ukrainian Helsinki Human Rights Union (UHHRU) sent requests to the Ministry of Foreign Affairs of Ukraine and the Consul of Ukraine in Rostov-on-Don to visit Kerimov, but the visit was not carried out. On 29 August, the UHHRU invoked Rule 39 of the European Court of Human Rights on interim measures, which resulted in the Court requesting the Russian Federation to inform it of Kerimov’s health condition and his medical treatment. The legal procedure was interrupted on 8 September, when Kerimov died.

176. On 7 October 2016, Russian authorities rejected Ukraine’s extradition request for Oleh Sentsov, who was arrested in Crimea and transferred to the Russian Federation in 2014 for trial and detention. The extradition request was rejected on the grounds that Sentsov is a citizen of the Russian Federation, despite confirmation of his Ukrainian citizenship in April 2016 by the Russian Federation Commissioner for Human Rights.

### **E. Political rights**

177. On 18 September, the Russian Federation held parliamentary and local elections. For the first time, voting for national elections also took place on the Crimean peninsula, in violation of UN GA Resolution 68/262 on the territorial integrity of Ukraine. Seven candidates from the ‘republic of Crimea’ and the city of Sevastopol were elected to the Russian Federation Parliament.<sup>150</sup>

178. Even though the election campaign and voting appear to have proceeded without incident, it is of note that no international observers were present. Nonetheless, OHCHR received credible information that employees of state and public sector institutions in Crimea were instructed to vote and threatened with reprisals, including dismissal, if they failed to turn up. In addition, before the vote, there were reports of

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<sup>150</sup> Mikhail Sheremet (Vice Prime Minister), Ruslan Balbek (Vice Prime Minister) and Natalia Poklonskaya (Prosecutor General) were elected under the proportional system; Konstantin Bakharev (First Vice Speaker of the Parliament), Andrey Kozenko (Vice Speaker of the Parliament), Svetlana Savchenko (Head of the State Committee for Culture and Protection of Cultural Heritage) and Dmitry Belik (deputy director of the ‘BIG-CRIMEA’ company) were elected under the majoritarian system.

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pressure and house searches conducted by the ‘police’ against Crimean Tatar activists and Mejlis members who were advocating for a boycott of the elections. Earlier, the head of the Mejlis, Refat Chubarov, had called on Crimean residents not to vote so as not to legitimize the ‘occupation’ of the peninsula.

## **F. Right to education**

179. The start of the 2016-2017 school year in Crimea and the city of Sevastopol confirmed the continuous decline of Ukrainian as a language of instruction, a phenomenon observed since Ukraine’s loss of *de facto* sovereignty over the peninsula in March 2014, while an increasing number of Crimean Tatar parents appear to be making use of the possibility of educating their children in the Crimean Tatar language.

180. There are 533 schools in Crimea. Of the seven Ukrainian language education institutions that existed until 2014, the Simferopol Gymnasium School is the only one remaining. This year, however, it ceased instruction in Ukrainian in the first and second grade. The spokesperson of the Crimean ‘ministry of education’ attributed this to a supposed lack of interest among parents for continuing Ukrainian-language instruction.

181. Instruction in the Crimean Tatar language is provided in 14 national schools, which is one more than in 2014. Another 19 schools have classes in the Crimean Tatar language: six of them have two languages of instruction: Russian and Crimean Tatar; and 13 schools use Russian as a language of instruction but have classes in Crimean Tatar. According to the head of the Crimean Tatar NGO ‘Maarifchi’, Safure Kadzhametova, out of approximately 20,000 first-grade children, 825 are educated in Crimean Tatar language.

## **VII. Legal developments and institutional reforms**

### **A. Judicial reform**

182. On 30 September, Constitutional amendments<sup>151</sup> on the judiciary and the law ‘On the judicial system and the status of judges’<sup>152</sup> entered into force, launching the process of reforming the judiciary. A central feature of the reform is the intention to cleanse the judicial branch in order to restore public trust in an institution that has, for decades, been perceived as corrupt and lacking independence.

183. All judges appointed prior to the entry into force of the constitutional amendments will undergo an assessment of their compatibility,<sup>153</sup> which could result in dismissals.<sup>154</sup> This will primarily affect 1,232 judges who were appointed for an initial period of five years and whose tenure will be

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<sup>151</sup> Law of Ukraine “On amendments to the Constitution of Ukraine (regarding the judiciary)”, No. 1401-VII of 2 June 2016.

<sup>152</sup> Law of Ukraine “On the judicial system and the status of judges”, No.1402-VIII of 2 June 2016.

<sup>153</sup> The assessment will concern competence, professional ethics and integrity.

<sup>154</sup> The starting date and order for the compatibility assessment of judges, to be determined by the High Qualification Commission of Judges, is not known.

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automatically terminated at the end of their terms unless they pass such assessment.

184. The restructuring of the Supreme Court of Ukraine will lead to a reduction in the number of positions of judges in high judicial instances from the current 365 to 200. It is not clear whether current judges of the Supreme Court who fail to be re-appointed will be dismissed or transferred to lower instance courts, thus creating uncertainty and opposition to the reform.

185. Ukraine has 765 courts whose proper functioning requires the presence of 9,071 judges.<sup>155</sup> As of 15 November, 6,614 judges were employed. Six courts<sup>156</sup> have no judges and cannot operate while almost 25 per cent of courts are understaffed by up to 50 per cent.

186. On 8 and 22 September 2016, Parliament approved the resignation of approximately 1,000 judges, a majority of whom served for over 20 years. According to the head of the High Qualification Commission of Judges, courts could lose between 35 and 40 per cent of judges by the end of 2016 due to such resignations.<sup>157</sup>

187. A small number of judges have been dismissed under the lustration procedures established in the post-Maidan period. A temporary special commission found 46 judges guilty of having delivered politically motivated judgments in relation to the Maidan protesters.<sup>158</sup> The High Council of Justice upheld these findings for 29 judges, recommending their dismissal.<sup>159</sup> Allegations of violations committed by judges during Maidan were also addressed to the High Qualification Commission of Judges, which found seven judges guilty of disciplinary violations and recommended their dismissal.<sup>160</sup> To date, Parliament and the President have dismissed 31 judges.

188. Since December 2014, the High Qualification Commission of Judges recommended dismissal of 340 judges, in the majority of cases due to their collaboration with the *de facto* authorities of the Autonomous Republic of Crimea and the city

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<sup>155</sup> Interview of the Head of the Supreme Court of Ukraine, Yaroslav Romaniuk, published in the official newspaper of the Parliament of Ukraine 'Holos Ukrainy' - 2016.10.27. – № 204 (available at: <http://www.golos.com.ua/article/277914>).

<sup>155</sup> Information provided by the High Qualification Commission of Judges in a letter to HRMMU of 11 November 2016.

<sup>156</sup> Three courts do not operate due to the absence of hired judges: Mahdalynivskiy district court (Dnipropetrovsk region), Karlivskiy district court (Poltava region) and Shpolianskiy district court (Cherkasy region). Another three courts do not operate because the judges are awaiting the approval of their indefinite appointment upon termination of their five-year appointment: Yaremchanskiy city court (Ivano-Frankivsk region); Lokhvytskiy district courts (Poltava region); and Radyvylivskiy district court (Rivne region).

<sup>157</sup> HRMMU meeting with the Head of the High Qualification Commission of Judges on 3 October 2016.

<sup>158</sup> 7<sup>th</sup> OHCHR report on the human rights situation in Ukraine, paras. 184 - 185.

<sup>159</sup> The remaining complaints involving 305 judges, which have not been considered by the now defunct temporary special commission, are being reviewed by the High Council of Justice. As of mid-September 2016, the HCJ opened disciplinary proceedings against 46 judges, three of which have been completed. As a result two judges have been recommended for dismissal.

<sup>160</sup> In connection to the Maidan events the HQCJ received 149 complaints against judges and opened 98 disciplinary proceedings resulting in eight judges being brought to account with seven recommendations for dismissal on the grounds of violation of the oath. Other proceedings were closed as unsubstantiated (57) or due to an application of a statute of limitations (31).

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of Sevastopol (295 judges) or with the armed groups in the Donetsk (20) and Luhansk (1) regions.<sup>161</sup> As of 15 November, 299 judges have been dismissed.

189. Judges were also vetted under a lustration procedure launched pursuant to the Law “On the Cleansing of Government”,<sup>162</sup> resulting in the dismissal of eight judges.<sup>163</sup>

190. While the situation with understaffing precedes the current reform<sup>164</sup>, the high rate of resignations poses serious challenges to the rule of law and administration of justice. Effective selection and appointment procedures will therefore be required to make up for the resignations and dismissals and sustain proper operation of the court system.

191. The High Qualification Commission of Judges, which is in charge of the selection of judges, is considering the introduction of a simplified recruitment process for former candidates. This would reportedly allow around 400 positions to be filled.

192. In the context of the judicial reform, a draft law ‘On the High Council of Justice’ was developed and passed the first reading in Parliament on 3 November. Its adoption will give effect to the new powers of this body regarding the appointment, transfer, dismissal and disciplinary liability of judges. The new composition of this body, which aims to eliminate excessive influence of the executive, shall however only be effective by 30 April 2019 and therefore significantly delayed.

## **B. Criminal justice reform**

193. On 7 September, Parliament adopted a set of amendments<sup>165</sup> elaborated by the Ministry of Justice and the State Penitentiary Service facilitating the realisation of the right to pension by convicted persons, lifting some of the limitations on the use of personal money by such persons and allowing them to access the Internet. The amendments also grant convicts, including those sentenced to life imprisonment, the right to receive extended visits. They harmonise existing legal acts with the law ‘On probation’ adopted in February 2015 and provide for further humanisation of criminal legislation by prohibiting the imposition of a life sentence for the preparation of crimes and attempted crimes, with the exception of crimes against national security (articles 109-114-1) and crimes against peace (articles 437-439, 442(2), and 443). The amendments also enable the transfer of persons from one correctional centre to another, if

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<sup>161</sup> Another 24 recommendations for dismissal issued by the HQCJ were based on other general grounds and concerned judges from other regions.

<sup>162</sup> Law of Ukraine ‘On the cleansing of government’, No.1682-VII of 16 September 2014.

<sup>163</sup> According to the law on Government cleansing, the judges are subjected to the general lustration process in the country. For the two years of its application, the Ministry of Justice have submitted to the HCJ the information on about 70 judges providing grounds for their lustration, eight judges were dismissed according to the lustration criteria.

<sup>164</sup> On 1 January 2013, with a similar number of courts, 8,215 judges were employed.

<sup>165</sup> Law of Ukraine ‘On amendments to certain legislative acts of Ukraine concerning the enforcement of verdicts and realisation of the rights of convicts’, No. 1491-VIII of 7 September 2016 (entered into force on 8 October 2016).

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there are valid reasons for the placement of a convict closer to the place of residence of his/her relatives.

194. Also on 7 September, Parliament adopted legislative amendments<sup>166</sup> enhancing access to justice for persons held in pre-trial detention and imprisoned convicts. The amendments clarify that the appeals against decisions of the prison administration authorities and pre-trial detention institutions are to be reviewed by administrative courts. They also exempt convicts from the payment of court fees following the execution of a sentence provided they do not have enough money on their personal accounts. The amendments also provide for an urgent review - within 24 hours - of complaints concerning the disciplinary transfer of individuals to an isolation facility and complaints concerning forced feeding.

### **C. Draft law “On the Temporarily Occupied Territory of Ukraine”**

195. On 19 July, 29 members of parliament registered a draft law No. 3593-d ‘On the Temporarily Occupied Territory of Ukraine’ defining a single legal regime for Crimea and parts of the Donetsk and Luhansk regions that are not controlled by the Government. OHCHR has actively engaged with the Government and provided comments outlining the human rights impact of the draft law, if adopted in its current form.<sup>167</sup>

196. OHCHR is of the view that this draft law, which is mainly driven by security considerations, if adopted as it currently stands harms human rights, contravenes Ukraine’s international obligations and is likely unconstitutional. The fact that the draft law abrogates the responsibility of the Government to protect the life, health, property rights and ensure social obligations runs counter to the principle of territorial jurisdiction whereby the Government has positive obligations to use all legal and diplomatic means available to guarantee the rights of persons in uncontrolled territory. In addition, the blanket non-recognition of documents issued in the territories not controlled by the Government is not in line with international standards, supported by international jurisprudence, which imply the recognition of certain acts, such as civil registration documents (e.g. birth, death and marriage certificates), issued by *de facto* authorities. Differential treatment of residents of “temporarily occupied territory” with regard to sale, transfer, alienation and inheritance of property as well as moratorium of fines and penalties would violate the right to equal protection of the law without discrimination contained in article 26 of the ICCPR and article 14 of the ECHR. Terminating water and electricity supplies to the “temporarily occupied territory” would contravene both customary rules of international humanitarian law concerning relief, and human rights law requiring the Government to ensure minimum essential humanitarian supplies for the civilian population.

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<sup>166</sup> Law of Ukraine ‘On amendments to certain legislative acts of Ukraine (on enhancing the access to justice for persons held in pre-trial detention or prison facilities)’, No. 1492-VIII of 7 September 2016 (entered into force on 8 October).

<sup>167</sup> See paragraph 201 for further information.



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197. It is also questionable whether the wide restrictions to be applied – after the ‘liberation’ of the so-called ‘temporarily occupied territories’ – to the exercise of civil and political rights<sup>168</sup> as well as the freedom of movement, assembly and the media, conform to the principle of proportionality. In human rights law, restrictive measures must not only serve permissible purposes, they must also be necessary to protect them and constitute the “least intrusive instruments amongst those, which might achieve the desired result.”<sup>169</sup>

198. Also noteworthy is that the draft law, if adopted in its present form, would supersede existing legislation,<sup>170</sup> including the law ‘On interim self-government order in certain areas of the Donetsk and Luhansk regions’. The draft law would run counter to UN Security Council Resolution 2202(2015), which endorses the “Package of measures for the Implementation of the Minsk Agreements” adopted on 12 February 2015.

## **VIII. Technical cooperation and capacity-building toward the promotion and protection of human rights in Ukraine**

199. Throughout the period under review, OHCHR continued to develop its technical cooperation and capacity-building activities in Ukraine, guided by its mandate and further to its work within Human Rights Up Front to boost early warning throughout the UN system and its response to the ongoing crisis in Ukraine.

200. As a result of its findings, OHCHR has prioritized providing targeted technical cooperation on torture prevention. On 8-9 September, OHCHR organized a consultative workshop on the documentation and investigation of torture in Ukraine under the Istanbul Protocol, in partnership with the Ombudsperson’s institution, and carried out a range of follow-up activities with medical experts, government officials, and civil society to support Government efforts in fighting impunity and strengthen accountability for human rights violations. The results of the workshop will guide, in particular, OHCHR technical

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<sup>168</sup> According to the draft law, following the lifting of martial law, local elections are prohibited for a period of 2 to 6 years, depending on the administrative unit level, and voting for national elections is prohibited for 6 years.

<sup>169</sup> See General Comment No. 27, 1999, CCPR/C/21/Rev.1/Add.9, paras 11-16.

<sup>170</sup> The draft law would supersede the Law of Ukraine ‘On ensuring civil rights and freedoms and the legal regime on temporarily occupied territory of Ukraine’, No. 1207-VII, of 15 April 2014; Law of Ukraine ‘On creation of the “Crimea” free economic zone and on specifics of economic activity on the temporarily occupied territory of Ukraine’, No. 1636-VII, of 12 August 2014; Law of Ukraine ‘On temporary measures introduced for the period of anti-terrorist operation’, No. 1669-VII, of 2 September 2014. In addition, while not mentioned in the draft law, it would also replace legal acts governing the procedure of movement to and from non-Government-controlled territory: the ‘Temporary Order for monitoring of movement of persons, vehicles and goods along the contact line within Donetsk and Luhansk regions’ approved by a Decree of the First Deputy Head of the Anti-terrorist Centre within the State Security Service of Ukraine No.27 of 22 January 2015; and the ‘Order of entry to the temporarily occupied territory of Ukraine and exit from it’ approved by a Decree of the Cabinet of Ministers of Ukraine No. 367 of 4 June 2015 (applicable to Crimea only).

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cooperation and capacity building efforts with partners in Ukraine in the area of torture prevention for the remainder of 2016 and into 2017.

201. Following the workshop, OHCHR took part, on 23 September in a round table discussion on forensic services organized by the Parliamentary Committee for Healthcare and attended by parliamentarians, forensic experts, medical practitioners, lawyers, NGOs and ICRC. OHCHR presented its views on key parameters for an effective forensic service based on the recommendations of the Special Rapporteur on Torture contained in his 2014 report. Since, the General Prosecutor's Office has requested assistance in identifying international forensic expertise, which OHCHR will facilitate. Upon invitation, OHCHR joined a working group that will draft a law "On the National Forensic Bureau of Ukraine". Through such activities, OHCHR contributes to the reform and strengthening of the forensic service of Ukraine, an essential step toward improving documentation and investigation of torture and ill-treatment, and advancing the administration of justice in general.

202. OHCHR supported the start of the preparation of a new five-year compact between the UN system in Ukraine and the Government, known as the United Nations Development Action Framework (UNDAF), which will cover the period of 2018-2022. OHCHR strengthened the capacities of UN agencies to use a human rights-based approach to develop the UNDAF by organizing a dedicated learning and training session for UN system agencies and by integrating international human rights norms and standards assisting at identifying discriminatory practices that impede development into the Country Analysis.

203. OHCHR has also supported Ukraine in its engagement with UN human rights mechanisms. From 1 to 9 September, OHCHR in conjunction with UNHCR, supported the visit of the Special Rapporteur on the human rights of IDPs, Chaloka Beyani, to follow up on the recommendations made in his 2014 report to the Human Rights Council.<sup>171</sup> During the same period, the United Nations Subcommittee on Prevention of Torture (SPT) concluded its visit to Ukraine that had been suspended in May 2016 after being unable to access some places under the authority of the SBU. In advance of the mission, OHCHR facilitated the visit of one member of the SPT Secretariat to Kyiv in August, who led a joint OHCHR-Council of Europe-UNDP workshop on torture prevention which helped to raise awareness of the activities and mandate of the SPT among duty-bearers. This visit, combined with further advocacy and relationship building with relevant authorities, allowed the experts to return to Ukraine from 5 to 9 September to resume their mission, noting that Ukraine has made progress in improving conditions of detention in the country, in particular

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<sup>171</sup> "Ukraine: UN expert calls for comprehensive strategy to address IDPs' plight as winter closes in" 9 September 2016, Office of the High Commissioner for Human Rights (Accessible at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20472&LangID=E>).

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through reducing overcrowding in pre-trial detention centres.<sup>172</sup> In 2017, OHCHR will lead the joint UN submission to the Universal Periodic Review (UPR) assessing Ukraine's compliance with its international human rights obligations.

204. OHCHR has also supported the Government of Ukraine in ensuring that its policies comply with international human rights standards. OHCHR participated in expert discussions organized by the Ministry of Justice on amendments to the National Human Rights Action Plan (NHRAP). OHCHR successfully advocated for improvements aimed at defining concrete implementing authorities (ministries), and for the newly created Ministry on Temporarily Occupied Territories and IDPs to be included in activities relating to the protection of IDP rights and activities toward the protection of the rights of persons residing in Crimea and the territories controlled by the armed groups in eastern Ukraine. On 20-21 September, OHCHR contributed to a workshop aimed at better developing relevant indicators to measure the implementation of the NHRAP by sharing OHCHR-developed human rights indicators. In areas where Government policy raises human rights concerns, OHCHR has undertaken constructive engagement.

205. On 19 September, OHCHR participated in a round table discussion on Ukraine's derogation from human rights treaties, organized by the Parliamentary Committee on Foreign Affairs and the Committee on Human Rights. During the discussion, representatives of the Ministry of Justice, the Ministry of Foreign Affairs and the Prosecutor General's Office supported some of the recommendations made by OHCHR and the Council of Europe and acknowledged that some clarification of the duration and territorial application of the derogation was needed. The heads of the parliamentary committees on human rights and foreign affairs concluded by committing to establish a working group tasked to amend the May 2015 parliamentary Resolution on derogation.

206. OHCHR has also actively engaged with the Government on the draft law on temporarily occupied territory, conveying concerns in a written advisory communication to two parliamentary committees and the Ministries of Temporarily Occupied Territories and IDPs, Justice and Foreign Affairs.

## **IX. Conclusions and recommendations**

207. The apparent unwillingness of the parties to the conflict to implement their obligations stemming from Minsk Agreements has endangered civilians by continuing a pattern of hostilities in densely populated towns and neighbourhoods. Civilians living close to the contact line frequently appeal to OHCHR to bear witness and heed the destruction and damage that the ongoing conflict causes to their lives, while weapons prohibited by the Minsk Agreements remain in areas from which they should be withdrawn, and continue to be used.

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<sup>172</sup> Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment debriefing with the Government of Ukraine, 13 September 2016.

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208. The 13 per cent decrease in civilian casualties between 16 August and 15 November 2015 is testament to the importance of the full and effective implementation of the Minsk Package of Measures. The restoration of full control by the Government of Ukraine over parts of the border with the Russian Federation in certain areas of Donetsk and Luhansk regions, the withdrawal of foreign fighters, pull-out of all heavy weaponry, pardon and amnesty through law, in line with international law and with due regard for human rights is critical to ensure human rights protection for all those living in the conflict-affected area and the establishment of the rule of law in Ukraine.

209. The consistent presence and operations of OHCHR on either side of the contact line allow for early and responsive monitoring of the human rights situation in the conflict-affected area. Information gathered during the reporting period confirms that the local population suffers from insecurity, military engagement near their homes, the threat of mines and unexploded ordnance, and severe and disproportionate restrictions on their freedom of movement. The reported continued flow of weapons and ammunition to the conflict area, which results in serious human rights violations and abuses and violations of international humanitarian law, compounds their suffering.

210. Civilians living in close proximity to the contact line have limited or no access to water and electricity as a direct result of ongoing hostilities. It is of deep concern that Government forces and armed groups operating in civilian areas do not take all feasible precautions against the effects of fighting, resulting in damage to schools, kindergartens, and medical facilities. Ukrainian military forces and armed groups continued to be positioned in civilian homes and buildings in villages and towns adjacent to the contact line.

211. The lack of protection for the civilian population is exacerbated by the armed groups' undue restrictions preventing civil society and humanitarian actors from carrying out humanitarian activities including protection on territories controlled by the armed groups.

212. The derogation of the Government from the International Covenant on Civil and Political Rights in June 2016 toward people living in the territories controlled by the armed groups broadens the protection gap. The registered draft law 'On the Temporarily Occupied Territory of Ukraine' risks undermining human rights and contravening Ukraine's international obligations, violating the right to equal protection and customary rules of international humanitarian law concerning relief, and human rights law requiring the Government to ensure minimum essential humanitarian supplies for the civilian population.

213. IDPs have faced eviction as the Government has shown disregard for their rights and particular needs. During his visit to Ukraine, the Special Rapporteur on the human rights of internally displaced persons found that IDPs in Ukraine face a number of problems when accessing their rights, ranging from

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freedom of movement to social protection and housing, land and property issues.<sup>173</sup>

214. Ukraine still lacks a comprehensive policy regarding national minorities. The most recent case of Roma forced eviction from Loshchynivka village, Odesa region, was a stark reminder of the need for a human rights-based approach at all levels of government.

215. Judges and lawyers have an essential role to play in protecting persons against discrimination, particularly women, children and minorities, and ensure that existing laws and regulations prohibiting discrimination are respected in legal practice. Such protections apply equally to IDPs, Roma and survivors of conflict-related human rights violations and abuses. To play this role in providing equal protection to all Ukrainians, judges and lawyers must be protected from politicized assaults on their independence. Repeated interference with the independence of the judiciary in the cases relating to the 2 May 2014 violence in Odesa have aggravated the slanted nature of investigations and resulted in unjustified delays. Deficit in good governance and widespread corruption continue to contribute to a lack of trust in Government institutions and instability.

216. The majority of individual cases documented by OHCHR in Ukraine concern violations and abuses of human rights in detention and places of deprivation of liberty. While armed groups continued to deny external independent monitors access to persons deprived of their liberty, OHCHR was able to record and verified allegations of torture and ill-treatment in armed group custody. However, without unfettered access to all those deprived of their liberty by the armed groups, OHCHR has serious concerns that they may be subject to torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment), including sexual and gender-based violence. OHCHR also continued to record cases of *incommunicado* detention by the SBU, and noted that Ukrainian courts regularly enforce mandatory detention of suspects in conflict-related cases, raising concerns of arbitrary detention and highlighting the need to bring the Code of Criminal Procedure in line with international standards.

217. While there has been some progress in investigations into the killings at Maidan in January and February 2014, OHCHR notes that perpetrators of human rights abuses and violations enjoy a persistent and broad climate of impunity. This jeopardizes accountability and the right of victims to remedy. Throughout its work and engagement with the Government of Ukraine, OHCHR has emphasized the need for accountability to promote reconciliation, the rule of law in accordance with international human rights law, and restore confidence in the institutions of the State.

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<sup>173</sup> “Ukraine: UN expert calls for comprehensive strategy to address IDPs’ plight as winter closes in” 9 September 2016, Office of the High Commissioner for Human Rights (Accessible at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20472&LangID=E>).



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218. The significant rise in cases of killings and attacks on journalists appear related to their professional activities and intended to threaten and stifle their reporting. Such attacks take place against a backdrop of political figures using damaging rhetoric that encourages a lack of respect for the life and work of journalists. Greater protection for journalists is critical for ensuring society's access to information and for government accountability, across the country.

219. To ensure accountability and curtail impunity, it is critical for Ukraine to have a robust and independent judiciary. The Constitutional amendments regarding the judiciary introduced on 30 September set out a clear path of reform. An independent – and fully staffed and resourced – judiciary is critical for ensuring accountability for human rights and international humanitarian law violations, and providing an impartial and objective foundation upon which to ensure that all Ukrainians enjoy equal protection under the rule of law.

220. The human rights situation in Crimea continued to raise serious concerns. The arbitrary detention of individuals on grounds of their political opinion and expression continues to be worrying. The 18 September Russian Federation parliamentary and local elections held on the Crimean peninsula were held in violation of UN General Assembly Resolution 68/262 on the territorial integrity of Ukraine, and were marked by intimidation and violations targeting Crimean Tatars and members of the Mejlis, contributing to the climate of repression against dissenting voices.

221. OHCHR has been progressively integrating support to humanitarian, development, technical assistance and capacity-building dimensions in its work, including through targeted cooperation with key Government institutions and ministries. OHCHR has also engaged on the protection of human rights with the armed groups of 'Donetsk people's republic' and 'Luhansk people's republic'.

222. Most recommendations made in the previous OHCHR reports on the human rights situation in Ukraine have not been implemented, and remain valid. In addition, OHCHR calls upon all parties to implement the following recommendations:

223. **To the Government of Ukraine:**

- a) **Judiciary to enforce the principle that laws and policies of the Government of Ukraine are bound to respect human rights standards, including the right to equal treatment and the principle of non-discrimination; and ensuring broad application of such equal protection to minorities, persons affected by the armed conflict, IDPs, older persons and persons with disabilities;**
- b) **Cabinet of Ministers to take measures to facilitate freedom of movement to and from Crimea, including by reconsidering restrictions on the transportation of personal belongings stemming from Resolution 1035 of 16 December 2015;**
- c) **Headquarters of the 'Anti-Terrorism Operation' to reconsider the restrictions on freedom of movement**

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imposed by the Temporary Order *vis-à-vis* international law, particularly the legality, necessity and proportionality of the restrictions on movement of civilians and goods, while the State Border Service take measures to shorten processing time, provide necessary facilities and establish effective complaint mechanisms;

- d) Penitentiary Service to ensure that medical personnel in pre-trial detention facilities (SIZO) provide medical certificates to detainees and register any recorded injuries with specific attention to the situation of female detainees;
- e) Security Service of Ukraine (SBU) to immediately release all persons held *incommunicado* in unrecognized places of detention, including the five remaining individuals held in the Kharkiv SBU and three individuals held in Mariupol SBU;
- f) National police to ensure the protection of courtrooms, including judges, lawyers, accused, victims and witnesses through adequate and effective presence during trials, with adequate support and resources allocation by the Government;
- g) Ombudsperson's office to pursue its challenge of the constitutionality of article 176(5) of the Code of Criminal Procedure as it leads to arbitrary detention;
- h) Main Investigation Department of the National Police together with the inter-agency operational group, to promptly proceed with the investigation into Pavel Sheremet's death on 20 July 2016 to ensure accountability; Ministry of Internal Affairs to ensure effective investigation into the killing of Oles Buzyna on 15 April 2015;
- i) Cabinet of Ministers to set up a register of civilians who suffered physical injuries as a result of hostilities in eastern Ukraine, determine their legal status and consider extending social entitlements to this category of persons;
- j) Ministry of Social Policy to ensure the availability of specialised psycho-social support and counselling to relatives of missing persons;
- k) Cabinet of Ministers, particularly the Ministry of Social Policy, to act on the observations made by the Special Rapporteur on the human rights of internally displaced persons during his visit to Ukraine in September 2016, to urgently delink pensions and social benefits from registration, as this has affected around 500,000 IDPs, whose situation is further aggravated by the onset of winter;
- l) Cabinet of Ministers, particularly the Ministry of Social Policy and the Ministry of Temporarily Occupied Territories and IDPs, in a coordinated manner, to prioritise durable housing for IDPs, many of whom are elderly and have disabilities, together with access to livelihood opportunities;

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- m) **Government to develop a comprehensive legal framework including a fact-finding and assessment mechanism for damaged and destroyed property, and enable the affected population to access effective remedy, noting that many IDPs left property behind in armed group-controlled and conflict-affected areas;**
  - n) **Government to strengthen accountability and protection services to ensure survivors' rights to seek redress and reparation for sexual and gender-based violence.**

224. **To all parties involved in the hostilities in Donetsk and Luhansk regions, including the armed groups of 'Donetsk people's republic' and 'Luhansk people's republic':**

- a) **Adhere to the ceasefire and implement other obligations contained in Minsk Agreements, in particular regarding withdrawal of prohibited weapons;**
- b) **Comply with the 21 September Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware;**
- c) **Guarantee the facilitation of unimpeded humanitarian assistance to civilians in need without distinction;**
- d) **Target only military objectives in line with binding legal obligations, prohibit indiscriminate attacks – which do not distinguish between civilians and fighters, and ensure that subordinates do not direct attacks against civilians;**
- e) **Avoid under all circumstances carrying out any attacks that are expected to cause incidental loss of civilian life, injury to civilians and damage to civilian objects excessive to the anticipated concrete and direct military advantage;**
- f) **In order to ensure greater protection of the civilian population and essential infrastructure, cease the use of mortars and other indirect and imprecise weapons in civilian-populated areas, and not place soldiers, fighters or other military objectives in populated areas;**
- g) **Treat all those detained in connection with the conflict including soldiers and fighters humanely in all circumstances;**
- h) **Allow unfettered access to international independent and impartial observers to persons deprived of their liberty, keep a detailed register of every person deprived of liberty and inform families of detainees where they are held; and ensure that the detention of juveniles comply with the Convention on the Rights of the Child, the Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;**
- i) **Facilitate civilians' freedom of movement and transportation of goods across the contact line according**

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to norms and principles of international humanitarian law.

225. To the *de facto* authorities of Crimea and to the Russian Federation:

- a) Guarantee the human rights of all inhabitants of Crimea, without discrimination;
- b) Bring an end to the displacement from the territory of Crimea to the Russian Federation of persons who have no Russian citizenship, including those sentenced to imprisonment;
- c) Respect and ensure the right to health, including sexual and reproductive health rights of all persons detained in Crimea or transferred to the Russian Federation following such detention, including proper medical treatment and hospitalization, when necessary;
- d) Ensure adequate medical care and treatment to detainees in pre-trial detention facilities and prisons;
- e) Refrain from practices such as forcible psychiatric hospitalization, which may amount to ill-treatment;
- f) Uphold freedom of opinion and release all persons who have been arrested and charged for expressing their views on the status of Crimea;
- g) Allow Crimean Tatars to choose their own self-governing institutions;
- h) Allow unimpeded access to Crimea for all regional and international human rights bodies in order to enable them to monitor the human rights situation in accordance with their mandates.

# Annex 774

OHCHR, Report on the Human Rights Situation in Ukraine (16 February to 15 May 2017)






**Office of the United Nations High Commissioner  
for Human Rights**

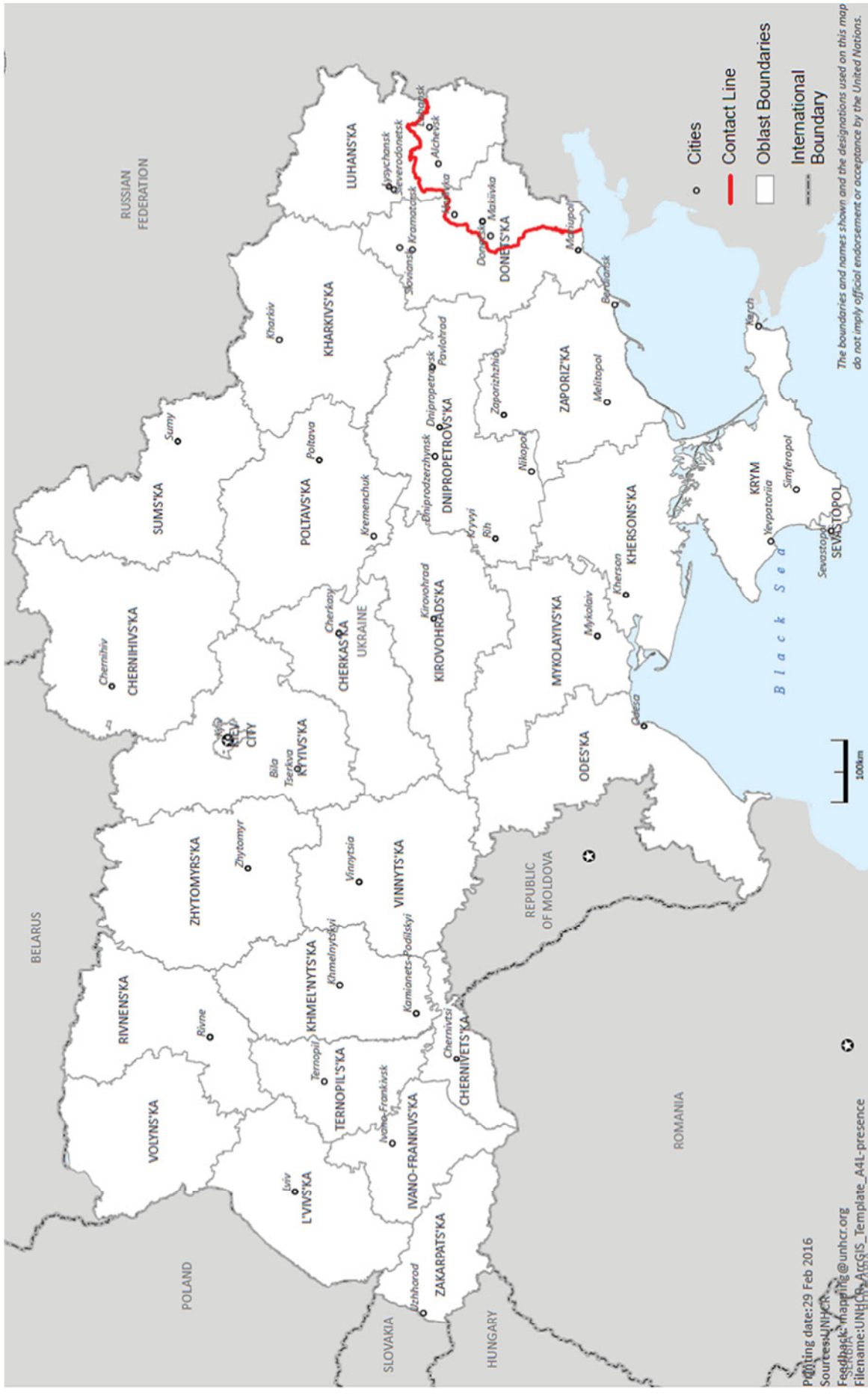
**Report on the human rights situation in Ukraine  
16 February to 15 May 2017**



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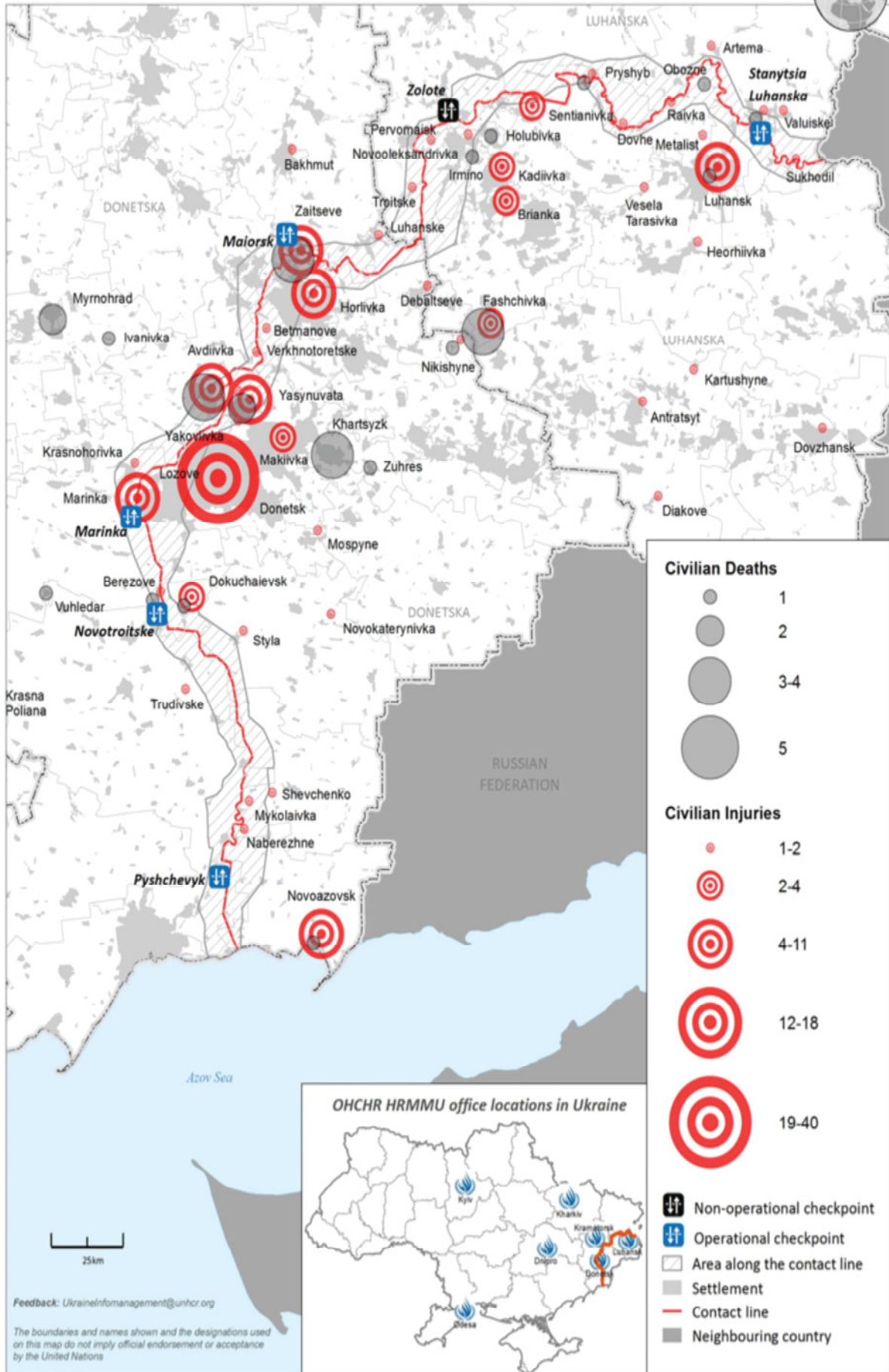
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# Ukraine: Civilian casualties along the contact line, 16 February - 15 May 2017

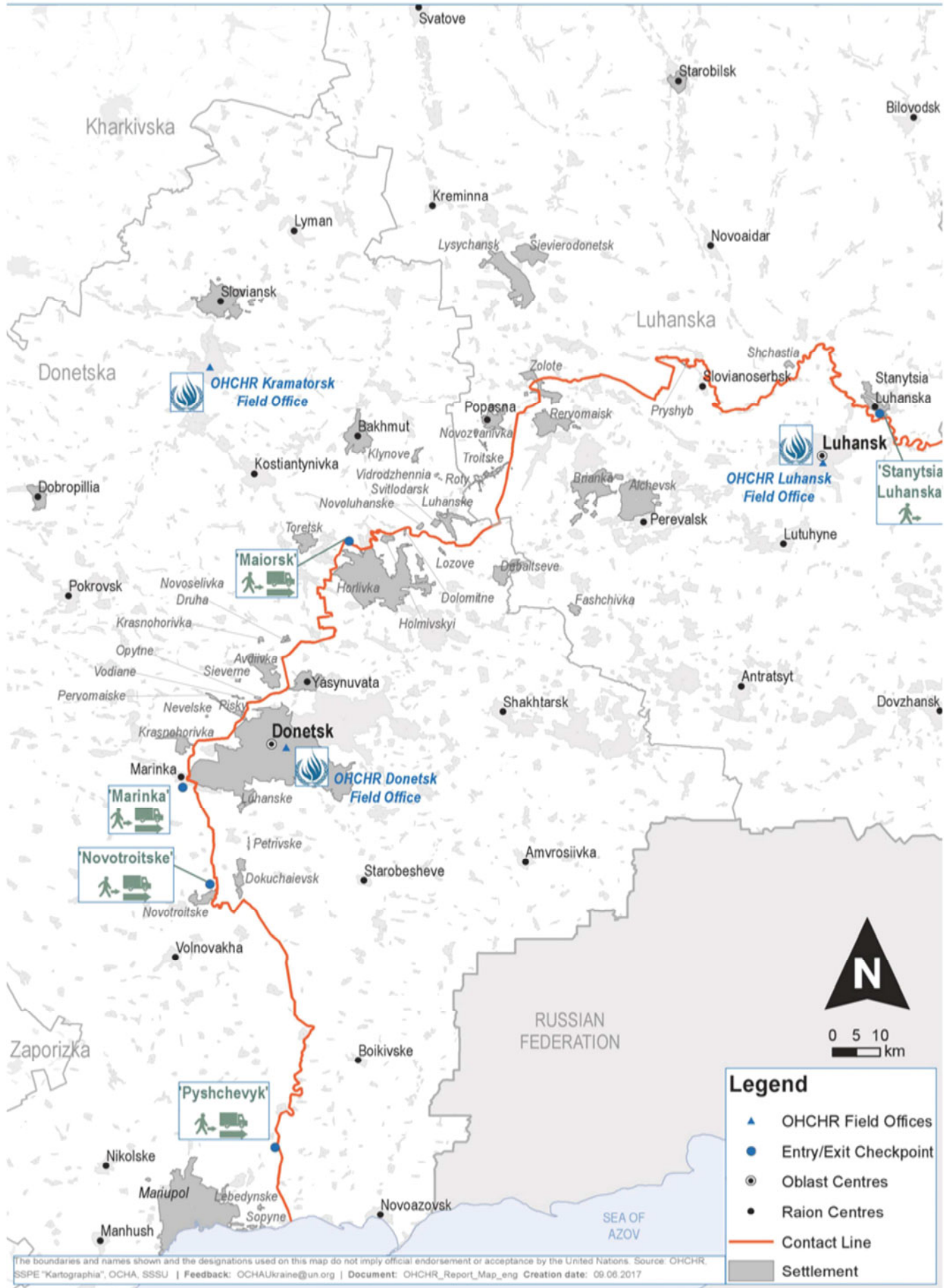


Feedback: [Ukraineinfomanagement@unhcr.org](mailto:Ukraineinfomanagement@unhcr.org)

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations



# Locations in Donetsk and Luhansk regions mentioned in this report



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations. Source: OHCHR, SSPE "Kartographia", OCHA, SSSU | Feedback: OCHAUkraine@un.org | Document: OHCHR\_Report\_Map\_eng Creation date: 09/06/2017

## I. Executive summary

1. Based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), this eighteenth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the human rights situation in Ukraine covers the period from 16 February to 15 May 2017.

2. HRMMU is mandated to monitor, document and publicly report on the human rights situation in Ukraine. The findings presented in this report are grounded in data collected by HRMMU through in-depth interviews conducted with 252 witnesses and victims of human rights violations and abuses, as well as site visits in both Government-controlled and armed groups-controlled territory. HRMMU also carries out follow-up activities to facilitate the protection of individuals concerned in the cases it documents, including through trial monitoring, detention visits, referrals to State institutions, humanitarian organizations and non-governmental organizations, and cooperation with United Nations Human Rights Council Special Procedures mandate holders and Human Rights Treaty Bodies.

3. During the reporting period, the conflict entered its fourth year and the risk of a significant escalation remains high. Since it broke out in the Donetsk and Luhansk regions of eastern Ukraine in April 2014, the conflict has been exacerbated by the inflow of foreign fighters, and supply of ammunition and heavy weaponry, reportedly from the Russian Federation.<sup>1</sup> Daily ceasefire violations recorded by the Special Monitoring Mission of the Organization for Security and Co-operation in Europe (OSCE)<sup>2</sup> demonstrated the routine use of heavy weaponry, and that indiscriminate shelling continued to take a heavy toll on civilian lives, property and critical infrastructure, including those supplying water, electricity and gas, and health and educational facilities. Despite efforts to peacefully resolve the conflict, the parties continued to fail to implement their commitments made under the Minsk agreements,<sup>3</sup> notably a full and immediate ceasefire, and the withdrawal of heavy weapons from the contact line.

4. Between 16 February and 15 May 2017, OHCHR recorded 193 conflict-related civilian casualties: 36 deaths and 157 injuries, 42 per cent of which were caused by shelling. This is a 48 per cent increase compared with the previous reporting period of 16 November 2016 to 15 February 2017, when OHCHR recorded 130 civilian casualties (23 deaths and 107 injuries; 65 per cent caused by shelling). In total, from 14 April 2014 to 15 May 2017,

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<sup>1</sup> OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2015, paragraphs 2, 6; OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2015, paragraphs 2, 58-59; OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2015, paragraphs 2, 22 (see also fn. 128); OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, paragraph 2 (see also fn. 3).

<sup>2</sup> OSCE daily reports on ceasefire violations, available at <http://www.osce.org/ukraine-smm/reports/>.

<sup>3</sup> The Package of Measures for the Implementation of the Minsk Agreements calls for: an immediate and comprehensive ceasefire; withdrawal of all heavy weapons from the contact line by both sides; commencement of a dialogue on modalities of local elections; legislation establishing pardon and amnesty in connection with events in certain areas of Donetsk and Luhansk regions; release and exchange of all hostages and unlawfully detained persons; safe access, delivery, storage, and distribution of humanitarian assistance on the basis of an international mechanism; defining of modalities for full resumption of socioeconomic ties; reinstatement of full control of the state border by the Government of Ukraine throughout the conflict area; withdrawal of all foreign armed groups, military equipment, and mercenaries from Ukraine; constitutional reforms providing for decentralization as a key element; and local elections in certain areas of Donetsk and Luhansk regions. United Nations Security Council Resolution 2202 (2015), available at <http://www.un.org/press/en/2015/sc11785.doc.htm>. See also Protocol on the Results of the Consultations of the Trilateral Contact Group regarding Joint Measures Aimed at the Implementation of the Peace Plan of the President of Ukraine P. Poroshenko and Initiatives of the President of the Russian Federation V. Putin, available at <http://www.osce.org/home/123257>; Memorandum on the Implementation of the Protocol on the Results of the Consultations of the Trilateral Contact Group regarding Joint Measures Aimed at the Implementation of the Peace Plan of the President of Ukraine P. Poroshenko and Initiatives of the President of the Russian Federation V. Putin, available at <http://www.osce.org/home/123806>.

OHCHR recorded 34,056 casualties among civilians, the Ukrainian military and members of armed groups. This includes 10,090 people killed, including 2,777 civilians, and 23,966 injured.<sup>4</sup>

5. With no end to the conflict in sight, there is heightened concern for the protection of civilians as the summer months approach, when hostilities may spike (as witnessed in previous years). It is crucial to ensure that residential areas and critical civilian infrastructure is not targeted, and that uninterrupted operation of water and power supply, among other life-saving infrastructures, can be maintained.

6. Lack of progress or tangible results in investigations and legal proceedings connected to conflict-related cases, including those which are high profile, contribute to the sense of stagnation of the conflict. Three years after the violence at Maidan in Kyiv and Odesa, which together claimed the lives of at least 169 people, no one has been held accountable for these deaths.

7. OHCHR recorded new accounts of summary executions, arbitrary deprivation of liberty, and torture/ill-treatment committed on both sides of the contact line, most of which occurred prior to the reporting period, but were only recently documented.<sup>5</sup> In conflict-related cases, detention on remand was often utilized as the only measure of restraint by the judiciary, despite international standards pertaining to the right to liberty and security of person and the presumption of innocence, which call for consideration of alternative measures. Previously identified patterns of torture and ill-treatment by Ukrainian forces of individuals accused of conflict-related charges persisted throughout this reporting period, although at a lesser gravity and frequency compared with previous years of the conflict. OHCHR is deeply troubled by allegations indicating the systematic use of torture and ill-treatment by the Security Service of Ukraine (SBU) against conflict-related detainees in order to extract confessions. The lack of effective investigation into complaints of torture and ill-treatment fuels a sense of impunity surrounding such actions. Conflict-related sexual violence also persisted, most often in the context of deprivation of liberty, at a similar level as recorded in the previous reporting period.

8. Restrictions on the freedom of movement at the contact line had a wider impact on the population due to a sharp rise in the number of people crossing it in March. The increase was caused by a new Government requirement that internally displaced persons (IDPs) entitled to pensions and social payments renew their bank registration at locations in Government-controlled territory. Long queues at entry-exit checkpoints exposed civilians, particularly the most vulnerable, such as pensioners, persons with disabilities and women, to degrading conditions for protracted periods and to the risk of injury or death from shelling. Restrictions on freedom of movement in some villages located near the contact line impeded the enjoyment of social and economic rights, including the rights to social protection, to the highest attainable standard of physical and mental health, and to housing, land and property. Access to some of these villages was so restrictive that IDPs who had fled them earlier due to the conflict were unable to return, reunite with families, check on their property, or farm their land. Those who have remained in such villages are isolated and fully dependent on either the Ukrainian military or armed groups to deliver essentials such as water, bread and fuel.

9. OHCHR observed the ongoing deterioration of freedom of expression in conflict-affected areas, particularly in territory controlled by armed groups. Access to information,

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<sup>4</sup> This is a conservative estimate based on available data. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and to overall under-reporting, especially of military casualties. Injuries have been particularly under reported.

<sup>5</sup> Not all new cases are reflected in this report, as OHCHR strives to maintain the highest protection of individuals through strict adherence to the principles of confidentiality and informed consent. Several victims and witnesses interviewed by OHCHR either did not want to share essential information, or did not consent to their accounts being publicly reported, for fear of reprisals.

freedom of the media and plurality of opinion remained severely limited and journalists exposed to intimidation and threats. Impunity continued to prevail for those obstructing journalists' activities, with only 7.1 per cent of related criminal complaints reaching courts.

10. The space for civil society and humanitarian activities shrank significantly during the reporting period, impacting vulnerable groups and persons with scarce economic resources. Notably, in territory controlled by armed groups of the self-proclaimed 'Donetsk people's republic', a major private organization providing humanitarian assistance to 500,000 individuals was forced by armed groups to halt operations. Access to persons in need by humanitarian organizations in territory controlled by armed groups has been seriously hindered by an 'accreditation' system imposed by these groups. Humanitarian and human rights activists operating in Government-controlled territory also faced impediments at checkpoints.

11. The fragile socio-economic situation of people living on both sides of the contact line fell to a new low, hampered by economic stagnation with limited employment prospects and means to carve out a livelihood. Demobilised soldiers and former members of volunteer battalions in Government-controlled territory continued to block the transportation of cargo over the contact line. Armed groups of the self-proclaimed 'Donetsk people's republic' and 'Luhansk people's republic'<sup>6</sup> seized control of approximately 54 enterprises located in areas under their control and introduced a form of "temporary external management". The Government endorsed the blockade as an official policy. The accumulated impact of these actions on the people living on both sides of the contact line has yet to be seen.

12. In the absence of access to Crimea, OHCHR continued to monitor the human rights situation from its offices in mainland Ukraine, guided by United Nations General Assembly resolutions 68/262 and 71/205. In that context, it observed that several court decisions were issued against members of the Crimean Tatar community, in apparent disregard for fair trial guarantees. Gross violations of the right to physical and mental integrity were also documented on the basis of interviews conducted with 12 convicts formerly detained in Crimea and the Russian Federation. On 1 April, the 2017 campaign for military conscription in the Russian Federation army started which, in the case of Crimean residents, violates the international prohibition to compel them to military service in the armed forces of the Occupying Power.<sup>7</sup> OHCHR also analyzed recent decisions affecting property rights in Crimea and noted with concern the diminishing space for Ukrainian as a language of instruction in education.

13. On 19 April, the International Court of Justice delivered its Order on provisional measures in proceedings brought by Ukraine, concluding that the Russian Federation must refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis, and ensure the availability of education in the Ukrainian language.<sup>8</sup> The Order also asserts that the Russian Federation and Ukraine should work towards full implementation of the "Package of Measures" in order to achieve a peaceful settlement of the conflict in eastern Ukraine.

14. Ukraine continued to implement judicial reform measures on the basis of constitutional amendments adopted in June 2016. Several codes and legal acts were amended, introducing notably e-governance, subject-matter jurisdiction rules, and the use of mediation as a means of dispute resolution. In the area of criminal justice, Parliament

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<sup>6</sup> Hereinafter 'Donetsk people's republic' and 'Luhansk people's republic'.

<sup>7</sup> Article 51, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War.

<sup>8</sup> The court also found that the conditions required for the indication of provisional measures with regard to Ukraine's claims against the Russian Federation based on the International Convention for the Suppression of the Financing of Terrorism were not met. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (*Ukraine v. Russian Federation*), Order on Request for the Indication of Provisional Measures, 19 April 2017, available at <http://www.icj-cij.org/docket/files/166/19394.pdf>.

expanded the list of crimes in relation to which proceedings may be pursued *in absentia*. It also extended the application of a lower threshold for such proceedings, which was introduced in May 2016 as a temporary measure. OHCHR reiterates its position that this risks violating due process and fair trial rights.<sup>9</sup>

15. OHCHR continued to engage in technical cooperation and capacity-building activities with the Government of Ukraine and civil society in order to strengthen the protection and promotion of human rights.

## II. Rights to life, liberty, security, and physical integrity

### A. International humanitarian law in the conduct of hostilities

*“We have been expecting response fire for a while. It is wrong when they shoot from the village and hide behind our houses. They should shoot from [the fields] instead.”*

- Resident of a village near the contact line

16. On 14 April, hostilities in eastern Ukraine entered their fourth year. Amidst continuing diplomatic efforts to ensure compliance with the Minsk agreements, the situation remained tense and dangerous for civilians, with spikes in late February and early and late March, and recurrent fighting in several hotspots<sup>10</sup> along the contact line, as in previous reporting periods.

17. Decisions by the Trilateral Contact Group in Minsk re-committing the sides to adhere to the ceasefire from 1 April, and again from 13 April, did not take hold, with the OSCE Special Monitoring Mission (SMM) recording brief respites followed by upsurges of ceasefire violations. The main ingredients for the escalation of hostilities – presence and use of heavy weapons near the contact line and in proximity of opposing positions – were not removed, despite the parties’ commitment to the withdrawal of heavy weapons, with devastating impact on civilian lives, property and infrastructure. The use of artillery, including multiple-launch rocket systems, continued in Donetsk and Luhansk regions throughout the reporting period.<sup>11</sup>

18. Indiscriminate shelling and the presence of Ukrainian Armed Forces and armed groups near water facilities in Donetsk region continued to have a detrimental impact on the supply of water on both sides of the contact line. The Donetsk Filtration Station, which serves 345,000 people<sup>12</sup> in Avdiivka, Yasynuvata and parts of Donetsk, stopped operations six times during the reporting period due to renewed shelling and resulting damage.<sup>13</sup> Each such incident resulted in water supply interruptions on both sides of the contact line and threatened the life and physical integrity of employees. Mariupol, where nearly 450,000 people currently

<sup>9</sup> See OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, para. 173.

<sup>10</sup> Avdiivka-Yasynuvata-Donetsk airport, areas east of Mariupol, the western outskirts of Horlivka, and the areas south of Svitlodarsk, all in Donetsk region; and the Popasna-Troitske-Pervomaisk area in Luhansk region.

<sup>11</sup> See SMM daily reports, e.g. of 1 May 2017, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/314691>, and 4 May 2017, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/315686>.

<sup>12</sup> Figures provided to the WASH Cluster by water supply company ‘Voda Donbasa’ as of December 2016.

<sup>13</sup> According to WASH Cluster reports, DFS was non-operational on 18 February and from 24 February to 4 March, 5 to 8 March, 11 to 17 March, 29 March to 5 April, and 2 to 7 May 2017.



reside, has been receiving insufficient water and relying on a natural back-up reservoir since January 2017 due to damage to the South Donbas water pipeline. Another concern is shelling in the vicinity of the First Lift Pumping Station of the South Donbas water pipeline.<sup>14</sup> This facility is an essential part of water infrastructure as it supplies raw water to five filtration stations which, in turn, process water for over one million people living on both sides of the contact line, from Mariupol in the south to the northwestern border of Donetsk region.

19. OHCHR is particularly concerned that chlorine warehouses at the Donetsk Filtration Station were hit by shelling several times during the reporting period, as was a wastewater treatment plant in Yasynuvata. While leakage of chlorine was reportedly prevented, OHCHR recalls that five water facilities located close to the contact line, on both sides, which store in total almost 350 metric tons of chlorine, are exposed to shelling, which would pose a major risk to public safety and the environment.

20. The presence of a large number of mines and unexploded ordnance in areas close to the contact line in Donetsk and Luhansk regions continued to pose a serious threat to civilians. In violation of their commitments under the Minsk agreements, all sides continued laying new mines rather than systematically clearing or marking mines and other hazards, or fencing them off.<sup>15</sup> On 23 April, a vehicle of an OSCE SMM patrol was destroyed in an explosion, most likely caused by a land mine, on a regularly used road in Pryshyb village (controlled by armed groups) of Luhansk region, killing one and injuring two patrol members.<sup>16</sup> The following day, in Fashchivka village (armed-group-controlled), also in Luhansk region, a tractor came into contact with a land mine, which caused the death of three civilians.<sup>17</sup>

21. During the reporting period, OHCHR continued to witness the positioning of Ukrainian Armed Forces and armed groups in or nearby residential areas, without taking necessary precautions, in violation of international humanitarian law.<sup>18</sup> According to residents, the occupation and use of residential neighbourhoods by Ukrainian Armed Forces have often been followed by shelling of the areas.<sup>19</sup>

22. In Government-controlled territory, OHCHR recorded the military use of residential civilian property by Ukrainian Armed Forces in numerous towns and villages.<sup>20</sup> In Novoluhanske, the military occupied a multi-story house close to a school, and in Toretsk, a military base was located in a communal property building close to the city hospital. In Novotroitske, OHCHR observed that a former boarding school in the immediate proximity of

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<sup>14</sup> The 1<sup>st</sup> Lift Pumping Station was shelled on 27 and 28 February; 11, 27 and 31 March; and 1, 27, 28 and 29 April 2017.

<sup>15</sup> See Minsk Memorandum of 19 September 2014 and TCG decision on mine action of 3 March 2016. In early May, the SMM noted anti-tank mines for the first time both in territory controlled by the Government and territory controlled by armed groups, see the Mission's daily reports, e.g. of 8 May 2017, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/315996>. For Ukraine, this is also a violation of its obligations under the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.

<sup>16</sup> The event claimed the first fatality since the Mission's establishment in March 2014. See <http://www.osce.org/special-monitoring-mission-to-ukraine/312971>.

<sup>17</sup> See SMM daily report of 30 April 2017 available at <http://www.osce.org/special-monitoring-mission-to-ukraine/314571>.

<sup>18</sup> Article 13(1), Additional Protocol II to the Geneva Conventions stipulates that "the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations." This includes the obligation for each party to the conflict to avoid, to the extent feasible, locating military objectives within or near densely populated areas. The location of military objectives in civilian areas runs counter to this obligation. Henckaerts, Doswald-Beck, Customary International Humanitarian Law, Volume I, Rule 23.

<sup>19</sup> E.g. in Luhanske, HRMMU interview, 30 March 2017; Vidrozhennia, HRMMU field visit and interviews, 6 April 2017; Nevelske, HRMMU interview, 29 March 2017; Kamianka, HRMMU interviews, 23 March 2017; and Krasnohorivka of Yasynuvata district, HRMMU interviews, 23 March 2017.

<sup>20</sup> During the reporting period, OHCHR observed military occupation of civilian property in Pisky, a Government-controlled part of Zaitseve, Novoselivka Druha, Avdiivka, Zolote-4, Klynove, Roty, Novozvanivka, Vidrozhennia, Troitske, Novoluhanske, Toretsk, Luhanske, Shchastia, and Pervomaiske in Yasynuvatskyi district.

a functioning kindergarten, as well as a vacant building of a local hospital were occupied by the Ukrainian military.<sup>21</sup>

23. OHCHR has received numerous reports of, and observed signs of looting of private houses temporarily abandoned by owners displaced from villages along the contact line.<sup>22</sup> There are indications that elements of the Ukrainian Armed Forces may be implicated in some such incidents. Some civilians informed OHCHR that they had opted to remain in their homes to protect their property after witnessing the looting of neighbouring homes,<sup>23</sup> which exposes them to the dangers of active hostilities, including shelling. OHCHR recalls that pillage is prohibited under customary international law applicable in both international and non-international armed conflicts, as well as explicitly by the Fourth Geneva Convention.<sup>24</sup>

24. In territory controlled by armed groups, OHCHR observed a similar pattern of armed formations using residential areas for firing positions and occupying residential property. OHCHR was informed that three houses in Lozove<sup>25</sup> were at the time occupied by members of armed groups. On 10 April, in Dolomitne, where OHCHR observed the presence of armed groups close to residential houses, the home of an elderly couple was hit by a projectile and burned down. When visiting shelled areas in territory controlled by armed groups, OHCHR often noted fresh traces of heavy vehicles, indicating the recent presence of armed formations.<sup>26</sup>

25. OHCHR reiterates that presence in or use of civilian housing, by Ukrainian Armed Forces and armed groups puts civilians at risk, and violates the obligation of parties to a conflict to take all feasible measures to spare civilians from harm,<sup>27</sup> besides violating the rights to adequate housing and property.

26. As in the previous reporting period, OHCHR noted examples where the Ukrainian Armed Forces vacated their quarters in residential neighbourhoods in Vidrodzhennia<sup>28</sup> and Nevelske<sup>29</sup>, which led to a reduction in shelling in such areas. OHCHR commends the Government of Ukraine for taking such action, which demonstrates that measures to protect civilians during armed conflict are both feasible and effective towards compliance with obligations under international humanitarian law.

## B. Civilian casualties

27. Between 16 February and 15 May 2017, OHCHR recorded 193 conflict-related civilian casualties<sup>30</sup>: 36 deaths (21 men, 11 women, three boys, and an adult whose sex is unknown)

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<sup>21</sup> HRMMU field visits, 11 April, 3 May 2017.

<sup>22</sup> Villages of Pisky, Nevelske, Klynove, and Novoselivka Druha.

<sup>23</sup> HRMMU interview, 27 April 2017.

<sup>24</sup> Article 4(2)(g), Additional Protocol II to the Geneva Conventions.

<sup>25</sup> HRMMU interview, 27 March 2017.

<sup>26</sup> A pattern also regularly reported by the OSCE SMM, *see, e.g.*, <http://www.osce.org/special-monitoring-mission-to-ukraine/304526>. Although OHCHR regularly observes the presence of armed groups in villages close to the contact line, civilians are reluctant to speak of or complain about the use of their neighbourhoods by armed groups for firing positions.

<sup>27</sup> Article 13(1), Additional Protocol II to the Geneva Conventions; Henckaerts, Doswald-Beck, *Customary International Humanitarian Law*, Volume I, Rules 22 and 23.

<sup>28</sup> HRMMU field visit and interviews, 6 April 2017.

<sup>29</sup> HRMMU interview, 29 March 2017.

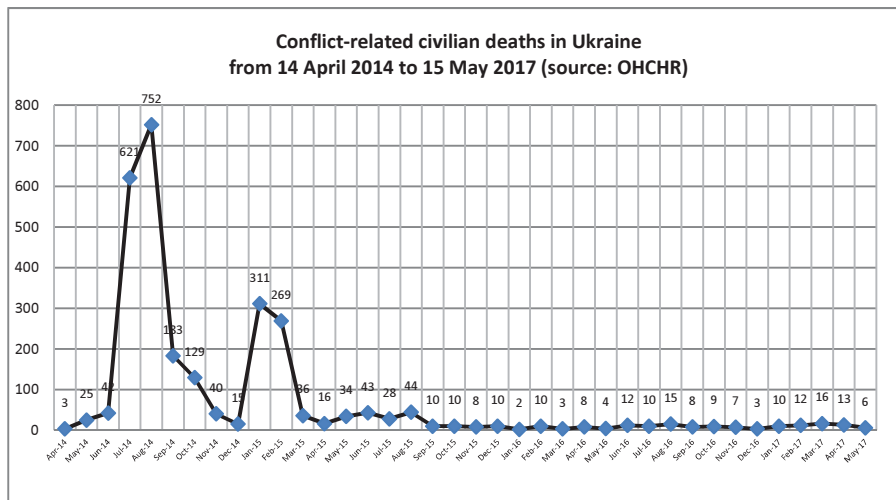
<sup>30</sup> OHCHR investigated reports of civilian casualties by consulting a broad range of sources and types of information which are evaluated for credibility and reliability. In undertaking documentation and analysis of each incident, OHCHR exercises due diligence to corroborate information on casualties from as wide a range of sources as possible, including OSCE public reports, accounts of witnesses, victims and other directly affected persons, military actors, community leaders, medical professionals, and other interlocutors. In some instances, investigations may take weeks or months before conclusions can be drawn. This may mean that conclusions on civilian casualties may be revised at a later date as more information becomes available. OHCHR does not claim that the statistics presented here are complete. Civilian casualties may be under-reported given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods. The increase in the number of casualties

and 157 injuries (90 men, 55 women, nine boys, a girl and two adults whose sex is unknown). This is a 48 per cent increase compared with the previous reporting period of 16 November 2016 to 15 February 2017, during which OHCHR recorded 130 civilian casualties (23 deaths and 107 injuries).

	Adults			Children			Total
	Women	Men	Sex unkn.	Girls	Boys	Sex unkn.	
Killed	11	21	1		3		36
Injured	55	90	2	1	9		157
Total	66	111	3	1	12		193

Type of incident/weapon	Killed		Injured		Total
	Adults	Children	Adults	Children	
Mines, ERW, booby traps, IEDs and explosions of ammunition depots	19	3	60	4	86
Shelling (mortars, guns, howitzers, MLRS and tanks)	11		66	5	82
Small arms and light weapons	2		21	1	24
Other conflict-related incidents	1				1
TOTAL	33	3	147	10	193

28. During the whole conflict period, from 14 April 2014 to 15 May 2017, at least 2,479 civilians were killed: 1,367 men, 826 women, 90 boys and 47 girls, and 149 adults whose sex is unknown.<sup>31</sup> An additional 298 civilians, including 80 children, were killed as a result of the MH17 plane crash on 17 July 2014. The number of conflict-related civilian injuries is estimated at 7,000-9000.



between the different reporting dates does not necessarily mean that these casualties happened between these dates. They could have happened earlier, but were recorded by a certain reporting date.

<sup>31</sup> Numbers may change as new information emerges over time.

29. In total, from 14 April 2014 to 15 May 2017, OHCHR recorded 34,056 conflict-related casualties in Ukraine, among civilians, Ukrainian military and members of the armed groups. This includes 10,090 people killed and 23,966 injured.<sup>32</sup>

### C. Missing persons

30. The exact number of individuals missing as a result of the conflict remains undetermined.<sup>33</sup> The lack of coordination among the governmental bodies concerned and the absence of exchange of forensic information between the Government of Ukraine and relevant actors of ‘Donetsk people’s republic’ and self-proclaimed ‘Luhansk people’s republic’ persisted. OHCHR encourages the Government of Ukraine and armed groups to exchange DNA material and anthropometric data to facilitate the process of identification of bodies.<sup>34</sup> OHCHR is of the view that the whereabouts of a considerable number of those missing could be established, and the uncertainty and despair borne by their relatives relieved, if a proper search mechanism was put in place. OHCHR regrets that the adoption of legislation ‘On the legal status of missing persons’, which foresees the establishment of a commission for missing persons, was still pending as of 15 May 2017.<sup>35</sup>

31. During the reporting period, OHCHR documented additional cases of persons who have been missing since 2014 and 2015. During individual interviews, victims’ relatives complained that they could not access information about the fate or whereabouts of their loved ones.<sup>36</sup>

### D. Summary executions, deprivation of liberty, enforced disappearances, torture and ill-treatment, and conflict-related sexual violence

32. In territory controlled by the Government of Ukraine, OHCHR continued to enjoy effective access to official places of detention, and interviewed conflict-related detainees in pre-trial detention facilities (SIZOs) in Bakhmut, Dnipro, Kharkiv, Kherson, Kyiv, Mariupol, Mykolaiv, Odesa, Poltava, Starobilsk, Vilniansk, Zaporizhzhia and Zhytomyr. In territory controlled by armed groups, OHCHR continued to lack full and unfettered access to places of deprivation of liberty. Access to persons detained was granted only on an *ad hoc* basis, and on such occasions, interviews could not be conducted confidentially.

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<sup>32</sup> This is a conservative estimate based on available data. These totals include: casualties among the Ukrainian military, as reported by the Ukrainian authorities; 298 people from flight MH17; civilian casualties on the territory controlled by the Government, as reported by local authorities and the regional departments of internal affairs of Donetsk and Luhansk regions; and casualties among civilians and members of the armed groups on the territory controlled by the self-proclaimed ‘Donetsk people’s republic’ and the self-proclaimed ‘Luhansk people’s republic’, as reported by the armed groups, the so-called ‘local authorities’ and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, as well as overall under-reporting, especially of military casualties. Injuries have been particularly under-reported.

<sup>33</sup> The open database of individuals who went missing in the context of the conflict maintained by the National Police of Ukraine listed 1,335 persons as of 20 April 2017. The Security Service of Ukraine considered 416 individuals as missing as such as of 21 March 2017. The ‘ombudsman’s office’ of the ‘Donetsk people’s republic’ recorded 450 missing persons as of 19 April 2017.

<sup>34</sup> OHCHR recalls the obligation of parties to a conflict to take all feasible measures to account for persons reported missing as a result of armed conflict and provide family members with any information it has on their fate. Henckaerts, Doswald-Beck, Customary International Humanitarian Law, Volume I, Rule 117.

<sup>35</sup> See OHCHR report on the human rights situation in Ukraine covering 16 November 2016 to 15 February 2017, para. 150-152.

<sup>36</sup> HRMMU interviews, 24 and 27 March 2017.

## 1. Summary executions

*“There are many sick people walking around with guns these days. No UN or OSCE can protect us. If they want to kill us, they will just come. Who can protect us from this?”*

- Resident of a village near the contact line

33. During this reporting period, OHCHR documented cases of summary executions and wilful killings that occurred since 2014 until now. Some illustrative cases are presented below.

34. OHCHR welcomes the efforts of the Government to investigate recent cases of extrajudicial executions and other killings. Investigative actions have become timelier; suspects were identified and detained shortly after the incidents. It is of concern, however, that superiors who may have ordered or concealed crimes have not brought to justice. For example, in the ongoing trials regarding the torture of Oleksandr Agafonov<sup>37</sup> whilst in SBU custody and his subsequent death in Izium police station in 2014, as well as the case of two members of the Ukrainian Armed Forces<sup>38</sup> suspected of killing two women in Luhanske on 14 June 2015,<sup>39</sup> the actions of the commanders were not examined.

35. OHCHR has been following two recent cases of extrajudicial executions and other killings allegedly committed by Ukrainian forces. On 10 March, the body of a man who went missing in Avdiivka on 3 March 2017 was found near Krasnohorivka. An SBU officer suspected of committing the crime was taken into custody in March, but released on bail. The pre-trial investigation is ongoing, with concerns for the safety of relatives and witnesses.<sup>40</sup> In another case, a man discovered on 23 September 2016 that his house in Pishchane had been looted and set on fire, and that his relative who had been living there was missing. Police discovered the relative’s body buried in a nearby forest, with traces of four bullet wounds. Out of 11 members of the Ukrainian Armed Forces suspected of involvement in this crime, only five are on trial, and only one has been charged with committing murder.<sup>41</sup>

### *Armed groups*

36. OHCHR is also following the case of two residents of Horlivka who went missing in October 2016. Their bodies were reportedly found on 20 March 2017 buried in Horlivka, but their relatives were not able to see and identify the bodies. The victims were allegedly shot dead by members of armed groups in October 2016. Their relatives were informed that the alleged perpetrators were being detained and the ‘investigation’ ongoing.<sup>42</sup>

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<sup>37</sup> For further details, see OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2015 (para. 114) and covering the period from 16 November 2015 to 15 February 2016 (para. 71).

<sup>38</sup> The defendants were acquitted on 3 February 2017 despite strong evidence presented in court. Relatives of the victims and the prosecutor filed an appeal. The verdict was quashed on 11 April 2017 and the case sent back to the first instance court.

<sup>39</sup> HRMMU interviews, 6 March, 11 April 2017.

<sup>40</sup> HRMMU interviews, 16, 21, 22 and 24 March, 21 April 2017.

<sup>41</sup> HRMMU interviews, 23 February, 21 March 2017.

<sup>42</sup> HRMMU interview, 21 March 2017.



## 2. Unlawful/arbitrary deprivation of liberty, enforced disappearances, and abductions

37. OHCHR continued to document cases of individuals unlawfully or arbitrarily deprived of their liberty or subjected to enforced disappearances and abductions. While some of these cases occurred in 2014 or 2015, OHCHR continued to receive recent testimonies indicating that such practices were persisting, particularly in territory controlled by armed groups. In a number of cases, the victims' families did not have access to those detained and had no information on their whereabouts, which may amount to enforced disappearance.

38. In April 2017, two men were detained by police in Bakhmut, taken to an unknown location outside town, where one was kept for three days and the other for one day *incommunicado*. They were each tortured while being questioned about their participation in armed groups in 2014. Both were severely beaten and one was subjected to electric shocks in the genitals. Both victims were transferred to the pre-trial detention facility and charged with participation in an armed group.<sup>43</sup>

39. On 19 November 2016, a former member of an armed group was detained at the border while crossing into the Russian Federation, and was interrogated by Ukrainian border guards.<sup>44</sup> The following day, he was taken by police investigators to Sloviansk, with his hands tied with duct tape. He was detained in the Sloviansk police building for two weeks, repeatedly interrogated, constantly moved from one room to another, and signing in and out of the logbook every four hours "in order to comply with the law".<sup>45</sup> He could not inform his relatives about his whereabouts and had no access to a lawyer. On 9 December 2016, the Sloviansk city district court remanded him to pre-trial detention. He only met his free legal aid lawyer in court and, as of 15 May 2017, remained in detention.

40. OHCHR also continued to observe that in conflict-related cases<sup>46</sup>, detention is often used as the only preventive measure.<sup>47</sup> Under international human rights standards pertaining to the right to liberty and security of a person, individuals awaiting trial shall not be detained as a general rule.<sup>48</sup> Rather, pre-trial detention must be demonstrated as necessary in the specific case, "to prevent flight, interference with evidence, or the recurrence of crime"<sup>49</sup> and "should be an exception and as short as possible."<sup>50</sup>

### *Armed groups*

41. During the reporting period, OHCHR continued to document cases of armed groups of 'Donetsk people's republic' and 'Luhansk people's republic' detaining individuals suspected of affiliation with the Ukrainian Armed Forces or for having 'pro-Ukrainian' views. For example, in January 2017, a 16-year-old girl was detained at a checkpoint with her

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<sup>43</sup> HRMMU interview, 4 May 2017.

<sup>44</sup> HRMMU interview, 15 February 2017.

<sup>45</sup> HRMMU previously documented the case indicating same practice of arbitrary detention.

<sup>46</sup> These individuals are mostly detained on the following charges: actions aimed at forceful change or overthrow of the constitutional order or takeover of Government (article 109 of the Criminal Code of Ukraine); trespass against territorial integrity and inviolability of Ukraine (article 110); high treason (article 111); trespass against life of a statesman or a public figure (article 112); sabotage (article 113); espionage (article 114); intentional homicide (article 115); act of terrorism (article 258); involvement in a terrorist act (article 258-1); public incitement to commit a terrorist act (article 258-2); creation of a terrorist group or organization (article 258-3); facilitating a terrorist act (article 258-4); financing of terrorism (article 258-5); and creation of unlawful paramilitary or armed formations (article 260). In rare cases, articles 437 (planning, preparing and waging aggressive war or military conflict) and 438 (violation of law and customs of war) have been applied.

<sup>47</sup> Pursuant to changes in the Criminal Procedure Code since 7 October 2014, all forms of preventive measures other than detention cannot be applied in conflict-related cases, while they are allowed for all other crimes. *See also* "Due process, fair trial rights, and interference with judiciary" *below*.

<sup>48</sup> ICCPR, article 9 (3).

<sup>49</sup> Communications No. 305/1988, *Van Alphen v. Netherlands*, Views adopted by the Human Rights Committee on 23 July 1990, para. 5.8; Communication No. 248/1987, *Campbell v. Jamaica*, Views adopted by the Human Rights Committee on 30 March 1992, para. 6.3. *See also* European Convention on Human Rights art. 5(1)(c).

<sup>50</sup> Human Rights Committee, general comment No. 8, para. 3.

father. She was interrogated for seven hours by ‘ministry of state security’ (‘MGB’) representatives without the presence of her parents or a lawyer. She was searched by a man, although she insisted on a woman conducting the body search. She was released on the same day.<sup>51</sup>

42. OHCHR is following the cases of two individuals detained by ‘MGB’ of ‘Luhansk people’s republic’. A blogger who lived in Luhansk and published information about daily life there was detained in November 2016. He was ‘charged’ with “espionage” against the ‘Luhansk people’s republic’ on behalf of the Ukrainian authorities and “inciting inter-ethnic hatred”. Apart from a few videos of his “confession” which were published by ‘MGB’, there is no information about his whereabouts or fate. Vitalii Rudenko, a judge at the Luhansk regional court of appeal, was detained at the Stanytsia Luhanska crossing point in October 2016. As of 15 May 2017, he remained detained in Luhansk and OHCHR was denied access to him.<sup>52</sup> In addition, OHCHR remains concerned about the fate of five adolescents from Yasynuvata who have been detained by ‘MGB’ in Donetsk since the end of August 2016<sup>53</sup> and calls for their immediate release.

43. Armed groups continued the practice of 30-day ‘administrative arrest’, during which victims are not allowed to see lawyers or relatives, and which is often prolonged. OHCHR documented the cases of two men detained by ‘MGB’ in Donetsk city in February 2017.<sup>54</sup> In one case, armed men wearing camouflage and balaclavas broke into a man’s house in Donetsk and arrested him in front of his family, including his child.<sup>55</sup> The following day, ‘MGB’ confirmed the man was under 30-day ‘administrative arrest’. In March, ‘MGB’ informed his family that the detention was prolonged for another 30 days, without providing any information on his whereabouts. The victim was only allowed to call his wife twice<sup>56</sup>, and during the first call, she understood by his voice that he was in physical pain. In April, the family was informed that the victim had been charged with “espionage”. As of 15 May, his place of detention remained unknown and his lawyer did not have unimpeded access to him.<sup>57</sup>

44. In November 2016, armed men in camouflage and balaclavas entered a woman’s house in Donetsk, conducted a ‘search’, and took her to an unknown direction. Her relatives were later informed by ‘MGB’ that she was under 30-day ‘administrative arrest’ but with no indication as to the reasons for this or her whereabouts. In February 2017, the family was informed that the victim was transferred to the ‘pre-trial detention facility’ (‘SIZO’) in Donetsk city where she remained as of 15 May.<sup>58</sup>

45. OHCHR documented cases of detention of civilians by the ‘police department for fighting organised crime’ (‘UBOP’) in Donetsk city. For example, in December 2016, a man was apprehended by unknown armed men in his home in Donetsk. A ‘search’ was conducted and some of his personal belongings were ‘confiscated’. Allegedly, the victim was detained by ‘UBOP’, severely beaten, and required medical care at a hospital before being admitted to the ‘SIZO’ in Donetsk.<sup>59</sup>

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<sup>51</sup> HRMMU interview, 11 April 2017.

<sup>52</sup> HRMMU interview, 24 April 2017.

<sup>53</sup> HRMMU interview, 28 April 2017.

<sup>54</sup> HRMMU interview, 19 April 2017.

<sup>55</sup> HRMMU interview, 10 March 2017.

<sup>56</sup> On 6 and 27 February 2017.

<sup>57</sup> The lawyer does not have regular access to his client, and when he is able to speak with him, there are restriction placed. HRMMU interview, 24 April 2017.

<sup>58</sup> HRMMU interview, 24 April 2017.

<sup>59</sup> HRMMU interview, 22 February 2017.

### 3. Torture and ill-treatment

*“Thinking about my finger being cut off was too much for me, so I told them what they wanted to hear.”*

– Victim of torture

46. OHCHR documented new cases of individuals accused of conflict-related charges being subjected to torture and ill-treatment on both sides of the contact line, a pattern which has been previously identified by OHCHR.<sup>60</sup> While the gravity and frequency of such cases has reduced compared to the previous years of conflict, the practice has persisted. Victims of torture who remained in detention continued to have limited access to healthcare, which often aggravated their condition.<sup>61</sup>

47. OHCHR recorded new accounts from victims and witnesses suggesting the systematic use of torture and ill-treatment of conflict-related detainees by SBU officials in order to extract confessions.

48. During the reporting period, OHCHR documented five cases involving nine individuals who were tortured at the Kharkiv SBU premises in 2015-2016,<sup>62</sup> some of which are described below. On 29 April 2015, an anti-Maidan activist was detained by 15 unidentified armed men, who took him to the Kharkiv SBU building, where he was beaten with a baseball bat and subjected to waterboarding. The perpetrators also removed his pants and burned his buttocks with a lighter, while demanding he confess to storing weapons. The victim consequently suffers from a permanent limp.<sup>63</sup> Another victim was detained and beaten in his apartment by SBU Alfa squad on the night of 30 May 2015, before being taken to the Kharkiv SBU building, where he was thrown on the floor, kicked and punched by officers while handcuffed. During interrogation, the victim was subjected to the “swallow” torture method: while standing on his back, the perpetrators raised the victim’s arms behind his back, causing great pain to joints.<sup>64</sup> Another victim was brought to the Kharkiv SBU building on 29 May 2015, after being detained at a checkpoint. Officers beat and punched him, demanding he confess to terrorist activities.<sup>65</sup> All three victims were transferred to the pre-trial detention center in Kharkiv, where they remained as of 15 May 2017.

49. OHCHR also documented new cases of torture and ill-treatment of former members of armed groups. On 8 October 2016, a member of an armed group was captured by Ukrainian forces near Vodiane village. Although he had been shot, he was not provided with medical aid. He was taken to the Mariupol SBU building, where he was interrogated about the armed groups’ military positions. He was kicked until he fell to the ground, and a plastic bag was fixed over his head with duct tape, causing suffocation. The perpetrators threatened to hurt his family and to send him to clear a minefield. The victim remained in detention as of 15 May.<sup>66</sup> Similarly, a member of the armed groups was detained in April 2015 and brought to the SBU building in Mariupol. He was kept for a five-day interrogation, during which he was beaten all over the body, electrocuted, waterboarded and threatened with execution. The

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<sup>60</sup> See OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 42-50.

<sup>61</sup> HRMMU interview, 6 April 2017.

<sup>62</sup> HRMMU interviews, 28 February, 7, 10, 15 and 29 March, 12 April 2017; Trial monitoring, 14 and 26 April 2017.

<sup>63</sup> HRMMU interview, 7 March 2017.

<sup>64</sup> HRMMU interview, 10 March 2017.

<sup>65</sup> HRMMU interview, 29 March 2017.

<sup>66</sup> HRMMU interview, 15 February 2017.

detainee was then transferred to the pre-trial detention centre in Starobilsk, where he remained as of 15 May.<sup>67</sup>

50. In December 2016, a former member of an armed group was detained in Zolote-4. He was shot in the leg, then his hands were duct-taped and his head was covered. While he was lying on the ground, the officers hit his face with the butt of a gun, breaking his lip. He was then put in a vehicle, where he was beaten and kicked while being interrogated. After a few hours, he was brought to the Sievierodonetsk SBU, where he was further interrogated. The investigator presented him his ‘testimony’, forcing him to sign it without reading. He was subsequently allowed to see a lawyer and taken to a hospital. As of 15 May, the victim remained in pre-trial detention centre in Starobilsk.<sup>68</sup>

51. On 24 June 2016, members of the Ukrainian Armed Forces detained a member of an armed group in Luhansk region, after wounding him. He was transferred to SBU in Starobilsk where he was interrogated and beaten by three SBU officers for four hours until he signed a “confession” written by one of the officers. He was then taken to a hospital and tied to a bed. One of the officers who guarded him directed a lamp into his eyes and left it on for two days. After he was released from hospital, the victim was transferred to Sievierodonetsk SBU, where he had access to a lawyer for the first time. As of 15 May, he remained in pre-trial detention centre in Starobilsk.<sup>69</sup>

52. OHCHR is concerned about ineffective investigations into allegations of torture and ill-treatment brought by victims to law enforcement officers or raised in court. According to the SBU, the incidents in June and December 2016 described above were reviewed, however neither the investigating judge nor regional SBU office found grounds to request an official investigation. Three investigations and 14 audits of possible human rights violations in SBU facilities in Luhansk region were also carried out, however no unlawful acts were found., Furthermore, there have been no developments in the investigations led by the Military Prosecution of allegations of arbitrary detention and ill-treatment in 13 incidents allegedly involving SBU officers in Odesa and Zaporizhzhia. The victims have not yet been interviewed by the prosecutor.<sup>70</sup>

53. OHCHR also followed at least 12 individual cases where victims raised allegations of torture and ill-treatment before court. In these cases, undue delays occurred in entering the allegations in the unified registry and in taking investigative steps. OHCHR recalls that the Government bears primary responsibility to conduct full-scale, prompt, impartial and effective investigations into human rights violations and to prosecute perpetrators, whether they are elements of Government forces or members of armed groups. The Government must also establish effective complaint mechanisms, prompt and effective ex officio investigation into cases of torture and ensure that any person who has been subjected to torture has access to an effective remedy.

#### *Armed groups*

54. OHCHR continued documenting cases of torture on territory controlled by armed groups. Due to limited access to places of deprivation of liberty, OHCHR is often able to document such cases only after the release of individuals, when they move to Government-controlled territory and are able to speak more freely about their experiences.

55. In October 2016, a man was detained at a checkpoint controlled by armed groups in Donetsk region and brought to a ‘police unit’ in Donetsk. He was interrogated on three occasions, and severely kicked and beaten with fists and a truncheon while handcuffed. Three

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<sup>67</sup> HRMMU interview, 13 April 2017.

<sup>68</sup> HRMMU interview, 21 February 2017.

<sup>69</sup> HRMMU interview, 21 February 2017.

<sup>70</sup> See OHCHR report OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 66.

or four times, a plastic bag was put over his head, causing him to suffocate. One of the interrogators threatened to cut off one of his fingers, and made him believe this act was imminent. Another perpetrator threatened him with a gun, saying his body would be found in the river. The victim was also subjected to electric shocks on his back, head and the flank of his body. He was released in December 2016.<sup>71</sup>

56. OHCHR also documented the case of a man who was detained at a checkpoint run by an armed group in March 2015, and brought to Dokuchaievsk. He was tortured by armed men in uniforms of ‘Donetsk people’s republic’, beaten with truncheons until they broke, subjected to electric shocks, and smashed in the head. He was brought to a hospital and then transferred to the seized former SBU building in Donetsk city, where he was tortured again in the same manner. Later, the victim was tied to a chair, interrogated, and beaten with a plastic pipe. One of the perpetrators fastened a belt around his neck and tightened it until the victim lost consciousness. Electric shocks were used repeatedly. The perpetrators also threatened that he would be forced to blow himself up. The victim was released in April 2016.<sup>72</sup>

57. OHCHR obtained more details on the case of 13 Ukrainian soldiers captured by armed groups near Debaltseve in February 2015.<sup>73</sup> The victims were struck in the head with rifle butts, forced to remove their jackets despite the very low temperatures, and ordered to kneel for four hours in the snow, causing their legs to go numb. Some members of the armed groups put knives to their faces and threatened: “What do you want me to cut off, an eye or an ear?” All the victims were subsequently transferred to a building in Luhansk, allegedly housing the ‘separate commandant’s regiment of the 2<sup>nd</sup> army corps of ‘Luhansk people’s republic army’. During interrogations, the soldiers were severely beaten. One soldier was held in a cell with a civilian whose body was completely blue, ostensibly as a result of severe beatings. The civilian stated that he was accused by armed groups of being a spotter and was tortured until he ‘confessed’. The soldiers were later released while the fate of the civilian remained unknown.

58. OHCHR also documented the case of three Ukrainian soldiers who were captured by armed groups of ‘Prizrak’ (phantom) battalion in Luhansk region in August 2014. They were beaten all over their body by several armed men every evening. One perpetrator with the call sign “Leshyi” stabbed the victim in the palm, cut his finger and broke his arm with the butt of a machine gun. Requests for medical aid were denied and food was not provided. The victims were also subjected to mock executions. One victim was transferred to another building, where he was kept in solitary confinement and regularly beaten. The perpetrators also poured icy water on his head, broke his arm and shot him in the foot. He was taken to the toilet and severely hit with rifle butts. When he was lying on the floor, bleeding, a fake grenade was thrown into the toilet. After that, the wife of one of the commanders urinated on him. He was released towards the end of the 2014.<sup>74</sup>

#### **4. Exchanges of individuals deprived of liberty**

59. No releases within the “all for all” exchange foreseen in the Minsk agreements took place during the reporting period, despite ongoing discussions of the Working Group on Humanitarian Issues of the Trilateral Contact Group in Minsk, and the attestation of the willingness of individuals in Government custody to be relocated to territory controlled by armed groups upon their release which was carried out from 28 April to 12 May.

60. The Government continued to urge for the release of 121 individuals who are believed to be held in captivity by the armed groups, while the armed groups acknowledged holding only

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<sup>71</sup> HRMMU interview, 22 February 2017.

<sup>72</sup> HRMMU interview, 16 February 2017.

<sup>73</sup> HRMMU interviews, 23 February 2017. *See also* OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 50.

<sup>74</sup> HRMMU interview, 14 April 2017.



47 of them.<sup>75</sup> The armed groups were seeking the release of 771 individuals who they believed were held or residing in Government-controlled territory.

61. OHCHR considers it essential that individuals who are exchanged are not relocated to the other side of the contact line against their will. OHCHR also reiterates that no impunity should be granted to perpetrators of war crimes in the context of the pardoning or amnesty envisaged in the Minsk agreements.

## **5. Transfers of pre-conflict prisoners to Government-controlled territory**

62. The total number of pre-conflict prisoners in territory controlled by armed groups is estimated at approximately 9,500.<sup>76</sup> On 11 April, 14 pre-conflict prisoners from several penal colonies controlled by the ‘Donetsk people’s republic’ were transferred to Mariupol SIZO. According to the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson’s Office of Ukraine), since 2015, 147 prisoners were transferred from territory controlled by armed groups of the ‘Donetsk people’s republic’. As of May 2017, at least 735 prisoners had filed requests to the Ombudsperson’s Office of Ukraine and supposedly to the relevant ‘authorities’ of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ indicating their wish to be transferred to Government-controlled territory.

## **6. Conflict-related sexual violence**

63. During the reporting period, OHCHR continued to document cases of conflict-related sexual violence. Most of the cases reflected in the report took place in 2015-2016. Similarly as for torture, these cases are often reported only after a certain time has passed following the violation. As described in previous report of HRMMU,<sup>77</sup> sexual violence has most often been perpetrated in the context of deprivation of liberty, against both men and women and may, in some instances, amount to torture.

64. The presence of armed actors in residential areas remained one of the highest risk factors for sexual and gender-based violence, especially against women. When victims have reported these crimes, effective investigations have been rare due to shortcomings in legislation and lack of will and capacity of law enforcement. Victims living in territory controlled by armed groups have been particularly hesitant to report the incidents, including due to fear and absence of access to justice. The identification and documentation of sexual violence cases has also been impeded by the lack of regular access to places of deprivation of liberty in territory controlled by armed groups.

65. OHCHR continued to verify allegations of torture with elements of sexual violence perpetrated by SBU officers against conflict-related detainees with a view to extracting confessions.<sup>78</sup> For example, OHCHR interviewed two men detained by SBU in April 2015 on conflict-related charges.<sup>79</sup> One was stopped on the road by unidentified armed men, handcuffed and hooded, and brought to the Kharkiv SBU building. He was interrogated and ordered to confess to being a member of “Kharkiv partisans”. He was kicked in the stomach and hit on the head. One of the SBU officers grabbed and twisted the victim’s genitals. During this ordeal, which lasted for about an hour, officers continuously threatened his family.<sup>80</sup> In another case, a man was detained by SBU at his friend’s house, where he was beaten in the groin before being interrogated. The SBU officers put a gas mask over his head

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<sup>75</sup> Forty-two held in territory controlled by ‘Donetsk people’s republic’ armed groups and five in territory controlled by ‘Luhansk people’s republic’ armed groups.

<sup>76</sup> Based on data of the Penitentiary Service of Ukraine from before the conflict.

<sup>77</sup> See OHCHR report on Conflict-Related Sexual Violence in Ukraine covering the period from 14 March 2014 to 31 January 2017, available at [http://www.ohchr.org/Documents/Countries/UA/ReportCRSV\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf).

<sup>78</sup> HRMMU interviews, 11 and 12 April 2017.

<sup>79</sup> Articles 258(2)-(3) (1), (terrorism) 263(1) (unlawful handling of weapons), 110(2) (trespass against territorial integrity and inviolability of Ukraine), 201(2) (smuggling) with article 28(2) qualification (group commission).

<sup>80</sup> HRMMU interview, 15 March 2017.

and closed the inhale/exhale tube to cause suffocation, threatening him with additional physical violence. When the SBU officers threatened to give his girlfriend's address to the Right Sector<sup>81</sup>, saying they would “do anything” to her, the victim agreed to ‘cooperate’ and sign everything.<sup>82</sup> Both victims remained in detention as of 15 May 2017. Similarly, a man arrested in his home in January 2015 was brought to Volnovakha SBU, where he was tied to a radiator, beaten and kicked on his body and head, causing him to lose consciousness several times. The perpetrators forced him to sign a ‘confession’, threatening that they would rape his wife, cut her to pieces and force him to eat them.<sup>83</sup>

66. OHCHR also documented three cases of sexual and gender-based violence perpetrated against women by members of Ukrainian Armed Forces positioned in residential areas. In October 2016, in Marinka, a woman was alone in her house when two drunk soldiers broke in.<sup>84</sup> They started touching her and one tried to pull her skirt down. She screamed and struggled, and one of the perpetrators hit her in the face with a metal bowl, injuring her nose and lip. She managed to escape to another room and call the owner of the house who contacted the police and the commander of the military unit. A complaint was filed with the police department, but when the police questioned her, they told her the incident was her fault. Later the police investigator told her the case had been closed due to lack of evidence.

#### *Armed groups*

67. On 5 May, in Petrivske, a member of the armed groups equipped with an assault rifle intimidated an unarmed female patrol member of the OSCE SMM by making comments of a sexual nature and threatened to stop the patrol from moving further until his demands were met. The OSCE monitors left the area via a different road.<sup>85</sup>

68. On 28 June 2014, in a village controlled by armed groups in Luhansk region, a woman and her four-year-old daughter were outside their house when six armed men drove up and ordered her to open the garage.<sup>86</sup> When she refused, one of the men threatened to rape her with his machine gun. He poked at her daughter's buttocks with the gun, threatening to rape her together with her daughter. He shot several times into the ground near the woman's legs, injuring her toe. On the same day, the victim's husband reported the case to the commander of the armed group. A month later, he was detained by the same armed group and severely beaten for six days. The family left the territory controlled by armed groups immediately after his release.

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<sup>81</sup> The Right Sector defines itself as a national liberation movement, which consists of a political party founded in November 2013, a battalion called Ukrainian Volunteer Corps formed in April 2014 and a youth wing called “Right Youth”. It is considered by many a far-right political and military group, and has been implicated in several human rights violations.

<sup>82</sup> HRMMU interview, 17 March 2017.

<sup>83</sup> HRMMU interview, 12 April 2017. According to the SBU, none of the seven persons of Volnovakha region or surrounding areas who were detained in January 2015 raised a claim of torture or ill-treatment.

<sup>84</sup> HRMMU interview, 20 March 2017.

<sup>85</sup> Latest from the OSCE SMM, based on information received as of 19:30, 5 May 2017, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/315761> and statement of 8 May 2017, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/315891>.

<sup>86</sup> HRMMU interview, 9 March 2017.

### III. Accountability and administration of justice

*“The investigator said in the presence of my lawyer, ‘but these were our guys. Why would we collect evidence against them?’ - explaining why he did not take finger prints at the site of looting in my house.”*

- Resident of a village near the contact line

69. The reporting period covers the third anniversary of the killings of protesters at Maidan in Kyiv, launch of the security operation in eastern Ukraine and 2 May 2014 violence in Odesa, events which had significant detrimental impact on the human rights situation in the country. Three years after these events, victims continue to seek accountability for killings and other human rights violations. Investigations and prosecutions against perpetrators of violence during the demonstrations in Kyiv and Odesa appear to be selective and lacking examination of possible responsibility of senior officials. Human rights violations and abuses perpetrated in the context of over three years of armed conflict remain largely uninvestigated, preventing accountability for such violations. The resulting environment of impunity for such actions may lead to further violations and abuses.

70. When judicial proceedings do move forward in conflict-related cases, there are indications of possible bias against individuals prosecuted for alleged affiliation with armed groups, resulting in violations of the right to a fair trial. In territory controlled by armed groups, OHCHR continued to observe the development of parallel structures to replace the judiciary, law enforcement, and security forces in certain parts of Donetsk and Luhansk regions. The operation of these structures contradicts the Constitution of Ukraine and Minsk agreements and they do not comply with basic principles and standards of fair trial and the right to liberty and security of person.

#### A. High-profile cases of violence related to riots and public disturbances

71. Three years after the killing of protesters and law enforcement officers at Maidan, Kyiv, and the violence in Odesa, OHCHR is concerned that efforts to bring perpetrators to account have still not produced tangible results.

##### 1. Accountability for the killing of protesters at Maidan

72. Despite efforts of the Office of the Prosecutor General to bring those responsible for the killing of protesters and others during the Maidan events in Kyiv, no former senior official has been held accountable.<sup>87</sup> As of 15 May, the Office of the Prosecutor General had identified the individuals responsible for the killing of 65 protesters, and brought charges against a number of them,<sup>88</sup> while investigations into the deaths of 13 other protesters were ongoing.

<sup>87</sup> See OHCHR report on accountability for killings in Ukraine from January 2014 to May 2016, Annex I, Table 1.

<sup>88</sup> Three Berkut servicemen are charged with killing three and injuring 33 protesters on 18 February 2014; one protestor is on trial for killing another protestor on 18 February 2014; six Berkut servicemen and former SBU senior officials are charged with killing ten and other intended actions that led to deaths of two protesters as a result of ‘anti-terrorist operation’ launched in central Kyiv into the night of 19 February 2014; three individuals (the so-called ‘titushky’ hired by officials to attack protesters in order to legitimize police intervention dispersing protests under the guise of ensuring public order) are charged with killing journalist Viacheslav Veremii on 19 February 2014 (the pre-trial investigation against two suspects is ongoing, while the third suspect was put on a wanted list) and 32 Berkut servicemen accused of killing 48 and attempted killing of 80 protesters on 20 February 2014 (five remain in custody pending trial while the others have escaped jurisdiction).

73. OHCHR welcomes the completion of the pre-trial investigation into the killings of three protestors and attempted killing of 33 protestors at Kriposnyi Lane on 18 February 2014.<sup>89</sup> However, OHCHR notes the failure of the authorities to prevent the accused, a Berkut serviceman, from fleeing justice shortly after his release from pre-trial detention,<sup>90</sup> along with two other Berkut servicemen accused of torturing Maidan protesters.<sup>91</sup>

74. While noting that the measure of pre-trial detention should be applied only where necessary, OHCHR recalls that the release of accused persons “may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement”.<sup>92</sup> Given that at least 12 Berkut servicemen suspected of killing protestors at Maidan had already fled to the Russian Federation,<sup>93</sup> OHCHR is concerned whether the judiciary took adequate precautions to ensure the appearance at the trial of the recent absconder. This is especially troublesome considered together with the propensity of courts to impose pre-trial detention in conflict-related cases (*see* Due process, fair trial rights, and interference with the judiciary *below*).

75. OHCHR reiterates its concern with lack of progress in the investigation into the killings of 13 police officers on 18-20 February 2014,<sup>94</sup> due to legal provisions prescribing that individuals who participated in mass gatherings and are suspected or accused of crimes during the Maidan protests, including violence against a law enforcement officer, shall be exempted from criminal responsibility.<sup>95</sup> The authorities have thus failed in their obligation to ensure an effective remedy for relatives of the killed police officers.

76. The trial *in absentia* of former President Viktor Yanukovich on charges of high treason, facilitating infringement of territorial integrity of Ukraine, and facilitating waging aggressive war against Ukraine, commenced on 4 May. He is also suspected, along with other former senior officials, of abuse of authority or office in relation to the forceful dispersal of protestors on 30 November 2013 that marked the beginning of the Maidan protests. According to the Office of the Prosecutor General, the investigation into the role of the former president in the Maidan events is on hold due to his escape. Thus, OHCHR is concerned that the most senior officials may escape accountability for the human right violations committed during the Maidan events.

## 2. Accountability for the 2 May 2014 violence in Odesa

77. No progress was observed in bringing to account those responsible for the death of 48 people in Odesa on 2 May 2014.<sup>96</sup> Actions taken thus far appear selective and suggest possible bias.

78. On 15 May, in the trial of 20 members of ‘pro-federalism’ groups, which has lasted for over two years, the Malynovskyi district court of Odesa disqualified the presiding judge

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<sup>89</sup> On 27 March, the Office of the Prosecutor General reported the submission of an indictment against two Berkut servicemen on charges of killing three protestors on 18 February 2014 at Kriposnyi Lane.

<sup>90</sup> On 14 April 2017, the accused, along with three other Berkut servicemen (two accused of torturing a Maidan protester in January 2014 and the third accused of attacking journalists at a checkpoint in Kharkiv region) uploaded a video on YouTube stating they had fled to the Russian Federation as they had no faith in a fair trial by Ukrainian courts. The Head of the Special Investigations Department of the Office of the Prosecutor General confirmed that they had absconded.

<sup>91</sup> On 6 April 2017, the court of appeal of Kyiv changed the measure of restraint for the accused from remand in custody to personal commitment to appear in court for trial.

<sup>92</sup> International Covenant on Civil and Political Rights, Article 9.3.

<sup>93</sup> *See* OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 82.

<sup>94</sup> *See* OHCHR report on Accountability for killings in Ukraine covering the period from January 2014 to May 2016, Annex I, Table 2.

<sup>95</sup> Law “On prevention of persecution and punishment of individuals in respect of events which have taken place during peaceful assemblies and recognizing the repeal of certain laws of Ukraine”. The law also calls for the destruction of case files.

<sup>96</sup> *See* OHCHR report on Accountability for killings in Ukraine covering the period from January 2014 to May 2016, Annex I, Table 3.

and two of the three judges on the bench.<sup>97</sup> The case will now need to be retried from the beginning. On the same day, the Malynovskyi district court submitted an appeal requesting to transfer the case to another court as it is unable to form a new panel in compliance with the Criminal Procedure Code.<sup>98</sup> OHCHR is concerned that the protracted proceedings may result in prolonged detention of five of the defendants who have been remanded in custody since May 2014.

79. By contrast, the trial of one member of ‘pro-unity’ activist groups, who is the only individual charged with killing, has not yet commenced, and he enjoys full freedom, without any measure of restraint. Three officials of the Odesa regional department of the State Emergency Service accused of failing to assist persons trapped in the burning House of Trade Unions, which resulted in 42 deaths, are also free pending trial.

80. To address public distrust in the investigation of 2 May 2014 violence, the Office of the Prosecutor General is seeking independent foreign experts to assist in defining the precise cause of death of 34 people who perished in the Trade Union building.

### **3. Accountability for the 31 August 2015 violence in Kyiv**

81. The investigation into the violence which occurred in front of the Parliament in Kyiv on 31 August 2015<sup>99</sup> was divided into two categories: mass disturbances and terrorist act.<sup>100</sup> Both investigations have been completed, resulting in the indictment of 15 individuals, including four former members of Parliament from the ‘Svoboda’ political party and two former participants in the security operation in the east. The first case, before the Podilskyi district court of Kyiv,<sup>101</sup> has been characterized by delays and regular rescheduling of hearings, particularly due to non-appearance of the parties, victims or witnesses. Preparatory hearings for the trial in the second case,<sup>102</sup> before the Shevchenkivskyi district court of Kyiv, have not yet begun due to the failure of the court to compose the jury panel.

82. In a separate proceeding, on 17 March 2017, the Bratskyi district court of Mykolaiv region issued the first judgement on this incident, convicting one of the participants and sentencing him to six years in prison.<sup>103</sup> The decision has not yet entered into force pending an appeal.

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<sup>97</sup> The court disqualified the presiding judge and two panel members, referring to Article 76(2) of the Criminal Procedure Code (Inadmissibility for a judge to re-participate in criminal proceedings) as well as an official response from the Supreme Court of Ukraine to the court of appeal for Odesa region.

<sup>98</sup> Because one of the accused was a minor at the time of the incident, the presiding judge must be authorized to conduct criminal proceedings involving juveniles. Article 31(10), Criminal Procedure Code.

<sup>99</sup> See OHCHR report on Accountability for killings in Ukraine covering the period from January 2014 to May 2016, Annex I, para. 5.

<sup>100</sup> According to the Ministry of Internal Affairs, mass clashes between protesters and police officers, and the explosion of a hand grenade claimed the lives of four National Guard servicemen and left 144 law enforcement personnel injured.

<sup>101</sup> On 28 July 2016, the Office of the Prosecutor General reported completion of the investigation into mass disturbances near the Parliament and submission of an indictment against 15 individuals to Pecherskyi district court of Kyiv.

<sup>102</sup> On 7 July 2016, the Office of the Prosecutor General reported completion of the investigation into the terrorist act near the Parliament against two individuals.

<sup>103</sup> The court admitted this individual case from the 31 August event after the accused perpetrated another crime in Mykolaiv region.



## B. Accountability for human rights violations and abuses in the east

*“You need to be a kamikaze if you register your injuries. If they learn about it, they will make you disabled and will deal with your family.”*

- Conflict-related detainee, subjected to torture

83. After three years of hostilities, victims continue their quest for accountability and redress for conflict-related human rights violations. Accounts, for example, of those detained on charges of membership in armed groups reveal widespread practices of enforced disappearance, arbitrary detention, torture and ill-treatment, carried out by or at the behest of Government authorities.<sup>104</sup> These techniques are used for the purposes of compelling victims to testify against themselves with a view to prosecuting them.

84. At the same time, Ukrainian law enforcement and security forces often refute detainees' complaints of human rights violations as a defence tactic, which may contribute to the systemic failure to adequately investigate such allegations. Such an attitude has, to a large extent, contributed to victims' mistrust in national redress mechanisms, leading them to refrain from filing complaints.<sup>105</sup> The conditions of people subjected to torture and ill-treatment often deteriorated due to the failure of the medical personnel of penitentiary facilities to properly document the injuries of victims upon their arrival.<sup>106</sup> OHCHR recalls that the Government bears the responsibility to investigate allegations of grave human rights violations including torture, ill-treatment and arbitrary detention. OHCHR stresses that victims of abuse of power are entitled to access to justice and to prompt redress, as provided for in national legislation, for the harm that they have suffered.<sup>107</sup>

85. OHCHR welcomes the completion of the trial against 12 former members of the 'Tornado' special police regiment charged with grave human rights violations including arbitrary detention, abduction, torture, and violent "unnatural gratification of sexual desire" during the security operation in the east.<sup>108</sup> On 7 April, after a year-long closed trial, the Obolonskyi district court of Kyiv convicted all defendants, sentencing eight of them to various prison terms and releasing four on probation. OHCHR is concerned that despite strong evidence of the killing of at least one individual,<sup>109</sup> none of the perpetrators was held accountable for this act. OHCHR continues to follow cases involving other battalions, including the 24<sup>th</sup> separate storm battalion 'Aidar'<sup>110</sup> and 'Donbas' special battalion of the

<sup>104</sup> Over the reporting period, OHCHR documented at least seven cases (HRMMU interviews, 21 and 22 February 2017) of individuals arbitrarily detained and ill-treated by armed men near the Government-controlled city of Mariupol. After a period of time, the individuals were handed over to law enforcement agencies and prosecuted on charges of membership in the terrorist organization 'Donetsk people's republic'. This raises concerns that the perpetrators acted with the consent or acquiescence of the Security Service of Ukraine.

<sup>105</sup> HRMMU interview, 21 February 2017: The victim stated that three days after being arrested by Ukrainian soldiers, he was brought before the SBU investigator and then first met his lawyer. Despite clear bodily signs of physical abuse, neither of the investigator nor the lawyer reacted. Pressured by torture and death threats, the victim signed a paper containing self-incriminating statements.

<sup>106</sup> HRMMU interviews, 21 February, 12 and 13 April 2017.

<sup>107</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985, 96th plenary meeting.

<sup>108</sup> Eight defendants, including the commander of the battalion and his deputy, were sentenced to terms of imprisonment ranging from eight to 11 years. Four others were released on probation. Both the prosecution and defence counsel expressed intention to appeal the verdict.

<sup>109</sup> See OHCHR report on Accountability for killings in Ukraine covering the period from January 2014 to May 2016, Annex I, para. 106-108.

<sup>110</sup> See OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, para. 56.

National Guard,<sup>111</sup> whose members, according to victims' accounts, have perpetrated grave human rights violations while taking part in the security operation.

86. OHCHR continued to follow the ongoing investigation conducted by the Office of the Prosecutor General into arbitrary detention and enforced disappearances<sup>112</sup> at the premises of the Kharkiv Regional Department of SBU<sup>113</sup> but is not aware of any developments in this regard. OHCHR further notes a lack of progress in ensuring accountability for the killings of Oleh Kalashnikov<sup>114</sup> and Oles Buzyna,<sup>115</sup> on 15 and 16 April 2015, respectively.

87. Despite continued lack of access to territory controlled by armed groups, which negatively affects the ability of Ukrainian law enforcement to conduct full investigations, the Office of the Prosecutor General and SBU continued investigating human rights abuses perpetrated by the armed groups.<sup>116</sup> On 13 May, SBU charged *in absentia* "nine leaders of the so-called 'penal corrections department of the ministry of internal affairs of Luhansk people's republic'" with membership in a terrorist organization, but did not address evidence suggesting that they perpetrated grave human rights violations.<sup>117</sup> The Office of the Prosecutor General informed OHCHR that since the beginning of the security operation on 14 April 2014, the National Police have opened 2,845 pre-trial investigations for illegal detention, abduction of persons and hostage-taking in Donetsk and Luhansk region, which resulted in 79 indictments.

88. OHCHR notes that none of the members of the armed groups has been brought to account for such human rights abuses as torture, ill-treatment or arbitrary deprivation of life. Instead, the majority are prosecuted for their mere armed group membership. OHCHR further notes that, for the first time, charges of violation of rules and customs of war have been brought against seven members of armed groups with regard to the arbitrary execution, illegal detention, torture and ill-treatment of Ukrainian soldiers and civilians.<sup>118</sup>

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<sup>111</sup> Five members of the battalion are currently on trial in Krasnoarmiyskiy district court (Donetsk region) facing numerous charges including abduction, armed robbery, extortion, banditry, and hooliganism. For more details, see OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2016, para. 73.

<sup>112</sup> HRMMU interviews, 24 and 26 February, 7 March 2017.

<sup>113</sup> See OHCHR reports on the human rights situation in Ukraine covering the periods from 16 November 2016 to 15 February 2017 (para. 41), 16 August to 15 November 2016 (para. 35) and 16 May to 15 August 2016 (para. 45).

<sup>114</sup> See OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, para. 70.

<sup>115</sup> Ibid.; OHCHR report on Accountability for killings in Ukraine covering the period from January 2014 to May 2016, Annex I, para. 79-82.

<sup>116</sup> For more details see 17<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 63-65.

<sup>117</sup> On 15 May, SBU released a video of a former prisoner released from Alchevsk penitentiary facility no. 13 (facility dedicated for prisoners with tuberculosis, located in the territory controlled by armed groups) stating that the prisoners were subjected to physical suffering and deprived of medical treatment and protection. Prisoners who refused to obtain a 'passport' of the 'Luhansk people's republic' reportedly suffered the most. Moreover, during active hostilities, for instance in Debaltseve, prisoners were forcefully recruited into the armed groups. If they refused, they were subjected to solitary confinement and deprived of food. After they were handed over to the armed groups, their documents were destroyed and they never returned. See SBU press release, 15 May 2017, available at <https://ssu.gov.ua/ua/news/4/category/21/view/3340#sthash.I1BfhtGM.gcbeTlzy.dpbs>.

<sup>118</sup> The suspects include the 'commander' of the 'Somali' battalion of 'Donetsk people's republic', 'commander' of the 'All-great army of Don' of 'Luhansk people's republic', 'commander' of the 'investigators' of the 'separate commandant's regiment of the 2<sup>nd</sup> army corps' of 'Luhansk people's republic', Major General of the Armed Forces of the Russian Federation holding the position of the 'deputy minister' of the 'ministry of state security' of 'Luhansk people's republic', First Deputy Head of the General Staff of the Armed Forces of the Russian Federation, and Ukrainian members of armed groups of 'Donetsk people's republic'.

### C. Due process, fair trial rights, and interference with the judiciary

*“Why I changed my testimony and plead guilty now? I just want this trial to end.”*

- Defendant in conflict-related case, detained since October 2015, seated in metal cage during the hearing and breaking into tears

89. OHCHR continued monitoring of trials of individuals charged with affiliation with armed groups, and other high-profile cases, noting systematic violations of the right to a fair trial and other related human rights standards. In particular, OHCHR observed that courts continued to apply custodial detention to suspects accused of affiliation with armed groups without assessing its necessity.<sup>119</sup> This approach also entails the practice of automatic extension of pre-trial detention,<sup>120</sup> and undermines the process of judicial review of lawfulness of detention. OHCHR recalls that pre-trial detention should not be mandatory for all defendants charged with a particular crime, but should be based on an individualized determination that it is reasonable and necessary, taking into account all circumstances of the individual case.<sup>121</sup>

90. OHCHR also noted repeated delays in trials<sup>122</sup> which, coupled with the above-mentioned practice, inevitably lead to prolonged pre-trial detention and may therefore jeopardize the presumption of innocence.<sup>123</sup> OHCHR recalls that individuals subjected to remand custody pending trial must be tried as expeditiously as possible, and that when delays become unavoidable, the court must reconsider alternatives to pre-trial detention.<sup>124</sup>

91. In the course of trial monitoring and interviewing of defendants in conflict-related criminal cases,<sup>125</sup> OHCHR received credible accounts of the SBU obtaining evidence by torture, including witness ‘testimony’ and ‘confessions’. Such evidence has subsequently been admitted by courts,<sup>126</sup> sometimes despite victims’ complaints to the court regarding their nature. For example, on 20 March, Dobropillia city district court of Donetsk region issued a guilty verdict against the defendant despite an ongoing investigation into his complaint of ill-treatment and arbitrary detention.<sup>127</sup>

92. OHCHR continued to witness attempts by various actors to interfere with the judiciary. During trial monitoring, it observed intimidation and physical abuse of judges by organized groups of individuals claiming to be ‘patriots’.<sup>128</sup> Tolerance of such behaviour by

<sup>119</sup> Article 176(5) of the Criminal Procedure Code of Ukraine prohibits the use of any measure of restraint other than detention on remand for individuals suspected or accused of, *inter alia*, membership in terrorist organizations or unlawful armed formations, which are the charges most often lodged against conflict-related detainees.

<sup>120</sup> HRMMU trial monitoring of Zhovtnevyi district court of Dnipro, 15 and 16 March 2017; HRMMU trial monitoring of court of appeal of Zaporizhzhia Region, 6 April 2017; HRMMU trial monitoring of Zhovtnevyi district court of Zaporizhzhia, 16 March 2017.

<sup>121</sup> Human Rights Committee, General Comment No. 35 Article 9 (Liberty and Security of Person), para. 38.

<sup>122</sup> HRMMU monitors trials in conflict-related cases as well as a few emblematic criminal cases and noted that courts often cannot proceed with the hearing of the case due to failure of parties or witnesses to appear, or failure to transfer defendants from the pre-trial detention facility, yet they regularly extend defendants’ remand in custody (e.g. case of Anastasiia Kovalenko, in pre-trial detention since December 2014, and case of former mayor of Sloviansk, in detention since July 2014 and awaiting fourth retrial).

<sup>123</sup> Human Rights Committee, General Comment No. 35 Article 9 (Liberty and Security of Person), para. 37.

<sup>124</sup> *Ibid.*

<sup>125</sup> HRMMU trial monitoring of Dzerzhynskiy city court of Donetsk Region, 26 March 2017; HRMMU trial monitoring of Sloviansk city district court, 4 April 2017; HRMMU trial monitoring of Starobilskiy district court of Luhansk Region, 13 March 2017; HRMMU trial monitoring of Lysychanskiy city court of Luhansk Region, 5 April 2017.

<sup>126</sup> HRMMU interviews, 13 March, 5 April 2017.

<sup>127</sup> HRMMU interview, 6 April 2017; Court decision of Dobropilskiy city district court of Donetsk region, 20 March 2017, available at: <http://reyestr.court.gov.ua/Review/65401324>.

<sup>128</sup> HRMMU trial monitoring at the Malynovskiy district court of Odesa, 13 April 2017.

law enforcement, through insufficient police presence or refusal to act to secure the courtroom, remains concerning.

#### D. Human rights impact of armed group structures

*"I cannot summon Zakharchenko's soldiers for questioning."*

- Father of victim of summary execution by members of 'Oplot' armed group in Donetsk, quoting an 'investigator' on the case

93. OHCHR continued to monitor the impact of parallel structures of 'Donetsk people's republic' and 'Luhansk people's republic' on the human rights of people residing in territory controlled by armed groups. OHCHR reiterates that armed groups are bound by international humanitarian law which *inter alia* prohibits sentencing and executions without prior judgment by a regularly constituted court that offers essential guarantees of independence and impartiality.<sup>129</sup>

94. On 20 April, OHCHR met with the 'deputy chair' of the 'supreme court' of 'Donetsk people's republic' and was informed that 'courts' of 'Donetsk people's republic' continue application of procedural laws of Ukraine so far as they are not in contradiction with the 'constitution' of 'Donetsk people's republic'.

95. OHCHR was also informed that in 2015, the 'courts' of 'Donetsk people's republic' took up 5,247 pre-conflict criminal cases against 6,003 individuals, including 777 detainees, which had been interrupted by the conflict and the evacuation of courts to Government-controlled territory. Reportedly, 4,763 cases against 5,439 defendants were examined by the 'courts' as of April 2017.<sup>130</sup> OHCHR was not able to verify whether the detainees concerned had been granted any procedural rights and safeguards. OHCHR is aware of a case involving a pre-conflict detainee whose trial began in 2014.<sup>131</sup> In 2015, a 'court' of 'Donetsk people's republic' convicted and sentenced the defendant to four years and six months imprisonment. One year later, a 'court of appeal' returned the case for a new 'trial' due to the fact that the 'investigation' was carried out under Ukrainian law which did not comply with 'legislation' of 'Donetsk people's republic'. The defendant has spent a total of five years in detention and the 'retrial' has not yet commenced.

96. As of 15 May, a prominent religious scholar, Ihor Kozlovskiy, remained in 'detention' in Donetsk.<sup>132</sup> He was deprived of his liberty on 27 January 2016 and held *incommunicado* until 29 January 2016, when his wife was informed that the 'MGB' was detaining him. HRMMU was able to monitor the "hearings" in his case before a 'military tribunal', and on 3 May observed the pronouncement of the 'judgment' and 'sentence' of two years and eight months in a high-security prison on conviction of illegal possession of weapons. Notably, that 'court' imposed maximum penalty in his case - imprisonment in a penal colony, although the 'prosecutor' requested to send him to a colony-settlement (lesser security and control, where prisoners are allowed to go outside of the settlement and visit their families etc.).

97. Parallel structures reportedly also conducted 'investigations' into human rights abuses. On 17 March, the 'chair' of the 'supreme court' of 'Donetsk people's republic' reported a 'sentence' imposed against a Ukrainian police officer for torturing supporters of

<sup>129</sup> Article 3 common to the Geneva Conventions; Article 6, Additional Protocol II to the Geneva Conventions; Henckaerts, Doswald-Beck, Customary International Humanitarian Law, Volume I, Rule 100.

<sup>130</sup> HRMMU meeting, 20 April 2017.

<sup>131</sup> HRMMU interview, 3 March 2017.

<sup>132</sup> HRMMU interview, 6 April 2017.

armed groups.<sup>133</sup> On 20 April, the ‘deputy chair’ of the ‘supreme court’ informed OHCHR about 46 ‘criminal cases’ against 82 ‘officials’ of ‘law enforcement bodies’ for alleged human rights abuses which had been or were being examined by ‘courts’ of ‘Donetsk people’s republic’. She also indicated that 24 such ‘officials’ had been ‘sentenced’ in nine ‘criminal cases’. On 3 March, the ‘prosecutor general’s office’ of ‘Luhansk people’s republic’ placed a former member of the ‘ministry of state security’ on a ‘wanted list’ in relation to charges of abduction, arbitrary detention, and death threats.<sup>134</sup>

98. OHCHR collected credible accounts demonstrating a lack of effective remedy for victims of human rights abuses through parallel structures. An illustrative case is that of a local businessman killed on 8 November 2014 in Donetsk, allegedly by members of ‘Oplot’ battalion. The ‘office of the military prosecutor’ of ‘Donetsk people’s republic’ started an investigation, which reportedly identified three witnesses – members of the ‘Oplot’ battalion. Progress, however, seems to have stalled due to reluctance of investigators to summon members of the battalion for interrogation.<sup>135</sup>

## IV. Fundamental freedoms

### A. Freedom of movement

*“We had to stay overnight in the queue of cars that wasn't moving at all. You can hear the shooting there. I don't care who started it all! I just want to see my daughter!”*

- Elderly resident of a village near Donetsk airport

99. This reporting period saw a sharp increase in the number of people crossing the contact line, with a daily average of 29,000 crossings and a peak of 45,200 in March<sup>136</sup> – which was substantially higher than in previous months.<sup>137</sup> In the second half of March, OHCHR observed alarming situations at all five crossing routes in Donetsk and Luhansk regions. In ‘Marinka’ corridor, where the road is the narrowest, hundreds of cars were queuing in four lines. People complained of corruption on both sides of the contact line, and about long waiting hours in degrading conditions (for example, without shelter, exposed to extreme temperatures, with limited access to potable water and toilets, sometimes carrying cumbersome luggage) including at night, when the risk of shelling is high.<sup>138</sup> This increase of movement was caused by the new requirement for IDPs entitled to pensions and social payments to renew their bank registration. The current regulations demand that pensioners registered in territory controlled by armed groups register as IDPs and undergo a number of verification processes in order to realize their constitutional right to social protection (*see* Situation of internally displaced persons *below*).

<sup>133</sup> <https://dan-news.info/ukraine/sud-dnr-vpervye-zaochno-prigovoril-sotrudnika-mvd-ukrainy-k-14-godam-lisheniya-svobody.html>.

<sup>134</sup> Website of the ‘prosecutor general’s office’ of ‘Luhansk people’s republic’ (available at <http://gplnr.su/vnimanie-rozysk/2186-denisov-boris-aleksandrovich.html>).

<sup>135</sup> HRMMU interview, 28 February 2017.

<sup>136</sup> Daily numbers provided by the State Border Guard Service, available at <http://dpsu.gov.ua/ua/news/1490249414-situaciya-v-kontrolnih-punktah-vizdu-viizdu-na-linii-rozmezhuвання/>.

<sup>137</sup> *See* OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017. During that period, between 16,000 and 25,000 civilians crossed the contact line daily.

<sup>138</sup> HRMMU visits, 13, 17, 20, 23 and 24 March 2017.



100. Movement across the contact line has also been affected by a number of legislative changes regulating the transfer of goods,<sup>139</sup> as well as amendments introduced on 14 April to the Temporary Order which regulates movement of people.<sup>140</sup> The major positive outcome of the amendments is that permits for crossing the contact line will no longer expire. It is, however, important to ensure that previously-issued permits will also be recognized as indefinitely valid. Another welcome development is that residents of settlements adjacent to the contact line on the Government-controlled side will no longer need a permit to cross (as previously required). This is not, however, foreseen for those living close to the contact line on armed-group controlled territory.

101. On the other hand, other recent changes to the Temporary Order related to invalidation of a permit and to the refusal to allow a person to cross the contact line into Government-controlled territory are of concern. The clause which invalidates a permit if there is information that its holder facilitated an offence or another person's evasion of responsibility<sup>141</sup> is vague and does not indicate how the holder would be notified regarding such information. Also of concern is that the State Border Guard Service can deny entry to a person leaving armed-group controlled territory who "fails to prove the purpose of entering the Government-controlled territory".<sup>142</sup> Finally, OHCHR noted with regret that public passenger transportation across the contact line remained prohibited.

102. Recognizing that, in exceptional circumstances, the necessity to protect national security and public order may justify certain restrictions on freedom of movement, OHCHR notes that some measures may still be assessed as unnecessary and disproportionate. This is the case with the prohibition of travel in certain types of vehicles and the strict limitations on type and quantity of personal belongings allowed to be transferred which are set by the Ministry of Temporarily Occupied Territories. Such restrictions also create space for undue discretion and broad interpretation, providing grounds for corruption. This is at odds with the Government's Action Plan defining State policy towards citizens living in territory controlled by armed groups, which prioritizes fighting corruption at the contact line and improvements of crossing procedures.<sup>143</sup>

103. Restrictions on freedom of movement have a severe impact on the realization of social and economic rights, as described below in Chapter V. For example, for security reasons, residents of Pisky<sup>144</sup> who fled the area due to hostilities in 2014 are denied access to the village and cannot reunite with their families, check on their property, or farm their lands. The few who remained in the village are isolated and fully dependent on Ukrainian military personnel for delivery of potable water, bread, gas cylinders and electricity supplied from generators. Dolomitne village (controlled by armed groups) has become isolated since the Ukrainian Armed Forces closed the road to the neighbouring village of Novoluhanske (Government-controlled) on 1 January 2017. The village has no grocery store, pharmacy, clinic, or public transportation, and the mobile phone connection is poor.

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<sup>139</sup> Resolution No. 99 of Cabinet of Ministers 'On establishing the order of transferring goods to or out of the anti-terrorist operation area', 1 March 2017, available at <http://www.kmu.gov.ua/control/uk/cardnpd?docid=249790429>; Order No. 39 of the Ministry of Temporarily Occupied Territories and IDPs 'On defining the list and amount of goods allowed for transferring to/from humanitarian-logistics centres and across the contact line', 24 March 2017, available at <http://zakon3.rada.gov.ua/laws/show/z0417-17>.

<sup>140</sup> Temporary Order on the control of movement of people across the contact line in Donetsk and Luhansk regions (entered into force as of 21 January 2015), available with latest changes approved by the 'Centre of the Anti-Terrorist Operation at the Security Service of Ukraine', available at <https://ssu.gov.ua/ua/pages/32>.

<sup>141</sup> *Ibid.*, para. 7.9, point 3.

<sup>142</sup> *Ibid.*, para. 5.9.

<sup>143</sup> The Cabinet of Ministers Action Plan aimed at implementing some principles of internal policy in specific areas of Donetsk and Luhansk regions where public authorities temporarily do not exercise their powers, as of 11 January 2017.

<sup>144</sup> A Government-controlled settlement in Donetsk region, in the immediate proximity to the contact line, 13 kilometres from Donetsk airport.

## B. Freedom of opinion and expression

*“Many people do not understand how we can work on both sides of the contact line. People say that we have to choose one side and report from there.”*

- Journalist working in Donetsk region

104. OHCHR notes an ongoing deterioration of freedom of opinion and expression in conflict-affected parts of Ukraine, particularly in territory controlled by armed groups who continued to block Ukrainian broadcasting, including through a ban of over 350 websites,<sup>145</sup> and to restrict access to printed Ukrainian media. On both sides of the contact line, OHCHR observed intimidation of, and attacks on media representatives and outlets, as well as self-censorship among journalists and bloggers.

105. According to the Office of the Prosecutor General, 645 criminal proceedings were registered regarding the obstruction of journalist activities during 2013-2016 across the country. Half of these cases were terminated during the pre-trial investigation phase. Only 7.1 per cent (46 cases) have been transferred to courts so far. OHCHR reiterates that effective investigation of violations against journalists would provide a more secure media environment and improve public trust in the judiciary.

106. OHCHR observed worrying signs in the domain of access to public information and open data for the general population, and particularly for investigative journalists in Ukraine. On 23 March, the apartments in Kyiv of the Chief Executive Officer of “Youcontrol” company, which monitors open data financial reports, were searched by SBU.<sup>146</sup> “Youcontrol” is used by many anti-corruption non-governmental organizations (NGOs) and investigative journalists.<sup>147</sup> In light of amendments to the law on anti-corruption adopted on 23 March (*see paragraph 112 below*), OHCHR recalls that transparent information flow should be ensured, and organizations providing access to information and promoting accountability should be shielded from political interference or intimidation.

### *Territory controlled by armed groups*

107. Hennadiy Benytskyi, a blogger detained by ‘MGB’ of ‘Luhansk people’s republic’ in December 2016, was reportedly released on 14 March. Journalists who have been granted ‘accreditation’ must still inform the ‘press department’ of the ‘ministry of foreign affairs’ if they plan to visit areas close to the contact line.

108. Even ‘accredited’ journalists were not always permitted access to all areas they wished to visit. When crossing checkpoints, journalists have been exposed to arbitrary demands, such as being required to show their footage, questioned about the purpose of their mission, or subjected to searches of personal belongings. A foreign media representative informed OHCHR that he had realized he should not report about “provocative” issues in order to be allowed to enter again, and that he avoids filming in certain locations or covering certain topics such as the seizure of commercial property by armed groups.

109. Access to information and Ukrainian internet services remained restricted. After armed groups in ‘Donetsk people’s republic’ seized control of the provider Ukrtelekom on 1 March, customers had intermittent or no internet access. On 21 April, the ‘minister of communications’ of ‘Luhansk people’s republic’ announced that the ability to call emergency

<sup>145</sup> Statement of OSCE Representative on Freedom of the Media, Dunja Mijatović, available at <http://www.osce.org/fom/295336>.

<sup>146</sup> The investigation is based on the Shevchenkivskiy district court of Kyiv decision on 3 March 2017 that “YouControl” illegally used an open state register in violation of the criminal code.

<sup>147</sup> HRMMU interview, 30 March 2017.

services (ambulance, police, fire-fighters) on short numbers (101, 102, 103, 104) was no longer available for customers using mobile operator “MTS-Ukraine” on territory controlled by ‘Luhansk people’s republic’ armed groups.<sup>148</sup> Although envisaged in the Government Action Plan<sup>149</sup>, access to Ukrainian and international information material in territory controlled by armed groups and at checkpoints remained limited.

### C. Freedom of association, peaceful assembly, and religion or belief

110. OHCHR noted an improvement in the policing and security provided for various anniversary and commemorative events throughout Ukraine. The Maidan commemorations, at the end of February, were held peacefully, with isolated disturbances. OHCHR also observed improved law enforcement measures at the 2 May commemoration in Odesa, which prevented clashes. While the commemoration events of 9 May, which attracted approximately 600,000 participants around Ukraine, were generally peaceful, some were marred by minor skirmishes in several big cities, including Dnipro, Kharkiv, Kyiv, Odesa and Zaporizhzhia, resulting in bodily injuries of 32 people, the detention of 89 people and the initiation of 19 criminal proceedings.

111. Over the reporting period, OHCHR noted a worrisome development in the regulation of activities of NGOs in Ukraine. On 23 March, the Parliament voted for amendments to the Law ‘On prevention of corruption’, which extend financial disclosure requirements, normally applicable to civil servants, to anti-corruption NGOs.<sup>150</sup> The amendments include several ambiguous provisions and definitions, which may be subject to broad interpretation or abuse. The amendments could have a chilling effect on civic anti-corruption activity, as a very broad range of entities may fall within its scope.<sup>151</sup> OHCHR is concerned that the amendments are discriminatory in nature, targeting anti-corruption NGOs, and may violate the right to privacy of their staff.<sup>152</sup>

#### *Territory controlled by armed groups*

112. In territory controlled by armed groups, the space for civil society, media, and religious and humanitarian organizations remained considerably restricted. ‘Authorities’ of ‘Luhansk people’s republic’ reminded religious organizations to provide documents to reconfirm their registration and legal status by 18 May 2017. While no sanction for violation of the deadline was announced, OHCHR is concerned about the possible forceful expulsion of those operating without ‘confirmation’.

113. Freedom of peaceful assembly in territory controlled by armed groups has also steadily deteriorated. Since the armed groups seized control, no pro-Ukrainian demonstrations or open protests against the armed groups have taken place. For assemblies which do occur in Donetsk, participants are transported in buses in an organized manner, indicating that some attendance, for example by students and employees of ‘state’ enterprises, may not be fully voluntary.

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<sup>148</sup> See <http://lug-info.com/news/one/abonenty-mts-ukraina-bolshe-ne-mogut-zvonit-na-korotkie-nomera-ekstrennykh-sluzhb-lnr-23646>.

<sup>149</sup> Cabinet of Ministers Action Plan aimed at implementing some principles of internal policy in specific areas of Donetsk and Luhansk regions where public authorities temporarily do not exercise their powers.

<sup>150</sup> Draft law No. 6172 ‘On amendments to article 3 of the law on prevention of corruption’.

<sup>151</sup> Not only do staff members and experts of anti-corruption NGOs and donor and implementing organizations fall under the new provisions, but so do their contractors and service-providers.

<sup>152</sup> The required e-declarations require automatic disclosure of a significant amount of personal data.

## D. Discrimination against persons belonging to minorities

114. Various sources, including human rights defenders and civil society activists, reported about the forced displacement of a Roma community in Kyiv in early April.<sup>153</sup> Violent threats and searches conducted by unknown individuals wearing balaclavas occurred in a Roma camp located in Berezhniaky district on 30 March. Fearing persecution, the Roma left the camp, which was then completely destroyed by fire on 6 April. As a result, approximately 150 members of the Roma community have been displaced. Authorities were not able to provide information on the cause of the fire, and no investigation<sup>154</sup> into the incident was being conducted. OHCHR urges local authorities in Kyiv to prevent forced displacement, conduct proper investigations into this incident, and ensure the victims the right to an effective remedy, including access to compensation. OHCHR is further concerned about the lack of investigation in the case concerning the forced eviction of Roma families in the Loshchynivka case in Odesa region.<sup>155</sup>

## V. Economic and social rights

115. The conflict in eastern Ukraine has not only induced humanitarian needs among affected communities, but also aggravated a number of pre-existing systemic issues which worsened human suffering in general, and the situation of the most vulnerable in particular. Certain Government-imposed restrictions further aggravated the distress of some three million people living in territory controlled by armed groups and these unnecessary impediments may be perceived as punishment for not fleeing these areas.

116. Access to and quality of water in armed-group controlled territory of Luhansk region is of great concern. A functioning mechanism for payment for water supplied by a public utility on Government-controlled territory to territory controlled by armed groups has not been effectively implemented,<sup>156</sup> and the water supply company continues operating while accumulating large debts for electricity use. On 25 April, a private power-supply enterprise, “Luhansk Energy Union”, cut off electricity supply to armed-group controlled territory. In addition, on 4 May, due to a broken pipe, a water company stopped supplying safe drinking water to some 460,000 in Luhansk region, 410,000 of whom reside in territory controlled by armed groups. The ‘Luhansk people’s republic’ immediately began using alternative sources of water and power supply, including electricity from the Russian Federation. Those sources, however, are considered not sustainable, and the quality of the water is questionable. This is especially worrisome for the summer season, when lack of quantity or quality of water can lead to spread of infectious diseases. This is of concern also for Donetsk region where people on both sides of the contact line suffer from irregular water supply due to frequent damages of water infrastructure (*see* International humanitarian law in the conduct of hostilities *above*).

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<sup>153</sup> See appeal concerning the events, referring to its character as “ethnic cleansing”, available at [http://www.irf.ua/allevents/news/zayava\\_schodo\\_podiy\\_u\\_kievi\\_yaki\\_nosyat\\_karakter\\_etnichnikh\\_chistok/](http://www.irf.ua/allevents/news/zayava_schodo_podiy_u_kievi_yaki_nosyat_karakter_etnichnikh_chistok/).

<sup>154</sup> According to the Advisor to the Minister of Internal Affairs, there is no investigation because no one filed a complaint with the police and there are no applicants or victims.

<sup>155</sup> OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 124; OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2016, para. 152.

<sup>156</sup> A mechanism was established on 25 August 2016 by the economic sub-group of the Trilateral Contact Group in Minsk but has not functioned consistently. According to agreement No. 16-15, Limited Liability Company ‘Dzherelo Novoho Zhyttia’ transfers payments for water from armed-group controlled territory to the public utility company ‘Popasnianskyi Vodokanal’ on Government-controlled territory. As of 1 April 2017, the debt of ‘Dzherelo Novoho Zhyttia’ to ‘Popasnianskyi Vodokanal’ was 28,521,634 UAH.

## A. Right to social protection

117. Despite numerous consultations at various levels, the Government has not yet addressed the issue of payment of pensions to all eligible citizens of Ukraine. At least 160,000 pensioners residing in territory controlled by armed groups did not receive their pensions between December 2014 and December 2016<sup>157</sup> because they were not registered as IDPs, as required by Government resolutions adopted in November 2014.<sup>158</sup> Those who did register as IDPs were subjected to a cumbersome verification procedure<sup>159</sup> which, in 2016, resulted in the discontinuance of pension payments for 43 per cent of eligible IDPs (over 400,000 people). In its 2016 annual report, the Pension Fund of Ukraine presented this result as “a cost-saving achievement”.<sup>160</sup>

118. OHCHR reiterates that linking pension payments with IDP registration, as well as suspending them as a result of consecutive verification procedures, contradicts Ukrainian national legislation, its international obligations, and certain decisions of domestic courts<sup>161</sup> as well as the case law of the European Court of Human Rights.<sup>162</sup>

119. OHCHR welcomes the recommendation for a mechanism of payment of pensions by the working group of the Ministry of Temporarily Occupied Territories and IDPs. The mechanism would allow pensioners residing in territory controlled by armed groups to apply for their pension in any office of the Pension Fund (on Government-controlled territory), with no requirement to be registered as IDPs. For pensioners with mobility constraints, the recommendation is to reserve funds to cover their pension payments while working with international organizations to design an acceptable payment mechanism. A procedure of physical verification of pensioners is also envisaged in the proposal.

120. On 15 March, the blockade of cargo across the contact line initiated by former members of the ‘Aidar’ and ‘Donbas’ volunteer battalions during the previous reporting period<sup>163</sup> was legitimized by the Government.<sup>164</sup> On 1 March, armed groups of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ seized control of, and introduced ‘temporary external management’ of approximately 54 enterprises in territory under their control, including several private and commercial metallurgic factories and coal mines, hotels, a stadium, the offices of a humanitarian organization, as well as railways. These actions left thousands of people with uncertainty about their employment and livelihood. A number of enterprises on both sides of the contact line, including power thermal plants, have

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<sup>157</sup> As of August 2014, 1,278,200 pensioners were registered in armed-group controlled territory of Donetsk and Luhansk regions. From that time until December 2016, 1,118,200 pensioners residing in these areas applied for pension in the Government-controlled territory, which implies that at least 160,000 eligible pensioners have not applied for their pension since August 2014.

<sup>158</sup> Resolution of the Cabinet of Ministers No. 595 on ‘Certain issues of financing state institutions, paying of social benefits to the population, and providing financial support to certain enterprises and organizations in Donetsk and Luhansk regions’ as of 7 November 2014, available at

<http://www.kmu.gov.ua/control/uk/cardnpd?docid=247734847>, and Resolution of the Cabinet of Ministers No. 637 ‘On making social payments to internally displaced persons’ as of 5 November 2014, available at

<http://zakon2.rada.gov.ua/laws/show/637-2014-%D0%BF>.

<sup>159</sup> See Situation of internally displaced persons *below*.

<sup>160</sup> Financial and statistical indicators of the Pension Fund in 2016, available at <http://www.pfu.gov.ua/pfu/doccatalog/document;jsessionid=951F213D2DA7A695E0FC97EBBF1FAEB7.app2?id=277122>.

<sup>161</sup> Decision of High Administrative Court of Ukraine, 2015, available at <http://document.ua/pro-viznannja-protipravnoyu-ta-skasuvannja-postanovi-kabinet-doc248223.html>; Two decisions of Pavlohrad city district court of Dnipropetrovsk region, 2017, available at <http://reyestr.court.gov.ua/Review/64542884> and

<http://reyestr.court.gov.ua/Review/64542918>; Decision of Donetsk Appellate Administrative Court, 2017, available at <http://www.reyestr.court.gov.ua/Review/65383449>; Decision of Dnipropetrovsk Appellate Administrative Court, 2017, available at <http://www.reyestr.court.gov.ua/Review/65383315>.

<sup>162</sup> *Pichkur v. Ukraine* (2013), App. 10441/06.

<sup>163</sup> OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2016, para. 109.

<sup>164</sup> Decision of the National Security and Defence Council of Ukraine “On urgent additional measures to counter hybrid threats to the national security of Ukraine”, available at <http://www.rnbo.gov.ua/documents/441.html>.



reduced or stopped operations, lacking access to sales markets, or coal, or required raw materials from beyond the contact line.<sup>165</sup> According to available information, workers in territory controlled by armed groups receive irregular pay. For many on both sides of the contact line, salary has been significantly cut since the Government prohibited all cargo movement across the contact line and the armed groups took control over the enterprises.

121. Furthermore, some 22,000 Ukrainian railway employees in armed-group-controlled territory in Donetsk and Luhansk regions have not received a salary since March 2017.<sup>166</sup> Their employer, the Ukrainian public railway company ‘Ukrzaliznytsia’, has neither dismissed them nor notified them of the termination of payments. They continued working to support infrastructure and maintain operation of railway connections within territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ armed groups. OHCHR encourages the Government to undertake all necessary measures to prevent the increase of unemployment and ensure social guarantees for workers.

## B. Situation of internally displaced persons

*“The IDP pensioners got a text message that on 3 April all their money will turn into pumpkin.”*

- NGO worker from Kramatorsk, commenting on the identification procedure

122. Many IDPs continued to face bureaucratic impediments and discrimination due to various legislative acts adopted since the beginning of the conflict. Being deprived of political rights, subjected to regular checks by authorities, and facing disproportionate hardship in accessing basic public services, IDPs are at risk of becoming marginalized in society, further deepening their dependence on external aid. After three years of the displacement crisis, the Government is still struggling to elaborate a comprehensive and durable strategy for IDPs, including for their socio-economic integration, especially as the conflict lingers without a foreseeable end. Yet, according to a recent study, 88 per cent of IDPs said they are partially or fully integrated into the local community.<sup>167</sup>

123. In March 2017, OHCHR observed long queues at Oshchadbank branches, the only bank where IDP pensioners are entitled to receive their payments. This was largely due to a compulsory, Government-imposed identification process for IDP pensioners at the bank.<sup>168</sup> IDPs reportedly received text messages from the bank informing them that their payments would be suspended unless they complete ‘identification’ at the relevant bank branches in Government-controlled territory by 3 April 2017. Consequently, long queues at checkpoints registered a record in March, with over 960,000 crossings compared with 550,000 in February (*see Freedom of movement above*). Some people travelling from territory controlled by armed groups needed up to three days to complete the identification, and were forced to stay overnight in Government-controlled territory at their own expense.<sup>169</sup>

124. On 22 March, the Cabinet of Ministers of Ukraine postponed the deadline for completion of the identification process to 1 May 2017, and Oshchadbank took some positive

<sup>165</sup> HRMMU interviews across the country on 4 April, 15-16 May 2017, field visits on 17 and 19 May 2017.

<sup>166</sup> HRMMU interview, 26 April 2017.

<sup>167</sup> IOM National Monitoring System Report “On the Situation of Internally Displaced Persons” covering the period of February-March 2017.

<sup>168</sup> Cabinet of Ministers Resolution No 167, 14 March 2016.

<sup>169</sup> OCHA humanitarian snapshot from 3 April 2017, available at <https://www.humanitarianresponse.info/en/operations/ukraine/infographic/ukraine-humanitarian-snapshot-03-april-2017>.

steps to ease the process.<sup>170</sup> Yet, OHCHR maintains that the requirement to undergo identification, applied only to IDP pensioners, is discriminatory and creates unreasonable additional barriers for accessing pensions, besides causing hardship for hundreds of thousands Ukrainians having to cross the contact line.

125. Further hardship is expected due to the potential suspension of payment of pensions and social allowances to IDPs following the issuance of new lists by SBU. OHCHR received information that in March 2017, local departments of the Ministry of Social Policy received lists<sup>171</sup> of people registered as IDPs in their area who allegedly stayed outside of Government-controlled territory for over 60 days with instructions to these departments to suspend payment of their pensions and benefits pending “verification”. OHCHR recalls the negative impact of the previous IDP verification initiated by the Government in February 2016, and warns of hardships that the continuation of such practice would bring, including forced returns. According to a recent survey, 58 per cent of IDPs stated they did not visit territory controlled by armed groups after displacement, and only one per cent voiced their intention to return to their place of origin in the near future.<sup>172</sup>

126. IDPs, along with internal labour migrants,<sup>173</sup> continued to be deprived of their political right to influence self-governance bodies by exercising their voting rights. Although eligible to vote in national elections, their participation in local elections is limited.<sup>174</sup> Under Ukrainian law<sup>175</sup> a citizen’s voting address is his/her registered permanent place of residence. Thus, people whose permanent residence is in territory controlled by armed groups cannot exercise their voting rights. Recalling that it is vital to create favourable conditions for equal participation of IDPs in matters of national and local importance,<sup>176</sup> OHCHR welcomes legislative initiatives aimed at ensuring voting rights of IDPs and other internal migrants, specifically the newly registered draft law prepared by representatives of civil society and international organizations which would enable citizens to establish their temporary current residence as their voting address.<sup>177</sup>

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<sup>170</sup> Oshchadbank opened a mobile office near entry-exit points in Kurakhove and Volnovakha and arranged buses to transport people from the central department to other offices.

<sup>171</sup> The lists are based on data provided by the State Border Guard Service which registers IDPs crossing the contact line and the state borders of Ukraine.

<sup>172</sup> The main reason for this was the perception that it was “dangerous for life”. IOM National Monitoring System Report “On the Situation of Internally Displaced Persons” covering the period of February-March 2017.

<sup>173</sup> According to a study conducted by IOM, in 2014-2015 the number of internal labour migrants in Ukraine exceeded 1.6 million or nine per cent of the economically active population of the country, while internal migration demonstrated a stable tendency of increase. More information available at [http://iom.org.ua/sites/default/files/ff\\_ukr\\_21\\_10\\_press.pdf](http://iom.org.ua/sites/default/files/ff_ukr_21_10_press.pdf).

<sup>174</sup> Law No. 1706-VII adopted by Parliament in June 2015 requires that IDPs establish permanent residence in the oblast in which they are based. However many are understandably reluctant to do so for fear of losing their property in territory controlled by armed groups.

<sup>175</sup> Article 8 of the Law of Ukraine “On State Register of voters.”

<sup>176</sup> United Nations Guiding principles on internal displacement, principle 22(1)(d) states “Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right.”

<sup>177</sup> Draft law No. 6240 “On voting rights of internally displaced persons and other mobile citizens inside the country” registered on 27 March in Parliament.

### C. Housing, land, and property rights

*“‘People live here’ is written on many gates. It is just to make sure that you don’t find some soldiers living in your house when you come back from shopping.”*

- Resident of a village near the contact line

127. Housing needs of the affected population are becoming increasingly acute as prolonged displacement outlasts individual savings and available assistance. While housing support for IDPs provides assistance in covering utility bills, Government authorities did little to protect IDPs against forced evictions from collective centres and often did not offer reasonable alternatives.

128. The lack of a compensation mechanism for damaged or destroyed property compounded the situation, and remains one of the biggest concerns among the conflict-affected population. OHCHR supports the current work of the Ministry of Temporarily Occupied Territories and IDPs on the elaboration of a long-term restitution concept and reiterates that this should be embedded in a comprehensive national housing strategy.

129. On 23 March, Parliament adopted amendments to the law on IDPs,<sup>178</sup> according to which IDPs residing in collective centres<sup>179</sup> will be charged for utilities at standard rates applied to the population and not the higher rates applicable to legal entities, as was often the practice before (since collective centres operate as legal entities).

130. While OHCHR welcomes these positive steps in the domain of IDP housing, negative trends in the administration of collective centres across Ukraine, and related violations of the right to adequate housing of IDPs, such as security of tenure, remain. In Kyiv, OHCHR observed negative implications for the security of tenure and adequate living standards due to attempts by owners to evict IDPs, as well as the local authorities’ inability to offer IDPs adequate housing opportunities. On 20 March, six unknown people dressed as construction workers entered the collective centre “Dzherelo” (Kyiv region) in an attempt to evict IDPs. The men, allegedly paid by the owner of the collective centre, damaged electricity lines, broke windows and doors in the IDPs’ rooms, and harassed the IDPs.<sup>180</sup>

131. Right to adequate housing and property rights continued to be tightly connected to the displacement patterns in Ukraine. According to a recent study, 78 per cent of returnees mentioned ownership of private property and the absence of rent payment as the main reasons for their return.<sup>181</sup> Among IDPs, housing remains the most needed type of support.<sup>182</sup>

### D. Humanitarian situation

132. Provision of humanitarian assistance remained challenging in territory controlled by armed groups in the eastern regions. Humanitarian access to persons in need continued to be seriously hampered by the ‘accreditation’ system imposed by armed groups. The termination of operations of both an international and national humanitarian organization in armed group-controlled territory of Donetsk region negatively impacted vulnerable groups and persons with scarce economic resources.

<sup>178</sup> Law of Ukraine ‘On amendments to the Law of Ukraine ‘On ensuring the rights and freedoms of IDPs’ concerning the right of IDPs to receive utility services’, draft law No. 2481 of 27 March 2015.

<sup>179</sup> Such as modular houses, camps, dormitories, sanatoriums, hotels, etc.

<sup>180</sup> HRMMU interview, 28 April 2017.

<sup>181</sup> IOM National Monitoring System Report “On the Situation of Internally Displaced Persons” covering the period of February-March 2017.

<sup>182</sup> According to 84 per cent of key informants. IOM National Monitoring System Report “On the Situation of Internally Displaced Persons” covering the period February-March 2017.

133. The space for humanitarian actors to operate shrank particularly when a major humanitarian organization providing assistance for people living in territory controlled by armed groups of ‘Donetsk people’s republic’ was forced to halt operations. On 28 February, armed groups entered the main Donetsk office and warehouses of “Pomozhem” humanitarian centre<sup>183</sup> of Rinat Akhmetov’s Foundation and blocked its operations throughout the territory under its control. Staff and volunteers no longer had access to the premises, humanitarian aid or stocks.<sup>184</sup> In a number of interviews, people residing in these areas stated they depend on this assistance for survival. According to the Centre, 500,000 individuals were affected by the disruption of its work. According to the latest Food Security and Vulnerability Analysis, an estimated 620,000 people in the Donbas are food insecure, nearly 38,000 are IDPs.<sup>185</sup>

134. Of particular concern are the increasing large-scale humanitarian and human rights consequences of hostilities in Avdiivka (Government-controlled) and Donetsk city (armed-group-controlled). Interruptions and cuts to power supply, and consequently to water and heating, endanger the right to an adequate standard of living of hundreds of thousands civilians on both sides of the contact line, threatening in particular the lives and health of the most vulnerable individuals, such as those living in social protection institutions.

135. Humanitarian and human rights activists operating in Government-controlled territory also described impediments created by police and servicemen at checkpoints, such as demands for permits and other documents not legally/officially required, which may exacerbate the humanitarian situation in the conflict zone.

## **E. Right to the highest attainable standard of physical and mental health**

136. OHCHR welcomes steps undertaken to reform the health care system and commends the launch of the State programme ‘Affordable medications’<sup>186</sup> which enables patients with heart diseases, diabetes and asthma to obtain medication without payment. OHCHR encourages the Government to take further targeted steps to improve the right to health, and in particular, to consider the draft law “On state financial guarantees for providing medical services” and to adopt the national targeted programme to fight tuberculosis. OHCHR also commends measures instituted to subordinate medical personnel in detention facilities to the Ministry of Healthcare.<sup>187</sup>

137. At the same time, OHCHR observed that essential elements of the right to health, such as availability, accessibility (to everyone without any discrimination) and quality of health care, were not always granted in the vicinity of the contact line. Villages on both sides remain isolated, with disproportionate restrictions of freedom of movement (*see* Freedom of movement *above*). In some areas, one medical practitioner served several hundred<sup>188</sup> to several thousand<sup>189</sup> people, with the nearest emergency room located 20 to 30 kilometres away from the settlement. In villages such as Dolomitne, Nevelske, Novooleksandrivka, Opytne, Pisky, Roty, and Vidrozhennia, medical care is inaccessible: there is no doctor or paramedic, and ambulances are either not allowed to enter by Ukrainian Armed Forces or armed groups, or would not come in the evening or at night due to the security situation. In Vidrozhennia, a woman told OHCHR she had had to pay to fill the gas tank of an ambulance

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<sup>183</sup> The Humanitarian Center was the main distributor of humanitarian aid in non-Government-controlled areas since the beginning of the conflict. It provided about 11,700,000 food parcels to vulnerable categories of people, assisting up to 1 million beneficiaries.

<sup>184</sup> <http://www.fdu.org.ua/news/26105>.

<sup>185</sup> <http://reliefweb.int/report/ukraine/food-security-and-vulnerability-analysis-february-2017>.

<sup>186</sup> Resolution of the Cabinet of Ministers No. 152 ‘On the provision of availability of medical means as of 17 March 2017, available at <http://zakon2.rada.gov.ua/laws/show/152-2017-%D0%BF>.

<sup>187</sup> OHCHR report on the human right situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 167(h).

<sup>188</sup> Such as Sopyne and Lebedynske. HRMMU field visit, 23 February 2017.

<sup>189</sup> Such as Holmivskiyi, Horlivskiyi district. HRMMU field visit, 9 March 2017.

in order to be transported to a medical facility.<sup>190</sup> In areas which ambulances are not allowed to access or where public transportation is not available, civilians must rely on military personnel or members of armed groups to be transported to hospital.

138. The armed conflict also affected the right to healthy natural and workplace environments.<sup>191</sup> Water treatment facilities in territory controlled by armed groups are in critical shortage of personal protection equipment (PPE) for hazardous materials incidents. The equipment, which is supplied from Dnipro, has not been approved for transport across the contact line as humanitarian delivery due to its potential “dual use”.

139. The ban on cargo movement across the contact line also complicated supply of PPE for coal miners from Donetsk to Government-controlled territory. Coupled with the failure to evacuate the mine rescue equipment back in 2014, it resulted in a critical lack of PPE and rescue equipment in coal mines in western Ukraine. OHCHR was informed that the ‘Stepova’ coal mine in Lviv region has a 60 per cent shortage of PPE.<sup>192</sup> On 2 March, an accident at this mine resulted in 31 casualties. An investigative commission of the Cabinet of Ministers concluded that the main reason for the accident was substandard equipment.<sup>193</sup>

## VI. Human rights in the Autonomous Republic of Crimea and city of Sevastopol

140. OHCHR deplores the lack of access to Crimea. It nevertheless continued to record violations of human rights and international humanitarian law affecting people residing in the peninsula, including non-respect of fair trial guarantees, retroactive application of criminal law, forced transfers of protected persons from Crimea to the Russian Federation, death in detention, torture, cruel, inhuman or degrading treatment or punishment, and the absence of access to mechanisms for effective remedy. Concerns also exist regarding protection of the right to property and education in native language.

### A. Administration of justice and fair trial rights

*“Everyone can get into trouble there, especially Crimean Tatars.”*

- Crimean Tatar IDP residing in Odesa

141. Crimean courts discontinued all judicial proceedings under Ukrainian law and retroactively applied criminal legislation of the Russian Federation during the re-examination

<sup>190</sup> HRMMU interview, 6 April 2017.

<sup>191</sup> In line with article 12 of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14 of the Committee on Economic, Social and Cultural Rights calls on States to adopt “... preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. Furthermore, industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment...”, available at <http://www.refworld.org/pdfid/4538838d0.pdf>.

<sup>192</sup> HRMMU interview, 4 April 2017.

<sup>193</sup> Preliminary results of the Cabinet of Ministers’ inspection, available at [http://www.kmu.gov.ua/control/uk/publish/article?art\\_id=249831971&cat\\_id=244276429](http://www.kmu.gov.ua/control/uk/publish/article?art_id=249831971&cat_id=244276429).



of individual cases, which contravenes the international humanitarian law principle to continue using the penal laws in place before occupation.<sup>194</sup>

142. During the reporting period, several court decisions were issued in apparent disregard for fair trial guarantees in relation to members of the Crimean Tatar community and one defense lawyer.

143. On 21 February, a Crimean Tatar man from Kamenka was sentenced by a Crimean court to 11 days of administrative detention for posting on a social media network, in 2013, material featuring an organization prohibited in the Russian Federation.<sup>195</sup> In a similar case, a Crimean Tatar man from Bakhchysarai was sentenced to 12 days of administrative detention for having uploaded on a social media network in 2011-2012 material featuring an organization prohibited in the Russian Federation and four folk songs of a Chechen singer containing anti-Russian rhetoric.<sup>196</sup> In both cases the judges found the defendants guilty of promoting extremism and disregarded the fact that the alleged violations took place before the implementation of Russian Federation laws in Crimea. OHCHR recalls that the retroactive application of penal law violates international humanitarian and international human rights law.<sup>197</sup>

144. Mass arrests were conducted by police in Crimean Tatar neighbourhoods. On 21 February, 10 Crimean Tatars who were filming the police search of a home belonging to a Crimean Tatar man suspected of extremism were arrested. They were found guilty of breaching public order and impeding the movement of civilians, and sentenced to five days of administrative arrest. The judgments were passed in separate trials in one day and, at least for some, in violation of fair trial standards: no representatives of the prosecution were present; two men were convicted in the absence of lawyers; and in at least one proceeding the judge ignored the public retraction of a witness statement supporting the claim that the individuals were breaching public order and freedom of movement.<sup>198</sup> On 13 April, the police carried out a raid in Bakhchysarai and arrested two Crimean Tatars for posting “extremist materials” on a social network. Five other Crimean Tatars who had gathered on the street watching the police raid were arrested and charged with “unauthorized public gathering”. All seven men were sentenced, six to administrative detention (from two to ten days) and one to a monetary fine. During the court hearings, several of the individuals were denied the right to legal representation and told that they had no right to a lawyer.<sup>199</sup>

145. On 14 February, the supreme court of Crimea dismissed the appeal of Russian Federation lawyer Nikolay Polozov against the decision of a first instance court<sup>200</sup> in Simferopol allowing an FSB investigator to interrogate him as a witness in a criminal case concerning one of his clients, Ilmi Umerov, the Deputy Chairman of Mejlis. On the basis of this initial court decision, Nikolay Polozov had forcefully been taken by security officials from his hotel in Simferopol to the FSB Crimea headquarters on 25 January and questioned by the FSB investigator in Ilmi Umerov’s case.<sup>201</sup> The supreme court decision argued that the

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<sup>194</sup> Article 64, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, according to which, penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.

<sup>195</sup> HRMMU interview, 23 February 2017.

<sup>196</sup> To justify the conviction, the judge referred to the “personal evaluation report” drawn up by the head of Bakhchysarai police, in which the defendant was described as “displaying hatred towards the Russian-speaking population and supporting anti-Russian propaganda”. HRMMU interview, 5 April 2017.

<sup>197</sup> Articles 65 and 67, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949; Article 15, ICCPR.

<sup>198</sup> HRMMU interview, 5 April 2017.

<sup>199</sup> HRMMU interview, 21 April 2017.

<sup>200</sup> At the request of the FSB, the Kyivskiyi district court in Simferopol ruled on 13 December 2016 that Nikolay Polozov should be compelled to testify as a witness in Ilmi Umerov’s case, despite being his lawyer.

<sup>201</sup> See OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 128.

interrogation of Nikolay Polozov as a witness did not interfere with his rights as a defence lawyer because it allegedly concerned facts which had happened prior to the moment when he assumed the defence of his client. OHCHR is gravely concerned by this decision, which not only undermines the confidentiality of communications between lawyers and their clients, but also the ability of lawyers to perform their professional functions without intimidation, hindrance, harassment or improper interference.<sup>202</sup>

## B. Conditions of detention

146. OHCHR documented several cases of grave ill-treatment of people in detention.

147. On 26 April, a Crimean resident from Kerch who was convicted and began serving his sentence in Crimea before its temporary occupation by the Russian Federation, cut his wrists and throat in protest against his planned transfer from a detention facility in Simferopol to one located in the Republic of Mordovia (Russian Federation). After being hospitalized, and contrary to medical recommendations, he was transferred on 2 May to the Russian Federation where he started a hunger strike. OHCHR recalls that the forcible transfer of Ukrainian detainees to penal colonies and pre-trial detention facilities in the Russian Federation involves protected persons and therefore constitutes a violation of international humanitarian law.<sup>203</sup>

148. On 17 March, the Russian Federation transferred to Ukraine 12 pre-conflict convicts (11 men and one woman) who were all serving their sentences in Crimea when Russian Federation authorities took control of the peninsula, and had been subsequently transferred to various penitentiary institutions in the Russian Federation. Their return to Ukraine is the result of lengthy negotiations between the Ombudspersons of Ukraine and the Russian Federation, during which they had agreed to focus efforts on securing the transfer of Ukrainian citizens who had been sentenced by courts in mainland Ukraine or Crimea before 2014 and wanted to be transferred to mainland Ukraine.

149. OHCHR interviewed all 12 convicts in the pre-trial detention centre in Kharkiv, from where they will be transferred to penal institutions throughout Ukraine to serve the remainder of their sentences. They provided accounts of serious human rights violations, including threats, inhumane conditions of detention, torture, prohibited forms of punishment including unjustified strips, detention in solitary confinement, harassment and abuse on ethnic grounds.

150. Following the March 2014 referendum in Crimea, correspondence with mainland Ukraine was blocked and family visits were denied for weeks. In addition, significant pressure was placed on detainees by the penitentiary administration to become Russian Federation citizens. When they refused, they were intimidated, placed in solitary confinement, and sometimes beaten. The female detainee said personnel of the Simferopol pre-trial detention centre warned her that she could be killed for her refusal to become a Russian Federation citizen.<sup>204</sup> Compelling the inhabitants of an occupied territory to adopt the citizenship of the Occupying Power is tantamount to obliging them “to swear allegiance” to the latter, which is forbidden under international humanitarian law.<sup>205</sup>

151. OHCHR interlocutors complained about ill-treatment, threats of sexual violence, and denial of confidential meetings with Ukrainian consuls. Some detainees claimed they

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<sup>202</sup> See UN Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990, Principles 16 and 22.

<sup>203</sup> Articles 49 and 76, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. See also OHCHR report on the human right situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 134-135.

<sup>204</sup> HRMMU interview, 21 March 2017.

<sup>205</sup> Article 45, Hague Regulations.

were ill-treated by prison guards based on their Ukrainian origin. One of them reported that upon arrival to colony no. 7 in the settlement of Pakino (Vladimir region), he was forced daily by local prison guards to strip down to his underwear in sub-zero temperatures, after which they beat him with their fists, legs and batons while using derogatory language.<sup>206</sup>

152. Both in Crimea and the Russian Federation, medical assistance was reportedly inadequate. One prisoner was allegedly denied medical treatment in penal colony no. 102 in Simferopol because he did not have a Russian Federation health insurance.<sup>207</sup> OHCHR has first-hand information that a Crimean inmate, Andrii Levin, died on 6 March 2017 in a penal colony of the Russian Federation (Tlyustenkhabl, Adygea region) where he had been transferred from Crimea on 1 November 2015. He was suffering from HIV, tuberculosis, chronic pancreatitis and chronic paranephritis, and had applied on 16 February 2017 to the Prosecutor of Adygea complaining that no medical treatment was provided to him. Two other inmates suffering from serious ailments and transferred from Crimea to the same penal colony had died in 2016, also due to a reported lack of medical treatment: Valeryi Kerimov on 8 September 2016, and Dmytro Serpik on 4 December 2016. Under international humanitarian law provisions, the Occupying Power must provide detainees with medical attention required by their state of health.<sup>208</sup> Failure to provide medical assistance and healthcare to detainees violates the right to health and may amount to a violation of the right to life.

### C. Military conscription

153. A campaign on the conscription of Crimean residents into the ranks of the Russian Federation Armed Forces began on 1 April. It is expected that up to 2,400 men will be conscripted. Since 2014, conscripted Crimean residents have been serving in military units of the Russian Federation on the territory of the Crimean peninsula. In 2017, for the first time, they will also be sent to military units in the Russian Federation.<sup>209</sup> During a press conference on 12 April, the Military Commissioner of the Russian Federation in Crimea declared that a criminal case had been opened against a resident of Crimea who refused to serve in the Russian Federation army. OHCHR wishes to stress that under the Fourth Geneva Convention (Article 51), an Occupying Power may not compel civilians in the occupied territory to serve in its armed or auxiliary forces.

### D. Housing, land and property rights

154. The question of housing, land and property in Crimea is sensitive, particularly for Crimean Tatars who returned from exile starting in the late 1980s. The unmanaged return process and the perceived injustices in land allocation have led to Crimean Tatars settling on unoccupied or public land.<sup>210</sup> After taking control of the peninsula, the Russian Federation authorities in Crimea pledged to legalize the unauthorized appropriation of land or allocate alternative land plots to Crimean Tatars.<sup>211</sup>

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<sup>206</sup> HRMMU interview, 21 March 2017.

<sup>207</sup> HRMMU interview, 21 March 2017.

<sup>208</sup> Article 76, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War.

<sup>209</sup> According to Article 7 of the Treaty of Accession between the Republic of Crimea and the Russian Federation of 18 March 2014, Crimean residents who are called to serve in the Russian Federation Armed Forces will undertake their military service on the territory of the Republic of Crimea and the city of Sevastopol until 31 December 2016.

<sup>210</sup> See August 2013 Needs Assessment of the OSCE HCNM: "The Integration of Formerly Deported People in Crimea, Ukraine", pp. 9-15.

<sup>211</sup> On 10 May 2014, the Russian Federation Minister of Crimean Affairs stated at a press conference that the Russian authorities would deal with cases of unauthorized acquisition of land in Crimea "with full responsibility and caution"; See OHCHR report on the human rights situation in Ukraine, 15 June 2014, para. 320.

155. Nevertheless, this issue has not been addressed, and concerns have arisen after legal steps have been taken by the Russian Federation authorities in Crimea to allow the demolition of buildings constructed without necessary permits. The most recent decision applied to Crimea's capital, Simferopol.<sup>212</sup> It envisages that buildings constructed on land plots located in areas of restricted use, such as public areas and areas near utility facilities, will be torn down. Similar decisions have been adopted after Crimea's occupation in other parts of the peninsula.

156. The demolition of such buildings, ordered by local administrations and special "demolition commissions", could result in evictions disproportionately affecting the Crimean Tatars who, upon their return from deportation, constructed their houses on land plots they did not own. According to case law of the European Court of Human Rights, any person risking the loss of his/her home should be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8 of the ECHR.<sup>213</sup> OHCHR considers that neither the "commissions on demolition" nor the local administrations can be regarded as independent tribunals. In the absence of legal safeguards conforming to international human rights standards, forced evictions constitute a gross violation of a broad range of human rights, in particular the right to adequate housing and freedom from arbitrary interference with home and privacy.<sup>214</sup> OHCHR recalls the importance of eliminating forced evictions by *inter alia* repealing legislation which allows for such practice and taking measures to ensure the right to security of tenure for all residents.<sup>215</sup>

157. The confiscation of public and private property, referred to as "nationalization" under the Russian Federation legislation, which began in Crimea after the referendum in March 2014<sup>216</sup> continued. As of 12 May 2017, 4,575 public and private real estate assets had been "nationalized".

158. The Russian Federation authorities took steps to compensate owners of property "nationalized" since March 2014 by adopting special legislation<sup>217</sup> on 28 December 2016. However, the compensation is limited and does not offer a fair remedy to those affected. Indeed, the scheme is only applicable to private property<sup>218</sup> and excludes individuals accused of "extremism". The latter limitation raises particular concerns in view of the arbitrary application of anti-extremism legislation by the Russian Federation authorities in Crimea. The amount of compensation will be determined by reference to the market value of the object on 21 February 2014, a date which precedes the application of Russian Federation legislation in Crimea and the "nationalization". Moreover, payment of compensation can be postponed for 10 years.

159. OHCHR recalls that, according to international humanitarian law, private property, as well as the property of municipalities and institutions dedicated to religion, charity and education, the arts and science may not be confiscated,<sup>219</sup> and that immovable public property

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<sup>212</sup> Resolution No. 2206 "On the demolition of illegally constructed buildings in the municipal district of Simferopol" adopted on 23 September 2016.

<sup>213</sup> ECHR Judgment, *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, 21 April 2016, § 53.

<sup>214</sup> ICESCR, Article 11(1); ICCPR, Article 17(1).

<sup>215</sup> Resolution 1993/77 of the United Nations Commission on Human Rights; Resolution 2004/28 of the United Nations Commission on Human Rights.

<sup>216</sup> The first legal act which initiated the process of property nationalization in Crimea was the Resolution of the 'State Council of the Republic of Crimea' "*On property nationalization of agricultural companies, institutions and organizations in the Republic of Crimea*" No. 1836-6/14 (adopted 26 March 2014).

<sup>217</sup> The Law of the Republic of Crimea "On special aspects of regulation of some of the property relations in the Republic of Crimea" No. 345-3PK/2016 came into force on 14 January 2017.

<sup>218</sup> The law applies to private property included in the list of nationalized property according to Resolution No. 2085-6/14 of the 'State Council of the Republic of Crimea' (30 April 2014).

<sup>219</sup> Hague Regulations, Articles 46 and 56.

must be administered according to the rule of usufruct.<sup>220</sup> Destruction of property may only be justified if required by imperative military or public order necessity.<sup>221</sup>

## E. Right to education

160. Statistics released by Crimea's Ministry of Education in March 2017 show the continuing decline of Ukrainian as a language of education in schools across the peninsula.<sup>222</sup> The number of children following their education in Ukrainian decreased from 12,694 in 2013 to 371 in the 2016/2017 academic year. There were seven Ukrainian language schools and 875 classes in Crimea in 2013. As of March 2017, there remained only one school - in Feodosiia - attended by 132 children from grades 1 to 9. The other 239 children were in Russian-language schools which have a few classes delivered in Ukrainian. In total, education in Ukrainian language is offered in 28 classes across the peninsula.

161. The reasons for this dramatic decrease include a dominant Russian cultural environment, the departure of thousands of pro-Ukrainian Crimean residents to mainland Ukraine, claims of pressure from some teaching staff and school administrations to discontinue teaching in this language, and negative media reporting in Crimea and the Russian Federation about developments in Ukraine, which may have led to reluctance or fear to be branded 'anti-Russian' through the choice of Ukrainian as the language of instruction.

162. According to the information of Crimea's Ministry of Education, the Crimean Tatar language was used at the beginning of the 2016/2017 academic year by 5,330 children, a figure comparable to the situation prevailing in 2013.<sup>223</sup> Fifteen schools continued to provide education exclusively in the Crimean Tatar language, a number that has not changed in three years.

## VII. Legal developments and institutional reforms

### *International Court of Justice*

163. On 19 April, the International Court of Justice delivered its Order regarding the request for provisional measures submitted by Ukraine on 17 January 2017<sup>224</sup> in the case concerning "Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination" (*Ukraine v. Russian Federation*).

164. With regard to the situation in Crimea, the Court concluded that, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, the Russian Federation must refrain from "maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis", and must ensure the availability of education in the Ukrainian language. With regard to Ukraine's claims against the Russian Federation based on the International Convention for the Suppression of the Financing of Terrorism, the Court found that the conditions required for the indication of provisional measures were not met. The Court also instructed that Ukraine and the Russian Federation refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve, and expressed its expectation that both Parties work towards full implementation of

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<sup>220</sup> Hague Regulations, Article 55.

<sup>221</sup> Hague Regulations, Article 23(g).

<sup>222</sup> Available at <http://monm.rk.gov.ru/rus/index.htm/news/355733.htm>.

<sup>223</sup> 5,551 children were taught in the Crimean Tatar language in 2013.

<sup>224</sup> Available at <http://www.icj-cij.org/docket/files/166/19394.pdf>. See OHCHR report on the situation of human rights in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 146.



the “Package of Measures” in the Minsk agreements in order to achieve a peaceful settlement of the conflict in eastern Ukraine.

165. The International Court of Justice Order on the request for provisional measures does not prejudge the future ruling on merits.

## A. Legislative developments

### *Draft Law on Temporarily Occupied Territory of Ukraine*

166. On 12 April, the Parliamentary Committee on State Building, Regional Policy and Local Self-Government recommended that the Parliament reject the draft law ‘On Temporarily Occupied Territory of Ukraine’ (No.3593-d), which was registered on 19 July 2016.<sup>225</sup> The draft law had been criticized by civil society groups, the Council of Europe and the UN system (OHCHR, UNHCR and IOM), which advocated *inter alia* against abrogating the responsibility of the Government to guarantee the social rights of residents of territory not controlled by the Government, and prohibiting the delivery of minimum essential humanitarian supplies to them. A revised draft text was developed by a working group of the same parliamentary committee and registered in Parliament on 20 April.<sup>226</sup> While it narrowed the scope of the initial document and removed some controversial provisions, including on discontinuation of essential water and electricity supplies, other problematic provisions of the first draft law were kept, including the prohibition to pay pensions to residents of non-Government controlled territory and the blanket non-recognition of documents issued in such territory, contrary to international jurisprudence.<sup>227</sup>

167. Solutions addressing some of the most controversial issues remaining in the draft law were proposed in alternative legislative initiatives introduced to Parliament on 10 May.<sup>228</sup> One proposal would enable residents of territory not controlled by the Government to receive their pensions in Government-controlled territory through a mechanism to be developed by the Cabinet of Ministers of Ukraine. The other draft law introduces a distinction by offering a similar mechanism for residents of eastern regions that are not under control of the Government, and yet prohibiting the payment of pensions to residents of Crimea. Positively, both alternative draft laws provide for an administrative procedure for the establishment of the facts of birth and death occurring in non-Government controlled territory instead of the current judicial review.<sup>229</sup>

## B. Criminal justice reform

168. On 16 March, the Parliament adopted amendments to the Criminal Procedure Code of Ukraine, which entered into force on 13 April. They are intended to address practical

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<sup>225</sup> See OHCHR report on the situation of human rights in Ukraine covering the period from 16 August to 15 November 2016, para. 195-198.

<sup>226</sup> Draft Law ‘On temporarily occupied by the Russian Federation territory of Ukraine’ No.6400 of 20 April 2017.

<sup>227</sup> ICJ Advisory Opinion of 21 June 1971 – *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, para. 125; *Loizidou v. Turkey* (Merits), Judgment of 18 December 1996, ECHR (1996), para. 45; *Cyprus v. Turkey* (Merits), Judgment of 10 May 2001, ECHR (2001), para. 90 and “MRT” (*See Ilascu and Others v. Moldova and Russian Federation*, Application n. 48787/59, Judgment of 8 July 2004, para. 458-461).

<sup>228</sup> Draft Law ‘On temporarily occupied by the Russian Federation territory of Ukraine’ No.6400-2 of 10 May 2017; and Draft Law ‘On the territory of Ukraine temporarily occupied by the Russian Federation and the territory not controlled by the Government as a result of an armed conflict with the involvement of terrorist groups receiving external support’, No. 6400-1 of 10 May 2017.

<sup>229</sup> Addressing the issue of non-recognition of documents issued by ‘authorities’ in territory not controlled by the Government, one of the alternative draft laws explicitly permits using such documents as evidence in the process of establishing births and deaths. The provisions of the other alternative document concerning this issue appear to be contradictory.

problems concerning criminal proceedings *in absentia* against the former president Viktor Yanukovych and other ex-officials who have absconded.<sup>230</sup>

169. The amendments, in particular, expanded the list of crimes in relation to which proceedings can be pursued *in absentia* to also cover the creation of a criminal organization, assisting members of such organizations or covering up their criminal activity, and gangsterism. They also extended the application of a lower threshold for proceedings *in absentia* which was introduced in May 2016 as a temporary measure.<sup>231</sup> For instance, an individual staying in the area of the “anti-terrorist operation”, which includes localities controlled by the Government, may be subjected to proceedings *in absentia*, having no knowledge about criminal charges against him/her.

170. The temporary rules, which were previously assessed by OHCHR as creating a risk of violations of due process and fair trial rights<sup>232</sup>, will continue to apply until the State Bureau of Investigation starts operating, which must be no later than 19 November 2017. Positively, some of the most problematic provisions, such as those extending the term of pre-trial investigation and detention in custody from 12 to 18 months and mandating the publication of summons to proceedings in print media, were removed from the text of the law before its final adoption.

### C. Judicial reform

171. The establishment of the new supreme court is one of the large-scale initiatives within the framework of the judicial reform which started with the June 2016 constitutional amendments.<sup>233</sup> Ukraine took into account recommendations of the Venice Commission to transfer from a four-tier to three-tier judicial system. Thus, a single supreme court is being formed instead of three high specialized courts and the current functioning supreme court.

172. The recruitment of 120 judges to the supreme court began in November 2016, and was organized around four specialization tracks: civil, criminal, administrative and commercial law. On 21 April 2017, the process reached the stage where applicants who successfully passed the anonymous testing and practical assignment competitions started being interviewed. All interviews are public and may be observed through an on-line stream. Of the 382 candidates remaining, 73 per cent are judges, 10 per cent are attorneys, 10 per cent are academics and 7 per cent have mixed background. The deadline for the process to be completed, 31 March 2017, was not met. No new deadline has been set.

173. To enable the supreme court to operate in line with the judicial reform, the President submitted to the Parliament on 23 March a draft Law “On Introducing Changes to Commercial Code, Civil Procedure Code, Code of Administrative Court Procedure and Other Legislative Acts”.<sup>234</sup> The draft law was developed by working groups within the Council on Judicial Reform, which is an advisory body to the President of Ukraine. It entails relevant changes, which OHCHR views positively, concerning introduction of e-governance, simplification of the court process, subject-matter jurisdiction rules, and the use of mediation as a means of dispute resolution.

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<sup>230</sup> Law of Ukraine ‘On amendments to the Criminal Procedural Code of Ukraine (on strengthening the mechanisms for meeting the objectives of the criminal proceedings)’, No. 1950-VIII of 16 March 2017.

<sup>231</sup> See OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, para. 173.

<sup>232</sup> *Ibid.*

<sup>233</sup> See OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2016, para. 18-22.

<sup>234</sup> Draft law ‘On amendments to the Commercial Procedural Code of Ukraine, Civil Procedural Code of Ukraine, the Code of Administrative Judicial Procedure and other legislative documents’, No. 6232 of 23 March 2017.

## D. National Human Rights Institution

174. On 27 April, the five-year term of tenure of the current Ukrainian Parliament Commissioner for Human Rights (Ombudsperson's Office of Ukraine) expired. According to the law, the current Parliament Commissioner continues to exercise her functions until the appointment of a new one.<sup>235</sup> In line with the procedure, no less than one fourth of deputies or the Speaker of the Parliament can nominate candidates for the post by 17 May.<sup>236</sup> OHCHR recalls that, according to the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions, the existing procedure for selection and appointment of the Parliament Commissioner must be revised to ensure its compliance with the Paris Principles.<sup>237</sup> The process shall promote transparent, merit based and participatory selection in order to ensure the independence of, and public confidence in, the national human rights institution. Particularly, the selection and appointment procedure should require advertisement of the vacancy, establish clear and uniform criteria to assess the merit of applicants, an promote broad consultation and participation.

## VIII. Technical cooperation and capacity-building

175. OHCHR regularly engages in technical cooperation and capacity-building activities in order to assist the Government in meeting its international obligations to protect and promote human rights.

176. On 23 March, OHCHR submitted the joint contribution of United Nations agencies in Ukraine to the Universal Periodic Review (UPR) assessing Ukraine's compliance with its international human rights obligations. It also attended a presentation of alternative reports submitted by over a dozen Ukrainian civil society organizations and coalitions to the UPR, organized by the United Nations Development Programme and the Ombudsperson's office on 19 April. During this event, OHCHR encouraged the Government and non-states actors to engage in a consultation process ahead of the submission of Ukraine's national report, due by 12 August 2017, to ensure proper inclusion of the perspectives and human rights concerns of broad segments of society, in addition to the activities and obligations of the Government.

177. OHCHR notes positive response of the Government of Ukraine to the OHCHR thematic report on conflict-related sexual violence in Ukraine released on 16 February. On 24 February, the Office of the Prosecutor General sent a letter to HRMMU showing interest in the report and informing about a dedicated investigator who will look into the cases included in the report.

178. Over the course of the reporting period, OHCHR participated in seven events held by partner organizations at local, national and international levels, during which it presented its thematic report on conflict-related sexual violence. More than 300 actors from international organizations, State agencies, and civil society have been briefed on key findings of the report, including actionable recommendations to all parties of the conflict.

179. OHCHR remains committed to supporting implementation of the Istanbul Protocol on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>238</sup> In March 2017, OHCHR concluded training sessions on the Istanbul Protocol which had commenced in January for approximately 400 newly

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<sup>235</sup> Law of Ukraine 'On the Ukrainian Parliament Commissioner for Human Rights' No. 776/97-BP of 23 December 1997, Article 9.

<sup>236</sup> *Ibid.*, Article 6.

<sup>237</sup> ICC Sub-Committee on Accreditation Report, October 2014, pages 35-36.

<sup>238</sup> Available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

recruited regional prosecutors. OHCHR also began collaborating with UNDP on development of a joint project to provide technical assistance to combat the use of torture.

## **IX. Conclusions and recommendations**

180. Little evidence suggests any serious intention for the implementation of the Minsk agreements in the near future. Renewed “commitments” to the ceasefire, repeated before and during the reporting period, consistently prove to be superficial and short-lived with the routine employment of heavy weaponry by all sides. Meanwhile, the civilian population on both sides of the contact line continues to suffer the brunt of the consequences. While they remain resilient, they express a rising sense of despair and a diminishing hope of a return to normalcy.

181. The three-year anniversaries of the violence at Maidan and Odesa passed without any significant security incidents, reflecting an improvement in the policing and securing of commemorative events. Nonetheless, there was no notable progress in the investigations and prosecutions to hold perpetrators of the violence and killings accountable. Coupled with new accounts of human rights violations and abuses, committed on both sides of the contact line, these factors contribute to a sense of impunity surrounding such actions.

182. Disproportionate restrictions on the freedom of movement continued to have a wide impact on the population, with greater effect in March due to a surge in the number of civilians, especially pensioners, who needed to cross the contact line in order to secure their social and economic benefits. The growing isolation of some villages located near the contact line, where movement is most greatly restricted, poses a great threat to the health, safety, and livelihood of residents. The ongoing deterioration of freedom of opinion and expression has had a profound effect on public access to information and plurality of opinion.

183. These trends, together with the shrinking space for humanitarian organizations, particularly in territory controlled by armed groups, which provide essential assistance to vulnerable sections of the population, paint a bleak picture for future reconciliation and development. OHCHR stresses that the only durable pathway to a peaceful resolution of the conflict and for the future development of Ukraine is the full and resolute implementation of the Minsk agreements.

184. OHCHR remains concerned by human rights violations and violations of international humanitarian law applicable to the occupation of Crimea by the Russian Federation, and particularly by the impact on the Crimean Tatar population. OHCHR will continue to monitor and report on the human rights situation in Crimea, including with regard to compliance with provisional measures issued by the International Court of Justice.

185. Most recommendations made in the previous OHCHR reports on the human rights situation in Ukraine have not been implemented and remain valid. OHCHR further recommends:

186. **To the Ukrainian authorities:**

- a) **Cabinet of Ministers to establish a mechanism for investigation of cases of looting, seizure and military occupation of civilian property;**
- b) **Security Service and other law enforcement agencies to ensure detainees’ access to a lawyer immediately after their detention and to refrain from carrying out any investigative actions in absence of the latter;**

- c) **Cabinet of Ministers to include the implementation of the Istanbul Protocol in the Human Rights Action Plan to foster effective investigation and documentation of torture;**
- d) **Prosecutor General's Office to investigate all allegations of arbitrary detention and/or torture and ill-treatment of conflict-related detainees by the Security Service elements or persons or groups of persons acting with their authorization, support or acquiescence and ensure accountability notwithstanding that the violations could have been committed by persons acting in official capacity;**
- e) **Courts to adequately review confessions submitted as evidence and exclude those obtained by torture or coercion;**
- f) **Courts to ensure that trials of individuals on charges of affiliation with armed groups are carried out without undue delay and in full respect of all fair trial guarantees;**
- g) **Courts to refrain from automatic extension of measure of restraint of custodial detention for conflict-related detainees charged with affiliation with the armed groups;**
- h) **Headquarters of the Anti-Terrorism Operation, Cabinet of Ministers and Ministry of Temporarily Occupied Territories and IDPs to lift unnecessary and disproportionate restrictions on freedom of movement, and ensure that 1) civilians may cross the contact line by all types of vehicles, including public transportation; 2) civilians may transfer personal belongings necessary for their adequate standard of living; 3) permits for crossing the contact line can only be invalidated on proved legal grounds, with proper notification and an established appeal procedure;**
- i) **State Border Guard Service to collect sex- and age-disaggregated data on people crossing the contact line in order to provide adequate facilities for men, women and children, thus mitigating restrictions on freedom of movement;**
- j) **Headquarters of the Anti-Terrorism Operation, State Border Guard Service of Ukraine, State Fiscal Service of Ukraine to establish and ensure effective functioning of a complaint procedure for victims of human rights violations at checkpoints;**
- k) **Headquarters of the Anti-Terrorism Operation to entrust one state entity with overall responsibility for maintenance of checkpoints, including administrative, sanitary and security measures, and to ensure its financial capacity;**
- l) **Presidential administration to develop amendments to the Law "On Corruption Prevention" and create favourable conditions for anti-corruption organizations to operate in Ukraine;**
- m) **Government of Ukraine to guarantee that residents of all villages in immediate proximity to the contact line can exercise their social and economic rights and enjoy their fundamental freedoms. In particular, either by establishing a new local administration or by extending powers**



of the existing ones, to ensure that executive authorities effectively operate in the villages of Pisky, Vodiane, Sieverne, and Opytne in Donetsk region;

- n) **Cabinet of Ministers and Ministry of Social Policy to guarantee all eligible citizens of Ukraine the right to receive their entitlements, including pension and social payments, regardless of IDP registration or place of residence;**
- o) **Cabinet of Ministers to adequately address the housing and accommodation situation of IDPs living in collective centres;**
- p) **Parliament of Ukraine to adopt proposed legislative amendment which would allow IDPs and other internal migrants to fully exercise their voting rights;**
- q) **Cabinet of Ministers to establish independent, transparent, and non-discriminatory procedures of documentation and verification of housing, land, and property ownership, and to establish a specific registry of destroyed or damaged housing and other property and a comprehensive legal mechanism for compensation, including for people residing in territory controlled by armed groups;**
- r) **Parliament of Ukraine to revise the procedure for selection and appointment of the Ombudsperson in line with the recommendations made by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions and include requirements to: publicize vacancies broadly, assess candidates on the basis of pre-determined, objective and publicly available criteria, and promote broad consultation and/or participation in the screening, selection and appointment process.**

187. **To all parties involved in the hostilities in Donetsk and Luhansk regions, including the Ukrainian Armed Forces, and armed groups of the self-proclaimed ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’:**

- a) **Adhere to the ceasefire and implement other obligations committed to in the Minsk agreements, in particular regarding withdrawal of prohibited weapons and disengagement of forces and hardware;**
- b) **Refrain from indiscriminate shelling of populated areas and locating military objectives within or near densely populated areas, medical facilities, and schools, in line with precautionary measures called for under international humanitarian law;**
- c) **Terminate all military activity around civilian infrastructure and objects indispensable to the survival of the civilian population, especially near power lines and water facilities. Guarantee immediate, secure and unimpeded access to repair teams fixing damages to such infrastructure;**
- d) **Allow regular and unhindered access to external monitors to all places of deprivation of liberty and guarantee that interviews can be conducted in confidentiality;**
- e) **Undertake comprehensive measures to protect civilians travelling across the contact line, ensuring that crossing routes and entry-exit checkpoints**

are a no-fire area and enhancing protection against sexual- or gender-based violence;

- f) Facilitate free and unimpeded passage by civilians across the contact line by increasing the number of crossing routes and entry-exit checkpoints, especially in Luhansk region;
- g) Guarantee security and freedom of movement for residents of villages in the 'no man's land' and in the immediate vicinity to the contact line, and facilitate (including by providing regular transportation) access to their rights to health, education, and social security.

188. **To the Government of the Russian Federation:**

- a) End the practice of retroactive application of penal laws to acts committed prior to the implementation of Russian Federation laws in Crimea;
- b) Ensure adequate medical assistance to all individuals detained in penitentiary institutions in Crimea irrespective of their citizenship, nationality or origin;
- c) Return to Crimea all protected persons transferred to the Russian Federation, pursuant to international humanitarian law provisions prohibiting the forcible transfer or deportation of protected persons from occupied territory to the territory of the Occupying Power;
- d) End the practice of compelling Crimean residents to serve in the armed forces of the Russian Federation;
- e) Repeal legislation which allows for forced evictions and confiscation of private property in Crimea.
- f) Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis;
- g) Ensure the availability of education in the Ukrainian language.

189. **To the international community:**

- a) Use all diplomatic channels to press all parties involved to end hostilities, by emphasizing the suffering of civilians and the human rights situation caused by the conflict; in particular, call for the parties to adhere to their commitments to cease fire, withdraw weapons and engage in mine action;
- b) Remind all parties involved in the hostilities to strictly abide by international human rights law and international humanitarian law in ensuring the protection of civilians;
- c) Urge the parties involved in the hostilities to guarantee secure and unimpeded access of repair teams to damaged civilian infrastructure.



# Annex 775

OHCHR, Report on the Human Rights Situation in Ukraine (16 May–15 August 2017)





**Office of the United Nations High Commissioner  
for Human Rights**

**Report on the human rights situation in Ukraine  
16 May to 15 August 2017**



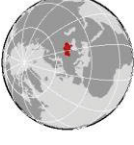
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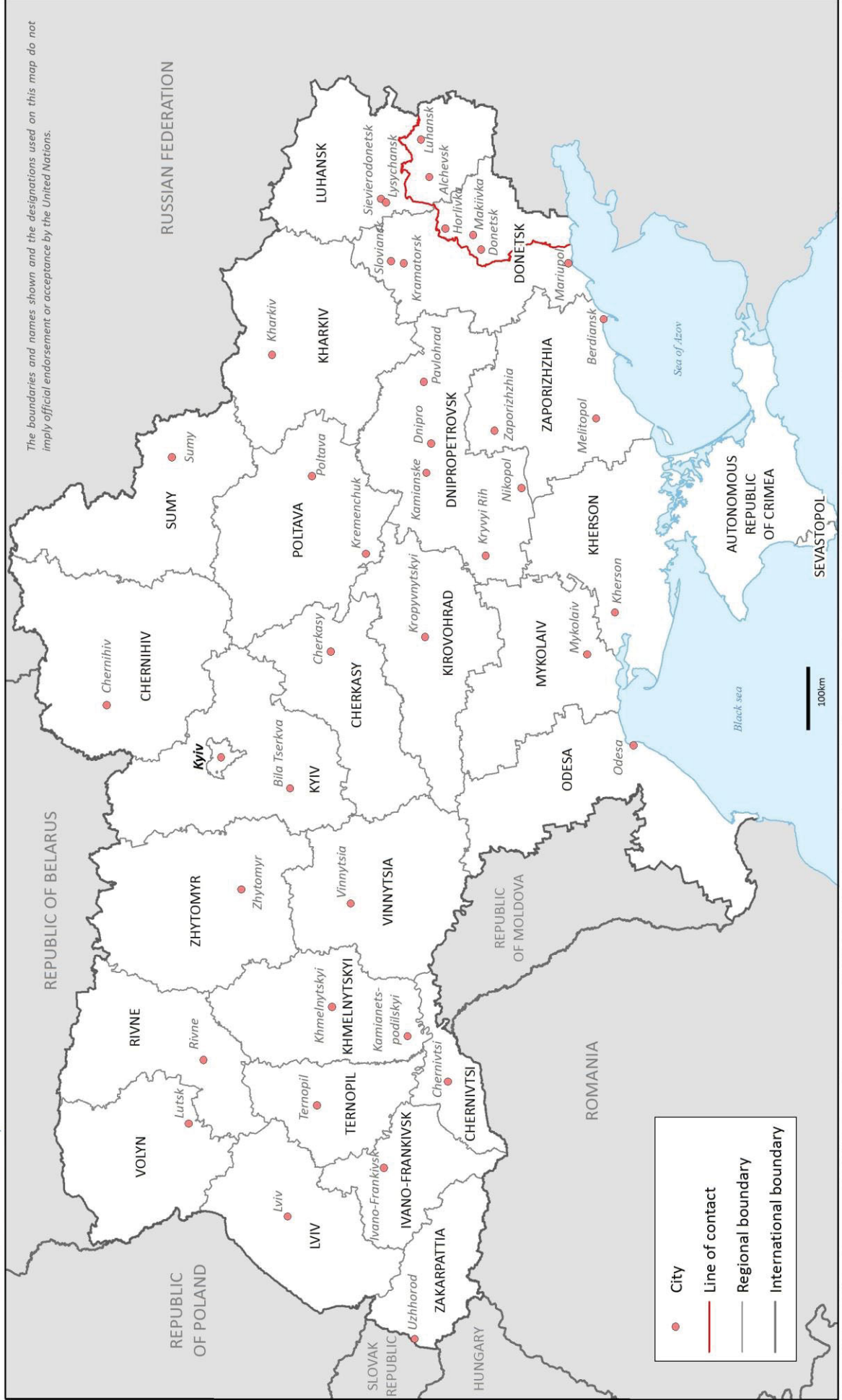




# Map of Ukraine

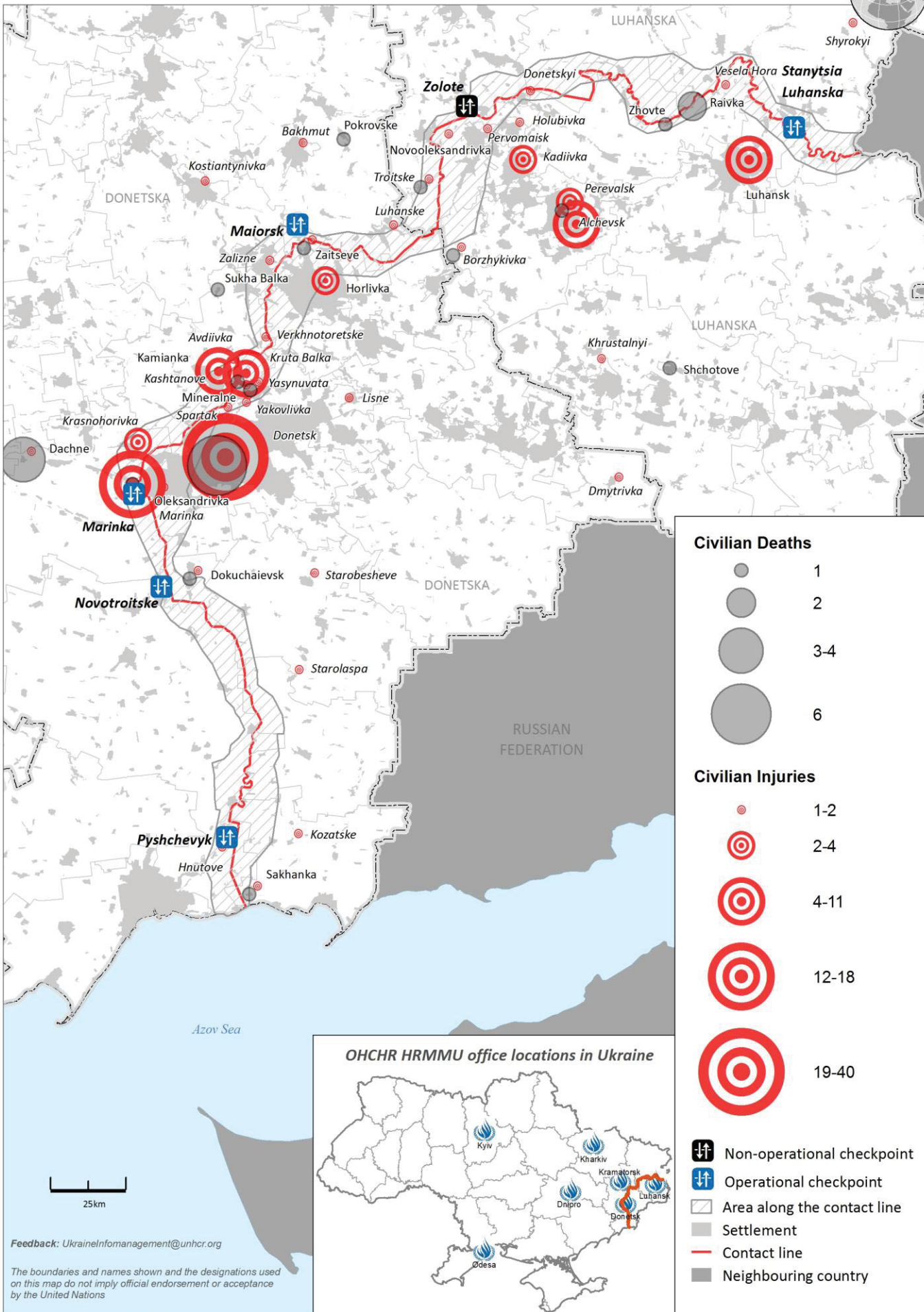
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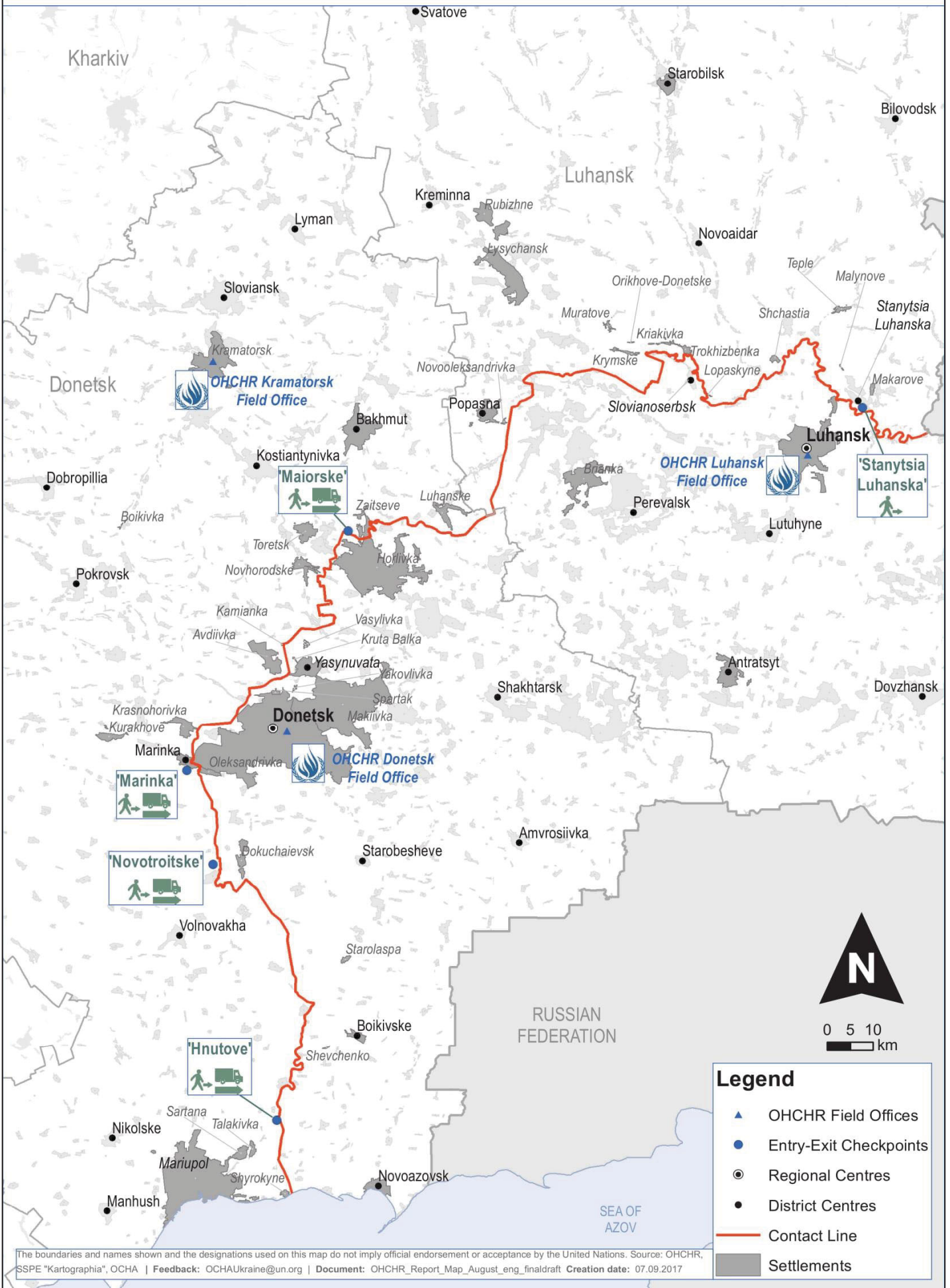


# Ukraine: Civilian casualties along the contact line, 16 May - 15 August 2017





# Locations in eastern Ukraine mentioned in this report



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**Legend**

- ▲ OHCHR Field Offices
- Entry-Exit Checkpoints
- ⊙ Regional Centres
- District Centres
- Contact Line
- Settlements

## I. Executive summary

*“We only see political ambitions on both sides. They are dividing something, but they forgot that there are people here.”*

- Resident of a village near the contact line

1. This nineteenth report on the situation of human rights in Ukraine by the United Nations High Commissioner for Human Rights (OHCHR) is based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)<sup>1</sup>, and covers the period from 16 May to 15 August 2017.
2. The findings presented in this report are grounded on data collected by HRMMU through 293 in-depth interviews with witnesses and victims of human rights violations and abuses, as well as site visits in both government-controlled and armed group-controlled territory. HRMMU also carried out 264 specific follow-up activities to facilitate the protection of human rights connected with the cases documented, including trial monitoring, detention visits, referrals to State institutions, humanitarian organizations and non-governmental organizations (NGOs), and cooperation with United Nations human rights mechanisms.<sup>2</sup>
3. During the fourth summer of the conflict, armed hostilities persisted in eastern Ukraine in an unpredictable and fluctuating manner, endangering lives, damaging property and threatening the environment. Heavy weapons, such as explosive weapons with a wide impact area or the capacity to deliver multiple munitions over a wide area, continued to be frequently employed, including in residential areas and where critical civilian infrastructure is located, in disregard of commitments under the Minsk agreements to withdraw such weapons from the contact line.<sup>3</sup> The situation has been exacerbated since the beginning of the conflict by the presence of foreign fighters, and the supply of ammunition and heavy weaponry reportedly from the Russian Federation.<sup>4</sup> OHCHR continues to call on all parties to the conflict to immediately adhere to the ceasefire and to implement all other obligations committed to in the Minsk agreements, including the withdrawal of prohibited weapons and disengagement of forces and hardware.
4. From 16 May to 15 August 2017, OHCHR recorded 161 conflict-related civilian casualties (26 deaths and 135 injuries), slightly more than half of which were caused by shelling. The monthly totals of civilian casualties decreased from May to June and again from June to July, possibly attributable in part to the “harvest ceasefire” which commenced on 24 June. Nevertheless, the daily reality of sudden spikes and drops in armed hostilities, including shelling, continued to pose physical risks and psychological trauma.
5. The practice of placing military objectives near civilian objects and facilities necessary for the survival of the civilian population continued on both sides of the contact line, increasing

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<sup>1</sup> HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address human rights concerns. For more details, see paras. 7–8 of the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

<sup>2</sup> United Nations Human Rights Council Special Procedures mandate holders and Human Rights Treaty Bodies.

<sup>3</sup> See daily and spot reports from the Special Monitoring Mission (SMM) of the Organization for Security and Co-operation in Europe (OSCE), available at <http://www.osce.org/ukraine-smm/reports>.

<sup>4</sup> OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2015, paras. 2 and 6; OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2015, paras. 2, 58-59; OHCHR Report on the human rights situation in Ukraine, 16 August to 15 November 2015, paras. 2 and 22 (see also fn. 128); OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2016, para 2.

the risk of shelling of such objects and facilities. Hospitals and schools were affected by shelling, as well as other types of infrastructure, which resulted in disruptions in the supply of water, electricity and gas.

6. OHCHR documented cases of summary executions, enforced disappearances, *incommunicado* detention, arbitrary deprivation of liberty, torture/ill-treatment and conflict-related sexual violence,<sup>5</sup> most of which occurred before but could only be documented during the reporting period. In particular, during the reporting period, individuals were subjected to enforced disappearances and held *incommunicado* in territory controlled by armed groups.

7. In government-controlled territory, OHCHR continued to enjoy cooperation with the authorities and access to official places of detention, allowing for confidential interviews of conflict-related detainees in line with international standards.

8. By contrast, OHCHR continued to be denied access to detainees and places of deprivation of liberty in the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic',<sup>6</sup> despite repeated requests, raising serious concerns regarding detention conditions, including possible further human rights abuses, such as torture and ill-treatment.

9. OHCHR was nevertheless able to document, on both sides of the contact line, the persisting practice of torture, ill-treatment and sexual violence involving conflict-related detainees, often to extract confessions. OHCHR also documented a new development linked to the arrest and detention of citizens by law enforcement under terrorism charges for conducting business and paying 'taxes' in territory controlled by armed groups.

10. The persistent lack of accountability for human rights violations and abuses contributed to the prevailing sense and state of impunity. For instance, little progress was achieved in bringing to justice those responsible for the killings of protesters at Maidan in 2014 and for the 2 May 2014 violence in Odesa.

11. Ukrainian authorities continued to fail to effectively investigate human rights violations perpetrated by members of the Ukrainian military or security forces. In cases against members of armed groups, however, prosecutions have begun to address specific human rights violations (such as unlawful detention, torture and ill-treatment) rather than relying on more general charges of terrorism.<sup>7</sup>

12. Credible accounts from persons apprehended and detained by parallel structures of 'administration of justice' in territory controlled by armed groups demonstrated a lack of guarantees or safeguards in place, leading to human rights abuses.

13. Restrictions on freedom of movement affected record numbers of people, with over one million registered occasions when people travelled across the contact line in May, in June and in July. Despite increased operational hours at all entry-exit checkpoints (EECP), long queues continued to be observed. Civilians, in particular the elderly, persons with disabilities and other vulnerable persons, were exposed for protracted periods to very high summer temperatures, degrading physical conditions, inadequate sanitary conditions, and serious security risks due to the ongoing shelling and presence of mines, explosive remnants of war (ERWs) and unexploded ordnance (UXO) near the checkpoints. Additional control measures at 'internal' checkpoints operated by the National Police of Ukraine, targeting residents of territory controlled by armed groups, further restricted freedom of movement.

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<sup>5</sup> Not all incidents documented by OHCHR which occurred during the reporting period are reflected in this report in order to maintain the highest protection of individuals through strict adherence to principles of confidentiality and informed consent.

<sup>6</sup> Hereinafter 'Donetsk people's republic' and 'Luhansk people's republic'.

<sup>7</sup> See Accountability for human rights violations and abuses in the east *below*, and OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2017, para 88, footnote 118.

14. OHCHR observed a worrying trend in legislative initiatives which may negatively impact the enjoyment of freedoms of expression and association. In particular, a package of draft laws introduced would require public financial disclosures of civil society organisations reaching a low threshold of annual revenue and public reporting requirements which appear intrusive. In addition, in two high-profile cases, criminal convictions were handed down based on non-violent expressions of opinion. In territory controlled by armed groups, media representatives were hindered in their work and residents did not feel free to openly express views or opinions.

15. OHCHR also noted mixed developments pertaining to freedom of assembly. There was an overall decrease in judicial prohibitions of public assemblies and better policing of large public assemblies throughout Ukraine. Smaller demonstrations, however, received insufficient police protection, particularly those organized by persons belonging to minority groups or opposition political movements, with cases of participants attacked and injured by members of radical nationalistic groups.

16. The socio-economic situation in eastern Ukraine continued to deteriorate due to hardships caused by armed hostilities, measures hindering economic prosperity, and increased levels of poverty and unemployment. In addition to frequent shelling of water facilities in Donetsk region, financial deficits of the electricity enterprise in Luhansk region led to even further disruptions in public supply of water and electricity, impacting the right to an adequate standard of living. OHCHR is also concerned about health and possible environmental risks, posed either directly by the armed hostilities or as secondary consequences.

17. OHCHR documented further incidents of violence and discrimination against the Roma community, some involving local authorities, including the shooting to death of one Roma in Vilshany and the destruction of a Roma camp in Lviv. A notable lack of investigations into forced evictions and displacement of Roma prevented accountability for such human rights violations.

18. Restitution and rehabilitation of civilian property destroyed or damaged due to the conflict, or compensation, remain among the most pressing unaddressed socio-economic issues. OHCHR stresses the need for a property inventory and inspection procedures, including a mechanism for documentation and assessment of damages caused by the conflict. In the ‘Donetsk people’s republic’, at least 109 private markets passed to ‘state ownership’ since April 2017, and procedures to remove property rights of owners of “abandoned” property commenced.

19. HRMMU continued monitoring the human rights situation in the Autonomous Republic Crimea and the city of Sevastopol<sup>8</sup> from its offices in mainland Ukraine on the basis of United Nations General Assembly resolution 68/262 on the territorial integrity of Ukraine and resolution 71/205 referring to Crimea as being occupied by the Russian Federation. OHCHR recorded violations of due process guarantees and fair trial rights, as well as the disregard of the freedoms of expression, peaceful assembly, movement and religion or belief. Several Ukrainian citizens lacking Russian citizenship were deported from Crimea for violating immigration rules of the Russian Federation. Infringements on the right to property in Crimea may, in effect, amount to the confiscation of property without reparation.

20. Judicial reforms continued, with the adoption of a law on the Constitutional Court of Ukraine which introduced a new constitutional complaints mechanism. There remains a significant shortage of judges as a result of reforms initiated in 2016 and the situation has worsened as retirement, resignation and dismissal of judges outpaced the selection and appointment of new ones. Following the failure of the Parliament to hold a vote on a new Parliamentary Commissioner for Human Rights (Ombudsperson), OHCHR advocated that a new selection process be conducted according to a revised procedure that is transparent, merit-based and participatory.

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<sup>8</sup> Hereinafter “Crimea”.



21. OHCHR continued to engage in technical cooperation and capacity-building activities with the Government of Ukraine and civil society in order to strengthen the protection and promotion of human rights. One particular endeavour aimed at assisting the Government and partners with regards to the third Universal Periodic Review (UPR) of Ukraine by the United Nations Human Rights Council, through the preparation of an updated compilation of thematically clustered recommendations addressed to Ukraine by United Nations Human Rights mechanisms, and including recommendations made by HRMMU.

## II. Right to life, liberty, security, and physical integrity

### A. International humanitarian law in the conduct of hostilities

22. Hostilities in eastern Ukraine continued despite efforts by the Trilateral Contact Group (TCG) in Minsk and the Normandy Four (France, Germany, the Russian Federation and Ukraine) to ensure greater compliance of the parties with their commitments under the Minsk agreements. Local communities on both sides of the contact line, in anticipation of the surge in hostilities during August, and eager to bring in their crops safely, proposed a ‘harvest ceasefire’ from 24 June to the end of August, which was endorsed by the TCG on 21 June 2017.

23. Although this ceasefire never fully took hold, it may have contributed to an overall reduction in the number of daily ceasefire violations. Relatively calm periods were often interceded by abrupt increases and equally sudden drops in the number of ceasefire violations. The volatility and unpredictability of the security situation made daily life particularly risky for civilians residing near the contact line. In addition to the threat of shelling, civilians continued to be at risk from mines, unexploded ordnance and booby traps, as the parties to the conflict failed to systematically demine, or mark and fence contaminated areas highly frequented by civilians, such as crossing routes and residential areas.<sup>9</sup> OHCHR notes that placement of booby traps and trip wires in such areas can amount to the use of an indiscriminate weapon.

24. Heavy weapons, including explosive weapons with a wide impact area (such as artillery and mortars) or the capacity to deliver multiple munitions over a wide area (such as multiple launch rocket systems), continued to be present near the contact line and used frequently, in disregard of the Minsk agreements.<sup>10</sup> Further, OHCHR recalls that the use of such weapons in civilian populated areas can be considered incompatible with the principle of distinction and may amount to a violation of international humanitarian law due to their likelihood of indiscriminate effects.

25. OHCHR remained concerned that placing military objectives in densely populated areas and near civilian objects and facilities necessary for the survival of the civilian population, and the resulting shelling of such areas, objects and facilities, remained a general pattern in the hostilities, suggesting that insufficient regard has been given to their protection.<sup>11</sup>

26. Firstly, the placement of military objectives in densely populated areas, through military occupation and use of civilian property, continued,<sup>12</sup> heightening the risk to civilian lives on both

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<sup>9</sup> See Civilian casualties *below*.

<sup>10</sup> Under the Minsk agreements, the parties pledged to withdraw heavy weapons from the contact line.

<sup>11</sup> OHCHR notes that on 9 June 2017 the Ministry of Justice registered an Order of the Ministry of Defence, enforcing the instruction on the procedure for implementation of the rule of international humanitarian law within the Ukrainian Armed Forces (no. 704/30572).

<sup>12</sup> Military occupation or use of civilian property was documented by HRMMU in Donetsk region in Luhanske (23 May 2017), Avdiivka (20 June 2017), Zhovanka - government-controlled part of Zaitseve (21 June 2017), and in Luhansk region in Teple (17 May 2017), Muratove (18 May 2017), Orikhove-Donetske (18 May 2017), Kriakivka (18 May 2017), Lopaskyne (18 May 2017), Malynove (5 July 2017), Shchastia (6 July 2017), and Zolote (10 August 2017).

sides of the contact line.<sup>13</sup> In a reversal of a positive development previously reported,<sup>14</sup> OHCHR documented the return of Ukrainian Armed Forces to Kamianka village (Yasynuvata district of Donetsk region) and use of civilian property from April 2017. As a likely consequence of renewed military use, HRMMU noted increased shelling of the village in May, and the injury of a boy by shelling in June.<sup>15</sup> In Lopaskyne (Luhansk region), following advocacy by OHCHR, the Ukrainian Armed Forces vacated a private residential building, enabling its rightful owner to return.<sup>16</sup>

27. OHCHR noted the offer in late June of the Bakhmut Civil-Military Administration to relocate the remaining residents of Zhovanka, a government-controlled part of Zaitseve village, which is divided by the contact line, for their protection. This initiative, however, was largely unsuccessful, due to lack of adequate financial compensation, conditions of temporary accommodation, and fear of looting and damages to homes.<sup>17</sup> Where use of a locality is justified due to military necessity, parties must take measures for the protection of civilians residing nearby.<sup>18</sup> Where evacuation of civilians becomes necessary, it must be conducted in a voluntary manner that provides procedural safeguards and remedies, including the ability to register as an internally displaced person (IDP), even within the same locality, and the provision of adequate housing (accommodating the needs of persons with disabilities) and compensation.

28. Secondly, placing military objectives near civilian objects and facilities necessary for the survival of the civilian population put these objects and facilities at risk. Namely, hospitals and schools continued to be affected by shelling on both sides of the contact line. On 28 May 2017 in government-controlled Krasnohorivka, the central hospital (marked with a 4-metre red cross on its roof) and school no. 2 both sustained direct hits.<sup>19</sup> Boarding schools in the armed group-controlled Trudivski settlement of Petrovskiy district, Donetsk city, and in Yasynuvata town were affected by shelling on 15 and 17 June respectively.<sup>20</sup>

29. Also, during the second quarter of 2017, the severity of incidents affecting water supply facilities significantly increased.<sup>21</sup> In total, 24 incidents were documented by the WASH Cluster within the reporting period.<sup>22</sup> In one major series of incidents, shelling between 6 to 10 June forced the First Lift Pumping Station<sup>23</sup> of the South Donbas water pipeline to repeatedly halt operations, interrupting water supply to approximately 400,000 people on both sides of the contact line for up to 10 days. The Donetsk Filtration Station (DFS),<sup>24</sup> which processes water for approximately 345,000 people on both sides of the contact line, was de-energized due to shelling between 2 and 6 June, and between 30 June and 3 July. While welcoming the agreement reached in Minsk on 19 July on the establishment of safety zones around two water facilities in Donetsk

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<sup>13</sup> See OHCHR Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, paras. 19-22; OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, paras. 21-22.

<sup>14</sup> OHCHR Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, paras. 18-27.

<sup>15</sup> HRMMU visit and interview, 20 June 2017.

<sup>16</sup> HRMMU visit, 18 May 2017.

<sup>17</sup> While some residents interviewed by HRMMU expressed willingness to seek secure refuge by purchasing property elsewhere, adequate financial compensation for property damaged/destroyed by shelling or uninhabitable due to security risks was not offered and they opted to stay in the remnants of their dwellings where they could grow food and keep poultry. Other residents stated they had declined the offer for relocation due to poor living conditions in the dormitory where authorities intended to temporarily accommodate them, limited livelihood possibilities, and the fear that their homes would be looted and destroyed if left unattended. At the time of the interviews, HRMMU observed signs of continued military occupation of the neighbourhood.

<sup>18</sup> Customary International Humanitarian Law rules no. 24, 131 and 133.

<sup>19</sup> HRMMU visit, 31 May 2017. While both the school and hospital were in use at the time of impact, no casualties were reported.

<sup>20</sup> HRMMU visit, 28 June 2017.

<sup>21</sup> If in the first quarter of 2017 an average incident would cause water to be stopped for 123,000 people, in April-June an average incident caused a 24-hour water stoppage for 287,000 people. WASH Cluster Ukraine Alert Bulletin, 1 May – 31 June 2017, Issue No. 9.

<sup>22</sup> Incident reports by WASH Cluster, 16 May to 15 August 2017.

<sup>23</sup> The First Lift Pumping Station is located between the armed group-controlled villages of Vasylivka and Kruta Balka, in immediate proximity to the contact line.

<sup>24</sup> DFS is located in 'no man's land', approximately 15 kilometres north of Donetsk city, between government-controlled Avdiivka and armed group-controlled Yasynuvata. From 1 January 2017, the DFS has had to stop operations 13 times.



region – the DFS and the First Lift Pumping Station – OHCHR regrets that actual disengagement has not commenced.<sup>25</sup>

30. OHCHR documented other cases when shelling damage of critical infrastructure caused water, electricity and gas shortages, including in government-controlled Krymske and Avdiivka, where residents have been left without gas supply since 5 and 7 June, respectively. In government-controlled Toretsk and surrounding villages, the water supply has been limited to one hour per day, while some neighbourhoods have not had access to running water at all due to huge water loss from a damaged water pipeline in ‘no-man’s land’ between Toretsk and armed group-controlled Horlivka. This situation has been unresolved since January 2017, as the parties to the hostilities failed to negotiate a “window of silence” to allow for repairs on the pipe.

31. OHCHR recalls that water and power supply, as well as heating in the winter period, are critical to the survival of the civilian population, and that placing military objectives in residential areas, particularly near hospitals, schools, or facilities necessary for the survival of the civilian population, may amount to a violation of international humanitarian law.

## B. Civilian casualties

*“A peaceful man was killed in this courtyard. Nobody will tell who is responsible for the shelling.”*

- Brother of a man killed by shelling

32. Between 16 May and 15 August 2017, OHCHR recorded 161 conflict-related civilian casualties: 26 deaths (11 women and 15 men) and 135 injuries (74 men, 46 women, 12 boys, 3 girls).<sup>26</sup> This is a 16 per cent decrease compared with the previous reporting period (16 February to 15 May 2017), when 193 civilian casualties were recorded, and a 14 per cent decrease from the same time period in 2016 (16 May to 15 August 2016), when 188 civilian casualties were recorded.

33. The feared increase in civilian casualties anticipated for August, based on the previous years of the conflict, did not materialize during the first two weeks of the month. The “harvest ceasefire”, which commenced on 24 June, may have contributed to the decrease in civilian casualties caused by shelling in July and during the first half of August.

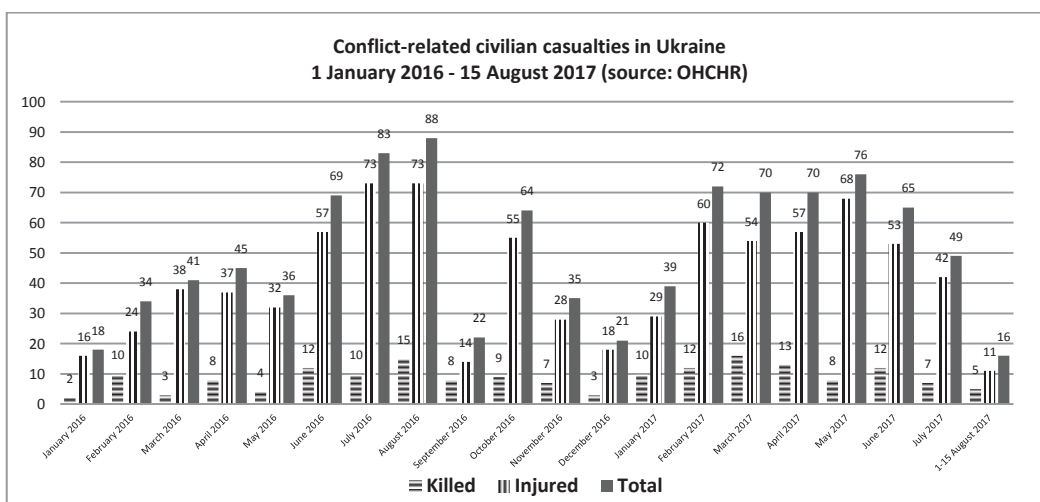
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<sup>25</sup> On 28 July, three projectiles hit the area of the First Lift Pumping Station. The DFS lost power due to shelling on 22 July, and was shelled again on 3 August. On 4 August, OSCE SMM members and their contracted workers were caught in small-arms fire at the DFS while installing a camera on its roof. On 9 August, the camera was shot and destroyed. See SMM spot reports available at <http://www.osce.org/special-monitoring-mission-to-ukraine/334146> and <http://www.osce.org/special-monitoring-mission-to-ukraine/335026>.

<sup>26</sup> OHCHR investigated reports of civilian casualties by consulting a broad range of sources and types of information which were evaluated for credibility and reliability. In undertaking documentation and analysis of each incident, OHCHR exercises due diligence to corroborate information on casualties from as wide a range of sources as possible, including OSCE public reports, accounts of witnesses, victims and other directly affected persons, military actors, community leaders, medical professionals, and other interlocutors. In some instances, investigations may take weeks or months before conclusions can be drawn, meaning that conclusions on civilian casualties may be revised as more information becomes available. OHCHR does not claim that the statistics presented in its reports are complete. It may be under-reporting civilian casualties given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods.

	Shelling (mortars, guns, howitzers, tanks, MLRS)			Small arms and light weapons			Mines, ERW, booby traps and IEDs		
	Killed	Injured	Total	Killed	Injured	Total	Killed	Injured	Total
<b>Donetsk region (total)</b>	9	70	79	1	12	13	8	20	28
Government-controlled	1	24	25		4	4	5	10	15
Armed group-controlled	8	46	54	1	8	9	2	10	12
'No man's land'							1		1
<b>Luhansk region (total)</b>		10	10		1	1	8	21	29
Government-controlled		2	2				2	2	4
Armed group-controlled		8	8		1	1	6	19	25
<b>Kharkiv region</b>								1	1
<b>Grand total</b>	<b>9</b>	<b>80</b>	<b>89</b>	<b>1</b>	<b>13</b>	<b>14</b>	<b>16</b>	<b>42</b>	<b>58</b>
Per cent of total			55.3			8.7			36

34. During the entire conflict period, from 14 April 2014 to 15 August 2017, at least 2,505 civilians were killed: 1,382 men, 837 women, 90 boys and 47 girls, and 149 adults whose sex is unknown. An additional 298 civilians, including 80 children, were killed as a result of the MH17 plane crash on 17 July 2014. The total number of conflict-related civilian injuries is estimated to be between 7,000 and 9,000.



35. In total, from 14 April 2014 to 15 August 2017, OHCHR recorded 34,766 conflict-related casualties in Ukraine, among civilians, Ukrainian armed forces and members of the armed groups. This includes 10,225 people killed and 24,541 injured.<sup>27</sup>

36. More than three years after the beginning of the armed conflict, no national mechanism has been put in place by the Government of Ukraine to afford adequate, effective, prompt and

<sup>27</sup> This is a conservative estimate based on available data. These totals include: casualties among the Ukrainian forces as reported by the Ukrainian authorities; 298 people from flight MH-17; civilian casualties on the territory controlled by the Government as reported by local authorities and regional departments of internal affairs; and casualties among civilians and members of the armed groups on territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic', as reported by armed groups, the so-called 'local authorities' and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and due to overall under-reporting, especially of military casualties. Injuries have been particularly under reported. The increase in the number of casualties between the different reporting dates does not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date.

appropriate remedies, including reparation, to civilian victims of the conflict, especially to those injured and to the families of those killed.<sup>28</sup>

### **C. Missing persons and recovery of human remains**

37. During the reporting period, OHCHR observed no progress in establishing the whereabouts of hundreds of individuals who went missing in the context of the armed conflict.<sup>29</sup> The exact number of missing persons is unknown. In the absence of properly functioning coordination between Government bodies, and exchange of relevant information between the Government and armed groups, publicly available figures on the number of people missing in the conflict zone differ considerably. As of 15 August 2017, the public database of the National Police of Ukraine listed 1,476 individuals<sup>30</sup> who went missing in the conflict zone since mid-April 2014. According to the Main Department of the National Police in Donetsk region, 1,646 individuals have gone missing in the region since the beginning of the conflict. According to the ‘ombudsperson’ of the ‘Donetsk people’s republic’, 509<sup>31</sup> individuals are registered as missing. OHCHR believes these figures reflect only the numbers of applications for the search of missing persons received by the various actors. Some people may be included in multiple lists while the whereabouts of others listed may have already been established.

38. OHCHR also believes that many of those reported as missing may be dead, with their bodies either not found or unidentified. Exchange of forensic data and other relevant information on missing persons between the Government of Ukraine, the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’, would help identify some individuals whose remains are either stored in morgues or have been buried as unidentified. This would decrease the suffering of relatives caused by the uncertainty about the fate of their loved ones. DNA profiling was available in Ukraine prior to 2014, and has been conducted on government-controlled territory since the conflict began. On territory controlled by armed groups, DNA profiling of human remains and relatives of missing persons has started to be carried out in Donetsk city, but is not yet available in Luhansk city. Some individuals reported as missing may be alive and held in secret or *incommunicado* detention, either in government-controlled territory or in territory controlled by armed groups.

### **D. Summary executions, killings, deprivation of liberty, enforced disappearances, torture and ill-treatment, and conflict-related sexual violence**

#### **1. Summary executions and killings**

39. OHCHR continued to receive allegations of killings and enforced disappearances which may have led to death and occurred before the reporting period, mainly in 2014. These allegations further attest to the complete collapse of law and order in the conflict zone at the initial stages of the conflict, and to the prevailing impunity for grave human rights violations and abuses. The following are examples of such cases.

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<sup>28</sup> The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law require States to provide compensation for economically assessable damage, as appropriate and proportional to the gravity of the violation and circumstances of each case resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

<sup>29</sup> Mainly in 2014-2015, but also in 2016-2017.

<sup>30</sup> 1,243 men and 233 women.

<sup>31</sup> As of 21 July 2017.

40. On 17 July 2014, three men and a woman disappeared while travelling by car from government-controlled Krasnohorivka to armed group-controlled Makiivka (both in Donetsk region). The burned remains of their car were found near a checkpoint of Ukrainian forces. Some time later, the bodies of two men and a woman identified as three of the missing persons<sup>32</sup> reportedly underwent forensic examinations in government-controlled territory, which found that the cause of death for all the victims was bullet wounds to their heads.<sup>33</sup> The Donetsk regional department of the National Police launched a criminal investigation into the case, however with no progress.

41. In October 2014, a resident of Antratsyt, in Luhansk region (controlled by armed groups) was summoned to the local “commandant’s office” where he was reportedly beaten to death. His body was found in a coal mine one year later.<sup>34</sup>

42. In June 2017, OHCHR documented a case which demonstrates the recurrent character of killings and enforced disappearances in the conflict zone. A young man who made his living carrying luggage for people travelling across the contact line in Stanytsia Luhanska left for work on 27 April 2017, and never returned. On 2 May, his family saw a media report stating that his body had been found by an ambulance in Zhovtnevyi district, in Luhansk city (controlled by armed groups) on 27 April. According to the death certificate, the man died of haemorrhagic shock linked to a complex trauma to his head, limbs, and body bones, and multiple injuries of internal organs. The ‘police’ in Luhansk did not provide his relatives with any information on the circumstances of his death. The Troitske police department of the National Police in Luhansk region launched a criminal investigation into the case. Earlier in 2015, the young man had been arbitrarily detained by the Tornado company<sup>35</sup> in the government-controlled territory, in Stanytsia Luhanska, and had spent several days in unofficial detention places.<sup>36</sup> The Military Prosecutor’s Office is investigating this incident.

## 2. Unlawful/arbitrary deprivation of liberty, enforced disappearances and abductions

*“I am afraid to go out to the street. People ask me ‘What are you hoping for? They are dead.’ My heart is cut in pieces when they say that. What I am hoping for?! For a miracle!”*

- Mother of two sons whose whereabouts are unknown since July 2014

43. In government-controlled territory, OHCHR continued to enjoy cooperation with the authorities and access to official places of detention, and interviewed conflict-related detainees in pre-trial detention facilities in Bakhmut, Kharkiv, Kherson, Kyiv, Mariupol, Mykolaiv, Odesa, Poltava, Starobilsk and Zaporizhzhia.

44. OHCHR also continued documenting cases of members of the Ukrainian Armed Forces detaining individuals in relation to the conflict and keeping them *incommunicado* for approximately 24 hours before transferring them to an official detention facility. For example, in June 2017, four persons were held *incommunicado* for approximately 24 hours, during which

<sup>32</sup> The bodies were never seen by the families of the victims, however were officially identified as the victims on a forensics document.

<sup>33</sup> HRMMU meeting, 13 July 2017.

<sup>34</sup> HRMMU interview, 9 August 2017.

<sup>35</sup> For more details on human rights violations by the battalion, please see OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2017, para 85.

<sup>36</sup> HRMMU interview, 14 June 2017.

time, at least one victim was hit and another threatened with physical violence, including electric shocks, in order to extract information.<sup>37</sup>

45. In territory controlled by armed groups, OHCHR continued to be denied access to detainees and places of deprivation of liberty, despite repeated requests, including in regard to specific individuals whose whereabouts are known. OHCHR was assured that all individuals deprived of their liberty in this territory were treated humanely, with due respect of their rights. First-hand information received by HRMMU coupled with this denial of access, however raise serious concern regarding their conditions and treatment, and suggest a high likelihood that grave human rights abuses may be occurring.

46. During the reporting period, OHCHR documented the arrests and detention by law enforcement of individuals under terrorism charges, allegedly for running businesses and paying ‘taxes’ in ‘Donetsk people’s republic’. For example, four entrepreneurs who left Donetsk after the conflict began were detained by the Security Service of Ukraine (SBU) under allegations of terrorism<sup>38</sup> for activities related with running businesses in territory controlled by armed groups.<sup>39</sup> As of 15 August 2017, all four individuals remained in pre-trial detention in Mariupol. OHCHR is concerned that more people may be detained under such charges.

47. OHCHR documented new cases during the reporting period in which individuals have been subjected to enforced disappearance, particularly in territory controlled by armed groups. In many cases, individuals were held *incommunicado* for at least a month. One interlocutor told HRMMU this was an established practice used by the ‘ministry of state security’ (‘MGB’) in ‘Luhansk people’s republic’ in order to hold a suspect until there was enough evidence to bring a ‘charge’.<sup>40</sup> Some emblematic cases are described below.

48. On 18 April 2017, a man was detained by ‘police’ in Luhansk city and reportedly released the same day, but went missing before reaching home. The following day, ‘MGB’ searched his house and seized some personal belongings. The victim was held *incommunicado* until 31 May, when his family was informed that he had been arrested by the ‘border service’ of ‘MGB’. Accused of ‘high treason’, he remained in detention as of 15 August.<sup>41</sup>

49. On 3 June 2017, a blogger in Donetsk city known as Stanislav Vasin was detained by ‘MGB’ and held *incommunicado* for more than a month, despite inquiries by his family. On 15 July 2017, his mother was informed of his detention.<sup>42</sup> As of 15 August, he remained in detention.

50. OHCHR is concerned by this practice by armed groups, especially in the absence of access to detainees by international organizations. OHCHR notes that the prohibition of enforced disappearance is absolute under international human rights law.<sup>43</sup> As pointed out by the United Nations Special Rapporteur on torture, “torture is most frequently practiced during *incommunicado* detention”.<sup>44</sup> Furthermore, *incommunicado* detention may, in itself, constitute a form of cruel, inhuman or degrading treatment or torture.<sup>45</sup>

51. OHCHR also continued to document cases of individuals who disappeared between 2014 and 2016 and whose whereabouts remain unknown. For example, on 28 May 2014, a man known for his pro-Ukrainian views was apprehended by unidentified men in plain clothes in Stanytsia Luhanska, which was controlled by armed groups at that time. His sister witnessed his

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<sup>37</sup> HRMMU interviews, 9 August 2017.

<sup>38</sup> They were charged under article 258(3) (creation, participation or facilitation of a terrorist group) and 258(5) (financing a terrorist group) of the Criminal Code of Ukraine.

<sup>39</sup> HRMMU interviews, 21 June and 19 July 2017.

<sup>40</sup> HRMMU interview, 19 May 2017.

<sup>41</sup> HRMMU interview, 9 June 2017.

<sup>42</sup> The victim’s mother was then allowed to see him in ‘detention’. HRMMU interviews, 7 June 2017 and 15 July 2017.

<sup>43</sup> International Convention for the Protection of All Persons from Enforced Disappearance, Article 1.

<sup>44</sup> UN doc. E/CN.4/1995/34, Report of the Special Rapporteur on torture, para. 926(d).

<sup>45</sup> UN doc. E/CN.4/2004/56/Add.2, Theo van Boven, UN Special Rapporteur on the question of torture; Visit to Spain, paras. 34-41.

abduction.<sup>46</sup> In another case, on 12 July 2014, two men disappeared near government-controlled Plotyna. A witness saw them being abducted by men in black uniform without insignia.<sup>47</sup> In both cases, the families never heard from the victims again, although investigations were launched by the Luhansk regional department of the National Police.

### 3. Torture and ill-treatment

52. OHCHR continued to document allegations of torture and ill-treatment of conflict-related detainees, often for the purpose of extracting confessions or coercing suspects to “cooperate” with the investigative authorities.

53. In government-controlled territory, HRMMU recorded several cases of interrogation techniques which may amount to torture, including mock executions and electrical shocks. Such cases are often reported well after the violation, as victims often remain in detention, or do not report the violations due to fear of persecution or lack of trust in the justice system. OHCHR notes that the prohibition against torture and cruel, inhuman and degrading treatment is absolute, and no derogation is permitted,<sup>48</sup> even in times of public emergency, terrorism or armed conflict.<sup>49</sup>

54. Recent cases recorded by HRMMU show that such practices persisted. On 2 June 2017, a woman in Kramatorsk was abducted by unknown men dressed in black, without any insignia. She was threatened at gun point, and questioned about her family for approximately 90 minutes. The perpetrators demanded that she provide information about armed groups’ military equipment. When she refused, she was violently grabbed by the hair, and threatened to be taken to the front line. She was then taken to a forest marked as a minefield and threatened to be made to walk through it. The perpetrators videotaped her “confession”. She was then told to leave the city immediately and remain silent, or she would be killed.<sup>50</sup>

55. In May 2017, a woman in Mariupol was lured to an Azov battalion position, where she was blindfolded and transported to an unknown destination. She was hit in the knees with a rifle butt and threatened to be buried on the spot, and therefore forced to cooperate. After the perpetrators informed the police that they had caught a member of an armed group, the police interrogated her without a lawyer, and she signed the interrogation protocol, incriminating herself as a member of an armed group. The next day, her “confession” was filmed, and then she was brought to the Mariupol SBU building where she had to repeat her confession to two officers. After one of the officers left the room, the other one locked the door and ordered her to undress for a physical examination. He photographed her scars and tattoos without explanation, making her uncomfortable. OHCHR notes that forced nudity during such an examination, which was not conducted by a medical professional, may amount to sexual violence. The victim was then taken to her flat, which had been searched, and she was held there by two SBU officers for three days. She was then taken to court, where an SBU officer punched her twice in the stomach in the corridor, causing severe pain.<sup>51</sup> The Military Prosecutor’s Office has launched an investigation into the conduct of the SBU.

56. Cases which occurred before the period under review, but which OHCHR was only able to document during the reporting period, demonstrated the long practice of torture and ill-treatment, as well as the difficulty in seeking accountability for such human rights violations.

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<sup>46</sup> HRMMU interview, 17 May 2017.

<sup>47</sup> HRMMU interview, 15 June 2017.

<sup>48</sup> Convention against Torture, Article 2(2). Also see General Comment No.2, ‘Implementation of Article 2 by State Parties’, UN Doc. CAT/C/GC/2/CRP/1/Rev.4 (2007), Advance Unedited Version at para.1.

<sup>49</sup> Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies, United Nations Voluntary Fund for the Victims of Torture, available at [http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation\\_torture\\_2011\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf).

<sup>50</sup> HRMMU interview, 19 July 2017.

<sup>51</sup> HRMMU interview, 19 July 2017.



57. In September 2016, three armed, masked soldiers of the Ukrainian Armed Forces stormed into a man's house near government-controlled Trokhizbenka. The victim was kicked, taken to another building, and beaten, purportedly because his children live in the Russian Federation. When he was released the next morning, the perpetrators threatened to shoot him and his wife if he complained. The beatings left bruises on the victim's chest and he was bedridden for a week.<sup>52</sup> He complained to authorities and was interviewed by a military prosecutor, but no official investigation was launched.

58. OHCHR documented the cases of eight individuals detained and tortured by SBU in Kharkiv in 2015.<sup>53</sup> For example, three of these individuals were arrested separately in May 2015, handcuffed and had bags placed over their heads. They were taken to the Kharkiv SBU building, where they were interrogated and tortured separately for hours by methods including suffocation with a gas mask<sup>54</sup>, dislocation of joints<sup>55</sup>, electric shock, and mock execution. The detainees also received death threats and threats of a sexual nature against their families. SBU officers forced these men to sign self-incriminating statements and refused them access to a lawyer. They were transferred to a hospital where a doctor refused to document visible injuries. In another example, also in May 2015, a man was arrested by SBU. On the way to the Kharkiv SBU building, the perpetrators stopped the vehicle and tortured him with electric current. Upon reaching the SBU building, the victim was further tortured until he "confessed" to planning terrorist acts.<sup>56</sup> As of 15 August 2017, all four of these victims remained in pre-trial detention. The Military Prosecutor's Office has launched an investigation into these allegations.

#### *By armed groups*

59. With no access to places of deprivation of liberty in territory controlled by armed groups, OHCHR cannot fully assess the conditions of detention. The continued denial of access of international observers to carry out interviews of detainees in line with international standards, together with first-hand information received, leads OHCHR to fear that those detained may be subject to torture and ill-treatment. In the absence of access to detainees in line with international standards, the likelihood that they are subjected to torture and ill-treatment is high.

60. Nevertheless, HRMMU was able to document cases of persons who were held in territory controlled by armed groups and subjected to treatment which could amount to torture or ill-treatment. These included both cases which occurred before and during the reporting period. Not all cases are reflected in this report in respect of confidentiality and in order to protect victims and their families.<sup>57</sup>

61. After nine months of detention by armed groups, a judge of the court of appeal of Luhansk region was released on 14 July 2017.<sup>58</sup> Detained at the Stanytsia Luhanska checkpoint in October 2016, he was held *incommunicado* by the 'ministry of state security' of the 'Luhansk people's republic'. He spent 48 days in solitary confinement. The conditions of detention were poor, including insufficient food, cold temperatures, limited space and sanitary conditions. OHCHR considers that these conditions may amount to ill-treatment. During his detention, the victim heard other detainees taken for 'interrogation', who were apparently subjected to beatings and electric shocks. He was forced to record a propaganda video against Ukraine. During his detention, OHCHR repeatedly requested access to him. Until the day of his release, when he was

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<sup>52</sup> HRMMU interview, 18 May 2017.

<sup>53</sup> HRMMU interviews, 25 and 31 May, 7 June, and 13, 21 and 26 July 2017.

<sup>54</sup> Also known as "elephant".

<sup>55</sup> Also known as "swallow".

<sup>56</sup> HRMMU interview, 15 June 2017.

<sup>57</sup> Not all new cases are reflected in this report, as OHCHR strives to maintain the highest protection of individuals through strict adherence to the principles of confidentiality and informed consent. Several victims and witnesses interviewed by OHCHR either did not want to share essential information, or did not consent to their accounts being publicly reported, for fear of reprisals.

<sup>58</sup> For more details, see para 42 of OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017.

presented to HRMMU, the ‘Luhansk people’s republic’ refused to provide any information about his whereabouts or fate.<sup>59</sup>

62. On 13 July 2017, a woman with a hearing disability, who had publicly criticized the ‘Luhansk people’s republic’ on social media, was detained at a checkpoint controlled by armed groups at the Stanytsia Luhanska crossing route. She was held *incommunicado* for 16 days by the ‘ministry of state security’ of the ‘Luhansk people’s republic’, during which time it consistently denied to her family that she was being detained. The woman was interrogated four times without legal representation. During one interrogation session, one of her fingers was dislocated with a pair of pliers. She was threatened to be moved to the basement with male detainees and told she would “have a fun night”. On 29 July, she was brought back to the same checkpoint and told to cross to the government-controlled side.<sup>60</sup> An investigation into this case was launched by the Luhansk regional department of the National Police.

#### 4. Conflict-related sexual violence

*“Then the officer told me, ‘We will bring your family into the basement, and we will rape them in front of you’.”*

- A detainee

63. OHCHR continued to record allegations of conflict-related sexual violence, many of which occurred before the reporting period but were documented later when victims felt able to speak about their ordeal. OHCHR recalls that cases of sexual violence are generally under-reported due to unease about this issue, trauma suffered by the victims and the stigma associated with sexual violence, as well as fear of reprisals. In addition, due to its particular nature, sexual violence often takes place with no witnesses or the only witnesses acting as accomplices.

64. As previously documented, sexual violence is most often used as a method of torture for conflict-related detainees. For example, a man detained in the Kharkiv SBU building in May 2015 was tortured for hours in an attempt to extract a confession. He broke down when a person claiming to be a doctor entered the room with a set of surgical tools and started pulling down his pants while threatening to cut off his testicles. SBU officers then took him to the investigator’s office where he was compelled to sign several self-incriminating statements.<sup>61</sup> In another case, a woman arrested in April 2015 by Kharkiv SBU was subjected to various acts of torture, including threats that the SBU officers would hand her daughter over to the Right Sector or Aidar battalion, so she could “watch how they play with her”.<sup>62</sup>

65. OHCHR commends efforts of the Government to investigate cases of sexual violence. It notes that the Military Prosecutor’s Office launched an investigation into one of the cases of sexual violence allegedly committed by members of the Ukrainian forces and established the facts constituting the crimes.

*By armed groups*

66. OHCHR documented the case of a woman who was gang-raped in June 2014, when her village was under the control of an armed group. According to witness accounts, she was

<sup>59</sup> HRMMU interviews, 14 July and 17 August 2017.

<sup>60</sup> HRMMU interviews, 17 July and 11 August 2017.

<sup>61</sup> HRMMU interview, 31 May 2017.

<sup>62</sup> HRMMU interview, 25 May 2017.

attacked by three men who sprayed something in her eyes to obscure her vision and then anally raped her. She was severely injured, underwent surgery and was hospitalized for three weeks, with medical costs partially covered by the commander of the armed group that was stationed in her village. Whilst in hospital, she was questioned by ‘police’ and a ‘criminal investigation’ was opened, however, she never received a forensic examination, and the case was reportedly closed shortly after.<sup>63</sup>

## **5. Exchanges of individuals deprived of liberty**

67. During the reporting period, no progress was observed in the implementation of the ‘all for all’ exchange stipulated by the Minsk agreements.<sup>64</sup> The Working Group on Humanitarian Issues of the Trilateral Contact Group continued to discuss the issue in Minsk, meeting twice a month. As of 31 July 2017, the Government continued to urge for the release of 137 individuals whom it believes remain in captivity of the armed groups, while the latter acknowledged only 71 of those individuals. As of 11 August, the armed groups sought the release of 502 individuals from the Government, including some who are not held in custody. OHCHR considers it essential that within the exchanges, individuals are not relocated to the other side of the contact line against their will.

## **6. Transfer of pre-conflict prisoners to government-controlled territory**

68. Since 14 April 2017, there were no transfers of pre-conflict prisoners from territory controlled by armed groups. During the reporting period, OHCHR received and followed up on complaints from pre-conflict prisoners in four penal colonies<sup>65</sup> in territory controlled by ‘Donetsk people’s republic’ that their requests to be transferred to government-controlled territory remain unsatisfied. Most reported having lost contact with families due to the conflict and the cumbersome procedures to cross the contact line for their relatives. Some prisoners stated they were subjected to forced labour; others worked voluntarily, but were not paid. They also indicated a lack of medication and insufficient food.<sup>66</sup>

# **III. Accountability and administration of justice**

## **A. Accountability for human rights violations and abuses in the east**

69. Accountability for human rights violations is a key element of the right to an effective remedy.<sup>67</sup> Failure to bring to account perpetrators of grave human rights violations such as torture or ill-treatment, summary execution or arbitrary killing, and enforced disappearance could give rise to a separate breach of the International Covenant on Civil and Political Rights. In addition, impunity for these violations largely contributes to their recurrence.<sup>68</sup>

70. Despite continued lack of access to territory controlled by armed groups, Ukrainian law enforcement agencies investigated some cases of human rights abuses perpetrated by members of armed groups. On 19 June 2017, the Office of the Prosecutor General reported that investigations based on the testimonies of over 900 persons formerly detained in armed group-controlled

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<sup>63</sup> HRMMU interviews, 25 May and 3 August 2017. There was never a criminal investigation of the incident by Ukrainian authorities due to lack of an official report filed by the victim.

<sup>64</sup> The Package of Measures for the Implementation of the Minsk Agreements of 12 February 2015, para 6 calls for “the release and exchange of all hostages and unlawfully detained persons based on the ‘all for all’ principle”.

<sup>65</sup> Penal colonies in: Yenakiieve No.52, Donetsk No. 124, Makiivka No. 32 and Michurine No.57.

<sup>66</sup> HRMMU meetings, 7 July and 10 August 2017.

<sup>67</sup> ICCPR, Article 2(3).

<sup>68</sup> United Nations Human Rights Committee, General Comment no. 31, “The Nature of the General Legal Obligation Imposed on States Parties to the Covenant”, para 18.

territory had led to the identification of 13 persons (captured Ukrainian soldiers and civilians) arbitrarily killed by armed groups and “military servicemen of the Russian Federation”.<sup>69</sup>

71. With some exceptions,<sup>70</sup> HRMMU continued to observe that Ukrainian authorities have yet to effectively investigate human rights violations alleged to have been perpetrated by members of the Ukrainian military or security forces.<sup>71</sup> Emblematic cases include the enforced disappearance of a number of individuals believed to be affiliated with armed groups who were detained at the Kharkiv regional department of SBU and the alleged airstrike of the Luhansk regional state administration building on 2 June 2014. Similarly, other human rights violations, including torture and ill-treatment, allegedly perpetrated by SBU elements, have not been effectively investigated.<sup>72</sup> Failure of the Government to hold perpetrators accountable sends the signal that they are immune to responsibility for human rights violations perpetrated against conflict-related detainees.

72. OHCHR has previously noted that human rights abuses perpetrated by members of armed groups are often neglected in the course of criminal investigations, with the vast majority of perpetrators prosecuted solely on charges of affiliation with armed groups.<sup>73</sup> While this practice has persisted,<sup>74</sup> it was notable that on 1 June 2017, the Slovianskyi town-district court of Donetsk region convicted a member of the armed groups of the ‘Donetsk people’s republic’ for violating the rules and customs of war for the illegal capture, detention, torture and ill-treatment of Ukrainian servicemen and others at the former premises of the Donetsk regional department of SBU in 2014.<sup>75</sup> This was the first conviction of a member of an armed group since the beginning of the conflict for crimes committed, and not on affiliation to an armed group.

73. On a positive note, OHCHR welcomes a civil judgment of the Prymorskyi district court of Odesa<sup>76</sup> in an action brought by a victim of abduction, unlawful detention, and severe torture (including mutilation) by members of the Aidar battalion. The court ordered the Government to pay four million UAH in compensation for pain and suffering. A criminal investigation into these human rights violations is ongoing.

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<sup>69</sup> RBC Ukraine news agency, available at <https://www.rbc.ua/ukr/news/svideteli-soobshchili-massovyh-kaznyah-sovershennyh-1497867366.html>.

<sup>70</sup> For example, the investigation into members of Tornado special police patrol company for arbitrary detention, abduction, torture and “unnatural gratification of sexual desire” which lead to some convictions on 7 April 2017 (see OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para. 85), and the investigation into the fatal shooting of a civilian at the Maiorsk EECF on 14 December 2016 by a military serviceman (see OHCHR Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, para 88).

<sup>71</sup> See, e.g., the killings of Serhii Kostakov and Dmytro Shabratskyi (OHCHR thematic report on accountability for killings, Annex I, paras. 115-118); The enforced disappearance of Maksim Popov (OHCHR thematic report on accountability for killings, Annex I, paras. 106-108); And the killing of Roman Postolenko (OHCHR thematic report on accountability for killings, Annex I, paras. 11-14).

<sup>72</sup> HRMMU interview, 31 May 2017; HRMMU meeting with Military Prosecutor of Kharkiv garrison, 18 July 2017; HRMMU trial monitoring, 25 July 2017. See also OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para 86.

<sup>73</sup> See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para 88.

<sup>74</sup> This practice is especially concerning when it comes to persons whose ‘position’ within the armed groups confers greater ability to negatively impact the human rights of those living in territory controlled by the armed groups. For instance, on 19 June 2017, the ‘deputy minister of state security’ of ‘Luhansk people’s republic’ was indicted *in absentia* for membership in a “terrorist organization”, and on 12 June 2017, the Selidivskyi town court of Donetsk region acquitted *in absentia* the ‘president’ of the ‘supreme court’ of the ‘Donetsk people’s republic’ of similar charges.

<sup>75</sup> For more details, see OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para 88.

<sup>76</sup> Decision dated 15 June 2017, available at <http://reyestr.court.gov.ua/Review/67397157>.

## B. Fair trial rights

*“We will let you free if you prove [that you are innocent].”*

- Presiding judge in a criminal proceeding

74. In its monitoring of conflict-related criminal cases, HRMMU noted that fair trial rights and judicial guarantees were often disregarded.

75. In cases involving persons suspected of affiliation with armed groups, courts continued to rubberstamp prosecution motions to extend pre-trial detention based solely on abstract reference to article 176(5) of the Criminal Procedure Code.<sup>77</sup> When sanctioning and prolonging pre-trial detention, the courts ignored individual circumstances, including the defendant’s social standing, family circumstances, health condition and the length of time already spent in detention. OHCHR recalls that the imposition of pre-trial detention must be based on an individualized determination of necessity and reasonableness thereof. Pre-trial detention must not be mandatory for all defendants charged with a particular crime without consideration of individual circumstances.<sup>78</sup>

76. OHCHR also observed undue delays in trials of conflict-related detainees while the accused remained in custody.<sup>79</sup> OHCHR recalls that individuals charged with criminal offences have the right to be tried without undue delay; persons who are not released pending trial must be tried as expeditiously as possible<sup>80</sup> or released from custody.<sup>81</sup> Further, prolonged pre-trial detention may jeopardize the presumption of innocence.<sup>82</sup>

77. Over the reporting period, OHCHR documented a number of cases where conflict-related detainees complained of being compelled to admit guilt by means of threats, torture and ill-treatment, and where such allegations were not sufficiently examined by the court.<sup>83</sup>

## C. Human rights impact of armed group structures

78. OHCHR continued to monitor the development and impact of parallel structures of ‘administration of justice’ established by armed groups in territory under their control.

79. HRMMU continued collecting credible victim accounts that no guarantees or safeguards were in place for individuals apprehended and detained by the ‘MGB’ of ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’, particularly when they were ‘charged’ with espionage, subversion or cooperation with Ukrainian forces. The ‘MGB’ denied holding the individuals in question, which is tantamount to enforced disappearance.<sup>84</sup> Furthermore, detainees were deprived of access to a lawyer or information regarding the grounds for their detention, and

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<sup>77</sup> Article 176(5) states, “measures of restraint in the form of personal commitment, personal warranty, house arrest and bail may not be applied to persons suspected or accused of having committed the crimes specified by Articles 109-114-1, 258-258-5, 260, and 261 of the Criminal Code of Ukraine”. During its trial monitoring, HRMMU observed numerous hearings during which detention was extended based solely on this article, without consideration of specific risks or circumstances relevant to the individual case.

<sup>78</sup> Human Rights Committee, General Comment no. 35 Article 9 (Liberty and security of person), para 38.

<sup>79</sup> HRMMU trial monitoring, 12, 17, 19 and 20 July 2017; HRMMU interview, 25 May 2017.

<sup>80</sup> Human Rights Committee, General Comment no. 35 Article 9 (Liberty and security of person), para 37.

<sup>81</sup> ICCPR, Articles 9(3) and 14(3)(C).

<sup>82</sup> Human Rights Committee, General Comment no. 35 Article 9 (Liberty and security of person), para 37.

<sup>83</sup> HRMMU interviews, 2 June 2017, 21 and 26 July 2017.

<sup>84</sup> See Unlawful/arbitrary deprivation of liberty, enforced disappearances and abductions *above*.

were forced to give self-incriminating statements.<sup>85</sup> OHCHR notes that ‘MGB’ ‘investigations’ and detentions are not subject to any forms of review.

80. In the absence of a functioning ‘supreme court’ in ‘Luhansk people’s republic’, individuals ‘convicted’ by ‘first instance courts’ could not have their ‘sentence’ ‘reviewed’. Those who ‘appealed’ their ‘conviction’ entered a judicial limbo while remaining imprisoned, as the first instance ‘verdict’ does not enter into force pending ‘appeal’, yet there is no possibility of the ‘appeal’ being heard. OHCHR received information that this situation negatively affects many people ‘convicted’.<sup>86</sup>

81. On 1 August 2017, the ‘military tribunal’ of the ‘supreme court’ of ‘Donetsk people’s republic’ reported the ‘conviction’ of four individuals of “espionage”, bringing the total number of such ‘convictions’ during 2016 and 2017 to eight.<sup>87</sup>

## **D. High-profile cases of violence related to riots and public disturbances**

82. More than three years after the violent killings perpetrated during the Maidan protests in Kyiv and on 2 May 2014 in Odesa, little progress has been achieved in bringing perpetrators to account, and many suspects have fled Ukraine, contributing to impunity for these grave human rights violations and lack of justice for victims.

### **1. Accountability for the killings of protesters at Maidan**

83. The Sviatoshynskiy district court of Kyiv continued holding hearings on the merits of the case of five former ‘Berkut’ servicemen accused of killing 48 protesters on 20 February 2014 in Kyiv. They remain in custody pending trial, which is still at the stage of collecting testimonies of victims and examination of case files.

84. On 21 July 2017, the Office of the Prosecutor General reported that the Russian Federation had denied its extradition request for 21 ‘Berkut’ servicemen who had fled Ukraine and were also wanted for suspected involvement in the killing of the 48 protesters. Fifteen suspects have reportedly been granted Russian citizenship, and three temporary asylum. OHCHR is concerned that failure to ensure their appearance at trial contributes to the longstanding impunity of perpetrators, particularly more senior former officials suspected of organizing and ordering the killings of protesters.

85. On 29 July 2017, the alleged organizer of an abduction of two Maidan protesters (one of whom died),<sup>88</sup> was placed in detention for 60 days.<sup>89</sup> He is charged with organizing the abduction, torture and killing of a hostage in collusion with a group of people.

### **2. Accountability for the 2 May 2014 violence in Odesa**

86. Equally little progress was observed in judicial proceedings to bring accountability for the killings that occurred in the city centre of Odesa and during the House of Trade Unions fire.

87. Following numerous recusals of judges in all four district courts of Odesa, and the subsequent inability to form a bench, on 26 May 2017, the court of appeal of Odesa region transferred the case of 20 ‘pro-federalism’ activists accused of mass disorder to the Illichivskiy

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<sup>85</sup> HRMMU interview, 11 August 2017.

<sup>86</sup> HRMMU interview, 18 May 2017.

<sup>87</sup> Reportedly, two defendants were local residents while the others were from other parts of Ukraine, the Russian Federation and Uzbekistan.

<sup>88</sup> See OHCHR report on accountability for killings from January 2014 to May 2016, Annex I, table 1.

<sup>89</sup> Ruling of the Pecherskyi district court of Kyiv, 29 July 2017, available at <http://reyestr.court.gov.ua/Review/68090613>.



town court of Odesa region.<sup>90</sup> Five of the accused remained in pre-trial detention since May 2014. The first court hearing in this case was held on 27 November 2014.

88. The only ‘pro-unity’ activist accused of killing remained free pending trial, which has not yet commenced since his indictment more than two years. OHCHR notes the arbitrary approach of the courts dealing with the 2 May cases; while some of those accused of mass disorder have been detained for more than three years, a person accused of killing enjoys his liberty. OHCHR notes that the nature and gravity of the alleged offence should be duly taken into account when assessing the proportionality of the measure of restraint.

89. On 25 July 2017, the Office of the Prosecutor General reported that the Russian Federation denied its request for extradition of the former Deputy Head of the Odesa regional police because the suspect had been granted Russian Federation citizenship. The suspect is charged with “Excess of Authority” and “Neglect of Official Duty” in relation to alleged failures to act to maintain public order and security during the 2 May 2014 violence and for his decision two days later to release 63 people from police custody who had been arrested for mass disorder.

## IV. Fundamental freedoms

### A. Freedom of movement

*“I have my parents and relatives on the other side of the contact line. They receive information we don’t, and we don’t have information they have. The void between us is deepening. That terrifies me. We are losing connection with every day passing.”*

- IDP from Donetsk region

90. This reporting period saw a record increase in numbers of people travelling across the contact line. Over one million individual crossings were recorded each month in May, June and July, with the trend continuing at the beginning of August.<sup>91</sup> On average, 36,000 people travelled across the contact line each day, compared with 29,000 during the previous reporting period. OHCHR is concerned about security risks faced by civilians at or near checkpoints, including from shelling, land mines and other explosive devices. Eight incidents related to explosions of mines or shelling resulting in casualties or temporary closure of EECPs were recorded within the reporting period.<sup>92</sup>

91. Extreme heat, lack of cooling spaces, and inadequate physical and sanitary conditions at checkpoints exacerbated the already aggravated situation of people crossing and increased

<sup>90</sup> Ruling of the court of appeal of Odesa region, 26 May 2017, available at <http://reyestr.court.gov.ua/Review/66724977>.

<sup>91</sup> Movement across the contact line continued to be boosted by Government requirements for IDPs entitled to pensions to undergo cumbersome identification procedures in person. See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, paras. 99, 123-125.

<sup>92</sup> For example, on 8 June 2017, a civilian resident of Trudivski neighbourhood in Donetsk was killed by an IED in the ‘grey area’ between Marinka and Trudivski neighbourhood; On 7 July, one person was killed and another injured by an explosive device on the side of the road in government-controlled territory between Zhovanka and the Maiorsk EECP; On 16 July, a man received a gunshot wound at the Marinka EECP. At least eight incidents of shelling near EECPs during operation hours were recorded during the reporting period, at least two of which resulted in the suspension of operations. State Border Guard Service of Ukraine, <http://dpsu.gov.ua/ua/news>. See also “UKRAINE: CHECKPOINTS - Humanitarian Snapshot (as of 26 July 2017)”, available at <https://www.humanitarianresponse.info/en/operations/ukraine/infographic/ukraine-checkpoints-humanitarian-snapshot-26-july-2017>.

protection concerns, especially for persons with disabilities, the elderly, children and women. The situation was particularly alarming in Luhansk region, where Stanytsia Luhanska remains the only crossing route, accessible only by pedestrians, with unsafe wooden ramps connecting the pieces of a destroyed bridge. OHCHR observed insufficient availability of wheelchairs on the government-controlled side of the bridge, and their complete absence on the side controlled by armed groups, despite the high demand for such assistance. Moreover, the poor conditions of the ramps pose a physical risk to pedestrians attempting to cross. On a single day, OSCE SMM monitors observed three pedestrians falling, 10 persons losing their footing, and a man with disabilities accidentally dropped by porters.<sup>93</sup> At crossing routes in Donetsk region, buses circulating between the ‘zero checkpoint’ and an EECP were not equipped for persons with disabilities. OHCHR is also concerned that ambulances were not regularly present at each checkpoint during operational hours.<sup>94</sup>

92. OHCHR documented incidents when unnecessary or disproportionate restrictions and inspections at checkpoints impeded not only freedom of movement, but also the enjoyment of the right to liberty and security.<sup>95</sup> For example, on 11 July 2017, at the Marinka checkpoint, SBU elements questioned about possible connections to armed groups for several hours a female volunteer from Donetsk who frequently crosses the contact line to visit her elderly mother in armed group-controlled territory and her grandchildren in Zaporizhzhia (government-controlled territory).<sup>96</sup>

93. OHCHR is concerned by impediments to freedom of movement at so-called ‘internal’ checkpoints which are unrelated to crossing routes and operated by the National Police of Ukraine. HRMMU documented cases of special profiling of individuals with residence registration in armed group-controlled territory, as well as of staff of humanitarian organizations, as well as cases of collection of cell phone IMEI codes. In one case, members of a Ukrainian TV crew were subjected to physical violence at an ‘internal’ checkpoint on the road between Kurakhove and Mariupol.<sup>97</sup> OHCHR was informed that armed groups also started collecting IMEI codes from civilians crossing at ‘Maiorsk’ checkpoint.<sup>98</sup>

94. Restrictions on freedom of movement continued to disproportionately affect civilians residing in the immediate vicinity of the contact line, impeding their access to medical, education, social, administrative and legal services.<sup>99</sup> Further, this artificial boundary, and the

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<sup>93</sup> Daily report of the OSCE Special Monitoring Mission to Ukraine, 21 June 2017, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/324881>.

<sup>94</sup> EECP checkpoints are open from 6:00 to 20:00 hrs, however ambulances are not stationed at EECPs during full operational hours. For example, an ambulance is present on the government-controlled side of Stanytsia Luhanska EECP from 10:00 to 14:00 hrs, and on the side controlled by armed groups from 8:00 to 17:00 hrs. On the government-controlled side of Marinka EECP, the first-aid point operates from 9:00 to 16:00 hrs. At Maiorsk EECP, NGO “Premiere Urgence” maintains a first aid tent which is open until 15:30 hrs. A military paramedic remains on duty at the EECP from 15:30 to 20:00 hrs. At Pyshevyk/Hnutove (government-controlled side), Oktiabr and Olenivka (armed group-controlled) checkpoints, a paramedic is present during all hours, however, an ambulance will not go to Pyshevyk. In case of emergency, servicemen take a person in need to Talakivka, where an ambulance would come from Mariupol. An ambulance will come to Oktiabr from Novoazovsk, which would take at least 30 minutes.

<sup>95</sup> HRMMU interviews, 28 June and 18 July 2017.

<sup>96</sup> HRMMU interview, 13 July 2017.

<sup>97</sup> Following an internal investigation of the incident by the Donetsk Regional Department of the National Police of Ukraine, the case is now with the Donetsk Regional Prosecutor’s Office. HRMMU interview, 14 August 2017.

<sup>98</sup> HRMMU interview, 13 June 2017.

<sup>99</sup> On 18 May 2017, HRMMU visited Orikhove-Donetske village of Luhansk region (government-controlled) where 32 residents, mostly elderly, face a lack of public transportation and are subjected to arbitrary travel restrictions at checkpoints surrounding the village. Residents complained of complications to access medical care and other essential social and administrative services available in Trokhizbenka. On 24 May, HRMMU visited Novooleksandrivka village, located in the ‘no man’s land’ of Luhansk region, where mainly elderly residents remained. Freedom of movement is restricted by Government forces and armed groups: Residents can only access the village by foot or bicycle through a government-controlled checkpoint, and by motorbike through an armed group-controlled checkpoint. Elderly and disabled residents lack access to administrative services and social and pension payments, which would require a seven-kilometre walk through a swamp to Popasna, possibly exposing them to mines. Ambulances cannot enter Novooleksandrivka, further restricting access to medical care. OHCHR observed similar isolation of residents in Kamianka and Starolaspa, where there is no public transportation, grocery shops or pharmacy, and ambulances were sometimes denied entry.

complicated procedure to cross it, divides families, causing hardships. HRMMU spoke with an 80-year-old man who must queue and walk across the Stanytsia Luhanska bridge every week to visit his wife in hospital.<sup>100</sup> OHCHR regrets that the provision introduced in April 2017 to the Temporary Order allowing for non-expiring permits (required to cross) has not been implemented.<sup>101</sup>

## B. Freedoms of expression, peaceful assembly and association

*“The first things we were hiding were the Ukrainian costumes and Ukrainian flag... It appeared that the Government of Ukraine does not care about us.”*

- Resident of a village near the contact line

95. OHCHR observed a worrying trend in legislative initiatives which, if adopted, would negatively impact the enjoyment of freedoms of expression and association, and may consequently, limit civil society space. On 10 July 2017, the President of Ukraine submitted a package of draft laws to Parliament<sup>102</sup> which may create undue burden for small civil society organisations as it requires public financial disclosures from those reaching a low threshold of annual revenue. The amendments also introduce additional public reporting requirements regarding donors, beneficiaries and staff which may affect the latter’s rights to respect for privacy and confidentiality. Other Government policies may also unduly interfere with access to online information and communication. For instance, on 16 May 2017, the President signed a decree imposing sanctions on 468 companies, including blocking of popular social networks and an email service, and requiring Ukrainian internet providers to restrict access to their sites.<sup>103</sup> While these measures may be lawful and follow a legitimate aim, there are concerns as to their proportionality.

96. OHCHR also noted an increase in online “troll” attacks and defamation campaigns on social media targeting activists and media professionals engaged in investigative journalism and promotion of accountability.<sup>104</sup> Physical and online attacks are often not investigated, or investigations are protracted.

97. A year after the killing of journalist Pavel Sheremet on 20 July 2016, little progress was observed in the investigation into this case. Following the release of an investigative documentary on this case, which revealed additional information, the journalists who made the documentary were included into the inter-agency investigation group, comprised of representatives of SBU, the National Police and the Office of the Prosecutor General. OHCHR welcomes this step and urges the authorities to ensure an effective investigation into the killing of Mr. Sheremet as a step towards ending impunity for attacks and murders of journalists.

<sup>100</sup> On 2 June 2017, at the Stanytsia Luhanska bridge, HRMMU spoke to a man travelling from (government-controlled) Makarove village to Luhansk in order to visit his wife being treated in a hospital. He had to cross the contact line on a weekly basis to go to hospital.

<sup>101</sup> Temporary Order on the control of movement of people across the contact line in Donetsk and Luhansk regions, available at <https://ssu.gov.ua/ua/pages/32>; see also OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para. 100.

<sup>102</sup> Draft laws no. 6674 and 6675 (proposing amendments to the Tax Code of Ukraine and other legislative acts) both purportedly aim at “enhancing the transparency of funding of public organizations and of the use of international technical assistance.”

<sup>103</sup> The presidential decree targeted “legal entities of the Russian Federation, the activity of which threatens information and cyber security of Ukraine” and included sanctions against social networks VK.com (VKontakte) and Odnoklassniki, search engine Yandex, and the Mail.ru email service.

<sup>104</sup> These include actions by anonymous online users posting false information about certain civil activists, anti-corruption workers and journalists, threats and intimidations, attempts to show the person in a bad light and publicly shaming or attacking their private accounts and email.

98. Criminal convictions based on expressions of opinion against mobilisation also raised concern. For instance, on 15 May 2017, the Henicheskyi district court of Kherson region sentenced Eduard Kovalenko to five years of imprisonment for expressing opposition to military mobilization during a public assembly in 2014. On 1 June 2017, the High Specialized Court of Ukraine for Civil and Criminal Cases annulled the acquittal of journalist and blogger Ruslan Kotsaba<sup>105</sup>, charged with treason in connection with a video he posted online opposing mobilization and his perceived cooperation with Russian media.

99. On 7 July 2017, the National Police opened a criminal case<sup>106</sup> against the website “Myrotvorets”, which, since August 2014, has been publicly posting personal data of thousands of people, including media professionals, NGO activists, labelling them as supporters of armed groups and “terrorism”. OHCHR welcomes this development and urges the authorities to conduct the investigation in good faith and take measures to remove personal data from the website.

100. During the reporting period, OHCHR continued to observe improvement with regard to respect for freedom of peaceful assembly, as illustrated by a decrease in judicial prohibitions of public assemblies and better policing of large public assemblies throughout Ukraine.<sup>107</sup> Yet, OHCHR noted that smaller demonstrations continued to suffer from insufficient security and protection by police, particularly those organized by persons belonging to minority groups or opposition political movements.

101. On several occasions, demonstrations organized by such groups were attacked by radical nationalistic groups, resulting in bodily injuries of participants. The police were either not present to secure the assembly or were unable to provide adequate security. Further, the police have been reluctant to take effective measures to properly investigate such cases and bring those responsible to justice.

102. For example, on 17 May 2017, in Kharkiv, members of the Right Sector and other radical groups attacked participants of the peaceful rally “LGBT Rights are Human Rights”. Police were present but unable to prevent violent skirmishes. They initially refused to classify the attack as a “hate crime”, however following victims’ appeals, and pursuant to an investigative judge’s decision, on 2 August the case was registered under Article 161 of the Criminal Code (Violation of citizens’ equality based on their race, nationality or religious preferences).<sup>108</sup> On 14 June, a group of young people forcibly prevented a demonstration against gender-based discrimination, sexism, violence and sexual harassment from taking place at the Kyiv Mohyla Academy. Although the police were called, they arrived 40 minutes later. On 16 June, a demonstration against the renaming of Vatutina Avenue, in Kyiv, organized by the Socialist Party of Ukraine was attacked by a group of young people<sup>109</sup>, resulting in the hospitalization of some participants. While informed in advance of this event, the police failed to provide adequate security. A feminist demonstration planned in Kyiv for 21 June was cancelled due to threats of violence and the refusal of police to ensure security. On 9 July, a lecture on the rights of transgender people in Kyiv was disrupted by 10 youths wearing masks, reportedly affiliated with “Svoboda” nationalistic political party. The Odesa Pride Equality March on 13 August was forced to stop halfway through its planned 700-metre route by a counterdemonstration by nationalist far right wing organizations<sup>110</sup> whose participants engaged in hate speech including incitement to violence. The police failed to adequately secure the route of the march, and the one

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<sup>105</sup> Kotsaba was released on 14 July 2016 after 18 months in custody.

<sup>106</sup> For “Obstruction of the lawful professional activity of journalists”, Article 171(1) of the Criminal Code of Ukraine.

<sup>107</sup> On 18 June 2017, police effectively provided security for participants of the KyivPride Equality March despite attempts by opponents to disrupt it by violence.

<sup>108</sup> Art. 161 prohibits “willful actions inciting national, racial or religious enmity and hatred, humiliation of national honor and dignity, or the insult of citizens’ feelings in respect to their religious convictions, and also any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based on race, color of skin, political, religious and other convictions, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

<sup>109</sup> They were allegedly members of the C14, National Corps and Right Sector.

<sup>110</sup> Vulychnyi Front, Prava Molod, Svoboda and Sokil youth wing.

person arrested for violent behaviour was charged only with “minor hooliganism” and not a hate crime.

#### *Territory controlled by armed groups*

103. In territory controlled by armed groups, OHCHR continued to observe systematic attacks on civil society space severely hindering the work of media representatives. HRMMU documented cases of media professionals detained by armed groups<sup>111</sup> while some were subjected to intimidation and interference with their work. Journalists entering territory controlled by armed groups of ‘Donetsk people’s republic’ must inform the ‘press centre’ of the ‘ministry of defence’ about their activities on a daily basis, are arbitrarily required to show their video footage at checkpoints,<sup>112</sup> and are accompanied by members of armed groups when travelling close to the contact line.

104. Due to restrictions on civil society and on the exercise of fundamental freedoms, citizens were less prone or simply afraid to openly express their views. Citizens openly expressing pro-Ukrainian views continued to experience intimidation or attacks.<sup>113</sup> Residents of territory controlled by armed groups feared “saying too much” when complaining of everyday realities.<sup>114</sup>

### **C. Freedom of religion or belief**

105. During the reporting period, OHCHR noted a worrisome development of infringement on freedom of religion or belief against Jehovah’s Witnesses. In government-controlled territory, Jehovah’s Witnesses faced attacks on their religious buildings, and reluctance of law enforcement agencies to investigate such cases.<sup>115</sup>

106. In territory controlled by armed groups of the ‘Donetsk people’s republic’, Jehovah’s Witnesses were accused of extremism and subjected to harassment, arbitrary searches of religious buildings, and confiscation of religious literature.<sup>116</sup> Members of the Jehovah’s Witness community were summoned to ‘police’ or ‘prosecution offices’ and informed they had to cease operations until their religion organization was ‘registered’; however no procedure for obtaining such ‘registration’ was established. On 7 July 2017, the ‘supreme court’ of the ‘Donetsk people’s republic’ declared two religious publications of the Jehovah’s Witnesses as “extremist” and prohibited their dissemination.<sup>117</sup> Reportedly, since the beginning of the conflict, nine religious buildings of Jehovah’s Witnesses have been seized by armed groups.<sup>118</sup>

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<sup>111</sup> See Unlawful/arbitrary deprivation of liberty, enforced disappearances and abductions *above*.

<sup>112</sup> A similar practise of journalists required to inform state agencies by journalists about their activities around the contact line as well as the checking of video footage, was also observed in government-controlled territory.

<sup>113</sup> See Torture and ill-treatment *above*.

<sup>114</sup> HRMMU field teams generally hear this sentiment while engaged with the public, as well as specifically during formal interviews. HRMMU interviews, 18 May and 2 June 2017.

<sup>115</sup> For example, on 19 June 2017, several men forcibly entered a Kingdom Hall in Khust during a religious service, threatening to blow up the building and shoot the parishioners inside. Reportedly, the police ignored numerous calls and arrived 90 minutes after having received the first report of the ongoing crime. No investigation has been initiated into the case. See Jehovah’s Witnesses: Report on Observance of Freedom of Religion in Ukraine by The Religious Center of Jehovah’s Witnesses in Ukraine.

<sup>116</sup> HRMMU interviews, 21 and 22 August 2017.

<sup>117</sup> HRMMU interview, 21 August 2017.

<sup>118</sup> “Kingdom Halls” (religious buildings of Jehovah’s Witnesses) were seized in Horlivka, Donetsk, Perevalsk, Khrustalnyi (formerly Krasnyi Luch), Boikivske (formerly Telmanove), Yenakiieve and Brianka. OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2015, para 90; OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2015, paras. 84 and 85; See also Jehovah’s Witnesses: Report on Observance of Freedom of Religion “Certain Territories in the Donetsk and Luhansk Regions”, Religious Center of Jehovah’s Witnesses in Ukraine, April-June 2017.



## V. Economic and social rights

*“People are left without work and no pensions, with high prices for food. People have no rights. All have diseases and no money to get treatment. We live in constant fear and constant despair. We have no hope and no future. We are Ukrainian citizens and we have Ukrainian passports. We want this horror to end and live in a state with the rule of law, where human rights are above all.”*

- Resident of a village near the contact line

107. Increased levels of poverty and unemployment coupled with record-high food prices<sup>119</sup> have affected the lives of 3.8 million people in the conflict zone, in addition to daily hardships caused by the armed hostilities and related policies<sup>120</sup> imposed by all sides. This situation has been further exacerbated by legislative measures that led to impeded access to social entitlements and pensions. OHCHR recalls that legislative measures should aim at progressively achieving the full realization of economic and social rights, not restricting them.<sup>121</sup> OHCHR further notes the Government’s commitment to the Sustainable Development Goals contained in the 2030 Agenda, which are part of a consensus framework that applies to all countries, including those in a conflict situation.<sup>122</sup>

### A. Right to an adequate standard of living

108. OHCHR observed a particularly dire situation in villages located in the immediate vicinity of the contact line.<sup>123</sup> In one emblematic example, for three years, residents of Spartak village (in territory controlled by ‘Donetsk people’s republic’) have not had access to centralized supplies of electricity, water and gas, and have relied on wells and a generator which they rarely have money to fuel. There is no public transportation, grocery store, pharmacy or medical unit in the village. Ambulances do not come to the village due to security constraints. Due to the high intensity of shelling, residents often live in degrading conditions in basements.<sup>124</sup> The two children in the village walk 20 minutes to catch a bus to attend school in Yakovlivka village, also located close to the contact line (in territory controlled by ‘Donetsk people’s republic’). They are often forced to skip school due to the critical security situation. While this is a unique case, there are many such villages on both sides of the contact line whose residents experience similar daily hardships.

<sup>119</sup> Food Security and Livelihoods Cluster Food Security Assessment, data collection undertaken in June and July, 2017. Preliminary findings available at [http://fscluster.org/sites/default/files/documents/fslc\\_dashboard\\_january\\_-\\_june\\_2017\\_final.pdf](http://fscluster.org/sites/default/files/documents/fslc_dashboard_january_-_june_2017_final.pdf).

<sup>120</sup> For example, the cargo blockade and imposition of “temporary external management”.

<sup>121</sup> Article 2 (1), International Covenant on Economic, Social and Cultural Rights.

<sup>122</sup> See in particular SDGs regarding the eradication of poverty (Goal 1), ensuring healthy lives and well-being (Goal 3), availability of clean water and sanitation (Goal 6), access to affordable, reliable, sustainable and modern energy (Goal 7), promoting sustained, inclusive and sustainable economic growth, productive employment and decent work (Goal 8), making cities and human settlements inclusive, safe, resilient and sustainable (Goal 11), ensuring sustainable consumption and production patterns (Goal 12). The Agenda is available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

<sup>123</sup> HRMMU teams visited Shevchenko and Boikivske on 17 May 2017, Zaitseve on 25 May, 21 June and 3 August, Kamianka on 20 June, Luhanske on 23 May, Novooleksandrivka on 24 May, Lopaskyne and Orikhove-Donetske on 18 May, Zolote-4 on 19 May, Starolaspa and Sartana on 5 June, Spartak on 3 July, and Oleksandrivka on 2 August.

<sup>124</sup> HRMMU visited one basement where five people, including an 11-year-old child, have been living since 2014, in degrading conditions: damp, with dim light and walls affected by fungus.



109. While shelling directly endangered staff and operations of critical civilian infrastructure,<sup>125</sup> the failure to introduce adequate normative frameworks regulating water and power supplies, as well as crisis management for key enterprises in Luhansk region<sup>126</sup> caused further interruptions in public water and power supplies.

110. In June, Luhansk Energy Union (LEU), the sole distributor of power in Luhansk region, informed OHCHR that it could not continue to distribute electricity or perform network maintenance due to delay of payments for electricity previously supplied on both sides of the contact line and the resulting accumulated debt to the state-owned electricity enterprise, Enerhorynok.<sup>127</sup> At least four water supply companies in Luhansk region accumulated large debts to LEU for electricity supplied.<sup>128</sup> The financial situation of LEU has been aggravated by the reported unauthorized and non-remunerated connection of military positions and objects to electricity lines.<sup>129</sup> As a result, LEU began cutting power to water facilities.<sup>130</sup> This crisis, coupled with frequent breakdown of old water pipes, has been limiting access to safe drinking water of approximately 220,000 people on both sides of the contact line.

111. In western parts of ‘Luhansk people’s republic’, water supplies decreased threefold compared with pre-conflict time.<sup>131</sup> Residential households, hospitals and schools receive water irregularly, sometimes only once for a few hours in two days, and delivery of drinking water is sometimes sporadic. Persons with disabilities face additional difficulties in accessing water delivery points and carrying bottles home. In some villages, residents collect water from boreholes, heightening the risk of outbreak of infectious diseases. Since water filtration stations must frequently halt operations due to shelling, water quality has reportedly deteriorated. In Brianka, the water is red, brown or yellow.<sup>132</sup>

112. OHCHR is concerned that if the water supply issues are not resolved well before the winter, irreversible damage to infrastructure may be unavoidable on both sides of the contact line, as the centralized heating system requires uninterrupted water flow through the pipes.

## B. Right to health

*“I am not used to crying but I am crying now. It is so unjust. You come and go and I will stay here and have to survive. There is no help from the state.”*

- A man with disabilities

<sup>125</sup> See International humanitarian law in the conduct of hostilities *above*.

<sup>126</sup> Luhansk Energy Union (Luhanske Enerhetychne Obiednannia), a privately-owned enterprise, has accumulated more than five billion UAH (nearly 200 million USD) in debts to the state bulk-distributor of electricity. LEU was sanctioned and had its bank accounts frozen. LEU cut salaries and shortened the work week to three days, resulting in the resignation of 200 employees in 2017. The management claims the company has no money for petrol in order to send repair teams to fix the frequent damages to electricity networks along the contact line caused by the hostilities.

<sup>127</sup> HRMMU interview, 15 June 2017.

<sup>128</sup> Lysychansk, Popasna, Starobilsk and Rubizhne water companies.

<sup>129</sup> On 14 June 2017, the LEU management sent a formal complaint to the Government, including at national level, detailing the company’s financial losses caused by unremunerated use of electricity by military facilities in Luhansk region (HRMMU received a copy on 15 June). As of 15 August, the company had not received any substantive reply to this complaint.

<sup>130</sup> On 11 July 2017, LEU cut the electricity supply to a number of pumps of the Lysychansk and Popasna Water Companies, as well as to the Popasniansky District Water Company. As of 20 July, water supply to Lysychansk was renewed but the debt remained unresolved, signalling that further cut offs may be imminent.

<sup>131</sup> The decreases resulted from multiple factors, including old infrastructure and conflict-related damage to pipes.

<sup>132</sup> HRMMU interview, 7 June 2017.

113. Frequent damage to critical infrastructure also poses environmental threats which could greatly impact the right to health. Shelling around a wastewater treatment plant near Dokuchaievsk and a phenolic plant in Novhorodske risks contaminating groundwater and the environment with sewage and toxic liquid waste.<sup>133</sup> Shelling damage to water facilities or power lines which causes water pumps to stop operating may result in the flooding of coal mines which, in this industrial region, may force toxic methane gas to the surface and into basements in residential areas.<sup>134</sup> In view of continued hostilities, failure by the parties to the conflict to respect and implement their agreement in principal on the creation of safety zones around key infrastructure,<sup>135</sup> or to efficiently negotiate “windows of silence” prevented necessary repairs and further aggravated the situation.

114. OHCHR continued to document limited access to and availability of health care in areas close to the contact line, on both sides, as some 130 facilities remain either partially or fully non-operational.<sup>136</sup> A number of places where residents had access to specialized doctors before the conflict now only have a paramedic available, usually only once a week.<sup>137</sup> In locations where public transportation ceased operating and/or the area is not accessible for ambulances due to the armed conflict, residents who are unable to drive must hire a taxi or walk to access medical care.<sup>138</sup>

115. These conditions render persons with disabilities in particular more vulnerable. Frequently in need of medical care, they face greater physical obstacles travelling and crossing checkpoints to receive specialized treatment, or simply fleeing from shelling. Many patients cross the contact line to continue with the treatment they were receiving before the conflict. For example, the hospital in Donetsk city is particularly renowned in treating cancer and continues to provide treatment for patients residing on both sides of the contact line.<sup>139</sup>

116. OHCHR welcomes the ongoing healthcare reform, which may not only resolve systemic issues, but also address certain conflict-related obstacles. If adopted, a draft law “On state financial guarantees for providing medical services” would allow IDPs to receive medical care throughout Ukraine, regardless of their residence or IDP registration.<sup>140</sup>

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<sup>133</sup> On 11 July 2017, the waste water treatment plant near Dokuchaievsk (‘Donetsk people’s republic’) came under shelling and its staff was evacuated. For 24 hours, wastewater from the town’s population of over 24,000 was discharged into the environment. In Novhorodske, on the government-controlled side, a sludge collector of a phenolic plant was overfilled with toxic liquid waste. Due to ongoing hostilities and the lack of agreement on a local ceasefire, no repair works were conducted for the last two years. If the dam is damaged, toxic waste would contaminate the rivers of Kryvyi Torets and Siverskyi Donets, which are water sources for the whole Donbas region.

<sup>134</sup> These concerns were voiced by the Joint Centre for Control and Co-ordination Ukrainian spokesperson, available at <https://ua.112.ua/video/zatopleni-shakhty-poblyzu-toretska-v-donetskii-oblasti-zalyshaiutsia-tekhnohennoi-zahrozoiu-stskk-240545.html>. However, Toretsk local authorities rejected such allegations, claiming that all necessary maintenance work in the mines, at least in government-controlled territory, was being undertaken. HRMMU interview, 3 August 2017.

<sup>135</sup> On 19 July 2017 at the Trilateral Contact Group meeting in Minsk, the parties expressed their commitment to create safety zones around the First Lift Pumping Station and Donetsk Filtration Station. See statement of the TCG Coordinator, available at <http://www.osce.org/chairmanship/330961>.

<sup>136</sup> World Health Organization, <http://www.euro.who.int/en/health-topics/emergencies/health-response-to-the-humanitarian-crisis-in-ukraine/news/news/2017/08/world-humanitarian-day-who-urges-more-health-aid-to-address-ukraines-humanitarian-crisis>.

<sup>137</sup> HRMMU visit to (government-controlled) Trokhizbenka, on 18 May 2017, Zaitseve, on 25 May, 21 June and 3 August 2017, and Luhanske, on 23 May 2017.

<sup>138</sup> HRMMU visit to Starolaspa, on 5 June 2017, and Spartak, on 4 July 2017 (both in ‘Donetsk people’s republic’), and Novooleksandrivka, Luhansk region (‘no man’s land’), on 24 May 2017. On 13 June 2017, an injured woman in Avdiivka (government-controlled territory) had to walk over one kilometre because the ambulance could not access the area due to shelling. HRMMU interview, 20 June 2017.

<sup>139</sup> HRMMU interview, 12 July 2017.

<sup>140</sup> The text of the draft law is available at [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61566](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61566).

### C. Right to social security and social protection

*“My mother, 91, cannot get her pension since 2014. She is too old to travel to the government-controlled side. She worked for it all her life.”*

- Resident of a village near the contact line

117. Negative trends in the sphere of employment may be further aggravated should current conditions persist. In 2016, the unemployment rate in Luhansk region was more than double than in other regions of Ukraine.<sup>141</sup> A number of key enterprises in ‘Luhansk people’s republic’ have stopped or reduced their operations since 2014, when the banking system stopped functioning and transportation of goods became difficult.<sup>142</sup> Due to the trade blockade introduced in 2017,<sup>143</sup> at least two large enterprises in ‘Luhansk people’s republic’ lost access to raw materials and sales markets, resulting in the reduction of salaries by 50 to 70 per cent.<sup>144</sup> In both ‘republics’, the situation worsened after armed groups introduced “temporary external management”<sup>145</sup> of enterprises in territory under their control. OHCHR was informed that after coal mines closed in ‘Donetsk people’s republic’, some miners joined armed groups to secure their livelihood,<sup>146</sup> a trend which had been previously identified by OHCHR.<sup>147</sup> Enterprises in government-controlled territory which previously depended on anthracite coal from territory now controlled by armed groups have taken further steps since the trade blockade to identify other sources. While they continued to operate, they have faced financial losses.<sup>148</sup>

118. Approximately 600,000 people with residence registration in armed group-controlled territory have been deprived of social entitlements, most significantly, payment of pensions, since the government’s mandatory verification process.<sup>149</sup> This has a significant impact on the lives of thousands, as for many, pensions are the only source of income. OHCHR reiterates its recommendation to de-link the right to pension from IDP registration. OHCHR welcomes the proposed legislative amendments to the law on ‘Mandatory state pensions insurance’<sup>150</sup> which would protect pension rights of citizens deprived of their liberty and citizens residing in areas not under the control of the Government. If adopted, the draft law would reinstate the right of all citizens to receive their pension, regardless of IDP registration or residence location.<sup>151</sup>

### D. Housing, land, and property rights

119. The restitution and rehabilitation of destroyed or damaged property or compensation remain among the most pressing unaddressed socio-economic issues. Damage to property may stem from shelling and armed hostilities or from military occupation and use of civilian property.

<sup>141</sup> According to the World Food Programme, before 2014, the unemployment rate was decreasing across the five eastern regions, however since 2014, it has been increasing drastically. In 2016, the unemployment rate in Luhansk region reached 16 per cent whereas the average across Ukraine was seven per cent.

<sup>142</sup> These conditions led to further economic hardships and job losses for up to 5,000 people. HRMMU interviews, 27 July, 8 and 10 August 2017.

<sup>143</sup> A blockade of trade across the contact line was initiated by former members of volunteer battalions in January 2017 and regularized by the Government on 15 March 2017. See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para 120.

<sup>144</sup> HRMMU interviews, 19 May and 28 July 2017.

<sup>145</sup> See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para 120.

<sup>146</sup> HRMMU interview, 14 August 2017.

<sup>147</sup> See OHCHR Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, para 110.

<sup>148</sup> HRMMU interviews, 1 and 3 August 2017.

<sup>149</sup> See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, paras. 117-119.

<sup>150</sup> Available at [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61678](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61678).

<sup>151</sup> The draft law also foresees that pensions will be paid in government-controlled territory retroactively and without any time limitations.

The conflict-affected population, including IDPs, continued to suffer from unregulated claim procedures<sup>152</sup> and lack of inventory of such property, making it hard to pursue related claims. OHCHR notes that only in a few instances claimants were able to win court cases, and thereby gain legal right to compensation for loss of property.<sup>153</sup>

120. On 31 May 2017, the Cabinet of Ministers adopted amendments<sup>154</sup> which would allow authorities to deny housing assistance (rent and utility subsidies) to IDPs if the IDP or a family member owns residential property or a part thereof in government-controlled territory. Moreover, these amendments aim to further narrow the eligibility criteria for such assistance. Only IDPs originating from settlements “where state authorities temporarily do not exercise their powers or located along the contact line”, or those whose housing was destroyed or has become unsuitable for living as a result of the conflict are considered as eligible.

121. For over two years, IDPs from Shyrokyne have been denied access to their property due to security constraints. However, high officials accompanied by representatives of the international community regularly visit the village. During a field visit to Shyrokyne on 20 July, HRMMU was informed by a commander of the Ukrainian Armed Forces that the village remained unsafe because the security situation had prevented demining and only the main road had been cleared.<sup>155</sup> Residents complained that, based on photos and videos available online, private houses have been looted, supposedly by members of volunteer battalions present in the village.<sup>156</sup>

#### *Territory controlled by armed groups*

122. Parallel procedures that ‘regulate’ inheriting, selling and buying of property put in place by armed groups continued to create unnecessary hardship for the population. According to ‘legislative initiatives’,<sup>157</sup> all real estate transactions executed after 11 May 2014 must be registered with the ‘Donetsk people’s republic’. Such ‘initiatives’ result in additional financial burden due to the double registration of transactions that is required, considering that the Government of Ukraine does not recognize such ‘registration’ as valid.<sup>158</sup>

123. Military occupation and use of civilian housing by armed groups hindered the ability of displaced persons to return to their homes. OHCHR was informed about a woman who returned to Luhansk city and could no longer access her apartment because the lock had been changed.<sup>159</sup> Interlocutors from Luhansk alleged that apartments were being opened and given to armed groups.<sup>160</sup>

124. Armed groups further restricted the right to unimpeded use of privately-owned commercial premises or other business-related property.<sup>161</sup> On 5 July 2017, a member of the ‘people’s council’ of the ‘Donetsk people’s republic’ reported that 109 private markets had

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<sup>152</sup> The lack of regulation on documentation and assessment of damages caused by hostilities leaves it to local authorities to arbitrarily decide how to request a housing inventory and document a claim.

<sup>153</sup> For instance, on 27 June 2017, the Selydovskiyi town court of Donetsk region decided to compensate from the state budget the cost (UAH 2,059,000, equivalent to USD 80,000) for the real estate of a resident of the town of Avdiivka which was destroyed by armed hostilities in 2015. The decision entered into force on 10 July.

<sup>154</sup> Cabinet of Ministers of Ukraine Resolution No.370 ‘On amendments to the Resolutions No.505 and No.646’ of 31 May 2017.

<sup>155</sup> HRMMU site visit, 20 July 2017. During this visit, HRMMU observed that all of the houses appeared to have been damaged by the armed hostilities.

<sup>156</sup> HRMMU interview, 18 July 2017.

<sup>157</sup> On 5 July 2017, a ‘law’ of ‘DPR’ on ‘amendments’ to the law “on state registration of real rights to immovable property and their restrictions (encumbrances)” entered into ‘force’.

<sup>158</sup> HRMMU recalls that previous documents issued by notaries in territory controlled by armed groups were equally not considered as valid by the Government of Ukraine.

<sup>159</sup> HRMMU interview, 26 July 2017.

<sup>160</sup> HRMMU interview, 6 August 2017.

<sup>161</sup> See also OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para 120.

passed to ‘state ownership’ since April 2017.<sup>162</sup> The owner of a small market told HRMMU he had to pay additional money to the ‘state management’ to be allowed to continue managing a small shop there.<sup>163</sup>

125. On 4 July 2017, the ‘fund of state property’ of ‘Donetsk people’s republic’ announced the filing of an appeal to the ‘arbitration court’ requesting declaration of property rights concerning “abandoned” property.<sup>164</sup> OHCHR is concerned that these developments may unlawfully interfere with property rights.

126. Legal experts operating in territory controlled by armed groups reported increased information requests concerning the ongoing process of mandatory ‘registration’ of vehicles under ‘Donetsk people’s republic’ ‘legislation’.<sup>165</sup> The process reportedly includes a special fee for ‘registration’, paid through the ‘central republican bank’. Owners who failed to ‘register’ their vehicle would be fined between 340 to 510 roubles,<sup>166</sup> and their vehicles would be held until the fine was paid. Not only does this incur additional expenses for residents, it also places them in a difficult legal predicament, as any ‘official’ payments of ‘fees’ into the ‘budget’ of the ‘Donetsk people’s republic’ may be interpreted as funding of terrorism by law enforcement agencies of Ukraine.<sup>167</sup>

## E. Human rights in humanitarian action

127. The space for humanitarian action continued to be restricted in territory controlled by armed groups, with very few humanitarian actors able to operate. Protection activities, including psycho-social support, education and mine action, remained difficult to implement, negatively impacting the most vulnerable.<sup>168</sup>

128. Access to quality psycho-social support in rural areas in government-controlled territory and in “no-man’s land” also remained a concern due to a general lack of medical personnel. Most of the individual, *ad hoc* programmes implemented by non-governmental actors and international organizations are addressed short-term critical needs. There remains, however, a need to address long-term recovery and development solutions. The situation was especially dire in schools, where there were often no psychologists, speech therapists or defectologists despite the high need for psycho-social support for children living in the conflict zone.<sup>169</sup>

129. OHCHR observed a growing humanitarian need for both food and non-food items in territory controlled by armed groups. This resulted from, *inter alia*, the cargo blockade,<sup>170</sup> the prohibition of large humanitarian NGOs (“People in Need” and “Pomozhem” humanitarian centre of Rinat Akhmetov’s Foundation) from operating in ‘Donetsk people’s republic’<sup>171</sup> and Government restrictions limiting access to pensions of residents living in armed group-controlled territory.

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<sup>162</sup> <https://dan-news.info/obschestvo/v-gossobstvennost-dnr-s-aprelya-2016-goda-pereshlo-109-rynkov-po-vse-territorii-respubliki.html>.

<sup>163</sup> HRMMU interview, 6 July 2017.

<sup>164</sup> Available at <http://dnr-online.ru/fond-gosimushhestva-dnr-uvedomlyaet-o-podache-iskov-v-arbitrazhnyj-sud-dnr-na-predmet-priznaniya-prava-sobstvennosti-na-nedvizhimoe-imushchestvo-ryada-yuridicheskix-lic/>.

<sup>165</sup> HRMMU meeting, 23 May 2017.

<sup>166</sup> <http://smdnr.ru/gai-preduprezhdaet-ob-otvetstvennosti-za-narushenie-srokov-registracii-avtotransporta/>.

<sup>167</sup> See Unlawful/arbitrary deprivation of liberty, enforced disappearances and abductions *above*.

<sup>168</sup> See, e.g., OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, paras. 132-135.

<sup>169</sup> The standard is one psychologist in a school with at least 300 students. For schools with less students, the psychologist would work part time. Ministry of Education Decree No. 616 ‘On the provision on psychological service in the education system of Ukraine’, 2 July 2009.

<sup>170</sup> See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para 120.

<sup>171</sup> See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para 133.

130. OHCHR notes an acute need to increase mine action, including mine-risk awareness activities, as many agricultural land plots remain contaminated with UXO, ERWs and landmines. Humanitarian workers expressed hesitation to scale up livelihoods programmes for fear of placing at risk civilians who would engage in agricultural activities, as well as the staff of the humanitarian organizations.<sup>172</sup>

## VI. Discrimination against Roma

131. OHCHR observed the continuation of a worrisome trend of violence and discrimination against Roma people throughout Ukraine, in some cases involving local authorities.<sup>173</sup> Thus, on 16 May 2017, in a violent escalation of a dispute between a local leader and the Roma community in Vilshany village (Kharkiv region), a group of men led by a member of the Kharkiv regional council and the head of the Vilshany village council attacked a group of Roma, shooting and killing one and wounding three others. Following the incident, some representatives of local authorities engaged in hate speech and threatened to evict Roma families from the village.<sup>174</sup> On 21 July 2017, in Lviv, a Roma camp was set on fire, and another two smaller Roma camps were abandoned, following a statement by a member of the Lviv city council, on 20 July, urging local authorities to take more rigorous actions to “resolve” the Roma issue, including by evicting Roma from Lviv.<sup>175</sup> The police informed HRMMU that no investigation had been initiated into this incident, stating that “there were no victims”.

132. OHCHR is concerned about the lack of investigations of crimes committed against members of the Roma community, particularly regarding the forced displacement of a Roma community in Kyiv, in April 2017, and the forced eviction of Roma families in Loshchynivka village, Odesa region, in August 2016.<sup>176</sup> On 28 July 2017, the Odesa regional prosecution closed the criminal investigation into police misconduct<sup>177</sup> during the forced eviction of Roma families in Loshchynivka village, Odesa region due to lack of *corpus delicti*.

## VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol

133. OHCHR has continued to seek access to Crimea in order to fulfil the mandate of HRMMU to monitor, document and report on the human rights situation throughout Ukraine, and to implement United Nations General Assembly resolution 71/205 which, *inter alia*, requests OHCHR to issue a report on the human rights situation in Crimea.<sup>178</sup> OHCHR continued to record violations of fair trial rights and fundamental freedoms. Further, a number of forced transfers and deportations of Ukrainians took place. In Sevastopol, the security of tenure of property owners has been compromised by judicial decisions confiscating land plots.

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<sup>172</sup> NRC general coordination meeting, 2 June 2017.

<sup>173</sup> Incidents of hate speech were also noted, such as fliers depicting racial slurs and possible incitement to hatred against Roma which were posted in Odesa by a right-wing youth organization.

<sup>174</sup> “IRF’s Statement about violence against Roma in the village Vilshany”, *International Renaissance Foundation*, 18 May 2017, available at [http://www.irf.ua/en/allevnts/news/roma\\_vilshany\\_irfstatement/](http://www.irf.ua/en/allevnts/news/roma_vilshany_irfstatement/).

<sup>175</sup> “Open statement concerning incident with Roma settlement in Lviv”, *Ukrainian Helsinki Human Rights Union*, 27 July 2017, available at <https://helsinki.org.ua/appeals/vidkryta-zayava-schodo-intsydentu-iz-romskym-poselennyam-u-lvovi/>.

<sup>176</sup> See OHCHR Report on the human rights situation in Ukraine, 16 August to 15 November 2016, para 152.

<sup>177</sup> Based on article 367 of the Criminal Code, “Neglect of official duty”.

<sup>178</sup> On 19 December 2016, the General Assembly adopted resolution 71/205 on the “situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol”. Recalling General Assembly resolution 68/262 on the “Territorial integrity of Ukraine”, it refers to Crimea as under “temporary occupation” and calls on the Russian Federation “as an occupying power” to bring an immediate end to abuses against residents of Crimea.



## **A. Administration of justice and fair trial rights**

134. Administration of justice in Crimea continued to be tainted by concerns of political motivation. Legal proceedings involving people in opposition to the Russian Federation authorities in Crimea, or perceived to be, often failed to uphold due process and fair trial guarantees. In such cases, claims of abuse in detention were dismissed by courts without proper judicial review.

135. Two men arrested under accusations of being part of alleged Ukrainian sabotage groups sent to Crimea to commit terrorist acts were convicted of other charges and sentenced to prison terms. On 18 May 2017, one of the defendants was sentenced to three years of imprisonment on drug-related charges. He stated in court that he had been tortured in order to force a confession which was filmed and presented as evidence. He also complained that the drugs found in his car had been planted by the Federal Security Service (FSB). No investigations were conducted to verify his claims. Similarly, on 17 July, the other defendant was sentenced to three years and six months for weapons-related rather than terrorism charges. According to his wife, he was arrested at the Armiansk crossing point, detained overnight, and taken to Simferopol where he was “arrested” with a gun planted on him.<sup>179</sup>

136. On 4 August 2017, a court in Crimea sentenced a farmer and pro-Ukrainian activist to three years and seven months in prison for possession of weapons and explosives. On 29 November 2016, he had affixed a sign to his house that read “Heavenly Hundred Street” in reference to Maidan protesters who died in February 2014 in Kyiv. Ten days later, FSB officers searched his home and allegedly found bullets and explosives in the attic, for which he was arrested. The accused pleaded not guilty and claimed that the case against him was fabricated.

137. Lengthy legal proceedings marked the case of a deputy chairman of the Mejlis, who was arrested in January 2015 and whose detention has been repeatedly extended ever since.<sup>180</sup> OHCHR considers that the practice of automatic extension of pre-trial detention undermines the process of judicial review of lawfulness of detention.

## **B. Freedom of expression**

138. The application of anti-extremism legislation to statements, articles or views expressing criticism or contravening an official position constricted the right to freedom of expression.

139. OHCHR noted for the first time the criminal sanctioning of a social media post on 7 July 2017. A Crimean Tatar from Sevastopol was sentenced to one year and three months imprisonment for “publicly inciting hatred or enmity”. The conviction related to his Facebook posts in 2016, which mentioned the “oppression” of Crimean Tatars, referred to Crimea being “occupied” and “annexed”, and quoted a Crimean Tatar leader who organized the food and trade blockade of Crimea in September 2015.

140. Trials involving a deputy chairman of the Crimean Tatar Mejlis and a Crimean journalist on separatism-related charges based on public statements made opposing the annexation of Crimea were underway as of 15 August 2017. If convicted, they could be imprisoned for up to five years.

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<sup>179</sup> HRMMU interview, 8 May 2017.

<sup>180</sup> The Deputy Chairman is charged with organizing public disorder outside the Crimean parliament on 26 February 2014, when Crimean Tatars activists clashed with pro-Russian activists. His trial started in October 2016.

### C. Freedom of peaceful assembly and association

141. During the reporting period, unauthorized public events were prohibited, as were events involving the Crimean Tatar Mejlis, which was banned in September 2016.

142. Commemorative ceremonies were organized in mainland Ukraine and Crimea to mark the 73<sup>rd</sup> anniversary on 18 May 2017 of the 1944 deportation of 250,000 people, mostly Crimean Tatars, accused by Soviet authorities of collaborating with Nazi Germany. City authorities in Simferopol banned such commemorations in the central square and detained eight Crimean Tatars for conducting unauthorized actions by walking in the street while displaying a Crimean Tatar flag. In Bakhchysarai, five drivers of cars carrying Crimean Tatar flags were detained, and in Feodosiia, the police blocked access to a memorial stone where people were planning to lay flowers.

143. On 8 August, an elderly Crimean Tatar man was arrested for holding a one-person picket in support of prosecuted Crimean Tatars in front of the building of the Supreme Court of Crimea in Simferopol. He was charged with unauthorized public gathering and resisting police orders and sentenced to an administrative fine of 10,000 RUB and 10 days of detention. The man reportedly suffers from numerous health conditions, including Parkinson's disease.

144. The only functioning Ukrainian Cultural Centre in Crimea closed in June 2017 due to lack of funds.<sup>181</sup> The Centre had not applied for registration under Russian Federation law, and its members were regularly summoned by police or FSB and warned not to engage in "extremist activity". Public events organized by the Centre, which included paying tribute to Ukrainian literary or historic figures, were often prohibited. For example, on 7 March 2017, city authorities banned a public commemoration of Ukrainian poet Taras Shevchenko, claiming that the application to hold the commemoration had been improperly filed. In fact, since 2014, only one of the Centre's requests to organize a public event was granted while six were turned down.<sup>182</sup>

145. OHCHR recalls that restrictions to the exercise of the right to peaceful assembly may only be justified if they are necessary, in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.<sup>183</sup>

### D. Freedom of movement

146. OHCHR continued monitoring freedom of movement at the Chonhar, Kalanchak and Chaplynka crossing points on the administrative boundary line (ABL) with Crimea. As in previous reporting periods, one of the most common complaints was the difficulty of transporting personal belongings to and from Crimea.

147. On 14 June 2017, the administrative court of appeal of Kyiv held that the ban on transportation of goods and personal belongings across the ABL between Crimea and mainland Ukraine was unlawful and invalid.<sup>184</sup> The ban had been denounced by Ukrainian human rights organizations as encouraging corruption and restricting freedom of movement.

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<sup>181</sup> According to its Head, the Centre does not have funds to pay rent for its premises in Simferopol.

<sup>182</sup> HRMMU interview, 14 June 2017.

<sup>183</sup> UN doc. A/HRC/31/66, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, paras. 29 and 34.

<sup>184</sup> The ban was instituted by Government Resolution no. 1035 of 14 December 2015, which set up an exhaustive list of 23 types of goods allowed to be transported across the ABL.

148. Based on its monitoring at the ABL, HRMMU observed that the court decision was not consistently applied. In some cases, Ukrainian officers required travellers who were unaware of the decision to comply with the invalidated Resolution. In other cases, particularly when they were shown a copy of the court decision, officers allowed unrestricted crossing. Moreover, as of 10 August 2017, the invalidated Resolution was still displayed at the ABL crossing point “Chonhar”.

149. In a positive development, foreign lawyers and human rights activists were added to the list of persons who may apply for a special permit for crossing the ABL. Prior to 29 July 2017, Ukrainian legislation only exempted from the general prohibition of foreigners crossing between Crimea and mainland Ukraine persons with family or religious reasons, journalists, and foreigners owning real estate in Crimea.<sup>185</sup>

## **E. Freedom of religion or belief**

150. On 1 June 2017, all 22 congregations of Jehovah’s Witnesses in Crimea were de-registered.<sup>186</sup> The decision was made pursuant to an April 2017 decision of the Supreme Court of the Russian Federation, which found that the group had violated the country’s anti-extremism law. Without registration, a religious community may still congregate, however it cannot enter into contracts (for example to rent state-owned property or pay utility bills), employ people or invite foreigners to participate in religious activities and trainings. An estimated 8,000 believers in Crimea were affected by this development.

151. On 9 June, a Jehovah Witness was told at a military conscription center in Crimea that that he could not invoke his right to an alternative civilian service under Russian Federation legislation unless he renounced his faith and changed his religion.<sup>187</sup> On 27 June, the head of a local committee of Jehovah’s Witnesses was summoned to court, charged with unlawful missionary activity.<sup>188</sup>

152. OHCHR stresses that limiting the right to freedom of religion or belief may amount to a violation of international human rights law. In addition, as the occupying power in Crimea as per General Assembly resolution 71/205, the Russian Federation is bound to respect individuals’ religious convictions and practices.<sup>189</sup>

## **F. Forced transfers and deportations of protected persons**

153. Among the most vulnerable groups of Crimean residents are those Ukrainian citizens who, at the time of start of the occupation, had no formal registration (“propiska”) in Crimea and, therefore, did not qualify for the Russian Federation citizenship. Russian authorities in Crimea consider them “foreigners” and subject to Russian Federation immigration laws.

154. Several persons lacking Russian Federation citizenship were deported from Crimea to mainland Ukraine for violating immigration rules of the Russian Federation, which were imposed

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<sup>185</sup> The State Migration Service issues special permits to foreign citizens or stateless persons travelling to/from Crimea “with the purpose to provide legal aid to the victims of violations committed by unlawful public authorities and their agents”, or as part of the independent human rights missions. Cabinet of Ministers Resolution No. 544 “On amendments to the procedure for entry to the temporarily occupied territory of Ukraine and exit from it”, 19 July 2017.

<sup>186</sup> Pursuant to Russian Federation legislation imposed in Crimea, public organizations, including religious communities, were obligated to re-register to order to obtain legal status.

<sup>187</sup> <http://khpg.org/en/index.php?id=1497831415>. A central tenet of the Jehovah’s Witness faith is opposition to serving in the military.

<sup>188</sup> He was charged under Article 5.26 part 4 of the Code of Administrative Offenses of Russia (carrying out missionary activity in violation of the requirements of the law). The man reportedly died later that day of a heart attack. <https://uawire.org/news/jehovah-s-witness-follower-in-the-crimea-dies-after-his-trial>.

<sup>189</sup> Article 27, Fourth Geneva Convention.

in Crimea in violation of General Assembly resolution 68/262 on the territorial integrity of Ukraine.

155. In January 2017, the Crimea-born chairman of an NGO providing free legal aid was convicted of “illegal stay” and ordered to be deported.<sup>190</sup> The court found him to be a foreigner who violated immigration rules by staying in Crimea beyond the authorized 90-day period. Following the ruling, he was transferred from Crimea to Krasnodar (Russian Federation), detained for 27 days, and then deported to mainland Ukraine where he currently lives as an IDP. He is banned from entering Crimea, where his wife and son live, until 19 December 2021.

156. This case illustrates the adverse effects stemming from the unlawful implementation of Russian Federation laws in Crimea. The forced transfer and deportation of this man contravene international humanitarian law rules applying to protected persons in situations of occupation.<sup>191</sup> The entry ban violates his freedom of movement and right to family life by separating him from his relatives.<sup>192</sup> OHCHR received information that 20-25 other Ukrainian citizens have been similarly deported from Crimea to mainland Ukraine.<sup>193</sup>

## **G. Right to property**

157. During the reporting period, the issue of real estate acquired by private individuals from the city of Sevastopol prior to the occupation of Crimea became particularly acute. The owners of approximately 600 private properties acquired from the city of Sevastopol are at risk of being deprived of their right to property.

158. Several real estate owners received court decisions cancelling their purchase contracts, which were concluded before Crimea was occupied by the Russian Federation in 2014. The judgments stated that the transactions were illegally authorized by the city administration instead of the city council. They did not take into account the three-year statute of limitations invoked by several owners, nor did they provide for any financial compensation.<sup>194</sup>

159. The judgments, in effect, amount to the confiscation of property without reparation. HRMMU recalls that, according to international humanitarian law, private property, as well as the property of municipalities and institutions dedicated to religion, charity and education, the arts and science may not be confiscated.<sup>195</sup>

## **VIII. Legal developments and institutional reforms**

### **A. Derogation from international human rights obligations**

160. June marked one year since the Government reviewed its derogation from certain human rights guarantees under the International Covenant on Civil and Political Rights and the European Convention on Human Rights in light of the security situation in the conflict area.<sup>196</sup>

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<sup>190</sup> HRMMU interview, 5 May 2017. The person’s “propiska” had been cancelled in 2012 on procedural grounds, disqualifying him from the ability to obtain Russian Federation citizenship after March 2014.

<sup>191</sup> Article 49, Fourth Geneva Convention.

<sup>192</sup> See Article 16 of the Universal Declaration of Human Rights, Article 23 of the International Covenant on Civil and Political Rights, and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>193</sup> HRMMU interview, 26 May 2017.

<sup>194</sup> HRMMU interview, 29 May 2017.

<sup>195</sup> Hague Regulations, Articles 46 and 56.

<sup>196</sup> The Government notified the United Nations Secretary-General of its derogation from these international instruments in June 2015. See OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2016, paras. 15-17.

Since then, an inter-agency state commission was established on 19 April 2017 to review the scope, territorial application and necessity of these derogations. As of 15 August, information on the progress or results of the review had not been made available. OHCHR underlines the importance of a regular review of the necessity and proportionality of derogation measures by an independent mechanism so as to ensure the temporary nature and objectivity of the assessment.

## **B. Judicial reform**

### *Constitutional Court*

161. On 13 July 2017, the Parliament adopted a law on the Constitutional Court of Ukraine<sup>197</sup> pursuant to constitutional amendments in force since 30 September 2016.

162. One of the new provisions introduced a new constitutional complaints mechanism, enabling individuals and legal entities to appeal to the Constitutional Court when a law applied by an ordinary court in a final decision concerning their case is believed to contradict the Constitution. Prior to adoption of the law, 111 constitutional complaints had been lodged in accordance with the constitutional amendments but none had been processed due to the absence of a review procedure. The new law provides that the Court must decide on the opening of constitutional proceedings within one month of the assignment of a case to a judge rapporteur<sup>198</sup> and that a complaint shall be reviewed within six months.

163. The law also created legal conditions to fill vacant positions in the Constitutional Court. As of 15 August, five out of 18 positions of judges at the court were vacant and could not be filled due to the absence of a procedure for selection based on the constitutional amendments. According to the law, the selection of candidates shall be carried out by screening commissions functioning under each of the three authorities entrusted by the Constitution to appoint six judges, namely the President, Parliament and Congress of Judges.<sup>199</sup> The appointing authorities no longer have a role in the dismissal of judges, which can take place only by decision of at least two-thirds of the total number of judges of the Constitutional Court itself.

164. OHCHR hopes that enactment of the new law will avert a crisis in the operation of the Court, which has a backlog of cases and has not issued any judgments in 2017.<sup>200</sup> It recalls, for example, that important pieces of legislation are pending review by the Court, including provisions of the 2014 lustration law, the 2012 law on language policy and the 2014 law on decommunization.

### *Staffing of courts*

165. It would appear that resignations and dismissals of judges continued to occur at a higher pace than the selection and appointment of new ones. Ukrainian courts therefore experienced a further decrease in the number of judges, which started prior to the ongoing judicial reform and affects the duration of court proceedings and overall administration of justice.<sup>201</sup>

166. Following the entry into force, on 30 September 2016, of constitutional amendments and of the law ‘On the judicial system and the status of judges’, which aimed at ‘cleansing’ the judicial branch in order to restore public trust in the judicial institution, the number of judges employed further decreased from 6,614 to 6,063 between 15 November 2016 and 30 June 2017, leaving Ukraine short of one third of the judges needed to staff its courts.<sup>202</sup> The majority

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<sup>197</sup> Law ‘On the Constitutional Court of Ukraine’, No.2136-VIII of 13 July 2017 (entered into force on 3 August 2017).

<sup>198</sup> This term can be extended by the Grand Chamber.

<sup>199</sup> Screening by Parliament will be conducted by the Parliamentary Committee on Legal Policy and Justice; the Council of Judges of Ukraine will act as a screening commission under the Congress of Judges of Ukraine; and the President will establish a special screening commission.

<sup>200</sup> The Constitutional Court issued seven judgments in 2016, five in 2015, and seven in 2014.

<sup>201</sup> HRMMU report on the human rights situation in Ukraine, 16 August to 15 November 2016, para 182.

<sup>202</sup> There are 765 courts in Ukraine, whose effective functioning requires 9,028 judges. Information provided by the High Qualification Commission of Judges on 14 July 2017 upon written request of HRMMU.

resigned while others were dismissed following disciplinary sanctions.<sup>203</sup> The number of judges authorized to administer justice is even lower, since the initial terms of 1,245 judges have ended. An additional 1,271 judges are now eligible to retire.<sup>204</sup> As of 30 June 2017, nine courts had no judges and did not operate<sup>205</sup> and 13 per cent of the courts were understaffed in respect of judges by over 50 per cent.<sup>206</sup>

167. To mitigate this situation, on 31 May 2017, the High Council of Justice temporarily transferred 32 judges to local courts facing the greatest staffing needs. In addition, between 1 January and 30 June 2017, the High Council of Justice appointed 199 new judges.

### C. Draft law on restoring state sovereignty

168. A draft law<sup>207</sup> aimed at restoring state sovereignty over certain areas of Luhansk and Donetsk regions was developed by the National Security and Defence Council (NSDC) upon request of the President of Ukraine, but not yet registered in Parliament.<sup>208</sup> OHCHR calls on the Government to conduct broad consultations on this draft law, including with civil society. It needs to ensure that the proposed new framework for the security operation incorporates human rights guarantees in line with international standards.

### D. National Human Rights Institution

169. On 17 July, OHCHR addressed a letter to the Chairman of the Parliament of Ukraine advocating for a new selection process for the position of Parliamentary Commissioner for Human Rights (Ombudsperson). This should follow a revision of the current procedure in conformity with the Paris Principles and the 2014 recommendations of the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions requiring transparent, merit based and participatory selection.<sup>209</sup>

170. This initiative came after Parliament failed to hold a vote on three candidates nominated by deputies within the prescribed 20-day deadline, but later adopted a new voting procedure for selection of the Ombudsperson (contained in above-mentioned law on the Constitutional Court of Ukraine). OHCHR is concerned that claims of irregularities and backdoor political deals surrounding the selection of a new Ombudsperson risk undermining public trust in the institution, and calls on the Government to protect the integrity and independence of the national human rights institution.

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<sup>203</sup> From 1 January to 30 June 2017, the High Council of Justice dismissed 390 judges, of whom 222 resigned and 168 had faced disciplinary sanctions.

<sup>204</sup> Information reported by the Head of the State Judicial Administration at a meeting of heads of courts of appeal, held on 9 June 2017, at the High Specialized Court of Ukraine for Civil and Criminal Cases.

<sup>205</sup> Five courts did not operate due to the absence of hired judges: Yaremchanskyi town court of Ivano-Frankivsk region; Lokhvytskyi district court of Poltava region; Radyvylivskyi district court of Rivne region, Kulykovskyi district court of Chernihiv region, and Zhydachivskyi district court of Lviv region. Four courts did not operate because the judges were awaiting approval of their indefinite appointment upon termination of their initial five-year appointment: Karlivskyi district court of Poltava region, Novovodolazkyi district court of Kharkiv region, Skadovskyi district court of Kherson region, and Putylskyi district court of Chernivtsi region.

<sup>206</sup> The number does not include courts located in territory not controlled by the Government.

<sup>207</sup> Draft law "On the aspects of the state policy on the restoration of Ukraine's sovereignty over the temporarily occupied territory of the Donetsk and Luhansk regions".

<sup>208</sup> Three other draft laws on the temporarily occupied territories were pending in the Parliament as at 15 August 2017. See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, paras. 166-167.

<sup>209</sup> OHCHR recommended such revision to the Parliament of Ukraine previously, see OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para. 186.



## IX. Technical cooperation and capacity-building

171. OHCHR conducts technical cooperation and capacity-building activities to assist the Government of Ukraine in meeting its international obligations to protect and promote human rights. During the reporting period, HRMMU engaged with numerous prosecution offices, penitentiary staff, SBU, the Ombudsperson, and various government ministries, as well as civil society organizations, to provide guidance and assistance in addressing human rights issues.

172. Together with the United Nations High Commissioner for Refugees and other partners, including from civil society, HRMMU developed a broad advocacy campaign focused on ensuring access to pension payments by all entitled citizens. The campaign calls for the de-linking of the right to pension from IDP or residence registration, as this is an obstacle which hinders access to pensions, particularly for Ukrainians residing in territory controlled by armed groups. In this context, HRMMU held advocacy meetings with the Minister of Temporarily Occupied Territories and IDPs, the head of the Parliamentary Committee on Human Rights, as well as international partners, embassies, and other stakeholders. The campaign has already resulted in a few legislative initiatives, for instance one that, if adopted, would reinstate the right of all citizens to receive their pension, regardless of IDP registration or residence location.<sup>210</sup>

173. In preparation for the third UPR cycle of Ukraine in November 2017, OHCHR encouraged the Government to use it as an opportunity to communicate their expectations for capacity-building and specific requests for technical assistance and support. HRMMU also updated its thematic compilation of recommendations made to Ukraine by United Nations human rights mechanisms (treaty bodies, special procedures and previous UPR cycles).

174. HRMMU continued to raise concerns regarding specific allegations of torture and ill-treatment of detainees and to support implementation of the Istanbul Protocol.<sup>211</sup> HRMMU provided human rights training to civil society monitors of the National Preventive Mechanism in May and to SBU officers in Odesa in July, focusing on means of preventing and addressing torture. In June and July, OHCHR held separate discussions in Kharkiv with the Regional Prosecutor, Military Prosecutors and the head of SBU on accountability for torture and ill-treatment of conflict-related detainees allegedly perpetrated by SBU officers in specific cases documented by HRMMU. On 30 June, OHCHR organized the presentation of the report of the United Nations Subcommittee on Prevention of Torture on its 2016 visit to Ukraine to representatives of the Office of the Prosecutor General, SBU, the Ministry of Foreign Affairs and various human rights NGOs, followed by a dialogue concerning best practices in documentation of torture, complaint and oversight mechanisms, and treatment of conflict-related detainees. HRMMU drew attention to persisting cases of torture, and reminded the Government of its obligation to develop a road map for the full implementation of the Subcommittee's recommendations. In July, HRMMU gave a presentation to deputy heads of penitentiary institutions on its key findings pertaining to torture and international obligations to prevent and address this practice.

175. Jointly with United Nations and NGOs, HRMMU helped develop guidelines for the inspection by special commissions of real estate damaged or destroyed during the armed conflict, as well as a draft inspection act for such damaged or destroyed property. The guidelines and act will soon be submitted to the Cabinet of Ministers as tools to assist the Government in addressing the impact of the conflict on civilians.

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<sup>210</sup> See Right to social security and social protection *above*.

<sup>211</sup> The Istanbul Protocol on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

## X. Conclusions and recommendations

176. In eastern Ukraine, as the civilian population endured the fourth summer of the conflict, it faced continuing volatility of armed hostilities alongside a dearth of progress in efforts to resolve the conflict and bring about peace and reconciliation. The parties to the conflict repeatedly failed to honour commitments made under the Minsk agreements and subsequent renewed agreements to cease fire. Instead, they chose to perpetuate the conflict through the continued use of heavy weapons and laying of additional mines, as well as the implementation of measures which deepened the divide between communities on either side of the contact line. The resulting costs to civilian lives, health, family bonds and property have become a steady fixture of the conflict.

177. On both sides of the contact line, those most affected by the conflict are increasingly voicing anger and frustration at its continuation. This shared perspective should bode well as a basis for local level conflict resolution activities. More needs to be done to ensure that policies of discrimination and exclusion do not further the divide marked by an arbitrary boundary, that of the contact line; and that information provided to civilians promotes inclusion and a respect for individuals and their dignity.

178. Serious human rights violations and abuses, in particular enforced disappearances, *incommunicado* detention, torture, ill-treatment and sexual violence, perpetrated in connection with conflict-related suspects, compounded the suffering of the population and further fuelled an atmosphere of fear and distrust. At the same time, accountability for past and ongoing violations of human rights and international humanitarian law remained elusive, perpetuating a sense of impunity.

179. Against the background of a further deteriorating socio-economic environment, in particular in territory controlled by armed groups, the future looks bleak. Only a serious commitment to peace and reintegration by the parties to the conflict, translating into sincere action, can reverse this trend.

180. OHCHR remains concerned by human rights violations and violations of international humanitarian law applicable to the occupation of Crimea by the Russian Federation, particularly the impact on the Crimean Tatar population. HRMMU will continue to monitor and report on the human rights situation in Crimea, including with regard to compliance with provisional measures issued by the International Court of Justice.<sup>212</sup>

181. Most recommendations made in previous OHCHR reports on the human rights situation in Ukraine have not been implemented and remain pertinent and valid. OHCHR further reiterates or recommends the following:

182. **To the Ukrainian authorities:**

- a) **Government of Ukraine to develop a national mechanism to make adequate, effective, prompt and appropriate remedies, including reparation, available to civilian victims of the conflict, especially those injured and the families of those killed;**<sup>213</sup>
- b) **Cabinet of Ministers to ensure the development and provision of timely, non-discriminatory and comprehensive assistance to all conflict-affected individuals, particularly injured civilians and victims of torture and conflict-related sexual**

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<sup>212</sup> See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para. 163.

<sup>213</sup> In line with the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

violence, including medical, psycho-social and legal services, livelihood support, and other multi-sectoral services, such as housing, taking into account the specific needs of persons with disabilities;

- c) **Cabinet of Ministers to set up a property inventory and inspection procedures, including an effective and accessible mechanism for documentation and assessment of damages caused by the conflict;**<sup>214</sup>
- d) **National Police and Office of the Prosecutor General to investigate, in a timely and impartial manner, allegations of human rights violations committed at so-called ‘internal checkpoints’ in the conflict zone, in particular, incidents involving the use of disproportionate and unnecessary force or violence by law enforcement;**
- e) **General Staff of the Ukrainian Armed Forces to ensure that all personnel carrying out service, in particular those in the conflict area, are aware of the legal procedure of detention and adequately supervised to abide by it;**
- f) **Parliamentary Commissioner for Human Rights to step up the work of the office’s regional representatives in the ATO area to ensure their pro-active role in promoting human rights compliance, in particular during detention and trials of conflict-related detainees, and rights of persons passing through checkpoints;**
- g) **Office of the Prosecutor General and other law enforcement agencies to classify appropriately, thoroughly investigate and prosecute hate crimes,**<sup>215</sup> **including any crimes committed on the basis of ethnicity, sexual orientation and gender identity;**
- h) **National Police to promptly and effectively investigate alleged violations in connection to “Myrotvorets” website;**
- i) **National Police to provide adequate security to public assemblies throughout Ukraine and provide personnel with methodological guidelines and training on the right to freedom of peaceful assembly;**
- j) **National Commission for State Regulation of Energy and Public Utilities Sector to regulate power supply in Luhansk region, ensuring uninterrupted distribution of electricity;**
- k) **State Fiscal Service to comply with the court decision invalidating the ban on transportation of personal and consumer goods across the ABL established by Government Resolution 1035;**
- l) **Inter-agency commission to ensure regular periodic review of the necessity and proportionality of the Government’s derogation measures and make public the results of such review; and lift the derogation as soon as it is no longer strictly required;**
- m) **President to ensure that the National Security and Defence Council consults broadly with civil society in the development of the draft law “On the aspects of**

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<sup>214</sup> In pursuance of paragraph 20 of the Comprehensive State Programme on Support, Social Adaptation and Reintegration of Citizens of Ukraine, Who Have Resettled from the Temporarily Occupied Territory of Ukraine and Areas Where Anti-Terrorist Operation Is Ongoing to Other Regions of Ukraine, For the Period Till 2017.

<sup>215</sup> As set out in Article 161 of the Criminal Code of Ukraine.

the state policy on the restoration of Ukraine's sovereignty over the temporarily occupied territory of the Donetsk and Luhansk regions”, and that the proposed new framework for the security operation incorporates human rights guarantees in line with international standards;

- n) Government, Parliament and other relevant State bodies to eliminate obstacles which prevent Ukrainian citizens from having equal access to pensions, regardless of place of residence or IDP registration;
- o) Parliament to ensure that legislation is in place to support health care reform in a manner which guarantees accessibility and availability of quality health services for all Ukrainian citizens, without discrimination;
- p) Parliament to adopt legislation allowing for participation of civil society actors in the provision of psycho-social services to citizens of Ukraine;

183. To all parties involved in the hostilities in Donetsk and Luhansk regions, including the Ukrainian Armed Forces, and armed groups of the self-proclaimed ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’:

- a) Bring to an end the conflict by adhering to the ceasefire and implementing other obligations undertaken in the Minsk agreements, in particular regarding withdrawal of prohibited weapons and disengagement of forces and hardware, and until such implementation, agree on and fully respect “windows of silence” to allow for crucial repairs to civilian infrastructure in a timely manner;
- b) Strictly respect agreed safety zones around Donetsk Filtration Station and the First Lift Pumping Station by refraining from shelling in the area and withdrawing all fighters and equipment;
- c) Facilitate free and unimpeded passage by civilians across the contact line by increasing the number of crossing routes and entry-exit checkpoints, especially in Luhansk region;
- d) Remove security risks infringing upon freedom of movement in settlements located close to the contact line, such as Shyrokyne, Novooleksandrivka and Starolaspa, by demining the area and adhering to the ceasefire agreements, so that access of humanitarian aid workers and the general public is not hindered;
- e) Ensure unimpeded access of OHCHR and other independent international observers to all places of deprivation of liberty, including for private confidential interviews with detainees;
- f) Immediately release all persons arbitrarily deprived of their liberty, particularly those subjected to *incommunicado* detention;
- g) Take measures to ensure that persons with disabilities residing near the contact line have equal access to quality health services, including by facilitating freedom of movement and providing accessible transportation;
- h) Armed groups of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to respect and protect the right to freedom of expression, and to refrain from acts of infringement, including intimidation or harassment of media professionals or persons expressing “pro-Ukrainian” or other politically diverse views;

- i) **Armed groups of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to refrain from creating parallel ‘legislative’ procedures for registration of real estate or property, including vehicles;**
- j) **Armed groups of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to halt the practice of seizing and placing under ‘temporary external management’ private or communal property such as private markets and real estate objects owned by churches or research institutions.**

184. **To the Government of the Russian Federation:**

- a) **Implement General Assembly Resolution 71/205 of 19 December 2016, including by ensuring proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea;**
- b) **Uphold freedom of opinion and release all persons charged or sentenced for expressing critical or dissenting views, including about political events or the status of Crimea;**
- c) **Refrain from forcible deportation and/or transfers of Ukrainian citizens lacking Russian Federation passports from Crimea;**
- d) **Investigate all allegations of torture and ill-treatment made by individuals deprived of liberty in Crimea, including those accused of terrorism and separatism related charges;**
- e) **Respect religious convictions and practices, including by providing alternative military service for conscientious objectors, and reverse the decision to de-register Jehovah's Witnesses congregations in Crimea.**

185. **To the international community:**

- a) **Use all diplomatic channels to press all parties involved to end hostilities, emphasizing the effect the conflict has on the human rights situation, and call on them to strictly adhere to their commitments under the Minsk agreements, including an immediate and full ceasefire and the withdrawal of heavy weapons;**
- b) **Continue to provide technical assistance to further develop the free legal aid system in line with international human rights standards, offering support aimed at increasing the quality of legal assistance and the quantity of defence lawyers offering services in eastern Ukraine, in particular in Luhansk region;**
- c) **Consider funding NGO projects which provide free legal aid to affected civilians in cases of illegal expropriation of property by the Ukrainian military and armed groups and forced displacement of civilians;**
- d) **Support the Government of Ukraine in developing a system of comprehensive, timely, and non-discriminatory assistance to all conflict-affected individuals, particularly injured civilians and victims of torture and conflict-related sexual violence, including medical, psycho-social and legal services, as well as livelihood support, taking into account the specific needs of persons with disabilities;**
- e) **Support projects of civil society on trial monitoring of conflict-related cases to promote compliance with fair trial guarantees and to gather evidence for recommendations aimed at implementing ongoing legal and judicial reforms.**