

**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 XXI OF THE ANNEXES  
TO THE MEMORIAL  
SUBMITTED BY UKRAINE**

**12 JUNE 2018**



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# Annex 776


OHCHR, Report on the Human Rights Situation in Ukraine (16 August–15 November 2017)



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

**Report on the human rights situation in Ukraine  
16 August to 15 November 2017**



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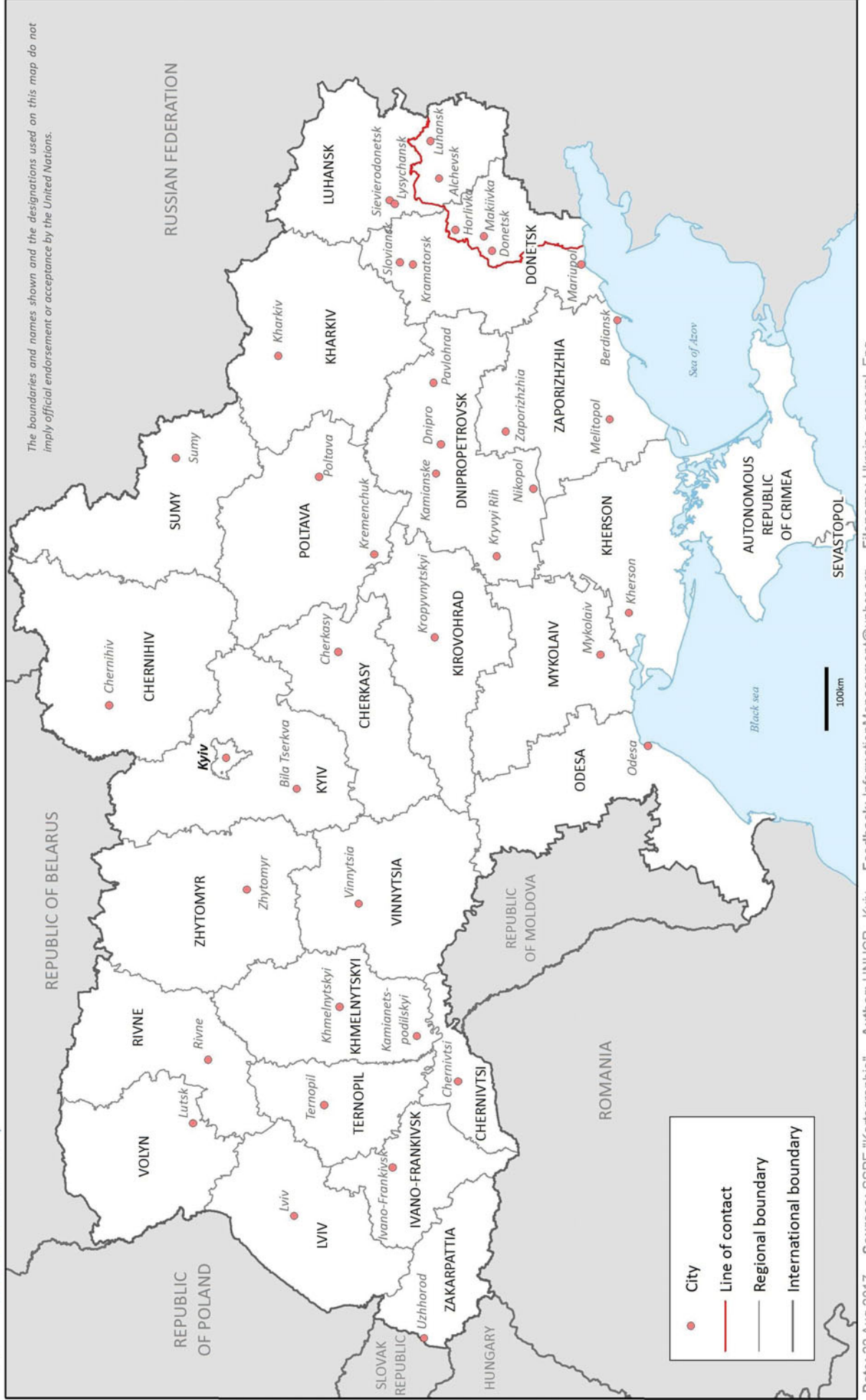
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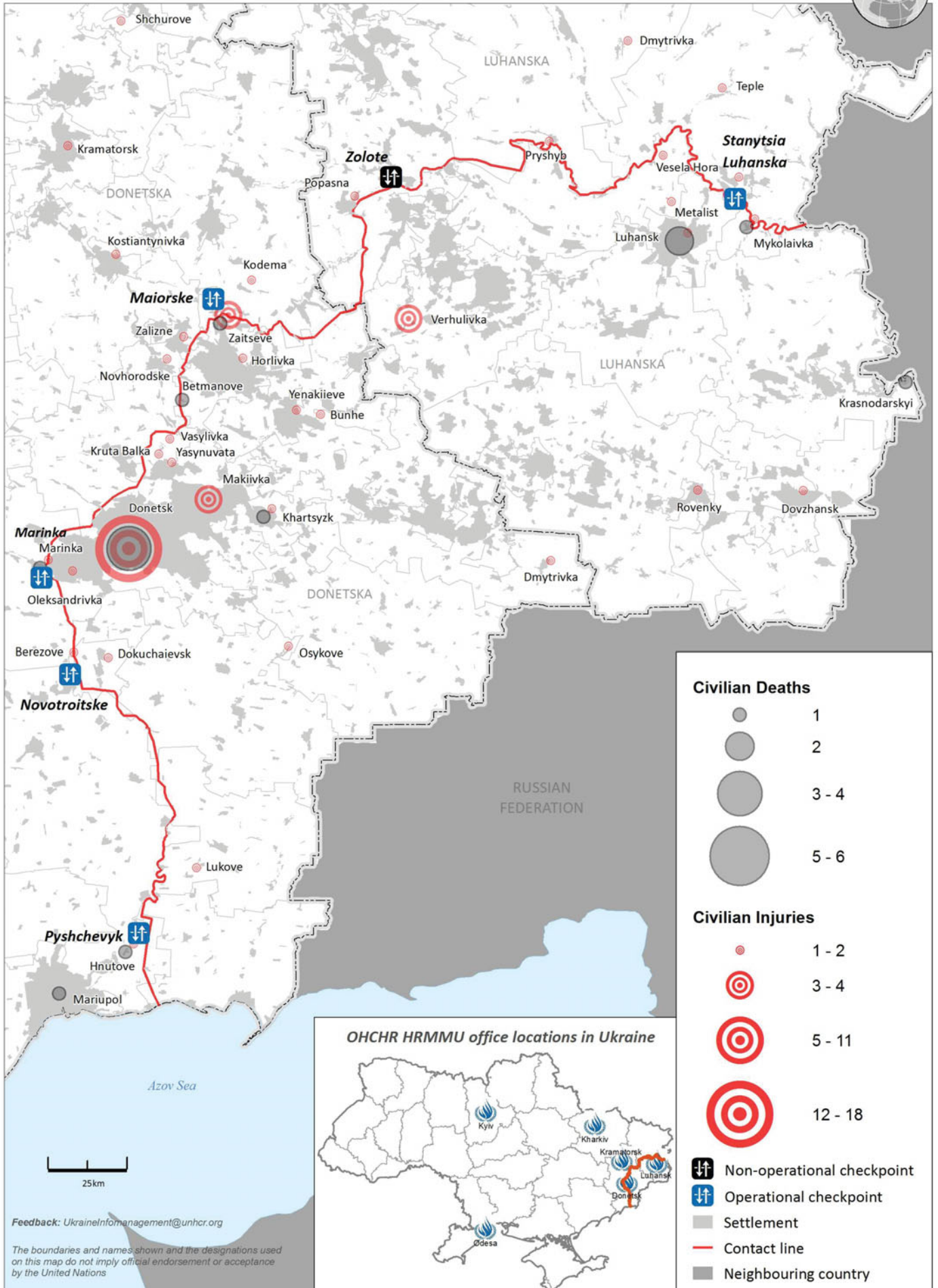


The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.





# Ukraine: Civilian casualties along the contact line, 16 August - 15 November 2017





# Locations in eastern Ukraine 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, ICC, SSP, "Kartographia", OCHA | Feedback: OCHAUkraine@un.org | Document: OHCHRReportMapNovEn\_29112017\_v1 | Creation date: 08.12.2017

0 5 10 km

**Legend**

- ▲ OHCHR Field Offices
- Entry-Exit Checkpoints
- ⊙ Region Centres
- District Centres
- 🚰 Water Facilities
- Contact Line
- Settlements



## I. Executive summary

*“It is now worse than in 2014 because we cannot continue to bear it any longer.”*

- Resident of a village near the contact line.

1. This twentieth report on the situation of human rights in Ukraine by the Office of 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 August to 15 November 2017.

2. The findings presented in this report are grounded on data collected by HRMMU through 290 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 423 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. While May through September saw a steady decline in hostilities, which levelled off in October, November commenced with a sudden surge in keeping with the unpredictable dynamics of the armed conflict in eastern Ukraine. Much of the character of the conflict, however, remained the same as previously reported – with daily ceasefire violations and frequent use of heavy weapons, some with indiscriminate effects, threatening the lives and well-being of the civilian population while damaging property and critical infrastructure. As the fourth winter of the conflict approaches, fluctuations in the armed hostilities maintained a tense environment of general insecurity. 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>3</sup>

4. OHCHR recorded 87 conflict-related civilian casualties in eastern Ukraine (15 deaths and 72 injuries) between 16 August and 15 November 2017, a 48 per cent decrease compared to the previous reporting period of 16 May to 15 August. The leading causes of casualties were mines, explosive remnants of war (ERW), booby traps and improvised explosive devices (IEDs) which accounted for 59.8 per cent of all civilian casualties recorded, while shelling was responsible for 23 per cent, and fire from small arms and light weapons for 17.2 per cent. Recalling, however, that the conflict is still in an active phase, after three months of lower civilian fatalities and injuries, as of 15 November, hostilities appear to be on the rise, which could lead to a corresponding increase in civilian casualties.

5. Shelling of critical civilian water infrastructure continued to endanger not only the staff but all persons in the vicinity of such facilities, in addition to disrupting public supply of water and posing serious risk to the environment. Repeated shelling of the Donetsk Filtration Station<sup>4</sup>

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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> 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.

<sup>4</sup> The Donetsk Filtration Station, located in “no man’s land” approximately 15 km north of Donetsk city, between government-controlled Avdiivka and armed-group-controlled Yasynuvata, processes water for approximately 345,000 people on both sides of the contact line.

between 3 and 4 November damaged a backup chlorine pipeline, which could have led to an environmental disaster if toxic chlorine gas had leaked. A direct hit to the main pipeline or any of the 900-kg bottles storing chlorine at the facility could have resulted in the deaths of any person within a 200-metre radius.<sup>5</sup> The following day, the Verkhokalmiuska Filtration Station,<sup>6</sup> which stores 100 tons of chlorine gas, was shelled and sustained multiple hits.

6. OHCHR repeats its call for 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 heavy weapons and disengagement of forces and hardware.<sup>7</sup> OHCHR recalls that during the last reporting period, a renewed ceasefire commitment (the “harvest ceasefire”) resulted in a decrease in ceasefire violations, and a notable decrease in civilian casualties.<sup>8</sup>

7. OHCHR continued to document cases of summary executions, enforced disappearances, arbitrary detention, torture and ill-treatment, and conflict-related sexual violence. While many cases recorded date back to prior years of the conflict, new incidents also occurred within the reporting period.

8. In government-controlled territory, OHCHR – in general – continue to enjoy unimpeded access to conflict-related detainees, with the exception of several individuals in Kharkiv, Kyiv and Dnipro who are under investigation of the Security Service of Ukraine. In territory controlled by armed groups, OHCHR was denied access places where people are deprived of their liberty and to hold confidential interviews. As enforced disappearances, torture and conflict-related sexual violence often take place in the context of detention, this denial of access raises serious concerns that human rights abuses may be occurring.

9. Accountability for grave human rights violations in conflict-related cases remained elusive. Legal proceedings were plagued by ineffective investigations, politicization of cases with the involvement of high level officials and infringements on the independence of the judiciary. OHCHR documented substantial pressure exerted on judges in numerous cases.

10. No significant progress was achieved in criminal proceedings related to the killing of protestors in Maidan in 2014. Due to the length of proceedings, defendants have remained in detention for several years.<sup>9</sup> With regard to the 2 May 2014 violence in Odesa, the trial of 19 persons accused of organizing and participating in the mass disturbances which led to six deaths concluded in an acquittal. To date, no one has been held responsible for the violence that day, or for any of the resulting 48 deaths.

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<sup>5</sup> Press release, Ukraine: UN experts warn of chemical disaster and water safety risk as conflict escalates in East, United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and Special Rapporteur on the human rights to safe drinking water and sanitation, 10 November 2017.

<sup>6</sup> The Verkhokalmiuska Filtration Station, located in armed-group-controlled territory approximately 17 km northeast of Donetsk, supplies water to 800,000 people.

<sup>7</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>.

<sup>8</sup> The “harvest ceasefire” ran from 24 June to the end of August, and while it never fully took hold, it contributed to an overall reduction in the number of daily ceasefire violations, and consequently, the number of civilian casualties. See OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, paras. 22-23, 32-33.

<sup>9</sup> Two defendants have remained in detention for over three years while three have been detained for over two years.

11. Within structures in territory controlled by armed groups, arbitrary detentions and ‘prosecutions’ were compounded by the lack of recourse to effective remedy. This is of particular concern given the ‘pronouncement’ of a second ‘death penalty’ by the ‘supreme court’ of the ‘Donetsk people’s republic’ in November. The practice of *incommunicado* detentions, which often amounted to enforced disappearance, also persisted.

12. As in previous reporting periods, infringements on freedom of movement continued to isolate residents in villages located close to the contact line, cut off access to basic goods, services and humanitarian aid, and intensified general hardship for the population. The shortening of entry-exit checkpoint operational hours after summer, together with high numbers of persons traveling resulted in longer queues to cross the contact line. A total of 1.2 million crossings were recorded at the five crossing routes in the month of August, and 1.1 million each in September and October.

13. Freedom of opinion and expression continued to face mounting challenges. OHCHR noted with concern the broad interpretation and application of terrorism-related provisions of the Criminal Code in cases where SBU initiated criminal investigations against Ukrainian media professionals, journalists and bloggers. In territory controlled by armed groups, freedom of expression remained severely curtailed, with no room for critical publications or elements of dissent.

14. Many of the human rights violations and abuses and infringements on fundamental freedoms described above persisted at similar or slightly heightened degrees as reported by OHCHR in previous quarters. However, members of the conflict-affected population expressed to HRMMU that the cumulative effect of the resulting harms and hardship they have endured as the conflict continues in its fourth year is reaching an unbearable level. This was exacerbated by the worsening socio-economic situation, policies which deprive citizens of their pensions, and the lack of access to restitution of or compensation for property damaged or destroyed by the conflict. These conditions deepen the divide, jeopardize social cohesion and complicate prospects and efforts for future reconciliation.

15. Along with an increasing sentiment of despair of people directly affected by the armed conflict in the east, OHCHR noted increasing manifestations of intolerance, including threats of violence, by extreme right-wing groups, which served to stifle public expressions and events by individuals holding alternative, minority social or political opinions. Violent acts which occurred remained largely unsanctioned.

16. Having no access to Crimea, HRMMU continued to analyse the human rights situation on the peninsula from 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 under occupation by the Russian Federation. The Russian Federation continued to apply its laws, in violation of international humanitarian law applicable to an Occupying Power. Practices by the authorities which resulted in serious human rights violations, and which disproportionately affected Crimean Tatars, persisted this reporting period. Further, the exercise of freedoms of opinion and expression, religion or belief and peaceful assembly also continued to be curtailed through verdicts criminalizing criticism and dissent.

17. Two developments during the Parliament’s session within the reporting period are of particular importance. Parliament began consideration and adoption of a new legal framework concerning territory not under the control of the Government, with the aim of restoring state sovereignty over certain areas of Donetsk and Luhansk regions. It is viewed to be implemented in the context of an armed aggression and temporary occupation by the Russian Federation. OHCHR cautions that, at this stage, the draft law lacks clarity as to the framework for the protection of rights and freedoms, thus failing to satisfy the legal certainty requirement.

18. Parliament also adopted a new Law on Education which instates the Ukrainian language as the main language of instruction in secondary and higher education. OHCHR cautions that strengthening of the Ukrainian language should not come at the expense of minority languages,



and calls on the Government to ensure that the rights of minorities are respected without discrimination among different minority groups.

19. 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. OHCHR provided targeted trainings and advocacy to support implementation of the Istanbul Protocol,<sup>10</sup> and continued to raise awareness of conflict-related sexual violence. OHCHR also supported the preparations for Ukraine's third Universal Periodic Review (UPR) which took place on 15 November 2017. Furthermore, the United Nations Partnership Framework with Ukraine defining the support of the United Nations to national development priorities has been signed. OHCHR will contribute to specifically support those relating to democratic governance, rule of law, civic participation, human security and social cohesion.

## II. Rights to life, liberty, security, and physical integrity

### A. International humanitarian law in the conduct of hostilities

*"If the shelling does not start at 22:00, I cannot fall asleep."*

- Resident of a village near the contact line.

20. During the reporting period, daily exchanges of fire across the contact line by all parties to the conflict continued. Some improvement in the security situation was observed since the beginning of the reporting period in mid-August until the end of October, which may be partially attributable to renewed ceasefire commitments. Following the end of the "harvest ceasefire" (agreed to allow local communities to bring in their crops safely), another renewed ceasefire commitment commenced on 25 August to allow children to start the new school year safely. However, such commitments to ceasefire by the sides to the conflict can only be a temporarily solution. The escalation that took place by the end of the reporting period, in the first two weeks of November, indicates that achieving a sustainable peace requires full compliance with the Minsk agreements. Meanwhile, sporadic and unpredictable spikes in the armed hostilities further exacerbated the situation of general insecurity for civilians living in conflict-affected areas, and in particular, those close to the contact line.

21. OHCHR remains concerned about the continued presence of heavy weapons near the contact line,<sup>11</sup> in disregard of pledges made under the Minsk agreements to withdraw such weapons. The Special Monitoring Mission (SMM) of the Organization for Security and Cooperation in Europe (OSCE) documented the repeated use of 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).<sup>12</sup> The use of such weapons in densely populated areas can be considered incompatible with the principle of distinction and may amount to a violation of

<sup>10</sup> United Nations Manual on the 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>.

<sup>11</sup> For example, the OSCE SMM observed four multiple launch rocket systems being transported between Shchastia and Voitove (government-controlled territory) on 15 September, four multiple launch rocket systems near Novoamvrosiivske and ten tanks near Novoselivka (armed-group-controlled territory) on 12 October. See OSCE SMM daily reports, available at <http://www.osce.org/ukraine-smm/reports>.

<sup>12</sup> For example, on 22 August, the OSCE SMM camera in (government-controlled) Shyrokyne recorded *inter alia* 8 rocket-assisted projectiles in flight and 20 explosions assessed as impacts. OSCE SMM daily report available at <http://www.osce.org/special-monitoring-mission-to-ukraine/336636>. On 10 October, the OSCE SMM heard 35-40 explosions assessed as impacts of multiple launch rocket system near (government-controlled) Lebedynske. OSCE SMM daily report, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/349206>.

international humanitarian law due to the likelihood of indiscriminate effects. During the reporting period, HRMMU documented civilian casualties and damage to civilian property caused by heavy weapons.<sup>13</sup>

22. The risk to civilian lives has been further heightened by the contamination of highly-frequented areas with mines and IEDs, as well as the presence of ERW.<sup>14</sup> The parties to the conflict continued the practice of placement of IEDs and anti-personnel mines in populated areas and near objects of civilian infrastructure.<sup>15</sup> OHCHR notes that placement of such victim-activated explosive devices, which, by their nature, cannot differentiate between civilians and combatants, in densely populated areas and areas frequently attended by civilians may amount to an indiscriminate attack in violation of the principle of distinction enshrined in international humanitarian law.<sup>16</sup> Further, OHCHR recalls that parties to a conflict must take all precautionary measures to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.<sup>17</sup>

23. OHCHR continued to observe military presence in densely populated areas and military use of civilian property on both sides of the contact line, increasing the risk to civilian lives, property and critical infrastructure.<sup>18</sup> Locating military positions and equipment within or near residential areas and objects indispensable for the survival of the civilian population falls short of taking all feasible steps to separate military objectives from the civilian population, in contravention to international humanitarian law.<sup>19</sup> OHCHR notes that where such presence is justified due to military necessity, the parties must protect the resident civilian population, including by providing alternative accommodation.<sup>20</sup> Some residents of (government-controlled) Opytne and in the “no man’s land” part of Pivdenne informed HRMMU they wished to relocate

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<sup>13</sup> See “Civilian casualties” below. In addition, HRMMU documented damage to civilian houses in (armed-group-controlled) Pervomaisk caused by shelling on 23-24 August, and damages to civilian houses and infrastructure in (armed-group-controlled) Kyivskiy district of Donetsk city during an escalation in hostilities on 5-6 November 2017. See also OSCE SMM documentation of civilian property damaged by shelling in (government-controlled) Marinka on 27 September and (armed-group-controlled) Yasynuvata on 29 September, available at <http://www.osce.org/ukraine-smm/reports/>.

<sup>14</sup> “Ukraine has the largest number of anti-vehicle mine-related incidents globally, and ranks fifth worldwide for civilian casualties as a result of landmines and unexploded ordnance (UXO).” 2018 Humanitarian Needs Overview, Ukraine, November 2017, available at <https://reliefweb.int/report/ukraine/ukraine-humanitarian-needs-overview-2018-enuk>. On 6 September, a man in Dmytrivka was injured by ERW. On 4 October, an employee of the local power company was killed after tripping an anti-personnel mine near a powerline on the outskirts of Betmanove (formerly Krasnyi Partizan). On 5 November, one child was killed and two injured by ERW near a school in (armed-group-controlled) Petrovskiy district of Donetsk city. OHCHR civilian casualties records.

<sup>15</sup> HRMMU documented a case of a man in Zolote 4 (located in “no man’s land”) who went deaf in one ear as result of an explosion of a sound grenade placed near his house. HRMMU interview, 29 September 2017. On 8 October, a tractor driver was injured by the explosion of a mine near Metalist in an area which had been previously de-mined. <http://www.osce.org/special-monitoring-mission-to-ukraine/349421>. On 31 October, HRMMU documented the case of a woman who was injured in April 2017 by a trip-wired explosive device planted in her neighbour’s house.

<sup>16</sup> ICRC, Customary International Humanitarian Law Database, Rules 1, 11 and 12.

<sup>17</sup> ICRC, Customary International Humanitarian Law Database, Rule 7.

<sup>18</sup> Presence of military or armed groups and their use or occupation of civilian property was documented by HRMMU in government-controlled territory in Dacha (1 November), Krymske (29 August), Luhanske (4 October), Malynove (5 October), Novhorodske (5 September), Novoluhanske (4 October), Novotoshkivske (6 October), Opytne (10 October), Shchastia (5 October), Tonenke (10 October), Troitske (31 October), and Zolote 4 (30 August), in armed-group-controlled territory in Adminploshadka (26 September), Donetsk (16 August and 3 November), Donetsk city Kyivskiy district (9 November), Lukove (8 September), Molodizhne (25 August), Pikuzy (formerly Kominternove) (26 October), and Zolote 5 (4 October), and in “no man’s land” in the Chihari area of Pivdenne (9 November), as well as in both the government-controlled and armed-group-controlled parts of Zaitseve (1 November).

<sup>19</sup> See ICRC, Customary International Humanitarian Law Database, Rules 22 and 23.

<sup>20</sup> Customary international humanitarian law sets out the following elements of protection of civilians in such situation: (1) prohibition on use of human shields (Rule 97), (2) requirement to warn the civilian population of upcoming attacks (Rule 20), and (3) requirement to remove the civilian population and objects under control of the belligerent party from the vicinity of military objectives (Rule 24; Guiding Principles on Internal Displacement, Principle 7(3)(b), Principle 15(a)). In the case that the security of the civilian population or military imperative demand evacuation, humane conditions must be ensured and affected civilians must be provided with adequate alternative accommodation (Rule 131; Guiding Principles on Internal Displacement, Principle 7(2)). In addition, civilian properties should be protected and compensation paid for any use or damage of property (Rule 52, Rule 133).

to a safer place, however adequate alternative accommodation was never offered by the authorities.<sup>21</sup>

24. During the reporting period, 10 incidents affecting water facilities were documented in conflict-affected areas.<sup>22</sup> The First Lift Pumping Station<sup>23</sup> of the South Donbas water pipeline was shelled on three occasions, causing damage to the facility and vehicles, and came under small-arms fire on three occasions. The Donetsk Filtration Station<sup>24</sup> was shelled repeatedly between 3 and 5 November 2017, causing damage to a backup chlorine pipeline. If the main pipeline in use or any of the 900-kg bottles storing chlorine in these facilities were to sustain a direct hit, it would endanger the lives of not only staff, but any person within a 200-metre radius, disrupt the water supply to approximately 350,000 people on both sides of the contact line, and have devastating consequences for the environment.<sup>25</sup> On 5 November, the Verkhnokalmiuska Filtration Station, which supplies clean water to 800,000 people and stores 100 tons of chlorine gas, was hit by multiple shells. If toxic chlorine gas were to be released, it could have “devastating consequences” for the population in Donetsk city, Makiivka and Avdiivka.<sup>26</sup> This is not the first time that shelling of such infrastructure has threatened lives and the environment.<sup>27</sup> OHCHR notes that critical civilian infrastructure such as water facilities require special protection and calls on all parties involved in the hostilities to adhere to the agreement reached in Minsk on 19 July 2017 in which they expressed commitment to create “safety zones” around the Donetsk Filtration Station and the First Lift Pumping Station.

25. Armed hostilities also continued to threaten industrial facilities containing hazardous materials which, if released, may have severe consequences for the environment and civilians living in close proximity. For example, the sludge collector of the phenol plant in (government-controlled) Novhorodske requires regular bi-weekly maintenance. For the last year, however, no such maintenance or repair work could be done due to the lack of security guarantees for a “window of silence”.<sup>28</sup> It should be noted that if the dam around the collector is damaged, it risks releasing liquid toxic waste into the Kryvyi Torets and Siverskyi Donets rivers which serve as the main water sources for the Donbas region.<sup>29</sup> On 9 November an agreement to provide security guarantees for a “window of silence” was reached by the Joint Centre for Control and Coordination and repair works started. OHCHR recalls that particular care must be taken to avoid attacks and damages of installations containing dangerous forces and substances and also to protect the natural environment against widespread, long-term and severe damage. OHCHR calls on the parties involved in hostilities to negotiate adequate security arrangements which would allow regular maintenance as well as repairs to be conducted on the phenol plant.

## B. Civilian casualties

26. Between 16 August and 15 November 2017, OHCHR recorded 87 conflict-related civilian casualties in 44 locations of Ukraine: 15 deaths (14 men and 1 boy) and 72 injuries (42 men, 19

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<sup>21</sup> HRMMU interviews.

<sup>22</sup> See WASH Cluster Incident Reports nos. 81-93, available at <https://www.humanitarianresponse.info/en/operations/ukraine/documents/bundles/46705>.

<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> The Donetsk Filtration Station is located in “no man’s land”, approximately 15 kilometres north of Donetsk city, between government-controlled Avdiivka and armed group-controlled Yasynuvata.

<sup>25</sup> See “Ukraine: UN experts warn of chemical disaster and water safety risk as conflict escalates in East”, United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and Special Rapporteur on the human rights to safe drinking water and sanitation, 10 November 2017.

<sup>26</sup> See “Ukraine: UN experts warn of chemical disaster and water safety risk as conflict escalates in East”, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22382&LangID=E>.

<sup>27</sup> See, e.g., OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, paras. 29-30; OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para. 18.

<sup>28</sup> A “window of silence” is a localized agreement to adhere to the ceasefire for a designated time period.

<sup>29</sup> HRMMU interview.



women, 10 boys and 1 girl).<sup>30</sup> This is a 48 per cent decrease compared with the previous reporting period of 16 May to 15 August 2017, during which 168 civilian casualties (26 deaths and 142 injuries) were recorded.

27. This reduction is mainly in the number of civilian casualties caused by shelling and SALW<sup>31</sup> fire, which has been steadily decreasing since May 2017. Between August and October, it decreased four-fold as compared to May through July (11 and 42 on average per month, accordingly). OHCHR also observed an increasing disparity in regard to civilian casualties caused by shelling and SALW fire occurring on territory controlled by armed groups and those occurring on territory controlled by the Government. From May through July 2017, the ratio was 2 to 1, while from August through October, the ratio was 10 to 1 (29 in territory controlled by armed groups versus 3 in government-controlled territory).<sup>32</sup> With regard to the 52 civilian casualties caused by mines, ERW, booby traps and IEDs, 20 occurred in mine-related incidents (38.5 per cent), while 32 (61.5 per cent) resulted from imprudent handling or dismantling of ERW or the detonation of hand grenades in interpersonal conflicts.

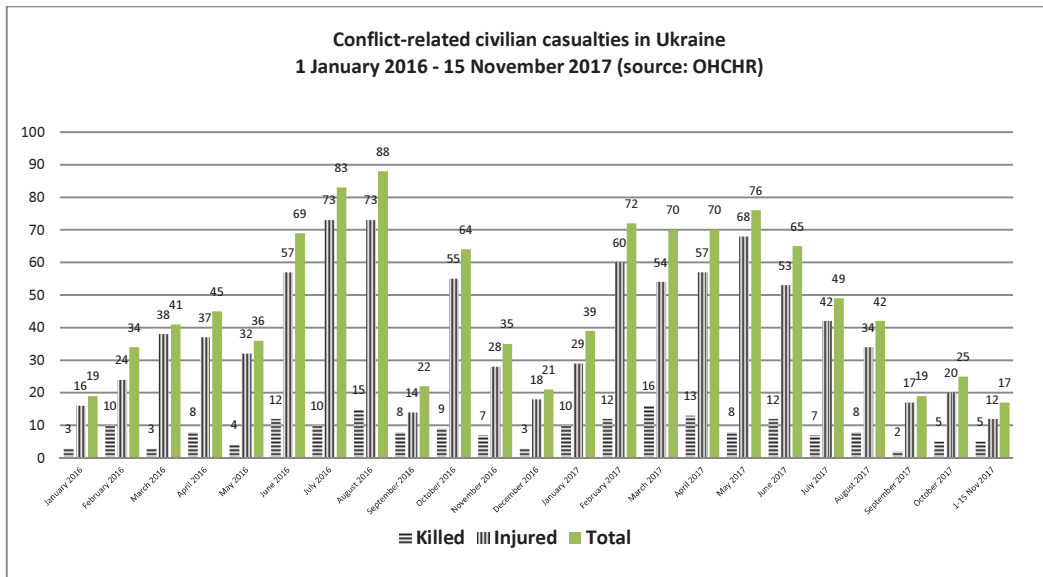
Civilian casualties from 16 August to 15 November 2017									
	Shelling (mortars, guns, howitzers, tanks, MLRS)			Small arms and light weapons			Mines, ERW, booby traps and IEDs		
	Killed	Injured	Total	Killed	Injured	Total	Killed	Injured	Total
<b>Donetsk region (total)</b>	1	17	18	2	11	13	6	22	28
Government-controlled		2	2		4	4	2	10	12
Controlled by armed groups	1	15	16	2	7	9	3	12	15
“No man’s land”							1		1
<b>Luhansk region (total)</b>		2	2	2		2	3	13	16
Government-controlled				1		1		4	4
Controlled by armed groups		2	2	1		1	2	9	11
“No man’s land”							1		1
<b>Cherkasy region</b>							1	2	3
<b>Dnipropetrovsk region</b>								5	5
<b>Grand total</b>	<b>1</b>	<b>19</b>	<b>20</b>	<b>4</b>	<b>11</b>	<b>15</b>	<b>10</b>	<b>42</b>	<b>52</b>
Per cent			23.0			17.2			59.8

28. Overall levels of civilian casualties in 2017 were comparable to 2016 levels. From 1 January to 15 November 2017, OHCHR recorded 544 conflict-related civilian casualties: 98 killed and 446 injured. This is a 3.6 per cent increase compared to the same period in 2016, when 525 civilian casualties (87 killed and 438 injured) were recorded.

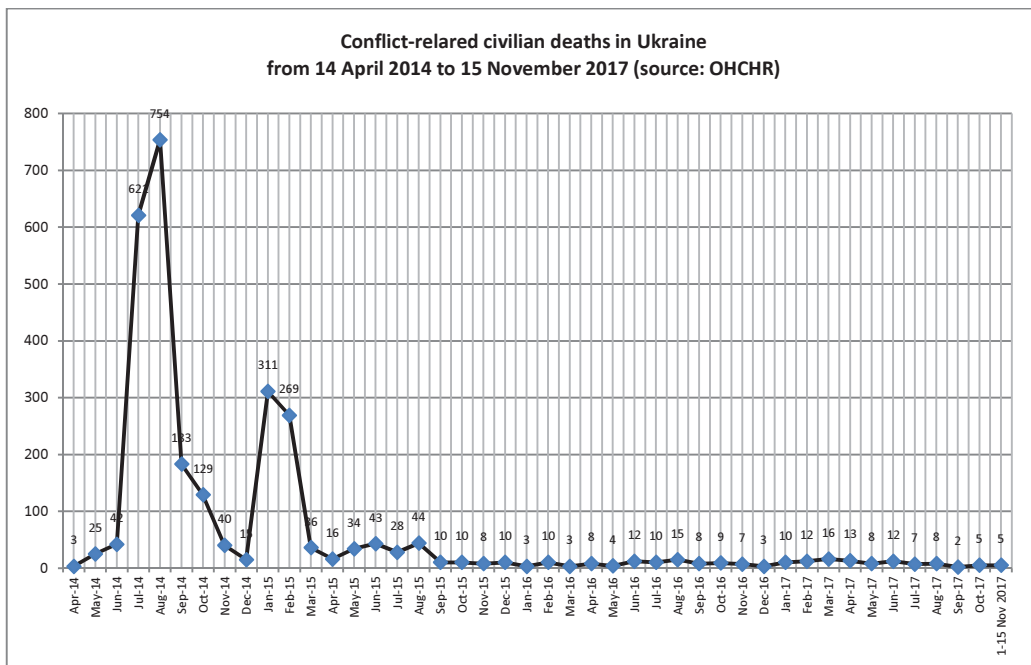
<sup>30</sup> OHCHR investigated reports of civilian casualties by consulting a broad range of sources and types of information which were evaluated for credibility and reliability. In undertaking documentation and analysis of each incident, OHCHR exercises due diligence to corroborate information on 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 this report are complete. Civilian casualties may be underreported given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods.

<sup>31</sup> Small arms and light weapons.

<sup>32</sup> OHCHR is not in a position to establish with certainty which party to the conflict is responsible for specific civilian casualties caused by shelling and SALW fire; it is only able to make their attribution per territory of control.



29. During the entire conflict period, from 14 April 2014 to 15 November 2017, at least 2,523 civilians were killed: 1,399 men, 837 women, 91 boys, 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 number of conflict-related civilian injuries is estimated between 7,000 and 9,000.



30. In total, from 14 April 2014 to 15 November 2017, OHCHR recorded 35,081 conflict-related casualties in Ukraine among Ukrainian armed forces, civilians and members of the armed groups. This includes 10,303 people killed and 24,778 injured.<sup>33</sup>

### **C. Missing persons and recovery of human remains**

31. With the outbreak of the armed conflict in April 2014, documentation of missing persons was considerably disrupted in eastern Ukraine. Although efforts have subsequently resumed in both territory controlled by the Government and territory controlled by armed groups, there has been no effective exchange of forensic information (such as DNA samples and anthropometrical data) across the contact line for over three years. As of 15 November 2017, draft legislation “On the legal status of missing persons” foreseeing the establishment of a commission for missing persons, which is crucial for fulfilment of Ukraine’s obligations under international humanitarian law,<sup>34</sup> was still pending before Parliament.<sup>35</sup>

32. There is therefore no effective possibility to match figures on the missing reported by the Government (865<sup>36</sup> to 1,476<sup>37</sup>) and those reported by armed groups (509 as of 10 November 2017 according to the ‘ombudsperson’s office’ of the ‘Donetsk people’s republic’).<sup>38</sup> As of 22 August 2017, the ICRC estimated the number of conflict-related missing persons to be from 1,000 to 1,500.<sup>39</sup>

33. OHCHR believes that many of those reported as missing persons may be dead, with their bodies either not yet found or identified. Further, OHCHR cannot exclude that some individuals reported missing may currently be held *incommunicado* either by the Government or by armed groups. Full and unimpeded access of independent international monitors to all places of detention, especially those in territory controlled by armed groups, is crucial for establishing the whereabouts of some of the missing.

### **D. Summary executions, killings, deprivation of liberty, enforced disappearances, torture and ill-treatment, and conflict-related sexual violence**

#### **1. Summary executions and killings**

34. OHCHR continued to receive and verify allegations of summary executions and wilful killings of civilians, Ukrainian servicemen, and individuals associated with armed groups. These allegations mostly concern 2014, but also 2015 through 2017, indicating the prevailing impunity for grave violations and abuses of international human rights law and violations of international humanitarian law in the conflict zone. Victims’ relatives and witnesses interviewed by HRMMU often do not give consent for public reporting on such cases out of fear of retaliation or persecution.

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<sup>33</sup> This is a conservative estimate based on available data. These totals include: casualties among Ukrainian forces as reported by 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 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 underreporting, especially of military casualties. Injuries have been particularly underreported. 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>34</sup> ICRC, Customary International Humanitarian Law Database, Rule 117.

<sup>35</sup> There have been no developments on the two draft laws since 7 June 2017, when the Parliamentary Committee on human rights issued its conclusion regarding the texts.

<sup>36</sup> As of 15 November, according to the Main Department of the National Police in Donetsk region.

<sup>37</sup> As of 15 November, according to the National Police of Ukraine.

<sup>38</sup> No figures have been reported by the ‘Luhansk people’s republic’.

<sup>39</sup> <https://www.ukrinform.ru/rubric-society/2290807-krasnyj-krest-razyskivaet-640-propavsih-bez-vesti-na-donbasse.html>.

35. For example, a civilian who participated in the May 2014 “referendum on the status of the Donetsk peoples’ republic” went missing after Ukrainian military, including the Aidar volunteer battalion, retook control of the area. His body was found in November 2014 with traces of gunshot wounds to the head. His family is not aware of any investigation conducted into his death.<sup>40</sup> In another case, in July 2016, a man was found shot dead near his house in a village of Luhansk region controlled by armed groups. Neighbours had heard three shots in the preceding evening. There was an armed groups’ checkpoint nearby, manned by the ‘Brianka-USSR’ battalion. The victim’s family was notified that a suspect was ‘arrested’ by ‘police’ at the beginning of November.<sup>41</sup>

## 2. Unlawful/arbitrary deprivation of liberty, enforced disappearances and abductions

“When you do not understand anything and just sit there in the basement, every night you expect that someone may come, take you out, kill you and bury you in some forest, and then no one will ever find out where you are. That’s the only thing you can think about.”

- Victim describing *incommunicado* detention.

36. OHCHR continued documenting cases of unregistered detention, when a person is held *incommunicado* prior to being delivered to an official place of detention, a practice which increases the likelihood of torture and ill-treatment with a view to extracting a confession. Although these cases occurred earlier, they were documented during the reporting period.

37. For example, on 16 April 2015, a former member of an armed group was detained in his home by armed men in balaclavas. Without introducing themselves or presenting a search warrant, they beat him, threatened him, and searched his house. They took the victim to a basement, which he believes was on the outskirts of Pokrovsk (formerly Krasnoarmiisk), where he was detained *incommunicado*, handcuffed to a metal safe which forced his body into a difficult position. He was interrogated and tortured by having water poured over his face, electrocutions, and beatings on his back and kidneys. The perpetrators made him sign documents and filmed a video confession. He was taken to the Kramatorsk SBU on 21 April 2015, where he was given more documents to sign. In November 2015, he was convicted of terrorism.<sup>42</sup>

38. On 10 January 2015, a resident of Pokrovsk was stopped in his car and detained by four armed men. They brought him to the Right Sector training camp near Velykomykhailivka (Dnipropetrovsk region), where he was detained in a basement and beaten with a truncheon for two days. The victim was held *incommunicado* until 14 May 2015, during which time he was ill-treated and witnessed the death of another detainee. The perpetrators are currently on trial.<sup>43</sup>

39. OHCHR is concerned about the lack of progress in investigations of enforced disappearances which occurred in 2014. For example, there has been no progress in the investigation into the disappearance of a truck driver who went missing on 25 July 2014 near Katerynivka (formerly Yuvileine) in Luhansk region. HRMMU recently learned that his passport was found in March 2017 in possession of a UAF serviceman.<sup>44</sup> On 30 August 2017, National Police of Ukraine in Bilokurakynsk district of Luhansk region launched a criminal investigation under article 115 (murder).

<sup>40</sup> HRMMU interview.

<sup>41</sup> HRMMU interview.

<sup>42</sup> HRMMU interview. His appeal is currently being heard.

<sup>43</sup> HRMMU interview.

<sup>44</sup> HRMMU interview.

### *Territory controlled by armed groups*

40. OHCHR documented the continued practice of ‘administrative arrest’, during which persons are held *incommunicado* and prohibited from contact with relatives or a defence counsel. The initial detention period of 30 days was often automatically prolonged beyond the initial period.<sup>45</sup> OHCHR is concerned about arbitrary application of ‘administrative arrest’ and *incommunicado* detention, and the lack of any procedural guarantees or recourse for persons who find themselves subjected to it. Further, OHCHR notes that such a practice – of detaining persons, denying them access to lawyers or relatives, and refusing to provide information to families on their whereabouts – may amount to enforced disappearance.

41. For example, on 29 April 2017, two men traveling to Dokuchaievsk were detained by ‘border guards’ at an armed-group-controlled checkpoint and taken to the ‘department of combating organized crime’ (UBOP) in Donetsk. Both men worked as State Fiscal Service inspectors in government-controlled territory. They were detained for a few days in ‘UBOP’ and then brought to a temporary detention facility administered by ‘police’ and held *incommunicado* under ‘administrative arrest’. Their families were not notified of their ‘arrests’, and learned of their whereabouts from other sources. The lawyer hired by relatives was denied access to the detainee. Since April, the men were released every 30 days, given a moment to talk to relatives, and then immediately ‘re-arrested’ by ‘UBOP’ on different ‘charges’ and placed under another 30-day ‘administrative arrest’.<sup>46</sup>

42. On 27 February 2017, a couple was detained at a checkpoint controlled by armed groups. They were questioned for approximately six hours, then separated and brought to the ‘MGB’ building in Donetsk city. The woman was questioned again and told that they had discovered explosives in one of their bags and would charge her husband with ‘espionage’. When she was released, she saw her husband in another office; his pupils were unusually enlarged. Ten days later, she received a call from an ‘MGB officer’ who stated her husband was under ‘administrative arrest’. As of 15 November 2017, the victim was allegedly in Donetsk SIZO, however his wife has never been able to see him during his detention.<sup>47</sup>

43. OHCHR continued documenting cases of individuals subjected to enforced disappearance. On 31 August 2017, a young man who made his living carrying luggage for people walking along the Stanytsia Luhanska crossing route went missing. He had crossed the government-controlled entry-exit checkpoint while carrying luggage, but was stopped by personnel at the checkpoint controlled by the armed groups of the ‘Luhansk people’s republic’ and his passport was taken away. Despite relatives’ inquiries, the whereabouts and fate of the victim remain unknown.<sup>48</sup> On 2 September 2017, the National Police of Ukraine in Stanytsia Luhansk district of Luhansk region launched a criminal investigation under article 146 (Illegal confinement or abduction of a person).

44. On 25 August 2017, a man was taken from his home to a ‘police station’ in Makiivka by the ‘ministry of state security’ (‘MGB’) officers, where he was held for at least two days. The family’s last contact with him occurred by phone on 27 August. They were informed by ‘police’ that the man was under ‘administrative arrest’ and denied permission to speak or meet with him. It is believed that his ‘arrest’ is retaliation for his political opinion, as he openly expressed ‘pro-unity’ views and criticism of the ‘Donetsk people’s republic’ and the Russian Federation.<sup>49</sup>

45. OHCHR is concerned that there has been no progress on cases that occurred in earlier stages of the conflict. For example, on 1 July 2015 an unconscious man with visible injuries on his head and torso was seen being dragged from his apartment by three armed men in camouflage

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<sup>45</sup> See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, paras. 43-45.

<sup>46</sup> HRMMU interview.

<sup>47</sup> HRMMU interview.

<sup>48</sup> HRMMU interviews; HRMMU meeting, 15 September.

<sup>49</sup> Approximately seven months ago, the victim was fired from his job at a local hospital in Makiivka due to his ‘pro-unity’ views.

with 'Vostok' insignia. The victim was put in a car. As of 15 November 2017, his whereabouts remained unknown.

46. OHCHR notes that enforced disappearance not only constitutes a grave violation of the rights to life and to liberty and security of the person, but is “inseparably linked” to treatment that amounts to torture or to cruel, inhuman or degrading treatment or punishment.

### 3. Torture and ill-treatment

*“If you behave well, if you say what we want – you won’t be hurt. If you resist, we will send Right Sector to your house. Your boy will be crippled; your wife will be met on the way from work. We will inject you with drugs, so you will become a plant.”*

- Perpetrator to a victim of torture.

47. During the reporting period, OHCHR continued to receive allegations which match the previously documented pattern of use of torture to extract confessions from persons suspected of being members of or otherwise affiliated with armed groups.<sup>50</sup> Also, in a few cases, Ukrainian servicemen detained on suspicion of committing criminal offences were subjected to torture until they provided self-incriminating testimonies. It is deeply concerning that investigations into allegations of torture are rarely opened and when so, have been ineffective. Defence lawyers also rarely raise allegations of torture, either due to intimidation or as a strategy to reduce the sentence.

48. For example, in August 2015, in two separate episodes, SBU arrested two residents of Kharkiv region accused of being supporters of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ and planning to carry out subversive activities. Both victims were transported to the regional SBU department, where they were tortured (beaten, hands twisted behind the back, subjected to mock execution, and threats of violence against their families) until they signed self-incriminating statements. Although they were taken to hospital, SBU officers instructed doctors not to record any injuries. One of the victims begged a lawyer not to raise allegations of torture in court, fearing reprisals. The victim told the doctors in the pre-trial detention facility (SIZO) that he was injured falling from a tree. Both victims remain in detention, with trials ongoing.<sup>51</sup>

49. In another case, on 16 June 2016, a victim was physically attacked next to his apartment building by two men wearing balaclavas. The victim ran out into the street, where two other individuals hit him on the head, strangled him, and kicked his head when he fell on the ground. He was handcuffed, dragged into a van, and driven 30-40 minutes away. When the van stopped, an SBU official of the Kharkiv regional department questioned him about his acquaintances who joined the armed groups of the ‘Donetsk people’s republic’. Unsatisfied with the victim’s reply, SBU officers strangled, kicked and punched him while threatening his family. When the victim agreed to cooperate, the SBU officers explained that he would be taken to the Ukrainian-Russian border and detained for “smuggling weapons”. At the border, one officer stabbed the victim’s heel so he would not be able to escape. Afterwards, the victim was taken to the Kharkiv SBU building and forced to memorise a written statement. His “confession” was video recorded. The victim is currently on trial for “terrorism” and “trespass against territorial integrity of Ukraine”. While the Military Prosecutor for Kharkiv Garrison is investigating the allegations of torture, no notifications of suspicions or indictments have been issued.<sup>52</sup>

<sup>50</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 victims through strict adherence to the principles of confidentiality and informed consent.

<sup>51</sup> HRMMU interviews.

<sup>52</sup> HRMMU interviews; HRMMU trial monitoring, 15 September and 30 October 2017; HRMMU meeting, 5 September 2017.



50. In another case, a man was detained in his home in Nyzhnioteple in November 2016 by members of the UAF. They searched him at gun point, beat him causing lasting pain, and subjected him to suffocation and electroshocks. They forced him to make a video confession that he provided information on Ukrainian military positions to armed groups. Then he was taken to the Sievierodonetsk SBU building where he was interrogated without a lawyer and forced to sign papers in order to receive medical care. Afterwards, he was taken to the hospital but threatened by SBU officers not to complain of any ill-treatment. He is accused of being a spotter for armed groups and is currently on trial.<sup>53</sup>

51. OHCHR also followed cases of Ukrainian servicemen who reported being subjected to torture while detained on criminal charges.<sup>54</sup> On 30 October 2014, a serviceman of the Kirovohrad volunteer battalion together with five fellow soldiers was detained by a group of 20 armed men. The victim was held *incommunicado* in solitary confinement for three days in the basement of the SBU regional department building in Kramatorsk. He was tortured several times a night in order to extract information about his commanders. The victim was beaten, including with truncheons, and hung from bars while being hit and subjected to electroshocks. On the third night, the perpetrators cuffed the victim's hands behind his back, put duct tape tightly over his eyes and mouth causing pain, pushed him to the floor and kicked him. The victim lost consciousness and choked on his own blood. The beating continued until the victim confirmed that he was ready to "confess". He was told what to say in court and forced to sign documents. The SBU officers who took him to the court threatened that if he asked for a lawyer or complained, his "therapy" in the basement would continue. In the presence of two masked, armed SBU officers, the judge ordered his pre-trial detention for 60 days, without announcing any charges.<sup>55</sup> The victim's injuries were later documented at hospital and in the SIZO. Despite his written complaints about the *incommunicado* detention and torture, as well as two court orders for the Office of the General Prosecutor to conduct a forensic expertise of his injuries and investigate the circumstances of his arrest, there has been no progress in investigation. As of 15 November 2017, he remains in detention and complains about not receiving necessary medical aid.<sup>56</sup>

#### *Territory controlled by armed groups*

52. Victims of torture residing in territory controlled by armed groups hesitate to report torture and rarely give consent for public reporting for fear of retaliation and direct threats to their safety.<sup>57</sup> When cases are reported, it is often much later after the incident occurred.

53. OHCHR documented the case of a Russian blogger,<sup>58</sup> who was detained with his wife at their home in Donetsk city on 27 September 2017 by armed men dressed in camouflage. The blogger was physically assaulted by the perpetrators, resulting in a fractured leg. One of the perpetrators also attempted to suffocate him. The victims were then taken to the 'UBOP' office, and interrogated separately for a few hours. During this time, no medical aid was provided. The woman was released that evening, while the man was forced to sign a 'notice' that he was detained under 'administrative arrest' upon charges of participating in a terrorist organisation. He was released on 2 November 2017.<sup>59</sup>

54. During the reporting period, OHCHR received and followed up on accounts of seven individuals (three women and four men) who had been detained *incommunicado* in an armed-group-controlled place of detention called "Izoliatsiia".<sup>60</sup> Since at least 2016, the facility has been used by the 'MGB' and the 'UBOP' of the 'Donetsk people's republic' to detain men and women

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<sup>53</sup> HRMMU interviews.

<sup>54</sup> HRMMU interviews.

<sup>55</sup> The victim was later charged and on 28 April 2017, the Kostiantynivka City Court convicted him under articles 187(2), 189(3), 263(1) and 410(1) of the Criminal Code and sentenced him to 10 years. He has appealed the verdict.

<sup>56</sup> HRMMU interview.

<sup>57</sup> HRMMU interviews.

<sup>58</sup> See also para. 105 below.

<sup>59</sup> HRMMU interviews.

<sup>60</sup> Izoliatsiia was an industrial facility that was turned into cultural facility in Donetsk city prior to the conflict. In May 2014, it was seized by armed groups and used as an illegal detention facility where individuals were tortured. OHCHR has previously reported on the human rights violations that occurred there.

suspected of “treason”, “subversive activities” or cooperation with SBU. Some members of the armed groups of the ‘Donetsk people’s republic’ were also reportedly held in this facility. Detention periods varied from a few hours to over a year. The facility has cells used for punishment (e.g. one only for sitting, another only for standing) and a ‘monitoring room’ from which the cells could be watched 24 hours via video cameras. Guards wore camouflage without insignia and were armed with AK-47 assault rifles. To keep detainees in a state of exhaustion, the guards forced them to constantly perform physical work.<sup>61</sup>

#### 4. Conflict-related sexual violence

*“We will bring your daughter here and we will have sexual intercourse with her in all possible ways.”*

- Staff to detainee during interrogation.

55. OHCHR continued documenting cases of conflict-related sexual violence, most of which occurred at the early stages of the conflict, in 2014-2015, but were only reported recently when the victims felt safe and were able to access some services. These cases fit into the previously-identified pattern of sexual violence used as a form of torture or to force victims to perform actions demanded by the perpetrators.<sup>62</sup> Some emblematic cases are described below.

56. On 28 September 2017, a civilian man was taken off a bus at an internal checkpoint by armed men in camouflaged uniform and accused of affiliation with armed groups based on his social media pictures. He was transferred to a police station in Kreminna, where he was forced to strip to his underwear and stand in a cold room for two hours, with people walking in and out. He was beaten, threatened with rape and of being handed over to Azov battalion. Without access to a lawyer, he was forced to sign a statement, typed by an investigator, that he was a member of armed groups. The next day he was released.<sup>63</sup>

57. In December 2014, seven masked men armed with assault rifles, including several members of a volunteer battalion, broke into a private house in a town near the contact line. One perpetrator put a knife to the victim’s neck, who was eight months pregnant, and threatened to cut her throat if she screamed. He tied her hands and legs with rope and gagged her with a cloth wet with engine oil, causing her to suffocate. He also pointed a gun to her stomach threatening to shoot her baby. While one perpetrator demanded to know where the money and valuables were, another one sexually assaulted her by touching her breasts and genitals under her clothing, and a third man threatened her with gang rape. During this ordeal, the victim could hear her parents screaming in another room, causing additional suffering and reinforcing the threats. After seizing all the valuables and money, the men threatened to shoot the family if they reported the crime. The perpetrators are currently on trial.<sup>64</sup>

##### *Territory controlled by armed groups*

58. On 31 May 2014, near Luhansk, two civilian men were abducted and detained by five members of an armed group masked with balaclavas and armed with assault rifles. They were taken to a tent camp and separated. One victim, who was known for his pro-Ukrainian views, was brought inside a tent, where other members of armed groups beat him and subjected him to a mock execution before interrogating him. At one point, the interrogator kicked the victim in his testicles, which was extremely painful and resulted in residual injury. The victim was also beaten with a metal rod wrapped in a rag by different individuals, including a woman. The perpetrators forced the victim to open his social network accounts, which was followed by more beatings on different parts of his body, including his kidneys and the back of his head. The perpetrators

<sup>61</sup> HRMMU interviews.

<sup>62</sup> See OHCHR report on conflict-related sexual violence in Ukraine, 14 March 2014 to 31 January 2017.

<sup>63</sup> HRMMU interview.

<sup>64</sup> HRMMU interview.



threatened the second victim that his younger sister “may not come back home tonight”; they knew where she studied and what time she returned home. The victims also heard a man armed with a pistol ask the guards whether his friends could rape the ‘detainees’.<sup>65</sup>

## 5. Access to places of detention

59. In government-controlled territory, OHCHR – in general – continued to enjoy unimpeded access to official places of detention. OHCHR conducted confidential interviews, in line with international standards, of detainees in SIZOs in Bakhmut, Kharkiv, Kherson, Mariupol, Mykolaiv, Odesa, Starobilsk, Vinnytsia and Zhytomyr, and in penal colonies in Kharkiv, Mykolaiv and Odesa regions. At the same time, OHCHR faced unreasonable delays with access to a number of detainees held in Dnipro and Kyiv. In Kharkiv, OHCHR was denied permission for three months to hold a confidential interview with a detainee under SBU investigation, and also faced delays accessing other such detainees.

60. In both ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, OHCHR continued to be denied access to detainees and places of deprivation of liberty. Coupled with first-hand information received by HRMMU, this denial of access continued to raise serious concerns regarding detention conditions, as well as possible further human rights abuses such as torture and ill-treatment.

## 6. Conditions of detention

61. In government-controlled territory, HRMMU noted during its visits that the general conditions in some places of detention did not satisfy applicable international standards such as the Mandela Rules.<sup>66</sup> The issue of access to medical care remains acute, particularly for conflict-related detainees in SIZOs. Frequently raised concerns included: refusal to provide medical care<sup>67</sup>; failure or inability to provide opportunities for specialised medical care (e.g. consultations with a neurologist, endocrinologist, surgeon or gynaecologist) or for a specific medical examination despite repeated requests<sup>68</sup>; failure to provide medical check-ups or needed X-rays<sup>69</sup>; and failure to provide medical assistance due to the absence of basic medication in SIZOs<sup>70</sup> or inability to ensure access to antiretroviral treatment for detainees with HIV<sup>71</sup>. While these findings are based on HRMMU interviews with conflict-related detainees, the United Nations Subcommittee on Prevention of Torture (SPT) also captured these violations as a result of systemic challenges.<sup>72</sup>

62. During interviews and court hearings, alleged victims and their lawyers continue to raise concerns that bodily injuries of detainees as a result of torture are not systematically documented when detainees are admitted to a SIZO or temporary detention facility (ITT), despite existing regulations.<sup>73</sup> For example, a detainee was first rejected by the ITT in Kramatorsk due to visible signs of ill-treatment, but later admitted after the military police forced him to sign a statement that the injuries were sustained prior to his apprehension. The ITT administration did not attempt

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<sup>65</sup> HRMMU interview.

<sup>66</sup> United Nations General Assembly Resolution 70/175, “United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)”, 17 December 2015.

<sup>67</sup> HRMMU interviews.

<sup>68</sup> HRMMU interviews.

<sup>69</sup> HRMMU interview.

<sup>70</sup> HRMMU interview.

<sup>71</sup> HRMMU trial monitoring, 17 October 2017.

<sup>72</sup> CAT/OP/UKR/3, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Visit to Ukraine undertaken from 19 to 25 May and from 5 to 9 September 2016: observations and recommendations addressed to the State party, paras. 53-56.

<sup>73</sup> For example, the existing Order of the Ministry of Internal Affairs No. 638 dated 2 December 2008, registered in the Ministry of Justice on 12 February 2009, requires that all detainees pass a medical examination in the medical institution under the Ministry of Health, and if a detainee has any health complaints, ITT staff should call an ambulance. If there are any visible signs of injuries, the Prosecutor’s Office should be immediately notified. Unfortunately, based on HRMMU monitoring, these safeguards do not always work, which leads to poor documentation of torture at all stages. HRMMU therefore welcomes efforts of the National Police and other relevant law-enforcement agencies to improve the situation through training of their staff, including on Istanbul Protocol, as well as a pilot project in ITT nr. 1 in Dnipropetrovsk region.

to verify the veracity of the written statement.<sup>74</sup> Often, detainees are only asked if they have any medical complaints and are not duly examined by a health practitioner. In some cases, although injuries were documented, SIZO staff failed to provide a copy of the medical certificate to the detainee<sup>75</sup> despite the legal requirement to do so.<sup>76</sup> As was highlighted by the SPT, delayed or superficial medical examination may thwart investigative efforts into allegations of torture.<sup>77</sup>

*Situation of pre-conflict prisoners in territory controlled by armed groups*

63. OHCHR welcomes the transfer on 14 September 2017 of 19 pre-conflict prisoners from four penal colonies<sup>78</sup> controlled by the ‘Donetsk people’s republic’ to facilities in government-controlled territory. The transferred prisoners did not report being subjected to torture or ill-treatment, however, in certain penal colonies, the conditions were poor, including substandard quality of food, insufficient healthcare due to lack of medical staff and supplies, and lack of adequate heating.<sup>79</sup>

64. Prisoners reported that one of the primary reasons for requesting transfer was to be able to maintain contact with families, which had become difficult once the armed conflict erupted. While prisoners are sometimes able to make phone calls, there is no postal service between government-controlled territory and armed-groups-controlled territory, and relatives cannot easily cross the contact line. OHCHR is not informed about criteria used for selecting detainees for transfer. It is of concern that the ‘Donetsk people’s republic’ denies transfer requests of pre-conflict prisoners with official registration in government-controlled territory of Donetsk region.

65. Even those prisoners who have served their complete sentence or were acquitted by a court in government-controlled territory after the start of the conflict have not been released. The armed groups do not acknowledge court decisions taken in government-controlled territory and do not recognize or apply the Savchenko Law,<sup>80</sup> resulting in the arbitrary detention of the concerned individuals.<sup>81</sup>

66. To date, no pre-conflict prisoners have been transferred from penal colonies controlled by the ‘Luhansk people’s republic’ despite numerous appeals by prisoners and advocacy by HRMMU. This raises concern when paired with allegations received by HRMMU of ill-treatment, particularly in penal colonies in Slovianoserbsk and Khrustalnyi (formerly Krasnyi Luch). In addition to poor conditions of detention,<sup>82</sup> prisoners alleged that they have been regularly beaten by masked men believed to be ‘special forces’ (“spetsnaz”). The perpetrators wore camouflage with a chevron displaying a skull wearing a beret with a knife in its teeth.<sup>83</sup>

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<sup>74</sup> HRMMU interview.

<sup>75</sup> HRMMU interviews.

<sup>76</sup> Joint Decree of the Ministry of Justice Ukraine and the Ministry of Health of Ukraine no. 239/5/104 of 10 February 2012, explicitly requires SIZO medical staff to issue a copy of a medical certificate attesting to documented bodily injuries to the detainee, regardless of the nature and circumstances of such injuries

<sup>77</sup> CAT/OP/UKR/3, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Visit to Ukraine undertaken from 19 to 25 May and from 5 to 9 September 2016: observations and recommendations addressed to the State party, paras. 34-38.

<sup>78</sup> Penal colonies no. 32 and 97 in Makiivka, no. 28 in Torez, and no. 52 in Yenakiieve.

<sup>79</sup> HRMMU interviews.

<sup>80</sup> Law of Ukraine ‘On amendments to the Criminal Code of Ukraine concerning the improvement of rules of incorporation by the court of the period of pre-trial detention into the period of sentence’ No.838-VIII of 26 November 2015.

<sup>81</sup> Under the Savchenko Law, when calculating time served, one day in a pre-trial detention facility was counted as two days of detention in a prison colony, which could substantially reduce the overall length of a prison sentence.

<sup>82</sup> Prisoners reported insufficient quantity of food, insufficient of medical aid, limited electricity and running water (available only two hours per day), no heating in the barracks, and insufficient opportunities for personal hygiene (prisoners are allowed to wash only once a month).

<sup>83</sup> HRMMU interviews.

### III. Accountability and administration of justice

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

*“We will kill you now, and we will avoid any punishment for that.”*

- Perpetrators to victim of human rights violations.

67. The Government of Ukraine has a duty to ensure that victims of human rights violations and abuses have access to an effective remedy, including reparations, and that such remedies are enforced when granted.<sup>84</sup> Yet accountability for most conflict-related cases has not been achieved. These include both human rights violations perpetrated by Government forces and human rights abuses perpetrated by armed groups.

68. As of 1 November 2017, military prosecutor’s offices reported carrying out 118 investigations into crimes allegedly perpetrated by Ukrainian military forces and other military formations (including killings of civilians) as well as by the SBU (including abuse of power and physical abuse of detainees to force confessions).<sup>85</sup> They further reported that, under their procedural guidance, the national police are carrying out 119 investigations.<sup>86</sup> At the same time, certain human rights violations allegedly perpetrated by Ukrainian military (in particular by members of special units formed on a voluntary basis) and SBU remain uninvestigated.<sup>87</sup>

69. Similarly, police were hesitant to investigate the enforced disappearance of a Luhansk resident on 14 July 2014 allegedly perpetrated by members of the Ukrainian military due to “absence of elements of the crime”. Only in May 2017, after the victim’s mother had repeatedly filed a complaint with the police, was an investigation formally launched.<sup>88</sup> In another case, a Ukrainian soldier, accused of arbitrarily detaining a person, complained that the military prosecutor’s office failed to investigate his own complaint of arbitrary detention and beatings over the course of three days at the Kramatorsk SBU. Despite repeated complaints since 2015, the investigation was closed and reopened twice, with no results to date.<sup>89</sup>

70. The effectiveness of investigations is also an issue. For example, the criminal investigation into unlawful detention of individuals at the Kharkiv SBU has been ongoing for a year without yielding any results, raising concern regarding the genuine intention to bring the perpetrators to accountability.<sup>90</sup> Similarly, a conflict-related detainee’s allegations of torture and ill-treatment by SBU officers in Sievierodonetsk were not properly addressed by the military prosecution.<sup>91</sup> Furthermore, the investigation into the enforced disappearance of a resident of Dobropillia (Donetsk region) on 1 October 2014 has not yielded any results. The victim’s brother collected witness accounts suggesting that the crime had been committed by members of the

<sup>84</sup> ICCPR, art. 2(3); CERD art. 6; CAT, art. 14.

<sup>85</sup> According to the Military Prosecutor, in addition, 13 investigations have been suspended, 124 have been closed and 83 have been submitted to courts with indictments (52 of which resulted in judgments of conviction).

<sup>86</sup> According to the Military Prosecutor, in addition, 6 investigations have been suspended, 142 have been closed and 243 have been submitted to courts with indictments (150 of which resulted in judgments of conviction).

<sup>87</sup> For instance, killings of Roman Postolenko and Dmytro Shabratskyi, OHCHR thematic report on accountability for killings in Ukraine, Annex I, paras. 11-14 and 117-118 respectively.

<sup>88</sup> HRMMU interview.

<sup>89</sup> HRMMU interview.

<sup>90</sup> OHCHR Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, para. 41 and footnote 37.

<sup>91</sup> HRMMU interview. The victim complained to the Prosecutor’s office of Luhansk region, which forwarded the complaint to the military prosecutor of Luhansk garrison, which in turn forwarded the detainee’s complaint to the SBU internal oversight mechanism. The latter replied to the victim that no illegal actions had been established as a result of conducted investigation.

Donbas battalion with the acquiescence of the SBU and local police. The same police department is in charge of the investigation.<sup>92</sup>

71. OHCHR is deeply concerned with the release on 6 November 2017 of a State Border Guard who had been convicted in the first instance court of killing a civilian in 2014 and sentenced to 13 years in prison.<sup>93</sup> The release followed a public information campaign by political figures in support of the accused which distorted the facts of the case, requests by members of Parliament for the SBU to investigate the judges of the trial court for links to armed groups and to examine their previous judgments,<sup>94</sup> and a meeting between members of Parliament and the Prosecutor General.<sup>95</sup> Further, President Poroshenko made a public statement in support of the accused.<sup>96</sup> Such pressure is emblematic of interference with the judiciary, and is likely to have a chilling effect on future investigations into serious violations of international human rights law or international humanitarian law committed by members of the security forces.

72. The Office of the Military Prosecutor continued to investigate human rights abuses perpetrated in territory controlled by armed groups, including killings, arbitrary deprivation of liberty, and torture and ill-treatment of both Ukrainian military and civilians. It reported having established numerous violations of Part 2 of Article 75 of Protocol I.<sup>97</sup> Testimonies of over 1,050 individuals arbitrarily detained by armed groups have reportedly been collected.

73. Individuals affiliated or linked with armed groups continued to face charges based only on their alleged participation in or support to armed groups rather than on violations of international humanitarian law or the human rights abuses they may have committed.<sup>98</sup> According to the Military Prosecutor, only 11 persons have been charged with violating the rules and customs of war under article 438 of the Criminal Code.<sup>99</sup>

74. OHCHR notes the *in absentia* murder conviction and life sentences issued on 10 November 2017 against three members of armed groups of the ‘Donetsk people’s republic’ for the 2014 killing of 16-year-old Stepan Chubenko.<sup>100</sup> While OHCHR welcomes adjudication of

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<sup>92</sup> HRMMU interview.

<sup>93</sup> Judgement of conviction, Prymorskyi district court of Mariupol, 15 November 2016, upheld by court of appeal of Donetsk region on 7 February 2017, available at: <http://reyestr.court.gov.ua/Review/64775792>. The accused was released based on the decision of the High Specialized Court for Civil and Criminal Cases on 6 November 2017 to return the case for retrial, available at: <http://reyestr.court.gov.ua/Review/70144868>.

<sup>94</sup> See appeal of judges of Prymorskyi district court of Mariupol to the High Council of Justice regarding interference with the judiciary, 6 November 2017, available at [http://www.vru.gov.ua/content/file/2951-0-6-17\\_.pdf](http://www.vru.gov.ua/content/file/2951-0-6-17_.pdf). On 1 November, a member of Parliament filed a request with SBU to examine whether the judges of Prymorskyi district court are linked to the armed groups. In addition, approximately 150 men, including senior officials and servicemen of the State Border Guard Service, members of the Donbas battalion, at least four members of the Parliament, and young men in sportswear with a red duct tape on their shoulders, attended the hearing on 2 November, and up to 200 men in military uniform attended the hearing on 6 November before the High Specialized Court for Civil and Criminal Cases. HRMMU trial monitoring, 2 and 6 November 2017.

<sup>95</sup> On 2 November, members of Parliament who support the perpetrator met with the Prosecutor General to discuss the case. [http://www.gp.gov.ua/ua/news.html?\\_m=publications&\\_t=rec&id=218440&fp=20](http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=218440&fp=20).

<sup>96</sup> President Poroshenko made a statement supporting the Court decision saying that “sometimes the Motherland has to defend its defenders” (available at: <https://www.facebook.com/petroporoshenko/posts/1136056533195404>)

<sup>97</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977.

<sup>98</sup> See OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2017, para. 88; OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2017, para. 72.

<sup>99</sup> See defendants listed in OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2017, footnote 118. Additional defendants include a ‘commander’ of the ‘Hooligan battalion’ of the ‘Luhansk people’s republic’ (suspected of armed assault, abduction and illegal detention), the ‘military commandant’ of the ‘ministry of defence’ of the ‘Luhansk people’s republic’ (suspected of creating an armed group in July 2014, assault, and misappropriating of property to be used in operation of the ‘Luhansk people’s republic’), commander of the ‘Vostok battalion’ for failure to provide medical aid to a Ukrainian soldier, leading to his death (see OHCHR thematic report on Accountability for killings in Ukraine from January 2014 to May 2016, Annex I, paras. 26-28), and a member of the armed groups of ‘Donetsk people’s republic’ for physical violence against captured military servicemen and civilians in Snizhne, Donetsk region. According to the Office of the Military Prosecutor, 3,000 persons (including 1,450 civilians) have been unlawfully detained and subjected to torture, inhuman and degrading treatment.

<sup>100</sup> Judgment of conviction of Dzerzhynskyi town court of Donetsk region (available at: <http://reyestr.court.gov.ua/Review/70145786>). See also OHCHR thematic report on accountability for killings from January 2014 to May 2016, Annex I, paras. 44-47.

the human rights violation rather than focusing on membership in an armed group, concerns remain regarding possible deficiencies of the national legal framework regulating trials *in absentia* which may fall short of international human rights standards.<sup>101</sup>

## B. Fair trial rights

“The European Court of Human Rights is very far. SBU, on the other hand, is right here.”

- Criminal judge.

75. Individuals arrested and detained for conflict-related charges often found themselves victims of human rights violations such as arbitrary detention, torture and ill-treatment. The pattern suggested that the majority of these violations occurred shortly after arrest with the aim of obtaining incriminating testimonies and information. Victims’ complaints of torture or ill-treatment were often disregarded, even when submitted in court.<sup>102</sup> Furthermore, OHCHR documented cases suggesting that immediate access to a lawyer remains a problem for conflict-related detainees. This problem existed mainly in combination with the practice of unlawful detention prior to registering the arrest of a person.<sup>103</sup>

76. Article 258-3 of the Criminal Code on the “setting up of a terrorist group or organization” criminalizes a broad range of actions, including “participating in” as well as “materially, institutionally, or otherwise facilitating the setting up or operation of” a terrorist group or organization. Such wording allows for broad interpretation of the law, in contradiction to the basic principle of legal certainty. On 28 September 2017, the Andrushivskiyi district court of Zhytomyr region sentenced one media professional and one IT specialist to nine years for the “informational facilitation” of “activity of a terrorist organization” for helping to organize the operation of Novorossia TV channel.<sup>104</sup>

77. OHCHR continued to observe attempts to pressure or otherwise interfere with the judiciary in conflict-related cases. A judge of Zarichnyi district court of Sumy<sup>105</sup> reported being harassed by ‘civic activists’ in response to the acquittal of a former security officer accused of joining an armed group.<sup>106</sup> In an unrelated case, after acquitting the former chief of the Kramatorsk town police who was accused of supporting armed groups, another judge found himself under investigation for the same charges.<sup>107</sup> A judge of the court of appeal of Luhansk region considering an appeal in the second acquittal of a district council official charged under article 114-1 of the Criminal Code<sup>108</sup> openly stated during a hearing that it was difficult for him to handle the “poorly substantiated appeal” given the attention to the case of “people from above”.<sup>109</sup> Judges of Selydivskiyi town court of Donetsk region who complained to the High

<sup>101</sup> While an accused person has the right to be present at his or her trial (art.14, ICCPR), trials *in absentia* may be acceptable in special circumstances so long as the rights of an effective defence is preserved (General Comment no. 13, art. 14, ICCPR). The Criminal Code of Ukraine allows for *in absentia* trials, however does not provide for retrials, nor an opportunity to appeal against the verdict after the expiry of the general 30-day statutory limitation.

<sup>102</sup> HRMMU interviews (with regard to complaints made in six different cases).

<sup>103</sup> HRMMU interviews.

<sup>104</sup> Judgment available at <http://reyestr.court.gov.ua/Review/69213571>.

<sup>105</sup> HRMMU interview.

<sup>106</sup> The acquittal was based on lack of recognition of the ‘Donetsk people’s republic’ as a terrorist organization and non-admissibility of evidence, obtained by coercion.

<sup>107</sup> HRMMU interview.

<sup>108</sup> Article 114-1, introduced into the Criminal Code at the wake of the armed conflict in April 2014, criminalizes any “obstruction of lawful activities of the armed forces of Ukraine or other military formations”. The current legislation does not define such ‘lawful actions’ with sufficient clarity, nor does it set a threshold to qualify as ‘obstructing’ them. This raises concerns that an unjustifiably wide discretion is left to prosecutors and judges, and the article may be used to persecute legitimate complaints against the military.

<sup>109</sup> HRMMU trial monitoring, 30 October 2017. According to publicly available information, the Deputy Minister for Temporary Occupied Territories and IDPs made prejudicial statements against the accused and another senior official of



Council of Justice about interference with their functions by the prosecutor's office of Donetsk region in conflict-related criminal cases, afterwards found themselves under investigation led by the latter.<sup>110</sup>

78. OHCHR recalls that the presumption of innocence is among fundamental guarantees of fair trial, and senior public officials should refrain from making public statements regarding criminal proceedings which would prejudice the public to believe the suspect is guilty or prejudice the assessment by judicial authorities.<sup>111</sup> OHCHR is concerned with public statements made by the deputy speaker of the Parliament claiming that former Sloviansk mayor Nelia Shtepa<sup>112</sup> (currently on trial for trespass against territorial integrity of Ukraine and creation of terrorist organization) called the "Russian world" into Donbas.<sup>113</sup> (See also the release of a convicted State Border Guard, para. 71 above.)

### C. Territory controlled by armed groups

"The circus continues..."

- Person on 'trial'.

79. The 'Donetsk people's republic' and 'Luhansk people's republic' continued developing structures through which they performed government-like functions, including in the area of 'justice'. OHCHR recalls that it is increasingly accepted that non-state actors exercising government-like functions and effective control over a territory must respect human rights standards when their conduct affects the human rights of individuals under their control.<sup>114</sup>

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the district council, blaming them for construction of barricades obstructing the movement of UAF troops. Notably, he publicly admitted to interfering with the judiciary and pledged to "not step away until purging the land of this scum". See <https://apostrophe.ua/ua/article/society/2015-10-02/georgiy-tuka-o-vozvraschenii-separatistov-vo-vlast-i-blujdayushih-snayperah/2353> and <https://amnesty.org.ru/ru/2015-09-18-ukraina2/>.

<sup>110</sup> See complaints regarding interference with the judiciary, dated 23 June 2017 and 11 July 2017 (available at [http://www.vru.gov.ua/content/file/1288-0-6-17\\_.pdf](http://www.vru.gov.ua/content/file/1288-0-6-17_.pdf) and [http://www.vru.gov.ua/content/file/1288-1-6-17\\_.pdf](http://www.vru.gov.ua/content/file/1288-1-6-17_.pdf)). The judges complained about the failure of the prosecutor's office of Donetsk region to comply with legislation when prosecuting individuals on conflict-related charges, leaving judges no option but to return indictments back to the prosecution or acquit defendants. They alleged that in order to shift attention from their failures, the prosecutors blame the judges of intentional protraction of proceedings and unwillingness to adjudicate in conflict-related cases. On 7 July 2017, a group of "National Corps" activists allegedly organized by the prosecutor's office of Donetsk region protested against the acquittal of the 'head' of the 'supreme court' of 'Donetsk people's republic' and performed a mock 'hanging of the corrupt judge' (see <http://azov.press/ru/selidivs-kim-suddyam---lyustraciyu>). On 4 August 2017, based on a submission of a member of the Parliament, the prosecutor's office of Donetsk region launched an investigation into the acquittal of the 'head' of the 'supreme court' of 'Donetsk people's republic' by the judges of Selydivskyi district court of Donetsk region on charges of delivering a knowingly unjust verdict (see OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2017, footnote 74).

<sup>111</sup> It is a duty of all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. In *Gridin v. Russia* (2000), the Human Rights Committee found a violation of the presumption of innocence where public statements by officials which received wide media coverage presented the accused as guilty. See also *Saidova v. Tajikistan* (2004); *Ismoilov and others v. Russia*, ECtHR, no. 2947/06, 24 April 2008.

<sup>112</sup> See OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, footnote 122. On 20 September 2017, Leninskyi district court of Kharkiv released Ms Shtepa from custody, replacing detention with house arrest upon the motion of the defence. Decision available at <http://reyestr.court.gov.ua/Review/69076525>. After more than three years of extending the detention (since Shtepa's arrest in July 2014), the court concluded that there was not a risk of flight. Of note, on 6 November 2017, the court informed the parties that the presiding judge on the trial has gone on paternity leave and recused himself. It is unclear whether the case will now need to be tried *de novo*.

<sup>113</sup> <https://www.facebook.com/iryna.gerashchenko/posts/1512039325550542>.

<sup>114</sup> The United Nations Committee on the Elimination of Discrimination against Women considers that "under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights" (General Recommendation No 30, 2013). The United Nations Security Council strongly condemned "the continued violations of international humanitarian law and the widespread human rights violations and abuses, perpetrated by armed groups" in the Central African Republic (resolution 2127 (2013), para. 17). In relation to the situation in the Democratic Republic of the Congo, it reminded all parties "in Uvira and in the area that they must abide by international humanitarian standards

80. The armed groups contend that conflict-related detainees are under ‘investigation’ and/or in ‘custody’ awaiting ‘trial’. As a general rule, conflict-related ‘criminal cases’ (‘espionage’, ‘high treason’, etc.) are held in closed ‘sessions’ without outside observers or independent international monitors. OHCHR is concerned that, behind closed doors, conflict-related detainees are ‘convicted’ and face harsh ‘sentences’ without recourse to effective remedy. For example, on 31 October, a ‘military court’ of the ‘Luhansk people’s republic’ ‘sentenced’ a man to 12 years for ‘high treason’ after a two-week ‘trial’ held in closed sessions. OHCHR notes that the defence counsel, who was ‘appointed’ by ‘MGB’, never visited his client in detention. OHCHR further notes that while the details of the ‘prosecution’ and ‘conviction’ are unknown, the man was initially arrested after singing a Ukrainian song in a local bar.<sup>115</sup>

81. In addition to these concerns, the inherent lack of independence and impartiality of these ‘tribunals’ raises serious concerns that residents in territory controlled by armed groups do not have adequate protection of their rights and no access to justice. The situation is even more concerning in light of reports that a second ‘death penalty’ was ‘pronounced’ on 7 November 2017 by the ‘supreme court’ of the ‘Donetsk people’s republic’.<sup>116</sup> International law sets stringent conditions for application of the death penalty, including meticulous compliance with international fair trial standards. The structures put in place by the “Donetsk people’s republic” clearly fail to meet those standards and should therefore in no circumstances impose capital punishment.

82. In territory controlled by armed groups of both ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, the process of ‘registered’ detention is often preceded by a period of *incommunicado* detention perpetrated by the ‘law enforcement structures’, by ‘MGB’<sup>117</sup> or ‘UBOP’<sup>118</sup>, which is not subject to any ‘review’. Such *incommunicado* detention may last for weeks or months.

83. Persons residing in territory under the control of armed groups, including those in detention, who wished to obtain a lawyer faced new challenges. On 30 June 2017, the ‘head’ of ‘Donetsk people’s republic’ issued a ‘decree’ stating that only lawyers who were ‘certified’ by the ‘Donetsk people’s republic’ may represent a ‘defendant’ in ‘criminal cases’, which is in conflict with the ‘law on the bar and practice of law’.<sup>119</sup> Many lawyers fear obtaining such ‘certification’, as it may put them at risk of arrest and prosecution when they travel to government-controlled territory because the certification procedure requires taking an oath to the ‘Donetsk people’s republic’.

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and ensure respect for human rights in the sectors they control” (statement by the President of the Council, S/PRST/2002/27(2002)), and indicated that “the RCD-GOMA must... ensure an end to all violations of human rights and to impunity in all areas under its control” (statement by the President of the Council, S/PRST/2002/22(2002)). See also, in relation to the situation in Gaza: A/HRC/16/71, para. 4, and in relation to the situation in Libya: A/HRC/17/45(2011), para. 20. See also Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, A/HRC/17/44, para. 72; and Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, 31 March 2011, para. 188.

<sup>115</sup> HRMMU interviews. In addition, on 9 October 2017, the ‘prosecutor-general’s office’ of the ‘Donetsk people’s republic’ reported the ‘sentencing’ of two people to 14 years each for ‘espionage’, and on 13 November, OHCHR attended the pronouncement of a ‘judgement’ by the ‘military tribunal’ of the ‘Donetsk people’s republic’ where a woman was ‘convicted’ of ‘espionage’ and ‘sentenced’ to 10 years. She reportedly received the minimum ‘penalty’ in exchange for cooperating with the prosecution.

<sup>116</sup> The ‘defendant’ was ‘convicted’ of the rape, sexual assault and killing of a nine-year-old girl. Judgment available at <https://supcourt-dnr.su/content/verhovnyy-sud-prigovoril-nasilnika-i-ubiycu-k-isklyuchitelnoy-mere-nakazaniya>. The first ‘death penalty’ was ‘pronounced’ in December 2015 in a ‘case’ involving ‘charges’ of brigandism and killings, however as of 27 June 2017, the ‘death penalty’ had not been executed.

<sup>117</sup> HRMMU interview; OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, paras. 47-50.

<sup>118</sup> HRMMU interview.

<sup>119</sup> The ‘law’ allows lawyers certified in Ukraine or the U.S.S.R. who have continuously practiced law in the ‘Donetsk people’s republic’ since 11 May 2014 and are registered with the ‘ministry of justice’ to represent criminal defendants. HRMMU interview.

## D. High-profile cases of violence related to riots and public disturbances

84. OHCHR continued to follow the cases of killings and violent deaths in the context of mass assemblies, including those which occurred at Maidan in Kyiv,<sup>120</sup> during the 2 May 2014 violence in Odesa<sup>121</sup>, during the Unity March in Kharkiv on 22 February 2015<sup>122</sup> and from the explosion near Parliament on 31 August 2015.<sup>123</sup> Investigations into some episodes have been ongoing, while others have reached the courts, however no essential progress has been observed in convicting perpetrators.

### 1. Accountability for the killings of protesters at Maidan

85. According to the Prosecutor-General's Office, 53 persons (including former senior officials) have been notified of suspicion of committing crimes against participants of Maidan protests. Forty of them have reportedly absconded; special pre-trial investigations *in absentia* were launched against 27 of them.

86. Ten persons have been indicted, including five former "Berkut" special police regiment servicemen who are on trial on charges of killing 48 people and inflicting 128 gunshot injuries to 80 protesters on 20 February 2014, together with other absconded servicemen. They remain in custody pending trial at Sviatoshynskiy district court of Kyiv, which is still reviewing witnesses' and victims' testimonies and examines case files.

87. On 14 November 2017, Pecherskyi district court of Kyiv extended the pre-trial detention of one of alleged accomplices<sup>124</sup> of the abduction of two Maidan protesters on 21 January 2014. Both were reportedly severely beaten and released in a forest outside Kyiv. As a result, one victim froze to death.

88. The Prosecutor-General's Office continues its investigation against the former deputy head of the Kyiv SBU for launching an "anti-terrorist operation" in the Kyiv city centre which resulted in the deaths of protesters.<sup>125</sup> In total, 380 persons are under investigation for committing crimes against Maidan protesters.<sup>126</sup>

### 2. Accountability for the 2 May 2014 violence in Odesa

89. On 18 September 2017, the Illichivskiy town court of Odesa region acquitted 19 persons<sup>127</sup> of mass disturbances in the city centre which led to the killing of six men.<sup>128</sup> The court held that the prosecution failed to prove that the accused took active part in the disorder. The court also noted that the pre-trial investigation was not impartial as it was carried out by police and according to available information, police officers could have been engaged in organizing and participating in the mass disturbances along with those on trial. The court also shared OHCHR's concerns regarding the one-sided investigation, noting in particular that the prosecution was biased against the 'pro-federalism' activists.

90. The court ordered the immediate release of the five defendants who had remained in custody since May 2014. SBU immediately re-arrested two of them in the courtroom after the

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<sup>120</sup> At least 108 protesters and other individuals, as well as 13 police officers, were killed during the Maidan protests. See OHCHR report on Accountability for killings in Ukraine, paras. 20-24 and Annex I, tables 1 and 2.

<sup>121</sup> During the mass disorder in Odesa city centre, 6 persons were shot dead and 42 died while trapped in the burning House of Trade Unions. See OHCHR report on Accountability for killings in Ukraine, paras. 25-27 and Annex I, table 3.

<sup>122</sup> Four people were killed by a blast. See OHCHR report on Accountability for killings in Ukraine, Annex I, para. 4.

<sup>123</sup> Four police officers were killed by a combat grenade explosion. See OHCHR report on Accountability for killings in Ukraine, Annex I, para. 5.

<sup>124</sup> Another 11 suspects have been put on a wanted list.

<sup>125</sup> For more details, see OHCHR thematic report on Accountability for killings in Ukraine from January 2014 to May 2016, Annex I, Table 1.

<sup>126</sup> Of them: 48 senior officials, 203 law enforcement officers, including 25 investigators, 16 prosecutors and 15 judges, and 42 civilians (the so-called "titushky") have been charged with crimes against Maidan protesters from November 2013 to February 2014. One hundred fifty five indictments against 239 persons have been submitted to courts, and 42 people have been convicted.

<sup>127</sup> The 20<sup>th</sup> accused absconded from Ukraine on 11 August 2017 and his case was separated.

<sup>128</sup> Judgment of acquittal, available at: <http://reyestr.court.gov.ua/Review/68926870>. OHCHR notes that the legal proceedings were beset with delays, having been transferred between four different courts, as well as re-started on three different occasions. Notably, once the case reached the panel of the Illichivskiy town court of Odesa region, the trial saw rapid progress and was completed within four months (from 31 May to 18 September 2014).



judgement was pronounced, on charges of “trespass against the territorial integrity of Ukraine” in connection with a peaceful motorcade rally of ‘pro-federalism’ supporters in March 2014.<sup>129</sup>

91. The court decision left unanswered the question of who is responsible for organizing the mass disturbances which resulted in 48 deaths. As of the date of this report, the investigations had identified only two persons who allegedly shot dead two men. One of the suspects is a member of ‘pro-unity’ groups and remains at liberty pending his trial, in stark contrast to the members of ‘pro-federalism’ groups who were detained for several years prior to their acquittal.<sup>130</sup>

## IV. Fundamental freedoms

### A. Freedom of movement

*“If we did not have to travel to the territory controlled by the Government to confirm our right to receive pensions, we would still go there... But to meet with relatives, to purchase food, not to be humiliated.”*

- Resident living in territory not controlled by the Government.

92. Restrictions on freedom of movement and the transfer of goods and currency across the contact line continued to adversely affect hundreds of thousands of persons. Such restrictions, which required civilians to expose themselves to security risks, long queues and physical challenges, only served to further divide a once-integrated community.

93. Numerous factors contributed to longer queues at entry-exit checkpoints (EECPs) on both ends of the crossing routes. A total of 1.2 million individual crossings were recorded at the five crossing routes in August, and 1.1 million in September and October each.<sup>131</sup> The daily working hours of the checkpoints at the crossing routes were reduced by 4.5 hours over the course of the reporting period.<sup>132</sup> As of 15 November 2017, they were open from 8:00 to 17:00 hrs. Newly introduced measures<sup>133</sup> at the Cargill checkpoint (controlled by ‘Donetsk people’s republic’), also significantly slowed down the movement of people across the contact line. HRMMU observed that due to the longer waiting periods at this checkpoint, people attempted to cross the contact line through other crossing corridors, contributing to longer queues there as well. Civilians complained to HRMMU that long queues at government-controlled checkpoints were caused by an overly complicated checking procedure. OHCHR notes that corrupt practices were also claimed to be a significant factor negatively impacting the flow of civilians across the contact line.<sup>134</sup>

94. During the reporting period, there have been at least nine security incidents at or in the vicinity of the crossing routes.<sup>135</sup> Mines continued to pose a serious threat to civilians crossing

<sup>129</sup> <http://reyestr.court.gov.ua/Review/69748399>, <http://reyestr.court.gov.ua/Review/69748019>

<sup>130</sup> The second suspect is a ‘pro-federalism’ activist who allegedly fled Ukraine after the 2 May violence.

<sup>131</sup> Number of individual crossings of the contact line per month (information provided by the State Border Guard Service of Ukraine): August – 1.194.000; September – 1.093.000; October – 1.108.000; 1-15 November – 485.000.

<sup>132</sup> On 1 September 2017, the working hours were reduced by 2.5 hours, and on 29 October, they were reduced by a further 2 hours. At the close of the reporting period, the EECPs were open from 8:00 to 17:00 hrs.

<sup>133</sup> Individual passport registration and checks already in place at other checkpoints were introduced at Cargill checkpoint on 7 September 2017.

<sup>134</sup> HRMMU site visits of all five crossing routes throughout the reporting period and information received from interlocutors.

<sup>135</sup> See Ukraine: Checkpoints – Humanitarian Snapshot (as of 16 November 2017), available at <https://reliefweb.int/report/ukraine/ukraine-checkpoints-humanitarian-snapshot-16-november-2017>; Ukraine: Checkpoints – Humanitarian Snapshot (as of 15 September 2017), available at <https://reliefweb.int/report/ukraine/ukraine-checkpoints-humanitarian-snapshot-15-september-2017>. Further, on 13 October 2017, one Ukrainian Border Guard was wounded as a

the contact line and those living in close vicinity to EECPs. On 22 August, two women (aged 60 and 56) suffered injuries requiring hospitalization from an explosive device while walking off the main road near the Novotroitske EECP.<sup>136</sup> On 1 September, a 54-year old woman was wounded by a mine explosion in a forest in Stanytsia Luhanska.<sup>137</sup>

95. OHCHR continued to express concern over conditions at Stanytsia Luhanska, the sole crossing route in Luhansk region, which requires people to climb across unsafe wooden ramps connecting parts of a destroyed bridge.<sup>138</sup> This is especially challenging for elderly people (who make up the vast majority of those crossing), persons with disabilities, and families travelling with children. With the onset of winter, traversing the ramps will become increasingly more difficult due to snow and ice. For this reason, persons with disabilities living in territory controlled by armed groups often decide it is too dangerous to travel across in order to receive their disability support and pensions.<sup>139</sup> OHCHR fears that these conditions may also encourage use of alternative, unofficial crossing paths, which are often mined. For example, on 10 November 2017, a resident of Donetsk stepped on a landmine while attempting to cross the contact line from Donetsk to Marinka outside of official crossing routes.<sup>140</sup> He died instantly from his injuries, however, his body remained in “no man’s land” for two days before it could be recovered.

96. On 20 October 2017, in a unilateral action, the Government once again opened its EECP located at the hitherto closed crossing route near Zolote in Luhansk region<sup>141</sup> and allowed people to cross into “no man’s land” towards positions of armed groups of the ‘Luhansk people’s republic’. The people were prohibited from crossing checkpoints manned by the armed groups and had to return. While OHCHR strongly urges the opening of additional crossing routes across the contact line, including at Zolote, this must be done in a coordinated manner and must avoid placing civilians at increased security risks.

97. OHCHR continued to document cases of discriminatory restriction of freedom of movement through so-called ‘internal check points’ operated by the National Police. Civilians, including representatives of local and international NGOs who are registered in territory controlled by armed groups are often stopped and required to present an IDP certificate and their cell phones for a check of IMEI codes.<sup>142</sup> All personal data is reportedly stored for future use. Such practice not only restricts freedom of movement and has a negative impact on operation of NGOs but also has a discriminatory nature targeting people who are registered in territory controlled by armed groups.

98. Residents were also adversely affected by unnecessary and disproportionate restrictions imposed by Order no. 39 of the Ministry of Temporarily Occupied Territory, which specifies the list of goods and quantities which may be transported across the contact line. On 28 July 2017, a woman crossing the contact line was stopped from transporting life-saving medication for her disabled daughter who suffers from a serious kidney condition, because the quantity of medication exceeded the prescribed maximum. The mother and child were stuck at the EECP for eight hours, during which the woman had to perform peritoneal dialysis for her daughter twice.

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result of sniper fire at Marinka checkpoint, and on 10 September 2017, the area around the government-controlled checkpoint at Maiorsk was impacted by shelling.

<sup>136</sup> Daily report of the OSCE SMM, 25 August 2017, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/336636>.

<sup>137</sup> ATO Press Centre, 2 September 2017, available at <https://www.facebook.com/ato.news/posts/1682749488402517>.

<sup>138</sup> See OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2017, para. 91.

<sup>139</sup> HRMMU meeting, 12 September 2017.

<sup>140</sup> OSCE SMM Daily report, 13 November 2017, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/356591>. In addition, on 7 November, a resident of Stanytsia Luhanska died when he detonated an anti-personnel mine in the vicinity of Krasnyi Yar village while attempting to cross a river by boat from government-controlled territory to territory controlled by armed groups (information provided by OSCE SMM).

<sup>141</sup> The Government first opened the Zolote checkpoint in March 2016, however armed groups of the self-proclaimed ‘Luhansk people’s republic’ refused to open checkpoints on territory under its control which would allow for the crossing of civilians.

<sup>142</sup> Information provided by NGO Right to Protection. In addition, on 16 October 2017, HRMMU national Human Rights Officers staff travelling in a private car were asked at an internal checkpoint about their registered place of residence (“propiska”), suggesting discriminatory treatment.

They were allowed to transport the medication across the contact line only after a local NGO intervened.<sup>143</sup>

99. Since there is no legal provision determining the amount of money which may be transported across the contact line, border guards apply Order no. 39 arbitrarily and confiscate amounts in excess of 10,000 UAH.<sup>144</sup> As of 28 August 2017, the State Fiscal Service of Ukraine (SFS) had seized cash from persons crossing the contact line on 26 occasions, totalling over 300,000 USD.<sup>145</sup> In each of these incidents, the SFS opened criminal proceedings under article 285-5 of the Criminal Code (“financing terrorism”) and transferred the cases to SBU for investigation.

100. Civilians complained that at government-controlled checkpoints, SBU officers pressured civilians residing in territory controlled by armed groups to sign papers agreeing to cooperate with SBU, by gathering information and reporting it back to SBU.<sup>146</sup> OHCHR is deeply concerned that such actions place civilians at serious risk. Such exchanges with SBU, occurring at checkpoints, can have grave repercussions such as ‘arrest’ by members of the armed groups on ‘charges’ of ‘high treason’ or ‘espionage’.

## B. Freedom of opinion and expression

*“If you cover the events in a wrong manner, you will end up with a criminal case of terrorism.”*

- Legal defender.

101. OHCHR is concerned about the use of and the broad interpretation of terrorism-related provisions of the Criminal Code, as well as the provisions on high treason and trespass on territorial integrity of the country, in cases against Ukrainian media professionals, journalists and bloggers who publish materials or make posts or reposts in social media which are labelled by the security service as ‘anti-Ukrainian’.

102. Within the reporting period, at least three individuals were arrested and detained<sup>147</sup> and one was convicted and given a suspended sentence based on a repost he made on social media.<sup>148</sup> In addition, on 28 September 2017, the Andrushivskiy district court of Zhytomyr region convicted one media professional and one IT specialist on terrorism charges and sentenced each to nine years.<sup>149</sup> They were accused of facilitating the online broadcasting of Novorossia TV channel (affiliated with the ‘Donetsk people’s republic’, which the SBU considers a terrorist organization). Another journalist detained at Zhytomyr SIZO since 2 August 2017 is charged

<sup>143</sup> HRMMU interview.

<sup>144</sup> The Order provides that a person may transport goods with a total value of 10,000 UAH.

<sup>145</sup> According to the SFS, they confiscated 3,393,500 UAH, 1,319,700 RUB, 137,300 USD, 8,600 EUR, 100 CAD and 35 GBP during 2017.

<sup>146</sup> HRMMU interviews.

<sup>147</sup> SBU arrested one man on 28 September 2017 in Zaporizhzhia for his alleged affiliation with the ‘social communication committee’ of the self-proclaimed ‘Donetsk people’s republic’ and his publications which SBU claimed to be anti-Ukrainian and contain public calls to trespass the territorial integrity of Ukraine (*See* <https://ssu.gov.ua/ua/news/1/category/2/view/3952#.3AuLYZF0.dpbs>), the second on 19 October in Berezivka town in Odesa region (<https://ssu.gov.ua/ua/news/7/category/21/view/4035#.ZODEPeyc.dpbs>), and the third on 27 October 2017 in Dnipro (<https://ssu.gov.ua/ua/news/4/category/21/view/4067#.r2HQ9i27.dpbs>) for social media posts deemed “anti-Ukrainian”.

<sup>148</sup> On 2 October 2017, the Desnianskii district court in Kyiv convicted a man under article 109 of the Criminal Code (“Actions aimed at forceful change or overthrow of the constitutional order or take-over of government”) for his repost on social media (<http://reyestr.court.gov.ua/Review/69284181#>).

<sup>149</sup> Both were found guilty of “Creation of a terrorist group or a terrorist organization” (Article 258-3 of the Criminal Code), and the IT specialist was additionally convicted of “public calls to commit a terrorist act” (Article 258-2) and “Violating the equality of citizens based on their race, ethnicity or regional beliefs” (Article 161). HRMMU interviews. *See also* Fair trial rights, para. 76 above.

*inter alia* with treason and terrorism based on his publications, and could face up to 15 years of imprisonment.<sup>150</sup>

103. The lack of accountability for crimes against journalists raises serious concerns. Little progress was achieved in investigations of recent physical attacks against media professionals<sup>151</sup> or in the high-profile cases of the killings of Pavlo Sheremet<sup>152</sup> and Oles Buzyna.<sup>153</sup>

104. OHCHR also noted a worrying trend of foreign journalists reporting on the conflict in the east being labelled “propagandists” as a basis for their deportation from Ukraine.<sup>154</sup> Three journalists from the Russian Federation and two from Spain were subjected to arrests, interrogations, and expulsions in connection with their reporting.<sup>155</sup> The SBU insists it is compelled to undertake restrictive measures in cases when journalists disregard objectivity and distort information. OHCHR stresses that any restriction of freedom of expression, if applied, must be proportionate to the legitimate aim pursued and calls for careful consideration of each restrictive measure, based on international standards including practice of the European Court of Human Rights.<sup>156</sup>

#### *Territory controlled by armed groups*

105. Freedom of expression remains severely restricted with no critical publications or elements of dissent allowed in media outlets circulating in ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. On 27 September 2017, armed men forcibly entered the home of a well-known blogger and activist in Donetsk, beat him and interrogated both him and his wife (*see also* para. 53 *above*). The blogger was arbitrarily detained for 36 days, until 2 November,

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<sup>150</sup> He is charged with “High Treason” (Article 111 of the Criminal Code), “Trespass against the territorial integrity and inviolability of Ukraine” (Article 110), “Violations of citizens’ equality based on their race, ethnicity and religious beliefs” (Article 161) and “Creation of a terrorist group or a terrorist organization” (Article 258-3). HRMMU interviews; <https://ssu.gov.ua/ua/news/1/category/2/view/3945#.Zd2HXxCc.dpbs>.

<sup>151</sup> On 15 September 2017, a journalist and a cameraman from Radio Liberty were attacked in Kyiv, allegedly by a state guard officer while they were filming near the venue of the wedding of the General Prosecutor’s son. A criminal case was opened under article 345-1 (“threats or violence towards a journalist”). Both the victims and their lawyer state the law enforcement are failing to investigate the case. On 24 October 2017, one journalist was beaten and two others were attacked and apprehended while reporting on a trial in Sviatoshynskiyi district court in Kyiv. A criminal case was opened under article 171 of the Criminal Code of Ukraine (“preventing legal professional activity of journalists”). In total, from January to October 2017, the National Union of Journalists of Ukraine documented 80 attacks against journalists, 20 of which were reportedly committed by state officials, civil servants or law enforcement agents. <http://nsju.org/index.php/article/6679>.

<sup>152</sup> See OHCHR report on the human rights situation in Ukraine covering the period between 16 May and 15 August 2017, para. 97.

<sup>153</sup> See OHCHR report on Accountability for killings in Ukraine, January 2014 to May 2016, Annex I, para. 79-82; OHCHR report on the human rights situation in Ukraine covering the period between 16 February and 15 May 2017, para. 86.

<sup>154</sup> The practice was widely criticised by the international community: On 18 September 2017, the Committee to Protect Journalists (CPJ) published an open letter to President Poroshenko which referred to seven incidents from August to September where SBU “targeted newsrooms and journalists on accusations that appear politically motivated, and in retaliation for critical reporting” and called on the President “to reaffirm his commitment to ensuring journalists’ safety”, available at <https://cpj.org/2017/09/cpj-calls-on-ukrainian-president-petro-poroshenko-.php>.

<sup>155</sup> On 14 August 2017, SBU detained Tamara Nersesyan, special correspondent for Russian state broadcaster VGTRK and interrogated her about her reporting in eastern Ukraine. On 29 August 2017, SBU reported it had barred Spanish freelance journalists Antonio Pampliega and Ángel Sastre over their reporting on the conflict in the east and for posting “anti-Ukrainian” messages on social media. On 30 August 2017, unknown persons abducted Russian journalist from ‘Pervyi kanal’, Anna Kurbatova, from a street in the centre of Kiev. On 4 October, SBU detained Russian ‘NTV’ journalist Viacheslav Nemyshev and reported he had a ‘press accreditation’ of the self-proclaimed ‘Donetsk people’s republic’ and had been working on the armed-group-controlled territory in 2016-2017, reporting “anti-Ukrainian information”. All these journalists were expelled and barred from entering Ukraine for three years. On 13 October 2017 SBU reported to have lifted the ban for the two Spanish journalists

<sup>156</sup> See fact sheet on hate speech by the European Court of Human Rights, available at [http://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf); *Handyside v. the United Kingdom*, Judgment, 7 December 1976, § 49: “Subject to paragraph 2 of Article 10 (art. 10-2), [freedom of expression] is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. [https://hudoc.echr.coe.int/eng#{"itemid":\["001-57499"\]}](https://hudoc.echr.coe.int/eng#{)”.

accused of ‘terrorism’. The ‘charge’ allegedly stemmed from his published articles criticising the leadership of the ‘Donetsk people’s republic’.<sup>157</sup>

106. Armed groups of ‘Donetsk people’s republic’ continue to detain blogger Stanislav Aseyev (aka Vasin), held since 3 June 2017.<sup>158</sup> Another blogger in ‘Luhansk people’s republic’ was reportedly ‘convicted’ of “extremism” and “espionage” for his critical posts on social media and ‘sentenced’ to 14 years imprisonment.<sup>159</sup>

107. The privacy and personal data protection of internet users in ‘Donetsk people’s republic’ have been compromised. On 21 September 2017, the ‘ministry of communication’ sent a letter to internet providers requesting them to collect and store the personal data of internet users<sup>160</sup> and information about their online activities.<sup>161</sup> The justification provided was the “significant number” of requests from ‘law enforcement agents’ to identify persons suspected of committing offences.

### C. Freedom of religion or belief

108. OHCHR continued documenting interference with freedom of religion through policies and actions undertaken in particular in territory controlled by armed groups. OHCHR also continued to monitor ongoing disputes between different churches in Ukraine for potential impacts which may infringe upon the freedom of religion.<sup>162</sup>

109. On 17 August 2017, the ‘ministry of culture, sports and youth’ of ‘Luhansk people’s republic’ adopted a ‘decree’<sup>163</sup> requiring religious organizations to obtain a positive “theological opinion” in order to ‘register’, act as ‘legal entity’ and operate. The ‘expert council’ created to conduct such theological expertise can issue a negative opinion on the basis of a broad and vague list of reasons.<sup>164</sup> OHCHR is concerned that implementation of this ‘decree’ will lead to arbitrary infringement on the right to manifest one’s religion or belief, while further shrinking the space for members of minority religious groups to exercise their rights.

110. In both ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, a number of actions were taken against Jehovah’s Witnesses communities. In Horlivka, one of the houses of worship of the Jehovah’s Witnesses community (known as “Kingdom Halls”) was reportedly ‘expropriated’ by the ‘Donetsk people’s republic’ on the basis that it was “abandoned”, despite documentation confirming the congregation’s ownership of the property<sup>165</sup> as well as its continued use by parishioners.<sup>166</sup> On 28 August, the ‘MGB’ of the ‘Luhansk people’s republic’ announced that activities of unregistered organizations of Jehovah’s Witnesses were banned due to their alleged ties with the SBU. Since then, Kingdom Halls in Luhansk, Alchevsk and Holubivka in territory controlled by the ‘Luhansk peoples’ republic’ have been inaccessible for parishioners, bringing the total number of Jehovah’s Witnesses religious buildings seized by

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<sup>157</sup> HRMMU interview.

<sup>158</sup> OHCHR Report on the human rights situation in Ukraine, 16 May and 15 August 2017, paras. 49 and 103.

<sup>159</sup> Joint Submission under Article 19 of the Centre of Democracy and Rule of Law, Interdisciplinary Scientific-Educational Centre on Fighting Corruption, Human Rights Information Centre, Human Rights Platform and Institute for Development of Regional Press for the Universal Periodic Review of Ukraine, 30 March 2017, available at <http://bit.ly/2jzbKwS>; Press briefing by a representative of the self-proclaimed ‘Luhansk people’s republic’, available at [https://www.youtube.com/watch?time\\_continue=111&v=5XeYdB6-rlo](https://www.youtube.com/watch?time_continue=111&v=5XeYdB6-rlo).

<sup>160</sup> Internet providers are expected to provide ‘law enforcement’ with a user’s name, residence registration, contact details and IP address.

<sup>161</sup> The information is to be stored for no less than six months. The letter is published on the website of the ‘ministry of communications’, available at [https://xn--b1akbpgy3fwa.xn--p1acf/sites/default/files/pismo\\_ms\\_2418.pdf](https://xn--b1akbpgy3fwa.xn--p1acf/sites/default/files/pismo_ms_2418.pdf).

<sup>162</sup> These churches include the Ukrainian Orthodox Church (Moscow Patriarchate), Ukrainian Orthodox Church of the Kyiv Patriarchate, and Ukrainian Greek Catholic Church.

<sup>163</sup> ‘Decree’ on ‘order of issuance of theological opinion on permissibility of state registration of religious organizations’, available at <https://mklnr.su/engine/download.php?id=507&area=static>.

<sup>164</sup> The list *inter alia* includes “complicity in aggression against the ‘Luhansk people’s republic’”.

<sup>165</sup> The documents were issued by Ukrainian authorities prior to the outbreak of the conflict.

<sup>166</sup> No ‘decision’ was communicated to the parishioners, who found out from anonymous sources after the ‘expropriation’ had already taken place.



armed groups since the beginning of the conflict to 12.<sup>167</sup> Furthermore, on 14 October, ‘MGB’ entered the private home of a parishioner, interrupted a joint worship and collected personal data of all the participants. Four parishioners were temporarily detained and one was accused of organising an unauthorised public gathering.<sup>168</sup>

## V. Economic and social rights

### A. Right to an adequate standard of living

*“We had hoped that when we retire, we can finally start living for ourselves. But now we do not have money for anything. We just sit at home all day long. It is very depressing.”*

- Pensioner.

111. The living conditions of people residing in conflict-affected areas remained dire due to damages and wear of key civilian infrastructure affecting public gas, water and electricity supply, lack of basic services in remote villages close to the contact line, severe restrictions on delivery of humanitarian aid, deteriorating economic environment, food insecurity, high level of unemployment and limited access to psycho-social and other forms of support.

112. As temperatures fell, the humanitarian situation in villages close to the contact line where civilian infrastructure and public gas supply are often damaged worsened. For example, the gas pipeline to (government-controlled) Krymske, Toshkivka and Nyzhnie was damaged by shelling on 5 June 2017, interrupting the supply of gas to those villages. The majority of residential houses have not been equipped with other heating mechanisms and will rely on limited humanitarian support in this regard. A similar situation was observed on the other side of the contact line, in Pikuzy village (formerly Kominternove) where 35 residential houses have not had gas supply since shelling damaged the pipeline in April 2017. Although the pipeline was repaired in May 2017, the gas company (located in Mariupol) stopped supplying gas to Pikuzy on 9 June 2017.<sup>169</sup> Due to high prices, residents cannot afford to purchase coal on a regular basis for heating purposes and instead rely on electric heaters. However, the electricity supply is irregular due to frequent damages inflicted by shelling.<sup>170</sup>

113. Much of the key water infrastructure is located in “no man’s land”, which is often shelled and/or contaminated with UXO. The security situation poses serious obstacles for performing maintenance and repairs which should be completed prior to the onset of winter in order to avoid possible serious irreversible damage.<sup>171</sup> Dokuchaievsk (located 2km from the contact line in territory controlled by ‘Donetsk people’s republic’) receives approximately only

<sup>167</sup> Kingdom Halls in Horlivka, Donetsk, Perevalsk, Khrustalnyi (formerly Krasnyi Luch), Boikivske (formerly Telmanove), Yenakiieve, Holubivka (formerly Kirovsk) and Brianka remain confiscated. In addition, Kingdom Halls in Luhansk and Alchevsk were searched by ‘MGB’ on 4 August 2017 based on alleged mining of the area, during which, parishioners were forced out from the building, had their personal data collected, and were individually questioned (including children who were questioned without the presence of their parents). On 15 August, the Kingdom Hall in Holubivka (formerly Kirovsk) was sealed by the ‘Luhansk people’s republic’ without any justification provided. HRMMU interview; Jehovah’s Witnesses Report on Observance of Freedom of Religion in “Certain Territories in the Donetsk and Luhansk Regions”, July – September 2017; OHCHR Report on the human rights situation in Ukraine, 15 May to 14 August 2017, paras. 105-106.

<sup>168</sup> HRMMU interview. HRMMU documented other cases where parishioners of Jehovah’s Witnesses were detained, questioned with regard to their religious affiliation, and ill-treated by members of armed groups.

<sup>169</sup> HRMMU meeting, 7 September 2017.

<sup>170</sup> Other locations with restricted access to electricity caused by the conflict include government-controlled Lopaskyne (since May 2017), armed-group-controlled Staromarivka (since end of September 2017) and Novooleksandrivka (where inhabitants have not had electricity for more than three year). OSCE SMM.

<sup>171</sup> If the pipes do not have water running through them when temperatures drop, they may freeze, causing irreversible damage. HRMMU meeting (WASH Cluster), 31 August 2017.



70 per cent of its water needs due to damages of the South Donbas Water Pipeline caused by shelling; the same damage places at risk the centralized heating of 400,000 people during the winter. Repairs would require a “window of silence” for water specialists to fix known damage and to check nine kilometres of pipe located in “no man’s land”, which may be contaminated with mines and UXO.

114. People living in villages close to the contact line continued to face obstacles accessing basic services and goods. For instance, in Opytne village where 42 residents remain, there has been no electricity, heating, gas or water supply since the beginning of the conflict. Furthermore, there is no grocery store, no pharmacy, no medical facility, and no public transportation. In order to access basic services, residents must walk 6 km to Avdiivka, along a footpath going through fields contaminated by mines and UXO, as the roads leading to Opytne are closed to vehicles. Persons with disabilities or elderly people who cannot walk the distance are especially vulnerable.<sup>172</sup>

115. Restrictions on movement also prevented humanitarian assistance from reaching Opytne and other remote villages located close to the contact line in “no man’s land”. An NGO attempting to deliver humanitarian aid was stopped at an ‘internal’ checkpoint at the entrance to Pishchane (located 1.2km from the contact line) and denied entry to the village.<sup>173</sup> Similar incidents were documented in Novoluhanske, and the government-controlled area of Zaitseve (Bakhmutka and Zhovanka).<sup>174</sup>

116. Access to adequate housing also remained an issue, in particular for displaced persons with disabilities. OHCHR observed poor living conditions in a collective centre for IDPs in Sviati Hory sanatorium in Donetsk region, where 90 per cent of the 203 residents (including 31 children) are persons with disabilities.<sup>175</sup> The indoor temperature of the two buildings was approximately 15 degrees Celsius. Residents share a single functioning shower, and a warm shower is available only once every nine days. The electricity is weak and the elevators do not function. Furthermore, IDPs accommodated in this collective centre lack basic food items, medications and hygiene products. OHCHR also documented the case of an 80-year-old wheelchair-bound IDP and her husband from Donetsk, who have spent two years living in their unheated country house. With very few accessible apartments available, they were unable to obtain appropriate alternative accommodation.<sup>176</sup>

117. The space for humanitarian action in territory controlled by armed groups continued to be restricted. For instance, in ‘Donetsk people’s republic’ a new ‘accreditation’ for humanitarian cargo was introduced,<sup>177</sup> adding a third layer to an already cumbersome ‘accreditation’ process for humanitarian activity.<sup>178</sup> This cumbersome procedure creates additional challenges for humanitarian aid to reach people in need, at a time when 800,000 people in territory controlled by armed groups (double the number in 2016), are severely and moderately food insecure.<sup>179</sup>

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<sup>172</sup> HRMMU visit to Opytne village, 10 October 2017. HRMMU documented similar situations during visits to Chornyi Buhor and Chihari settlements in Pivdenne (2 November 2017), Dacha (1 November 2017), Katerynivka - particularly its western part Koshanivka (30 August 2017), Krymske (29 August 2017), government-controlled parts of Zaitseve (Bakhmutka and Zhovanka, 1 November 2017), Znamianka (9 November 2017) and Novooleksandrivka (20 October).

<sup>173</sup> HRMMU visit to Pishchane, 5 October 2017.

<sup>174</sup> HRMMU visit to Novoluhanske, 4 October 2017.

<sup>175</sup> HRMMU visit, 5 September 2017.

<sup>176</sup> HRMMU interview.

<sup>177</sup> Although ‘decree’ no. 74 “on adoption of a temporary order of accreditation of humanitarian cargo” was signed on 28 April 2017, it was not published until 12 September 2017.

<sup>178</sup> There are now three ‘accreditation’ required, for the humanitarian organization to operate in the territory, for the specific humanitarian project, and for humanitarian cargo.

<sup>179</sup> Food Security and Livelihoods Cluster, Update on Sectoral Needs, Ukraine, October 2017, available at: [http://fslcluster.org/sites/default/files/documents/fslc\\_brief\\_update\\_on\\_sectoral\\_needs\\_october\\_2017.pdf](http://fslcluster.org/sites/default/files/documents/fslc_brief_update_on_sectoral_needs_october_2017.pdf).

## B. Right to social security and social protection

“You should have thought about this in 2014! When will they terminate your pension?”

- Border Guard to pensioner crossing the contact line.

118. There has been no change in the Government’s policy of linking pensions to IDP registration.<sup>180</sup> The verification and identification procedure<sup>181</sup> under this policy has led to the suspension of pension payments to at least 500,000 people since its adoption on 8 June 2016.<sup>182</sup>

119. OHCHR stresses that this discriminatory requirement violates Ukraine’s legal obligations<sup>183</sup>, jeopardizes social cohesion, and creates additional hardships for vulnerable people. For example, persons with disabilities, who are particularly affected by the conflict<sup>184</sup> and face greater challenges due to restrictions on freedom of movement,<sup>185</sup> have increased difficulty fulfilling the verification procedure. The policy also distorts displacement statistics and puts administrative burdens on local social protection departments tasked with conducting the verification. Moreover, verification (home visits) often cannot be conducted in government-controlled territory located near the contact line.<sup>186</sup>

120. OHCHR notes that the suspension of pensions under the verification process, which deprived hundreds of thousands of people - and often entire families - of their sole income, appears to have been disproportionate and unnecessary. Of the 547,300 cases of suspensions which were reviewed by the inter-agency commission on assigning (resuming) pension payments in 2017, pension payments were reinstated in 385,100 cases, amounting to 70 per cent.<sup>187</sup> Further, those pension suspensions which were challenged in court also led to reinstatement in a significant number of cases.<sup>188</sup> Notably, on 30 August 2017, the Dobropillia city-district court of Donetsk region ruled in favour of a plaintiff who had been deprived of her pension since October

<sup>180</sup> See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017, para. 99; OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, para. 118.

<sup>181</sup> Verification is intended to confirm that pensioners with residence registration in armed-group-controlled territory have *de facto* become IDPs living in government-controlled territory, which is required to continue receiving pension payments. The procedure was introduced by Cabinet of Ministers resolution no. 365 on “Some questions of implementation of social payments to internally displaced persons”, available at <http://www.kmu.gov.ua/control/ru/cardnpd?docid=249110200>. On 13 September 2017, the Cabinet of Ministers adopted resolution no. 689 (available at <http://www.kmu.gov.ua/control/uk/cardnpd?docid=250271225>) abolishing the verification procedure (home visits) for pensioners if they undergo the obligatory identification procedure (personal appearance) in ‘Oshchadbank’ (due every three months). However, regular verification will continue for those IDPs who receive targeted assistance or any other forms of social benefits. As the majority of IDP-pensioners also receive IDP assistance or social benefits, they do not benefit from the amendments. In other cases, lack of cooperation and technical means for timely information exchange between the departments of social policy and ‘Oshchadbank’ have thwarted the intended effect of the reform.

<sup>182</sup> Data provided by the Pension Fund of Ukraine on 3 November 2017.

<sup>183</sup> Article 9 of the International Covenant on Economic, Social and Cultural Rights; Article 1 of Protocol I to the Convention for the Protection of Human Rights and Fundamental Freedoms; Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms; Articles 41 (the right to property) and 46 (on the right to social security) of the Constitution of Ukraine; Decision of the Constitutional Court of Ukraine dated 7 October 2009 recognizing that pension payments cannot be suspended solely on the basis of the beneficiary’s place of residents.

<sup>184</sup> See, e.g. Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Ukraine, 2 October 2015, paras. 13-14, 22-25; OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, paras. 91, 111 and 115.

<sup>185</sup> See Freedom of Movement *above*.

<sup>186</sup> For example, HRMMU was informed that representatives of the Ukrainian Pension Fund refused to cross the bridge to Staromariivka (located in “no man’s land” in Donetsk region) to process the verification of four bedridden pensioners, whose entitlements were thereafter suspended. HRMMU meeting with NGO Right to Protection on 6 September 2017.

<sup>187</sup> Data provided by the Pension Fund of Ukraine, covering all cases reviewed from 1 January to 26 October 2017.

<sup>188</sup> In 90 per cent of cases filed in 2017 by the NGO Right to Protection (over 80 decisions), Ukrainian courts ruled in favour of citizens who appealed the decision to suspend their pension payments. The Pension Fund informed HRMMU that between January and October 2017, 165 IDPs had their pension payments restored based on court decisions.

2014, marking the first time that a court confirmed the right to pension of a resident who continuously lived in territory controlled by armed groups.<sup>189</sup> The decision, however, was overturned on 31 October 2017 and is now pending before the High Administrative Court of Ukraine.

121. Furthermore, the linking of the right to pension with IDP registration for citizens with residence registration in armed-group-controlled territory even when they choose to register a residence in government-controlled territory creates obstacles for the integration of IDPs in their new communities.<sup>190</sup> OHCHR reiterates that in order to prevent a situation of protracted displacement, Government policies should facilitate access to durable solutions such as local integration.

122. OHCHR noted a worrying trend where IDPs have been denied targeted financial assistance because the settlements they fled were not included in the official list of settlements where state authorities do not exercise their functions in accordance with Cabinet of Ministers' Order No. 1085.<sup>191</sup> For example, Zaitseve, Zolote-5, Pivnichne, and Nevelske - which are regularly affected by the armed hostilities - have not been included in the list.

#### *Territory controlled by armed groups*

123. Since the conflict began, persons residing in territory controlled by armed groups have suffered from the loss of access to Government services. Persons with disabilities have been disproportionately affected as, for example, they no longer receive discounts on or free provision of certain medications, hygienic items and prosthetic equipment, and the social taxi (for people in wheelchairs) no longer functions. In addition, persons with disabilities in armed-group-controlled territory, including children, can no longer receive annual treatment or undergo rehabilitation in sanatoriums.

124. Residents stated that the 'disability allowance' paid by the self-proclaimed 'authorities' in both 'republics' is not a sustainable source of income and does not cover basic needs.<sup>192</sup> As a result, persons with disabilities were often left fully dependent on families and/or humanitarian assistance, at a time when humanitarian organizations faced continuing restrictions (*see also Adequate standard of living above*).

### **C. Housing, land, and property rights**

125. The lack of restitution and rehabilitation of, or compensation for, destroyed or damaged property remained among the most pressing unaddressed socio-economic issues.<sup>193</sup> OHCHR notes that there was no progress in development of a unified registry of damaged and/or destroyed property.<sup>194</sup> In certain areas close to the contact line, where residents were forced to leave their homes due to the security situation, the local civil-military administrations check on damaged property only when specifically requested by the owner. Therefore, it is likely that a large number of damaged and/or destroyed properties have not been certified by civil-military administrations, which would make it difficult for owners to obtain compensation or restitution in the future.

126. In six cases, a first instance court recognised the right to compensation of persons whose houses were damaged or destroyed due to the hostilities, however these decisions were overturned either by appeal or cassation courts.<sup>195</sup> In a recent decision, a court of appeal

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<sup>189</sup> Court decision available at <http://reyestr.court.gov.ua/Review/68839150>.

<sup>190</sup> HRMMU interviews.

<sup>191</sup> On 31 May 2017, the Cabinet of Ministers adopted amendments to resolution No. 505 (on provisions of targeted assistance to IDPs), which provides that only IDPs from settlements listed in Order No. 1085 are eligible for targeted Government assistance. The list in Order 1085 was adopted in November 2014 and last amended in December 2015.

<sup>192</sup> HRMMU interviews.

<sup>193</sup> *See* OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, para. 119.

<sup>194</sup> In its previous report on the human rights situation in Ukraine, OHCHR recommended to the Cabinet of Ministers to develop property inventory and inspection procedures, including an effective and accessible mechanism for documentation and assessment of damages caused by the armed conflict.

<sup>195</sup> Information provided by the NGO Right to Protection.

overturned a judgment awarding compensation because the owner had received humanitarian assistance in the form of construction materials.<sup>196</sup> OHCHR reiterates that persons whose houses have been damaged or destroyed due to the armed conflict have the right to full and effective compensation as an integral component of the restitution process.<sup>197</sup>

127. On 20 September 2017, the Cabinet of Ministers adopted resolution no. 708, which provides necessary criteria for IDPs to participate in the state affordable housing program.<sup>198</sup> The program provides financial assistance amounting to 50% of the estimated cost of purchasing or building a home. OHCHR welcomes the adoption of the resolution but cautions that, taking into consideration housing prices and unemployment levels in conflict-affected areas, housing may still be unaffordable for vulnerable categories of people despite this assistance.<sup>199</sup>

#### *Territory controlled by armed groups*

128. A number of IDPs whose homes lie in territory controlled by armed groups expressed concern regarding a new ‘program’ introduced by the ‘Luhansk people’s republic’ to make an inventory of all “abandoned” apartments so that they can be allocated to people in need.<sup>200</sup> This ‘program’ raises concerns that the private property of IDPs temporarily residing in government-controlled territory may be seized.

129. On 3 November 2017, the armed groups of ‘Donetsk people’s republic’ published a ‘decree’ on ‘nationalisation’ of harvest planted on land plots which are included in the ‘state’ or ‘municipal’ ‘property funds’ and have been “occupied” by legal entities or private persons without ‘authorization’.<sup>201</sup> The ‘ministry of taxes’ was given unhindered access to the storages of legal entities and private persons to implement the decree, which applies retroactively. OHCHR is concerned about the possible human rights impact of this action, particularly in light of the level of food insecurity in the territory.<sup>202</sup>

## **VI. Discrimination against persons belonging to minority groups**

130. OHCHR continued to document attacks against persons belonging to minority groups, as well as the reluctance of police to classify such attacks as hate crimes. On 30 September, participants of the Equality Festival in Zaporizhzhia were attacked by a group of approximately 200 young people, resulting in hospitalization of four female activists.<sup>203</sup> Whilst the perpetrators were beating the victims, they shouted, “This is not the place for people like you!” The police, whose number was insufficient to protect the participants,<sup>204</sup> failed to timely react to the attack. Seventeen people were arrested, however police were unwilling to classify the attack as a hate crime<sup>205</sup> and classified the charges as hooliganism.

131. OHCHR is concerned with manifestations of intolerance, including threats of violence, by extreme right-wing groups<sup>206</sup> against individuals holding alternative, minority social or

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<sup>196</sup> Decision of the Court of Appeal of Donetsk region, 12 September 2017, available at <http://reyestr.court.gov.ua/Review/68895276>.

<sup>197</sup> United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, known as the ‘Pinheiro Principles’, Principle 21.

<sup>198</sup> Available at <http://zakon3.rada.gov.ua/laws/show/708-2017-%D0%BF>.

<sup>199</sup> This point was raised during the HLP Fair organised by the Danish Refugee Council on 5 October 2017.

<sup>200</sup> HRMMU phone conversations with IDPs from Luhansk. Statement of the ‘head’ of ‘Luhansk people’s republic’ of 11 September 2017.

<sup>201</sup> [https://old.dnr-online.ru/wp-content/uploads/2017/11/Ukaz\\_N291\\_03112017.pdf](https://old.dnr-online.ru/wp-content/uploads/2017/11/Ukaz_N291_03112017.pdf)

<sup>202</sup> See Food Security and Livelihoods Cluster, Update on Sectoral Needs, Ukraine, October 2017, available at: [http://fsccluster.org/sites/default/files/documents/fslc\\_brief\\_update\\_on\\_sectoral\\_needs\\_october\\_2017.pdf](http://fsccluster.org/sites/default/files/documents/fslc_brief_update_on_sectoral_needs_october_2017.pdf).

<sup>203</sup> HRMMU interview.

<sup>204</sup> The Ministry of the Interior informed HRMMU that 70 police officers were present.

<sup>205</sup> Art. 161 of the Criminal Code prohibits “wilful actions inciting national, racial or religious enmity and hatred, humiliation of national honour 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, skin colour, political, religious and other convictions, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

<sup>206</sup> “Extreme right-wing groups” is an umbrella term encompassing political parties, movements and groups who blame vulnerable groups for societal problems and incite intolerance and violence against them. Extreme right-wing groups bring into question fundamental principle of non-discrimination by propagating an ideology based on racism, racial

political opinions. On 8 September 2017, the LGBT association ‘Liga’ in Mykolaiv intended to lay flowers at a monument commemorating those who died during Maidan protests. The event was cancelled due to violent threats from representatives of Sokil<sup>207</sup> and the Right Sector,<sup>208</sup> and a lack of security guarantees from police.<sup>209</sup> Organizers of the Forum of Editors, held in Lviv from 14 to 17 September, also received threats<sup>210</sup> from extreme right-wing groups (including the Right Sector, Sokil, National Corps<sup>211</sup> and Volunteer Ukrainian Corps<sup>212</sup>), forcing them to cancel the presentation of a book featuring lesbian parents. On 31 October, a session of the Gender Club organized by students of the National Pedagogical University was disrupted by members of “Traditions and Order”<sup>213</sup> who physically threatened the participants and ripped apart the European Union flag flying on the university building.<sup>214</sup> OHCHR is further concerned with expressions of intolerance voiced by government authorities, such as the Poltava City Council which adopted an open statement calling upon the Verkhovna Rada to discriminate against the LGBTI community.<sup>215</sup>

## VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol

*“This arrest is an attempt to shut our mouths.”*

- Crimean Tatar on trial for alleged membership in a terrorist group.

132. Despite continued lack of access to Crimea, OHCHR was able to document aspects of the human rights situation on the peninsula, through interviews with witnesses and victims of human rights violations, as well as visits to the Administrative Boundary Line with Crimea and meeting with local Government officials. During the reporting period, two deputy chairs of the Crimean Tatar Mejlis were sentenced by courts in Crimea to various terms of imprisonment. On 25 October, they were pardoned and jointly released. In other cases, OHCHR recorded serious human rights violations such as arbitrary arrest, torture and ill-treatment. The exercise of freedoms of peaceful assembly, opinion and expression continued to be curtailed through verdicts criminalizing criticism and dissent. OHCHR notes that under article 43 of the 1907

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discrimination, xenophobia and related intolerance. The same groups are also involved in attacks against individuals based on their gender identity and sexual orientation. *See* Reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/35/42 of 26 April 2017 and A/HRC/18/44 of 21 July 2011).

<sup>207</sup> The youth wing of the extreme right-wing political party Svoboda.

<sup>208</sup> Right Sector is an extreme right-wing movement which consists of political party, paramilitary volunteer battalion and youth organization.

<sup>209</sup> *See* Appeal of the Head of LGBT Association ‘Liga’ to the Ukrainian Parliament Commissioner for Human Rights, available at <http://lgbt.com.ua/звернення-до-уповноваженого-пл/>. Representatives of Sokil and Right Sector openly threatened to violently disrupt the event and stated that such events are not in line with the ideology of their organizations and cultural traditions of Ukraine.

<sup>210</sup> A number of extreme right-wing groups signed a letter addressed to the head of the Lviv Regional Department of the SBU, head of the Lviv Regional State Administration and the Head of the Lviv City Council calling upon them to prevent presentation of the book and threatening to otherwise take all possible actions themselves. *See* <http://bookforum.ua/wp-content/uploads/2017/09/Lyst.pdf>.

<sup>211</sup> Extreme right-wing political party with Social Nationalistic ideology.

<sup>212</sup> Volunteer battalion and military wing of the Right Sector Movement.

<sup>213</sup> Extreme right-wing group propagating nationalism and traditional family values.

<sup>214</sup> HRMMU was informed that the perpetrators were shouting that the idea of gender is contrary to Ukrainian traditional values and that such topics should not even be discussed. The police arrived to the site, however, after taking some written testimonies from perpetrators, they departed without taking any further actions. HRMMU interview.

<sup>215</sup> On 19 September 2017, the Poltava City Council adopted an open statement calling for the Verkhovna Rada to ban “propaganda of deviant sexual behaviour” including “dignity marches”, “prides”, “gay parades” and “queer-culture festivals”, erase any mention of “sexual orientation” or “gender identity” from domestic legislation, abstain from adopting the Law on Civil Partnership, remove sexual education aimed at eliminating gender stereotypes from schools, adopt the Law on “prohibition of propaganda of homosexuality”, halt the process of amending the Constitution and other legal acts with regard to the definition of family, marriage, fatherhood, motherhood and childhood.



Hague Regulation and article 64 of the Fourth Geneva Convention of 1949, the Russian Federation, as the occupying power, must respect the laws already in place in the occupied territory, and can only adopt penal provisions that are essential for maintaining an orderly government and ensuring its security.

## A. Rule of law and administration of justice

133. On 25 October 2017, two Crimean Tatar leaders Akhtem Chiygoz and Ilmi Umerov, convicted in Crimea for “organizing mass disorders” and “public calls to violate the territorial integrity” of the Russian Federation, respectively, were freed. They were flown to Turkey and, on 27 October, returned to Ukraine. The President of the Russian Federation reportedly pardoned both deputy chairs of the Mejlis following negotiations with the Turkish President.

134. Chiygoz was sentenced on 11 September 2017 to 8 years in prison for organizing mass disorders during a rally in Simferopol on 26 February 2014. Umerov was found guilty on 27 September 2017 and sentenced to two years of imprisonment for public calls to violate territorial integrity of the Russian Federation during a televised interview. OHCHR notes that the conviction of Chiygoz may be viewed as a violation of Article 70 of Geneva Convention IV, according to which the arrest, prosecution and conviction by the occupying power of a “protected person”<sup>216</sup> for acts committed before the occupation are illegal, notwithstanding the issue of the law applied to the case.<sup>217</sup> With regard to the conviction of Umerov, OHCHR recalls that all forms of opinion are protected under human rights law and cannot be criminalized.

## B. Right to liberty and security

135. During the reporting period, Crimean law enforcement officers arrested 10 Crimean Tatars alleged to be members of terrorist or extremist groups promoting a sectarian form of Islam. The police also briefly detained 49 Crimean Tatars who initiated peaceful single-person pickets to denounce the arrests and portrayal of Crimean Tatars as terrorists.

136. Following house raids, four Crimean Tatar men – all devout Muslims – were arrested on 2 October by the Crimea branch of the Russian Federation Federal Security Service (FSB). They are accused of “extremist activities” and alleged to be members of *Tablighi Jamaat*, a Sunni movement banned in the Russian Federation as an extremist organization.<sup>218</sup> Three of the men, who were represented by private lawyers, were remanded in custody and the remaining man was placed under house arrest. Within a few days, the three men in detention terminated the services of their private lawyers. According to OHCHR interlocutors, the waivers are the result of pressure exerted by FSB on the suspects and their relatives in order to dissuade them from requesting the services of a dedicated counsel in exchange for promised leniency.<sup>219</sup>

137. On 11 October, the FSB and Special Forces units carried out a series of simultaneous searches of homes of Crimean Tatars in Bakhchysarai, resulting in the arrest of six Crimean Tatar men – all practicing Muslims – on charges of alleged membership in *Hizb ut-Tahrir*, an organization labelled as ‘terrorist’ and banned in the Russian Federation.<sup>220</sup> With these arrests, the number of people detained in Crimea since March 2014 on accusation of membership in *Hizb ut-Tahrir* has reached 25. On the same day, 11 other Crimean Tatar men who came to show

<sup>216</sup> Article 4 of Geneva Convention IV states that “Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”

<sup>217</sup> Article 70 of Geneva Convention IV stipulates that “protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed before the occupation, with the exception of breaches of laws and customs of war.”

<sup>218</sup> The Supreme Court of the Russian Federation declared *Tablighi Jamaat* an extremist organization on 7 May 2009. In Ukraine, *Tablighi Jamaat* is allowed.

<sup>219</sup> HRMMU interviews.

<sup>220</sup> The Supreme Court of the Russian Federation declared *Hizb ut-Tahrir* a terrorist organization on 14 February 2003.



solidarity and film the actions of law enforcement officers were also detained and later released. Nine of them were sentenced to administrative fines.<sup>221</sup>

### C. Right to physical and mental integrity

138. OHCHR documented grave human rights violations allegedly perpetrated by the Crimean branch of the FSB against a Crimean Tatar man. In the early morning of 13 September, following a search of his home, a Crimean Tatar man was detained by the Crimean FSB. The victim was held *incommunicado* for more than a day in the premises of the FSB in Simferopol, during which time his family made continuous inquiries to law enforcement about his whereabouts and fate.<sup>222</sup> On 14 September, the victim was left at a bus station in Simferopol. He was physically injured and stated he had been beaten and tortured, including by electric shock, and threatened with sexual violence in order to force him to make incriminating statements against himself and others. No formal record of his arrest was made and no official charges were brought against him.

### D. Freedom of opinion and expression

139. Those who claimed that Crimea was occupied by the Russian Federation faced criminal consequences and possible imprisonment.

140. Like Ilmi Umerov, freelance journalist Mykola Semena was convicted on separatism charges on 22 September 2017 and handed a 30-month suspended prison sentence. He is also barred from “public activities” - including journalism - for three years. The conviction stems from an article he wrote for Radio Free Europe/Radio Liberty in 2015 which criticized the occupation of Crimea and called for its blockade by military means.

141. OHCHR notes that anti-separatism provisions must be applied in a manner consistent with the obligation of states under article 19, paragraph 1, of the International Covenant on Civil and Political Rights, and not used to silence or criminalize opposing opinions or criticism.

### E. Freedom of religion or belief

142. On 31 August, court bailiffs stormed the building housing the Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) in Simferopol. The action was undertaken pursuant to a judgment, upheld by the Supreme Court of the Russian Federation in February 2017, ordering to vacate premises used by a subsidiary company of the UOC-KP as office space and a shop in the first floor of the building. OHCHR notes that these developments created anxiety among churchgoers and revived concerns about the future of the UOC-KP, whose functioning in Crimea remains precarious due to the lack of an official legal status pursuant to Russian Federation legislation.<sup>223</sup>

143. Unlike the UOC-KP, the Ukrainian Greek-Catholic church (UGCC) re-registered in 2016 and is operating in Sevastopol, Yalta and Yevpatoriia in accordance with the legal framework imposed by the Russian Federation. However, the church had to change its name to the ‘Byzantine Catholic Church’, as its original appellation is not recognized in the Russian Federation. Furthermore, only two UGCC priests permanently reside in Crimea where they continue providing religious services. The other UGCC officials who were not residents of Crimea in March 2014 - and thus did not meet the legal condition to become Russian Federation citizens - became foreigners under Russian Federation law which was imposed in Crimea, and had to leave the peninsula.<sup>224</sup>

<sup>221</sup> HRMMU interview.

<sup>222</sup> HRMMU interviews.

<sup>223</sup> Under Russian Federation law, all public organizations in Crimea, including religious communities, had to re-register in order to obtain legal status. Without registration, religious communities can congregate but cannot enter into contracts to rent State-owned property, open bank accounts, employ people or invite foreigners.

<sup>224</sup> HRMMU interviews. See also OHCHR report on “The situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, paras. 64-70.

## F. Freedom of peaceful assembly

144. The authorities in Crimea continued to impose restrictions on the exercise of the freedom of assembly. The police arrested 49 people who conducted one-man pickets in protest against the prosecution of Crimean Tatars. Further, 13 municipalities rejected requests to hold peaceful assemblies on LGBT rights.

145. On 14 October, a series of one-person pickets took place throughout Crimea in protest against the arrests of Crimean Tatars for alleged membership in “terrorist” or “extremist” organizations in Bakhchysarai. Nearly 100 people held up placards expressing demands to stop the persecution of Crimean Tatars. The police reported the arrests of 49 picketers for violating Russian Federation federal law on public assemblies.<sup>225</sup> After “precautionary conversations” with the police, they were released. According to Russian Federation legislation applied by the Occupying Power in Crimea, one-person pickets do not require pre-authorization.<sup>226</sup> OHCHR recalls that under international human rights law, restrictions on 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.

146. Thirteen municipalities in Crimea - Yevpatoriia, Yalta, Sudak, Feodosiia, Dzhankoi, Armiansk, Bakhchysarai, Sevastopol, Kerch, Alushta, Saky, Simferopol, and Krasnoperekopsk - banned LGBT assemblies planned in October 2017. LGBT organizations from the Russian Federation petitioned for these peaceful assemblies to advocate for recognition of human rights of LGBT persons. The refusals were based on Russian Federation legislation, applied by the Occupying Power in Crimea, prohibiting propaganda of “non-traditional sexual relations”. In *Bączkowski and Others v. Poland*, the European Court of Human Rights recognized that the refusal to hold a peaceful assembly on the ground of sexual orientation amounts to a violation of the right to free assembly in conjunction with the violation of the prohibition of discrimination.<sup>227</sup>

## G. Military conscription

147. On 2 October 2017, the Russian Federation launched a new military draft. Around 2,000 men from Crimea are expected to be conscripted into the Russian Federation Armed Forces. The Russian Federation Ministry of Defence confirmed that one third of the conscripts will be transferred outside the peninsula, to the Russian Federation. Draft evasion is punishable under the Criminal Code of the Russian Federation, and possible sanctions include up to two years of incarceration.<sup>228</sup> A local department of the Russian Federation Investigative Committee in Sevastopol confirmed pending criminal charges against a Sevastopol resident for draft evasion.<sup>229</sup> OHCHR notes that the military draft violates the international humanitarian law prohibition to compel protected persons to perform military service in the armed forces of the occupying power.<sup>230</sup>

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<sup>225</sup> <https://82мвд.рф/news/item/11345690/>.

<sup>226</sup> However, according to the Constitutional Court of the Russian Federation, when several one-person pickets are held simultaneously and are similar to one another with “sufficient obviousness” in respect of the items used, common goals, slogans and timing, such pickets may be considered as one single public picket carried out by a group of individuals, to which pre-authorization requirements for their conduct will apply. (Judgment of the Constitutional Court of the Russian Federation, 14 February 2013 No. 4-II, par. 2.5; <https://rg.ru/2013/02/27/mitingi-dok.html>).

<sup>227</sup> ECtHR, *Bączkowski and Others v. Poland* (No. 1543/06), 3 May 2007.

<sup>228</sup> Article 328 of the Criminal Code of the Russian Federation.

<sup>229</sup> Sevastopol Investigation Department of the Investigative Committee of the Russian Federation, statement of 28 September 2017, available at <http://sevastopol.sledcom.ru/news/item/1167566/>; Statement of 11 October 2017, available at <http://sevastopol.sledcom.ru/news/item/1170699/>.

<sup>230</sup> Article 51, Geneva Convention IV.

## VIII. Legal developments and institutional reforms

### A. Legal framework concerning territory not controlled by the Government in certain areas of Donetsk and Luhansk regions

148. On 6 October, the Parliament of Ukraine prolonged<sup>231</sup> by one year the application of a 2014 law<sup>232</sup> providing for expanded local self-rule in certain areas of eastern Ukraine not under Government control as one of the political commitments under the Minsk agreements. The introduction of special governance rules is conditioned upon the implementation of a set of requirements for safe and democratic elections,<sup>233</sup> including the withdrawal of weapons and all illegal military formations.

149. On the same day, Parliament adopted in its first reading the draft law providing a framework for the Government to re-establish control over certain areas of Donetsk and Luhansk regions.<sup>234</sup> It states that the Russian Federation has conducted an armed aggression against Ukraine, resulting in the temporary occupation of parts of its territory. The text affirms Ukraine's right to self-defence,<sup>235</sup> alongside its commitment to a peaceful political settlement based on international law. Conflict management is entrusted with the military - the Joint Operative Headquarter of the Armed Forces of Ukraine (JOHAFU)<sup>236</sup> - and the principle of an anti-terrorist operation conducted under the auspices of the State Security Service of Ukraine (SBU) is abandoned.

150. Under the draft law, Ukraine claims no responsibility for illegal acts of the Russian Federation and armed groups in the territory they control and considers null and void any act (decisions, documents) committed by them in this territory. It recognizes Ukraine's positive obligations towards the population of these areas, and creates a "special legal regime" to protect its rights and freedoms, based largely on the 2014 law<sup>237</sup> which previously applied exclusively to Crimea. The Ministry on Temporarily Occupied Territory (TOT) and IDPs is tasked with designing "protective measures" such as facilitating the satisfaction of economic and social needs, providing humanitarian aid, and ensuring access to the Ukrainian media and legal remedies. The procedure regulating movement of persons and goods across the contact line is to be defined by the Head of JOHAFU in consultations with the SBU and the Ministry on TOT and IDPs.

151. OHCHR takes note of the intention of the legislator to define, in legally binding terms, the conflict in eastern Ukraine. At the same time, it underlines that this position should not be used to impose a narrative - and introduce legal sanctions - restricting the freedom of opinion and expression.

152. OHCHR notes that the draft law generally lacks clarity regarding the legal framework for the protection of rights and freedoms in certain areas of Donetsk and Luhansk regions. Although legislation applying to Crimea is mentioned as forming the legal basis for human rights protection in eastern Ukraine, its transposition appears to require adjustments without which the legal certainty requirement may not be satisfied.

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<sup>231</sup> Adoption of the Law of Ukraine "On Creating the Necessary Conditions for a Peaceful Settlement in Certain areas of Donetsk and Luhansk Regions" no.2167-VIII.

<sup>232</sup> Law of Ukraine "On the Special Order of Local Self Government in Certain Areas of the Donetsk and Luhansk regions" no.1680-VII of 16 September 2014. The law had been adopted for a three-year period, set to expire on 18 October 2017.

<sup>233</sup> *Ibid.*, Article 10.

<sup>234</sup> Draft Law no.7163 "On Particular Aspects of Public Policy Aimed at Safeguarding the Sovereignty of Ukraine over the Temporarily Occupied Territory of the Donetsk and Luhansk regions of Ukraine".

<sup>235</sup> Article 51 of the United Nations Charter.

<sup>236</sup> The Joint Operative Headquarter of the Armed Forces of Ukraine (JOHAFU) is a body responsible for the management and coordination of inter-agency militarised forces. Together with the General Staff of the UAF, it forms part of the Ukrainian military command. JOHAFU was included into the structure of the Ukrainian Armed Forces in the course of its reform in June 2016. *See* Law of Ukraine "On amendments to the legislation concerning defence" no.1420-VIII of 16 June 2016.

<sup>237</sup> Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" no.1207-VII of 15 April 2014.

153. OHCHR also has concerns regarding the provision proclaiming blanket non-recognition of acts issued in the territory not under Government control, and urges that, in order to guarantee legal recognition of persons living in these areas, at a minimum that the procedure of recognition of the facts of birth and death occurring in such territories be continued.

154. Anticipating the consequences of the promulgation of the draft law, OHCHR urges the Government to prevent the abrupt termination of the validity of legal acts<sup>238</sup> that established certain guarantees and privileges for the population for the duration of the anti-terrorist operation. A transitional period should foresee that the validity of such privileges be extended until national legislation is harmonized with the new legal framework.

## B. Law on Education

155. On 28 September, a new law “On education” entered into force which aims to ensure equal opportunities for students to achieve fluency in the official language and introduces new rules on the use of languages in public education.<sup>239</sup>

156. Under the law, Ukrainian will become the main language of instruction in secondary (i.e. beginning from fifth grade) and higher education. National minorities retain the right to be instructed in their mother tongue in pre-primary and primary school, and at higher levels may request to be taught their native languages as a subject. Additionally, “one or more” subjects may be taught bi- or multi-lingually, in Ukrainian and any of the official languages of the European Union. Indigenous peoples can be educated in their native language from pre-primary to secondary school, and will also have the option of continuing to learn their indigenous language as a separate subject thereafter.<sup>240</sup>

157. OHCHR notes that the previous education law allowed the use of minority languages as a medium of instruction at all levels of education, thereby enabling national minorities to benefit from the full extent of international education standards. The UNESCO Principles on Language and Education state that minority language education should cover primary instruction and “be extended to as late a stage in education as possible”.<sup>241</sup> Similarly, according to the United Nations Special Rapporteur on National Minorities, “ideally, the instruction in the mother tongue should last for a minimum of between six to eight years – more when this is feasible”.<sup>242</sup>

158. The new legislation is more restrictive than the previous education law, as national minorities may not be instructed in their mother tongue beyond primary education. In its 2001 decision *Cyprus v. Turkey*, the European Court of Human Rights found a violation of the right to education<sup>243</sup> where the provision of instruction in the minority language was ensured during primary education but not secondary.<sup>244</sup>

159. While it is a legitimate aim for states to provide students with sufficient opportunities to achieve fluency in the official language, OHCHR believes this should not be at the expense of education in minority languages.<sup>245</sup> It also stresses that all rights must be enjoyed in a non-

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<sup>238</sup> For instance, the Law “On Temporary Measures for the Duration of the Anti-Terrorist Operation” no.1669-VII of 2 September 2014.

<sup>239</sup> President Petro Poroshenko stated that the law improves the quality of the education system of Ukraine, enhances the role of the Ukrainian language, and provides everyone with equal learning opportunities. He also emphasized the determination to rigorously respect education rights of national minorities.

<sup>240</sup> A transition period is provided for students who commenced their secondary education before 1 September 2018, and for whom former language rules will apply, but only until 1 September 2020 when the provisions of the new law will apply to all.

<sup>241</sup> UNESCO, Principles of Language and Education, Principle 1.

<sup>242</sup> United Nations Special Rapporteur on minority issues: Language Rights of Linguistic Minorities. A Practical Guide for Implementation, Geneva, March 2017, p. 18.

<sup>243</sup> Article 2 of Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, (European Convention on Human Rights).

<sup>244</sup> European Court of Human Rights, *Cyprus v. Turkey*, Judgement of 10 May 2001 (Grand Chamber) *Cyprus v. Turkey*, at para.278.

<sup>245</sup> According to the United Nations Special Rapporteur on minority issues, “students should be provided with sufficient opportunities to achieve fluency in the official language, although not at the expense of education in their own language”, *supra*, footnote 4, p. 19.

discriminatory manner. This applies, for example, to the right of national minorities to be educated in “one or more subjects” in an official EU language, which is not available to those whose mother tongue is not an official EU language.

160. OHCHR recalls that the context prevailing in a country is central to the proper regulation of minority language issues. Representatives of various national minorities<sup>246</sup> have approached HRMMU and complained that the provisions of the law, as adopted, do not take their interests into account, which were expressed during consultations. Some expressed concern that the significant limit on educational instruction in minority languages will affect both the quality of education and their right to cultural self-determination, especially in certain remote areas with a high concentration of residents belonging to national minorities. OHCHR is concerned that the new law may result in increased tensions in Ukrainian society.<sup>247</sup> The Government of Ukraine is invited to ensure flexibility in developing and implementing language and education policies, and to introduce any changes gradually, in full respect of its international and regional obligations.

## IX. Technical cooperation and capacity-building

161. OHCHR engages in 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, meetings and events were held with a wide range of government actors and civil society, in order to provide guidance and assistance in addressing human rights issues. In particular, closer cooperation was established with the Permanent Representative of the President of Ukraine to Crimea. Further, OHCHR continued to support preparations for Ukraine’s third Universal Periodic Review (UPR) which took place on 15 November 2017.

162. HRMMU continued to promote implementation of the Istanbul Protocol<sup>248</sup> through trainings and dissemination of information. In September and October, HRMMU provided trainings to over 160 practitioners including civil society monitors of the National Preventive Mechanism (NPM), management and medical staff of penitentiaries, members of prosecution offices, police and forensics experts. The trainings focused on torture prevention, humane treatment of detainees in line with the “Nelson Mandela Rules”,<sup>249</sup> effective identification and investigation of torture, state obligations under international law, and United Nations mechanisms to address torture. Such capacity-building activities complement HRMMU’s monitoring, reporting and advocacy efforts with regard to the practice of torture by Government agents and armed groups against conflict-related detainees, which the Mission has been documenting since 2014. In addition, on 10 October, jointly with the NPM, HRMMU conducted a partners’ meeting on implementation of the Istanbul Protocol. Representatives of the Office of the Prosecutor General, Ministry of Health, Ministry of Justice, the Parliament’s Commissioner for Human Rights (Ombudsperson), civil society and international organisations shared information on their completed and planned activities and identified challenges and gaps.

163. HRMMU also continued to raise awareness of conflict-related sexual violence and carry out follow-up activities to the OHCHR thematic report on conflict-related sexual violence in Ukraine released in February 2017. On 28 September and 2 November 2017, HRMMU delivered sessions on prevention of arbitrary and unlawful detention, torture and conflict-related sexual

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<sup>246</sup> HRMMU interviews with representatives of the Albanian, Gagauz, Hungarian, Moldovan, Romanian and Russian national minorities.

<sup>247</sup> HRMMU was informed about a number of demonstrations against the language provision of the new law on education. For example, on 17 October 2017 in Chernivtsi a demonstration of people belonging to Romanian national minority demanded the right to education in their native language; simultaneously there was a counter demonstration organized by Ukrainian nationalist groups, including Right Sector and Svoboda, shouting that every citizen of Ukraine must be taught in Ukrainian (*see e.g.* [http://zik.ua/news/2017/10/17/u\\_chernivtsyah\\_rumunski\\_organizatsii\\_piketuvaly\\_oda\\_cherez\\_zakon\\_pro\\_osvitu\\_1187809](http://zik.ua/news/2017/10/17/u_chernivtsyah_rumunski_organizatsii_piketuvaly_oda_cherez_zakon_pro_osvitu_1187809)).

<sup>248</sup> United Nations Manual on the 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>.

<sup>249</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, A/RES/70/175 adopted on 17 December 2015, available at <https://www.penalreform.org/resource/standard-minimum-rules-treatment-prisoners-smr/>.



violence to military personnel who will be deployed to the conflict area in civil-military coordination units. In addition to presenting the findings of the thematic report, HRMMU provided an overview of relevant international human rights and international humanitarian law standards, including through specific case studies. Further, in support of the Government's commitment to undertake steps to design and operationalize effective measures to address conflict-related sexual violence, HRMMU and UN-Women contracted an international expert consultant to provide strategic advice to the Government, civil society and the United Nations system on preventing and addressing conflict-related sexual violence in Ukraine. Extensive consultations were held from 13 October to 2 November with representatives of the Government, Parliament, local authorities, civil society and UN Agencies. The consultant's visit concluded with a workshop on 10 November hosted by the Ministry of Justice, where key state actors, including regional and local authorities from conflict-affected areas, service providers, civil society and development partners contributed to the development of the national strategy to prevent and address conflict-related sexual violence.

164. On 15 November 2017, Ukraine's compliance with international human rights obligations was appraised under the Universal Periodic Review (UPR) procedure of the Human Rights Council. 190 recommendations were issued by Member States in relation to women's rights/gender equality, domestic and sexual violence, fighting xenophobia and homophobia, inter-ethnic harmony, corruption, accountability/impunity, and judicial reform. The United Nations system in Ukraine contributed to an informed review of Ukraine's third UPR by submitting a joint human rights assessment, raising the awareness of embassies in Ukraine about key human rights issues, and facilitating consultations involving the Government, civil society organizations and the Ombudsperson Institution.

165. The United Nations Partnership Framework with Ukraine defining the support of the United Nations to national development priorities was signed on 25 October 2017. Under the Framework, OHCHR will contribute to specifically support those priorities related to democratic governance, rule of law, civic participation, human security and social cohesion.

## **X. Conclusions and recommendations**

166. The temporary lull in the armed hostilities and consequent reduction in civilian casualties recorded in September and October demonstrated the potential positive impact on the population of adherence to the ceasefire. However, the number of civilian casualties is on the rise again in November. Further, while the number of casualties may have temporarily dipped, the adverse effects on the population caused by the conflict in eastern Ukraine did not diminish. Sudden and unpredictable spikes in the armed hostilities claimed lives, inflicted suffering and destroyed families. The duration of such suffering, stretched over three years, has taken a heavier toll than can be reflected in statistics. This suffering was compounded as individuals were subjected to human rights violations - including arbitrary detentions, torture and ill-treatment - committed in connection with the conflict on both sides of the contact line. At the same time, continuing restrictions on the freedom of movement served to further suffocate and isolate communities, jeopardizing social cohesion and future peace and reconciliation efforts.

167. For the 4.4 million people who have been affected by the conflict,<sup>250</sup> there were no indications of serious efforts by the parties to the conflict to halt hostilities and restore peace. Faced with "more of the same", those who have already lost their loved ones, health, property, livelihood and opportunities are now losing hope. The approach of the fourth winter of security risks and hardship is anticipated as more difficult to bear than those endured earlier in the conflict.

168. Earnest efforts to take concrete steps toward resolving the conflict are long overdue. With the passage of time, divisions in Ukrainian society resulting from the conflict will continue to deepen and take root. Challenges which need to be overcome for a true reconciliation and

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<sup>250</sup> 2018 Humanitarian Needs Overview, Ukraine. November 2017, available at <https://reliefweb.int/report/ukraine/ukraine-humanitarian-needs-overview-2018-enuk>.



long-term peace throughout Ukraine also become greater as they remain unaddressed over time. A serious intention to honour and implement commitments made in the Minsk agreements would be an invaluable first step towards peace and reconciliation.

169. Furthermore, as we move into 2018, it is imperative that Government policies and legislative developments evolve in an inclusive manner, and together with judicial reforms, contributes to the enhancement of accountability and the foundation for future peace and reconciliation. Such measures would also create conditions for a free media and freedom of expression in the run-up to the 2019 elections, while combatting hate speech and discriminatory acts of violence.

170. Crimea continues to remain subjected to the legal and governance framework of the Russian Federation, in violation of international humanitarian law. For its part, the Government of Ukraine should foster and implement inclusive policies towards the population of the peninsula, to help ensure that existing divisions do not deepen further. The lifting of all unnecessary restrictions to freedom of movement would be a significant element in such an approach.

171. 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:

172. **To the Ukrainian authorities:**

- a) **Where military presence within civilian areas is justified due to military necessity, take all possible steps to protect the resident civilian population, including making available adequate alternative accommodation, as well as compensation for the use of property and any damages;**
- b) **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;**
- c) **Government of Ukraine to establish independent, transparent and non-discriminatory procedures of documentation and verification of housing, land and property ownership, create a registry of damaged or destroyed housing and other property, and a comprehensive legal mechanism for restitution and compensation;**
- d) **Law enforcement agencies to ensure effective investigation of cases of enforced disappearance, *incommunicado* detention, torture and ill-treatment in which Ukrainian forces (SBU, UAF, volunteer battalions, etc.) are allegedly involved, and consider establishing an inter-agency group in charge of investigation of such cases, as civilian investigative bodies do not have access to many alleged places of detention or where the victims were last seen;**
- e) **Security Service of Ukraine to grant immediate, unrestricted, and confidential access to conflict-related detainees newly arrested by SBU, including in Kharkiv region;**
- f) **Cabinet of Ministers to amend its resolution no. 99 so that it provides a list of items prohibited from transport across the contact line to replace the current list of permissible goods and quantities;**
- g) **Government of Ukraine to lift unnecessary and disproportionate restrictions and ease freedom of movement at all checkpoints including ‘internal’ checkpoints, and ensure that persons with residence registered in territory controlled by armed groups are not subjected to additional discriminatory checks;**
- h) **National Police to conduct transparent and effective investigation in all cases of attacks on media professionals, and undertake all possible measures to ensure**

accountability for killings of journalists, including with international expertise where needed;

- i) National Police, Headquarters of the Antiterrorist Operation, heads of regional, district and village councils and heads of civil-military administrations to collaborate on defining the list of settlements affected by the armed conflict, ensuring that it does not deprive people of their economic and social rights;
- j) Ministry of Social Policy to ensure that the protection and support to IDPs extends to all persons who meet the IDP definition, without any discrimination including based on the list of settlements affected by the armed conflict;
- k) 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;
- l) Ministry of Social Policy to establish effective cooperation and information exchange processes with all relevant actors engaged in conducting verification and identification procedures in relation to pensions, as well as in home-delivering payments for IDPs receiving pensions and social benefits, to avoid double-verification or any additional burden on vulnerable people;
- m) Cabinet of Ministers, Parliament and other relevant state bodies to ensure that persons with disabilities, regardless of their place of residence, have access to health services, including rehabilitation, as foreseen by state programs and laws;
- n) Ministry of Temporarily Occupied Territories and Internally Displaced Persons, Ministry of Social Policy and other relevant state bodies to ensure that IDPs with disabilities are provided with adequate accommodations, access to in-home and other services, and means for inclusion in the community;
- o) National Police and other law enforcement agencies to take all appropriate measures to secure public gatherings of persons belonging to minority groups;
- p) Office of the Prosecutor General and other law enforcement agencies to ensure appropriate classification, investigation and prosecution of hate crimes, including any crimes committed on the basis of ethnicity, sexual orientation and gender identity;
- q) Office of the Prosecutor General and other law enforcement agencies to properly address and investigate manifestations of intolerance, including threats of violence, by extreme right-wing groups against individuals of minority social groups and those holding alternative political opinions;
- r) Government of Ukraine to ensure that the language provision in the new Law on Education does not lead to violations of the rights of minorities and to avoid any discrimination against certain minority groups;
- s) Government authorities to create an administrative procedure, which is accessible to all, without discrimination of any kind, and free of charge, enabling use of documents relating to the facts of birth and death which are issued on territory not under Government control in the process of recognition of such facts under Ukrainian legislation, and maintain the judicial procedure as an alternative for disputable cases.

173. 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 and maintenance of civilian infrastructure in a timely manner;

- b) Strictly adhere to international humanitarian law standards on the prohibition of use of weapons with indiscriminate effects in populated areas, including those with a wide impact area or the capacity to deliver multiple munitions over a wide area;
- c) Respect the agreement reached in Minsk on 19 July 2017 in which parties expressed commitment to create “safety zones” around the critical civilian water facilities of Donetsk Filtration Station and First Lift Pumping Station in Donetsk region, and expand the list of such “safety zones” to include facilities which house hazardous materials that would endanger civilians and the environment if damaged by the armed hostilities;
- d) Take necessary measures to ensure protection of civilian population living close to the contact line and in the case that the security of the civilian population or military imperative demand evacuation, ensure humane conditions of such evacuation and provide adequate alternative accommodation;
- e) Enable and facilitate the voluntary transfer of all pre-conflict detainees to government-controlled territory, regardless of their registered place of residence, in order to enable contact with their families without the unnecessary hardship linked to restrictions on freedom of movement;
- f) Facilitate the safe and unimpeded passage of civilians across the contact line by ensuring that crossing routes and entry-exit checkpoints are a no-fire area and by increasing the number of crossing routes, especially in Luhansk region by opening the Zolote crossing route for vehicles and pedestrian traffic;
- g) Refrain from unnecessary impediments to access of humanitarian assistance to people in need, including in villages and settlements located close to the contact line;
- h) Armed groups of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to respect freedom of religion or belief in territory under their control and refrain from infringement upon this right, including by halting the seizure of religious buildings of Jehovah’s Witnesses and the harassment of their parishioners;
- i) Armed groups of the ‘Luhansk people’s republic’ to ensure proper respect for property rights of IDPs when conducting any inventory of abandoned property.

174. 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 human rights in Crimea for all and respect obligations that apply to an occupying power pursuant to international humanitarian law provisions;
- c) Investigate all cases of enforced disappearance, torture and ill-treatment involving officers of the Crimean branch of the FSB, bring perpetrators to justice and ensure redress for victims;
- d) Refrain from application of anti-extremism and anti-terrorism legislation to criminalize peaceful religious conduct of devout Muslims in Crimea, and immediately release all persons arrested and charged with such crimes;

- e) **Put an end to searches of houses indiscriminately affecting Crimean Tatars by law enforcement agencies in Crimea;**
- f) **Ensure that the rights to freedom of expression, peaceful assembly, thought, conscience and religion can be exercised by any individual and group in Crimea, without discrimination on any grounds, including race, nationality, political views, ethnicity or sexual orientation;**
- g) **Comply with the international humanitarian law prohibition against compelling residents of the occupied territory of Crimea to serve in the armed forces of the Russian Federation;**

175. **To the international community:**

- a) **Continue using all diplomatic means to press all parties involved to end hostilities, by emphasizing the human rights situation and suffering of civilians caused by the active armed conflict;**
- b) **Support the Ministry of Justice and other Government actors in carrying out penitentiary reform in Ukraine which will improve material conditions and provision of services, particularly medical services, in places of detention;**
- c) **Ensure that the Media Freedom Guidelines developed for Ukraine by international media experts and lawyers continue to adhere to international standards and best practices in the domain of freedom of expression during any review or amendment process;**
- d) **Support the Government of Ukraine in devising laws and policies that promote inclusiveness and social cohesion.**

# Annex 777

OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of  
Crimea, No. 12-401/2016 (17 November 2016)





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

**Situation of human rights in the temporarily  
occupied Autonomous Republic of Crimea and the  
city of Sevastopol (Ukraine)**



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## I. Executive Summary

1. On 14 March 2014, following a request of the Government of Ukraine addressed to the United Nations Secretary-General to establish a human rights mission in Ukraine, the Office of the United Nations High Commissioner for Human Rights (OHCHR) deployed a Human Rights Monitoring Mission in Ukraine (HRMMU). Since then, HRMMU has been collecting and analyzing information on the human rights situation throughout Ukraine, including in the Autonomous Republic of Crimea and the city of Sevastopol<sup>1</sup> on the basis of United Nations General Assembly resolutions 68/262, reaffirming the territorial integrity of Ukraine and 71/205 referring to the Crimean peninsula as Ukrainian territory temporarily occupied<sup>2</sup> by the Russian Federation. According to the Constitution of Ukraine, Crimea and the city of Sevastopol are separate administrative units of the Crimean peninsula having their own governing institutions.

2. The present report was developed based on the mandate of OHCHR and HRMMU, but also following a request by General Assembly resolution 71/205<sup>3</sup> on the *“Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)”* for a dedicated thematic report of OHCHR on the “situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol”. The report covers the period from 22 February 2014 to 12 September 2017. HRMMU has not been provided access to Crimea by Russian Federation authorities since its former Head of Mission accompanied the former Assistant Secretary-General for Human Rights, Ivan Šimonović, on 21-22 March 2014. As a result, it has been monitoring human rights developments in Crimea from mainland Ukraine.

3. Pro-Russian groups in Crimea rejected the ousting by Parliament of former President of Ukraine Viktor Yanukovich on 22 February 2014, criticizing it as an unconstitutional change of power. One of these groups was the ‘people’s militia’, a local paramilitary formation created on 23 February 2014, and commonly referred to as the ‘Crimean self-defence’.<sup>4</sup> With the support of Russian Federation troops<sup>5</sup>, the Crimean self-defence-blocked key infrastructure, airports and military installations and took control of strategic facilities. It has been accused of committing numerous human rights abuses with impunity since the end of February 2014.

4. The President of the Russian Federation Vladimir Putin stated that in a meeting with heads of security agencies during the night of 22 and 23 February 2014 he took the decision to “start working on the return of Crimea to the Russian Federation”.<sup>6</sup>

5. On 27 February 2014, uniformed men without insignia took control of the Parliament of Crimea. On the same day, the Parliament of Crimea dismissed the Government of Crimea. On 11 March 2014, the Parliaments of Crimea and Sevastopol adopted a joint Declaration of Independence stating that Crimea and Sevastopol will unite to form an independent state - the “Republic of Crimea” - and seek integration into the Russian Federation if Crimean residents choose to join the Russian Federation at a referendum scheduled for 16 March.<sup>7</sup> According to the pro-Russian authorities in Crimea, a large majority of voters backed Crimea’s “incorporation” into the Russian Federation. The referendum was declared invalid by the Government of Ukraine and the United Nations General Assembly. The United Nations Secretary-General Ban-Ki Moon expressed “deep concern and disappointment”, adding that the referendum would only exacerbate an “already complex and tense situation”.<sup>8</sup> Subsequently, the Russian Federation and the “Republic of Crimea” signed on 18 March 2014 a “treaty of accession” effectively annexing the peninsula into the Russian Federation.

6. One consequence of this development was the imposition of Russian Federation citizenship on residents of Crimea. This has resulted in regressive effects on the enjoyment of human rights, particularly for those who refused to automatically adopt Russian

Federation citizenship, were ineligible to obtain it, or were required to forfeit their Ukrainian citizenship in order to remain employed.

7. Since the beginning of occupation, Ukrainian laws were substituted by Russian Federation laws, in violation of the obligation under international humanitarian law to respect the existing law of the occupied territory.<sup>9</sup> Among other implications, this led to the arbitrary implementation of Russian Federation criminal law provisions designed to fight terrorism, extremism and separatism, which have restricted the right to liberty and security of the person and the space for the enjoyment of fundamental freedoms.

8. Laws and judicial decisions deriving from the implementation of the legal framework of the Russian Federation in Crimea have further undermined the exercise of fundamental freedoms. Mandatory re-registration requirements were imposed on NGOs, media outlets and religious communities in Crimea. Russian Federation authorities have denied a number of them the right to re-register, generally on procedural grounds, raising concerns about the use of legal norms and procedures to silence dissent or criticism.

9. Most affected by these restrictions were individuals opposed to the March 2014 referendum or criticizing Russian Federation control of Crimea, such as journalists, bloggers, supporters of the Mejlis,<sup>10</sup> pro-Ukrainian and Maidan activists, as well as persons with no declared political affiliation but advocating strict compliance with the tenets of Islam, who are often accused of belonging to extremist groups banned in the Russian Federation, such as Hizb ut-Tahrir. The rights of these people to freedom of opinion and expression, association, peaceful assembly, movement, thought, conscience and religion, were obstructed through acts of intimidation, pressure, physical attacks, warnings as well as harassment through judicial measures, including prohibitions, house searches, detentions and sanctions.

10. Russian Federation justice system applied in Crimea often failed to uphold fair trial rights and due process guarantees. Court decisions have confirmed actions, decisions and requests of investigating or prosecuting bodies, seemingly without proper judicial oversight. Courts frequently ignored credible claims of human rights violations occurring in detention. Judges have applied Russian Federation criminal law provisions to a wide variety of peaceful assemblies, speech and activities, and in some cases retroactively to events that preceded the temporary occupation of Crimea or occurred outside of the peninsula in mainland Ukraine.

11. Grave human rights violations, such as arbitrary arrests and detentions, enforced disappearances, ill-treatment and torture, and at least one extra-judicial execution were documented. For a three-week period following the overthrow of Ukrainian authorities in Crimea, human rights abuses occurring on the peninsula were attributed to members of the Crimean self-defence and various Cossack groups. Following Crimea's temporary occupation, on 18 March 2014, representatives of the Crimean Federal Security Service of the Russian Federation (FSB) and police were more frequently mentioned as perpetrators.

12. While those human rights violations and abuses have affected Crimean residents of diverse ethnic backgrounds, Crimean Tatars were particularly targeted especially those with links to the Mejlis, which boycotted the March 2014 referendum and initiated public protests in favour of Crimea remaining a part of Ukraine. Intrusive law enforcement raids of private properties have also disproportionately affected the Crimean Tatars and interfered with their right to privacy under the justification of fighting extremism. Furthermore, the ban of the Mejlis, imposed in April 2016 by the Supreme Court of Crimea, has infringed on the civil, political and cultural rights of Crimean Tatars.

13. The Russian Federation authorities in Crimea have failed to effectively investigate most allegations of human rights violations committed by the security forces or armed groups acting under the direction or control of the State. Failure to prosecute these acts and ensure accountability has denied victims proper remedy and strengthened impunity, potentially encouraging the continued perpetration of human rights violations.

14. Since the beginning of the temporary occupation, all penitentiary institutions in Crimea have been integrated into the penitentiary system of the Russian Federation, leading to numerous transfers of detainees from Crimea to penal colonies in the Russian Federation, contrary to provisions of international humanitarian law.<sup>11</sup>

15. Restrictions affecting freedom of movement to and from Crimea have been imposed by the Russian Federation and Ukraine on the grounds of security or pursuant to immigration rules. They include five-year exiles, deportations, prohibitions on entry of individuals and public transportation, non-recognition of documents, and restrictive regulations applicable to travel of children and transportation of personal belongings.

16. Large scale expropriation of public and private property has been conducted without compensation or regard for international humanitarian law provisions protecting property from seizures or destruction. Crimean Tatars who returned from deportation in the 1990s and built their houses on land plots without obtaining construction permits remain at risk of seeing their security of tenure contested and being forcibly evicted.

17. The space for public manifestation of Ukrainian culture and identity has shrunk significantly. Groups manifesting their attachment to national symbols, dates or historic figures have been issued warnings or sanctioned by courts for violating public order or conducting unauthorized rallies. Education in the Ukrainian language has almost disappeared from Crimea, jeopardizing one of the pillars of an individual's identity and cultural affiliation.

18. The availability of health services in free-of-charge State medical institutions has been impaired since March 2014 due to the numerous departures of doctors and other medical staff to more lucrative private sector institutions in Crimea. This has resulted in delayed treatment of the most economically disadvantaged, jeopardizing their right to life and health. Retrogressive measures stemming from the implementation of Russian Federation legislation have affected people suffering from drug dependence.

19. The right of the Crimean population to an adequate standard of living has been affected by measures taken by Ukrainian authorities or implemented on mainland Ukraine, including the interruption of water and energy supplies to the peninsula. Under international humanitarian law, the Russian Federation as the occupying power is obliged to ensure to the fullest extent of the means available to it sufficient hygiene and public health standards, as well as the provision of food and medical care to the population. At the same time, this does not exonerate Ukraine from its obligations under the International Covenant on Economic, Social and Cultural Rights not to interfere with the enjoyment of the rights it enshrines, and from respecting the requirement under international humanitarian law to ensure that the basic needs of the population continue to be met under conditions of occupation.

## **II. Introduction**

20. The political events that marked the Maidan protests in Kyiv, and culminated in the departure, on 21 February 2014, of then President of Ukraine Viktor Yanukovich and the establishment of an interim Government of Ukraine on 23 February, affected Crimea. The Crimean peninsula had also been the theatre of pro- and larger anti-Maidan rallies since December 2013.<sup>12</sup>

21. The President of the Russian Federation Vladimir Putin stated that in a meeting with heads of security agencies during the night of 22 and 23 February 2014 he took the decision to "start working on the return of Crimea to the Russian Federation".<sup>13</sup>



22. On 23 February 2014, demonstrations in Sevastopol led to the resignation of the Kyiv-appointed authorities and the installation by the local parliament of a pro-Russian “People’s Mayor” on 24 February.<sup>14</sup>

23. In Simferopol, the capital of the Autonomous Republic of Crimea, supporters of Ukrainian unity, mainly Crimean Tatars, clashed on 26 February with pro-Russian residents in front of the parliament. A stampede left two people dead and some 70 injured. On the following night, armed groups without insignia took over the buildings of the local government and parliament. On 27 February, members of the Parliament of Crimea, in the presence of gunmen, dismissed the local Government and elected Sergey Aksenov as the Head of Crimea.<sup>15</sup>

24. On 6 March 2014, the Parliament of Crimea adopted a resolution calling for a referendum<sup>16</sup> on the status of the peninsula, to be held on 16 March 2014, basing the decision on the “absence of legitimate State organs in Ukraine”.<sup>17</sup> In an Opinion<sup>18</sup> concerning the compatibility of this resolution with constitutional principles, the European Commission for Democracy through Law (Venice Commission) of the Council of Europe noted that the referendum violated the Constitution of Ukraine, and asserted that circumstances in Crimea did not allow for a referendum to be held in line with European democratic standards.<sup>19</sup> On 17 March 2014, United Nations Secretary-General Ban-Ki Moon regretted that the referendum would only exacerbate an “already complex and tense situation”.<sup>20</sup> Furthermore, during his mission to Crimea on 21 and 22 March 2014, former UN Assistant Secretary-General for Human Rights Ivan Šimonović received information on alleged cases of non-Ukrainian citizens participating in the referendum, as well as individuals voting numerous times in different locations.<sup>21</sup>

25. According to the pro-Russian authorities in Crimea, an overwhelming majority of the Crimean population voted in favour of joining the Russian Federation. Opponents boycotted the poll, considering it as unlawful.<sup>22</sup> The authorities of Ukraine declared these developments unconstitutional and terminated the powers of Crimean institutions.<sup>23</sup>

26. On 18 March 2014 a “*Treaty on the Accession of the Republic of Crimea to the Russian Federation*” (“*Treaty on Accession*”) was signed in Moscow, and on 21 March 2014, the Parliament of the Russian Federation ratified a Constitutional Law “*On the Accession of the Republic of Crimea to the Russian Federation and the Creation of the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol within the Russian Federation*”.

27. On 15 April 2014, the Parliament of Ukraine passed a law designed to regulate legal aspects related to the temporary occupation of Crimea.<sup>24</sup> It defines principles applying to legal and property rights, economic activity, social rights and benefits, freedom of movement, and compensation for damages incurred from the temporary occupation.

28. The General Assembly of the United Nations adopted two resolutions on Crimea. Resolution 68/262<sup>25</sup> on the “*Territorial integrity of Ukraine*” of 27 March 2014 states that the March 2014 referendum has “no validity” and cannot form the basis for any alteration of the status of Crimea. Resolution 71/205 on the “*Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)*”, adopted on 19 December 2016<sup>26</sup>, refers to Crimea as being under the “temporary occupation” of the Russian Federation. It calls on the latter to abide by the Geneva Conventions. It also urges the Russian Federation to ensure proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations (NGOs) to the peninsula, and requests the United Nations Secretary-General to seek ways and means to ensure safe and unfettered access to Crimea by established regional and international human rights monitoring mechanisms. In addition, it requests the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a dedicated thematic report on the human rights situation in Crimea.

29. The present report was developed pursuant to General Assembly Resolution 71/205, and covers the period between 22 February 2014 and 12 September 2017. Since the adoption of this resolution, OHCHR has been analyzing incidents occurring in Crimea based on an international humanitarian law framework, as well as against international human rights standards.

### **III. Methodology**

30. HRMMU has a mandate *inter alia* to monitor and publicly report on the human rights situation in Ukraine through teams based in various locations, including through a presence in Crimea's capital, Simferopol.<sup>27</sup>

31. Former Assistant Secretary-General for Human Rights Ivan Šimonović was the last United Nations official to visit the Crimean peninsula, on 21 and 22 March 2014.<sup>28</sup>

32. On 18 September 2014, a letter addressed by HRMMU to the Head of Crimea requested the opportunity to establish a sub-office in Simferopol, in line with its mandate and General Assembly resolution 68/262. The response, received on 8 October 2014, stated that HRMMU had been deployed on the territory of Ukraine upon the invitation of the Government of Ukraine; that Crimea was part of the Russian Federation; and that questions of international relations were not within the competence of Crimean institutions.

33. On 20 April 2017, following consultations with the Government of Ukraine, OHCHR informed the Government of the Russian Federation of its intention to send a mission of HRMMU to Crimea in order to prepare the report on the human rights situation in Crimea requested by General Assembly resolution 71/205. While no formal response was received, OHCHR was notified informally that it would not be granted access to Crimea due to its mandate covering Ukraine and that any OHCHR mission would need to be agreed upon directly with the Russian Federation authorities. A second notification mentioning an OHCHR mission to Crimea, addressed to the Russian Federation on 13 June 2017, remained unanswered at the closing date of the present report.

34. In response, the Government of Ukraine, in its Notes Verbales of 30 March 2017, 19 July 2017, 28 July 2017 and 7 September 2017, reaffirmed its position on the need to ensure safe and unfettered access to the Autonomous Republic of Crimea and the city of Sevastopol by established regional and international human rights monitoring mechanisms to enable them to carry out their mandate, expressed its readiness to provide HRMMU with full freedom of movement throughout Ukraine, and confirmed its strong commitment to properly implement resolution 71/205 of the United Nations General Assembly.

35. Given the lack of access to Crimea, HRMMU has monitored the human rights situation in the peninsula from its presence in mainland Ukraine. HRMMU systematically collects and analyzes information gathered through direct interviews and fact-finding missions, including at the Administrative Boundary Line (ABL) between mainland Ukraine and Crimea. This report only describes allegations of human rights violations and abuses and violations of international humanitarian law that OHCHR could verify and corroborate in accordance with its methodology. OHCHR is committed to the protection of its sources and systematically assesses the potential risks of harm and retaliation against them.<sup>29</sup>

### **IV. Application of International Law**

36. International human rights and humanitarian law are complementary bodies of international law. In the case of occupation, humanitarian law and human rights law apply concurrently and place protection obligations both on the occupying power and the State whose territory is under occupation.

## 1. *International Human Rights Law*

37. Human rights are guaranteed by international treaties and agreements, as well as customary law, which apply at all times, regardless of peace or war.

38. Under international law, the Russian Federation must respect its obligations under international human rights law in Crimea from the moment it acquired “effective control” over the territory.<sup>30</sup>

39. Ukraine considers that the occupation of Crimea started on 20 February 2014<sup>31</sup> and denies having human rights obligations in relation to this territory from the moment it lost effective control over the peninsula. On 14 May 2015, the Parliament of Ukraine adopted a Declaration on Derogation<sup>32</sup> stating that the Russian Federation “*shall bear full responsibility for observance of human rights and performance of the respective international obligations at the annexed and temporarily occupied territory.*”

40. On 19 April 2017, the Government of Ukraine established an Intergovernmental Commission on derogation in order to review periodically the territorial application of the derogation. Its mandate includes the review of the necessity and proportionality of derogation measures and making proposals to the Government on the continuation and scope of the derogation.

41. OHCHR notes that States are allowed, in exceptional circumstances, namely in times of public emergency threatening the life of the nation, to adjust their obligations temporarily under a treaty. However, under the International Covenant on Civil and Political Rights, States have a continuing obligation to ensure respect for the rights recognized in the Covenant in relation to the population of a territory controlled by *de facto* authorities or armed groups within the limits of their effective power.<sup>33</sup> Similarly, under the case law of the European Court of Human Rights, a State that has lost effective control over a part of its territory is nevertheless obliged under Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to use all the legal and diplomatic means available to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention to those living there, as the region is recognized under public international law as part of its territory.<sup>34</sup>

## 2. *International Humanitarian Law*

42. Both the Russian Federation and Ukraine are parties to the 1907 Hague Regulations, the Fourth Geneva Convention of 1949, and the 1977 Additional Protocol I to the 1949 Geneva Conventions. This body of international law provides the primary basis for rules governing occupation. The legal regime of an occupied territory is also regulated by international customary law.

43. An occupying power does not acquire sovereignty over the occupied territory. The occupying power must respect the laws in force in the occupied territory, unless they constitute a threat to its security or an obstacle to the application of the Fourth Geneva Convention.<sup>35</sup>

44. Under international law, States are responsible for violations of international humanitarian law attributable to them, including: violations committed by their organs, including their armed forces; violations committed by persons or entities they have empowered to exercise elements of governmental authority; violations committed by persons or groups acting in fact on their instructions, or under their direction or control; and violations committed by private persons or groups which they acknowledge and adopt as their own.<sup>36</sup>

45. In 2016, the Office of the Prosecutor of the International Criminal Court found Crimea to be under the occupation of the Russian Federation and stated it will apply an

international armed conflict legal framework to the analysis of facts and alleged crimes perpetrated there.<sup>37</sup>

## V. Population data and movements

46. According to the last census conducted in Ukraine, in 2001, 125 nationalities lived on the Crimean peninsula, which had a population of 2,401,209 (2,024,056 in Crimea and 377,153 in Sevastopol).<sup>38</sup> The census enumerated the population by ethnicity, finding the largest national groups in Crimea and Sevastopol to be Russians, numbering 1,450,394 (60.40 per cent); Ukrainians 576,647 (24.12 per cent); and Crimean Tatars 245,291 (12.26 per cent).

47. There were also 35,157 Belarussians; 13,602 Tatars; 10,088 Armenians; 5,531 Jews; 4,562 Moldovans; 4,459 Poles; 4,377 Azeri; 3,087 Uzbeks; 3,036 Greeks; 3,027 Koreans; 2,790 Germans; 2,679 Chuvash; 2,594 Mordovians; 2,282 Bulgarians 2,137 Georgians; 1,905 Roma; and 1,192 Maris. In addition, 17,298 persons did not declare themselves or belonged to ethnic groups numbering less than 1,000 individuals.

48. In September 2014, the Russian Federation conducted a census on the peninsula, which was not recognized by the Government of Ukraine.<sup>39</sup> According to its results, the population of Crimea and Sevastopol had decreased by 4.8 per cent since 2001, down to 2,284,769, albeit with differences between the two administrative units: in Crimea, the population decreased by 6.5 per cent, to 1,891,465, while that of Sevastopol grew by 4.1 per cent, to 393,304.

49. According to that same census, in the entire peninsula, the number of persons of Russian nationality increased to 1,492,078 (65.31 per cent), the Ukrainians dropped to 344,515 (15.08 per cent) and the Crimean Tatars decreased to 232,340 (10.17 per cent). The other communities diminished, except for the Tatars - a group culturally affiliated with the Volga Tatars and the Crimean Tatars - whose numbers rose from 13,602 to 44,996.

50. Since the beginning of the occupation, the displacement of residents of Crimea - mostly ethnic Ukrainians and Crimean Tatars - had multiple causes, notably the refusal to live under Russian Federation jurisdiction, fear of persecution on ethnic or religious grounds, threats or reported attacks, avoiding military conscription in the Russian Federation army and enrolling in Ukrainian education institutions.

51. In April 2017, the State Emergency Service of Ukraine estimated the number of internally displaced persons (IDPs) from Crimea living in mainland Ukraine at 22,822.<sup>40</sup> Ukrainian NGOs estimate that between 50,000 and 60,000 former Crimean residents could be displaced in mainland Ukraine.<sup>41</sup>

52. The demographic structure of Crimea continues to change, mainly as a result of a continuous influx of Russian Federation citizens into Crimea, which started after the 2014 referendum. Most of them are pensioners, public servants and servicemen with their families. Around 13,200 IDPs fleeing the conflict in eastern Ukraine had taken refuge in Crimea at the end of 2014.<sup>42</sup>

53. According to the State Statistics Service of the Russian Federation, as of 1 January 2017, the population of the Crimean peninsula had increased by 56,152 since the September 2014 census, to 2,340,921.<sup>43</sup> During this period, the population of the city of Sevastopol, where the Black Sea Fleet is based, rose from 393,304 to 428,753, which constitutes an eight per cent increase.

54. OHCHR recalls that the 1949 Geneva Convention relative to the Protection on Civilian Persons in Time of War provides in Article 49 that "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies".

## VI. Civil and Political Rights

### A. Right to nationality

55. The adoption of the *Treaty on Accession* on 18 March 2014 had an immediate consequence for the status of residents of Crimea and rights attached to it: all Ukrainian citizens and stateless persons who were permanently residing on the peninsula, as evidenced by a residency registration stamp in the passport, were automatically recognized as citizens of the Russian Federation.<sup>44</sup> An exception was made for persons who, within one month of the entry into force of the treaty (i.e. by 18 April 2014), rejected Russian Federation citizenship in writing.

56. The automatic citizenship rule led to the emergence of three vulnerable groups: those who rejected in writing Russian Federation citizenship; those who, for lack of a residency registration in Crimea, did not meet the legal criteria to become Russian Federation citizens; and those who had to renounce their Ukrainian citizenship to keep their employment. As of May 2015, the High Commissioner for Human Rights of the Russian Federation (Ombudsperson) estimated that around 100,000 persons living in Crimea (about 4 per cent of the population) did not have Russian Federation citizenship.<sup>45</sup>

57. Imposing citizenship on the inhabitants of an occupied territory can be equated to compelling them to swear allegiance to a power they may consider as hostile, which is forbidden under the Fourth Geneva Convention.<sup>46</sup> In addition to being in violation of international humanitarian law, the automatic citizenship rule raises a number of important concerns under international human rights law.

#### 1. *Ukrainian citizens having Crimean residency registration who rejected Russian Federation citizenship*

58. The procedure for rejecting Russian Federation citizenship, which had to be completed by 18 April 2014, was marked by certain constraints: instructions from the Russian Federal Migration Service (FMS) on the refusal procedure were only made available on 1 April; information about FMS centres was not available until 4 April; only two FMS centres were functioning on 9 April 2014; and some requirements in the procedure evolved over time, such as the demand that both parents make the application on behalf of their child.<sup>47</sup>

59. After 18 April 2014, FMS reported that 3,427 permanent residents of Crimea had applied to opt out of automatically obtaining Russian Federation citizenship.<sup>48</sup>

60. Renouncing Russian Federation citizenship remains legally possible on the basis of the 2002 law *On Citizenship*, except for people who were indicted, sentenced, have outstanding obligations towards the Russian Federation, or have no other citizenship or guarantee for the acquisition thereof.<sup>49</sup>

61. Residents of Crimea who opted out of Russian Federation citizenship became foreigners. They could obtain residency permits through a simplified procedure, giving them certain rights enjoyed by Russian Federation citizens, such as the right to pension, free health insurance, social allowances, and the right to exercise professions for which Russian Federation citizenship is not a mandatory requirement.<sup>50</sup>

62. However, overall, persons holding a residency permit and no Russian Federation citizenship do not enjoy equality before the law and are deprived of important rights. They cannot own agricultural land,<sup>51</sup> vote and be elected, register a religious community, apply to hold a public meeting, hold positions in the public administration and re-register their private vehicle on the peninsula.<sup>52</sup>

63. OHCHR documented some cases of Crimean residents who had rejected Russian Federation citizenship and faced discrimination. For instance, a man from Simferopol was subjected to regular psychological harassment by his employer for having renounced Russian Federation citizenship. In 2016, after two years of being pushed by his employer to take back his formal rejection of Russian Federation citizenship, he was dismissed after being told that his “anti-Russian” position disqualified him from continued employment.<sup>53</sup> Two of his colleagues were also dismissed, including one who rejected Russian Federation citizenship, and another who took up Russian Federation citizenship but publicly expressed pro-Ukrainian views.

2. *Ukrainian citizens without Crimean residency registration who are excluded from Russian Federation citizenship*

64. Ukrainian citizens living in Crimea whose passport stamps indicated they were registered in mainland Ukraine could not become citizens of the Russian Federation. They assumed the status of a foreigner. As such, they could no longer legally remain in Crimea for more than 90 days within a period of 180 days from the moment they entered the peninsula, according to Russian Federation legislation applicable to foreigners.

65. Non-compliance with immigration regulations imposed by the Russian Federation can lead to court-ordered deportations. For instance, in 2016, a court in Sevastopol ordered a Ukrainian citizen who had overstayed to be deported to mainland Ukraine although he owned property in this city<sup>54</sup>; another court deported a Ukrainian citizen who had a wife and children in Crimea.<sup>55</sup>

66. Under international humanitarian law, deportation or transfer of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, is prohibited regardless of the motive.<sup>56</sup>

67. Rules regulating stay were not consistently applied, sometimes favoring individuals who supported Crimea’s accession to the Russian Federation. For example, the Supreme Court of Crimea ruled not to deport a Ukrainian citizen who described himself as “an active participant of the Russian Spring in Sevastopol” and claimed his deportation to Ukraine would threaten his life and well-being.<sup>57</sup> The Court accepted the argument that he had a family in Crimea and that his deportation would interfere with his private and family life.

68. Employment of Ukrainian citizens lacking Crimean residency registration is prohibited. A quota system under Russian Federation law allows up to 5,000 foreigners to reside and work in Crimea but this only applies to foreigners with non-Ukrainian passports who were living in Crimea before March 2014 and held Ukrainian residence permits.<sup>58</sup>

69. In 2016, police raids against private businesses were conducted, resulting in the opening of administrative proceedings against owners of catering institutions<sup>59</sup> and private entrepreneurs<sup>60</sup> who were illegally employing Ukrainian citizens. People illegally employed risk deportation and their employers face administrative sanctions of up to 800,000 RUB (nearly USD 13,200) or closure of their business for up to 90 days.

70. Ukrainian citizens without residency registration in Crimea are excluded from free health insurance and access to public hospitals. In one case documented by OHCHR, a Ukrainian woman who had lived in Crimea for 10 years, but was registered in Kharkiv, died in 2015 after a public hospital in Crimea refused to treat her due to the fact that she did not have health insurance.<sup>61</sup> According to Russian Federation legislation, she was a foreigner and, as such, she did not have a Russian Federation passport affording the right to free health insurance and access to public hospitals. The refusal to provide life-saving medical treatment - including due to origin or status, such as citizenship - constitutes a grave violation of the right to the highest attainable level of physical and mental health, and



a violation of the obligation, under international humanitarian law, to ensure that the health system in place in an occupied territory continues to function adequately.

3. *Ukrainian citizens who were made to renounce Ukrainian citizenship*

71. Russian Federation law does not require Ukrainian citizens who apply for Russian Federation citizenship to surrender their Ukrainian passports or relinquish their Ukrainian citizenship. However, residents of Crimea who were employed in government and municipal jobs before the referendum were obliged by law to give up their Ukrainian citizenship no later than 18 April 2014, in addition to obtaining a passport of the Russian Federation if they wanted to retain their employment.<sup>62</sup> A law adopted by the Parliament of Crimea further required them to possess “a copy of the document confirming denial of existing citizenship of another State and the surrender of a passport of another State.”<sup>63</sup>

72. Before the Russian Federation occupied Crimea, 20,384 civil servants were employed on the peninsula.<sup>64</sup> According to the head of the FMS department for citizenship, asylum and readmission in Crimea, as of 21 May 2015, 19,000 Crimean residents had applied to renounce Ukrainian citizenship.<sup>65</sup> While no information is provided about their identity or profession, it is likely that civil servants constitute the bulk of this group. This is contrary to the Fourth Geneva Convention, which prohibits an occupying power from altering the status of public officials in the territories it occupies.<sup>66</sup>

**B. Administration of justice and fair trial rights**

73. The *Treaty on Accession* provided for a transition period until 1 January 2015 to fully apply the legal framework of the Russian Federation in Crimea.<sup>67</sup> In practice, the gradual substitution of the Ukrainian legal system by that of the Russian Federation implied that both systems coexisted, regulating different spheres and consequently causing confusion for legal practitioners as well as legal uncertainty for rights-holders.<sup>68</sup>

74. OHCHR recalls that in accordance with international humanitarian law, the penal laws in place in the occupied territory must remain in force and be applied by courts, with the exception of norms that constitute a threat to the security of the occupying power, or an obstacle to the application of relevant international humanitarian law provisions.<sup>69</sup>

75. As documented by OHCHR, the judicial and law enforcement authorities of the Russian Federation in Crimea frequently violated the presumption of innocence; the right to information without delay of the nature and cause of charge; the right to defend oneself or be assisted by a lawyer of one’s own choice; the right to adequate time to prepare defence; the right to trial without undue delay; the right to appeal or review; the right to a hearing by an independent and impartial tribunal; and the right not to be compelled to testify against oneself or confess guilt.

76. OHCHR documented cases demonstrating that allegations of torture and ill-treatment in post-referendum Crimea committed by State agents of the Russian Federation during pre-trial investigations were often disregarded by courts. For instance, in March 2015, a court rejected the request of a defence lawyer to exclude evidence against his client reportedly obtained under duress. The judge stated that torture allegations should be examined together with other elements in order not to compromise the establishment of facts and responsibility.<sup>70</sup>

77. Suspects were charged and some convicted in relation to acts which occurred before the application of Russian Federation legislation in Crimea, in disregard of the principle of non-retroactive application of criminal law enshrined in international human rights and humanitarian law treaties.<sup>71</sup> On 11 September 2017, a court in Crimea sentenced a deputy chair of the Mejlis, Akhtem Chyigoz, to eight years of imprisonment on the basis of Russian Federation legislation, after it found the accused guilty of organizing mass protests, which were held on 26 February 2014 when the legal framework of Ukraine still

applied in Crimea. In addition, two individuals received prison sentences in 2015 and 2016 for allegedly injuring 'Berkut' police officers during the Maidan protests in Kyiv, on 18 February 2014.<sup>72</sup> Their convictions were based on Russian Federation legislation introduced in Crimea after 18 March 2014.

78. Some judgments were passed in apparent disregard of the right to a hearing by a competent, independent and impartial tribunal. In 2017, 10 Crimean Tatars arrested for filming a police raid of the home of another Crimean Tatar man were judged in one day and sentenced to five days of administrative arrest. 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>73</sup>

79. Instances of intimidation of defence lawyers representing clients opposed to the presence of the Russian Federation in Crimea have also been reported. On 25 January 2017, a lawyer from the Russian Federation defending one of the deputy chairmen of the Mejlis was forcefully brought to the FSB office in Simferopol for interrogation and asked to disclose details of the case concerning his client. Despite being pressed to cooperate, he refused, invoking his duty to uphold the attorney-client privilege, and was released after two and a half hours. On 14 February 2017, an appellate court upheld a first instance decision to enable the FSB investigator to interrogate him as a witness in a criminal case against one of his clients.<sup>74</sup> OHCHR reiterates that international administration of justice standards explicitly protect the freedom of exercise of the profession of lawyer.<sup>75</sup>

### **C. Right to life**

80. In February, March and April 2014, four persons were killed and two others died, as described in this chapter, during incidents related to Crimea's unrecognized accession to the Russian Federation. While other deaths, including murders, have occurred in Crimea in the three and a half years since the occupation began, OHCHR does not have credible circumstantial evidence that they could be attributed to State agents of the Russian Federation in Crimea.

81. In March 2014, a pro-Ukrainian Crimean Tatar activist, Mr. Reshat Ametov, was abducted, tortured and summarily executed by people believed to be members of the Crimean self-defence. He disappeared on 3 March after staging a one-man picket in front of Crimea's government building in Simferopol. Video footage shows him being led away by three men in military-style jackets. On 15 March, his body was found in a village of the Bilohirsk district, bearing signs of torture.<sup>76</sup> The Crimean police opened a criminal investigation. As of December 2014, more than 270 witnesses had been interrogated and over 50 forensic analyses and 50 examinations had been carried out.<sup>77</sup> OHCHR has serious doubts about the effectiveness of these investigations. The suspects, members of the Crimean self-defence, who were filmed abducting the victim, were only interrogated as witnesses and later released. In 2015, the investigation was suspended due to the fact that the individual suspected by the police to be the perpetrator was allegedly no longer in Crimea.<sup>78</sup> It resumed in 2016 but has since been conducted intermittently.<sup>79</sup>

82. Three killings occurred during armed incidents. On 18 March 2014, one Ukrainian serviceman and one Crimean self-defence volunteer were killed during a shooting incident in Simferopol.<sup>80</sup> OHCHR does not have information about the investigation conducted in relation to this case. On 6 April 2014, a Ukrainian Army naval officer was killed by a Russian Federation serviceman in a dormitory in Novofedorivka.<sup>81</sup> A Russian Federation military tribunal in Crimea sentenced the perpetrator to two years of imprisonment on 13 March 2015. The accused was convicted of homicide committed in excess of the requirements of justifiable defence. In addition, the victim's widow sued and obtained from the Ministry of Defence of the Russian Federation 500,000 RUB (about USD 8,000) in compensation for the harm incurred.<sup>82</sup>

83. The impartiality of investigations carried out by the Crimean police is particularly questionable in relation to the violence that occurred on 26 February 2014. On that date, pro-Ukrainian and pro-Russian groups clashed in front of the parliament of Crimea, resulting in the death of two pro-Russian demonstrators.<sup>83</sup> The criminal proceedings identified pro-Ukrainian supporters belonging to the Crimean Tatar community as being the only suspects although the skirmishes involved representatives of pro-Russian groups as well.<sup>84</sup>

#### **D. Right to physical and mental integrity**

84. The right to physical and mental integrity encompasses freedom from torture and other inhuman treatment. The Russian Federation and Ukraine have both ratified international conventions obliging them to prevent and redress torture, cruel and/or inhuman or degrading treatment.<sup>85</sup>

85. Multiple and grave violations of the right to physical and mental integrity have been committed by state agents of the Russian Federation in Crimea since 2014. The absence of investigations suggests that their perpetrators have benefited from and continue to enjoy impunity.

86. Victims and witnesses have accused the Crimean self-defence of violence against pro-Ukrainian activists, mainly in 2014. Its members have reportedly been implicated in attacks, abductions, enforced disappearances, one summary execution, arbitrary detention, and torture and ill-treatment of individuals opposed to the March 2014 referendum, as well as of Maidan supporters, members and affiliates of the Mejlis, journalists and Ukrainian servicemen.<sup>86</sup> On 11 June 2014, the Parliament of Crimea legalized the Crimean self-defence by turning it into a civil group with powers to assist the police.<sup>87</sup>

87. The Russian Federation has indicated that several criminal cases were opened in which the suspects were members of the Crimean self-defence. These cases are connected with a robbery, in April 2014, and incidents in which vehicles were taken illegally with the threat of the use of firearms.<sup>88</sup>

88. Two legislative initiatives registered in the Crimean and Russian Federation Parliaments in August 2014 proposing immunity from prosecution for actions committed by the self-defence forces have not been pursued.

89. In view of the multiplicity of testimonies mentioning illicit acts committed by members of the self-defence with apparent impunity, OHCHR has serious doubts that the Russian Federation authorities have complied with their obligations to ensure accountability through effective and impartial investigations. The duty to investigate and prosecute is made more compelling by the fact that the existence of the self-defence group has been legalized, and its members have been recognized as agents of the State.<sup>89</sup>

90. FSB and the Crimean police have also been accused of violating the right to physical and mental integrity of persons holding dissenting views, in particular Crimean Tatars and ethnic Ukrainians. Such violations have occurred prior to and during detention, in penitentiary institutions and in places where people were illegally kept *incommunicado*.

91. In two cases documented by OHCHR in 2016, pro-Ukrainian supporters were compelled by FSB officers to confess to terrorism-related crimes through torture with elements of sexual violence. The victims were kept *incommunicado*, tied, blindfolded, beaten up, subjected to forced nudity, electrocuted through electric wires placed on their genitals, and threatened with rape with a soldering iron and wooden stick.<sup>90</sup>

92. Forced internment in a psychiatric institution has been used as a form of harassment against political opponents, which may amount to torture or ill-treatment. Procedurally, such placements are decided by a judge upon the request of the police or FSB investigator. A deputy Chairman of the Mejlis, Mr. Ilmi Umerov, underwent an imposed

court-ordered ‘psychiatric assessment’ for three weeks<sup>91</sup> after being charged in May 2016 with calls to violate the territorial integrity of the Russian Federation. In November and December 2016 five Crimean Tatar men suspected of being members of Hizb ut-Tahrir, an organization banned for terrorism in the Russian Federation, were also placed in a psychiatric hospital for weeks. During the psychiatric assessment, doctors reportedly asked them unrelated questions, including on their religious practice and political views.<sup>92</sup>

## **E. Right to liberty and security**

93. The right to liberty and security of person exists to ensure that subjects of a State can pursue their daily activities without harassment or apprehension of being restrained without any lawful basis. It includes two key components: freedom from arbitrary arrest or detention; and protection from enforced disappearances. Arbitrary deprivation of liberty may amount to a violation of the requirement of common Article 3 of the Geneva Conventions and Additional Protocol I that all civilians and persons *hors de combat* should be treated humanely.

### *1. Arbitrary arrests and detentions*

94. The Fourth Geneva Convention specifies that in an occupied territory, a civilian may only be interned or placed in assigned residence for “imperative reasons of security” (Article 78). Arbitrary detention is prohibited under customary international humanitarian law<sup>93</sup> and international human rights law protects individuals from arbitrary arrest and detention by the State, as well as by private individuals or entities empowered or authorized by the State to exercise powers of arrest or detention.<sup>94</sup> According to the United Nations Human Rights Committee, “*arbitrariness is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.*”<sup>95</sup> Any deprivation of liberty must therefore be lawful, reasonable and necessary.

95. OHCHR documented multiple allegations of violations of the right to liberty as a result of acts attributed to agents of the Russian Federation authorities in Crimea. While most of them occurred in 2014, fresh claims of unlawful deprivation of liberty are regularly recorded. Arbitrary arrests and detentions take different forms and appear to serve various purposes, from instilling fear, to stifling opposition, and inflicting punishment.

96. In many cases, victims are neither charged nor tried, but detained by the police, FSB or self-defence groups as a form of extra-judicial punishment or harassment. Detention under such circumstances would usually last from several hours to several days, exceeding the legal limits for temporary detention and ignoring procedural requirements, such as the establishment of a protocol of arrest. Many of the victims were journalists, land or business owners, and people arrested during so-called ‘prophylactic’ police operations at markets, mosques, cafés, restaurants or places of entertainment. OHCHR noted a prevalence of members of the Crimean Tatar community among people apprehended during police raids. They were typically taken to the police centre to fight extremism (“Center E”), photographed, fingerprinted and made to provide DNA samples before being released, usually without any charges being pressed.<sup>96</sup>

97. In other cases, people deprived of liberty were charged with offences of extremism, terrorism, territorial integrity violations, detained and tried. This form of treatment has been commonly applied against political opponents, such as Crimean Tatar figures linked to the Mejlis, practising Muslims accused of belonging to banned Islamic groups, and journalists or individuals posting messages critical of the Russian Federation authorities or expressing dissent on social media. Prosecutions often seemed to be tainted by bias and a political agenda.<sup>97</sup> The initial arrests were usually carried out by FSB and followed by searches of victims’ houses and harassment of their families by law

enforcement. Victims were charged and subjected to lengthy pre-trial detention despite a general lack of sufficient evidence.

98. In the most egregious cases, unlawful detentions were accompanied by physical or psychological abuse amounting to torture. Many of the victims were people accused of spying and planning terrorist acts, as well as political and civic activists supporting the Maidan protests and pro-Ukrainian demonstrations in Crimea or seeking to assist Ukrainian soldiers stationed in Crimea. On 9 March 2014, two members of a pro-Ukrainian organization were abducted by the Crimean self-defence, detained in a secret location without the presence of a lawyer for 11 days - and one of them tortured - before being released.<sup>98</sup> The arrests were made without reasonable suspicion, proper motivation and court review, qualifying as violations of the right to liberty and security. In addition, the torture allegations were not investigated, in denial of the right to an effective remedy.

## 2. *Enforced disappearances*

99. Enforced disappearance, as defined by the International Convention for the Protection of All Persons from Enforced Disappearance,<sup>99</sup> violates, or threatens to violate, a range of international humanitarian law norms, most notably the prohibition of arbitrary deprivation of liberty,<sup>100</sup> torture and other cruel or inhuman treatment<sup>101</sup> and murder.<sup>102</sup> The duty to prevent enforced disappearances is further supported by the requirement to record the details of persons deprived of their liberty.<sup>103</sup> The obligations placed on States by the Convention arguably represent customary international law, which Ukraine (which has ratified the Convention) and the Russian Federation (which has not done so) are required to respect. OHCHR notes a precedent in the jurisprudence of the European Court of Human Rights for holding an occupying power liable for violation of the right to liberty and security arising from the failure of authorities to investigate the fate and whereabouts of missing persons in its occupied territory.<sup>104</sup>

100. The first recorded case of enforced disappearance in Crimea occurred on 3 March 2014, less than a week after the establishment of a pro-Russian Government in Crimea, on 27 February.<sup>105</sup> Since then, dozens of persons have gone missing, mostly in 2014. While the majority of victims were released by perpetrators within hours or days, the whereabouts of others are still unknown.

101. The highest number of enforced disappearances in a single month occurred in March 2014, when at least 21 persons were abducted in Crimea. The victims included pro-Ukrainian and Maidan activists, journalists, Crimean Tatars and former and active Ukrainian servicemen. They were held *incommunicado* and often subjected to physical and psychological abuse by armed individuals allegedly belonging to the Crimean self-defence and one Cossack group. Most victims were released after being illegally held from a few hours to several days, with no contact with their relatives or lawyers.<sup>106</sup>

102. OHCHR documented 10 cases of persons who disappeared and are still missing: six Crimean Tatars, three ethnic Ukrainians and one Russian-Tatar - all men. Seven went missing in 2014, two in 2015 and one in 2016.

103. On 1 October 2014, the Head of Crimea decided to create a 'contact group' focusing on the disappearances and other incidents involving Crimean Tatars. The group convened for the first time on 14 October 2014 in the presence of investigative authorities and the relatives of five missing Crimean Tatar men but achieved little beyond information-sharing and the decision to transfer the investigations to the central Investigation Department of the Russian Federation.<sup>107</sup> Of the 10 disappearances mentioned, criminal investigations were still ongoing in only one case as at 12 September 2017.<sup>108</sup> They were suspended in six cases due to the inability to identify suspects,<sup>109</sup> and in three cases no investigative actions have been taken as the disappearances were allegedly not reported.<sup>110</sup>



104. In five cases, the possible involvement of State agents was raised by witnesses who saw the victims being abducted by men dressed in uniform associated with the security forces or the Crimean self-defence. Circumstances which may suggest political motives in the other five cases include the profile of the victims who were pro-Ukrainian activists or had links to the Mejlis.

## **F. Right to private and family life**

105. OHCHR estimates that up to 150 police and FSB raids of private houses, businesses, cafés, bars, restaurants, markets, schools, libraries, mosques and madrassas (Islamic religious schools) have taken place since the beginning of Crimea's occupation. These actions have usually been carried out with the justification to search for weapons, drugs or literature with extremist content forbidden under Russian Federation law.<sup>111</sup> Several interlocutors shared their conviction that the objective pursued by such operations was to instil fear, particularly in the Crimean Tatar community, in order to pre-empt or discourage actions or statements questioning the established order since March 2014.

106. The searches were conducted on the basis of the Russian Federation's anti-extremism law, which is very broad and has been used extensively in Crimea. The law gives wide discretion to law enforcement agencies to interpret and apply its provisions, which can be viewed as an infringement of the principles of legality, necessity and proportionality.<sup>112</sup> In her annual report for 2014, the Ombudsperson of the Russian Federation stated in relation to Crimea that law enforcement officers should *adopt "a well-balanced approach that rules out any arbitrary, excessively broad interpretation of the notion of 'extremism'"*.<sup>113</sup>

107. OHCHR documented raids, which at times took place without search warrants being presented, involved excessive use of force, and amounted to an arbitrary or unlawful interference with an individual's privacy, family and home, in violation of international human rights law. According to victims, materials considered illegal were planted in homes and false written testimonies declaring the presence of illegal substances were signed under duress.<sup>114</sup> On 4 and 5 September 2014, at least 10 houses belonging to Crimean Tatars were searched by police officers and FSB officials in Simferopol, Nizhnegorsk, Krasnoperekopsk and Bakhchisaray.<sup>115</sup> The police found no weapons or drugs but confiscated religious literature.

108. There are reports that some house raids were conducted at a time when only Crimean Tatar women were present and that the absence of female officers among those carrying out the search greatly disturbed them.<sup>116</sup>

109. As at 12 September 2017, 38 individuals from Crimea and the city of Sevastopol (35 men and three women) were on a special list of people 'believed to be involved in extremism or terrorism', administered by the Russian Federation Financial Monitoring Service.<sup>117</sup> According to the laws of the Russian Federation on preventing financing of terrorism applied in Crimea, the bank accounts of individuals on this special list should be constantly monitored and most of their bank transactions are suspended.

110. In view of the excessively broad interpretation of the Russian Federation's anti-extremism law applying to Crimea, such limitations may amount to undue interference with the right to private and family life and to the right to the peaceful enjoyment of one's possessions.

## **G. Rights of detainees**

111. According to the Ministry of Justice of Ukraine, on 20 March 2014, 1,086 individuals were detained at Crimea's only pre-trial detention facility in Simferopol, 1353 convicts were serving their sentences in a strict regime colony in Simferopol, 789 convicts



were held in a general regime colony in Kerch and 67 in a correction centre in Kerch. All four institutions have been integrated into the penitentiary system of the Russian Federation,<sup>118</sup> which led to the transfer of hundreds of detainees held in Crimea to penitentiary institutions in the Russian Federation.

### 1. *Violations of the rights of prisoners in Crimea*

112. After the Russian Federation took control of Crimea, local courts discontinued all pending appeal proceedings under Ukrainian law, in violation of fair trial guarantees.<sup>119</sup> Ukrainian penal legislation was repealed and prison sentences were requalified in accordance with Russian Federation law, sometimes to the detriment of detainees.

113. Former detainees in Crimea complained to OHCHR about overcrowding, which can amount to degrading treatment. Built for a maximum capacity of 817 people, the pre-trial detention centre in Simferopol had 1,066 detainees in March 2014,<sup>120</sup> 1,532 in December 2015,<sup>121</sup> and a similar level of overcrowding in 2016.<sup>122</sup>

114. Soon after the occupation started, correspondence between detainees in Crimea and mainland Ukraine was blocked by the administration of the penitentiary service and all family visits were denied violating the right of prisoners to be allowed to communicate with family and friends at regular intervals.<sup>123</sup>

115. Pressure was exerted on detainees who refused to accept automatic Russian Federation citizenship as prison officials recorded those who did or did not take Russian Federation passports.<sup>124</sup> A female detainee who rejected Russian Federation citizenship complained that she was denied family visits and that sunflower oil was regularly poured over her personal belongings as a harassment technique.<sup>125</sup> Other detainees who refused Russian Federation citizenship were placed in smaller cells or in solitary confinement.<sup>126</sup>

### 2. *Transfer of prisoners to the Russian Federation*

116. A sizeable number of Crimea's prison population was transferred to the Russian Federation.<sup>127</sup> A key factor explaining this situation is the lack of specialized penitentiary facilities in Crimea, which has led to the transfer of juveniles in conflict with the law, people sentenced to life imprisonment, and prisoners suffering from serious physical and mental illnesses. In addition, Crimea having no prisons for women, 240 female detainees convicted by Crimean courts were sent to the Russian Federation between 18 March 2014 and 15 June 2016 to serve their sentences.<sup>128</sup>

117. Transfers of pre-trial detainees have also taken place. This is the case of Ukrainian filmmaker Mr. Oleh Sientsov, who was arrested in Simferopol on 11 May 2014 on suspicion of "plotting terrorist acts". On 23 May 2014, he was transferred to Moscow's Lefortovo prison and later to Rostov-on-Don (Russian Federation) where he was placed in remand detention. Following his trial and conviction on 25 August 2015,<sup>129</sup> he was incarcerated in a high security penal colony in the Siberian region of Yakutia.

118. OHCHR notes that international humanitarian law strictly prohibits forcible transfers of protected persons, including detainees, from occupied territory to the territory of the occupying power, regardless of the motives of such transfers.<sup>130</sup> In this regard, the imposition of Russian Federation citizenship to residents of an occupied territory does not alter their status as protected persons.

119. On 17 March 2017, negotiations between the Ombudspersons of Ukraine and the Russian Federation enabled the return to mainland Ukraine of 12 detainees (11 men and a woman) sentenced by Ukrainian courts before March 2014, and transferred from Crimea to various penitentiary institutions in the Russian Federation after that date. OHCHR interviewed each of them. Some detainees publicly expressing pro-Ukrainian sentiments reported having been ill-treated and placed in solitary confinement.<sup>131</sup> Others complained of

the absence of medical treatment. OHCHR documented the death of at least three male prisoners transferred from Crimea to the penitentiary institution in Tlyustenkhabl, Adygea region, who were suffering from serious ailments and did not receive necessary medical care.<sup>132</sup> Under international human rights and humanitarian law provisions, detainees must be provided with the medical attention required by their state of health.<sup>133</sup>

## **H. Forced enlistment**

120. Since the occupation began, residents of Crimea have been subjected to conscription in the armed forces of the Russian Federation. Until 31 December 2016, military service could only take place on the territory of the Crimean peninsula.<sup>134</sup> Since 2017, conscripts can also be sent to serve on the territory of the Russian Federation. On 25 May 2017, 30 conscripts from Sevastopol were sent to the Russian Federation after reportedly expressing the will to serve there.<sup>135</sup>

121. OHCHR spoke to several Crimean Tatars who left the peninsula to avoid serving in the Russian Federation army. They stated they could not return to Crimea as they would be prosecuted for avoiding the draft.<sup>136</sup> On 12 April 2017, the Military Commissioner of the Russian Federation in Crimea announced that a criminal case had been opened against a resident of Crimea who refused to serve in the Russian Federation army.

122. OHCHR notes that under international humanitarian law, an occupying power is prohibited from compelling protected persons to serve in its armed or auxiliary forces or to exercise pressure or propaganda which aims at securing voluntary enlistment.<sup>137</sup>

## **I. Freedom of movement**

123. The introduction by the Russian Federation of a State border at the ABL between mainland Ukraine and Crimea, in violation of General Assembly resolution 68/262, has adversely affected freedom of movement between mainland Ukraine and the Crimean peninsula. Other legal restrictions, as per this section, have been imposed both by the Governments of the Russian Federation and Ukraine.<sup>138</sup>

124. International human rights law guarantees freedom of movement to anyone lawfully within the borders of a State and the right to leave and enter their own country.<sup>139</sup> It also recognizes that a sovereign Government has the right to restrict freedom of movement provided such a measure is necessary, reasonable and proportionate.

### *1. Restrictions imposed by the Russian Federation authorities*

125. On 25 April 2014, the Russian Federation authorities established its ‘border’ at the northern entrance to Crimea. Ukrainian activists, supporters and members of the Mejlis, in particular, have frequently faced infringements on their movement, including intrusive and lengthy interrogations whenever entering or leaving Crimea through the ABL.

126. In addition, citizens of Ukraine have been deported from Crimea for violating Russian Federation immigration rules, which, pursuant to resolution 68/262, should not apply to the territory of Crimea. For instance, the Crimea-born chairman of an NGO from Evpatoriia providing free legal aid was convicted in January 2017 of “illegal stay” by a Crimean court which ordered his deportation.<sup>140</sup> In 2012, his Crimean passport registration had been cancelled on procedural grounds, which disqualified him from obtaining Russian Federation citizenship in March 2014. The court which ordered his deportation found him to be a foreigner who violated immigration rules by staying in Crimea beyond the authorized 90-day period. Following the ruling, the man was transferred from Crimea to the region of Krasnodar (Russian Federation), detained for 27 days, and subsequently 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, which violates his freedom

of movement and his right to family life.<sup>141</sup> In addition, his forced transfer and deportation contravene international humanitarian law rules applying to protected persons in situations of occupation.<sup>142</sup>

127. OHCHR has information that 20 to 25 other Ukrainian citizens were deported from Crimea to mainland Ukraine in 2016, and has reasons to believe that the total number since the beginning of the occupation of Crimea may be significantly higher.<sup>143</sup>

128. Unlawful limitations to freedom of movement were also imposed against political opponents and individuals criticizing the human rights situation on the peninsula who were prohibited entry into the Russian Federation, consequently banning their access to Crimea. On 22 April 2014, a Russian Federation officer at the ABL handed the former leader of the Mejlis, Mr. Mustafa Dzhemilev, an unsigned document informing him of being banned from entering the territory of the Russian Federation for five years. On 5 July 2014, the current head of the Mejlis, Mr. Refat Chubarov, was issued an entry ban for allegedly inciting inter-ethnic hatred.<sup>144</sup> Other people subjected to similar prohibitions include in 2014 the director of Crimean Tatar news agency *QHA*, and in 2016 a Ukrainian journalist and a defence lawyer.<sup>145</sup>

## 2. *Restrictions imposed by Ukraine*

129. Between March and December 2014, Ukraine suspended air, train and bus connections to the peninsula. Older persons, persons with disabilities and children were the most affected by the absence of public transportation. Some said they had no choice but to walk across the ABL for more than two kilometres, sometimes in adverse weather conditions.<sup>146</sup> The only means of transport remaining are private cars and taxis that operate between Ukraine's mainland and Crimea.

130. According to Ukrainian legislation, Ukrainian citizens have the right to free and unimpeded access to Crimea.<sup>147</sup> However, crossing into the peninsula is permitted – for Ukrainian citizens and foreigners alike – only through three crossing points located in the region of Kherson, namely Kalanchak, Chaplynka or Chonhar. Foreign citizens violating rules on access to Crimea are prohibited from entering Ukraine for a period of three years.<sup>148</sup>

131. National legal requirements related to the travel of children have constricted freedom of movement. Children below 16 years of age, if accompanied by only one parent, must have notarized written consent of the other parent.<sup>149</sup> This has created problems for Crimean residents, as documents issued by the Russian Federation authorities in Crimea are not recognized in Ukraine.

132. Specific requirements also apply to foreigners and stateless persons who may only enter and leave Crimea with a special permission issued by Ukrainian authorities following a lengthy procedure.

133. Another freedom of movement restriction applied to limitations in the transportation of consumer goods and personal belongings to and from Crimea introduced by Government decree No. 1035 of 16 December 2015. A court decision issued in June 2017 found the restrictions to be unlawful, although OHCHR observed through monitoring of the ABL it conducted in August 2017 that posters informing travellers of transportation limitations under decree No. 1035 were still present at the Chonhar crossing point.<sup>150</sup>

134. A so-called civil blockade of Crimea was initiated in September 2015 by the Crimean Tatar leadership in mainland Ukraine to prevent trade with the Russian Federation occupying Crimea and draw the attention of the international community to human rights violations on the peninsula. The enforcement of the blockade was accompanied by incidents, including physical attacks by blockade participants of people travelling from Crimea, as well as confiscation of goods and personal items, violating human rights and

impacting freedom of movement across the ABL.<sup>151</sup> On 17 January 2015, the organizers of the ‘civil blockade’ of Crimea announced they had stopped enforcing their embargo.<sup>152</sup>

135. OHCHR noticed security risks for travellers related to the presence of insufficiently marked minefields on both sides of the road leading to the Kalanchak and Chaplynka crossing points. Representatives of Ukraine’s State Border Guard Service said they had no maps with mine locations. Although small triangular mine signs are visible, the risk of accidentally walking into an ill-marked minefield remains.<sup>153</sup>

## **J. Freedom of thought, conscience and religion**

136. It is a norm of customary international humanitarian law that the convictions and religious practices of civilians and persons *hors de combat* must be respected.<sup>154</sup> Article 58 of the Fourth Geneva Convention provides that the occupying power must permit ministers of religion to give spiritual assistance to members of their religious communities, and Article 15 of the First Protocol to this Convention states that an occupying power should respect and protect civilian religious personnel. Furthermore, the International Covenant on Civil and Political Rights and the European Convention on the Protection of Human Rights and Fundamental Freedoms provide that everyone has the right to freedom of thought, conscience and religion, and that the right to manifest one’s religion and beliefs may only be subject to limitations, which are prescribed by law and are necessary to protect public safety, order, health, morals or the rights and freedoms of others.<sup>155</sup>

137. After the start of the occupation, freedom of religion or belief in Crimea has been jeopardized by a series of incidents targeting representatives of minority confessions and religious facilities belonging to them. Limitations on religious freedom have also resulted from the imposition of legal re-registration requirements, legislation increasing restrictions on the activities of religious groups in the name of fighting extremism, and judicial decisions.

138. The Parliament of the Russian Federation adopted legal amendments - commonly referred to as the ‘Yarovaya package’ – which came into force on 20 July 2016 as an anti-terrorism measure allowing the authorities to monitor extremist groups. The amendments practically ban missionary groups and house prayers by making proselytizing, preaching, praying, or disseminating religious materials outside of “specially designated places”, like officially recognized religious institutions, a punishable crime.<sup>156</sup>

139. In the first year after adoption of the ‘Yarovaya package’ eight persons from Crimea - including four Jehovah’s Witnesses, three Protestants and one Muslim – were fined 5,000 RUB each (USD 85) for conducting a missionary activity.<sup>157</sup> In addition, eight religious communities - two Jehovah’s Witness, one Catholic, one Lutheran, one Pentecostal and one Hare Krishna - were fined in amounts ranging from 30,000 RUB (USD 525) to 50,000 RUB (USD 875) for violating the prohibition for a religious organization to conduct activities “without indicating its official full name”.<sup>158</sup>

140. The gravest and most frequent incidents involving representatives of minority confessions were reported in 2014. For instance, on 1 June, men in Russian Cossack uniforms broke into the local Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) in the village of Perevalne, shouting and terrorizing churchgoers. The car of the priest was damaged. The police were called but did not investigate the incident.<sup>159</sup> On 21 July, a house in the village of Mramorne belonging to the UOC-KP was burnt to the ground.<sup>160</sup> A pastor of the Protestant Church from Simferopol and his family left the peninsula after reportedly being told by FSB officers that he could ‘disappear’.<sup>161</sup> Greek-Catholic priests faced threats and persecution, resulting in four out of six of them leaving Crimea. A Polish citizen and the senior Roman Catholic priest in the Simferopol parish had to leave on 24 October, due to the non-renewal of Ukrainian residence permits. Most of the 23 Turkish Imams and teachers on the peninsula have left for the same reason.<sup>162</sup> On 26 April, unknown persons threw Molotov cocktails at a mosque in the village of Skalyste, setting it

on fire. On 25 July, a Muslim cemetery in Otuz was damaged. Several mosques and madrassas (Islamic schools) belonging to the Spiritual Administration of the Muslims of Crimea (DUMK) were raided in 2014 by FSB officers searching for banned extremist materials and members of radical groups.<sup>163</sup> The raids have continued in the following years but their frequency diminished after the DUMK leadership started cooperating with the Russian Federation authorities in Crimea in 2015.

141. Pursuant to Russian Federation legislation imposed in Crimea, public organizations in Crimea, including religious communities, were subjected to the obligation to re-register to obtain legal status. The religious communities which applied for registration had 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”. Only Russian Federation citizens are allowed to register a religious community.

142. Without registration, religious communities can congregate but cannot enter into contracts to rent State-owned property, open bank accounts, employ people or invite foreigners. The deadline for re-registration was extended twice and expired on 1 January 2016. The process has been lengthy and lacked transparency.<sup>164</sup>

143. Before the occupation of Crimea, there were 2,083 religious organizations in Crimea and 137 in Sevastopol, both with and without legal entity status.<sup>165</sup> As of 4 September 2017, 722 religious communities were registered in Crimea and 96 in Sevastopol. They included the two largest religious organizations of the Christian Orthodox and Muslim communities, as well as various Protestant, Jewish, Roman-Catholic and Greek-Catholic communities, among other religious groups.

144. One of the religious communities registered in Crimea, the Jehovah’s Witnesses, was declared illegal in 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. On 1 June 2017, all 22 congregations in Crimea were de-registered, affecting the right to freedom of religion of an estimated 8,000 believers. On 9 June 2017, a Jehovah Witness was told at a military conscription centre in Crimea 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>166</sup> On 27 June, the head of the Jehovah Witnesses community in Dzhankoy was summoned to court, charged with unlawful missionary activity, and died later that day of a heart attack.<sup>167</sup>

145. The Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) chose not to re-register under Russian Federation law and thus has no legal recognition. Since 2014, five UOC-KP churches have been either seized by paramilitary groups or closed due to non-renewal of their property leases.<sup>168</sup> The activities of another UOC-KP church, located in Simferopol, were disrupted on 31 August 2017, when court bailiffs stormed the building of the church. The action was undertaken pursuant to a judgment, upheld by the Supreme Court of the Russian Federation in February 2017, ordering to vacate premises in the building used by a daughter company of the UOC-KP as office space and a shop. As of 12 September 2017, worship services were still held but fewer parishioners attended them.<sup>169</sup>

## **K. Freedom of peaceful assembly**

146. Freedom of peaceful assembly guarantees the right of individuals to gather peacefully in order to express an aim or issue in public. It is protected by various international legal instruments and closely connected with other fundamental rights such as freedom of speech, thought and association. Limitations are permitted in accordance with international law, including administrative regulations, as long as they are proportionate and not used to oppress the nature of free assembly.



147. The possibility to peacefully gather or hold a rally in Crimea has been significantly reduced since March 2014. Restrictive legal measures placed additional obstacles to the exercise of the right to peaceful assembly. According to legislation adopted by the Parliament of Crimea in August 2014, the organizers of public assemblies must be Russian Federation citizens and must officially request permission to hold an assembly no more than 15 days and no fewer than 10 days prior to the planned event. In addition, a resolution of the Government of Crimea of 4 July 2016 reduced from 665 to 366 the number of locations throughout the ‘Republic of Crimea’ where public events could be organized, without explaining the motives of this decision.<sup>170</sup>

148. Lengthy blanket prohibitions on holding public assemblies have been issued, including an indefinite one decided by the Simferopol city authorities. In March 2016, a ban on all public events on the territory of the city was decreed, with the exception of those organized by the republican and local authorities.<sup>171</sup> This measure was not taken in response to a sudden deterioration of public order and clearly infringed on the freedom to hold peaceful public assemblies.

149. Public events initiated by groups or individuals not affiliated with the Russian Federation authorities in Crimea or which consider that Crimea remains a constituent part of Ukraine have systematically been prohibited and prevented. On 23 September 2014, the Prosecutor of Crimea issued a statement that “*all actions aimed at the non-recognition of Crimea as a part of the Russian Federation will be prosecuted.*”<sup>172</sup> Consequently, any assembly demanding the return of Crimea to Ukraine or expressing loyalty to Ukraine has been effectively outlawed.

150. Requests to hold peaceful public assemblies have often been rejected on procedural technicalities, which appeared to be neither necessary to justify a ban nor proportionate and responding to a general public interest. For example, the Simferopol city authorities refused to grant permission for an assembly planned by the Crimean Tatar NGO *Kardashlyk* for 23 August 2014 near the memorial complex for the victims of the Crimean Tatar deportation. The motive provided was that the extremely high temperatures could negatively affect the health of participants. Yet, other outdoor events planned on the same day went ahead.<sup>173</sup>

151. In some cases, refusals to authorize public events were based on unsubstantiated allegations that “extremist” or “separatist” messages would purportedly be disseminated during their conduct.<sup>174</sup>

152. Spontaneous gatherings have been met with sanctions. Crimean Tatars taking part in unauthorized motorcades to commemorate the Crimean Tatar deportation were regularly arrested, interrogated for hours, and fined.<sup>175</sup> An elderly Crimean Tatar man holding a one-person picket in support of prosecuted Crimean Tatars was arrested in front of the building of the Supreme Court of Crimea on 8 August 2017. He was charged with carrying out an unauthorized public gathering and resisting police orders and sentenced by court to an administrative fine of 10,000 RUB (USD 175) and 10 days of detention.

153. The European Court of Human Rights has found that restrictions imposed on assemblies to prevent minor disorder are often disproportionate measures, and that incidents of violence are better dealt with by way of subsequent prosecution or disciplinary actions.<sup>176</sup> In relation to blanket legal provisions which ban assemblies at specific times or in particular locations, the Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that they require greater justification than restrictions on individual assemblies.<sup>177</sup>

## **L. Freedom of opinion and expression and the media**

154. Human rights law guarantees the right to hold opinions without interference. Undue restrictions on the right to seek, receive and impart information and ideas of all



kinds gravely undermine freedom of expression, which is protected under Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

155. The right to express one's view or opinion has been significantly curtailed in Crimea.<sup>178</sup> In March 2014, analogue broadcasts of Ukrainian television channels were shut off and the vacated frequencies started broadcasting Russian TV channels. Journalists were attacked or ill-treated without any investigation being conducted into these incidents.<sup>179</sup> In June 2014, the only Ukrainian language newspaper, *Krymska svitlytsia*, was banned from distribution and had to vacate its rented premises.

156. Official 'warnings' have often preceded the closing down of a media outlet. They applied to views, articles or programmes whose content were deemed 'extremist'. The editor of the weekly Mejlis newspaper *Avdet* received several written and oral warnings from FSB officers that the newspaper materials allegedly contained extremist content, such as use of the terms 'annexation', and 'temporary occupation' of Crimea.<sup>180</sup> The Crimean Tatar ATR television channel was warned by *Roskomnadzor*, the Russian Federation media regulatory body, against disseminating false rumours about repression on ethnic and religious grounds and promoting extremism.<sup>181</sup>

157. *ATR* and *Avdet* were among the Crimean Tatar media outlets which were denied re-registration according to Russian Federation legislation and had to cease operations on the peninsula. When the deadline for re-registration expired on 1 April 2015, *Roskomnadzor* reported that 232 media were authorized to work, a small fraction of the approximately 3,000 media outlets previously registered under Ukrainian regulations.<sup>182</sup> In addition, other popular Crimean Tatar media outlets, such as *Lale* television channel, *Meydan* and *Lider* radio stations, *QHA* news agency and *15minut* Internet site, were denied licenses to work. Procedural violations were cited as the main reasons for rejection.<sup>183</sup>

158. The minority language media that continued operating or registered as a new media entity, have no political content or support the official position on the status of Crimea. Crimean television has information and education programmes in the native languages of national minorities, including Armenian, Bulgarian, Crimean Tatar, German, Greek, and Ukrainian. Its programmes for the Crimean Tatar community include the Crimean Tatar news *Haberler*, *Netije*, and *Ekindi Subet*; the talk-show *Dilde, fikirde, işte birlik*; the educational programme *Eglenip-Ogrenem*; the cultural and religious programme *Selyam Aleykum*; and the informational and cultural programme *Tanysh-Belish*.<sup>184</sup>

159. According to the United Nations Human Rights Committee "the penalization of a media outlet [including online media], publishers or journalists solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of the freedom of expression."<sup>185</sup> Yet, provisions of the Russian Federation penal code have regularly been used by the authorities in Crimea to criminalize free speech and dissenting opinions of journalists and non-journalists alike.

160. On 7 July 2017, a court in Crimea convicted a Crimean Tatar man from Sevastopol to one year and three months of prison for "publicly inciting hatred or enmity". During an eight months period in 2016, he had posted statements on *Facebook* mentioning the "oppression" of the Crimean Tatars, referring to Crimea being "occupied" and "annexed", and quoting a Crimean Tatar leader who had organized the food and trade blockade of Crimea in September 2015.<sup>186</sup>

161. People have also been charged under the accusation of advocating separatism. In 2017, the trials of a journalist from Crimea and a deputy chairman of the Mejlis, started. Both men were charged with "public calls to violate the territorial integrity of the Russian Federation" in connection with an article and a televised interview, respectively.<sup>187</sup> If found guilty, they face prison sentences of up to five years.

## M. Freedom of association

162. Following the occupation of Crimea, most human right groups ceased to exist or relocated elsewhere in Ukraine. Some did so in protest against the new situation, while others felt compelled to do so, on account of personal threats and physical violence faced by their members.

163. For instance, the director of the Yalta-based NGO *Almenda* left Crimea on 16 March 2014, one day after she was warned by members of the Crimean self-defence that her safety was “no longer guaranteed.”<sup>188</sup> Several members of the NGO *Ukrainian House* were tortured and forcibly disappeared in connection with their role in organizing Maidan events in Crimea and their subsequent opposition to Russian Federation presence.

164. Civic groups or non-governmental institutions which stayed but did not accept the policies of the new authorities faced systematic obstruction of their activities, intimidation and sometimes prosecution. In September 2014, the Crimean police organized searches, seized property, and evicted the charitable organization *Crimea Foundation* from its premises in Simferopol. The eviction also affected the central office of the Mejlis and the Mejlis weekly newspaper *Avdet*.<sup>189</sup>

165. As other legal entities, NGOs were required to re-register under Russian Federation law, which involved a number of constraints. Application documents included *inter alia* a new version of the NGO statute and a formal decision by the NGO executive body to align its founding documents with legislative requirements. If the NGO was not registered at the local address of a founder who was a Crimean resident, applicants were required to provide a letter from the owners of the intended rental premises of the NGO guaranteeing that they did not object to such a registration.<sup>190</sup>

166. The re-registration of NGOs was further stymied by implementation of the Russian Federation’s law on ‘foreign agents’ and ‘undesirable organizations’ in Crimea, both of which have had a chilling effect on civic groups.<sup>191</sup> Some decided not to seek registration while others decided to forgo foreign funding rather than endure frequent inspections and stigmatization.

167. The restrictive conditions placed by the legislation of the Russian Federation on activities of civil society organizations have been reflected in the number of NGOs which currently operate on the peninsula. As of 4 September 2017, 1,852 NGOs were registered in Crimea and the city of Sevastopol<sup>192</sup> compared to 4,090 in mid-March 2014.<sup>193</sup>

168. While the Russian Federation authorities in Crimea attempted to silence the Mejlis, they selectively allowed the establishment of organizations representing the Crimean Tatars, including *Kyryym*, *Kyryym Birligi*, the *Crimean Tatar 'Inkishaf' Society* and the *Association of Crimean Tatar Businessmen*.

169. Four national-cultural associations representing Ukrainians have been registered in Crimea: the Simferopol-based *Renaissance in Unity*, *Ukrainians of Simferopol*, *Ukrainians of Yevpatoriia* and *Ukrainians of Yalta*. The members of the unregistered Simferopol-based *Ukrainian Cultural Centre*, which has been under constant surveillance since 2014, were regularly called by the police or FSB for ‘informal talks’. Their public activities, including paying tribute to Ukrainian literary, political or historic figures, were often disrupted or prohibited. In May 2017, the Centre closed due to the absence of funds to pay for the rent of its premises, and on 29 August 2017, its director left the peninsula for mainland Ukraine following anonymous text message threats and information that the FSB would arrest him.<sup>194</sup>

## VII. Economic, Social and Cultural Rights

### A. Property rights

170. Following Crimea's occupation, the Russian Federation authorities proceeded with a large-scale nationalization of public and sometimes private property. Expropriation was done in disregard of ownership rights and without compensation. Proper regulation of housing, land and property issues are also central to the Crimean Tatars who, almost three decades after returning from deportation, have not obtained security of tenure guarantees.

#### 1. *Property nationalization*

171. Since the March 2014 referendum, many of the most economically valuable assets in Crimea – from energy companies to mobile operators – have been expropriated, often by force.

172. On 24 August 2014, the Crimean self-defence took over the *Zaliv* shipbuilding company, preventing the management from entering the premises. A new administration from Zelenodolsk (Tatarstan) was subsequently imposed on the firm.<sup>195</sup> On 27 August 2014, members of the Crimean self-defence entered the headquarters of Ukrainian gas company *Krymgas* and seized 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.<sup>196</sup>

173. Regulatory acts have been adopted to provide legitimacy to the nationalization process.<sup>197</sup> However, frequent amendments, which increased the number and nature of property to be nationalized, undermined legal certainty and guarantees against arbitrariness. For example, Resolution No. 2085-6/14, which originally focused on nationalization of property without ownership or belonging to the State of Ukraine, was amended to include 111 individual property assets listed in a separate Annex called "*List of property considered as the property of the Republic of Crimea*". During 2014-2016, hotels, private apartments, non-residential premises, markets, gas stations, land plots and movable property, were added to the Annex by new resolutions, which contained no criteria for the nationalization and, in most cases, no information on the owners of nationalized property.

174. On 27 February 2015 Crimea's Parliament adopted Resolution No. 505-1/15 declaring an end to the nationalization process and prohibiting the inclusion of new property into the Annex starting from 1 March 2015. However, this provision was subsequently amended on 16 September 2015, allowing inclusion of land plots and some new information in the List of nationalized property for "clarification purposes." As of 12 September 2017, the Annex with the list of nationalized property had been amended 56 times and now contains 4,618 "nationalized" public and private real estate assets.<sup>198</sup>

175. Similar processes have taken place in the city of Sevastopol.<sup>199</sup> With the purpose of "restoring social fairness and maintaining public order", the city authorities nationalized 13 companies and 30 real estate assets between February 2015 and July 2016.<sup>200</sup>

176. 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>201</sup> and that immovable public property must be administered according to the rule of usufruct.<sup>202</sup>

#### 2. *Housing, land and property of formerly deported people*

177. The question of housing, land and property in Crimea is sensitive, particularly for Crimean Tatars who returned from exile starting from the late 1980s. The unmanaged

return process and the perceived injustices in land allocation led to Crimean Tatars settling on unoccupied or public land.<sup>203</sup>

178. While successive Governments of Ukraine took steps to facilitate repatriation to Crimea and resolve some of the issues facing formerly deported persons, many problems remained. In a decree issued by former President Viktor Yanukovych in 2010, the need to solve “the burning problem of resettlement” of formerly deported persons was acknowledged.<sup>204</sup>

179. 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>205</sup> In 2015, they adopted a law enabling Russian Federation citizens of Crimea who illegally built property on a seized plot of land to acquire this land.<sup>206</sup> There is no information on how this law has been implemented. Crimean Tatars have expressed concern about the citizenship requirement prescribed by the law, which automatically excludes from the process of legalization formerly deported persons who were not residents of Crimea on 18 March 2014 or have returned from deportation after that date. Other obstacles, including resistance from title owners of land plots and competing interests among Crimean Tatar groups representing returnees have also adversely affected the process of acquisition.

180. Additional concerns rose after several cities in Crimea allowed the demolition of buildings constructed without necessary permits. The most recent decision applies to Simferopol<sup>207</sup> and 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. The demolition of such buildings, to be ordered by local administrations and special “demolition commissions”, could result in evictions disproportionately affecting Crimean Tatars.

181. Forced evictions constitute a violation of a broad range of human rights, including the right to adequate housing and freedom from arbitrary interference with home and privacy.<sup>208</sup> OHCHR recalls the importance of preventing 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>209</sup>

## **B. Right to maintain one’s identity, culture and tradition**

182. The Russian Federation authorities in Crimea have denied various manifestations of Ukrainian and Crimean Tatar culture and identity by groups perceived as hostile to the Russian Federation and to Crimea’s status as a part of it. Pressure, intimidation and prohibitive administrative or court decisions have been applied. Such actions violate Article 15 of the International Covenant on Economic, Social and Cultural Rights, which guarantees the right of everyone to take part in cultural life, and Article 27 of the International Covenant on Civil and Political Rights, which provides that in States where ethnic, religious or linguistic minorities exist, persons belonging to such minorities should not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

### *1. Limitations of the right of Ukrainians and Crimean Tatars to express their culture and identity*

183. Following Crimea’s occupation, the Ukrainian and Crimean Tatar communities have been constricted in their ability to display Ukrainian state and cultural symbols and publicly celebrate important dates for their communities. Festivities and assemblies organized by minority groups have only been allowed if those groups supported the position of the Russian Federation on the status of Crimea.

184. On 18 February 2015, the Bakhchysarai authorities prohibited the local Mejlis from carrying out a rally in commemoration of the anniversary of the death of Noman Çelebicihan, an important figure in Crimean Tatar history. On 11 March 2015, a court in Simferopol ordered 40 hours of corrective labour for three pro-Ukrainian activists and 20 hours for a fourth after they unfurled a Ukrainian flag bearing the inscription “Crimea is Ukraine” during a rally to commemorate the anniversary of the national poet of Ukraine, Taras Shevchenko, two days before.<sup>210</sup> In June 2015, the city of Simferopol rejected an application by the Mejlis’ to hold celebrations of the Crimean Tatar Flag Day.

185. Institutions promoting Ukrainian culture and traditions have been shut down. The Museum of Ukrainian Vyshyvanka - a traditional Ukrainian embroidery - was closed in February 2015, and books by contemporary Ukrainian authors have been removed from the *Franko* Library located in Simferopol.<sup>211</sup>

186. The recognition under the constitution of the “Republic of Crimea” of Ukrainian and Crimean Tatar as official languages on a par with the Russian language has been largely declaratory. A draft law on the use of Crimea’s official languages was registered in the Parliament of Crimea on 4 April 2017, but has yet to be discussed.<sup>212</sup>

## 2. *The ban of the Mejlis*

187. In 2016, the Russian Federation authorities in Crimea outlawed the Mejlis, a development which many in the Crimean Tatar community perceived as an attack against their culture and identity. While it is not supported by all Crimean Tatars, the Mejlis is viewed by many as a self-governing body and traditional organ of an indigenous people. Its members, forming an executive body, were elected by the Kurultai, the Crimean Tatars’ assembly.

188. On 26 April 2016, the Supreme Court of Crimea declared the Mejlis to be an extremist organization and prohibited it from conducting any activities. The ruling was followed by an instruction, in May 2016, by the Vice Prime Minister of Crimea addressed to the heads of local governments in Crimea to report to the Prosecutor of Crimea any violations committed by Mejlis members or activists.<sup>213</sup>

189. On 29 September 2016, the Supreme Court of the Russian Federation upheld the ban, and supported the Prosecution which argued that the Crimean Tatar leadership of the Mejlis had repeatedly violated Russian Federation legislation and caused prejudice to residents of Crimea by organizing a trade blockade in 2015. The Mejlis was also accused of orchestrating a cut-off in energy supplies to the peninsula - with adverse humanitarian consequences for the population - caused by the sabotage of electricity pylons in mainland Ukraine. OHCHR notes that the ruling confirms the significant restrictions already imposed by the Russian Federation authorities in Crimea on this institution since 2014. It appears to be based on prejudicial evidence and disregards the legitimate character of the Mejlis as an elected organ representing the Crimean Tatar community.

190. In addition to prohibiting any public activity by or on behalf of the Mejlis, the court decision implies that the estimated 2,500 members of the national and local Mejlis bodies can incur criminal liability and face up to eight years in prison for belonging to an organization recognized as extremist. While no criminal sanctions have been imposed so far, some members of the Mejlis have been subjected to administrative sanctions. On 28 September 2016, eight of them were fined by courts in amounts ranging from 750 RUB (USD 12) to 1,000 RUB (USD 15) for holding an “illegal meeting” of this organization.<sup>214</sup>

191. On 19 April 2017, the International Court of Justice delivered an Order on provisional measures in proceedings brought by Ukraine against the Russian Federation, 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*”.<sup>215</sup>



192. On 25 August 2017, the Committee on the Elimination of Racial Discrimination issued its Concluding Observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation.<sup>216</sup> In these Concluding Observations, the Committee stated that it was “particularly concerned” about the ban on the Mejlis and the “strict limitations on the operation of Crimean Tatar representative institutions, such as the outlawing of the Mejlis and the closure of several media outlets.”

193. As of 12 September 2017, the Mejlis remains a banned organization pursuant to the decisions of the Supreme Courts of Crimea and the Russian Federation.

### **C. Right to education in native language**

194. International human rights instruments ratified by both Ukraine and the Russian Federation guarantee the right to education.<sup>217</sup> States are obliged to prioritize the introduction of compulsory, free primary education and must “take steps” towards the realization of secondary, higher and fundamental education for all those within its jurisdiction.<sup>218</sup> Article 2 of the First Protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms provides that states should respect the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions. Article 50 of the Fourth Geneva Convention provides that the occupying power should, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

195. Shortly after the March 2014 referendum, schools and universities in Crimea started functioning in accordance with the curriculum and educational standards of the Russian Federation. The education and academic qualifications obtained in Ukrainian educational establishments were recognized while a large-scale in-training programme for over 20,000 Crimean teachers started in June 2014.<sup>219</sup>

196. Overall, the introduction of Russian Federation education standards has limited the right of ethnic Ukrainians and Crimean Tatars to education in their native language. While under Russian Federation law minority language instruction is available from grades 1 to 9, in senior classes of secondary schools (grades 10 and 11) all subjects must be taught in Russian. Furthermore, there is no clear procedure regulating the education in a mother tongue and no legally defined numeric threshold for opening schools or classes.

197. The number of students undergoing instruction in Ukrainian language has dropped dramatically. In the 2013-2014 academic year, 12,694 students were educated in the Ukrainian language. Following the occupation of Crimea, this number fell to 2,154 in 2014-2015, 949 in 2015-2016, and 371 in 2016-2017. In April 2015, the long-time director of the only Ukrainian-language gymnasium in Simferopol left Crimea, allegedly due to threats and harassment. Between 2013 and 2017, the number of Ukrainian schools decreased from seven to one, and the number of classes from 875 to 28.<sup>220</sup>

198. OHCHR considers that the main reasons for this decrease include a dominant Russian cultural environment and the departure of thousands of pro-Ukrainian Crimean residents to mainland Ukraine. Pressure from some teaching staff and school administrations to discontinue teaching in Ukrainian language has also been reported.

199. At the university level, the Department of Ukrainian Philology in the Vernadskiy Taurida National University was closed down in September 2014 and the majority of its teaching staff laid off.<sup>221</sup> The departments of Ukrainian philology, culture of the Ukrainian language and theory and history of the Ukrainian language have been merged into one department. By the end of 2014, Ukrainian as a language of instruction had been removed from university-level education in Crimea.



200. On 19 April 2017, the International Court of Justice delivered an Order on provisional measures in proceedings brought by Ukraine against the Russian Federation, concluding unanimously that the Russian Federation must “*Ensure the availability of education in the Ukrainian language*”.<sup>222</sup>

201. The number of students receiving their instruction in Crimean Tatar language has remained stable, largely due to a high level of cultural awareness among the Crimean Tatars. In the 2013-2014 academic year, when Ukraine’s curriculum was last applied in Crimea, 5,551 Crimean Tatars were educated in their native language. In 2014-2015, the figure was 5,146, in 2015-2016 it was 5,334, and in 2016-2017, 5,330 children were educated in Crimean Tatar.<sup>223</sup> Fifteen Crimean Tatar national schools were functioning in 2017, as in 2013.<sup>224</sup>

## **D. Right to health**

202. The availability of health care treatment in Crimea has been affected by the departure of numerous doctors and medical staff from medical State institutions. Drug users have additionally suffered from a disruption in treatment caused by the implementation of Russian Federation legislation.

203. In General Comment No. 14, the United Nations Committee on Economic Social and Cultural Rights reminded all States parties to the International Covenant on Economic, Social and Cultural Rights of the “*minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care.*” Those minimum essential levels include “*the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups,*” including the provision of essential drugs. Similarly, international humanitarian law obliges an occupying power to ensure food, hygiene, public health and medical supplies for the inhabitants of occupied territories.

### *1. Medical staff deficit in public hospitals*

204. Crimea is confronted with an acute lack of medical personnel, an enduring phenomenon which pre-dates the occupation by the Russian Federation but has been aggravated after March 2014 due to the departure of many doctors to the private sector.

205. Since 2014, many doctors in Crimea have left public health care institutions for private clinics on the peninsula, which provide higher salaries and better working conditions. A similar situation prevails in the city of Sevastopol, where salaries in private clinics in 2017 were two and a half times higher (40,000 RUB i.e. USD 660) than in public hospitals (16,000 RUB i.e. USD 265).<sup>225</sup> Physicians in public hospitals also criticized what they viewed as excessive bureaucratic paperwork and a system of remuneration deriving from new Russian Federation regulations, with the payment of a full doctor’s salary depending on the result of multiple inspections and internal audits.<sup>226</sup>

206. In November 2016, 7,195 doctors and 17,283 other medical personnel were employed in public medical centres in Crimea, with only 62.3 per cent of physicians’ positions occupied.

207. The Minister of Health of Crimea publicly acknowledged a lack of physicians, pediatricians, general practitioners, emergency staff and laboratory technicians. For three months in 2016, the main public hospital in Crimea’s second most populated district, Kerch, had no doctor in its neurosurgical department. The situation is most worrying in the districts of Rozdolne, Nyzhnohirskiyi, Krasnoperekopsk, Pervomaysky and Armyansk, and in the countryside, where only 40 per cent of the medical staff positions are filled.<sup>227</sup>

208. The shortage of medical personnel has had an impact on the quality of free public health care services and created long waits, delaying treatment for the most economically-disadvantaged patients and jeopardizing their right to health.<sup>228</sup>

## 2. *Impaired treatment of drug users*

209. Retrogressive measures introduced in Crimea since the application of Russian Federation legislation have undermined the right to health for those suffering from drug dependence.

210. An estimated 21,100 injecting drug-users lived in Crimea in 2013. Substitution Maintenance Therapy (SMT) for Crimean patients was terminated after the peninsula was incorporated in the Russian Federation. The latter bans the medical use of methadone and buprenorphine in the treatment of drug dependence and does not have maintenance therapy programmes.<sup>229</sup> Medicines given to patients in rehabilitation centres include benzodiazepines, barbiturates, neuroleptics and anti-psychotic drugs, which are not considered a reasonable alternative to the banned treatments among independent health care experts.

211. As a result, 803 registered heroin addicts previously receiving Opioid Substitution Therapy (OST) in Crimea no longer had access to this treatment.<sup>230</sup> This has had major detrimental effects, including changes in treatment, breaches of patient confidentiality, and increased mandatory drug screening.<sup>231</sup>

212. Without methadone, users often relapse into taking heroin and risk an overdose. The United Nations Special Envoy for HIV/AIDS evoked the possibility that by January 2015, up to 100 former OST recipients had died in Crimea due to complications related to overdose or suicide,<sup>232</sup> although in June 2014, Crimea's health authorities were denying any deaths.<sup>233</sup>

213. Comprehensive harm reduction strategies, which include OST, are essential to prevent and treat HIV, hepatitis and tuberculosis among people who inject drugs. The ban on OST opiates crippled Crimea's HIV prevention programmes, which included *inter alia* needle exchanges covering 14,000 people and OST for intravenous drug-users.

214. According to the Chief Doctor of Crimea's Centre for the prevention and control of AIDS, 1,417 newly diagnosed cases of HIV infection were recorded in Crimea for the first nine months of 2016, including 25 per cent resulting from drug injection.<sup>234</sup>

## E. **Access to water and other essential services**

215. The right to an adequate standard of living including in particular access to food, water and other essential items, is included in several international human rights treaties.<sup>235</sup> In addition, international humanitarian law prohibits the attack, destruction, removal, or rendering useless objects indispensable to the survival of the civilian population, such as foodstuffs, water installations and supplies and irrigation works.<sup>236</sup>

216. Until 2014, Crimea was 82 per cent dependent on water supplies via the North Crimean Canal that links the Dnepr river in mainland Ukraine and the peninsula. The eastern Crimean regions stretching from Sudak to Kerch have virtually no surface sources of water. On 13 May 2014, the Ukrainian State Water Resources Agency informed that Ukraine had shut off water supplies to Crimea via the North-Crimean Canal. While this situation had no negative implications on drinking water,<sup>237</sup> agricultural lands were affected, and practically all rice plantations on the peninsula perished.<sup>238</sup> According to the Federal target programme on the socioeconomic development of Crimea, until 2020 "*Crimea's dependence on supply of water via the North Crimean Canal can be eventually reduced or eliminated by searching for underground water sources, including manmade ones.*"<sup>239</sup>

217. Crimea was also dependent on supplies from mainland Ukraine for up to 85 per cent of the electricity it consumed. Access to energy is a component of the right to adequate housing, which is derived from the right to an adequate standard of living.<sup>240</sup> On 21-22 November 2015, energy deliveries were disrupted after perpetrators believed to be supporting the blockade of Crimea damaged four transmission towers in the region of Kherson, which supplied electricity to Crimea. Although one of the power lines was later repaired, energy supplies from mainland Ukraine have since not resumed due to the non-renewal of the contract between Ukraine's energy company and the Russian Federation authorities in Crimea, which expired on 1 January 2016.<sup>241</sup>

218. Following the power outage, for about three weeks, the interruption of energy deliveries to Crimea caused widespread disruptions, affecting food conservation, lighting, heating, public transportation and economic activity. Although the Russian Federation authorities in Crimea redirected available energy resources to the most critical social infrastructure, such as hospitals and schools, the impact of this situation has been acute, particularly for people with limited mobility and low income.

219. Pursuant to the International Covenant on Economic, Social and Cultural Rights, States parties must ensure the satisfaction of minimum essential levels of rights under the Covenant in all circumstances.<sup>242</sup> Under international humanitarian law, the Russian Federation as the occupying power is obliged to ensure to the fullest extent of the means available to it sufficient hygiene and public health standards, as well as the provision of food and medical care to the population. At the same time, this does not exonerate Ukraine from its obligations under the International Covenant not to interfere with the enjoyment of the rights it enshrines, and from respecting the requirement under international humanitarian law to ensure that the basic needs of the population continue to be met under conditions of occupation.<sup>243</sup>

## **VIII. Conclusions and Recommendations**

220. The human rights situation in Crimea has significantly deteriorated since the beginning of its occupation by the Russian Federation. The imposition of a new citizenship and legal framework and the resulting administration of justice have significantly limited the enjoyment of human rights for the residents of Crimea. The Russian Federation has extended its laws to Crimea in violation of international humanitarian law. In many cases, they have been applied arbitrarily.

221. Russian Federation authorities in Crimea have supported groups and individuals loyal to the Russian Federation, including among national and religious minorities, while preventing any criticism or dissent and outlawing organized opposition, such as the Mejlis. The space for civil society to operate, criticize or advocate has considerably shrunk. Media outlets have been shut down, disproportionately affecting the Crimean Tatar and Ukrainian communities, their right to information and to maintain their culture and identity.

222. Grave human rights violations affecting the right to life, liberty and security have not been effectively investigated. The judiciary has failed to uphold the rule of law and exercise proper administration of justice. There is an urgent need for accountability for human rights violations and abuses and providing the victims with redress.

223. Moreover, the freedom of movement between mainland Ukraine and Crimea has been restricted and the ABL has acquired many attributes of a State border.

224. Since the attempted alteration of the status of Crimea by the Russian Federation, a development which was denounced by General Assembly resolution 68/262 and later qualified as occupation in General Assembly resolution 71/205, the forcible integration of the peninsula into the political, legal, socio-economic, educational, informational, cultural and security spheres of the Russian Federation has been actively pursued, deepening the divide between this territory of Ukraine and the rest of the country.

225. In July 2016, Crimea was administratively attached to the Southern Federal District of the Russian Federation, further strengthening implementation of policies from the central level and coordination with neighboring regions of the Russian Federation. The peninsula has been integrated into the energy grid of the Russian Federation, which is also building a rail-and-road bridge through the Kerch strait, creating a land corridor to Crimea. This intensified integration is further compounded by population movements - from the Russian Federation to Crimea and from Crimea to mainland Ukraine - which tend to favour and strengthen pro-Russia sentiments on the peninsula.

226. In order to improve the human rights situation in Crimea, OHCHR recommends:

**To the Government of the Russian Federation to:**

- a) **Uphold human rights in Crimea for all and respect obligations that apply to an occupying power pursuant to international humanitarian law provisions;**
- b) **Ensure proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea, pursuant to General Assembly resolution 71/205;**
- c) **Apply Ukrainian laws in Crimea, pursuant to General Assembly resolutions 68/262 and 71/205;**
- d) **Ensure accountability for human rights violations and abuses through effective investigations of allegations of ill-treatment, torture, abductions, disappearances and killings involving members of the security forces and the Crimean self-defence; bring perpetrators to justice and provide redress for victims;**
- e) **Comply with the international humanitarian law prohibition to compel residents of the occupied territory of Crimea to serve in the armed forces of the Russian Federation and to deport or transfer parts of the civilian population of the Russian Federation into Crimea; return to Crimea all protected persons transferred to the territory of the Russian Federation;**
- f) **Ensure independent and impartial administration of justice, including due process and fair trial rights, and that persons deprived of liberty 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;**
- g) **End the practice of retroactive application of penal laws to acts committed before the occupation of Crimea, and refrain from using law enforcement bodies and the justice system to pressure and intimidate opponents;**
- h) **Uphold the right of defence counsel to perform their professional functions without intimidation, harassment or improper interference;**
- i) **End the practice of extracting confessions of guilt from persons in detention through threats, torture, or ill-treatment, and refrain from practices such as forcible psychiatric hospitalization, which may amount to ill-treatment;**
- j) **Ensure adequate medical assistance to all individuals detained in penitentiary institutions irrespective of their citizenship or any other grounds;**
- k) **Enable unimpeded freedom of movement to and from Crimea, and end deportations of Crimean residents pursuant to Russian Federation immigration rules;**
- l) **Ensure that the rights to freedom of expression, peaceful assembly, association, thought, conscience and religion can be exercised by any individual and group in Crimea, without discrimination on any grounds, including race, nationality, political views or ethnicity;**

- m) Stop applying legislation on extremism, terrorism and separatism to criminalize free speech and peaceful conduct, and release all persons arrested and charged for expressing dissenting views, including regarding the status of Crimea;**
- n) Allow the development of independent and pluralistic media outlets, including those representing minority communities, and refrain from placing legal and administrative obstacles on their registration or operation;**
- o) Put an end to police actions, including house searches, summons, detentions, taking of DNA samples, targeting disproportionately members of the Crimean Tatar community;**
- p) Lift any limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis;**
- q) Ensure the availability of education in the Ukrainian language, and enable all ethnic communities in Crimea, including the Crimean Tatars and Ukrainians, to maintain and develop their culture, traditions and identity, and to commemorate important events;**
- r) Ensure access of all Crimean residents, including those without Russian Federation passports, to employment, health treatment, property and public services, without discrimination;**
- s) End the ban on the use of Substitution Maintenance Therapy (SMT) for patients suffering from drug dependence;**
- t) Respect the right to property and the prohibition to confiscate private property; ensure security of tenure for the Crimean Tatars by putting in place a mechanism facilitating recognition of their property rights.**

**To the Government of Ukraine to:**

- a) Use all legal and diplomatic means available to promote and guarantee the enjoyment of the human rights of residents of Crimea;**
- b) Investigate, within practical limits, human rights violations and abuses committed in Crimea as well as those perpetrated in mainland Ukraine in relation to the ‘civil blockade’ of Crimea;**
- c) Remove all non-necessary restrictions to freedom of movement to and from Crimea, and ensure that the perimeter of the mined area near the Kalanchak and Chaplynka crossing points in the Kherson region is visible and well protected;**
- d) Simplify access to civil documents, education and other public services to residents of Crimea and IDPs;**
- e) Support dialogue between the Ombudspersons of Ukraine and the Russian Federation to facilitate the voluntary transfer of Ukrainian prisoners held in Crimea to penitentiary institutions in mainland Ukraine;**
- f) Refrain from actions that would raise obstacles to the enjoyment by residents of Crimea of their human rights.**

**To the international community:**

- a) Insist on full cooperation of the Russian Federation with international and regional monitoring mechanisms, including by granting unrestricted access to their representatives to Crimea;**

- b) Remind the Russian Federation and Ukraine to strictly abide by international human rights law and international humanitarian law in ensuring the protection of the population of Crimea;**
- c) Raise cases of human rights violations and abuses in discussions with the Russian Federation authorities at bilateral and multilateral forums.**



## IX. End notes

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<sup>1</sup> Hereafter referred to as ‘Crimea’.

<sup>2</sup> All future references to the term “occupation” are to be interpreted in line with UN General Assembly resolution 71/205 referring to the “temporary occupation” of Crimea.

<sup>3</sup> The resolution 71/205 was adopted by the UN General Assembly on 19 of December 2016.

<sup>4</sup> The people’s militia was registered on 29 July 2014. It is composed of former policemen and army officers, Afghan war veterans and biker groups, tasked to ‘maintain order and combat fascism’ on the peninsula; see Народное Ополчение Республика Крым, “Устав Общественной Организации”, 9 сентября 2014, available at: <http://narodnoe-opolchenie.ru/ustav-obshhestvennoy-organizatsii/>.

<sup>5</sup> Speaking to journalists, the President of the Russian Federation, Vladimir Putin, stated: “*Behind the backs of the Crimean self-defense units, there were our soldiers. They acted in a very polite, but decisive and professional manner. There was no other way to help the people of Crimea to express their free will*”. Video conference, Ria Novosti, 17 April 2014.

<sup>6</sup> Interview given to the TV channel “Rossiya” as part of a documentary “Crimea. The way home”, available at: <https://www.youtube.com/watch?v=c8nMhCMphYU>.

<sup>7</sup> The referendum question provided two alternatives: “1. Are you in favour of the Autonomous Republic of Crimea reuniting with Russia as a constituent part of the Russian Federation?” or “2. Are you in favour of restoring the Constitution of the Republic of Crimea of 1992 and of Crimea’s status as part of Ukraine?”

<sup>8</sup> See the statement of the Spokesperson of the UN Secretary-General of 17 March 2014 <http://www.un.org/apps/news/story.asp?NewsID=47366#.WcU48nRx3IU>.

<sup>9</sup> Article 45 of the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907 and Article 64, Geneva Convention IV.

<sup>10</sup> The Mejlis is a self-governing institution of the Crimean Tatar people holding executive powers. Its members are chosen from among the members of an elected assembly, the Kurultai.

<sup>11</sup> Articles 49 and 76, Geneva Convention IV.

<sup>12</sup> See “Human Rights Assessment Mission in Ukraine. Human Rights and Minority Rights Situation”, OSCE report of the High Commissioner for National Minorities and the Office for Democratic Institutions and Human Rights, The Hague/ Warsaw (12 May 2014), pp. 49-76.

<sup>13</sup> Interview given to the TV channel “Rossiya” as part of a documentary “Crimea. The way home”, available at: <https://www.youtube.com/watch?v=c8nMhCMphYU>.

<sup>14</sup> <https://www.theguardian.com/world/2014/feb/25/ukraine-sevastopol-installs-pro-russian-mayor>.

<sup>15</sup> According to the Constitution of the ‘Republic of Crimea’, adopted on 11 April 2014, the Head of Crimea («Глава Республики Крым») who is the highest-ranking official of Crimea may also act as the Prime Minister of Crimea. Starting from 14 April 2014, Sergey Aksenov has been acting as the Head and the Prime Minister of Crimea. See: <http://glava.rk.gov.ru/rus/officially.htm>

<sup>16</sup> The referendum question provided two alternatives: “1. Are you in favour of the Autonomous Republic of Crimea reuniting with Russia as a constituent part of the Russian Federation?” or “2. Are you in favour of restoring the Constitution of the Republic of Crimea of 1992 and of Crimea’s status as part of Ukraine?”

<sup>17</sup> <http://www.crimea.gov.ru/act/11689>.

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<sup>18</sup> The Opinion was prepared following a request of the Secretary-General of the Council of Europe of 7 March 2014.

<sup>19</sup> See Paragraph 28 of Opinion no. 762 / 2014 on “Whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organize a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea’s 1992 constitution is compatible with constitutional principles” (Venice, 21-22 March 2014).

<sup>20</sup> See *supra* endnote 8.

<sup>21</sup> OHCHR report on the human rights situation in Ukraine, 15 April 2014, paragraph 82

<sup>22</sup> According to the Crimean the election commission, 1,274 096 persons (83.1 per cent) cast their ballots, of whom 1,233,002 (96.77 per cent) voted to join the Russian Federation, 31,997 (2.51 per cent) voted for Crimea to be part of Ukraine, and 9,097 votes (0.72 per cent) were invalid; see <http://archive.is/bvjR6>. In Sevastopol, 274,101 persons (89.5 per cent) cast their ballots, of whom 262,041 (95.6 per cent) voted to join the Russian Federation, 9,250 (3.37 per cent) voted for Crimea to be part of Ukraine, and 2,810 votes were invalid (1.03 per cent); see <http://archive.is/zbExZ>.

<sup>23</sup> On 14 March 2014, the Constitutional Court of Ukraine ruled that the decision to hold a referendum was unconstitutional, and on 15 March the Parliament of Ukraine terminated the powers of the Parliament of Crimea.

<sup>24</sup> The law “*On Securing the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine*” entered into force on 22 November 2014.

<sup>25</sup> The resolution was adopted by 101 countries, 11 voted against, 58 abstained and 24 were absent.

<sup>26</sup> The resolution was adopted by 70 countries, 26 voted against, 77 abstained and 21 were absent.

<sup>27</sup> Agreement between the Office of the High Commissioner for Human Rights and the Government of Ukraine concerning the deployment of a short-term UN Human Rights Monitoring Mission in Ukraine, done at Geneva on 31 July 2014.

<sup>28</sup> The objectives of the visit were to discuss allegations of human rights violations, protection concerns and the establishment of a sub-office of the HRMMU in Simferopol. See OHCHR report on the human rights situation in Ukraine, 15 March to 2 April 2014, paragraphs 80 to 93.

<sup>29</sup> Gender-sensitive investigation methods, including regarding interviewing, security arrangements, witness protection and safe handling of information were used by OHCHR. See OHCHR manual on gender integration in monitoring available at <https://intranet.ohchr.org/Offices/Geneva/TEsprDD/RuleofLawEqualityandNon-DiscriminationBranch/WomensHumanRightsAndGenderSection/Documents/Chapter15-20pp.pdf>.

<sup>30</sup> Article 42 of the 1907 Hague Regulations states: “*Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.*”

<sup>31</sup> On 15 September 2015, Article 1 of the law of Ukraine “*On Securing the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine*” was amended to establish the beginning of the occupation of Crimea on 20 February 2014.

<sup>32</sup> The Government of Ukraine exercised its right to derogate from its obligations under the International Covenant on Civil and Political Rights in relation to the rights to liberty and security (Article 9); fair trial (Article 14); effective remedy (Article 2(3)); respect for private and family life (Article 17); and freedom of movement (Article 12) as well as obligations enshrined in Article 5 (liberty and security), Article 6 (fair trial) Article 8

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(respect for private and family life) and Article 13 (effective remedy) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>33</sup> Human Rights Committee, Concluding Observations on Moldova (CCPR/C/MDA/CO/2(2009), paragraph 5).

<sup>34</sup> *Ilascu and Others v. Moldova and Russia*, 48787/99, European Court of Human Rights, 8 July 2004, paragraph 331.

<sup>35</sup> Article 43, 1907 Hague Regulations.

<sup>36</sup> Henckaerts, Doswald-Beck, *Customary International Humanitarian Law*, Volume I. Rule 149, hereinafter, Customary IHL Rules; See also Article 3, Hague Convention (IV) and Article 91, Additional Protocol I.

<sup>37</sup> See Report of the International Criminal Court on Preliminary Examination Activities (2016), paragraphs 155 to 158. Pursuant to two article 12(3) declarations lodged by the Government of Ukraine on 17 April 2014 and 8 September 2015, the Court may exercise jurisdiction over Rome Statute crimes committed on the territory of Ukraine since 21 November 2013.

<sup>38</sup> <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/>.

<sup>39</sup> <http://www.statdata.ru/naselenie-krima-i-sevastopolya>.

<sup>40</sup> <http://www.dsns.gov.ua/ua/Ostanni-novini/61047.html>.

<sup>41</sup> <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis>.

<sup>42</sup> [http://www.gks.ru/free\\_doc/new\\_site/population/demo/perepis\\_krim/obsh\\_itog\\_kfo.docx](http://www.gks.ru/free_doc/new_site/population/demo/perepis_krim/obsh_itog_kfo.docx)

<sup>43</sup> <http://www.statdata.ru/naselenie-krima-i-sevastopolya>.

<sup>44</sup> See Article 4 of the Russian Federation law “*On the Accession of the Republic of Crimea into the Russian Federation and the Creation of New Federal Subjects – the Republic of Crimea and the City of Federal Significance Sevastopol*” (21 March 2014).

<sup>45</sup> See Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2014, Crimea chapter.

<sup>46</sup> Article 45, 1907 Hague Regulations.

<sup>47</sup> OHCHR report on the human rights situation in Ukraine, 2 April to 6 May 2014, paragraph 127.

<sup>48</sup> [http://rian.com.ua/CIS\\_news/20140422/345528247.html](http://rian.com.ua/CIS_news/20140422/345528247.html).

<sup>49</sup> Article 20, Federal Law No. 62-FZ “*On Citizenship of the Russian Federation*” (31 May 2002).

<sup>50</sup> <http://helsinki.org.ua/advices/poluchenye-vyda-na-zhytelstvo-dlya-hrazhdan-pozhelavshyh-sohranyt-ukraynskoe-hrazhdanstvo-y-prozhyvayuschyh-postoyanno-na-territoryy-kryima/>.

<sup>51</sup> Article 3 of the Russian Federation Law “*On circulation of agricultural land*” (24 July 2002).

<sup>52</sup> OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2016, paragraph 197.

<sup>53</sup> OHCHR report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, paragraphs 139 to 141.

<sup>54</sup> Judgment of the Balaklava district court of the Republic of Crimea, 22 November 2016, No. 5-207/2016, <http://sudact.ru/regular/doc/s56ZvgkNvSgw/>

<sup>55</sup> Judgment of the Supreme court of the Republic of Crimea, 15 November 2016, No. 12-2050/2016, <http://sudact.ru/regular/doc/hbZ5VPzDk710/>.

<sup>56</sup> In addition, the occupying power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. See Article 49, Geneva Convention IV.

<sup>57</sup> Judgment of the Supreme court of the Republic of Crimea, 17 November 2016, No. 12-401/2016, <http://sudact.ru/regular/doc/Q9mwes1Qfjb/>.

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- <sup>58</sup> See “Human Rights in Retreat. Abuses in Crimea”, Human Rights Watch, 17 November 2014, available at: <https://www.hrw.org/report/2014/11/17/rights-retreat/abuses-crimea>.
- <sup>59</sup> Judgment of the Supreme court of the Republic of Crimea, 2 November 2016, No. 12-1696/2016, <http://sudact.ru/regular/doc/55PTDREeCUZT/>.
- <sup>60</sup> Judgment of the Sudak city court of the Republic of Crimea, 25 October 2016, No. 5-131/2016, <http://sudact.ru/regular/doc/MdwdkOOIxGdO/>.
- <sup>61</sup> OHCHR report on the situation of human rights in Ukraine, 16 November 2015 to 15 February 2016, paragraph 195.
- <sup>62</sup> Article 4 of the Federal Constitutional Law “*On the Accession of the Republic of Crimea into the Russian Federation and the Creation of New Federal Subjects – the Republic of Crimea and the City of Federal Significance Sevastopol*” (21 March 2014).
- <sup>63</sup> Article 11 of the Law of the Republic of Crimea “*On State Civil Service of the Republic of Crimea*” (29 May 2014).
- <sup>64</sup> This number includes 3,581 persons employed in the city of Sevastopol and 16,803 in the Autonomous Republic of Crimea. [http://www.ukrstat.gov.ua/druk/publicat/kat\\_u/2014/bl/03/bl\\_ds\\_13.zip](http://www.ukrstat.gov.ua/druk/publicat/kat_u/2014/bl/03/bl_ds_13.zip).
- <sup>65</sup> <http://ru.krymr.com/content/news/27024784.html>.
- <sup>66</sup> Article 54, Geneva Convention IV.
- <sup>67</sup> Article 6 of the Russian Federation law “*On the Accession of the Republic of Crimea into the Russian Federation and the Creation of New Federal Subjects – the Republic of Crimea and the City of Federal Significance Sevastopol*” (21 March 2014).
- <sup>68</sup> The Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2014 mentions in relation to Crimea that the “*objective difficulties of the transition period throughout 2014*” have given rise to “*a number of legal and law enforcement grey areas*” which have encouraged corruption schemes, Moscow, 2015, p. 96.
- <sup>69</sup> Article 64, Geneva Convention IV.
- <sup>70</sup> OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2015, paragraph 159.
- <sup>71</sup> See Articles 64, 65, 67, and 70, Geneva Convention IV and Article 15, International Covenant on Civil and Political Rights.
- <sup>72</sup> OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2015, paragraphs 158-159 and HRMMU report on the human rights situation in Ukraine, 16 May to 15 August 2016, paragraph 157.
- <sup>73</sup> OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2017, paragraph 144.
- <sup>74</sup> Ibid. paragraph 145.
- <sup>75</sup> 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, Havana, Cuba, 27 August to 7 September 1990, Principles 16 and 22.
- <sup>76</sup> OHCHR report on the human rights situation in Ukraine, 15 March to 2 April 2014, paragraph 86.
- <sup>77</sup> See List of Issues in Relation to the Seventh Periodic Report of the Russian Federation, *Human Rights Committee*, 18 December 2014, CCPR/C/RUS/Q/7/Add.1, paragraph 173.
- <sup>78</sup> <http://khpg.org/en/index.php?id=1457018864>.
- <sup>79</sup> HRMMU interview, 13 August 2017.
- <sup>80</sup> <http://www.telegraph.co.uk/news/worldnews/europe/ukraine/10716412/Ukraines-unlikeliest-funeral-the-only-two-foes-to-die-in-Russias-Crimea-takeover-are-mourned-together.html>.
- <sup>81</sup> <http://www.independent.co.uk/news/world/europe/ukraine-naval-officer-shot-dead-by-russian-solider-in-crimea-9243306.html>.
- <sup>82</sup> <https://ru.krymr.com/a/27740314.html>.

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- <sup>83</sup> <https://www.kyivpost.com/article/content/euromaidan/two-die-in-rallies-outside-crimean-parliament-says-ex-head-of-mejlis-337708.html>.
- <sup>84</sup> OHCHR report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, paragraph 187.
- <sup>85</sup> See Article 2, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Article 7, International Covenant on Civil and Political Rights; and Article 3, European Convention for the Protection of Human Rights and Fundamental Freedoms.
- <sup>86</sup> See OHCHR report on the human rights situation in Ukraine, 15 June 2014, paragraphs 299-303 and 309 and OHCHR report on the human rights situation in Ukraine, 18 August to 16 September 2014, paragraph 165.
- <sup>87</sup> See Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his Mission in Kyiv, Moscow and Ukraine, from 7 to 12 September 2014, paragraph 17.
- <sup>88</sup> See List of Issues in Relation to the Seventh Periodic Report of the Russian Federation, *Human Rights Committee*, 18 December 2014, CCPR/C/RUS/Q/7/Add.1, paragraph 174.
- <sup>89</sup> Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principle 2.
- <sup>90</sup> HRMMU interviews, 7 September 2016 and 11 December 2016.
- <sup>91</sup> OHCHR report on the human rights situation in Ukraine, 16 August to 15 November 2016, paragraph 158.
- <sup>92</sup> OHCHR report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, paragraph 133.
- <sup>93</sup> Rule 99, Customary International Humanitarian law.
- <sup>94</sup> Article 9, International Covenant on Civil and Political Rights; UN Human Rights Committee (HRC), General comment no. 35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35.
- <sup>95</sup> Communication No. 458/1991, *A. W. Mukong v. Cameroon* (Views adopted on 21 July 1994), in UN doc. *GAOR*, A/49/40 (vol. II), p. 181, paragraph 9.8.
- <sup>96</sup> OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2016, paragraphs 183 to 185.
- <sup>97</sup> OHCHR report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, paragraph 202.
- <sup>98</sup> HRMMU interview, 20 October 2014.
- <sup>99</sup> Article 2, Convention for the Protection of All Persons from Enforced Disappearance.
- <sup>100</sup> Rule 99, Customary International Humanitarian Law.
- <sup>101</sup> Rule 90, *Ibid.*
- <sup>102</sup> Rule 89, *Ibid.*
- <sup>103</sup> Rule 123, *Ibid.*
- <sup>104</sup> See *Cyprus v. Turkey*, 25781/94, Judgment, European Court of Human Rights, 10 May 2001, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59454>.
- <sup>105</sup> Reshat Ametov, a pro-Ukrainian activist, was abducted in Simferopol and found dead two weeks later.
- <sup>106</sup> The Ukrainian NGO *CrimeaSOS* estimates that between March 2014 and March 2017, agents of the Russian Federation were directly or indirectly involved in at least 36 cases of enforced disappearances. See Enforced Disappearance in Crimea Annexed by Russian Federation 2014-2016, *CrimeaSOS*, p. 2.
- <sup>107</sup> OHCHR report on the human rights situation in Ukraine, 15 November 2014, paragraphs 213-215.
- <sup>108</sup> Information provided by the Prosecutor's office of the Republic of Crimea to *CrimeaSOS* on 29 November 2016.



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- <sup>109</sup> Ibid.
- <sup>110</sup> Ibid.
- <sup>111</sup> The Federal List of Extremist Materials was introduced by Federal Law No. 114-FZ “*On Combating Extremist Activities*” (25 July 2002).
- <sup>112</sup> See Opinion No. 660/2011 on the Federal Law on Combating Extremist Activity of Russian Federation, The European Commission For Democracy Through Law (Venice Commission), 1 June 2012.
- <sup>113</sup> Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2014, Moscow, 2015, p. 99
- <sup>114</sup> See “*The Situation of the Crimean Tatars since the Annexation of Crimea by the Russian Federation*”, Report prepared by an Unofficial Turkish Delegation in Crimea on 27-30 April 2015 (5 June 2015), pp. 9-10.
- <sup>115</sup> OHCHR report on the human rights situation in Ukraine, 18 August to 16 September 2014, paragraphs 155-156.
- <sup>116</sup> See “*The Situation of the Crimean Tatars since the Annexation of Crimea by the Russian Federation*”, *ibid.* p. 9.
- <sup>117</sup> <http://fedsfm.ru/documents/terrorists-catalog-portal-act>
- <sup>118</sup> [http://www.krim.fsin.su/news/detail.php?ELEMENT\\_ID=129921](http://www.krim.fsin.su/news/detail.php?ELEMENT_ID=129921).
- <sup>119</sup> Article 14(5), International Covenant on Civil and Political Rights.
- <sup>120</sup> Statistics of the State Penitentiary Service of Ukraine as of 20 March 2014, <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/735176>.
- <sup>121</sup> Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2015, Moscow, p. 72
- <sup>122</sup> Report of the High Commissioner for Human Rights in the Republic of Crimea, 2016, p. 63, [http://ombudsman.rk.gov.ru/file/doklad\\_2016.pdf](http://ombudsman.rk.gov.ru/file/doklad_2016.pdf)
- <sup>123</sup> Rule 58, United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules).
- <sup>124</sup> OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2017, paragraph 150.
- <sup>125</sup> HRMMU interview, 21 March 2017.
- <sup>126</sup> Ibid.
- <sup>127</sup> One Ukrainian NGO claimed on 31 May 2016 that 2,200 prisoners had been transferred from Crimea to the Russian Federation, <https://hromadskeradio.org/programs/hromadska-hvylya/2200-krymskyh-uvyaznennyh-bulo-peremishcheno-na-terytoriyu-rosiyi-advokat#V0In6plsZF0.twitter>.
- <sup>128</sup> OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2016, paragraph 181.
- <sup>129</sup> The trial started on 21 July 2015, and on 25 August 2015, a military tribunal sentenced him to 20 years of imprisonment.
- <sup>130</sup> See Articles 49 and 76, Geneva Convention IV.
- <sup>131</sup> OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2017, paragraph 151.
- <sup>132</sup> Ibid. paragraph 152.
- <sup>133</sup> See Article 76, Geneva Convention IV; Article 10, International Covenant on Civil and Political Rights; Article 3, European Convention on Human Rights and Fundamental Freedoms, and *Kudla v. Poland*, 30210/96, European Court of Human Rights, 26 October 2000, paragraph 94.
- <sup>134</sup> Article 7, Treaty of Accession between the Republic of Crimea and the Russian Federation (18 March 2014).
- <sup>135</sup> This figure was announced by the military commissioner of Sevastopol, Alexei Astakhov, on 25 May 2017.



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- <sup>136</sup> HRMMU interviews, 20 November 2015 and 13 October 2016.
- <sup>137</sup> Article 51, Geneva Convention IV.
- <sup>138</sup> See OSCE Special Monitoring Mission to Ukraine thematic report, “Freedom of movement across the administrative boundary line with Crimea” (21 June 2015), available at: <http://www.osce.org/ukraine-smm/165691>.
- <sup>139</sup> See Article 12, International Covenant on Civil and Political Rights; and Articles 2 and 3, Protocol 4 to the European Convention on Human Rights and Fundamental Freedoms.
- <sup>140</sup> HRMMU interview, 5 May 2017.
- <sup>141</sup> See Article 23, International Covenant on Civil and Political Rights; Article 10, Convention on the Right of the Child; Article 8, European Convention on Human Rights and Fundamental Freedoms.
- <sup>142</sup> Article 49, Geneva Convention IV.
- <sup>143</sup> HRMMU interview, 26 May 2017.
- <sup>144</sup> The decision on the undesirability of stay of Mr. Dzhemilev and Mr. Chubarov in the Russian Federation was taken pursuant to Article 27 of the Federal Law “*On the Procedure of Exit from the Russian Federation and Entry to the Russian Federation*”. See Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2014, p. 101.
- <sup>145</sup> HRMMU interview, 17 October 2016.
- <sup>146</sup> HRMMU interviews, 19 February 2015, 22 September 2015 and 3 February 2016.
- <sup>147</sup> See Article 10, Law of Ukraine “*On Guaranteeing the rights and freedoms of citizens and on the legal regime on the temporarily occupied territory of Ukraine*”.
- <sup>148</sup> On 23 November 2016, 14 citizens of Uzbekistan and one Azeri citizen travelling from Crimea to mainland Ukraine were stopped by Ukrainian border guards on the ABL and issued with three-year entry bans to Ukraine for having accessed Crimea through the Russian Federation, in violation of Ukrainian legislation.
- <sup>149</sup> See Government Regulation No. 367 of 4 June 2015.
- <sup>150</sup> OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2017, paragraph 148.
- <sup>151</sup> OHCHR report on the human rights situation in Ukraine, 16 August to 15 November 2015, paragraphs 144 to 146.
- <sup>152</sup> OHCHR report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, paragraph 198.
- <sup>153</sup> OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2016, paragraph 175.
- <sup>154</sup> Rule 104, Customary International Humanitarian Law.
- <sup>155</sup> See Article 18(3), International Covenant on Civil and Political Rights, and Article 9(2), European Convention on Human Rights and Fundamental Freedoms.
- <sup>156</sup> Maximum fines amount to the equivalent of \$780 for individuals or \$15,000 for organizations.
- <sup>157</sup> See Article 5.26, part 4 of the Code of Administrative Offenses of the Russian Federation (“Carrying out missionary activity in violation of the requirements of the law”).
- <sup>158</sup> See Article 5.26, part 3, *ibid*.
- <sup>159</sup> OHCHR report on the human rights situation in Ukraine, 7 May to 7 June 2014, paragraph 315.
- <sup>160</sup> OHCHR report on the human rights situation in Ukraine, 16 July to 16 August 2014, paragraph 163.
- <sup>161</sup> OHCHR report on the human rights situation in Ukraine, 1 to 30 November 2014, paragraph 84.
- <sup>162</sup> OHCHR report on the human rights situation in Ukraine 15 December 2014, paragraph 84.

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<sup>163</sup> On 24 June 2014, the FSB raided a madrassa in the village of Kolchugino, in the Simferopol district. On 13 August 2014, three madrassas in Simferopol were searched. On 22 September 2014, a seven-hour search was carried out at the Derekoi Mosque in Yalta.

<sup>164</sup> See 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 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*”.

<sup>165</sup> The term “religious organizations” includes parishes, congregations, theological schools, monasteries, and other constituent parts of a church or religious group.

<sup>166</sup> <http://khp.org/en/index.php?id=1497831415>.

<sup>167</sup> <https://uawire.org/news/jehovah-s-witness-follower-in-the-crimea-dies-after-trial>.

<sup>168</sup> The churches in Perevalne (Simferopol district) and Sevastopol were seized while those in Krasnoperekopsk, Kerch and Saki were closed.

<sup>169</sup> <https://ru.krymr.com/a/news/28721834.html>.

<sup>170</sup> OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2016, paragraphs 165 to 167.

<sup>171</sup> OHCHR report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, paragraphs 199-200.

<sup>172</sup> OHCHR report on the human rights situation in Ukraine, 17 September to 31 October 2014, paragraph 212.

<sup>173</sup> OHCHR report on the human rights situation in Ukraine, 18 August to 16 September 2014, paragraph 159.

<sup>174</sup> According to the International Covenant on Civil and Political Rights (Article 21) and the European Convention on Human Rights and Fundamental Freedoms (Article 11), state authorities have a responsibility to respect and ensure freedom of peaceful assembly, including by protecting assemblies from attacks or disruption by third parties. Any restrictions of this right must be proportionate to achieve a legitimate aim that is demonstrably necessary in a democratic society.

<sup>175</sup> OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2015, paragraph 175.

<sup>176</sup> European Court of Human Rights, *Stankov and the United Macedonian Organization Ilinden v. Bulgaria* (2001), paragraph 94.

<sup>177</sup> See A/HRC/31/66 paragraph 30, and A/HRC/23/39, paragraph 63.

<sup>178</sup> See Amnesty International “*One Year On. Violations of the right to freedom, expression and association in Crimea*”, March 2015, pp 9-14.

<sup>179</sup> OHCHR report on the human rights situation in Ukraine, 7 May to 7 June 2014, paragraphs 298 to 301 and 303.

<sup>180</sup> *Ibid.* paragraph 302.

<sup>181</sup> OHCHR report on the human rights situation in Ukraine, 17 September to 31 October 2014, paragraph 230.

<sup>182</sup> Ministry of Foreign Affairs of the Russian Federation, submission to UNESCO, 14 April 2015, available at: <http://russianunesco.ru/eng/article/2070>.

<sup>183</sup> OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2015, paragraphs 165-166.

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<sup>184</sup> See Fourth Report submitted by the Russian Federation pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (Received on 20 December 2016), p. 28.

<sup>185</sup> *Human Rights Committee*, General Comment No. 34, *Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34 (12 September 2011), paragraph 42.

<sup>186</sup> OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2017, paragraph 139.

<sup>187</sup> See Amnesty International Public statement, “*Crimea: Rapidly Deteriorating Human Rights Situation in the International Blind Spot*”, 17 March 2017, p. 5.

<sup>188</sup> HRMMU interview, 29 June 2014.

<sup>189</sup> See “*The situation of national minorities in Crimea following its annexation*”, European Parliament, Policy Department, Directorate General for External Policies, 2016, p.19, available at:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO\\_STU\(2016\)578003\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf).

<sup>190</sup> Russian Federal Law “*On Amending the Federal Law ‘Enacting chapter 1 of the Civil Code of the Russian Federation’ and Article 1202(3) of the Civil Code of the Russian Federation*” (5 May 2014), available at: <http://base.garant.ru/70648870/>.

<sup>191</sup> Russian Federal Law “*On Amending some legal acts of the Russian Federation*” (23 May 2015) and Russian Federal Law “*On Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organizations Performing the Function of Foreign Agents*” (20 July 2012).

<sup>192</sup> This number includes “autonomous non-commercial organizations”, “national-cultural autonomies” and “non-government organizations”. See <http://unro.minjust.ru/NKO.aspx>.

<sup>193</sup> <http://rgo.informjust.ua/>.

<sup>194</sup> HRMMU interview, 3-4 September 2017

<sup>195</sup> OHCHR report on the human rights situation in Ukraine, 18 August to 16 September 2014, paragraph 165.

<sup>196</sup> *Ibid.*

<sup>197</sup> See law “*On special aspects of regulation of property and land matters in the Republic of Crimea*” (31 July 2014), Resolution of the ‘State Council of the Republic of Crimea’ “*On aspects of administration of the property of the Republic of Crimea*” (30 April 2014) with subsequent amendments. Other legal acts seeking to facilitate the process of nationalization include the law “*On the administration and disposition of state-owned property in the Republic of Crimea*” (8 August 2014), and 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*” (26 March 2014).

<sup>198</sup> This figure is based on information collected by OHCHR from open sources.

<sup>199</sup> In the city of Sevastopol, nationalization was conducted in accordance with a Resolution of the Sevastopol city government “*On some aspects of the nationalization of property*” (28 February 2015) with subsequent amendments.

<sup>200</sup> See Resolutions of the Sevastopol city Government “*On some aspects of the nationalization of property*” No. 118-III, 123-III, 662-III of 28 February 2015, 28 February 2015 and 8 July 2016 respectively.

<sup>201</sup> Articles 46 and 56, 1907 Hague Regulations.

<sup>202</sup> *Ibid.* Article 55.

<sup>203</sup> See “*The Integration of Formerly Deported People in Crimea, Ukraine*”; Needs Assessment of the OSCE High Commissioner on National Minorities, August 2013, pp. 9-15.

<sup>204</sup> Presidential Decree No. 615/2010 proposed taking “*measures, in accordance with established procedures, for facilitating the adoption of the Concept of the State ethno-*

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*national policy and programmes for the period until 2015 for resettlement of Crimean Tatars, other persons deported on the ground of ethnic origin, and their descendants who have returned or are returning to Ukraine for permanent residence, their adaptation and integration in Ukrainian society.”*

<sup>205</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, 7 May to 7 June 2014, paragraph 320.

<sup>206</sup> Law ‘On provision of land plots which are in state or municipal property and on certain issues of land relations’ (15 January 2015), available at <http://crimea.gov.ru/textdoc/ru/7/act/66z.pdf>.

<sup>207</sup> Resolution No. 2206 “On the demolition of illegally constructed buildings in the municipal district of Simferopol”, adopted on 23 September 2016.

<sup>208</sup> See Article 11(1), International Covenant on Economic, Social and Cultural Rights; Article 17(1), International Covenant on Civil and Political Rights; Article 1, European Convention on Human Rights and Fundamental Freedoms; and UN Committee on Economic, Social and Cultural Rights (CESCR); General Comment No. 7: The right to adequate housing (Art. 11.1): forced evictions, 20 May 1997, E/1998/22

<sup>209</sup> See Resolutions 1993/77 and 2004/28 of the United Nations Commission on Human Rights.

<sup>210</sup> OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2015, paragraph 163.

<sup>211</sup> See “Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015)”, OSCE Office for Democratic Institutions and Human Rights and High Commissioner for National Minorities, paragraph 258, 17 September 2015, available at: <http://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>

<sup>212</sup> See law No.1236/30-10 (4 April 2017), which regulates the use of official languages in the spheres of education, legislation, public relations, official correspondence and daily life.

<sup>213</sup> OHCHR report on the human rights situation in Ukraine, 15 May to 16 August 2016, paragraphs 176-177.

<sup>214</sup> OHCHR report on the human rights situation in Ukraine, 16 August to 15 November 2016, paragraphs 167 to 169.

<sup>215</sup> See 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); Request for the indication of provisional measures, 19 April 2017, General List No. 166, paragraph 106.

<sup>216</sup> Committee on the Elimination of Racial Discrimination, CERD/C/RUS/CO/23-24.

<sup>217</sup> See Article 26, International Covenant on Civil and Political Rights; Articles 2 and 13, International Covenant on Economic, Social and Cultural Rights; Article 29, Convention on the Right of the Child; Article 5, Convention on the Elimination of All Forms of Racial Discrimination; Article 10, Convention on the Elimination of Discrimination Against Women ; Articles 1, 2 and 5, UNESCO Convention against Discrimination in Education; Articles 26 and 29, International Labor Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries, No. 169.

<sup>218</sup> See *Committee on Economic, Social and Cultural Rights, General Comment No. 13*, (twenty-first session, 1999), *the right to education (article 13 of the Covenant)*, E/C.12/1999/10, 8 December 1999, paragraphs 51-52.

<sup>219</sup> See Information on the Situation in the Republic of Crimea (Russian Federation) in the Fields of UNESCO Competence, Received from Russian Competent Authorities (As of 10 October 2014); 195 EX/5.INF.5, Paris, 21 October 2014, p.14.

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- <sup>220</sup> See “Situation with Access to Education in the Native Language in Crimea”, *Crimean Human Rights Group*, available at: [http://www.civicsolidarity.org/sites/default/files/detailed\\_report\\_education\\_crimea\\_a4\\_.pdf](http://www.civicsolidarity.org/sites/default/files/detailed_report_education_crimea_a4_.pdf).
- <sup>221</sup> The university was made a part of the Crimean Federal University (CFU) as the Taurida Academy in Crimea. Following this, the Ukrainian authorities relocated the Vernadsky Taurida National University to mainland Ukraine, and reopened it in Kyiv on 27 September 2016.
- <sup>222</sup> See 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); Request for the indication of provisional measures, 19 April 2017, General List No. 166, paragraph 106.
- <sup>223</sup> According to the Crimean Tatar NGO *Maarifchi*, among 1<sup>st</sup> grade children in September 2016, 825 out of approximately 20,000 were educated in the Crimean Tatar language.
- <sup>224</sup> See “Situation with Access to Education in the Native Language in Crimea”, *Crimean Human Rights Group*, available at: [http://www.civicsolidarity.org/sites/default/files/detailed\\_report\\_education\\_crimea\\_a4\\_.pdf](http://www.civicsolidarity.org/sites/default/files/detailed_report_education_crimea_a4_.pdf).
- <sup>225</sup> <https://www.15minut.org/news/172009-sevastopolskie-vrachi-uvolnyayutsya-iz-zanizkih-zarplat-i-vysokih-cen-na-zhile>.
- <sup>226</sup> HRMMU interview, 20 December 2016.
- <sup>227</sup> This information was mentioned by the Minister of Health of Crimea in November 2016. See <http://podpricelom.com.ua/en/read/social-analitics-read/minister-medical-centers-crimea-staffed-doctors-one-third.html>.
- <sup>228</sup> OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2015, paragraph 186.
- <sup>229</sup> The Committee on Economic Social and Cultural Rights expressed its concern “*about the continued ban on the medical use of methadone and buprenorphine for treatment of drug dependence*” in the Russian Federation “*and the fact that the Government does not support opioid substitution therapy (OST) and needle and syringe programmes.*” See fifth periodic report of the Russian Federation (E/C.12/RUS/5), Concluding Observations, 1 June 2011, paragraph 29.
- <sup>230</sup> In Crimea, OST was legal since 2006.
- <sup>231</sup> See “*Substitution maintenance treatment in Ukraine: Humanitarian and medical mission 16-21 May 2014*”, Expert report of the Pompidou Group, P-PG/ (2014) Misc. 1 rev.
- <sup>232</sup> <https://www.theguardian.com/world/2015/jan/20/ukrainian-drug-addicts-dying-due-to-treatment-ban-says-un>.
- <sup>233</sup> <http://www.rferl.org/a/crimeas-methadone-ban-hitting-rehab-patients-hard/25429665.html>.
- <sup>234</sup> <http://podpricelom.com.ua/en/read/social-analitics-read/increase-hiv-incidence-recorded-crimea.html>.
- <sup>235</sup> See Article 11, International Covenant on Civil and Political Rights; Articles 24(2)(c) and 27, Convention on the Right of the Child; and Article 28, CRPD; and Article 25, Universal Declaration of Human Rights.
- <sup>236</sup> Article 54(2), Customary International Humanitarian Law.
- <sup>237</sup> OHCHR report on the human rights situation in Ukraine, 15 June 2014, paragraph 322.
- <sup>238</sup> <http://tass.ru/en/economy/749184>.
- <sup>239</sup> <http://tass.ru/en/russia/790555>.
- <sup>240</sup> *Committee on Economic, Social and Cultural Rights, General Comment No 4, The Right to Adequate Housing (Article 11(1) of the Covenant)*, 13 December 1991, paragraph 8(b), E/1992/23, Annex 3.

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<sup>241</sup> OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2016, paragraph 200.

<sup>242</sup> *Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23.

<sup>243</sup> Under international human rights law, the Government remains obliged to ensure the satisfaction of minimum essential levels of social and economic rights (e.g. primary health care, essential food stuff, basic shelter and housing and most basic forms of education); see *Committee on Economic, Social and Cultural Rights, General Comment No. 3*, *ibid.*



# Annex 778

OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of  
Crimea and the City of Sevastopol, U.N. Doc. A/HRC/36/CRP.3 (25 September 2017)



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**Human Rights Council**

**Thirty-sixth session**

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Agenda item 10

**Technical assistance and capacity-building**


**Situation of human rights in the temporarily occupied  
Autonomous Republic of Crimea and the city of Sevastopol  
(Ukraine)\***

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## I. Executive Summary

1. On 14 March 2014, following a request of the Government of Ukraine addressed to the United Nations Secretary-General to establish a human rights mission in Ukraine, the Office of the United Nations High Commissioner for Human Rights (OHCHR) deployed a Human Rights Monitoring Mission in Ukraine (HRMMU). Since then, HRMMU has been collecting and analyzing information on the human rights situation throughout Ukraine, including in the Autonomous Republic of Crimea and the city of Sevastopol<sup>1</sup> on the basis of United Nations General Assembly resolutions 68/262, reaffirming the territorial integrity of Ukraine and 71/205 referring to the Crimean peninsula as Ukrainian territory temporarily occupied<sup>2</sup> by the Russian Federation. According to the Constitution of Ukraine, Crimea and the city of Sevastopol are separate administrative units of the Crimean peninsula having their own governing institutions.

2. The present report was developed based on the mandate of OHCHR and HRMMU, but also following a request by General Assembly resolution 71/205<sup>3</sup> on the “*Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)*” for a dedicated thematic report of OHCHR on the “situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol”. The report covers the period from 22 February 2014 to 12 September 2017. HRMMU has not been provided access to Crimea by Russian Federation authorities since its former Head of Mission accompanied the former Assistant Secretary-General for Human Rights, Ivan Šimonović, on 21-22 March 2014. As a result, it has been monitoring human rights developments in Crimea from mainland Ukraine.

3. Pro-Russian groups in Crimea rejected the ousting by Parliament of former President of Ukraine Viktor Yanukovich on 22 February 2014, criticizing it as an unconstitutional change of power. One of these groups was the ‘people’s militia’, a local paramilitary formation created on 23 February 2014, and commonly referred to as the ‘Crimean self-defence’.<sup>4</sup> With the support of Russian Federation troops<sup>5</sup>, the Crimean self-defence-blocked key infrastructure, airports and military installations and took control of strategic facilities. It has been accused of committing numerous human rights abuses with impunity since the end of February 2014.

4. The President of the Russian Federation Vladimir Putin stated that in a meeting with heads of security agencies during the night of 22 and 23 February 2014 he took the decision to “start working on the return of Crimea to the Russian Federation”.<sup>6</sup>

5. On 27 February 2014, uniformed men without insignia took control of the Parliament of Crimea. On the same day, the Parliament of Crimea dismissed the Government of Crimea. On 11 March 2014, the Parliaments of Crimea and Sevastopol adopted a joint Declaration of Independence stating that Crimea and Sevastopol will unite to form an independent state - the “Republic of Crimea” - and seek integration into the Russian Federation if Crimean residents choose to join the Russian Federation at a referendum scheduled for 16 March.<sup>7</sup> According to the pro-Russian authorities in Crimea, a large majority of voters backed Crimea’s “incorporation” into the Russian Federation. The referendum was declared invalid by the Government of Ukraine and the United Nations General Assembly. The United Nations Secretary-General Ban-Ki Moon expressed “deep concern and disappointment”, adding that the referendum would only exacerbate an “already complex and tense situation”.<sup>8</sup> Subsequently, the Russian Federation and the “Republic of Crimea” signed on 18 March 2014 a “treaty of accession” effectively annexing the peninsula into the Russian Federation.

6. One consequence of this development was the imposition of Russian Federation citizenship on residents of Crimea. This has resulted in regressive effects on the enjoyment



of human rights, particularly for those who refused to automatically adopt Russian Federation citizenship, were ineligible to obtain it, or were required to forfeit their Ukrainian citizenship in order to remain employed.

7. Since the beginning of occupation, Ukrainian laws were substituted by Russian Federation laws, in violation of the obligation under international humanitarian law to respect the existing law of the occupied territory.<sup>9</sup> Among other implications, this led to the arbitrary implementation of Russian Federation criminal law provisions designed to fight terrorism, extremism and separatism, which have restricted the right to liberty and security of the person and the space for the enjoyment of fundamental freedoms.

8. Laws and judicial decisions deriving from the implementation of the legal framework of the Russian Federation in Crimea have further undermined the exercise of fundamental freedoms. Mandatory re-registration requirements were imposed on NGOs, media outlets and religious communities in Crimea. Russian Federation authorities have denied a number of them the right to re-register, generally on procedural grounds, raising concerns about the use of legal norms and procedures to silence dissent or criticism.

9. Most affected by these restrictions were individuals opposed to the March 2014 referendum or criticizing Russian Federation control of Crimea, such as journalists, bloggers, supporters of the Mejlis,<sup>10</sup> pro-Ukrainian and Maidan activists, as well as persons with no declared political affiliation but advocating strict compliance with the tenets of Islam, who are often accused of belonging to extremist groups banned in the Russian Federation, such as Hizb ut-Tahrir. The rights of these people to freedom of opinion and expression, association, peaceful assembly, movement, thought, conscience and religion, were obstructed through acts of intimidation, pressure, physical attacks, warnings as well as harassment through judicial measures, including prohibitions, house searches, detentions and sanctions.

10. Russian Federation justice system applied in Crimea often failed to uphold fair trial rights and due process guarantees. Court decisions have confirmed actions, decisions and requests of investigating or prosecuting bodies, seemingly without proper judicial oversight. Courts frequently ignored credible claims of human rights violations occurring in detention. Judges have applied Russian Federation criminal law provisions to a wide variety of peaceful assemblies, speech and activities, and in some cases retroactively to events that preceded the temporary occupation of Crimea or occurred outside of the peninsula in mainland Ukraine.

11. Grave human rights violations, such as arbitrary arrests and detentions, enforced disappearances, ill-treatment and torture, and at least one extra-judicial execution were documented. For a three-week period following the overthrow of Ukrainian authorities in Crimea, human rights abuses occurring on the peninsula were attributed to members of the Crimean self-defence and various Cossack groups. Following Crimea's temporary occupation, on 18 March 2014, representatives of the Crimean Federal Security Service of the Russian Federation (FSB) and police were more frequently mentioned as perpetrators.

12. While those human rights violations and abuses have affected Crimean residents of diverse ethnic backgrounds, Crimean Tatars were particularly targeted especially those with links to the Mejlis, which boycotted the March 2014 referendum and initiated public protests in favour of Crimea remaining a part of Ukraine. Intrusive law enforcement raids of private properties have also disproportionately affected the Crimean Tatars and interfered with their right to privacy under the justification of fighting extremism. Furthermore, the ban of the Mejlis, imposed in April 2016 by the Supreme Court of Crimea, has infringed on the civil, political and cultural rights of Crimean Tatars.

13. The Russian Federation authorities in Crimea have failed to effectively investigate most allegations of human rights violations committed by the security forces or armed

groups acting under the direction or control of the State. Failure to prosecute these acts and ensure accountability has denied victims proper remedy and strengthened impunity, potentially encouraging the continued perpetration of human rights violations.

14. Since the beginning of the temporary occupation, all penitentiary institutions in Crimea have been integrated into the penitentiary system of the Russian Federation, leading to numerous transfers of detainees from Crimea to penal colonies in the Russian Federation, contrary to provisions of international humanitarian law.<sup>11</sup>

15. Restrictions affecting freedom of movement to and from Crimea have been imposed by the Russian Federation and Ukraine on the grounds of security or pursuant to immigration rules. They include five-year exiles, deportations, prohibitions on entry of individuals and public transportation, non-recognition of documents, and restrictive regulations applicable to travel of children and transportation of personal belongings.

16. Large scale expropriation of public and private property has been conducted without compensation or regard for international humanitarian law provisions protecting property from seizures or destruction. Crimean Tatars who returned from deportation in the 1990s and built their houses on land plots without obtaining construction permits remain at risk of seeing their security of tenure contested and being forcibly evicted.

17. The space for public manifestation of Ukrainian culture and identity has shrunk significantly. Groups manifesting their attachment to national symbols, dates or historic figures have been issued warnings or sanctioned by courts for violating public order or conducting unauthorized rallies. Education in the Ukrainian language has almost disappeared from Crimea, jeopardizing one of the pillars of an individual's identity and cultural affiliation.

18. The availability of health services in free-of-charge State medical institutions has been impaired since March 2014 due to the numerous departures of doctors and other medical staff to more lucrative private sector institutions in Crimea. This has resulted in delayed treatment of the most economically disadvantaged, jeopardizing their right to life and health. Retrogressive measures stemming from the implementation of Russian Federation legislation have affected people suffering from drug dependence.

19. The right of the Crimean population to an adequate standard of living has been affected by measures taken by Ukrainian authorities or implemented on mainland Ukraine, including the interruption of water and energy supplies to the peninsula. Under international humanitarian law, the Russian Federation as the occupying power is obliged to ensure to the fullest extent of the means available to it sufficient hygiene and public health standards, as well as the provision of food and medical care to the population. At the same time, this does not exonerate Ukraine from its obligations under the International Covenant on Economic, Social and Cultural Rights not to interfere with the enjoyment of the rights it enshrines, and from respecting the requirement under international humanitarian law to ensure that the basic needs of the population continue to be met under conditions of occupation.

## **II. Introduction**

20. The political events that marked the Maidan protests in Kyiv, and culminated in the departure, on 21 February 2014, of then President of Ukraine Viktor Yanukovich and the establishment of an interim Government of Ukraine on 23 February, affected Crimea. The Crimean peninsula had also been the theatre of pro- and larger anti-Maidan rallies since December 2013.<sup>12</sup>

21. The President of the Russian Federation Vladimir Putin stated that in a meeting with heads of security agencies during the night of 22 and 23 February 2014 he took the decision to “start working on the return of Crimea to the Russian Federation”.<sup>13</sup>
22. On 23 February 2014, demonstrations in Sevastopol led to the resignation of the Kyiv-appointed authorities and the installation by the local parliament of a pro-Russian “People’s Mayor” on 24 February.<sup>14</sup>
23. In Simferopol, the capital of the Autonomous Republic of Crimea, supporters of Ukrainian unity, mainly Crimean Tatars, clashed on 26 February with pro-Russian residents in front of the parliament. A stampede left two people dead and some 70 injured. On the following night, armed groups without insignia took over the buildings of the local government and parliament. On 27 February, members of the Parliament of Crimea, in the presence of gunmen, dismissed the local Government and elected Sergey Aksenov as the Head of Crimea.<sup>15</sup>
24. On 6 March 2014, the Parliament of Crimea adopted a resolution calling for a referendum<sup>16</sup> on the status of the peninsula, to be held on 16 March 2014, basing the decision on the “absence of legitimate State organs in Ukraine”.<sup>17</sup> In an Opinion<sup>18</sup> concerning the compatibility of this resolution with constitutional principles, the European Commission for Democracy through Law (Venice Commission) of the Council of Europe noted that the referendum violated the Constitution of Ukraine, and asserted that circumstances in Crimea did not allow for a referendum to be held in line with European democratic standards.<sup>19</sup> On 17 March 2014, United Nations Secretary-General Ban-Ki Moon regretted that the referendum would only exacerbate an “already complex and tense situation”<sup>20</sup>. Furthermore, during his mission to Crimea on 21 and 22 March 2014, former UN Assistant Secretary-General for Human Rights Ivan Šimonović received information on alleged cases of non-Ukrainian citizens participating in the referendum, as well as individuals voting numerous times in different locations.<sup>21</sup>
25. According to the pro-Russian authorities in Crimea, an overwhelming majority of the Crimean population voted in favour of joining the Russian Federation. Opponents boycotted the poll, considering it as unlawful.<sup>22</sup> The authorities of Ukraine declared these developments unconstitutional and terminated the powers of Crimean institutions.<sup>23</sup>
26. On 18 March 2014 a “*Treaty on the Accession of the Republic of Crimea to the Russian Federation*” (“*Treaty on Accession*”) was signed in Moscow, and on 21 March 2014, the Parliament of the Russian Federation ratified a Constitutional Law “*On the Accession of the Republic of Crimea to the Russian Federation and the Creation of the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol within the Russian Federation*”.
27. On 15 April 2014, the Parliament of Ukraine passed a law designed to regulate legal aspects related to the temporary occupation of Crimea.<sup>24</sup> It defines principles applying to legal and property rights, economic activity, social rights and benefits, freedom of movement, and compensation for damages incurred from the temporary occupation.
28. The General Assembly of the United Nations adopted two resolutions on Crimea. Resolution 68/262<sup>25</sup> on the “*Territorial integrity of Ukraine*” of 27 March 2014 states that the March 2014 referendum has “no validity” and cannot form the basis for any alteration of the status of Crimea. Resolution 71/205 on the “*Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)*”, adopted on 19 December 2016<sup>26</sup>, refers to Crimea as being under the “temporary occupation” of the Russian Federation. It calls on the latter to abide by the Geneva Conventions. It also urges the Russian Federation to ensure proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations (NGOs) to the peninsula, and requests the United Nations Secretary-General to seek ways and means

to ensure safe and unfettered access to Crimea by established regional and international human rights monitoring mechanisms. In addition, it requests the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a dedicated thematic report on the human rights situation in Crimea.

29. The present report was developed pursuant to General Assembly Resolution 71/205, and covers the period between 22 February 2014 and 12 September 2017. Since the adoption of this resolution, OHCHR has been analyzing incidents occurring in Crimea based on an international humanitarian law framework, as well as against international human rights standards.

### III. Methodology

30. HRMMU has a mandate *inter alia* to monitor and publicly report on the human rights situation in Ukraine through teams based in various locations, including through a presence in Crimea's capital, Simferopol.<sup>27</sup>

31. Former Assistant Secretary-General for Human Rights Ivan Šimonović was the last United Nations official to visit the Crimean peninsula, on 21 and 22 March 2014.<sup>28</sup>

32. On 18 September 2014, a letter addressed by HRMMU to the Head of Crimea requested the opportunity to establish a sub-office in Simferopol, in line with its mandate and General Assembly resolution 68/262. The response, received on 8 October 2014, stated that HRMMU had been deployed on the territory of Ukraine upon the invitation of the Government of Ukraine; that Crimea was part of the Russian Federation; and that questions of international relations were not within the competence of Crimean institutions.

33. On 20 April 2017, following consultations with the Government of Ukraine, OHCHR informed the Government of the Russian Federation of its intention to send a mission of HRMMU to Crimea in order to prepare the report on the human rights situation in Crimea requested by General Assembly resolution 71/205. While no formal response was received, OHCHR was notified informally that it would not be granted access to Crimea due to its mandate covering Ukraine and that any OHCHR mission would need to be agreed upon directly with the Russian Federation authorities. A second notification mentioning an OHCHR mission to Crimea, addressed to the Russian Federation on 13 June 2017, remained unanswered at the closing date of the present report.

34. In response, the Government of Ukraine, in its Notes Verbales of 30 March 2017, 19 July 2017, 28 July 2017 and 7 September 2017, reaffirmed its position on the need to ensure safe and unfettered access to the Autonomous Republic of Crimea and the city of Sevastopol by established regional and international human rights monitoring mechanisms to enable them to carry out their mandate, expressed its readiness to provide HRMMU with full freedom of movement throughout Ukraine, and confirmed its strong commitment to properly implement resolution 71/205 of the United Nations General Assembly.

35. Given the lack of access to Crimea, HRMMU has monitored the human rights situation in the peninsula from its presence in mainland Ukraine. HRMMU systematically collects and analyzes information gathered through direct interviews and fact-finding missions, including at the Administrative Boundary Line (ABL) between mainland Ukraine and Crimea. This report only describes allegations of human rights violations and abuses and violations of international humanitarian law that OHCHR could verify and corroborate in accordance with its methodology. OHCHR is committed to the protection of its sources and systematically assesses the potential risks of harm and retaliation against them.<sup>29</sup>

## IV. Application of International Law

36. International human rights and humanitarian law are complementary bodies of international law. In the case of occupation, humanitarian law and human rights law apply concurrently and place protection obligations both on the occupying power and the State whose territory is under occupation.

### 1. International Human Rights Law

37. Human rights are guaranteed by international treaties and agreements, as well as customary law, which apply at all times, regardless of peace or war.

38. Under international law, the Russian Federation must respect its obligations under international human rights law in Crimea from the moment it acquired “effective control” over the territory.<sup>30</sup>

39. Ukraine considers that the occupation of Crimea started on 20 February 2014<sup>31</sup> and denies having human rights obligations in relation to this territory from the moment it lost effective control over the peninsula. On 14 May 2015, the Parliament of Ukraine adopted a Declaration on Derogation<sup>32</sup> stating that the Russian Federation “*shall bear full responsibility for observance of human rights and performance of the respective international obligations at the annexed and temporarily occupied territory.*”

40. On 19 April 2017, the Government of Ukraine established an Intergovernmental Commission on derogation in order to review periodically the territorial application of the derogation. Its mandate includes the review of the necessity and proportionality of derogation measures and making proposals to the Government on the continuation and scope of the derogation.

41. OHCHR notes that States are allowed, in exceptional circumstances, namely in times of public emergency threatening the life of the nation, to adjust their obligations temporarily under a treaty. However, under the International Covenant on Civil and Political Rights, States have a continuing obligation to ensure respect for the rights recognized in the Covenant in relation to the population of a territory controlled by *de facto* authorities or armed groups within the limits of their effective power.<sup>33</sup> Similarly, under the case law of the European Court of Human Rights, a State that has lost effective control over a part of its territory is nevertheless obliged under Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to use all the legal and diplomatic means available to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention to those living there, as the region is recognized under public international law as part of its territory.<sup>34</sup>

### 2. International Humanitarian Law

42. Both the Russian Federation and Ukraine are parties to the 1907 Hague Regulations, the Fourth Geneva Convention of 1949, and the 1977 Additional Protocol I to the 1949 Geneva Conventions. This body of international law provides the primary basis for rules governing occupation. The legal regime of an occupied territory is also regulated by international customary law.

43. An occupying power does not acquire sovereignty over the occupied territory. The occupying power must respect the laws in force in the occupied territory, unless they constitute a threat to its security or an obstacle to the application of the Fourth Geneva Convention.<sup>35</sup>

44. Under international law, States are responsible for violations of international humanitarian law attributable to them, including: violations committed by their organs,

including their armed forces; violations committed by persons or entities they have empowered to exercise elements of governmental authority; violations committed by persons or groups acting in fact on their instructions, or under their direction or control; and violations committed by private persons or groups which they acknowledge and adopt as their own.<sup>36</sup>

45. In 2016, the Office of the Prosecutor of the International Criminal Court found Crimea to be under the occupation of the Russian Federation and stated it will apply an international armed conflict legal framework to the analysis of facts and alleged crimes perpetrated there.<sup>37</sup>

## V. Population data and movements

46. According to the last census conducted in Ukraine, in 2001, 125 nationalities lived on the Crimean peninsula, which had a population of 2,401,209 (2,024,056 in Crimea and 377,153 in Sevastopol).<sup>38</sup> The census enumerated the population by ethnicity, finding the largest national groups in Crimea and Sevastopol to be Russians, numbering 1,450,394 (60.40 per cent); Ukrainians 576,647 (24.12 per cent); and Crimean Tatars 245,291 (12.26 per cent).

47. There were also 35,157 Belarussians; 13,602 Tatars; 10,088 Armenians; 5,531 Jews; 4,562 Moldovans; 4,459 Poles; 4,377 Azeri; 3,087 Uzbeks; 3,036 Greeks; 3,027 Koreans; 2,790 Germans; 2,679 Chuvash; 2,594 Mordovians; 2,282 Bulgarians 2,137 Georgians; 1,905 Roma; and 1,192 Maris. In addition, 17,298 persons did not declare themselves or belonged to ethnic groups numbering less than 1,000 individuals.

48. In September 2014, the Russian Federation conducted a census on the peninsula, which was not recognized by the Government of Ukraine.<sup>39</sup> According to its results, the population of Crimea and Sevastopol had decreased by 4.8 per cent since 2001, down to 2,284,769, albeit with differences between the two administrative units: in Crimea, the population decreased by 6.5 per cent, to 1,891,465, while that of Sevastopol grew by 4.1 per cent, to 393,304.

49. According to that same census, in the entire peninsula, the number of persons of Russian nationality increased to 1,492,078 (65.31 per cent), the Ukrainians dropped to 344,515 (15.08 per cent) and the Crimean Tatars decreased to 232,340 (10.17 per cent). The other communities diminished, except for the Tatars - a group culturally affiliated with the Volga Tatars and the Crimean Tatars - whose numbers rose from 13,602 to 44,996.

50. Since the beginning of the occupation, the displacement of residents of Crimea - mostly ethnic Ukrainians and Crimean Tatars - had multiple causes, notably the refusal to live under Russian Federation jurisdiction, fear of persecution on ethnic or religious grounds, threats or reported attacks, avoiding military conscription in the Russian Federation army and enrolling in Ukrainian education institutions.

51. In April 2017, the State Emergency Service of Ukraine estimated the number of internally displaced persons (IDPs) from Crimea living in mainland Ukraine at 22,822.<sup>40</sup> Ukrainian NGOs estimate that between 50,000 and 60,000 former Crimean residents could be displaced in mainland Ukraine.<sup>41</sup>

52. The demographic structure of Crimea continues to change, mainly as a result of a continuous influx of Russian Federation citizens into Crimea, which started after the 2014 referendum. Most of them are pensioners, public servants and servicemen with their families. Around 13,200 IDPs fleeing the conflict in eastern Ukraine had taken refuge in Crimea at the end of 2014.<sup>42</sup>



53. According to the State Statistics Service of the Russian Federation, as of 1 January 2017, the population of the Crimean peninsula had increased by 56,152 since the September 2014 census, to 2,340,921.<sup>43</sup> During this period, the population of the city of Sevastopol, where the Black Sea Fleet is based, rose from 393,304 to 428,753, which constitutes an eight per cent increase.

54. OHCHR recalls that the 1949 Geneva Convention relative to the Protection on Civilian Persons in Time of War provides in Article 49 that “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”.

## VI. Civil and Political Rights

### A. Right to nationality

55. The adoption of the *Treaty on Accession* on 18 March 2014 had an immediate consequence for the status of residents of Crimea and rights attached to it: all Ukrainian citizens and stateless persons who were permanently residing on the peninsula, as evidenced by a residency registration stamp in the passport, were automatically recognized as citizens of the Russian Federation.<sup>44</sup> An exception was made for persons who, within one month of the entry into force of the treaty (i.e. by 18 April 2014), rejected Russian Federation citizenship in writing.

56. The automatic citizenship rule led to the emergence of three vulnerable groups: those who rejected in writing Russian Federation citizenship; those who, for lack of a residency registration in Crimea, did not meet the legal criteria to become Russian Federation citizens; and those who had to renounce their Ukrainian citizenship to keep their employment. As of May 2015, the High Commissioner for Human Rights of the Russian Federation (Ombudsperson) estimated that around 100,000 persons living in Crimea (about 4 per cent of the population) did not have Russian Federation citizenship.<sup>45</sup>

57. Imposing citizenship on the inhabitants of an occupied territory can be equated to compelling them to swear allegiance to a power they may consider as hostile, which is forbidden under the Fourth Geneva Convention.<sup>46</sup> In addition to being in violation of international humanitarian law, the automatic citizenship rule raises a number of important concerns under international human rights law.

#### 1. Ukrainian citizens having Crimean residency registration who rejected Russian Federation citizenship

58. The procedure for rejecting Russian Federation citizenship, which had to be completed by 18 April 2014, was marked by certain constraints: instructions from the Russian Federal Migration Service (FMS) on the refusal procedure were only made available on 1 April; information about FMS centres was not available until 4 April; only two FMS centres were functioning on 9 April 2014; and some requirements in the procedure evolved over time, such as the demand that both parents make the application on behalf of their child.<sup>47</sup>

59. After 18 April 2014, FMS reported that 3,427 permanent residents of Crimea had applied to opt out of automatically obtaining Russian Federation citizenship.<sup>48</sup>

60. Renouncing Russian Federation citizenship remains legally possible on the basis of the 2002 law *On Citizenship*, except for people who were indicted, sentenced, have outstanding obligations towards the Russian Federation, or have no other citizenship or guarantee for the acquisition thereof.<sup>49</sup>

61. Residents of Crimea who opted out of Russian Federation citizenship became foreigners. They could obtain residency permits through a simplified procedure, giving them certain rights enjoyed by Russian Federation citizens, such as the right to pension, free health insurance, social allowances, and the right to exercise professions for which Russian Federation citizenship is not a mandatory requirement.<sup>50</sup>

62. However, overall, persons holding a residency permit and no Russian Federation citizenship do not enjoy equality before the law and are deprived of important rights. They cannot own agricultural land,<sup>51</sup> vote and be elected, register a religious community, apply to hold a public meeting, hold positions in the public administration and re-register their private vehicle on the peninsula.<sup>52</sup>

63. OHCHR documented some cases of Crimean residents who had rejected Russian Federation citizenship and faced discrimination. For instance, a man from Simferopol was subjected to regular psychological harassment by his employer for having renounced Russian Federation citizenship. In 2016, after two years of being pushed by his employer to take back his formal rejection of Russian Federation citizenship, he was dismissed after being told that his “anti-Russian” position disqualified him from continued employment.<sup>53</sup> Two of his colleagues were also dismissed, including one who rejected Russian Federation citizenship, and another who took up Russian Federation citizenship but publicly expressed pro-Ukrainian views.

## **2. Ukrainian citizens without Crimean residency registration who are excluded from Russian Federation citizenship**

64. Ukrainian citizens living in Crimea whose passport stamps indicated they were registered in mainland Ukraine could not become citizens of the Russian Federation. They assumed the status of a foreigner. As such, they could no longer legally remain in Crimea for more than 90 days within a period of 180 days from the moment they entered the peninsula, according to Russian Federation legislation applicable to foreigners.

65. Non-compliance with immigration regulations imposed by the Russian Federation can lead to court-ordered deportations. For instance, in 2016, a court in Sevastopol ordered a Ukrainian citizen who had overstayed to be deported to mainland Ukraine although he owned property in this city<sup>54</sup>; another court deported a Ukrainian citizen who had a wife and children in Crimea.<sup>55</sup>

66. Under international humanitarian law, deportation or transfer of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, is prohibited regardless of the motive.<sup>56</sup>

67. Rules regulating stay were not consistently applied, sometimes favoring individuals who supported Crimea’s accession to the Russian Federation. For example, the Supreme Court of Crimea ruled not to deport a Ukrainian citizen who described himself as “an active participant of the Russian Spring in Sevastopol” and claimed his deportation to Ukraine would threaten his life and well-being.<sup>57</sup> The Court accepted the argument that he had a family in Crimea and that his deportation would interfere with his private and family life.

68. Employment of Ukrainian citizens lacking Crimean residency registration is prohibited. A quota system under Russian Federation law allows up to 5,000 foreigners to reside and work in Crimea but this only applies to foreigners with non-Ukrainian passports who were living in Crimea before March 2014 and held Ukrainian residence permits.<sup>58</sup>

69. In 2016, police raids against private businesses were conducted, resulting in the opening of administrative proceedings against owners of catering institutions<sup>59</sup> and private entrepreneurs<sup>60</sup> who were illegally employing Ukrainian citizens. People illegally

employed risk deportation and their employers face administrative sanctions of up to 800,000 RUB (nearly USD 13,200) or closure of their business for up to 90 days.

70. Ukrainian citizens without residency registration in Crimea are excluded from free health insurance and access to public hospitals. In one case documented by OHCHR, a Ukrainian woman who had lived in Crimea for 10 years, but was registered in Kharkiv, died in 2015 after a public hospital in Crimea refused to treat her due to the fact that she did not have health insurance.<sup>61</sup> According to Russian Federation legislation, she was a foreigner and, as such, she did not have a Russian Federation passport affording the right to free health insurance and access to public hospitals. The refusal to provide life-saving medical treatment - including due to origin or status, such as citizenship - constitutes a grave violation of the right to the highest attainable level of physical and mental health, and a violation of the obligation, under international humanitarian law, to ensure that the health system in place in an occupied territory continues to function adequately.

### **3. Ukrainian citizens who were made to renounce Ukrainian citizenship**

71. Russian Federation law does not require Ukrainian citizens who apply for Russian Federation citizenship to surrender their Ukrainian passports or relinquish their Ukrainian citizenship. However, residents of Crimea who were employed in government and municipal jobs before the referendum were obliged by law to give up their Ukrainian citizenship no later than 18 April 2014, in addition to obtaining a passport of the Russian Federation if they wanted to retain their employment.<sup>62</sup> A law adopted by the Parliament of Crimea further required them to possess “*a copy of the document confirming denial of existing citizenship of another State and the surrender of a passport of another State.*”<sup>63</sup>

72. Before the Russian Federation occupied Crimea, 20,384 civil servants were employed on the peninsula.<sup>64</sup> According to the head of the FMS department for citizenship, asylum and readmission in Crimea, as of 21 May 2015, 19,000 Crimean residents had applied to renounce Ukrainian citizenship.<sup>65</sup> While no information is provided about their identity or profession, it is likely that civil servants constitute the bulk of this group. This is contrary to the Fourth Geneva Convention, which prohibits an occupying power from altering the status of public officials in the territories it occupies.<sup>66</sup>

## **B. Administration of justice and fair trial rights**

73. The *Treaty on Accession* provided for a transition period until 1 January 2015 to fully apply the legal framework of the Russian Federation in Crimea.<sup>67</sup> In practice, the gradual substitution of the Ukrainian legal system by that of the Russian Federation implied that both systems coexisted, regulating different spheres and consequently causing confusion for legal practitioners as well as legal uncertainty for rights-holders.<sup>68</sup>

74. OHCHR recalls that in accordance with international humanitarian law, the penal laws in place in the occupied territory must remain in force and be applied by courts, with the exception of norms that constitute a threat to the security of the occupying power, or an obstacle to the application of relevant international humanitarian law provisions.<sup>69</sup>

75. As documented by OHCHR, the judicial and law enforcement authorities of the Russian Federation in Crimea frequently violated the presumption of innocence; the right to information without delay of the nature and cause of charge; the right to defend oneself or be assisted by a lawyer of one’s own choice; the right to adequate time to prepare defence; the right to trial without undue delay; the right to appeal or review; the right to a hearing by an independent and impartial tribunal; and the right not to be compelled to testify against oneself or confess guilt.

76. OHCHR documented cases demonstrating that allegations of torture and ill-treatment in post-referendum Crimea committed by State agents of the Russian Federation during pre-trial investigations were often disregarded by courts. For instance, in March 2015, a court rejected the request of a defence lawyer to exclude evidence against his client reportedly obtained under duress. The judge stated that torture allegations should be examined together with other elements in order not to compromise the establishment of facts and responsibility.<sup>70</sup>

77. Suspects were charged and some convicted in relation to acts which occurred before the application of Russian Federation legislation in Crimea, in disregard of the principle of non-retroactive application of criminal law enshrined in international human rights and humanitarian law treaties.<sup>71</sup> On 11 September 2017, a court in Crimea sentenced a deputy chair of the Mejlis, Akhtem Chyigoz, to eight years of imprisonment on the basis of Russian Federation legislation, after it found the accused guilty of organizing mass protests, which were held on 26 February 2014 when the legal framework of Ukraine still applied in Crimea. In addition, two individuals received prison sentences in 2015 and 2016 for allegedly injuring 'Berkut' police officers during the Maidan protests in Kyiv, on 18 February 2014.<sup>72</sup> Their convictions were based on Russian Federation legislation introduced in Crimea after 18 March 2014.

78. Some judgments were passed in apparent disregard of the right to a hearing by a competent, independent and impartial tribunal. In 2017, 10 Crimean Tatars arrested for filming a police raid of the home of another Crimean Tatar man were judged in one day and sentenced to five days of administrative arrest. 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>73</sup>

79. Instances of intimidation of defence lawyers representing clients opposed to the presence of the Russian Federation in Crimea have also been reported. On 25 January 2017, a lawyer from the Russian Federation defending one of the deputy chairmen of the Mejlis was forcefully brought to the FSB office in Simferopol for interrogation and asked to disclose details of the case concerning his client. Despite being pressed to cooperate, he refused, invoking his duty to uphold the attorney-client privilege, and was released after two and a half hours. On 14 February 2017, an appellate court upheld a first instance decision to enable the FSB investigator to interrogate him as a witness in a criminal case against one of his clients.<sup>74</sup> OHCHR reiterates that international administration of justice standards explicitly protect the freedom of exercise of the profession of lawyer.<sup>75</sup>

### **C. Right to life**

80. In February, March and April 2014, four persons were killed and two others died, as described in this chapter, during incidents related to Crimea's unrecognized accession to the Russian Federation. While other deaths, including murders, have occurred in Crimea in the three and a half years since the occupation began, OHCHR does not have credible circumstantial evidence that they could be attributed to State agents of the Russian Federation in Crimea.

81. In March 2014, a pro-Ukrainian Crimean Tatar activist, Mr. Reshat Ametov, was abducted, tortured and summarily executed by people believed to be members of the Crimean self-defence. He disappeared on 3 March after staging a one-man picket in front of Crimea's government building in Simferopol. Video footage shows him being led away by three men in military-style jackets. On 15 March, his body was found in a village of the Bilohirsk district, bearing signs of torture.<sup>76</sup> The Crimean police opened a criminal investigation. As of December 2014, more than 270 witnesses had been interrogated and

over 50 forensic analyses and 50 examinations had been carried out.<sup>77</sup> OHCHR has serious doubts about the effectiveness of these investigations. The suspects, members of the Crimean self-defence, who were filmed abducting the victim, were only interrogated as witnesses and later released. In 2015, the investigation was suspended due to the fact that the individual suspected by the police to be the perpetrator was allegedly no longer in Crimea.<sup>78</sup> It resumed in 2016 but has since been conducted intermittently.<sup>79</sup>

82. Three killings occurred during armed incidents. On 18 March 2014, one Ukrainian serviceman and one Crimean self-defence volunteer were killed during a shooting incident in Simferopol.<sup>80</sup> OHCHR does not have information about the investigation conducted in relation to this case. On 6 April 2014, a Ukrainian Army naval officer was killed by a Russian Federation serviceman in a dormitory in Novofedorivka.<sup>81</sup> A Russian Federation military tribunal in Crimea sentenced the perpetrator to two years of imprisonment on 13 March 2015. The accused was convicted of homicide committed in excess of the requirements of justifiable defence. In addition, the victim's widow sued and obtained from the Ministry of Defence of the Russian Federation 500,000 RUB (about USD 8,000) in compensation for the harm incurred.<sup>82</sup>

83. The impartiality of investigations carried out by the Crimean police is particularly questionable in relation to the violence that occurred on 26 February 2014. On that date, pro-Ukrainian and pro-Russian groups clashed in front of the parliament of Crimea, resulting in the death of two pro-Russian demonstrators.<sup>83</sup> The criminal proceedings identified pro-Ukrainian supporters belonging to the Crimean Tatar community as being the only suspects although the skirmishes involved representatives of pro-Russian groups as well.<sup>84</sup>

#### **D. Right to physical and mental integrity**

84. The right to physical and mental integrity encompasses freedom from torture and other inhuman treatment. The Russian Federation and Ukraine have both ratified international conventions obliging them to prevent and redress torture, cruel and/or inhuman or degrading treatment.<sup>85</sup>

85. Multiple and grave violations of the right to physical and mental integrity have been committed by state agents of the Russian Federation in Crimea since 2014. The absence of investigations suggests that their perpetrators have benefited from and continue to enjoy impunity.

86. Victims and witnesses have accused the Crimean self-defence of violence against pro-Ukrainian activists, mainly in 2014. Its members have reportedly been implicated in attacks, abductions, enforced disappearances, one summary execution, arbitrary detention, and torture and ill-treatment of individuals opposed to the March 2014 referendum, as well as of Maidan supporters, members and affiliates of the Mejlis, journalists and Ukrainian servicemen.<sup>86</sup> On 11 June 2014, the Parliament of Crimea legalized the Crimean self-defence by turning it into a civil group with powers to assist the police.<sup>87</sup>

87. The Russian Federation has indicated that several criminal cases were opened in which the suspects were members of the Crimean self-defence. These cases are connected with a robbery, in April 2014, and incidents in which vehicles were taken illegally with the threat of the use of firearms.<sup>88</sup>

88. Two legislative initiatives registered in the Crimean and Russian Federation Parliaments in August 2014 proposing immunity from prosecution for actions committed by the self-defence forces have not been pursued.

89. In view of the multiplicity of testimonies mentioning illicit acts committed by members of the self-defence with apparent impunity, OHCHR has serious doubts that the Russian Federation authorities have complied with their obligations to ensure accountability through effective and impartial investigations. The duty to investigate and prosecute is made more compelling by the fact that the existence of the self-defence group has been legalized, and its members have been recognized as agents of the State.<sup>89</sup>

90. FSB and the Crimean police have also been accused of violating the right to physical and mental integrity of persons holding dissenting views, in particular Crimean Tatars and ethnic Ukrainians. Such violations have occurred prior to and during detention, in penitentiary institutions and in places where people were illegally kept *incommunicado*.

91. In two cases documented by OHCHR in 2016, pro-Ukrainian supporters were compelled by FSB officers to confess to terrorism-related crimes through torture with elements of sexual violence. The victims were kept *incommunicado*, tied, blindfolded, beaten up, subjected to forced nudity, electrocuted through electric wires placed on their genitals, and threatened with rape with a soldering iron and wooden stick.<sup>90</sup>

92. Forced internment in a psychiatric institution has been used as a form of harassment against political opponents, which may amount to torture or ill-treatment. Procedurally, such placements are decided by a judge upon the request of the police or FSB investigator. A deputy Chairman of the Mejlis, Mr. Ilmi Umerov, underwent an imposed court-ordered ‘psychiatric assessment’ for three weeks<sup>91</sup> after being charged in May 2016 with calls to violate the territorial integrity of the Russian Federation. In November and December 2016 five Crimean Tatar men suspected of being members of Hizb ut-Tahrir, an organization banned for terrorism in the Russian Federation, were also placed in a psychiatric hospital for weeks. During the psychiatric assessment, doctors reportedly asked them unrelated questions, including on their religious practice and political views.<sup>92</sup>

## E. Right to liberty and security

93. The right to liberty and security of person exists to ensure that subjects of a State can pursue their daily activities without harassment or apprehension of being restrained without any lawful basis. It includes two key components: freedom from arbitrary arrest or detention; and protection from enforced disappearances. Arbitrary deprivation of liberty may amount to a violation of the requirement of common Article 3 of the Geneva Conventions and Additional Protocol I that all civilians and persons *hors de combat* should be treated humanely.

### 1. Arbitrary arrests and detentions

94. The Fourth Geneva Convention specifies that in an occupied territory, a civilian may only be interned or placed in assigned residence for “imperative reasons of security” (Article 78). Arbitrary detention is prohibited under customary international humanitarian law<sup>93</sup> and international human rights law protects individuals from arbitrary arrest and detention by the State, as well as by private individuals or entities empowered or authorized by the State to exercise powers of arrest or detention.<sup>94</sup> According to the United Nations Human Rights Committee, “*arbitrariness is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.*”<sup>95</sup> Any deprivation of liberty must therefore be lawful, reasonable and necessary.

95. OHCHR documented multiple allegations of violations of the right to liberty as a result of acts attributed to agents of the Russian Federation authorities in Crimea. While most of them occurred in 2014, fresh claims of unlawful deprivation of liberty are regularly



recorded. Arbitrary arrests and detentions take different forms and appear to serve various purposes, from instilling fear, to stifling opposition, and inflicting punishment.

96. In many cases, victims are neither charged nor tried, but detained by the police, FSB or self-defence groups as a form of extra-judicial punishment or harassment. Detention under such circumstances would usually last from several hours to several days, exceeding the legal limits for temporary detention and ignoring procedural requirements, such as the establishment of a protocol of arrest. Many of the victims were journalists, land or business owners, and people arrested during so-called ‘prophylactic’ police operations at markets, mosques, cafés, restaurants or places of entertainment. OHCHR noted a prevalence of members of the Crimean Tatar community among people apprehended during police raids. They were typically taken to the police centre to fight extremism (“Center E”), photographed, fingerprinted and made to provide DNA samples before being released, usually without any charges being pressed.<sup>96</sup>

97. In other cases, people deprived of liberty were charged with offences of extremism, terrorism, territorial integrity violations, detained and tried. This form of treatment has been commonly applied against political opponents, such as Crimean Tatar figures linked to the Mejlis, practising Muslims accused of belonging to banned Islamic groups, and journalists or individuals posting messages critical of the Russian Federation authorities or expressing dissent on social media. Prosecutions often seemed to be tainted by bias and a political agenda.<sup>97</sup> The initial arrests were usually carried out by FSB and followed by searches of victims’ houses and harassment of their families by law enforcement. Victims were charged and subjected to lengthy pre-trial detention despite a general lack of sufficient evidence.

98. In the most egregious cases, unlawful detentions were accompanied by physical or psychological abuse amounting to torture. Many of the victims were people accused of spying and planning terrorist acts, as well as political and civic activists supporting the Maidan protests and pro-Ukrainian demonstrations in Crimea or seeking to assist Ukrainian soldiers stationed in Crimea. On 9 March 2014, two members of a pro-Ukrainian organization were abducted by the Crimean self-defence, detained in a secret location without the presence of a lawyer for 11 days - and one of them tortured - before being released.<sup>98</sup> The arrests were made without reasonable suspicion, proper motivation and court review, qualifying as violations of the right to liberty and security. In addition, the torture allegations were not investigated, in denial of the right to an effective remedy.

## **2. Enforced disappearances**

99. Enforced disappearance, as defined by the International Convention for the Protection of All Persons from Enforced Disappearance,<sup>99</sup> violates, or threatens to violate, a range of international humanitarian law norms, most notably the prohibition of arbitrary deprivation of liberty,<sup>100</sup> torture and other cruel or inhuman treatment<sup>101</sup> and murder.<sup>102</sup> The duty to prevent enforced disappearances is further supported by the requirement to record the details of persons deprived of their liberty.<sup>103</sup> The obligations placed on States by the Convention arguably represent customary international law, which Ukraine (which has ratified the Convention) and the Russian Federation (which has not done so) are required to respect. OHCHR notes a precedent in the jurisprudence of the European Court of Human Rights for holding an occupying power liable for violation of the right to liberty and security arising from the failure of authorities to investigate the fate and whereabouts of missing persons in its occupied territory.<sup>104</sup>

100. The first recorded case of enforced disappearance in Crimea occurred on 3 March 2014, less than a week after the establishment of a pro-Russian Government in Crimea, on 27 February.<sup>105</sup> Since then, dozens of persons have gone missing, mostly in 2014. While the majority of victims were released by perpetrators within hours or days, the whereabouts of others are still unknown.

101. The highest number of enforced disappearances in a single month occurred in March 2014, when at least 21 persons were abducted in Crimea. The victims included pro-Ukrainian and Maidan activists, journalists, Crimean Tatars and former and active Ukrainian servicemen. They were held *incommunicado* and often subjected to physical and psychological abuse by armed individuals allegedly belonging to the Crimean self-defence and one Cossack group. Most victims were released after being illegally held from a few hours to several days, with no contact with their relatives or lawyers.<sup>106</sup>

102. OHCHR documented 10 cases of persons who disappeared and are still missing: six Crimean Tatars, three ethnic Ukrainians and one Russian-Tatar - all men. Seven went missing in 2014, two in 2015 and one in 2016.

103. On 1 October 2014, the Head of Crimea decided to create a ‘contact group’ focusing on the disappearances and other incidents involving Crimean Tatars. The group convened for the first time on 14 October 2014 in the presence of investigative authorities and the relatives of five missing Crimean Tatar men but achieved little beyond information-sharing and the decision to transfer the investigations to the central Investigation Department of the Russian Federation.<sup>107</sup> Of the 10 disappearances mentioned, criminal investigations were still ongoing in only one case as at 12 September 2017.<sup>108</sup> They were suspended in six cases due to the inability to identify suspects,<sup>109</sup> and in three cases no investigative actions have been taken as the disappearances were allegedly not reported.<sup>110</sup>

104. In five cases, the possible involvement of State agents was raised by witnesses who saw the victims being abducted by men dressed in uniform associated with the security forces or the Crimean self-defence. Circumstances which may suggest political motives in the other five cases include the profile of the victims who were pro-Ukrainian activists or had links to the Mejlis.

## **F. Right to private and family life**

105. OHCHR estimates that up to 150 police and FSB raids of private houses, businesses, cafés, bars, restaurants, markets, schools, libraries, mosques and madrassas (Islamic religious schools) have taken place since the beginning of Crimea’s occupation. These actions have usually been carried out with the justification to search for weapons, drugs or literature with extremist content forbidden under Russian Federation law.<sup>111</sup> Several interlocutors shared their conviction that the objective pursued by such operations was to instil fear, particularly in the Crimean Tatar community, in order to pre-empt or discourage actions or statements questioning the established order since March 2014.

106. The searches were conducted on the basis of the Russian Federation’s anti-extremism law, which is very broad and has been used extensively in Crimea. The law gives wide discretion to law enforcement agencies to interpret and apply its provisions, which can be viewed as an infringement of the principles of legality, necessity and proportionality.<sup>112</sup> In her annual report for 2014, the Ombudsperson of the Russian Federation stated in relation to Crimea that law enforcement officers should *adopt “a well-balanced approach that rules out any arbitrary, excessively broad interpretation of the notion of ‘extremism’”*.<sup>113</sup>

107. OHCHR documented raids, which at times took place without search warrants being presented, involved excessive use of force, and amounted to an arbitrary or unlawful interference with an individual’s privacy, family and home, in violation of international human rights law. According to victims, materials considered illegal were planted in homes and false written testimonies declaring the presence of illegal substances were signed under duress.<sup>114</sup> On 4 and 5 September 2014, at least 10 houses belonging to Crimean Tatars were searched by police officers and FSB officials in Simferopol, Nizhnegorsk,

Krasnoperekopsk and Bakhchisaray.<sup>115</sup> The police found no weapons or drugs but confiscated religious literature.

108. There are reports that some house raids were conducted at a time when only Crimean Tatar women were present and that the absence of female officers among those carrying out the search greatly disturbed them.<sup>116</sup>

109. As at 12 September 2017, 38 individuals from Crimea and the city of Sevastopol (35 men and three women) were on a special list of people ‘believed to be involved in extremism or terrorism’, administered by the Russian Federation Financial Monitoring Service.<sup>117</sup> According to the laws of the Russian Federation on preventing financing of terrorism applied in Crimea, the bank accounts of individuals on this special list should be constantly monitored and most of their bank transactions are suspended.

110. In view of the excessively broad interpretation of the Russian Federation’s anti-extremism law applying to Crimea, such limitations may amount to undue interference with the right to private and family life and to the right to the peaceful enjoyment of one’s possessions.

## **G. Rights of detainees**

111. According to the Ministry of Justice of Ukraine, on 20 March 2014, 1,086 individuals were detained at Crimea’s only pre-trial detention facility in Simferopol, 1353 convicts were serving their sentences in a strict regime colony in Simferopol, 789 convicts were held in a general regime colony in Kerch and 67 in a correction centre in Kerch. All four institutions have been integrated into the penitentiary system of the Russian Federation,<sup>118</sup> which led to the transfer of hundreds of detainees held in Crimea to penitentiary institutions in the Russian Federation.

### **1. Violations of the rights of prisoners in Crimea**

112. After the Russian Federation took control of Crimea, local courts discontinued all pending appeal proceedings under Ukrainian law, in violation of fair trial guarantees.<sup>119</sup> Ukrainian penal legislation was repealed and prison sentences were requalified in accordance with Russian Federation law, sometimes to the detriment of detainees.

113. Former detainees in Crimea complained to OHCHR about overcrowding, which can amount to degrading treatment. Built for a maximum capacity of 817 people, the pre-trial detention centre in Simferopol had 1,066 detainees in March 2014,<sup>120</sup> 1,532 in December 2015,<sup>121</sup> and a similar level of overcrowding in 2016.<sup>122</sup>

114. Soon after the occupation started, correspondence between detainees in Crimea and mainland Ukraine was blocked by the administration of the penitentiary service and all family visits were denied violating the right of prisoners to be allowed to communicate with family and friends at regular intervals.<sup>123</sup>

115. Pressure was exerted on detainees who refused to accept automatic Russian Federation citizenship as prison officials recorded those who did or did not take Russian Federation passports.<sup>124</sup> A female detainee who rejected Russian Federation citizenship complained that she was denied family visits and that sunflower oil was regularly poured over her personal belongings as a harassment technique.<sup>125</sup> Other detainees who refused Russian Federation citizenship were placed in smaller cells or in solitary confinement.<sup>126</sup>

### **2. Transfer of prisoners to the Russian Federation**

116. A sizeable number of Crimea’s prison population was transferred to the Russian Federation.<sup>127</sup> A key factor explaining this situation is the lack of specialized penitentiary

facilities in Crimea, which has led to the transfer of juveniles in conflict with the law, people sentenced to life imprisonment, and prisoners suffering from serious physical and mental illnesses. In addition, Crimea having no prisons for women, 240 female detainees convicted by Crimean courts were sent to the Russian Federation between 18 March 2014 and 15 June 2016 to serve their sentences.<sup>128</sup>

117. Transfers of pre-trial detainees have also taken place. This is the case of Ukrainian filmmaker Mr. Oleh Sientsov, who was arrested in Simferopol on 11 May 2014 on suspicion of "plotting terrorist acts". On 23 May 2014, he was transferred to Moscow's Lefortovo prison and later to Rostov-on-Don (Russian Federation) where he was placed in remand detention. Following his trial and conviction on 25 August 2015,<sup>129</sup> he was incarcerated in a high security penal colony in the Siberian region of Yakutia.

118. OHCHR notes that international humanitarian law strictly prohibits forcible transfers of protected persons, including detainees, from occupied territory to the territory of the occupying power, regardless of the motives of such transfers.<sup>130</sup> In this regard, the imposition of Russian Federation citizenship to residents of an occupied territory does not alter their status as protected persons.

119. On 17 March 2017, negotiations between the Ombudspersons of Ukraine and the Russian Federation enabled the return to mainland Ukraine of 12 detainees (11 men and a woman) sentenced by Ukrainian courts before March 2014, and transferred from Crimea to various penitentiary institutions in the Russian Federation after that date. OHCHR interviewed each of them. Some detainees publicly expressing pro-Ukrainian sentiments reported having been ill-treated and placed in solitary confinement.<sup>131</sup> Others complained of the absence of medical treatment. OHCHR documented the death of at least three male prisoners transferred from Crimea to the penitentiary institution in Tlyustenkhabl, Adygea region, who were suffering from serious ailments and did not receive necessary medical care.<sup>132</sup> Under international human rights and humanitarian law provisions, detainees must be provided with the medical attention required by their state of health.<sup>133</sup>

## **H. Forced enlistment**

120. Since the occupation began, residents of Crimea have been subjected to conscription in the armed forces of the Russian Federation. Until 31 December 2016, military service could only take place on the territory of the Crimean peninsula.<sup>134</sup> Since 2017, conscripts can also be sent to serve on the territory of the Russian Federation. On 25 May 2017, 30 conscripts from Sevastopol were sent to the Russian Federation after reportedly expressing the will to serve there.<sup>135</sup>

121. OHCHR spoke to several Crimean Tatars who left the peninsula to avoid serving in the Russian Federation army. They stated they could not return to Crimea as they would be prosecuted for avoiding the draft.<sup>136</sup> On 12 April 2017, the Military Commissioner of the Russian Federation in Crimea announced that a criminal case had been opened against a resident of Crimea who refused to serve in the Russian Federation army.

122. OHCHR notes that under international humanitarian law, an occupying power is prohibited from compelling protected persons to serve in its armed or auxiliary forces or to exercise pressure or propaganda which aims at securing voluntary enlistment.<sup>137</sup>

## **I. Freedom of movement**

123. The introduction by the Russian Federation of a State border at the ABL between mainland Ukraine and Crimea, in violation of General Assembly resolution 68/262, has

adversely affected freedom of movement between mainland Ukraine and the Crimean peninsula. Other legal restrictions, as per this section, have been imposed both by the Governments of the Russian Federation and Ukraine.<sup>138</sup>

124. International human rights law guarantees freedom of movement to anyone lawfully within the borders of a State and the right to leave and enter their own country.<sup>139</sup> It also recognizes that a sovereign Government has the right to restrict freedom of movement provided such a measure is necessary, reasonable and proportionate.

### **1. Restrictions imposed by the Russian Federation authorities**

125. On 25 April 2014, the Russian Federation authorities established its ‘border’ at the northern entrance to Crimea. Ukrainian activists, supporters and members of the Mejlis, in particular, have frequently faced infringements on their movement, including intrusive and lengthy interrogations whenever entering or leaving Crimea through the ABL.

126. In addition, citizens of Ukraine have been deported from Crimea for violating Russian Federation immigration rules, which, pursuant to resolution 68/262, should not apply to the territory of Crimea. For instance, the Crimea-born chairman of an NGO from Evpatoriia providing free legal aid was convicted in January 2017 of “illegal stay” by a Crimean court which ordered his deportation.<sup>140</sup> In 2012, his Crimean passport registration had been cancelled on procedural grounds, which disqualified him from obtaining Russian Federation citizenship in March 2014. The court which ordered his deportation found him to be a foreigner who violated immigration rules by staying in Crimea beyond the authorized 90-day period. Following the ruling, the man was transferred from Crimea to the region of Krasnodar (Russian Federation), detained for 27 days, and subsequently 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, which violates his freedom of movement and his right to family life.<sup>141</sup> In addition, his forced transfer and deportation contravene international humanitarian law rules applying to protected persons in situations of occupation.<sup>142</sup>

127. OHCHR has information that 20 to 25 other Ukrainian citizens were deported from Crimea to mainland Ukraine in 2016, and has reasons to believe that the total number since the beginning of the occupation of Crimea may be significantly higher.<sup>143</sup>

128. Unlawful limitations to freedom of movement were also imposed against political opponents and individuals criticizing the human rights situation on the peninsula who were prohibited entry into the Russian Federation, consequently banning their access to Crimea. On 22 April 2014, a Russian Federation officer at the ABL handed the former leader of the Mejlis, Mr. Mustafa Dzhemilev, an unsigned document informing him of being banned from entering the territory of the Russian Federation for five years. On 5 July 2014, the current head of the Mejlis, Mr. Refat Chubarov, was issued an entry ban for allegedly inciting inter-ethnic hatred.<sup>144</sup> Other people subjected to similar prohibitions include in 2014 the director of Crimean Tatar news agency *QHA*, and in 2016 a Ukrainian journalist and a defence lawyer.<sup>145</sup>

### **2. Restrictions imposed by Ukraine**

129. Between March and December 2014, Ukraine suspended air, train and bus connections to the peninsula. Older persons, persons with disabilities and children were the most affected by the absence of public transportation. Some said they had no choice but to walk across the ABL for more than two kilometres, sometimes in adverse weather conditions.<sup>146</sup> The only means of transport remaining are private cars and taxis that operate between Ukraine’s mainland and Crimea.

130. According to Ukrainian legislation, Ukrainian citizens have the right to free and unimpeded access to Crimea.<sup>147</sup> However, crossing into the peninsula is permitted – for Ukrainian citizens and foreigners alike – only through three crossing points located in the region of Kherson, namely Kalanchak, Chaplynka or Chonhar. Foreign citizens violating rules on access to Crimea are prohibited from entering Ukraine for a period of three years.<sup>148</sup>

131. National legal requirements related to the travel of children have constricted freedom of movement. Children below 16 years of age, if accompanied by only one parent, must have notarized written consent of the other parent.<sup>149</sup> This has created problems for Crimean residents, as documents issued by the Russian Federation authorities in Crimea are not recognized in Ukraine.

132. Specific requirements also apply to foreigners and stateless persons who may only enter and leave Crimea with a special permission issued by Ukrainian authorities following a lengthy procedure.

133. Another freedom of movement restriction applied to limitations in the transportation of consumer goods and personal belongings to and from Crimea introduced by Government decree No. 1035 of 16 December 2015. A court decision issued in June 2017 found the restrictions to be unlawful, although OHCHR observed through monitoring of the ABL it conducted in August 2017 that posters informing travellers of transportation limitations under decree No. 1035 were still present at the Chonhar crossing point.<sup>150</sup>

134. A so-called civil blockade of Crimea was initiated in September 2015 by the Crimean Tatar leadership in mainland Ukraine to prevent trade with the Russian Federation occupying Crimea and draw the attention of the international community to human rights violations on the peninsula. The enforcement of the blockade was accompanied by incidents, including physical attacks by blockade participants of people travelling from Crimea, as well as confiscation of goods and personal items, violating human rights and impacting freedom of movement across the ABL.<sup>151</sup> On 17 January 2015, the organizers of the ‘civil blockade’ of Crimea announced they had stopped enforcing their embargo.<sup>152</sup>

135. OHCHR noticed security risks for travellers related to the presence of insufficiently marked minefields on both sides of the road leading to the Kalanchak and Chaplynka crossing points. Representatives of Ukraine’s State Border Guard Service said they had no maps with mine locations. Although small triangular mine signs are visible, the risk of accidentally walking into an ill-marked minefield remains.<sup>153</sup>

## **J. Freedom of thought, conscience and religion**

136. It is a norm of customary international humanitarian law that the convictions and religious practices of civilians and persons *hors de combat* must be respected.<sup>154</sup> Article 58 of the Fourth Geneva Convention provides that the occupying power must permit ministers of religion to give spiritual assistance to members of their religious communities, and Article 15 of the First Protocol to this Convention states that an occupying power should respect and protect civilian religious personnel. Furthermore, the International Covenant on Civil and Political Rights and the European Convention on the Protection of Human Rights and Fundamental Freedoms provide that everyone has the right to freedom of thought, conscience and religion, and that the right to manifest one’s religion and beliefs may only be subject to limitations, which are prescribed by law and are necessary to protect public safety, order, health, morals or the rights and freedoms of others.<sup>155</sup>

137. After the start of the occupation, freedom of religion or belief in Crimea has been jeopardized by a series of incidents targeting representatives of minority confessions and religious facilities belonging to them. Limitations on religious freedom have also resulted



from the imposition of legal re-registration requirements, legislation increasing restrictions on the activities of religious groups in the name of fighting extremism, and judicial decisions.

138. The Parliament of the Russian Federation adopted legal amendments - commonly referred to as the 'Yarovaya package' - which came into force on 20 July 2016 as an anti-terrorism measure allowing the authorities to monitor extremist groups. The amendments practically ban missionary groups and house prayers by making proselytizing, preaching, praying, or disseminating religious materials outside of "specially designated places", like officially recognized religious institutions, a punishable crime.<sup>156</sup>

139. In the first year after adoption of the 'Yarovaya package' eight persons from Crimea - including four Jehovah's Witnesses, three Protestants and one Muslim - were fined 5,000 RUB each (USD 85) for conducting a missionary activity.<sup>157</sup> In addition, eight religious communities - two Jehovah's Witness, one Catholic, one Lutheran, one Pentecostal and one Hare Krishna - were fined in amounts ranging from 30,000 RUB (USD 525) to 50,000 RUB (USD 875) for violating the prohibition for a religious organization to conduct activities "without indicating its official full name".<sup>158</sup>

140. The gravest and most frequent incidents involving representatives of minority confessions were reported in 2014. For instance, on 1 June, men in Russian Cossack uniforms broke into the local Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) in the village of Perevalne, shouting and terrorizing churchgoers. The car of the priest was damaged. The police were called but did not investigate the incident.<sup>159</sup> On 21 July, a house in the village of Mramorne belonging to the UOC-KP was burnt to the ground.<sup>160</sup> A pastor of the Protestant Church from Simferopol and his family left the peninsula after reportedly being told by FSB officers that he could 'disappear'.<sup>161</sup> Greek-Catholic priests faced threats and persecution, resulting in four out of six of them leaving Crimea. A Polish citizen and the senior Roman Catholic priest in the Simferopol parish had to leave on 24 October, due to the non-renewal of Ukrainian residence permits. Most of the 23 Turkish Imams and teachers on the peninsula have left for the same reason.<sup>162</sup> On 26 April, unknown persons threw Molotov cocktails at a mosque in the village of Skalyste, setting it on fire. On 25 July, a Muslim cemetery in Otuz was damaged. Several mosques and madrassas (Islamic schools) belonging to the Spiritual Administration of the Muslims of Crimea (DUMK) were raided in 2014 by FSB officers searching for banned extremist materials and members of radical groups.<sup>163</sup> The raids have continued in the following years but their frequency diminished after the DUMK leadership started cooperating with the Russian Federation authorities in Crimea in 2015.

141. Pursuant to Russian Federation legislation imposed in Crimea, public organizations in Crimea, including religious communities, were subjected to the obligation to re-register to obtain legal status. The religious communities which applied for registration had 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". Only Russian Federation citizens are allowed to register a religious community.

142. Without registration, religious communities can congregate but cannot enter into contracts to rent State-owned property, open bank accounts, employ people or invite foreigners. The deadline for re-registration was extended twice and expired on 1 January 2016. The process has been lengthy and lacked transparency.<sup>164</sup>

143. Before the occupation of Crimea, there were 2,083 religious organizations in Crimea and 137 in Sevastopol, both with and without legal entity status.<sup>165</sup> As of 4 September 2017, 722 religious communities were registered in Crimea and 96 in Sevastopol. They included the two largest religious organizations of the Christian Orthodox and Muslim communities,

as well as various Protestant, Jewish, Roman-Catholic and Greek-Catholic communities, among other religious groups.

144. One of the religious communities registered in Crimea, the Jehovah's Witnesses, was declared illegal in 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. On 1 June 2017, all 22 congregations in Crimea were de-registered, affecting the right to freedom of religion of an estimated 8,000 believers. On 9 June 2017, a Jehovah Witness was told at a military conscription centre in Crimea 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>166</sup> On 27 June, the head of the Jehovah Witnesses community in Dzhankoy was summoned to court, charged with unlawful missionary activity, and died later that day of a heart attack.<sup>167</sup>

145. The Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) chose not to re-register under Russian Federation law and thus has no legal recognition. Since 2014, five UOC-KP churches have been either seized by paramilitary groups or closed due to non-renewal of their property leases.<sup>168</sup> The activities of another UOC-KP church, located in Simferopol, were disrupted on 31 August 2017, when court bailiffs stormed the building of the church. The action was undertaken pursuant to a judgment, upheld by the Supreme Court of the Russian Federation in February 2017, ordering to vacate premises in the building used by a daughter company of the UOC-KP as office space and a shop. As of 12 September 2017, worship services were still held but fewer parishioners attended them.<sup>169</sup>

## **K. Freedom of peaceful assembly**

146. Freedom of peaceful assembly guarantees the right of individuals to gather peacefully in order to express an aim or issue in public. It is protected by various international legal instruments and closely connected with other fundamental rights such as freedom of speech, thought and association. Limitations are permitted in accordance with international law, including administrative regulations, as long as they are proportionate and not used to oppress the nature of free assembly.

147. The possibility to peacefully gather or hold a rally in Crimea has been significantly reduced since March 2014. Restrictive legal measures placed additional obstacles to the exercise of the right to peaceful assembly. According to legislation adopted by the Parliament of Crimea in August 2014, the organizers of public assemblies must be Russian Federation citizens and must officially request permission to hold an assembly no more than 15 days and no fewer than 10 days prior to the planned event. In addition, a resolution of the Government of Crimea of 4 July 2016 reduced from 665 to 366 the number of locations throughout the 'Republic of Crimea' where public events could be organized, without explaining the motives of this decision.<sup>170</sup>

148. Lengthy blanket prohibitions on holding public assemblies have been issued, including an indefinite one decided by the Simferopol city authorities. In March 2016, a ban on all public events on the territory of the city was decreed, with the exception of those organized by the republican and local authorities.<sup>171</sup> This measure was not taken in response to a sudden deterioration of public order and clearly infringed on the freedom to hold peaceful public assemblies.

149. Public events initiated by groups or individuals not affiliated with the Russian Federation authorities in Crimea or which consider that Crimea remains a constituent part of Ukraine have systematically been prohibited and prevented. On 23 September 2014, the Prosecutor of Crimea issued a statement that "*all actions aimed at the non-recognition of Crimea as a part of the Russian Federation will be prosecuted.*"<sup>172</sup> Consequently, any

assembly demanding the return of Crimea to Ukraine or expressing loyalty to Ukraine has been effectively outlawed.

150. Requests to hold peaceful public assemblies have often been rejected on procedural technicalities, which appeared to be neither necessary to justify a ban nor proportionate and responding to a general public interest. For example, the Simferopol city authorities refused to grant permission for an assembly planned by the Crimean Tatar NGO *Kardashlyk* for 23 August 2014 near the memorial complex for the victims of the Crimean Tatar deportation. The motive provided was that the extremely high temperatures could negatively affect the health of participants. Yet, other outdoor events planned on the same day went ahead.<sup>173</sup>

151. In some cases, refusals to authorize public events were based on unsubstantiated allegations that “extremist” or “separatist” messages would purportedly be disseminated during their conduct.<sup>174</sup>

152. Spontaneous gatherings have been met with sanctions. Crimean Tatars taking part in unauthorized motorcades to commemorate the Crimean Tatar deportation were regularly arrested, interrogated for hours, and fined.<sup>175</sup> An elderly Crimean Tatar man holding a one-person picket in support of prosecuted Crimean Tatars was arrested in front of the building of the Supreme Court of Crimea on 8 August 2017. He was charged with carrying out an unauthorized public gathering and resisting police orders and sentenced by court to an administrative fine of 10,000 RUB (USD 175) and 10 days of detention.

153. The European Court of Human Rights has found that restrictions imposed on assemblies to prevent minor disorder are often disproportionate measures, and that incidents of violence are better dealt with by way of subsequent prosecution or disciplinary actions.<sup>176</sup> In relation to blanket legal provisions which ban assemblies at specific times or in particular locations, the Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that they require greater justification than restrictions on individual assemblies.<sup>177</sup>

## L. Freedom of opinion and expression and the media

154. Human rights law guarantees the right to hold opinions without interference. Undue restrictions on the right to seek, receive and impart information and ideas of all kinds gravely undermine freedom of expression, which is protected under Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

155. The right to express one’s view or opinion has been significantly curtailed in Crimea.<sup>178</sup> In March 2014, analogue broadcasts of Ukrainian television channels were shut off and the vacated frequencies started broadcasting Russian TV channels. Journalists were attacked or ill-treated without any investigation being conducted into these incidents.<sup>179</sup> In June 2014, the only Ukrainian language newspaper, *Krymska svitlytsia*, was banned from distribution and had to vacate its rented premises.

156. Official ‘warnings’ have often preceded the closing down of a media outlet. They applied to views, articles or programmes whose content were deemed ‘extremist’. The editor of the weekly Mejlis newspaper *Avdet* received several written and oral warnings from FSB officers that the newspaper materials allegedly contained extremist content, such as use of the terms ‘annexation’, and ‘temporary occupation’ of Crimea.<sup>180</sup> The Crimean Tatar ATR television channel was warned by *Roskomnadzor*, the Russian Federation media regulatory body, against disseminating false rumours about repression on ethnic and religious grounds and promoting extremism.<sup>181</sup>

157. *ATR* and *Avdet* were among the Crimean Tatar media outlets which were denied re-registration according to Russian Federation legislation and had to cease operations on the peninsula. When the deadline for re-registration expired on 1 April 2015, *Roskomnadzor* reported that 232 media were authorized to work, a small fraction of the approximately 3,000 media outlets previously registered under Ukrainian regulations.<sup>182</sup> In addition, other popular Crimean Tatar media outlets, such as *Lale* television channel, *Meydan* and *Lider* radio stations, *QHA* news agency and *15minut* Internet site, were denied licenses to work. Procedural violations were cited as the main reasons for rejection.<sup>183</sup>

158. The minority language media that continued operating or registered as a new media entity, have no political content or support the official position on the status of Crimea. Crimean television has information and education programmes in the native languages of national minorities, including Armenian, Bulgarian, Crimean Tatar, German, Greek, and Ukrainian. Its programmes for the Crimean Tatar community include the Crimean Tatar news *Haberler*, *Netije*, and *Ekindi Subet*; the talk-show *Dilde, fikirde, işte birlik*; the educational programme *Eglenip-Ogrenem*; the cultural and religious programme *Selyam Aleykum*; and the informational and cultural programme *Tanysh-Belish*.<sup>184</sup>

159. According to the United Nations Human Rights Committee “the penalization of a media outlet [including online media], publishers or journalists solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of the freedom of expression.”<sup>185</sup> Yet, provisions of the Russian Federation penal code have regularly been used by the authorities in Crimea to criminalize free speech and dissenting opinions of journalists and non-journalists alike.

160. On 7 July 2017, a court in Crimea convicted a Crimean Tatar man from Sevastopol to one year and three months of prison for “publicly inciting hatred or enmity”. During an eight months period in 2016, he had posted statements on *Facebook* mentioning the “oppression” of the Crimean Tatars, referring to Crimea being “occupied” and “annexed”, and quoting a Crimean Tatar leader who had organized the food and trade blockade of Crimea in September 2015.<sup>186</sup>

161. People have also been charged under the accusation of advocating separatism. In 2017, the trials of a journalist from Crimea and a deputy chairman of the Mejlis, started. Both men were charged with “public calls to violate the territorial integrity of the Russian Federation” in connection with an article and a televised interview, respectively.<sup>187</sup> If found guilty, they face prison sentences of up to five years.

## M. Freedom of association

162. Following the occupation of Crimea, most human right groups ceased to exist or relocated elsewhere in Ukraine. Some did so in protest against the new situation, while others felt compelled to do so, on account of personal threats and physical violence faced by their members.

163. For instance, the director of the Yalta-based NGO *Almenda* left Crimea on 16 March 2014, one day after she was warned by members of the Crimean self-defence that her safety was “no longer guaranteed.”<sup>188</sup> Several members of the NGO *Ukrainian House* were tortured and forcibly disappeared in connection with their role in organizing Maidan events in Crimea and their subsequent opposition to Russian Federation presence.

164. Civic groups or non-governmental institutions which stayed but did not accept the policies of the new authorities faced systematic obstruction of their activities, intimidation and sometimes prosecution. In September 2014, the Crimean police organized searches, seized property, and evicted the charitable organization *Crimea Foundation* from its

premises in Simferopol. The eviction also affected the central office of the Mejlis and the Mejlis weekly newspaper *Avdet*.<sup>189</sup>

165. As other legal entities, NGOs were required to re-register under Russian Federation law, which involved a number of constraints. Application documents included *inter alia* a new version of the NGO statute and a formal decision by the NGO executive body to align its founding documents with legislative requirements. If the NGO was not registered at the local address of a founder who was a Crimean resident, applicants were required to provide a letter from the owners of the intended rental premises of the NGO guaranteeing that they did not object to such a registration.<sup>190</sup>

166. The re-registration of NGOs was further stymied by implementation of the Russian Federation's law on 'foreign agents' and 'undesirable organizations' in Crimea, both of which have had a chilling effect on civic groups.<sup>191</sup> Some decided not to seek registration while others decided to forgo foreign funding rather than endure frequent inspections and stigmatization.

167. The restrictive conditions placed by the legislation of the Russian Federation on activities of civil society organizations have been reflected in the number of NGOs which currently operate on the peninsula. As of 4 September 2017, 1,852 NGOs were registered in Crimea and the city of Sevastopol<sup>192</sup> compared to 4,090 in mid-March 2014.<sup>193</sup>

168. While the Russian Federation authorities in Crimea attempted to silence the Mejlis, they selectively allowed the establishment of organizations representing the Crimean Tatars, including *Kyryym*, *Kyryym Birligi*, the *Crimean Tatar 'Inkishaf' Society* and the *Association of Crimean Tatar Businessmen*.

169. Four national-cultural associations representing Ukrainians have been registered in Crimea: the Simferopol-based *Renaissance in Unity*, *Ukrainians of Simferopol*, *Ukrainians of Yevpatoriia* and *Ukrainians of Yalta*. The members of the unregistered Simferopol-based *Ukrainian Cultural Centre*, which has been under constant surveillance since 2014, were regularly called by the police or FSB for 'informal talks'. Their public activities, including paying tribute to Ukrainian literary, political or historic figures, were often disrupted or prohibited. In May 2017, the Centre closed due to the absence of funds to pay for the rent of its premises, and on 29 August 2017, its director left the peninsula for mainland Ukraine following anonymous text message threats and information that the FSB would arrest him.<sup>194</sup>

## VII. Economic, Social and Cultural Rights

### A. Property rights

170. Following Crimea's occupation, the Russian Federation authorities proceeded with a large-scale nationalization of public and sometimes private property. Expropriation was done in disregard of ownership rights and without compensation. Proper regulation of housing, land and property issues are also central to the Crimean Tatars who, almost three decades after returning from deportation, have not obtained security of tenure guarantees.

#### 1. Property nationalization

171. Since the March 2014 referendum, many of the most economically valuable assets in Crimea – from energy companies to mobile operators – have been expropriated, often by force.



172. On 24 August 2014, the Crimean self-defence took over the *Zaliv* shipbuilding company, preventing the management from entering the premises. A new administration from Zelenodolsk (Tatarstan) was subsequently imposed on the firm.<sup>195</sup> On 27 August 2014, members of the Crimean self-defence entered the headquarters of Ukrainian gas company *Krymgas* and seized 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.<sup>196</sup>

173. Regulatory acts have been adopted to provide legitimacy to the nationalization process.<sup>197</sup> However, frequent amendments, which increased the number and nature of property to be nationalized, undermined legal certainty and guarantees against arbitrariness. For example, Resolution No. 2085-6/14, which originally focused on nationalization of property without ownership or belonging to the State of Ukraine, was amended to include 111 individual property assets listed in a separate Annex called “*List of property considered as the property of the Republic of Crimea*”. During 2014-2016, hotels, private apartments, non-residential premises, markets, gas stations, land plots and movable property, were added to the Annex by new resolutions, which contained no criteria for the nationalization and, in most cases, no information on the owners of nationalized property.

174. On 27 February 2015 Crimea’s Parliament adopted Resolution No. 505-1/15 declaring an end to the nationalization process and prohibiting the inclusion of new property into the Annex starting from 1 March 2015. However, this provision was subsequently amended on 16 September 2015, allowing inclusion of land plots and some new information in the List of nationalized property for “clarification purposes.” As of 12 September 2017, the Annex with the list of nationalized property had been amended 56 times and now contains 4,618 “nationalized” public and private real estate assets.<sup>198</sup>

175. Similar processes have taken place in the city of Sevastopol.<sup>199</sup> With the purpose of “restoring social fairness and maintaining public order”, the city authorities nationalized 13 companies and 30 real estate assets between February 2015 and July 2016.<sup>200</sup>

176. 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>201</sup> and that immovable public property must be administered according to the rule of usufruct.<sup>202</sup>

## 2. Housing, land and property of formerly deported people

177. The question of housing, land and property in Crimea is sensitive, particularly for Crimean Tatars who returned from exile starting from the late 1980s. The unmanaged return process and the perceived injustices in land allocation led to Crimean Tatars settling on unoccupied or public land.<sup>203</sup>

178. While successive Governments of Ukraine took steps to facilitate repatriation to Crimea and resolve some of the issues facing formerly deported persons, many problems remained. In a decree issued by former President Viktor Yanukovich in 2010, the need to solve “the burning problem of resettlement” of formerly deported persons was acknowledged.<sup>204</sup>

179. 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>205</sup> In 2015, they adopted a law enabling Russian Federation citizens of Crimea who illegally built property on a seized plot of land to acquire this land.<sup>206</sup> There is no information on how this law has been implemented. Crimean Tatars have expressed concern about the citizenship requirement prescribed by the law, which automatically excludes from the process of legalization formerly deported persons who were not residents of Crimea on 18 March 2014 or have returned from deportation after that date. Other



obstacles, including resistance from title owners of land plots and competing interests among Crimean Tatar groups representing returnees have also adversely affected the process of acquisition.

180. Additional concerns rose after several cities in Crimea allowed the demolition of buildings constructed without necessary permits. The most recent decision applies to Simferopol<sup>207</sup> and 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. The demolition of such buildings, to be ordered by local administrations and special “demolition commissions”, could result in evictions disproportionately affecting Crimean Tatars.

181. Forced evictions constitute a violation of a broad range of human rights, including the right to adequate housing and freedom from arbitrary interference with home and privacy.<sup>208</sup> OHCHR recalls the importance of preventing 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>209</sup>

## **B. Right to maintain one’s identity, culture and tradition**

182. The Russian Federation authorities in Crimea have denied various manifestations of Ukrainian and Crimean Tatar culture and identity by groups perceived as hostile to the Russian Federation and to Crimea’s status as a part of it. Pressure, intimidation and prohibitive administrative or court decisions have been applied. Such actions violate Article 15 of the International Covenant on Economic, Social and Cultural Rights, which guarantees the right of everyone to take part in cultural life, and Article 27 of the International Covenant on Civil and Political Rights, which provides that in States where ethnic, religious or linguistic minorities exist, persons belonging to such minorities should not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

### **1. Limitations of the right of Ukrainians and Crimean Tatars to express their culture and identity**

183. Following Crimea’s occupation, the Ukrainian and Crimean Tatar communities have been constricted in their ability to display Ukrainian state and cultural symbols and publicly celebrate important dates for their communities. Festivities and assemblies organized by minority groups have only been allowed if those groups supported the position of the Russian Federation on the status of Crimea.

184. On 18 February 2015, the Bakhchysarai authorities prohibited the local Mejlis from carrying out a rally in commemoration of the anniversary of the death of Noman Çelebicihan, an important figure in Crimean Tatar history. On 11 March 2015, a court in Simferopol ordered 40 hours of corrective labour for three pro-Ukrainian activists and 20 hours for a fourth after they unfurled a Ukrainian flag bearing the inscription “Crimea is Ukraine” during a rally to commemorate the anniversary of the national poet of Ukraine, Taras Shevchenko, two days before.<sup>210</sup> In June 2015, the city of Simferopol rejected an application by the Mejlis’ to hold celebrations of the Crimean Tatar Flag Day.

185. Institutions promoting Ukrainian culture and traditions have been shut down. The Museum of Ukrainian Vyshyvanka - a traditional Ukrainian embroidery - was closed in February 2015, and books by contemporary Ukrainian authors have been removed from the *Franko* Library located in Simferopol.<sup>211</sup>

186. The recognition under the constitution of the “Republic of Crimea” of Ukrainian and Crimean Tatar as official languages on a par with the Russian language has been largely

declaratory. A draft law on the use of Crimea's official languages was registered in the Parliament of Crimea on 4 April 2017, but has yet to be discussed.<sup>212</sup>

## 2. The ban of the Mejlis

187. In 2016, the Russian Federation authorities in Crimea outlawed the Mejlis, a development which many in the Crimean Tatar community perceived as an attack against their culture and identity. While it is not supported by all Crimean Tatars, the Mejlis is viewed by many as a self-governing body and traditional organ of an indigenous people. Its members, forming an executive body, were elected by the Kurultai, the Crimean Tatars' assembly.

188. On 26 April 2016, the Supreme Court of Crimea declared the Mejlis to be an extremist organization and prohibited it from conducting any activities. The ruling was followed by an instruction, in May 2016, by the Vice Prime Minister of Crimea addressed to the heads of local governments in Crimea to report to the Prosecutor of Crimea any violations committed by Mejlis members or activists.<sup>213</sup>

189. On 29 September 2016, the Supreme Court of the Russian Federation upheld the ban, and supported the Prosecution which argued that the Crimean Tatar leadership of the Mejlis had repeatedly violated Russian Federation legislation and caused prejudice to residents of Crimea by organizing a trade blockade in 2015. The Mejlis was also accused of orchestrating a cut-off in energy supplies to the peninsula - with adverse humanitarian consequences for the population - caused by the sabotage of electricity pylons in mainland Ukraine. OHCHR notes that the ruling confirms the significant restrictions already imposed by the Russian Federation authorities in Crimea on this institution since 2014. It appears to be based on prejudicial evidence and disregards the legitimate character of the Mejlis as an elected organ representing the Crimean Tatar community.

190. In addition to prohibiting any public activity by or on behalf of the Mejlis, the court decision implies that the estimated 2,500 members of the national and local Mejlis bodies can incur criminal liability and face up to eight years in prison for belonging to an organization recognized as extremist. While no criminal sanctions have been imposed so far, some members of the Mejlis have been subjected to administrative sanctions. On 28 September 2016, eight of them were fined by courts in amounts ranging from 750 RUB (USD 12) to 1,000 RUB (USD 15) for holding an "illegal meeting" of this organization.<sup>214</sup>

191. On 19 April 2017, the International Court of Justice delivered an Order on provisional measures in proceedings brought by Ukraine against the Russian Federation, 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*".<sup>215</sup>

192. On 25 August 2017, the Committee on the Elimination of Racial Discrimination issued its Concluding Observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation.<sup>216</sup> In these Concluding Observations, the Committee stated that it was "particularly concerned" about the ban on the Mejlis and the "strict limitations on the operation of Crimean Tatar representative institutions, such as the outlawing of the Mejlis and the closure of several media outlets."

193. As of 12 September 2017, the Mejlis remains a banned organization pursuant to the decisions of the Supreme Courts of Crimea and the Russian Federation.

### C. Right to education in native language

194. International human rights instruments ratified by both Ukraine and the Russian Federation guarantee the right to education.<sup>217</sup> States are obliged to prioritize the introduction of compulsory, free primary education and must “take steps” towards the realization of secondary, higher and fundamental education for all those within its jurisdiction.<sup>218</sup> Article 2 of the First Protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms provides that states should respect the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions. Article 50 of the Fourth Geneva Convention provides that the occupying power should, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

195. Shortly after the March 2014 referendum, schools and universities in Crimea started functioning in accordance with the curriculum and educational standards of the Russian Federation. The education and academic qualifications obtained in Ukrainian educational establishments were recognized while a large-scale in-training programme for over 20,000 Crimean teachers started in June 2014.<sup>219</sup>

196. Overall, the introduction of Russian Federation education standards has limited the right of ethnic Ukrainians and Crimean Tatars to education in their native language. While under Russian Federation law minority language instruction is available from grades 1 to 9, in senior classes of secondary schools (grades 10 and 11) all subjects must be taught in Russian. Furthermore, there is no clear procedure regulating the education in a mother tongue and no legally defined numeric threshold for opening schools or classes.

197. The number of students undergoing instruction in Ukrainian language has dropped dramatically. In the 2013-2014 academic year, 12,694 students were educated in the Ukrainian language. Following the occupation of Crimea, this number fell to 2,154 in 2014-2015, 949 in 2015-2016, and 371 in 2016-2017. In April 2015, the long-time director of the only Ukrainian-language gymnasium in Simferopol left Crimea, allegedly due to threats and harassment. Between 2013 and 2017, the number of Ukrainian schools decreased from seven to one, and the number of classes from 875 to 28.<sup>220</sup>

198. OHCHR considers that the main reasons for this decrease include a dominant Russian cultural environment and the departure of thousands of pro-Ukrainian Crimean residents to mainland Ukraine. Pressure from some teaching staff and school administrations to discontinue teaching in Ukrainian language has also been reported.

199. At the university level, the Department of Ukrainian Philology in the Vernadskiy Taurida National University was closed down in September 2014 and the majority of its teaching staff laid off.<sup>221</sup> The departments of Ukrainian philology, culture of the Ukrainian language and theory and history of the Ukrainian language have been merged into one department. By the end of 2014, Ukrainian as a language of instruction had been removed from university-level education in Crimea.

200. On 19 April 2017, the International Court of Justice delivered an Order on provisional measures in proceedings brought by Ukraine against the Russian Federation, concluding unanimously that the Russian Federation must “*Ensure the availability of education in the Ukrainian language*”.<sup>222</sup>

201. The number of students receiving their instruction in Crimean Tatar language has remained stable, largely due to a high level of cultural awareness among the Crimean Tatars. In the 2013-2014 academic year, when Ukraine’s curriculum was last applied in Crimea, 5,551 Crimean Tatars were educated in their native language. In 2014-2015, the figure was 5,146, in 2015-2016 it was 5,334, and in 2016-2017, 5,330 children were

educated in Crimean Tatar.<sup>223</sup> Fifteen Crimean Tatar national schools were functioning in 2017, as in 2013.<sup>224</sup>

## **D. Right to health**

202. The availability of health care treatment in Crimea has been affected by the departure of numerous doctors and medical staff from medical State institutions. Drug users have additionally suffered from a disruption in treatment caused by the implementation of Russian Federation legislation.

203. In General Comment No. 14, the United Nations Committee on Economic Social and Cultural Rights reminded all States parties to the International Covenant on Economic, Social and Cultural Rights of the “*minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care.*” Those minimum essential levels include “*the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups,*” including the provision of essential drugs. Similarly, international humanitarian law obliges an occupying power to ensure food, hygiene, public health and medical supplies for the inhabitants of occupied territories.

### **1. Medical staff deficit in public hospitals**

204. Crimea is confronted with an acute lack of medical personnel, an enduring phenomenon which pre-dates the occupation by the Russian Federation but has been aggravated after March 2014 due to the departure of many doctors to the private sector.

205. Since 2014, many doctors in Crimea have left public health care institutions for private clinics on the peninsula, which provide higher salaries and better working conditions. A similar situation prevails in the city of Sevastopol, where salaries in private clinics in 2017 were two and a half times higher (40,000 RUB i.e. USD 660) than in public hospitals (16,000 RUB i.e. USD 265).<sup>225</sup> Physicians in public hospitals also criticized what they viewed as excessive bureaucratic paperwork and a system of remuneration deriving from new Russian Federation regulations, with the payment of a full doctor’s salary depending on the result of multiple inspections and internal audits.<sup>226</sup>

206. In November 2016, 7,195 doctors and 17,283 other medical personnel were employed in public medical centres in Crimea, with only 62.3 per cent of physicians’ positions occupied.

207. The Minister of Health of Crimea publicly acknowledged a lack of physicians, pediatricians, general practitioners, emergency staff and laboratory technicians. For three months in 2016, the main public hospital in Crimea’s second most populated district, Kerch, had no doctor in its neurosurgical department. The situation is most worrying in the districts of Rozdolne, Nyzhnohirskiy, Krasnoperekopsk, Pervomaysky and Armyansk, and in the countryside, where only 40 per cent of the medical staff positions are filled.<sup>227</sup>

208. The shortage of medical personnel has had an impact on the quality of free public health care services and created long waits, delaying treatment for the most economically-disadvantaged patients and jeopardizing their right to health.<sup>228</sup>

### **2. Impaired treatment of drug users**

209. Retrogressive measures introduced in Crimea since the application of Russian Federation legislation have undermined the right to health for those suffering from drug dependence.

210. An estimated 21,100 injecting drug-users lived in Crimea in 2013. Substitution Maintenance Therapy (SMT) for Crimean patients was terminated after the peninsula was incorporated in the Russian Federation. The latter bans the medical use of methadone and buprenorphine in the treatment of drug dependence and does not have maintenance therapy programmes.<sup>229</sup> Medicines given to patients in rehabilitation centres include benzodiazepines, barbiturates, neuroleptics and anti-psychotic drugs, which are not considered a reasonable alternative to the banned treatments among independent health care experts.

211. As a result, 803 registered heroin addicts previously receiving Opioid Substitution Therapy (OST) in Crimea no longer had access to this treatment.<sup>230</sup> This has had major detrimental effects, including changes in treatment, breaches of patient confidentiality, and increased mandatory drug screening.<sup>231</sup>

212. Without methadone, users often relapse into taking heroin and risk an overdose. The United Nations Special Envoy for HIV/AIDS evoked the possibility that by January 2015, up to 100 former OST recipients had died in Crimea due to complications related to overdose or suicide,<sup>232</sup> although in June 2014, Crimea's health authorities were denying any deaths.<sup>233</sup>

213. Comprehensive harm reduction strategies, which include OST, are essential to prevent and treat HIV, hepatitis and tuberculosis among people who inject drugs. The ban on OST opiates crippled Crimea's HIV prevention programmes, which included *inter alia* needle exchanges covering 14,000 people and OST for intravenous drug-users.

214. According to the Chief Doctor of Crimea's Centre for the prevention and control of AIDS, 1,417 newly diagnosed cases of HIV infection were recorded in Crimea for the first nine months of 2016, including 25 per cent resulting from drug injection.<sup>234</sup>

## E. Access to water and other essential services

215. The right to an adequate standard of living including in particular access to food, water and other essential items, is included in several international human rights treaties.<sup>235</sup> In addition, international humanitarian law prohibits the attack, destruction, removal, or rendering useless objects indispensable to the survival of the civilian population, such as foodstuffs, water installations and supplies and irrigation works.<sup>236</sup>

216. Until 2014, Crimea was 82 per cent dependent on water supplies via the North Crimean Canal that links the Dnepr river in mainland Ukraine and the peninsula. The eastern Crimean regions stretching from Sudak to Kerch have virtually no surface sources of water. On 13 May 2014, the Ukrainian State Water Resources Agency informed that Ukraine had shut off water supplies to Crimea via the North-Crimean Canal. While this situation had no negative implications on drinking water,<sup>237</sup> agricultural lands were affected, and practically all rice plantations on the peninsula perished.<sup>238</sup> According to the Federal target programme on the socioeconomic development of Crimea, until 2020 "*Crimea's dependence on supply of water via the North Crimean Canal can be eventually reduced or eliminated by searching for underground water sources, including manmade ones*".<sup>239</sup>

217. Crimea was also dependent on supplies from mainland Ukraine for up to 85 per cent of the electricity it consumed. Access to energy is a component of the right to adequate housing, which is derived from the right to an adequate standard of living.<sup>240</sup> On 21-22 November 2015, energy deliveries were disrupted after perpetrators believed to be supporting the blockade of Crimea damaged four transmission towers in the region of Kherson, which supplied electricity to Crimea. Although one of the power lines was later repaired, energy supplies from mainland Ukraine have since not resumed due to the non-

renewal of the contract between Ukraine's energy company and the Russian Federation authorities in Crimea, which expired on 1 January 2016.<sup>241</sup>

218. Following the power outage, for about three weeks, the interruption of energy deliveries to Crimea caused widespread disruptions, affecting food conservation, lighting, heating, public transportation and economic activity. Although the Russian Federation authorities in Crimea redirected available energy resources to the most critical social infrastructure, such as hospitals and schools, the impact of this situation has been acute, particularly for people with limited mobility and low income.

219. Pursuant to the International Covenant on Economic, Social and Cultural Rights, States parties must ensure the satisfaction of minimum essential levels of rights under the Covenant in all circumstances.<sup>242</sup> Under international humanitarian law, the Russian Federation as the occupying power is obliged to ensure to the fullest extent of the means available to it sufficient hygiene and public health standards, as well as the provision of food and medical care to the population. At the same time, this does not exonerate Ukraine from its obligations under the International Covenant not to interfere with the enjoyment of the rights it enshrines, and from respecting the requirement under international humanitarian law to ensure that the basic needs of the population continue to be met under conditions of occupation.<sup>243</sup>

## VIII. Conclusions and Recommendations

220. **The human rights situation in Crimea has significantly deteriorated since the beginning of its occupation by the Russian Federation. The imposition of a new citizenship and legal framework and the resulting administration of justice have significantly limited the enjoyment of human rights for the residents of Crimea. The Russian Federation has extended its laws to Crimea in violation of international humanitarian law. In many cases, they have been applied arbitrarily.**

221. **Russian Federation authorities in Crimea have supported groups and individuals loyal to the Russian Federation, including among national and religious minorities, while preventing any criticism or dissent and outlawing organized opposition, such as the Mejlis. The space for civil society to operate, criticize or advocate has considerably shrunk. Media outlets have been shut down, disproportionately affecting the Crimean Tatar and Ukrainian communities, their right to information and to maintain their culture and identity.**

222. **Grave human rights violations affecting the right to life, liberty and security have not been effectively investigated. The judiciary has failed to uphold the rule of law and exercise proper administration of justice. There is an urgent need for accountability for human rights violations and abuses and providing the victims with redress.**

223. **Moreover, the freedom of movement between mainland Ukraine and Crimea has been restricted and the ABL has acquired many attributes of a State border.**

224. **Since the attempted alteration of the status of Crimea by the Russian Federation, a development which was denounced by General Assembly resolution 68/262 and later qualified as occupation in General Assembly resolution 71/205, the forcible integration of the peninsula into the political, legal, socio-economic, educational, informational, cultural and security spheres of the Russian Federation has been actively pursued, deepening the divide between this territory of Ukraine and the rest of the country.**



225. In July 2016, Crimea was administratively attached to the Southern Federal District of the Russian Federation, further strengthening implementation of policies from the central level and coordination with neighboring regions of the Russian Federation. The peninsula has been integrated into the energy grid of the Russian Federation, which is also building a rail-and-road bridge through the Kerch strait, creating a land corridor to Crimea. This intensified integration is further compounded by population movements - from the Russian Federation to Crimea and from Crimea to mainland Ukraine - which tend to favour and strengthen pro-Russia sentiments on the peninsula.

226. In order to improve the human rights situation in Crimea, OHCHR recommends:

To the Government of the Russian Federation to:

- a) Uphold human rights in Crimea for all and respect obligations that apply to an occupying power pursuant to international humanitarian law provisions;
- b) Ensure proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea, pursuant to General Assembly resolution 71/205;
- c) Apply Ukrainian laws in Crimea, pursuant to General Assembly resolutions 68/262 and 71/205;
- d) Ensure accountability for human rights violations and abuses through effective investigations of allegations of ill-treatment, torture, abductions, disappearances and killings involving members of the security forces and the Crimean self-defence; bring perpetrators to justice and provide redress for victims;
- e) Comply with the international humanitarian law prohibition to compel residents of the occupied territory of Crimea to serve in the armed forces of the Russian Federation and to deport or transfer parts of the civilian population of the Russian Federation into Crimea; return to Crimea all protected persons transferred to the territory of the Russian Federation;
- f) Ensure independent and impartial administration of justice, including due process and fair trial rights, and that persons deprived of liberty 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;
- g) End the practice of retroactive application of penal laws to acts committed before the occupation of Crimea, and refrain from using law enforcement bodies and the justice system to pressure and intimidate opponents;
- h) Uphold the right of defence counsel to perform their professional functions without intimidation, harassment or improper interference;
- i) End the practice of extracting confessions of guilt from persons in detention through threats, torture, or ill-treatment, and refrain from practices such as forcible psychiatric hospitalization, which may amount to ill-treatment;
- j) Ensure adequate medical assistance to all individuals detained in penitentiary institutions irrespective of their citizenship or any other grounds;
- k) Enable unimpeded freedom of movement to and from Crimea, and end deportations of Crimean residents pursuant to Russian Federation immigration rules;

- l) Ensure that the rights to freedom of expression, peaceful assembly, association, thought, conscience and religion can be exercised by any individual and group in Crimea, without discrimination on any grounds, including race, nationality, political views or ethnicity;
- m) Stop applying legislation on extremism, terrorism and separatism to criminalize free speech and peaceful conduct, and release all persons arrested and charged for expressing dissenting views, including regarding the status of Crimea;
- n) Allow the development of independent and pluralistic media outlets, including those representing minority communities, and refrain from placing legal and administrative obstacles on their registration or operation;
- o) Put an end to police actions, including house searches, summons, detentions, taking of DNA samples, targeting disproportionately members of the Crimean Tatar community;
- p) Lift any limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis;
- q) Ensure the availability of education in the Ukrainian language, and enable all ethnic communities in Crimea, including the Crimean Tatars and Ukrainians, to maintain and develop their culture, traditions and identity, and to commemorate important events;
- r) Ensure access of all Crimean residents, including those without Russian Federation passports, to employment, health treatment, property and public services, without discrimination;
- s) End the ban on the use of Substitution Maintenance Therapy (SMT) for patients suffering from drug dependence;
- t) Respect the right to property and the prohibition to confiscate private property; ensure security of tenure for the Crimean Tatars by putting in place a mechanism facilitating recognition of their property rights.

**To the Government of Ukraine to:**

- a) Use all legal and diplomatic means available to promote and guarantee the enjoyment of the human rights of residents of Crimea;
- b) Investigate, within practical limits, human rights violations and abuses committed in Crimea as well as those perpetrated in mainland Ukraine in relation to the 'civil blockade' of Crimea;
- c) Remove all non-necessary restrictions to freedom of movement to and from Crimea, and ensure that the perimeter of the mined area near the Kalanchak and Chaplynka crossing points in the Kherson region is visible and well protected;
- d) Simplify access to civil documents, education and other public services to residents of Crimea and IDPs;
- e) Support dialogue between the Ombudspersons of Ukraine and the Russian Federation to facilitate the voluntary transfer of Ukrainian prisoners held in Crimea to penitentiary institutions in mainland Ukraine;
- f) Refrain from actions that would raise obstacles to the enjoyment by residents of Crimea of their human rights.

**To the international community:**

- a) **Insist on full cooperation of the Russian Federation with international and regional monitoring mechanisms, including by granting unrestricted access to their representatives to Crimea;**
- b) Remind the Russian Federation and Ukraine to strictly abide by international human rights law and international humanitarian law in ensuring the protection of the population of Crimea;
- c) **Raise cases of human rights violations and abuses in discussions with the Russian Federation authorities at bilateral and multilateral forums.**

## IX. End notes

- 1 Hereafter referred to as ‘Crimea’.
- 2 All future references to the term “occupation” are to be interpreted in line with UN General Assembly resolution 71/205 referring to the “temporary occupation” of Crimea.
- 3 The resolution 71/205 was adopted by the UN General Assembly on 19 of December 2016..
- 4 The people’s militia was registered on 29 July 2014. It is composed of former policemen and army officers, Afghan war veterans and biker groups, tasked to ‘maintain order and combat fascism’ on the peninsula; see Народное Ополчение Республика Крым, “Устав Общественной Организации”, 9 сентября 2014, available at: <http://narodnoe-opolchenie.ru/ustav-obshhestvennoy-organizatsii/>.
- 5 Speaking to journalists, the President of the Russian Federation, Vladimir Putin, stated: “Behind the backs of the Crimean self-defense units, there were our soldiers. They acted in a very polite, but decisive and professional manner. There was no other way to help the people of Crimea to express their free will”. Video conference, Ria Novosti, 17 April 2014.
- 6 Interview given to the TV channel “Rossiya” as part of a documentary “Crimea. The way home”, available at: <https://www.youtube.com/watch?v=c8nMhCMphYU>.
- 7 The referendum question provided two alternatives: “1. Are you in favour of the Autonomous Republic of Crimea reuniting with Russia as a constituent part of the Russian Federation?” or “2. Are you in favour of restoring the Constitution of the Republic of Crimea of 1992 and of Crimea’s status as part of Ukraine?”
- 8 See the statement of the Spokesperson of the UN Secretary-General of 17 March 2014 <http://www.un.org/apps/news/story.asp?NewsID=47366#.WcU48nRx3IU>.
- 9 Article 45 of the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907 and Article 64, Geneva Convention IV.
- 10 The Mejlis is a self-governing institution of the Crimean Tatar people holding executive powers. Its members are chosen from among the members of an elected assembly, the Kurultai.
- 11 Articles 49 and 76, Geneva Convention IV.
- 12 See “Human Rights Assessment Mission in Ukraine. Human Rights and Minority Rights Situation”, OSCE report of the High Commissioner for National Minorities and the Office for Democratic Institutions and Human Rights, The Hague/ Warsaw (12 May 2014), pp. 49-76.
- 13 Interview given to the TV channel “Rossiya” as part of a documentary “Crimea. The way home”, available at: <https://www.youtube.com/watch?v=c8nMhCMphYU>.
- 14 <https://www.theguardian.com/world/2014/feb/25/ukraine-sevastopol-installs-pro-russian-mayor>.
- 15 According to the Constitution of the ‘Republic of Crimea’, adopted on 11 April 2014, the Head of Crimea («Глава Республики Крым») who is the highest-ranking official of Crimea may also act as the Prime Minister of Crimea. Starting from 14 April 2014, Sergey Aksenov has been acting as the Head and the Prime Minister of Crimea. See: <http://glava.rk.gov.ru/rus/officially.htm>
- 16 The referendum question provided two alternatives: “1. Are you in favour of the Autonomous Republic of Crimea reuniting with Russia as a constituent part of the Russian Federation?” or “2. Are you in favour of restoring the Constitution of the Republic of Crimea of 1992 and of Crimea’s status as part of Ukraine?”
- 17 <http://www.crimea.gov.ru/act/11689>.
- 18 The Opinion was prepared following a request of the Secretary-General of the Council of Europe of 7 March 2014.
- 19 See Paragraph 28 of Opinion no. 762 / 2014 on “Whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organize a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea’s 1992 constitution is compatible with constitutional principles” (Venice, 21-22 March 2014).
- 20 See supra endnote 8.
- 21 OHCHR report on the human rights situation in Ukraine, 15 April 2014, paragraph 82
- 22 According to the Crimean the election commission, 1,274 096 persons (83.1 per cent) cast their ballots, of whom 1,233,002 (96.77 per cent) voted to join the Russian Federation, 31,997 (2.51 per cent) voted for Crimea to be part of Ukraine, and 9,097 votes (0.72 per cent) were invalid; see <http://archive.is/bvjR6>. In Sevastopol, 274,101 persons (89.5 per cent) cast their ballots, of whom 262,041 (95.6 per cent)

- voted to join the Russian Federation, 9,250 (3.37 per cent) voted for Crimea to be part of Ukraine, and 2,810 votes were invalid (1.03 per cent); see <http://archive.is/zbExZ>.
- 23 On 14 March 2014, the Constitutional Court of Ukraine ruled that the decision to hold a referendum was unconstitutional, and on 15 March the Parliament of Ukraine terminated the powers of the Parliament of Crimea.
- 24 The law “On Securing the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” entered into force on 22 November 2014.
- 25 The resolution was adopted by 101 countries, 11 voted against, 58 abstained and 24 were absent.
- 26 The resolution was adopted by 70 countries, 26 voted against, 77 abstained and 21 were absent.
- 27 Agreement between the Office of the High Commissioner for Human Rights and the Government of Ukraine concerning the deployment of a short-term UN Human Rights Monitoring Mission in Ukraine, done at Geneva on 31 July 2014.
- 28 The objectives of the visit were to discuss allegations of human rights violations, protection concerns and the establishment of a sub-office of the HRMMU in Simferopol. See OHCHR report on the human rights situation in Ukraine, 15 March to 2 April 2014, paragraphs 80 to 93.
- 29 Gender-sensitive investigation methods, including regarding interviewing, security arrangements, witness protection and safe handling of information were used by OHCHR. See OHCHR manual on gender integration in monitoring available at <https://intranet.ohchr.org/Offices/Geneva/TEsprDD/RuleofLawEqualityandNon-DiscriminationBranch/WomensHumanRightsAndGenderSection/Documents/Chapter15-20pp.pdf>.
- 30 Article 42 of the 1907 Hague Regulations states: “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”
- 31 On 15 September 2015, Article 1 of the law of Ukraine “On Securing the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” was amended to establish the beginning of the occupation of Crimea on 20 February 2014.
- 32 The Government of Ukraine exercised its right to derogate from its obligations under the International Covenant on Civil and Political Rights in relation to the rights to liberty and security (Article 9); fair trial (Article 14); effective remedy (Article 2(3)); respect for private and family life (Article 17); and freedom of movement (Article 12) as well as obligations enshrined in Article 5 (liberty and security), Article 6 (fair trial) Article 8 (respect for private and family life) and Article 13 (effective remedy) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 33 Human Rights Committee, Concluding Observations on Moldova (CCPR/C/MDA/CO/2(2009), paragraph 5).
- 34 *Ilascu and Others v. Moldova and Russia*, 48787/99, European Court of Human Rights, 8 July 2004, paragraph 331.
- 35 Article 43, 1907 Hague Regulations.
- 36 Henckaerts, Doswald-Beck, Customary International Humanitarian Law, Volume I. Rule 149, hereinafter, Customary IHL Rules; See also Article 3, Hague Convention (IV) and Article 91, Additional Protocol I.
- 37 See Report of the International Criminal Court on Preliminary Examination Activities (2016), paragraphs 155 to 158. Pursuant to two article 12(3) declarations lodged by the Government of Ukraine on 17 April 2014 and 8 September 2015, the Court may exercise jurisdiction over Rome Statute crimes committed on the territory of Ukraine since 21 November 2013.
- 38 <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/>.
- 39 <http://www.statdata.ru/naselenie-krima-i-sevastopolya>.
- 40 <http://www.dsns.gov.ua/ua/Ostanni-novini/61047.html>.
- 41 <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/ukraine/figures-analysis>.
- 42 [http://www.gks.ru/free\\_doc/new\\_site/population/demo/perepis\\_krim/obsh\\_itog\\_kfo.docx](http://www.gks.ru/free_doc/new_site/population/demo/perepis_krim/obsh_itog_kfo.docx)
- 43 <http://www.statdata.ru/naselenie-krima-i-sevastopolya>.
- 44 See Article 4 of the Russian Federation law “On the Accession of the Republic of Crimea into the Russian Federation and the Creation of New Federal Subjects – the Republic of Crimea and the City of Federal Significance Sevastopol” (21 March 2014).
- 45 See Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2014, Crimea chapter.
- 46 Article 45, 1907 Hague Regulations.
- 47 OHCHR report on the human rights situation in Ukraine, 2 April to 6 May 2014, paragraph 127.

- 48 [http://rian.com.ua/CIS\\_news/20140422/345528247.html](http://rian.com.ua/CIS_news/20140422/345528247.html).
- 49 Article 20, Federal Law No. 62-FZ "On Citizenship of the Russian Federation" (31 May 2002).
- 50 <http://helsinki.org.ua/advice/poluchenye-vyda-na-zhytelstvo-dlya-hrazhdan-pozhelavshyh-sohranyt-ukraynskoe-hrazhdanstvo-y-prozhyvayuschyh-postoyanno-na-territoryy-kryima/>.
- 51 Article 3 of the Russian Federation Law "On circulation of agricultural land" (24 July 2002).
- 52 OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2016, paragraph 197.
- 53 OHCHR report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, paragraphs 139 to 141.
- 54 Judgment of the Balaklava district court of the Republic of Crimea, 22 November 2016, No. 5-207/2016, <http://sudact.ru/regular/doc/s56ZvgkNvSgw/>
- 55 Judgment of the Supreme court of the Republic of Crimea, 15 November 2016, No. 12-2050/2016, <http://sudact.ru/regular/doc/hbZ5VPzDk7l0/>.
- 56 In addition, the occupying power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. See Article 49, Geneva Convention IV.
- 57 Judgment of the Supreme court of the Republic of Crimea, 17 November 2016, No. 12-401/2016, <http://sudact.ru/regular/doc/Q9mweslQfjb/>.
- 58 See "Human Rights in Retreat. Abuses in Crimea", Human Rights Watch, 17 November 2014, available at: <https://www.hrw.org/report/2014/11/17/rights-retreat/abuses-crimea>.
- 59 Judgment of the Supreme court of the Republic of Crimea, 2 November 2016, No. 12-1696/2016, <http://sudact.ru/regular/doc/55PTDREeCUZT/>.
- 60 Judgment of the Sudak city court of the Republic of Crimea, 25 October 2016, No. 5-131/2016, <http://sudact.ru/regular/doc/MdwdkOOlxGdO/>.
- 61 OHCHR report on the situation of human rights in Ukraine, 16 November 2015 to 15 February 2016, paragraph 195.
- 62 Article 4 of the Federal Constitutional Law "On the Accession of the Republic of Crimea into the Russian Federation and the Creation of New Federal Subjects – the Republic of Crimea and the City of Federal Significance Sevastopol" (21 March 2014).
- 63 Article 11 of the Law of the Republic of Crimea "On State Civil Service of the Republic of Crimea" (29 May 2014).
- 64 This number includes 3,581 persons employed in the city of Sevastopol and 16,803 in the Autonomous Republic of Crimea. [http://www.ukrstat.gov.ua/druk/publicat/kat\\_u/2014/bl/03/bl\\_ds\\_13.zip](http://www.ukrstat.gov.ua/druk/publicat/kat_u/2014/bl/03/bl_ds_13.zip).
- 65 <http://ru.krymr.com/content/news/27024784.html>.
- 66 Article 54, Geneva Convention IV.
- 67 Article 6 of the Russian Federation law "On the Accession of the Republic of Crimea into the Russian Federation and the Creation of New Federal Subjects – the Republic of Crimea and the City of Federal Significance Sevastopol" (21 March 2014).
- 68 The Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2014 mentions in relation to Crimea that the "objective difficulties of the transition period throughout 2014" have given rise to "a number of legal and law enforcement grey areas" which have encouraged corruption schemes, Moscow, 2015, p. 96.
- 69 Article 64, Geneva Convention IV.
- 70 OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2015, paragraph 159
- 71 See Articles 64, 65, 67, and 70, Geneva Convention IV and Article 15, International Covenant on Civil and Political Rights.
- 72 OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2015, paragraphs 158-159 and HRMMU report on the human rights situation in Ukraine, 16 May to 15 August 2016, paragraph 157.
- 73 OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2017, paragraph 144.
- 74 Ibid. paragraph 145.
- 75 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, Havana, Cuba, 27 August to 7 September 1990, Principles 16 and 22.
- 76 OHCHR report on the human rights situation in Ukraine, 15 March to 2 April 2014, paragraph 86.
- 77 See List of Issues in Relation to the Seventh Periodic Report of the Russian Federation, Human Rights Committee, 18 December 2014, CCPR/C/RUS/Q/7/Add.1, paragraph 173.
- 78 <http://khpg.org/en/index.php?id=1457018864>.
- 79 HRMMU interview, 13 August 2017.



- 80 <http://www.telegraph.co.uk/news/worldnews/europe/ukraine/10716412/Ukraines-unlikeliest-funeral-the-only-two-foes-to-die-in-Russias-Crimea-takeover-are-mourned-together.html>.
- 81 <http://www.independent.co.uk/news/world/europe/ukraine-naval-officer-shot-dead-by-russian-solider-in-crimea-9243306.html>.
- 82 <https://ru.krymr.com/a/27740314.html>.
- 83 <https://www.kyivpost.com/article/content/euromaidan/two-die-in-rallies-outside-crimean-parliament-says-ex-head-of-mejlis-337708.html>.
- 84 OHCHR report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, paragraph 187.
- 85 See Article 2, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Article 7, International Covenant on Civil and Political Rights; and Article 3, European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 86 See OHCHR report on the human rights situation in Ukraine, 15 June 2014, paragraphs 299-303 and 309 and OHCHR report on the human rights situation in Ukraine, 18 August to 16 September 2014, paragraph 165.
- 87 See Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his Mission in Kyiv, Moscow and Ukraine, from 7 to 12 September 2014, paragraph 17.
- 88 See List of Issues in Relation to the Seventh Periodic Report of the Russian Federation, Human Rights Committee, 18 December 2014, CCPR/C/RUS/Q/7/Add.1, paragraph 174.
- 89 Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principle 2.
- 90 HRMMU interviews, 7 September 2016 and 11 December 2016.
- 91 OHCHR report on the human rights situation in Ukraine, 16 August to 15 November 2016, paragraph 158.
- 92 OHCHR report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, paragraph 133.
- 93 Rule 99, Customary International Humanitarian law.
- 94 Article 9, International Covenant on Civil and Political Rights; UN Human Rights Committee (HRC), General comment no. 35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35
- 95 Communication No. 458/1991, A. W. Mukong v. Cameroon (Views adopted on 21 July 1994), in UN doc. GAOR, A/49/40 (vol. II), p. 181, paragraph 9.8.
- 96 OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2016, paragraphs 183 to 185.
- 97 OHCHR report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, paragraph 202.
- 98 HRMMU interview, 20 October 2014.
- 99 Article 2, Convention for the Protection of All Persons from Enforced Disappearance.
- 100 Rule 99, Customary International Humanitarian Law.
- 101 Rule 90, Ibid.
- 102 Rule 89, Ibid.
- 103 Rule 123, Ibid.
- 104 See *Cyprus v. Turkey*, 25781/94, Judgment, European Court of Human Rights, 10 May 2001, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59454>.
- 105 Reshat Ametov, a pro-Ukrainian activist, was abducted in Simferopol and found dead two weeks later.
- 106 The Ukrainian NGO CrimeaSOS estimates that between March 2014 and March 2017, agents of the Russian Federation were directly or indirectly involved in at least 36 cases of enforced disappearances. See *Enforced Disappearance in Crimea Annexed by Russian Federation 2014-2016*, CrimeaSOS, p. 2.
- 107 OHCHR report on the human rights situation in Ukraine, 15 November 2014, paragraphs 213-215.
- 108 Information provided by the Prosecutor's office of the Republic of Crimea to CrimeaSOS on 29 November 2016.
- 109 Ibid.
- 110 Ibid.
- 111 The Federal List of Extremist Materials was introduced by Federal Law No. 114-FZ "On Combating Extremist Activities" (25 July 2002).
- 112 See Opinion No. 660/2011 on the Federal Law on Combating Extremist Activity of Russian Federation, The European Commission For Democracy Through Law (Venice Commission), 1 June 2012.
- 113 Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2014, Moscow, 2015, p. 99
- 114 See "The Situation of the Crimean Tatars since the Annexation of Crimea by the Russian Federation", Report prepared by an Unofficial Turkish Delegation in Crimea on 27-30 April 2015 (5 June 2015), pp. 9-10.

- 115 OHCHR report on the human rights situation in Ukraine, 18 August to 16 September 2014, paragraphs 155-156.
- 116 See “The Situation of the Crimean Tatars since the Annexation of Crimea by the Russian Federation”, *ibid.* p. 9.
- 117 <http://fedsfm.ru/documents/terrorists-catalog-portal-act>
- 118 [http://www.krim.fsin.su/news/detail.php?ELEMENT\\_ID=129921](http://www.krim.fsin.su/news/detail.php?ELEMENT_ID=129921).
- 119 Article 14(5), International Covenant on Civil and Political Rights.
- 120 Statistics of the State Penitentiary Service of Ukraine as of 20 March 2014, <http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/735176>.
- 121 Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2015, Moscow, p. 72
- 122 Report of the High Commissioner for Human Rights in the Republic of Crimea, 2016, p. 63, [http://ombudsman.rk.gov.ru/file/doklad\\_2016.pdf](http://ombudsman.rk.gov.ru/file/doklad_2016.pdf).
- 123 Rule 58, United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules).
- 124 OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2017, paragraph 150.
- 125 HRMMU interview, 21 March 2017.
- 126 *Ibid.*
- 127 One Ukrainian NGO claimed on 31 May 2016 that 2,200 prisoners had been transferred from Crimea to the Russian Federation, <https://hromadskeradio.org/programs/hromadska-hvylya/2200-krymskyh-uvyaznyh-bulo-peremishcheno-na-terytoriyu-rosiyi-advokat#.V01n6plSZF0.twitter>.
- 128 OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2016, paragraph 181.
- 129 The trial started on 21 July 2015, and on 25 August 2015, a military tribunal sentenced him to 20 years of imprisonment.
- 130 See Articles 49 and 76, Geneva Convention IV.
- 131 OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2017, paragraph 151.
- 132 *Ibid.* paragraph 152.
- 133 See Article 76, Geneva Convention IV; Article 10, International Covenant on Civil and Political Rights; Article 3, European Convention on Human Rights and Fundamental Freedoms, and *Kudla v. Poland*, 30210/96, European Court of Human Rights, 26 October 2000, paragraph 94.
- 134 Article 7, Treaty of Accession between the Republic of Crimea and the Russian Federation (18 March 2014).
- 135 This figure was announced by the military commissioner of Sevastopol, Alexei Astakhov, on 25 May 2017.
- 136 HRMMU interviews, 20 November 2015 and 13 October 2016.
- 137 Article 51, Geneva Convention IV.
- 138 See OSCE Special Monitoring Mission to Ukraine thematic report, “Freedom of movement across the administrative boundary line with Crimea” (21 June 2015), available at: <http://www.osce.org/ukraine-smm/165691>.
- 139 See Article 12, International Covenant on Civil and Political Rights; and Articles 2 and 3, Protocol 4 to the European Convention on Human Rights and Fundamental Freedoms.
- 140 HRMMU interview, 5 May 2017.
- 141 See Article 23, International Covenant on Civil and Political Rights; Article 10, Convention on the Right of the Child; Article 8, European Convention on Human Rights and Fundamental Freedoms.
- 142 Article 49, Geneva Convention IV.
- 143 HRMMU interview, 26 May 2017.
- 144 The decision on the undesirability of stay of Mr. Dzhemilev and Mr. Chubarov in the Russian Federation was taken pursuant to Article 27 of the Federal Law “On the Procedure of Exit from the Russian Federation and Entry to the Russian Federation. See Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2014, p. 101.
- 145 HRMMU interview, 17 October 2016.
- 146 HRMMU interviews, 19 February 2015, 22 September 2015 and 3 February 2016.
- 147 See Article 10, Law of Ukraine “On Guaranteeing the rights and freedoms of citizens and on the legal regime on the temporarily occupied territory of Ukraine”.
- 148 On 23 November 2016, 14 citizens of Uzbekistan and one Azeri citizen travelling from Crimea to mainland Ukraine were stopped by Ukrainian border guards on the ABL and issued with three-year entry bans to Ukraine for having accessed Crimea through the Russian Federation, in violation of Ukrainian legislation.
- 149 See Government Regulation No. 367 of 4 June 2015.
- 150 OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2017, paragraph 148.
- 151 OHCHR report on the human rights situation in Ukraine, 16 August to 15 November 2015, paragraphs 144 to 146.

- 152 OHCHR report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, paragraph 198.
- 153 OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2016, paragraph 175.
- 154 Rule 104, Customary International Humanitarian Law.
- 155 See Article 18(3), International Covenant on Civil and Political Rights, and Article 9(2), European Convention on Human Rights and Fundamental Freedoms.
- 156 Maximum fines amount to the equivalent of \$780 for individuals or \$15,000 for organizations.
- 157 See Article 5.26, part 4 of the Code of Administrative Offenses of the Russian Federation (“Carrying out missionary activity in violation of the requirements of the law”).
- 158 See Article 5.26, part 3, *ibid.*
- 159 OHCHR report on the human rights situation in Ukraine, 7 May to 7 June 2014, paragraph 315.
- 160 OHCHR report on the human rights situation in Ukraine, 16 July to 16 August 2014, paragraph 163.
- 161 OHCHR report on the human rights situation in Ukraine, 1 to 30 November 2014, paragraph 84.
- 162 OHCHR report on the human rights situation in Ukraine 15 December 2014, paragraph 84
- 163 On 24 June 2014, the FSB raided a madrassa in the village of Kolchugino, in the Simferopol district. On 13 August 2014, three madrassas in Simferopol were searched. On 22 September 2014, a seven-hour search was carried out at the Derekoi Mosque in Yalta.
- 164 See 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 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”.
- 165 The term “religious organizations” includes parishes, congregations, theological schools, monasteries, and other constituent parts of a church or religious group.
- 166 <http://khp.org/en/index.php?id=1497831415>
- 167 <https://uawire.org/news/jehovah-s-witness-follower-in-the-crimea-dies-after-his-trial>.
- 168 The churches in Perevalne (Simferopol district) and Sevastopol were seized while those in Krasnoperekopsk, Kerch and Saki were closed.
- 169 <https://ru.krymr.com/a/news/28721834.html>.
- 170 OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2016, paragraphs 165 to 167.
- 171 OHCHR report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, paragraphs 199-200.
- 172 OHCHR report on the human rights situation in Ukraine, 17 September to 31 October 2014, paragraph 212.
- 173 OHCHR report on the human rights situation in Ukraine, 18 August to 16 September 2014, paragraph 159.
- 174 According to the International Covenant on Civil and Political Rights (Article 21) and the European Convention on Human Rights and Fundamental Freedoms (Article 11), state authorities have a responsibility to respect and ensure freedom of peaceful assembly, including by protecting assemblies from attacks or disruption by third parties. Any restrictions of this right must be proportionate to achieve a legitimate aim that is demonstrably necessary in a democratic society.
- 175 OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2015, paragraph 175.
- 176 European Court of Human Rights, *Stankov and the United Macedonian Organization Ilinden v. Bulgaria* (2001), paragraph 94.
- 177 See A/HRC/31/66 paragraph 30, and A/HRC/23/39, paragraph 63.
- 178 See Amnesty International “One Year On. Violations of the right to freedom, expression and association in Crimea”, March 2015, pp 9-14.
- 179 OHCHR report on the human rights situation in Ukraine, 7 May to 7 June 2014, paragraphs 298 to 301 and 303.
- 180 *Ibid.* paragraph 302.
- 181 OHCHR report on the human rights situation in Ukraine, 17 September to 31 October 2014, paragraph 230.
- 182 Ministry of Foreign Affairs of the Russian Federation, submission to UNESCO, 14 April 2015, available at: <http://russianunesco.ru/eng/article/2070>).
- 183 OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2015, paragraphs 165-166.
- 184 See Fourth Report submitted by the Russian Federation pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (Received on 20 December 2016), p. 28.

- 185 Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (12 September 2011), paragraph 42.
- 186 OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2017, paragraph 139.
- 187 See Amnesty International Public statement, “Crimea: Rapidly Deteriorating Human Rights Situation in the International Blind Spot”, 17 March 2017, p. 5.
- 188 HRMMU interview, 29 June 2014.
- 189 See “The situation of national minorities in Crimea following its annexation”, European Parliament, Policy Department, Directorate General for External Policies, 2016, p.19, available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO\\_STU\(2016\)578003\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf).
- 190 Russian Federal Law “On Amending the Federal Law ‘Enacting chapter 1 of the Civil Code of the Russian Federation’ and Article 1202(3) of the Civil Code of the Russian Federation” (5 May 2014), available at: <http://base.garant.ru/70648870/>.
- 191 Russian Federal Law “On Amending some legal acts of the Russian Federation” (23 May 2015) and Russian Federal Law “On Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organizations Performing the Function of Foreign Agents” (20 July 2012).
- 192 This number includes “autonomous non-commercial organizations”, “national-cultural autonomies” and “non-government organizations”. See <http://unro.minjust.ru/NKOs.aspx>.
- 193 <http://rgo.informjust.ua/>.
- 194 HRMMU interview, 3-4 September 2017
- 195 OHCHR report on the human rights situation in Ukraine, 18 August to 16 September 2014, paragraph 165.
- 196 Ibid.
- 197 See law “On special aspects of regulation of property and land matters in the Republic of Crimea” (31 July 2014), Resolution of the ‘State Council of the Republic of Crimea’ “On aspects of administration of the property of the Republic of Crimea” (30 April 2014) with subsequent amendments. Other legal acts seeking to facilitate the process of nationalization include the law “On the administration and disposition of state-owned property in the Republic of Crimea” (8 August 2014), and 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” (26 March 2014).
- 198 This figure is based on information collected by OHCHR from open sources.
- 199 In the city of Sevastopol, nationalization was conducted in accordance with a Resolution of the Sevastopol city government “On some aspects of the nationalization of property” (28 February 2015) with subsequent amendments.
- 200 See Resolutions of the Sevastopol city Government “On some aspects of the nationalization of property” No. 118-III, 123-III, 662-III of 28 February 2015, 28 February 2015 and 8 July 2016 respectively.
- 201 Articles 46 and 56, 1907 Hague Regulations.
- 202 Ibid. Article 55.
- 203 See “The Integration of Formerly Deported People in Crimea, Ukraine”; Needs Assessment of the OSCE High Commissioner on National Minorities, August 2013, pp. 9-15.
- 204 Presidential Decree No. 615/2010 proposed taking “measures, in accordance with established procedures, for facilitating the adoption of the Concept of the State ethno-national policy and programmes for the period until 2015 for resettlement of Crimean Tatars, other persons deported on the ground of ethnic origin, and their descendants who have returned or are returning to Ukraine for permanent residence, their adaptation and integration in Ukrainian society.”
- 205 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, 7 May to 7 June 2014, paragraph 320.
- 206 Law ‘On provision of land plots which are in state or municipal property and on certain issues of land relations’ (15 January 2015), available at <http://crimea.gov.ru/textdoc/ru/7/act/66z.pdf>.
- 207 Resolution No. 2206 “On the demolition of illegally constructed buildings in the municipal district of Simferopol”, adopted on 23 September 2016.
- 208 See Article 11(1), International Covenant on Economic, Social and Cultural Rights; Article 17(1), International Covenant on Civil and Political Rights; Article 1, European Convention on Human Rights and Fundamental Freedoms; and UN Committee on Economic, Social and Cultural Rights (CESCR);

- General Comment No. 7: The right to adequate housing (Art. 11.1): forced evictions, 20 May 1997, E/1998/22
- 209 See Resolutions 1993/77 and 2004/28 of the United Nations Commission on Human Rights.
- 210 OHCHR report on the human rights situation in Ukraine, 16 February to 15 May 2015, paragraph 163.
- 211 See “Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015)”, OSCE Office for Democratic Institutions and Human Rights and High Commissioner for National Minorities, paragraph 258, 17 September 2015, available at: <http://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true>
- 212 See law No.1236/30-10 (4 April 2017), which regulates the use of official languages in the spheres of education, legislation, public relations, official correspondence and daily life.
- 213 OHCHR report on the human rights situation in Ukraine, 15 May to 16 August 2016, paragraphs 176-177.
- 214 OHCHR report on the human rights situation in Ukraine, 16 August to 15 November 2016, paragraphs 167 to 169.
- 215 See 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); Request for the indication of provisional measures, 19 April 2017, General List No. 166, paragraph 106.
- 216 Committee on the Elimination of Racial Discrimination, CERD/C/RUS/CO/23-24.
- 217 See Article 26, International Covenant on Civil and Political Rights; Articles 2 and 13, International Covenant on Economic, Social and Cultural Rights; Article 29, Convention on the Right of the Child; Article 5, Convention on the Elimination of All Forms of Racial Discrimination; Article 10, Convention on the Elimination of Discrimination Against Women ; Articles 1, 2 and 5, UNESCO Convention against Discrimination in Education; Articles 26 and 29, International Labor Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries, No. 169.
- 218 See Committee on Economic, Social and Cultural Rights, General Comment No. 13, (twenty-first session, 1999), the right to education (article 13 of the Covenant), E/C.12/1999/10, 8 December 1999, paragraphs 51-52.
- 219 See Information on the Situation in the Republic of Crimea (Russian Federation) in the Fields of UNESCO Competence, Received from Russian Competent Authorities (As of 10 October 2014); 195 EX/5.INF.5, Paris, 21 October 2014, p.14.
- 220 See “Situation with Access to Education in the Native Language in Crimea”, Crimean Human Rights Group, available at: [http://www.civicsolidarity.org/sites/default/files/detailed\\_report\\_education\\_crimea\\_a4\\_.pdf](http://www.civicsolidarity.org/sites/default/files/detailed_report_education_crimea_a4_.pdf).
- 221 The university was made a part of the Crimean Federal University (CFU) as the Taurida Academy in Crimea. Following this, the Ukrainian authorities relocated the Vernadsky Taurida National University to mainland Ukraine, and reopened it in Kyiv on 27 September 2016.
- 222 See 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); Request for the indication of provisional measures, 19 April 2017, General List No. 166, paragraph 106.
- 223 According to the Crimean Tatar NGO Maarifchi, among 1st grade children in September 2016, 825 out of approximately 20,000 were educated in the Crimean Tatar language.
- 224 See “Situation with Access to Education in the Native Language in Crimea”, Crimean Human Rights Group, available at: [http://www.civicsolidarity.org/sites/default/files/detailed\\_report\\_education\\_crimea\\_a4\\_.pdf](http://www.civicsolidarity.org/sites/default/files/detailed_report_education_crimea_a4_.pdf).
- 225 <https://www.15minut.org/news/172009-sevastopolskie-vrachi-uvolnyayutsya-iz-za-nizkih-zarplat-i-vysokih-cen-na-zhile>.
- 226 HRMMU interview, 20 December 2016.
- 227 This information was mentioned by the Minister of Health of Crimea in November 2016. See <http://podpricelom.com.ua/en/read/social-analitics-read/minister-medical-centers-crimea-staffed-doctors-one-third.html>.
- 228 OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2015, paragraph 186.
- 229 The Committee on Economic Social and Cultural Rights expressed its concern “about the continued ban on the medical use of methadone and buprenorphine for treatment of drug dependence” in the Russian Federation “and the fact that the Government does not support opioid substitution therapy (OST) and needle and syringe programmes.” See fifth periodic report of the Russian Federation (E/C.12/RUS/5),

Concluding Observations, 1 June 2011, paragraph 29.

230 In Crimea, OST was legal since 2006.

231 See “Substitution maintenance treatment in Ukraine: Humanitarian and medical mission 16-21 May 2014”, Expert report of the Pompidou Group, P-PG/ (2014) Misc. 1 rev.

232 <https://www.theguardian.com/world/2015/jan/20/ukrainian-drug-addicts-dying-due-to-treatment-ban-says-un>.

233 <http://www.rferl.org/a/crimeas-methadone-ban-hitting-rehab-patients-hard/25429665.html>.

234 <http://podpricelom.com.ua/en/read/social-analytics-read/increase-hiv-incidence-recorded-crimea.html>.

235 See Article 11, International Covenant on Civil and Political Rights; Articles 24(2)(c) and 27, Convention on the Right of the Child; and Article 28, CRPD; and Article 25, Universal Declaration of Human Rights.

236 Article 54(2), Customary International Humanitarian Law.

237 OHCHR report on the human rights situation in Ukraine, 15 June 2014, paragraph 322.

238 <http://tass.ru/en/economy/749184>.

239 <http://tass.ru/en/russia/790555>.

240 Committee on Economic, Social and Cultural Rights, General Comment No 4, The Right to Adequate Housing (Article 11(1) of the Covenant), 13 December 1991, paragraph 8(b), E/1992/23, Annex 3.

241 OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2016, paragraph 200.

242 Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23.

243 Under international human rights law, the Government remains obliged to ensure the satisfaction of minimum essential levels of social and economic rights (e.g. primary health care, essential food stuff, basic shelter and housing and most basic forms of education); see Committee on Economic, Social and Cultural Rights, General Comment No. 3, *ibid*.



# Annex 779

OHCHR, Report on the Human Rights Situation in Ukraine (16 November 2017–15 February 2018)



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

**Report on the human rights situation in Ukraine  
16 November 2017 to 15 February 2018**





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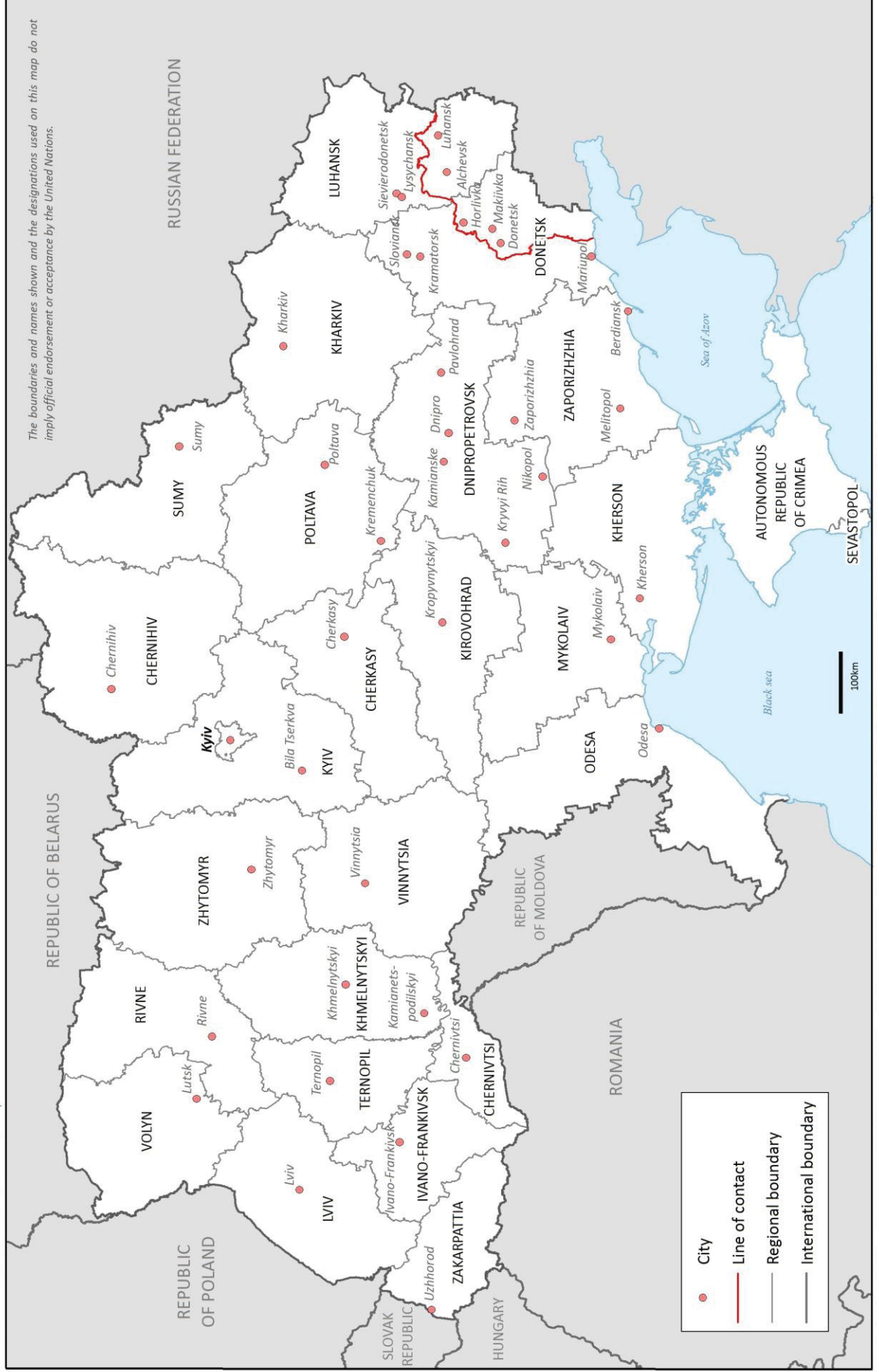




# Map of Ukraine

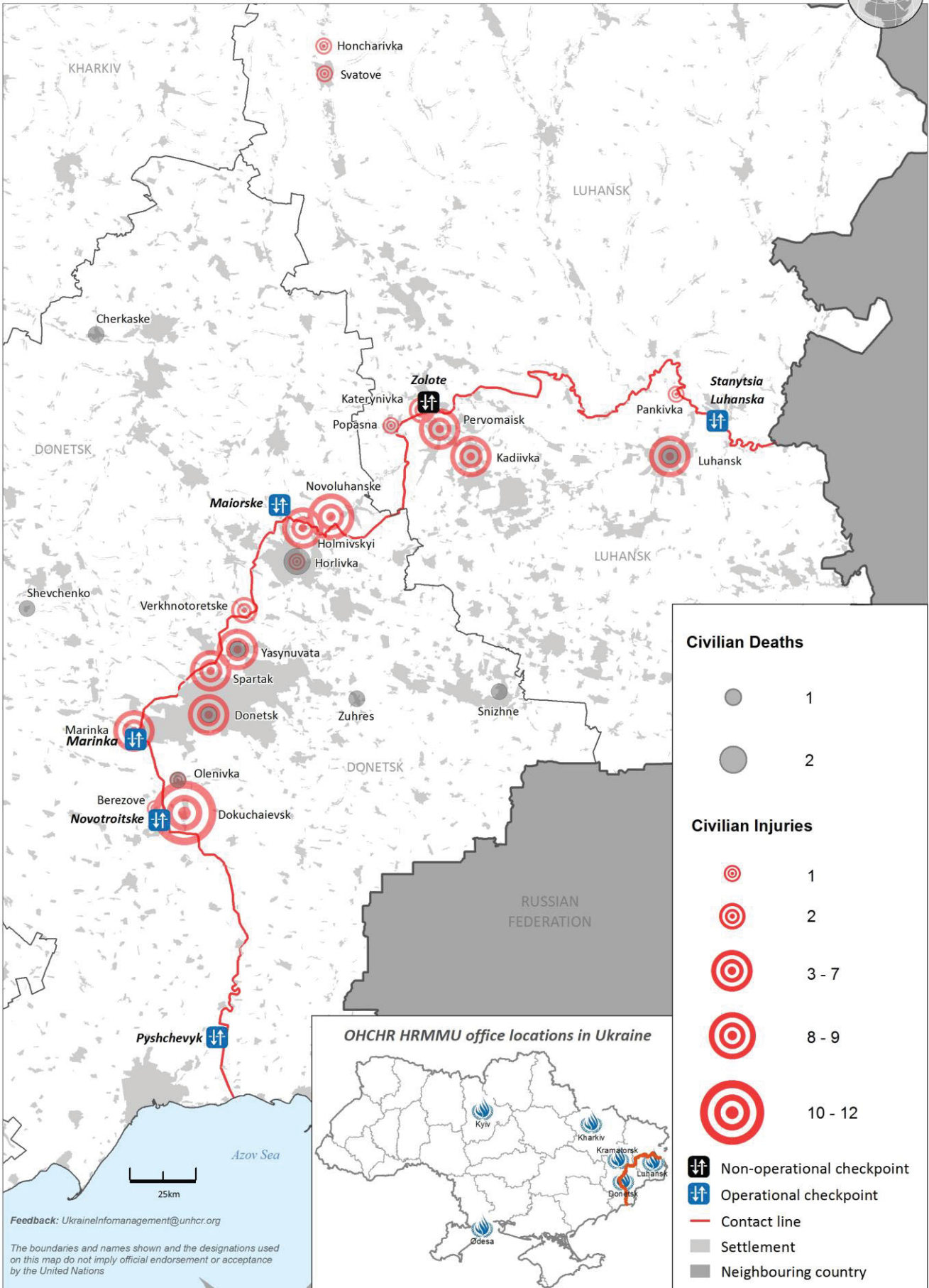


The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.



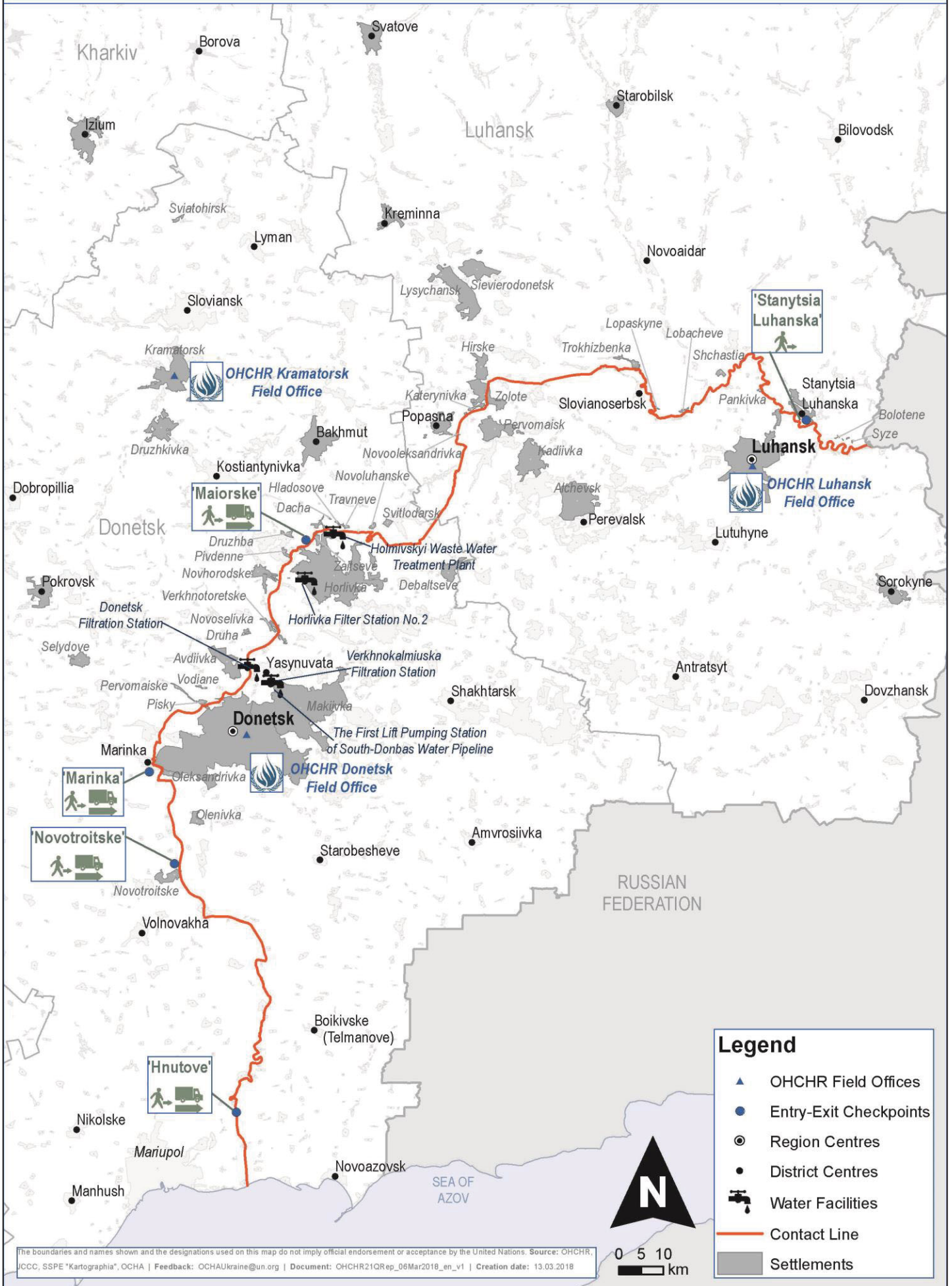


# Ukraine: Civilian casualties along the contact line, 16 November 2017 - 15 February 2018





# Locations in eastern Ukraine 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, ICC, SSPE "Kartographia", OCHA | Feedback: OCHAUkraine@un.org | Document: OHCHR21QR\_06Mar2018\_en\_v1 | Creation date: 13.03.2018

### Legend

- ▲ OHCHR Field Offices
- Entry-Exit Checkpoints
- ⊙ Region Centres
- District Centres
- 🚰 Water Facilities
- Contact Line
- Settlements



## I. Executive summary

*We are human beings, not animals. We only want peace!!*

- Resident of a village near the contact line.

1. This twenty-first 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<sup>1</sup> and covers the period from 16 November 2017 to 15 February 2018.

2. This report is based on data collected by OHCHR through 276 in-depth interviews with victims and witnesses of human rights violations and abuses, and visits in both government-controlled and armed-group-controlled territory. OHCHR also carried out 546 activities to facilitate the protection of human rights connected with the cases documented, including trial monitoring, visit of places of detention, advocacy with duty-bearers, humanitarian organizations and non-governmental organizations (NGOs), and cooperation with United Nations human rights mechanisms.<sup>2</sup>

3. During the period under review, OHCHR documented 205 cases involving violations and abuses of the right to life, deprivation of liberty, enforced disappearance, torture and ill-treatment, sexual violence, fair trial rights, fundamental freedoms, and economic and social rights. In 66 out of these 205 cases, the alleged violation or abuse occurred within the reporting period; the Government of Ukraine bore responsibility for 38 of these cases, and armed groups for 28 cases. The overall continuation of human rights violations and abuses suffered by the civilian population in the conflict area, Crimea and across Ukraine, underscores the cumulative impact and the human cost of the ongoing conflict.

4. Out of the total 205 documented cases, 121 cases involved credible allegations of torture, ill-treatment and/or sexual violence, committed in the context of unlawful or arbitrary detention. Fifteen of these cases occurred during the reporting period, on both sides of the contact line. OHCHR interviewed 113 persons held in 13 detention facilities in government-controlled territory.<sup>3</sup> While OHCHR continued to enjoy unimpeded access to official places of detention and conflict-related detainees in government-controlled territory, it continued to be denied such access in territory controlled by the armed groups of the self-proclaimed 'Donetsk people's republic' and the self-proclaimed 'Luhansk people's republic'.<sup>4</sup> This persistent denial of access raises serious concerns regarding detention conditions and possible further human rights abuses, including ill-treatment and torture. First-hand information received from a number of former detainees, including some individuals released as part of a simultaneous release on 27 December 2017, supports these concerns.

5. OHCHR also documented a total of 73 conflict-related civilian casualties, namely 12 deaths and 61 injuries. While this represents an overall decrease of 16 per cent compared with the previous reporting period, the number of civilian casualties resulting from shelling and light weapons fire increased by 66.7 per cent, indicating that the armed hostilities continued endangering the population on a daily basis. OHCHR was not able to attribute all civilian casualties to a specific party to the conflict. Yet, of the 47 civilian casualties resulting from shelling and small arms/light weapons fire, 35 (2 killed and 33 injured) were recorded in territory controlled by armed groups, and are likely attributable to the Government, and 12 (1 killed and 11 injured) were recorded in territory controlled by the Government, and are likely attributable to armed groups. Twenty-six civilian casualties could not be attributed to any party.<sup>5</sup>

6. OHCHR noted a lack of significant progress in achieving accountability for grave human rights violations in the killing of protestors at Maidan and the 2 May 2014 violence in

Odesa. Furthermore, in conflict-related investigations and proceedings, OHCHR observed an unwillingness, both within law enforcement institutions and politically, to effectively investigate human rights violations alleged to have been perpetrated by State actors.

7. During the reporting period, under the framework of the “all for all” simultaneous release foreseen in the Minsk agreements,<sup>6</sup> the Government of Ukraine released 234 conflict-related detainees while armed groups released 75 individuals. As of 15 February 2018, OHCHR had interviewed 64 of these individuals, on both sides of the contact line. All of those interviewed described having been subjected to inhumane conditions of detention, torture or ill-treatment, sexual violence, threats of violence, and/or violations of fair trial guarantees. These violations and abuses (most of which occurred prior to the reporting period) are emblematic of systemic human rights issues which have been further exacerbated by the conflict. Furthermore, the *ad hoc* procedures applied for the simultaneous release raise concerns regarding accountability and access to justice.

8. Mindful of the approaching commencement of the campaign year ahead of 2019 parliamentary and presidential elections, OHCHR has been monitoring the situation regarding freedoms of opinion and expression, and of peaceful assembly, as well as non-discrimination, as essential foundations of any functioning democratic system. OHCHR documented nine cases involving physical attacks or use of force against journalists and media professionals, and ten attacks on individuals, peaceful assemblies and social events. These attacks were either perpetrated by State actors or members of extreme right-wing groups acting with impunity. OHCHR notes that the proliferation of intolerance threatens constitutional democracy, rule of law and inclusiveness.

9. Restrictions on freedom of movement further isolated residents in villages located close to the contact line, cut off their access to basic goods, services, such as markets, education and healthcare facilities, and humanitarian aid, which has further intensified the general hardship for the population. While conditions at the Stanytsia Luhanska crossing route improved due to ramp repairs made by the International Committee of the Red Cross (ICRC), the average 35,000 daily crossings of the contact line registered created long queues at the five official crossing routes, with people exposed to a dangerous environment due to shelling nearby the checkpoints and mine-contamination, amid freezing temperatures and with inadequate access to basic hygiene, heating and medical facilities.

10. Freedom of religion or belief continued to be infringed upon in territory controlled by armed groups, with particular targeting of Jehovah’s Witnesses. OHCHR has been monitoring the implementation of a ‘law’ adopted in territory controlled by ‘Luhansk people’s republic’ on 2 February, which bans all “religious groups” not directly linked to “traditional” religions.

11. The cumulative effects of the armed hostilities, infringements on freedom of movement and the declining socio-economic situation continued to further cement hardship, particularly for people living in conflict-affected areas close to the contact line. Villages situated in these zones remained isolated, with limited or no access to basic goods and services, including essential medical and emergency services. Furthermore, as we move towards the fifth year of the conflict, there was no progress in establishing a restitution and compensation mechanism for destroyed or damaged property remained one of the most pressing unaddressed socio-economic issues deriving from the conflict. Such a mechanism will be crucial for peace, stability and reconciliation.

12. Pensioners residing in territory controlled by armed groups continued to face restrictions in accessing their pensions due to the Government policy of linking pension payments with internally displaced persons (IDPs) and residence registration. In this respect, OHCHR welcomes recent Supreme Court decisions invalidating the termination of pension payments in individual cases, that had been based on Cabinet of Ministers resolution no. 365. OHCHR also welcomes the decision of the Kyiv Circuit Administrative Court recognizing the resolution as unlawful and



providing for its cancellation, and is hopeful that this leads to a change in policy so as to ensure equal access to pensions by all Ukrainian pensioners.

13. OHCHR continued monitoring the human rights situation in the Autonomous Republic of Crimea and the city of Sevastopol despite lack of access to the peninsula, on the basis of United Nations General Assembly resolutions noting the territorial integrity of Ukraine and Crimea being under the temporary occupation of the Russian Federation.<sup>7</sup> The Russian Federation authorities in Crimea continued to restrict fundamental freedoms, disproportionately affecting the Crimean Tatar community, and to forcibly conscript male residents of Crimea into the Russian Federation armed forces. OHCHR also noted a dramatic decrease, by 97 per cent, of the number of students receiving education in Ukrainian language since the occupation of the peninsula in 2014.

14. On 18 January 2018, the Parliament of Ukraine adopted a law<sup>8</sup> describing the conflict in the east as an armed aggression and providing a new legal framework to re-establish control over certain areas of Donetsk and Luhansk regions, considered to be occupied by the Russian Federation. While several key recommendations jointly made by OHCHR and the United Nations High Commissioner for Refugees (UNHCR) were integrated into the law, it retains elements that may adversely impact human rights, notably the possibility for the Government and military authorities to use “special powers” restricting fundamental freedoms in “security zones” adjacent to the “area of hostilities”.

15. Parliament also adopted legislative amendments granting stronger social protection to participants in the Maidan events who sustained injuries which did not qualify as disabilities, and to civilians who acquired disability in connection to the conflict in eastern Ukraine. While welcoming this development, OHCHR notes that this protection only extends to individuals in territory not controlled by the Government who sustained injuries before 1 December 2014.

16. As part of its human rights promotion mandate, and in addition to a range of advocacy measures undertaken to address human rights protection needs, OHCHR participated in 12 capacity-building and awareness-raising events for representatives of Government ministries, prosecution offices, the Security Service, National Police, the State Border Guards Service, the Ombudsperson’s office, military personnel and chaplains, and the Pastoral Care Council, as well as for civil society.

## II. Rights to life, liberty, security and physical integrity

### A. Conduct of hostilities and civilian casualties<sup>9</sup>

*Our only dream was to survive this night and sleep in our house,  
not in the dark and cold basement.  
- Resident of a village near the contact line.*

17. The ongoing armed conflict in eastern Ukraine continued to severely impact the lives of civilians during the reporting period. From 16 November 2017 to 15 February 2018, OHCHR documented 73 conflict-related civilian casualties (12 killed and 61 injured),<sup>10</sup> reflecting a 16 per cent decrease compared with the previous reporting period, when it recorded 87 civilian casualties (15 killed and 72 injured).<sup>11</sup> This is due to fewer civilian deaths and injuries resulting from mine-related incidents and incautious handling of explosive remnants of war (ERW) (*see para. 22 below*). At the same time, the number of civilian casualties caused by shelling and small arms and light weapons (SALW) fire has increased (*see para. 19 below*).

18. Despite the slight reduction in civilian casualties, OHCHR remains concerned about the persistent use of heavy weapons and small arms fire by parties to the conflict, combined with the widespread presence of unexploded ordnance, mines, and booby traps. This situation continued to pose serious risk to civilians residing near or attempting to cross the 457 km contact line between Government and armed group-controlled areas.<sup>12</sup>

19. Most civilian casualties continued to be caused by the use of indirect and/or explosive weapons systems. OHCHR documented 40 civilian casualties (2 killed and 38 injured) caused by shelling from various weapons systems – including mortars, howitzers and multiple launch rocket systems (MLRS) – and light weapons fire.<sup>13</sup> This represents a 66.7 per cent increase compared with the previous reporting period (16 August to 15 November 2017), when OHCHR recorded 24 civilian casualties caused by shelling and light weapons fire (2 killed and 22 injured). In addition, small arms fire caused seven civilian casualties (one killed and six injured).<sup>14</sup> Of the total of 47 casualties from shelling, light weapons and small arms fire, more than two thirds – 35 (2 killed and 33 injured) occurred in territory controlled by armed groups, and are likely attributable to the Government, based on the geographic location where they occurred. Twelve civilian casualties (1 killed and 11 injured) were recorded in territory controlled by the Government, and are likely attributable to the armed groups, based on the geographic location where they occurred.

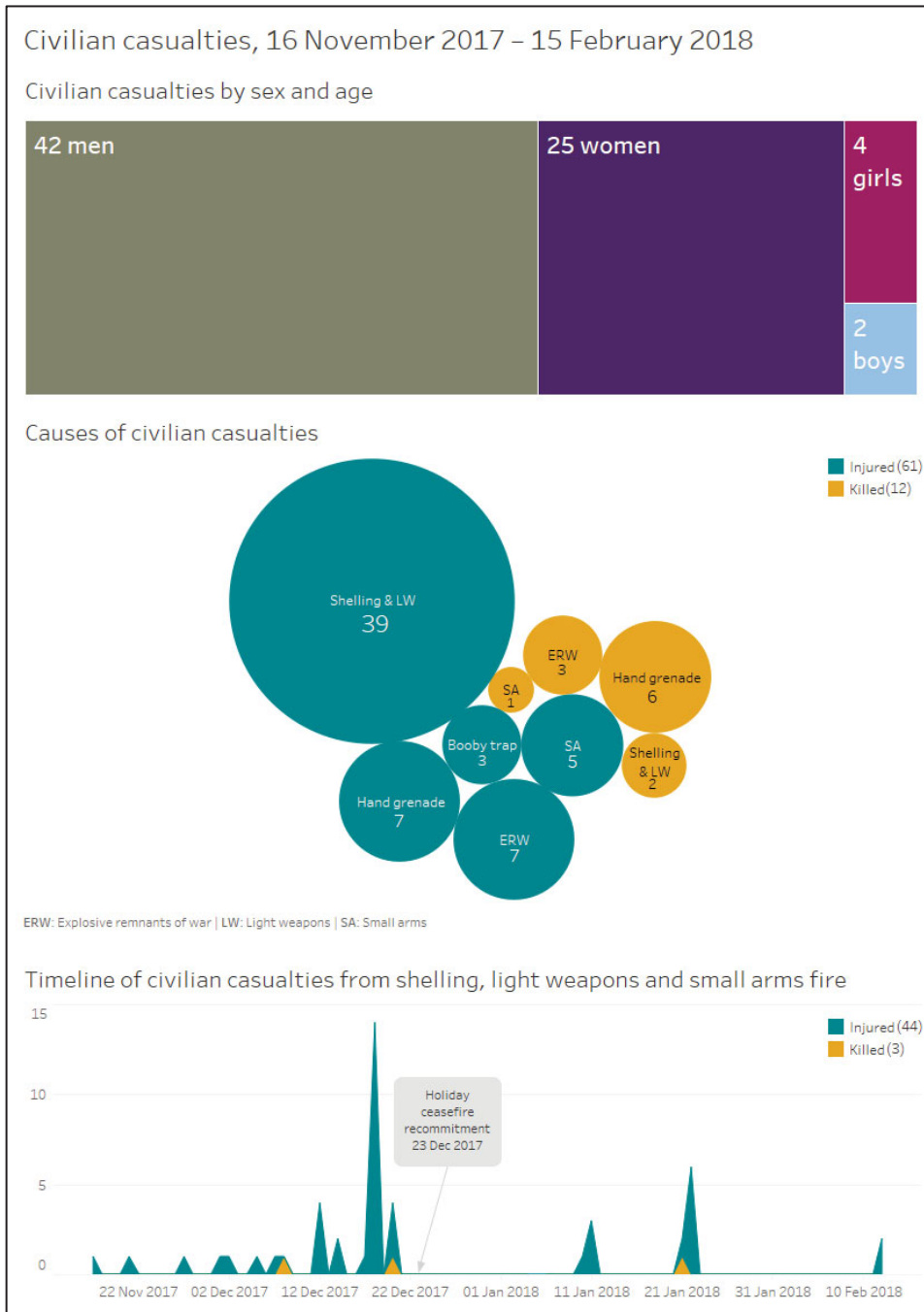
20. The parties to the conflict continued to employ indirect and/or explosive weapons with wide area effects, including MLRS, in areas populated and used by civilians.<sup>15</sup> This may constitute a violation of international humanitarian law prohibitions on indiscriminate attacks and of the obligation to take all feasible precautions to avoid harm to the civilian population and damage to civilian objects.<sup>16</sup> For example, on 18 December, shelling hit the central area of Novoluhanske – a town in government-controlled territory, with approximately 3,500 residents – injuring eight civilians and damaging numerous civilian homes. At least two shells landed close to a school, and a third in the school yard, while 20 children were present. Another shell hit a kindergarten which was empty at the time. Both educational facilities are situated 120 metres from a dormitory used by the Ukrainian Armed Forces, raising additional concerns about the placement of military objectives in proximity to civilian facilities (discussed below).

21. Civilians continued to be killed and injured by explosive remnants of war, with leftover devices causing more fatalities than shelling during the reporting period.<sup>17</sup> Between 16 November 2017 and 15 February 2018, OHCHR documented 23 civilian casualties (9 killed and 14 injured) due to civilians handling ERW, mostly abandoned explosive ordnance in the form of hand grenades.<sup>18</sup> This accounted for almost one third (31.5 per cent) of all civilian casualties during the reporting period.

22. Moreover, the detonation of booby traps injured three civilians (all men). The use of victim-activated devices – which cannot distinguish between civilians and persons taking active part in hostilities – may amount to an indiscriminate attack, in violation of international humanitarian law, particularly when placed in areas known to be used by civilians.<sup>19</sup> In addition, these devices limit freedom of movement for civilians.<sup>20</sup> While OHCHR observed and received reports of signs warning of the presence of mines, these did not always clearly indicate where the mines may be, and were often not considered as reliable by the local population.<sup>21</sup>

23. Shelling and SALW fire exchanges also damaged civilian homes, schools and medical facilities.<sup>22</sup> OHCHR observed the presence of military personnel and weapons in residential areas on both sides of the contact line, including in proximity to education and health-care facilities.<sup>23</sup> OHCHR emphasizes that even where military equipment or soldiers are present in areas used by civilians, attacks that do not distinguish civilians and civilian objects from military objectives or cause disproportionate civilian casualties and damage to civilian objects are prohibited and may amount to war crimes.<sup>24</sup> Further, OHCHR documented cases in which Ukrainian Armed Forces used civilian homes for lengthy periods, sometimes without the consent of the owners, and left the properties in a damaged condition.<sup>25</sup> The use of civilian homes by parties to the conflict increases the risk of being targeted in the hostilities and endangers civilian lives. It also contributes to the displacement of civilians and prevents returns.

24. Moreover, damages to key critical water and electricity infrastructure, and delays in negotiating “windows of silence” for repairs and maintenance, disrupted the supply of water and electricity to conflict-affected areas.<sup>26</sup> The Donetsk Filtration Station, in particular, was shelled on eight occasions, with potentially devastating consequences for the population and the environment given the toxic chlorine gas stored in that facility.<sup>27</sup> On 18-19 December, the Donetsk Filtration Station came under shelling and heavy machine gun fire for over 24 hours, forcing the evacuation of staff without security guarantees.<sup>28</sup> In this context, OHCHR remains concerned by the withdrawal, as of 18 December 2017, of Russian Federation representatives from the Joint Centre for Control and Coordination. It has continued to monitor the potential implications regarding the ability of parties to the conflict to negotiate “windows of silence” to enable maintenance and repairs of critical civilian infrastructure as well as the safe provision of humanitarian assistance.<sup>29</sup>



## **B. Deprivation of liberty, enforced disappearance and abduction, torture and ill-treatment, and conflict-related sexual violence**

*It is very difficult... Not just for him, but for us too...  
You never know how to behave around him now.  
He does not tell me anything about what happened to him there.  
Maybe they beat him, maybe they did not.  
I can't know for sure what exactly happened to him there,  
but they surely broke my son's soul.  
- Mother of torture victim.*

### **1. Access to places of detention**

25. OHCHR continued to enjoy unimpeded access to official places of detention in government-controlled territory. It conducted 113 confidential interviews with individuals in pre-trial detention facilities (SIZOs), in Bakhmut, Kharkiv, Kherson, Kyiv, Mariupol, Mykolaiv, Odesa and Starobilsk, as well as with convicts in penal colonies in Kharkiv, Kherson and Odesa regions.

26. In both the 'Donetsk people's republic' and the 'Luhansk people's republic', OHCHR continued to be denied access to places of deprivation of liberty to meet with detainees, despite repeated requests. This persistent denial continued to raise serious concerns regarding detention conditions and possible further human rights abuses, including torture and ill-treatment. First-hand information received by OHCHR from a number of detainees, including some of those released by armed groups within "all for all" simultaneous release under the Minsk agreements (see Annex II), supports these concerns.

27. In the absence of access to places of deprivation of liberty in the areas controlled by the armed groups, this report cannot reflect the actual number of cases of deprivation of liberty, enforced disappearance and abduction, torture, ill-treatment and sexual violence.

### **2. Unlawful/arbitrary deprivation of liberty, enforced disappearance and abduction, torture, ill-treatment and sexual violence**

28. Within the reporting period, OHCHR documented 115 cases of credible allegations of unlawful or arbitrary detention, torture, ill-treatment and/or sexual violence committed on both sides of the contact line. Fifteen of these cases involve human rights violations or abuses which were allegedly committed during the reporting period. Three cases involved the State Security Service (SBU), and twelve involved armed groups.

29. In four cases,<sup>30</sup> which occurred between September and December 2017 in government-controlled territory, the victims were allegedly abducted by a group of unidentified, masked individuals, either in civilian clothes or camouflage without insignia or emblems, in a public space, during daytime. These cases illustrate a pattern re-emerging since September 2017 (previously identified in 2014-2015)<sup>31</sup> of arbitrary deprivation of liberty, torture and ill-treatment of individuals detained in government-controlled territory, in a manner which prevents victims from effectively raising complaints and thus precludes official investigations into allegations of human rights violations. One victim noted about his abductors: "I thought they were bandits – the whole scene just looked like that"<sup>32</sup>. The victims reported being blindfolded or hooded, handcuffed and transported to an unknown location (building, basement, garage) where they were allegedly subjected to beatings, violent threats (including of rape), mock execution, or rape, while being coerced into confessing to cooperating with the Federal Security Service of the Russian Federation (FSB) or armed groups. This lasted from a few hours to a few days or weeks,

during which the victim remained blindfolded or the perpetrators covered their faces.<sup>33</sup> The victim would then either be transferred to SBU or “released” on a public street where they would be immediately arrested by SBU. At that point, the detention would reportedly be properly registered, relatives were notified of the detention, and the detainee was notified of suspicion and interrogated. The victims, who remain in detention, did not allege being subjected to torture or ill-treatment during official detention.

30. The victims reported that once handed over to an official place of detention, they went through a medical examination, as required by law and existing regulations<sup>34</sup>; however, in three cases they were not asked in detail how they received bruises or other visible injuries. In one case, the medical staff simply accepted the “explanation” that the detainee sustained injuries prior to apprehension by “falling from a tree” or “stairs”<sup>35</sup>, not questioning the credibility of this statement. The failure of medical staff to inquire about injuries and probe further for explanations has been consistently documented by OHCHR, as well as detainees’ reluctance to tell medical staff the true nature of their injuries for fear of repercussions.<sup>36</sup> These cases highlight the need to develop the capacity of medical staff, particularly in detention facilities, to conduct examinations in accordance with the Istanbul Protocol standards.<sup>37</sup>

#### *Territory controlled by armed groups*

31. OHCHR documented a rising number of cases of civilians arbitrarily deprived of their liberty by armed groups - a trend observed since summer 2017. OHCHR registered seven new cases<sup>38</sup> which occurred within the reporting period in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, and 18 cases that occurred earlier.<sup>39</sup> The victims were mainly detained by the ‘ministry of state security’ (‘MGB’) or ‘department of combating organized crime’ (‘UBOP’) at checkpoints, in their home, or at their workplace. Detentions at checkpoints were often followed by house searches and seizure of property.<sup>40</sup>

32. On 15 January 2018, ‘MGB’ of ‘Donetsk people’s republic’ recognized that in 2017 it detained 246 individuals under “suspicion of espionage and state treason”, 148 of whom were living and working in armed-group-controlled territory.<sup>41</sup> There is no data available for territory controlled by the ‘Luhansk people’s republic’.

33. Detention by ‘MGB’ and ‘UBOP’ of ‘Donetsk people’s republic’ commonly started with a 30-day ‘administrative arrest’, during which individuals were held *incommunicado*.<sup>42</sup> After the 30 days expire, access to a lawyer would then usually be granted, and relatives would more likely to be notified of the detention. However, after the initial 30-day ‘administrative arrest’, the ‘prosecutor’ would often issue an ‘order’ with new ‘grounds’ for ‘administrative arrest’ and detention.<sup>43</sup>

34. Individuals detained by ‘MGB’ of ‘Luhansk people’s republic’ were also held *incommunicado* for an initial period. In most cases, despite appeals from relatives, ‘MGB’ did not confirm the detention and/or provide information about the place of detention.<sup>44</sup> OHCHR reiterates that such practices amount to enforced disappearance. Furthermore, in the absence of access to detainees by international organizations, *incommunicado* detention raises serious concerns that detainees may be subjected to torture or ill-treatment.<sup>45</sup>

35. Of concern, on 2 February 2018, the ‘people’s council’ of the ‘Luhansk people’s republic’ amended the ‘martial law’<sup>46</sup> to introduce the notion of ‘preventive arrest’, which can be applied for up to 30 days and then extended to 60 days. It is worrisome that such ‘arrest’ can be applied on the basis of a decision of the ‘minister of state security’ or the ‘minister of the interior’, in agreement with the ‘prosecutor general’, and may be based on allegations that a person *may* have been involved in crimes against the security of the ‘republic’.

### **3. Situation of pre-conflict prisoners**

36. OHCHR welcomes the transfer, on 7 February 2018, of 20 pre-conflict prisoners from seven penitentiary facilities located in territory controlled by ‘Donetsk people’s republic’ to government-controlled territory.<sup>47</sup> Since August 2015, 186 people (including four women) have



been transferred to government-controlled territory. To date, these transfers have been undertaken under the auspices of the Office of the Ombudsperson of Ukraine through a dialogue with representatives of the ‘Donetsk people’s republic’, representing an example of a human rights confidence-building measure. OHCHR is aware of at least 104 current prisoners who have requested to be transferred to government-controlled territory.

37. As pre-conflict prisoners previously transferred,<sup>48</sup> the recently transferred individuals reported the overall conditions of detention as poor, with insufficient food of substandard quality<sup>49</sup> and electricity cuts during the day. Medical care was also reported as insufficient due to shortage of medical staff or staff’s reluctance to provide medical care. Some detainees alleged that they had to receive permission from prison ‘administration’ prior to receiving treatment. Lack of medication (particularly specialized treatment for diabetes), was the biggest challenge; the only way to obtain the required medication was to find another prisoner who had a similar diagnosis and ask his/her relatives to bring additional supplies. Given these conditions, parcels from relatives were of particular significance to prisoners. The main reason that pre-conflict prisoners request to be transferred is to have easier communication and contact with relatives, including through visits. OHCHR notes that since 11 January 2018, it has become particularly challenging for pre-conflict prisoners to maintain contacts with their families as the service of the main Ukrainian mobile operator, Vodafone, became sporadic in Luhansk or absent in Donetsk (*see* “Adequate standard of living” *below*).

38. Criteria used by the armed groups to select individuals for transfer remained unclear. Transferred prisoners reported that ‘authorities’ in territory controlled by ‘Donetsk people’s republic’ continued to deny transfer requests by pre-conflict prisoners officially registered in government-controlled territory of Donetsk region or in Crimea. Several transferred prisoners reported they had been placed in solitary confinement for up to 15 days for repeatedly requesting to be transferred to government-controlled territory.

39. As of 15 February 2018, ‘Luhansk people’s republic’ had not taken practical steps to transfer pre-conflict prisoners, disregarding the appeals to the ‘authorities’ of at least 64 prisoners, as confirmed to OHCHR. This is of particular concern considering the reports about deteriorating medical care provision in the penitentiary institutions. Furthermore, crossing the contact line in Luhansk region is arduous (there are no direct vehicle crossings – only a footbridge), making family visits very challenging.<sup>50</sup>

40. Particular attention should be given to prisoners that remain in custody in either the ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’ who, after the conflict started, were either acquitted by a court in government-controlled territory,<sup>51</sup> have served their sentence, or have appealed the sentence of the first-instance court. Additionally, OHCHR was informed of a few pre-conflict detainees who were never sentenced but were transported to Donetsk city for forensic expertise in early 2014, before the outbreak of the conflict. They have remained trapped in SIZOs for almost four years, which amounts to an arbitrary deprivation of liberty.

41. In government-controlled territory, OHCHR continued following ongoing penitentiary reform. While it is a welcome step that all medical professionals are to be shifted from the subordination of the penitentiary administration to the Ministry of Health, it has not yet been completed.<sup>52</sup> Due to uncertainty of employment contracts, medical professionals working in SIZOs have started leaving their jobs, which may negatively affect the provision of healthcare in these facilities. Furthermore, it remains difficult to provide specialized medical services to detainees/prisoners due to a lack of necessary transportation and guarded wards in general hospitals. At the same time, the procurement of medication for prisoners with HIV and multi-resistant tuberculosis has improved.



### III. Accountability and administration of justice

*SBU has a green light to do whatever they want.*  
- Law enforcement to conflict-related detainee.

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

42. There have been a few positive developments in efforts to investigate and prosecute State actors responsible for various human rights violations.<sup>53</sup> Yet, a large number of investigations remain to be undertaken into human rights violations allegedly perpetrated by military and security forces. OHCHR has observed that some cases that occurred in the earlier stages of the conflict have still not been investigated or adequately investigated.<sup>54</sup>

#### B. Fair trial rights

43. Individuals standing trial on criminal charges related to the armed conflict continued to experience violations of judicial safeguards and procedural guarantees.

44. Individuals charged with affiliation or links with armed groups are remanded in custody following their arrest. Yet courts often failed to carefully examine the circumstances of arrest, including the possible use of torture.<sup>55</sup> OHCHR monitored some of the trials and observed a lack of equality of arms in a number of cases, with courts disregarding arguments of the defence counsel and relying solely on article 176(5) of the Criminal Procedure Code,<sup>56</sup> thus avoiding the requirement to assess whether pre-trial detention is reasonable and necessary, and amounting to arbitrary detention. This was also observed when courts determined extensions of pre-trial detention.

45. International human rights law requires that any detention related to criminal charges be subject to judicial control.<sup>57</sup> This includes appearance before a judge immediately after arrest,<sup>58</sup> as well as periodic judicial review of the lawfulness of continuing detention pending trial. Pre-trial detention must be based on an individualized determination of the reasonable and necessary nature of the measure. Furthermore, individuals remanded in custody must be tried as expeditiously as possible, to the extent consistent with their rights of defence, to prevent prolonged pre-trial detention, which may jeopardize the presumption of innocence.<sup>59</sup>

46. At least 25 individuals arrested on suspicion of affiliation with, or links to, armed groups were deprived of access to a lawyer of their choice.<sup>60</sup> The right of an accused to defend him/herself and to have the assistance of counsel of his/her choice is one of the minimum guarantees to which every accused person is entitled.<sup>61</sup>

47. OHCHR continued to monitor conflict-related cases where undue pressure was exerted against the judiciary. The case against Nelia Shtepa, former mayor of Sloviansk, is a particularly egregious example. In its monitoring of her trial, OHCHR observed intimidation and pressure on the judges from law enforcement<sup>62</sup> as well as right-wing groups. Consequently, judges in Kharkiv courts were reluctant to deal with the case, and at least 19 judges either recused themselves, were disqualified or dismissed, took sick or paternity leaves under the prosecution's pressure or quit their career entirely. This has resulted in a fourth re-trial, in violation of the right to be tried without undue delay.<sup>63</sup>

48. OHCHR is concerned about attempts by law enforcement agencies to preclude the release of conflict-related detainees who have served their sentences. OHCHR documented a case of four police officers facing reprisals from the SBU for permitting Serhii Yudaiev<sup>64</sup> to leave

the court building following his conviction and release under amnesty.<sup>65</sup> The head of the convoy unit was discharged from service for failing to preclude Yudaiev's release while two other officers present in the convoy received official reprimands. In addition, an officer who escorted Yudaiev out of the courtroom was charged with "abuse of authority" and placed in pre-trial detention.

## **C. High-profile cases of violence related to riots and public disturbances**

49. OHCHR continued monitoring developments in criminal proceedings involving human rights violations committed during the Maidan protests in Kyiv and in the context of the 2 May 2014 violence in Odesa.

### **1. Accountability for the killings of protesters at Maidan**

50. There were few developments in the trial of five former Berkut special police officers accused of killing 48 protesters on 20 February 2014 at Independence square (Maidan), Kyiv. Two accused have been detained since April 2014, and three since February 2015. The Sviatoshynskiy district court of Kyiv continued to examine testimonies of victims and witnesses.

51. The investigations and prosecutions into grave human rights violations perpetrated overnight from 18 to 19 February 2014, at Maidan and in adjacent areas, have suffered from serious shortcomings. Despite apparent coordination between SBU,<sup>66</sup> 'titushky',<sup>67</sup> and police<sup>68</sup> regarding attacks on Maidan protesters, this has not been reflected in the criminal charges. A due examination of the nexus could impact the ultimate qualification of the human rights violations. In a separate case, the engagement of 'titushky' by (former) senior Government officials is evident from the distribution of Kalashnikov assault rifles from the armoury of the Ministry of Internal Affairs, and raises questions with regards to the individual criminal liability of former senior officials for crimes committed by the 'titushky'.<sup>69</sup>

52. OHCHR is further concerned with what appears to be special treatment afforded to the 'titushky', resulting in denial of justice to victims of their crimes. For example, the Shevchenkivskiy district court of Kyiv<sup>70</sup> released a 'titushky' gang leader from custody into house arrest, and then released him from house arrest although he continued committing crimes, including violent acts, endangering public safety.<sup>71</sup> Furthermore, these additional crimes were committed when he was supposedly under the protection of the State Protection Service (on 9 October 2015 and 5 May 2016). On 26 December, in a separate case, the same court released two 'titushky' under house arrest (the third defendant was already under house arrest). All are accused of the attempted murder of eight protesters.<sup>72</sup>

53. On a positive note, OHCHR welcomes reported developments in the investigation of the killing of 13 law enforcement officers during Maidan protests.<sup>73</sup> Almost four years after the events, the Prosecutor General's Office reported that only one individual has been charged with shooting dead two law enforcement officers and injuring a third.<sup>74</sup>

### **2. Accountability for the 2 May 2014 violence in Odesa**

54. The investigation and trials related to the 2 May 2014 violence in Odesa continued to be one-sided, undermining the rights of victims and the accused. The two acquitted defendants (members of 'pro-federalism' groups) who were immediately rearrested on 18 September 2017 remained in detention pending trial for new charges.<sup>75</sup> At a meeting with OHCHR on 24 November 2018, the Odesa Prosecution Office confirmed that on 18 October 2017, the Court of Appeal of Odesa region ruled that the detaining authority had failed to provide one of the defendants with access to his contracted lawyer and ordered the prosecutor to launch a criminal investigation into this fact.<sup>76</sup> The prosecutor, however, refused to do so.<sup>77</sup>

55. OHCHR is also concerned with the lack of progress in investigations into harassment of and pressure on judges dealing with the mass disorder cases by 'pro-unity' activists, despite the identification of some alleged perpetrators by victims or witnesses.<sup>78</sup>

## IV. Simultaneous release of detainees under the Minsk agreements

*We'll give you 8 years and then, maybe, will exchange.  
Do not count on court, you are staying here as hostage.  
- Law enforcement to conflict-related detainee.*

56. On 27 December 2017, a simultaneous release took place as part of the “all for all” release envisaged by the Minsk agreements<sup>79</sup>: 233 individuals were released by the Government of Ukraine and 74 individuals were released by armed groups.

57. The Government released 157 individuals (including 15 women) to the ‘Donetsk people’s republic’ and 76 (including three women) to the ‘Luhansk people’s republic’. All the detainees had been either in the custody of law enforcement agencies (detained under suspicion of being a member of or otherwise affiliated with armed groups and tried in courts) or had already started served their sentences (mostly under article 258-3 of the Criminal Code, aiding terrorist organizations).

58. Of the 74 detainees released by armed groups,<sup>80</sup> 41 were civilians<sup>81</sup> and 33 were members of the Ukrainian forces (Ukrainian Armed Forces and National Guard). The ‘Donetsk people’s republic’ released 58 individuals (including five women) and the ‘Luhansk people’s republic’ released 16 (all men).

59. On 20 January 2018, further releases occurred. The Government of Ukraine released one female civilian, while the ‘Donetsk people’s republic’ released a male member of the Ukrainian Armed Forces,<sup>82</sup> bringing the total of people released under the framework of the simultaneous release to 309. (In addition to the discussion in this chapter, a more detailed description of the simultaneous release and related human rights concerns can be found in Annex II.)

### A. Detention in preparation for simultaneous release

60. Before their simultaneous release, all 234 individuals in Government custody were held in various detention facilities across Ukraine, although some had already been officially released from detention on remand by court order.

61. Ahead of the planned simultaneous release, 177 individuals were transported to “Zelenyi Hai” sanatorium near Sviatohirsk (Donetsk region).<sup>83</sup> Guarded by armed SBU officers, they were not allowed to leave the premises, but could move freely inside the building and were allowed up to two hours walk a day on the premises of the sanatorium. Some detainees were not informed where and why they were being taken. Some could not inform their relatives or lawyers of their whereabouts.<sup>84</sup>

62. Other detainees (mainly those held in western Ukraine) were first transported to Lukianivske SIZO in Kyiv, where some 30 of them were put in a cell, with only 18 beds.<sup>85</sup> After 10 days, they were transferred to Kharkiv SIZO where they were joined by other detainees waiting to be released. While approximately 40 of them were in one cell, some reported there was enough space.<sup>86</sup> On the morning of 27 December 2017, they were transported to the Zaitsevo checkpoint where they were joined by the group held in “Zelenyi Hai”.

### B. Allegations of human rights violations and abuses

63. In order to protect individuals and their families through strict adherence to the principles of confidentiality and informed consent, the report presents an overall analysis of the issues rather than detailed information on individual cases.<sup>87</sup>

64. Of the 234 individuals released by the Government, OHCHR had already been monitoring 142 cases prior to the simultaneous release, having interviewed individuals in detention facilities and observed related court hearings. After the simultaneous release, OHCHR undertook further interviews, and as of 15 February 2018, it had interviewed 64 of the released individuals, on both sides of the contact line. All of those interviewed described having been subjected to torture or ill-treatment, sexual violence, threats of violence, inhumane conditions of detention and/or violations of fair trial guarantees. These violations and abuses (most of which occurred before the reporting period) are emblematic of systemic human rights issues which have been further exacerbated by the conflict.

65. The analysis of interviews conducted before and after the simultaneous release suggests that cases of *incommunicado* detention and torture were more common in 2014 and 2015 than afterwards. During that period, “volunteer battalions” were often involved in apprehensions. Torture was most often reported by detainees held in Kharkiv SBU, particularly in 2015. Methods used included suffocation with a gas mask, dislocation of joints, electric shock and mock execution. Detainees also received death threats and threats of a sexual nature, both against themselves and their families, and were denied access to medical care. The torture would usually continue until the detainees signed self-incriminating statements.<sup>88</sup> Members of armed groups were reportedly usually subjected to more violence. Released detainees also told OHCHR they were subjected to excessive use of force during apprehension and not granted access to legal counsel until they “confessed”.

66. Interviews with released detainees also suggest that individuals (especially women) detained by the Government in late 2016 and 2017 were less likely than before to be subjected to physical violence.<sup>89</sup> At the same time, because the detainees were often blindfolded or hooded, or the perpetrators covered their faces, it was almost impossible to identify the perpetrators, which significantly restricted the possibility of successfully lodging complaints.

#### *Territory controlled by armed groups*

67. Of the 75 individuals released by armed groups, 41 were civilians: 2 had been arbitrarily detained since December 2014, 13 since 2015, 17 since 2016, and 9 since February-March 2017. OHCHR interviewed 20 of the released civilians. They had been detained either in their homes, or while at work or on the street, usually by armed men wearing no insignia. In 18 cases, they were transferred to ‘MGB’ of ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’, which reportedly ‘investigated’ the cases.<sup>90</sup> During the initial period of detention - at least for one month - each person was held *incommunicado*, denied access to a lawyer or communication with relatives.<sup>91</sup> During this time, in the majority of documented cases, the detainees were kept either in the basements of ‘MGB’ buildings or in premises generally not intended for detention, and regularly brought to ‘MGB officers’ for interrogation.<sup>92</sup> Detainees were often hooded or blindfolded and handcuffed and/or strapped to a chair. In all documented cases, ‘MGB officers’ threatened severe physical violence or rape against them or their relatives if they refused to “cooperate”.<sup>93</sup> Such threats were usually accompanied by blows to the head or body, making victims believe the threats were imminent and credible.

68. In 15 out of 20 documented cases, physical violence amounting to torture was used during interrogation, until the detainee “confessed” and wrote, signed and/or was videotaped providing self-incriminating testimonies. The most common methods of torture were mock executions,<sup>94</sup> electrocution,<sup>95</sup> beatings<sup>96</sup> and suffocation by placing a bag over the head.<sup>97</sup>

69. During the overall time of detention in territory controlled by armed groups, each individual was held in at least two different places, including premises not intended for detention. Conditions of detention varied from normal to those amounting to inhumane and degrading treatment; facilities most commonly used are described below.

70. In territory controlled by ‘Donetsk people’s republic’, detained civilians were predominantly held in the following places: basement of the ‘MGB’ building on 26 Shevchenka Street, Donetsk city SIZO, unofficial place of detention Izoliatsiia on 3 Svitloho Shliakhu, ‘IVS’ temporary detention facility in Donetsk, penal colony No. 32 in Makiivka.

71. In territory controlled by ‘Luhansk people’s republic’, civilians reported being held in the ‘MGB’ building in Luhansk city, Luhansk SIZO, and the ‘commandant’s offices’ in Luhansk and Stakhanov. In the ‘MGB’ building, detainees were always hooded and handcuffed when interrogated.

72. Thirty-three people released by armed groups on 27 December were members of the Ukrainian forces. One had been detained since August 2014, 15 since 2015, 16 since 2016, and 1 since March 2017. OHCHR interviewed 18 of the released military personnel. Most were captured at military positions or near checkpoints. All those interviewed had been beaten upon capture. Some were interrogated and tortured.<sup>98</sup> Mock executions were also reported as common<sup>99</sup> and often repeated.<sup>100</sup> The members of the Ukrainian armed forces were held in various places and moved among two or three different facilities.<sup>101</sup> Conditions of detention varied, and in most cases amounted to inhumane and degrading treatment.

### C. Accountability and fair trial rights

73. OHCHR is concerned that the simultaneous release may have negative consequences on accountability for human rights violations. First, the release of individuals alleged to be perpetrators of human rights violations<sup>102</sup> deprives victims of justice and redress.<sup>103</sup> Second, many conflict-related detainees who were released were subjected to human rights violations during their detention and prosecution. Some who filed complaints faced obstruction from law enforcement, which lacked willingness to duly investigate the allegations while the complainants remained in government-controlled territory.<sup>104</sup> Their release to armed-group-controlled territory may lead to closure of the cases, depriving them of access to justice.

74. OHCHR examined the legal procedures applied by the Government in preparation for the “all for all” simultaneous release on 27 December 2017.<sup>105</sup> Following the release, OHCHR interviewed 26 persons (out of the 234 detainees released by the Government) who stated that the main reason they had agreed to participate in the release was because it was their only option for liberty due to protracted court proceedings during which mandatory pre-trial detention is applied against all individuals charged with affiliation or links with the armed groups under article 176(5) of the Criminal Procedure Code.<sup>106</sup>

75. OHCHR is concerned that the simultaneous release may have been used to compel conflict-related detainees, who saw no prospect of justice or fair hearing, to plead guilty, even in otherwise poorly substantiated cases, thus effectively denying them access to justice.<sup>107</sup> Between 13 and 21 December 2017, at least 39 individuals were convicted by courts prior to the simultaneous release based on *inter alia* plea bargains and retractions of appeals. Eighteen individuals interviewed by OHCHR stated they were offered plea bargains in order to be included in the release process.

76. Individuals who were released but whose trials were not completed or whose cases were not closed may risk re-arrest<sup>108</sup> should they return to government-controlled territory, or convictions following trials held *in absentia*.<sup>109</sup> At least four individuals received suspended sentences with a probation period during which they are obliged to report to law enforcement authorities. In addition, they are deprived of the possibility to pursue remedies for alleged human rights violations perpetrated against them by State actors. The ability to travel across the contact line is of importance for both those who received suspended sentences and those with pending trials. However, many individuals did not have their identity documents returned to them upon release. Others may face restrictions on their movement imposed by armed groups.<sup>110</sup>

#### *Territory controlled by armed groups*

77. Interviews of individuals detained by armed groups and released to government-controlled territory provided further insight into the system of ‘prosecution’ in the two ‘republics’.<sup>111</sup> ‘Trials’ in conflict-related cases are reportedly carried out in closed sessions, allegedly in order not to disclose ‘classified information’.<sup>112</sup>



78. Interviews with Ukrainian soldiers and civilians believed to be affiliated with Government forces<sup>113</sup> who were detained in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ revealed that their cases were often not subject to any review. OHCHR documented 19<sup>114</sup> conflict-related cases where persons were subjected to indefinite detention in breach of international human rights and international humanitarian law.<sup>115</sup> Those Ukrainian soldiers and civilians detained for over two years reported no periodic review regarding the necessity or appropriateness of their continued detention, nor were ‘charges’ brought against them during this period.<sup>116</sup> Ukrainian soldiers detained in Donetsk for up to over three years were approached by ‘prosecution’ in September 2017 only - a few months before the simultaneous release - when their detention was formalized by a ‘measure of restraint’ of custodial detention imposed by the ‘prosecutor general’s office’.

79. ‘Pre-trial’ detention proceedings of individuals ‘charged’ with espionage or other conflict-related crimes by ‘military tribunals’ in territory controlled by ‘Donetsk people’s republic’ appear to have followed a pro-forma basis.<sup>117</sup> Furthermore, even such perfunctory review of legality of detention was delayed. Time spent in *incommunicado* detention, to which many were reportedly subjected prior to acknowledged ‘arrest’, seems not to have been taken into account by a ‘military tribunal’ when calculating the ‘sentence’.<sup>118</sup> Such practice contributed to unacknowledged detention during which individuals were exposed to torture, including with a view to force self-incriminating statements which served as basis for subsequent ‘prosecution’.<sup>119</sup>

80. Accounts by conflict-related detainees suggest that their degree of culpability in the imputed ‘crime’ was already considered established at the time of their ‘arrest’, amounting to a presumption of guilt. Subsequent ‘investigations’ and ‘trials’ seemed to serve merely to create a veneer of legality to the ‘prosecution’ of individuals believed to be associated with Ukrainian military or security forces.<sup>120</sup>

81. Released detainees informed OHCHR that some appointed lawyers did not make any real effort to present their case. The account of at least one victim suggests that he was intimidated by ‘MGB’ of ‘Donetsk people’s republic’ in the presence of the appointed lawyer, with no reaction from the latter.<sup>121</sup> Some lawyers assigned to detainees advised that only ‘convicts’ were eligible for the simultaneous release under the Minsk agreements, leading at least four detainees to plead guilty even though they had never admitted to committing the charged offences. At the same time, detainees released from ‘Donetsk people’s republic’ who had been ‘prosecuted’ noted that lawyers facilitated contacts with their families.<sup>122</sup>

82. Deprived of access to the Ukrainian judiciary and of effective ‘legal representation’ in proceedings before ‘courts’ in armed-group-controlled territory,<sup>123</sup> and fearing repercussions for withdrawing statements given under duress,<sup>124</sup> conflict-related detainees have stood ‘trials’ with no chance of presenting their defence.<sup>125</sup> Conflict-related ‘trials’ were heard by a ‘military tribunal’ as a chamber of the ‘supreme court’ of ‘Donetsk people’s republic’, whose ‘verdicts’ entered into force immediately, with limited opportunities to ‘appeal’.

## **V. Democratic/civic space and fundamental freedoms**

### **A. Democratic/civic space**

83. OHCHR noted developments relating to freedom of opinion and expression and freedom of the media, and discrimination, hate speech and manifestations of intolerance that may result in diminishing democratic/civic and political space throughout Ukraine. The lack of investigation and accountability in cases where there have been infringement of these rights is of particular concern as Ukraine is moving towards the presidential and parliamentary elections, scheduled respectively for March and October in 2019.



## 1. Freedom of opinion and expression, and freedom of the media

*There is little understanding that the freedom of speech is a value in itself,  
and that it should be protected as the right to life or the right to health.*

- Lawyer.

84. Within the reporting period, OHCHR documented 18 cases involving infringements on freedom of opinion and expression and/or freedom of the media. Ten of these cases relate to human rights violations or abuses allegedly committed during the reporting period; in seven cases, State actors either perpetrated the violation or failed to prevent or to investigate the act, while the remaining three cases can be attributed to the armed groups.

85. OHCHR examined nine cases (six occurred within the reporting period) of physical attacks on journalists and other incidents obstructing journalistic activity and the work of media outlets. In five cases, the victims and their legal defenders complained of protracted and ineffective investigations, also noting a lack of transparency. In five of these cases, the attacks were perpetrated by members of extreme right-wing groups<sup>126</sup> and law enforcement was present but did not prevent or stop the unlawful actions.<sup>127</sup> In total, in 2017 the National Union of Journalists in Ukraine documented 90 incidents of physical violence against media professionals.<sup>128</sup>

86. OHCHR is concerned about lack of progress in investigations into acts of violence against journalists, which fosters an atmosphere of impunity and fear. For instance, there has been no accountability for the killing of journalists Oles Buzyna (on 16 April 2015) and Pavlo Sheremet (on 20 July 2016).<sup>129</sup>

87. The National Police reported no developments in the criminal investigation against the Myrotvorets website, opened for “obstruction of lawful professional activity of journalists” and “violation of personal privacy”.<sup>130</sup> The web-portal positions itself as the “centre for research of signs of crimes against the national security of Ukraine, peace, humanity and international order”. OHCHR notes that no alleged perpetrators have been identified in the criminal investigation despite public information regarding the head of the centre.<sup>131</sup> OHCHR further notes that the project was presented in 2015 by a people’s deputy holding a position of adviser to the Ministry of Interior of Ukraine. Meanwhile, the personal data (including home addresses and passport data) of individuals, including media professionals and NGO activists, continued to be published on the Myrotvorets website, in violation of right to privacy and presumption of innocence.<sup>132</sup> OHCHR notes that a State bank has reportedly refused to provide services for an individual based on information published about the person on the Myrotvorets website.<sup>133</sup>

88. OHCHR cautions the Government against broad application of legislative provisions aimed at protecting Ukraine’s national security and territorial integrity.<sup>134</sup> Between 1 January 2017 and 14 February 2018, the State Committee on TV and Radio Broadcasting banned 30 books published in the Russian Federation, including the Russian translation of a book on ‘Stalingrad’ by British historian Antony Beevor.<sup>135</sup> Though the number of banned books is low compared with the number of publications allowed for import from the Russian Federation (over 10,000), OHCHR cautions the Government against disproportionate restrictions on freedom of expression.

### *Territory controlled by armed groups*

89. The space for expressing critical opinion remained highly restricted in territory controlled by armed groups. OHCHR documented three incidents when attempts to express critical opinions were stifled by psychological pressure and threats to physical integrity.<sup>136</sup>

90. At least five persons released by armed groups in the simultaneous release on 27 December 2017 were being detained *inter alia* for their critical publications on social media.

OHCHR remains concerned that as of 15 February, at least two bloggers remained detained by armed groups in ‘Donetsk people’s republic’.

## 2. Discrimination, hate speech and manifestations of intolerance

*I felt threatened and afraid; I did not trust the police.*

- Demonstrator detained by the police for several hours.

91. OHCHR documented 14 cases of discrimination, hate speech and/or violence targeting persons belonging to minority groups or holding alternative, minority social or political opinions. Twelve of these cases occurred within the reporting period; in two cases, law enforcement elements were involved, while in eight cases, perpetrators were members of extreme right-wing groups who appeared to act with impunity, the police being reluctant to properly classify and investigate such crimes. OHCHR notes that the proliferation of intolerance threatens constitutional democracy, rule of law and inclusiveness.

92. In December 2017, during two raids targeting several homes belonging to Roma people in Zolotonosha (Cherkasy region) and Boryslav (Lviv region), police were physically aggressive; beating people, damaging or destroying private possessions, and treating the Roma in a humiliating manner.<sup>137</sup> In Zolotonosha, tensions between Roma and other residents rose from 7 to 9 January, resulting in intimidation and harassment of Roma people, including incitement to violence.<sup>138</sup> In Lviv region, OHCHR was informed of actions by local activists including incitement to violence against Roma, labelling them as criminals.<sup>139</sup>

93. OHCHR also documented ten acts of intolerance including violence by members of extreme right-wing groups against individuals belonging to minority social groups and/or people holding alternative, minority social or political opinions, eight of which occurred during the reporting period. OHCHR documented physical attacks on individuals,<sup>140</sup> peaceful assemblies and social events deemed to be propagating ideas and values contrary to theirs.<sup>141</sup> Such attacks also may extend to those *perceived* to belong to minority social groups or to hold alternative social opinions.<sup>142</sup> OHCHR is concerned that police did not take appropriate measures to ensure the security of those assemblies or to properly classify these attacks and conduct investigations.<sup>143</sup>

94. On 28 January 2018, National Brigades – a paramilitary formation – held a march in the centre of Kyiv, during which they took an “oath” to “protect” the nation when the government “can’t or won’t”.<sup>144</sup> OHCHR notes with concern the extreme right-wing ideology of this group, its public proclamation to resort to violence when it deems it necessary, and its ties to the political party National Corps. OHCHR is concerned that the proliferation of extreme ideologies propagates discrimination and intolerance and threatens constitutional democracy and rule of law.

95. A “campaign” of intolerance against the Ukrainian Orthodox Church (Moscow Patriarchate) (hereinafter “UOC(MP)”), led by extreme right-wing group C14,<sup>145</sup> began during the reporting period. On 8 January 2018, several dozen members of C14 blocked the entrance and road to the Kyiv Pechersk Lavra to protest against the priests’ refusals to conduct services commemorating fallen Ukrainian soldiers and civilians who were not baptized by UOC(MP).<sup>146</sup> Members of C14 behaved aggressively, inciting violence and physically threatening those expressing opposing views. While the incident continued for over an hour, law enforcement authorities did not intervene. The same day, C14 announced on social media that this action was only the beginning of a protest campaign, and threatened to conduct further, larger “protests” in multiple locations.<sup>147</sup> Since then, C14 and other extreme right-wing groups broke into the Kyiv office of the news website of the Union of Orthodox Journalists, which publishes information on

UOC(MP),<sup>148</sup> and two arson attempts were committed against Tithes Chapel in Kyiv and St. Volodymyr church in Lviv, both belonging to UOC(MP).<sup>149</sup> OHCHR is concerned that law enforcement agencies did not take effective measures to prevent such acts, to thoroughly investigate them and to bring those responsible to justice.

96. OHCHR is concerned with expressions of intolerance voiced by some local Government authorities, such as the Ivano-Frankivsk City Council's resolution on 15 December, calling upon the Parliament of Ukraine to discriminate against the LGBT community.<sup>150</sup>

97. Such statements not only contravene core obligations of States with respect to protecting the human rights of LGBT persons,<sup>151</sup> but also violate anti-discrimination provisions set out in national legislation.<sup>152</sup> OHCHR calls on all members of the Government, including local authorities, as well as on all political parties, to refrain from and sanction calls for any forms of discrimination, intolerance and hatred, and to strenuously adhere to the principle of non-discrimination in word and action.

## B. Freedom of religion or belief

98. OHCHR also documented new instances of interference with freedom of religion in territory controlled by armed groups.<sup>153</sup> OHCHR is concerned with the adoption, on 2 February, in territory controlled by 'Luhansk people's republic', of a 'law' which bans all "religious groups" not directly linked to traditional religions, thus limiting freedom of religion.<sup>154</sup>

99. In territory controlled by the armed groups, Jehovah's Witnesses continued to be targeted by various actions. OHCHR documented two new instances of "expropriation" of buildings belonging to the community, bringing the total number of expropriated Kingdom Halls to 14.<sup>155</sup> Two religious publications of Jehovah's Witnesses were declared "extremist" by the 'Donetsk people's republic'<sup>156</sup> while a 'court' in 'Luhansk people's republic' issued a 'decision' stating that actions of Jehovah's Witnesses "infringe the right to religious self-determination of others".<sup>157</sup> OHCHR is concerned that such labelling exposes Jehovah's Witnesses to possible administrative or criminal sanctions and further harassment.<sup>158</sup>

## C. Freedom of movement

*My husband will stay in Travneve,  
I will come to Holmivskii because I am too scared to stay there.  
Because of this conflict, we will end up with a contact line between us and getting divorced.  
- Resident of a village near the contact line.*

100. The number of crossings of the contact line through five official crossing points remained at the same level as in previous months. A total of 1,042,000 crossings were registered in November 2017, 1,089,000 in December 2017, and 748,000 in January 2018. As of 15 February 2018, 670,000 crossings had been registered.<sup>159</sup> The drop in the number of crossings in January may be attributed to the New Year/Orthodox Christmas holidays, as observed in prior years.<sup>160</sup>

101. Basic facilities and services available at crossing routes<sup>161</sup> were insufficient for the number of people crossing the contact line daily. Entry-exit checkpoints (EECPs) do not hold legal status and do not fall under the authority of any single state agency which would be responsible for maintaining an adequate level of facilities and services. At the end of October 2017, the Prime Minister of Ukraine directed the military-civil administrations in Luhansk and Donetsk regions to hand over assets to designated communal enterprises tasked with maintaining decent conditions at checkpoints. This order has not been implemented.

102. Limited availability of medical assistance at crossing routes is of particular concern.<sup>162</sup> During the reporting period, at least two medical emergencies occurred at crossing routes, both of which resulted in deaths.<sup>163</sup> Furthermore, there are heightened security risks present near the contact line, due to armed hostilities as well as mine and ERW contamination. For example, on 21 January, a bus carrying civilians came under small arms fire near the Olenivka checkpoint (armed-group controlled) along the Novotroitske crossing route, killing one person and injuring another. Thus it is imperative that timely and adequate medical aid is available at crossing routes.

103. The physical challenges of crossing routes remained particularly daunting for persons with disabilities and the elderly, who generally make up a significant proportion of those crossing the contact line.<sup>164</sup> Due to the long queues, civilians must endure these conditions for long periods, sometimes for up to 10 hours, amid freezing temperatures.<sup>165</sup> Following numerous appeals from the international community, the parties to the conflict finally agreed upon conditions which enabled ICRC to repair the wooden ramps connecting the broken parts of the bridge at the Stanytsia Luhanska crossing route, on 10 December 2017.<sup>166</sup> While this is an important improvement, manoeuvring up and down the steep ramps at this sole crossing route in the entire Luhansk region remains difficult for people with disabilities, elderly people and families with children.

104. OHCHR notes that the 14 April 2017 Temporary Order<sup>167</sup> which indefinitely extended the validity of the permits to cross the contact line, remained unimplemented. Individuals must therefore apply for extensions of their electronic permits, creating an unnecessary barrier, especially for persons without access to computers or the internet.



105. On 15 December 2017, the ‘head’ of the ‘Donetsk people’s republic’ adopted a ‘decree’<sup>168</sup> prohibiting ‘civil servants’ from traveling to government-controlled territory. Despite an ‘explanatory note’<sup>169</sup> limiting its applicability, implementation of the ‘decree’ remains unclear.<sup>170</sup> OHCHR documented four cases where employees of kindergartens and social institutions were required to sign a declaration that they had read the ‘decree’ restricting the freedom of movement of ‘civil servants’.

106. OHCHR also documented two cases where ‘authorities’ of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ ‘deported’ civilians from territory under their control.<sup>171</sup> OHCHR recalls that international humanitarian law prohibits parties to the conflict from ordering

the displacement of civilians, in whole or in part, for reasons related to the conflict, unless required for the security of civilians or imperative military reasons.<sup>172</sup>

## VI. Economic and social rights

### A. Right to an adequate standard of living

*Please, give us a road, so we can fetch bread!*  
- Resident of a village near the contact line.

107. The living conditions of approximately 600,000<sup>173</sup> civilians (including 100,000 children) who reside close to the contact line, on both sides, worsened due to damages to key civilian infrastructure and private housing, restrictions on freedom of movement, limited access to basic services, the high level of unemployment, lack of public transportation, and a generally deteriorating economic environment.<sup>174</sup> Moreover, these conditions significantly isolated these communities.

108. Incidents of indiscriminate shelling affecting critical water and power supply systems, as well as sanitation facilities, continued to put staff of these facilities at risk, limit access to safe water, and as a knock-on effect, disrupt heating systems affecting hundreds of thousands of civilians on both sides of the contact line (*see also* paragraph 24 *above*). At least 27 incidents affecting water and sanitation facilities were recorded between November and December 2017.<sup>175</sup> The Donetsk Filtration Station, which supplies water for 345,000 people on both sides of the contact line, comes under fire more than other infrastructure, with 13 security incidents involving shelling and SALW fire occurring during the reporting period.<sup>176</sup>

109. Access to basic services in isolated communities at the contact line remains a major concern. For example, in Katerynivka village, located between Popasna and Zolote (government-controlled territory, Luhansk region), restrictions on freedom of movement and lack of public transportation aggravated the humanitarian situation of the remaining 310 residents.<sup>177</sup> There is only one shop in the village, where products are overpriced, and there is no post office. Residents can only leave the village through the Zolote checkpoint.<sup>178</sup> The electricity supply is regularly disrupted due to the ongoing hostilities, yet electricians are unable to provide full services to the village for security and/or financial reasons.<sup>179</sup> Ambulances, emergency services, police and other essential services do not have full access throughout Katerynivka due to restrictions on movement imposed by the Ukrainian Armed Forces, and rarely visit.<sup>180</sup> Residents expressed feeling isolated and forgotten by local authorities who fail to respond to their numerous appeals.<sup>181</sup>

110. Following the escalation of hostilities in November 2017 in the vicinity of Novoluhanske village (Donetsk region), residents of the affected villages of Travneve, Dolomitne and Hladosove no longer had access to basic facilities and services, and their freedom of movement was restricted by Ukrainian Armed Forces-controlled checkpoints. Residents of Travneve and Hladosove villages lacked electricity from 16 November 2017 to 5 January 2018 due to damaged power lines in territory controlled by armed groups of the 'Donetsk people's republic'.<sup>182</sup> There are no shops or schools in those villages, and access to basic health care is limited. Restrictions on movement hindered residents' ability to obtain goods and services elsewhere.

111. On 11 January 2018, the only Ukrainian mobile network operating in territory controlled by the armed groups stopped operating due to damages of fibre-optic communication lines.<sup>183</sup> The breakdown in mobile network services cut off communication between families separated by the contact line, disrupted businesses,<sup>184</sup> and further prevented access to emergency and medical

services. In order to reach mobile reception, people tend to take risks, travelling to areas close to the contact line.

## **B. Right to social security and social protection**

### *Internally displaced persons*

112. Out of 1,492,851 internally displaced persons (IDPs) registered in Ukraine,<sup>185</sup> 6,000 reside in 215 collective centres<sup>186</sup> located throughout the country. Living conditions in many of these centres are inadequate, with limited access to potable water, unsafe electrical wiring, and unresolved issues of legal tenure leaving IDPs at risk of eviction.<sup>187</sup> In addition, due to low income of IDPs, ownership disputes over the buildings between various state institutions, and poor communication between IDPs and local authorities, debts for utility bills accumulate and can lead to disruptions in supply. For example, during the reporting period, electricity to Teteriv sanatorium, in Zhytomyr region, was cut twice by the company supplying electricity due to debts, leaving 188 IDPs (including 88 children) without power, water and heating for up to 24 hours. OHCHR intervention led to restoration of services in both instances, but long-term solutions are needed.

113. OHCHR welcomes the amendments introduced to the Cabinet of Ministers' decree No. 1085, which expand the lists of settlements located at the contact line and those where State authorities temporarily do not exercise their functions.<sup>188</sup> This will enable over 100,000 IDPs from heavily affected areas to receive financial assistance, of which they had been deprived for almost nine months.<sup>189</sup>

### *Payment of pensions*

114. OHCHR welcomes the Supreme Court decisions issued in January and February 2018<sup>190</sup> in individual cases concerning termination of IDPs' pension payments based on the rules established by Cabinet of Ministers resolution no. 365.<sup>191</sup> The Supreme Court underlined that pensions could only be terminated on the basis of an exhaustive list of grounds foreseen in the law,<sup>192</sup> which has a higher legal force than the resolution.

115. OHCHR further welcomes the decision of the Kyiv Circuit Administrative Court on 14 December 2017 declaring resolution no. 365 as unlawful and ordering its cancellation.<sup>193</sup> This judgment, which requires a change of policy, has been appealed by the Cabinet of Ministers.

116. On 13 February 2018, the European Court of Human Rights issued a judgment regarding claims submitted by seven Ukrainian nationals from Donetsk whose pension payments had been suspended.<sup>194</sup> The Court held that the claimants had not been disproportionately restricted in their right of access to a court, and that they had failed to exhaust all domestic remedies available to challenge the suspension of their pensions before Ukrainian institutions. Thus, on the issue of protection of property, the Court did not assess whether the system for payment of pensions put in place by the Government ensured practical and effective access to social benefits for residents of territory not under Government control. Nevertheless, the Court indicated that the existence of such a system, prompted by an objective fact of hostilities in the region, cannot give rise to claims of unfavourable treatment when comparing the treatment of residents of territory controlled by armed groups with that of residents in government-controlled territory.

117. OHCHR reiterates that the current system, which links the right to pension with IDP registration,<sup>195</sup> has led to a significant reduction in the number of people from armed-group-controlled territory receiving pensions. While 1,278,000 pensioners were registered in this territory in August 2014, 956,000 persons were receiving pensions as of January 2016, and only 504,900 people as of November 2017.<sup>196</sup> While some pensioners residing in territory controlled by armed groups may receive financial assistance from the self-proclaimed 'republics', this does not replace their right to a pension, which is both a form of property and a type of social insurance provided exclusively by the State.



## C. Housing, land and property rights

118. There has been no progress in establishing a restitution and compensation mechanism for property destroyed and/or damaged due to the armed conflict. While a few courts have recognized the right of some property owners to compensation in civil cases brought against the Government, the time prescribed to execute decisions had not yet run<sup>197</sup> and no compensation had therefore been paid as of 15 February 2018.<sup>198</sup>

119. OHCHR notes that, due to the high number of houses damaged or destroyed and the costs associated with filing complaints, not all those affected will be able to bring court claims, highlighting the need for an effective and comprehensive administrative mechanism. OHCHR further notes that this need has become even more urgent due to the three-year statute of limitations for civil cases. Thus, in 2018, owners whose property was damaged or destroyed in 2014-2015 may lose one of the avenues to claim restitution or compensation.

120. Furthermore, in villages close to the contact line where there is extensive military presence,<sup>199</sup> OHCHR documented incidents of looting of private houses and ineffective and/or protracted investigations, particularly when there are reasonable grounds to believe that members of the Ukrainian Armed Forces may have been involved.<sup>200</sup>

### *Territory controlled by armed groups*

121. OHCHR has previously expressed concerns over the system of ‘external management’ imposed on private enterprises and the ‘nationalization’ of 109 markets in territory controlled by ‘Donetsk people’s republic’.<sup>201</sup> During the reporting period, OHCHR documented the arbitrary confiscation of private property applied against one individual in ‘Donetsk people’s republic’.<sup>202</sup> OHCHR reiterates that everyone has the right to the peaceful enjoyment of one’s possessions.<sup>203</sup>

## VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol

*Shut up now, you don't have any rights here!*  
- Police officer to journalist.

122. On 19 December 2017, the United Nations General Assembly adopted resolution 72/190 on the “Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine”.<sup>204</sup> Recalling General Assembly resolution 68/262 (27 March 2014) on the territorial integrity of Ukraine, and echoing resolution 71/205 (19 December 2016), resolution 72/190 urges the Russian Federation to comply with its obligations as an occupying power in Crimea, and to ensure human rights protection and unimpeded access of human rights monitoring missions and NGOs to the peninsula.<sup>205</sup> The Russian Federation continued to deny OHCHR access to Crimea, not recognizing the above-mentioned General Assembly resolutions. OHCHR therefore continued to monitor the human rights situation in Crimea from mainland Ukraine and through regular fact-finding missions to areas adjacent to Crimea, including the administrative boundary line with the peninsula.

123. During the reporting period, the Russian Federation continued to apply its laws in violation of the obligation under international humanitarian law to respect the legislation of the occupied territory.<sup>206</sup> Peaceful protest actions initiated by Crimean Tatar activists were sanctioned. OHCHR observed persistent problems in the administration of justice and the enjoyment of fundamental freedoms in Crimea, and was able to document 18 cases of human rights violations.

## **A. Freedom of peaceful assembly**

124. During the reporting period, 78 Crimean Tatar and two other Muslim men were fined<sup>207</sup> for holding one-person pickets, on 14 October 2017, in protest against the arrest of other Crimean Tatar men for alleged membership in terrorist or extremist organizations.<sup>208</sup> They were found guilty of violating Russian Federation law on public assemblies by holding organized actions, requiring pre-authorization for their conduct, portrayed as individual initiatives, which do not require prior authorization.<sup>209</sup> OHCHR notes that the judgments offer no evidence that public actions in the form of single pickets could harm 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, which are the only permissible grounds to restrict the exercise of the right to peaceful assembly under international human rights law.

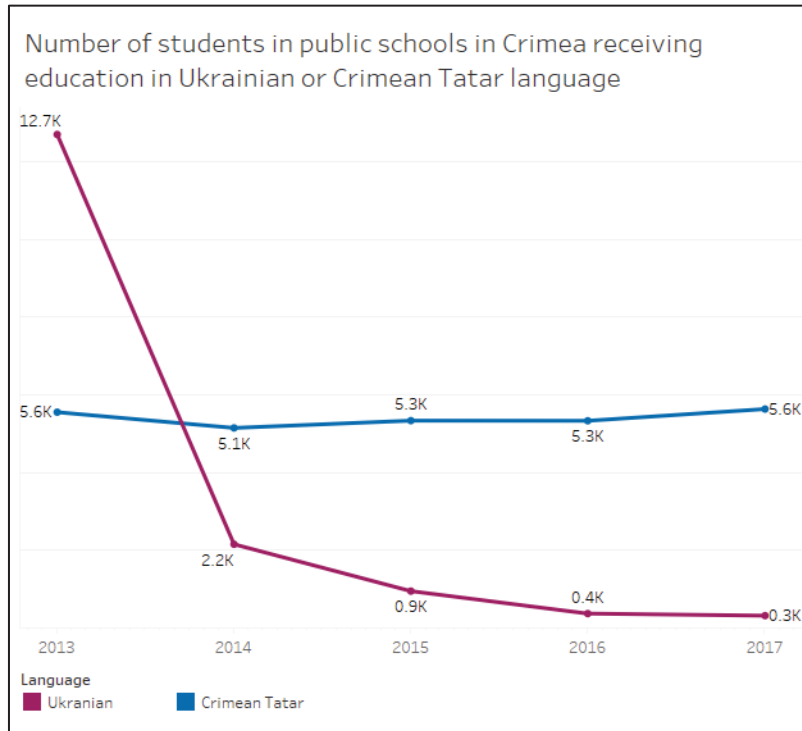
## **B. Freedom of opinion and expression**

125. On 18 December 2017, the Supreme Court of Crimea upheld a conviction against freelance journalist Mykola Semena, charged in April 2016 for writing (under a pseudonym) an article alleged to contain calls to violate the territorial integrity of the Russian Federation.<sup>210</sup> The Supreme Court maintained the suspended two-and-a-half year sentence but shortened the period of time during which Mr. Semena is prohibited from working as a journalist from three to two years. OHCHR noted that parts of the article appear to encourage the use of force to return control of Crimea to Ukraine,<sup>211</sup> and that Article 64(2) of Geneva Convention (IV) provides the Occupying Power with the right to subject the population of the occupied territory to provisions which are “essential to ensure the security of the Occupying Power”. At the same time, the verdict was based solely on a linguistic expert’s report, which was endorsed by the court without any assessment. This contravenes the due process principle that “all legal matters must be resolved exclusively by the courts”.<sup>212</sup> Furthermore, an alternative linguistic expertise presented by the defence was dismissed by the court in a formalistic manner without sufficient legal justification, which may amount to a violation of fair trial guarantees.<sup>213</sup>

## **C. Right to education in native language**

126. The number of students taught in Ukrainian language in Crimea has drastically decreased, falling by 97 per cent since 2014.<sup>214</sup> In the current academic year, 318 students (0.2 per cent of children attending public schools in Crimea<sup>215</sup>) are educated in Ukrainian language.<sup>216</sup> In addition, the number of children taught Ukrainian as a subject, a selective course, or within extracurricular activities, has sharply fallen, by approximately 50 per cent (from 12,892 in 2016-2017 to 6,400 in the current academic year).

127. About 5,600 students (3 per cent of students enrolled in public schools) receive education in Crimean Tatar - a number which has remained stable over the years.<sup>217</sup> Currently, 21,600 students study Crimean Tatar as a subject, a selective course, or within extracurricular activities – an increase of 12 per cent, from 19,254 students in 2016-2017.



128. On 28 December, the Russian authorities, through the Ministry of Education of Crimea, disseminated to municipalities a “Road map on the choice of language in education”.<sup>218</sup> This document offers a mechanism for parents to request education in native language for their children. In particular, parents must be informed by school administrations of the right to choose a language of instruction, the possibilities of learning in languages other than Russian, and the availability of appropriate teachers. OHCHR welcomes this step, which has the potential to increase access to education in one’s mother tongue, provided that the roadmap is effectively implemented in public schools.

#### D. Forced conscription

129. The Russian Federation continued to compel Crimean residents into its armed forces, conscripting at least 4,800 men within two campaigns in 2017, in violation of international humanitarian law.<sup>219</sup> In addition, courts in Crimea started to hear cases on charges of draft evasion.<sup>220</sup> At least two guilty verdicts were passed, sentencing two Crimean residents to a criminal fine of 25,000 RUB each (approximately 430 USD).<sup>221</sup> It should be noted that the Criminal Code of the Russian Federation also prescribes the possibility of incarcerating a person for up to two years for evading the military draft<sup>222</sup> and does not absolve those convicted from the obligation to undergo military service.

#### E. Access to public services in mainland Ukraine

130. OHCHR noted a persistent pattern of restricted access to some public services in mainland Ukraine, particularly banking services, for people originating from Crimea. In November 2014, the National Bank of Ukraine decreed that people with residence in Crimea had become “non-residents” of Ukraine for the purpose of banking transactions.<sup>223</sup> This restriction affects people living in Crimea - but not registered IDPs – as well as those who had left the peninsula for mainland Ukraine before the Russian Federation occupation. As a result, Ukrainian citizens who were residing in mainland Ukraine before 2014 but had a passport registration

indicating a locality in Crimea as their place of residence often felt compelled to obtain IDP status to be able to open a bank account for employment purposes.<sup>224</sup> However, the IDP status carries more stringent civil registration requirements, often applied arbitrarily, for example to renew a national passport.<sup>225</sup>

## **VIII. Legal developments and institutional reforms**

### **A. New legal framework concerning territory not controlled by the Government in certain areas of Donetsk and Luhansk regions**

131. On 18 January 2018, Parliament adopted a law providing a new framework to re-establish control over certain areas of Donetsk and Luhansk regions, defining these areas as occupied by the Russian Federation.<sup>226</sup> While outlining the structure of the military operation on countering armed aggression, the law allows the anti-terrorist operation to continue in parallel with the military-led one. It also distinguishes several geographical areas with different applicable regimes relating to the security operation, namely “area of exercise of the security and defence measures” and “area of hostilities” but does not define them. In addition, areas “adjacent” to an “area of hostilities” are defined as “security zones”, to be determined by the military commander,<sup>227</sup> where the Government and defence authorities engaged in the security operation are vested with “special powers”.<sup>228</sup> OHCHR invites the Government to ensure that the principle of proportionality is observed at all times during the exercise of such powers. OHCHR will carefully monitor implementation of the final text of the law.

132. Several key recommendations jointly made by OHCHR and UNHCR were taken into account during the revision.<sup>229</sup> In particular, the law confirms that the provisions of the 2014 law<sup>230</sup> which previously applied exclusively to Crimea, may not apply to the situation in certain areas of the Donetsk and Luhansk regions unless amendments are made. However, there is no timeframe for adopting the amendments to the 2014 law necessary to meet the legal certainty criteria for people to claim rights. As was recommended, the law clarifies that the rules on transfer of jurisdiction of courts will remain regulated by the existing legislation relating to the anti-terrorist operation.<sup>231</sup> Also, the general rule proclaiming null and void acts issued in areas of Donetsk and Luhansk regions which are not under Government control foresees an exception, in line with international jurisprudence, for birth- and death-related documents that “shall be attached to the applications for registration of birth or death”. OHCHR notes that a similar exception should be made for documents issued in Crimea. Furthermore, the law authorizes the Cabinet of Ministers - instead of the military commander - to define the procedure regulating movement of persons and goods across the contact line. It also prevents the authorities from denying individuals entry to government-controlled territory in situations threatening the life of civilians.

133. Despite some positive changes, the law still lacks clarity as to the human rights consequences of the transition from an anti-terrorist legal framework to this new one.<sup>232</sup>

### **B. Status of civilian victims**

134. On 14 November 2017, Parliament amended legislation granting participants in the Maidan events who sustained injuries which did not lead to disability the status of “victims of the Revolution of Dignity” and entitling them to the same social protection guarantees as persons having former combatant status.<sup>233</sup> The amendments also extend to civilians who acquired disability in connection to the conflict in eastern Ukraine the same social guarantees as those applying to war veterans with disabilities. However, these guarantees will apply to civilians in territory not controlled by the Government only if they were injured before 1 December 2014. There are no time limitations for civilians injured in government-controlled territory.

135. OHCHR welcomes the decision to provide strong social protection guarantees to civilian victims of the conflict with disabilities on both sides of the contact line. It regrets, however, that temporal restrictions were imposed on persons residing in territory not under Government control, which will result in the exclusion of hundreds of civilian victims.<sup>234</sup> OHCHR also notes that the situation of civilians who sustained conflict-related injuries which did not lead to disability remains to be addressed, and stresses the need for a comprehensive policy to guarantee the right to remedy and reparation for all civilian victims of the conflict, regardless of the perpetrator and the location where they were injured, in accordance with United Nations Basic Principles.<sup>235</sup>

### **C. Law on Education**

136. On 8 December 2017, following a request by the Government of Ukraine, the Council of Europe's European Commission for Democracy through Law (Venice Commission) adopted an Opinion<sup>236</sup> on article 7 of the framework Law on Education,<sup>237</sup> which reflects concerns previously raised by OHCHR in relation to minority language education.<sup>238</sup> The Commission noted, in particular, that the law would "considerably reduce"<sup>239</sup> the amount of minority language education and that article 7 treats less favourably minority languages that are not official languages of the European Union, such as Russian.<sup>240</sup> The Commission recommends amending Article 7 as an "appropriate solution" to avoid "discriminatory treatment" of minority languages that are not official European Union languages.<sup>241</sup> The Commission further recommends that the Government ensure a sufficient proportion of education is available in minority languages when implementing the Education law, introduce an appropriate transitional period for its implementation, and exempt private schools from the new language rules.<sup>242</sup>

### **D. Draft legislation on missing persons**

137. On 18 January, Parliament adopted in first reading a draft law<sup>243</sup> providing for the establishment of a Commission on Missing Persons for tracing missing persons and identifying human remains. This text, as well as an alternative one, was registered in Parliament in November-December 2016<sup>244</sup> to address the situation of persons unaccounted for as a result of armed conflict, public disturbances, and natural or man-made disasters. As recommended by the lead Parliamentary Committee<sup>245</sup> and prompted by OHCHR and other actors' advocacy, the document will be revised in preparation for the second reading to incorporate key aspects contained in the alternative proposal,<sup>246</sup> specifically the concept of "enforced disappearance" and provision of financial assistance to family members of missing persons.

138. OHCHR welcomes this significant step toward streamlining relevant national procedures. It stresses the importance of ensuring sufficient capacity for the Commission to be able to deliver its mandate effectively, in line with international standards,<sup>247</sup> and to allow involvement of families of missing persons in the Commission's work. It is also essential to provide effective remedies for violations of the right of relatives to know the fate of missing persons and to guarantee support, rehabilitation and reintegration of missing persons returning after a prolonged period of absence.

## **IX. Technical cooperation and capacity-building**

139. OHCHR continued engaging with the Government and civil society to support them in the protection and promotion of international human rights standards within Ukraine, as well as the application of international humanitarian law. OHCHR assistance focused on implementation of recommendations dealing with torture from the United Nations Subcommittee on Prevention of Torture<sup>248</sup> and OHCHR past reports, development of the country strategy to prevent and

address conflict-related sexual violence, and equal access of all Ukrainian citizens to pension payments regardless of residence registration or IDP status.

140. Throughout the reporting period, OHCHR promoted the implementation of the Istanbul Protocol and strengthening measures to prevent and address torture and conflict-related sexual violence through various trainings and presentations. OHCHR participated in four workshops<sup>249</sup> which were part of a series of regional workshops organized by the Office of the Prosecutor General of Ukraine to promote the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). OHCHR's presentations focused on the identification, documentation and investigation of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with international practices and standards. OHCHR also conducted training sessions on international human rights standards and ethical concerns regarding torture and ill-treatment for military personnel deployed to the "anti-terrorism operation" area as part of civil-military cooperation units,<sup>250</sup> military chaplains who regularly provide pastoral care to soldiers deployed at the contact line,<sup>251</sup> and members of the Pastoral Care Council (advisory body to the Ministry of Justice).<sup>252</sup>

141. In November, an international expert on conflict-related sexual violence contracted by OHCHR and UN Women concluded her visit to Ukraine and presented to key stakeholders, including the Vice-Prime Minister, the preliminary draft of a national strategy to prevent and address conflict-related sexual violence.<sup>253</sup> OHCHR, together with UN Women and the expert, are finalizing the strategy with a view to integrating it into a revised version of the National Action Plan on the Implementation of the United Nations Security Council Resolution 1325.

142. OHCHR continued to raise awareness of and provide consultations to various stakeholders on the issue of payment of pensions to Ukrainian citizens with residence registration in territory controlled by armed groups.<sup>254</sup> In partnership with other United Nations agencies, and under the auspices of the United Nations Resident Coordinator's Office, OHCHR developed a briefing note providing an overview of the issue, with statistical data, reflecting the human cost of current Government policies, and highlighting the legal obligations of the Government in this area. The briefing note was shared with the Prime Minister of Ukraine, key State officials, civil society and the international community.

143. In addition, during the reporting period, OHCHR – with the help of Justice Rapid Response – continued to engage and facilitate the assistance of international forensic experts to conduct a forensic re-examination related to the deaths resulting from the fire in the House of Trade Unions in Odesa on 2 May 2014. Such assistance was solicited by the Office of the Prosecutor General.

## X. Conclusions and recommendations

*These villages (on both sides of the contact line) are tied together  
like a big ball of yarn.*

- Resident of a village near the contact line.

144. As Ukraine is about to enter the fifth year of armed hostilities, civilians continue to pay the costs of this conflict. Families, friends and business ties continue to be artificially divided by the contact line, adding to the hardship borne by the population. The parties involved in hostilities need to adhere to the ceasefire, to protect civilian lives and critical civilian infrastructure, to alleviate hardships caused by the conflict, and to facilitate freedom of movement across the contact line.



145. With the simultaneous release of detainees under the framework of the Minsk Agreements, more information has come to light regarding serious human rights violations and abuses perpetrated on both sides of the contact line - arbitrary deprivation of liberty, *incommunicado* detention, torture and ill-treatment. These violations and abuses cause grave suffering for victims and their families, feed division and increase the challenges which shall be faced in future peace and reconciliation efforts.

146. Violations and abuses perpetrated in conflict-related cases remain essentially unaddressed, and a systemic lack of accountability deprives victims and the society as a whole of the right to know. It also fuels a climate of impunity.

147. Such a climate is particularly worrisome as Ukraine prepares for the 2019 presidential and parliamentary elections. Ukrainian law enforcement authorities must address with resolve any manifestations of intolerance, threats and violence, including against persons belonging to minority groups and individuals holding alternative, minority social or political opinions. Respect for fundamental freedoms and protection of minorities will serve as a bulwark against extreme ideologies that threaten constitutional democracy ahead of the elections.

148. The residents of the Crimean peninsula continue to be subjected to the legal and governance framework of the Russian Federation, in violation of international humanitarian law. OHCHR recalls the United Nations General Assembly's request that the Russian Federation comply with its obligations as an occupying power in Crimea.

149. OHCHR notes that most of its past recommendations have yet to be implemented and remain valid. OHCHR therefore reiterates and further recommends:

150. **Recommendations to the Ukrainian authorities:**

a) **Government of Ukraine to investigate all potential violations of international humanitarian law, or at the minimum – and as obligated by international law – of serious violations of international humanitarian law, and ensure accountability through disciplinary or criminal proceedings, as appropriate.**

b) **Government of Ukraine to ensure that the right to remedy of victims of serious violations of international humanitarian law and gross violations and abuses of international human rights law is fulfilled through equal and effective access to justice and reparations, including restitution, compensation and rehabilitation, without discrimination.**

c) **Where military presence within civilian areas is justified due to military necessity, Government of Ukraine to take all possible steps to protect the civilian population, including making available adequate alternative accommodation, as well as compensation for the use of property and any damages.**

d) **Government of Ukraine to ensure investigations, in an effective and timely manner, and prosecute allegations of torture and ill-treatment, arbitrary and *incommunicado* detention, sexual- and gender-based violence, including those allegedly committed by State actors, persons or groups of persons acting with their authorization, support or acquiescence; and consider establishing an inter-agency group in charge of investigation of such cases, as civilian investigative bodies do not have access to many alleged places of detention or where the victims were last seen.**

e) **Government of Ukraine to ensure that individuals charged with affiliation or links with the armed groups are remanded in custody pending trial only after individual determination of reasonableness and necessity thereof.**

f) **Government of Ukraine to ensure that complaints by conflict-related detainees regarding arbitrary arrest and/or detention, torture and ill-treatment, are properly addressed by law enforcement authorities.**

- g) Government of Ukraine to ensure investigations by the National Police of all allegations of pressure on judges.**
- h) Government of Ukraine to facilitate the free and unimpeded passage of civilians across the contact line by increasing the number of crossing routes and entry-exit checkpoints; lift unnecessary and disproportionate restrictions on, and ease freedom of movement at all checkpoints, including ‘internal’ checkpoints; and ensure that persons with residence registered in territory controlled by armed groups are not subjected to additional discriminatory checks.**
- i) Government of Ukraine to allocate sufficient funds to designated enterprises to maintain an adequate level of services and conditions at entry-exit checkpoints with facilities that provide safe and dignified conditions, in particular for persons with disabilities, including access to adequate water, sanitation, shelter, medical services and information.**
- j) Government of Ukraine to ensure the full implementation of the Temporary Order on Control of the Movement of People along the Contact Line in Donetsk and Luhansk regions introduced on 14 April 2017 allowing for non-expiry of permits.**
- k) Ensure the Prosecutor’s Office, National Police and Military Prosecutor’s office conduct transparent, timely and effective investigation of attacks on media professionals and media outlets, threats to physical integrity and other criminal actions that can be qualified as preclusion of lawful professional activity of journalists.**
- l) National Police to ensure prompt, effective and unbiased investigation of alleged violations in connection with the operations of the Myrotvorets website.**
- m) Security Service of Ukraine to ensure that any restriction on freedom of expression is imposed only as a specific and individualized response to a precise threat to national security, and is both necessary and proportionate.**
- n) Ministry of Internal Affairs and National Police to ensure that law enforcement officials involved in policing of public assemblies know and apply international human rights standards, and take all appropriate measures to secure such assemblies without discrimination, including gatherings of persons belonging to minority groups.**
- o) Government of Ukraine to guarantee that residents of all villages adjacent to the contact line can access basic services and receive social payments and pensions.**
- p) Government of Ukraine to ensure that IDPs living in collective centres enjoy an adequate standard of living, including safe access to drinking water, electricity and heating, as well as appropriate access to basic services and employment opportunities.**
- q) Government of Ukraine, Parliament and other relevant State bodies to eliminate obstacles preventing all citizens from enjoying equal access to pensions regardless of their place of residence or IDP registration.**
- r) Government of Ukraine, Parliament and regional authorities 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.**
- s) Ministry of Temporarily Occupied Territories and Internally Displaced Persons, Ministry of Social Policy and other relevant state bodies to ensure that IDPs with disabilities are provided with adequate accommodation, access to in-home and other services, and means for inclusion in the community.**
- t) Government of Ukraine to establish independent, transparent and non-discriminatory procedures of documentation and verification of housing, land and property ownership; create a registry of damaged or destroyed housing and other**

property; and set up a comprehensive legal mechanism for restitution and compensation.

u) Office of the Prosecutor General and other law enforcement agencies to ensure appropriate classification, investigation and prosecution of crimes committed on the basis of religious affiliation, ethnicity, sexual orientation, gender identity, beliefs, views or opinions, including crimes perpetrated by members of extreme right-wing groups.

v) Government of Ukraine to ensure that the language provision in the Law on Education does not lead to violations of the rights of minorities or discrimination against certain minority groups.

w) Government of Ukraine to simplify access to banking services and IDs in mainland Ukraine for people originating from Crimea and territory controlled by armed groups.

x) Government of Ukraine to develop a comprehensive policy to guarantee adequate, effective, prompt and appropriate remedies, including reparation, to civilian victims of the conflict, especially those injured and the families of those killed, in accordance with United Nations Basic Principles<sup>255</sup>.

y) Parliament to ensure the revision of the procedure for selection and appointment of the Ombudsperson, in line with the recommendations of the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions; in particular the procedure should include requirements to publicize vacancies broadly, assess candidates on the basis of predetermined, objective and publicly available criteria, and promote broad consultation and/or participation in the screening, selection and appointment process.

z) Government of Ukraine to establish an independent and impartial centralized State authority for tracing missing persons and identifying human remains, with sufficient capacity and reach to deliver its mandate effectively, and ensure effective investigation and prosecution of enforced disappearance.

aa) Government of Ukraine to provide effective remedies for violations of the right of relatives to know the fate of missing persons; in particular, introduce guarantees responding to their material, financial and psychological needs; and ensure support, rehabilitation and reintegration of missing persons returning after a prolonged period of absence.

151. 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 foreseen in the Minsk agreements, in particular regarding withdrawal of prohibited weapons and disengagement of forces and hardware;<sup>256</sup> until such implementation, agree on and fully respect "windows of silence" to allow for crucial repairs to and maintenance of civilian infrastructure in a timely manner.

b) Take all feasible precautions to minimize harm to the civilian population during operations in areas populated by civilians, including by: locating military objectives such as armed forces and weapons systems outside of densely populated areas, or when such relocation of military objects from civilian areas is not feasible due to military necessity, removing civilians – with their consent – from the vicinity of military objects to ensure their safety; immediately ceasing the use of weapons with indiscriminate effects in areas populated and used by civilians, particularly those with a wide impact area or the capacity to deliver multiple munitions over a wide area; and strictly comply with international humanitarian law, in particular, refrain from deliberately targeting civilians or civilian objects, including objects indispensable to the survival of the civilian population, such as drinking water installations and supplies.

- c) Investigate any attack that may have caused incidental loss of civilian life, injury to civilians, or damage to civilian objects; establish whether such attack was excessive in relation to any anticipated concrete and direct military advantage; and hold those responsible to account.
- d) Armed groups of the self-proclaimed 'Donetsk people's republic' and the self-proclaimed 'Luhansk people's republic' to ensure that all instructions and directives issued in relation to the conduct of hostilities are compliant with international humanitarian law, and provide training in international humanitarian law to its members.
- e) Ensure unimpeded access for OHCHR and other independent international observers to all places of deprivation of liberty, and allow private, confidential interviews with detainees; keep a detailed register of every person deprived of liberty and inform their families where they are held.
- f) Treat all persons detained, including those held in connection with the conflict and soldiers and fighters, humanely in all circumstances.
- g) Enable and facilitate the voluntary transfer of all pre-conflict detainees to government-controlled territory, regardless of their registered place of residence, in order to enable contact with their families.
- h) Armed groups of 'Donetsk people's republic' and 'Luhansk people's republic' to respect freedom of religion or belief in territory under their control, and refrain from infringement upon this right, including by lifting the existing prohibition of Jehovah's Witnesses, halting seizures of their religious buildings and the harassment of their members.

152. To the Government of the Russian Federation:

- a) Implement General Assembly Resolution 72/190 of 19 December 2017, including by ensuring proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea.
- b) Ensure that the right to freedom of peaceful assembly can be exercised by all Crimean residents in any form including single-person pickets, without any restrictions other than those permissible by international human rights law, and without discrimination on any grounds.
- c) Refrain from sanctioning free speech and peaceful conduct, and release all persons arrested and charged for expressing dissenting views, including regarding the status of Crimea;
- d) Comply with the international humanitarian law obligation not to compel residents of the occupied territory of Crimea to serve in the armed forces of the Russian Federation; quash all guilty verdicts in this regard and discontinue all criminal proceedings initiated against protected persons in Crimea for evading military service in the armed forces of the Russian Federation;
- e) Ensure the availability of education in Ukrainian language.

153. To the international community:

- a) Encourage the parties to the conflict to pursue all available political and practical avenues to continue simultaneous release of conflict-related detainees pursuant to the Minsk agreements.
- b) In light of the upcoming presidential and parliamentary elections, as well as attacks on journalists and other individuals documented by OHCHR, strengthen their engagement in combatting discrimination and manifestations of intolerance towards

**ethnic, political, sexual and other minorities in Ukraine, linking prospects of cooperation to progress in this regard.**

# ANNEX I

## Endnotes

<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 further 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> The majority of human rights violations documented by OHCHR during the reporting period involve incidents which occurred prior to the reporting period.

<sup>4</sup> Hereinafter ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’.

<sup>5</sup> Three civilian casualties (all injuries) were caused by booby traps, whilst 23 (9 killed and 14 injured) were caused by imprudent handling of ERW, mostly hand grenades.

<sup>6</sup> “Release and exchange of all hostages and unlawfully detained persons, based on the principle “all for all” is foreseen in para 6 of the Package of Measures for the Implementation of the Minsk Agreements. English translation available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/UA\\_150212\\_MinskAgreement\\_en.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf). The Working Group on Humanitarian Issues reached the decision on the simultaneous release at the end of November 2017, after a year of tense discussions in Minsk.

<sup>7</sup> *See* U.N. General Assembly resolution 68/262 of 27 March 2014 on the territorial integrity of Ukraine, resolution 71/205 of 19 December 2016 referring to Crimea as being occupied by the Russian Federation and resolution 72/190 of 19 December 2017 urging the Russian Federation to comply with its obligations as an occupying power in Crimea.

<sup>8</sup> Law “On particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine” (draft law no.1763). *See also* OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017 (hereinafter “OHCHR 19<sup>th</sup> Report”), paras. 148-154.

<sup>9</sup> OHCHR documents civilian casualties by consulting a broad range of sources and types of information which were evaluated for credibility and reliability. In analysis of each incident, OHCHR exercises due diligence to corroborate information from as wide a range of sources as possible, including OSCE public reports, victim and witness accounts, military actors, community leaders, medical professionals, and other interlocutors. In some instances, documentation may take weeks or months before conclusions can be drawn, meaning that numbers on civilian casualties may be revised as more information becomes available. OHCHR does not claim that the statistics presented in this report are complete. Civilian casualties may be underreported given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods.

<sup>10</sup> The deaths of 11 men and 1 woman, and the injury of 31 men, 24 women, 4 girls and 2 boys.

<sup>11</sup> Between 16 August to 15 November 2017, OHCHR documented 87 civilian casualties: 15 killed (14 men and 1 boy) and 72 injured (42 men, 19 women, 10 boys and 1 girl).

<sup>12</sup> OHCHR recalls that the parties committed to withdraw heavy weapons under the Minsk agreements. During the reporting period, hostilities intensified between 2 to 20 December, particularly in Donetsk region. Hostilities substantially reduced between 23 December and 10 January as a result of a re-commitment to the ceasefire negotiated by the Trilateral Contact Group and other signatories to the Minsk agreements for the Christmas and New Year period. OSCE SMM recorded almost 16,000 ceasefire violations the week of 11 to 17 December and over 10,000 ceasefire violations from 18 to 24 December. This fell to approximately 2,000 ceasefire violations recorded the week of 25 to 31 December 2017 and just under 4,000 ceasefire violations from 1 to 7 January 2018. *See* OSCE daily and spot reports at <http://www.osce.org/ukraine-smm/reports/>; OSCE press statement on re-commitment at <http://www.osce.org/special-monitoring-mission-to-ukraine/364031>.

<sup>13</sup> Civilian casualties due to shelling and light weapons are compiled together because a number of casualties stemmed from fragmentation injuries which could have been caused by either, specifically 1 death (a man) and 18 injuries (11 men and 7 women). In addition, OHCHR recorded 1 death (a man) and 21 injuries (11 women, 8 men and 2 girls) caused by shelling from guns, mortars, howitzers and MLRS.

<sup>14</sup> Specifically, the death of 1 man and the injury of 4 men and 1 woman.

<sup>15</sup> For example, actors used a Grad multiple rocket launch system to shell Novoluhanske – a town populated by approximately 3,500 civilians – on 18 December. On 29 November, SMM located in government-controlled Svitlodarsk recorded approximately 70 undetermined explosions and heavy-machine-gun and small-arms fire, all 2-5km south-east and south, and 24 explosions assessed as 122mm MLRS munitions, 4-5km to the northeast. OSCE SMM daily report at <http://www.osce.org/special-monitoring-mission-to-ukraine/360141>. Overnight on 4-5 December, SMM in armed-group-controlled Kadiivka (formerly Stakhanov) recorded approximately 200 undetermined explosions 6-18km away, and approximately 100 explosions assessed as outgoing rounds of 122mm MLRS munition 6-9km away. OSCE SMM daily report at <http://www.osce.org/special-monitoring-mission-to-ukraine/360961>. In Novoluhanske on 20 December, SMM documented a fresh crater in a field assessed as caused by a 122mm MLRS munition. The crater was located 50m from the nearest house. OSCE SMM daily report at <http://www.osce.org/special-monitoring-mission-to-ukraine/364021>.

<sup>16</sup> ICRC, Customary International Humanitarian Law Database, Rules 11, 12, 15, 17.

<sup>17</sup> Explosive remnants of war include both unexploded ordnance (UXO) and abandoned explosive ordnance (AXO).

<sup>18</sup> This is a 28.1 per cent decrease compared with the previous reporting period (16 August to 15 November 2017) when OHCHR recorded 32 civilian casualties caused by ERW incautious handling: 6 killed and 26 injured. During the reporting period, most of such civilian casualties resulted from incautious handling of hand grenades or their use in interpersonal conflicts, with perpetrators often being intoxicated by alcohol, or from attempts to dismantle AXOs (shells or cartridges for small arms).



<sup>19</sup> Protocol II (as amended on 3 May 1996) to the 1980 Convention on Certain Conventional Weapons also restricts the indiscriminate and disproportionate use of booby-trap devices (defined as any device or material which is designed, constructed or adapted to kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act) and – as in international humanitarian law – requires that all feasible precautions be taken to protect civilians from the effects of booby traps (including taking into account measures to protect civilians and the availability and feasibility of using alternatives). It further prohibits the use of booby traps attached to, or associated with, a wide range of specific items, and in any area with a concentration of civilians akin to that found in a city, town, or village where combat between ground forces is not taking place or does not appear to be imminent. Ukraine consented to be bound by Protocol II on 15 December 1999. The protocol binds all parties to the conflict in a non-international armed conflict. *See* Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 CCW Convention as amended on 3 May 1996), Articles 1,2,3,7. *See* ICRC, Customary International Humanitarian Law Database, Rules 1, 11 and 12.

<sup>20</sup> *See also* “Freedom of movement” and “Right to adequate standard of living” sections.

<sup>21</sup> OHCHR interview.

<sup>22</sup> For example, OHCHR documented shelling damage to civilian homes (houses and apartments), a school, kindergarten and medical post in government-controlled Novoluhanske on 18 December and to a kindergarten in armed-group-controlled Holmivskyi on 17-18 December. Shelling of armed-group-controlled Kadivka (formerly Stakhanov) on 19 December shattered the windows of a polyclinic and damaged civilian homes. OCHA reported an increase of reported incidents against education facilities during December. Humanitarian Snapshot (as of 23 January 2018) at <https://www.humanitarianresponse.info/en/operations/ukraine/infographic/ukraine-humanitarian-snapshot-23-january-2018>.

<sup>23</sup> Presence of military or armed groups and their use or occupation of civilian property was documented by OHCHR in Bolotene on 13 December, Druzhba on 6 December, Lopaskyne on 14 December, Lobacheve on 14 December, Novhorodske on 5 December, Novoluhanske on 4, 8, 21 December and 23 January, Novooleksandrivka on 17 January, Novoselivka Druha on 6 December, Pankivka on 7 December 2017), Syze on 13 December, Travneve on 23 January, Trokhizbenka on 14 December, Verkhnotoretske on 6 December and 26 January, and Zolote-4 on 17 January, Pisky, Pervomaiske and Vodiane (Yasynuvata district) on 14 February. In addition, OHCHR observed that the UAF occupied homes in Travneve in late November and marked houses in Travneve and Hladosove with civilians present with circles while empty houses were marked with crosses. In Katerynivka, OHCHR observed renewed military presence on 8 February. According to local residents, UAF returned their positions back inside the village at the end of December and occupied civilian homes.

<sup>24</sup> ICRC Customary International Humanitarian Law Study, Rules 11, 12, 14, 156. *See also* Rule 15, requiring parties to take all feasible precautions to avoid – and in any event minimize – incidental loss of civilian life, injury to civilians and damage to civilian objects during the conduct of military operations.

<sup>25</sup> OHCHR documented such examples in Bolotene (13 December), Katerynivka (8 February), Pervomaiske (14 February), Pisky (14 February), Novoselivka Druha (6 December), Syze (13 December), Verkhnotoretske (26 January) and Vodiane (14 February). *See also* “Housing, land, and property rights” section *below*.

<sup>26</sup> For example, OHCHR observed that the electricity supply to areas of Zolote-4 was cut by shelling on 18 November, denying electricity to one street and a hamlet during sub-zero temperatures. Repair teams refused to go to the area because of the inability to organize a “window of silence” as a result of the departure of Russian soldiers from the Joint Centre for Control and Coordination (formed in September 2014, provides a mechanism for monitoring the ceasefire and resolving issues linked to stabilization of the area around the contact line, including the coordination of “windows of silence”; hereinafter JCCC). The electricity supply resumed on 27 November. Similarly, the populations of Novoluhanske, Hladosove and Travneve had limited access to electricity after 16 November and 28 December due to shelling damages to infrastructure. On 19 December, one of two power lines to the First Lift Pumping Station was damaged by shelling and cannot be repaired without a window of silence. If the remaining power line is damaged, electricity supply to the pumping station will be cut. The station supplies water to five filtration stations, which in turn process water for over 1 million people on both sides of the contact line. Information provided by WASH Cluster.

<sup>27</sup> WASH Incident Reports at <https://www.humanitarianresponse.info/en/operations/ukraine/water-sanitation-and-hygiene>. OHCHR has consistently raised the risks surrounding direct or indirect damage to the Donetsk Filtration Station (DFS) (located in “no man’s land” approximately 15 km north of Donetsk city) from use of explosive weapons. *See, e.g.*, OHCHR Report on the human rights situation in Ukraine, 16 August to 15 November 2017 (hereinafter “OHCHR 20<sup>th</sup> Report”), para. 24. During the reporting period, in addition to the shelling and shooting in the vicinity of the DFS on 19 December, the facility came under fire on 1-2 December (shelling leaving behind unexploded ordnance); 3 December (shelling); 12 December (a machine-gun bullet entered a room where an employee was present) and 17-18 December (a shell landed next to a chlorine pipe). Other facilities were also impacted by the hostilities. On 26 January, the First Lift Pumping Station of the South Donbas Water Pipeline was reconnected to a reserve power line as a result of shelling and damage to a power converter. A repair brigade was unable to repair the power converter on the same day after small arms fire in the area posed a risk. On 12 December, a shell hit the grounds of Horlivka Filter Station No.2 (armed-group-controlled territory), which supplies water to 184,000 people on both sides of the contact line. On 31 December, the Holmivskyi Waste Water Treatment Plant, which provides treats water supply for 7,800 people, lost power due to shelling damage to a power cable which connected the substation to the power line. The cable was repaired a few days later.

<sup>28</sup> Projectiles landed on the grounds of the DFS, requiring evacuation of approximately 70 staff to the bomb shelter. The evacuation had to be completed without any security guarantees due to difficulties coordinating a “window of silence” following the withdrawal of the Russian Federation from the JCCC. (Source: Wash Cluster.) *See also* <http://www.osce.org/special-monitoring-mission-to-ukraine/363681?download=true>. OHCHR is unable to determine which party to the conflict fired the projectiles that landed in the vicinity of the Donetsk Filtration Station.

<sup>29</sup> Comment by the Information and Press Department of the Russian Federation Ministry of Foreign Affairs, available at [http://www.mid.ru/en/web/guest/maps/ua/-/asset\\_publisher/ktm0ZLTvbbS3/content/id/2993360](http://www.mid.ru/en/web/guest/maps/ua/-/asset_publisher/ktm0ZLTvbbS3/content/id/2993360).

<sup>30</sup> OHCHR interviews, November 2017 – January 2018.

<sup>31</sup> OHCHR previously reported on such pattern, which were more common in 2014-2015. Then, the authorities justified such practice by the fact that due to hostilities it was impossible to immediately deliver a detainee to an official place of detention.

<sup>32</sup> OHCHR interview, 27 December 2017.

<sup>33</sup> Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32, E/CN.4/1995/34, para. 926(d) reminds “Each interrogation should be initiated with the identification of all persons present. All interrogation sessions should be recorded and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings. The practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers.”

<sup>34</sup> To improve the legal framework on medical care provision in places of deprivation of liberty, Ministry of Justice and Ministry of Health issued a joint order No. 1517/5/503 dated 10 May 2017, which amended previously existing mechanisms of identification and registration of bodily injuries of the convicted detainees, as well as those who just arrived to the detention facilities. This amended order foresees mandatory registration of bodily injuries and notification of authorities about them, medical examination of the detainees without presence of non-medical staff, free choice of a doctor and confidentiality of medical records.

<sup>35</sup> Detainees often tell OHCHR during interviews that they are compelled/threatened to provide such explanations by the law enforcement bodies that detained an individual.

<sup>36</sup> For example, see OHCHR Report on human rights situation in Ukraine, covering the period from 16 August to 15 November 2017, para 62; CAT/OP/UKR/3, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Visit to Ukraine undertaken from 19 to 25 May and from 5 to 9 September 2016: observations and recommendations addressed to the State party.

<sup>37</sup> Chapters IV, V and VI of the Istanbul Protocol detail that medical examination and psychological evaluation should be thorough, even if the victim does not have any immediate complaints and acute symptoms at the time of examination. Istanbul protocol highlights the importance of interviewing the alleged victim and recording the answers regarding how injuries were received, healing process, etc.

<sup>38</sup> Seven cases involving 12 individuals.

<sup>39</sup> In one emblematic case recorded during the reporting period, a victim was detained at an armed-group-controlled checkpoint in August 2017, hooded and handcuffed, and brought to the ‘MGB’ building in Donetsk. On the way, he was pressured to confess to being a spy and threatened. At ‘MGB’ he was interrogated for ten hours, after which he was told to sign a document stating he had not been under pressure. When he refused, an ‘MGB officer’ gave him two options: to sign the document, hand over his personal belongings including passport and leave the building, or to not sign it and end up in the basement. The victim chose the first option and was released. Following this, he was twice summoned to ‘MGB’ for interrogation. At the end November, he appealed to ‘MGB’ to return his passport, and later to the ‘general prosecutor’. On 6 December, after the victim and his lawyer filed a complaint at ‘MGB’, he was arrested on his way home. ‘MGB officers’ took him to a field, searched him, and told him to sign documents or they would take him to a minefield and he would be just another civilian casualty. He protested, but the ‘officers’ threatened him with beatings and death. The victim signed: 1) a statement confirming he received his documents back from ‘MGB’; 2) an admission of verbally ‘consenting’ to cooperate with SBU to defame the ‘Donetsk people’s republic’; and 3) a ‘notice’ of ‘deportation’ from ‘DPR’ for 5 years. He was then taken to a checkpoint, given his documents and cellphone, transferred to government-controlled territory.

<sup>40</sup> OHCHR documented four such cases during the reporting period. This is in line with previous recorded cases.

<sup>41</sup> <https://dan-news.info/obschestvo/sotrudniki-mgb-dnr-v-2017-godu-zaderzhali-po-podozreniyu-v-shpionazhe-i-gosizmene-pochti-250-chelovek.html>.

<sup>42</sup> See also OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017 (hereinafter “OHCHR 18<sup>th</sup> Report”), paras. 43-44; OHCHR 20<sup>th</sup> Report, paras. 40-44.

<sup>43</sup> In a few rare instances, the person was released shortly after the apprehension.

<sup>44</sup> In an emblematic case recorded during the reporting period, a couple disappeared while crossing an armed-group-controlled checkpoint on 16 October 2017. Relatives appealed to ‘MGB’, ‘police’ and the ‘general prosecutor’ without response. On 28 November, relatives found out that the couple was detained by ‘MGB’, however could not confirm their whereabouts.

<sup>45</sup> “Torture is most frequently practised during *incommunicado* detention. Incommunicado detention should be made illegal and persons held incommunicado should be released without delay. Legal provisions should ensure that detainees be given access to legal counsel within 24 hours of detention. Security personnel who do not honour such provisions should be punished. [...] In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours.” Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32, E/CN.4/1995/34, para. 926(d).

<sup>46</sup> It was introduced in 2014 and has not been lifted.

<sup>47</sup> All 20 prisoners were convicted before the outbreak of the conflict. They were held in the following colonies: No. 32 Makiivka, No. 52 Yenakiieve, No. 97 Makiivka, No. 28 Torez, No. 33 Kirovske, No. 124 Donetsk and No. 3 Zhdanivka for individuals with tuberculosis. OHCHR interviewed 14 out of these 20 prisoners.

<sup>48</sup> See, e.g., OHCHR 20<sup>th</sup> Report, paras. 63-64.

<sup>49</sup> Prisoners reported that food was “often rotten” and “sometimes dangerous for consumption”; if the food was of better quality, the portions were small and insufficient. The situation was particularly bad in 2014-2015 in some colonies, “amounting to starvation”.

<sup>50</sup> There is only one official crossing route across the contact line in Luhansk region. It is open only for pedestrians (no vehicles), who must walk across wooden ramps connecting pieces of a broken bridge. It is particularly difficult for persons with disabilities, families with children or the elderly to traverse.

<sup>51</sup> Armed groups do not acknowledge court decisions by the Ukrainian judiciary, resulting in arbitrary and prolonged detention.

<sup>52</sup> Instead the Ministry of Justice created the “Medical center of the State Correctional Service of Ukraine”.

<sup>53</sup> For example, the Military Prosecutor’s offices of Kharkiv and Mariupol garrisons are conducting investigations into allegations of illegal arrest and detention and use of unlawful methods of interrogation by SBU officers; four UAF soldiers are currently standing trial in Svativskiyi district court of Luhansk region on charges of abduction and killing a civilian in June 2014 in Kreminna district, Luhansk region; five members of former ‘Donbas’ volunteer battalion, three members of ‘Dnipro-1’ battalion and three members of ‘Right Sector’ are on trial before Krasnoarmiisk town-district court of Donetsk region for crimes perpetrated against civilians in 2014-2015 and early 2016; an SBU officer accused of beating to death a resident of Avdiivka in March 2017 is on trial before Druzkivskiyi town court of Donetsk region; the trial against 2 SBU officers, accused of causing a death of a civilian arrested at a checkpoint by torturing him and failing to enable his immediate access to medical aid in November 2014 is nearing completion in Iziium town-district court of Kharkiv region.

<sup>54</sup> *See, e.g.*, the case of Dmytro Shabratskiy (see OHCHR thematic report on Accountability for killings, Annex I, paras 117-118). Despite a forensic report finding that he died of a gunshot wound to the head and mine-blast trauma, police classified the death as suicide and closed the case. The victim’s family had to obtain a court order to reopen the case, however even then there was no proper investigation into his death. For example, ballistic tests of a rifle found next to the body were not conducted. In the case of Roman Postolenko, a civilian killed by the State Border Guard Service patrol (see OHCHR thematic report on Accountability for killings, Annex I, paras 11-14), all the alleged perpetrators were granted witness status, leaving the victim’s family without access to compensation or redress, as according to the investigation, the soldiers acted within their functions when they opened fire. OHCHR notes that during investigation, the case was closed twice by the Prosecutor and ordered re-opened by the court, showing a reluctance to investigate the killing as a crime perpetrated by state actors.

<sup>55</sup> OHCHR has consistently documented and reported on the use of torture to illicit “confessions”. *See, e.g.*, paras. 29, 65 and 68 *above*, OHCHR 20<sup>th</sup> Report, paras. 47-50. OHCHR 19<sup>th</sup> Report, paras. 52-55.

<sup>56</sup> Article 176(5) envisages custodial detention as the only possible measure of restraint for individuals accused *inter alia* of affiliation or links with armed groups.

<sup>57</sup> ICCPR, art. 9 and 14.

<sup>58</sup> “The physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody... It thus serves as a safeguard for the right to security of person and the prohibition against torture and cruel, inhuman or degrading treatment”. General Comment no. 35 Article 9 (Liberty and security of person), para. 34.

<sup>59</sup> Human Rights Committee, General Comment no. 35 Article 9 (Liberty and security of person), para. 37.

<sup>60</sup> OHCHR consistently receives allegations that detainees are prohibited from contact with a lawyer during the initial period of arrest and detention.

<sup>61</sup> International Covenant on Civil and Political Rights, art. 14; European Convention on Human Rights, art. 6.

<sup>62</sup> *See, e.g.*, OHCHR 20<sup>th</sup> Report, paras. 71 and 77.

<sup>63</sup> In January 2018, the trial of Nelia Shtepa came to a halt after a number of Leninskyi district court of Kharkiv judges recused themselves from the case. The case was then transferred to Zhovtnevyi district court of Kharkiv for the fourth re-trial, raising serious concerns about violation of the right to trial without undue delay.

<sup>64</sup> Serhii Yudaiev was charged with rioting and hooliganism in connection with alleged participation in the takeover of the Kharkiv regional state administration on 6-7 April 2014. Despite the minor gravity of the charges, he was detained for 3.5 years, since May 2014.

<sup>65</sup> Verdict, Kyivskiyi district court of Kharkiv, 6 November 2017, at <http://reyestr.court.gov.ua/Review/70066827>. The SBU reportedly presented the convict with new charges that would allow them to demand continuation of his custodial detention.

<sup>66</sup> The former SBU Head of Kyiv city and region is currently tried before the Shevchenkivskiyi district court of Kyiv on charges of organizing the killing of 10 persons in a manner endangering others and organizing the infliction of bodily injuries by a group in a manner causing special suffering, resulting in the death of one person and a total of 22 victims.

<sup>67</sup> Armed civilians, sometimes wearing camouflage and masks, often with criminal records, who were engaged by law enforcement to attack protesters.

<sup>68</sup> The timing of the gathering of ‘titushky’ at Sofiiska square in Kyiv coincides with the beginning of the ‘anti-terrorist operation’ in the city centre. Similarly, they left the scene approximately at the time when the active phase of the ‘operation’ was over; video footage from security cameras at the scene shows that ‘titushky’ left the crossroads at 3:00 hrs, after the active phase of the ‘anti-terrorist operation’ at Maidan had ended for five hours (see reconstruction of events at [http://talio.org/en/events/vasiltsov\\_and\\_veremiy](http://talio.org/en/events/vasiltsov_and_veremiy)). The place of their deployment is also hardly accidental – Sofiiska square is just a few blocks from Maidan in the direct path of protesters retreating from Maidan after their anticipated dispersal by police and security forces in the course of the ‘anti-terrorist operation’. Interestingly, attacks on unarmed protesters have been perpetrated right in the immediate vicinity of Kyiv regional police, with no interventions from their side. The purpose of the deployment of ‘titushky’ was also similar to that of the ‘anti-terrorist operation’. As a result two individuals have been shot dead (Vitalii Vasyltsov and Viacheslav Veremii) and at least six others have sustained gunshot wounds. Many more have been physically abused.

<sup>69</sup> The investigation found that senior officials of the Ministry of Internal Affairs (MoIA) organized the illegal transfer of automatic firearms and ammunition to ‘titushky’ on 20 February 2014 for use against the protests, and identified 12 suspects including the former Minister of Internal Affairs, former head of MoIA supplies department and former Head of Kyiv police (<http://rrg.gp.gov.ua/reestr-kriminalnih-provadzhen/golovne-slidche-upravlinnja-generalnoi-prokuraturi-ukraini/postachannya-ta-zastosuvannya-spetszaso/>). A former member of the MoIA special unit combatting organized crime carried the firearms to ‘titushky’ from the armoury.

<sup>70</sup> On 22 December 2017, the Shevchenkivskiyi district court of Kyiv sentenced the gang leader to a four-year suspended sentence with a two-year probation period (verdict available at <http://reyestr.court.gov.ua/Review/71189809>) and released him. The court established that he was paid USD 20,000 to organize 200-300 young, athletically-built men to “protect public order”, and they were provided with bats (by an unknown individual) prior to their deployment at Sofiiska square (few blocks from Maidan Independence Square). When they noticed journalist Viacheslav Veremii videotaping them from a taxi, the accused together with other ‘titushky’ dragged him out and severely beat him with bats. When he tried to escape, one shot him in the back, causing his death. Despite these facts, the court accepted the defence’s arguments that the accused ordered others not to touch the victim and the shooter acted on his own initiative, thus accepting the qualification of the crime as “hooliganism”.

<sup>71</sup> The gang leader was arrested on 29 March 2014 and remanded in custody on charges of killing Viacheslav Veremii, however, on 27 May 2014, due to threats he allegedly received while in detention, he was placed under house arrest as well as provided with protection by the State Protection Service. Shortly after, the prosecutor changed the qualification of crime from murder to hooliganism. On 22 August 2014, the accused was released from house arrest under personal recognizance. On 19 October 2014, the Shevchenkivskiyi district court of Kharkiv granted the prosecutor’s motion to hold the trial in closed sessions (video of hearing available at <https://www.youtube.com/watch?v=JA4OCzQCX0A>). Pending trial, he committed two other crimes. On 17 March 2016, the Kyievo-Sviatoshynskiyi district court of Kyiv region convicted him of illegal possession of weapons and imposed a three-year suspended sentence (court decision at <http://reyestr.court.gov.ua/Review/56651650>). A second trial on hooliganism charges stemming from a raid on a gas station during which a few people were beaten and one was shot with a “traumatic pistol” is ongoing before the Solomianskyi district court of Kyiv (criminal proceeding no. 760/4865/17-к). The above did not persuade the Shevchenkivskiyi district court of Kyiv dealing with the case of the killing of Viacheslav Veremii to change the measure of restraint for Yurii Krysin.

<sup>72</sup> Court decision available at <http://reyestr.court.gov.ua/Review/71231699>. The three ‘titushky’ are accused of attempting to murder six protesters using firearms, attacking and intimidating protesters using bats and sticks, and carrying out a “joint criminal intention aimed at counteracting peaceful protests” together with unidentified individuals between 22:30 hrs on 18 February to 2:30 hrs on 19 February 2014.

<sup>73</sup> See OHCHR thematic report on accountability for killings in Ukraine from January 2014 to May 2016, Annex I, table 1.

<sup>74</sup> Briefing of the Prosecutor General’s Office, 12 February 2018. See also briefing of the Head of the Special Investigations Department of the Prosecutor General’s Office, 20 February 2018 at: [https://www.youtube.com/watch?v=yVsd\\_zkA0Rc](https://www.youtube.com/watch?v=yVsd_zkA0Rc).

<sup>75</sup> See OHCHR 20<sup>th</sup> Report, para. 90.

<sup>76</sup> Ruling dated 18 October 2017, available at: <http://reyestr.court.gov.ua/Review/69748019>.

<sup>77</sup> OHCHR meeting, 21 December 2017.

<sup>78</sup> On 9 January 2018, OHCHR received a response (dated 26 December 2017) from the Malynovskiyi district police department stating that criminal investigations into pressure on a panel of judges of the Malynovskiyi district court of Odesa on 30 November 2015 and attacks on a defence lawyer on 18 July 2016 and 12 May 2017 have been ongoing, and the criminal investigation into pressure on judges of the Court of appeal of Odesa region on 7 June 2016 was closed on 16 December 2016 due to absence of *corpus delicti*. See OHCHR Report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016 (hereinafter “OHCHR 13<sup>th</sup> Report”), para. 100; OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2016 (hereinafter “OHCHR 15<sup>th</sup> Report”), paras. 87-89.

<sup>79</sup> “Release and exchange of all hostages and unlawfully detained persons, based on the principle “all for all” is foreseen in para 6 of the Package of measures for the Implementation of the Minsk agreements. English translation available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/UA\\_150212\\_MinskAgreement\\_en.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf). The Working Group on Humanitarian Issues reached the decision on the simultaneous release at the end of November 2017, after a year of tense discussions in Minsk.

<sup>80</sup> One woman decided to stay in Donetsk for family reasons.

<sup>81</sup> Some civilians had previously been members of volunteer battalions but were not taking part in hostilities at the time of their apprehension.

<sup>82</sup> Thus, in total, during the reporting period, the Government of Ukraine released 234 individuals (including 19 women), while armed groups released 75 (including 5 women) within the framework of the simultaneous release.

<sup>83</sup> Some were brought to “Zelenyi Hai” as early as 15 December 2017, while others were transferred to this facility even a few days before the release on 27 December.

<sup>84</sup> OHCHR interviews, November-January 2018. Government informed OHCHR that these restrictive measures were taken to ensure the safety of the detainees.

<sup>85</sup> Transitory cells in SIZOs across Ukraine generally have poor conditions.

<sup>86</sup> OHCHR interview, 6 February 2018.

<sup>87</sup> Many released detainees have credible fears of retaliation, and some individuals or their families have received threats. Additionally, OHCHR strives to maintain the highest protection of victims through strict adherence to the principles of confidentiality and informed consent.

<sup>88</sup> “OHCHR documented the cases of eight individuals detained and tortured by SBU in Kharkiv in 2015. 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, dislocation of joints, 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. 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.” OHCHR 19<sup>th</sup> Report, para 58.

<sup>89</sup> OHCHR interviews, 26 August 2016, 13 April 2017, 20, 27 September 2017, 2 and 3 February 2018.

<sup>90</sup> In two cases, victims (former members of battalions) could not identify the affiliation of ‘investigators’.

<sup>91</sup> So-called ‘administrative arrest’.

<sup>92</sup> The interrogation, often with torture, was conducted in ‘MGB’ buildings in Donetsk and Luhansk and in ‘MGB’ and Izoliatsiia detention facility in Donetsk.

<sup>93</sup> Some threats recanted by interviewed victims were: “we will put you inside a basin with chlorine”, “I will cut your leg and will leave you forever in MGB basement”, “send you to the frontline”, “you don’t want to be disabled, do you?”, “I will go pick up a drill and drill through your legs”, “we have three main directions: to threaten, frighten, prevent access”, “we will put you back in the cell and deal with your wife”, “everything that was until now – were just flowers. You will be placed into the cell with faggots and get raped [the word used in Russian ‘tebia opustiat’ is a prison jargon that means someone will be beaten, raped and urinated on]”, “they threatened to bring my wife, torture her on the table [with electric shock], put her in the next cell, rape her and make me listen to how she screams”.

<sup>94</sup> Mock execution was very common and often used repeatedly. Some examples from victims’ interviews include: “I was facing the wall and the guards shot above my head. I was scared to death”; “Somebody leaned in and said ‘You must remember this sound for the rest of your life. Then I heard the bolt reload and two people talking: ‘Wait... what if the cartridge is real?’ - ‘I am not sure if it is real or blank’. Then the gun was fired into my direction”; “I was taken outside with a plastic bag over my head and told to pray. Then I heard someone loading a gun. Then they told me they changed their mind. On another day, I was put in a coffin and told to get ready to die, then I heard someone nailing it. After approximately an hour, I dared to open it, and was beaten for that.”

<sup>95</sup> Electric shocks were administered on the neck, ears, feet, legs, arms and genitals. For example, a female detainee described one of her evenings in Izoliatsiia detention facility: “One evening a number of men came to the room. They put a bag on my head and forced me into a different room. There I was put on a metal table face down and tied with duct tape. My socks were taken off and someone connected wires to my toes and turned on electricity. It was extremely painful through my whole body. They demanded I confess to cooperating with some people from the government-controlled side. I was electrocuted twice”. Another detainee in Izoliatsiia stated “On many occasions my cellmates were taken out somewhere, tortured with electricity and returned with burns on their ears, fingers and genitals”. A detainee from Luhansk said “they would attach one wire to the handcuffs, and another wire to parts of the body - a nose, ears, genitals”.

<sup>96</sup> Detainees were beaten both by hand and with objects, on all body parts, for example, hits to the head with a book, hits on the soles of feet, stepping on bare toes, and blows to the chest causing difficulty breathing.

<sup>97</sup> Suffocation was done almost to the point of unconsciousness or triggering seizures. For example, a detainee held in Luhansk witnessed “a person would be forced to wear a gas mask, and an air hole would be closed, causing a person to suffocate.”

<sup>98</sup> For example: “They started asking about military positions, then twisted my arms and led me downstairs, intentionally pushing me against the walls, so I would hit my head. Then they slammed my head against the boiler. Then six or seven men brought me to a room, forced to undress and made me kneel facing the wall. Then they hit me a few times, racked the slide and put a machine gun to my head saying I can make my last wish. Then someone entered the room and I heard a dialog: ‘Oh, don’t do it, his blood will be everywhere’ – ‘No worries, I will clean the floor’. Then I heard click of a slide and was ordered to get dressed. They twisted my hands and led me upstairs. Again, they were slamming me against the walls and the boiler.”

<sup>99</sup> The majority of individuals interviewed mentioned being subjected to mock execution, in many cases repeatedly.

<sup>100</sup> An example provided by an interviewee: “We were brought inside a building of a former club or school. For the next two days, the captors took turns beating us repeatedly. They encouraged others to participate in the beatings, saying ‘Hey, who wants to see a live *ukrop* [derogatory name used for Ukrainians]?’ As a result of beating, I lost most of my teeth.”

<sup>101</sup> In Donetsk and its vicinity, members of Ukrainian forces were predominantly held in basements of the former SBU building on 62 Shchorsa Street, the ‘MGB’ building on Shevchenka Street, buildings at 7 Artema Street and 14 Molodizhna Street, and the Cossack’s base at 25 Maiskaia Street. Most were then moved to Makiivka penal colony No. 97. In Luhansk region, they were held in the basement of the ‘MGB’ building in Luhansk, SIZO No.1, and the ‘commandant’s office’ in Luhansk. Interviewees could not specifically identify other places where they were held for short periods of time, such as a basement in Pervomaisk.

<sup>102</sup> At least 10 individuals transferred to armed-group-controlled territory who were charged with or convicted of crimes against life and liberty of individuals or against their property. At least seven others were facing similar charges in addition to those related to their affiliation or links with armed groups. A person convicted for killing two Ukrainian soldiers was pardoned by the President and transferred to armed-group-controlled territory on 20 January 2018.

<sup>103</sup> For example, on 6 July 2017, a former police officer in Druzhkivka was found guilty of robbery, brigandism and unlawful expropriation of a vehicle as part of an armed group of the ‘Donetsk people’s republic’ that abducted a local businessman and tortured him together with others in the basement of the building of the so-called ‘Druzhkivka NKVD’ or ‘Komendatura’ in June-July 2014. He was the only member of the armed group who stood trial for crimes perpetrated against civilians when Druzhkivka was under the armed group’s control. He was initially charged and tried only under art. 260 of the Criminal Code (membership in illegal armed formation), however due to victims’ appeals, the charges were requalified and the perpetrator was convicted and sentenced to 12 years in prison by Druzhkivka City Court of Donetsk

region. On 5 February, local authorities informed the victims they should not expect to receive compensation for damages awarded by the court since the perpetrator was released under the simultaneous release framework.

<sup>104</sup> OHCHR is aware of at least ten individuals transferred to armed-group-controlled territory under the simultaneous release framework, who complained of human rights violations in relation to their detention and subsequent prosecution and confirmed their intention to pursue cases against the perpetrators.

<sup>105</sup> The “release and exchange of all hostages and unlawfully detained persons”, Package of Measures for the Implementation of the Minsk Agreements, para 6, English translation available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/UA\\_150212\\_MinskAgreement\\_en.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf).

<sup>106</sup> Through trial monitoring, OHCHR documented that some detainees spent years in detention awaiting trial under art. 176(5) of the Criminal Procedure Code of Ukraine, despite the failure of prosecution to establish the necessity of imposing detention on remand on conflict-related detainees. Further, OHCHR noted that in some cases, detainees who agreed to be released and transferred to armed-group-controlled territory had no family in or links to that territory.

<sup>107</sup> Courts do not examine the merits of a case when parties agree to a plea bargain, but suspend the trial once the defendant pleads guilty. The court practice is to only examine the “voluntariness” of the plea bargain agreement and grounds its decision on the statements (“confession”) of the defendant. However, according to criminal procedure law, the court cannot ground its decision exclusively on the statements (confession) of the defendant.

<sup>108</sup> At least three individuals who were released from custody by court order for the purpose of being exchanged were then re-arrested upon being excluded from the exchange. OHCHR interviews, 12 and 17 January 2018.

<sup>109</sup> OHCHR notes that the existing procedure of trials *in absentia* does not correspond to ECtHR case law, in particular due to the lack of provision for a full retrial with the defendant’s present. OHCHR further notes that courts issued rulings on compelled appearance (“pryvid”) in relation to at least 20 released individuals and at least five other individuals have been put on a wanted list.

<sup>110</sup> OHCHR is concerned with reports that some individuals transferred to armed-groups-controlled territory in the framework of the simultaneous release were re-arrested. For example, the mother of released detainee Serhii Babych, who is facing trial in Krasnoarmiisk City District Court of Donetsk Region and was transferred to armed-groups-controlled territory on 27 December without legal clearance, and lost contact with her son on 6 January 2018. The man was reportedly ‘arrested’ by ‘MGB’ in Donetsk. Following his conditional release on 26 January, he was reportedly banned from travelling to territory controlled by the Government, thus preventing him from attending court.

<sup>111</sup> OHCHR continued to have limited access to monitor ‘trials’ of individuals ‘accused’ of conflict-related offences in ‘courts’ in Donetsk. The ‘trials’ were held behind closed doors and OHCHR was excluded from them.

<sup>112</sup> OHCHR interview, 21 November 2017. OHCHR notes that “publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large” (HRC General comment no. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, para 28).

<sup>113</sup> They are mostly ‘charged’ with espionage under art. 321 of the ‘criminal code’ of ‘Donetsk people’s republic’.

<sup>114</sup> At least two civilians detained by the armed groups of ‘Donetsk people’s republic’ stated that they have been detained without being formally ‘charged’. At least 17 interviewed Ukrainian soldiers detained in both ‘republics’ have also been detained without any ‘charges’ brought against them.

<sup>115</sup> Initial interviews, 28 December 2017, 11 and 14 January 2018.

<sup>116</sup> The armed groups of ‘Donetsk people’s republic’ formally initiated ‘investigation’ against at least 10 Ukrainian soldiers interviewed by OHCHR under article 230 (‘aiding and abetting terrorism’) of their ‘criminal code’ only in September 2017. One interviewee told OHCHR that ‘investigation’ against captured Ukrainian soldiers was merely a formality that would enable their release. The armed groups of ‘Luhansk people’s republic’ have not charged or tried none of six captured soldiers interviewed by OHCHR irrespective of the duration of their detention.

<sup>117</sup> For example, on 27 November 2017, the ‘military tribunal’ of ‘Donetsk people’s republic’ ‘ruled’ to extend detention pending ‘trial’ of a defendant with the substantiation going beyond the ‘prosecutor’s’ arguments. The ‘judge’ noted that since the ‘hearings on the merits’ had not started, it was difficult to assess to what extent the ‘accused’ facilitated the ‘investigation’ and therefore, there were no grounds to change his ‘measure of restraint’. OHCHR trial monitoring, 27 November 2017.

<sup>118</sup> OHCHR interviews, 4 and 5 January 2018.

<sup>119</sup> Torture is prohibited under both IHL and IHR. Article 14.3(g), ICCPR; Articles 75.4(f), Protocols I and art. 6.2(f), Protocol II Additional to the Geneva Conventions of 12 August 1949.

<sup>120</sup> Accounts of at least 18 civilians interviewed by OHCHR after their release on 27 December 2017 suggest that they have been detained due to alleged links with Ukrainian military and/or security forces.

<sup>121</sup> OHCHR interview, 16 January 2018.

<sup>122</sup> In territory controlled by ‘Donetsk people’s republic’, those who were detained without a view towards ‘prosecution’ were not provided with lawyers.

<sup>123</sup> Of the 18 conflict-related detainees interviewed by OHCHR, none were provided with a lawyer immediately upon being detained. One detainee told OHCHR that he never had a confidential meeting with his assigned lawyer, who only signed documents and was inactive during the ‘trial’ (OHCHR interview, 11 January 2018). In some cases, assigned lawyers witnessed intimidation of their client (conflict-related detainee), however, did nothing (OHCHR interview, 15 January 2018). Lawyers of conflict-related detainees refrain from challenging legality of detention of their client during ‘pre-trial’ and ‘trial’ stages (OHCHR trial monitoring, 27 November 2017). OHCHR is concerned that lawyers from government-controlled territory are not allowed to participate in the ‘proceedings’.

<sup>124</sup> At least seven individuals reportedly tried to present their case but then changed their mind fearing repercussions from the ‘MGB’. Others accepted the ‘charges’ being promised to be included in the simultaneous release.

<sup>125</sup> These conclusions are based on interviews of ‘convicted’ detainees released on 27 December 2017, due to OHCHR’s lack of access to ‘court hearings’.



<sup>126</sup> “Extreme right-wing groups” is an umbrella term encompassing political parties, movements and groups who blame vulnerable groups for societal problems and incite intolerance and violence against them. Extreme right-wing groups bring into question fundamental principle of non-discrimination by propagating an ideology based on racism, racial discrimination, xenophobia and related intolerance. The same groups are also involved in attacks against individuals based on their gender identity and sexual orientation. See Reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/35/42 of 26 April 2017 and A/HRC/18/44 of 21 July 2011).

<sup>127</sup> The cases are as follows. 1) In 2015, SBU officers reportedly attacked a journalist and cameraman for Radio Liberty attempting to film near the SBU building in Kyiv. The Military Prosecutor opened a criminal investigation under art. 171 (“preclusion of professional and legal activity of journalists”), but closed it four times. Each time, a court ruled to reopen it. 2) On 15 September 2017, a Radio Liberty TV crew was attacked in Kyiv, allegedly by a state guard officer while filming near the venue of the wedding of the General Prosecutor’s son. A criminal case was opened under art. 345-1 (“threats or violence towards a journalist”). 3) On 24 October 2017, one journalist was beaten and two others attacked and apprehended by police while reporting on a trial in Sviatoshynskiy district court in Kyiv. A criminal case was opened under art. 171. 4) On 3 December, activists of a right-wing group (Bratstvo Korchinskoho) blocked a business centre in Kyiv in which ‘News One’ TV channel is located. For up to seven hours, the building was completely blocked with sand bags, barbed wire and barrels. Police present on the ground did not intervene. A criminal case was opened under art. 356 (“unauthorized actions”), but was closed on 1 February 2018. 5) On 12 December 2017, a journalist of ‘News One’ TV channel was hit while polling members of the public on a Kyiv street. An alleged perpetrator, who was a member of a right-wing organization (Right Sector), posted about the attack on Facebook. 6) On 25 January 2018, around 50 members of an extreme right-wing groups stormed in the office of the Union of Orthodox Journalists affiliated with Moscow Patriarchate, insulted members of the Union and searched their computers. Police at the scene did not intervene. C-14 posted video of its members storming the office on Facebook. 7) On 3 February 2018, a female reporter was blocked, interrogated and threatened by members of extreme right-wing group C-14. The police present did not intervene. 8) On 8 February 2018, the (rented) office of media holding ‘Vesti’ was blocked and occupied by the “state agency on the search and management of the assets”, under the pretext of an ownership dispute regarding the office. Reportedly, the holding received no prior notifications, all their equipment remained in the office as well as the personal belongings of media professionals. 9) On 13 February members of a right-wing organization (Rights Sector) physically forced a journalist from a court room in Odesa, calling him a ‘separatist’. The police present did not intervene. A criminal investigation was opened under art. 171.

<sup>128</sup> In 14 cases, the alleged perpetrators were civil servants, state officials or members of Parliament and eight cases allegedly involved police officers or state guards. The majority of incidents (29) took place in Kyiv region. Female media professionals were subjected to physical violence in 24 cases. Data obtained during the country-wide monitoring by the National Union of Journalists of Ukraine, available in its official journal ‘A journalist of Ukraine’, No. 1-2, 2018.

<sup>129</sup> In the case of Oles Buzyna, although one investigation was completed and the case transferred to a court, another investigation was launched on 24 June 2017 to identify additional suspects. In the case of Pavlo Sheremet, no suspects have been identified.

<sup>130</sup> Since August 2014, the website has been publicly posting the personal data of thousands of people, including media professionals, NGO activists, labelling them as supporters of armed groups and ‘terrorism’. Criminal cases regarding Myrotvorets are investigated under arts. 171 and 182 of the Criminal Code.

<sup>131</sup> The head of Myrotvorets is named on the website itself and is widely quoted in media.

<sup>132</sup> OHCHR interviews, 8 February 2018.

<sup>133</sup> Ukrainian media published a letter from a state bank which says that “negative information” was found about a client on Myrotvorets website. Notably, the letter asserts that “SBU, Headquarters of the Ukrainian Armed Forces, State Border Guard Service, Ministry of Internal Affairs and State Penitentiary Service of Ukraine” are “partners” of Myrotvorets. Copy of letter available at <https://ubr.ua/finances/banking-sector/ukraintsam-aktivno-blokirujut-scheta-iz-za-sajta-mirotvorets-3864782>.

<sup>134</sup> In particular, the law ‘On amending certain laws of Ukraine on restriction of access to Ukrainian market of foreign print materials of anti-Ukrainian content’ available at <http://zakon0.rada.gov.ua/laws/show/1780-19>.

<sup>135</sup> State Committee on TV and Radio Broadcasting of Ukraine decisions available at [http://comin.kmu.gov.ua/control/uk/publish/article?art\\_id=142069&cat\\_id=140366](http://comin.kmu.gov.ua/control/uk/publish/article?art_id=142069&cat_id=140366) and <https://www.radiosvoboda.org/a/28981382.html>.

<sup>136</sup> OHCHR interviews, 28 December 2017, 16 January 2018, 14 February 2018.

<sup>137</sup> OHCHR was informed that on 7 December in Zolotonosha, police officers wearing balaclavas without any official insignia forcefully broke into the houses of Roma families, without presenting any procedural documents authorizing such actions. They treated the Roma in a humiliating manner, beat people and damaged or destroyed property. Three Roma men were subsequently detained on the basis of drug-trafficking allegations. OHCHR interview, 13 December 2017. See also Letter by Coalition of Roma Civil Society Organizations to Minister of Internal Affairs of 12 December 2017 and Letter by Cherkassy Regional Civil Society Organization “Romani Rota” of 11 December 2017 at <http://legalspace.org/ua/napryamki-posilennya-romskikh-gromad/item/10616-dii-politsii-u-zolotonoshi-ta-boryslavi-shchodo-romiv-ie-porushenniam-prav-liudyny-pravozakhysnyky>). On 11 December in Boryslav, in another raid, police broke into the homes of Roma, forced the women to kneel and detained some of the men. The police refused to present identification documents or procedural documents authorizing the searches. During interrogations - conducted without allowing access to lawyers - police collected fingerprints and photographed each man. In the aftermath, police announced that the raids part of an investigation of a double murder. OHCHR interview, 14 December 2017.

<sup>138</sup> A local Roma activist reported that from on 7 January, a conflict occurred between local residents, one of whom belong to the Roma community (see statement at <https://www.facebook.com/radiochiriklo/posts/1209393582526717>). On 8 January, a statement calling upon local residents to assemble and discuss the possibility to evict Roma was disseminated

in the city, and on 9 January around 200 residents gathered in the city centre shouting anti-Roma slogans and inciting violence against them. Later that same day, around twenty cars of people gathered at the activist's residence and began throwing stones at it, however police arrived and calmed the situation. Afterwards, a working group was established under the auspices of local administration to settle disputes involving Roma in the city. The Roma community in Zolotonosha is worried that further tensions and discriminatory acts may lead to violence and/or forced eviction. Further OHCHR was informed that an anti-Roma information campaign has been launched in local media, which heats up already fragile situation. OHCHR interview, 2 February 2018.

<sup>139</sup> OHCHR interview, 22 January 2017. OHCHR also observed open calls to join formations to fight "Roma muggers" disseminated via social media. *See, e.g.*, Facebook group "L.O.V.C.I." (J.I.O.B.I.I.) created to form a group of volunteers to patrol the city streets and fight "Roma muggers" at <https://www.facebook.com/groups/2092767147613075/?pnref=story>.

<sup>140</sup> OHCHR interviewed Stanislav Serhiienko, a left-wing activist, who was physically attacked for his political views on 20 April 2017 by members of extreme right-wing groups. Shortly after, a video of the attack was posted on YouTube in which it was mentioned *inter alia* that the people "like him" will not be tolerated. Police were reluctant to properly investigate the case, including by postponing the forensic examination of the victim, showing reluctance to accept evidence from the victim and twice changing the investigator in the case. Further, on 19 January 2018, the leader of C14 posted a video on Facebook in which he acknowledged that his group was involved in the attack. OHCHR interview, 13 February 2018. On 7 February, a group of people attacked two members of the Communist Party of Ukraine and of the Anti-Fascist Committee of Ukraine to rob them of political material (stickers calling to "resist the Nazi occupation" and commemorating a young victim of violence in Odesa on 2 May 2014). The attack resulted in bodily injuries, including a concussion. The victims also received death threats. Approximately two hours after the attack, the head of the Kyiv cell of National Corps posted a video of the attack on Facebook, acknowledging involvement of National Corps in the attack (available at <https://www.facebook.com/serhiiifilimonov/posts/953784998121729?pnref=story>). As of 15 February, the victims had no information whether a criminal investigation had been launched or an investigator appointed, and forensic expertise was not appointed despite the victims' requests. Allegedly, the police unofficially urged the victim to refrain from any events by Anti-Fascist Committee of Ukraine. OHCHR interview, 21 February 2018.

<sup>141</sup> On 22 December, a session of the Gender Club organized by students of the National Pedagogical University was disrupted by a group of people wearing balaclavas who attacked participants with pepper spray, causing chemical burns to three victims. OHCHR was informed that police did not launch an investigation into the attack due to the minor injuries of victims and the University administration is reluctant to take any measures to ensure security of participants of the Gender Club or to create a safe learning environment where all students feel respected and comfortable expressing their opinions and belief. OHCHR interview, 18 January 2018. Previous sessions of the Gender Club were disrupted by members of extreme right-wing groups such as Tradition and Order. *See* OHCHR 20th Report, para 131. On 19 January, a commemoration for slain human rights activists Stanislav Markelov and Anastasiya Baburova was disrupted by members of C14, Sokil, and Tradition and Order. Police did not take appropriate measures to ensure the security of participants, despite a specific request from the Ombudsperson, and ignored requests by the organizers to separate them from the aggressive protestors. Statement of Centre for Civilian Liberties at <http://ccl.org.ua/statements/zvernennya-tsentru-hromadyanskyh-svobod/>; letter of the Ombudsperson to Head of National Police concerning the State's positive obligations to ensure security of participants of the commemoration at <http://www.ombudsman.gov.ua/ua/all-news/pr/18118-ve-upovnovazhenij-privernula-uvagu-kerivnitstva-natspolitsiii-do-vazhlivo/>. Furthermore, police detained participants of the commemoration without justification, whereas none of the counter-demonstrators were detained.

<sup>142</sup> During the attack on the commemoration for the human rights activities (*see* footnote above), a British tourist on a nearby street was attacked and sustained serious facial and head injuries. He believes he was targeted by extremists due to his "nonstandard appearance". <https://www.facebook.com/LiamAnthonyTong/posts/2235174779833442>; <https://www.rferl.org/a/ukraine-british-tourist-beaten-attacked-kyiv/28986994.html>.

<sup>143</sup> For example, OHCHR is monitoring a case involving multiple attacks on a member of the LGBTI community in October 2017 in Kyiv and Vinnitsa by members of the Radical Party. Despite the victim's persistence in filing complaints with police and demanding action, his injuries were not documented and there has been no investigation. In November, he complained to prosecution about the failure to investigate, yet his complaint was transferred to the same police against whom he complained.

<sup>144</sup> *See* <https://www.facebook.com/ndrugua/>.

<sup>145</sup> Extreme right-wing group propagating nationalism and intolerance to individuals holding alternative, minority social or political opinions.

<sup>146</sup> They had been baptized by the priests of Ukrainian Orthodox Church of the Kyiv Patriarchate.

<sup>147</sup> <https://www.facebook.com/c14news/>.

<sup>148</sup> On 25 January, C14 forcefully entered the office in Kyiv. Video posted on C14's Facebook page shows its members searching the premises for "anti-Ukrainian documents" while insulting and threatening the journalists. They left after police arrived, reportedly taking private property, yet no one was arrested. *See* Statement of the Union of Orthodox Journalists at <http://uoj.org.ua/en/novosti/sobytiya/uoj-statement-regarding-the-assault-on-editorial-office>. Within the comments provided on this report by the Government of Ukraine, the Ministry of Culture referred to the Union of Orthodox Journalists as "a provocative structure, continuously working to create disorder and spread hate rhetoric". OHCHR is not aware of incidents where affiliated journalists have been spreading hate rhetoric. Regardless, OHCHR notes that such assessment shall not justify lack of actions by law enforcement agencies regarding attacks against media professionals and restrictions on freedom of opinion and expression.

<sup>149</sup> In Kyiv, on 25 January, two individuals were arrested by police for the arson attack against the Tithes chapel, and on 3 February, C14 and other extreme right-wing groups held a demonstration to support the accused and demand demolition of the chapel. In Lviv, on 28 January, members of Svoboda Party attempted to disrupt religious services in the St.

Volodymyr Church, and on 3 February, the church was significantly damaged in an arson attack. OHCHR interview, 8 February 2018.

<sup>150</sup> See statement at <http://www.namvk.if.ua/dt/188112/>. A similar statement calling for discrimination was adopted by the Poltava City Council on 19 September 2017. See OHCHR 20<sup>th</sup> Report, para. 131

<sup>151</sup> See, e.g., art. 7, Universal Declaration of Human Rights and art. 26, International Covenant on Civil and Political Rights.

<sup>152</sup> Art. 12, Law of Ukraine “On the Principles of Prevention and Countering Discrimination in Ukraine”, No. 5207-VI of 6 September 2012 (entry into force on 4 October 2012).

<sup>153</sup> OHCHR previously documented harassment of Jehovah’s Witnesses, seizure of religious materials, and arbitrary searches and seizures of religious buildings. Jehovah’s Witnesses remain un-registered in territory controlled by ‘Donetsk people’s republic’ due to the lack of registration procedure, leaving them vulnerable for further actions infringing upon their right to exercise freedom of religion. See OHCHR 20<sup>th</sup> Report, para. 110; OHCHR 19<sup>th</sup> Report, para. 105-106.

<sup>154</sup> The law prohibits “religious groups” of five or more persons which do not fall under one of the “traditional” religions. See <https://mklr.nu/religiya/novosti-religiya/1858-zakon-lnr-o-svobode-sovesti-i-religioznyh-obedineniyah-zapretil-deyatelnost-religioznyh-grupp-v-respublike.html>.

<sup>155</sup> On 22 November, the Jehovah’s Witnesses’ Kingdom Hall in Debal'tseve (territory controlled by armed groups of the ‘Donetsk people’s republic’) was sealed and expropriated as “abandoned” property, and on 25 November, the Kingdom Hall in Krasnodon (territory controlled by armed groups of the ‘Luhansk people’s republic’) was sealed and ‘expropriated’ based on lack of ‘registration’ and the minister was ‘fined’ for violating the procedure for organizing or holding public events. OHCHR also notes that an appeal by the Jehovah’s Witnesses community against the expropriation of their Kingdom Hall in Horlivka has not been addressed and the premises remained sealed. OHCHR interview, 1 December 2017.

<sup>156</sup> See list of extremist publications ‘adopted’ by the ‘ministry of justice’ of ‘Donetsk people’s republic’ at <http://www.minjust-dnr.ru/wp-content/uploads/2016/08/SPISOK-EKSTR.-MATERIALOV-na-sajt-po-sostoyaniyu-na-21.12.2017.pdf>.

<sup>157</sup> In November, a parishioner previously arrested during a joint worship was found guilty of organising an unauthorised public gathering and ‘fined’ 5,000 RUB. The victim ‘appealed’ the decision, however it was upheld. OHCHR interview, 26 January 2018.

<sup>158</sup> Article 7 of the “law on counteracting extremist activities” of ‘Donetsk people’s republic’ declares that “persons responsible for the preparation, dissemination or illegal storage of extremist material with the purpose of subsequent dissemination, are punished under administrative or criminal law,” at <http://dnrsovet.su/zakon-donetskoj-narodnoj-respubliki-o-protivodejstvii-ekstremistskoj-deyatelnosti/>.

<sup>159</sup> Information provided by State Border Guard Service of Ukraine on 16 February 2018.

<sup>160</sup> See, e.g., OCHA Humanitarian Snapshot as of 15 February 2018 at <https://www.humanitarianresponse.info/en/node/160154>.

<sup>161</sup> Such as toilets facilities, drinking water, shelter and medical services.

<sup>162</sup> For example, an ambulance is present at the government-controlled checkpoint at Stanytsia Luhanska EECP from 9 a.m. to 4 p.m. while civilians begin queuing as early as 4 a.m. Moreover, it is not always present at the Stanytsia Luhanska EECP during working hours due to lack of funding.

<sup>163</sup> On 15 November 2017, an elderly man died in the early morning at an armed-group-controlled checkpoint at the Stanytsia Luhanska crossing route. Since it happened before 9:00 hrs, there were no medical personnel to provide assistance which could possibly have saved his life. On 14 January 2018, a man (aged 65) from Alchevsk was found dead (due to heart attack) on a bus while it was stopped at an armed-group-controlled checkpoint along the Maiorsk crossing route. OSCE SMM Daily report, 16 January 2018.

<sup>164</sup> At Stanytsia Luhanska EECP, for example, OHCHR observed that wheelchairs were only available on the government-controlled side of the crossing route. Even there, their number of was insufficient and they were not serviced beyond the so-called “0” checkpoint. Persons with disabilities had to find physical assistance from other persons in order to get to and cross the ramps between the “0” checkpoints, a distance of approximately 500 meters. OHCHR observed persons with disabilities paying to be transported on luggage trolleys. At the crossing routes in Donetsk region, on the other hand, persons crossing the contact line are not permitted to walk between the “0” checkpoints. There are buses available; however, they are not equipped for wheelchairs. Therefore, persons with disabilities must pay extra for carriers and taxis to take them across.

<sup>165</sup> OHCHR interviews at Maiorsk crossing route, 1 November 2017, and Stanytsia Luhanska crossing route, 13 December 2017.

<sup>166</sup> See also OHCHR 20<sup>th</sup> Report, para. 95.

<sup>167</sup> Anti-terrorist Centre of the Security Service of Ukraine, Decree “On approving the temporary order on the control of movement of people across the contact line in the Donetsk and Luhansk regions” no.222or of 14 April 2017.

<sup>168</sup> The ban (available at [http://www.mgbdnr.ru/news.php?id=20180115\\_00&img\\_num=0](http://www.mgbdnr.ru/news.php?id=20180115_00&img_num=0)) was reportedly initiated by ‘MGB’ to protect residents of ‘Donetsk people’s republic’ from the risk of being arrested in territory controlled by the Government.

<sup>169</sup> An explanatory note published on 18 January 2018 stated that the ban applied to ‘senior officials’, ‘ministers’ and their deputies, employees of ‘ministries’ and ‘administrations’ (except for technical staff), managers and their deputies at ‘state’ and ‘municipal’ enterprises, heads of hospitals and hospital departments, and principals of universities, schools and kindergartens. Available at <https://dnr-online.ru/poyasnenie-k-ukazu-glavy-dnr-aleksandra-zaxarchenko-363/>.

<sup>170</sup> The ‘decree’ states it applies to all ‘state officials’, ‘officials’ of ‘local self-government’ and employees of enterprises, institutions, and organizations of ‘state’ and ‘municipal’ property (including teachers, doctors, librarians, postal carriers, etc.).

<sup>171</sup> In one case, a conflict-related detainee who was transferred to armed-group-controlled territory under the framework of the simultaneous release was afterwards reportedly ‘expelled’ by ‘authorities’ of ‘Luhansk people’s republic’ back to government-controlled territory with a 10-year ‘entry ban’ under the pre-text that he had previously agreed to cooperate with SBU. While two such cases were documented, OHCHR believes that the number of expulsions may be higher.

<sup>172</sup> Additional Protocol II, art. 17; ICRC Customary International Humanitarian Law Study, Rule 129. In Resolution No. 2675 (XXV) adopted in 1970 on basic principles for the protection of civilian populations in armed conflicts, the United Nations General Assembly affirmed that “civilian populations, or individual members thereof, should not be the object of ... forcible transfers...”.

<sup>173</sup> 2018 Humanitarian Needs Overview, available at [https://www.humanitarianresponse.info/system/files/documents/files/ukraine\\_humanitarian\\_needs\\_overview\\_2018\\_en\\_1.pdf](https://www.humanitarianresponse.info/system/files/documents/files/ukraine_humanitarian_needs_overview_2018_en_1.pdf).

<sup>174</sup> See also OHCHR 20<sup>th</sup> Report, paras. 111-117.

<sup>175</sup> WASH Cluster Ukraine Alert Bulletin, Issue 12, at [https://www.humanitarianresponse.info/system/files/documents/files/12\\_wash\\_cluster\\_alert\\_bulletin\\_issue\\_12.pdf](https://www.humanitarianresponse.info/system/files/documents/files/12_wash_cluster_alert_bulletin_issue_12.pdf).

<sup>176</sup> WASH Incident Reports at <https://www.humanitarianresponse.info/en/operations/ukraine/water-sanitation-and-hygiene>.

<sup>177</sup> The number is approximate since there is no local authority to maintain the population record. It is based on information provided to OHCHR by local community activists.

<sup>178</sup> The other road running from western Katerynivka to Popasna (three km away) is blocked by UAF. Residents must travel to and cross the Zolote checkpoint in order to take a bus to Sievierodonetsk, Lysychansk or the nearest district centre – Popasna, where they can access basic services and receive social payments and pensions. During winter, however, buses depart before the Zolote checkpoint opens, therefore Katerynivka residents cannot use them.

<sup>179</sup> OHCHR notes that when electricity disruptions occur, repair brigades of the Luhansk Energy Union refuse to come to the village, claiming that they have no petrol. In such cases, locals either hired a taxi or drove members of the repair brigade in their own cars from Hirske or Popasna.

<sup>180</sup> Similar situation was observed by OHCHR in Hladosove (23 January 2018), Novoluhanske (23 January 2018), Novooleksandrivka (17 January 2018), Pisky (14 February 2018), Travneve (23 January 2018), Verkhnotoetske (27 January 2017) and Zolote-4 (17 January 2018). OHCHR also received information of such conditions in Chihari and Dacha.

<sup>181</sup> OHCHR notes that the Government attempted to mitigate this situation by facilitating visits of representatives of the postal service and allowing an ambulance to attend to patients in the village (there is only one ambulance car located in Hirske servicing Katerynivka and therefore it does not arrive timely to the village). However, Koshanivka (an isolated part of Katerynivka) is not accessed by these services. Also, on 13 December 2017 the Cabinet of Ministers adopted the state targeted program on recovery and peacebuilding in the east. Its aim is to restore infrastructure and services in many areas of eastern Ukraine that have been negatively impacted by the conflict (<https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-derzhavnoi-cilov>).

<sup>182</sup> Some electricity was provided through generators, however it was not regularly available. Other settlements experienced similar issues, for example, from 18 to 27 November 2017, the electricity supply to parts of Zolote-4 was cut due to damaged power lines. Without electricity, many homes do not have heating, which is dangerous for families with children and the elderly due to freezing winter temperatures.

<sup>183</sup> While another local mobile provider is available, it cannot provide full, reliable coverage, including to government-controlled territory, and is facing difficulties due to the sudden volume of customers and calls.

<sup>184</sup> For example, shopkeepers in Oleksandrivka (20km southwest of Donetsk) could not arrange delivery of supplies including bread due to lack of mobile service. OSCE SMM Daily Report of 14 January 2018, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/366516>.

<sup>185</sup> Ministry of Social Policy of Ukraine, 22 January 2018, available at <http://www.msp.gov.ua/news/14678.html>.

<sup>186</sup> Information provided by Shelter Cluster, at [https://www.sheltercluster.org/sites/default/files/docs/annual\\_report\\_approvedforpublication.pdf](https://www.sheltercluster.org/sites/default/files/docs/annual_report_approvedforpublication.pdf).

<sup>187</sup> OHCHR interviews.

<sup>188</sup> Decree No.1085, available at <http://zakon5.rada.gov.ua/laws/show/1085-2014-%D1%80>.

<sup>189</sup> According to Cabinet of Ministers Resolution No. 505, IDPs from the settlements determined in its Decree No. 1085 are eligible for targeted assistance. Resolution available at <http://zakon0.rada.gov.ua/laws/show/505-2014-%D0%BF>. In addition, on 15 November 2017, the Cabinet of Ministers, by its Resolution No. 909-p, adopted the Strategy for integration of IDPs and implementation of durable solutions relating to internal displacement. Its aim is to create a background for the integration of IDPs into the hosting communities and ensuring State support to these category of people. The document is available at <http://zakon3.rada.gov.ua/laws/show/909-2017-%D1%80>.

<sup>190</sup> OHCHR is aware of 10 Supreme Court decisions. See, e.g., <http://reyestr.court.gov.ua/Review/71911075>; <http://reyestr.court.gov.ua/Review/71911456>; <http://reyestr.court.gov.ua/Review/72028721>.

<sup>191</sup> Resolution no. 365 of 8 June 2016 introduced the verification and identification procedure for IDP-pensioners.

<sup>192</sup> Law of Ukraine ‘On Mandatory State Pension Insurance’ no.1058-IV of 9 July 2003.

<sup>193</sup> Decision available at <http://reyestr.court.gov.ua/Review/7108322>.

<sup>194</sup> *Tsezar and Others v. Ukraine* (Applications nos. 73590/14, 73593/14, 73820/14, 4635/15, 5200/15, 5206/15 and 7289/15), ECtHR, 13 February 2018. The applicants had brought their claims based on inability to access court in region no longer controlled by the Government (right to access courts, Article 6-1), the suspension of pensions (protection of property, Article 1 of Protocol No. 1), and discrimination based on the place of residence (prohibition of discrimination, Article 14 in conjunction with Article 6 and Article 1 of Protocol No. 1).

<sup>195</sup> See, e.g., OHCHR Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, para. 108; OHCHR 18<sup>th</sup> Report, paras. 117-119; OHCHR 19<sup>th</sup> Report, para 118.



- <sup>196</sup> Pension Fund of Ukraine, at [http://www.pfu.gov.ua/pfu/control/uk/publish/article?art\\_id=304887&cat\\_id=94750](http://www.pfu.gov.ua/pfu/control/uk/publish/article?art_id=304887&cat_id=94750).
- <sup>197</sup> The allowed term for executive proceedings is 2-6 months. Law of Ukraine “On executive proceedings”, art. 25.
- <sup>198</sup> The NGO “Right to Protection” provided legal assistance in several civil cases where courts awarded compensation, before the Dzerzhynsk city court of Donetsk region on 14 December 2017 (<http://reyestr.court.gov.ua/Review/71062112>), Selidove court of Donetsk region on 10 November 2017 (<http://reyestr.court.gov.ua/Review/70222046>) and 28 November 2017 (<http://reyestr.court.gov.ua/Review/66201646>), and the Appeal court of Donetsk region on 29 November 2017 (<http://www.reyestr.court.gov.ua/Review/70573400>) and 13 December 2017 (<http://reyestr.court.gov.ua/Review/70989960>).
- <sup>199</sup> See also “Conduct of Hostilities and Civilian Casualties” section.
- <sup>200</sup> During the reporting period, OHCHR documented cases of ineffective investigations into complaints of looting against UAF servicemen regarding civilian homes in Hirske, Kriakivka, Pervomaiske, Pisky, Zhovanka. Allegations of looting were also received regarding homes in Novoselivka Druha, Syze and Verkhnotoretske (OHCHR interview, 6 December 2017). While the majority of cases of theft and damage to civilian homes documented by OHCHR occurred in territory controlled by Government, it is likely that similar acts are being carried out in armed-group-controlled territory but are under-reported due to safety concerns of victims.
- <sup>201</sup> See OHCHR 20<sup>th</sup> Report, para. 129; 19<sup>th</sup> OHCHR Report, para. 124.
- <sup>202</sup> [https://old.dnr-online.ru/wp-content/uploads/2017/12/Ukaz\\_N343\\_06122017.pdf](https://old.dnr-online.ru/wp-content/uploads/2017/12/Ukaz_N343_06122017.pdf).
- <sup>203</sup> “Everyone has the rights to own property alone as well as in association with others, and no one shall be arbitrary deprived of his or her property.” Art 17, Universal Declaration of Human Rights. “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.” Art. 1, Protocol 1 to the European Convention on Human Rights.
- <sup>204</sup> A/RES/72/190 at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/72/190](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/190).
- <sup>205</sup> The resolution also requests OHCHR to prepare a second dedicated thematic report on the situation of human rights in Crimea and to update the Human Rights Council on the issue.
- <sup>206</sup> Article 43 of the Regulations concerning the Laws and Customs of War on Land, Annex to Convention (IV) respecting the Laws and Customs of War on Land The Hague, 18 October 1907 and Article 64, Geneva Convention IV of 1949.
- <sup>207</sup> Administrative fines of 10,000-15,000 RUB (165-250 USD) each. Two of the verdicts were reversed on appeal.
- <sup>208</sup> See OHCHR 20<sup>th</sup> Report, paras. 144-145.
- <sup>209</sup> According to Russian Federation legislation applied in Crimea, one-person pickets do not require pre-authorization, however the Constitutional Court of the Russian Federation has ruled that when several one-person pickets are held simultaneously and are similar to one another with “sufficient obviousness” in respect of the items used, common goals, slogans and timing, such pickets may be considered as one single public picket carried out by a group of individuals, to which pre-authorization requirements for their conduct will apply. (Judgment of the Constitutional Court of the Russian Federation, 14 February 2013 No. 4-II, par. 2.5; <https://rg.ru/2013/02/27/mitingi-dok.html>).
- <sup>210</sup> The article can be found at <https://ru.krymr.com/a/27240750.html>. See also OHCHR 20<sup>th</sup> Report, paras. 140-141.
- <sup>211</sup> The article *inter alia* states: “The blockade must be the first step, a signal for the liberation; it must be a strictly military operation. [«Блокада должна быть первым шагом, предвестием освобождения, это должна быть четкая боевая операция»]. In an earlier version, which was later edited, the article mentioned that the blockade should be conducted through all necessary means, including “the neutralization and destruction of the Russian ferry through the Kerch Strait, [...], the occupiers’ telecommunications, the neutralization of the military command’s fighting ability” and that “The war should be carried out by military means and decisively”. [Блокада [...] должна сопровождаться всеми нужными мероприятиями, в том числе и операцией по нейтрализации и выводу из строя российской переправы через Керченский пролив, коммуникаций оккупантов, нейтрализации боеспособности их штабов. Война должна вестись военными средствами и решительно].
- <sup>212</sup> See *Dmitriyevskiy v. Russia*, no. 42168/06, ECtHR, 3 October 2017, para. 113.
- <sup>213</sup> “The obligation to provide reasons for a decision is an essential procedural safeguard under Article 6 § 1 of the Convention, as it demonstrates to the parties that their arguments have been heard, affords them the possibility of objecting to or appealing against the decision, and also serves to justify the reasons for a judicial decision to the public.” *Cumhuriyet Vakfi and Others v. Turkey*, no. 28255/07, ECtHR, 8 October 2013, para. 67.
- <sup>214</sup> Before Crimea’s unrecognized accession to the Russian Federation, there were 7 Ukrainian-language schools, 875 Ukrainian-language classes, and a total of 12,694 students receiving education in Ukrainian language. (Note: This and further statistics on education do not include information regarding schools in Sevastopol, a separate administrative unit from the Autonomous Republic of Crimea.) OHCHR considers the main reasons for this decrease to be a dominant Russian cultural environment and the departure of thousands of pro-Ukrainian Crimean residents, as well as pressure from some teaching staff and school administrations to discontinue teaching in Ukrainian language. See OHCHR Report on the “Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)”, paras. 197-198.
- <sup>215</sup> 196,500 students are currently enrolled in public schools in Crimea.
- <sup>216</sup> The 318 students receive education in 9 classes available in a single Ukrainian-language school and 7 Russian-language schools with 13 classes with instruction in Ukrainian. In the 2016/2017 academic year, in addition to nine classes in the same single Ukrainian language school, 19 classes with Ukrainian as the language of instruction were available in 12 Russian-language schools.
- <sup>217</sup> 5,146 students received education in Crimean Tatar in the 2014-2015 academic year, 5,334 in 2015-2016, and 5,330 in 2016-2017. The number of classes available has also remained stable. Fifteen public schools currently use Crimean Tatar as the language of instruction in 202 of their classes, and an additional 133 Crimean Tatar classes function in 31 Russian-language schools. In 2016-2017, there were 201 classes in 15 Crimean Tatar schools and 137 Crimean Tatar classes in 37

Russian-language schools. *See also* OHCHR report “Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)”, para. 201.

<sup>218</sup> Letter of the Ministry of Education, Science, and Youth of the Republic of Crimea on the Roadmap on the Choice of the Language of Instruction (Learning) in educational institutions of the Republic of Crimea of 28 December 2017, available at <http://monm.rk.gov.ru/file/scan01275220171228104654.pdf>.

<sup>219</sup> This constitutes a violation of art. 51 of the IV Geneva Convention prohibiting an occupying power from compelling protected persons into its armed or auxiliary forces.

<sup>220</sup> There have been at least seven accused in 2017 whose cases have been heard by courts in Crimea on charges under art. 328 of the Criminal Code of the Russian Federation (military draft evasion).

<sup>221</sup> Judgment with a guilty verdict of Gagarinskyi district court in Sevastopol, 31 October 2017; Judgement with a guilty verdict of Simferopol district court, 16 October 2017, upheld by the Supreme Court of Crimea on 28 November 2017.

<sup>222</sup> Article 328 of the Criminal Code of the Russian Federation.

<sup>223</sup> Decree 699 of 3 November 2014, available at <http://zakon0.rada.gov.ua/laws/show/v0699500-14>, which refers back to the Law of Ukraine “On Creation of the Free Economic Zone ‘Crimea’ and the Particularities of the Conduct of Business Activity on the Temporarily Occupied Territory of Ukraine” of 12 August 2014, available at

<http://zakon2.rada.gov.ua/laws/show/1636-18?info=1>. The decree has been regularly challenged in Ukrainian courts. In its most recent decision on the matter, the High Administrative Court of Ukraine upheld the decree on 8 November 2017 (decision available at <http://reyestr.court.gov.ua/Review/70163446>). According to art. 1 of Decree 699, former Crimean residents are exempt from the restrictions of the decree if they have a valid IDP certificate and proof of residence in mainland Ukraine.

<sup>224</sup> In one case, a woman registered in Crimea who left Simferopol for Kyiv in 2008, lived in Germany from 2013 to 2015 and returned to Ukraine in 2015, had no choice but to register as an IDP to be able to open a bank account in Kyiv. OHCHR interview, 12 January 2018. Another person from Crimea who moved to Kyiv in 2009 had to register as an IDP to open a bank account in 2014. OHCHR interview, 22 December 2017.

<sup>225</sup> OHCHR interviews, 27 November and 22 December 2017. For example, in 2016, a former Crimean resident who relocated to mainland Ukraine in 2009 was denied the possibility to complete a routine procedure for mandatory replacement of a passport photo upon reaching the age of 25 both in her current place of residence (Kyiv) or former place of registration, Irpin (also in mainland Ukraine) because her passport still indicated registration in Crimea. She had to challenge the refusal, but was only able to apply for the photo replacement in Irpin (and not Kyiv), and only upon verification of her IDP status and the submission of additional documents which are not normally required for such procedure.

<sup>226</sup> Draft Law no. 7163 “On Particular Aspects of Public Policy Aimed at Safeguarding the Sovereignty of Ukraine over the Temporarily Occupied Territory of the Donetsk and Luhansk regions of Ukraine”, adopted 18 January 2018, signed by the President 20 February, and entered into force 24 February. *See also* OHCHR 20<sup>th</sup> Report, paras. 149-154.

<sup>227</sup> Article 8 states that geographical limits of the ‘security zones’ are to be defined by the Head of the General Staff of the Armed Forces of Ukraine on the submission of the Commander of the joint forces.

<sup>228</sup> Article 12(6) provides an exhaustive list of “special powers”: use of weapons, authority to stop and check persons, to conduct searches, to detain persons, to limit movement in the streets, to access private property, including houses, and to use private vehicles and means of communication.

<sup>229</sup> Advocacy letter by OHCHR and UNHCR dated 19 October 2017.

<sup>230</sup> Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” no.1207-VII of 15 April 2014.

<sup>231</sup> Law of Ukraine ‘On administration of justice and criminal proceedings in connection to the conduct of the anti-terrorist operation’, No.1632-VII of 12 August 2014.

<sup>232</sup> *See* OHCHR 20<sup>th</sup> Report, para. 154.

<sup>233</sup> Law “On the status of war veterans and their social protection guarantees” no.3551-XII, 22 October 1993.

<sup>234</sup> OHCHR estimates based on its regular recording of civilian casualties.

<sup>235</sup> UN 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.

<sup>236</sup> Opinion No. 902/2017 of the European Commission for Democracy through Law (Venice Commission) - Ukraine - Opinion on the Provisions of the Law on Education of 5 September 2017 which concern the use of the State language and minority and other languages in Education, adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (8-9 December 2017), hereinafter “Venice Commission Opinion”.

<sup>237</sup> The law on Education was adopted on 5 September 2017 and entered into force on 28 September 2017. Article 7 drew criticism from representatives of various national minorities for reducing the scope of education in minority languages at the secondary level. *See* OHCHR 20<sup>th</sup> Report, para. 160.

<sup>238</sup> OHCHR 20<sup>th</sup> Report, paras. 155-160.

<sup>239</sup> Venice Commission Opinion, para. 87.

<sup>240</sup> “Paragraph 4 of Article 7 provides no solution for languages which are not official languages of the EU, in particular the Russian language, as the most widely used language apart from the state language. The less favourable treatment of these languages is difficult to justify and therefore raises issues of discrimination”; Venice Commission Opinion, para. 124.

<sup>241</sup> *Ibid.*, para. 125.

<sup>242</sup> *Ibid.*, para. 126.

<sup>243</sup> Draft law ‘On the legal status of missing persons’, No.5435 of 22 November 2016.

<sup>244</sup> *See* OHCHR Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, paras.150-152.

<sup>245</sup> The Parliamentary Committee on human rights, national minorities and inter-ethnic relations.

<sup>246</sup> Draft law ‘On the legal status of missing persons’, No.5435-1 of 5 December 2016.



<sup>247</sup> See ICRC, *Guiding principles / Model law on the missing* (February 2009); Human Rights Council Advisory Committee, *Report on best practices in the matter of missing persons (A/HRC/16/70)*, 21 February 2011.

<sup>248</sup> Contained in its 2017 report on its visit to Ukraine in 2016.

<sup>249</sup> OHCHR participated in workshops in Sievierodonetsk (23 November), Odesa (27 November), Ivano-Frankivsk (15 December, via Skype) and Kharkiv (15 December) conducted for the benefit of representatives of various prosecution officers, penitentiary institutions, National Police, the regional forensic bureau and the Ministry of Justice.

<sup>250</sup> On 22 November in Kyiv, OHCHR delivered a session *inter alia* on prevention of arbitrary and unlawful detention, torture and conflict-related sexual violence. The session laid the foundation for further strengthening of OHCHR cooperation with the civil-military units in the field through its office in Kramatorsk.

<sup>251</sup> On 11 December in Kyiv, OHCHR delivered a presentation on torture prevention for approximately 50 military chaplains of the Ukrainian Greek Catholic Church who regularly go to the contact line as volunteers or staff of the security and defence structures to provide pastoral care to the soldiers.

<sup>252</sup> On 28 November in Kyiv, OHCHR participated in a seminar organized by the Ministry of Justice and the Office of the Ombudsperson with a view to develop guidance for chaplains confronted with torture in prisons.

<sup>253</sup> The consultant was retained to provide strategic advice to the Government, civil society and the United Nations system on preventing and addressing conflict-related sexual violence in Ukraine.

<sup>254</sup> See “Right to social security and social protection” *above*.

<sup>255</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.

<sup>256</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>.

## ANNEX II

### Simultaneous release of detainees under the Minsk agreements

1. On 27 December 2017, a simultaneous release took place as part of the “all for all” release envisaged by the Minsk agreements<sup>1</sup>: 233 individuals were released by the Government of Ukraine and 74 individuals were released by armed groups. The simultaneous release took place on the transport corridor Horlivka-Artemivsk, between armed-group controlled Horlivka and Government-controlled entry-exit checkpoint Zaitseve.
2. Of the 233 individuals released by the Government, 157 individuals (including 15 women) were released to the ‘Donetsk people’s republic’ and 76 individuals (including 3 women) to the ‘Luhansk people’s republic’. All the detainees had been either in the custody of law-enforcement agencies (detained under suspicion of being a member of or otherwise affiliated with armed groups and tried in court), or had already served their sentences (mostly under article 258-3 of the criminal code, aiding terrorist organisations).
3. ‘Donetsk people’s republic’ released 58 individuals (53 men and 5 women), and ‘Luhansk people’s republic’ released 16 individuals (all men). Of the 74 detainees released by armed groups<sup>2</sup>, 41 were civilians<sup>3</sup> and 33 were members of the Ukrainian forces (Ukrainian Armed Forces and National Guard).
4. On 20 January 2018, further releases occurred. The Government of Ukraine released one female civilian, while the ‘Donetsk people’s republic’ released a male member of the Ukrainian Armed Forces. Thus, during the reporting period, a total of 309 persons were released under the simultaneous release framework: 234 released by the Government (including 19 women) and 75 by armed groups (including 5 women).

#### A. Detention in preparation for simultaneous release

5. Prior to the simultaneous release, all 234 individuals in Government custody were held in various detention facilities across Ukraine, although some had already been officially released from detention on remand by court order.
6. Ahead of the planned simultaneous release, most individuals were transported to “Zelenyi Hai” sanatorium near Sviatohirsk (Donetsk region).<sup>4</sup> Guarded by armed SBU officers, they were not allowed to leave the premises, but could move freely inside the building and were allowed up to two hours walk a day on the territory of the sanatorium. Some detainees told OHCHR they were not informed where and why they were being taken. Some could not inform their relatives or lawyers of their whereabouts.<sup>5</sup>
7. Other detainees (mainly those held in western Ukraine) were first transported to Lukianivske SIZO in Kyiv, where some 30 of them were put in a cell, with only 18 beds.<sup>6</sup> After ten days, they were transferred to Kharkiv SIZO, where they were joined by other detainees waiting to be released. While approximately 40 of them were in one cell, some reported that

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<sup>1</sup> “Release and exchange of all hostages and unlawfully detained persons, based on the principle “all for all” is foreseen in para. 6 of the Package of measures for the Implementation of the Minsk agreements. English translation available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/UA\\_150212\\_MinskAgreement\\_en.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf). The Working Group on Humanitarian Issues reached the decision on the simultaneous release at the end of November 2017, after a year of tense discussions in Minsk.

<sup>2</sup> One woman decided to stay in the territory controlled by armed groups for family reasons.

<sup>3</sup> Some civilians had previously been members of volunteer battalions but were not taking part in hostilities at the time of their apprehension.

<sup>4</sup> Some were brought to “Zelenyi Hai” as early as 15 December 2017, while others were transferred to this facility even a few days before the release on 27 December.

<sup>5</sup> OHCHR interviews, November-January 2018. The Government informed OHCHR that these restrictive measures were taken to ensure the safety of the detainees.

<sup>6</sup> Transitory cells in SIZOs across Ukraine generally have poor conditions.

there was enough space.<sup>7</sup> On the morning of 27 December 2017, they were transported to the Zaitseve checkpoint, where they were joined by the group held in “Zelenyi Hai”.

8. In the territory controlled by armed groups, between 25-26 December 2017, the ‘administration’ of the detention facilities called each detainee who was to be included in the release and instructed each to write a statement that they have no complaints about the conditions of detention and a request to be pardoned by the ‘head of republic’.<sup>8</sup> The administration informed the detainees that it was the only way to be released on 27 December 2017.

## **B. Allegations of human rights violations**

9. In order to protect individuals and their families through strict adherence to the principles of confidentiality and informed consent, much of the documented information is presented in the form of an overall analysis rather than detailed information in individual cases.<sup>9</sup>

10. Of the 234 individuals released by the Government, OHCHR had already been monitoring 142 cases prior to the simultaneous release, having interviewed individuals while in detention facilities in government-controlled territory and observed related court hearings.<sup>10</sup> After the simultaneous release, OHCHR undertook further interviews, and as of 15 February 2018, it had interviewed 64 of the released individuals, on both sides of the contact line. All described having been subjected to torture or ill-treatment, sexual violence, threats of violence, inhumane conditions of detention and/or violations of fair trial guarantees. These violations and abuses (most of which occurred prior to the reporting period) are emblematic of systemic human rights issues which have been further exacerbated by the conflict.

11. Analysis of interviews conducted both before and after the simultaneous release suggests that cases of *incommunicado* detention and torture were more common in 2014 and 2015 in government-controlled territory than afterwards. During that period, “volunteer battalions” were often involved in apprehensions. For example, in November 2014, four masked, armed Aidar battalion members stormed into a hospital where the victim was receiving treatment, placed a bag over his head and took him to the basement of the former police school in Shchastia, where he was held *incommunicado* with 16 other men. After four days, he was finally admitted to the SIZO in Starobilsk, where he had access to a lawyer.<sup>11</sup>

12. Torture was most often reported by detainees held in Kharkiv SBU, particularly in 2015. Methods used included suffocation with a gas mask, dislocation of joints, electric shock and mock execution. Detainees also received death threats and threats of a sexual nature, both against themselves and their families, and were denied access to medical care. The torture would usually continue until the detainees signed self-incriminating statements.<sup>12</sup> For example, a woman was detained in Kramatorsk in January 2015 by a group of masked men wearing camouflage without insignia. Blindfolded, she was brought to the basement of the Kramatorsk SBU building, and forced to write a “confession” which was dictated. She was threatened that her minor daughter

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<sup>7</sup> OHCHR interview, 6 February 2018.

<sup>8</sup> The exact wording of the appeal was “please demonstrate an act of mercy towards me”.

<sup>9</sup> Many released detainees have credible fears of retaliation, and some individuals or their families have received threats. Additionally, OHCHR strives to maintain the highest protection of victims through strict adherence to the principles of confidentiality and informed consent.

<sup>10</sup> OHCHR had also previously submitted advocacy letters outlining human rights concerns on individual cases to the Government.

<sup>11</sup> OHCHR interviews, 24 March 2016 and 8 February 2018.

<sup>12</sup> “OHCHR documented the cases of eight individuals detained and tortured by SBU in Kharkiv in 2015. 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, dislocation of joints, 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. 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.” OHCHR 19<sup>th</sup> Report, para. 58.

would be subjected to sexual violence<sup>13</sup> and punched in the face. She was then handcuffed to a pipe overnight, during which she heard a male detainee screaming in a neighbouring room. Over the next 24 hours, she was subjected to electric shock, raped and burned on the leg.<sup>14</sup> She was forced to “confess” on video of being member of armed groups in ‘Donetsk people’s republic’.<sup>15</sup>

13. Members of armed groups were reportedly usually subjected to more violence. For example, in May 2015, four to six masked, armed persons attacked a former member of an armed group of ‘Luhansk people’s republic’. They hooded and handcuffed him, and kicked him while interrogating him and demanding he confess to committing crimes and hiding weapons. As a result, the victim was heavily bleeding from his head, arms and legs. While transporting him to Kyiv SBU, the perpetrators cut him with a knife and threatened to kill him if he did not cooperate. At the SBU office, he was forced to make a video “confession” in Ukrainian and Russian languages. Then he was transferred to Kharkiv SBU, where he was granted access to a lawyer. He was then taken to Kharkiv SIZO where despite being examined by a doctor, no medical care was provided for about a week.<sup>16</sup>

14. Released detainees also told OHCHR they were subjected to excessive use of force during apprehension and not granted access to legal counsel until they “confessed”. For example, in November 2015, a man was arrested in Mykolaiv by five masked people during which he was hit in the chest, pushed face down on the street and handcuffed. During some five hours of interrogation by SBU in absence of a lawyer, the detainee was called “terrorist” and threatened: “*your relatives will never know where you are. We bury such people like you*”. Then he was forced to read a “confession” on camera. He was only given access to a lawyer after four days.<sup>17</sup>

15. Interviews with released detainees also suggest that individuals (especially women) detained by the Government in late 2016 and 2017 were less likely than before to be subjected to physical violence.<sup>18</sup> At the same time, because the detainees were blindfolded or hooded, or the perpetrators covered their faces, it was almost impossible to identify the perpetrators, which significantly restricts the possibility of successful lodging complaints about these human rights violations.

16. Conditions in SIZOs were often reported as poor. For example, in Odesa SIZO the cell walls were covered in mould and the drain was often clogged; detainees were fed three times a day, with food which was often rotten.<sup>19</sup> In Starobilsk SIZO, while the overall conditions were reported as “tolerable”, the food was described as “inedible”.<sup>20</sup> Detainees in Bakhmut SIZO complained about poor sanitary conditions and bedbugs.<sup>21</sup> Detainees held in Kharkiv SIZO reported that parts of the building were poorly heated and cells were infested with cockroaches and had poor sanitary conditions.<sup>22</sup> Another detainee reported she was transferred between Kharkiv SIZO and penal colony No. 54 without evident reason; while in the colony, she was placed in solitary confinement for over five months.<sup>23</sup> Detainees also complained of non-provision of adequate medical care with regard to all facilities.

#### *Territory controlled by armed groups*

17. Of the 75 individuals released by armed groups, 41 were civilians: 2 had been arbitrarily detained since December 2014, 13 since 2015, 17 since 2016 and 9 since February-March 2017.

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<sup>13</sup> The perpetrators stated, “We will now bring your daughter here and amuse ourselves with her as a woman until you give us the testimony we need!” and “We will bring your children to the military airport and give them to servicemen for amusement!”

<sup>14</sup> The victim still had the scar at the time of the interview.

<sup>15</sup> OHCHR interviews, 13 June 2016, 6 July 2017.

<sup>16</sup> OHCHR interviews, 18 November 2016, 8 February 2018.

<sup>17</sup> OHCHR interviews, 12 April 2017, 5 February 2018.

<sup>18</sup> OHCHR interviews, 26 August 2016, 13 April 2017, 20, 27 September 2017, 2 and 3 February 2018.

<sup>19</sup> OHCHR interviews, 8 February 2018.

<sup>20</sup> OHCHR interviews, 5 December 2016, 9 August 2017, 8 February 2018.

<sup>21</sup> OHCHR interviews, 13 June 2017, 5 July 2017.

<sup>22</sup> OHCHR interview, 6 February 2018.

<sup>23</sup> She was held in solitary confinement from November 2016 to April 2017. OHCHR interview, 25 May 2017.

OHCHR interviewed 20 of the released civilians. They had been detained either in their homes, or while at work or on the street, usually by armed men wearing no insignia. In 18 cases, they were transferred to ‘MGB’ of ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’, which ‘investigated’ the cases.<sup>24</sup> During the initial period of detention - at least for one month - each person was held *incommunicado*, denied access to a lawyer or communication with relatives.<sup>25</sup> During this time, in the majority of documented cases, the detained civilians were kept either in the basements of the ‘MGB’ buildings or in premises generally not intended for detention, and regularly brought to ‘MGB officers’ for interrogation.<sup>26</sup> Detainees were often hooded or blindfolded and handcuffed and/or strapped to a chair. In all documented cases, ‘MGB officers’ threatened severe physical violence or rape against the detainees or their relatives if they refused to “cooperate”.<sup>27</sup> Such threats were usually accompanied by hits or kicks into the head, chest or legs, making victims believe the threats were imminent and credible.

18. In 15 out of 20 documented cases, physical violence amounting to torture was used during interrogation, until the detainee “confessed” and wrote, signed and/or was videotaped providing self-incriminating testimonies. The most common methods of torture used were mock executions,<sup>28</sup> electrocution,<sup>29</sup> beatings<sup>30</sup> and suffocation by placing a bag over the head.<sup>31</sup> These testimonies were corroborated by initial medical examinations of 73 detainees (both civilians and military) released by armed groups, according to which 7 individuals had closed craniocerebral trauma, over 50 had problems with teeth (including knocked out teeth), and 8 had physiological dysfunctions or disability linked to torture.

19. During the overall time of detention in territory controlled by armed groups, each individual was held in at least two different detention places, including premises not intended for detention. Conditions of detention varied from normal to those amounting to inhumane and degrading treatment; facilities most commonly used are described below.

20. In territory controlled by ‘Donetsk people’s republic’, detained civilians were predominantly held in the following places: basement of the ‘MGB’ building on 26 Shevchenka Street, Donetsk city SIZO, Izoliatsiia on 3 Svitloho Shliakhu, ‘IVS’ temporary detention facility in Donetsk, and penal colony No. 32 in Makiivka.

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<sup>24</sup> In two cases, victims (former members of battalions) could not identify the affiliation of ‘investigators’.

<sup>25</sup> So-called ‘administrative arrest’.

<sup>26</sup> The interrogation, often with torture, was conducted in ‘MGB’ buildings in Donetsk and Luhansk and in Izoliatsiia detention facility in Donetsk.

<sup>27</sup> Some threats recanted by interviewed victims were: “we will put you inside a basin with chlorine”, “I will cut your leg and will leave you forever in MGB basement”, “send you to the frontline”, “you don’t want to be disabled, do you?”, “I will go pick up a drill and drill through your legs”, “we have three main directions: to threaten, frighten, prevent access”, “we will put you back in the cell and deal with your wife”, “everything that was until now – were just flowers. You will be placed into the cell with faggots and get raped [the word used in Russian ‘tebia opustiat’ is a prison jargon that means someone will be beaten, raped and urinated on]”, “they threatened to bring my wife, torture her on the table [with electric shock], put her in the next cell, rape her and make me listen to how she screams”.

<sup>28</sup> Mock execution was very common and often used repeatedly. Some examples from victims’ interviews include: “I was facing the wall and the guards shot above my head. I was scared to death”; “Somebody leaned in and said ‘You must remember this sound for the rest of your life. Then I heard the bolt reload and two people talking: ‘Wait... what if the cartridge is real?’ - ‘I am not sure if it is real or blank’. Then the gun was fired into my direction”; “I was taken outside with a plastic bag over my head and told to pray. Then I heard someone loading a gun. Then they told me they changed their mind. On another day, I was put in a coffin and told to get ready to die, then I heard someone nailing it. After approximately an hour, I dared to open it, and was beaten for that.”

<sup>29</sup> Electric shocks were administered on the neck, ears, feet, legs, arms and genitals. For example, a female detainee described one of her evenings in Izoliatsiia detention facility: “One evening a number of men came to the room. They put a bag on my head and forced me into a different room. There I was put on a metal table face down and tied with duct tape. My socks were taken off and someone connected wires to my toes and turned on electricity. It was extremely painful through my whole body. They demanded I confess to cooperating with some people from the government-controlled side. I was electrocuted twice”. Another detainee in Izoliatsiia stated “On many occasions my cellmates were taken out somewhere, tortured with electricity and returned with burns on their ears, fingers and genitals”. A detainee from Luhansk said “they would attach one wire to the handcuffs, and another wire to parts of the body - a nose, ears, genitals”.

<sup>30</sup> Detainees were beaten both by hand and with objects, on all body parts, for example, hits to the head with a book, hits on the soles of feet, stepping on bare toes, and blows to the chest causing difficulty breathing.

<sup>31</sup> Suffocation was done almost to the point of unconsciousness or triggering seizures. For example, a detainee held in Luhansk witnessed that “a person would be forced to wear a gas mask, and an air hole would be closed, causing a person to suffocate.”



21. In the ‘MGB’ basement, detainees were fed three times per day, but food was often spoiled; however at some point civilian detainees were allowed to receive packages from relatives once a month. They were convoyed to the toilet twice a day, and showers were permitted once every fortnight. The cells were cold (around 10 degrees Celsius during cold season), damp and lacked fresh air. It was forbidden to do physical exercises in the cells. Medical care was not provided.

22. Conditions in the IVS in Donetsk were reportedly satisfactory: the cells were renovated before 2012<sup>32</sup> and well-heated, detainees were served food from a nearby canteen (fish, potatoes, meat, bread), given water and had access to medical care.<sup>33</sup>

23. Conditions in Izoliatsiia were poor.<sup>34</sup> Detainees were held in the basement and ground floor. Most rooms lacked toilets or running water, and detainees were only allowed to use such facilities once a day for a few minutes; alternatively they could relieve themselves in a plastic bottle in the cell. Food was provided twice a day. Detainees were forced to work<sup>35</sup>: women were forced to cook and clean and men to move heavy objects, including ammunition, and clean cars in the yard. In the room, the light was continuously on and detainees were not allowed to switch it off. Walks were not allowed. There was a doctor in the facility, but available medication was mostly expired. A few detainees described hearing the screams of others being tortured.<sup>36</sup>

24. Conditions were reported as poor in Donetsk SIZO. Detainees were held in the 6<sup>th</sup> or 10<sup>th</sup> block, which had been previously used for convicts with life sentences.<sup>37</sup> The cells were small (2 x 4 metres or 1.3 x 3.5 metres), with bunk beds. Often cells were overcrowded (12 people for 8 places), cold with broken windows, humid with mould on the walls, and infested with cockroaches, bedbugs and rats. The toilets in the cells would often clog. Food was insufficient in quantity and of poor quality. Detainees could receive parcels from relatives<sup>38</sup>, inform them of their whereabouts and be visited by families. After ‘sentencing’, six interviewed detainees were moved to Makiivka colony No. 32 near Donetsk, where conditions were overall satisfactory; however the walls were with mould and cold. During the time in detention, some detainees experienced prison inspection (which prisoners/detainees refer to as “masks”). During one of such inspections, detainees were forced to undress and do squats. Under the pretext of cells’ search they dragged every detainee out and beat them with their bats.

25. In territory controlled by ‘Luhansk people’s republic’, civilians reported being held in the ‘MGB’ building in Luhansk city, Luhansk SIZO, and the ‘commandant’s offices’ in Luhansk and Stakhanov.

26. In the ‘MGB’ building, detainees were always hooded and handcuffed when interrogated. Detainees were forced to rise at 6:00 hrs, often to the ‘anthem of the republic’, and fed twice a day with porridge, a piece of bread and hot water. Sometimes at night, ‘officers’ took a detainee from a cell and the person would be missing for several days.

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<sup>32</sup> This detention facility was renovated by the Government of Ukraine ahead of the European Football Championship in 2012.

<sup>33</sup> One interviewee described IVS as “heaven in comparison with MGB”.

<sup>34</sup> Prior to the conflict, Izoliatsiia was an industrial facility which was turned into a cultural centre in Donetsk city. In May 2014, it was seized by armed groups and used as a detention facility. OHCHR documented and previously reported on various human rights violations including torture which occurred at Izoliatsiia. Since 2015, this detention facility is reported to be controlled by ‘MGB’. According to interviewed detainees, the number of detainees in Izoliatsiia at different times varied from 13 to 55. Some detainees were civilians, others were members of the armed groups. Members of the armed groups were brutally beaten. In spring 2017, all rooms holding detainees were kept were renovated, all detainees received bedclothes and a washing machine was installed.

<sup>35</sup> Some detainees reported that they volunteered to work in the kitchen, as it also allowed them to get access to better food.

<sup>36</sup> For example, one detainee told OHCHR: “While being held in Izoliatsiia, I heard other detainees being tortured in the adjacent compartments. One day I heard a man from the Caucasus being tortured; he was offering them ransom, but they did not stop. The following day I was told to clean that room – I saw blood and some haired skin on the floor” ... “We could often hear screams of others at night”.

<sup>37</sup> Usually in SIZOs, blocks used for life sentences detainees are in the worst condition.

<sup>38</sup> Here and throughout the text of this annex, it was easier to receive parcels for those who had relatives in the territory controlled by armed groups. Due to absence of postal services between territory controlled by armed groups and government-controlled territory, it was much more difficult to send parcels to those detainees who did not have family links in the territory controlled by armed groups.



27. Conditions in the Luhansk SIZO were reported as overall satisfactory, improving in early 2017. Detainees were fed three times a day, with better food on weekends, and had regular access to hot water. Sometimes detainees could call relatives. Cells were inspected once every fortnight, sometimes resulting in beatings of detainees.

28. In the ‘Commandant’s office’ of Zhovtnevyi district in Luhansk city, detainees were held in a big cell in the basement containing five-plank beds and no lights. They were convoyed to the toilet twice a day. Detainees received satisfactory nutrition and were treated well by the guards. Occasionally, short walks in the yard were allowed. Detainees reported being interrogated by ‘MGB officers’, often with use of torture (mostly with use of electric currents).

29. In the ‘Commandant’s office’ in Stakhanov town, detainees were held for short periods of time in basement cells. Interrogations took place in the same building.

30. The remaining 33 persons released by armed groups were members of the Ukrainian forces. One had been detained by armed groups since August 2014, 15 since 2015, 16 since 2016 and 1 since March 2017. OHCHR interviewed 18 of the released military personnel. Most were captured at military positions or near checkpoints. All those interviewed had been beaten upon capture. Some soldiers were interrogated and tortured.<sup>39</sup> Mock executions were reported common<sup>40</sup> and often repeated.<sup>41</sup> Further treatment of the soldiers varied greatly depending on which unit captured them and their own role within the Ukrainian military. For example, those few who were intelligence officers or served in special battalions were beaten and tortured more frequently and severely than others.<sup>42</sup> Some soldiers were forced to videotape self-incriminating “confessions” or give false statements to the media for use as propaganda.

31. Member of the Ukrainian forces were held in various places and moved among two or three different facilities.<sup>43</sup> Conditions of detention varied, and in most cases amounted to inhumane and degrading treatment.

32. In territory controlled by ‘Donetsk people’s republic’, some soldiers captured in 2014 and 2015 were initially held in the seized building on 25 Maiska Street in Donetsk under the control of ‘Don Cossacks’.<sup>44</sup> Detainees there (military and some civilians – both men and women) were constantly subjected to torture and ill-treatment during interrogation.<sup>45</sup> All detainees were held in one small cell (3×5 metres) lacking windows, with poor ventilation and no toilets.

33. In the detention facility on 14 Molodizhna Street, detainees were held in second floor rooms with barred windows, with approximately 18 detainees sharing one cell. Detainees used metal racks as beds, and were escorted once a day to bathroom facilities (and otherwise used a

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<sup>39</sup> For example: “They started asking about military positions, then twisted my arms and led me downstairs, intentionally pushing me against the walls, so I would hit my head. Then they slammed my head against the boiler. Then six or seven men brought me to a room, forced to undress and made me kneel facing the wall. Then they hit me a few times, racked the slide and put a machine gun to my head saying I can make my last wish. Then someone entered the room and I heard a dialog: ‘Oh, don’t do it, his blood will be everywhere’ – ‘No worries, I will clean the floor’. Then I heard click of a slide and was ordered to get dressed. They twisted my hands and led me upstairs. Again, they were slamming me against the walls and the boiler.”

<sup>40</sup> The majority of individuals interviewed mentioned being subjected to mock execution, in many cases repeatedly.

<sup>41</sup> An example provided by an interviewee: “We were brought inside a building of a former club or school. For the next two days, the captors took turns beating us repeatedly. They encouraged others to participate in the beatings, saying ‘Hey, who wants to see a live *ukrop* [derogatory name used for Ukrainians]?’ As a result of beating, I lost most of my teeth.”

<sup>42</sup> “They did not consider us as human beings and treated as beasts. We had no official status and, thus, no rights.”

<sup>43</sup> In Donetsk and its vicinity, members of Ukrainian forces were predominantly held in basements of the former SBU building on 62 Shchorsa Street, the ‘MGB’ building on Shevchenka Street, buildings at 7 Artema Street and 14 Molodizhna Street, and the Cossack’s base at 25 Maiskaia Street. Most were then moved to Makiivka penal colony No. 97. In Luhansk region, they were held in the basement of the ‘MGB’ building in Luhansk, SIZO No.1, and the ‘commandant’s office’ in Luhansk. Interviewees could not specifically identify other places where they were held for short periods of time, such as a basement in Pervomaisk.

<sup>44</sup> This detention facility run by Cossacks existed until 30 April 2015 when it was taken over by ‘MGB’. Then all detainees were transferred to the basement of the former SBU building at 62 Shchorsa Street.

<sup>45</sup> The Cossacks randomly beat detainees in the cells with their rifle butts. One interviewee stated: “Cossacks interrogated me about my military unit and combat tasks. I was beaten with arms and legs. They also pierced me several times using a knife.” “One night a few Cossacks, who seemed to be drunk, entered the cell, ordered the detainees to lay on the floor and started firing above the detainees’ heads”.

plastic bottle in the cell). They were fed twice daily, however those subjected to forced labour<sup>46</sup> received one additional meal per day. Approximately once per week, detainees were allowed to contact their families. Civilians were also held in this facility. OHCHR received credible reports of a civilian woman dying in that facility on 10 September 2016, after being subjected to torture, including beatings and electrocution.

34. From February to May 2016, some Ukrainian soldiers were held in the basement of the building at 7 Artema Street<sup>47</sup> which was controlled by ‘republican guards’ of the ‘Donetsk people’s republic’. Some 35 detainees were held in three windowless cells measuring 2 by 6 meters each. They were given access to toilets and running water once per day.

35. Most Ukrainian soldiers captured near Donetsk reported being detained for various periods of time in the seized SBU building at 62 Shchorsa Street. Before interrogation, some soldiers were put in solitary confinement in complete darkness in a small cell called the “Yama” (pit).<sup>48</sup> All detainees were held in basement rooms (a former archive), which was too small for the number of persons (up to 50 men), resulting in overcrowding. There were no windows or fresh air, and plastic bottles were used instead of toilets. Food was insufficient – a 10 litre bucket of food (soup or porridge) and several loaves of bread were provided for all detainees to share.

36. In July 2016, most Ukrainian Armed Forces detained in territory controlled by ‘Donetsk people’s republic’ were transferred to Makiivka colony No. 97 (maximum security prison) where they were separated from pre-conflict prisoners and placed two to three detainees per cell. They were prohibited from contacting relatives.<sup>49</sup> Detention conditions in the colony were worse than in other premises; the cells were cold and damp, detainees received three meals per day but of very poor quality.<sup>50</sup> Medical treatment was rarely provided.<sup>51</sup> The detainees were subjected to daily searches of their cells.

37. In territory controlled by ‘Luhansk people’s republic’, Ukrainian Armed Forces were held in the same places of detention as civilians. In Luhansk SIZO, Ukrainian soldiers were held on the fifth floor and treated differently than civilians. The food was poor and insufficient (some bread and rarely a bit of porridge), and reportedly there were cases when the guards did not feed detainees for two days. Detainees did not have hot water for at least five months. No medical treatment was available; walks outside and contacts with relatives were not permitted.

38. Released Ukrainian soldiers also reported being detained in the ‘Commandant’s office’ of Artemivskiyi district in Luhansk, where they were held in six spacious cells in the basement and fed three times a day with food cooked for the guards.

### C. Accountability for human rights violations and fair trial rights

39. OHCHR is concerned that the simultaneous release of detainees may have negative consequences on accountability for human rights violations. First, the release of individuals alleged to be perpetrators of human rights violations<sup>52</sup> deprives victims of justice and redress.<sup>53</sup>

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<sup>46</sup> Cleaning barrels with gasoline, cleaning industrial waste, digging trenches and other hard labour.

<sup>47</sup> The building previously belonged to a railway company.

<sup>48</sup> This was utility space under stairs with heat pipelines, 1.3 x 2 metres, with no light. Usually they were kept there for one to two days.

<sup>49</sup> In protest, two members of UAF announced a hunger strike and were severely beaten by guards. As described by one interviewee: “Two guards held me while the third was beating my stomach asking whether I still refuse to eat. We agreed to stop the strike, but we were still punished. I was held in solitary confinement until 15 April 2017” [10 months].

<sup>50</sup> One person stated: “I have not seen a blue sky for 1.5 years.”

<sup>51</sup> “A local doctor always underlined that she does not want to treat captured Ukrainian soldiers – ‘you are enemies!’”

<sup>52</sup> OHCHR is aware of at least 10 individuals transferred to armed-group-controlled territory who were charged with or convicted of crimes against life and liberty of individuals or against their property. At least seven others were facing similar charges in addition to those related to their affiliation or links with armed groups. A person convicted for killing two Ukrainian soldiers was pardoned by the President and transferred to armed-group-controlled territory on 20 January 2018.

<sup>53</sup> For example, on 6 July 2017, a former police officer in Druzhkivka was found guilty of robbery, brigandism and unlawful expropriation of a vehicle as part of an armed group of the ‘Donetsk people’s republic’ that abducted a local businessman and tortured him together with others in the basement of the building of the so-called ‘Druzhkivka NKVD’ or ‘Komendatura’ in June-July 2014. He was the only member of the armed group who stood trial for crimes perpetrated

Second, many conflict-related detainees who were released were subjected to human rights violations during the course of their detention and prosecution. Some who filed complaints faced obstruction from law enforcement, which lacked willingness to duly investigate the allegations while the complainants remained in government-controlled territory.<sup>54</sup> Their release to armed-group-controlled territory may lead to closure of the cases, depriving them of access to justice.

40. OHCHR examined the legal procedures applied by the Government in preparation for the simultaneous release on 27 December 2017.<sup>55</sup> Following the release, OHCHR interviewed 26 individuals (out of the 234 detainees released by the Government) who stated that the main reason they had agreed to participate in the release was because it was their only option for liberty due to protracted court proceedings during which mandatory pre-trial detention is applied against all individuals charged with affiliation or links with armed groups under article 176(5) of the Criminal Procedure Code.<sup>56</sup>

41. OHCHR is concerned that the simultaneous release may have been used to compel conflict-related detainees, who saw no prospect of justice or fair hearing, to plead guilty, even in otherwise poorly substantiated cases, thus effectively denying them access to justice.<sup>57</sup> Between 13 and 21 December 2017, at least 39 individuals were convicted by courts based on *inter alia* plea bargains and retractions of appeals. OHCHR noted a spike in plea bargains shortly before the simultaneous release took place.<sup>58</sup> Eighteen individuals interviewed by OHCHR stated they were offered plea bargains in exchange for being included in the simultaneous release process.

42. At least twenty six individuals who had been on trial for over a year were promptly convicted within two weeks prior to the release. If their conviction was a precondition for inclusion in the simultaneous release, this would raise concern that they have been effectively denied access to justice.

43. In 58 cases of individuals, courts lifted the custodial measures days before the simultaneous release, despite the practice of mandatory pre-trial detention of conflict-related detainees under article 176(5) and the increased risk of flight (since they were meant to be transferred to armed-group-controlled territory). This creates the appearance that courts were influenced by prosecutors and the SBU (which was in charge of the simultaneous release).

44. Individuals who were released but whose trials were not completed or whose cases were not closed<sup>59</sup> may risk re-arrest should they return to government-controlled territory, or they may be tried and convicted *in absentia*.<sup>60</sup> At least four individuals received suspended sentences with

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against civilians when Druzhkivka was under the armed group's control. He was initially charged and tried only under art. 260 of the Criminal Code (membership in illegal armed formation), however due to victims' appeals, the charges were requalified and the perpetrator was convicted and sentenced to 12 years in prison by Druzhkivka City Court of Donetsk region. On 5 February, local authorities informed the victims they should not expect to receive compensation for damages awarded by the court since the perpetrator was released under the simultaneous release framework.

<sup>54</sup> OHCHR is aware of at least ten individuals transferred to armed-group-controlled territory under the simultaneous release framework, who complained of human rights violations in relation to their detention and subsequent prosecution and confirmed their intention to pursue cases against the perpetrators.

<sup>55</sup> Through trial monitoring, OHCHR documented that some detainees spend years in detention awaiting trial under art. 176, despite the failure of prosecution to establish the necessity of imposing detention on remand on conflict-related detainees. Further, OHCHR noted that in some cases, detainees who agreed to be released and transferred to armed-group-controlled territory had no family in or links to that territory.

<sup>56</sup> Through trial monitoring, OHCHR documented that some detainees spent years in detention awaiting trial under art. 176, despite the failure of prosecution to establish the necessity of imposing detention on remand on conflict-related detainees. Further, OHCHR noted that in some cases, detainees who agreed to be released and transferred to armed-group-controlled territory had no family in or links to that territory.

<sup>57</sup> Courts do not examine the merits of a case when parties agree to a plea bargain, but suspend the trial once the defendant pleads guilty. The court practice is to only examine the "voluntariness" of the plea bargain agreement and grounds its decision on the statements ("confession") of the defendant. However, according to criminal procedure law, the court cannot ground its decision exclusively on the statements (confession) of the defendant.

<sup>58</sup> At least 13 individuals pled guilty and were convicted to prison terms which coincided or exceeded duration of their pre-trial detention.

<sup>59</sup> OHCHR has identified at least 58 persons who were released from pre-trial detention however whose trials continue to be pending.

<sup>60</sup> OHCHR notes that the existing procedure of trials *in absentia* does not correspond to ECtHR case law, in particular due to the lack of provision for a full retrial with the defendant's present. OHCHR further notes that courts issued rulings on

a probation period during which they are obliged to report to law enforcement. In addition, they are deprived of the possibility to pursue remedies for alleged human rights violations perpetrated against them by state actors. The ability to travel across the contact line is of importance for both those who received suspended sentence and those with pending trials. However, many individuals did not have their identity documents returned to them upon release.<sup>61</sup> Others may face restrictions on their movement imposed by armed groups.

#### *Territory controlled by armed groups*

45. Interviews of individuals detained by armed groups and released to government-controlled territory provided further insight into the system of ‘prosecution’ in the two ‘republics’.<sup>62</sup> ‘Trials’ in conflict-related cases are reportedly carried out in closed sessions, allegedly in order not to disclose ‘classified information’.<sup>63</sup>

46. Interviews with Ukrainian soldiers and civilians believed to be affiliated with Government forces,<sup>64</sup> who were detained in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ that their cases were often not subject to any review. OHCHR documented 19 conflict-related cases where persons were subjected to indefinite detention<sup>65</sup> in breach of international human rights and international humanitarian law.<sup>66</sup> Those Ukrainian soldiers and civilians detained for over two years reported no periodic review regarding the necessity or appropriateness of their continued detention, nor were ‘charges’ brought against them during this period.<sup>67</sup> Ukrainian soldiers, detained in Donetsk for a period of up to three years were approached by ‘prosecution’ in September 2017 only - a few months before the simultaneous release - when their detention was formalized by a ‘measure of restraint’ of custodial detention imposed by the ‘prosecutor general’s office’.

47. Pre-trial detention proceedings of individuals ‘charged’ with espionage or other conflict-related crimes by ‘military tribunals’ in territory controlled by ‘Donetsk people’s republic’ appear to have followed a pro-forma basis.<sup>68</sup> Furthermore, even such perfunctory review of legality of detention was delayed. Time spent in *incommunicado* detention, to which many were reportedly subjected prior to acknowledged ‘arrest’, seems not to have been taken into account by a ‘military tribunal’ when calculating the ‘sentence’.<sup>69</sup> Such practice contributed to unacknowledged detention during which individuals were exposed to torture, including with a view to force self-incriminating statements which served as basis for their subsequent

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compelled appearance (привід) in relation to at least 20 released individuals and at least five other individuals have been put on a wanted list.

<sup>61</sup> Out of 160 individuals released and transferred to ‘Donetsk people’s republic’, 62 did not have their passports, 25 had no documents at all, and 101 did not receive certificates of release which raises concerns that the legal proceedings against them have not been closed. OHCHR does not have information regarding persons transferred to ‘Luhansk people’s republic’.

<sup>62</sup> OHCHR continued to have limited access to monitor ‘trials’ of individuals ‘accused’ of conflict-related offences in ‘courts’ in Donetsk. The ‘trials’ were held behind closed doors and OHCHR was excluded from all but the first and last ‘hearings’.

<sup>63</sup> OHCHR interview, 21 November 2017. OHCHR notes that “publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large” (HRC General comment no. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, para. 28).

<sup>64</sup> They are mostly ‘charged’ with espionage under art. 321 of the ‘criminal code’ of ‘Donetsk people’s republic’.

<sup>65</sup> At least two civilians detained by the armed groups of ‘Donetsk people’s republic’ stated that they have been detained without being formally ‘charged’. At least 17 interviewed Ukrainian soldiers detained in both ‘republics’ have also been detained without any ‘charges’ brought against them.

<sup>66</sup> Initial interviews, 28 December 2017, 11 and 14 January 2018.

<sup>67</sup> The armed groups of ‘Donetsk people’s republic’ formally initiated ‘investigation’ against at least 10 Ukrainian soldiers interviewed by OHCHR under article 230 (‘aiding and abetting terrorism’) of their ‘criminal code’ only in September 2017. One interviewee told OHCHR that ‘investigation’ against captured Ukrainian soldiers was merely a formality that would enable their release. The armed groups of ‘Luhansk people’s republic’ have not charged or tried none of six captured soldiers interviewed by OHCHR irrespective of the duration of their detention.

<sup>68</sup> For example, on 27 November 2017, the ‘military tribunal’ of ‘Donetsk people’s republic’ ‘ruled’ to extend detention pending ‘trial’ of a defendant with the substantiation going beyond the ‘prosecutor’s’ arguments. The ‘judge’ noted that since the ‘hearings on the merits’ had not started, it was difficult to assess to what extent the ‘accused’ facilitated the ‘investigation’ and therefore, there were no grounds to change his ‘measure of restraint’. OHCHR trial monitoring, 27 November 2017.

<sup>69</sup> OHCHR interviews, 4 and 5 January 2017.

‘prosecution’.<sup>70</sup> In at least two cases, ‘courts’ disregarded detainees’ complaints regarding such human rights violations they had suffered.<sup>71</sup>

48. Accounts by conflict-related detainees suggest that their degree of culpability in the imputed ‘crime’ was already considered established at the time of their ‘arrest’, amounting to a presumption of guilt. Subsequent ‘investigations’ and ‘trials’ seem to serve merely to create a veneer of legality to the ‘prosecution’ of individuals believed to be associated with Ukrainian military or security forces.<sup>72</sup>

49. Released detainees informed OHCHR that some appointed lawyers did not make any real effort to present their case. The account of at least one victim suggests that he was intimidated by ‘MGB’ of ‘Donetsk people’s republic’ in the presence of the appointed lawyer, with no reaction from the latter.<sup>73</sup> Some lawyers assigned to detainees advised that only ‘convicts’ were eligible for the simultaneous release under the Minsk agreements, leading many detainees to plead guilty even though they had never admitted to committing the charged offences. At the same time, detainees released from ‘Donetsk people’s republic’ who had been ‘prosecuted’ noted that lawyers facilitated contacts with their families.

50. Deprived of access to the Ukrainian judiciary and of effective ‘legal representation’ in proceedings before ‘courts’ in armed-group-controlled territory,<sup>74</sup> and fearing repercussions for withdrawing statements given under duress,<sup>75</sup> conflict-related detainees have stood ‘trials’ with no chance of presenting their defence.<sup>76</sup> Conflict-related ‘trials’ were heard by a ‘military tribunal’ as a chamber of the ‘supreme court’ of ‘Donetsk people’s republic’, whose ‘verdicts’ entered into force immediately with limited opportunities to ‘appeal’.

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<sup>70</sup> Torture is prohibited under both IHL and IHRL. Article 14.3(g), ICCPR; Articles 75.4(f), Protocols I and art. 6.2(f), Protocol II Additional to the Geneva Conventions of 12 August 1949.

<sup>71</sup> HRMMU interviews 4-5 January 2018 and 18 January 2018.

<sup>72</sup> Accounts of at least 18 civilians interviewed by OHCHR after their release on 27 December 2017 suggest that they have been detained due to alleged links with Ukrainian military and/or security forces.

<sup>73</sup> OHCHR interview, 16 January 2018.

<sup>74</sup> Of the 18 conflict-related detainees interviewed by OHCHR, none were provided with a lawyer immediately upon being detained. One detainee told OHCHR that he never had a confidential meeting with his assigned lawyer, who only signed documents and was inactive during the ‘trial’ (OHCHR interview, 11 January 2018). In some cases, assigned lawyers witnessed intimidation of their client (conflict-related detainee), however, did nothing (OHCHR interview, 15 January 2018). Lawyers of conflict-related detainees refrain from challenging legality of detention of their client during ‘pre-trial’ and ‘trial’ stages (OHCHR trial monitoring, 27 November 2017). OHCHR is concerned that lawyers from government-controlled territory are not allowed to participate in the ‘proceedings’.

<sup>75</sup> At least seven individuals reportedly tried to present their case but then changed their mind fearing repercussions from the ‘MGB’. Others accepted the ‘charges’ being promised to be included in the simultaneous release.

<sup>76</sup> These conclusions are based on interviews of ‘convicted’ detainees released on 27 December 2017, due to OHCHR’s lack of access to ‘court hearings’.





# Annex 780

U.N. Commission on Human Rights, Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, U.N. Doc. E/CN.4/Sub.2/AC.5/2005/2 (2005)





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**COMMENTARY OF THE WORKING GROUP ON MINORITIES TO  
THE UNITED NATIONS DECLARATION ON THE RIGHTS OF  
PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS  
AND LINGUISTIC MINORITIES**

**Note by the Secretary-General**

1. The Working Group on Minorities, at its tenth session, adopted the commentary on the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, originally drawn up by its former Chairperson, Mr. Asbjørn Eide, and contained in document E/CN.4/AC.5/2001/2, as a commentary of the Working Group as a whole.
2. The text of the commentary of the Working Group as a whole is attached in the form of a pamphlet for reproduction in the United Nations Guide for Minorities.

## PART I

### FINAL TEXT OF THE COMMENTARY TO THE UNITED NATIONS DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES OF THE WORKING GROUP ON MINORITIES

#### I. INTRODUCTION

1. In 1992, in its resolution 47/135, the United Nations General Assembly proclaimed the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Assembly requested that intensified efforts be made to disseminate information on the Declaration and promote understanding thereof.

2. This commentary has been prepared in the context of the Working Group on Minorities of the Sub-Commission on the Promotion and Protection of Human Rights. It is intended to serve as a guide to the understanding and application of the Declaration. The first draft, prepared by **Asbjørn Eide as Chairperson-Rapporteur**, was submitted to the Working Group on Minorities for discussion in 1998<sup>1</sup> and was subsequently circulated to Governments, intergovernmental and non-governmental organizations and individual experts for comments. A compilation of those comments was submitted to the Working Group at its fifth session in 1999.<sup>2</sup> Additional comments were made during that session and at the sixth session in 2000.<sup>3</sup> The Working Group requested Mr. Eide on that basis to finalize the Commentary and to ensure its publication in the planned United Nations manual on minorities. The present final text therefore draws on written work or oral contributions by many experts, Governments and international and non-governmental organizations, and thus takes into account a broad body of opinion. **The Working Group on Minorities, at its tenth session adopted the Commentary on the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities originally drawn up by its former Chairperson, Asbjørn Eide, and contained in document E/CN.4/AC.5/2001/2, as a Commentary of the Working Group as a whole.**

#### II. PURPOSES OF THE DECLARATION: ADVANCING HUMAN RIGHTS AND THE PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS

3. The purposes of the Declaration, as set out in the General Assembly resolution 47/135 and the preamble to the Declaration, is to promote more effective implementation of the human rights of persons belonging to minorities and more generally to contribute to the realization of the principles of the Charter of the United Nations and of the human rights instruments adopted at the universal or regional level. The Declaration on Minorities is inspired by article 27 of the International Covenant on Civil and Political Rights. The General Assembly holds that the promotion and protection of the rights of minorities contribute to the political and social stability of the States in which minorities live and contribute to the strengthening of friendship and cooperation among peoples and States.

4. The Declaration builds on and adds to the rights contained in the International Bill of Human Rights and other human rights instruments by strengthening and clarifying those rights which make it possible for persons belonging to minorities to preserve and develop their group identity. The human rights set out in the Universal Declaration of Human Rights must at all times be respected in the process, including the principle of non-discrimination between individuals. The State is obliged to respect and ensure to every person within its territory and subject to its jurisdiction, without discrimination on any ground, including race, ethnicity, religion or national origin, the rights contained in the instruments to which that State is a party.

5. It is in the light of these purposes and principles that the articles of the Declaration on Minorities must be interpreted.

### **III. INTERPRETATION OF AND COMMENTS ON THE TITLE AND THE INDIVIDUAL ARTICLES**

#### **THE TITLE AND SCOPE OF THE DECLARATION**

##### **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**

6. The beneficiaries of the rights under article 27 of the International Covenant on Civil and Political Rights, which has inspired the Declaration, are persons belonging to “ethnic, religious or linguistic minorities”. The Declaration on Minorities adds the term “national minorities”. That addition does not extend the overall scope of application beyond the groups already covered by article 27. There is hardly any national minority, however defined, that is not also an ethnic or linguistic minority. A relevant question, however, would be whether the title indicates that the Declaration covers four different categories of minorities, whose rights have somewhat different content and strength. Persons belonging to groups defined solely as religious minorities might be held to have only those special minority rights which relate to the profession and practice of their religion. Persons belonging to groups solely defined as linguistic minorities might similarly be held to have only those special minority rights which are related to education and use of their language. Persons who belong to groups defined as ethnic would have more extensive rights relating to the preservation and development of other aspects of their culture also, since ethnicity is generally defined by a broad conception of culture, including a way of life. The category of national minority would then have still stronger rights relating not only to their culture but to the preservation and development of their national identity.

7. The Declaration does not, in its substantive provisions, make such distinctions. This does not exclude the possibility that the needs of the different categories of minorities could be taken into account in the interpretation and application of the various provisions.

8. Regional European instruments on minority rights use only the concept “national minorities” and do not refer to “ethnic, religious or linguistic minorities”. The most important among them are the instruments and documents of the Council of Europe<sup>4</sup> and the Organization for Security and Cooperation in Europe.<sup>5</sup> When applying those instruments it is important to

define “national minority”, but the same problem does not arise for the United Nations Declaration on Minorities: even if a group is held not to constitute a national minority, it can still be an ethnic, religious or linguistic minority and therefore be covered by the Declaration.

9. This can be important in several respects. In relation to the European regional instruments, some States argue that “national minorities” only comprise groups composed of citizens of the State. Even if that is accepted (at present it is a matter of some controversy), it would not apply to the United Nations Declaration on Minorities because it has a much wider scope than “national minorities”. As the Declaration is inspired by article 27 of the International Covenant on Civil and Political Rights, it may be assumed that the Declaration has at least as wide a scope as that article. In conformity with article 2 of the Covenant, States parties are under an obligation to respect and ensure the application of article 27 to everyone within its territory and under its jurisdiction, whether the person - or group of persons - are citizens of the country or not. This is also the view expressed by the Human Rights Committee in paragraphs 5.1 and 5.2 of its general comment No. 23 (fiftieth session, 1994). Persons who are not (yet) citizens of the country in which they reside can form part of or belong to a minority in that country.

10. While citizenship as such should not be a distinguishing criterion that excludes some persons or groups from enjoying minority rights under the Declaration, other factors can be relevant in distinguishing between the rights that can be demanded by different minorities. Those who live compactly together in a part of the State territory may be entitled to rights regarding the use of language, and street and place names which are different from those who are dispersed, and may in some circumstances be entitled to some kind of autonomy. Those who have been established for a long time on the territory may have stronger rights than those who have recently arrived.

11. The best approach appears to be to avoid making an absolute distinction between “new” and “old” minorities by excluding the former and including the latter, but to recognize that in the application of the Declaration the “old” minorities have stronger entitlements than the “new”.

12. The word “minority” can sometimes be misleading in itself. Outside Europe, and particularly in Africa, countries are often composed of a large number of groups, none of which make up a majority.

13. The relevant factors differ significantly between States. What is required is to ensure appropriate rights for members of all groups and to develop good governance in heterogeneous societies. By good governance is here understood legal, administrative and territorial arrangements which allow for peaceful and constructive group accommodation based on equality in dignity and rights for all and which allows for the necessary pluralism to enable the persons belonging to the different groups to preserve and develop their identity.

14. The Declaration sets out rights of persons belonging to minorities mainly in article 2 and spells out the duties of the States in which they exist in articles 1, 4 and 5. While the rights are consistently set out as rights of individuals, the duties of States are in part formulated as duties



towards minorities as groups. This is most clearly expressed in article 1 (see below). While only individuals can claim the rights, the State cannot fully implement them without ensuring adequate conditions for the existence and identity of the group as a whole.

15. The rights of persons belonging to minorities differ from the rights of peoples to self-determination. The rights of persons belonging to minorities are individual rights, even if they in most cases can only be enjoyed in community with others. The rights of peoples, on the other hand, are collective rights. While the right of peoples to self-determination is well established under international law, in particular by common article 1 of the two International Covenants on Human Rights, it does not apply to persons belonging to minorities. This does not exclude the possibility that persons belonging to an ethnic or national group may in some contexts legitimately make claims based on minority rights and, in another context, when acting as a group, can make claims based on the right of a people to self-determination.

16. Within the United Nations and also within the Organization of American States, a distinction is drawn between the rights of persons belonging to minorities and those of indigenous peoples. The latter have particular concerns which are not properly addressed in the Declaration on Minorities. The main instrument at the global level relating to indigenous peoples is the Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) of the International Labour Organization (ILO), which has been ratified by only a small number of States. The draft declaration on the rights of indigenous peoples, adopted by the Working Group on Indigenous Populations and transmitted by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1993 to the Commission on Human Rights, is still under consideration by the Commission.

17. Persons belonging to indigenous peoples are of course fully entitled, if they so wish, to claim the rights contained in the instruments on minorities. This has repeatedly been done under article 27 of the International Covenant on Civil and Political Rights. Persons belonging to indigenous peoples have made several submissions under the Optional Protocol to that Covenant.

18. That protocol does not generally make it possible to claim the group-oriented rights sought by indigenous peoples, but some modification of that point follows from general comment No. 23 of the Human Rights Committee (fiftieth session, 1994). The Committee noted that, especially in the case of indigenous peoples, the preservation of their use of land resources can become an essential element in the right of persons belonging to such minorities to exercise their cultural rights (para. 7). Since the indigenous peoples very often have collective rights to land, individual members of the group may be in a position to make claims not only for themselves, but for the indigenous group as a whole.

19. Some see a link between the right of persons belonging to minorities to effective political participation and the right of peoples to self-determination. The issue of effective participation is addressed below in the comments on articles 2.2 and 2.3. If participation is denied to a minority and its members, this might in some cases give rise to a legitimate claim to self-determination. If the group claims a right to self-determination and challenges the territorial integrity of the State, it would have to claim to be a people, and that claim would have to be based on article 1 common to the Covenants and would therefore fall outside the Declaration on Minorities. This

follows also from article 8.4 of the Declaration (see below). The same would apply in other contexts where the collective right to self-determination is claimed. The Declaration neither limits nor extends the rights to self-determination that peoples have under other parts of international law.<sup>6</sup>

20. While the Declaration does not provide group rights to self-determination, the duties of the State to protect the identity of minorities and to ensure their effective participation might in some cases be best implemented by arrangements for autonomy in regard to religious, linguistic or broader cultural matters. Good practices of that kind can be found in many States. The autonomy can be territorial, cultural and local, and can be more or less extensive. Such autonomy can be organized and managed by associations set up by persons belonging to minorities in accordance with article 2.4. But the Declaration does not make it a requirement for States to establish such autonomy. In some cases, positive measures of integration (but not assimilation) can best serve the protection of minorities.

## ARTICLE 1

### **1.1 States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.**

21. The relationship between the State and its minorities has in the past taken five different forms: elimination, assimilation, toleration, protection and promotion. Under present international law, elimination is clearly illegal. The Declaration is based on the consideration that forced assimilation is unacceptable. While a degree of integration is required in every national society in order to make it possible for the State to respect and ensure human rights to every person within its territory without discrimination, the protection of minorities is intended to ensure that integration does not become unwanted assimilation or undermine the group identity of persons living on the territory of the State.

22. Integration differs from assimilation in that while it develops and maintains a common domain where equal treatment and a common rule of law prevail, it also allows for pluralism. The areas of pluralism covered by the Declaration are culture, language and religion.

23. Minority protection is based on four requirements: protection of the existence, non-exclusion, non-discrimination and non-assimilation of the groups concerned.

24. The protection of the existence of minorities includes their physical existence, their continued existence on the territories on which they live and their continued access to the material resources required to continue their existence on those territories. The minorities shall neither be physically excluded from the territory nor be excluded from access to the resources required for their livelihood. The right to existence in its physical sense is sustained by the Convention on the Prevention and Punishment of the Crime of Genocide, which codified customary law in 1948. Forced population transfers intended to move persons belonging to minorities away from the territory on which they live, or with that effect, would constitute

serious breaches of contemporary international standards, including the Rome Statute of the International Criminal Court. But protection of their existence goes beyond the duty not to destroy or deliberately weaken minority groups. It also requires respect for and protection of their religious and cultural heritage, essential to their group identity, including buildings and sites such as libraries, churches, mosques, temples and synagogues.

25. The second requirement is that minorities shall not be excluded from the national society. Apartheid was the extreme version of exclusion of different groups from equal participation in the national society as a whole. The Declaration on Minorities repeatedly underlines the rights of all groups, small as well as large, to participate effectively in society (arts. 2.2 and 2.3).

26. The third requirement is non-discrimination, which is a general principle of human rights law and elaborated by, inter alia, the International Convention on the Elimination of All Forms of Racial Discrimination, which also covers discrimination on ethnic grounds. The Declaration on Minorities elaborates the principle of non-discrimination in its provision that the exercise of their rights as persons belonging to minorities shall not justify any discrimination in any other field, and that no disadvantage shall result from the exercise or non-exercise of these rights (art. 3).

27. The fourth requirement is non-assimilation and its corollary, which is to protect and promote conditions for the group identity of minorities. Many recent international instruments use the term “identity”, which expresses a clear trend towards the protection and promotion of cultural diversity, both internationally and internally within States. Relevant provisions are articles 29 and 30 of the Convention on the Rights of the Child, article 31 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 2.2 (b) of ILO Convention No. 169, which refers to respect for the social and cultural identity, customs and traditions and institutions of indigenous peoples, as well as provisions of regional instruments such as those of the Organization on Security and Cooperation in Europe, including its 1990 Copenhagen Conference on the Human Dimension and its 1991 Geneva Meeting of Experts on National Minorities. Another recent instrument in the same direction is the European Framework Convention for the Protection of National Minorities.

28. Minority group identity requires not only tolerance but a positive attitude towards cultural pluralism on the part of the State and the larger society. Not only acceptance but also respect for the distinctive characteristics and contribution of minorities to the life of the national society as a whole are required. Protection of their identity means not only that the State should abstain from policies which have the purpose or effect of assimilating minorities into the dominant culture, but also that it should protect them against activities by third parties which have an assimilatory effect. The language and educational policies of the State concerned are crucial in this regard. Denying minorities the possibility of learning their own language and of receiving instruction in their own language, or excluding from their education the transmission of knowledge about their own culture, history, tradition and language, would be a violation of the obligation to protect their identity.

29. Promotion of the identity of minorities requires special measures to facilitate the maintenance, reproduction and further development of their culture. Cultures are not static; minorities should be given the opportunity to develop their own culture in the context of an ongoing process. That process should be an interaction between the persons belonging to the minority themselves, between the minority and the State, and between the minority and the wider national society. The measures required to achieve this purpose are set out in greater detail in article 4 of the Declaration.

## **1.2 States shall adopt appropriate legislative and other measures to achieve those ends.**

30. Article 1.2 requires “appropriate legislative and other measures”. Legislation is needed and it must be complemented by other measures in order to ensure that article 1 can be effectively implemented. Both process and content are important here. In terms of process, it is essential that the State consult the minorities on what would constitute appropriate measures. This follows also from article 2.3 of the Declaration. Different minorities may have different needs that must be taken into account. Any differences in policy, however, must be based on objective and reasonable grounds in order to avoid discrimination.

31. “Other measures” include, but are not limited to, judicial, administrative, promotional and educational measures.

32. In general terms, the content of the measures which have to be adopted are set out in the other provisions of the Declaration, particularly articles 2 and 4, which will be discussed below. One set of measures stems directly from article 1.1: States must adopt laws protecting against acts or incitement to acts which physically threaten the existence of groups or threaten their identity. This obligation also follows from the International Convention on the Elimination of All Forms of Racial Discrimination. Under article 4 of that Convention, States are required to adopt legislative measures intended to protect groups against hatred and violence on racial or ethnic grounds. A comparable obligation is contained in article 20 of the International Covenant on Civil and Political Rights.

## **ARTICLE 2**

### **2.1 Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.**

33. Article 27 of the International Covenant on Civil and Political Rights has almost the same language, but the Declaration is more explicit in requiring positive action. Article 27 of the Covenant requires that persons belonging to minorities “shall not be denied the right to ...”, whereas article 2 of the Declaration uses the positive expression “have the right to ...”. Article 27 has been interpreted by the Human Rights Committee as requiring more than mere passive non-interference.<sup>7</sup> The Declaration on Minorities makes it clear that

these rights often require action, including protective measures and encouragement of conditions for the promotion of their identity (art. 1) and specified, active measures by the State (art. 4).

34. The words “freely and without interference or any form of discrimination” at the end of article 2.1 show that it is not enough for the State to abstain from interference or discrimination. It must also ensure that individuals and organizations of the larger society do not interfere or discriminate.

## **2.2 Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.**

35. The right to participate in all aspects of the life of the larger national society is essential, both in order for persons belonging to minorities to promote their interests and values and to create an integrated but pluralist society based on tolerance and dialogue. By their participation in all forms of public life in their country, they are able both to shape their own destinies and to contribute to political change in the larger society.

36. The words “public life” must be understood in the same broad sense as in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, though much is covered already by the preceding words “cultural, religious, social and economic”. Included in “public life” are, among other rights, rights relating to election and to being elected, the holding of public office, and other political and administrative domains.

37. Participation can be ensured in many ways, including the use of minority associations (see also article 2.4), membership in other associations, and through their free contacts both inside the State and across borders (see article 2.5).

## **2.3 Persons belonging to minorities have the right to participate effectively in decisions on the national, and where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.**

38. While article 2.2 deals generally with the right to participation in all aspects of the public life of a society, article 2.3 deals specifically with the right of persons belonging to minorities to effective participation “in decisions ... concerning the minority to which they belong or the regions in which they live”. As such decisions have a particular impact on persons belonging to minorities, the emphasis on effective participation is here of particular importance. Representatives of persons belonging to minorities should be involved beginning at the initial stages of decision-making. Experience has shown that it is of little use to involve them only at the final stages where there is very little room for compromise. Minorities should be involved at the local, national and international levels in the formulation, adoption, implementation and monitoring of standards and policies affecting them.

39. In 1991, the Conference on Security and Cooperation in Europe held a Meeting of Experts on National Minorities in Geneva. The States there assembled noted approaches used with positive results in some of the participating States. These included advisory and

decision-making bodies - in particular with regard to education, culture and religion - on which minorities were represented. Also mentioned were assemblies for national minority affairs, local and autonomous administration, as well as autonomy on a territorial basis, including the existence of consultative, legislative and executive bodies chosen through free and periodic elections. Reference was further made to forms of self-administration by a national minority of aspects concerning its identity in situations where autonomy on a territorial basis did not apply, and decentralized or local forms of government.<sup>8</sup>

40. In early May 1999, a group of independent experts met in Lund, Sweden, to draw up a set of recommendations on the effective participation of national minorities in public life. The recommendations are built upon fundamental principles and rules of international law, such as respect for human dignity, equal rights and non-discrimination, as they affect the rights of national minorities to participate in public life and to enjoy other political rights.<sup>9</sup> At its fifth session, at the end of May 1999, the Working Group on Minorities adopted a set of recommendations on the same topic.<sup>10</sup>

41. The following commentary draws extensively on these recommendations. The purpose is not to set out only the minimum rights under article 2.3 of persons belonging to minorities, but also to provide a list of good practices which may be of use to Governments and minorities in finding appropriate solutions to issues confronting them.

42. Effective participation provides channels for consultation between and among minorities and Governments. It can serve as a means of dispute resolution and sustain diversity as a condition for the dynamic stability of a society. The number of persons belonging to minorities is by definition too small for them to determine the outcome of decisions in majoritarian democracy. They must as a minimum have the right to have their opinions heard and fully taken into account before decisions which concern them are adopted. A wide range of constitutional and political measures are used around the world to provide access for minorities to decision-making.

43. The variety in the composition, needs and aspirations of different types of minority groups requires identification and adoption of the most appropriate ways to create conditions for effective participation in each case. The mechanisms chosen have to take into account whether the persons belonging to the minority in question live dispersed or in compactly settled groups, whether the minority is small or large, or an old or a new minority. Religious minorities may also require different types or contexts of participation than ethnic or national minorities. It should be noted, however, that in some cases religion and ethnicity coincide.

44. Effective participation requires representation in legislative, administrative and advisory bodies and more generally in public life. Persons belonging to minorities, like all others, are entitled to assemble and to form their associations and thereby to aggregate their interests and values to make the greatest possible impact on national and regional decision-making. They are entitled not only to set up and make use of ethnic, cultural and religious associations and societies (see commentary to article 2.4 below), but also to establish political parties, should they



so wish. In a well-integrated society, however, many persons belonging to minorities often prefer to be members of or vote for parties which are not organized on ethnic lines but are sensitive to the concerns of the minorities.

45. Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation. Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities. Some forms of preference voting, where voters rank candidates in order of choice, may also facilitate minority representation and promote inter-communal cooperation.

46. Decentralization of powers based on the principle of subsidiarity, whether called self-government or devolved power, and whether the arrangements are symmetrical or asymmetrical, would increase the chances of minorities to participate in the exercise of authority over matters affecting themselves and the entire society in which they live.

47. Public institutions should not, however, be based on ethnic or religious criteria. Governments at local, regional and national levels should recognize the role of multiple identities in contributing to open communities and in establishing useful distinctions between public institutional structures and cultural identities.

48. States should also establish advisory or consultative bodies involving minorities within appropriate institutional frameworks. Such bodies or round tables should be attributed political weight and effectively consulted on issues affecting the minority population.

49. There should be equal access to public sector employment across the various ethnic, linguistic and religious communities.

50. Citizenship remains an important condition for full and effective participation. Barriers to the acquisition of citizenship for members of minorities should be reduced. Forms of participation by resident non-citizens should also be developed, including local voting rights after a certain period of residence and inclusion of elected non-citizen observers in municipal, regional and national legislative and decision-making assemblies.

#### **2.4 Persons belonging to minorities have the right to establish and maintain their own associations.**

51. Persons belonging to minorities are entitled, in the same way as other members of society, to set up any association they may want,<sup>11</sup> including educational or religious institutions, but their right to association is not limited to concerns related to their cultural, linguistic or religious identity. The right to associate of persons belonging to minorities extends both to national and to international associations. Their right to form or join associations can be limited only by law and the limitations can only be those which apply to associations of majorities: limitations must be those necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of rights and freedoms.

**2.5 Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.**

52. The right to contacts has three facets, permitting intra-minority contacts, inter-minority contacts, and transfrontier contacts. The right to intra-minority contacts is inherent in the right of association. Inter-minority contacts make it possible for persons belonging to minorities to share experience and information and to develop a common minority platform within the State. The right to transfrontier contacts constitutes the major innovation of the Declaration, and serves in part to overcome some of the negative consequences of the often unavoidable division of ethnic groups by international frontiers. Such contacts must be “free”, but also “peaceful”. The latter limitation has two aspects: contacts must not involve the use of violent means or preparation of the use of such means; and the aims must be in conformity with the Declaration and generally with the purposes and principles of the Charter of the United Nations, as set out also in article 8.4 of the Declaration.

### **ARTICLE 3**

**3.1 Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.**

53. The main point here is that persons can exercise their rights both individually and collectively, the most important aspect being the collective exercise of their rights, be it through associations, cultural manifestations or educational institutions, or in any other way. That they can exercise their rights in community with other members of the group applies not only to the rights contained in the Declaration, but any human right. They shall not be subject to any discrimination as a consequence of exercising their rights. This principle is important, because Governments or persons belonging to majorities are often tolerant of persons of other national or ethnic origins until such time as the latter assert their own identity, language and traditions. It is often only when they assert their rights as persons belonging to a group that discrimination or persecution starts. Article 3.1 makes it clear that they shall not be subjected to discrimination for manifesting their group identity.

**3.2 No disadvantage shall result for any person belonging to a minority as a consequence of the exercise or non-exercise of the rights set forth in the present Declaration.**

54. While article 3.1 provides that persons belonging to minorities shall not be subjected to discrimination for exercising, individually or collectively, their minority rights, article 3.2 makes it clear that they shall also not be disadvantaged in any way for choosing not to belong to the minority concerned. This provision is directed both towards the State and the agencies of the minority group. The State cannot impose a particular ethnic identity on a given person (which is what the apartheid regime in South Africa sought to do) by the use of negative sanctions against

those who do not want to be part of that group; nor can persons belonging to minorities subject to any disadvantage persons who on objective criteria may be held to form part of their group but who subjectively do not want to belong to it. While, under conventional law, responsibility for human rights compliance normally rests with the State, the Declaration in this respect implies duties - at least morally - for persons representing minorities. Furthermore, States would be under a duty to prohibit the taking of measures by minorities to impose their particular rules on any person who did not want to be part of the minority concerned and therefore did not want to exercise her or his rights.

## ARTICLE 4

### **4.1 States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.**

55. Article 4 sets out the State measures that should be taken in order to achieve the purpose of the Declaration and is its most important part, together with article 2, which sets out the rights. While States are generally obliged under international law to ensure that all members of society may exercise their human rights, States must give particular attention to the human rights situation of persons belonging to minorities because of the special problems they confront. They are often in a vulnerable position and have, in the past, often been subjected to discrimination. In order to ensure equality in fact, it may under some circumstances be necessary for the State to take transitional affirmative action, as provided for in article 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination, which is applicable to ethnic as well as racial minorities, provided these measures do not disproportionately affect the rights of others.

### **4.2 States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.**

56. This paragraph of article 4 calls for more than mere tolerance of the manifestation of different cultures within a State. The creation of favourable conditions requires active measures by the State. The nature of those measures depends on the situation of the minority concerned, but should be guided by the purpose set forth in article 4.2, which is twofold. On the one hand, individual members of the minority shall be enabled to express the traditional characteristics of the group, which may include a right to use their traditional attire and to make their living in their own cultural ways. On the other hand, they shall be enabled, in community with other persons belonging to the group, to develop their culture, language and traditions. These measures may require economic resources from the State. In the same way as the State provides funding for the development of the culture and language of the majority, it shall provide resources for similar activities of the minority.

57. The words "except where specific practices are in violation of national law and contrary to international standards" require some comment. The meaning of the words "contrary to international standards" is simple enough. In particular, it is intended that the practices must not

be contrary to international human rights standards. This, however, should apply to practices of both majorities and minorities. Cultural or religious practices which violate human rights law should be outlawed for everyone, not only for minorities. The qualification contained in the final words of article 4.2 is therefore only a specific application of a universal principle applicable to everyone.

58. The first part of the phrase “in violation of national law” raises somewhat more difficult questions. It is clear that the State is not free to adopt whatever prohibitions against minorities’ cultural practices that it wants. If that were the case, the Declaration, and article 4.2 in particular, would be nearly empty of content. What is intended, however, is to respect the margin of appreciation which any State must have regarding which practices it wants to prohibit, taking into account the particular conditions prevailing in that country. As long as the prohibitions are based on reasonable and objective grounds, they must be respected.

**4.3 States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.**

59. Language is among the most important carriers of group identity. In line with the general requirement in article 1 that States shall encourage the promotion of the linguistic identity of the minority concerned, measures are required for persons belonging to minorities to learn their mother tongue (which is a minimum) or to have instruction in their mother tongue (which goes some steps further).

60. The steps required in these regards depend on a number of variable factors. Of significance will be the size of the group and the nature of its settlement, i.e. whether it lives compactly together or is dispersed throughout the country. Also relevant will be whether it is a long-established minority or a new minority composed of recent immigrants, whether or not they have obtained citizenship.

61. In cases where the language of the minority is a territorial language traditionally spoken and used by many in a region of the country, States should to the maximum of their available resources ensure that linguistic identity can be preserved. Pre-school and primary school education should ideally in such cases be in the child’s own language, i.e. the minority language spoken at home. Since persons belonging to minorities, like those belonging to majorities, have a duty to integrate into the wider national society, they need also to learn the official or State language(s). The official language(s) should gradually be introduced at later stages. Where there is a large linguistic minority within the country, the language of the minority is sometimes also an official language of the State concerned.

62. At the European regional level, educational rights relating to minority languages are developed at greater length in the European Charter for Regional or Minority Languages, adopted by the Council of Europe. On this subject, a group of experts elaborated the Hague Recommendations regarding the Education Rights of National Minorities (October 1996), prepared under the auspices of the Foundation on Inter-Ethnic Relations.

63. In regard to non-territorial languages spoken traditionally by a minority within a country, but which are not associated with a particular region of that country, a uniform solution is more difficult to find. The principles stated above should be applied where appropriate, but where the persons belonging to the minority live dispersed, with only a few persons in each particular place, their children need to learn the language of the surrounding environment more fully at an earlier stage. Nevertheless, they should always also have an opportunity to learn their mother tongue. In this regard, persons belonging to minorities have a right, like others, to establish their private institutions, where the minority language is the main language of instruction. However, the State is entitled to require that the State language also be taught. One question to be addressed is whether the State is obliged to provide subsidies for such teaching. It would be a requirement that the State does ensure the existence of and fund some institutions which can ensure the teaching of that minority language. It follows from the general wording of article 4.3 that everyone should have adequate opportunities “wherever possible”. How far the obligation to fund teaching of minority languages for persons belonging to dispersed groups goes would therefore depend on the resources of the State.

64. Greater difficulties arise in regard to languages used solely by persons belonging to new minorities. These are usually more dispersed than are the older and settled minorities, and the number of languages spoken at home by migrants in a country of immigration can be quite large. Furthermore, the children have a great need to learn to use the language of the country of immigration as quickly and as effectively as possible. Should, however, some new minorities settle compactly together in a region of the country and in large number, there is no reason to treat them differently from old minorities. It should be noted, however, that the European Charter for Regional or Minority Languages does not cover the languages of migrants. In any case, persons belonging to new minorities are entitled to set up their own private educational institutions allowing for the teaching of and instruction in their mother tongue. The State is entitled to demand that the official language also be taught.

**4.4 States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.**

65. Experience has shown that in societies where different national, ethnic, religious or linguistic groups coexist, the culture, history and traditions of minority groups have often been neglected and the majorities are frequently ignorant of those traditions and cultures. Where there has been conflict, the minority groups’ culture, history and traditions have often been subject to distorted representations, resulting in low self-esteem within the groups and negative stereotypes towards members of the group on the part of the wider community. Racial hatred, xenophobia and intolerance sometimes take root.

66. To avoid such circumstances, there is a need for both multicultural and intercultural education. Multicultural education involves educational policies and practices which meet the separate educational needs of groups in society belonging to different cultural traditions, while intercultural education involves educational policies and practices whereby persons belonging to different cultures, whether in a majority or minority position, learn to interact constructively with each other.

67. Article 4.4 calls for intercultural education, by encouraging knowledge in the society as a whole of the history, tradition and culture of the minorities living there. Cultures and languages of minorities should be made accessible to the majorities as a means of encouraging interaction and conflict prevention in pluri-ethnic societies. Such knowledge should be presented in a positive way in order to encourage tolerance and respect. History textbooks are particularly important in this regard. Bias in the presentation of the history and neglect of the contributions of the minority are significant causes of ethnic tension. The United Nations Educational, Scientific and Cultural Organization has concerned itself with the need to eliminate such prejudices and misrepresentations in history textbooks, but much remains to be done.

68. This paragraph of article 4 also emphasizes the complementary duty to ensure that persons belonging to minorities gain knowledge of the society as a whole. This provision should counteract tendencies towards fundamentalist or closed religious or ethnic groups, which can be as much affected by xenophobia and intolerance as the majorities.

69. The overall purpose of article 4.4 is to ensure egalitarian integration based on non-discrimination and respect for each of the cultural, linguistic or religious groups which together form the national society. The formation of more or less involuntary ghettos where the different groups live in their own world without knowledge of, or tolerance for, persons belonging to the other parts of the national society would be a violation of the purpose and spirit of the Declaration.

70. A concern similar to that of article 4.4 is expressed in the International Convention on the Elimination of All Forms of Racial Discrimination (art. 7) and in the Convention on the Rights of the Child (art. 29).

**4.5 States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development of their country.**

71. There is often a risk that minorities, owing to their limited number compared to the majority and for other reasons, may be subjected to exclusion, marginalization or neglect. In the worst cases, the land and resources of minorities are taken over by the more powerful sectors of society, with consequent displacement and marginalization of persons belonging to the minorities. In other cases, persons belonging to minorities are neglected in the economic life of the society. Article 4.5 requires steps being taken to ensure that this does not happen. It should also prevent minorities being made into museum pieces by a misguided requirement that they remain at their traditional level of development while the members of the surrounding society experience significant improvements in their standard of living.

72. Article 4.5 calls for the integration of everyone in the overall economic development of society as a whole, while ensuring that this integration takes place in ways which make it possible for persons belonging to minorities to preserve their own identity. The balancing act required by these two separate aims can be difficult, but is facilitated by the existence of active



and free associations of minorities which are fully consulted in regard to all development activities which affect or can affect their minority. Measures taken under article 2 to ensure participation facilitate this process.

## **ARTICLE 5**

### **5.1 National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.**

73. The participation of persons belonging to minorities in the economic progress and development of their country (art. 4.5) can be achieved only if their interests are taken into account in the planning and implementation of national policies and programmes. Their interests go beyond purely economic aspects, however. Planning of educational policy, health policy, public nutrition policy or housing and settlement policies are among the many aspects of social life in which the interests of the minorities should be taken into account. While the authorities are required to take only “legitimate” interests into account, this is no different from what is required in relation to majorities: an accountable Government should not promote “illegitimate interests” of any group, whether majority or minority. The interests of minorities should be given “due regard”, which means that they should be given reasonable weight compared with other legitimate interests that the Government has to take into consideration.

### **5.2 Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.**

74. This provision is of particular interest for development assistance, but relates also to other economic cooperation among States, including trade and investment agreements. There have been many instances in the past where such cooperation has neglected or directly violated the interests of minorities. Development agencies, financial institutions and others involved in international cooperation have a dual task: firstly, to ensure that legitimate interests of minorities are not negatively affected by the measures implied in the cooperation envisaged; and secondly, to ensure that persons belonging to minorities can benefit as much as members of majorities from that cooperation. The notion of “due regard” means that proper weight should be given to the interests of the minorities, all factors taken into account. An assessment should be made of the likely impact of the cooperation on the affected minorities. This should be an integral part of any feasibility study.

## **ARTICLE 6**

### **States should cooperate on questions relating to persons belonging to minorities, inter alia by exchanging information and experiences, in order to promote mutual understanding and confidence.**

75. Two sets of considerations underlie this provision. One is to share and exchange knowledge about good practices, whereby States can learn from each other. The other is to promote mutual understanding and trust. The latter is of particular importance.

76. Situations involving minorities often have international repercussions. Tensions between States have arisen in the past and in some cases continue in the present over the treatment of minorities, particularly in relations between the home State of a given minority and other States where persons belonging to the same ethnic, religious or linguistic group reside. Such tensions can affect the security of the countries involved and create a difficult political atmosphere, both internally and internationally.

77. Article 6 encourages States to cooperate in order to find constructive solutions to situations involving minorities. In accordance with the Charter of the United Nations, States should observe the principle of non-intervention in their bilateral relations. They should abstain from any use of force and also from any encouragement of the use of violence by parties to group conflicts in other States, and should take all necessary measures to prevent incursion by any armed group or mercenaries into other States in order to participate in group conflicts. On the other hand, they should, in their bilateral relations, engage in constructive cooperation to facilitate, on a reciprocal basis, the protection of equality and promotion of group identities. One approach, much used in Central and Eastern Europe, is for States to conclude bilateral treaties or other arrangements concerning good neighbourly relations based on the principles of the Charter and on international human rights law, combining commitments of strict non-intervention with provisions for cooperation in promoting conditions for the maintenance of group identities and transborder contacts by persons belonging to minorities. Provisions on minorities contained in such treaties and other bilateral arrangements should be based on universal and regional instruments relating to equality, non-discrimination and minority rights. Such treaties should include provisions for the settlement of disputes regarding their implementation.

## **ARTICLE 7**

### **States should cooperate in order to promote respect for the rights set forth in the present Declaration.**

78. The cooperation called for in article 7 can be undertaken at the regional and subregional levels, as well as at the level of the United Nations. At the European level, a number of intergovernmental mechanisms and procedures have been established whose purpose, at least partially, is to promote in a peaceful way the rights of minorities and achieve constructive group accommodation. These mechanisms include the Council of the Baltic Sea States and its Commissioner on Democratic Institutions and Human Rights, including the Rights of Persons belonging to Minorities; the OSCE, with its Office of the High Commissioner on National Minorities; and the Council of Europe, which has adopted several instruments of relevance for minorities. In the United Nations, cooperation can take place through the Working Group on Minorities.

79. The treaty bodies, in particular the Committee on the Elimination of All Forms of Racial Discrimination, the Human Rights Committee and the Committee on the Rights of the Child, can also play important roles in this regard. (See also below under article 9.)

## ARTICLE 8

**8.1 Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.**

80. The Declaration does not replace or modify existing international obligations in favour of persons belonging to minorities. It is an addition to, not a substitute for, commitments already made.

**8.2 The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.**

81. The rights of specific categories of persons are supplementary to the universally recognized rights of every person. The Declaration is intended to strengthen the implementation of human rights in regard to persons belonging to minorities, but not to weaken for anyone the enjoyment of universal human rights. Consequently, the exercise of rights under the Declaration must not negatively affect the enjoyment of human rights for persons who do not belong to a minority, nor for persons who belong to the minority. In their efforts to preserve the collective identity of the minority, agencies of the minority concerned cannot on the basis of the Declaration adopt measures which interfere with the individual human rights of any person belonging to that minority.

**8.3 Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.**

82. In accordance with article 1 of the Universal Declaration of Human Rights, all human beings are born free and equal in dignity and rights. Article 2 of the Universal Declaration provides that everyone is entitled to all the rights set out in that declaration without distinction of any kind such as race, language, religion or national origin. The question has been raised as to whether special measures in favour of national or ethnic, religious or linguistic minorities constitute a distinction in the enjoyment of human rights. The same question could be put with even greater emphasis with respect to the definition of racial discrimination contained in article 1.1 of the International Convention on the Elimination of All Forms of Racial Discrimination, which reads: "The term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." The question would then be whether special measures under the Declaration on Minorities, which would indeed be taken on the basis of "national or ethnic origin", would constitute a preference and therefore constitute impermissible discrimination.

83. Article 8.3 answers this question by pointing out that such measures shall not prima facie be considered to be contrary to the principle of equality. Under normal circumstances, measures to ensure effective participation, or to ensure that minorities benefit from economic progress in society or have the possibility to learn their own language will not be a privilege vis-à-vis other members of the society. It is essential, however, that such measures do not go beyond what is reasonable under the circumstances and are proportional to the aim sought to be realized.

**8.4 Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.**

84. As stated in the preamble, the Declaration is based on the principles of the Charter of the United Nations. Note should also be taken of the conviction expressed in the preamble that the promotion and protection of the rights of minorities contribute to the political and social stability of States. Article 8.4 serves as a reminder that nothing in the Declaration can be construed as permitting any activity which is contrary to the purposes of the Charter. Particular mention is made of activities that are contrary to the sovereign equality, territorial integrity and political independence of States. As pointed out above, the rights of persons belonging to minorities are different from the rights of peoples to self-determination, and minority rights cannot serve as a basis for claims of secession or dismemberment of a State.

## **ARTICLE 9**

**The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.**

85. Wherever possible, the agencies and bodies of the United Nations system shall contribute to the full realization of the Declaration. Projects of technical cooperation and assistance shall take the standards contained in the Declaration fully into account. The Working Group on Minorities established by the United Nations in July 1995 serves as a stimulus for such cooperation. This article should be seen in the light of the Charter of the United Nations (Arts. 55 and 56), according to which the Organization shall promote respect and observance for human rights and fundamental freedoms. Promotion of the rights of persons belonging to minorities form part of that obligation. United Nations organs and specialized agencies should give special consideration to requests for technical cooperation and assistance that are designed to achieve the aims of this Declaration.

### **Notes**

<sup>1</sup> E/CN.4/Sub.2/AC.5/1998/WP.1.

<sup>2</sup> E/CN.4/Sub.2/AC.5/1999/WP.1.

<sup>3</sup> E/CN.4/Sub.2/AC.5/2000/WP.1.

<sup>4</sup> The Framework Convention for the Protection of National Minorities, adopted by the Council of Europe in 1994.

<sup>5</sup> Most important are the Helsinki Final Act of 1975 and the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, 1990, section IV, paragraphs 30 to 40.

<sup>6</sup> Reference can also be made here to general comment No. 23 (1994), adopted by the Human Rights Committee at its fiftieth session. It deals with article 27 of the International Covenant on Civil and Political Rights (the minority rights provision), and points out, in paragraph 3.1, the distinction between the right of peoples to self-determination and the rights of persons belonging to minorities, which are protected under article 27.

<sup>7</sup> Human Rights Committee, general comment No. 23, adopted at the fiftieth session, 1994, paragraphs 6.1 and 6.2.

<sup>8</sup> Report of the CSCE Meeting of Experts on National Minorities, Geneva, 19 July 1991, Part IV. See also the second progress report of Special Rapporteur A. Eide on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1992/37), paragraphs 122-155.

<sup>9</sup> The Lund recommendations can be found on the web site of the OSCE High Commissioner on National Minorities, <http://www.osce.org/hcnm/documents/lund.htm>.

<sup>10</sup> Report of the Working Group on Minorities on its fifth session (E/CN.4/Sub.2/1999/21), paragraphs 81-88.

<sup>11</sup> Universal Declaration of Human Rights, article 20; International Covenant on Civil and Political Rights, article 22.

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# Annex 781

Human Rights Bodies - Complaint Procedures, OHCHR (6 June 2018) accessed at <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#interstate>



# Human Rights Bodies - Complaints Procedures

[ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx](http://ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx)

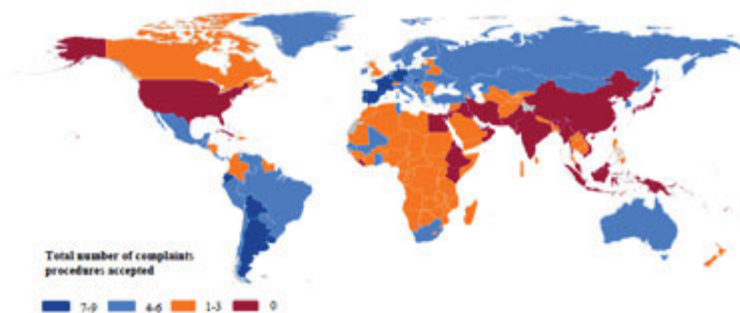
## Complaining about human rights violations

The ability of individuals to complain about the violation of their rights in an international arena brings real meaning to the rights contained in the human rights treaties.

There are three main procedures for bringing complaints of violations of the provisions of the human rights treaties before the human rights treaty bodies:

There are also procedures for complaints which fall outside of the treaty body system - through the [Special Procedures of the Human Rights Council](#) and the [Human Rights Council Complaint Procedure](#).

## Individual Communications



There are nine core international human rights treaties. Each of these treaties has established a “treaty body” (Committee) of experts to monitor implementation of the treaty provisions by its States parties.

Treaty bodies (CCPR, CERD, CAT, CEDAW, CRPD, CED, CMW, CESC and CRC) may, under certain conditions, consider individual complaints or communications from individuals.

### **Not all treaty body based complaint mechanisms have entered into force.**

Currently, eight of the human rights treaty bodies (CCPR, CERD, CAT, CEDAW, CRPD, CED, CESC and CRC) may, under certain conditions, receive and consider individual complaints or communications from individuals:

The **Human Rights Committee (CCPR)** may consider individual communications alleging violations of the rights set forth in the [International Covenant on Civil and Political Rights](#) by States parties to the [First Optional Protocol to the International Covenant on Civil and Political Rights](#);

The **Committee on Elimination of Discrimination against Women (CEDAW)** may consider individual communications alleging violations of the [Convention on the Elimination of All Forms of Discrimination against Women](#) by States parties to the [Optional Protocol to the Convention on the Elimination of Discrimination against Women](#);

The **Committee against Torture (CAT)** may consider individual complaints alleging violations of the rights set out in the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) by States parties who have made the necessary declaration under [article 22 of the Convention](#);

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The **Committee on the Elimination of Racial Discrimination (CERD)** may consider individual petitions alleging violations of the International Convention on the Elimination of All Forms of Racial Discrimination by States parties who have made the necessary declaration under article 14 of the Convention;

The **Committee on the Rights of Persons with Disabilities (CRPD)** may consider individual communications alleging violations of the Convention on the Rights of Persons with Disabilities by States parties to the Optional Protocol to the Convention;

The **Committee on Enforced Disappearances (CED)** may consider individual communications alleging violations of the International Convention for the Protection of All Persons from Enforced Disappearance by States parties who have made the necessary declaration under article 31 of the Convention.

The **Committee on Economic, Social and Cultural Rights (CESCR)** may consider individual communications alleging violations of the International Covenant on Economic, Social and Cultural Rights by States parties to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

The **Committee on the Rights of the Child (CRC)** may consider individual communications alleging violations of the Convention on the Rights of the Child or its two first Optional Protocols on the sale of children, child prostitution and child pornography (OPSC), and on the involvement of children in armed conflict (OPAC) by State Parties to the Third Optional Protocol on a communications procedure (OPIC).

For the **Committee on Migrant Workers (CMW)**, the individual complaint mechanism **has not yet entered into force** :

Article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families gives the Committee on Migrant Workers (CMW) competence to receive and consider individual communications alleging violations of the Convention by States parties who made the necessary declaration under article 77. This individual complaint mechanism will become operative when 10 states parties have made the necessary declaration under article 77. For status of ratifications, [click here](#).

*Who can complain?*

Anyone can lodge a complaint with a Committee against a State:

- That is party to the treaty in question (through ratification or accession) providing for the rights which have allegedly been violated;
- That accepted the Committee's competence to examine individual complaints, either through ratification or accession to an Optional Protocol (in the case of ICCPR, CEDAW, CRPD, ICESCR and CRC) or by making a declaration to that effect under a specific article of the Convention (in the case of CERD, CAT, CED and CMW).

Complaints may also be brought by third parties on behalf of individuals, provided they have given their written consent (without requirement as to its specific form). In certain cases, a third party may bring a case without such consent, for example, where a person is in prison without access to the outside world or is a victim of an enforced disappearance. In such cases, the author of the complaint should state clearly why such consent cannot be provided.

For **more information on how to complain under the treaty bodies' complaint procedures**, [click here](#).

## Inter-State Complaints

Several of the human rights treaties contain provisions to allow for State parties to complain to the relevant treaty body (Committee) about alleged violations of the treaty by another State party.

**Note:** these procedures have never been used.

**CAT, CMW, CED, ICESCR and CRC:** Article 21 CAT, article 74 CMW, article 32 CED, article 10 of the Optional Protocol to ICESCR, and article 12 of the Optional Protocol (on a communications procedure) to the Convention on the Rights of the Child set out a procedure for the relevant Committee itself to consider complaints from one State party which considers that another State party is not giving effect to the provisions of the Convention. This procedure applies only to States parties who have made a declaration accepting the competence of the Committee in this regard.

**CERD, CCPR and CRC:** Articles 11-13 ICERD, articles 41-43 ICCPR set out a more elaborate procedure for the resolution of disputes between States parties over a State's fulfilment of its obligations under the relevant Convention/Covenant through the establishment of an *ad hoc* Conciliation Commission. The procedure normally applies to all States parties to ICERD, but applies only to States parties to the ICCPR and CRC which have made a declaration accepting the competence of the relevant Committees in this regard.

*Resolution of inter-State disputes concerning interpretation or application of a convention*

**CERD, CEDAW, CAT, CMW and CED :** Article 22 ICERD, article 29 CEDAW, article 30 CAT, article 92 CMW and article 32 CED provide for disputes between States parties concerning interpretation or application of the Convention to be resolved in the first instance by negotiation or, failing that, by arbitration. One of the States involved may refer the dispute to the International Court of Justice if the parties fail to agree arbitration terms within six months. States parties may exclude themselves from this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other States parties.

## Inquiries

Upon receipt of reliable information on serious, grave or systematic violations by a State party of the conventions they monitor, the Committee against Torture (article 20 CAT), the Committee on the Elimination of Discrimination against Women (article 8 of the Optional Protocol to CEDAW), the Committee on the Rights of Persons with Disabilities (article 6 Optional Protocol to CRPD), the Committee on Enforced Disappearances (article 33 of CED), the Committee on Economic, Social and Cultural Rights (article 11 of the Optional Protocol to ICESCR) and the Committee on the Rights of the Child (article 13 of the Optional Protocol (on a communications procedure) to CRC) may, on their own initiative, initiate inquiries if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party.

*Which States may be subject to inquiries?*

Inquiries may only be conducted with respect to States parties that have recognized the competence of the relevant Committee in this regard. States parties may opt out from the inquiry procedure, at the time of signature or ratification or accession (article 28 CAT; article 10 of the Optional Protocol to CEDAW; article 8 of the Optional Protocol to CRPD; article 13(7) of the Optional Protocol (on a communications procedure) to CRC) or anytime (article 11(8) of the Optional Protocol to ICESCR) by making a declaration that they do not recognize the competence of the Committee in question to conduct inquiries. In this regard CED is an exception as the competence to conduct inquiries is not subject to the acceptance by States parties (article 33 ICPPED).

*Inquiry Procedure*

1. The procedure may be initiated if the Committee receives reliable information indicating that the rights contained in the Convention it monitors are being systematically violated by the State party.
2. The Committee invites the State party to co-operate in the examination of the information by submitting observations.
3. The Committee may, on the basis of the State party's observations and other relevant information available to it, decide to designate one or more of its members to conduct an inquiry and report urgently to the Committee. Where warranted and

with the consent of the State party concerned, an inquiry may include a visit to its territory.

4. The findings of the member(s) are then examined by the Committee and transmitted to the State party together with any comments and recommendations.
5. The State party is requested to submit its own observations on the Committee's findings, comments and recommendations within a specific time frame (usually six months) and, where invited by the Committee, to inform it of the measures taken in response to the inquiry.
6. The inquiry procedure is confidential and the cooperation of the State party shall be sought at all stages of the proceedings.



# Annex 782

U.N. General Assembly, 20th Session 1406th Plenary Meeting, Official Records, U.N. Doc.  
A\_PB.1406 (21 December 1965)





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*President:* Mr. Amintore FANFANI (Italy).

AGENDA ITEM 58

Draft International Convention on the Elimination of All Forms of Racial Discrimination

REPORT OF THE THIRD COMMITTEE (A/6181)

*Mr. Macdonald (Canada), Rapporteur of the Third Committee, presented the report of that Committee and then spoke as follows.*

1. Mr. MACDONALD (Canada), Rapporteur of the Third Committee: As the Assembly is aware, in resolution 1906 (XVIII), entitled "Preparation of a draft international convention on the elimination of all forms of racial discrimination", the General Assembly requested the Economic and Social Council to invite the Commission on Human Rights to give absolute priority to the preparation of a draft international convention on the elimination of all forms of racial discrimination.

2. On the basis of a preliminary draft prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights prepared in 1964 seven substantive articles which the Economic and Social Council transmitted to the General Assembly in resolution 1015 B (XXXVII) of 30 July 1964.

3. At the present session of the General Assembly the Third Committee considered in great detail, at forty-three meetings, and adopted unanimously a draft convention comprising a preamble and twenty-four articles. These twenty-four articles are divided into three parts. Part I consists of the substantive articles; part II, of articles on implementation; part III contains the final clauses.

4. I wish to draw to the Assembly's attention the fact that the Third Committee decided not to include a territorial application clause, a federal clause or a reservations clause in the draft convention. On the reservations clause the Assembly has before it an amendment submitted by thirty-three Powers [A/L.479]. There is also an amendment to article 4 by five Latin American Powers [A/L.480].

5. I would also draw the Assembly's attention to the two draft resolutions which appear in paragraph 212

of the Third Committee's report [A/6181] and on which the Assembly is requested to take action.

6. Lastly, I would draw the attention of the Assembly to the report of the Fifth Committee [A/6182], which deals with the financial implications that arise in connexion with part II of the draft Convention, on measures of implementation.

7. Mr. LAMPTEY (Ghana): I should like to introduce the amendment contained in document A/L.479. We have submitted this amendment because, to many delegations gathered here, the absence of a reservations clause from the draft Convention is a major flaw that could conceivably nullify the effect of the Convention *ab initio*. That the reservations clause was deleted in the Third Committee, by a vote of 25 to 19 with 34 abstentions [see A/6181, para. 194], was itself a tragic circumstance and could have happened only because we were all tired and the effect of this action was not obvious to many. We believe that, on second thought, most delegations now realize the necessity of a reservations clause: the number of co-sponsors of the amendment bespeaks that fact.

8. The three-paragraph clause that we promise is simple enough and is a restatement in positive terms of a formulation which enjoys wide support with respect to reservations to multilateral conventions. Before dealing specifically with this text and with reservations generally, however, I should like to comment briefly on the articles of the Convention which purportedly would be subject to significant reservations.

9. First, there is article 4, the first paragraph of which has given concern to some delegations. It should be recalled that that paragraph was the outcome of a difficult compromise after hours, and even days, of discussion, drafting and redrafting. In that process, most of us yielded from fixed positions, and no argument has since been brought forth to show that this article would be in derogation of the fundamental right of freedom of speech.

10. We listened very carefully to the recent intervention of Mr. Goldberg, in which he touched upon this subject, and we can suggest only that a reservation would not be the proper mode of dealing with this matter. It was the consensus in the Committee that this article should not be in derogation of "the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention". Thus, a unilateral declaratory statement as to this consensual interpretation is what is necessary, and not a reservation, for a reservation, *ipso facto*, amounts to a



modification and in this case, a modification of a difficult compromise.

11. What can be reiterated also is the correlative consensus of the Committee that these fundamental freedoms should not be employed to violate the purposes and objectives of this Convention. It is for this reason that we cannot accept a new formulation of article 4.

12. Articles 14 and 15 have also created some concern among certain delegations. As for article 14, its very optional nature makes it necessary to comment thereon. In our view, a juridical position that denies that a State, in exercise of its own sovereign will, can grant to individuals within its borders a right of petition to an international forum is tenuous, to say the least. Article 15, however, is another matter.

13. My delegation took an active part in objecting to the original article 13 bis and to the reformulation of the present article 15. We objected to article 13 bis because we believed that it was legally dubious to extend mandatorily a right denied the citizens of a metropolitan State to the colonial subjects of the State through an instrument of this type. It is, however, different when a procedural link between bodies of the United Nations and a body established through a multilateral convention and charged with the common task of achieving the purposes of the Charter is contended to be in violation of law. Such a contention is based on political expediency and is legally spurious.

14. In the first place, the Members of the United Nations have undertaken certain obligations in respect of human rights. We are aware that there is a divergence of viewpoints among the authorities concerning the legal effect of Articles 55 and 56—the so-called human rights Articles of the Charter. While Hudson, Kelsen and Drost, among others, claim that these Articles are not constitutive of enforceable legal norms, they agree that

"The Members"—of the United Nations—"have undertaken to act in conformity with the Purposes of the Organization. They have legally committed themselves to a legislative program, national and international, in respect of human rights." <sup>1/</sup>

15. Even the Legal Adviser of the United States Department of State in his famous memorandum to the Attorney-General in connexion with the McGhee and Shelley cases did admit that the Articles

"appear to place Member States under the obligation to co-operate with the United Nations in the carrying out of its function, which is stated here and elsewhere in the Charter as being the promotion of universal respect for and observance of human rights and fundamental freedoms". <sup>2/</sup>

But for the failure of the conference at San Francisco twenty years ago to adopt the proposal of the representative of Panama for a positive declaration that one of the purposes of the United Nations would be

"to see to it that the essential liberties of all are respected without distinction of race, language and creed", there would have been no doubt about the legal effect of the human rights provisions. We for our part agree with Sir H. Lauterpacht that the cumulative legal result of the various human rights pronouncements of the Charter cannot be ignored and that the legal character of these obligations of the Charter would remain even if the Charter were to contain no provisions of any kind for their implementation. As that distinguished English jurist has said:

"Any construction of the Charter according to which Members of the United Nations are, in law, entitled to disregard—and to violate—human rights and fundamental freedoms is destructive of both the legal and moral authority of the Charter as a whole...[and] runs counter to a cardinal principle of construction according to which treaties must be interpreted in good faith." <sup>3/</sup>

16. If the principle pacta sunt servanda is accepted, then all the Members of this Organization are under legal obligation to accept the right of petition expressly granted to the peoples of the colonial territories under the provisions of the Charter and extended by the establishment of constituent United Nations Committees of permanent and ad hoc nature.

17. If we cannot, arguendo, deny the legality of the bodies to which these petitions lie, we cannot question the legal validity of a procedural link between the Committee established under this Convention, a convention adopted under the aegis of the United Nations with the aim of achieving a pre-emptory purpose of the Charter—the elimination of all forms of racial discrimination, which is an essential requisite in the realization of the dignity and worth of man—and the established bodies of the United Nations to which its counsel would be highly useful. That is all that Article 15 attempts to do.

18. Article 71 of the Charter authorizes the Economic and Social Council to consult and co-operate with other international, national and non-governmental organizations handling matters which fall within its purview, and such co-operation has significantly helped that Council to achieve its goals.

19. The Constitution of the International Refugee Organization provides that it may establish

"Such effective relationships as may be desirable with other international organizations"

and that it is

"to consult and co-operate with public and private organizations whenever it is deemed advisable, in so far as such organizations share the purpose of the Organization and observe the principles of the United Nations".

20. The Constitution of the International Civil Aviation Organization, the ILO and many others have similar provisions, and, as Sir H. Lauterpacht says, while these

"provisions add little to the formal status and procedural capacity of the individual... in the inter-

<sup>1/</sup> Pieter N. Drost, Human Rights as Legal Rights (Leiden, A.W. Sijthoff, 1951), p. 29.

<sup>2/</sup> H. Lauterpacht, International Law and Human Rights (London, Stevens and Sons, 1950), p. 149, foot-note.

<sup>3/</sup> Ibid., p. 149.



national sphere, ... they illustrate both the inadequacy of the hitherto predominant doctrine and the manner in which international practice may soften and eventually discard a rigid rule no longer in keeping with modern needs". <sup>4/</sup>

21. The various specialized agencies in special relationship with the United Nations are all beings of separate and distinct international treaties: their memberships are different in instances from that of the United Nations. Thus there are several precedents for the procedural link envisaged between the Committee and other United Nations bodies. The *raison d'être* for this co-operation is that these bodies are all dedicated to the achievement of Charter objectives.

22. The Committee established under this Convention may, within a relatively short period, achieve expertise in problems of racial discrimination. In such case would its advisory role to a United Nations body like the Committee of Twenty-Four not far outweigh in results the slim possibility of political propaganda for which its comments and recommendations could be used? Those who would oppose this procedural link could base their opposition only on political considerations and not on legal or constitutional factors.

23. Let me now turn to the question of reservations generally. It is true that the subject of reservations is a complex one, but let us not exaggerate this complexity.

24. The practice followed by the League of Nations with respect to multilateral conventions was that, to be valid, a reservation must be accepted by all contracting parties. Substantially the same practice was followed by the Secretary-General of the United Nations until the decision of the International Court of Justice <sup>5/</sup> on the Genocide Convention. The rule adhered to by the Secretary-General then was formulated by the International Law Commission in 1951 as follows:

"A State may make a reservation when signing, ratifying or acceding to a convention, prior to its entry into force, only with the consent of all States which have ratified or acceded thereto up to the date of entry into force; and may do so after the date of entry into force only with the consent of all States which have theretofore ratified or acceded." <sup>6/</sup>

25. The difficulty that has arisen in recent years with respect to reservations has come about mainly because of the sharp multiplicity and varied nature of multilateral conventions since the Second World War and the attainment of nationhood by many colonial peoples that were not party to the development of the traditional concepts of international law; but there is sufficient evidence both of the old and of the new concepts to guide us. Restricting ourselves, then, to the type of humanitarian convention before us, let us hear what some of the experts have to say.

<sup>4/</sup> *Ibid.*, p. 29.

<sup>5/</sup> Reservations to the Convention on Genocide, Advisory Opinion: L.C.J. Reports 1951, pp. 29 and 30.

<sup>6/</sup> Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858), para. 19.

26. According to Lord McNair,

"The law leaves the negotiating parties completely free to create their own rules governing the question of reservations to the particular treaty in the negotiation with which they are concerned. They are at liberty to insert in the treaty a clause dealing with reservations, and it is in this way that they can comply in advance with the principle of unanimous consent, which is the basis of treaty obligations. Fidelity to this principle forms no obstacle to the desire to create greater flexibility in the matter of reservations in order to encourage and facilitate the universality of obligations, on the one hand, without destroying on the other hand the essential degree, though not necessarily the complete degree, of uniformity of obligation."

And he adds:

"What is vitally necessary is to draw the attention of groups of States engaged in negotiating a treaty to the imperative necessity of facing up to the question of reservations and inserting in each treaty the clause appropriate to it in that particular case, whether the clause forbids reservations or permits them. In the case of treaties negotiated under the auspices of the United Nations it is the practice of the Secretariat to do this, and it was expressly done when the Genocide Convention was being negotiated, but without result; for that Convention contained no article dealing with reservations." <sup>7/</sup>

I want to repeat: "for that Convention contained no article dealing with reservations".

27. Sir Hersch Lauterpacht, commenting on the projected International Bill of the Rights of Man, the idea from which this Convention emanated, stated:

"The dignity and effectiveness alike of the Bill demand that there should be no room in it for reservations of any kind or description. The Bill of Rights is a Bill of the fundamental rights of man. The idea of any reservations to them is, prima facie, objectionable... if reservations were to be appended in large numbers they would lend substance to the charge that governments hope to contrive to become parties to a basic international enactment without undue sacrifice." <sup>8/</sup>

28. It is not only the publicists who speak in this vein. In the drafting both of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956, and of the UNESCO Convention against Discrimination in Education of 1960, the discussions now going on here took place. In these instances the reservations clause finally adopted was similar to that proposed by Chile and Uruguay to the draft covenants which state in essence: "Reservations to this Convention shall not be permitted."

29. It would perhaps be useful for our understanding of the problem if we listened to some of the arguments

<sup>7/</sup> Lord McNair, *The Law of Treaties* (Oxford, Clarendon Press, 1961), pp. 169, 170.

<sup>8/</sup> H. Lauterpacht, *op. cit.*, p. 390.



that finally won the day during consideration of the Slavery Convention.<sup>2/</sup>

30. The Argentine representative, Mr. Beltramino, had suggested the deletion of the reservations clause. To this Miss Lunsingh-Meijer of the Netherlands demurred, arguing that the absence of a reservations article would raise serious difficulties and complicated legal questions. Mr. Jafri of Pakistan, in a penetrating analysis, stated that if reservations were to be allowed there would be little justification for all the efforts which had been made to secure a generally acceptable text, and added that whatever might be said about the sovereign rights of States, reservations detracted from the efficacy and advantages of any multilateral convention, whatever its object. Reservations were necessary only in cases where highly controversial articles had been forced through by the pressure of "brute majority" voting.

31. In the view of the French representative, Mr. Giraud, the main point to bear in mind was that conventions most commonly rested on compromises and, in those circumstances, reservations enabling States to accept what they liked and reject what they did not like would upset the balance of the convention and certain States would feel that they had been unfairly thwarted. The Turkish representative, Mr. Tuncel, objecting to the Argentinian proposal, said he had the impression that some delegations had the draft covenants on human rights particularly in mind and that they would not like any precedent to be created which would affect possible reservations to the covenants. This of course should not be a fear.

32. But perhaps the most articulate representation against deletion was that of the United Kingdom representative, Mr. Scott-Fox. He said that the opponents of the reservations article had based their objections on the principle that the inclusion of a non-reservations clause was incompatible with the sovereign rights of States. He disagreed. If, on becoming a party to the Convention, a State agreed that no reservations to it should be allowed, it would not be doing anything incompatible with its sovereign rights. Each case would of course have to be considered on its merits, but there were a certain number of conventions, including the present one, reservations to which would open the door to modifications that would destroy the fundamental value of the convention. It was in the interests of all States intending to become parties to the Convention that they should agree beforehand to allow no reservations. The International Court's advisory opinion in connexion with the Genocide Convention had not, in the opinion of many international lawyers, resolved the difficulties with respect to reservations. It was for that reason that, by its resolution 598 (VI), the General Assembly had recommended that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to

the effect to be attributed to them. It was in accordance with that resolution and to avoid the many difficulties that reservations would create that the article on reservations had been included in the draft.

33. We have quoted the summary of Mr. Scott-Fox's statement extensively because it is cogent and apt and applies with full force to the present case; for, in our view, slavery is the mother of racial discrimination and we cannot understand a change of attitude with respect to the anti-discrimination Convention before us. Furthermore, none of the articles of the draft Convention of the elimination of all forms of racial discrimination has been adopted by "brute majority" voting, to use Mr. Jafri's words. Each has been the result of a deliberate and fine compromise and has been adopted almost overwhelmingly.

34. With respect to the UNESCO Convention on Discrimination in Education, it is pertinent to quote the report of the Special Committee of Governmental Experts, which met in Paris from 13 to 29 June 1960, on this question:

"The authors of the draft Convention, while mindful of the necessity of preparing a text capable of ratification by the largest possible number of States, felt that that consideration should not have the effect of detracting from the creative value of the text prepared or of weakening the principles and rules enunciated. The draft Convention accordingly precludes the possibility of States making reservations to it."

35. Most of the co-sponsors of the amendment before us share the viewpoints so ably stated by the publicists, governmental experts and governmental delegates, and we would have liked to introduce the Chilean-Uruguayan proposal that precludes reservations completely. However, in a spirit of compromise and to avoid a long debate in plenary, we are proposing this three-paragraph reservations article. One thing that all who are conversant with this subject are agreed upon is that the question of reservations must be squarely faced by the conference that adopts a multilateral convention. This is what the Secretary-General as depositary would want us to do; this is what we insist must be done.

36. First, recognizing the fact that all the Members of the United Nations have been afforded the opportunity to participate in the negotiation and adoption of the Convention, and that as a human rights instrument its reach must be universal, we have proposed in paragraph 1 that the Secretary-General, as the depositary of the Convention, should circulate any reservation among the signatory States indicated in article 17 of the Convention for their consideration. This is no innovation, for it has been applied by several conventions among which is the Convention on the Political Rights of Women. And as reasoned by the International Law Commission in its Yearbook of 1951, at the time a reservation is tendered, "a signatory State may be actively engaged in the study of the convention, or it may be in the process of completing the procedures necessary for its ratification, or for some reason, such as the assembling of its parliament, it may have been com-

<sup>2/</sup> United Nations Conference of Plenipotentiaries on a Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, Geneva, 13 August-4 September 1956.



pelled to delay its ratification." <sup>10/</sup> We share the opinion of the International Law Commission that the objection of such a State should have no legal effect but serve as indication of the State's attitude with respect to the reservation. Upon the ratification or accession of the State, however, its objection will become legally effective unless the objection is withdrawn. Thus States will have the opportunity to assess the eventual fate and effect of proposed reservations.

37. In paragraph 2 we have adopted the formulation of the International Court of Justice as to compatibility in its decision on the Genocide Convention in the first part of the first sentence, *a fortiori* applied to the second part of the sentence. In the second sentence we have provided that the objection of two thirds of the States Parties is tantamount to non-acceptance of the reservation. This is a departure from the traditional concept of unanimity and is one that was widely shared during the consideration of the question by the International Law Commission in 1962. It is similar to but even weaker than the proposal of the United Kingdom to the draft Convention which would deem a reservation to be accepted "if not less than two-thirds of the States to whom copies have been circulated in accordance with this article accept or do not object to it within a period of three months following the date of circulation". It is no innovation but it is a clause which this Assembly as master of its house can adopt to save the Convention from destruction and a great number of law suits over interpretation.

38. A suggestion that the International Court of Justice replace the States in this matter is untenable, for it is the States that have negotiated and will adopt this Convention. It is their intent which is vital to any judicial construction as to interpretation and it is they who must have the primary responsibility of guaranteeing the integrity of the Convention. Their actions, even if political, will be based on their understanding of the consensus achieved in adopting the Convention and as to the purpose and object they mutually had in mind when inserting the various articles. Of course, in the case of a dispute, the Convention, by article 21, will have given ultimate jurisdiction to the International Court of Justice.

39. The third paragraph is self-explanatory and needs no comment. Repetitious as it may sound, let me quote the advice of the International Law Commission on this question:

"It is always within the power of negotiating States to provide in the text of the convention itself for the limits within which, if at all, reservations are to be admissible and for the effect that is to be given to objections taken to them, and it is usually when a convention contains no such provisions that difficulties arise. It is much to be desired, therefore, that the problem of reservations to multilateral conventions should be squarely faced by the draftsmen of a convention text at the

time it is being drawn up; in the view of the Commission, this is likely to produce the greatest satisfaction in the long run." <sup>11/</sup>

40. Finally, let me emphasize that this Convention is the result of a remarkable compromise between gentlemen. We cannot therefore conceive of a State wishing to frustrate its object and purpose, an object and purpose that is already bound by the Charter, and most likely by its own Constitution, to realize. But if a State wishes to do this, then other like-minded States interested in the Convention are in duty bound to ensure the integrity of the Convention and to prevent it from becoming a variety of conventions.

41. Many of us were not here—in fact we were not independent—when the General Assembly unanimously adopted the resolution Mr. Scott-Fox referred to, but we are now loyal Members of the United Nations, and the Assembly's wishes are our commands. It is in this spirit that we propose our amendment. It is in this spirit that we expect it will receive unanimous approval.

42. Mr. BELTRAMINO (Argentina) (translated from Spanish): First of all, I should like to thank my friend the representative of Ghana for referring to the statement I made at the Conference on Slavery in 1956, which shows that our position in regard to the reservations clause is not of recent date. From the very first mention of the idea of introducing at this late hour in the General Assembly, when we are almost at the end of our labours, a new draft article concerning the reservations clause, we were opposed to it for the following basic reasons: in the first place, because the question of the submission of reservations is a very serious one, since it touches very closely on the question of the sovereignty of States, and because in the past, even in the United Nations, it has been handled in a great variety of ways according to the particular Convention involved, so that we cannot speak of uniform practice. Secondly, because the fact that the text was submitted so late made it impossible for delegations to have the proper consultations with their Governments.

43. We understand perfectly well the desire to ensure that reservations do not in any way undermine the Convention itself, which was drawn up with such labour and patience by the Third Committee. This seemed to us only common sense, and therefore we feel that oratorical displays indulged in for the purpose of attacking or defending the attitude of this or that country in the past are superfluous, simply because they are unnecessary. This is not the subject under discussion here. The question is whether a provision adopted in haste can serve the purposes of the Convention, the vigorous and unequivocal implementation of its clauses, and encourage its adoption by all States Members of the United Nations.

44. This twofold purpose was borne in mind constantly by my delegation and the other Latin American delegations while the Convention was being drawn up. Some will argue that the new article on reser-

<sup>10/</sup> Yearbook of the International Law Commission 1951, Vol. II (United Nations publication, Sales No.: 57.V.6), document A/1858, para. 29.

<sup>11/</sup> Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858), para. 27.



vations in document A/L.479 is too weak; others will find it acceptable. But there is no doubt about it—this is not just one further article in the Convention; the principles involved are of importance, as I feel sure my co-sponsors would agree.

45. We do feel that it is desirable to have a reservation clause in this Convention; but rather than incorporate in the text a clause which has not been fully weighed, a clause on which Governments have not been properly consulted, it would be better from every point of view not to have any clause on reservations whatever. This is a special kind of Convention with a peculiar system of implementation, and it deals, moreover, with a problem whose solution will be under constant supervision by a special committee and by the General Assembly. Hence we do not feel that reservations appropriate to earlier conventions can be adapted to suit it, at least not without thorough study.

46. Our attitude is one of principle, although we agree that even if there is no reservation clause, reservations must not inhibit the aims and purposes of the Convention, the noble humanitarian and practical ends it is designed to subserve. If they did, we should regard it as a calamity. We do not feel it is acceptable, merely because it has not been possible to produce a better formula or out of a desire to restrict the reservations that a particular State may make, simply and solely to decide that reservations shall be subject to the approval of two thirds of the States Parties to the Convention. Even without any such proviso, there is nothing to prevent the Committee provided for in the Convention from entering into negotiations with the State or States concerned with a view to inducing them to reconsider their attitude—a point which is not covered by the thirty-three-Power amendment [A/L.479], and even with a view to making suggestions to the General Assembly regarding the reports which the State involved has to submit. This way might be less spectacular than requiring sanction by a two-thirds majority, but it might also be more effective in practice. My delegation will therefore be unable to vote for the draft article in its present form.

47. I would now like briefly to introduce the amendment appearing in document A/L.480. It refers to article IV (a) of the Convention and is very simple. Its purpose is to remove an inconsistency in the text as it stands. We decided to submit this text in the light of other amendments to the Convention already submitted. We should like to make it emphatically clear at the outset that we resolutely support the provisions of article IV in so far as they provide for penalties to be imposed by law on organizations practising racial discrimination, propaganda activities, acts of violence and the incitement or promotion of discrimination. Here again, our position is not new. As is well known, in 1963, when the Declaration on the Elimination of All Forms of Racial Discrimination was considered, it was the Argentine delegation that proposed—and the proposal was subsequently adopted by the General Assembly [resolution 1904 (XVIII)]—that consideration should be given to the question of both the promotion of and incitement to racial discrimination. In fact, we went even further

here than article IV (b). It is also a well-known fact that the Argentine penal code lays down a number of penalties for such discrimination with a view to preventing any discrimination that may arise in the future. Our position is thus clear and unequivocal in the matter.

48. Secondly, at the very outset, when the Committee considered an amendment to article IV (a) condemning the mere oral or written expression of the notion of superiority of one race over another, my delegation and others as well were flatly opposed to this. Our attitude is thus one of principle and is consistent. What we are anxious to condemn and proscribe as categorically as possible is not the fact that, for example, a scientist may publish a document pointing out differences between individuals of different races, as has occurred in the past and as still happens today, nor public discussions on such subjects between two or more persons. What we condemn is any incitement to racial discrimination as a result of such publications or discussions. In this event the State must take vigorous action at all times to nip in the bud incitement to racial discrimination by such means.

49. This, then, is the limit of freedom of speech as we understand it. The mere expression of ideas is not in itself punishable if it is not accompanied by incitement to discrimination or racial hatred. This is the aim of those who genuinely want the Convention. There are, admittedly, certain qualifications in the introductory part of article IV, but we are most concerned that this Convention—as we have desired and urged from the outset—shall be as perfect as possible, avoiding provisions of any kind likely to lead to abuse or misinterpretation which it might be difficult to remedy. This is why we state quite unequivocally in our amendment that all incitement to racial discrimination, no matter what form it may take, shall be punishable by law. We have particularly added, in order to preserve the original idea of the text, the question of discrimination based on racial superiority or hatred, on which we are entirely in agreement. We consider that in this way article IV (a) is satisfactorily rounded off and the purposes of the Convention are duly fulfilled.

50. Finally, I should like to reply to the point raised by the representative of Ghana in order to set the record straight. Contrary to what he said, there has never, I repeat never, been any compromise with the members of the Latin American group nor with certain other delegations regarding the drafting of this article. A compromise requires action on the part of all the parties to the negotiations.

51. Mrs. CABRERA (Mexico) (translated from Spanish): The Mexican delegation regards the draft international Convention on the Elimination of All Forms of Racial Discrimination as a document of singular importance in the effort to put into practice the lofty principles set forth in the Declaration of Human Rights. For this reason, it bears in its train important innovations which must be examined in absolute freedom by the various Parliaments or Houses of Representatives which make it possible for the Governments of Member States to ratify the Convention.



52. The delegation of Mexico collaborated in an honest and unwavering manner with the majority of the members of the Third Committee to adopt a text which would receive unanimous support. Unanimity was achieved as a result of concessions on all sides based on mutual understanding and goodwill. To introduce amendments which, in one way or another, have already been rejected by the Third Committee would upset the balance achieved and force delegations to reconsider their position in the matter.

53. We believe that the Mexican legislature should be left absolutely free to consider the various implications of the Convention. Majority acceptance of an article such as that envisaged in document A/L.479 severely restricts this freedom and prejudices the action which the Mexican legislature may take.

54. For this reason, and despite the fact that in its domestic and international policies alike, the Mexican Government has championed in the past and will continue to champion the concept of racial non-discrimination, my delegation feels obliged to vote against this amendment; and if it is adopted, we shall have to abstain from voting on the draft Convention as a whole.

55. The PRESIDENT (translated from French): We shall now proceed to vote, beginning with the thirty-three-Power amendment [A/L.479] to part III of the annex to draft resolution A [A/6181, para. 212]. The amendment calls for the insertion of a new article 20 in the draft Convention. A separate vote has been requested on the second sentence of paragraph 2 of the article, which reads as follows:

"A reservation shall be considered incompatible or inhibitive if at least two thirds of the States parties to the Convention object to it."

I now put this sentence to the vote. A vote by roll-call has been requested.

*The vote was taken by roll-call.*

*Mali, having been drawn by lot by the President, was called upon to vote first.*

*In favour:* Mali, Mauritania, Mongolia, Morocco, Nepal, Nigeria, Pakistan, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syria, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Upper Volta, Uruguay, Yemen, Yugoslavia, Zambia, Afghanistan, Algeria, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Chad, Congo (Brazzaville), Cuba, Cyprus, Czechoslovakia, Dahomey, Ethiopia, Gabon, Ghana, Guinea, Hungary, India, Iran, Iraq, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Laos, Lebanon, Liberia, Libya, Madagascar, Malawi.

*Against:* Mexico, Panama, Paraguay, Peru, Spain, United States of America, Venezuela, Argentina, Australia, Belgium, Bolivia, Colombia, Costa Rica, Dominican Republic, El Salvador, France, Guatemala, Honduras.

*Abstaining:* Netherlands, New Zealand, Norway, Portugal, Sweden, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, Austria, Brazil, Burma, Canada, Ceylon, Chile, China, Congo (Democratic Republic of), Denmark, Finland, Greece, Haiti, Iceland, Ireland, Israel, Italy, Luxembourg, Malaysia, Maldives Islands.

*The sentence was adopted by 62 votes to 18, with 27 abstentions.*

56. The PRESIDENT (translated from French): I now put paragraph 2 to the vote.

*Paragraph 2 was adopted by 76 votes to 13, with 15 abstentions.*

57. I now put the amendment as a whole to the vote.

*The amendment as a whole was adopted by 82 votes to 4, with 21 abstentions.*

58. The PRESIDENT (translated from French): I invite the Assembly to vote on the five Power amendment [A/L.480] to part I of the annex to draft resolution A. It refers to article 4 (a) of the draft Convention.

*The amendment was rejected by 54 votes to 25, with 23 abstentions.*

59. The PRESIDENT (translated from French): I would remind representatives that the Fifth Committee has submitted a report [A/6182] on the financial implications of adoption of the draft Convention. The report refers in particular to part II of the annex to the draft resolution, i.e., part II of the draft Convention.

60. I now put to the vote draft resolution A, as amended. A roll-call vote has been requested.

*The vote was taken by roll-call.*

*The Philippines, having been drawn by lot by the President, was called upon to vote first.*

*In favour:* Philippines, Poland, Portugal, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Somalia, Spain, Sudan, Sweden, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Ceylon, Chad, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, El Salvador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Laos, Lebanon, Liberia, Libya, Luxembourg, Madagascar, Malaysia, Maldives Islands, Mali, Mauritania, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru.

*Against:* None.



*Abstaining: Mexico.\**

*Draft resolution A, as amended, was adopted by 106 votes to none, with 1 abstention.*

61. The PRESIDENT (translated from French): I now put to the vote draft resolution B [A/6181, para. 212].

*Draft resolution B was adopted by 98 votes to none, with 7 abstentions.*

62. The PRESIDENT (translated from French): With regard to the resolution just adopted, I am informed that it will take some time to prepare copies of the Convention for signature. As soon as the copies are ready, the date for signature will be announced in the *United Nations Journal*. This will enable Governments wishing to sign the Convention to grant the appropriate full powers to their plenipotentiaries.

63. I shall now call on each of the representatives in turn who wish to explain their votes.

64. Mr. OSPINA (Colombia) (translated from Spanish): I asked permission to speak before the vote, and it seems to me that this raises a point of order, because one reason why I wanted to speak was to ask for a separate vote on certain sentences or phrases in article 4. With this in mind—and I hope that the Assembly will take due note of it—I shall say what I would have said prior to the voting.

65. The Third Committee approved the draft International Convention on the Elimination of All Forms of Racial Discrimination in a text which appears in document A/6181 of 18 December 1965. If this draft is adopted by a majority vote, it will go from the Assembly to the States which are parties to the Convention for ratification in accordance with the terms set forth in the Convention.

66. My delegation has worked with tremendous zeal in order to give this humanitarian draft such force that it could become an international covenant with which States Members of the United Nations would comply. To achieve this, it would have to be in keeping with the spirit and the letter of the universal principles of law as well as with the constitutional principles of Member States; and this has proved extremely difficult in spite of the fact that the sponsors in the Committee itself made concessions towards extending the bounds of international positive law and eliminating errors in the text.

67. Nevertheless, certain articles of the Convention still embody extremist clauses which are unacceptable because they are at variance with the political constitutions of particular countries, and this will mean that reservations will be made when the draft is voted upon and at the time of ratification once it is converted into a covenant.

68. As far as the political constitution of Colombia is concerned, the enshrinement of the liberties in it is based on the recognition of the rights of the human person, and these rights are safeguarded up to the point where the rights of others or the rights of the

community begin. However, if the law or international treaties attempt to restrict these freedoms in the interest of the community or of mankind, this can only extend to the point at which the principle of freedom remains intact—in other words, personal freedom can be regulated but not encroached upon.

69. The Colombian constitution is based on the principles of Rousseau, adjusted in the light of the advances made in the social field; and individualism has had to and still has to make concessions in the interests of the community, without stamping out the individual, without encroaching upon his freedom, respecting his right to think and to express his deliberate decisions in actions or words.

70. Freedom of thought has been violently curtailed by tyrants throughout the course of history, by the Inquisition and by those who in the name of royal powers opposed the independence of the Americas. These are facts which show clearly that to penalize ideas, whatever their nature, is to pave the way for tyranny, for the abuse of power; and even in the most favourable circumstances it will merely lead to a sorry situation where interpretation is left to judges and law officers. As far as we are concerned, as far as our democracy is concerned, ideas are fought with ideas and reasons; theories are refuted with arguments and not by resort to the scaffold, prison, exile, confiscation or fines.

71. For these reasons we ask for a separate vote on the phrase "based on ideas or theories" in the second line of the first paragraph of article 4, and "of ideas based on superiority or hatred" in the first line of article 4 (a). If these phrases are not rejected, my delegation would like to enter reservations on them here and now.

72. Moreover, we believe that penal law can never presume to impose penalties for subjective offences. This barbarous practice is merely the expression of fanaticism such as is found among uncivilized people and is hence proscribed by universal law. Here, therefore, is one voice that will not remain silent while the representatives of the most advanced nations in the world vote without seriously pondering on the dangers involved in authorizing penalties under criminal law for ideological offences. The interpretation of article 4 to which I referred not only stipulates punishment for individuals but for organizations as well. It is known that juridical persons, let alone juridical persons associated for political purposes, are not subject to penal sanctions or the passive object of criminal law. Article 4, in the terms in which it is drafted, is legally unsound, in addition to having the constitutional defects I have pointed out.

73. The Colombian Parliament will not authorize ratification of a covenant at variance with the political constitution of the country and with the tenets of public law. Colombia practises freedom of ideas and will not depart from the principles underlying its civilization.

74. My delegation is eager for this convention to be adopted. There are no racial problems in Colombia. There is crossing of blood; men are valued for their

\*The Mexican delegation subsequently informed the Secretariat that it would like Mexico to be included in the list of delegations voting in favour of draft resolution A.



virtues as citizens; coloured persons occupy and have always occupied the highest public offices side by side with whites; races live in harmony and merge without more ado, because it is a commonplace occurrence. There, in the crucible of Latin America, the blood and the races of the future meet and mingle; and since there is no discrimination of any kind in Colombia, my delegation felt that it could freely and frankly analyse article 4. And we find that in its present wording it is a retrograde measure instead of being a step forward on mankind's road towards the future.

75. In conclusion, may I—again in explanation of my vote—point out certain faults we have found with article 15 of the Convention. This provision establishes a special situation in respect of the territories referred to in General Assembly resolution 1514 (XV) of 14 December 1960. This exceptional treatment provided for in article 15 in regard to the right of petition, converting it into something resembling a new right which might be described as a right of direct petition since it does not involve intervention by the State concerned, the Committee being informed through the competent bodies of the United Nations, arouses misgivings on the part of my delegation precisely because of its exceptional nature.

76. At first sight it would seem that a political problem is being injected into the Convention, whereas my delegation is conscious of the fact that the aim of the Convention is eminently humanitarian. Thus problems are created in the United Nations itself, issues being transferred from one committee to another without any apparent authorization to do so. Administering Powers might feel that there was some derogation from their sovereignty and that they are exposed to the danger of violation for want of clarity in the rules applied.

77. My delegation believes that since the colonial status of certain Territories constitutes a temporary legal situation, this provision too should be temporary and not permanent. My delegation will abstain from the voting on this article, with the exception of paragraph 1, for which we intend to vote.

78. I shall not refer to the amendment to article 20 [A/L.479], since I am entirely in agreement with the views expressed by the representatives of Argentina and Mexico. A few days ago the United States representative, speaking in the Third Committee [1373rd meeting], said that this Convention was more than a mere restatement of laudable principles. That is true: the Convention is a resounding victory, which must not be demeaned by political issues.

79. Mr. VERRET (Haiti) (translated from French): The delegation of Haiti, in spite of the reservations it expressed in the Third Committee concerning certain paragraphs of the various articles of the draft International Convention on the Elimination of All Forms of Racial Discrimination, voted for the draft Convention as a whole, even though it still has some misgivings concerning the full effectiveness of the measures of implementation. It also approved the report of the Third Committee on this subject as an absolute imperative of the present time, when

human passions are revealed as more deadly than the most modern weapons.

80. Now, heaven be praised, we have produced a document of which the least that can be said is that it is reasonably reassuring. We applaud it, and we join in the chorus of authoritative voices of the nations assembled in this Hall to intone in all solemnity the hymn of reconciliation among the races which fantastic theories tend to divide, vaunting the supremacy of some peoples over others regarded as inferior and hence despised and held in servitude, if not indeed destined for utter annihilation. That was the judgement of Gobineau and his disciples with their theory of the inequality of human races; of the German philosopher Nietzsche, the champion of force, in his famous book *Thus Spake Zarathustra*; and a whole series of sorcerers' apprentices who came after them. They ignored the fact that in the beginning, when men dwelt in caves, no matter where they were such ideas had not yet occurred to them, and they formed groups and mingled together all on the same footing in their fierce struggle against the wild beasts and the elements they had not yet subdued.

81. We have no desire to dwell on the controversial writings of specialists in anthropology or genetics. We in the Republic of Haiti, ever since the days when our African ancestors freed themselves from the diabolical colonial yoke, have always practised tolerance towards all races, in accordance with our laws and customs, in spite of the tortures of every kind inflicted on our forefathers and the ostracism suffered by our country because of our ethnic origins. We have practised tolerance in the belief that all races are on a par and that the barriers set up between them have been erected through the ages merely as a sequel to struggle and conquest, where the victorious side subjugated the other and regarded the race of the vanquished as inferior to its own. That was the way with the civilizations that have died out, and it is the same with the new civilizations.

82. There is no need to cite the ancient empires, whose doleful fate the history books recount, except to recall that the instinct to dominate has ever been one of the characteristics of the human species, and that men today, in spite of the new gospels preached by the wise men of every part of the world, still confront each other in antagonistic ideologies whose baleful shadows cast gloom over the places where they fall. History is like the sea, ever beginning anew, and men have not changed over the ages. Confronted with its prey, the beast shows its claws.

83. Thus, to safeguard the higher interests of an epoch, the colonial Powers regarded Haiti as fair game throughout the last century, following the proclamation of its independence, because for them it set a dangerous example.

84. Libelled by racist writers and theorists who claimed that in Haiti's first steps as a sovereign nation they detected a congenital inferiority inherent in the black race; isolated by the Powers which made no move to recognize it; and excluded, only recently still, from international gatherings, Haiti neverthe-



less fulfilled its destiny. This island, the home of a free people, proud of its origins, pursuing its onward and upward march, slowly but surely, despite the obstacles of every kind deliberately placed in its path, towards progress and modern civilization, in peace and dignity at all times, under the enlightened leadership of a just and learned Chief of State, H.E. Dr. François Duvalier, Life President of the Republic. And because though our forefathers were oppressed we still believe in a better future, we share the distaste felt by the majority of the peoples of the world for all forms of racial discrimination, no matter by what means they are called: anti-semitism, colonialism, nazism, apartheid and all such, past and present. They are all of them as degrading as the minds that conceived them.

85. It is most gratifying that after centuries during which the war-lords have caused the destruction of so much life and property, the nations represented here have approved this international Convention on the Elimination of All Forms of Racial Discrimination, for the purpose of promoting greater understanding among peoples and building a new world where, in an atmosphere of more brotherly, more just and more human feelings, the smoke from the pipe of peace will bring with it progress and happiness to nations sincerely reunited.

86. The peoples of the world will be grateful to us Member States if we are able to respect this Convention. Let us at least wish it long life, so that the peace so dear to the hearts of men may reign on earth.

87. In conclusion, the delegation of Haiti pays homage to the members of the Third Committee and the General Assembly for this meritorious effort, which represents a new landmark on the path to social progress.

88. Mr. LAMPTEY (Ghana): A generation ago, a young African student landed on the shores of these United States in pursuit of higher learning. He slept on the subways of New York City and rubbed shoulders with the workers in the shipyards of Pennsylvania. Alone in a strange country, he came face to face with racial discrimination.

89. A decade later he left for the United Kingdom, and there again, in the lower-class restaurants of Camden Town and Tottenham Court Road in London, he was to experience the subtlety of racial discrimination.

90. He did not become a bitter man in consequence of those experiences: he became a better man. For he became convinced that if an honest and enduring relationship between men of different races and ethnic origins must come, it must be preceded by the elimination of all forms of racial discrimination.

91. Osagyefo Kwame Nkrumah, the man of whom I speak, has with determination and consistency employed the influence and power that destiny has bestowed upon him to ensure the total eradication of this cancerous tumour from the face of the earth. It is for this reason that he can never, and his people will never, consider the struggle of the Americans of African descent for equality as an

isolated struggle peculiar to them; nor can he and his people remain immune from the privations suffered by millions of black men in the southern part of Africa.

92. It is in the name of this leader, and the nation of which he is the architect, that my delegation has been proud to vote for the adoption of this International Convention on the Elimination of All Forms of Racial Discrimination.

93. In explaining our vote, let us state that we are not completely satisfied with the Convention just adopted, for we would have hoped that, seven centuries after the Magna Carta declared "...to no one will we refuse or delay right or justice"; more than a century and a half after the American Declaration of Independence asserted that "all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness"; 172 years after the French Declaration of the Rights of Man and Citizen proclaimed that "forgetfulness and contempt of the natural rights of men are the sole causes of the miseries of the world"; almost half a century after Lenin proclaimed the brotherhood of man; twenty years after the great Charter of the United Nations reaffirmed "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women...", and seventeen years after we, through the Universal Declaration of Human Rights, declared that "all are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination", the representatives of Governments here gathered would have adopted a strong Convention able to insure the speedy disappearance of racial discrimination, that dogma and practice which is a travesty of the very essence of justice. But, alas, realism dictated that we take an infant step. Let me therefore register the hope of my Government and people that the Convention just adopted will, in a few years, be subject to revision, and a more effective instrument adopted.

94. "...That the great and terrible war which has now ended was a war made possible by the denial of the democratic principles of the dignity, equality and mutual respect of men, and by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races." These are the words of the preamble to the Constitution of UNESCO. It was Santayana who remarked that he who does not know the past is doomed to repeat it. In taking this first step in providing the nations of the world with a multilateral treaty for the elimination of all forms of racial discrimination, a treaty capable of enforcement, we have demonstrated our capacity not to forget. Let us then hope that the nations of the world will demonstrate their commitment to this purpose by faithfully adopting and executing the principles enshrined in this Convention. Then the day may yet come when it can truly be said, as it was said by Confucius twenty-five centuries ago, that: "Within the Four Seas all are Brothers."



95. My delegation has been proud and honoured to participate in the drafting and adoption of this Convention, and we thank those who joined us in this collective task. If in the process we have seemed impatient, we beg forgiveness, for we meant no offence to anybody—but we were dedicated to the conclusion of this task.

96. We leave this rostrum convinced that, because of what you have done today, when the story of the twentieth session of the General Assembly comes to be told, it can well be said, as it was once said by a great war leader: This was its finest hour.

97. Miss WILLIS (United States of America): It is a source of deep satisfaction to the United States delegation that the Committee, under the skilful and patient leadership of its able Chairman, successfully persisted in the arduous task of drafting the International Convention on the Elimination of All Forms of Racial Discrimination. The adoption of this Convention will certainly be one of the main achievements of this session. All delegations which worked hard to achieve this result are to be congratulated.

98. The United States voted for the Convention as a whole because we agree with its constructive humanitarian objectives. It is more than a statement of lofty ideals. It provides machinery for implementation which goes well beyond any previous human rights instrument negotiated in the United Nations. It is inevitably a complex document and will require careful study not only by my Government but also, I am sure, by many other Governments.

99. It is not appropriate here to recapitulate even the substance of statements made by the United States representative in the Third Committee on various articles. For the record, however, here in this Assembly, I wish to state that the United States understands article 4 of the Convention as imposing no obligation on any party to take measures which are not fully consistent with its constitutional guarantees of freedom, including freedom of speech and association. This interpretation is entirely consistent with the opening paragraph of article 4 of the Convention itself, which provides that, in carrying out certain obligations of the Convention, States Parties shall have "due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention". Article 5, in turn, lists, among the rights to be guaranteed without distinction as to race, colour, or national or ethnic origin, the right to freedom of opinion and expression.

100. Let me now turn very briefly to the question of the reservations article. My delegation believes that it would have been better for this Convention not to contain an article on reservations. The absence of such an article need not have impaired the effectiveness of the Convention. The omission of an article on reservations would, however, have made possible the acceptance of the Convention by a greater number of States, thereby contributing to the eradication of racial discrimination over a wider area.

101. We think it would have been preferable in this Convention, if there had to be an article on reser-

vations, for it to provide for a judicial decision on the question of whether a reservation made by a State was or was not compatible with the object and purpose of the Convention.

102. What I have said explains why we abstained from voting on the article contained in document A/L.479. Notwithstanding our difficulties with some aspects of the text, we welcome the adoption of this Convention by the General Assembly. We hope that it will help in bringing to an end the evils of racial discrimination, for racial discrimination has no place in the world we, the peoples of the United Nations, are seeking to build.

103. Mr. COMBAL (France) (translated from French): The French delegation would have liked to be able to rejoice unreservedly in the adoption by the General Assembly of a draft international Convention on the Elimination of All Forms of Racial Discrimination. For that reason we regret that we felt obliged this morning to oppose the adoption of the amendment [A/L.479] to insert a new article 20 in the text of the draft Convention.

104. While paragraph 3 of this document merely reiterates generally recognized international principles, paragraphs 1 and 2 introduce new ideas which my delegation cannot endorse.

105. In the first place, paragraph 1, because of ambiguous or perhaps merely inept drafting, would be likely to extend beyond the sphere of the States parties to the Convention the procedure for examining reservations and make it possible for States that are not and never will be parties to the Convention to be seized of reservations submitted by others which had decided to accede to the Convention.

106. The French delegation likewise felt obliged to vote against paragraph 2. The admissibility of ratifications or accessions subject to reservations should be decided upon normally by each Contracting State on the basis of legal considerations; but the procedure envisaged—the submission of such decisions for approval by a two-thirds majority of the Contracting States—does not respect that rule; it introduces into the draft Convention not only a principle foreign to the spirit of a contractual instrument, but also an element of a political nature calculated to distort the purpose and scope of the instrument.

107. The French delegation was nevertheless able to vote in favour of the draft international Convention as a whole. To be sure, several of its provisions, in addition to the new article 20 just added by the General Assembly, evoked criticism and reservations. Moreover, there are still too many places where the text transmitted by the Third Committee has shortcomings attributable to the *ad hoc* nature of the wording used and the undue haste with which the Committee frequently had to take decisions. However, the lofty moral and humanitarian aims of this instrument, combined with the need to provide the international community with a text, even though an imperfect one, which should at any rate help it to remove this blot on human society—racial discrimination—seemed to my delegation reasons enough for waiving our difficulties and joining with



those who have supported the Convention on the Elimination of All Forms of Racial Discrimination.

108. Mr. BOSCO (Italy) (translated from French): The Italian delegation has given its enthusiastic approval to the draft International Convention on the Elimination of All Forms of Racial Discrimination, which was discussed at great length by the Third Committee and carefully drawn up by eminent jurists.

109. We are convinced that today's date will constitute a landmark in the history of the United Nations. The document submitted to us for approval is not merely the outcome of heavy labours and close co-operation within the Organization; it is first and foremost a solemn affirmation of the will of the peoples of those nations to do away once and for all with abominable doctrines and practices which for too many centuries, and until the present day, have been the cause of suffering and manifold distress. No one can fail to remember the millions of victims that racial hatred and anti-semitism have made in our generation. No one can fail to be conscience-stricken and revolted by the policy of racial segregation which, alas, is still rife today. It is hardly necessary to recall here how many times the voice of the United Nations has been raised, affirming that all forms of racial discrimination are an offence to the dignity of the human person and that therefore they cannot be justified de jure, let alone tolerated de facto in any shape or form.

110. The Universal Declaration of Human Rights has pointed the way for us. The draft Convention just adopted is the means, the tool forged by the United Nations for attaining the ends of the Declaration. It is now for our countries, our Parliaments and Governments, to become parties to the Convention and adopt the measures they deem most appropriate for implementing it.

111. In conclusion, I am happy to declare here on behalf of my delegation that the affirmative vote we have cast is the solemn expression of our full moral support for the principles and obligations of this Convention, which the law and policies of the Italian Republic has always supported.

112. Mr. MOROZOV (Union of Soviet Socialist Republics) (translated from Russian): The Soviet delegation voted in favour of the adoption of the Convention on the Elimination of all Forms of Discrimination. We believe that the Convention just adopted will be warmly welcomed by world public opinion and that its adoption will be regarded by all progressive people as an event of great international importance.

113. Racism and racial discrimination are such shameful and odious products of imperialism and colonialism that all peoples and all decent human beings are resolutely demanding that they be ended.

114. Even now the policy of racism and racial discrimination is still causing millions of people mental and physical suffering and constituting a source of hostility and conflict not only in relations between individuals and peoples but also between States, thereby creating an immediate threat to international peace and security.

115. We all know—and there is no need to dwell on the subject at this time—that there is abundant and irrefutable evidence that racist ideas and policies still prevail in a number of countries in the fields of administration, the economy, education, public health, social security, family relations and the like.

116. Hence the adoption of the Convention on the Elimination of All Forms of Racial Discrimination is a logical development of the historic United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, and of the Declaration on the Elimination of All Forms of Racial Discrimination, adopted earlier by the General Assembly [1904 (XVIII)].

117. Today, at its twentieth session, and on the twentieth anniversary of the founding of the United Nations, the General Assembly has added a memorable page to the annals of the Organization.

118. The delegation of the Soviet Union, representing the peoples of the Soviet State, who feel the deepest sympathy and understanding for peoples who have to endure apartheid, segregation and other manifestations of racism, has made every effort to help to formulate a meaningful convention on the elimination of all forms of racial discrimination. The drafting of the Convention revealed that, despite the fact that racism has been branded as a most grievous crime against mankind, and despite the adoption of a special declaration resolutely condemning racism and all forms of racial discrimination, there is still a tendency on the part of certain States to hinder the implementation of these United Nations decisions, to emasculate them, to interpret these documents in such a way as to reduce to nothing or belittle their practical significance. Interpretations of this kind have been put forward in the Third Committee also and reflected in the statements of some speakers at the present session of the General Assembly. It is also a regrettable fact that they are advanced precisely by delegations of countries which, like the United States for example, have so far obstinately refused to ratify agreements and conventions previously prepared by the United Nations and designed to promote the fulfilment of one of the tasks laid down in the United Nations Charter—the task of promoting universal respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion.

119. It should also be pointed out that there are various other conventions, adopted earlier by the United Nations, which are still awaiting the signature of the countries whose delegations have spoken in the Third Committee, at this session of the General Assembly, also, of restricting in one way or another the Convention which we have just adopted. Suffice it to mention such instruments as the Convention against Discrimination in Education<sup>12/</sup> and even such an important convention as the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>13/</sup>

<sup>12/</sup> Convention against Discrimination in Education, adopted by the General Conference of UNESCO at its eleventh session (Paris, 14 December 1960).

<sup>13/</sup> Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 (III), annex).



120. As regards the Soviet people, we are convinced that the General Assembly's decision to adopt the Convention will be fully appreciated by all the peoples of our multinational State.

121. In 1917 the Soviet people were the first in the history of mankind to put an end to discrimination and all other manifestations of the imperialist system of exploitation. More than 110 nationalities, drawn together by bonds of indissoluble friendship, go to make up the 230-million-strong people of the Soviet Union. To our people all questions connected with the elimination of racism and other forms of discrimination are a thing of the past—they are history. Soviet law strictly prohibits all forms of racial discrimination. We need only recall that the Constitution of the Soviet Union, as well as the Constitutions of all fifteen Union Republics and of all thirty Soviet Autonomous Republics, clearly establish the equality of all citizens, regardless of their race or national origin, in all fields—economic, political and social—as an immutable law. Any direct or indirect limitation of rights whatsoever or, conversely, the establishment of any direct or indirect privileges for citizens on account of their race or national origin, is punishable by law, as is any advocacy of racial or national exclusiveness or hatred and contempt.

122. We should like, in conclusion, to emphasize that it is the duty of the United Nations to ensure that the provisions of the Convention are implemented in the very near future and are strictly observed everywhere.

123. Lady GAITSKELL (United Kingdom): We did, of course, vote in favour of the Convention as a whole because we strongly support the general objectives and purposes of that Convention. We also voted for article 20 as a whole because, as the representative of Ghana pointed out, we have already on previous occasions made clear our opposition in principle to the placing of reservations on articles of implementation. We were glad to see that some of our colleagues shared this view.

124. We still, however, maintain our objections to article 15. These objections were explained in detail in Committee and there is no need for me to repeat them. Nothing has been said to refute them. The Ghanaian representative's arguments seem to turn on the assertion that the right to petition has already been granted by the Charter. This is, of course, not the case except to inhabitants of Trust Territories.

125. I shall confine myself to reiterating the general criticism of article 15 already expressed in the Third Committee by an able and distinguished colleague: it represents bad politics and worse law.

126. Mrs. MANTZOULINOS (Greece): My delegation voted for the deletion of the reservations clause when the vote was taken in the Third Committee [1368th meeting] because, in view of the amendments proposed to the draft, we thought that deletion was a better solution, taking into consideration the fact that a number of United Nations and specialized agencies conventions had not included a reservations clause. The reservations formula would permit any reservation by any State party to the Con-

vention or to any article of the Convention and, according to United Nations procedure, communication through the Secretary-General of such reservations to all States parties to the Convention, for their acceptance or disagreement.

127. In the absence of a reservations clause in a given convention, under United Nations practices and in conformity with the principles of international law no reservation could be entered into by a State if it were incompatible with the object and purposes of the convention.

128. The amendment submitted to the Assembly today [A/L.479], interpreting these principles of international law, seemed acceptable to my delegation and we voted in favour of it.

129. However, the last phrase of paragraph 2, providing that it is up to the States parties to decide, by a two-thirds majority, what is incompatible or inhibitive with regard to the object of reservations, seemed to us not a familiar clause in the proceedings of international conventions. We would have preferred to have this matter decided upon by a juridical body, rather, such as the Legal Section of the United Nations Secretariat, which would accordingly give its competent opinion on reservations entered into by States at a time of ratification or accession. This stage was provided for by the Convention.

130. Under the circumstances, however, we abstained on the last phrase of paragraph 2, but voted in favour of paragraph 2 as adopted, with the retention of its last phrase.

131. In explaining its vote in favour of resolutions A and B respectively preceding and following the text of the Convention [A/6181, para. 212] the delegation of Greece whole-heartedly welcomes the adoption of the Convention by the General Assembly. Despite some imperfections in the text, my delegation considers it an outstanding United Nations instrument, an achievement in international life. We are confident that it will effectively meet its purposes and objectives: namely, to combat racial discrimination in all its forms, and thus serve the great cause of human rights and human dignity.

132. Mr. BAROODY (Saudi Arabia): Racial discrimination should have been an anachronism a long time ago. Unfortunately, there are still certain countries and societies which practice racial discrimination, despite the fact that their national Constitutions forbid it. It is our fervent hope that the Convention we have just approved will reaffirm the right of all peoples, regardless of the colour of their skin.

133. I am happy to note that reservations have no place in such a Convention. We trust that it will not be too long before all the vestiges of racial discrimination will have disappeared from the face of this earth. The Convention has reaffirmed the fact that the United Nations, in its totality, believes that we all belong to the same human family.

134. Finally, it is indeed auspicious that the Convention has been adopted during the session which has been presided over by a scholarly, gentle and noble son of Italy—Italy, which has played a historic role in humanism, in art and in culture.



135. The PRESIDENT (translated from French): I call on the Secretary-General.

136. The SECRETARY-GENERAL: It is with great pleasure that I welcome the adoption by the General Assembly, at this twentieth session, of the International Convention on the Elimination of All Forms of Racial Discrimination.

137. I am convinced that the Convention will constitute a most valuable instrument by which the United Nations may carry forward its efforts to eradicate the vestiges of racial discrimination wherever they may persist throughout the world.

138. In the Charter, the peoples of the United Nations proclaimed their determination to reaffirm faith in fundamental human rights and in the dignity and worth of the human person. The Convention which the General Assembly has just adopted represents a significant step towards the achievement of that goal. Not only does it call for an end to racial discrimination in all its forms; it goes on to the next, and very necessary, step of establishing the international machinery which is essential to achieve that aim.

139. Since the Universal Declaration of Human Rights was adopted and proclaimed on 10 December 1948, the world has anxiously awaited the completion of other parts of what was then envisaged as an International Bill of Human Rights, consisting of the Declaration, one or more international conventions, and measures of implementation. That is why the adoption of this Convention, with its measures of implementation set out in part II, represents a most significant step towards the realization of one of the Organization's long-term goals.

140. I am most happy that this step has been taken at this time, at the culmination of the observance of the International Co-operation Year, and I am gratified that the Convention has been adopted by so decisive a vote.

141. I note that the Secretary-General has been assigned an important role in providing the Secretariat and otherwise assisting the Committee on the Elimination of Racial Discrimination which will be established when the Convention comes into effect, and the Conciliation Commission which will be appointed as required. For my part, I am pleased to say that I accept these obligations.

142. The preparation of the Convention was a co-operative effort in which many organs of the United Nations participated, including the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights, and the Economic and Social Council, and this General Assembly. In particular, it was the great initiative and drive displayed by the Third Committee which gave the Convention its full form and substance. I should like to commend them for this achievement, which is in keeping with the high hopes and expectations of the peoples of the world.

143. It is now the duty of all of us to see to it that the Convention comes into effect as soon as possible and that its terms are carried out precisely and in a spirit of mutual respect and understanding between peoples and nations, in accordance with the great humanitarian objectives of the Charter and the principles laid down in the Universal Declaration of Human Rights.

144. The PRESIDENT (translated from French): I thank the Secretary-General for his statement. Ten days or so ago, in this same Assembly Hall, we celebrated the anniversary of the Universal Declaration of Human Rights. It is a great pleasure for me, as your President, to say that there is no better way of celebrating the anniversary of the Universal Declaration than by the vote we have cast this morning at the twentieth session.

*The meeting rose at 1.40 p.m.*

# Annex 783

Intentionally Omitted





# Annex 784

Written Statement Submitted by the Society for Threatened Peoples, U.N. Doc.  
A/HRC/28/NGO/97 (23 February 2015)





# General Assembly

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## Human Rights Council

Twenty-eighth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]


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## **Rights of Minorities in annexed Crimea deteriorating**

Nearly one year passed since the Russian Federation annexed Crimea. Since then the protection of the rights of the minorities there deteriorated. The authorities have particularly targeted Crimean Tatars, a Muslim ethnic minority in the Crimea peninsula who openly opposed the Russian annexation.

Crimean Tatars make up 15% of the population on the peninsula. The authorities have barred Mustafa Dzhemilev, long-time leader of the Crimean Tatars and Refat Chubarov, president of the self governing body Mejlis from entering their homeland. The authorities have also accused Mejlis of “extremism”, harassed and persecuted its members and sealed its office in Simferopol.

On January 29<sup>th</sup> the Mejlis deputy head, Achtem Chyygoz, was detained on charges of ‘organizing and taking part in mass disturbances’. Not only is there video footage demonstrating that Chyygoz tried to calm protesters, but the demonstration in question took place on Feb 26, 2014, the day before Russian soldiers seized control and weeks before Russia annexed the peninsula. Chyygoz is accused in connection with two persons dying during the protest. At the time one of the victims was reported to have died of a heart attack. Even if it were proven that both deaths were a direct result of the demonstration, the charges seem unrelated to the person arrested. Moreover the Russian criminal code was not in place at the time of the event, which is why, if there are any offences they should fall under Ukrainian prosecution.

Human Rights organizations and the Mejlis of the Crimean Tatar people have made clear that the arrest of Chyygoz is a further severe harassment of the minority. His house was searched on January 30<sup>th</sup>. On February 6<sup>th</sup> the Crimean Supreme Court upheld the detention of Chyygoz. After the court hearing his relatives for two days were not informed about his place of detention. Only on February 9<sup>th</sup> they were told that he is held in a single cell in the SIZO – investigation detention center. On February 7<sup>th</sup>, Eskender Kantemirov, another Crimean Tatar activist and participant of the protests on February 26<sup>th</sup> 2014, was arrested on the same charges.

Sinaver Kadyrov, a long time Crimean Tatar activist and founder of the “Committee for the Protection of Rights of Crimean Tatars” was deported from Crimea. On January 23<sup>rd</sup> he was on his way to Kherson, in southern Ukraine, in order to fly to Turkey for medical treatment. Kadyrov was accompanied by Eskender Bariev and Ambedijt Suleymanov, both prominent Crimean Tatar activists. They were stopped at the Armyansk check point. The guards took their passports and told them to wait. While Bariev and Suleymanov were allowed to wait in their car, Kadyrov was held in a little room and later told that he had violated Russian law. He was taken to Armyansk for a court hearing. The judge found that Kadyrov had overstayed Russia’s 90-day limit for foreigners who are allowed to enter Russia under visa-free agreements and ordered him to be expelled from Crimea. The background of this court decision is the Russian policy of “passportization” granting Russian citizenship to Crimea residents. After April 18<sup>th</sup> 2014 all Ukrainian passport holders who resided in Crimea were deemed Russian citizens. Those who wanted to hold on to their Ukrainian passports were effectively made foreigners. Kadyrov had taken no action on his citizenship. But still he was treated as if a foreigner. In other cases, for instance that of prominent Ukrainian film maker, Oleh Sentsov, Russian authorities claimed that he was Russian, detained him in Crimea and sent him to a prison in Moscow. This shows that the law on citizenship is applied arbitrarily to suit the interests of the Russian authorities.

The editor of the Mejlis newspaper Avdet received “anti-extremism” warnings and the paper was threatened with closure. In the end of January 2015, armed “OMON” special forces raided the only Crimean Tatar TV channel ATR in Simferopol. The channel staff was detained and later released, equipment confiscated, the archive of the channel taken away. Crimean Tatars, who gathered in front of the building in support of ATR, were threatened with legal proceedings because their protest was not approved by the authorities. The OSCE Representative on Freedom of the media slammed the incident as a “clear intrusion of media independence”.



The Crimean Tatar minority has been targeted systematically. Crimean Tatar politicians and activists as well as religious dignitaries were especially in danger of being harassed: their homes were searched, mosques and Muslim schools raided, schools and libraries searched, people disappeared, others were arrested. Also persons opposing the annexation were discriminated against. The population feels isolated as there are no international organizations present on the peninsula. Also human rights organizations are only frequently on Crimea to monitor and document human rights violations.

That is why Society for Threatened Peoples calls on the Human Rights Council to call on:

The government of the Russian Federation to:

- Release Achtem Chyygoz
- Reestablish the right to enter Crimea for Mustafa Dzhemilew, Refat Chubarov and Sinaver Kadyrov
- Stop the discrimination of the indigenous Crimean Tatar population on the peninsula

UN bodies to:

- Establish international and independent human rights monitoring mechanisms on Crimea
  - Monitor the trial of Achtem Chyygoz
  - Activate UN Special Procedures, especially the UN Special rapporteur on indigenous issues as well as the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Crimea
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# Annex 785

Permanent Delegation of the Russian Federation to UNESCO, Information on the Situation in the Republic of Crimea (the Russian Federation) within the Scope of UNESCO Competence as of April 8, 2015 (14 April 2015)





14 April 2015

## Information on the situation in the Republic of Crimea (the Russian Federation) within the scope of UNESCO competence. As of April 8, 2015



The Russian Federation calls attention that the decisions on the Crimea of the 194th and the 195th sessions of the UNESCO Executive Council are legally null and void due to the fact that they exceed the scope of Organization's competence. Article I, para 3 of the Constitution of UNESCO firmly establishes that the Organization is prohibited from intervening in matters which are essentially within the domestic jurisdiction of States Members. Resolutions on the Crimea adopted at the sessions of the Executive Council contradict not only the Constitution of UNESCO but also the fundamental right of peoples to self-determination, established in the UN Charter and international covenants on human rights.

"Information on the current events in the Autonomous Republic of Crimea" circulated by the Ukrainian delegation distorts the real state of affairs in the peninsula in the spheres of education, security of cultural heritage sites, freedom of expression, rights of national minorities and other areas of competence of UNESCO. In this regard Russia brings to the notice of the Director-General of UNESCO and the States Members of the 196th session of the Executive Council the following information on the real situation in the Republic of Crimea (the Russian Federation) in the above mentioned spheres that was provided by the relevant Russian ministries and agencies.

### I. The Right to Education

The Russian Federation in accordance with Article 28, para 1, of the 1989 Convention on the Rights of the Child and Article 3, para (e), of the UNESCO 1960 Convention against Discrimination in Education recognizes the right of any child to education and takes all necessary measures to ensure it.

As it is established by Article 2, para 4, of the Federal Constitutional Law No. 6-FKZ and Article 10 of the Constitution of the Republic of Crimea of April 11, 2014, the state languages of the Republic of Crimea are Russian, Ukrainian and Crimean Tatar. Besides, Article 1, para 2 of the Constitution of the Republic of Crimea guarantees everyone the right to use his or her native language, as well as the right to a free choice of the language of communication, upbringing, education and creative work.

Education in the Republic of Crimea is provided in state languages of the Republic in accordance with the procedure established by Federal Laws No. 273-FZ of December 29, 2012, "On Education in the Russian Federation" and No. 84-FZ of May 5, 2014, "On the Peculiarities of the Legal Regulation of the Relations in Education in Connection with the Admission of the Republic of Crimea into the Russian Federation and the Establishment of New Constituent Entities within the Russian Federation – the Republic of Crimea and the Federal City of Sevastopol and on the Introduction of Changes to the Federal Law "On Education in the Russian Federation"".



Article 36 of the Constitution of Crimea guarantees general access to and free pre-school, secondary and high vocational education in state or municipal educational establishments and at enterprises. Everyone shall have the right to receive on a competitive basis a free higher education in a state or municipal educational establishment and at an enterprise.

Decree No. 651 of December 30, 2014 of the Council of Ministers of the Republic of Crimea established the State Program for the Development of Education and Sciences in the Republic of Crimea for 2015–2017 according to which comprehensive measures are taken to preserve and develop the network of classes and schools teaching in Ukrainian and Crimean Tatar, covering the issues of material and technical support of such schools.

According to the Ministry of Education, Science and Youth of the Republic of Crimea, general educational establishments of the Republic provide education to 184,869 children, including 177,984 children (96,2%) with Russian as the language of learning, 4,895 children (2,7%) with Crimean Tatar as the language of learning and 1,990 children (1,1%) with Ukrainian as the language of learning. There are 15 general educational establishments with Crimean Tatar as the language of learning (in Yevpatoria and Sudak, Bakchysarai, Belogorsk, Dzhankoy, Kirovski, Krasnogvardeiski Pervomaiski, Simferopolski and Sovetski districts).

Numbers of students taught in the three official languages of the Republic of Crimea as well as students learning these languages as subjects in pre-school and general educational establishments in 2014/2015 and similar numbers in 2013/2014 school years are given below. Comparative analysis of the data clearly demonstrates the absurdity and political bias of accusations against Russian authorities of "flagrant violations of children's right to receive education in their native language".

In the 2014/2015 school year in the Republic of Crimea:

a) pre-school educational establishments provided education to:

- 63,158 children in Russian (57,508 in 2013/2014);
- 1,740 children in Ukrainian (1,760 in 2013/2014);
- 837 children in Crimean Tatar (830 in 2013/2014)

b) general educational establishments provided education to:

- 177,984 children in Russian (158,174 in 2013/2014);
- 1,990 children in Ukrainian (12,694 in 2013/2014);
- 4,895 children in Crimean Tatar (5,551 in 2013/2014);

Apart from that, general educational establishments provide the study of the following languages:

- Russian (in organizations and classes with non-Russian as the language of learning) – 6,885 students in the 2014/2015 school year (16,839 in 2013/2014);
- Ukrainian (in organizations and classes with Russian as the language of learning) – 39,150 students in the 2014/2015 school year (162,764 in 2013/2014);
- Crimean Tatar (in organizations and classes with Russian as the language of learning) – 13,040 students in the 2014/2015 school year (12,396 in 2013/2014).

Number of teachers in general educational establishments, teaching the following languages:

- Russian – 1,534 people in the 2014/2015 school year (1,354 in 2013/2014);
- Ukrainian – 1,573 people in the 2014/2015 school year (1,566 in 2013/2014);
- Crimean Tatar – 347 people (352 in 2013/2014).

Apart from that, Regulation No.436-p of May 27, 2014, of the Council of Ministers of the Republic of Crimea approved the Implementation plan on the Decree of the President of the Russian Federation No. 268 of April 21, 2014, "On Measures to rehabilitate Armenian, Bulgarian, Greek, Crimean Tatar and German populations and State support for their revival and development". The plan includes modernization and enhancement of material and technical as well as educational and methodological base of the general educational establishments with Armenian, Bulgarian, New Greek, Crimean Tatar and German as the learning languages.

All students of general educational establishments in the Republic of Crimea are provided to the full extent with textbooks envisaged by the educational standards of the Russian Federation. Financial support to acquire textbooks included 899,077.6 thousand rubles allocated from the Federal budget of the Russian Federation to the budget of the Republic of Crimea on July 11, 2014.

Educational materials published in Ukraine that are not used in the academic process are kept in the libraries of the educational institutions. The Ministry of Education, Science and Youth of the Republic of Crimea or the educational administrations have not taken decisions to dispose of educational materials in the Ukrainian language.

In the City of Sevastopol educational materials based on the Ukrainian educational programmes have been collected and systematized and, then, sent to Donetsk and Lugansk to be used in academic process.

Textbooks of the Crimean Tatar and Ukrainian languages are currently being developed in accordance with the Federal State

Education Standards of the Russian Federation. Until the textbooks are finished, these languages are being taught with the help of the textbooks established by the Ministry of Education and Science of Ukraine basing on Ukrainian educational programmes.

Prosecution authorities of the Republic of Crimea and the City of Sevastopol have not found any violations of the rights of children for education in the official language of the Russian Federation or the official languages of the Republic of Crimea. There have also been no complaints from the citizens concerning violations of the rights of minors.

There have been registered no cases of non-granting of education certificates. All school-leavers and graduates of higher education institutions of the Republic of Crimea and the City of Sevastopol of the 2013/2014 school years have been given school certificates and diplomas. Ukrainian standards for issuing school certificates have been used as well. In March, 2014, the Ministry of Education, Science and Youth of the Republic of Crimea ordered and paid the Ministry of Education and Science of Ukraine for copies of such certificates, and in June, 2014, they were given to school-leavers upon parents' demand.

In compliance with Article 6, Part 1, of the Federal Law No. 84-FZ, the Russian Federation recognizes education, academic levels and academic qualifications, that had been awarded in Ukraine and prescribed in the education certificates and in academic qualification certificates approved by the Cabinet of Ministers of Ukraine and that belong to the persons who were recognized as citizens of the Russian Federation according to Article 4, Part 1, of the Federal Constitutional Law No. 6-FKZ and the persons who were permanently residing in the Crimea and Sevastopol on the day of their admission to the Russian Federation.

Pursuant to Article 12 of the Federal Constitutional Law No.6-FKZ of March 21, 2014, the documents that confirm, inter alia, marital status, education, property and other rights, issued by state or other official bodies of Ukraine, the Autonomous Republic of Crimea and Sevastopol, remain valid without any time limitation or the need of confirmation by the state of the Russian Federation, the Republic of Crimea, or the Federal City of Sevastopol.

On July 16, 2014, 1,089,801.5 thousand rubles were transferred to the accounts of the Republic of Crimea as part of modernization of the regional education system.

Upgrading courses for teachers, managers and other employees in the education sector of the Republic of Crimea were also funded in the amount of 458,254.7 thousand rubles.

There are 14 universities and branches in the Crimea, including the Crimean Industrial Pedagogical University, branches of the Russian Academy of Justice in Moscow, Academy of Law and the Academy of the Russian Interior Ministry. Until 2014, the language of learning was mainly Russian. Exceptions were only certain philological disciplines (Ukrainian language and literature) – teaching was conducted in the Ukrainian language even after the referendum of 2014.

In order to prepare employees for comprehensive socio-economic development of the Crimean Federal District and the Federal City of Sevastopol, the Vernadsky Crimean Federal University, a Federal State Autonomous Educational Institution of Higher Professional Education, was founded in Simferopol by the Russian Federation Government Decree No. 1465-r of August 4, 2014, as well as the Sevastopol State University, Federal State Autonomous Educational Institution of Higher Professional Education, was founded in Sevastopol by the Russian Federation Government Decree No. 1988-r of October 8, 2014.

## **II. Cultural Heritage**

According to the government report submitted to the State statistical authorities of Ukraine, the Autonomous Republic of Crimea as of January 1, 2014, had 24 museums of which 12 were under the supervision of republican institutions with the remaining 12 under the supervision of municipal institutions. The total number of exhibits and valuables in museum collections is 1,270,847 items.

According to the data from to the State statistical authorities of Russia in the territory of the Autonomous Republic of Crimea there were, as of January 1, 2015, 27 museums of which 15 were of republican significance while the remaining 12 are of municipal significance. The total number of exhibits and artifacts in museum collections is 1,291,937.

There are 6 museums in the city of Sevastopol counting 523,925 exhibits.

According to the State Committee for Safeguarding of Cultural Heritage of the Republic of Crimea there are 11,000 objects of cultural heritage in the territory of the region. 5,846 of them are monuments of archeology (including primitive sites, Tauri burial grounds and those of the Migration Period, Scythian settlements and mounds, and ancient cities), almost 4,360 are historical monuments (most of them relate to the events of World War II) and there are almost 1,000 architectural monuments and some 230 monuments. There are 2,063 objects of cultural heritage in the city of Sevastopol registered and protected by State.

While under the Ukrainian jurisdiction, the objects of cultural-historical heritage in the territory of Crimea were falling into disrepair due to systematic underfunding. The authorities which maintained and supervised these objects were not taking necessary steps to restore them or to mitigate the destructive effects of natural phenomena. Some objects of cultural heritage were illegally privatized and also partly transferred to the Presidential Affairs Department of Ukraine or to individuals who were closely associated with the Ukrainian senior government officials. Palaces, park complexes and other monuments were maintained only to the extent required for their commercial use.

The cultural-historical monuments in the territory of the Republic of Crimea and in the city of Sevastopol are protected by Russian legislation notably by the Federal Law No. 9-FZ of February 12, 2015, "On basic principles of legal regulation of relations in the field of culture and tourism in connection with the accession of the Republic of Crimea to the Russian Federation and establishment of new constituent entities within the Russian Federation – the Republic of Crimea and the city of federal importance Sevastopol". Under this law, the classification of objects of cultural heritage of the Republic of Crimea and the city of Sevastopol as objects of federal significance or objects of local (municipal) significance and their entry in the National Register are to be conducted within a year from the day on which this law enters into force.

The accusations against Russia of pillage of the Crimean cultural valuables are absurd. According to the Office of the Prosecutor General and other competent authorities of the Russian Federation the facts of transportation of museum exhibits or cultural valuables from Crimea to other regions of Russia since March 18, 2014, have not been registered. On the contrary, over the past year the number of museum exhibits and valuables in Crimea has increased by more than 20,000 items.

On September 1, 2014, the federal government funded institution of the Republic of Crimea East Crimean Historical and Cultural Museum-Preserve, successor of the Kerch National Preserve, signed an agreement on cooperation with the federal government cultural institution the State Hermitage Museum. However, no artifacts or cultural items of the Crimean museum have been transferred to the State Hermitage Museum. The agreement on scientific and cultural cooperation – signed by the State Hermitage Museum and the federal government funded cultural institution the Tauric Chersonese National Preserve on July 4, 2014 – does not provide for the transfer of any cultural items either.

In addition, contrary to the widespread claims, no damage has been caused to the Sudak Fortress Monument Site over the past year. No cases of destroyed artifacts or illegal alienation of museum property have been registered. On June 24, 2014, by the regulation of the Council of Ministers of Crimea, the management of the Museum Complex was transferred under the jurisdiction of the federal government institution of the Republic of Crimea the Sudak Fortress Museum Preserve which is under the supervision of the Ministry of Culture of the Republic of Crimea.

The world heritage site the Ancient City of Tauric Chersonese and its Chora is under the supervision of the Russian Federation and managed by the federal government cultural institution the Tauric Chersonese National Preserve established by the Decree of the Government of Sevastopol No. 569 of December 11, 2014. In January 2015, the Preserve was incorporated in the United Museum of History of Sevastopol, but by the Decree of the Government of Sevastopol No. 142 of March 6, 2015, it was removed from the museum association together with the land allocation system of the Chersonese Chora on the Heracleon Peninsula, as well as the Calamita and Chembalo fortresses – thus regaining its status of a separate legal entity.

On March 18, 2014, the main collection of the Tauric Chersonese National Preserve was supplemented by 731 museum items. Today, the total number of the artifacts reaches 217,310 items.

In August 2014, the President of the Russian Federation instructed the government of the country – together with the presidential administration and executive authorities of Sevastopol – to ensure protection of the world heritage site the Ancient City of Tauric Chersonese and its Chora" in accordance with the requirements of the Convention concerning the Protection of the World Cultural and Natural Heritage, and to introduce proposals to add the site to the State Code of Particularly Valuable Objects of Cultural Heritage of the Peoples of the Russian Federation.

Currently, the Ministry of Culture of the Russian Federation, together with the authorities of the Tauric Chersonese National Preserve, is preparing necessary documentation to complete the process of granting the heritage site the Ancient City of Tauric Chersonese and its Chora the status of a federal site of interest. Upon gaining the status, Chersonese will enjoy greater protection, which will fully comply with the conservation measures taken in relation to other UNESCO World Heritage sites of the Russian Federation.

For the campaign of accusations against Russia a large-scale fraud in the territory of the Tauric Chersonese National Preserve in the area of the Sandy cape is characteristic. Those who carry out that campaign present as an evidence of predatory policy of Russia a criminal case initiated by the Department of the Investigatory Committee of the Russian Federation for the city of Sevastopol on December 19, 2014, in connection with unlawful occupation of a 1.5-hectar plot of land located there, but they even did not try to check the dates when that unlawful act had been committed.

Meanwhile, the investigators determined that in 2009 the plot had been unlawfully passed to the cottage building cooperative "Zolotoye Runo" in collusion with officials from various administrative bodies of the city of Sevastopol responsible for the cultural heritage protection.

Other cases of unlawful occupation of lands in the conservation zone of the Tauric Chersonese National Preserve were also identified to confirm only that unlawful acts had been committed in Sevastopol when it belonged to Ukraine. Criminal cases were initiated in connection with all those events with a view to returning unlawfully occupied lands to the Tauric Chersonese National Preserve.

Grave violations were identified with respect to archeological excavations carried out in the Crimean Peninsula when it belonged to Ukraine. Unlawful excavations were regularly carried out in the territories of about 25 archeological monuments of Crimea. As a result of actions by unlicensed archeologists, some historic sites of the peninsula were fully demolished, e.g. the Funa settlement in the territory of Big Alushta and the Kitey necropolis in the Leninsky district.

With a view to preserving archeological heritage sites in the Republic of Crimea and the city of Sevastopol, according to the established procedure the Ministry of Culture of the Russian Federation issues permits ("laissez passer") to identify and explore archeological heritage sites. 68 such permits were issued in 2014, and 8 – in 2015.

Field surveys are carried out by both archeologists from Crimea and those from other Russian regions who are highly qualified professionals having been engaged in the exploration and popularization of the archeological sites of the peninsula for many years.

As in the previous years, archeological finds are being passed to museums in the Republic of Crimea and the city of Sevastopol.

To the contrary, the demands of the Ukrainian side to pass to the National Museum of the History of Ukraine in Kiev exhibits from four Crimean museums which had participated in the exhibition "Crimea. The Golden Island in the Black Sea" organized by the Allard Pierson Museum in Amsterdam lead to the disintegration of museum collections in Crimea.

The Federal Target Program "Culture of Russia (2012 - 2018)" provides for monitoring of the archeological heritage sites in the

territory of the Kerch Peninsula. As instructed by the President of the Russian Federation, a plan of actions was developed to preserve such sites in the process of designing, building and reconstructing facilities of transport infrastructure, communications and mass media, energy and water supply.

With a view to preserving the World Heritage Site “Ancient city of Chersones and its Chora”, archeological heritage sites located in the territory of the Tauric Chersonese National Preserve will be subject to monitoring. The Russian side is also ready to receive a mission of the World Heritage Centre and the International Council on Monuments and Sites (ICOMOS) in Chersones and create all necessary conditions for its work.

### III. Freedom of Expression

In the Russian Federation, the principle of the freedom of mass communications is enshrined in the Russian Constitution (paragraph 4 of Article 29), Law of the Russian Federation “On mass media” of December 27, 1991 (with amendments and additions) and other information-related legislative acts.

Legal mechanisms existing in Russia govern in a balanced manner both the freedom of mass media, on the one hand, and obligations and responsibilities of media community with respect to the citizens and the state, on the other hand. In particular, the Law “On mass media” contains requirements concerning the registration of actors in the media space, rules of professional and ethic conduct, the limits of state and public control which makes it possible to exercise one of the main democratic principles reading that the implementation of rights and freedoms by one actor of public relations should not inflict harm or damage on the rights and legitimate interests of other actors.

At the same time, the materials distributed by the Ukrainian side present a distorted picture of the real situation in the information domain in the Russian Federation, in particular in Crimea.

When an independent Republic of Crimea was admitted to the Russian Federation, Russian standards of accreditation of local and foreign journalists were introduced there. We see no discrimination of Ukrainian media representatives in contrast to the actions by the Kiev authorities with respect to Russian mass media. In Crimea, Ukrainian journalists are treated as other foreign journalists. The Prosecutor’s Office of the Republic of Crimea has not received any complaints related to exerting pressure on mass media.

In accordance with Article 6 of the Federal Constitutional Law of the Russian Federation of March 21, 2014, No. 6-FKZ “On admitting to the Russian Federation the Republic of Crimea and establishing within the Russian Federation the new constituent entities of the Republic of Crimea and the city of federal importance Sevastopol”, a transitional period has been declared to settle the issues of integration of new constituent entities in the economic, financial, credit and legal systems of the Russian Federation. In this context, the process of re-issuance of licenses for Crimean mass media and their re-registration was launched in May 2014. At the same time, up to April 1, 2015, a simplified procedure of registration was in effect, including financial benefits and established in accordance with Federal Law of December 1, 2014, No. 402 –FZ “On certain aspects of legal regulation of relations in the field of mass media in connection with admitting the Republic of Crimea to the Russian Federation and establishing within the Russian Federation new constituent entities of the Republic of Crimea and the city of federal importance Sevastopol”.

As of April 2, 2015, in the Republic of Crimea and in the city of Sevastopol 232 mass media were registered, including 19 television channels, 42 radio channels, 8 online media, 163 print media and information agencies. Up to April 1, 2015, from among the mass media mentioned above 207 operated with Ukrainian registration and licenses and 25 came to media market for the first time. Since April 1, entitling documents issued by the Ukrainian authorities to Crimean mass media lose their force and the procedure of registration as Russian mass media will continue in the ordinary course.

It should be noted that currently far from every Crimean mass medium took part in the re-registration process. First of all, this is due to the fact that at this stage mass media which had closed for some reason did not take part in that process. In this context, Russian authorities are considering the request of the representatives of Crimean media community to grant the necessary support to mass media in the crisis period.

It is important to stress that Russia does not view the consistent work to counter the distribution of Nazi or neo-Nazi, terrorist or extremist materials as a practice of interfering with media activities in Crimea. The aim of such publications is evident, i.e. to provoke conflicts, undermine the constitutional foundations of the state and its sovereignty. The law prohibits the distribution of such information in Russia. We would like to cite a few examples interpreted by the Ukrainian side as an interference with media activities.

Termination of broadcasting by the LLC “Black Sea TV and Radio Company”. As of March 2015, the LLC “Black Sea TV and Radio Company” was not registered as mass medium with no application for registration having been filed.

The activities of the LLC “Black Sea TV and Radio Company” was terminated by the SimStar Internet provider in view of the fact that broadcasting of the channels with no license for broadcasting in the territory of the Russian Federation is prohibited. That issue falls under the competence of the Ministry of Domestic Policy, Information and Communications of the Republic of Crimea. The movable and immovable property owned by the LLC “Black Sea TV and Radio Company” was seized and put in safe custody based on the decision of the Commercial Court of the Republic of Crimea after the consideration of an application to introduce protective measures as a follow-up to the claim of the Ukrainian legal entity “Radio and TV Broadcasting Centre of the Autonomous Republic of Crimea” to recover the debts amounting to more than 3 million roubles and resulting from the violation of contractual obligations to provide services of distribution and broadcasting of television programmes.

Delivery of official warning to the Crimean Tatar Newspaper “Avdet”. Russia consistently respects and supports the activities of ethnic organizations and at the same time stands for strict observance of national legislation by such organizations. The Mejlis of the Crimean Tatar people and the “Avdet” newspaper controlled by it which had been repeatedly warned of an inadmissibility of public encouragement of extremist activities refused to work within the legal framework.

On September 17, 2014, in accordance with Articles 13 and 13.1 of the Federal Law of April 3, 1995, No. 40-FZ "On Federal Security Service" and with a view to preventing a crime treated as the promotion of extremists ideas through mass media, Shevkey Kaybullayev, editor-in-chief of the Crimean Tatar Newspaper "Avdet", was given an official warning of an admissibility of actions creating conditions for committing crimes.

TV Channel "ATR". The Department of the Investigatory Committee of the Russian Federation for the Republic of Crimea initiated a criminal case in accordance with Article 212 of the Criminal Code of Russia ("mass disturbances") in connection with mass disturbances around the building of the Verkhovna Rada of the Autonomous Republic of Crimea on February 26, 2014, during which 2 persons died. On January 26, 2015, the office of the TV company "ATR" was searched in response to the information that video records contained data on events having a substantial significance for investigating the said criminal case, as well as a refusal of the TV company's managers to provide such records as requested by the investigator.

Operational checks confirmed the information on the availability of records required by the investigators. The video records of mass disturbances which had been found and computer system unit with recording media were seized. The staff members of the TV channel were given an opportunity to copy all the information required to avoid interruptions in broadcasting. The seized system unit was inspected by an investigator within 24 hours.

In October 2014, the TV Channel "ATR" filed a request to the Federal Service for Supervision of Communications, Information Technologies and Mass Media of Russia to issue a license for TV broadcasting in the Russian Federation. The inspection revealed discrepancies in license documents which did not allow issuing a license. On April 1, 2015, the ATR terminated television and radio broadcasting in the Republic of Crimea, since it failed to undergo a procedure of registration as Russian mass medium within a prescribed period.

The ATR has an illustrative background. Along with the Meydan Radio (102.7 FM) and information portal "crimeantatars.org", the TV channel is part of the LLC "Atlant-SV" media holding owned by one of the leaders and ideologists of the Crimean Tatar community, citizen of Russia Lenur Islyamov.

The TV channel has been broadcasting for Crimea since 2006. In September 2012, the National Television and Radio Broadcasting Council of Ukraine rejected an application of the LLC "Atlant-SV" to issue a license for broadcasting in the multi-channel TV network MX-5 of Ukraine. In August 2013, the media holding was refused the right to FM broadcasting in Crimea. The fact that the holding had three warnings given by the National Council of Ukraine was cited as an official reason for refusal. Thus, the Ukrainian authorities opposed the expansion of the sphere of influence of that media holding due to its apparently anti-State information policy.

At the present day, the Kiev authorities has given the TV Channel "ATR" a priority right of broadcasting through the Ukrainian cable-based network probably due to the current anti-Russian focus of that TV channel.

With regard to freedom of expression in today's Crimea, it should be taken into account that the language of the Crimean Tatars was recognized there as a state language for the first time in the modern history.

#### **IV. The Rights of Minorities**

The rights and freedoms of person and citizen in the Republic of Crimea are recognized and guaranteed in accordance with the generally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation and the Constitution of the Republic of Crimea.

The Republic of Crimea is home to more than 125 different nationalities, of which 58–60 per cent are Russians, 20–24 per cent – Ukrainians, 10-12 per cent – Crimean Tatars, as well as Greeks, Armenians, Georgians and other ethnic groups.

Restoration of historical justice and elimination of consequences of unlawful deportation from the territory of Crimea of representatives of some nations during the Soviet period would contribute to resolving international issues in the Crimea. In this regard the President of the Russian Federation adopted a decree on April 21, 2014, No. 268 "On Measures for the Rehabilitation of the Armenian, Bulgarian, Greek, Crimean Tatar and German Peoples Subjected to Unlawful Deportation and Political Repressions on ethnic and other Grounds".

The Federal Target Program Social and Economic Development of the Republic of Crimea and the Federal City of Sevastopol until 2020 adopted by decision No. 790 of the Government of the Russian Federation of 11 August 2014 stipulates the activities, including those aimed at ensuring interethnic unity, harmonizing interethnic relations and providing favorable conditions for the development of Crimean peoples living in the territory of the Republic of Crimea and the city of Sevastopol. This Program earmarks federal funds in the amount of 10,321.74 million rubles for 2015–2020.

In general, the interethnic situation in the Republic is considered to be stable. No acts of intimidation, violence, persecution of ethnic Ukrainian or Crimean Tatar population, representatives of other nationalities, including resulting from the use of the Ukrainian and Crimean Tatar languages or national symbols in public places have been registered. Law-enforcement authorities of a Republic of Crimea and the city of Sevastopol have not received any claims concerning any ban on entry or departure of public figures or persons of public professions or about obstacles to staging mass cultural events.

Besides, the interethnic and, as a consequence, the sociopolitical situation is aggravated by the attempts to provoke a conflict between Crimean Tatar and Slavic peoples. The Mejlis of the Crimean Tatar People, a non-registered body created by the Qurultay of the Crimean Tatar People (National Congress) in 1991, is playing a destructive role in this.

At the same time the Mejlis of the Crimean Tatar People, having a significant number of supporters, does not express the opinion of the whole Crimean Tatar nation. Other organizations and movements with the participation of Crimean Tatars who have other



views on the situation have been established in Crimea. Among them are, in particular, non-governmental organizations Milliyy Firqa and Qirim Birligi, and the Qirim public movement. Chairman of the movement R.I. Ilyasov is Deputy Chairman of the State Council of the Republic of Crimea. Crimean Tatar representatives hold important positions also in all other bodies of the legislative and executive branches of the Republic of Crimea.

Interethnic relations in Crimea go hand in hand with sectarian ones.

The Constitution of the Russian Federation, the Constitution of the Republic of Crimea of April 11, 2014, and the Charter of the Federal City of Sevastopol of April 14, 2014, guarantee the nations of the Crimean Federal District the freedom of conscience, the freedom of worship, including the right to practice any religion individually or with others or practice none, freely chose, profess or disseminate religious and other convictions and act according to such.

As of January 1, 2014, 1409 religious organizations were registered in Crimea; however, some 674 communities, mainly Muslim ones, operated without registration. As of March 1, 2015, in Crimea 60 religious organizations, including 9 communities, were re-registered in accordance with the Russian law; others – who have filed documents pursuant to the procedure established by law – are being registered.

The Ukrainian Orthodox Church is still the largest confession in Crimea (in a canonical unity with the Moscow Patriarchate). It is represented by three dioceses – the diocese of Simferopol and Crimea, the diocese of Dzhankoy, and the diocese of Feodosiya. They consist of 532 religious organizations – the diocese of Simferopol and Crimea incorporates 4 monasteries, 4 brotherhoods, a religious educational establishment, and 323 religious communities; the diocese of Dzhankoy consists of 137 communities; and the diocese of Feodosiya is represented by 2 monasteries and 61 communities.

The Ukrainian Orthodox Church of the Kiev Patriarchate (UOC of the KP) is represented in Crimea by 44 religious organizations including one Spiritual Board, three missions, one brotherhood and 39 religious communities. The churches and cathedrals continue to receive parishioners. Archbishop Clement, Head of the Crimean Diocese of the UOC of the KP, has residence in Crimea and regularly attends public and religious events.

The Islamic religious organizations are the second largest confession of all existing in Crimea. They are represented by the Spiritual Board of the Muslims of Crimea (SBMC) and Spiritual Centre of the Muslims of Crimea (SCMC).

There are 346 religious organizations, including one Board, 5 religious educational establishments (madrasah) and 340 religious communities within the SBMC. On February 27, 2015, the SBMC underwent the re-registration procedure under the legal name "Centralized Religious Organization "Spiritual Board of the Muslims of the Republic of Crimea and of the city of Sevastopol". Besides, the SBMC resumed its work within the Interreligious Council "World is a Gift of God" under the Council of Ministers of the Republic of Crimea. However, the leaders of the SBMC do not intend to join the established Islamic religious centres of the Russian Federation. The proposals of the Council of Muftis of Russia to join this organization addressed to the leaders of the SBMC were also declined.

There are 15 religious organizations, including 1 spiritual centre and 14 religious communities, within the SCMC. Moreover, the charters of 49 independent Islamic communities are registered in the Republic of Crimea.

There are no cases of enforced closing of churches, cathedrals of the Ukrainian Orthodox Church of the Kiev Patriarchate or of other confessions, or harassment of Orthodox Ukrainians by preventing priests and believers from entering church buildings. No searches of churches, mosques or cathedrals were carried out, nor any pressure was exerted on religious communities. The representatives of the UOC of the KP, the Roman Catholic Church in Ukraine (headed by Jacek Pyl), the SBMC (mufti Emirali Ablayev) do not see any threats against themselves or organizations they head.

The inter-confessional situation in the Crimean Federal District of the Russian Federation in general can be characterized as stable and predictable. Believers in that district have all opportunities to realize their right to freedom of religion. The representatives of the clergy and general public support the position of state and law-enforcement bodies to ensure law and order, including in the field of interethnic relations, countering radicalism and extremist manifestations.

At the same time, those who are against the stabilization of the situation on the Crimean Peninsula use any far-fetched pretext to separate peoples living here and foment ethnic and confessional strife. In their activity, they often proceed from an information war and instigation to direct extremist action.

Taking this into account, the law enforcement authorities of the Russian Federation, the Republic of Crimea and the City of Sevastopol are thoroughly checking any information on violations of the law and taking adequate measures to prevent illegal activities whoever commits such.

In March 2014, the law enforcement bodies detained a priest of the Ukrainian Greek Catholic Church Nikolai Kvich in the City of Sevastopol. Ten armour vests and symbols of Ukrainian radical nationalist organizations were found in his apartment during the search. As a result of the check, Mr. Kvich was charged with an administrative offence. The law enforcement authorities have received no reports on violent actions against priests of the Parish of the Dormition Church of the Ukrainian Greek Catholic Church in Sevastopol, there have been no reports either about any destruction of or damage to parish property. However, the fact of the voluntary departure from the territory of the Crimea of up to 10 priests of the Ukrainian Greek Catholic Church, who are Euromaidan supporters, was confirmed.

According to the Prosecutor General's Office of the Russian Federation, during the period from March 18, 2014, to March 19, 2015, no statements or reports about crimes of intimidation of Crimean Tatar families or anonymous threats have been registered by the regional offices of the Ministry of the Interior of the Republic of Crimea.

At the same time six reports about unlawful acts against representatives of Crimean Tatars and other persons, including reports about sectarian crimes, have been registered. A criminal investigation of one of the reports in question about the arson by unidentified persons of Chukurcha-Jami mosque in June 2014 was opened. In case of other reports, including about the

inflammation of a guest room window of the mosque of the Khadzhibey Muslim community in Solnechnaya Dolina village, regional bodies of internal affairs opened procedural verification, the results of which revealed no grounds for criminal cases.

During the period from January 1, 2015, to March 6, 2015, the local agencies at the district level subordinated to the Ministry of Internal Affairs of the Republic of Crimea received 287 statements and reports about missing persons, 189 of which were found within ten days. Among the total number of registered statements of citizens 18 concerned missing Crimean Tatars.

In 2014, search was stopped because 188 missing persons were found; the breakdown by nationality included 163 Russians, 13 Ukrainians, 9 Crimean Tatars, and 3 persons of other nationalities.

The law enforcement agencies have not received any reports from the representatives of the Mejlis of the Crimean Tatar People nor from other public organizations, religious confessions, political parties about abductions of their activists, or any other illegal acts regarding any organization or its members. There are still attempts to give some interethnic character to the events that do not in fact have such character. This refers, inter alia, to the detention of A. Chiyoqoz, one of the leaders of the Mejlis of the Crimean Tatar People.

A. Chiyoqoz, citizen of Ukraine, vice chairman of the Mejlis of the Crimean Tatar People, was arrested on January 29, 2015, due to the fact that the investigation received proof of his leading role in the mass disturbances on February 26, 2014, near the building of the Verkhovna Rada of the Autonomous Republic of Crimea in the course of which two people died. The same day he was accused of committing a crime established by Article 212, para. 1, of the Criminal Code of the Russian Federation and the Kiev district court of Simferopol imposed on him pre-trial detention.

A. Chiyoqoz is well known in Crimea for his regular extremist escapades, in particular the attempt to occupy the Svyato-Uspensky Monastery in the Bakhchisaray region in the 1990s, seizure of Bakhchisaray regional registry office, city council and regional administration, his active armed participation in bloody mass disturbances in the area of the old Azizler Muslim cemetery in the summer of 2006, aggressive actions against the decision of Ukrainian authorities to demolish illegal buildings in the territory of the Crimean State Natural Reserve on the Ai Petri plateau.

Cases on the adoption of children in the Crimea, as well as in the whole of the Russian Federation, are reviewed by the court on the basis of the norms of the Family Code of the Russian Federation with the mandatory participation of the adoptive parents, guardianship and trusteeship body and the Prosecutor. In the period from March 2014 to March 2015 39 orphans and children left without parental care, who have the citizenship of the Russian Federation, have been adopted in the Republic of Crimea and in the city of Sevastopol. 25 of them – in the territory of the Republic of Crimea, 14 – in Sevastopol. All children were adopted by the citizens of the Russian Federation in compliance with the norms. There are no cases of adoption of minor Ukrainian citizens.

No complaints from citizens regarding the violation of the right of children for adoption were reserved by the Prosecution Offices of the Republic of Crimea and Sevastopol, and no violations have been registered.

There were no violations in the actions of the Ministry of Land and Property Relations of the Republic of Crimea, which acting in accordance with the Decision of the State Council of the Republic of Crimea No. 2059-6/14 of April 18, 2014, and the Decision of the Council of Ministers of the Republic of Crimea No. 312 of September 2, 2014, prepared and sent to the Crimean Eparchy Administration of the Ukrainian Orthodox Church of the Kiev Patriarchate an additional lease agreement to the Equiapostolic St. Vladimir and St. Olga Cathedral which provides for a new monthly payment of 90,906.62 rubles. Taking into account that the lessee is a religious organization, a corresponding reduction rate was applied when assessing the actual value of the lease.

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# Annex 786

U.N. General Assembly Resolution 45/158, International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (18 December 1990)



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United Nations

A/RES/45/158



## General Assembly

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A/RES/45/158  
69th plenary meeting  
18 December 1990

45/158. International Convention on the Protection of the Rights  
of All Migrant Workers and Members of Their Families

The General Assembly,

Reaffirming once more the permanent validity of the principles and standards set forth in the basic instruments regarding the international protection of human rights, in particular in the Universal Declaration of Human Rights, the International Covenants on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women,

Bearing in mind the principles and standards established within the framework of the International Labour Organisation and the importance of the task carried out in connection with migrant workers and their families in other specialized agencies and in various organs of the United Nations,

Reiterating that in spite of the existence of an already established body of principles and standards, there is a need to make further efforts to improve the situation and ensure the human rights and dignity of all migrant workers and their families,

Recalling its resolution 34/172 of 17 December 1979, in which it decided to establish a working group open to all Member States to elaborate an international convention on the protection of the rights of all migrant workers and their families,

Recalling also its resolutions 35/198 of 15 December 1980, 36/160 of 16 December 1981, 37/170 of 17 December 1982, 38/86 of 16 December 1983, 39/102 of 14 December 1984, 40/130 of 13 December 1985, 41/151 of 4 December 1986, 42/140 of 7 December 1987, 43/146 of 8 December 1988 and 44/155 of 15 December 1989, by which it renewed the mandate of the Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families and requested it to continue its work,

Having examined the report of the Working Group on its ninth inter-sessional meeting, held from 29 May to 8 June 1990, with a view to completing the remaining articles and considering the results of the technical revision of the draft Convention entrusted to the Centre for Human Rights of the Secretariat in accordance with resolution 44/155,

Bearing in mind that the Working Group was able to achieve its goals in



accordance with the mandate entrusted to it by the General Assembly,

1. Expresses its appreciation to the Working Group for having concluded the elaboration of the draft International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

2. Adopts and opens for signature, ratification and accession the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, contained in the annex to the present resolution;

3. Calls upon all Member States to consider signing and ratifying or acceding to the Convention as a matter of priority, and expresses the hope that it will enter into force at an early date;

4. Requests the Secretary-General to provide all facilities and assistance necessary for the dissemination of information on the Convention;

5. Invites United Nations agencies and organizations, as well as intergovernmental and non-governmental organizations, to intensify their efforts with a view to disseminating information on the Convention and to promoting understanding thereof;

6. Requests the Secretary-General to submit to the General Assembly at its forty-sixth session a report on the status of the Convention;

#### Preamble

The States Parties to the present Convention,

Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No. 151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105),

Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

Recalling that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

Recognizing the importance of the work done in connection with migrant

workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows:

#### PART I

##### Scope and definitions

##### Article 1

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without

distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

## Article 2

For the purposes of the present Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

2. (a) The term "frontier worker" refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;

(b) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

(c) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;

(d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;

(e) The term "itinerant worker" refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;

(f) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;

(g) The term "specified-employment worker" refers to a migrant worker:

(i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or

(ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or

(iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief;

and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;

(h) The term "self-employed worker" refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the

State of employment or bilateral or multilateral agreements.

#### Article 3

The present Convention shall not apply to:

- (a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;
- (b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;
- (c) Persons taking up residence in a State different from their State of origin as investors;
- (d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;
- (e) Students and trainees;
- (f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

#### Article 4

For the purposes of the present Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

#### Article 5

For the purposes of the present Convention, migrant workers and members of their families:

- (a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;
- (b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

#### Article 6

For the purposes of the present Convention:

- (a) The term "State of origin" means the State of which the person concerned is a national;
- (b) The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;
- (c) The term "State of transit" means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

### PART II

## Non-discrimination with respect to rights

## Article 7

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

## PART III

## Human rights of all migrant workers and members of their families

## Article 8

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.

2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

## Article 9

The right to life of migrant workers and members of their families shall be protected by law.

## Article 10

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

## Article 11

1. No migrant worker or member of his or her family shall be held in slavery or servitude.

2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

4. For the purpose of the present article the term "forced or compulsory labour" shall not include:

(a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

## Article 12

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.



2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.

3. Freedom to manifest one's religion or belief 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.

4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### Article 13

1. Migrant workers and members of their families shall have the right to hold opinions without interference.

2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.

3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputation of others;

(b) For the protection of the national security of the States concerned or of public order (*ordre public*) or of public health or morals;

(c) For the purpose of preventing any propaganda for war;

(d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

#### Article 14

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

#### Article 15

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

#### Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.

2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedures established by law.

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:

(a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;

(b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

#### Article 17

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted

persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration, shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.

5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.

7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

#### Article 18

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

(a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;

(b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;

(c) To be tried without undue delay;

(d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;

(e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

(f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;

(g) Not to be compelled to testify against themselves or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.

7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

#### Article 19

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.

2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

#### Article 20

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.

2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

#### Article 21

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

#### Article 22

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined

and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.

3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.

8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

#### Article 23

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

#### Article 24

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

#### Article 25

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by this term;



(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of any such irregularity.

#### Article 26

1. States Parties recognize the right of migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

#### Article 27

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

#### Article 28

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

#### Article 29

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

#### Article 30

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State

concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

#### Article 31

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.

2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

#### Article 32

Upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

#### Article 33

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:

(a) Their rights arising out of the present Convention;

(b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.

2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall co-operate with other States concerned.

3. Such adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language they are able to understand.

#### Article 34

Nothing in the present part of the Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

#### Article 35

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in part VI of the present Convention.

### PART IV

Other rights of migrant workers and members of their families  
who are documented or in a regular situation

#### Article 36

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in part III.

#### Article 37

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

#### Article 38

1. States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.

2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

#### Article 39

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

#### Article 40

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

#### Article 41

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.

2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

#### Article 42

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.

3. Migrant workers may enjoy political rights in the State of

employment if that State, in the exercise of its sovereignty, grants them such rights.

#### Article 43

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:

(a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and placement services;

(c) Access to vocational training and retraining facilities and institutions;

(d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

(e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;

(f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;

(g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

#### Article 44

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

#### Article 45

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and training institutions and

services, provided that requirements for participation are met;

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

#### Article 46

Migrant workers and members of their families shall, subject to the applicable legislation of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

(a) Upon departure from the State of origin or State of habitual residence;

(b) Upon initial admission to the State of employment;

(c) Upon final departure from the State of employment;

(d) Upon final return to the State of origin or State of habitual residence.

#### Article 47

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.

2. States concerned shall take appropriate measures to facilitate such transfers.

#### Article 48

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

(a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;

(b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.

2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and



members of their families.

#### Article 49

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.

3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

#### Article 50

1. In the case of death of a migrant worker or dissolution of marriage, the State of employment shall favourably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay; the State of employment shall take into account the length of time they have already resided in that State.

2. Members of the family to whom such authorization is not granted shall be allowed before departure a reasonable period of time in order to enable them to settle their affairs in the State of employment.

3. The provisions of paragraphs 1 and 2 of the present article may not be interpreted as adversely affecting any right to stay and work otherwise granted to such family members by the legislation of the State of employment or by bilateral and multilateral treaties applicable to that State.

#### Article 51

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

#### Article 52

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

(b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a

State of employment may also:

(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

#### Article 53

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.

2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

#### Article 54

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

- (a) Protection against dismissal;
- (b) Unemployment benefits;
- (c) Access to public work schemes intended to combat unemployment;

(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

#### Article 55

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

#### Article 56

1. Migrant workers and members of their families referred to in the present part of the Convention may not be expelled from a State of employment,

except for reasons defined in the national legislation of that State, and subject to the safeguards established in part III.

2. Expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit.

3. In considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of the length of time that the person concerned has already resided in the State of employment.

#### PART V

#### Provisions applicable to particular categories of migrant workers and members of their families

##### Article 57

The particular categories of migrant workers and members of their families specified in the present part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in part III and, except as modified below, the rights set forth in part IV.

##### Article 58

1. Frontier workers, as defined in article 2, paragraph 2 (a), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment, taking into account that they do not have their habitual residence in that State.

2. States of employment shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

##### Article 59

1. Seasonal workers, as defined in article 2, paragraph 2 (b), of the present Convention, shall be entitled to the rights provided for in part IV that can be applied to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status in that State as seasonal workers, taking into account the fact that they are present in that State for only part of the year.

2. The State of employment shall, subject to paragraph 1 of the present article, consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

##### Article 60

Itinerant workers, as defined in article 2, paragraph 2 (e), of the present Convention, shall be entitled to the rights provided for in part IV that can be granted to them by reason of their presence and work in the territory of the State of employment and that are compatible with their status as itinerant workers in that State.

##### Article 61

1. Project-tied workers, as defined in article 2, paragraph 2 (f), of the present Convention, and members of their families shall be entitled to the rights provided for in part IV except the provisions of article 43, paragraphs 1 (b) and (c), article 43, paragraph 1 (d), as it pertains to social housing schemes, article 45, paragraph 1 (b), and articles 52 to 55.

2. If a project-tied worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State which has jurisdiction over that employer, on terms provided for in

article 18, paragraph 1, of the present Convention.

3. Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate measures with the aim of avoiding any denial of rights or duplication of payments in this respect.

4. Without prejudice to the provisions of article 47 of the present Convention and to relevant bilateral or multilateral agreements, States Parties concerned shall permit payment of the earnings of project-tied workers in their State of origin or habitual residence.

#### Article 62

1. Specified-employment workers as defined in article 2, paragraph 2 (g), of the present Convention, shall be entitled to the rights provided for in part IV, except the provisions of article 43, paragraphs 1 (b) and (c), article 43, paragraph 1 (d), as it pertains to social housing schemes, article 52, and article 54, paragraph 1 (d).

2. Members of the families of specified-employment workers shall be entitled to the rights relating to family members of migrant workers provided for in part IV of the present Convention, except the provisions of article 53.

#### Article 63

1. Self-employed workers, as defined in article 2, paragraph 2 (h), of the present Convention, shall be entitled to the rights provided for in part IV with the exception of those rights which are exclusively applicable to workers having a contract of employment.

2. Without prejudice to articles 52 and 79 of the present Convention, the termination of the economic activity of the self-employed workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

#### PART VI

Promotion of sound, equitable, humane and lawful conditions  
in connection with international migration of workers and  
members of their families

#### Article 64

1. Without prejudice to article 79 of the present Convention, the States Parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families.

2. In this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

#### Article 65

1. States Parties shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:

(a) The formulation and implementation of policies regarding such migration;

(b) An exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in such migration;

(c) The provision of appropriate information, particularly to employers, workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;

(d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return, as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

2. States Parties shall facilitate as appropriate the provision of adequate consular and other services that are necessary to meet the social, cultural and other needs of migrant workers and members of their families.

#### Article 66

1. Subject to paragraph 2 of the present article, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

(a) Public services or bodies of the State in which such operations take place;

(b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;

(c) A body established by virtue of a bilateral or multilateral agreement.

2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to the legislation and practice of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

#### Article 67

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

#### Article 68

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

(a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

(b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;

(c) Measures to impose effective sanctions on persons, groups or



entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-a-vis their employer arising from employment shall not be impaired by these measures.

#### Article 69

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

#### Article 70

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

#### Article 71

1. States Parties shall facilitate, whenever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families.

2. As regards compensation matters relating to the death of a migrant worker or a member of his or her family, States Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

### PART VII

#### Application of the Convention

#### Article 72

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as "the Committee");

(b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person from among its own nationals;

(b) Members shall be elected and shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter

to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of the present article, following the entry into force of the Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.

7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### Article 73

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:

(a) Within one year after the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years and whenever the Committee so requests.

2. Reports prepared under the present article shall also indicate factors and difficulties, if any, affecting the implementation of the Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

4. States Parties shall make their reports widely available to the public in their own countries.

#### Article 74

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with the present article. The Committee may request supplementary information from States Parties when considering these reports.

2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.

4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the present Convention as fall within the scope of their activities.

5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and to be heard in its meetings whenever matters falling within their field of competence are considered.

7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.

8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

#### Article 75

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The Committee shall normally meet annually.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

## Article 76

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;

(d) Subject to the provisions of subparagraph (c) of the present paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;

(e) The Committee shall hold closed meetings when examining communications under the present article;

(f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

- (i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The

written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of the present article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### Article 77

1. A State Party to the present Convention may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.

2. The Committee shall consider inadmissible any communication under the present article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. The Committee shall not consider any communications from an individual under the present article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.

4. Subject to the provisions of paragraph 2 of the present article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

5. The Committee shall consider communications received under the present article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

6. The Committee shall hold closed meetings when examining communications under the present article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of the present article shall come into force when ten



States Parties to the present Convention have made declarations under paragraph 1 of the present article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by or on behalf of an individual shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

#### Article 78

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and the specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

### PART VIII General provisions

#### Article 79

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

#### Article 80

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

#### Article 81

1. Nothing in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:

(a) The law or practice of a State Party; or

(b) Any bilateral or multilateral treaty in force for the State Party concerned.

2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

#### Article 82

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

#### Article 83

Each State Party to the present Convention undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

#### Article 84

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

### PART IX Final provisions

#### Article 85

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

#### Article 86

1. The present Convention shall be open for signature by all States. It is subject to ratification.

2. The present Convention shall be open to accession by any State.

3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

#### Article 87

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

#### Article 88

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

#### Article 89

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General of the United Nations.

3. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

4. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

#### Article 90

1. After five years from the entry into force of the Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting shall be submitted to the General Assembly for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment that they have accepted.

#### Article 91

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of signature, ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

#### Article 92

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.

3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

#### Article 93

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited

6/7/2018 A/RES/45/158. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families  
with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

# Annex 787

HRC, General Comment No. 18, Non-Discrimination (Thirty-seventh Session, 1989),  
Compilation of General Comments and General Recommendations Adopted by Human Rights  
Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 (1994)







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Human Rights  
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COMPILATION OF GENERAL COMMENTS AND GENERAL RECOMMENDATIONS  
ADOPTED BY HUMAN RIGHTS TREATY BODIES

Note by the Secretariat

This document contains a compilation of the general comments or general recommendations adopted, respectively, by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, and the Committee on the Elimination of Discrimination against Women.

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I

GENERAL COMMENTS

adopted by the Human Rights Committee\*

Introduction\*\*

The introduction to document CCPR/C/21/Rev.1 (General comments adopted by the Human Rights Committee under art. 40, para. 4, of the International Covenant on Civil and Political Rights; date: 19 May 1989) explains the purpose of the general comments as follows:

"The Committee wishes to reiterate its desire to assist States parties in fulfilling their reporting obligations. These general comments draw attention to some aspects of this matter but do not purport to be limitative or to attribute any priority between different aspects of the implementation of the Covenant. These comments will, from time to time, be followed by others as constraints of time and further experience may make possible.

"The Committee so far has examined 77 initial reports, 34 second periodic reports and, in some cases, additional information and supplementary reports. This experience, therefore, now covers a significant number of the States which have ratified the Covenant, at present 87. They represent different regions of the world with different political, social and legal systems and their reports illustrate most of the problems which may arise in implementing the Covenant, although they do not afford any complete basis for a worldwide review of the situation as regards civil and political rights.

"The purpose of these general comments is to make this experience available for the benefit of all States parties in order to promote their further implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedure and to stimulate the activities of these States and international organizations in the promotion and protection of human rights. These comments should also be of interest to other States, especially those preparing to become parties to the Covenant and thus to strengthen the cooperation of all States in the universal promotion and protection of human rights."

GENERAL COMMENT 1 Reporting obligation (Thirteenth session, 1981)

States parties have undertaken to submit reports in accordance with article 40 of the Covenant within one year of its entry into force for the States parties concerned and, thereafter, whenever the Committee so requests.

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\* For document references see annex I.

\*\* See Report of the Human Rights Committee, Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII.

Until the present time only the first part of this provision, calling for initial reports, has become regularly operative. The Committee notes, as appears from its annual reports, that only a small number of States have submitted their reports on time. Most of them have been submitted with delays ranging from a few months to several years and some States parties are still in default despite repeated reminders and other actions by the Committee. The fact that most States parties have nevertheless, even if somewhat late, engaged in a constructive dialogue with the Committee suggests that the States parties normally ought to be able to fulfil the reporting obligation within the time limit prescribed by article 40 (1) and that it would be in their own interest to do so in the future. In the process of ratifying the Covenant, States should pay immediate attention to their reporting obligation since the proper preparation of a report which covers so many civil and political rights necessarily does require time.

GENERAL COMMENT 2 Reporting guidelines (Thirteenth session, 1981)

1. The Committee has noted that some of the reports submitted initially were so brief and general that the Committee found it necessary to elaborate general guidelines regarding the form and content of reports. These guidelines were designed to ensure that reports are presented in a uniform manner and to enable the Committee and States parties to obtain a complete picture of the situation in each State as regards the implementation of the rights referred to in the Covenant. Despite the guidelines, however, some reports are still so brief and general that they do not satisfy the reporting obligations under article 40.

2. Article 2 of the Covenant requires States parties to adopt such legislative or other measures and provide such remedies as may be necessary to implement the Covenant. Article 40 requires States parties to submit to the Committee reports on the measures adopted by them, on the progress made in the enjoyment of the Covenant rights and the factors and difficulties, if any, affecting the implementation of the Covenant. Even reports which were in their form generally in accordance with the guidelines have in substance been incomplete. It has been difficult to understand from some reports whether the Covenant had been implemented as part of national legislation and many of them were clearly incomplete as regards relevant legislation. In some reports the role of national bodies or organs in supervising and in implementing the rights had not been made clear. Further, very few reports have given any account of the factors and difficulties affecting the implementation of the Covenant.

3. The Committee considers that the reporting obligation embraces not only the relevant laws and other norms relating to the obligations under the Covenant but also the practices and decisions of courts and other organs of the State party as well as further relevant facts which are likely to show the degree of the actual implementation and enjoyment of the rights recognized in the Covenant, the progress achieved and factors and difficulties in implementing the obligations under the Covenant.

4. It is the practice of the Committee, in accordance with Rule 68 of its Provisional Rules of Procedure, to examine reports in the presence of representatives of the reporting States. All States whose reports have been examined have cooperated with the Committee in this way but the level, experience and the number of representatives have varied. The Committee wishes to state that, if it is to be able to perform its functions under article 40 as effectively as possible and if the reporting State is to obtain the maximum benefit from the dialogue, it is desirable that the States representatives should have such status and experience (and preferably be in such number) as to respond to questions put, and the comments made, in the Committee over the whole range of matters covered by the Covenant.

GENERAL COMMENT 3 (Thirteenth session, 1981)

Article 2: Implementation at the national level

1. The Committee notes that article 2 of the Covenant generally leaves it to the States parties concerned to choose their method of implementation in their territories within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not per se sufficient. The Committee considers it necessary to draw the attention of States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights. This is obvious in a number of articles (e.g. art. 3 which is dealt with in General Comment 4 below), but in principle this undertaking relates to all rights set forth in the Covenant.

2. In this connection, it is very important that individuals should know what their rights under the Covenant (and the Optional Protocol, as the case may be) are and also that all administrative and judicial authorities should be aware of the obligations which the State party has assumed under the Covenant. To this end, the Covenant should be publicized in all official languages of the State and steps should be taken to familiarize the authorities concerned with its contents as part of their training. It is desirable also to give publicity to the State party's cooperation with the Committee.

GENERAL COMMENT 4 Article 3 (Thirteenth session, 1981)

1. Article 3 of the Covenant requiring, as it does, States parties to ensure the equal right of men and women to the enjoyment of all civil and political rights provided for in the Covenant, has been insufficiently dealt with in a considerable number of States reports and has raised a number of concerns, two of which may be highlighted.

2. Firstly, article 3, as articles 2 (1) and 26 in so far as those articles primarily deal with the prevention of discrimination on a number of grounds, among which sex is one, requires not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights. This



cannot be done simply by enacting laws. Hence, more information has generally been required regarding the role of women in practice with a view to ascertaining what measures, in addition to purely legislative measures of protection, have been or are being taken to give effect to the precise and positive obligations under article 3 and to ascertain what progress is being made or what factors or difficulties are being met in this regard.

3. Secondly, the positive obligation undertaken by States parties under that article may itself have an inevitable impact on legislation or administrative measures specifically designed to regulate matters other than those dealt with in the Covenant but which may adversely affect rights recognized in the Covenant. One example, among others, is the degree to which immigration laws which distinguish between a male and a female citizen may or may not adversely affect the scope of the right of the woman to marriage to non-citizens or to hold public office.

4. The Committee, therefore, considers that it might assist States parties if special attention were given to a review by specially appointed bodies or institutions of laws or measures which inherently draw a distinction between men and women in so far as those laws or measures adversely affect the rights provided for in the Covenant and, secondly, that States parties should give specific information in their reports about all measures, legislative or otherwise, designed to implement their undertaking under this article.

5. The Committee considers that it might help the States parties in implementing this obligation, if more use could be made of existing means of international cooperation with a view to exchanging experience and organizing assistance in solving the practical problems connected with the insurance of equal rights for men and women.

GENERAL COMMENT 5 Article 4 (Thirteenth session, 1981)

1. Article 4 of the Covenant has posed a number of problems for the Committee when considering reports from some States parties. When a public emergency which threatens the life of a nation arises and it is officially proclaimed, a State party may derogate from a number of rights to the extent strictly required by the situation. The State party, however, may not derogate from certain specific rights and may not take discriminatory measures on a number of grounds. The State party is also under an obligation to inform the other States parties immediately, through the Secretary-General, of the derogations it has made including the reasons therefor and the date on which the derogations are terminated.

2. States parties have generally indicated the mechanism provided in their legal systems for the declaration of a state of emergency and the applicable provisions of the law governing derogations. However, in the case of a few States which had apparently derogated from Covenant rights, it was unclear not only whether a state of emergency had been officially declared but also whether rights from which the Covenant allows no derogation had in fact not been derogated from and further whether the other States parties had been informed of the derogations and of the reasons for the derogations.

3. The Committee holds the view that measures taken under article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that, in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made. The Committee also considers that it is equally important for States parties, in times of public emergency, to inform the other States parties of the nature and extent of the derogations they have made and of the reasons therefor and, further, to fulfil their reporting obligations under article 40 of the Covenant by indicating the nature and extent of each right derogated from together with the relevant documentation.

GENERAL COMMENT 6 Article 6 (Sixteenth session, 1982)

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4). However, the Committee has noted that quite often the information given concerning article 6 was limited to only one or other aspect of this right. It is a right which should not be interpreted narrowly.

2. The Committee observes that war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year. Under the Charter of the United Nations the threat or use of force by any State against another State, except in exercise of the inherent right of self-defence, is already prohibited. The Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life. In this respect, the Committee notes, in particular, a connection between article 6 and article 20, which states that the law shall prohibit any propaganda for war (para. 1) or incitement to violence (para. 2) as therein described.

3. The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.

4. States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.

5. Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

GENERAL COMMENT 7 Article 7 (Sixteenth session, 1982)\*

1. In examining the reports of States parties, members of the Committee have often asked for further information under article 7 which prohibits, in the first place, torture or cruel, inhuman or degrading treatment or punishment. The Committee recalls that even in situations of public emergency such as are envisaged by article 4 (1) this provision is non-derogable under article 4 (2). Its purpose is to protect the integrity and dignity of the individual. The Committee notes that it is not sufficient for the implementation of this article to prohibit such treatment or punishment or to make it a crime. Most States have penal provisions which are applicable to cases of torture or similar practices. Because such cases nevertheless occur, it follows from article 7, read together with article 2 of the Covenant, that States must ensure an effective protection through some machinery of control.

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\* General Comment 7 was replaced by General Comment 20 (Forty-fourth session, 1992).

Complaints about ill-treatment must be investigated effectively by competent authorities. Those found guilty must be held responsible, and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation. Among the safeguards which may make control effective are provisions against detention incommunicado, granting, without prejudice to the investigation, persons such as doctors, lawyers and family members access to the detainees; provisions requiring that detainees should be held in places that are publicly recognized and that their names and places of detention should be entered in a central register available to persons concerned, such as relatives; provisions making confessions or other evidence obtained through torture or other treatment contrary to article 7 inadmissible in court; and measures of training and instruction of law enforcement officials not to apply such treatment.

2. As appears from the terms of this article, the scope of protection required goes far beyond torture as normally understood. It may not be necessary to draw sharp distinctions between the various prohibited forms of treatment or punishment. These distinctions depend on the kind, purpose and severity of the particular treatment. In the view of the Committee the prohibition must extend to corporal punishment, including excessive chastisement as an educational or disciplinary measure. Even such a measure as solitary confinement may, according to the circumstances, and especially when the person is kept incommunicado, be contrary to this article. Moreover, the article clearly protects not only persons arrested or imprisoned, but also pupils and patients in educational and medical institutions. Finally, it is also the duty of public authorities to ensure protection by the law against such treatment even when committed by persons acting outside or without any official authority. For all persons deprived of their liberty, the prohibition of treatment contrary to article 7 is supplemented by the positive requirement of article 10 (1) of the Covenant that they shall be treated with humanity and with respect for the inherent dignity of the human person.

3. In particular, the prohibition extends to medical or scientific experimentation without the free consent of the person concerned (art. 7, second sentence). The Committee notes that the reports of States parties have generally given little or no information on this point. It takes the view that at least in countries where science and medicine are highly developed, and even for peoples and areas outside their borders if affected by their experiments, more attention should be given to the possible need and means to ensure the observance of this provision. Special protection in regard to such experiments is necessary in the case of persons not capable of giving their consent.

GENERAL COMMENT 8 Article 9 (Sixteenth session, 1982)

1. Article 9 which deals with the right to liberty and security of persons has often been somewhat narrowly understood in reports by States parties, and they have therefore given incomplete information. The Committee points out that paragraph 1 is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc. It is true that some of the provisions of article 9 (part of para. 2 and the whole of para. 3) are only applicable to persons against whom criminal charges

are brought. But the rest, and in particular the important guarantee laid down in paragraph 4, i.e. the right to control by a court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention. Furthermore, States parties have in accordance with article 2 (3) also to ensure that an effective remedy is provided in other cases in which an individual claims to be deprived of his liberty in violation of the Covenant.

2. Paragraph 3 of article 9 requires that in criminal cases any person arrested or detained has to be brought "promptly" before a judge or other officer authorized by law to exercise judicial power. More precise time-limits are fixed by law in most States parties and, in the view of the Committee, delays must not exceed a few days. Many States have given insufficient information about the actual practices in this respect.

3. Another matter is the total length of detention pending trial. In certain categories of criminal cases in some countries this matter has caused some concern within the Committee, and members have questioned whether their practices have been in conformity with the entitlement "to trial within a reasonable time or to release" under paragraph 3. Pre-trial detention should be an exception and as short as possible. The Committee would welcome information concerning mechanisms existing and measures taken with a view to reducing the duration of such detention.

4. Also if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. it must not be arbitrary, and must be based on grounds and procedures established by law (para. 1), information of the reasons must be given (para. 2) and court control of the detention must be available (para. 4) as well as compensation in the case of a breach (para. 5). And if, in addition, criminal charges are brought in such cases, the full protection of article 9 (2) and (3), as well as article 14, must also be granted.

GENERAL COMMENT 9 Article 10 (Sixteenth session, 1982)\*

1. Article 10, paragraph 1 of the Covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. However, by no means all the reports submitted by States parties have contained information on the way in which this paragraph of the article is being implemented. The Committee is of the opinion that it would be desirable for the reports of States parties to contain specific information on the legal measures designed to protect that right. The Committee also considers that reports should indicate the concrete measures being taken by the competent State organs to monitor the mandatory implementation of national legislation concerning the humane treatment and respect for the human dignity of all persons deprived of their liberty that paragraph 1 requires.

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\* General Comment 9 was replaced by General Comment 21 (Forty-fourth session, 1992).



The Committee notes, in particular, that paragraph 1 of this article is generally applicable to persons deprived of their liberty, whereas paragraph 2 deals with accused as distinct from convicted persons, and paragraph 3 with convicted persons only. This structure quite often is not reflected in the reports, which mainly have related to accused and convicted persons. The wording of paragraph 1, its context - especially its proximity to article 9, paragraph 1, which also deals with all deprivations of liberty - and its purpose support a broad application of the principle expressed in that provision. Moreover, the Committee recalls that this article supplements article 7 as regards the treatment of all persons deprived of their liberty.

The humane treatment and the respect for the dignity of all persons deprived of their liberty is a basic standard of universal application which cannot depend entirely on material resources. While the Committee is aware that in other respects the modalities and conditions of detention may vary with the available resources, they must always be applied without discrimination, as required by article 2 (1).

Ultimate responsibility for the observance of this principle rests with the State as regards all institutions where persons are lawfully held against their will, not only in prisons but also, for example, hospitals, detention camps or correctional institutions.

2. Subparagraph 2 (a) of the article provides that, save in exceptional circumstances, accused persons shall be segregated from convicted persons and shall receive separate treatment appropriate to their status as unconvicted persons. Some reports have failed to pay proper attention to this direct requirement of the Covenant and, as a result, to provide adequate information on the way in which the treatment of accused persons differs from that of convicted persons. Such information should be included in future reports.

Subparagraph 2 (b) of the article calls, inter alia, for accused juvenile persons to be separated from adults. The information in reports shows that a number of States are not taking sufficient account of the fact that this is an unconditional requirement of the Covenant. It is the Committee's opinion that, as is clear from the text of the Covenant, deviation from States parties' obligations under subparagraph 2 (b) cannot be justified by any consideration whatsoever.

3. In a number of cases, the information appearing in reports with respect to paragraph 3 of the article has contained no concrete mention either of legislative or administrative measures or of practical steps to promote the reformation and social rehabilitation of prisoners, by, for example, education, vocational training and useful work. Allowing visits, in particular by family members, is normally also such a measure which is required for reasons of humanity. There are also similar lacunae in the reports of certain States with respect to information concerning juvenile offenders, who must be segregated from adults and given treatment appropriate to their age and legal status.

4. The Committee further notes that the principles of humane treatment and respect for human dignity set out in paragraph 1 are the basis for the more specific and limited obligations of States in the field of criminal justice

set out in paragraphs 2 and 3 of article 10. The segregation of accused persons from convicted ones is required in order to emphasize their status as unconvicted persons who are at the same time protected by the presumption of innocence stated in article 14, paragraph 2. The aim of these provisions is to protect the groups mentioned, and the requirements contained therein should be seen in that light. Thus, for example, the segregation and treatment of juvenile offenders should be provided for in such a way that it promotes their reformation and social rehabilitation.

GENERAL COMMENT 10 Article 19 (Nineteenth session, 1983)

1. Paragraph 1 requires protection of the "right to hold opinions without interference". This is a right to which the Covenant permits no exception or restriction. The Committee would welcome information from States parties concerning paragraph 1.
2. Paragraph 2 requires protection of the right to freedom of expression, which includes not only freedom to "impart information and ideas of all kinds", but also freedom to "seek" and "receive" them "regardless of frontiers" and in whatever medium, "either orally, in writing or in print, in the form of art, or through any other media of his choice". Not all States parties have provided information concerning all aspects of the freedom of expression. For instance, little attention has so far been given to the fact that, because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3.
3. Many State reports confine themselves to mentioning that freedom of expression is guaranteed under the Constitution or the law. However, in order to know the precise regime of freedom of expression in law and in practice, the Committee needs in addition pertinent information about the rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right. It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right.
4. Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being "necessary" for that State party for one of those purposes.

GENERAL COMMENT 11 Article 20 (Nineteenth session, 1983)

1. Not all reports submitted by States parties have provided sufficient information as to the implementation of article 20 of the Covenant. In view of the nature of article 20, States parties are obliged to adopt the necessary legislative measures prohibiting the actions referred to therein. However, the reports have shown that in some States such actions are neither prohibited by law nor are appropriate efforts intended or made to prohibit them. Furthermore, many reports failed to give sufficient information concerning the relevant national legislation and practice.

2. Article 20 of the Covenant states that any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. In the opinion of the Committee, these required prohibitions are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities. The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned. The provisions of article 20, paragraph 1, do not prohibit advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations. For article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation. The Committee, therefore, believes that States parties which have not yet done so should take the measures necessary to fulfil the obligations contained in article 20, and should themselves refrain from any such propaganda or advocacy.

GENERAL COMMENT 12 Article 1 (Twenty-first session, 1984)

1. In accordance with the purposes and principles of the Charter of the United Nations, article 1 of the International Covenant on Civil and Political Rights recognizes that all peoples have the right of self-determination. The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants.

2. Article 1 enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely "determine their political status and freely pursue their economic, social and cultural development". The article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.

3. Although the reporting obligations of all States parties include article 1, only some reports give detailed explanations regarding each of its paragraphs. The Committee has noted that many of them completely ignore article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties' reports should contain information on each paragraph of article 1.

4. With regard to paragraph 1 of article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right.

5. Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence". This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

6. Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligations exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.

7. In connection with article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV)).

8. The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.

GENERAL COMMENT 13 Article 14 (Twenty-first session, 1984)

1. The Committee notes that article 14 of the Covenant is of a complex nature and that different aspects of its provisions will need specific comments. All of these provisions are aimed at ensuring the proper administration of justice, and to this end uphold a series of individual rights such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. Not all reports provided details on the legislative or other measures adopted specifically to implement each of the provisions of article 14.

2. In general, the reports of States parties fail to recognize that article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law. Laws and practices dealing with these matters vary widely from State to State. This diversity makes it all the more necessary for States parties to provide all relevant information and to explain in greater detail how the concepts of "criminal charge" and "rights and obligations in a suit at law" are interpreted in relation to their respective legal systems.

3. The Committee would find it useful if, in their future reports, States parties could provide more detailed information on the steps taken to ensure that equality before the courts, including equal access to courts, fair and public hearings and competence, impartiality and independence of the judiciary are established by law and guaranteed in practice. In particular, States parties should specify the relevant constitutional and legislative texts which provide for the establishment of the courts and ensure that they are independent, impartial and competent, in particular with regard to the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the judiciary from the executive branch and the legislative.

4. The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized. The Committee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice. While the Covenant does not prohibit such categories of courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14. The Committee has noted a serious lack of information in this regard in the reports of some States parties whose judicial institutions



include such courts for the trying of civilians. In some countries such military and special courts do not afford the strict guarantees of the proper administration of justice in accordance with the requirements of article 14 which are essential for the effective protection of human rights. If States parties decide in circumstances of a public emergency as contemplated by article 4 to derogate from normal procedures required under article 14, they should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation, and respect the other conditions in paragraph 1 of article 14.

5. The second sentence of article 14, paragraph 1, provides that "everyone shall be entitled to a fair and public hearing". Paragraph 3 of the article elaborates on the requirements of a "fair hearing" in regard to the determination of criminal charges. However, the requirements of paragraph 3 are minimum guarantees, the observance of which is not always sufficient to ensure the fairness of a hearing as required by paragraph 1.

6. The publicity of hearings is an important safeguard in the interest of the individual and of society at large. At the same time article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons spelt out in that paragraph. It should be noted that, apart from such exceptional circumstances, the Committee considers that a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons. It should be noted that, even in cases in which the public is excluded from the trial, the judgement must, with certain strictly defined exceptions, be made public.

7. The Committee has noted a lack of information regarding article 14, paragraph 2 and, in some cases, has even observed that the presumption of innocence, which is fundamental to the protection of human rights, is expressed in very ambiguous terms or entails conditions which render it ineffective. By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.

8. Among the minimum guarantees in criminal proceedings prescribed by paragraph 3, the first concerns the right of everyone to be informed in a language which he understands of the charge against him (subpara. (a)). The Committee notes that State reports often do not explain how this right is respected and ensured. Article 14 (3) (a) applies to all cases of criminal charges, including those of persons not in detention. The Committee notes further that the right to be informed of the charge "promptly" requires that information is given in the manner described as soon as the charge is first made by a competent authority. In the opinion of the Committee this right must arise when in the course of an investigation a court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him as such. The specific requirements of subparagraph 3 (a) may be met by stating the charge either orally or in writing, provided that the information indicates both the law and the alleged facts on which it is based.

9. Subparagraph 3 (b) provides that the accused must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. What is "adequate time" depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel. When the accused does not want to defend himself in person or request a person or an association of his choice, he should be able to have recourse to a lawyer. Furthermore, this subparagraph requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications. Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter.

10. Subparagraph 3 (c) provides that the accused shall be tried without undue delay. This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place "without undue delay". To make this right effective, a procedure must be available in order to ensure that the trial will proceed "without undue delay", both in first instance and on appeal.

11. Not all reports have dealt with all aspects of the right of defence as defined in subparagraph 3 (d). The Committee has not always received sufficient information concerning the protection of the right of the accused to be present during the determination of any charge against him nor how the legal system assures his right either to defend himself in person or to be assisted by counsel of his own choosing, or what arrangements are made if a person does not have sufficient means to pay for legal assistance. The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences and the right to challenge the conduct of the case if they believe it to be unfair. When exceptionally for justified reasons trials in absentia are held, strict observance of the rights of the defence is all the more necessary.

12. Subparagraph 3 (e) states that the accused shall be entitled to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.

13. Subparagraph 3 (f) provides that if the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic importance in cases in which ignorance of the language used by a court or difficulty in understanding may constitute a major obstacle to the right of defence.

14. Subparagraph 3 (g) provides that the accused may not be compelled to testify against himself or to confess guilt. In considering this safeguard the provisions of article 7 and article 10, paragraph 1, should be borne in mind. In order to compel the accused to confess or to testify against

himself, frequently methods which violate these provisions are used. The law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable.

15. In order to safeguard the rights of the accused under paragraphs 1 and 3 of article 14, judges should have authority to consider any allegations made of violations of the rights of the accused during any stage of the prosecution.

16. Article 14, paragraph 4, provides that in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. Not many reports have furnished sufficient information concerning such relevant matters as the minimum age at which a juvenile may be charged with a criminal offence, the maximum age at which a person is still considered to be a juvenile, the existence of special courts and procedures, the laws governing procedures against juveniles and how all these special arrangements for juveniles take account of "the desirability of promoting their rehabilitation". Juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under article 14.

17. Article 14, paragraph 5, provides that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. Particular attention is drawn to the other language versions of the word "crime" ("infraccion", "delito", "prestuplenie") which show that the guarantee is not confined only to the most serious offences. In this connection, not enough information has been provided concerning the procedures of appeal, in particular the access to and the powers of reviewing tribunals, what requirements must be satisfied to appeal against a judgement, and the way in which the procedures before review tribunals take account of the fair and public hearing requirements of paragraph 1 of article 14.

18. Article 14, paragraph 6, provides for compensation according to law in certain cases of a miscarriage of justice as described therein. It seems from many State reports that this right is often not observed or insufficiently guaranteed by domestic legislation. States should, where necessary, supplement their legislation in this area in order to bring it into line with the provisions of the Covenant.

19. In considering State reports differing views have often been expressed as to the scope of paragraph 7 of article 14. Some States parties have even felt the need to make reservations in relation to procedures for the resumption of criminal cases. It seems to the Committee that most States parties make a clear distinction between a resumption of a trial justified by exceptional circumstances and a re-trial prohibited pursuant to the principle of ne bis in idem as contained in paragraph 7. This understanding of the meaning of ne bis in idem may encourage States parties to reconsider their reservations to article 14, paragraph 7.

GENERAL COMMENT 14 Article 6 (Twenty-third session, 1984)

1. In its general comment 6 [16] adopted at its 378th meeting on 27 July 1982, the Human Rights Committee observed that the right to life enunciated in the first paragraph of article 6 of the International Covenant on Civil and Political Rights is the supreme right from which no derogation is permitted even in time of public emergency. The same right to life is enshrined in article 3 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948. It is basic to all human rights.

2. In its previous general comment, the Committee also observed that it is the supreme duty of States to prevent wars. War and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year.

3. While remaining deeply concerned by the toll of human life taken by conventional weapons in armed conflicts, the Committee has noted that, during successive sessions of the General Assembly, representatives from all geographical regions have expressed their growing concern at the development and proliferation of increasingly awesome weapons of mass destruction, which not only threaten human life but also absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all.

4. The Committee associates itself with this concern. It is evident that the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today. This threat is compounded by the danger that the actual use of such weapons may be brought about, not only in the event of war, but even through human or mechanical error or failure.

5. Furthermore, the very existence and gravity of this threat generates a climate of suspicion and fear between States, which is in itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenants on Human Rights.

6. The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity.

7. The Committee accordingly, in the interest of mankind, calls upon all States, whether Parties to the Covenant or not, to take urgent steps, unilaterally and by agreement, to rid the world of this menace.

GENERAL COMMENT 15 Twenty-seventh session, 1986

The position of aliens under the Covenant

1. Reports from States parties have often failed to take into account that each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (art. 2, para. 1).

In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.

2. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof. This guarantee applies to aliens and citizens alike. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (art. 25), while article 13 applies only to aliens. However, the Committee's experience in examining reports shows that in a number of countries other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitations that cannot always be justified under the Covenant.

3. A few constitutions provide for equality of aliens with citizens. Some constitutions adopted more recently carefully distinguish fundamental rights that apply to all and those granted to citizens only, and deal with each in detail. In many States, however, the constitutions are drafted in terms of citizens only when granting relevant rights. Legislation and case law may also play an important part in providing for the rights of aliens. The Committee has been informed that in some States fundamental rights, though not guaranteed to aliens by the Constitution or other legislation, will also be extended to them as required by the Covenant. In certain cases, however, there has clearly been a failure to implement Covenant rights without discrimination in respect of aliens.

4. The Committee considers that in their reports States parties should give attention to the position of aliens, both under their law and in actual practice. The Covenant gives aliens all the protection regarding rights guaranteed therein, and its requirements should be observed by States parties in their legislation and in practice as appropriate. The position of aliens would thus be considerably improved. States parties should ensure that the provisions of the Covenant and the rights under it are made known to aliens within their jurisdiction.

5. The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

6. Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant.

7. Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in



slavery or servitude. Aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Aliens may not be imprisoned for failure to fulfil a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law. They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at marriageable age. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.

8. Once an alien is lawfully within a territory, his freedom of movement within the territory and his right to leave that territory may only be restricted in accordance with article 12, paragraph 3. Differences in treatment in this regard between aliens and nationals, or between different categories of aliens, need to be justified under article 12, paragraph 3. Since such restrictions must, inter alia, be consistent with the other rights recognized in the Covenant, a State party cannot, by restraining an alien or deporting him to a third country, arbitrarily prevent his return to his own country (art. 12, para. 4).

9. Many reports have given insufficient information on matters relevant to article 13. That article is applicable to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise. If such procedures entail arrest, the safeguards of the Covenant relating to deprivation of liberty (arts. 9 and 10) may also be applicable. If the arrest is for the particular purpose of extradition, other provisions of national and international law may apply. Normally an alien who is expelled must be allowed to leave for any country that agrees to take him. The particular rights of article 13 only protect those aliens who are lawfully in the territory of a State party. This means that national law concerning the requirements for entry and stay must be taken into account in determining the scope of that protection, and that illegal entrants and aliens who have stayed longer than the law or their permits allow, in particular, are not covered by its provisions. However, if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13. It is for the competent authorities of the State party, in good faith and in the exercise of

their powers, to apply and interpret the domestic law, observing, however, such requirements under the Covenant as equality before the law (art. 26).

10. Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out "in pursuance of a decision reached in accordance with law", its purpose is clearly to prevent arbitrary expulsions. On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when "compelling reasons of national security" so require. Discrimination may not be made between different categories of aliens in the application of article 13.

GENERAL COMMENT 16 Article 17 (Thirty-second session, 1988)

1. Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. In the view of the Committee this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.

2. In this connection, the Committee wishes to point out that in the reports of States parties to the Covenant the necessary attention is not being given to information concerning the manner in which respect for this right is guaranteed by legislative, administrative or judicial authorities, and in general by the competent organs established in the State. In particular, insufficient attention is paid to the fact that article 17 of the Covenant deals with protection against both unlawful and arbitrary interference. That means that it is precisely in State legislation above all that provision must be made for the protection of the right set forth in that article. At present the reports either say nothing about such legislation or provide insufficient information on the subject.

3. The term "unlawful" means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.

4. The expression "arbitrary interference" is also relevant to the protection of the right provided for in article 17. In the Committee's view the expression "arbitrary interference" can also extend to interference provided for under the law. The introduction of the concept of arbitrariness

is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.

5. Regarding the term "family", the objectives of the Covenant require that for purposes of article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned. The term "home" in English, "manzel" in Arabic, "zhùzhái" in Chinese, "domicile" in French, "zhilische" in Russian and "domicilio" in Spanish, as used in article 17 of the Covenant, is to be understood to indicate the place where a person resides or carries out his usual occupation. In this connection, the Committee invites States to indicate in their reports the meaning given in their society to the terms "family" and "home".

6. The Committee considers that the reports should include information on the authorities and organs set up within the legal system of the State which are competent to authorize interference allowed by the law. It is also indispensable to have information on the authorities which are entitled to exercise control over such interference with strict regard for the law, and to know in what manner and through which organs persons concerned may complain of a violation of the right provided for in article 17 of the Covenant. States should in their reports make clear the extent to which actual practice conforms to the law. State party reports should also contain information on complaints lodged in respect of arbitrary or unlawful interference, and the number of any findings in that regard, as well as the remedies provided in such cases.

7. As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant. Accordingly, the Committee recommends that States should indicate in their reports the laws and regulations that govern authorized interferences with private life.

8. Even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis. Compliance with article 17 requires that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.

9. States parties are under a duty themselves not to engage in interferences inconsistent with article 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons.

10. The gathering and holding of personal information on computers, databanks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.

11. Article 17 affords protection to personal honour and reputation and States are under an obligation to provide adequate legislation to that end. Provision must also be made for everyone effectively to be able to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible. States parties should indicate in their reports to what extent the honour or reputation of individuals is protected by law and how this protection is achieved according to their legal system.

GENERAL COMMENT 17 Article 24 (Thirty-fifth session, 1989)

1. Article 24 of the International Covenant on Civil and Political Rights recognizes the right of every child, without any discrimination, to receive from his family, society and the State the protection required by his status as a minor. Consequently, the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant. The reports submitted by States parties often seem to underestimate this obligation and supply inadequate information on the way in which children are afforded enjoyment of their right to a special protection.

2. In this connection, the Committee points out that the rights provided for in article 24 are not the only ones that the Covenant recognizes for children and that, as individuals, children benefit from all of the civil rights enunciated in the Covenant. In enunciating a right, some provisions of the Covenant expressly indicate to States measures to be adopted with a view to affording minors greater protection than adults. Thus, as far as the right to life is concerned, the death penalty cannot be imposed for crimes committed by persons under 18 years of age. Similarly, if lawfully deprived of their liberty, accused juvenile persons shall be separated from adults and are entitled to be brought as speedily as possible for adjudication; in turn, convicted juvenile offenders shall be subject to a penitentiary system that involves segregation from adults and is appropriate to their age and legal

status, the aim being to foster reformation and social rehabilitation. In other instances, children are protected by the possibility of the restriction - provided that such restriction is warranted - of a right recognized by the Covenant, such as the right to publicize a judgement in a suit at law or a criminal case, from which an exception may be made when the interest of the minor so requires.

3. In most cases, however, the measures to be adopted are not specified in the Covenant and it is for each State to determine them in the light of the protection needs of children in its territory and within its jurisdiction. The Committee notes in this regard that such measures, although intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural. For example, every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means. In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognized in the Covenant, particularly the right to freedom of opinion and expression. Moreover, the Committee wishes to draw the attention of States parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts.

4. The right to special measures of protection belongs to every child because of his status as a minor. Nevertheless, the Covenant does not indicate the age at which he attains his majority. This is to be determined by each State party in the light of the relevant social and cultural conditions. In this respect, States should indicate in their reports the age at which the child attains his majority in civil matters and assumes criminal responsibility. States should also indicate the age at which a child is legally entitled to work and the age at which he is treated as an adult under labour law. States should further indicate the age at which a child is considered adult for the purposes of article 10, paragraphs 2 and 3. However, the Committee notes that the age for the above purposes should not be set unreasonably low and that in any case a State party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.

5. The Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the non-discrimination clause contained in article 24 relates specifically to the measures of protection referred to in that provision. Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field, including inheritance, particularly as between children who are nationals and children who are aliens or as between legitimate children and children born out of wedlock.



6. Responsibility for guaranteeing children the necessary protection lies with the family, society and the State. Although the Covenant does not indicate how such responsibility is to be apportioned, it is primarily incumbent on the family, which is interpreted broadly to include all persons composing it in the society of the State party concerned, and particularly on the parents, to create conditions to promote the harmonious development of the child's personality and his enjoyment of the rights recognized in the Covenant. However, since it is quite common for the father and mother to be gainfully employed outside the home, reports by States parties should indicate how society, social institutions and the State are discharging their responsibility to assist the family in ensuring the protection of the child. Moreover, in cases where the parents and the family seriously fail in their duties, ill-treat or neglect the child, the State should intervene to restrict parental authority and the child may be separated from his family when circumstances so require. If the marriage is dissolved, steps should be taken, keeping in view the paramount interest of the children, to give them necessary protection and, so far as is possible, to guarantee personal relations with both parents. The Committee considers it useful that reports by States parties should provide information on the special measures of protection adopted to protect children who are abandoned or deprived of their family environment in order to enable them to develop in conditions that most closely resemble those characterizing the family environment.

7. Under article 24, paragraph 2, every child has the right to be registered immediately after birth and to have a name. In the Committee's opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child's legal personality. Providing for the right to have a name is of special importance in the case of children born out of wedlock. The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant. Reports by States parties should indicate in detail the measures that ensure the immediate registration of children born in their territory.

8. Special attention should also be paid, in the context of the protection to be granted to children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents. The measures adopted to ensure that children have a nationality should always be referred to in reports by States parties.

GENERAL COMMENT 18 Non-discrimination (Thirty-seventh session, 1989)

1. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Indeed, the principle of non-discrimination is so basic that article 3 obligates each State party to ensure the equal right of men and women to the enjoyment of the rights set forth in the Covenant. While article 4, paragraph 1, allows States parties to take measures derogating from certain obligations under the Covenant in time of public emergency, the same article requires, inter alia, that those measures should not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Furthermore, article 20, paragraph 2, obligates States parties to prohibit, by law, any advocacy of national, racial or religious hatred which constitutes incitement to discrimination.

3. Because of their basic and general character, the principle of non-discrimination as well as that of equality before the law and equal protection of the law are sometimes expressly referred to in articles relating to particular categories of human rights. Article 14, paragraph 1, provides that all persons shall be equal before the courts and tribunals, and paragraph 3 of the same article provides that, in the determination of any criminal charge against him, everyone shall be entitled, in full equality, to the minimum guarantees enumerated in subparagraphs (a) to (g) of paragraph 3. Similarly, article 25 provides for the equal participation in public life of all citizens, without any of the distinctions mentioned in article 2.

4. It is for the States parties to determine appropriate measures to implement the relevant provisions. However, the Committee is to be informed about the nature of such measures and their conformity with the principles of non-discrimination and equality before the law and equal protection of the law.

5. The Committee wishes to draw the attention of States parties to the fact that the Covenant sometimes expressly requires them to take measures to guarantee the equality of rights of the persons concerned. For example, article 23, paragraph 4, stipulates that States parties shall take appropriate steps to ensure equality of rights as well as responsibilities of spouses as to marriage, during marriage and at its dissolution. Such steps may take the form of legislative, administrative or other measures, but it is a positive duty of States parties to make certain that spouses have equal rights as

required by the Covenant. In relation to children, article 24 provides that all children, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, have the right to such measures of protection as are required by their status as minors, on the part of their family, society and the State.

6. The Committee notes that the Covenant neither defines the term "discrimination" nor indicates what constitutes discrimination. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Similarly, article 1 of the Convention on the Elimination of All Forms of Discrimination against Women provides that "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

7. While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

8. The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance. In this connection, the provisions of the Covenant are explicit. For example, article 6, paragraph 5, prohibits the death sentence from being imposed on persons below 18 years of age. The same paragraph prohibits that sentence from being carried out on pregnant women. Similarly, article 10, paragraph 3, requires the segregation of juvenile offenders from adults. Furthermore, article 25 guarantees certain political rights, differentiating on grounds of citizenship.

9. Reports of many States parties contain information regarding legislative as well as administrative measures and court decisions which relate to protection against discrimination in law, but they very often lack information which would reveal discrimination in fact. When reporting on articles 2 (1), 3 and 26 of the Covenant, States parties usually cite provisions of their constitution or equal opportunity laws with respect to equality of persons. While such information is of course useful, the Committee wishes to know if there remain any problems of discrimination in fact, which may be practised either by public authorities, by the community, or by private persons or bodies. The Committee wishes to be informed about legal provisions and administrative measures directed at diminishing or eliminating such discrimination.

10. The Committee also wishes to point out that the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.

11. Both article 2, paragraph 1, and article 26 enumerate grounds of discrimination such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee has observed that in a number of constitutions and laws not all the grounds on which discrimination is prohibited, as cited in article 2, paragraph 1, are enumerated. The Committee would therefore like to receive information from States parties as to the significance of such omissions.

12. While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.

13. Finally, the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.

GENERAL COMMENT 19 Article 23 (Thirty-ninth session, 1990)

1. Article 23 of the International Covenant on Civil and Political Rights recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Protection of the family and its members is also guaranteed, directly or indirectly, by other provisions of the Covenant. Thus, article 17 establishes a prohibition on arbitrary or unlawful interference with the family. In addition, article 24 of the Covenant specifically addresses the protection of the rights of the child, as such or as a member of a family. In their reports, States

parties often fail to give enough information on how the State and society are discharging their obligation to provide protection to the family and the persons composing it.

2. The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition. However, the Committee emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in article 23. Consequently, States parties should report on how the concept and scope of the family is construed or defined in their own society and legal system. Where diverse concepts of the family, "nuclear" and "extended", exist within a State, this should be indicated with an explanation of the degree of protection afforded to each. In view of the existence of various forms of family, such as unmarried couples and their children or single parents and their children, States parties should also indicate whether and to what extent such types of family and their members are recognized and protected by domestic law and practice.

3. Ensuring the protection provided for under article 23 of the Covenant requires that States parties should adopt legislative, administrative or other measures. States parties should provide detailed information concerning the nature of such measures and the means whereby their effective implementation is assured. In fact, since the Covenant also recognizes the right of the family to protection by society, States parties' reports should indicate how the necessary protection is granted to the family by the State and other social institutions, whether and to what extent the State gives financial or other support to the activities of such institutions, and how it ensures that these activities are compatible with the Covenant.

4. Article 23, paragraph 2, of the Covenant reaffirms the right of men and women of marriageable age to marry and to found a family. Paragraph 3 of the same article provides that no marriage shall be entered into without the free and full consent of the intending spouses. States parties' reports should indicate whether there are restrictions or impediments to the exercise of the right to marry based on special factors such as degree of kinship or mental incapacity. The Covenant does not establish a specific marriageable age either for men or for women, but that age should be such as to enable each of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law. In this connection, the Committee wishes to note that such legal provisions must be compatible with the full exercise of the other rights guaranteed by the Covenant; thus, for instance, the right to freedom of thought, conscience and religion implies that the legislation of each State should provide for the possibility of both religious and civil marriages. In the Committee's view, however, for a State to require that a marriage, which is celebrated in accordance with religious rites, be conducted, affirmed or registered also under civil law is not incompatible with the Covenant. States are also requested to include information on this subject in their reports.

5. The right to found a family implies, in principle, the possibility to procreate and live together. When States parties adopt family planning policies, they should be compatible with the provisions of the Covenant and



should, in particular, not be discriminatory or compulsory. Similarly, the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.

6. Article 23, paragraph 4, of the Covenant provides that States parties shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.

With regard to equality as to marriage, the Committee wishes to note in particular that no sex-based discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage. Likewise, the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name should be safeguarded.

During marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets. Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage.

Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children in this connection. States parties should, in particular, include information in their reports concerning the provision made for the necessary protection of any children at the dissolution of a marriage or on the separation of the spouses.

GENERAL COMMENT 20 Article 7 (Forty-fourth session, 1992)

1. This general comment replaces general comment 7 (the sixteenth session, 1982) reflecting and further developing it.
2. The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. The prohibition in article 7 is complemented by the positive requirements of article 10, paragraph 1, of the Covenant, which stipulates that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".
3. The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise

observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.

4. The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.

5. The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.

6. The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7. As the Committee has stated in its general comment No. 6 (16), article 6 of the Covenant refers generally to abolition of the death penalty in terms that strongly suggest that abolition is desirable. Moreover, when the death penalty is applied by a State party for the most serious crimes, it must not only be strictly limited in accordance with article 6 but it must be carried out in such a way as to cause the least possible physical and mental suffering.

7. Article 7 expressly prohibits medical or scientific experimentation without the free consent of the person concerned. The Committee notes that the reports of States parties generally contain little information on this point. More attention should be given to the need and means to ensure observance of this provision. The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health.

8. The Committee notes that it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.

9. In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end.

10. The Committee should be informed how States parties disseminate, to the population at large, relevant information concerning the ban on torture and

the treatment prohibited by article 7. Enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training. States parties should inform the Committee of the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons.

11. In addition to describing steps to provide the general protection against acts prohibited under article 7 to which anyone is entitled, the State party should provide detailed information on safeguards for the special protection of particularly vulnerable persons. It should be noted that keeping under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment is an effective means of preventing cases of torture and ill-treatment. To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention. In that connection, States parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment. The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.

12. It is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.

13. States parties should indicate when presenting their reports the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties applicable to such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons. Those who violate article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible. Consequently, those who have refused to obey orders must not be punished or subjected to any adverse treatment.

14. Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, States parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available

to victims of maltreatment and the procedure that complainants must follow, and statistics on the number of complaints and how they have been dealt with.

15. The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.

GENERAL COMMENT 21 Article 10 (Forty-fourth session, 1992)

1. This general comment replaces general comment 9 (the sixteenth session, 1982) reflecting and further developing it.

2. Article 10, paragraph 1, of the International Covenant on Civil and Political Rights applies to any one deprived of liberty under the laws and authority of the State who is held in prisons, hospitals - particularly psychiatric hospitals - detention camps or correctional institutions or elsewhere. States parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held.

3. Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.

4. Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

5. States parties are invited to indicate in their reports to what extent they are applying the relevant United Nations standards applicable to the treatment of prisoners: the Standard Minimum Rules for the Treatment of Prisoners (1957), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1978) and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).

6. The Committee recalls that reports should provide detailed information on national legislative and administrative provisions that have a bearing on the right provided for in article 10, paragraph 1. The Committee also considers that it is necessary for reports to specify what concrete measures have been taken by the competent authorities to monitor the effective application of the rules regarding the treatment of persons deprived of their liberty. States parties should include in their reports information concerning the system for supervising penitentiary establishments, the specific measures to prevent torture and cruel, inhuman or degrading treatment, and how impartial supervision is ensured.

7. Furthermore, the Committee recalls that reports should indicate whether the various applicable provisions form an integral part of the instruction and training of the personnel who have authority over persons deprived of their liberty and whether they are strictly adhered to by such personnel in the discharge of their duties. It would also be appropriate to specify whether arrested or detained persons have access to such information and have effective legal means enabling them to ensure that those rules are respected, to complain if the rules are ignored and to obtain adequate compensation in the event of a violation.

8. The Committee recalls that the principle set forth in article 10, paragraph 1, constitutes the basis for the more specific obligations of States parties in respect of criminal justice, which are set forth in article 10, paragraphs 2 and 3.

9. Article 10, paragraph 2 (a), provides for the segregation, save in exceptional circumstances, of accused persons from convicted ones. Such segregation is required in order to emphasize their status as unconvicted persons who at the same time enjoy the right to be presumed innocent as stated in article 14, paragraph 2. The reports of States parties should indicate how the separation of accused persons from convicted persons is effected and explain how the treatment of accused persons differs from that of convicted persons.

10. As to article 10, paragraph 3, which concerns convicted persons, the Committee wishes to have detailed information on the operation of the penitentiary system of the State party. No penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner. States parties are invited to specify whether they have a system to provide assistance after release and to give information as to its success.

11. In a number of cases, the information furnished by the State party contains no specific reference either to legislative or administrative provisions or to practical measures to ensure the re-education of convicted persons. The Committee requests specific information concerning the measures taken to provide teaching, education and re-education, vocational guidance and training and also concerning work programmes for prisoners inside the penitentiary establishment as well as outside.

12. In order to determine whether the principle set forth in article 10, paragraph 3, is being fully respected, the Committee also requests information



on the specific measures applied during detention, e.g., how convicted persons are dealt with individually and how they are categorized, the disciplinary system, solitary confinement and high-security detention and the conditions under which contacts are ensured with the outside world (family, lawyer, social and medical services, non-governmental organizations).

13. Moreover, the Committee notes that in the reports of some States parties no information has been provided concerning the treatment accorded to accused juvenile persons and juvenile offenders. Article 10, paragraph 2 (b), provides that accused juvenile persons shall be separated from adults. The information given in reports shows that some States parties are not paying the necessary attention to the fact that this is a mandatory provision of the Covenant. The text also provides that cases involving juveniles must be considered as speedily as possible. Reports should specify the measures taken by States parties to give effect to that provision. Lastly, under article 10, paragraph 3, juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status in so far as conditions of detention are concerned, such as shorter working hours and contact with relatives, with the aim of furthering their reformation and rehabilitation. Article 10 does not indicate any limits of juvenile age. While this is to be determined by each State party in the light of relevant social, cultural and other conditions, the Committee is of the opinion that article 6, paragraph 5, suggests that all persons under the age of 18 should be treated as juveniles, at least in matters relating to criminal justice. States should give relevant information about the age groups of persons treated as juveniles. In that regard, States parties are invited to indicate whether they are applying the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules (1987).

GENERAL COMMENT 22 Article 18 (Forty-eighth session 1993)

1. The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.

2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

3. Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1. In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.

4. The freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private". The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

5. The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2. The same protection is enjoyed by holders of all beliefs of a non-religious nature.

6. The Committee is of the view that article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in article 18.1. The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

7. In accordance with article 20, no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its General Comment 11 [19], States parties are under the obligation to enact laws to prohibit such acts.

8. Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under article 18.3, both as a matter of law and of their application in specific circumstances.

9. The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2 of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly,

information as to respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the right to freedom of thought, conscience, religion and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.

10. If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.

11. Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service.

GENERAL COMMENT 23 Article 27 (Fiftieth session, 1994)

1. Article 27 of the Covenant provides that, in those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. The Committee observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant.

2. In some communications submitted to the Committee under the Optional Protocol, the right protected under article 27 has been confused with the right of peoples to self-determination proclaimed in article 1 of the Covenant. Further, in reports submitted by States parties under article 40 of the Covenant, the obligations placed upon States parties under article 27 have sometimes been confused with their duty under article 2.1 to ensure the enjoyment of the rights guaranteed under the Covenant without discrimination and also with equality before the law and equal protection of the law under article 26.

3.1. The Covenant draws a distinction between the right to self-determination and the rights protected under article 27. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (Part I) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals as such and is included, like the articles relating to other personal rights conferred on individuals, in Part III of the Covenant and is cognizable under the Optional Protocol. 1/

3.2. The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. 2/ This may particularly be true of members of indigenous communities constituting a minority.

4. The Covenant also distinguishes the rights protected under article 27 from the guarantees under articles 2.1 and 26. The entitlement, under article 2.1, to enjoy the rights under the Covenant without discrimination applies to all individuals within the territory or under the jurisdiction of the State whether or not those persons belong to a minority. In addition, there is a distinct right provided under article 26 for equality before the law, equal protection of the law, and non-discrimination in respect of rights granted and obligations imposed by the States. It governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not. 3/ Some States parties who claim that they do not discriminate on grounds of ethnicity, language or religion, wrongly contend, on that basis alone, that they have no minorities.

5.1. The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2.1 are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under article 25. A State party may not, therefore, restrict the rights under article 27 to its citizens alone.

5.2. Article 27 confers rights on persons belonging to minorities which "exist" in a State party. Given the nature and scope of the rights envisaged under that article, it is not relevant to determine the degree of permanence that the term "exist" connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practise their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be



denied the exercise of those rights. As any other individual in the territory of the State party, they would, also for this purpose, have the general rights, for example, to freedom of association, of assembly, and of expression. The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.

5.3. The right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant. In particular, it should be distinguished from the general right to freedom of expression protected under article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not. Further, the right protected under article 27 should be distinguished from the particular right which article 14.3 (f) of the Covenant confers on accused persons to interpretation where they cannot understand or speak the language used in the courts. Article 14.3 (f) does not, in any other circumstances, confer on accused persons the right to use or speak the language of their choice in court proceedings. 4/

6.1. Although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a "right" and requires that it shall not be denied. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.

6.2. Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of articles 2.1 and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.

7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. 5/ The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

8. The Committee observes that none of the rights protected under article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant.

9. The Committee concludes that article 27 relates to rights whose protection imposes specific obligations on States parties. The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant. States parties, therefore, have an obligation to ensure that the exercise of these rights is fully protected and they should indicate in their reports the measures they have adopted to this end.

#### Notes

1/ See Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40), annex VI, General Comment No. 12 (21) (article 1), also issued in document CCPR/C/21/Rev.1; ibid., Forty-fifth Session, Supplement No. 40, (A/45/40), vol. II, annex IX, sect. A, Communication No. 167/1984 (Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada), views adopted on 26 March 1990.

2/ See ibid., Forty-third Session, Supplement No. 40 (A/43/40), annex VII, sect. G, Communication No. 197/1985 (Kitok v. Sweden), views adopted on 27 July 1988.

3/ See ibid., Forty-second Session, Supplement No. 40 (A/42/40), annex VIII, sect. D, Communication No. 182/1984 (F.H. Zwaan-de Vries v. the Netherlands), views adopted on 9 April 1987; ibid., sect. C, Communication No. 180/1984 (L.G. Danning v. the Netherlands), views adopted on 9 April 1987.

4/ See ibid., Forty-fifth Session, Supplement No. 40, (A/45/40), vol. II, annex X, sect. A, Communication No. 220/1987 (T.K. v. France), decision of 8 November 1989; ibid., sect. B, Communication No. 222/1987 (M.K. v. France), decision of 8 November 1989.

5/ See notes 1 and 2 above, Communication No. 167/1984 (Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada), views adopted on 26 March 1990, and Communication No. 197/1985 (Kitok v. Sweden), views adopted on 27 July 1988.

II

GENERAL COMMENTS

adopted by the Committee on Economic,  
Social and Cultural Rights

Introduction: the purpose of general comments\*

1. At its second session, in 1988, the Committee decided (E/1988/14, paras. 366 and 367), pursuant to an invitation addressed to it by the Economic and Social Council (resolution 1987/5) and endorsed by the General Assembly (resolution 42/102), to begin, as from its third session, the preparation of general comments based on the various articles and provisions of the International Covenant on Economic, Social and Cultural Rights with a view to assisting the States parties in fulfilling their reporting obligations.

2. The Committee, and the sessional working group of governmental experts which existed prior to the creation of the Committee, have examined 138 initial reports and 44 second periodic reports concerning rights covered by articles 6 to 9, 10 to 12 and 13 to 15 of the Covenant as of the end of its third session. This experience covers a significant number of States parties to the Covenant, currently consisting of 92 States. They represent all regions of the world, with different socio-economic, cultural, political and legal systems. Their reports submitted so far illustrate many of the problems which might arise in implementing the Covenant although they have not yet provided any complete picture as to the global situation with regard to the enjoyment of economic, social and cultural rights. The introduction to annex III (General Comments) of the Committee's 1989 report to the Economic and Social Council (E/1989/22) explains the purpose of the general comments as follows:

3. "The Committee endeavours, through its general comments, to make the experience gained so far through the examination of these reports available for the benefit of all States parties in order to assist and promote their further implementation of the Covenant; to draw the attention of the States parties to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedures and to stimulate the activities of the States parties, the international organizations and the specialized agencies concerned in achieving progressively and effectively the full realization of the rights recognized in the Covenant. Whenever necessary, the Committee may, in the light of the experience of States parties and of the conclusions which it has drawn therefrom, revise and update its general comments."

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\* Contained in document E/1989/22.

GENERAL COMMENT 1 (Third session, 1989)\*

Reporting by States parties

1. The reporting obligations which are contained in part IV of the Covenant are designed principally to assist each State party in fulfilling its obligations under the Covenant and, in addition, to provide a basis on which the Council, assisted by the Committee, can discharge its responsibilities for monitoring States parties' compliance with their obligations and for facilitating the realization of economic, social and cultural rights in accordance with the provisions of the Covenant. The Committee considers that it would be incorrect to assume that reporting is essentially only a procedural matter designed solely to satisfy each State party's formal obligation to report to the appropriate international monitoring body. On the contrary, in accordance with the letter and spirit of the Covenant, the processes of preparation and submission of reports by States can, and indeed should, serve to achieve a variety of objectives.

2. A first objective, which is of particular relevance to the initial report required to be submitted within two years of the Covenant's entry into force for the State party concerned, is to ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Covenant. Such a review might, for example, be undertaken in conjunction with each of the relevant national ministries or other authorities responsible for policy-making and implementation in the different fields covered by the Covenant.

3. A second objective is to ensure that the State party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within its territory or under its jurisdiction. From the Committee's experience to date, it is clear that the fulfilment of this objective cannot be achieved only by the preparation of aggregate national statistics or estimates, but also requires that special attention be given to any worse-off regions or areas and to any specific groups or subgroups which appear to be particularly vulnerable or disadvantaged. Thus, the essential first step towards promoting the realization of economic, social and cultural rights is diagnosis and knowledge of the existing situation. The Committee is aware that this process of monitoring and gathering information is a potentially time-consuming and costly one and that international assistance and cooperation, as provided for in article 2, paragraph 1 and articles 22 and 23 of the Covenant, may well be required in order to enable some States parties to fulfil the relevant obligations. If that is the case, and the State party concludes that it does not have the capacity to undertake the monitoring process which is an integral part of any process designed to promote accepted goals of public policy and is indispensable to the effective

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\* Contained in document E/1989/22.

implementation of the Covenant, it may note this fact in its report to the Committee and indicate the nature and extent of any international assistance that it may need.

4. While monitoring is designed to give a detailed overview of the existing situation, the principal value of such an overview is to provide the basis for the elaboration of clearly stated and carefully targeted policies, including the establishment of priorities which reflect the provisions of the Covenant. Therefore, a third objective of the reporting process is to enable the Government to demonstrate that such principled policy-making has in fact been undertaken. While the Covenant makes this obligation explicit only in article 14 in cases where "compulsory primary education, free of charge" has not yet been secured for all, a comparable obligation "to work out and adopt a detailed plan of action for the progressive implementation" of each of the rights contained in the Covenant is clearly implied by the obligation in article 2, paragraph 1 "to take steps ... by all appropriate means ...".

5. A fourth objective of the reporting process is to facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involvement of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies. In examining reports submitted to it to date, the Committee has welcomed the fact that a number of States parties, reflecting different political and economic systems, have encouraged inputs by such non-governmental groups into the preparation of their reports under the Covenant. Other States have ensured the widespread dissemination of their reports with a view to enabling comments to be made by the public at large. In these ways, the preparation of the report, and its consideration at the national level can come to be of at least as much value as the constructive dialogue conducted at the international level between the Committee and representatives of the reporting State.

6. A fifth objective is to provide a basis on which the State party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the Covenant. For this purpose, it may be useful for States to identify specific benchmarks or goals against which their performance in a given area can be assessed. Thus, for example, it is generally agreed that it is important to set specific goals with respect to the reduction of infant mortality, the extent of vaccination of children, the intake of calories per person, the number of persons per health-care provider, etc. In many of these areas, global benchmarks are of limited use, whereas national or other more specific benchmarks can provide an extremely valuable indication of progress.

7. In this regard, the Committee wishes to note that the Covenant attaches particular importance to the concept of "progressive realization" of the relevant rights and, for that reason, the Committee urges States parties to include in their periodic reports information which shows the progress over time, with respect to the effective realization of the relevant rights. By the same token, it is clear that qualitative, as well as quantitative, data are required in order for an adequate assessment of the situation to be made.



8. A sixth objective is to enable the State party itself to develop a better understanding of the problems and shortcomings encountered in efforts to realize progressively the full range of economic, social and cultural rights. For this reason, it is essential that States parties report in detail on the "factors and difficulties" inhibiting such realization. This process of identification and recognition of the relevant difficulties then provides the framework within which more appropriate policies can be devised.

9. A seventh objective is to enable the Committee, and the States parties as a whole, to facilitate the exchange of information among States and to develop a better understanding of the common problems faced by States and a fuller appreciation of the type of measures which might be taken to promote effective realization of each of the rights contained in the Covenant. This part of the process also enables the Committee to identify the most appropriate means by which the international community might assist States, in accordance with articles 22 and 23 of the Covenant. In order to underline the importance which the Committee attaches to this objective, a separate general comment on those articles will be discussed by the Committee at its fourth session.

GENERAL COMMENT 2 (Fourth session, 1990)\*

International technical assistance measures (art. 22 of the Covenant)

1. Article 22 of the Covenant establishes a mechanism by which the Economic and Social Council may bring to the attention of relevant United Nations bodies any matters arising out of reports submitted under the Covenant "which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the ... Covenant". While the primary responsibility under article 22 is vested in the Council, it is clearly appropriate for the Committee on Economic, Social and Cultural Rights to play an active role in advising and assisting the Council in this regard.

2. Recommendations in accordance with article 22 may be made to any "organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance". The Committee considers that this provision should be interpreted so as to include virtually all United Nations organs and agencies involved in any aspect of international development cooperation. It would therefore be appropriate for recommendations in accordance with article 22 to be addressed, inter alia, to the Secretary-General, subsidiary organs of the Council such as the Commission on Human Rights, the Commission on Social Development and the Commission on the Status of Women, other bodies such as UNDP, UNICEF and CDP, agencies such as the World Bank and IMF, and any of the other specialized agencies such as ILO, FAO, UNESCO and WHO.

3. Article 22 could lead either to recommendations of a general policy nature or to more narrowly focused recommendations relating to a specific

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\* Contained in document E/1990/23.

situation. In the former context, the principal role of the Committee would seem to be to encourage greater attention to efforts to promote economic, social and cultural rights within the framework of international development cooperation activities undertaken by, or with the assistance of, the United Nations and its agencies. In this regard the Committee notes that the Commission on Human Rights, in its resolution 1989/13 of 2 March 1989, invited it "to give consideration to means by which the various United Nations agencies working in the field of development could best integrate measures designed to promote full respect for economic, social and cultural rights in their activities".

4. As a preliminary practical matter, the Committee notes that its own endeavours would be assisted, and the relevant agencies would also be better informed, if they were to take a greater interest in the work of the Committee. While recognizing that such an interest can be demonstrated in a variety of ways, the Committee observes that attendance by representatives of the appropriate United Nations bodies at its first four sessions has, with the notable exceptions of ILO, UNESCO and WHO, been very low. Similarly, pertinent materials and written information had been received from only a very limited number of agencies. The Committee considers that a deeper understanding of the relevance of economic, social and cultural rights in the context of international development cooperation activities would be considerably facilitated through greater interaction between the Committee and the appropriate agencies. At the very least, the day of general discussion on a specific issue, which the Committee undertakes at each of its sessions, provides an ideal context in which a potentially productive exchange of views can be undertaken.

5. On the broader issues of the promotion of respect for human rights in the context of development activities, the Committee has so far seen only rather limited evidence of specific efforts by United Nations bodies. It notes with satisfaction in this regard the initiative taken jointly by the Centre for Human Rights and UNDP in writing to United Nations Resident Representatives and other field-based officials, inviting their "suggestions and advice, in particular with respect to possible forms of cooperation in ongoing projects [identified] as having a human rights dimension or in new ones in response to a specific Government's request". The Committee has also been informed of longstanding efforts undertaken by ILO to link its own human rights and other international labour standards to its technical cooperation activities.

6. With respect to such activities, two general principles are important. The first is that the two sets of human rights are indivisible and interdependent. This means that efforts to promote one set of rights should also take full account of the other. United Nations agencies involved in the promotion of economic, social and cultural rights should do their utmost to ensure that their activities are fully consistent with the enjoyment of civil and political rights. In negative terms this means that the international agencies should scrupulously avoid involvement in projects which, for example, involve the use of forced labour in contravention of international standards, or promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. In positive terms, it means that, wherever possible, the

agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights.

7. The second principle of general relevance is that development cooperation activities do not automatically contribute to the promotion of respect for economic, social and cultural rights. Many activities undertaken in the name of "development" have subsequently been recognized as ill-conceived and even counter-productive in human rights terms. In order to reduce the incidence of such problems, the whole range of issues dealt with in the Covenant should, wherever possible and appropriate, be given specific and careful consideration.

8. Despite the importance of seeking to integrate human rights concerns into development activities, it is true that proposals for such integration can too easily remain at a level of generality. Thus, in an effort to encourage the operationalization of the principle contained in article 22 of the Covenant, the Committee wishes to draw attention to the following specific measures which merit consideration by the relevant bodies:

(a) As a matter of principle, the appropriate United Nations organs and agencies should specifically recognize the intimate relationship which should be established between development activities and efforts to promote respect for human rights in general, and economic, social and cultural rights in particular. The Committee notes in this regard the failure of each of the first three United Nations Development Decade Strategies to recognize that relationship and urges that the fourth such strategy, to be adopted in 1990, should rectify that omission;

(b) Consideration should be given by United Nations agencies to the proposal, made by the Secretary-General in a report of 1979 a/ that a "human rights impact statement" be required to be prepared in connection with all major development cooperation activities;

(c) The training or briefing given to project and other personnel employed by United Nations agencies should include a component dealing with human rights standards and principles;

(d) Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenants are duly taken into account. This would apply, for example, in the initial assessment of the priority needs of a particular country, in the identification of particular projects, in project design, in the implementation of the project, and in its final evaluation.

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a/ "The international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the new international economic order and the fundamental human needs" (E/CN.4/1334, para. 314).

9. A matter which has been of particular concern to the Committee in the examination of the reports of States parties is the adverse impact of the debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries. The Committee recognizes that adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity. Under such circumstances, however, endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment. Such an approach, which is sometimes referred to as "adjustment with a human face" or as promoting "the human dimension of development" requires that the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment. Similarly, international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, *inter alia*, international cooperation. In many situations, this might point to the need for major debt relief initiatives.

10. Finally, the Committee wishes to draw attention to the important opportunity provided to States parties, in accordance with article 22 of the Covenant, to identify in their reports any particular needs they might have for technical assistance or development cooperation.

GENERAL COMMENT 3 (Fifth session, 1990)\*

The nature of States parties obligations (art. 2, para. 1 of the Covenant)

1. Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by States parties to the Covenant. Those obligations include both what may be termed (following the work of the International Law Commission) obligations of conduct and obligations of result. While great emphasis has sometimes been placed on the difference between the formulations used in this provision and that contained in the equivalent article 2 of the International Covenant on Civil and Political Rights, it is not always recognized that there are also significant similarities. In particular, while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties obligations. One of these, which is dealt with in a separate General Comment, and which is to be considered by the Committee at its sixth session, is the "undertaking to guarantee" that relevant rights "will be exercised without discrimination ...".

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\* Contained in document E/1991/23.

2. The other is the undertaking in article 2 (1) "to take steps", which in itself, is not qualified or limited by other considerations. The full meaning of the phrase can also be gauged by noting some of the different language versions. In English the undertaking is "to take steps", in French it is "to act" ("s'engage à agir") and in Spanish it is "to adopt measures" ("adoptar medidas"). Thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.

3. The means which should be used in order to satisfy the obligation to take steps are stated in article 2 (1) to be "all appropriate means, including particularly the adoption of legislative measures". The Committee recognizes that in many instances legislation is highly desirable and in some cases may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures. In fields such as health, the protection of children and mothers, and education, as well as in respect of the matters dealt with in articles 6 to 9, legislation may also be an indispensable element for many purposes.

4. The Committee notes that States parties have generally been conscientious in detailing at least some of the legislative measures that they have taken in this regard. It wishes to emphasize, however, that the adoption of legislative measures, as specifically foreseen by the Covenant, is by no means exhaustive of the obligations of States parties. Rather, the phrase "by all appropriate means" must be given its full and natural meaning. While each State party must decide for itself which means are the most appropriate under the circumstances with respect to each of the rights, the "appropriateness" of the means chosen will not always be self-evident. It is therefore desirable that States parties' reports should indicate not only the measures that have been taken but also the basis on which they are considered to be the most "appropriate" under the circumstances. However, the ultimate determination as to whether all appropriate measures have been taken remains one for the Committee to make.

5. Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable. The Committee notes, for example, that the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies. Indeed, those States parties which are also parties to the International Covenant on Civil and Political Rights are already obligated (by virtue of arts. 2 (paras. 1 and 3), 3 and 26) of that Covenant to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in that Covenant are violated, "shall have an effective remedy" (art. 2 (3) (a)). In addition, there are a number of other provisions in the International Covenant on Economic, Social and Cultural Rights, including articles 3, 7 (a) (i), 8, 10 (3), 13 (2) (a), (3) and (4)



and 15 (3) which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain.

6. Where specific policies aimed directly at the realization of the rights recognized in the Covenant have been adopted in legislative form, the Committee would wish to be informed, inter alia, as to whether such laws create any right of action on behalf of individuals or groups who feel that their rights are not being fully realized. In cases where constitutional recognition has been accorded to specific economic, social and cultural rights, or where the provisions of the Covenant have been incorporated directly into national law, the Committee would wish to receive information as to the extent to which these rights are considered to be justiciable (i.e. able to be invoked before the courts). The Committee would also wish to receive specific information as to any instances in which existing constitutional provisions relating to economic, social and cultural rights have been weakened or significantly changed.

7. Other measures which may also be considered "appropriate" for the purposes of article 2 (1) include, but are not limited to, administrative, financial, educational and social measures.

8. The Committee notes that the undertaking "to take steps ... by all appropriate means including particularly the adoption of legislative measures" neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question, provided only that it is democratic and that all human rights are thereby respected. Thus, in terms of political and economic systems the Covenant is neutral and its principles cannot accurately be described as being predicated exclusively upon the need for, or the desirability of a socialist or a capitalist system, or a mixed, centrally planned, or laissez-faire economy, or upon any other particular approach. In this regard, the Committee reaffirms that the rights recognized in the Covenant are susceptible of realization within the context of a wide variety of economic and political systems, provided only that the interdependence and indivisibility of the two sets of human rights, as affirmed inter alia in the preamble to the Covenant, is recognized and reflected in the system in question. The Committee also notes the relevance in this regard of other human rights and in particular the right to development.

9. The principal obligation of result reflected in article 2 (1) is to take steps "with a view to achieving progressively the full realization of the rights recognized" in the Covenant. The term "progressive realization" is often used to describe the intent of this phrase. The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over

time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d'être, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

10. On the basis of the extensive experience gained by the Committee, as well as by the body that preceded it, over a period of more than a decade of examining States parties' reports the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources". In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.

11. The Committee wishes to emphasize, however, that even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints. The Committee has already dealt with these issues in its General Comment 1 (1989).

12. Similarly, the Committee underlines the fact that even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes. In support of this approach the Committee takes note of the

analysis prepared by UNICEF entitled "Adjustment with a human face: protecting the vulnerable and promoting growth, a/ the analysis by UNDP in its Human Development Report 1990 b/ and the analysis by the World Bank in the World Development Report 1990. c/

13. A final element of article 2 (1), to which attention must be drawn, is that the undertaking given by all States parties is "to take steps, individually and through international assistance and cooperation, especially economic and technical ...". The Committee notes that the phrase "to the maximum of its available resources" was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance. Moreover, the essential role of such cooperation in facilitating the full realization of the relevant rights is further underlined by the specific provisions contained in articles 11, 15, 22 and 23. With respect to article 22 the Committee has already drawn attention, in General Comment 2 (1990), to some of the opportunities and responsibilities that exist in relation to international cooperation. Article 23 also specifically identifies "the furnishing of technical assistance" as well as other activities, as being among the means of "international action for the achievement of the rights recognized ...".

14. The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard. The Committee notes in particular the importance of the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986 and the need for States parties to take full account of all of the principles recognized therein. It emphasizes that, in the absence of an active programme of international assistance and cooperation on the part of all those States that are in a position to undertake one, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries. In this respect, the Committee also recalls the terms of its General Comment 2 (1990).

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a/ G.A. Cornia, R. Jolly and F. Stewart, eds., Oxford, Clarendon Press, 1987.

b/ Oxford, Oxford University Press, 1990.

c/ Oxford, Oxford University Press, 1990.

GENERAL COMMENT 4 (Sixth session, 1991)\*

The right to adequate housing (art. 11 (1) of the Covenant)

1. Pursuant to article 11 (1) of the Covenant, States parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, para. 312) and fourth sessions (E/1990/23, paras. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987. a/ The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. b/

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing c/ article 11 (1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

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\* Contained in document E/1992/23.

a/ Official Records of the General Assembly, Forty-third Session, Supplement No. 8, addendum (A/43/8/Add.1).

b/ Commission on Human Rights resolutions 1986/36 and 1987/22; reports by Mr. Danilo Türk, Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139); see also Sub-Commission resolution 1991/26.

c/ See, for example, article 25 (1) of the Universal Declaration on Human Rights, article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, article 27 (3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 (Report of Habitat: United Nations Conference on Human Settlements (United Nations publication, Sales No. E.76.IV.7 and corrigendum), chap. I), article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115).

4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11 (1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed. d/ There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While the reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.

7. In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. This "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated:

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d/ See footnote a/.



"Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost".

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) Affordability. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health

Principles of Housing e/ prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) Location. Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) Cultural adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

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e/ Geneva, World Health Organization, 1990.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

12. While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in paragraph 32 of the Global Strategy for Shelter, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures". Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Furthermore, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, inter alia, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to "provide detailed information about those groups within ... society that are vulnerable and disadvantaged with

regard to housing". They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of "enabling strategies", combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Strategy for Shelter (paras. 66-67) has drawn attention to the types of measures that might be taken in this regard and to their importance.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases the Committee is particularly interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved helpful should thus be provided.

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

18. In this regard, the Committee considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

19. Finally, article 11 (1) concludes with the obligation of States parties to recognize "the essential importance of international cooperation based on free consent". Traditionally, less than 5 per cent of all international

assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.



III

GENERAL RECOMMENDATIONS

adopted by the Committee on the Elimination of  
Racial Discrimination

According to article 9, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee may make suggestions and general recommendations based on the examination of the reports and information received from the States parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States parties. The Committee has so far adopted a total of 18 general recommendations.

General Recommendation I (Fifth session, 1972)\*

On the basis of the consideration at its fifth session of reports submitted by States parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee found that the legislation of a number of States parties did not include the provisions envisaged in article 4 (a) and (b) of the Convention, the implementation of which (with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention) is obligatory under the Convention for all States parties.

The Committee accordingly recommends that the States parties whose legislation was deficient in this respect should consider, in accordance with their national legislative procedures, the question of supplementing their legislation with provisions conforming to the requirements of article 4 (a) and (b) of the Convention.

General Recommendation II (Fifth session, 1972)\*

The Committee has considered some reports from States parties which expressed or implied the belief that the information mentioned in the Committee's communication of 28 January 1970 (CERD/C/R.12), need not be supplied by States parties on whose territories racial discrimination does not exist.

However, inasmuch as, in accordance with article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, all States parties undertake to submit reports on the measures that they have adopted and that give effect to the provisions of the Convention and, since all the categories of information listed in the Committee's communication of 28 January 1970 refer to obligations undertaken by the States parties under the Convention, that communication is addressed to all States parties without distinction, whether or not racial discrimination exists in their respective territories. The Committee welcomes the inclusion

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\* Contained in document A/8718.

in the reports from all States parties, which have not done so, of the necessary information in conformity with all the headings set out in the aforementioned communication of the Committee.

General Recommendation III (Sixth session, 1972)\*

The Committee has considered some reports from States parties containing information about measures taken to implement resolutions of United Nations organs concerning relations with the racist regimes in southern Africa.

The Committee notes that, in the tenth paragraph of the preamble to the International Convention on the Elimination of All Forms of Racial Discrimination, States parties have "resolved", inter alia, "to build an international community free from all forms of racial segregation and racial discrimination".

It notes also that, in article 3 of the Convention, "States parties particularly condemn racial segregation and apartheid".

Furthermore, the Committee notes that, in resolution 2784 (XXVI), section III, the General Assembly, immediately after taking note with appreciation of the Committee's second annual report and endorsing certain opinions and recommendations, submitted by it, proceeded to call upon "all the trading partners of South Africa to abstain from any action that constitutes an encouragement to the continued violation of the principles and objectives of the International Convention on the Elimination of All Forms of Racial Discrimination by South Africa and the illegal regime in Southern Rhodesia".

The Committee expresses the view that measures adopted on the national level to give effect to the provisions of the Convention are interrelated with measures taken on the international level to encourage respect everywhere for the principles of the Convention.

The Committee welcomes the inclusion in the reports submitted under article 9, paragraph 1, of the Convention, by any State Party which chooses to do so, of information regarding the status of its diplomatic, economic and other relations with the racist regimes in southern Africa.

General Recommendation IV (Eighth session, 1973)\*\*

The Committee on the Elimination of Racial Discrimination,

Having considered reports submitted by States parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination at its seventh and eighth sessions,

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\* Contained in document A/8718.

\*\* Contained in document A/9018.

Bearing in mind the need for the reports sent by States parties to the Committee to be as informative as possible,

Invites States parties to endeavour to include in their reports under article 9 relevant information on the demographic composition of the population referred to in the provisions of article 1 of the Convention.

General Recommendation V (Fifteenth session, 1977)\*

The Committee on the Elimination of Racial Discrimination,

Bearing in mind the provisions of articles 7 and 9 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Convinced that combating prejudices which lead to racial discrimination, promoting understanding, tolerance and friendship among racial and ethnic groups, and propagating the principles and purposes of the Charter of the United Nations and of the human rights declarations and other relevant instruments adopted by the General Assembly of the United Nations, are important and effective means of eliminating racial discrimination,

Considering that the obligations under article 7 of the Convention, which are binding on all States parties, must be fulfilled by them, including States which declare that racial discrimination is not practised on the territories under their jurisdiction, and that therefore all States parties are required to include information on their implementation of the provisions of that article in the reports they submit in accordance with article 9, paragraph 1, of the Convention,

Noting with regret that few States parties have included, in the reports they have submitted in accordance with article 9 of the Convention, information on the measures which they have adopted and which give effect to the provisions of article 7 of the Convention, and that that information has often been general and perfunctory,

Recalling that, in accordance with article 9, paragraph 1, of the Convention, the Committee may request further information from the States parties,

1. Requests every State party which has not already done so to include - in the next report it will submit in accordance with article 9 of the Convention, or in a special report before its next periodic report becomes due - adequate information on the measures which it has adopted and which give effect to the provisions of article 7 of the Convention;

2. Invites the attention of States parties to the fact that, in accordance with article 7 of the Convention, the information to which the

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\* Contained in document A/32/18.

preceding paragraph refers should include information on the "immediate and effective measures" which they have adopted, "in the fields of teaching, education, culture and information", with a view to:

- (a) "combating prejudices which lead to racial discrimination";
- (b) "Promoting understanding, tolerance and friendship among nations and racial or ethnical groups";
- (c) "Propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination" as well as the International Convention on the Elimination of All Forms of Racial Discrimination.

General Recommendation VI (Twenty-fifth session, 1982)\*

The Committee on the Elimination of Racial Discrimination,

Recognizing the fact that an impressive number of States has ratified, or acceded to, the International Convention on the Elimination of All Forms of Racial Discrimination,

Bearing in mind, however, that ratification alone does not enable the control system set up by the Convention to function effectively,

Recalling that article 9 of the Convention obliges States parties to submit initial and periodic reports on the measures that give effect to the provisions of the Convention,

Stating that at present no less than 89 reports are overdue from 62 States, that 42 of those reports are overdue from 15 States, each with two or more outstanding reports, and that four initial reports which were due between 1973 and 1978 have not been received,

Noting with regret that neither reminders sent through the Secretary-General to States parties nor the inclusion of the relevant information in the annual reports to the General Assembly has had the desired effect, in all cases,

Invites the General Assembly:

- (a) to take note of the situation;
- (b) to use its authority in order to ensure that the Committee could more effectively fulfil its obligations under the Convention.

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\* Contained in document A/37/18.

General Recommendation VII relating to the implementation of article 4 of the Convention (Thirty-second session, 1985)\*

The Committee on the Elimination of Racial Discrimination,

Having considered periodic reports of States parties for a period of 16 years, and in over 100 cases sixth, seventh and eighth periodic reports of States parties,

Recalling and reaffirming its General Recommendation I of 24 February 1972 and its decision 3 (VII) of 4 May 1973,

Noting with satisfaction that in a number of reports States parties have provided information on specific cases dealing with the implementation of article 4 of the Convention with regard to acts of racial discrimination,

Noting, however, that in a number of States parties the necessary legislation to implement article 4 of the Convention has not been enacted, and that many States parties have not yet fulfilled all the requirements of article 4 (a) and (b) of the Convention,

Further recalling that, in accordance with the first paragraph of article 4, States parties "undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination", with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention,

Bearing in mind the preventive aspects of article 4 to deter racism and racial discrimination as well as activities aimed at their promotion or incitement,

1. Recommends that those States parties whose legislation does not satisfy the provisions of article 4 (a) and (b) of the Convention take the necessary steps with a view to satisfying the mandatory requirements of that article;

2. Requests that those States parties which have not yet done so inform the Committee more fully in their periodic reports of the manner and extent to which the provisions of article 4 (a) and (b) are effectively implemented and quote the relevant parts of the texts in their reports;

3. Further requests those States parties which have not yet done so to endeavour to provide in their periodic reports more information concerning decisions taken by the competent national tribunals and other State institutions regarding acts of racial discrimination and in particular those offences dealt with in article 4 (a) and (b).

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\* Contained in document A/40/18.



General Recommendation VIII concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention (Thirty-eighth session, 1990)\*

The Committee on the Elimination of Racial Discrimination,

Having considered reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic groups or groups,

Is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.

General Recommendation IX concerning the application of article 8, paragraph 1, of the Convention (Thirty-eighth session, 1990)\*

The Committee on the Elimination of Racial Discrimination,

Considering that respect for the independence of the experts is essential to secure full observance of human rights and fundamental freedoms,

Recalling article 8, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination,

Alarmed by the tendency of the representatives of States, organizations and groups to put pressure upon experts, especially those serving as country rapporteurs,

Strongly recommends that they respect unreservedly the status of its members as independent experts of acknowledged impartiality serving in their personal capacity.

General Recommendation X concerning technical assistance (Thirty-ninth session, 1991)\*\*

The Committee on the Elimination of Racial Discrimination,

Taking note of the recommendation of the third meeting of persons chairing the human rights treaty bodies, as endorsed by the General Assembly at its forty-fifth session, to the effect that a series of seminars or workshops should be organized at the national level for the purpose of training those involved in the preparation of State party reports,

Concerned over the continued failure of certain States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to meet their reporting obligations under the Convention,

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\* Contained in document A/45/18.

\*\* Contained in document A/46/18.

Believing that training courses and workshops organized on the national level might prove of immeasurable assistance to officials responsible for the preparation of such State party reports,

1. Requests the Secretary-General to organize, in consultation with the States parties concerned, appropriate national training courses and workshops for their reporting officials as soon as practicable;

2. Recommends that the services of the staff of the Centre for Human Rights as well as of the experts of the Committee on the Elimination of Racial Discrimination should be utilized, as appropriate, in the conduct of such training courses and workshops.

General Recommendation XI on non-citizens (Forty-second session, 1993)\*

1. Article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination. Article 1, paragraph 2, excepts from this definition actions by a State party which differentiate between citizens and non-citizens. Article 1, paragraph 3, qualifies article 1, paragraph 2, by declaring that, among non-citizens, States parties may not discriminate against any particular nationality.

2. The Committee has noted that article 1, paragraph 2, has on occasion been interpreted as absolving States parties from any obligation to report on matters relating to legislation on foreigners. The Committee therefore affirms that States parties are under an obligation to report fully upon legislation on foreigners and its implementation.

3. The Committee further affirms that article 1, paragraph 2, must not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in other instruments, especially the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

General Recommendation XII on successor States (Forty-second session, 1993)\*

The Committee on the Elimination of Racial Discrimination,

Emphasizing the importance of universal participation of States in the International Convention on the Elimination of All Forms of Racial Discrimination,

Taking into account the emergence of successor States as a result of the dissolution of States,

1. Encourages successor States that have not yet done so to confirm to the Secretary-General, as depositary of the International Convention on the

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\* Contained in document A/48/18.

Elimination of All Forms of Racial Discrimination, that they continue to be bound by obligations under that Convention, if predecessor States were parties to it;

2. Invites successor States that have not yet done so to accede to the International Convention on the Elimination of All Forms of Racial Discrimination if predecessor States were not parties to it;

3. Invites successor States to consider the importance of making the declaration under article 14, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider individual communications.

General Recommendation XIII on the training of law enforcement officials in the protection of human rights (Forty-second session, 1993)\*

1. In accordance with article 2, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties have undertaken that all public authorities and public institutions, national and local, will not engage in any practice of racial discrimination; further, States parties have undertaken to guarantee the rights listed in article 5 of the Convention to everyone without distinction as to race, colour or national or ethnic origin.

2. The fulfilment of these obligations very much depends upon national law enforcement officials who exercise police powers, especially the powers of detention or arrest, and upon whether they are properly informed about the obligations their State has entered into under the Convention. Law enforcement officials should receive intensive training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin.

3. In the implementation of article 7 of the Convention, the Committee calls upon States parties to review and improve the training of law enforcement officials so that the standards of the Convention as well as the Code of Conduct for Law Enforcement Officials (1979) are fully implemented. They should also include respective information thereupon in their periodic reports.

General Recommendation XIV on article 1, paragraph 1, of the Convention (Forty-second session, 1993)\*

1. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic principle in the protection of human rights. The Committee wishes to draw the attention of States parties to certain features of the definition of racial discrimination in article 1, paragraph 1, of the International Convention on

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\* Contained in document A/48/18.

the Elimination of All Forms of Racial Discrimination. It is of the opinion that the words "based on" do not bear any meaning different from "on the grounds of" in preambular paragraph 7. A distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms. This is confirmed by the obligation placed upon States parties by article 2, paragraph 1 (c), to nullify any law or practice which has the effect of creating or perpetuating racial discrimination.

2. The Committee observes that a differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate or fall within the scope of article 1, paragraph 4, of the Convention. In considering the criteria that may have been employed, the Committee will acknowledge that particular actions may have varied purposes. In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.

3. Article 1, paragraph 1, of the Convention also refers to the political, economic, social and cultural fields; the related rights and freedoms are set up in article 5.

General Recommendation XV on article 4 of the Convention  
(Forty-second session, 1993)\*

1. When the International Convention on the Elimination of All Forms of Racial Discrimination was being adopted, article 4 was regarded as central to the struggle against racial discrimination. At that time, there was a widespread fear of the revival of authoritarian ideologies. The proscription of the dissemination of ideas of racial superiority, and of organized activity likely to incite persons to racial violence, was properly regarded as crucial. Since that time, the Committee has received evidence of organized violence based on ethnic origin and the political exploitation of ethnic difference. As a result, implementation of article 4 is now of increased importance.

2. The Committee recalls its General Recommendation VII in which it explained that the provisions of article 4 are of a mandatory character. To satisfy these obligations, States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced. Because threats and acts of racial violence easily lead to other such acts and generate an atmosphere of hostility, only immediate intervention can meet the obligations of effective response.

3. Article 4 (a) requires States parties to penalize four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts.

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\* Contained in document A/48/18.

4. In the opinion of the Committee, the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression. This right is embodied in article 19 of the Universal Declaration of Human Rights and is recalled in article 5 (d) (viii) of the International Convention on the Elimination of All Forms of Racial Discrimination. Its relevance to article 4 is noted in the article itself. The citizen's exercise of this right carries special duties and responsibilities, specified in article 29, paragraph 2, of the Universal Declaration, among which the obligation not to disseminate racist ideas is of particular importance. The Committee wishes, furthermore, to draw to the attention of States parties article 20 of the International Covenant on Civil and Political Rights, according to which any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

5. Article 4 (a) also penalizes the financing of racist activities, which the Committee takes to include all the activities mentioned in paragraph 3 above, that is to say, activities deriving from ethnic as well as racial differences. The Committee calls upon States parties to investigate whether their national law and its implementation meet this requirement.

6. Some States have maintained that in their legal order it is inappropriate to declare illegal an organization before its members have promoted or incited racial discrimination. The Committee is of the opinion that article 4 (b) places a greater burden upon such States to be vigilant in proceeding against such organizations at the earliest moment. These organizations, as well as organized and other propaganda activities, have to be declared illegal and prohibited. Participation in these organizations is, of itself, to be punished.

7. Article 4 (c) of the Convention outlines the obligations of public authorities. Public authorities at all administrative levels, including municipalities, are bound by this paragraph. The Committee holds that States parties must ensure that they observe these obligations and report on this.

General Recommendation XVI concerning the application of article 9 of the Convention (Forty-second session, 1993)\*

1. Under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties have undertaken to submit, through the Secretary-General of the United Nations, for consideration by the Committee, reports on measures taken by them to give effect to the provisions of the Convention.

2. With respect to this obligation of the States parties, the Committee has noted that, on some occasions, reports have made references to situations existing in other States.

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\* Contained in document A/48/18.



3. For this reason, the Committee wishes to remind States parties of the provisions of article 9 of the Convention concerning the content of their reports, while bearing in mind article 11, which is the only procedural means available to States for drawing to the attention of the Committee situations in which they consider that some other State is not giving effect to the provisions of the Convention.

General Recommendation XVII on the establishment of national institutions to facilitate the implementation of the Convention (Forty-second session, 1993)\*

The Committee on the Elimination of Racial Discrimination,

Considering the practice of States parties concerning the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination,

Convinced of the necessity to encourage further the establishment of national institutions to facilitate the implementation of the Convention,

Emphasizing the need to strengthen further the implementation of the Convention,

1. Recommends that States parties establish national commissions or other appropriate bodies, taking into account, mutatis mutandis, the principles relating to the status of national institutions annexed to Commission on Human Rights resolution 1992/54 of 3 March 1992, to serve, inter alia, the following purposes:

(a) To promote respect for the enjoyment of human rights without any discrimination, as expressly set out in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination;

(b) To review government policy towards protection against racial discrimination;

(c) To monitor legislative compliance with the provisions of the Convention;

(d) To educate the public about the obligations of States parties under the Convention;

(e) To assist the Government in the preparation of reports submitted to the Committee on the Elimination of Racial Discrimination;

2. Also recommends that, where such commissions have been established, they should be associated with the preparation of reports and possibly included in government delegations in order to intensify the dialogue between the Committee and the State party concerned.

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\* Contained in document A/48/18.

General recommendation XVIII on the establishment of an international tribunal to prosecute crimes against humanity (Forty-fourth session, 1994)\*

The Committee on the Elimination of Racial Discrimination,

Alarmed at the increasing number of racially and ethnically motivated massacres and atrocities occurring in different regions of the world,

Convinced that the impunity of the perpetrators is a major factor contributing to the occurrence and recurrence of these crimes,

Convinced of the need to establish, as quickly as possible, an international tribunal with general jurisdiction to prosecute genocide, crimes against humanity and grave breaches of the Geneva Conventions of 1949 and the Additional Protocols of 1977 thereto,

Taking into account the work already done on this question by the International Law Commission and the encouragement given in this regard by the General Assembly in its resolution 48/31 of 9 December 1993,

Also taking into account Security Council resolution 872 (1993) of 25 May 1993 establishing an international tribunal for the purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia,

1. Considers that an international tribunal with general jurisdiction should be established urgently to prosecute genocide, crimes against humanity, including murder, extermination, enslavement, deportation, imprisonment, torture, rape persecutions on political, racial and religious grounds and other inhumane acts directed against any civilian population, and grave breaches of the Geneva Conventions of 1949 and the Additional Protocols of 1977 thereto;

2. Urges the Secretary-General to bring the present recommendation to the attention of the competent organs and bodies of the United Nations, including the Security Council;

3. Requests the High Commissioner for Human Rights to ensure that all relevant information pertaining to the crimes referred to in paragraph 1 is systematically collected by the Centre for Human Rights so that it can be readily available to the international tribunal as soon as it is established.

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\* Contained in document A/49/18.

IV

GENERAL RECOMMENDATIONS

adopted by the Committee on the Elimination  
of Racial Discrimination against Women

According to article 21, paragraph 1, of the Convention on the Elimination of Discrimination against Women, the Committee may make suggestions and general recommendations based on the examination of the reports and information received from the States parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States parties. The Committee has so far adopted a total of 20 general recommendations.

General Recommendation No. 1 (Fifth session, 1986)\*

"Initial reports submitted under article 18 of the Convention should cover the situation up to the date of submission. Thereafter, reports should be submitted at least every four years after the first report was due and should include obstacles encountered in implementing the Convention fully and the measures adopted to overcome such obstacles."\*

General Recommendation No. 2 (Sixth session, 1987)\*\*

The Committee on the Elimination of Discrimination against Women,

Bearing in mind that the Committee had been faced with difficulties in its work because some initial reports of States parties under article 18 of the Convention did not reflect adequately the information available in the State party concerned in accordance with the guidelines,

Recommends:

(a) That the States parties, in preparing reports under article 18 of the Convention, should follow the general guidelines adopted in August 1983 (CEDAW/C/7) as to the form, content and date of reports;

(b) That the States parties should follow the general recommendation adopted in 1986 in these terms:

"Initial reports submitted under article 18 of the Convention should cover the situation up to the date of submission. Thereafter, reports should be submitted at least every four years after the first report was due and should include obstacles encountered in implementing the Convention fully and the measures adopted to overcome such obstacles."

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\* Contained in document A/41/45.

\*\* Contained in document A/42/38.

(c) That additional information supplementing the report of a State party should be sent to the Secretariat at least three months before the session at which the report is due to be considered.

General Recommendation No. 3 (Sixth session, 1987)\*

The Committee on the Elimination of Discrimination against Women,

Considering that the Committee on the Elimination of Discrimination against Women has considered 34 reports from States parties since 1983,

Further considering that, although the reports have come from States with different levels of development, they present features in varying degrees showing the existence of stereotyped conceptions of women, owing to socio-cultural factors, that perpetuate discrimination based on sex and hinder the implementation of article 5 of the Convention,

Urges all States parties effectively to adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.

General Recommendation No. 4 (Sixth session, 1987)\*

The Committee on the Elimination of Discrimination against Women,

Having examined reports from States parties at its sessions,

Expressed concern in relation to the significant number of reservations that appeared to be incompatible with the object and purpose of the Convention,

Welcomes the decision of the States parties to consider reservations at its next meeting in New York in 1988, and to that end suggests that all States parties concerned reconsider such reservations with a view to withdrawing them.

General Recommendation No. 5 (Seventh session, 1988)\*\*

Temporary special measures

The Committee on the Elimination of Discrimination against Women,

Taking note that the reports, the introductory remarks and the replies by States parties reveal that while significant progress has been achieved in

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\* Contained in document A/42/38.

\*\* Contained in document A/43/38.

regard to repealing or modifying discriminatory laws, there is still a need for action to be taken to implement fully the Convention by introducing measures to promote de facto equality between men and women,

Recalling article 4.1 of the Convention,

Recommends that States parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment.

General Recommendation No. 6 (Seventh session, 1988)\*

Effective national machinery and publicity

The Committee on the Elimination of Discrimination against Women,

Having considered the reports of States parties to the Convention on the Elimination of All Forms of Discrimination against Women,

Noting United Nations General Assembly resolution 42/60 of 30 November 1987,

Recommends that States parties:

1. Establish and/or strengthen effective national machinery, institutions and procedures, at a high level of Government, and with adequate resources, commitment and authority to:

(a) Advise on the impact on women of all government policies;

(b) Monitor the situation of women comprehensively;

(c) Help formulate new policies and effectively carry out strategies and measures to eliminate discrimination;

2. Take appropriate steps to ensure the dissemination of the Convention, the reports of the States parties under article 18 and the reports of the Committee in the language of the States concerned;

3. Seek the assistance of the Secretary-General and the Department of Public Information in providing translations of the Convention and the reports of the Committee;

4. Include in their initial and periodic reports the action taken in respect of this recommendation.

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\* Contained in document A/43/38.



General Recommendation No. 7 (Seventh session, 1988)\*

Resources

The Committee on the Elimination of Discrimination against Women,

Noting General Assembly resolutions 40/39, 41/108 and in particular 42/60, paragraph 14, which invited the Committee and the States parties to consider the question of holding future sessions of the Committee at Vienna,

Bearing in mind General Assembly resolution 42/105 and, in particular, paragraph 11, which requests the Secretary-General to strengthen coordination between the United Nations Centre for Human Rights and the Centre for Social Development and Humanitarian Affairs of the secretariat in relation to the implementation of human rights treaties and servicing treaty bodies,

Recommends to the States parties:

1. That they continue to support proposals for strengthening the coordination between the Centre for Human Rights at Geneva and the Centre for Social Development and Humanitarian Affairs at Vienna, in relation to the servicing of the Committee;
2. That they support proposals that the Committee meet in New York and Vienna;
3. That they take all necessary and appropriate steps to ensure that adequate resources and services are available to the Committee to assist it in its functions under the Convention and in particular that full-time staff are available to help the Committee to prepare for its sessions and during its session;
4. That they ensure that supplementary reports and materials are submitted to the Secretariat in due time to be translated into the official languages of the United Nations in time for distribution and consideration by the Committee.

General Recommendation No. 8 (Seventh session, 1988)\*

Implementation of article 8 of the Convention

The Committee on the Elimination of Discrimination against Women,

Having considered the reports of States parties submitted in accordance with article 18 of the Convention,

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\* Contained in document A/43/38.

Recommends that States parties take further direct measures in accordance with article 4 of the Convention to ensure the full implementation of article 8 of the Convention and to ensure to women on equal terms with men and without any discrimination the opportunities to represent their Government at the international level and to participate in the work of international organizations.

General Recommendation No. 9 (Eighth session, 1989)\*

Statistical data concerning the situation of women

The Committee on the Elimination of Discrimination against Women,

Considering that statistical information is absolutely necessary in order to understand the real situation of women in each of the States parties to the Convention,

Having observed that many of the States parties that present their reports for consideration by the Committee do not provide statistics,

Recommends that States parties should make every effort to ensure that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women in the particular sector in which they are interested.

General Recommendation No. 10 (Eighth session, 1989)\*

Tenth anniversary of the adoption of the Convention on the Elimination of All Forms of Discrimination against Women

The Committee on the Elimination of Discrimination against Women,

Considering that 18 December 1989 marks the tenth anniversary of the adoption of the Convention on the Elimination of All Forms of Discrimination against Women,

Considering further that in those 10 years the Convention has proved to be one of the most effective instruments that the United Nations has adopted to promote equality between the sexes in the societies of its States Members,

Recalling general recommendation No. 6 (seventh session 1988) on effective national machinery and publicity,

Recommends that, on the occasion of the tenth anniversary of the adoption of the Convention, the States parties should consider:

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\* Contained in document A/44/38.

1. Undertaking programmes including conferences and seminars to publicize the Convention on the Elimination of All Forms of Discrimination against Women in the main languages of and providing information on the Convention in their respective countries;
2. Inviting their national women's organizations to cooperate in the publicity campaigns regarding the Convention and its implementation and encouraging non-governmental organizations at the national, regional and international levels to publicize the Convention and its implementation;
3. Encouraging action to ensure the full implementation of the principles of the Convention, and in particular article 8, which relates to the participation of women at all levels of activity of the United Nations and the United Nations system;
4. Requesting the Secretary-General to commemorate the tenth anniversary of the adoption of the Convention by publishing and disseminating, in cooperation with the specialized agencies, printed and other materials regarding the Convention and its implementation in all official languages of the United Nations, preparing television documentaries about the Convention, and making the necessary resources available to the Division for the Advancement of Women, Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, to prepare an analysis of the information provided by States parties in order to update and publish the report of the Committee (A/CONF.116/13), which was first published for the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, held at Nairobi in 1985.

General Recommendation No. 11 (Eighth session, 1989)

Technical advisory services for reporting obligations

The Committee on the Elimination of Discrimination against Women,

Bearing in mind that, as at 3 March 1989, 96 States had ratified the Convention on the Elimination of All Forms of Discrimination against Women,

Taking into account the fact that by that date 60 initial and 19 second periodic reports had been received,

Noting that 36 initial and 36 second periodic reports were due by 3 March 1989 and had not yet been received,

Welcoming the request in General Assembly resolution 43/115, paragraph 9, that the Secretary-General should arrange, within existing resources and taking into account the priorities of the programme of advisory services, further training courses for those countries experiencing the most serious difficulties in meeting their reporting obligations under international instruments on human rights,

Recommends to States parties that they should encourage, support and cooperate in projects for technical advisory services, including training seminars, to assist States parties on their request in fulfilling their reporting obligations under article 18 of the Convention.

General Recommendation No. 12 (Eighth session, 1989)

Violence against women

The Committee on the Elimination of Discrimination against Women,

Considering that articles 2, 5, 11, 12 and 16 of the Convention require the States parties to act to protect women against violence of any kind occurring within the family, at the workplace or in any other area of social life,

Taking into account Economic and Social Council resolution 1988/27,

Recommends to the States parties that they should include in their periodic reports to the Committee information about:

1. The legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the workplace, etc.);
2. Other measures adopted to eradicate this violence;
3. The existence of support services for women who are the victims of aggression or abuses;
4. Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.

General Recommendation No. 13 (Eighth session, 1989)\*

Equal remuneration for work of equal value

The Committee on the Elimination of Discrimination against Women,

Recalling International Labour Organisation Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, which has been ratified by a large majority of States parties to the Convention on the Elimination of All Forms of Discrimination against Women,

Recalling also that it has considered 51 initial and 5 second periodic reports of States parties since 1983,

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\* Contained in document A/44/38.

Considering that although reports of States parties indicate that, even though the principle of equal remuneration for work of equal value has been accepted in the legislation of many countries, more remains to be done to ensure the application of that principle in practice, in order to overcome the gender-segregation in the labour market,

Recommends to the States parties to the Convention on the Elimination of All Forms of Discrimination against Women that:

1. In order to implement fully the Convention on the Elimination of All Forms of Discrimination against Women, those States parties that have not yet ratified ILO Convention No. 100 should be encouraged to do so;

2. They should consider the study, development and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate, and they should include the results achieved in their reports to the Committee on the Elimination of Discrimination against Women;

3. They should support, as far as practicable, the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.

General Recommendation No. 14 (Ninth session, 1990)\*

Female circumcision

The Committee on the Elimination of Discrimination against Women,

Concerned about the continuation of the practice of female circumcision and other traditional practices harmful to the health of women,

Noting with satisfaction that Governments, where such practices exist, national women's organizations, non-governmental organizations, specialized agencies, such as the World Health Organization, the United Nations Children's Fund, as well as the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, remain seized of the issue having particularly recognized that such traditional practices as female circumcision have serious health and other consequences for women and children,

Noting with interest the study of the Special Rapporteur on Traditional Practices Affecting the Health of Women and Children, as well as the study of the Special Working Group on Traditional Practices,

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\* Contained in document A/45/38 and Corrigendum.



Recognizing that women are taking important action themselves to identify and to combat practices that are prejudicial to the health and well-being of women and children,

Convinced that the important action that is being taken by women and by all interested groups needs to be supported and encouraged by Governments,

Noting with grave concern that there are continuing cultural, traditional and economic pressures which help to perpetuate harmful practices, such as female circumcision,

Recommends to States parties:

(a) That States parties take appropriate and effective measures with a view to eradicating the practice of female circumcision. Such measures could include:

- (i) The collection and dissemination by universities, medical or nursing associations, national women's organizations or other bodies of basic data about such traditional practices;
- (ii) The support of women's organizations at the national and local levels working for the elimination of female circumcision and other practices harmful to women;
- (iii) The encouragement of politicians, professionals, religious and community leaders at all levels including the media and the arts to cooperate in influencing attitudes towards the eradication of female circumcision;
- (iv) The introduction of appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision;

(b) That States parties include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel including traditional birth attendants to explain the harmful effects of female circumcision;

(c) That States parties invite assistance, information and advice from the appropriate organizations of the United Nations system to support and assist efforts being deployed to eliminate harmful traditional practices;

(d) That States parties include in their reports to the Committee under articles 10 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women information about measures taken to eliminate female circumcision.

General Recommendation No. 15 (Ninth session, 1990)\*

Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)

The Committee on the Elimination of Discrimination against Women,

Having considered information brought to its attention on the potential effects of both the global pandemic of acquired immunodeficiency syndrome (AIDS) and strategies to control it on the exercise of the rights of women,

Having regard to the reports and materials prepared by the World Health Organization and other United Nations organizations, organs and bodies in relation to human immunodeficiency virus (HIV), and, in particular, the note by the Secretary-General to the Commission on the Status of Women on the effects of AIDS on the advancement of women and the Final Document of the International Consultation on AIDS and Human Rights, held at Geneva from 26 to 28 July 1989,

Noting World Health Assembly resolution WHA 41.24 on the avoidance of discrimination in relation to HIV-infected people and people with AIDS of 13 May 1988, resolution 1989/11 of the Commission on Human Rights on non-discrimination in the field of health, of 2 March 1989, and in particular the Paris Declaration on Women, Children and AIDS, of 30 November 1989,

Noting that the World Health Organization has announced that the theme of World Aids Day, 1 December 1990, will be "Women and Aids",

Recommends:

- (a) That States parties intensify efforts in disseminating information to increase public awareness of the risk of HIV infection and AIDS, especially in women and children, and of its effects on them;
- (b) That programmes to combat AIDS should give special attention to the rights and needs of women and children, and to the factors relating to the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection;
- (c) That States parties ensure the active participation of women in primary health care and take measures to enhance their role as care providers, health workers and educators in the prevention of infection with HIV;
- (d) That all States parties include in their reports under article 12 of the Convention information on the effects of AIDS on the situation of women and on the action taken to cater to the needs of those women who are infected and to prevent specific discrimination against women in response to AIDS.

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\* Contained in document A/45/38.

General Recommendation No. 16 (Tenth session, 1991)

Unpaid women workers in rural and urban family enterprises\*

The Committee on the Elimination of Discrimination against Women,

Bearing in mind articles 2 (c) and 11 (c), (d) and (e) of the Convention on the Elimination of All Forms of Discrimination against Women and general recommendation No. 9 (eighth session, 1989) on statistical data concerning the situation of women,

Taking into consideration that a high percentage of women in the States parties work without payment, social security and social benefits in enterprises owned usually by a male member of the family,

Noting that the reports presented to the Committee on the Elimination of Discrimination against Women generally do not refer to the problem of unpaid women workers of family enterprises,

Affirming that unpaid work constitutes a form of women's exploitation that is contrary to the Convention,

Recommends that States parties:

(a) Include in their reports to the Committee information on the legal and social situation of unpaid women working in family enterprises;

(b) Collect statistical data on women who work without payment, social security and social benefits in enterprises owned by a family member, and include these data in their report to the Committee;

(c) Take the necessary steps to guarantee payment, social security and social benefits for women who work without such benefits in enterprises owned by a family member.

General Recommendation No. 17 (Tenth session, 1991)

Measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product\*

The Committee on the Elimination of Discrimination against Women,

Bearing in mind article 11 of the Convention on the Elimination of All Forms of Discrimination against Women,

Recalling paragraph 120 of the Nairobi Forward-looking Strategies for the Advancement of Women,

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\* Contained in document A/46/38.

Affirming that the measurement and quantification of the unremunerated domestic activities of women, which contribute to development in each country, will help to reveal the de facto economic role of women,

Convinced that such measurement and quantification offers a basis for the formulation of further policies related to the advancement of women,

Noting the discussions of the Statistical Commission, at its twenty-first session, on the current revision of the System of National Accounts and the development of statistics on women,

Recommends that States parties:

(a) Encourage and support research and experimental studies to measure and value the unremunerated domestic activities of women; for example, by conducting time-use surveys as part of their national household survey programmes and by collecting statistics disaggregated by gender on time spent on activities both in the household and on the labour market;

(b) Take steps, in accordance with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women and the Nairobi Forward-looking Strategies for the Advancement of Women, to quantify and include the unremunerated domestic activities of women in the gross national product;

(c) Include in their reports submitted under article 18 of the Convention information on the research and experimental studies undertaken to measure and value unremunerated domestic activities, as well as on the progress made in the incorporation of the unremunerated domestic activities of women in national accounts.

General Recommendation No. 18 (Tenth session, 1991)

Disabled women\*

The Committee on the Elimination of Discrimination against Women,

Taking into consideration particularly article 3 of the Convention on the Elimination of All Forms of Discrimination against Women,

Having considered more than 60 periodic reports of States parties, and having recognized that they provide scarce information on disabled women,

Concerned about the situation of disabled women, who suffer from a double discrimination linked to their special living conditions,

Recalling paragraph 296 of the Nairobi Forward-looking Strategies for the Advancement of Women, in which disabled women are considered as a vulnerable group under the heading "areas of special concern",

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\* Contained in document A/46/38.

Affirming its support for the World Programme of Action concerning Disabled Persons (1982),

Recommends that States parties provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life.

General Recommendation No. 19 (Eleventh session, 1992): Violence against women\*

#### Background

1. Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.
2. In 1989, the Committee recommended that States should include in their reports information on violence and on measures introduced to deal with it (General recommendation 12, eighth session).
3. At its tenth session in 1991, it was decided to allocate part of the eleventh session to a discussion and study on article 6 and other articles of the Convention relating to violence towards women and the sexual harassment and exploitation of women. That subject was chosen in anticipation of the 1993 World Conference on Human Rights, convened by the General Assembly by its resolution 45/155 of 18 December 1990.
4. The Committee concluded that not all the reports of States parties adequately reflected the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms. The full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women.
5. The Committee suggested to States parties that in reviewing their laws and policies, and in reporting under the Convention, they should have regard to the following comments of the Committee concerning gender-based violence.

#### General comments

6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

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\* Contained in document A/47/38.



7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) The right to life;
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- (d) The right to liberty and security of person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;
- (h) The right to just and favourable conditions of work.

8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2 (e), 2 (f) and 5). For example, under article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

#### Comments on specific articles of the Convention

##### Articles 2 and 3

10. Articles 2 and 3 establish a comprehensive obligation to eliminate discrimination in all its forms in addition to the specific obligations under articles 5-16.

##### Articles 2 (f), 5 and 10 (c)

11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and

practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities.

12. These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.

#### Article 6

13. States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.

14. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

15. Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.

16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

#### Article 11

17. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

18. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

Article 12

19. States parties are required by article 12 to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk.

20. In some States there are traditional practices perpetuated by culture and tradition that are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation.

Article 14

21. Rural women are at risk of gender-based violence because traditional attitudes regarding the subordinate role of women that persist in many rural communities. Girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns.

Article 16 (and article 5)

22. Compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children.

23. Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

Specific recommendations

24. In light of these comments, the Committee on the Elimination of Discrimination against Women recommends:

(a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;

(b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;

(c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;

(d) Effective measures should be taken to ensure that the media respect and promote respect for women;

(e) States parties in their report should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women, and the kinds of violence that result. They should report the measures that they have undertaken to overcome violence, and the effect of those measures;

(f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices which hinder women's equality (recommendation No. 3, 1987);

(g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;

(h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures, that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;

(i) Effective complaints procedures and remedies, including compensation, should be provided;

(j) States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace;

(k) States parties should establish or support services for victims of family violence, rape, sex assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling;

(l) States parties should take measures to overcome such practices and should take account of the Committee's recommendation on female circumcision (recommendation No. 14) in reporting on health issues;

(m) States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;

(n) States parties in their reports should state the extent of these problems and should indicate the measures that have been taken and their effect;

(o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities;

(p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers;

(q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence;

(r) Measures that are necessary to overcome family violence should include:

- (i) Criminal penalties where necessary and civil remedies in case of domestic violence;
- (ii) Legislation to remove the defence of honour in regard to the assault or murder of a female family member;
- (iii) Services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes;
- (iv) Rehabilitation programmes for perpetrators of domestic violence;
- (v) Support services for families where incest or sexual abuse has occurred;

(s) States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken;

(t) That States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:

- (i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including, inter alia, violence and abuse in the family, sexual assault and sexual harassment in the workplace;
- (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
- (iii) Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;



(u) That States parties should report on all forms of gender-based violence, and that such reports should include all available data on the incidence of each form of violence, and on the effects of such violence on the women who are victims;

(v) That the reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.

General recommendation No. 20 (Eleventh session, 1992): Reservations to the Convention\*

1. The Committee recalled the decision of the Fourth Meeting of States parties on reservations to the Convention with regard to article 28.2, which was welcomed in General recommendation No. 4 of the Committee.

2. The Committee recommended that, in connection with preparations for the World Conference on Human Rights in 1993, States parties should:

(a) Raise the question of the validity and the legal effect of reservations to the Convention in the context of reservations to other human rights treaties;

(b) Reconsider such reservations with a view to strengthening the implementation of all human rights treaties;

(c) Consider introducing a procedure on reservations to the Convention comparable with that of other human rights treaties;

General recommendation 21 (thirteenth session): Equality in marriage and family relations

1. The Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180, annex) affirms the equality of human rights for women and men in society and in the family. The Convention has an important place among international treaties concerned with human rights.

2. Other conventions and declarations also confer great significance on the family and woman's status within it. These include the Universal Declaration of Human Rights (General Assembly resolution 217/A (III)), the International Covenant on Civil and Political Rights (resolution 2200 A (XXI), annex), the Convention on the Nationality of Married Women (resolution 1040 (XI), annex), the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (resolution 1763 A (XVII), annex) and the subsequent Recommendation thereon (resolution 2018 (XX)) and the Nairobi Forward-looking Strategies for the Advancement of Women.

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\* Contained in document A/47/38.

3. The Convention on the Elimination of All Forms of Discrimination against Women recalls the inalienable rights of women which are already embodied in the above-mentioned conventions and declarations, but it goes further by recognizing the importance of culture and tradition in shaping the thinking and behaviour of men and women and the significant part they play in restricting the exercise of basic rights by women.

#### Background

4. The year 1994 has been designated by the General Assembly in its resolution 44/82 as the International Year of the Family. The Committee wishes to take the opportunity to stress the significance of compliance with women's basic rights within the family as one of the measures which will support and encourage the national celebrations that will take place.

5. Having chosen in this way to mark the International Year of the Family, the Committee wishes to analyse three articles in the Convention that have special significance for the status of women in the family:

#### Article 9

1. States parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States parties shall grant women equal rights with men with respect to the nationality of their children.

#### Comment

6. Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.

#### Article 15

1. States parties shall accord to women equality with men before the law.

2. States parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Comment

7. When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner and precludes her from the legal management of her own business or from entering into any other form of contract. Such restrictions seriously limit the woman's ability to provide for herself and her dependants.

8. A woman's right to bring litigation is limited in some countries by law or by her access to legal advice and her ability to seek redress from the courts. In others, her status as a witness or her evidence is accorded less respect or weight than that of a man. Such laws or customs limit the woman's right effectively to pursue or retain her equal share of property and diminish her standing as an independent, responsible and valued member of her community. When countries limit a woman's legal capacity by their laws, or permit individuals or institutions to do the same, they are denying women their rights to be equal with men and restricting women's ability to provide for themselves and their dependants.

9. Domicile is a concept in common law countries referring to the country in which a person intends to reside and to whose jurisdiction she will submit. Domicile is originally acquired by a child through its parents but, in adulthood, denotes the country in which a person normally resides and in which she intends to reside permanently. As in the case of nationality, the examination of States parties' reports demonstrates that a woman will not always be permitted at law to choose her own domicile. Domicile, like nationality, should be capable of change at will by an adult woman regardless of her marital status. Any restrictions on a woman's right to choose a domicile on the same basis as a man may limit her access to the courts in the country in which she lives or prevent her from entering and leaving a country freely and in her own right.

10. Migrant women who live and work temporarily in another country should be permitted the same rights as men to have their spouses, partners and children join them.

Article 16

1. States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

#### Comment

##### Public and private life

11. Historically, human activity in public and private life has been viewed differently and regulated accordingly. In all societies women who have traditionally performed their roles in the private or domestic sphere have long had those activities treated as inferior.

12. As such activities are invaluable for the survival of society, there can be no justification for applying different and discriminatory laws or customs to them. Reports of States parties disclose that there are still countries where de jure equality does not exist. Women are thereby prevented from having equal access to resources and from enjoying equality of status in the family and society. Even where de jure equality exists, all societies assign different roles, which are regarded as inferior, to women. In this way, principles of justice and equality contained in particular in article 16 and also in articles 2, 5 and 24 of the Convention are being violated.

Various forms of family

13. The form and concept of the family can vary from State to State, and even between regions within a State. Whatever form it takes, and whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people, as article 2 of the Convention requires.

Polygamous marriages

14. States parties' reports also disclose that polygamy is practised in a number of countries. Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5 (a) of the Convention.

Article 16 (1) (a) and (b)

15. While most countries report that national constitutions and laws comply with the Convention, custom, tradition and failure to enforce these laws in reality contravene the Convention.

16. A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on a woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.

Article 16 (1) (c)

17. An examination of States parties' reports discloses that many countries in their legal systems provide for the rights and responsibilities of married partners by relying on the application of common law principles, religious or customary law, rather than by complying with the principles contained in the Convention. These variations in law and practice relating to marriage have wide-ranging consequences for women, invariably restricting their rights to equal status and responsibility within marriage. Such limitations often result in the husband being accorded the status of head of household and primary decision-maker and therefore contravene the provisions of the Convention.

18. Moreover, generally a de facto union is not given legal protection at all. Women living in such relationships should have their equality of status with men both in family life and in the sharing of income and assets protected by law. Such women should share equal rights and responsibilities with men for the care and raising of dependent children or family members.

Article 16 (1) (d) and (f)

19. As provided in article 5 (b), most States recognize the shared responsibility of parents for the care, protection and maintenance of children. The principle that "the best interests of the child shall be the paramount consideration" has been included in the Convention on the Rights of the Child (General Assembly resolution 44/25, annex) and seems now to be universally accepted. However, in practice, some countries do not observe the principle of granting the parents of children equal status, particularly when they are not married. The children of such unions do not always enjoy the same status as those born in wedlock and, where the mothers are divorced or living apart, many fathers fail to share the responsibility of care, protection and maintenance of their children.

20. The shared rights and responsibilities enunciated in the Convention should be enforced at law and as appropriate through legal concepts of guardianship, wardship, trusteeship and adoption. States parties should ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children.

Article 16 (1) (e)

21. The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women's lives and also affect their physical and mental health, as well as that of their children. For these reasons, women are entitled to decide on the number and spacing of their children.

22. Some reports disclose coercive practices which have serious consequences for women, such as forced pregnancies, abortions or sterilization. Decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government. In order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in article 10 (h) of the Convention.

23. There is general agreement that where there are freely available appropriate measures for the voluntary regulation of fertility, the health, development and well-being of all members of the family improves. Moreover, such services improve the general quality of life and health of the population, and the voluntary regulation of population growth helps preserve the environment and achieve sustainable economic and social development.



Article 16 (1) (g)

24. A stable family is one which is based on principles of equity, justice and individual fulfilment for each member. Each partner must therefore have the right to choose a profession or employment that is best suited to his or her abilities, qualifications and aspirations, as provided in article 11 (a) and (c) of the Convention. Moreover, each partner should have the right to choose his or her name, thereby preserving individuality and identity in the community and distinguishing that person from other members of society. When by law or custom a woman is obliged to change her name on marriage or at its dissolution, she is denied these rights.

Article 16 (1) (h)

25. The rights provided in this article overlap with and complement those in article 15 (2) in which an obligation is placed on States to give women equal rights to enter into and conclude contracts and to administer property.

26. Article 15 (1) guarantees women equality with men before the law. The right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.

27. In countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.

28. In most countries, a significant proportion of the women are single or divorced and many have the sole responsibility to support a family. Any discrimination in the division of property that rests on the premise that the man alone is responsible for the support of the women and children of his family and that he can and will honourably discharge this responsibility is clearly unrealistic. Consequently, any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.

29. All of these rights should be guaranteed regardless of a woman's marital status.

Marital property

30. There are countries that do not acknowledge that right of women to own an equal share of the property with the husband during a marriage or de facto relationship and when that marriage or relationship ends. Many countries recognize that right, but the practical ability of women to exercise it may be limited by legal precedent or custom.

31. Even when these legal rights are vested in women, and the courts enforce them, property owned by a woman during marriage or on divorce may be managed by a man. In many States, including those where there is a community-property regime, there is no legal requirement that a woman be consulted when property owned by the parties during marriage or de facto relationship is sold or otherwise disposed of. This limits the woman's ability to control disposition of the property or the income derived from it.

32. In some countries, on division of marital property, greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets. Financial and non-financial contributions should be accorded the same weight.

33. In many countries, property accumulated during a de facto relationship is not treated at law on the same basis as property acquired during marriage. Invariably, if the relationship ends, the woman receives a significantly lower share than her partner. Property laws and customs that discriminate in this way against married or unmarried women with or without children should be revoked and discouraged.

#### Inheritance

34. Reports of States parties should include comment on the legal or customary provisions relating to inheritance laws as they affect the status of women as provided in the Convention and in Economic and Social Council resolution 884D (XXXIV), in which the Council recommended that States ensure that men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession. That provision has not been generally implemented.

35. There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.

#### Article 16 (2)

36. In the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. Article 16 (2) and the provisions of the Convention on the Rights of the Child preclude States parties from permitting or giving validity to a marriage between persons who have not attained their majority. In the context of the Convention on the Rights of the Child, "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is

attained earlier". Notwithstanding this definition, and bearing in mind the provisions of the Vienna Declaration, the Committee considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted.

37. This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities.

38. Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a women's right freely to choose her partner.

39. States parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children.

#### Recommendations

##### Violence against women

40. In considering the place of women in family life, the Committee wishes to stress that the provisions of general recommendation 19 (eleventh session) concerning violence against women have great significance for women's abilities to enjoy rights and freedoms on an equal basis with men. States parties are urged to comply with that general recommendation to ensure that, in both public and family life, women will be free of the gender-based violence that so seriously impedes their rights and freedoms as individuals.

##### Reservations

41. The Committee has noted with alarm the number of States parties which have entered reservations to the whole or part of article 16, especially when a reservation has also been entered to article 2, claiming that compliance may conflict with a commonly held vision of the family based, inter alia, on cultural or religious beliefs or on the country's economic or political status.

42. Many of these countries hold a belief in the patriarchal structure of a family which places a father, husband or son in a favourable position. In some countries where fundamentalist or other extremist views or economic hardships have encouraged a return to old values and traditions, women's place in the family has deteriorated sharply. In others, where it has been recognized that a modern society depends for its economic advance and for the general good of the community on involving all adults equally, regardless of gender, these taboos and reactionary or extremist ideas have progressively been discouraged.

43. Consistent with articles 2, 3 and 24 in particular, the Committee requires that all States parties gradually progress to a stage where, by its resolute discouragement of notions of the inequality of women in the home, each country will withdraw its reservation, in particular to articles 9, 15 and 16 of the Convention.

44. States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private law or by custom, and progress to the stage where reservations, particularly to article 16, will be withdrawn.

45. The Committee noted, on the basis of its examination of initial and subsequent periodic reports, that in some States parties to the Convention that had ratified or acceded without reservation, certain laws, especially those dealing with family, do not actually conform to the provisions of the Convention.

46. Their laws still contain many measures which discriminate against women based on norms, customs and socio-cultural prejudices. These States, because of their specific situation regarding these articles, make it difficult for the Committee to evaluate and understand the status of women.

47. The Committee, in particular on the basis of articles 1 and 2 of the Convention, requests that those States parties make the necessary efforts to examine the de facto situation relating to the issues and to introduce the required measures in their national legislations still containing provisions discriminatory to women.

#### Reports

48. Assisted by the comments in the present general recommendation, in their reports States parties should:

(a) Indicate the stage that has been reached in the country's progress to removal of all reservations to the Convention, in particular reservations to article 16;

(b) Set out whether their laws comply with the principles of articles 9, 15 and 16 and where, by reason of religious or private law or custom, compliance with the law or with the Convention is impeded.

Legislation

49. States parties should, where necessary to comply with the Convention, in particular in order to comply with articles 9, 15 and 16, enact and enforce legislation.

Encouraging compliance with the Convention

50. Assisted by the comments in the present general recommendation, and as required by articles 2, 3 and 24, States parties should introduce measures directed at encouraging full compliance with the principles of the Convention, particularly where religious or private law or custom conflict with those principles.

Annex I

LIST OF GENERAL COMMENTS ADOPTED BY THE HUMAN RIGHTS COMMITTEE\*

Thirteenth session (1981)

General comment 1	<u>Reporting obligation</u>
General comment 2	<u>Reporting guidelines</u>
General comment 3	<u>Article 2: Implementation at the national level</u>
General comment 4	<u>Article 3</u>
General comment 5	<u>Article 4</u>

Sixteenth session (1982)

General comment 6	<u>Article 6</u>
General comment 7	<u>Article 7**</u>
General comment 8	<u>Article 9</u>
General comment 9	<u>Article 10**</u>

Nineteenth session (1983)

General comment 10	<u>Article 19</u>
General comment 11	<u>Article 20</u>

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\* For the text of the general comments already adopted by the Committee, see *ibid.*, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VII; *ibid.*, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V; *ibid.*, Thirty-eighth Session, Supplement No. 40 (A/38/40), annex VI; *ibid.*, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), annex VI; *ibid.*, Fortieth Session, Supplement No. 40 (A/40/40), annex VI; *ibid.*, Forty-first Session, Supplement No. 40 (A/41/40), annex VI; *ibid.*, Forty-third Session, Supplement No. 40 (A/43/40), annex VI; *ibid.*, Forty-fourth Session, Supplement No. 40 (A/44/40), annex VI and *ibid.*, Forty-fifth Session, Supplement No. 40 (A/45/40), annex VI. Also issued in documents CCPR/C/21/Rev.1 and CCPR/C/21/Rev.1/Add.1, 2 and 3.

\*\* General comments 7 and 9 were replaced by General comments 20 and 21, respectively.



Twenty-first session (1984)

General comment 12 Article 1

General comment 13 Article 14

Twenty-third session (1984)

General comment 14 Article 6

Twenty-seventh session (1986)

General comment 15 The position of aliens under the Covenant

Thirty-second session (1988)

General comment 16 Article 17

Thirty-fifth session (1989)

General comment 17 Article 24

Thirty-seventh session (1989)

General comment 18 Non-discrimination

Thirty-ninth session (1990)

General comment 19 Article 23

Forty-fourth session (1992)

General comment 20 Article 7

General comment 21 Article 10

Forty-eighth session (1993)

General comment 22 Article 18

Fiftieth session (1994)

General comment 23 Article 27

Annex II

LIST OF GENERAL COMMENTS ADOPTED BY THE COMMITTEE ON  
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Third session (1989)

General comment 1      Reporting by States parties

Fourth session (1990)

General comment 2      International technical assistance measures  
(art. 22 of the Covenant)

Fifth session (1990)

General comment 3      The nature of States parties obligations (art. 2,  
para. 1 of the Covenant)

Sixth session (1991)

General comment 4      The right to adequate housing (art. 11 (1) of the  
Covenant)

Annex III

LIST OF GENERAL RECOMMENDATIONS ADOPTED BY THE COMMITTEE  
ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifth session (1972)

General recommendation I                    States parties' obligations (art. 4 of the Convention)

General recommendation II                   States parties obligations

Sixth session (1972)

General recommendation III                Reporting by States parties

Eighth session (1973)

General recommendation IV                Reporting by States parties (art. 1 of the Convention)

Fifteenth session (1977)

General recommendation V                 Reporting by States parties (art. 7 of the Convention)

Twenty-fifth session (1982)

General recommendation VI                Overdue reports

Thirty-second session (1985)

General recommendation VII              Implementation of article 4 of the Convention

Thirty-eighth session (1990)

General recommendation VIII            Interpretation and application of article 1, paragraphs 1 and 4, of the Convention

General recommendation IX               Application of article 8, paragraph 1 of the Convention

Thirty-ninth session (1991)

General recommendation X                Technical assistance

Forty-second session (1993)

General recommendation XI	<u>Non-citizens</u>
General recommendation XII	<u>Successor States</u>
General recommendation XIII	<u>Training of law enforcement officials in the protection of human rights</u>
General recommendation XIV	<u>Article 1, paragraph 1, of the Convention</u>
General recommendation XV	<u>Article 4 of the Convention</u>
General recommendation XVI	<u>Application of article 9 of the Convention</u>
General recommendation XVII	<u>The establishment of national institutions to facilitate the implementation of the Convention</u>

Forty-fourth session (1994)

General recommendation XVIII	<u>Establishment of an international tribunal to prosecute crimes against humanity</u>
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Annex IV

LIST OF GENERAL RECOMMENDATIONS ADOPTED BY THE COMMITTEE  
ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Fifth session (1986)

General recommendation No. 1      Reporting by States parties

Sixth session (1987)

General recommendation No. 2      Reporting by States parties

General recommendation No. 3      Education and public information  
campaigns

General recommendation No. 4      Reservations

Seventh session (1988)

General recommendation No. 5      Temporary special measures

General recommendation No. 6      Effective national machinery and  
publicity

General recommendation No. 7      Resources

General recommendation No. 8      Implementation of article 8 of the  
Convention

Eighth session (1989)

General recommendation No. 9      Statistical data concerning the  
situation of women

General recommendation No. 10    Tenth anniversary of the adoption of  
the Convention on the Elimination of  
All Forms of Discrimination against  
Women

General recommendation No. 11    Technical advisory services for  
reporting obligations

General recommendation No. 12    Violence against women

General recommendation No. 13    Equal remuneration for work of equal  
value

Ninth session (1990)

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|-------------------------------|---|
| General recommendation No. 14 | <u>Female circumcision</u>  |
| General recommendation No. 15 | <u>Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)</u> |

Tenth session (1991)

- |                               |   |
|-------------------------------|---|
| General recommendation No. 16 | <u>Unpaid women workers in rural and urban family enterprises</u>   |
| General recommendation No. 17 | <u>Measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product</u> |
| General recommendation No. 18 | <u>Disabled women</u>   |

Eleventh session (1992)

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|-------------------------------|---------------------------------------|
| General recommendation No. 19 | <u>Violence against Women</u>         |
| General recommendation No. 20 | <u>Reservations to the Convention</u> |

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# Annex 788

CERD Committee, General Recommendation No. 14



## **Forty-second session (1993)\***

### **General recommendation XIV on article 1, paragraph 1, of the Convention**

1. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic principle in the protection of human rights. The Committee wishes to draw the attention of States parties to certain features of the definition of racial discrimination in article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination. It is of the opinion that the words “based on” do not bear any meaning different from “on the grounds of” in preambular paragraph 7. A distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms. This is confirmed by the obligation placed upon States parties by article 2, paragraph 1 (c), to nullify any law or practice which has the effect of creating or perpetuating racial discrimination.

2. The Committee observes that a differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate or fall within the scope of article 1, paragraph 4, of the Convention. In considering the criteria that may have been employed, the Committee will acknowledge that particular actions may have varied purposes. In seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.

3. Article 1, paragraph 1, of the Convention also refers to the political, economic, social and cultural fields; the related rights and freedoms are set up in article 5.

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\* Contained in document A/48/18.



# Annex 789

CERD Committee, General Recommendation No. 31





## Sixty-fifth session (2005)

### **General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system**

*The Committee on the Elimination of Racial Discrimination,*

*Recalling* the definition of racial discrimination set out in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination,

*Recalling* the provisions of article 5 (a) of the Convention, under which States parties have an obligation to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to equal treatment before the tribunals and all other organs administering justice,

*Recalling* that article 6 of the Convention requires States parties to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination,

*Referring* to paragraph 25 of the declaration adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in 2001, which expressed “profound repudiation of the racism, racial discrimination, xenophobia and related intolerance that persist in some States in the functioning of the penal system and in the application of the law, as well as in the actions and attitudes of institutions and individuals responsible for law enforcement, especially where this has contributed to certain groups being overrepresented among persons under detention or imprisoned”,

*Referring* to the work of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights (see E/CN.4/Sub.2/2005/7) concerning discrimination in the criminal justice system,

*Bearing in mind* the reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance,

*Referring* to the 1951 Convention relating to the Status of Refugees, in particular article 16, which stipulates that “[a] refugee shall have free access to the courts of law on the territory of all Contracting States”,

*Bearing in mind* the observations relating to the functioning of the system of justice made in the Committee’s conclusions concerning reports submitted by States parties and in general recommendations XXVII (2000) on discrimination against Roma, XXIX (2002) on discrimination based on descent and XXX (2004) on discrimination against non-citizens,

*Convinced* that, even though the system of justice may be regarded as impartial and not affected by racism, racial discrimination or xenophobia, when racial or ethnic discrimination does exist in the administration and functioning of the system of justice, it constitutes a particularly serious violation of the rule of law, the principle of equality before the law, the principle of fair trial and the right to an independent and impartial tribunal, through its direct effect on persons belonging to groups which it is the very role of justice to protect,

*Considering* that no country is free from racial discrimination in the administration and functioning of the criminal justice system, regardless of the type of law applied or the judicial system in force, whether accusatorial, inquisitorial or mixed,

*Considering* that the risks of discrimination in the administration and functioning of the criminal justice system have increased in recent years, partly as a result of the rise in immigration and population movements, which have prompted prejudice and feelings of xenophobia or intolerance among certain sections of the population and certain law enforcement officials, and partly as a result of the security policies and anti-terrorism measures adopted by many States, which among other things have encouraged the emergence of anti-Arab or anti-Muslim feelings, or, as a reaction, anti-Semitic feelings, in a number of countries,

*Determined* to combat all forms of discrimination in the administration and functioning of the criminal justice system which may be suffered, in all countries of the world, by persons belonging to racial or ethnic groups, in particular non-citizens - including immigrants, refugees, asylum-seekers and stateless persons - Roma/Gypsies, indigenous peoples, displaced populations, persons discriminated against because of their descent, as well as other vulnerable groups which are particularly exposed to exclusion, marginalization and non-integration in society, paying particular attention to the situation of women and children belonging to the aforementioned groups, who are susceptible to multiple discrimination because of their race and because of their sex or their age,

*Formulates* the following recommendations addressed to States parties:

## **I. General steps**

### **A. Steps to be taken in order to better gauge the existence and extent of racial discrimination in the administration and functioning of the criminal justice system; the search for indicators attesting to such discrimination**

#### **1. Factual indicators**

1. States parties should pay the greatest attention to the following possible indicators of racial discrimination:

(a) The number and percentage of persons belonging to the groups referred to in the last paragraph of the preamble who are victims of aggression or other offences, especially when they are committed by police officers or other State officials;

(b) The absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination in the country. Such a statistic should not be viewed as necessarily positive, contrary to the belief of some States. It may also reveal either that victims have inadequate information concerning their rights, or that they fear social censure or reprisals, or that victims with limited resources fear the cost and complexity of the judicial process, or that there is a lack of trust in the police and judicial authorities, or that the authorities are insufficiently alert to or aware of offences involving racism;

(c) Insufficient or no information on the behaviour of law enforcement personnel vis-à-vis persons belonging to the groups referred to in the last paragraph of the preamble;

(d) The proportionately higher crime rates attributed to persons belonging to those groups, particularly as regards petty street crime and offences related to drugs and prostitution, as indicators of the exclusion or the non-integration of such persons into society;

(e) The number and percentage of persons belonging to those groups who are held in prison or preventive detention, including internment centres, penal establishments, psychiatric establishments or holding areas in airports;

(f) The handing down by the courts of harsher or inappropriate sentences against persons belonging to those groups;

(g) The insufficient representation of persons belonging to those groups among the ranks of the police, in the system of justice, including judges and jurors, and in other law enforcement departments.

2. In order for these factual indicators to be well known and used, States parties should embark on regular and public collection of information from police, judicial and prison authorities and immigration services, while respecting standards of confidentiality, anonymity and protection of personal data.

3. In particular, States parties should have access to comprehensive statistical or other information on complaints, prosecutions and convictions relating to acts of racism and xenophobia, as well as on compensation awarded to the victims of such acts, whether such compensation is paid by the perpetrators of the offences or under State compensation plans financed from public funds.

## **2. Legislative indicators**

4. The following should be regarded as indicators of potential causes of racial discrimination:

(a) Any gaps in domestic legislation on racial discrimination. In this regard, States parties should fully comply with the requirements of article 4 of the Convention and criminalize all acts of racism as provided by that article, in particular the dissemination of ideas based on racial superiority or hatred, incitement to racial hatred, violence or incitement to racial violence, but also racist propaganda activities and participation in racist organizations. States parties are also encouraged to incorporate a provision in their criminal legislation to the effect that committing offences for racial reasons generally constitutes an aggravating circumstance;

(b) The potential indirect discriminatory effects of certain domestic legislation, particularly legislation on terrorism, immigration, nationality, banning or deportation of non-citizens from a country, as well as legislation that has the effect of penalizing without legitimate grounds certain groups or membership of certain communities. States should seek to eliminate the discriminatory effects of such legislation and in any case to respect the principle of proportionality in its application to persons belonging to the groups referred to in the last paragraph of the preamble.

### **B. Strategies to be developed to prevent racial discrimination in the administration and functioning of the criminal justice system**

5. States parties should pursue national strategies the objectives of which include the following:

(a) To eliminate laws that have an impact in terms of racial discrimination, particularly those which target certain groups indirectly by penalizing acts which can be committed only by persons belonging to such groups, or laws that apply only to non-nationals without legitimate grounds or which do not respect the principle of proportionality;

(b) To develop, through appropriate education programmes, training in respect for human rights, tolerance and friendship among racial or ethnic groups, as well as sensitization to intercultural relations, for law enforcement officials: police personnel, persons working in the system of justice, prison institutions, psychiatric establishments, social and medical services, etc.;

(c) To foster dialogue and cooperation between the police and judicial authorities and the representatives of the various groups referred to in the last paragraph of the preamble, in order to combat prejudice and create a relationship of trust;

(d) To promote proper representation of persons belonging to racial and ethnic groups in the police and the system of justice;

(e) To ensure respect for, and recognition of the traditional systems of justice of indigenous peoples, in conformity with international human rights law;

(f) To make the necessary changes to the prison regime for prisoners belonging to the groups referred to in the last paragraph of the preamble, so as to take into account their cultural and religious practices;

(g) To institute, in situations of mass population movements, the interim measures and arrangements necessary for the operation of the justice system in order to take account of the particularly vulnerable situation of displaced persons, in particular by setting up decentralized courts at the places where the displaced persons are staying or by organizing mobile courts;

(h) To set up, in post-conflict situations, plans for the reconstruction of the legal system and the re-establishment of the rule of law throughout the territory of the countries concerned, by availing themselves, in particular, of the international technical assistance provided by the relevant United Nations entities;

(i) To implement national strategies or plans of action aimed at the elimination of structural racial discrimination. These long-term strategies should include specific objectives and actions as well as indicators against which progress can be measured. They should include, in particular, guidelines for prevention, recording, investigation and prosecution of racist or xenophobic incidents, assessment of the level of satisfaction among all communities concerning their relations with the police and the system of justice, and recruitment and promotion in the judicial system of persons belonging to various racial or ethnic groups;

(j) To entrust an independent national institution with the task of tracking, monitoring and measuring progress made under the national plans of action and guidelines against racial discrimination, identifying undetected manifestations of racial discrimination and submitting recommendations and proposals for improvement.

## **II. Steps to be taken to prevent racial discrimination with regard to victims of racism**

### **A. Access to the law and to justice**

6. In accordance with article 6 of the Convention, States parties are obliged to guarantee the right of every person within their jurisdiction to an effective remedy against the perpetrators of acts of racial discrimination, without discrimination of any kind, whether such acts are committed by private individuals or State officials, as well as the right to seek just and adequate reparation for the damage suffered.

7. In order to facilitate access to justice for the victims of racism, States parties should strive to supply the requisite legal information to persons belonging to the most vulnerable social groups, who are often unaware of their rights.

8. In that regard, States parties should promote, in the areas where such persons live, institutions such as free legal help and advice centres, legal information centres and centres for conciliation and mediation.

9. States parties should also expand their cooperation with associations of lawyers, university institutions, legal advice centres and non-governmental organizations specializing in protecting the rights of marginalized communities and in the prevention of discrimination.

### **B. Reporting of incidents to the authorities competent for receiving complaints**

10. States parties should take the necessary steps to ensure that the police services have an adequate and accessible presence in the neighbourhoods, regions, collective facilities, camps or centres where the persons belonging to the groups referred to in the last paragraph of the preamble reside, so that complaints from such persons can be expeditiously received.

11. The competent services should be instructed to receive the victims of acts of racism in police stations in a satisfactory manner, so that complaints are recorded immediately, investigations are pursued without delay and in an effective, independent and impartial manner, and files relating to racist or xenophobic incidents are retained and incorporated into databases.

12. Any refusal by a police official to accept a complaint involving an act of racism should lead to disciplinary or penal sanctions, and those sanctions should be increased if corruption is involved.

13. Conversely, it should be the right and duty of any police official or State employee to refuse to obey orders or instructions that require him or her to commit violations of human rights, particularly those based on racial discrimination. States parties should guarantee the freedom of any official to invoke this right without fear of punishment.

14. In cases of allegations of torture, ill-treatment or executions, investigations should be conducted in accordance with the Principles on the Effective Prevention and Investigation of



Extra-legal, Arbitrary and Summary Executions<sup>i</sup> and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>ii</sup>

### **C. Initiation of judicial proceedings**

15. States parties should remind public prosecutors and members of the prosecution service of the general importance of prosecuting racist acts, including minor offences committed with racist motives, since any racially motivated offence undermines social cohesion and society as a whole.

16. In advance of the initiation of proceedings, States parties could also encourage, with a view to respecting the rights of the victims, the use of parajudicial procedures for conflict resolution, including customary procedures compatible with human rights, mediation or conciliation, which can serve as useful options for the victims of acts of racism and to which less stigma may be attached.

17. In order to make it easier for the victims of acts of racism to bring actions in the courts, the steps to be taken should include the following:

(a) Offering procedural status for the victims of racism and xenophobia and associations for the protection of the rights of such victims, such as an opportunity to associate themselves with the criminal proceedings, or other similar procedures that might enable them to assert their rights in the criminal proceedings, at no cost to themselves;

(b) Granting victims effective judicial cooperation and legal aid, including the assistance of counsel and an interpreter free of charge;

(c) Ensuring that victims have information about the progress of the proceedings;

(d) Guaranteeing protection for the victim or the victim's family against any form of intimidation or reprisals;

(e) Providing for the possibility of suspending the functions, for the duration of the investigation, of the agents of the State against whom the complaints were made.

18. In countries where there are assistance and compensation plans for victims, States parties should ensure that such plans are available to all victims without discrimination and regardless of their nationality or residential status.

### **D. Functioning of the system of justice**

19. States parties should ensure that the system of justice:

(a) Grants a proper place to victims and their families, as well as witnesses, throughout the proceedings, by enabling complainants to be heard by the judges during the examination proceedings and the court hearing, to have access to information, to confront hostile witnesses, to challenge evidence and to be informed of the progress of proceedings;

(b) Treats the victims of racial discrimination without discrimination or prejudice, while respecting their dignity, through ensuring in particular that hearings, questioning or confrontations are carried out with the necessary sensitivity as far as racism is concerned;

(c) Guarantees the victim a court judgement within a reasonable period;

(d) Guarantees victims just and adequate reparation for the material and moral harm suffered as a result of racial discrimination.

### **III. Steps to be taken to prevent racial discrimination in regard to accused persons who are subject to judicial proceedings**

#### **A. Questioning, interrogation and arrest**

20. States parties should take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person's colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion.

21. States parties should prevent and most severely punish violence, acts of torture, cruel, inhuman or degrading treatment and all violations of human rights affecting persons belonging to the groups referred to in the last paragraph of the preamble which are committed by State officials, particularly police and army personnel, customs authorities, and persons working in airports, penal institutions and social, medical and psychiatric services.

22. States parties should ensure the observance of the general principle of proportionality and strict necessity in recourse to force against persons belonging to the groups referred to in the last paragraph of the preamble, in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>iii</sup>

23. States parties should also guarantee to all arrested persons, whatever the racial, national or ethnic group to which they belong, enjoyment of the fundamental rights of the defence enshrined in the relevant international human rights instruments (especially the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights), in particular the right not to be arbitrarily arrested or detained, the right to be informed of the reasons for their arrest, the right to the assistance of an interpreter, the right to the assistance of counsel, the right to be brought promptly before a judge or an authority empowered by the law to perform judicial functions, the right to consular protection guaranteed by article 36 of the Vienna Convention on Consular Relations and, in the case of refugees, the right to contact the Office of the United Nations High Commissioner for Refugees.

24. As regards persons placed in administrative holding centres or in holding areas in airports, States parties should ensure that they enjoy sufficiently decent living conditions.

25. Lastly, as regards the questioning or arrest of persons belonging to the groups referred to in the last paragraph of the preamble, States parties should bear in mind the special precautions to be taken when dealing with women or minors, because of their particular vulnerability.

#### **B. Pretrial detention**

26. Bearing in mind statistics which show that persons held awaiting trial include an excessively high number of non-nationals and persons belonging to the groups referred to in the last paragraph of the preamble, States parties should ensure:

(a) That the mere fact of belonging to a racial or ethnic group or one of the aforementioned groups is not a sufficient reason, de jure or de facto, to place a person in pretrial detention. Such pretrial detention can be justified only on objective grounds stipulated in the law, such as the risk of flight, the risk that the person might destroy evidence or influence witnesses, or the risk of a serious disturbance of public order;

(b) That the requirement to deposit a guarantee or financial security in order to obtain release pending trial is applied in a manner appropriate to the situation of persons belonging to such groups, who are often in straitened economic circumstances, so as to prevent this requirement from leading to discrimination against such persons;

(c) That the guarantees often required of accused persons as a condition of their remaining at liberty pending trial (fixed address, declared employment, stable family ties) are weighed in the light of the insecure situation which may result from their membership of such groups, particularly in the case of women and minors;

(d) That persons belonging to such groups who are held pending trial enjoy all the rights to which prisoners are entitled under the relevant international norms, and particularly the rights specially adapted to their circumstances: the right to respect for their traditions as regards religion, culture and food, the right to relations with their families, the right to the assistance of an interpreter and, where appropriate, the right to consular assistance.

### **C. The trial and the court judgement**

27. Prior to the trial, States parties may, where appropriate, give preference to non-judicial or parajudicial procedures for dealing with the offence, taking into account the cultural or customary background of the perpetrator, especially in the case of persons belonging to indigenous peoples.

28. In general, States parties must ensure that persons belonging to the groups referred to in the last paragraph of the preamble, like all other persons, enjoy all the guarantees of a fair trial and equality before the law, as enshrined in the relevant international human rights instruments, and specifically.

#### **1. The right to the presumption of innocence**

29. This right implies that the police authorities, the judicial authorities and other public authorities must be forbidden to express their opinions publicly concerning the guilt of the accused before the court reaches a decision, much less to cast suspicion in advance on the members of a specific racial or ethnic group. These authorities have an obligation to ensure that the mass media do not disseminate information which might stigmatize certain categories of persons, particularly those belonging to the groups referred to in the last paragraph of the preamble.

#### **2. The right to the assistance of counsel and the right to an interpreter**

30. Effectively guaranteeing these rights implies that States parties must set up a system under which counsel and interpreters will be assigned free of charge, together with legal help or advice and interpretation services for persons belonging to the groups referred to in the last paragraph of the preamble.

### **3. The right to an independent and impartial tribunal**

31. States parties should strive firmly to ensure a lack of any racial or xenophobic prejudice on the part of judges, jury members and other judicial personnel.

32. They should prevent all direct influence by pressure groups, ideologies, religions and churches on the functioning of the system of justice and on the decisions of judges, which may have a discriminatory effect on certain groups.

33. States parties may, in this regard, take into account the Bangalore Principles of Judicial Conduct adopted in 2002 (E/CN.4/2003/65, annex), which recommend in particular that:

- Judges should be aware of the diversity of society and differences linked with background, in particular racial origins;
- They should not, by words or conduct, manifest any bias towards persons or groups on the grounds of their racial or other origin;
- They should carry out their duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and their colleagues, without unjustified differentiation; and
- They should oppose the manifestation of prejudice by the persons under their direction and by lawyers or their adoption of discriminatory behaviour towards a person or group on the basis of their colour, racial, national, religious or sexual origin, or on other irrelevant grounds.

### **D. Guarantee of fair punishment**

34. In this regard, States should ensure that the courts do not apply harsher punishments solely because of an accused person's membership of a specific racial or ethnic group.

35. Special attention should be paid in this regard to the system of minimum punishments and obligatory detention applicable to certain offences and to capital punishment in countries which have not abolished it, bearing in mind reports that this punishment is imposed and carried out more frequently against persons belonging to specific racial or ethnic groups.

36. In the case of persons belonging to indigenous peoples, States parties should give preference to alternatives to imprisonment and to other forms of punishment that are better adapted to their legal system, bearing in mind in particular International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

37. Punishments targeted exclusively at non-nationals that are additional to punishments under ordinary law, such as deportation, expulsion or banning from the country concerned, should be imposed only in exceptional circumstances and in a proportionate manner, for serious reasons related to public order which are stipulated in the law, and should take into account the need to respect the private family life of those concerned and the international protection to which they are entitled.

### **E. Execution of sentences**

38. When persons belonging to the groups referred to in the last paragraph of the preamble are serving prison terms, the States parties should:

(a) Guarantee such persons the enjoyment of all the rights to which prisoners are entitled under the relevant international norms, in particular rights specially adapted to their situation: the right to respect for their religious and cultural practices, the right to respect for their customs as regards food, the right to relations with their families, the right to the assistance of an interpreter, the right to basic welfare benefits and, where appropriate, the right to consular assistance. The medical, psychological or social services offered to prisoners should take their cultural background into account;

(b) Guarantee to all prisoners whose rights have been violated the right to an effective remedy before an independent and impartial authority;

(c) Comply, in this regard, with the United Nations norms in this field, and particularly the Standard Minimum Rules for the Treatment of Prisoners,<sup>iv</sup> the Basic Principles for the Treatment of Prisoners<sup>v</sup> and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;<sup>vi</sup>

(d) Allow such persons to benefit, where appropriate, from the provisions of domestic legislation and international or bilateral conventions relating to the transfer of foreign prisoners, offering them an opportunity to serve the prison term in their countries of origin.

39. Further, the independent authorities in the States parties that are responsible for supervising prison institutions should include members who have expertise in the field of racial discrimination and sound knowledge of the problems of racial and ethnic groups and the other vulnerable groups referred to in the last paragraph of the preamble; when necessary, such supervisory authorities should have an effective visit and complaint mechanism.

40. When non-nationals are sentenced to deportation, expulsion or banning from their territory, States parties should comply fully with the obligation of non-refoulement arising out of the international norms concerning refugees and human rights, and ensure that such persons will not be sent back to a country or territory where they would run the risk of serious violations of their human rights.

41. Lastly, with regard to women and children belonging to the groups referred to in the last paragraph of the preamble, States parties should pay the greatest attention possible with a view to ensuring that such persons benefit from the special regime to which they are entitled in relation to the execution of sentences, bearing in mind the particular difficulties faced by mothers of families and women belonging to certain communities, particularly indigenous communities.

## Notes

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<sup>i</sup> Recommended by the Economic and Social Council in its resolution 1989/65 of 24 May 1989.

<sup>ii</sup> Recommended by the General Assembly in its resolution 55/89 of 4 December 2000.

<sup>iii</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990.

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<sup>iv</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>v</sup> Adopted and proclaimed by the General Assembly in its resolution 45/111 of 14 December 1990.

<sup>vi</sup> Adopted by the General Assembly in its resolution 43/173 of 9 December 1988.





# Annex 790

CERD Committee, General Recommendation No. 32





**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION  
Seventy-fifth session  
3 - 28 August 2009

**General recommendation No. 32**

**The meaning and scope of special measures in the  
International Convention on the Elimination of All Forms Racial Discrimination**

**I. INTRODUCTION**

**A. Background**

1. At its seventy-first session, the Committee on the Elimination of Racial Discrimination (“the Committee”) decided to embark upon the task of drafting a new general recommendation on special measures, in light of the difficulties observed in the understanding of such notion. At its seventy-second session, the Committee decided to hold at its next session a thematic discussion on the subject of special measures within the meaning of articles 1, paragraph 4, and 2, paragraph 2 of the International Convention on the Elimination of Racial Discrimination (“the Convention”). The thematic discussion was held on 4 and 5 August 2008 with the participation of States parties to the Convention, representatives of the Committee on the Elimination of Discrimination against Women, the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and non-governmental organizations. Following the discussion, the Committee renewed its determination to work on a general recommendation on special measures, with the objective of providing overall interpretative guidance on the meaning of the above articles in light of the provisions of the Convention as a whole.

## B. Principal sources

2. The general recommendation is based on the Committee's extensive repertoire of practice referring to special measures under the Convention. Committee practice includes the concluding observations on the reports of States parties to the Convention, communications under article 14, and earlier general recommendations, in particular general recommendation No. 8 (1990) on article 1, paragraphs 1 and 4, of the Convention,<sup>1</sup> as well as general recommendation No. 27 (2000) on Discrimination against Roma and general recommendation No. 29 (2002) on article 1, paragraph 1, of the Convention (Descent), both of which make specific reference to special measures.<sup>2</sup>

3. In drafting the recommendation, the Committee has also taken account of work on special measures completed under the aegis of other United Nations human rights bodies, notably the report by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights<sup>3</sup> and general recommendation No. 25 (2004) of the Committee on the Elimination of Discrimination against Women on temporary special measures.<sup>4</sup>

## C. Purpose

4. The purpose of the general recommendation is to provide, in the light of the Committee's experience, practical guidance on the meaning of special measures under the Convention in order to assist States parties in the discharge of their obligations under the Convention, including reporting obligations. Such guidance may be regarded as consolidating the wealth of Committee recommendations to States parties regarding special measures.

## D. Methodology

5. The Convention, as the Committee has observed on many occasions, is a living instrument that must be interpreted and applied taking into account the circumstances of contemporary society. This approach makes it imperative to read its text in a context-sensitive manner. The context for the present recommendation includes, in addition to the full text of the Convention including its title, preamble and operative articles, the range of universal human rights standards on the principles of non-discrimination and special measures. Context-sensitive interpretation also includes taking into account the particular circumstances of States parties without prejudice to the universal quality of the norms of the Convention. The nature of the Convention and the broad scope of its provisions imply that, while the conscientious application of Convention principles will produce variations in outcome among States parties, such variations must be fully justifiable in the light of the principles of the Convention.

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<sup>1</sup> *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 18 (A/45/18)*, chap. VII.

<sup>2</sup> *Ibid.*, *Fifty-fifth Session, Supplement No. 18 (A/55/18)*, annex V. sect. C.; and *Fifty-seventh Session, Supplement No. 18 (A/57/18)*, chap. XI, sect. F.

<sup>3</sup> "The Concept and Practice of Affirmative Action", Final report submitted by Mr. Marc Bossuyt, Special Rapporteur, in accordance with Sub-Commission resolution 1998/5 (E/CN.4/Sub.2/2002/21).

<sup>4</sup> *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 38 (A/59/38)*, annex I.

## II. EQUALITY AND NON-DISCRIMINATION AS THE BASIS OF SPECIAL MEASURES

### A. Formal and de facto equality

6. The Convention is based on the principles of the dignity and equality of all human beings. The principle of equality underpinned by the Convention combines formal equality before the law with equal protection of the law, with substantive or de facto equality in the enjoyment and exercise of human rights as the aim to be achieved by the faithful implementation of its principles.

### B. Direct and indirect discrimination

7. The principle of enjoyment of human rights on an equal footing is integral to the Convention's prohibition of discrimination on grounds of race, colour, descent, and national or ethnic origin. The "grounds" of discrimination are extended in practice by the notion of "intersectionality" whereby the Committee addresses situations of double or multiple discrimination - such as discrimination on grounds of gender or religion - when discrimination on such a ground appears to exist in combination with a ground or grounds listed in article 1 of the Convention. Discrimination under the Convention includes purposive or intentional discrimination and discrimination in effect. Discrimination is constituted not simply by an unjustifiable "distinction, exclusion or restriction" but also by an unjustifiable "preference", making it especially important that States parties distinguish "special measures" from unjustifiable preferences.

8. On the core notion of discrimination, in its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee observed that differential treatment will "constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim".<sup>5</sup> As a logical corollary of this principle, in its general recommendation No. 14 (1993) on article 1, paragraph 1, of the Convention, the Committee observes that "differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate".<sup>6</sup> The term "non-discrimination" does not signify the necessity of uniform treatment when there are significant differences in situation between one person or group and another, or, in other words, if there is an objective and reasonable justification for differential treatment. To treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same. The Committee has also observed that the application of the principle of non-discrimination requires that the characteristics of groups be taken into consideration.

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<sup>5</sup> Ibid., *Supplement No. 18 (A/59/18)*, chap. VII, para. 4.

<sup>6</sup> Ibid., *Forty-eighth Session, Supplement No. 18 (A/48/18)*, chapter VIII, sect. B.



### **C. Scope of the principle of non-discrimination**

9. The principle of non-discrimination, according to article 1, paragraph 1, of the Convention, protects the enjoyment on an equal footing of human rights and fundamental freedoms “in the political, economic, social, cultural or any other field of public life”. The list of human rights to which the principle applies under the Convention is not closed and extends to any field of human rights regulated by the public authorities in the State party. The reference to public life does not limit the scope of the non-discrimination principle to acts of the public administration but should be read in the light of the provisions in the Convention mandating measures by States parties to address racial discrimination “by any persons, group or organization”.<sup>7</sup>

10. The concepts of equality and non-discrimination in the Convention, and the obligation on States parties to achieve the objectives of the Convention, are further elaborated and developed through the provisions in articles 1, paragraph 4, and 2, paragraph 2, regarding special measures.

## **III. THE CONCEPT OF SPECIAL MEASURES**

### **A. Objective of special measures: Advancing effective equality**

11. The concept of special measures is based on the principle that laws, policies and practices adopted and implemented in order to fulfil obligations under the Convention require supplementing, when circumstances warrant, by the adoption of temporary special measures designed to secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms. Special measures are one component in the ensemble of provisions in the Convention dedicated to the objective of eliminating racial discrimination, the successful achievement of which will require the faithful implementation of all Convention provisions.

### **B. Autonomous meaning of special measures**

12. The terms “special measures” and “special and concrete measures” employed in the Convention may be regarded as functionally equivalent and have an autonomous meaning to be interpreted in the light of the Convention as a whole, which may differ from usage in particular States parties. The term “special measures” includes also measures that in some countries may be described as “affirmative measures”, “affirmative action” or “positive action” in cases where they correspond to the provisions of articles 1, paragraph 4, and 2, paragraph 2, of the Convention, as explained in the following paragraphs. In line with the Convention, the present recommendation employs the terms “special measures” or “special and concrete measures” and encourages States parties to employ terminology that clearly demonstrates the relationship of their laws and practice to these concepts in the Convention. The term “positive discrimination” is, in the context of international human rights standards, a *contradictio in terminis* and should be avoided.

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<sup>7</sup> Article 2, paragraph 1 (d); see also article 2, paragraph 1 (b).

13. “Measures” include the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture and participation in public life for disfavoured groups, devised and implemented on the basis of such instruments. States parties should include, as required in order to fulfil their obligations under the Convention, provisions on special measures in their legal systems, whether through general legislation or legislation directed to specific sectors in the light of the range of human rights referred to in article 5 of the Convention, and through plans, programmes and other policy initiatives referred to above at national, regional and local levels.

### **C. Special measures and other related notions**

14. The obligation to take special measures is distinct from the general positive obligation of States parties to the Convention to secure human rights and fundamental freedoms on a non-discriminatory basis to persons and groups subject to their jurisdiction; this is a general obligation flowing from the provisions of the Convention as a whole and integral to all parts of the Convention.

15. Special measures should not be confused with specific rights pertaining to certain categories of person or community, such as, for example the rights of persons belonging to minorities to enjoy their own culture, profess and practise their own religion and use their own language, the rights of indigenous peoples, including rights to lands traditionally occupied by them, and rights of women to non-identical treatment with men, such as the provision of maternity leave, on account of biological differences from men.<sup>8</sup> Such rights are permanent rights, recognized as such in human rights instruments, including those adopted in the context of the United Nations and its specialized agencies. States parties should carefully observe distinctions between special measures and permanent human rights in their law and practice. The distinction between special measures and permanent rights implies that those entitled to permanent rights may also enjoy the benefits of special measures.<sup>9</sup>

### **D. Conditions for the adoption and implementation of special measures**

16. Special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary. The measures should be designed and implemented on the basis of need, grounded in a realistic appraisal of the current situation of the individuals and communities concerned.

17. Appraisals of the need for special measures should be carried out on the basis of accurate data, disaggregated by race, colour, descent and ethnic or national origin and incorporating a gender perspective, on the socio-economic and cultural<sup>10</sup> status and conditions of the various

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<sup>8</sup> See Committee on the Elimination of Discrimination against Women, general recommendation 25 (note 4 above), paragraph 16.

<sup>9</sup> See for example paragraph 19 of general recommendation 25 of the Committee on the Elimination of Discrimination against Women (note 4 above), and paragraph 12 of the Recommendations of the Forum on Minority Issues on rights to education (A/HRC/10/11/Add.1).

<sup>10</sup> Article 2, paragraph 2, includes the term “cultural” as well as “social” and “economic”.

groups in the population and their participation in the social and economic development of the country.

18. States parties should ensure that special measures are designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities.

#### IV. CONVENTION PROVISIONS ON SPECIAL MEASURES

##### A. Article 1, paragraph 4

19. Article 1, paragraph 4, of the Convention stipulates that “special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved”.

20. By employing the phrase “**shall not be deemed racial discrimination**”, article 1, paragraph 4, of the Convention makes it clear that special measures taken by States parties under the terms of the Convention do not constitute discrimination, a clarification reinforced by the *travaux préparatoires* of the Convention which record the drafting change from “should not be deemed racial discrimination” to “shall not be deemed racial discrimination”. Accordingly, special measures are not an exception to the principle of non-discrimination but are integral to its meaning and essential to the Convention project of eliminating racial discrimination and advancing human dignity and effective equality.

21. In order to conform to the Convention, special measures do not amount to discrimination when taken for the “sole purpose” of ensuring equal enjoyment of human rights and fundamental freedoms. Such a motivation should be made apparent from the nature of the measures themselves, the arguments used by the authorities to justify the measures and the instruments designed to put the measures into effect. The reference to “sole purpose” limits the scope of acceptable motivations for special measures within the terms of the Convention.

22. The notion of “adequate advancement” in article 1, paragraph 4, implies goal-directed programmes which have the objective of alleviating and remedying disparities in the enjoyment of human rights and fundamental freedoms affecting particular groups and individuals, protecting them from discrimination. Such disparities include but are not confined to persistent or structural disparities and de facto inequalities resulting from the circumstances of history that continue to deny to vulnerable groups and individuals the advantages essential for the full development of the human personality. It is not necessary to prove “historic” discrimination in order to validate a programme of special measures; the emphasis should be placed on correcting present disparities and on preventing further imbalances from arising.

23. The term “protection” in the same paragraph signifies protection from violations of human rights emanating from any source, including discriminatory activities of private persons, in order to ensure the equal enjoyment of human rights and fundamental freedoms. The term “protection” also indicates that special measures may have preventive (of human rights violations) as well as corrective functions.

24. Although the Convention designates “racial or ethnic groups or individuals requiring ... protection” (article 1, paragraph 4), and “racial groups or individuals belonging to them” (article 2, paragraph 2), as the beneficiaries of special measures, the measures shall in principle be available to any group or person covered by article 1 of the Convention, as clearly indicated by the *travaux préparatoires* of the Convention, as well as by the practice of States parties and the relevant concluding observations of the Committee.<sup>11</sup>

25. Article 1, paragraph 4, is expressed more broadly than article 2, paragraph 2, in that it refers to individuals “requiring ... protection” without reference to ethnic group membership. The span of potential beneficiaries or addressees of special measures should however be understood in the light of the overall objective of the Convention as dedicated to the elimination of all forms of racial discrimination, with special measures as an essential tool, where appropriate, for the achievement of this objective.

26. Article 1, paragraph 4, provides for limitations on the employment of special measures by States parties. The first limitation is that the measures “should not lead to the maintenance of separate rights for different racial groups”. This provision is narrowly drawn to refer to “racial groups” and calls to mind the practice of Apartheid referred to in article 3 of the Convention, which was imposed by the authorities of the State, and to practices of segregation referred to in that article and in the preamble to the Convention. The notion of inadmissible “separate rights” must be distinguished from rights accepted and recognized by the international community to secure the existence and identity of groups such as minorities, indigenous peoples and other categories of person whose rights are similarly accepted and recognized within the framework of universal human rights.

27. The second limitation on special measures is that **“they shall not be continued after the objectives for which they have been taken have been achieved”**. This limitation on the operation of special measures is essentially functional and goal-related: the measures should cease to be applied when the objectives for which they were employed – the equality goals – have been sustainably achieved.<sup>12</sup> The length of time permitted for the duration of the measures will vary in the light of their objectives, the means utilized to achieve them, and the results of their application. Special measures should, therefore, be carefully tailored to meet the particular needs of the groups or individuals concerned.

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<sup>11</sup> See also paragraph 7 above.

<sup>12</sup> Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on Non-Discrimination in Economic, Social and Cultural Rights, paragraph 9.

## B. Article 2, paragraph 2

28. Article 2, paragraph 2, of the Convention stipulates that “States parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”.

29. Article 1, paragraph 4, of the Convention is essentially a clarification of the meaning of discrimination when applied to special measures. Article 2, paragraph 2, carries forward the special measures concept into the realm of obligations of States parties, along with the text of article 2 as a whole. Nuances of difference in the use of terms in the two paragraphs do not disturb their essential unity of concept and purpose.

30. The use in the paragraph of the verb “shall” in relation to taking special measures clearly indicates the mandatory nature of the obligation to take such measures. The mandatory nature of the obligation is not weakened by the addition of the phrase “when the circumstances so warrant”, a phrase that should be read as providing context for the application of the measures. The phrase has, in principle, an objective meaning in relation to the disparate enjoyment of human rights by persons and groups in the State party and the ensuing need to correct such imbalances.

31. The internal structure of States parties, whether unitary, federal or decentralized, does not affect their responsibility under the Convention, when resorting to special measures, to secure their application throughout the territory of the State. In federal or decentralized States, the federal authorities shall be internationally responsible for designing a framework for the consistent application of special measures in all parts of the State where such measures are necessary.

32. Whereas article 1, paragraph 4, of the Convention uses the term “special measures”, article 2, paragraph 2, refers to “special and concrete measures”. The *travaux préparatoires* of the Convention do not highlight any distinction between the terms and the Committee has generally employed both terms as synonymous.<sup>13</sup> Bearing in mind the context of article 2 as a broad statement of obligations under the Convention, the terminology employed in article 2, paragraph 2, is appropriate to its context in focusing on the obligation of States parties to adopt measures tailored to fit the situations to be remedied and capable of achieving their objectives.

33. The reference in article 2, paragraph 2, regarding the objective of special measures to ensure “adequate development and protection” of groups and individuals may be compared with the use of the term “advancement” in article 1, paragraph 4. The terms of the Convention signify that special measures should clearly benefit groups and individuals in their enjoyment of human rights. The naming of fields of action in the paragraph – “social, economic, cultural and other

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<sup>13</sup> The United Nations Declaration on the Elimination of All Forms of Racial Discrimination referred, in article 2, paragraph 3, to ‘special and concrete measures’ (General Assembly resolution 1904 (XVIII)). See also paragraph 12 above.

fields” – does not describe a closed list. In principle, special measures can reach into all fields of human rights deprivation, including deprivation of the enjoyment of any human rights expressly or impliedly protected by article 5 of the Convention. In all cases, it is clear that the reference to limitations of “development” relates only to the situation or condition in which groups or individuals find themselves and is not a reflection on any individual or group characteristic.

34. Beneficiaries of special measures under article 2, paragraph 2, may be groups or individuals belonging to such groups. The advancement and protection of communities through special measures is a legitimate objective to be pursued in tandem with respect for the rights and interests of individuals. The identification of an individual as belonging to a group should be based on self-identification by the individual concerned, unless a justification exists to the contrary.

35. Provisions on the limitations of special measures in article 2, paragraph 2, are in essence the same, *mutatis mutandis*, as those expressed in article 1, paragraph 4. The requirement to limit the period for which the measures are taken implies the need, as in the design and initiation of the measures, for a continuing, system of monitoring their application and results using, as appropriate, quantitative and qualitative methods of appraisal. States parties should also carefully determine whether negative human rights consequences would arise for beneficiary communities consequent upon an abrupt withdrawal of special measures, especially if such have been established for a lengthy period of time.

## **V. RECOMMENDATIONS FOR THE PREPARATION OF REPORTS BY STATES PARTIES**

36. The present guidance on the content of reports confirms and amplifies the guidance provided to States parties in the Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/MC/2006/3) and the Guidelines for the CERD-specific document to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1).

37. Reports of States parties should describe special measures in relation to any articles of the Convention to which the measures are related. The reports of States parties should also provide information, as appropriate, on:

- The terminology applied to special measures as understood in the Convention
- The justifications for special measures, including relevant statistical and other data on the general situation of beneficiaries, a brief account of how the disparities to be remedied have arisen, and the results to be expected from the application of measures
- The intended beneficiaries of the measures
- The range of consultations undertaken towards the adoption of the measures including consultations with intended beneficiaries and with civil society generally
- The nature of the measures and how they promote the advancement, development and protection of groups and individuals concerned
- The fields of action or sectors where special measures have been adopted
- Where possible, the envisaged duration of the measures
- The institutions in the State responsible for implementing the measures



- The available mechanisms for monitoring and evaluation of the measures
- Participation by targeted groups and individuals in the implementing institutions and in monitoring and evaluation processes
- The results, provisional or otherwise, of the application of the measures
- Plans for the adoption of new measures and the justifications thereof
- Information on reasons why, in the light of situations that appear to justify the adoption of measures, such measures have not been taken.

38. In cases where a reservation affecting Convention provisions on special measures is maintained, States parties are invited to provide information as to why such a reservation is considered necessary, the nature and scope of the reservation, its precise effects in terms of national law and policy, and any plans to limit or withdraw the reservation within a specified time frame. In cases where States parties have adopted special measures despite the reservation, they are invited to provide information on such measures in line with the recommendations in paragraph 37 above.

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# Annex 791

CERD Committee, General Recommendation No. VIII Concerning the Interpretation and Application of Article 1, Paragraphs 1 and 4 of the Convention Thirty-Eighth Session, contained in U.N. Doc A/45/18 (23 August 1990)



**Thirty-eighth session (1990)\***

**General recommendation VIII concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention**

*The Committee on the Elimination of Racial Discrimination,*

*Having considered* reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic group or groups,

*Is of the opinion* that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.

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\* Contained in document A/45/18.



# Annex 792

Report of the CERD Committee, General Assembly Official Records: 48th Session, Supp. No. 18,  
U.N. Doc. No. A/48/18 (19 January 1994)







General Assembly

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Forty-eighth session

REPORT OF THE COMMITTEE ON THE ELIMINATION OF  
RACIAL DISCRIMINATION\*

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\* The present document is a mimeographed version of the report of the Committee on the Elimination of Racial Discrimination. The final report will be issued as Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18 (A/48/18).

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Conference on Security and Cooperation in Europe (CSCE), which was monitoring ethnic tension and human rights violations in Kosovo, as well as in Vojvodina and Sandzak.

541. The Committee was also concerned that Serbs in Bosnia and Herzegovina were hindering the attempts of the Government of that State to implement the Convention.

(d) Suggestions and recommendations

542. The Committee underlined that non-discrimination in the enjoyment of fundamental, civil, political, economic, social and cultural rights must be effectively guaranteed in law and actively protected in practice if further ethnic unrest was to be avoided. The Committee in no way encouraged unilateral trends towards separatism or secession. In that connection, the Committee noted that separatism could best be discouraged by the active promotion and protection of minority rights and inter-ethnic tolerance.

543. The Committee recommended that, in conformity with articles 2 and 4 of the Convention, the Government should prohibit racial discrimination and should urgently take vigorous steps to ban racist activities and propaganda. In that connection it was vital that paramilitary groups be disbanded, reports of ethnically motivated attacks, including allegations of arbitrary arrests, disappearance and torture, promptly investigated and those responsible punished. The Committee emphasized the importance of providing proper training in human rights norms for law enforcement officials in accordance with its General Recommendation XIII and of ensuring the equitable representation among their ranks of national minorities.

544. The Committee strongly emphasized the need for urgent measures in respect of the situation in Kosovo in order to prevent persisting ethnic problems there from escalating into violence and armed conflict. The Committee recommended, in particular, that all possible measures be taken by both sides to foster dialogue between the Government and the leaders of Albanians in Kosovo. The Committee recommended that the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) strengthen the territorial integrity of the State by considering ways of assuring autonomy in Kosovo with a view to ensuring the effective representation of the Albanians in political and judicial institutions and their participation in democratic processes.

545. The Committee urged the Federal Republic of Yugoslavia (Serbia and Montenegro) to undertake all measures at its disposal with a view to bringing to an end the massive, gross and systematic human rights violations currently occurring in those areas of Croatia and Bosnia and Herzegovina controlled by Serbs. The Committee also urged the State party to assist efforts to arrest, bring to trial and punish all those responsible for crimes which would be covered by the terms of reference of the international tribunal established pursuant to Security Council resolution 808 (1993). The Committee further urged the Federal Republic of Yugoslavia (Serbia and Montenegro) to give effect to the International Court of Justice's Order of Provisional Measures of 8 April 1993.

Further action

546. Taking into account the wish expressed by the representative of the Government and the need to promote a dialogue between the Albanians in Kosovo and the Government, the Committee offered its good offices in the form of a mission of its members. The purpose of the mission would be to help promote a dialogue for a peaceful solution of issues concerning respect for human rights in Kosovo, in particular the elimination of all forms of racial discrimination

# Annex 793

Russian Federation, Reports Submitted by States Parties under Article 9 of the Convention,  
Twentieth to Twenty-Second Periodic Reports of States Parties due in 2012, Russian Federation,  
CERD/C/RUS/20-22 (6 June 2012)





**International Convention on  
the Elimination of All Forms  
of Racial Discrimination**

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**Committee on the Elimination of Racial Discrimination**

**Reports submitted by States parties under  
article 9 of the Convention**

**Twentieth to twenty-second periodic reports of  
States parties due in 2012**

**Russian Federation\*, \*\*, \*\*\***

[13 March 2012]

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\* This document contains the twentieth, twenty-first and twenty-second periodic reports of the Russian Federation due on 6 March 2008, 2010 and 2012 respectively, submitted in one document. For eighteenth and nineteenth periodic reports and the summary records of the meetings at which the Committee considered this report, see documents CERD/C/RUS/19 and CERD/C/SR.1882, 1883, 1897 and 1898.

\*\* In accordance with the information transmitted to the States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\*\* Annexes can be consulted in the files of the Secretariat.

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## I. Introduction

1. This consolidated report, which combines the twentieth, twenty-first and twenty-second periodic reports of the Russian Federation, is in line with article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination and was produced in accordance with the guidelines for the CERD-specific document to be submitted by States parties under article 9, paragraph 1, of the Convention.
2. The report covers the period from August 2006 to February 2012 and contains a description of legislative, judicial and administrative measures with the help of which the provisions of the Convention have been implemented since the presentation of the Russian Federation's eighteenth and nineteenth periodic reports (CERD/C/RUS/19).
3. It takes into account the concluding observations adopted by the Committee on the Elimination of Racial Discrimination following its consideration of the Russian Federation's eighteenth and nineteenth reports (CERD/C/RUS/CO/19) and presents information in that regard.
4. The report was elaborated by the Government of the Russian Federation and reflects its position. Non-governmental organizations (federal autonomous ethnic cultural organizations, human rights defence organizations, religious organizations) and administrative experts were involved in drawing up the report and discussing its drafting at meetings in the Ministry of Regional Development. The Government of the Russian Federation expresses appreciation to all participants for their ideas and proposals.
5. The annex to this report contains:
  - Information on the ethnic make-up of the Russian Federation in line with data from the 2010 national population census
  - Government Decision No. 255 of 24 March 2000 on the inventory of small indigenous peoples of the Russian Federation
  - Government Order No. 132 of 4 February 2009 on the ratification of an Outline for the sustainable development of the small indigenous peoples of the North, Siberia and the Russian Far East
  - Government Order No. 631 of 8 May 2009 on the approval of an inventory of traditional habitats and areas of traditional economic activities of the small indigenous peoples of the Russian Federation and an inventory of forms of traditional economic activities of the small indigenous peoples of the Russian Federation
  - European Court of Human Rights Decision No. 17582/05 of 7 December 2006 on the admissibility of the application "*Igor Vladimirovich Artyomov v. the Russian Federation*"
  - Supreme Court Ruling No. G05-134 of 2 December 2005 on the revocation of the registration of a list of candidates for election as deputies to the urban Duma, in connection with the violation by a regional branch of a political party of the provisions of electoral legislation
  - Supreme Court Ruling No. 46-V08-5 of 15 August 2008 upholding a lawsuit for reinstatement of the editor-in-chief of a district newspaper who had been wrongfully dismissed as a consequence of discrimination and abuse of rights by the head of the district administration

- The list of non-profit organizations in connection with which the court has issued an enforceable decision on the elimination or prohibition of activities for the reasons set out in the Federal Act on Combating Extremist Activities
- Information on the number of media outlets in the languages of the peoples of Russia
- Peoples of Russia: Atlas of cultures and religions; executive editors: A.V. Zhuravsky, O.E. Kuzmina, V.A. Tishkov, third, corrected and supplemented edition, M. Feoria, 2011, 320 pages
- Documentaries on the small indigenous peoples of the North, Siberia and the Russian Far East, published in 2011 by order of the Ministry of Regional Development (“The law of survival”, “People with pointed heads”, “The long road to life”, “Reindeer-people”)

## II. General information

6. The Union of Soviet Socialist Republics ratified the Convention on 4 February 1969, and today the Convention is an integral part of the domestic legal system of the Russian Federation. In accordance with article 15, paragraph 4, of the Constitution of the Russian Federation, if an international agreement of the Russian Federation establishes other rules than those envisaged by law, the rules of the international agreement must be applied. Thus, the provisions of an international agreement are directly applicable in the Russian Federation and do not require the adoption of special national legislation.

7. The Russian Federation is the only country that covers a large part of the continental landmass of Eurasia. It has a surface area of 17,075,400 square kilometres. The particularities of Russia’s geographic location and its historical development have conditioned the ethnic and cultural diversity of its population. Historically, the Russian Federation developed as a multi-ethnic State on whose territory many different ethnic communities lived, the vast majority of which are historically linked to the territories of the Russian Federation, and in this sense, in keeping with the Outline for State nationalities policy approved by Presidential Decree No. 909 of 15 June 1996, they constitute the indigenous peoples of the Russian Federation. Russian legislation also establishes a special status for small indigenous peoples with a population of less than 50,000 persons.

### A. Ethnic make-up and languages spoken

8. According to the 2010 national census, the permanent population of the Russian Federation was 142,900,000 persons (74 per cent urban and 26 per cent rural).

9. Persons permanently resident in the Russian Federation declared that they were members of 194 different ethnic communities. The majority of the population is Russian. Between 2002 and 2010, the Russian population declined from 115.9 million to 111.0 million persons, or by 4.2 per cent, but in relative terms the number of persons who indicated that they were ethnic Russians increased from 80.6 per cent to 80.9 per cent of the total population.

10. Also according to the census, there are 22 peoples in the Russian Federation with a population of more than 400,000 persons. As in the previous national census, the second most populous group after the Russians is the Tatars, who number 5.3 million, or 3.9 per

cent of those persons who indicated their ethnic identity. Ukrainians constitute the third largest population group, with 1.9 million persons (1.41 per cent). The next largest groups are:<sup>1</sup> Bashkirs (1.1 per cent), Chuvashi (1.1 per cent), Chechens (1.0 per cent), Armenians (0.9 per cent), Avars (0.7 per cent), Mordvins and Kazakhs (0.5 per cent each), Azeris, Dargins, Udmurts, Mari, Ossetians, Belarusians, Kabardins, Kumikis, Yakuts and Lezgins (0.4 per cent each) and Buryats and Ingush (0.3 per cent).

11. A positive trend in the period between the two censuses (2002–2010) was the increase in the population of 40 small indigenous peoples of the North (the inventory of whom was approved by Government Order No. 536 of 17 April 2006) from 244,000 to 257,900 persons, an increase of 13,900, or 5.7 per cent. The population of the Telengits grew by 55 per cent, the Soioys by 30 per cent, the Chelkans by 38 per cent, the Tubalars by 26 per cent, the Evens (Lamuts) by 14 per cent, the Dolgans by 9 per cent, the Evenks by 8 per cent, the Mansi by 7 per cent, the Khanty by 8 per cent and the Yukagirs by 6 per cent. The total population of the 47 small indigenous peoples of Russia (according to the inventory of small indigenous population approved by Government Decision No. 255 of 24 March 2000), stood at 316,000 persons, or 17,800 more than in 2002.

12. The Constitution provides that during a census, ethnic identity is indicated by the respondents themselves in accordance with their own determination and is recorded by the census takers strictly on that basis. The number of Russian citizens totalled 137,900,000 (99.4 per cent of those who indicated citizenship), 700,000 persons were foreign nationals, and 200,000 were stateless persons. A total of 79,000 persons have dual citizenship. More than 4,100,000 persons did not indicate their citizenship on the census questionnaire.

13. In 2010, 138,000,000 persons declared that they spoke Russian (99.4 per cent of those who answered the question of whether they spoke Russian), as against 142,600,000 (99.2 per cent) in 2002. The other most widespread languages of ethnic groups in Russia include Tatar, Chechen, Bashkir and Chuvash, and foreign languages include English, German and Ukrainian. In all, 277 languages and dialects are spoken by the inhabitants of the Russian Federation. Some 93.8 per cent of the population of the country declared Russian to be the mother tongue of their people. In addition, 5.7 per cent of the population of Russia, or 8,150,000 persons (from among non-Russians) also indicated that Russian was their mother tongue. For example, 40 per cent of Komi, 38 per cent of Udmurts, 35 per cent of Mordvins, 29 per cent of Chuvashi, 25 per cent of Mari and 20 per cent of Tatars said that Russian was their mother tongue.

14. For the first time, the census included data on the use of Russian sign language by deaf persons and the hearing impaired. A total of 121,000 persons declared that they use this language.

## **B. Foundations of State policy on preventing and combating racial discrimination**

15. The most important focus of efforts directed at implementing State nationalities policy is on strengthening the unity of the Russian nation, creating conditions for the ethnic cultural development of the peoples of Russia, deterring and prohibiting activities designed to incite racial or inter-ethnic hatred and religious discord or enmity and ensuring timely prevention and peaceful settlement of inter-ethnic clashes and conflicts.

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<sup>1</sup> The percentage of each people in the overall population is calculated on the basis of persons who indicated their ethnic identity.

16. Between 2006 and the beginning of 2012, considerable efforts were made to improve the work of State institutions on combating racial discrimination, ethnic strife and various forms of extremism. There were major developments in federal and regional legislation in these areas. New laws were adopted which were accompanied by an active public discussion, making it possible to take account of the views of civil society institutions. In the course of this work, the Government of the Russian Federation drew on the recommendations adopted by the Committee in 2003 and 2008.

17. To act on the Committee's recommendation, legislation on countering extremism was improved. A mechanism was set up to combat ultra-nationalistic and racist organizations (more details on this subject are provided in the information on article 2). There is public and State monitoring of the prohibition in the media of hate speech and materials that incite racial enmity. Public monitoring is carried out by human rights organizations (such as the SOVA Centre for Information and Analysis, the Moscow Bureau for Human Rights, and the organization Memorial), religious bodies (the Russian Orthodox Church, the Federation of Jewish Communities of Russia, Protestant organizations and others), ethnic cultural associations and the Social Forum of the Russian Federation, which conducts its work in accordance with Federal Act No. 32 of 4 April 2005 on the Social Forum of the Russian Federation. Pursuant to that Act, advisory boards have been set up within all federal government bodies; many of them address questions associated with combating extremist activities and the spread of ethnic and racial intolerance and religious xenophobia (specifically, the advisory boards attached to the Ministry of Regional Development, the Ministry of Culture, the Ministry of Tourism, the Ministry of Internal Affairs and the Federal Migration Service).

18. Additional mechanisms have been introduced for granting citizenship to former citizens of the USSR. On 22 June 2006, Presidential Decree No. 637 approved a State programme for assisting the voluntary resettlement in the Russian Federation of ethnic Russians living abroad and a plan of action for its implementation. Media support, including in the context of the annual international Internet forum on "The Integration of Ethnic Russians", plays an important role in the effective realization of the State programme.

19. An interdepartmental commission set up in accordance with Presidential Decree No. 814 of 1 August 2006 serves as the collective administrative body responsible for the implementation of the State programme. During the five years of the programme (2007–2012), 62,600 persons were resettled in the Russian Federation, 50.3 per cent of them in 2011. Over this same period, the number of entities of the Russian Federation which took in ethnic Russians under the programme rose from 12 to 40.

20. With the help of the international Internet Forum "Integration of Ethnic Russians" ([www.mifis.ru](http://www.mifis.ru)), persons who have already been resettled reply to questions and government bodies can be consulted on how the State programme has been implemented in the entities of the Russian Federation.

21. For all intents and purposes, the problem of persons resettled from Chechnya has been resolved. Serious attention is being given at federal level to the socioeconomic situation of the Chechen Republic. A total of 120.5 billion roubles, or approximately US\$ 4.5 billion,<sup>2</sup> were allocated from the federal budget under a special federal programme for the socioeconomic development of the Chechen Republic, 2008–2011.

22. Considerable efforts are being made to familiarize internal affairs staff with the provisions of national and international human rights norms. Steps are being taken to

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<sup>2</sup> According to the exchange rate of the Central Bank of Russia on 1 May 2011 (US\$ 1 = 27.4 roubles).

improve the legal literacy of law enforcement staff and strengthen their skills in communicating with representatives of civil society institutions, migrants and members of ethnic groups. This is all aimed at ensuring strict respect for human rights. Special attention is given to the training of law enforcement officers detached to the Northern Caucasus. They are acquainted with the ethnic and religious traditions of the local population in order to avoid conflict situations which might arise out of ignorance of these traditions.

23. The provisions of the International Convention on the Elimination of All Forms of Racial Discrimination are implemented in close cooperation between government bodies, voluntary associations and academic organizations.

24. In recent years, the Russian Federation has made considerable progress in addressing questions of cooperation between government bodies and civil society institutions active in the protection of the rights and interests of ethnic minorities. A network of civil society institutions has been established which, as of 20 December 2011, totalled 223,928 non-profit organizations; 15 federal, 245 regional and 639 local ethnic cultural associations and 1,194 communities of small indigenous peoples were registered (data from the Ministry of Justice of 16 February 2012).

25. At government level, in 2011 an Interdepartmental Working Group on inter-ethnic relations was set up under the chairmanship of Deputy Prime Minister D.N. Kozak. It includes representatives of 15 federal government bodies, the Federation Council (the upper house of the Federal Assembly), and the State Duma (the lower house of the Federal Assembly).

26. An Expert Advisory Board was created within the Interdepartmental Working Group; it includes heads of federal autonomous ethnic cultural organizations, religious bodies, prominent scholars, journalists and experts.

27. The Ministry of Regional Development is responsible for ensuring the activities of the Interdepartmental Working Group and the Expert Advisory Board. Its specialist body, the Department of Inter-Ethnic Relations, is also tasked with elaborating State nationalities policy and regulations in that area, protecting the rights of ethnic minorities and the small indigenous peoples of the Russian Federation, cooperating with Cossack communities and implementing the State programme for assisting the voluntary resettlement in the Russian Federation of ethnic Russians living abroad. The Ministry of Regional Development also has an Advisory Board on the affairs of autonomous ethnic cultural organizations, whose membership includes leaders of federal autonomous ethnic cultural organizations, and an interdepartmental commission on cooperation with ethnic voluntary associations.

28. At its meetings, the Advisory Board on the affairs of autonomous ethnic cultural organizations discusses questions concerning the prevention of extremism and inter-ethnic conflicts, as well as ways of improving existing legislation in the area of inter-ethnic relations, initiatives conducted under State nationalities policy and cooperation between federal autonomous ethnic cultural organizations and government authorities.

29. The system for administering State nationalities policy covers both the federal and the regional level. At the end of 2011, the following was in operation in all 83 constituent entities of the Russian Federation:

- Separate departments or structural divisions of regional government bodies with competence for State nationalities policy
- Standing working groups or interdepartmental coordinating bodies for promoting inter-ethnic harmony
- Expert advisory bodies on inter-ethnic and ethnic religious relations

30. A unity of approaches to the implementation of State nationalities policy at federal and regional level is ensured through the adoption of plans of action for fostering harmonious inter-ethnic relations, the financing of which is ensured with resources from the relevant budgets. In 2011, plans of action were adopted in all 83 constituent entities of the Russian Federation.

31. Cooperation with the largest religious groups, including Orthodox, Muslim, Jewish, Buddhist and other organizations, plays a major role in strengthening stability in society, preventing extremism and intolerance and protecting the cultural, spiritual and moral heritage and public morals. According to information from the Ministry of Justice, as of 31 December 2011, 24,624 religious organizations were registered in the Russian Federation, or 776 more than on 31 December 2010. The number of religious organizations within the Russian Orthodox Church stood at 13,943, and there were 4,380 Protestant, 4,317 Muslim, 276 Jewish, 221 Buddhist and 1,487 other religious organizations.

32. Over the centuries, conditions were created in Russia for the peaceful coexistence of persons with different religious beliefs. Government promotion of an interfaith dialogue and significant initiatives by religious organizations have been positive trends. Starting in 1998, the Interfaith Council of Russia, administered by the Russian Orthodox Church, the Council of Muftis of Russia, the Central Spiritual Board of Muslims of Russia and the European countries of the CIS, the Congress of Jewish Religious Organizations and Associations of Russia, and the Buddhist Traditional Sangha of Russia emerged as a genuine forum for interfaith dialogue and cooperation.

33. The World Summit of Religious Leaders held in Moscow on 3 July 2006 was a major event in the promotion of an interfaith dialogue and cooperation between the State and religious organizations. It was attended by President Putin together with more than 150 representatives of various confessions from more than 40 countries around the world. The event became the most representative forum of religious leaders in history. The Message adopted by the World Summit notes the growing role of religion in today's world and stresses that moral values are in many ways the same for all traditional religions.

34. The Government is making every effort to ensure constructive cooperation with all parties involved in the implementation of the provisions of the Convention, with the help of existing interdepartmental coordinating mechanisms, consultative bodies, the media, etc. In the exercise of its functions and powers, the Government draws on universally recognized international standards, condemns all manifestations of racist discrimination, proceeds on the assumption that human rights must be respected in all public spheres and is doing everything it can so that citizens of the Russian Federation can enjoy and assert their rights and freedoms.

35. In his public statements, President Medvedev has repeatedly condemned discrimination on ethnic grounds. At a meeting of the Presidential Council on the development of civil society and human rights held on 5 July 2011 in the city of Nalchik, he stressed the inadmissibility of ethnic discrimination and the need to ensure equal enjoyment of fundamental rights and freedoms, including the right to hold office at State and municipal level.

36. At a meeting of the Presidium of the State Council on 11 February 2011 in the city of Ufa, at which questions of inter-ethnic harmony were discussed, President Medvedev underscored the need to make every effort so that inter-ethnic peace and harmony in the country became the crowning achievement of Russian history. Following the meeting, he issued instructions for the elaboration of measures directed at eliminating manifestations of ethnic favouritism, the use of ethnic preferences when making appointments to the State and municipal civil service, etc. Thus, respect for the principle of equal access of citizens to



employment and the prohibition of discrimination on ethnic grounds are the basis for civil service recruitment policy in the Russian Federation.

37. In an article entitled “Russia: the ethnic question” published on 23 January 2012 in the newspaper *Nezavisimaya Gazeta*, Prime Minister Putin cautioned that ethnic and religious intolerance eroded and undermined the State, divided society and was becoming the ideological basis for the most radical groups and tendencies.

### **C. International cooperation and the participation of the Russian Federation in international organizations and projects**

38. International cooperation in the area of human rights is one of the most important components of the foreign policy of the Russian Federation. In international organizations, the Russian Federation conducts a consistent policy aimed at preventing manifestations of racism, neo-Nazism, aggressive nationalism, anti-Semitism and xenophobia.

39. One of the steps taken in this regard is what has become the Russian Federation’s traditional initiative in the framework of the United Nations General Assembly resolution on the inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The latest adoption of the resolution, once again at the initiative of the Russian Federation, was on 19 December 2011 at the sixty-sixth session of the General Assembly, by 134 votes in favour to 24 against, with 32 abstentions. Thirty-seven States co-sponsored the resolution.

40. In 2008 and 2009, the Russian Federation was closely involved in preparing the Conference to review the implementation of the Durban Declaration and Programme of Action to combat racism, racial discrimination, xenophobia and related intolerance (Geneva, April 2009). The Conference was the most important international event conducted in recent years by the United Nations on the question of combating racism. The main achievement of the Geneva forum was the political determination, reaffirmed by all participants, to continue to combat racism at local, national and international levels and to develop and strengthen international cooperation in that area.

41. The Russian Federation supported and played an active part in the high-level meeting which coincided with the tenth anniversary of the Durban Declaration and Programme of Action on the elimination of all forms of racial discrimination (New York, 22 September 2011) and at which the Minister of Foreign Affairs explained Russia’s principled approach to addressing problems associated with combating racism and its contemporary forms.

42. The Russian Federation makes an annual voluntary contribution to the Office of the United Nations High Commissioner for Human Rights, a certain proportion of which is for the programmes of the Office’s Anti-Discrimination Unit. In 2010 the Office earmarked US\$ 450,000 for this purpose. In addition, the Russian Federation is allocating resources for training programmes for representatives of Russia’s indigenous peoples (US\$ 50,000) and for the work of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance of the United Nations Human Rights Council (US\$ 50,000).

43. The Russian Federation is closely involved in international cooperation to improve standards in the area of human rights and ethnic minorities and to elaborate the corresponding decisions and resolutions of international organizations on the promotion of a dialogue between civilizations and cultures and the fight against contemporary forms of racism.

44. The Russian Federation regularly advocates making questions relating to the protection of ethnic minorities and the fight against crimes based on inter-ethnic and religious intolerance, extremism, xenophobia and discrimination on ethnic grounds a priority in the work of virtually all international organizations (the United Nations, the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe and others) that deal with human rights issues. It continues to cooperate with those specialized organizations and their structures, including the OSCE High Commissioner on National Minorities, the Council of Europe Commissioner for Human Rights, the Office of the United Nations High Commissioner for Human Rights and the United Nations Human Rights Council.

45. The Russian Federation assists with the organization of monitoring visits by representatives of international organizations. In 2006 and 2007, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, and the OSCE High Commissioner on National Minorities, Rolf Ekéus (who held the post from 2001 to 2007), conducted visits to the Russian Federation.

46. The OSCE High Commissioner on National Minorities, Knut Vollebaek, who was elected to that post in July 2007, held his first visit to the Russian Federation from 21 to 24 January 2008. The visit focused on the socioeconomic and cultural rights of members of ethnic minorities and small indigenous peoples. Mr. Vollebaek conducted a second working visit to the Russian Federation from 9 to 14 March 2009, during which he visited Moscow, the Republic of Bashkortostan and Voronezh province. The main purpose of the visit was to assess questions concerning the protection of the linguistic and educational rights of ethnic Ukrainians in Russia in order to prepare a comparative study on the situation with regard to the teaching of Russian in Ukraine and Ukrainian in Russia. The main topic of discussions between the High Commissioner and Russian representatives was the enjoyment of the linguistic and educational rights of the Russian-speaking population in Ukraine and ethnic Ukrainians in Russia, as well as the situation of Russian-speaking minorities in Latvia and Estonia.

47. The visit to the Russian Federation of the United Nations Special Rapporteur on the rights of indigenous peoples, James Anaya, from 5 to 16 October 2009 (Moscow, the Khanty-Mansi Autonomous Area – Yugra, and Krasnoyarsk and Khabarovsk Territories) was a major event in the area of international cooperation on the protection of the rights of small indigenous peoples. The Special Rapporteur met with representatives of federal and regional authorities and voluntary associations of the small indigenous peoples of the North in Khanty-Mansiisk, Krasnoyarsk and Khabarovsk and visited their traditional habitats in the Khanty-Mansi Autonomous Area and Krasnoyarsk and Khabarovsk Territories. The meetings between the Special Rapporteur and representatives of the small indigenous peoples of the North also focused on problems associated with the establishment of areas for the traditional use of natural resources by these peoples and the preservation of their traditional way of life and economic activities (in particular, fishing during tendering procedures for the use of fishing grounds).

48. From 13 to 19 February 2011, the United Nations High Commissioner for Human Rights, Navanethem Pillay, visited the Russian Federation, where she was informed in detail about measures to protect human rights undertaken in Russia at federal and regional levels. Both sides commended the programme of bilateral cooperation between the Russian Federation and the Office of the High Commissioner, which is being carried out on the basis of the document “OHCHR Framework for Cooperation with the Russian Federation for 2007 and beyond”.

49. The Russian Federation participates in international initiatives on questions of human rights protection (in particular in the context of the annual meeting of the OSCE to

assess the implementation of obligations in the area of the human dimension and OSCE thematic conferences on preventing and combating discrimination, xenophobia and discrimination, and the annual sessions of the United Nations Permanent Forum on Indigenous Issues) in order to disseminate objective information on the situation of ethnic minorities and the measures taken by the Russian Federation to protect their rights. Representatives of non-governmental organizations, including ethnic voluntary associations, associations of small indigenous peoples, and federal and regional government bodies, regularly take part in major international initiatives and present best practices in use in the Russian Federation.

50. The Russian Federation provides assistance for the participation of representatives of various Russian ethnic, cultural, social and religious associations and other civil society institutions in international events in order to attract the attention of the international community to the Russian experience in addressing problems in the area of inter-ethnic and interfaith relations. The focus is on creating conditions for involving a broader circle of representatives of civil society institutions in international activities on issues relating to the situation of minorities (Russian religious organizations, the Social Forum of the Russian Federation, Russian orthodox institutions, human rights and children's rights ombudspersons, and journalists).

51. Steps are being taken to create conditions for the participation of representatives of ethnic minorities and small indigenous peoples of Russia in the work of various international expert mechanisms, support bodies and forums, which serve as a platform for promoting dialogue and cooperation, determining and analysing best practices, and identifying contemporary challenges in this area and finding ways of addressing them (Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples, the United Nations Permanent Forum on Indigenous Issues and the Human Rights Council's Forum on Minority Issues).

52. The Russian Federation cooperates actively with specialized international organizations on questions concerning the protection of the rights of vulnerable ethnic groups, in particular the Roma and Finno-Ugric peoples, and provides assistance for conducting international initiatives on this issue both in Russia and abroad. The Path of Birds festival of Finno-Ugric culture of Russia, held in Strasbourg in September and October 2006, received very favourable comments. The event, of a European dimension, was a unique international presentation of the cultural and social life of the regions of the Volga Federal Area in which the peoples of the Finno-Ugric group make up a large part of the population.

53. From 7 to 9 September 2006, the Ministry of Regional Development together with the Interfaith Council of Russia and the Council of Europe conducted an international conference in Nizhny Novgorod entitled "Dialogue of Cultures and Interfaith Cooperation" in the framework of the Russian chairmanship of the Council of Europe's Committee of Ministers. The main goals of the conference were to promote an intercultural and interfaith dialogue and cooperation, analyse and develop experience in interfaith cooperation and combat extremism and terrorism.

54. Some 300 persons from countries around the world took part in the work of the Volga Forum, including leaders from the Council of Europe and the Council of Europe's Parliamentary Assembly and representatives of the United Nations, UNESCO, the European Union and other international organizations, associations and foundations, as well as federal and regional government bodies and respected Russian and international public and religious figures. The participants adopted a concluding document, the Volga Forum Declaration, which stressed the need to develop the religious dimension in intercultural dialogue. This is the first Pan-European document drawn up by the Russian Federation, and it is of great importance for both Russia and the Council of Europe. It was the first time at

Pan-European level that a determination to promote the religious dimension in intercultural dialogue was placed on record.

55. The conference participants welcomed the suggestion to make 2008 the European year of intercultural dialogue and expressed support for the Council of Europe initiative to prepare a white paper on intercultural dialogue. They also approved measures to reinforce national mechanisms for the protection of human rights and national minority rights in accordance with the Framework Convention for the Protection of National Minorities.

56. In 2006, the Council of Europe resumed its Pan-European “All different – All equal” campaign, which was conducted by young people in the 49 Member States of the Council of Europe’s European Cultural Convention. The campaign is designed to strengthen cooperation and diversity among peoples and is also open to non-Council of Europe States. During the campaign, emphasis was placed on diversity, which testifies to the wealth of our many different cultures and traditions.

57. In 2008, an international youth forum was held in the context of the campaign in Kazan under the motto “Intercultural Dialogue and its Religious Dimension”, which gave rise to the Kazan Action Plan 2020 as its natural follow-up. The aim of the Action Plan, which is currently under way, is to elaborate, bearing in mind examples of best practices, a catalogue of specific measures for the advancement and support of ideas of intercultural dialogue and its religious dimension, both among young people and directly by young people themselves.

58. The fifth world congress of Finno-Ugric peoples, held in June 2008 in Khanty-Mansi with the participation of the presidents of the Russian Federation, Finland, Hungary and Estonia, attracted considerable attention.

59. Between 2009 and 2011, the Ministry of Regional Development and the Ministry of Foreign Affairs, together with the Council of Europe and the European Commission, conducted a joint programme entitled “Minorities in Russia: Developing Languages, Culture, Media and Civil Society”, the aim of which was to consider the possibility of the Russian Federation’s implementing the European Charter for Regional or Minority Languages.

60. In conjunction with the Office of the United Nations High Commissioner for Human Rights, the Russian Federation hosted a seminar for the Member States of the Commonwealth of Independent States (CIS) on developing and carrying out national action plans to combat racial discrimination and intolerance (Saint Petersburg, 29–30 September 2011).

### **III. Measures taken by the Russian Federation to implement the basic provisions of the Convention**

#### **A. Article 1**

61. A comprehensive system of laws and regulations has been set up to ensure equality of rights of citizens, irrespective of sex, race, ethnic background, language, origin, material or official status, place of residence, attitude to religion, beliefs, or membership of voluntary associations or any other social group.

62. The international obligations of the Russian Federation, the Constitution and the Federal Act on the Principles of Legislation on Culture, the Federal Act on Ethnic Cultural Autonomy, the Federal Act on Voluntary Associations, the Federal Act on Freedom of Conscience and Religious Associations, and the Federal Act on Guarantees of the Rights of

the Small Indigenous Peoples of the Russian Federation, as well as other measures of social policy which ensure the preservation of the culture of ethnic minorities and safeguard language and the press, are integral parts of the legal system. Laws and regulations aimed at combating incitement of racial and religious hatred and extremist activities also play an important role. These include above all the Criminal Code, as well as the Federal Act on Combating Terrorism and the Federal Act on Combating Extremist Activities. Anti-discriminatory measures are included in sectoral legislation governing the protection of human rights in the areas of education, labour, health care, the courts, social protection and culture.

63. In line with article 1 of the Convention, domestic legislation includes provisions ensuring equality of the rights of citizens, irrespective of their social status, race, language, ethnic origin or religious affiliation. Article 19 of the Constitution guarantees equality of human and civil rights and freedoms, regardless of race, ethnic background, language, origin, place of residence or attitude to religion. All forms of restrictions on social, racial, ethnic, linguistic or religious grounds are prohibited.

64. In accordance with article 17 of the Constitution, human and civil rights and freedoms are recognized and guaranteed in keeping with the universally recognized principles and norms of international law. Article 15 states that the universally recognized principles and norms of international law and international agreements to which the Russian Federation is a party are an integral part of its legal system.

## **B. Article 2**

65. The Russian Federation condemns racial discrimination, which presupposes an absence of equality before the law and the courts, as well as inequality of treatment (distinctions, exclusions, limitations and preferences) in any area of public life, whether political, economic, social, cultural, administrative or elsewhere. This is stipulated in the Constitution, which recognizes and guarantees human and civil rights and freedoms, regardless of sex, race, ethnic background, language, origin, material or official status, place of residence, attitude to religion, beliefs, affiliation with voluntary associations or other circumstances.

66. The Constitution prohibits all forms of restrictions on the rights of citizens on social, racial, ethnic, linguistic or religious grounds.

67. Domestic legislation is on a sectoral basis, and various areas of social relations are governed by a particular set of legal provisions. Provisions of a general nature that prohibit discrimination against persons on grounds of their ethnic background are in force in the context of the human rights covered in a particular area – the exercise of labour rights, the right to education, the right to speak one’s native language, the right to enjoy the benefits of culture, etc. Thus, the principle of non-discrimination extends to all rights recognized by the Constitution and domestic law.

68. Russian legislation contains anti-discrimination provisions in virtually all branches of law, including article 3 of the Tax Code, article 7 of the Constitutional Act on the Judicial System, article 1 of the Family Code, article 5 of the Education Act, article 17 of the Principles of Legislation on Public Health Care, article 2 of the Federal Act on the Languages of the Peoples of the Russian Federation, article 4 of the Federal Citizenship Act, article 14 of the Federal Act on Basic Guarantees for Children’s Rights, article 7 of the Federal Advertising Act, article 8 of the Principles of Legislation on Culture, article 56 of the Federal Act on Basic Guarantees of Electoral Rights and the Right of Citizens to Participate in Referendums, the Labour Code, the Code of Civil Procedure, the Federal Act

on the General Principles of Local Self-Government and the Federal Act on the Principles of Health Care Legislation.

69. Thus, the provisions of article 2 of the Convention are implemented in full under domestic legislation, and the above-mentioned set of laws and regulations together with the Constitution and the Criminal Code constitute comprehensive anti-discrimination legislation, which is constantly improved to take modern realities into account.

70. Recognizing the important role played by legal forms of protection against discrimination, the Russian Federation is considering, as a matter of priority for domestic policy, the creation and further modernization of body of laws and regulations for the protection of the rights of ethnic minorities and the small indigenous peoples of the North, Siberia and the Russian Far East. The legislative framework is being improved not only at federal level, but also in the constituent entities of the Russian Federation.

71. The improvement of legislation has been accompanied by political and practical measures, including budget funding for programmes and specific initiatives directed at promoting harmonious inter-ethnic relations throughout the country, fostering ethnic cultural diversity and encouraging inter-ethnic tolerance.

72. In the view of the Russian Federation, the adoption of special anti-discrimination legislation is not in keeping with the logic or the sectoral nature of Russian law or its application in practice.

73. In conformity with article 2, paragraph 1 (b), of the Convention, the Russian Federation does not support racial discrimination by any persons or organizations. As the Russian Federation is a multi-ethnic country, such a policy could lead to a fragmenting of society and endanger the country's territorial integrity. The Constitution prohibits the activity of voluntary associations whose aims and acts are calculated to incite social, racial, ethnic or religious discord (art. 13), and article 9 of Federal Act No. 95 of 11 July 2001 on Political Parties prohibits the creation of political parties on ethnic or religious grounds. The creation of parties on such grounds might jeopardize the peaceful coexistence of peoples and religions in the country and undermine the principles of a secular State. The European Court of Human Rights agreed with these arguments in its decision on the admissibility of application No. 17582/05 of 7 December 2006 on "*Igor Vladimirovich Artyomov v. the Russian Federation*", in which it declared inadmissible the application of the leader of the organization "Russian All-Nation Union" concerning the refusal of the Ministry of Justice to register a political party of that name. The text of the Court's decision is contained in the annex to this report.

74. In order to implement article 2, paragraph 1 (e), of the Convention, the federal government bodies are taking action aimed at eliminating barriers between races and encouraging multi-ethnic organizations and movements.

75. Initiatives of an inter-ethnic nature in the area of youth policy are supported by the Ministry of Sport and Tourism, in the area of ethnic cultural development by the Ministry of Regional Development and the Ministry of Culture, in the area of upbringing and education by the Ministry of Education and Science and in the area of the media by the Ministry of Communications; other government bodies also provide assistance.

76. Support is given in particular to organizations which bring together persons of different races, ethnic background and religious beliefs (such as the Assembly of Peoples of Russia, the Congress of Peoples of the Caucasus, the Association of Finno-Ugric Peoples of the Russian Federation, the Russian Youth Union, the National Council of Associations of Young People's and Children's Associations of Russia, the Russian Youth Union and other voluntary associations) and work to prevent racial discrimination and to promote harmonious inter-ethnic and interfaith relations and intercultural dialogue.



77. The Ministry of Sport and Tourism and the Federal Agency on Youth Affairs have carried out a special project, called "Tolerance". Launched in 2009 in the framework of the International Year of Youth, the project was conducted in accordance with Presidential Decree No. 1383 of 18 September 2008 on the holding of the Year in the Russian Federation.

78. The aim of the project was to create and promote favourable conditions for harnessing the potential of Russian youth as an important social force capable of elaborating and realizing projects directed at shaping attitudes of tolerance and fostering inter-ethnic harmony.

79. As part of the implementation of the Tolerance initiative, projects were selected and supported which endorse a philosophy based on the principles of respect for human rights and freedoms, the goal of inter-ethnic concord, openness for dialogue and the education of the coming generation in a spirit of civil solidarity, tolerance and harmonious inter-ethnic relations.

80. At the initiative of youth and ethnic cultural movements in Russia, and with the help of the Social Forum, an Inter-ethnic Russian Federation Club has been set up and is fully operational. This is a functioning social network of more than 1,000 community leaders from around the country who are working to bring together citizens and organizations and to conduct initiatives in the area of intercultural dialogue and the formation of Russian identity. Educational and training sessions have been held in the Federal Areas. The international youth camp "Dialogue" (Kaluga province), the Russian Youth Forum in the Caucasus (Dombai) and other events have already become a tradition.

81. Activities are being carried out in the context of youth policy in the following areas so as to prevent extremist manifestations among young people on ethnic grounds:

- Improving the effectiveness of regional programmes for developing inter-ethnic and interfaith relations among young people; modern forms of cooperation with young people in this area have been elaborated and implemented
- Increasing the number of initiatives aimed at encouraging interaction between young people of different races, ethnic background and religions
- Supporting the programmes and projects of voluntary associations targeting children and young people and designed to foster interracial, inter-ethnic and religious harmony
- Cooperating with non-formal youth associations and youth subcultures, and creating favourable conditions for their activities

82. In 2009, a national competition was held for public service advertisements to assist adolescents in difficulty. As part of the competition, it was planned to create a website, one of whose themes was the promotion of tolerance and inter-ethnic cooperation among young people. In the context of the Youth Year, the website [www.godmol.ru](http://www.godmol.ru) was launched and began operating; one of its sections focuses on the topic "Russia for everyone". The main objective of the more than 13,000 participants from around the country who have registered with it is to advance ideas of tolerance among young people.

83. Associations of sports fans, above all for soccer, are one of the most common forms of activity for young people in today's Russia, and government bodies work regularly with this category of youths. The Ministry of Sport and Tourism is actively cooperating with the National Association of Sports Fans. The basic areas of cooperation have been defined; they include the protection of the rights and interests of Russian fans, the prevention of criminal offences at sports events and the implementation of joint initiatives to foster healthy lifestyles, participation in sports and a greater social commitment among young

people. Joint activities and projects are being conducted, such as the tournament “Score a goal, fan!”, the establishment of fan zones and the enforcement of security in stadiums.

84. As part of the promotion of cooperation with young people of the Northern Caucasus Federal Area, high priority is given to integrating these persons into the life of the country and encouraging them to meet young people from other regions and to learn about their traditions. To that end, the Ministry of Sport and Tourism has organized a number of national events in the Northern Caucasus Federal Area as well as the participation of young people from there in initiatives conducted in other parts of the Russian Federation. In 2010 and 2011, the Ministry held 15 nationwide initiatives in the Northern Caucasus Federal Area which were attended by young people from other parts of the country:

- In June 2010, a “Memory Train” travelled to the cities of central Russia and the capitals of the republics of the Northern Caucasus to commemorate the sixty-fifth anniversary of victory in the Second World War; more than 100 volunteers worked to improve the appearance of military cemeteries, organized meetings between war veterans and young people and learned about the history of the republics and their ethnic traditions. More than 10,000 young persons took part. The train stopped in Kursk, Krasnodar, Maikop, Cherkessk, Nalchik, Nevinnomyssk and Volgograd.
- In May 2010, the eighteenth national festival of the creative work of students, “Russian Student Spring”, was held in the city of Nalchik (Kabardino-Balkar Republic), in which more than 1,200 students attended – the winners of interregional festivals from 50 regions around the country.
- From 20 May to 3 June 2010, the “We are Together” youth camp was organized at the Federal Children’s Recreational and Educational Centre “Smena” in the city of Anapa (Krasnodar Territory), in which more than 1,000 young people took part (300 from the constituent entities of the Northern Caucasus Federal Area, the others being representatives of ethnic delegations from other parts of the country). The aim of the camp programme was to promote a culture of inter-ethnic cooperation and patriotic values among young people.
- In June 2010, 300 participants in “The Caucasus – Our Common Home” Youth Forum (Republic of Dagestan) discussed problems facing young people in the Northern Caucasus.
- From 23 to 31 July 2010, a Caucasus forum of Russian young people entitled “Better Together ...” was held in the Republic of Karachaevo-Cherkessia; more than 200 young scholars, graduate students, athletes and representatives of small businesses attended. The forum was conducted under the motto “Peace in the Caucasus – a mission for youth”.
- In August 2010, a festival of the creative work of young people of the Caucasus entitled “Friendship of Peoples – Russia’s Unity” attracted more than 300 visitors.
- From 8 to 26 August 2010, an all-Caucasus young people’s educational camp, “Mashuk – 2010”, was held in the city of Pyatigorsk in Stavropol Territory at the foot of Mount Mashuk in cooperation with the Ministry of Sport and Tourism. The activities of the camp took place in two shifts. The participants included 1,500 young people of various ethnic backgrounds who made up the delegations from the constituent entities of the Northern Caucasus Federal Area and the Republic of South Ossetia, as well as 500 guests and 30 experts. Contests were held for grants in the following areas: business activities; creative activities; media projects; and projects aimed at improving political, economic, social and other aspects of life. The winners were chosen in the course of the participation of the project groups in the “youth project conveyor” (a mechanism which includes training, expert consultation

and project assessment); the projects were carried out from the first day of the camp. There were 480 proposals and 62 winners.

- In August 2010, the Ministry of Sport and Tourism, in conjunction with the Council of Europe's Directorate of Youth and Sport and representatives of voluntary associations of young people, conducted a joint training seminar in the city of Derbent (Republic of Dagestan), for specialists of government bodies working with young people.
- In September 2010, with the support of the Ministry of Sport and Tourism, a festival of clubs of young families, "Belief, Hope, Love", was held in the city of Makhachkala (Republic of Dagestan), at which 150 youths from the republics of the Northern Caucasus and other regions of the Russian Federation discussed ways of promoting family values among young people and familiarized themselves with family traditions in other parts of the country.
- From 1 to 3 November 2010, a national youth forum, "The Multi-ethnic Russian Federation", was held in the city of Sochi (Krasnodar Territory) to coincide with the country's National Unity Day. The aim of the forum was to foster the active involvement of young people in the formation of a civil society based on the principles of solidarity, tolerance and mutual understanding, and the preservation and development of the cultures and languages of the peoples of the Russian Federation, as well as to encourage a dialogue between the leaders of various ethnic and religious youth organizations. Representatives of the government bodies of the constituent entities of the Russian Federation, youth activists, and student and ethnic organizations — 250 persons in all — took part in the event.
- From 29 to 31 October 2010, a youth forum on ethnic cultures, "We are Russian", was held in Mytishchinsky district, Moscow province, to celebrate National Unity Day. Representatives of federal and regional government bodies, voluntary associations, youth organizations, academics and personalities from culture and the arts took part, some 100 persons in all. The forum's programme included a plenary meeting, a national school of young leaders of civil society, discussion platforms, workshops, a presentation of young people's projects for the socioeconomic development of the constituent entities of the Russian Federation, a presentation of ethnic forms of sport, a discussion podium entitled "The Russian Federation and I", a review of project ideas and a contest of singers of traditional songs, entitled "Melodies of Unity".

85. In all, more than 20,000 persons from the republics of the Northern Caucasus and other regions took part in these national initiatives. In 2010, more than 30 regional and interregional events were held in the republics themselves, with the participation of more than 25,000 young people.

86. The year 2011 was the start of an annual competition of young people's projects under the Pan-Caucasus Youth Forum, in the framework of which 868 grants totalling 100 million roubles will be awarded for the implementation of projects in 22 categories.

87. The Ministry of Sport and Tourism recommended that the youth affairs bodies of the constituent entities of the Russian Federation should involve young people from the Northern Caucasus Federal Area in their events in order to integrate them into the life of the country and help them meet young people from other regions. Forty-three constituent entities sent their suggestions for the participation of young people from the Northern Caucasus Federal Area in their initiatives; 150 youths from the Northern Caucasus took part in events in seven constituent entities.

88. In 2011, the following national initiatives were held in the Northern Caucasus Federal Area: the “Friendship of Peoples – Unity of Russia” Caucasus youth festival; the pan-Caucasus youth forum “Mashuk-2011”; an international youth forum on “Promoting mutual understanding in the Caucasus”; and “We are Together!”, a national festival of young pupils of primary and secondary vocational schools (with the participation of representatives from all the constituent entities of the Northern Caucasus Federal Area).

89. From 14 to 17 April 2010, an interregional meeting was held in the city of Stavropol on the topic “Basic aims of youth policy in the Northern Caucasus Federal Area”, which was attended by A.G. Khloponin, Special Representative of the President of the Russian Federation in the Northern Caucasus Federal Area, representatives of the Ministry of Sport and Tourism, representatives of youth affairs bodies of all the constituent entities of the Northern Caucasus Federal Area, and heads of voluntary youth associations. At the meeting, it was decided to establish a standing deliberative body, the Youth Policy Council in the Northern Caucasus Federal Area, which was then set up pursuant to Order No. 279 of 8 December 2010 of the Special Representative.

90. In March 2010, an interregional training centre for the development of the human resource potential of youth policy in the Northern Caucasus Federal Area was created under the auspices of the Stavropol city branch of the M.A. Sholokhov State University of the Humanities in order to train youth policy specialists, including for voluntary youth associations.

91. The centre offers training courses for specialists in the following areas:

- Fostering attitudes of tolerance among young people.
- Volunteer work – traditions and innovations.
- Approaches for working with talented youths.
- Modern methods for teaching national history and patriotism.
- Problems associated with the socialization of young people in difficulty.
- Shaping and encouraging healthy lifestyles.
- Techniques for involving young people in the activities of institutions working to promote a democratic State and civil society.
- Preventing extremism among young people.
- Humanities-based methods for training volunteer teachers on the prevention of alcoholism and drug addiction among teenagers. In all, more than 300 persons took the training courses.

92. The training centre has a laboratory for studying problems of multicultural interaction among young people in the Northern Caucasus Federal Area. Leading political scientists, sociologists, historians and other specialists are involved in the work of the laboratory, which conducted a two-month pilot project on the human resource potential of youth policy in Stavropol Territory and in the Republics of Northern Ossetia-Alania, Dagestan and Karachaevo-Cherkessia. Similar studies were carried out in the Chechen Republic in December 2010.

93. The Ministry of Sport and Tourism has elaborated and approved a departmental plan for the implementation of a strategy for the socioeconomic development of the Northern Caucasus Federal Area until 2025 in the area of youth policy, and a draft Outline for youth policy in the constituent entities of the Northern Caucasus Federal Area until 2025 has been submitted to the Government.

94. A yearly festival conducted in a number of regions of Russia with funding from the federal budget (under the budget line of the Ministry of Culture) with the participation of various segments of the population, and young people in particular, is directed at reducing inter-ethnic barriers and overcoming xenophobia. All these initiatives are linked to current events in the social and political life of the country or commemorative dates in military history and are aimed at preventing all manifestations of racial discrimination.

95. The events include the inter-State youth festival “Slavic Unity”, held annually in Bryansk province near the “Friendship” monument on the border between Russia, Ukraine and Belarus, and a festival of groups from Russia, Belarus and Lithuania at the Friendship Mound in Pskov province. In 2009, an interregional film festival was held in Chuvash Republic on inter-ethnic harmony and cooperation. An annual international festival of Muslim cinema, “Golden Minbar”, is held in the city of Kazan, and an annual international forum on Slavic and orthodox films, “Golden Vityaz”, takes place in the city of Lipetsk.

96. The Russian Federation holds hundreds of events throughout the country every year aimed at promoting national unity and preventing racial, ethnic and religious intolerance as part of comprehensive regional plans for counteracting manifestations of extremism and regional programmes with similar goals.

97. In accordance with article 2, paragraph 2, of the Convention, the government bodies of the Russian Federation support ethnic cultural organizations. Pursuant to Federal Act No. 11 of 9 February 2009 on Amendments to article 16 of the Federal Act on Autonomous Ethnic Cultural Organizations, the central authorities may provide financial assistance to federal organizations of this kind from the federal budget, the regional authorities to regional and local bodies from the regional budget, and the local authorities to local bodies from the local budget.

98. Support is provided for ethnic cultural projects in the form of grants awarded by the President to non-profit organizations, grants from the Ministry of Sport and Tourism, the special federal programme “The Culture of Russia (2006–2011)” and subsidies allocated to assist the small indigenous peoples of the North, Siberia and the Far East in the context of a special federal programme on the socioeconomic and ethnic cultural development of ethnic Germans, 2008–2012, as well as a separate article of the federal budget on measures for implementing State nationalities policy in 2008–2011 (funding in 2008: 240.0 million roubles; in 2009: 179.5 million roubles; in 2010: 80.0 million roubles; in 2011: 80.0 million roubles) through subsidies awarded to the constituent entities of the Russian Federation to support socially oriented organizations.

99. In accordance with Federal Act No. 7 of 12 January 1996 on Non-Profit Organizations, as amended by Federal Act No. 40, non-profit organizations (with the exception of State corporations, State companies and voluntary associations that constitute political parties) are recognized as organizations with a social orientation if they perform activities aimed at: addressing social problems or bolstering civil society, including by providing free or preferential legal assistance to citizens and non-profit organizations and raising the legal awareness of the public or by protecting human and civil rights and freedoms; preventing socially dangerous forms of behaviour; conducting activities in the area of education, awareness-raising, science, culture, the arts, health care, illness prevention, promotion of healthy lifestyles, improvement of the population’s moral and psychological well-being and support for physical culture and sport; or fostering the spiritual development of the individual.

100. Assistance provided to non-profit organizations with a social orientation takes the following forms:

(a) Financial, material, media and advisory support, as well as support in training, in-service training and retraining of staff and volunteers;

(b) Tax allowances, in accordance with fiscal legislation;

(c) Placement of orders with non-profit organizations for goods, work and services for State and municipal requirements under the procedure established in Federal Act No. 94 of 21 July 2005;

(d) Tax allowances, in accordance with fiscal legislation, granted to legal entities which provide material assistance to non-profit organizations with a social orientation.

101. In addition to the above-mentioned forms of assistance, regional and local authorities may also provide support to non-profit organizations with a social orientation through allocations from their budgets.

102. Government Decision No. 713 of 23 August 2011 on the provision of assistance to non-profit organizations with a social orientation calls for the award, on the basis of a competition, of subsidies from the federal budget totalling:

- 600 million roubles to the budgets of the constituent entities for regional programmes to support non-profit organizations with a social orientation (relating to funding granted to such organizations on the basis of a competition)
- 132 million roubles to non-profit organizations with a social orientation to carry out programmes for the provision of media, advisory and technical support for the activities of such organizations in the main areas of their work; identification, compilation and dissemination of best practices for project delivery, including with the help of conferences and seminars; and promotion of the use of volunteers

103. In 2011, the federal authorities of the Russian Federation recommended the approval of regional programmes to support non-profit organizations with a social orientation.

104. State assistance in the cultural sphere is a crucial focus of efforts to meet the ethnic cultural needs of the peoples of Russia. Under the auspices of the Ministry of Culture, the centres of popular art forms work to identify and conserve holidays, rituals and family, vocal, instrumental, choreographic, handicraft and other traditions of the peoples of Russia. There are some 15,000 folklore groups in the country, of which 150 are national choirs, song and dance ensembles and folk music groups. More than 500 folklore sections have been set up in music schools and in art schools, and more than 5,000 clubs have folklore studios, schools and workshops. More than 3,000 clubs, above all in rural areas, have shifted their focus and have become folklore and handicraft centres, period-house museums, etc.

## C. Article 4

105. In conformity with article 4, subparagraphs (a) and (b), of the Convention, the Russian Federation condemns the dissemination of ideas or theories based on racial superiority and declares the dissemination of such ideas to be an offence punishable by law.

106. In accordance with the Criminal Code, acts committed on grounds of political, ideological, racial, ethnic or religious hatred or enmity or on grounds of hatred or enmity towards any social group are punishable offences of an extremist nature, which are covered by a number of articles of the special part of the Criminal Code, including article 280 (Public calls for extremist activities), article 282 (Hatemongering and disparagement), article 282.1 (Organization of an extremist association) and article 282.2 (Organizing the activities of an extremist organization).

107. Federal Act No. 114 of 25 July 2002 on Combating Extremism introduces the basic legal and organizational mechanisms for action in this regard, defines the term “extremism”



and establishes administrative and criminal responsibility for the commission of unlawful acts of an extremist nature.

108. Federal Act No. 148 of 27 June 2006 on Amendments to articles 1 and 15 of Federal Act No. 114 made important changes to article 1 which introduce a more exact definition of extremist activities (extremism).

109. The above-mentioned Act was adopted because of gaps in the legislation on combating extremism and xenophobia. The possibility had existed of public actions (including in the media and the Internet) which did not openly call for extremist activities but did so in veiled form or allowed for the possibility of carrying out such activities. In the past, the authors of materials along those lines and persons involved in their preparation had not been deemed to have engaged in extremist activities, and it had been virtually impossible to prosecute them.

110. Federal Act No. 211 of 27 July 2007 on the Introduction of Amendments to Several Pieces of Legislation was adopted to meet the need to improve the legal framework for establishing criminal and administrative responsibility for acts of an extremist nature and to remove the imprecision which had been noted with regard to the term "extremist activity".

111. At the time of the submission of the report, the Criminal Code defined 33 crimes of an extremist nature. Chapter 20 of the Code of Administrative Offences also criminalizes a number of acts of an extremist nature.

112. In accordance with article 282 of the Criminal Code, acts carried out publicly or in the mass media by a person using his/her official status or by an organized group, including with the threat or use of violence, that are designed to incite hatred or enmity or disparage an individual or a group on the basis of sex, race, ethnic background, language, origin, attitude to religion or membership of any social group are criminal offences.

113. In 2011, a federal bill was drafted on the introduction of amendments to several pieces of legislation, in which it is proposed to add a number of articles to the Criminal Code to criminalize acts of an extremist nature committed with the use of public information and telecommunications networks, including the Internet.

114. The Federal Act on the Police, which entered into force on 1 March 2011, requires the police to prevent, detect and suppress extremist activities and to take part in measures to fight terrorism. Anti-extremism departments within the Ministry of Internal Affairs have been operational since 2008.

115. On 26 July 2011, pursuant to Instruction No. 988 of the Ministry of Internal Affairs, an interdepartmental commission to combat extremism was set up in conjunction with the Ministry of Internal Affairs, the Federal Security Service, the Investigative Committee of the Russian Federation, the Ministry of Justice, the Ministry of Education and Science, the Ministry of Communications, the Ministry of Culture, the Ministry of Sport and Tourism, the Federal Customs Service, the Federal Migration Service, the Federal Financial Monitoring Service and the Office of the Procurator-General. One of its main tasks is to establish and ensure cooperation in this area between the federal authorities, civil society, ethnic voluntary organizations and religious organizations.

116. The law enforcement authorities are working to prevent, detect, suppress and elucidate crimes committed on grounds of racial, religious, ethnic or other forms of hatred or enmity. A number of initiatives are under way which aim to provide an in-depth systematic analysis and forecast of developments in an extremist context, as well as to prevent and detect violent crimes perpetrated against foreign nationals and combat unlawful acts of an extremist nature committed by radical groups.

117. Statistical data show an increase in manifestations of extremism in the Russian Federation in the years 2008 to 2010 and a decline in 2011. The law enforcement authorities brought to light 460 offences of an extremist nature in 2008, 548 in 2009, 656 in 2010 and 622 in 2011 (see Table). The rise in the number of detected cases is attributable in part to the introduction of amendments to criminal legislation directed at determining the motives of extremist offences, ensuring their proper classification (broadening of the qualifying criteria of offences under article 282 of the Criminal Code) and stepping up efforts by the law enforcement authorities to detect and suppress such acts.

118. An analysis of extremist offences must take into account that statistical data do not always reflect the actual extent of the phenomenon, since such acts are underreported. This is due in part to the inaction of the victims, who do not promptly file a complaint with the law enforcement authorities. Moreover, at the time of their commission most violent crimes are not recorded in the statistics separately. Extremist motives usually do not come to light until later, in the course of the investigation.

119. All in all, extremist offences are characterized by a preponderance of violent crimes (intentionally causing slight, moderate or severe harm to health, assaults, death threats), crimes against public security and public order (disorderly conduct) and crimes against the State power (incitement of hatred and enmity).

<i>Legal norms violated</i>	2008	2009	2010	2011	<i>Increase/decrease (2010–2011), %</i>
<b>Total offences</b>	<b>460</b>	<b>548</b>	<b>656</b>	<b>622</b>	<b>-5.2</b>
Including:					
Art. 105, para. 2 (k), of the Criminal Code (CC)	17	19	18	5	-5.3
Art. 111, para. 2 (f), of the CC	6	10	5	11	-50.0
Art. 112, para. 2 (f), of the CC	6	12	11	7	-8.3
Art. 115, para. 2 (b), of the CC	6	47	47	36	0.0
Art. 116, para. 2 (b), of the CC	55	73	97	88	+32.9
Art. 119, para. 2, of the CC	25	11	24	21	+118.2
Art. 213, para. 1 (b), of the CC	12	14	26	27	+85.7
Art. 280 of the CC	29	45	51	61	+13.3
Art. 282 of the CC	182	223	272	242	+22.0
Art. 282-1 of the CC	18	19	23	17	+21.1
Art. 282-2 of the CC	24	20	27	65	+35.0

120. As in previous years, the most widespread offences are those committed under article 282. They amounted to 41.5 per cent of all registered offences of an extremist nature in 2010, and 38.9 per cent of the total in 2011. According to the statistical data, in 2010, 272 offences were committed under article 282 (compared to 223 in 2009) and 51 under article 280 (compared to 45 in 2009). In 2011, 242 offences were committed under article 282, and 61 under article 280.

121. The number of homicides committed on extremist grounds in 2010 under article 105, paragraph 2 (k), of the Criminal Code fell by 5.3 per cent compared to 2009 (18 murders) and by 72.2 per cent in 2011 (5 murders).

122. Eleven offences were committed under article 111, paragraph 2 (f), of the Criminal Code (Intentionally causing slight, moderate or severe harm to health [...] on grounds of political, ideological, racial, ethnic or religious hatred or enmity or on grounds of hatred or

enmity towards any social group), an increase of 120 per cent compared to 2010 (5 offences).

123. The number of offences committed in connection with organizing the activities of extremist organizations rose. In all, 65 offences came to light under article 282.2 of the Criminal Code, 140.7 per cent more than in 2010, when there were 27 offences; 11 persons were convicted.

124. In 2011, 196 offences of an extremist nature came to light in the Central Federal Area compared to 255 in 2010 (a decline of 23.1 per cent), 51 in the Siberian Federal Area compared to 73 in 2010 (a decline of 30.1 per cent), 51 in the Northern Caucasus Federal Area compared to 53 in 2010 (a decline of 3.8 per cent) and 24 in the Far East Federal Area, compared to 30 in 2010 (a decline of 20.0 per cent). A considerable increase in offences in this category was noted in the Northwest Federal Area (73, compared to 62 in 2010, an increase of 17.7 per cent) and in the Southern Federal Area (48, compared to 28 in 2010, an increase of 71.4 per cent), and a slight increase was noted in the Volga Federal Area (120, compared to 110 in 2010, an increase of 9.1 per cent) and in the Urals Federal Area (46, compared to 42 in 2010, an increase of 9.5 per cent). As in the past, the Moscow region continues to have the most, and most serious, offences of an extremist nature committed on ethnic and religious grounds.

125. In the city of Moscow, a decline in the number of offences of an extremist nature, to 76, has been noted for the first time in several years. That said, in 2010, 105 such offences were registered in the capital, and the number of homicides on extremist grounds rose by half. The peak was in the years 2008 to 2010. Whereas 13 offences of an extremist nature were registered in the first half of 2007, 73 were registered in the first half of 2008.

126. The tide was turned after the law enforcement authorities neutralized the most dangerous group, whose members had murdered a number of migrants on extremist grounds. Several trials were held in Moscow City Court involving members of radical youth organizations charged with a series of offences of an extremist nature.

127. For example, on 3 March 2011, A.D. Vasilyev, A.V. Gordeev, K.D. Kucher and V.O. Polyakov were convicted, on the basis of a verdict handed down in a trial by jury on 21 February 2011, of committing nine assaults against 11 persons from the Caucasus or of Asian or African origin in 2008 and 2009 in Moscow.

128. They were also convicted of having set off a number of explosions, including at the Prague Fair commercial centre, the Tushin market and several concession stands at which members of various ethnic groups were working, and of having set fire to the synagogue of the Darkei Shalom community and to two vehicles belonging to a regiment of the special militia's Patrol and Inspection Service of the Central Internal Affairs Department, Moscow.

129. Vasilyev was sentenced under article 30, paragraph 3, article 105, paragraph 2 (a), (e), (g), and (k), article 282, paragraph 2 (a) and (c) (10 counts), article 282, paragraph 2 (c) (2 counts), article 213, paragraph 2 (3 counts), and article 161, paragraph 3 (a), of the Criminal Code to 20 years' deprivation of liberty.

130. Gordeev was convicted of similar offences and was sentenced to 8 years' deprivation of liberty. Kucher was sentenced to 10 years' deprivation of liberty and Polyakov to 7 years' deprivation of liberty.

131. In a decision of Moscow Area Military Court of 11 July 2011, L.E. Molotkov, V.V. Tamashev, V.A. Appolonov, N.N. Michailov, L.V. Rudik, members of the extremist association "National Socialist Society", were sentenced to life imprisonment. V.Yu. Vakhromov, E.B. Chalkov, S.A. Yurov, K.V. Nikiforenko, S.P. Golubev, V.V. Kovaleva and S.V. Sviridov, also members of the National Socialist Society, were sentenced to between 8 and 23 years' deprivation of liberty for the commission of offences under articles

105, 115, 116, 161, 162, 167, 205, 222, 223, 282, 282.1, 317 and 338 of the Criminal Code. They were implicated in the preparation of one terrorist act and committed 27 homicides, 5 attempted homicides and a number of other violent crimes in Moscow and Moscow province against persons of non-Slavic origin or persons who did not share their ideological views.

132. Most offences of an extremist nature are committed by persons under 25 years of age: members of youth groups (who, given their appearance, are referred to as skinheads), members of extremist movements, leftist radical groups and national patriotic organizations.

133. Suppressing the activities of groups that commit violent crimes for reasons of ethnic, religious or racial hatred or enmity is a main priority of the anti-extremism departments of law enforcement agencies.

134. To date, the list of voluntary and religious associations concerning which the courts have issued a legally enforceable decision on the elimination or prohibition of the activities set out in the Federal Act on Combating Extremist Activities already includes 28 associations (the list is contained in the annex to this report). The work of the procurator's offices in this area is continuing.

135. For example, Moscow City Court granted an application by the procurator to ban the voluntary association "Movement against illegal immigration".

136. The Moscow Provincial Court granted an application by the procurator's office to declare the interregional voluntary association "Spiritual Ancestral Russian Empire Rus" an extremist organization and to prohibit its activities. Pursuant to the court decision, the activities of this association were prohibited in Russia.

137. In addition to there being a closer monitoring of the activities of juveniles, posts for police officers have been created at virtually all schools and universities (5,616 school inspectors and 139 university inspectors). In a number of regions the post of commissioner for problem families has been established on a trial basis (150 officials in 11 regions).

138. The law enforcement authorities hold regular meetings with representatives of Russia's traditional religions (the Russian Orthodox Church, the Islamic Theological Board of the European part of Russia, and Jewish and Buddhist organizations).

139. Internal affairs officials together with representatives of religious organizations at schools and other educational establishments conduct awareness-raising activities aimed at preventing group violations of public order and acts of disorderly conduct and vandalism on grounds of ideological, racial, ethnic or religious hatred.

140. In 2011, special programmes directed at promoting tolerance in inter-ethnic and interfaith relations and counteracting radicalization, above all among young people, were carried out in 52 constituent entities of the Russian Federation. The programmes were designed on the basis of the principles of multiculturalism, religious tolerance, the values of a multi-ethnic Russian society, observance of human and civil rights, and support for inter-ethnic peace and reconciliation. The programme's main objectives are to eliminate the causes of inter-ethnic and interfaith enmity and intolerance, inter-ethnic aggression and violence, the spread of negative ethnic and religious stereotypes, xenophobia, everyday racism and chauvinism, and ethnically based political extremism.

141. The law enforcement agencies and State authorities regularly hold meetings and consultations with representatives of human rights organizations (the SOVA Centre for Information and Analysis, the Human Rights Institute, the Moscow Bureau of Human Rights and others). Agreement has been reached with a number of human rights and

religious organizations to conduct regular joint monitoring of the mass media and the Internet in order to detect extremist activities and appeals.

142. Internal affairs officials monitor educational establishments and meet with teachers to obtain information on undesirable developments and on ideologues and leaders of radical organizations who encourage young persons to commit offences of an extremist nature, the aim being to detect cases of promulgation of extremism among young people.

143. The procurators in a number of constituent entities of the Russian Federation continue to bring to light violations in this area. For example, in several educational establishments there are no action plans for preventing manifestations of extremism among young people or for promoting and teaching tolerant attitudes; the procuratorial authorities have had to take action.

144. In response, the procuratorial authorities have conducted preventive work in the provincial municipalities of the Republic of North Ossetia-Alania, the Kabardino-Balkar Republic, the Chechen Republic and Stavropol Territory.

145. Acting on the outcome of an inspection by Krasnodar Territory's department of youth affairs, the procuratorial authorities submitted an application to the administrative head (governor) of the Territory requesting corrective action in response to violations in connection with the fight against extremist activities among young people. Following an investigation, work began on the elaboration of a special programme to combat terrorism and extremism in the Territory.

146. Modern mass communications systems, including the Internet, have played a special technological and mobilizing role in the radicalization of youth, the Internet being one of the main sources of the dissemination of radical literature and ideology as well as serving as a means of communication for extremist groups, including those with transboundary links, and as a tool for coordinating extremist activities. Extremist organizations increasingly employ cyberspace for secretly recruiting new members, especially young people, and for disseminating propaganda for destructive acts. Steps are being taken to identify manifestations of extremism and xenophobia on Internet websites, in the press and in audiovisual broadcasts in order to prevent such acts and combat their spread. The federal list of banned extremist materials contains the names of more than 900 publications.

147. The prevention and suppression of extremist offences committed with the help of the Internet is one of the key aspects of anti-extremist activities with an impact on inter-ethnic and interfaith relations.

148. A number of experts, including officials of the regional antiterrorism body of the Shanghai Cooperation Organization, have estimated that only about 15 Internet sites propagating terrorism and extremism were in operation in 1998. Today they number in the thousands, including some 150 in Russian.

149. In cooperation with voluntary associations (the SOVA Centre for Information and Analysis and the Moscow Bureau for Human Rights), the Ministry of Internal Affairs constantly monitors the media and the Internet resources for evidence of the preparation and commission of extremist offences and follows the activities of radical organizations and their leaders; the findings are used to plan subsequent preventive and investigative measures.

150. Monitoring makes it possible to take swift action in response to materials posted on the Internet that foment inter-ethnic discord and enmity. Several examples are cited below:

- On 31 March 2011 the procuratorial authorities of the Crimea district of Orlovsk province submitted an application to the Khamovnich Court of the city of Moscow demanding that the owner of "Index", a video hosting limited liability company,

remove from the site all video files with the film “The Eternal Jew” (German title: Der ewige Jude). The documentary propaganda film by filmmaker Fritz Hippler, 1940, was declared to be extremist material.

- On 31 August 2011, officials of the Ministry of Internal Affairs of the Republic of Karelia ascertained that an unidentified person had posted statements on the Internet site of the information agency Business News-Komi, the content of which aimed to foment hatred and enmity on grounds of sex, race, ethnic background, language, origin, attitude to religion or membership of a social group.
- On 11 September 2011, criminal proceedings were instituted in the Republic of Bashkortostan for violation of article 282, paragraph 1, of the Criminal Code of the Russian Federation against A.R. Izmailov, who had posted texts and illustrations on an Internet website (<http://jepifan.livejournal.com> и <http://jepiianz.livejournal.com>) for the purpose of fomenting and supporting hatred and enmity among members of the Russian people towards members of the Bashkir people and disparaging groups of persons on grounds of ethnic background, language or origin.
- On 21 October 2011, criminal proceedings were instituted under the same article for the posting on a social network (<http://www.vkontakte.ru>) of videos with an extremist content of the Slavic Union, Movement against Illegal immigration and Format-18.
- On 2 November 2011, two criminal proceedings were instituted in Moscow under the same article for the posting on an Internet website (<http://buhoil589.borda.ru>, <http://rbfans.bodra.ru>) of material with an extremist content and for statements by users reflecting a positive attitude towards Nazism, as well as the approval and espousal of violent acts against persons of another ethnic origin.
- On 22 November 2011, criminal proceedings were instituted in the city of Belovo, Kemerovo province, under the same article against V.A. Maksimov for posting material from the federal list of extremist materials on the Internet (<http://www.vkontakte.ru>).
- The investigative department for Novgorod province, a unit of the Investigative Committee of the Russian Federation, instituted criminal proceedings against A.A. Kondratyev for offences under article 282, paragraph 1, of the Criminal Code. An investigation established that between August and November 2010, Kondratyev had posted 18 videos and 85 graphic presentations of an extremist nature on the Internet website [www.vkontakte.ru](http://www.vkontakte.ru). At the end of the investigation, the proceedings were transferred to the Novgorod district court. Kondratyev was convicted, and he expressed sincere regret.

151. As of 1 January 2012, the federal list of extremist materials included 1,066 materials, or 309 more than in 2010 (757).

152. The Federal Communications, Information Technologies and Mass Media Regulatory Authority also gives priority attention to supervising and monitoring the prohibition on the use of the information media for carrying out extremist activities, inciting ethnic and religious discord and fomenting ethnic and religious hatred.

153. According to the Regulatory Authority’s office of authorized media activities, which is responsible for the registration of media outlets, as of 1 January 2012, 89,173 media outlets were registered (compared to 90,352 one year earlier), including 65,596 in the print media (67,716 one year earlier) and 21,914 in the electronic media (21,076 one year earlier).



154. Owing to the systematic work by the Regulatory Authority in this area, in the period 2006–2011, 197 instances of publication in the media of materials containing evidence of extremist activities (including incitement of racial, ethnic or religious enmity or fascist propaganda) were detected, for which written warnings were issued in accordance with the procedure established in the Mass Media Act No. 2124-I of 27 December 1991 and Federal Act No. 114 of 25 July 2002 on the Suppression of Extremist Activities:

- In 2006, 39 warnings were issued for the posting of materials containing evidence of extremist activities, including 16 for inciting ethnic discord, 6 for inciting religious discord and 4 for fascist propaganda
- In 2007, 44 warnings were issued, including 24 for inciting ethnic discord, 4 for inciting religious discord and 2 for fascist propaganda
- In 2008, 28 warnings were issued, including 18 for inciting ethnic discord, 3 for inciting religious discord and 2 for fascist propaganda
- In 2009, 33 warnings were issued, including 14 for inciting ethnic discord, 3 for inciting religious discord and 6 for fascist propaganda
- In 2010, 28 warnings were issued, including 8 for inciting ethnic discord, 4 for inciting religious discord and 1 for fascist propaganda
- In 2011, 25 warnings were issued, including 8 for inciting ethnic discord, 2 for inciting religious discord and 1 for fascist propaganda

155. In addition, pursuant to subparagraph 23 (b) of Decision No. 16 of 15 June 2010 of the plenum of the Supreme Court on the application by the courts of the Mass Media Act, between June 2010 and 2011 the Regulatory Authority addressed 191 communications to the editors of electronic periodicals and information agencies calling for the withdrawal or revision of materials containing statements of an extremist nature (including incitement of racist, ethnic or religious discord or fascist propaganda).

156. The regional procuratorial authorities are also taking steps to prevent and suppress violations of an extremist nature in the information media.

157. For example, the Office of the Procurator-General of the Russian Federation applied to the court to declare as extremist the materials on the “Caucasus Centre” Internet website, which had posted the following articles with an extremist content: “This is their civilization”, “In Beslan they remembered Shamil Basaev’s letter to Vladimir Putin”, “Dzhamaat ‘sharia’ promises to attack Sochi and the synagogue in Shamilkala” and “The Dagestan Front: the jihad continues”.

158. A ruling by the Nikulin district court of Moscow of 12 September 2011 upheld the application of the Office of the Procurator-General in full. Information on the declaration of materials on the Caucasus Centre website as extremist has been included in the federal list of extremist materials on the Internet website of the Ministry of Justice.

159. Action in response to Internet providers and directors of educational establishments who do not block access to Internet websites declared as extremist has been taken by the procurators in the Republics of Bashkortostan, Mari El and Tatarstan Chuvash, Perm Territory, Samara, Orenburg, Kirov, Ulyanovsk, Nizhny Novgorod and Penzen provinces, Krasnodar Territory, Rostov and Volgograd provinces, the Adygei Republic, the Kabardino-Balkar Republic and Yaroslavl province.

160. In Moscow, criminal proceedings have been instituted for offences under article 205.2, paragraph 1, and article 282, paragraph 1, of the Criminal Code for the posting on the Internet by an unknown person of a text entitled “On terrorism as a method of combat”, which openly condones terrorism and advocates extremist activities.

161. The Volga interregional procurator of the Republic of Mari El detected the posting on five Internet websites of Adolf Hitler's *Mein Kampf*, which has been declared extremist material and has been included in the federal list of extremist materials. A city court decision granted the procurator's application to restrict access to these websites.

162. In 2011, 25 instances of publication in the media of material containing evidence of extremist activities (as against 28 in 2010) were detected in the course of monitoring and oversight of compliance by the information and communication media with legislation in that area. In that connection, the Regulatory Authority sent 25 official warning letters to media editors in accordance with the procedure established in article 16 of the Mass Media Act.

163. Also in 2011, the procurators carried out 2,398 verifications of media publications (2,783 in 2010), detected 727 violations of the law (508 in 2010) and took action in 368 cases (409 in 2010).

164. In the period 2008–2010, numerous sociological studies were conducted on the level of inter-ethnic tension and the spread of manifestations of ethnic and religious extremism, the findings of which were used to design measures to counter extremism and prevent inter-ethnic conflicts. Topics included:

- Students in Russia's metropolitan centres: ethnic identity and inter-ethnic relations
- Causes for the spread of ethnic extremism and xenophobia among young people (Central Federal Area)
- Ethnic political and ethnic religious monitoring: analysis and forecasting of conflicts, and reasons for administrative decisions (Kabardino-Balkar Republic)
- Ethnic cultural potential of the regions as a factor in the formation of a united Russian nation
- State of inter-ethnic and interfaith relations in the constituent entities of the Russian Federation: basic trends and the role of migration, schools, society and the authorities
- Formation of a civic identity and ethnic stereotypes in schools
- Comprehensive analysis of the contemporary ethnosocial situation of Russian speakers, including the Russian population in the republics of the Russian Federation

165. In accordance with article 4, subparagraph (c), of the Convention, the activities of the public authorities and public institutions are based on universally recognized norms of international law and the provisions of national legislation which prohibit the incitement of racial discrimination.

166. At the end of 2006, the Ministry of Regional Development elaborated guidelines for government bodies in the constituent entities for the detection of emerging conflicts in inter-ethnic relations and the establishment of model operating procedures for dealing with conflict situations and overcoming their consequences. The guidelines were sent to the constituent entities for use by the authorities in their work.

167. Following a meeting of the Presidium of the State Council of the Russian Federation held on 11 February 2011 in the city of Ufa on measures to promote inter-ethnic harmony in Russian society, which was dictated by the need to elaborate systematic measures for the prevention of a radicalization of ethnic questions, President Medvedev and the Government of the Russian Federation issued instructions for organizing systematic and coordinated initiatives aimed at fostering harmonious inter-ethnic relations and creating conditions for the ethnic cultural development of the peoples of Russia.

168. Accordingly, the Government, together with the special representatives of the President in the Federal Areas and the government authorities of the constituent entities, was instructed to analyse the implementation of State personnel policy in the constituent entities and to make proposals for ensuring compliance with the principle of equal access for citizens to posts in the State and municipal civil service and prohibiting discrimination on grounds of ethnic origin; train, retrain and improve the qualifications of State and municipal civil servants in the area of inter-ethnic and interfaith relations and the prevention of extremism; set up standing working groups in the constituent entities whose membership includes representatives of religious associations; and elaborate and carry out comprehensive action plans for promoting inter-ethnic harmony, giving special attention to interaction with ethnic cultural associations, religious organizations and ethnic communities.

169. Pursuant to those instructions, the above-mentioned Government-level Interdepartmental Working Group on inter-ethnic relations was established to coordinate State nationalities policy and the development of the ethnic culture of the peoples of Russia. On 22 June 2011 Dmitry Kozak, Deputy Prime Minister, approved a plan of action elaborated for the implementation of a State nationalities policy for 2011–2012 which incorporates the main areas of activity of the federal authorities with regard to:

- Awareness-raising measures aimed at strengthening a national identity and promoting inter-ethnic tolerance
- The inculcation, including among young people, of a culture based on a multi-ethnic society
- The prevention of ethnic and religious political extremism and inter-ethnic conflicts
- The ethnic cultural development of the peoples of the Russian Federation, and support for ethnic voluntary associations and religious organizations
- The improvement of legislation in the area of inter-ethnic relations and the ethnic cultural development of the peoples of the Russian Federation

170. In the constituent entities, comprehensive plans for promoting inter-ethnic harmony have been drafted and are being implemented.

171. At the level of regional government bodies, specialized bodies and departments responsible for State nationalities policy are currently in operation in all the constituent entities. Standing working groups and interdepartmental and expert advisory bodies on inter-ethnic and ethnic religious relations have also been established.

172. The regional and local authorities are also working to prevent extremist crimes.

#### **D. Article 5**

173. In compliance with the fundamental obligations laid down in article 2 of the Convention, the Russian Federation prohibits racial discrimination in all its forms with regard to the enjoyment of basic human and fundamental freedoms, including those enumerated in article 5 of the Convention.

174. In conformity with article 5, subparagraph (a), of the Convention, justice in the Russian Federation is administered in strict conformity with the adversarial principle and the equality of the parties to proceedings.

175. Article 7 of Federal Constitutional Act No. 1 of 31 December 1996 on the Judicial System of the Russian Federation (in its version of Federal Constitutional Act No. 5 of 15 December 2001, Federal Constitutional Act No. 3 of 4 July 2004 and Federal Constitutional

Act No. 3 of 5 April 2005) establishes the principle of the equality of all persons before the law and the courts. The content of this principle is set out in article 7, paragraph 2, pursuant to which the courts may not give preference to any bodies or parties to proceedings on grounds of their national or social status, sex, race, ethnicity, language or political affiliation, origin, material or official status, place of residence, place of birth, attitude to religion, beliefs, membership of voluntary associations or other circumstances prescribed by law.

176. In accordance with article 15 of the Code of Criminal Procedure and article 12 of the Code of Civil Procedure, criminal justice and civil justice are both administered on the basis of the adversarial principle and the equality of the parties to proceedings.

177. Pursuant to article 5, subparagraph (b), of the Convention, the Russian Federation guarantees, without distinction as to race or national or ethnic origin, the security of person and protection against violence or bodily harm inflicted by government officials. Article 21 of the Constitution provides that human dignity is protected by the State, that it may not be impaired for any reason, that no one may be subjected to torture, violence or other cruel or degrading treatment or punishment and that no one may be subjected to medical, scientific or other experiments without free consent.

178. These norms are set out in article 3 of Federal Act No. 3 of 7 February 2011 (revised 6 December 2011) on the Police (which states that police officers may not resort to torture, violence or other cruel or degrading treatment; police officers are required to halt any acts which intentionally subject a person to pain or physical or mental suffering), article 13 (Right of convicted persons to security of person) of the Penal Enforcement Code (Federal Act No. 1 of 8 January 1997, revised 7 December 2011, with the amendments and additions which entered into force on 16 December 2011) and article 19 (Right to security of person) of Federal Act No. 103 of 15 July 1995, revised 3 December 2011, on Pretrial Detention of Suspects and Accused Persons, as well as other laws and regulations.

179. In conformity with article 5, subparagraph (c), of the Convention, article 32 of the Constitution establishes the right of citizens of the Russian Federation to take part in the conduct of public affairs both directly and through their representatives, to vote and to stand for election to federal and local government bodies and to participate in referendums.

180. Article 4, paragraph 2, of the Federal Act on the Fundamental Guarantees of Electoral Rights and the Right of Citizens to Participate in Referendums stipulates that citizens of the Russian Federation enjoy the right to vote, to stand for election and to participate in referendums, irrespective of sex, race, ethnic background, language or place of residence.

181. In accordance with article 28 of Federal Act No. 138 of 26 November 1996 (revised 9 November 2009) on the Enjoyment of the Constitutional Rights of Citizens of the Russian Federation to Vote and to Stand for Election to Local Government Bodies, election programmes and campaign materials may not contain calls for a violent change of the foundations of the constitutional system or a violation of the integrity of the Russian Federation. Campaigns and propaganda espousing social, racial, ethnic or religious superiority, and the publication and dissemination of declarations and materials which incite social, racial, ethnic or religious hatred, are prohibited.

182. In compliance with article 5, subparagraph (d) (i), of the Convention, every citizen has the right to freedom of movement and residence within the borders of the Russian Federation. This right, which is inalienable, is enjoyed by all citizens from birth, and it is set out in article 27 of the Constitution as well as in article 1 of Act No. 5242-1 of 25 June 1993 on the Right of Citizens of the Russian Federation to Freedom of Movement and Residence within the Borders of the Russian Federation.

183. In conformity with article 5, subparagraph (d) (ii), article 27 of the Constitution establishes the right of everyone legally present in the Russian Federation to freedom of movement and choice of temporary or permanent residence. The right to leave the Russian Federation is also enshrined, as is the right of citizens to return to the Russian Federation without hindrance.

184. In keeping with article 5, subparagraph (d) (iii), article 6 of the Constitution stipulates that citizenship is acquired and terminated in accordance with federal law; it is the same and equal for all, irrespective of the grounds for acquisition.

185. The Federal Citizenship Act No. 62 of 31 May 2002 (revised 28 June 2009) defines the principles of Russian citizenship and the rules governing relations in that regard, and it sets out the grounds, conditions and procedure for its acquisition and termination.

186. In compliance with article 5, subparagraph (d) (iv), of the Convention, article 12 of the Family Code provides that the contracting of marriage requires the mutual free consent of the man and woman concerned and their attainment of marital age. There are no restrictions in respect of membership of any social or ethnic group.

187. In keeping with article 5, subparagraph (d) (v), domestic legislation guarantees the right to own property alone as well as in association with others. Thus, part 1, section III (Property and related rights), of the Civil Code (Federal Act No. 51 of 30 November 1994, revised 30 November 2011) specifies that the Russian Federation recognizes private, State, municipal and other forms of property (art. 212, para. 1). Property may be owned by a private citizen or a legal entity, as well as by the Russian Federation, the constituent entities of the Russian Federation and municipal entities. The law defines the forms of property which may only be owned by the State or municipal entities (art. 212, para. 3). All property owners enjoy equal protection of their rights (art. 212, para. 4).

188. Article 213 specifies that private citizens and legal entities may own any property, with the exception of certain forms of property. There are no restrictions on the amount or value of property owned by private citizens and legal entities, except in cases in which such restrictions have been established by law for the purposes set out in article 1, paragraph 2, of the Code, i.e. solely to the extent necessary for the protection of the foundations of the constitutional system, the morals, health, rights and legitimate interests of other persons, national defence or State security.

189. In accordance with article 213, paragraphs 3 and 4, commercial and non-profit organizations, with the exception of State and municipal enterprises and institutions, are owners of property transferred to them in the form of shares (contributions) by their founders (shareholders, members), as well as property acquired by these legal entities on other grounds. Voluntary and religious organizations and associations, charities and other foundations own the property which they acquire and may dispose of it solely for the attainment of the aims set out in their constituent documents. The founders (shareholders, members) of these organizations forfeit entitlement to the property which they have transferred to the ownership of the organizations concerned. If such an organization is terminated, the property which remains after the claims of creditors have been met is used for the purposes set out in its constituent documents.

190. In conformity with article 5, subparagraph (d) (vi), of the Convention, domestic legislation ensures the right of Russian citizens to inherit without any restrictions on grounds of race, ethnic background or religious affiliation. Part 3, section V (Right to inherit), of the Civil Code (Federal Act No. 146 of 26 November 2001, revised 30 June 2008), on the principles of the enjoyment of this right in the Russian Federation, stipulates that citizens who are alive on the day of the opening of the inheritance as well as persons conceived during the life of the testator and born alive after the opening of the inheritance

can inherit. Legal entities which exist on the day of the opening of the inheritance and which are cited in the testament can also inherit (art. 1,116, para. 1).

191. In keeping with article 5, subparagraph (d) (vii), article 28 of the Constitution specifies that everyone is guaranteed freedom of conscience and religion, including the right to practise any religion individually or with others or not to profess any faith, to freely choose, hold and disseminate religious and other beliefs and to act in conformity with them.

192. Article 29 of the Constitution prohibits propaganda or campaigns which foment social, racial, ethnic or religious hatred or enmity; the advocacy of social, racial, ethnic, religious or linguistic superiority is also prohibited.

193. The right of everyone to equality before the law is recognized, irrespective of attitude to religion and convictions. The Federal Act on Freedom of Conscience and Religious Associations, adopted on 26 September 1997, governs legal relations with regard to the right of individuals and citizens to freedom of religion as well as the legal status of religious associations.

194. As of 31 December 2011, 24,624 religious associations were registered in the Russian Federation. Many religious groups are also active. A religious group is a separate form of the enjoyment of freedom of religion; registration is not mandatory and takes place by notification.

195. Article 59 of the Constitution establishes the right of any citizen of the Russian Federation for whom the performance of military service runs counter to his convictions or faith to perform alternative civilian service; this also applies in other cases set out in federal legislation. Further to this provision, Federal Act No. 113 of 25 July 2002 (revised 30 November 2011) on Alternative Civil Service was adopted.

196. In conformity with article 5, subparagraph (d) (viii), of the Convention, article 19 of the Constitution provides that the State guarantees equality of human and civil rights and freedoms, regardless of sex, race, ethnic background, language, origin, material or official status, place of residence, attitude to religion, beliefs, membership of voluntary associations or other circumstances. Any restriction on civil rights on grounds of social status, race, ethnic background, language or religious affiliation is prohibited.

197. Article 28 of the Constitution stipulates that everyone has the right freely to choose, hold and disseminate religious and other beliefs and to act in conformity with them.

198. Article 29 of the Constitution guarantees that no one may be forced to express their views or beliefs or to renounce them.

199. In compliance with article 5, subparagraph (d) (ix), of the Convention, domestic legislation on meetings, rallies, demonstrations, marches and picketing is based on the provisions of the Constitution, universally recognized principles and norms of international law and international agreements to which the Russian Federation is a party, Federal Act No. 54 of 19 June 2004 (revised 8 December 2011) on Meetings, Rallies, Demonstrations, Marches and Picketing and other legislative acts. The holding of meetings, rallies, demonstrations and marches and picketing for the purpose of election and referendum campaigns is regulated by this Act and by legislation on elections and referendums. Federal Act No. 125 of 26 September 1997 on Freedom of Conscience and Religious Associations governs the celebration of religious rites and ceremonies.

200. Pursuant to article 31 of the Constitution, citizens have the right to assemble peacefully, without arms, to hold meetings, rallies, demonstrations and marches and to picket.

201. In accordance with article 5 of the above-mentioned Federal Act No. 54, the organizer of a public event may be one or more citizens of the Russian Federation (the



organizer of a demonstration, a march or picketing may be a citizen of the Russian Federation who is 18 years of age or older, and the organizer of a rally or a meeting may be a citizen of the Russian Federation who is 16 years of age or older), political parties or other voluntary associations or religious organizations, their regional branches or other structural divisions which have assumed responsibility for organizing and conducting a public event. The organizer of a public event may not be (1) a person declared by a court to be incompetent or of limited legal competence or a person held in a place of detention pursuant to a court sentence; or (2) a political party, voluntary association or religious organization or a regional branch or other structural division thereof whose activity has been suspended or prohibited or which has been dissolved in accordance with the procedure established by law.

202. Article 6 of the Act defines the rights of participants in public events, which include:

(a) The right to participate in discussions, decision-making and other collective activities consistent with the aims of the event;

(b) The right, during the event, to use various symbols and other means of publicly expressing a collective or individual opinion, as well as campaigning means not prohibited by law;

(c) The right to adopt resolutions, demands and other communications and to send them to the central and local government authorities, voluntary and religious associations, and international and other bodies and organizations.

203. During public events, participants must:

(a) Comply with all legitimate demands of the organizer, persons authorized by the organizer, the authorized official of the government body of the constituent entity or the local authority and internal affairs officials;

(b) Comply with the requirements of public order and regulations for the holding of public events;

(c) Comply with the requirements under national legislation and other legal instruments for ensuring transport and road traffic safety if the event is held with the use of public transport.

204. In accordance with article 7 of Federal Act No. 76 of 27 May 1998 (revised 1 February 2012) on the Status of Military Personnel (Freedom of speech: the right to participate in meetings, rallies, demonstrations and marches and to picket), military personnel have the right to participate unarmed in meetings, rallies, demonstrations, marches and picketing held outside the territory of the military facility during the time in which they are freed from the performance of their military duties.

205. Pursuant to article 149 of the Criminal Code (Obstruction of the holding of or participation in a meeting, rally, demonstration or march or picketing), the unlawful obstruction of the holding of or participation in a meeting, rally, demonstration or march or picketing, or coercion of participation in those events, constitutes an offence if the acts are committed by an official who takes advantage of his or her official position or with the threat or use of violence.

206. In conformity with article 5, subparagraph (e) (i), the right of ethnic minorities and foreign nationals to work and to protection against unemployment enshrined in the Convention is implemented in accordance with the Labour Code, which sets out the main principles for the regulation of labour and associated relations.

207. Article 2 of the Labour Code recognizes the following rights:

- Freedom to work, including the right to work and to engage in labour which is freely chosen or agreed, and the right to decide how to use one's aptitudes and to choose a profession or type of activity
- Prohibition of forced labour and discrimination at the workplace
- Protection against unemployment, and assistance in finding employment
- The right of all workers to just conditions of work, including safe and healthy working conditions, and the right to rest, including limitations on working time, daily breaks, weekends and public holidays, and paid annual leave
- Equality of rights and opportunities for workers
- The right of all workers to timely and full payment of a just remuneration ensuring for themselves and their families an existence worthy of human dignity and not less than the minimum wage established by federal law
- Equal opportunities for workers to be promoted without any discrimination, account being taken of their productivity, skills and length of service in their specialty and also their vocational training, retraining and in-service training
- The right of workers and employers to form associations to protect their rights and interests, including the right of workers to form and join trade unions
- The right of workers to participate in the administration of organizations in a manner prescribed by law
- The right to a combination of State and contractual agreements on labour and associated relations
- The rights entailed under a social partnership, including the right of workers, employers and their associations to participate in the negotiated regulation of labour and associated relations
- The obligation to pay compensation for harm caused to workers in connection with the performance of their duties
- State guarantees for ensuring the rights of workers and employers, and State supervision and monitoring of compliance
- The right of everyone to State protection of their labour rights and freedoms, including defence before the courts
- The right of everyone to the settlement of individual and collective labour disputes as well as the right to strike in accordance with the procedure prescribed by the Labour Code and other federal legislation
- The obligation on the part of parties to a labour contract to comply with its terms, including the right of the employer to require workers to perform their working duties and to respect the employer's property, and the right of workers to require the employer to comply with his/her obligations towards the workers, labour legislation and other instruments containing norms of labour law
- The right of trade union representatives to monitor compliance with labour legislation and other instruments containing norms of labour law
- The right of workers to the protection of their dignity at work
- The right of workers to compulsory social insurance

208. Pursuant to article 3 of the Labour Code (Prohibition of discrimination at work), everyone has equal opportunities for the exercise of their labour rights. No one may be

restricted in their labour rights and freedoms or benefit from any preference on grounds of sex, race, skin colour, ethnic background, language, origin, material, family, social or official status, age, place of residence, attitude to religion, political convictions, membership or non-membership of a voluntary association or other circumstances unrelated to a worker's professional merits. Persons who consider that they have been subjected to employment discrimination are entitled to apply to the courts for the restoration of their violated rights and compensation for material and moral damage.

209. State guarantees that ensure the constitutional right of ethnic minorities and foreign nationals to work and to social protection against unemployment are also set out in the Employment Act. In accordance with article 6 of the Act, employment legislation also covers stateless persons, unless otherwise provided by federal law or international agreements to which the Russian Federation is a party.

210. The employment of ethnic minorities and foreign nationals lawfully residing in the Russian Federation is ensured through a number of federal job promotion services as well as State participation in other measures aimed at reducing tension on the labour market in the constituent entities.

211. In conformity with article 5, subparagraph (e) (ii), of the Convention, domestic legislation establishes the right of citizens to form trade unions. The principles of the enjoyment of this right are set out in a whole set of laws and regulations (chapter 58 (Protection by Trade Unions of the Labour Rights and Legitimate Interests of Workers) of the Labour Code (Federal Act No. 197) of 30 December 2001, revised 22 November 2011, amended 15 December 2011; Federal Act No. 10 on Trade Unions (Rights and Guarantees of Activities) of 12 January 1996, revised 28 December 2010; Federal Employment Act No. 1032-1 of 19 April 1991, revised 30 November 2011 (art. 21); and other legal instruments in the area). These rights are guaranteed for all citizens of the Russian Federation, regardless of ethnic or religious group.

212. In accordance with article 2 of the Federal Act No. 315 on Self-regulating Organizations of 1 December 2007 (revised 3 December 2011), entities which engage in entrepreneurial or professional activities may create non-profit organizations for the purpose of elaborating and introducing standards and regulations for these activities and monitoring compliance. Self-regulating organizations, which are based on membership, are enterprises from the same branch of industry or marketing outlet for goods and services or entities involved in a specific type of professional activity.

213. In keeping with article 5, subparagraph (e) (iii), of the Convention, domestic legislation recognizes the right of ownership and other rights in rem with regard to housing (chapter 18 of the Civil Code (Federal Act No. 51) of 30 November 1994, revised 30 November 2011; and section III, chapter 5, of the Housing Code (Federal Act No. 188) of 29 December 2004, revised 6 December 2011, amended 7 December 2011, with amendments and additions which entered into force on 1 March 2012, including the procedure for the rental and lease of housing (section III, chapter 5, article 671)).

214. The Federal Housing Programme for 2002–2010 was implemented in order to improve the living conditions of the population, to make the acquisition of housing more accessible and to increase the proportion of families able to purchase their own housing. A similar programme is under way for the period 2011–2015.

215. Consistent with article 5, subparagraph (e) (iv), of the Convention, Federal Act No. 323 of 21 November 2011 on the Public Health Care System stipulates that the State must provide health care for its citizens, irrespective of sex, race, age, ethnic background, language, presence of illness, state of health, origin, material or official status, place of residence, attitude to religion, convictions, membership of a voluntary association or other circumstances.

216. The State guarantees citizens protection against forms of discrimination based on the presence of any illness. Persons who are guilty of violating this provision are punishable in accordance with the law. Citizens outside the country are guaranteed the right to health care in conformity with the international agreements to which the Russian Federation is a party.

217. Foreign nationals in the Russian Federation are guaranteed health care in accordance with the international agreements to which the Russian Federation is a party. Stateless persons permanently resident in the Russian Federation and refugees have the same right to health care as Russian citizens, unless international agreements to which the Russian Federation is a party provide otherwise.

218. Pursuant to Federal Act No. 195 of 10 December 1995 on the Fundamentals of Social Services for the Population of the Russian Federation, the State system of social services consists of State enterprises and social service institutions which are owned and operated by the constituent entities of the Russian Federation.

219. Social services are also provided by enterprises and institutions under other forms of ownership and by citizens engaged in an entrepreneurial activity for providing social services to the population without the formation of a legal entity.

220. The State supports and encourages the development of social services, irrespective of the form of ownership. Social services are based on the following principles:

- Targeted assistance
- Accessibility
- Voluntary participation
- Humanity
- Priority for minors in difficulty
- Confidentiality
- Prevention

221. The State guarantees for all citizens the right to social services under the State system in the basic forms defined by the above Federal Act, in accordance with the procedures and conditions prescribed by legislation and other legal instruments of the constituent entities.

222. Social services are provided upon the request of a citizen, his or her guardian or other legal representative, a central or local authority or a voluntary association. Every citizen has the right to obtain information free of charge on possibilities, forms, procedures and conditions for benefiting from the social services of the State system.

223. Foreign nationals permanently residing in the Russian Federation have the same right to social services as Russian citizens, unless international agreements to which the Russian Federation is a party provide otherwise.

224. Social services are either free of charge or on a paying basis. Free social services under the State system are provided in accordance with the above Federal Act. The procedure for the provision of free social services is defined by the government bodies of the constituent entities.

225. Pursuant to the Federal Act, the following persons are entitled to free social services under the State system: citizens who are unable to care for themselves due to their advanced age, illness or disability and who do not have a family to assist and care for them, provided that their average income is less than the minimum subsistence level established for the

constituent entity in which they live; citizens in difficulty due to unemployment, natural disasters or inter-ethnic or armed conflicts; and minors in difficulty.

226. Social services on a paying basis under the State system are provided in accordance with the procedure defined by the government bodies of the constituent entities.

227. Social protection in the Russian Federation is provided as a matter of priority, irrespective of sex, race, social background, religious or political convictions or social status, to:

- Elderly citizens, especially if single or living alone, and married couples living alone
- Disabled veterans of the Second World War and families of deceased military personnel
- Disabled veterans of conflicts in other countries (“internationalist soldiers”)
- Disabled persons, included persons disabled since childhood and disabled children
- Citizens who were victims of the consequences of the accident at the Chernobyl nuclear power plant and radioactive fallout in other areas
- Unemployed persons
- Refugees and displaced persons
- Children who have lost both parents
- Children displaying deviant behaviour
- Families with disabled children
- Low-income families
- Large families
- Single mothers
- Persons with special needs

228. The social services system provides various forms of assistance, including financial support, housing benefits, hospital care, temporary shelter, day care at social service institutions and rehabilitation.

229. For example, temporary shelter in specialized facilities is provided to orphans, children without parental care, neglected minors, children in difficulty, citizens without a fixed residence or occupation, citizens victims of physical or psychological violence, natural disasters or the consequences of inter-ethnic or armed conflicts and other persons in need.

230. Work is currently under way to enlarge the range of social services, improve their quality, promote mobile forms for their provision, introduce public-private partnerships and involve non-profit organizations.

231. On the basis of blueprints approved for the development and placement of social service facilities, most constituent entities have medium-term plans (until 2020) to create new social service establishments by erecting model buildings and other structures, increasing the capacity of existing installations, constructing additional housing etc.

232. In all, there are some 3,700 social service facilities for the elderly and the disabled, and 3,200 for families and children. They are in operation in all the constituent entities, which are responsible for their organization and funding.

233. In compliance with article 5, subparagraph (e) (v), of the Convention, article 5 of the Education Act provides that citizens are guaranteed the opportunity to receive an education, irrespective of sex, race, ethnic background, language, origin, place of residence, attitude to religion, beliefs, membership of a voluntary organization or association, age, state of health, social, material or official status or criminal record.

234. Restrictions on the right of citizens to vocational training on grounds of sex, age, state of health or criminal record may be established only by law.

235. Federal Act No. 17 of 9 February 2007 on Amendments to the Education Act and the Federal Act on Higher and Post-Graduate Vocational Training introduced a single State examination as the form of certification for students who have completed the curriculum of general secondary education.

236. The experience in implementing this Federal Act testifies to the fact that a single State examination ensures an independent objective assessment of the quality of secondary general education and a selection of candidates for secondary and higher vocational education schools who are most capable and best prepared for a mastery of the relevant level of schooling; it also makes vocational education more accessible and reduces the time spent and expenses incurred by schools in the selection process.

237. Proof of the effectiveness of the single State examination as a tool which makes vocational education more accessible is the fact that a large percentage of school leavers who take the exam are from rural areas (approximately 30 per cent) and from district localities and towns (population of up to 100,000 persons). A positive trend has been observed with regard to applications by such school leavers to universities in Moscow, Saint Petersburg and other large Russian cities (in 2010, more than half of first-year university students in Saint Petersburg (59 per cent) were from other parts of the country). In addition, 62.5 per cent of school leavers who took the single State examination are from families with a monthly income of less than 10,000 roubles.

238. This suggests that there is greater equality of initial opportunities for all segments of the population to receive quality vocational training, including in the most popular specialities and areas.

239. Citizens of the Russian Federation have the right to receive basic general education in their native language and also to choose a language of instruction, within the limits of the capacities available to the educational system (article 6 of the Education Act). The right of citizens to receive education in their native language is ensured through the establishment of the necessary number of schools, classes and groups, as well as conditions for their functioning.

240. The educational establishment and/or school regulations determine language or languages of instruction.

241. Questions relating to the education of foreign nationals in the Russian Federation are dealt with in accordance with domestic legislation and international agreements to which the Russian Federation is a party (article 57 of the Education Act).

242. In accordance with the international agreements to which the Russian Federation is a party, the State helps representatives of the peoples of the Russian Federation who are living abroad obtain basic general education in their native language.

243. More detailed information on the realization of educational rights in the native language is contained in paragraphs 373 and 381–399.

244. In conformity with article 5, subparagraph (e) (vi), of the Convention, the Constitution and federal legislation (including the Federal Act on Guarantees for the Rights of the Small Indigenous Peoples of the North, Siberia and the Russian Far East and the



Federal Act on the Foundations of Legislation on Culture) specify that the Russian Federation ensures the preservation and restoration of the cultural and ethnic identity of the small ethnic communities of the Russian Federation. These norms are dictated by the vulnerability of the traditional way of life of small indigenous peoples, the harsh climatic conditions in their habitat, urbanization and globalization.

245. Domestic legislation, including the Act on the Languages of the Peoples of the Russian Federation and the Federal Act on Ethnic and Cultural Autonomy, also guarantees the right of the peoples of the Russian Federation to preserve and develop their native language, traditions and culture. Provision is made for the creation of conditions conducive to a comprehensive and equitable development of native languages and freedom of choice and use of one's language of communication, so that all the peoples inhabiting the territory of the Russian Federation may realize their ethnic and cultural potential more fully. The Act focuses on protecting the sovereign linguistic rights of the individual, irrespective of a person's origin, social or property status, race or ethnic background, sex, education, attitude to religion or place of residence. Information on the number of media outlets in the languages of the peoples of Russia is contained in the annex to this report.

246. The Federal Act on the Foundations of Legislation on Culture establishes the right of peoples and ethnic communities to preserve and develop their cultural and ethnic identity and to protect, restore and preserve their traditional cultural and historical habitat.

247. The Federal Ethnic Cultural Autonomy Act defines such autonomy as a form of ethnic cultural self-determination consisting in the voluntary association of citizens of the Russian Federation who identify with a particular ethnic community and who organize on that basis in order to address independently issues of preservation of identity, language development, education and ethnic culture.

248. In compliance with article 5, subparagraph (f), of the Convention, there is no limitation whatsoever, in legislation or in practice, on access to any place or service intended for use by the general public on grounds of race, ethnic background, language or other affiliation.

#### **1. Situation with regard to the realization of the rights of members of the Roma community**

249. As in other European countries, the socialization in the Russian Federation of the Roma, including their access to modern social infrastructures (issuance of documents, provision of health care, housing etc.) and their successful social integration, is an important issue.

250. Working meetings are regularly held with representatives of Roma voluntary associations at federal, regional and local levels of government. The discussion on the social, economic and ethnic cultural development of Russian Roma at a meeting held in August 2011 of the Expert Advisory Board of representatives of ethnic voluntary associations under the Deputy Prime Minister constituted a major breakthrough in the improvement of interdepartmental coordination on issues involving the Roma community. Following the meeting, the Ministry of Regional Development and the Federal Autonomous Ethnic Cultural Organization of Russian Roma were instructed to elaborate a plan of action for the socioeconomic and ethnic cultural development of the Roma community. The plan of action is currently being prepared; once completed, it will be submitted to the Government for approval.

251. The central authorities regard the legalization of homeownership as the legal mechanism which prevents the practice of forcibly evicting Roma. A legalization of the Roma population enables Roma to avail themselves of all the rights guaranteed to citizens under the Constitution and the relevant legislation at federal and regional level.

252. Efforts to legalize Roma settlements are carried out in close cooperation with the federal, regional and local authorities.

253. Roma families receive State support in the framework of State housing made available to members of the population in need of better living conditions. The following data provide concrete examples of an improvement in the living conditions of the Roma.

254. In 2010, 63 Roma families in Kaluga province asserted their right to housing: 45 families received State or municipal housing, 15 are on the waiting list for housing, and 3 are on the waiting list for an improvement in their living conditions.

255. In Pskov province, 36 Roma families were placed on the list of citizens in need of low-income State housing.

256. In Volga province, six Roma families were provided with mobile homes, which citizens receive whose homes have become uninhabitable because of an emergency situation.

257. Today, Roma who are most successfully integrated into the social structure of Russian society and are best adapted live in cities or in towns near big cities. A characteristic of this ethnic community is its growing urbanization.

258. In places with large Roma populations, a number of measures are planned in the framework of a federal programme for strengthening the unity of the Russian nation and promoting the ethnic cultural development of the peoples of Russia. The programme is being elaborated by the federal ministries on the instructions of the President, the aim being to intensify work on the sociocultural adaptation and integration of Roma into Russian society and to prevent conflict situations (including in connection with the demolition of dwellings).

259. Representatives of the Federal Autonomous Ethnic Cultural Organization of Russian Roma are members of the Expert Advisory Board within the Interdepartmental Working Group on inter-ethnic relations and the Advisory Board on the affairs of autonomous ethnic cultural organizations set up in 2006 under the Ministry of Regional Development. This has made it possible to hold a constructive dialogue on issues relating to the cultural and socioeconomic situation of Russia's Roma community.

260. In conjunction with the Council of Europe, the Russian Federation is taking part in the elaboration and implementation of measures to improve the situation of Roma in the States parties of the Council of Europe. Specifically, in late 2011 it expressed an interest in participating in a programme initiated in 2010 by Council of Europe Secretary General Thorbjørn Jagland to train mediators on questions of cooperation between Roma communities and all levels of government in the area of education, health care and employment for Roma.

## **2. Implementation of the rights of the small indigenous peoples of the Russian Federation**

261. There are 47 small indigenous peoples in the Russian Federation, with a total population of 312,900 persons. Large populations are found in more than 30 constituent entities. They include the small indigenous peoples of the North, Siberia and the Russian Far East, whose population according to the census stands at between 244,000 and 254,700 persons (for more detailed figures for each ethnic group, see paragraphs 12–14).

262. The protection of the rights of small indigenous peoples and small ethnic communities is linked to the enjoyment of the right to land and other natural resources, which is seen as the foundation of the life and activities of peoples living in the areas

concerned (article 9, paragraph 1, of the Constitution), and the right to the protection of their native habitat and traditional way of life.

263. Article 69 of the Constitution guarantees the rights of indigenous peoples in conformity with universally recognized principles and norms of international law and international agreements.

264. The Russian Federation also considered it desirable to establish in a constitutional provision the requirement to protect the native habitat and traditional way of life of indigenous peoples: article 72, paragraph 1 (l), of the Constitution specifies that the protection of the native habitat and traditional way of life of small ethnic communities is under the joint jurisdiction of the Russian Federation and its constituent entities.

265. Federal legislation defines the legal status of indigenous peoples and small ethnic communities living under particular climatic and natural conditions in the regions of the North, Siberia and the Russian Far East. Federal Act No. 104 of 20 July 2000 on General Principles of Organization of the Communities of Small Indigenous Peoples of the North, Siberia and the Russian Far East specifically introduced the notion of “small indigenous peoples of the North, Siberia and the Russian Far East”, a new term which took on much greater importance because of the special legal status of such peoples. The singling out, in 2000, of that specific group (most of whose members lived in nomadic communities) from among other indigenous peoples of the Russian Federation was an important catalyst for the development of both federal and other legislation addressing ethnic issues in the following years.

266. Small indigenous peoples are guaranteed priority access to natural resources, which are regarded as the foundation of their life and activities. Their traditional habitat and way of life are also protected.

267. Legislation sets out four criteria for qualifying as a small indigenous people:

- Habitation of traditional ancestral settlement areas
- Preservation of traditional ways of life and livelihoods
- Identity as an independent ethnic community
- Population in the Russian Federation of less than 50,000 persons

268. In recent years, many initiatives have been successfully carried out at federal level to preserve the cultural heritage and traditional way of life of indigenous peoples.

269. The main objective of these initiatives is to ensure the sustainable development of indigenous peoples, which entails strengthening their socioeconomic potential and protecting their native habitat, traditional way of life and cultural values through targeted State support and the mobilization of their own internal resources.

270. The Russian Federation was the first Member State to respond to the United Nations General Assembly resolution proclaiming the Second International Decade of the World’s Indigenous People. It was the first Member State of the United Nations to create the relevant national organizing committee, which was headed by the Minister of Regional Development, since the Ministry of Regional Development is responsible for implementing State policy on the small indigenous peoples of Russia.

271. In the period 2008–2010, a set of three-year priority government measures were put into effect in the framework of the Second Decade. The next measures will be implemented by 2014, when the Second Decade comes to a close.

272. These measures are composed of initiatives to:

- Improve legislation

- Preserve and promote the cultural heritage and development of the traditional culture of the small indigenous peoples of the Russian Federation
- Preserve their traditional way of life
- Improve their level of health care and education
- Encourage international cooperation

273. The cost of funding these measures for the period 2008–2010 stood at 80 million roubles annually.

274. In 16 constituent entities with large populations of small indigenous peoples, regional organizational committees were set up to carry out the Second Decade, plans of action were approved and implemented, and financial resources were allocated.

275. Three federal acts govern State policy in the area of small indigenous peoples:

(a) Federal Act No. 82 of 30 April 1999 on the General Principles for the Organization of Communities of the Small Indigenous Peoples of the North, Siberia and the Russian Far East;

(b) Federal Act No. 104 of 20 July 2000 on Guarantees for the Rights of the Small Indigenous Peoples of the North, Siberia and the Russian Far East;

(c) Federal Act No. 49 of 7 May 2001 on Areas of Traditional Resource Use of the Small Indigenous Peoples of the North, Siberia and the Russian Far East.

276. The rights of indigenous peoples are also formalized in many federal and regional laws governing questions of investment, social protection, education, culture, animal husbandry, fishing etc.

277. To improve legislation, a new version of the Federal Act on Areas of Traditional Resource Use has been drafted which defines rules for the formation of such areas, simplifies the procedure for their creation and envisages the possibility of establishing them on various categories of land.

278. In 2009, the Government approved lists of traditional habitats and traditional livelihoods.

279. A bill is currently being elaborated which gives members of indigenous peoples the right freely to engage in traditional fishing to meet non-commercial needs, without any limit on the catch (information on the bill is contained in annex no. 7 and annex no. 8).

280. One of the most important strategic documents recently adopted is the Outline for the sustainable development of the small indigenous peoples of the North, Siberia and the Russian Far East approved by the Government in May 2009 (the text of the Outline is introduced in the annex to this report).

281. The Outline, which lays the groundwork for State policy on small indigenous peoples, envisages:

- Preserving the native habitat and traditional resource use in order to protect and promote the traditional way of life of indigenous peoples, inter alia by ensuring that they have priority access to fishing and hunting grounds and to the biological resources in their traditional habitat and areas of traditional economic activities
- Developing and modernizing their traditional economic activities
- Raising their standard of living to the national level
- Improving their demographic situation by reducing infant mortality and raising life expectancy to the national average

- Promoting their access to educational services, taking into account their ethnic cultural particularities

282. The Outline is based on a number of principles which define approaches to achieving the sustainable development of small indigenous minorities, including:

- The need for a global solution to problems associated with the socioeconomic and ethnic cultural development of the indigenous peoples
- Recognition of the right to use one's native language and protection of this right by the State
- Shared responsibility of the federal Government and the regional governments for preserving the native habitat and traditional way of life of the indigenous peoples

283. A plan of action was elaborated and approved by the Ministry of Regional Development together with other government bodies to ensure the practical implementation of the Outline in 2009–2011, which is currently ongoing. Regional plans have been adopted and are being put into effect in the constituent entities.

284. In 2010–2011, as part of measures directed at supporting the culture, languages and traditional way of life of the small indigenous peoples, the Ministry of Regional Development alone conducted more than 40 major international and national initiatives, including international academic conferences, congresses of indigenous peoples, festivals of culture, trade fairs and seminars.

285. A number of documentaries and animated films about the small indigenous peoples of Russia have been produced to acquaint the public with their traditional culture.

286. In December 2009, the Ministry of Regional Development approved a method for calculating the extent of damage caused by the economic and other activities of organizations based on all forms of ownership or by private individuals to the traditional habitat and areas of traditional economic activities in areas inhabited by communities of indigenous peoples. On the basis of the method, the principle was established of corporate social responsibility, to which enterprises active in areas inhabited by indigenous peoples voluntarily commit themselves.

287. In accordance with this method, estimates have been made of the extent of damage caused in a number of constituent entities by the following companies to economic activities involving the traditional use of natural resources: the Erv agricultural production cooperative, the Izhemsk Reindeer-Breeder and Co. agricultural production cooperative, Geostroi, the BashNIPIneft and Tyumenneftegazproekt (in the Nenets Autonomous Area); the Tazov agricultural production cooperative, the Verkhne-Purov cooperative farm, Integra-Geofizika and the Tyumensk Office of Cadastral Engineers (in the Yamal-Nenets Autonomous Area); Vostsibtransproekt and the Ural Engineering Energy Centre (in Amur province); Omsktransproekt (in Transbaikal Territory); and Vostsibtransproekt, the Ural Energy Engineering Centre, Omsktransproekt, NIPII Energotransproekt and Neryungri-Metallik (in the Republic of Sakha (Yakutia)).

288. An estimate has also been made of the payment of damages by the following companies: Naryanmarnftegaz, Bashneft Oil, Gazprom, Nenets Oil, Geostroi, Lukoil-Komi, Rospan International, Bankorneft, Integra-Geofizika, SibNATs, Mechel, FSK EES, RusGidro, Neryungri-Metallik and Xhvoinoe.

289. Based on the calculations of organizations of indigenous peoples, the payments being made are in line with the amount of damage sustained.

290. A practice has developed of concluding agreements between mining corporations operating in close proximity to the traditional habitat of small indigenous peoples, the

regional authorities and the indigenous peoples to support cultural, educational and other projects for these peoples. Major enterprises which have concluded such agreements and have provided targeted assistance to communities of indigenous peoples include BP, Gazprom, Lukoil, Novotek and Surgutneftegaz.

291. A separate area of work concerns the elaboration of a vocational training programme on the management of ethnic cultural projects, with the financial participation of the Ministry of Regional Development. The programme focuses primarily on improving the skills of indigenous administrators in this area. In 2011, it is planned to train six persons, to be funded with resources from the federal budget. Graduates receive an official State diploma in occupational retraining and a British masters diploma.

292. The policy for the sustainable development of indigenous peoples is currently funded from the federal and regional budgets through the following instruments:

- Special regional programmes
- Subsidies from the federal budget
- Financial measures, including grants, under various items of the federal and regional budgets

293. Until 2008, the federal instrument which impacted the development of the small indigenous peoples of the North was the programme on the economic and social development of the small indigenous peoples of the North, on the basis of which the relevant constituent entities elaborated and implemented regional support programmes for these peoples. As of the end of 2011, long-term regional programmes for the sustainable development of small indigenous peoples were being carried out in 14 constituent entities. Under the federal programme for assisting small indigenous peoples, 205.6 million roubles were allocated in 2006 and 207.2 million roubles annually in 2007 and 2008. Since 2009, subsidies from the federal budget have been assigned to the budgets of the constituent entities (in accordance with regulations for the distribution and granting of subsidies approved by Government Decision No. 217 of 10 March 2009) to support the economic and social development of the small indigenous peoples of the North, Siberia and the Russian Far East. The subsidies totalled 600 million roubles in 2009 and 240 million roubles annually in 2010 and 2011. In addition, since 2008 80 million roubles have been set aside annually to fund priority measures for preparing and conducting national initiatives under the Second International Decade of the World's Indigenous People.

294. In the framework of the implementation of the State programme for the development of agriculture and the regulation of markets for agricultural products, basic commodities and foodstuffs, the Ministry of Agriculture designated the following sums to support northern reindeer breeding and horse breeding for meat: 278.2 million roubles in 2008, 283.7 million roubles in 2009, 180 million roubles in 2010 and up to 400 million roubles in 2011. Up to 300 million roubles have been earmarked for 2012. On average, approximately half the resources go to support traditional northern reindeer breeding.

### **3. Protection of religious rights**

295. The Government gives close attention to supporting activities of traditional religious organizations which aim to prevent and resolve inter-ethnic conflicts and promote inter-ethnic harmony and religious tolerance.

296. The federal authorities assist religious associations in rebuilding and restoring religious sites that are historical and cultural monuments and support socially significant measures of religious associations and their educational and awareness-raising initiatives. In 2011, 2,159 million roubles were earmarked under the Culture of Russia Programme for these reconstruction and restoration efforts.



297. The advisory bodies of all special representatives of the President in the Federal Areas and of the authorities in the constituent entities also cooperate with religious associations and support their socially relevant initiatives, including efforts to improve inter-ethnic relations.

298. In the constituent entities, cooperation agreements to support social initiatives of religious associations have become common.

299. In April 2011, the Ministry of Education and Science approved a plan of action for the period 2011–2013 for the training of specialists with an in-depth knowledge of the history and culture of Islam. The plan envisages measures to elaborate, test and introduce educational and technical support for upgrading the qualifications of teaching staff and training and in-service training of personnel with an in-depth knowledge of the history and culture of Islam so that they can work with young people and religious associations; to develop a system for training these specialists in the use of off-site educational technologies and to purchase modern hardware, software and computer and office equipment for that purpose; and to organize international cooperation on training in this area.

300. The plan of action is being implemented by the Saint Petersburg State University, the Moscow State University of Linguistics, the Nizhny Novgorod State University, the Pyatigorsk State University of Linguistics, the Bashkir State Teachers' University and the Kazan (Volga) Federal University.

## **E. Article 6**

301. The courts consider applications associated with the violation of anti-discrimination provisions of international and domestic law in accordance with the procedure prescribed in existing legislation. The Supreme Court periodically reviews the application by the courts of norms which criminalize extremist acts, including article 282 (Hatemongering and disparagement), article 282, paragraph 1 (Organization of an extremist association), and article 282, paragraph 2 (Organizing the activities of an extremist organization), of the Criminal Code.

302. Figures for the number of persons convicted under article 282, paragraph 1, are as follows: 13 persons in 2006, 32 persons in 2007, 62 persons in 2008, 53 persons in 2009, 82 persons in 2010 and 49 persons in the first half of 2011.

303. Figures for the number of persons convicted under article 282, paragraph 2, are as follows: 42 persons in 2006, 32 persons in 2007, 59 persons in 2008, 39 persons in 2009, 78 persons in 2010 and 27 persons in the first half of 2011.

304. The structure of extremist offences shows a market predominance of violent crimes (intentional causing of slight, moderate or severe harm to health, assaults, death threats), crimes against public security and public order (disorderly conduct) and crimes against the State power (incitement of hatred and enmity, including through the media).

305. In 2011, the courts in 71 regions of Russia considered criminal proceedings involving extremism, compared to 66 in 2010. Sixty-eight cases were considered under special procedures and five in a trial by jury. Guilty verdicts were handed down involving 336 persons (462 in 2010), of whom 70 were under 18 years of age (76 in 2010); 10 persons were acquitted (9 in 2010).

306. Charges were not pressed and the proceedings were terminated in criminal cases involving 67 persons. Compulsory measures of a medical nature were taken with regard to two persons. The courts sentenced 173 persons to deprivation of liberty (51.4 per cent); 130 persons received a suspended sentence.

307. Punishment for the commission of extremist offences takes into account the nature and degree of public danger of the crime, within the limits of the sanctions set out under the relevant articles of the Criminal Code.

308. All in all, the decline in the number of extremist offences and in the figures on investigations and court practice indicate an improvement in the quality and outcome of efforts by the law enforcement authorities in this area.

309. On 28 June 2011, the Plenum of the Supreme Court adopted Decision No. 11 on judicial practice in criminal proceedings involving extremist offences, in which it established basic mechanisms and made recommendations for judicial practice in domestic courts. Paragraph 2 of the Decision draws the attention of the courts to the fact that crimes committed on grounds of political, ideological, racial, ethnic or religious hatred or enmity with regard to any social group must be distinguished from crimes committed on grounds of personal hostile relations. For a proper determination of the motive, account must be taken, in particular, of the duration of interpersonal relations between the defendant and the victim and the presence of conflicts with the victim unrelated to ethnic, religious, ideological or political views or membership of a particular race or social group.

310. Russian courts consider civil claims involving discrimination, but separate statistics are not kept. Annex 3 to this report cites two Supreme Court decisions as examples.

## **F. Article 7**

311. The Russian Federation is a multi-ethnic, pluralistic and multicultural State in which more than 194 ethnic groups speaking 277 languages and dialects live. In it has arisen a unique, centuries-old experience of peaceful coexistence among the members of many peoples and religions. This is one of the richest multicultural mosaics of Europe and Asia. A policy of protecting human rights is consistently and explicitly ensured at all levels of State power, irrespective of race, skin colour, sex, religious affiliation or social or ethnic background. The Russian Federation demonstrates the positive experience of intercultural and interfaith dialogue and cooperation.

312. The Government is taking the measures enumerated in its annual list of actions for the implementation of State nationalities policy so as to prevent ethnic discrimination and inter-ethnic and interfaith hate crimes and combat the spread of racist attitudes.

### **1. Inter-ethnic relations**

313. As part of State nationalities policy, the authorities at federal and regional level conduct annual sociological studies, international and interregional forums, conferences, symposiums and seminars and carry out media campaigns on equality and intercultural dialogue, which include public service announcements, the broadcast of animated films and documentaries on the peoples of Russia and the appearance in the media of representatives of the Ministry of Regional Development and ethnic voluntary associations.

314. In 2008 and 2009, the Ministry of Regional Development undertook a number of important initiatives in the area of awareness-raising, which in today's world is acquiring increased importance for the formation of public opinion. An information campaign has been elaborated under the motto "Many peoples, one country!", the aim being to forge a national identity and promote inter-ethnic harmony. In the context of the campaign, videos with public service announcements are prepared and broadcast on federal and regional television stations, outdoor public service announcements are posted which foster harmonious inter-ethnic relations and tolerance towards people of other ethnic origin, and a special Internet portal has been created for the campaign and has been operating successfully ([www.stranaodna.ru](http://www.stranaodna.ru)).

315. Three editions of a basic illustrated Atlas of the cultures and religions of the peoples of Russia came out in 2008, 2010 and 2011, and a wall map of the religions of the Russian Federation has also been published, as well as a study guide for university students on tolerance and a culture of inter-ethnic dialogue, which has been approved by a number of institutions of higher education in the Southern Federal Area.

316. For the third year, the Ministry of Regional Development together with the guild of inter-ethnic journalists is printing more than 500,000 copies of a supplement, entitled “Ethnic accent”, for the newspaper *Argumenti nedeli*.

317. SMIrotvoret (Media-Peacemaker), a national media competition for the best coverage of inter-ethnic cooperation between the peoples of Russia and their ethnic cultural development, is held annually together with the inter-ethnic journalism guild, Radio Russia and *Russkaya Gazeta*. The competition has already borne fruit: the outcome of the 2011 event indicated that in the three years between 2009 and 2011, the number of positive reports on inter-ethnic questions in the federal, regional and ethnic media more than doubled.

318. Whereas in 2008 134 federal and regional media outlets and 71 ethnic media outlets participated in the competition, in 2009 those figures rose to 301 media outlets, including 98 ethnic outlets. In 2010, the contributions of 360 media outlets, including 178 ethnic outlets, were announced for participation in the competition, and in 2011 625.

319. Another media project — a broadcast by the Moscow Echo radio station between January 2010 and January 2011 of the weekly programme “We” on issues of identity and the current state of ethnic relations in Russia — was accompanied by the publication in *Nezavisimaya Gazeta* of articles on the subject of the broadcast.

320. The Ministry of Regional Development helps the constituent entities conduct public awareness campaigns by making available, free of charge, materials elaborated during its information campaign, including originals of campaign posters, and discs and cassettes with films and cartoons. Agreements of this kind have been concluded with 56 constituent entities.

321. Several constituent entities have already launched their own public awareness campaigns. For example, public service television videos entitled “Many peoples, one country” have been posted on networks in a number of regions, and the official portals of some constituent entities (for example, Orlovsk province) are creating their own broadcasts on the subject (for instance, the public service video “Perm Territory – our common home” was produced in Perm Territory).

322. The Federal Press and Mass Communications Agency provides support on a competitive basis, with funding from the federal budget, for important projects on this topic in the print and electronic media in order to stimulate their interest in forging attitudes of tolerance, preventing extremism and xenophobia in Russian society and promoting inter-ethnic relations and respect for persons of different religious beliefs and cultures.

323. In the period 2006–2011, more than 192 million roubles in funding were awarded for 98 projects in the electronic media, and more than 115 million roubles for 308 projects in the print media, including:

- A television documentary on “The small peoples of Russia”, on the way of life and traditions of these peoples (broadcast by Russian Federation-24)
- A cycle of short documentaries entitled “The faces of Russia”, on the culture and way of life of the peoples of the Russian Federation (broadcast by Russian Federation-24)

- Television programmes: “Diaspora” (broadcast by “Mir”); “Kalam” (“Word”), about Dagestan, one of the biggest regions of the Northern Caucasus (broadcast by “Dagestan”, the State television and radio channel); “Tasu Yava” (“Our Tazov soil”), a cycle of public information programmes for the small indigenous peoples of the North (broadcast by 25 TVK, Tazov district, 27 TVK); “Ethnic Interest” (broadcast by “Karelia”, the State television and radio channel); and “Ul’gur”, about the life of the small indigenous peoples of the North in the Republic of Buryatia-Evenk (broadcast by “Russian Federation 1” and regional stations of “Buryatia”, the State television and radio channel)
- The radio programmes “Peoples of Russia”, on the ethnic diversity of the population and the promotion of inter-ethnic cooperation (broadcast by “Radio Russia”), and “I live in a big country”, a cycle of children’s cultural and educational programmes about Russia and its population (broadcast by the radio station “Gardarika”)
- “Ethnic Russians”, a website with information and analysis ([www.russedina.ru](http://www.russedina.ru), [www.russedina.org](http://www.russedina.org)) devoted to the promotion of cooperation between the Russian Federation and the countries of the CIS and the Baltic, inter-ethnic dialogue and the resolution of the problems of ethnic Russians abroad and displaced persons in Russia
- The projects: “Caucasus – an integral part of Russia”, “So different, and yet so similar” and “A multi-ethnic country, a sole Russian Federation” of the newspaper *Etnosfera* (Moscow)
- The projects “Northern Caucasus – a multifaceted world” and “Encouraging inter-ethnic cultural contacts as a way of combating xenophobia” of the newspaper *Druzhba narodov* (Moscow)
- The project “Addressing the problems of the Roma people and promoting their cultural traditions” of the newspaper *Tsygane Rossii* (Moscow)
- The project “In the single family of peoples of Russia” of the newspaper *Odon/Zvezda* (Republic of Buryatia)
- The project “Northern Caucasus: let’s work on the shape of things to come” of the newspaper *Muzhskoi kharakter* (Stavropol Territory)
- The project “Russian Federation – towards peace and tolerance” of the newspaper *Komsomolskaya pravda* (Moscow)
- The project “Fostering inter-ethnic harmony” of the newspaper *Argumenti nedeli* (Moscow)
- The project “The Russian Federation – a family of peoples” of the newspaper *Novie izvestia* (Moscow)
- The project “Preserving, strengthening and promoting the identity of the small indigenous peoples of the North – the Evenks” (with a translation into Evenk) of the newspaper *Vesti Severa* (Transbaikal Territory)
- The project “A big homeland – a patchwork of small peoples” of the newspaper *Cholman/Kama*, in the Mari language (Republic of Bashkortostan)
- *Finnougoria. Etnichesky komfort*, an academic journal

324. The Federal Press and Mass Communications Agency provides funding for the “Peace, harmony, unity” national television festival, the “Dialogue of cultures” media forum, the “Finno-Ugric world” international television festival and “Unity”, a national

competition of television films and programmes devoted to efforts to combat extremism, xenophobia and racial and religious hatred.

325. At the end of 2011, the television channel “Russian Federation-Culture” held the “Whole Russian Federation” folklore festival, which familiarized television viewers with the uniqueness and artistic diversity of the peoples of the Russian Federation.

326. A “Strana.ru” project is acquainting Internet users with the various regions of the country, the people who live there and their traditions and culture as part of “My Planet”, a 24-hour public television station of the National State Television and Radio Broadcasting Company.

327. With the support of the Ministry of Regional Development, many public information initiatives have been conducted that are of current interest because they heighten awareness of the history and culture of the peoples of Russia and promote ethnic tolerance in society. These include:

- The “We are the Russian Federation” forum, devoted to National Unity Day (3–4 November 2009, city of Omsk)
- The publication of a study guide (“Tolerance and a culture of inter-ethnic dialogue”) for university students
- The publication of “State nationalities policy and relations between the State and religions in the Russian Federation”, a yearly compilation of information and analysis
- The publication of *Finno-Ugorskaya Gazeta*, a nationwide cultural and educational journal
- The publication of *Finno-Ugorsky Mir*, an interregional television journal

328. The Ministry of Regional Development has been monitoring inter-ethnic relations and relations between the State and religions since 2005, on the basis of which a compilation of information and reference materials (“State nationalities policy and relations between the State and religions”) is published annually. Information summaries, guidance material and proposals concerning the implementation of State nationalities policy are also produced on the basis of the monitoring.

329. Together with the Council of Europe and the European Union, in 2009–2011 the Ministry of Regional Development carried out a joint programme entitled “Minorities in Russia: developing languages, culture, media and civil society”, the aim of which was to encourage the promotion of languages, culture, the media and civil society in Russia and to consider the possible ratification by the Russian Federation of the European Charter for Regional or Minority Languages.

330. In the context of the joint three-year project, 60 seminars were held for experts in the area of education, linguistics and jurisprudence as well as representatives of all levels of government active in the protection of the languages of ethnic minorities.

331. The implementation of the above-mentioned measures has made it possible to intensify inter-ethnic and intercultural cooperation and promote the principles of a culture of peace, ethnic tolerance and civic solidarity; heighten awareness of ethnic cultural development and combat the spread of manifestations of extremism, xenophobia and chauvinism among young people; prevent a politicizing and artificial mobilization of ethnic identity and the propagation of extremist ideology; enhance the cooperation of government authorities with ethnic voluntary associations on strengthening the unity of the Russian nation and ensuring the ethnic and cultural rights of the peoples of Russia; and encourage positive media reporting on aspects of inter-ethnic cooperation, the ethnic cultural

development of the peoples of Russia and best practices for intercultural and interfaith dialogue.

332. Since 2011, the Ministry of Regional Development has been hosting practical training courses for the law enforcement specialists of the constituent entities which address issues relating to State nationalities policy, the development of the ethnic culture of the peoples of Russia and the prevention of ethnic and religious extremism. As of 31 December 2011, 106 requests concerning such courses had been received, and 7 courses were held in January and February 2012.

333. The Social Forum of the Russian Federation is making major efforts to prevent occurrences of xenophobia and racism, address ways of overcoming fear of migrants, anti-Semitism, Islamophobia and extremist manifestations of inter-ethnic and interfaith discord and encourage interracial initiatives, including among young people. In 2010 and 2011, it organized and carried out many initiatives in this area, including:

- A number of public discussions on peace in the Caucasus (in the cities of Inzhich-Chukun, Elburgan, Adyge-Xhabl, Karachaevsk, Uchkeken and Cherkessk of the Karachaevo-Cherkessk Republic; in the cities of Vladikavkaz and Beslan and the rural communities of Lesken, Balta and Tarskoe of the Republic of North Ossetia-Alania; in the cities of Derbent, Xhasavyurt, Buinaksk, Izberbash, Kizlyar and Makhachkala of the Republic of Dagestan; in the city of Malgobek of the Republic of Ingushetia; and in the city of Nalchik, the towns of Prokhladny, Baksan and Elbrus and the rural communities of Sarmakovo, Bezengi and Novaya Balkaria of the Kabardino-Balkar Republic).
- Hearings on the topic of democratic freedoms and the improvement of anti-extremist legislation.
- The second international forum on migrants in Russia: security and cooperation.
- Hearings on the topic “What does the Caucasus think, and what does the Caucasus want?”, at which the results of the work of discussion platforms on “Peace in the Caucasus” were examined in the Republics of Dagestan, Ingushetia, Karachaevo-Cherkessia and North Ossetia.
- The second annual forum on the topic “Promoting harmonious relations between citizens and preventing intolerance and extremism”.
- A meeting of the Social Forum’s commission on inter-ethnic relations and freedom of conscience to discuss a textbook entitled “History of Russia 1917–2009”, by A.S. Barsenkov and A.I. Vdovin (publisher: Aspekt-Press, 2010) and the role of the educational system in promoting social harmony and preventing ethnic extremism. Specifically, the meeting considered whether the textbook in question has a negative impact on inter-ethnic relations and whether it contributes to the rise of inter-ethnic tensions and hatred. Recommendations were drafted and forwarded to the Minister of Education and Science, the president and the dean of the history department of Lomonosov State University, Moscow, and the government commission on combating attempts to falsify history to the detriment of the interests of Russia. An expert committee set up by the university’s academic council examined the textbook and concluded that, given its shortcomings, it was not appropriate for use in schools.
- A round-table discussion entitled “Interfaith cooperation and freedom of religion in Moscow; the viewpoint of various faiths”.
- Hearings on the topic “Study of religious culture in school: experience of the first year of the experiment”, at which the experience gathered in the process of the testing in 19 regions of a comprehensive course for use in general education, entitled



“Fundamentals of religious cultures and secular ethics”, was analysed and recommendations drafted for the continuation of the experiment; the findings of the study conducted by the Social Forum on the attitudes of parents towards the teaching of the course in secondary education establishments were presented.

- A round-table discussion on the topic “Kabardino-Balkar Republic: problems of the radicalization of youth”.
- A meeting of the Social Forum’s Russian nationalities club.
- A round-table discussion on the topic “The legal system and the fight against extremism: problems and progress”.
- A round-table discussion on the topic “Republic of Dagestan: religious conflict and the search for national reconciliation”.
- A photography exhibit devoted to World Refugee Day and to overcoming xenophobia and fear of migrants, organized together with the Office of the United Nations High Commissioner for Refugees (UNHCR) in the Russian Federation, the aim of which was to heighten public awareness of the problems of refugees and other migrants in Russia and to launch an appeal for respect for the rights of, tolerance towards and solidarity with persons who have lost their homeland and have been forced to start a new life.
- A round-table discussion on the topic “Opening the Talmud to world culture”. Participants discussed the contribution of Jewish religious literature to world culture and its impact on the development of Jewish thought. The results of 42 years of creative work by Rabbi Adin Shteinzalts in translating and analysing the Talmud were presented.
- Hearings on the topic “Problems associated with the establishment of holidays in the constituent entities: theory and practice”, organized together with the Spiritual Authority of the Muslims of Moscow and the Muslim High Council of the Central Region.
- Hearings on the topic “Russians in the Caucasus: myths and reality”.
- Public hearings on the topic “Rules of conduct for interaction between migrants and the indigenous population”.
- A round-table discussion on the topic “Nationalism, extremism and xenophobia: challenges facing the media”.

## 2. Education

334. A project on a multicultural educational model as a basis for shaping the Russian identity of children in general education schools has been implemented in the framework of the Federal education programme. The following tasks were addressed:

- Compiling and analysing experience in the constituent entities in opening schools offering classes in the native language of the local population
- Elaborating a conceptual foundation of multicultural education based on the principles of an overlapping of ethnic and cultural orientation, national cultural values and universal ideals with a view to presenting the ethnic culture of schoolchildren and teachers as a part of Russian and world culture
- Devising study guides and psychological teaching methods for forging Russian identity in preschool and general education
- Designing pilot projects that train teaching staff for work in a multicultural context

335. In the framework of the federal education programme for 2011–2015, teaching modules are being elaborated and tested for the sections of model curricula at general and supplementary education schools which focus on preventing extremism and antisocial behaviour; training the teaching staff to promote the personality and socialization of schoolchildren and inculcate a culture of inter-ethnic relations; devising and improving various forms of constructive cooperation between school, the family and civil society institutions in order to teach schoolchildren to become good citizens; and establishing (with the help of universities and private specialized secondary schools) student centres which instil a culture of national solidarity and a rejection of extremism.

336. Support for education with an ethnic focus plays a major role in preserving ethnic identity. With that in mind, in August 2006 an Outline for a national educational policy was approved which places special emphasis on ethnic problems in the educational context and cooperation with religious associations.

337. Museums are of great importance for State nationalities policy. Initiatives of museums aimed at presenting cultural diversity in Russia and fostering active civic mindedness and a rejection of manifestations of religious extremism, xenophobia and nationalism are supported in the framework of the State programme on the patriotic education of citizens of the Russian Federation, 2006–2010 and the federal programme on the culture of Russia, 2006–2011.

338. Libraries, as a social institution, also play an important instructional and educational role in strengthening civil peace and inter-ethnic harmony. The “Institute of Tolerance” project, a priority programme area of activity of the M.I. Rudomino National State Library of Foreign Literature launched in 2003, is working to advance the basic values of civil society and to promote understanding and friendly interpersonal relations through intercultural, inter-ethnic and interfaith dialogue.

339. Centres for Tolerance (Centres for intercultural, inter-ethnic and interfaith dialogue) are being created in the framework of the Institute of Tolerance with the help of cultural and educational institutions (libraries and universities) at regional level and abroad. The establishment of the Centres for Tolerance is a joint initiative of the regions and the Institute of Tolerance.

340. The Institute of Tolerance has elaborated and is carrying out a special project for children entitled “Other people, other traditions, other ways of life” to teach tolerance from an early age. The authors of the books published in the context of the project seek to explain to children that all people are different and that foreign cultures and customs must be treated with respect. The books address various aspects of life, including the family, religion, food, clothing, customs of different peoples. The main objective is to interest children in learning about how diverse the world is. The series is designed to help teach respect and tolerance for unfamiliar cultural events and to overcome entrenched negative ethnic stereotypes. The project is being carried out in cooperation with UNESCO. Of the 12 books produced in the framework of the project, 5 have already been translated into English and published.

341. Experience gathered by members of ethnic communities, school boards, student self-management bodies and the teaching staff of educational institutions in working together to prevent extremism and foster attitudes of respect towards the culture and traditions of the peoples of Russia has been compiled in a project on the implementation of measures for the organization of systematic cooperation between general and vocational education establishments, government authorities, voluntary associations and civil society institutions on preventing extremism among schoolchildren; there is an ongoing public discussion of these issues, and an Internet website has been set up for that purpose (<http://www.extremizmu-net.moocv.ru>).

342. Pursuant to the new State general education standards, education is a process not only of acquiring basic knowledge, skills and abilities, but also of developing the individual and instilling spiritual, moral, social, family and other values.

343. Special importance in that regard is attached to the spiritual and moral development of children and the inculcation of qualities such as tolerance and respect for other cultures and a willingness and ability to engage in dialogue and cooperation. That presupposes a knowledge of the particularities of traditional cultures and the cultural basis of social phenomena and traditions. Spiritual and moral development is meant to instil ethical values in the coming generation, informing their conduct with a sense of social responsibility, and to provide guidance in real-life situations.

344. Amendments have been made to the Education Act which reflect the importance of meeting the ethnic, cultural and religious needs of citizens of the Russian Federation and which specify for the first time that one of the main goals of education is spiritual and moral development (art. 14, para. 2). The education of children and young people is one of the most important tasks of society as a whole, including for parents. This task can be fulfilled with the help of a comprehensive educational system in which new curricula are elaborated that ensure the spiritual and moral enlightenment and instruction of children in classes on the history and culture of the religions that constitute an integral part of the historical and cultural patrimony of the peoples of Russia, as well as on the foundations of ethics.

345. Clearly, the educational component, together with academic knowledge and information about society and its interests, laws, culture and traditions, cannot be left out of the school curriculum without considerable damage to the quality of education and the development of the individual. Today this problem is a matter of concern to the general public the world over, as reflected above all in questions associated with inculcating tolerance and a sense of moral identity in the coming generation.

346. This problem is addressed, inter alia, by teaching about the history and culture of religions (and in some cases about the foundations of ethics). These subjects are included in classes or topics on history, literature, social studies and the arts. With the consent of schoolchildren and their parents and upon a decision by the teaching staff and the parents' committee, such material is taught in optional courses, electives, special classes or courses in the framework of the regional (ethnic regional) and educational components of the State general education standards. The history and culture of religions as well as the foundations of ethics may also be covered in various ways in extracurricular public awareness and educational activities.

347. Ministry of Education and Science Letter No. 03-2375 of 25 November 2009, containing recommendations for meeting the ethnic, cultural and religious needs of citizens, was sent to the constituent entities with a view to helping develop regional experience in the teaching of morals.

348. The new education standards also contemplate instilling a sense of patriotism. Classes with that goal are included in a comprehensive programme of spiritual and moral development, instruction and socialization.

349. Testing of the new education standards for the tenth and eleventh classes is planned to start no earlier than 1 September 2013, and all the renewed standards, once tested, are to be implemented as from 1 September 2020. Considerable attention is currently being given to promoting attitudes of tolerance and preventing xenophobia, extremism and other forms of discrimination on ethnic or religious grounds. Special emphasis is placed on the fight against various manifestations of racism based on Nazi ideologies, above all among young people.

350. The subject of the Holocaust is included in the school curriculum and in State general education standards in order to teach the values of mutual understanding and tolerance.

351. The Academy for the in-service training and retraining of teaching staff offers a special course on current questions relating to the Holocaust as part of its programme for upgrading the qualifications of teachers of history and civics.

352. The objective presentation of history in schoolbooks and the teaching of respect for social norms are particularly important in nurturing a sense of patriotism and civic duty and preventing extremism and xenophobia.

353. On 31 March and 1 April 2011, at the initiative of the Council of the Association of Teachers of History and Civics (a national voluntary organization), the presidium of the Russian Academy of Sciences held its first national congress of teachers of history and civics, at which it was stressed that the teaching of history is a strategic resource for the innovative development of Russia and forms the basis of a sense of civic duty and patriotism.

354. As an area of further work, the congress identified the development of the activities of the Association, one of whose aims should be an active participation in pinpointing and discussing strategic problems associated with the teaching of history, as well as promotion of the integration of the teaching of history and science.

355. In compliance with paragraphs 5.2.4 and 5.2.30 of its rules, the Ministry of Education and Science approved the regulations governing the evaluation of textbooks (Ministry of Education and Science Instruction No. 428 of 23 April 2010) and the regulations for the selection of organizations for the publication of textbooks approved for use in the school system (Ministry of Education and Science Instruction No. 88 of 18 March 2009). Pursuant to these instructions, the evaluation of a textbook includes an examination of whether its content conforms to current academic thinking, account being taken of the relevant educational level under the federal component of the State general education standards or the requirements of the standards for the educational level concerned.

356. In accordance with paragraph 3 of the rules, the evaluation has an educational and academic component. In conformity with paragraph 6, the Academy of Sciences and the Academy of Education participate in the evaluation, together with other organizations on the basis of their government-approved statutes, which define their powers. The academies' responsibility, scientific capacity and authority ensure the quality of the evaluation and prevent any textbooks of a quality that does not meet requirements being used in education.

357. Pursuant to the administrative regulations on the federal list of textbooks approved by Ministry of Education and Science Instruction No. 5 of 11 January 2007, the list of recommended (approved) textbooks for use in schools with general education curricula and State accreditation includes only those textbooks which have been evaluated by the above-mentioned bodies.

358. The right of all peoples of Russia to receive general education in their native language is guaranteed by law. The Constitution, the Education Act, the Ethnic Cultural Autonomy Act and the Act on the Languages of the Russian Federation stipulate that citizens of the Russian Federation who are members of specific ethnic communities have the right to be taught in their native language and to choose the language of upbringing and instruction, within the limits of the possibilities offered by the educational system and in accordance with national and regional legislation.

359. Federal legislation on education establishes the basic principles and framework for regulating relations in this sphere and delimits the competence and responsibility of the

federal, regional and local authorities and educational institutions. This makes it possible to take into account ethnic, regional and other criteria when educational issues are addressed.

360. The Education Act defines, as basic aims of education, the integration of the individual into the national and world culture and the development of the individual and citizen as a member of contemporary society.

361. The legislation of the Russian Federation is in full compliance with the norms and principles of international law which ensure the right of children to receive religious instruction (article 5, paragraph 4, of the Federal Act on freedom of conscience and religious associations).

362. In accordance with Presidential Instruction No. 2009 of 2 August 2009, the Ministry of Education and Science and a number of other related ministries and academic and educational institutions, a comprehensive course of study for general education establishments, on the foundations of religious cultures and secular ethics, was tested in 21 constituent entities with the participation of national religious organizations. The course is composed of six modules which can be chosen by the children's parents or legal representatives: the foundations of Russian Orthodox culture, the foundations of Islamic culture, the foundations of Buddhist culture, the foundations of Jewish culture, the foundations of international religious cultures and the foundations of secular ethics. The participants in the test, which was completed in the 2010/11 school year, considered that it had produced positive results.

363. The course is of a secular and cultural nature. Its main aims include: familiarizing schoolchildren with the foundations of religious cultures and secular ethics; developing notions about the importance of ethical norms and values; consolidating knowledge, understanding and ideas about spiritual culture and morals inculcated in young children in primary school; and developing the ability of young schoolchildren to communicate in a multi-ethnic and interfaith context on the basis of mutual respect and dialogue for the benefit of social peace and harmony. All school modules chosen by parents or legal representatives give children an idea of the diversity of religious and non-religious culture and offer the possibility of discussing questions about cultural particularities and traditions which are of greatest interest to them.

364. During the testing process, criteria were put into place for the implementation of the course: regional coordination councils were created whose membership includes representatives of religious associations; qualified teachers were trained; textbooks were elaborated and recommended for use; in most regions, a special plan was drafted to explain in the media how the course is introduced; and constructive cooperation was established between teachers, academics and representatives of various confessions.

365. Recently, migration has also left its mark on Russia's educational system. In these circumstances, the Federal Education Act's requirements on the integration of the individual into national and international culture are being implemented. The Russian language, which links the culture and languages of the peoples in Russia, has a special role to play in that regard, which the federal programme "Russian language" (2011–2015) aims to strengthen. The authorities of the constituent entities are making considerable efforts to promote the linguistic and sociocultural integration of migrants. Special programmes in Russian are being elaborated for children who have not been taught the language in school, methods and personalized learning approaches are being devised, and additional classes and courses in Russian are being introduced for children from neighbouring and more distant countries.

366. In accordance with article 26.3, paragraph 2 (20), of Federal Act No. 184 of 6 October 1999 on the Basic Principles of the Organization of the Legislative (Representative) and Executive Bodies of the Constituent Entities, the government

authorities of the constituent entities have joint competence for the support of schools offering classes in the native language of the local population and other subjects with an ethnic cultural focus.

367. Together with representatives of the educational authorities in the constituent entities (the national republics), explanatory memorandums have been produced on measures to protect the right of citizens to be taught in their native language and to use it in the educational system as a language of learning, account being taken of the provisions of Federal Act No. 309 of 1 December 2007 (circulated to all the constituent entities in Letter No. 03-848 of 28 April 2008).

368. Article 6, paragraph 3, of the Education Act provides that the language or languages of upbringing and instruction in an educational establishment are determined by the administrator(s) of that establishment and are set out in its regulations.

369. Pursuant to article 52, paragraph 1, of the Act, parents/legal representatives have the right to choose a school offering a particular language of upbringing and instruction for their children.

370. The importance of education in the local language is underscored by the fact that, according to data from the Centre for ethnic-related problems of education, which is attached to the Federal Institute for the Promotion of Education of the Ministry of Education and Science, by 1989 the number of languages used in schools as languages of upbringing and instruction had increased to 55. Today there are 80; in other words, demand and availability continue to grow.

371. The languages of ethnic minorities, including Azerbaijani, Armenian, Georgian, Kazakh, Altai, Bashkir, Buryat, Mari (Lugovoi), Tatar, Udmurt, Chuvash, Evenki, Yukagir and Yakut, are used in non-language classes in general education establishments (i.e. non-language classes are taught in these languages).

372. According to census data, 277 languages and dialects are spoken in the Russian Federation.

373. Programmes for the preservation, study and development of the languages of the peoples of the Russian Federation include plans for achieving a functional knowledge of the Russian language, as the State language of the Russian Federation, the official languages of the republics and other languages of the peoples of the Russian Federation, encouraging the publication of literature in these languages, funding academic research on their preservation, study and development, creating conditions for the dissemination in the media of information, communications and materials in these languages, training specialists in this area and improving the educational system in order to promote these languages.

374. The Federal Institute for the Promotion of Education conducts annual nationwide competitions for teachers of native languages, forums entitled “Languages of the peoples of the Russian Federation, a national asset for society and State”, theoretical and practical conferences, technical seminars and round tables, and it publishes monographs, textbooks and teaching aids, guidance material and compendiums of academic articles.

375. Pursuant to Government Order No. 1245 of 28 August 2009 on the approval of a plan of action for the implementation of the Outline 2009–2011 for the sustainable development of the small indigenous peoples of the North, Siberia and the Russian Far East, a number of initiatives are being carried out to preserve and develop the languages of these peoples.

376. For example, in 2010 study materials in the languages of the small indigenous peoples of the North, Siberia and the Russian Far East were ordered and supplied in compliance with Ministry of Education and Science Instruction No. 1032 of 15 October



2010. Textbooks, training manuals, dictionaries, works of fiction and other reading material have been published in the native languages of the small indigenous peoples of the North, Siberia and the Russian Far East, namely Nenets, Khanti and Shurym dialects, Nganasan, Tofalar, Nivxh, Nanai, Orochi, Udege, Evenki, Selkup and Saam.

377. In compliance with Government Order No. 2455 of 28 December 2011, in 2010 and 2011 the functional use of the languages of the small indigenous peoples in school was monitored in the framework of measures taken in connection with the holding in the Russian Federation of the Second International Decade of the World's Indigenous People, 2011–2014. The aim of the monitoring was to assess current functional knowledge of those native languages and to improve the quality of their teaching in schools and teacher training institutes.

378. In accordance with agreements between educational institutions (the A.I. Gertzen Russian State Teachers' University, the M.K. Amosov Yakutsk State University, the Far East State University, the Yugor State University and others) and State and local authorities, special admissions conditions are applied for members of the small indigenous peoples of the North, Siberia and the Russian Far East.

379. Conferences, seminars, symposiums and other initiatives on the promotion of the ethnic culture of the small indigenous peoples of the North, Siberia and the Russian Far East are conducted annually. For example, on 18 and 19 October 2011 an international seminar was held in the city of Syktyvkar on the topic: "The native languages of the small indigenous peoples of the North, Siberia and the Russian Far East and their current use in schools: monitoring results".

380. At the seminar, recommendations were drafted for the implementation of language education policy in areas in which the small indigenous peoples of the North have their traditional habitat and traditional economic activities, and a guidance manual was produced for the elaboration of curricula for the languages of these peoples that have the status of mother tongue, account being taken of the criteria of the federal State education standards for general primary school education.

381. In compliance with article 7 of the Convention, between 2006 and 2011 the Ministry of Internal Affairs conducted the following initiatives:

(a) Teaching material was used which was designed for studying effective measures for countering ethnic and religious intolerance, xenophobia and nationalism and eliminating the legal vacuum. Theoretical, sociopolitical and cultural aspects of inter-ethnic and interfaith relations, and ways and means of combating extremism, ethnic and religious intolerance, xenophobia and nationalism and promoting ethnic and religious tolerance among internal affairs officials were identified and examined in classes in political science, sociology, cultural studies, legal psychology, ethnopsychology and other subjects;

(b) In 2011, the Ministry of Internal Affairs elaborated seven federal State education standards for higher education in the following specialties: 031001.65: Law enforcement activities; 030901.65: Legal enforcement of national security; 030301.65: Psychology of official duties; 050407.65: Education and the psychology of deviant behaviour; 080101.65: Economic security; 090915.65: Security of information technologies in the law enforcement sphere; and 031003.65: Legal expertise. These standards cover skills which graduates must master, including a capacity for tolerant behaviour and social and professional cooperation that takes into account ethnic cultural and religious diversity, the ability to work in a group and cooperate with colleagues and to prevent and defuse conflict situations in a constructive manner, and other general cultural and professional skills;

(c) Questions relating to the prevention of ethnic and religious intolerance, xenophobia and nationalism are examined when initiatives of an ethical, psychological or patriotic nature are conducted. Issues which arise for discussion during meetings of the staff of the educational institutions of the Ministry of Internal Affairs with internal affairs veterans and the personnel of departments of the central and regional offices of the Ministry of Internal Affairs include problems of inter-ethnic relations, the phenomenon of tolerance, and respect for the religious sentiments and ethnic identity of others;

(d) Members of the staff of the psychology departments of educational institutions within the Ministry of Internal Affairs have regularly met with and counselled students who are experiencing a conflict in a group or are under great emotional stress, and they have conducted training courses in study groups on effective communication skills;

(e) With the help of the educational institutions of the Ministry of Internal Affairs, theoretical and practical conferences and round tables have been held on problems associated with counteracting extremism, ethnic and religious intolerance, xenophobia and nationalism. These events include: "Extremism in Russia: concepts, causes and ways and means of combating the phenomenon" (Nizhny Novgorod Academy of the Ministry of Internal Affairs, 24 January 2011) and "Facts, conditions and ways of supporting harmonious inter-ethnic cooperation, and counteracting the emergence of extremist tendencies in contemporary Russian society" (Voronezh Institute of the Ministry of Internal Affairs, 28 April 2011).

382. The procuratorial authorities active in the area of inter-ethnic relations and the prevention of extremism are also receiving further training. For example, in November 2010 a seminar was conducted in cooperation with the Academy of the Office of the Procurator-General and with the participation of deputies from the constituent entities on the topic "Elaboration of measures to identify and remove from circulation printed and audio and video materials whose content is designed to incite ethnic, racial or religious hatred".

383. Lectures are held at the Academy of the Office of the Procurator-General for the in-service training of the procuratorial staff of the constituent entities (84 persons every six months).

384. Training courses for the staff of the procuratorial authorities of the constituent entities are also offered on questions relating to the enforcement of laws on national security, legislation on international relations and the prevention of extremism (about 15 staff members every six months).

385. Information circulars are sent out on ways of improving the procuratorial monitoring by the regional and local authorities of the application of legislation on combating extremism, the aim being to provide technical and practical assistance to the procurators of the constituent entities. In these circulars, the procurators are requested to ensure that the regional and local authorities take additional measures to improve the monitoring of inter-ethnic and interfaith relations in order to identify risks of their destabilization and provide an overall assessment of conflict potential. It was also recommended that existing programmes should be reviewed and that new programmes should be drafted which give priority to measures designed to prevent extremist activities, including awareness-raising and educational initiatives.

386. In 2001, the Ministry of Health and Social Development, with the participation of the Ministry of Regional Development and specialists from the Russian Academy of the National Economy and the Civil Service under the President of the Russian Federation, produced teaching materials to provide comprehensive technical assistance to officials who deal with questions of inter-ethnic and interfaith relations. These include:

- A teaching guide on the prevention of extremism in the area of inter-ethnic and interfaith relations
- A masters programme on ethnic and federal relations
- A masters programme on the security of interfaith and inter-ethnic relations
- A programme of in-service training on ethnic, federal and interfaith relations
- A programme of further training on the administration by the State of interfaith and inter-ethnic relations
- A programme of in-service training on State-confessional relations in Russia: current situation and paths to improvement
- A programme of in-service training on the foundations of State policy in the area of freedom of conscience and worship
- A programme of in-service training on the threat of religious extremism and terrorism to Russia's national security

387. According to data from the constituent entities, in the first half of 2011 3,651 civil servants of the constituent entities and 3,052 municipal civil servants received training, retraining or further training. In the second half of 2011, training was planned for another 4,647 civil servants of the constituent entities and 3,475 municipal civil servants. More detailed information on the implementation of these plans is expected soon.

388. In addition, most constituent entities have made provision for expenditure on further training of State and municipal civil servants in 2012.

### **3. Culture**

389. In 2008 an Outline for the preservation of the intangible cultural heritage of the peoples of the Russian Federation, 2011–2015, and a programme of measures for its implementation were approved, pursuant to which a pilot variant of the digital catalogue of objects of the intangible cultural heritage of the peoples of the Russian Federation was produced. Work was begun in 2009, and the catalogue has now been put into service and is being tested in its experimental form. Training seminars have been attended by more than 100 specialists from 20 regions of Russia.

390. Together with the State Russian House of folk art, a number of popular initiatives have been conducted with the assistance of the cultural authorities of the constituent entities, including:

- “Singing childhood”, a national festival of children’s choirs
- “The opening of Europe”, an international festival
- A national festival of folk dancing for the T.A. Ustinovaya prize “Dancing the circle dance throughout Russia”
- “Peace to the Caucasus”, an international art festival
- The “Golden Ring Community” international festival of folk art
- The “Volga Delta without borders” festival (city of Astrakhan), in which groups from Azerbaijan, Belarus, Kazakhstan and Ukraine, together with Russian groups, took part
- An annual Commonwealth Festival of the folk art of the countries of the CIS and the Baltic (Rostov province)
- “My Russian Federation”, a national literary competition (Kirov province)

- “Russia’s Roots”, a national festival of folk art (Chuvash Republic)
- “From Russia to the heart”, an international festival of ethnic Russians

391. Initiatives included international and national theoretical and practical conferences on “Ethnic culture in contemporary Russia: traditions and innovations” and “Problems of the preservation of the intangible cultural heritage of humanity: the experience of international cooperation”, seminars for specialists of the cultural and recreational institutions of the Northern Caucasus and Southern Federal Areas and for heads of Finno-Ugric folklore groups, and many other activities. Round-table discussions, workshops and creative laboratories were held in the framework of these events, which were directed at creating conditions for a dialogue of cultures in a multi-ethnic State and the inculcation of attitudes of tolerance.

392. Traditional festivals, exhibitions and competitions are held annually in all the constituent entities in the context of the special federal programme “The Culture of Russia (2006–2011)”.

393. Since 2006, the Russian Institute of Cultural Studies has been carrying out assessments of various documents to detect the presence of illegal content designed to incite hatred or enmity or the degradation of human dignity on grounds of race, ethnic background or origin or to foment violent acts against persons of other ethnic groups, as well as offensive (negative or pejorative) statements about persons from other ethnic groups and the commission of other unlawful acts for nationalistic reasons.

394. The purpose of this activity, which on average involves some 200 assessments annually, is to prevent extremism in Russian society, identify extremist nationalistic organizations and combat falsifications of historical facts calculated to create negative stereotypes of certain population groups on the basis of ethnic or religious features.

395. In April 2011, a major cultural forum of ethnic minorities was organized in the city of Grozny (Chechen Republic), in the context of which a theoretical and practical conference was held on the topic “State support for the culture of the ethnic minorities of the Northern Caucasus as a factor in improving inter-ethnic relations”.

396. A number of projects are being carried out to develop ethno-tourism in order to prevent xenophobia and to promote and heighten awareness of ethnic cultures in Russia. Today it can be said that unique types of ethno-tourism have emerged and that the experience with them has been good. This concerns religious, educational, ecological, rural and other forms of tourism. With regard to sites of ethnocultural tourism, reference is made to ethnic villages (museums), multipurpose ethnic cultural complexes (composed of hotels, restaurants and recreation centres of an ethnic nature), monasteries and ethnographic open-air museums. These projects are being realized in many constituent entities. For example, in Orenburg a multifunctional museum — the ethnic cultural complex “Ethnic village” — is operating successfully in the city itself.

397. In Rostov province, an historical and architectural museum and park have opened at the Starocherkasskaya Cossack village, which is a unique complex of 23 monuments dating back to the seventeenth to nineteenth centuries, when it was the capital of the Don Cossacks (Cherkassk).

398. Ataman, a Cossack open-air ethno-tourism complex, is in operation on the Taman peninsula. There is also a project to create an ethno village, “Yb”, in the Republic of Komi with a museum and ethnographic centre of wooden architecture, reflecting the unique traditional culture of the ethnographic groups of the area.

399. Other sites exist in many constituent entities, including in areas inhabited by small indigenous peoples (the Yamal-Nenets Autonomous Area, the Khanty-Mansi Autonomous Area, Yakutia and elsewhere).

400. Media outlets in the languages of Russia are developing, in particular Mari and Nenets radio and Internet websites, including those which focus on the culture, languages, traditions and customs of the peoples of Russia. The informal Internet portal [www.chumoteka](http://www.chumoteka), which is devoted to the life of the peoples of the Nenets Autonomous Area, is a noteworthy project of this kind.

401. The government authorities provide financial assistance to many non-profit organizations representing small indigenous peoples to help them with projects of social importance.

#### **IV. Information on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination, adopted following the consideration of the eighteenth and nineteenth reports of the Russian Federation**

##### **Paragraph 9**

402. Paragraph 9 of the concluding observations recommends that the Russian Federation consider adopting a clear and comprehensive definition of racial discrimination in its legislation.

403. Article 1 of the Convention contains a definition of the term “racial discrimination”, namely “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

404. Pursuant to article 17 of the Constitution of the Russian Federation, human and civil rights and freedoms are recognized and guaranteed in the Russian Federation in conformity with universally accepted principles and norms of international law.

405. In accordance with article 15 of the Constitution, the universally recognized principles of international law and the international agreements to which the Russian Federation is a party are an integral part of its legal system.

406. In addition, article 19 of the Constitution guarantees equality of human and civil rights and freedoms, irrespective of race, ethnic background, language, origin, place of residence or attitude to religion. Restrictions of any kind on the rights of citizens on social, racial, ethnic, linguistic or religious grounds are prohibited.

407. Russian legislation guarantees the exercise of labour rights, the opportunity to receive an education and health care protection (article 3 of the Labour Code, article 5 of the Education Act and article 5 of the Federal Public Health Care Act).

##### **Paragraph 10**

408. Pursuant to the Presidential Decree adopted in 1997 on the basic identity documents of citizens of the Russian Federation in the territory of the Russian Federation and Government Decision No. 828 of 8 July 1997 on the approval of the regulations on

passports of citizens of the Russian Federation, the reference in passports to ethnic identity has been removed.

409. The Federal Vital Statistics Act provides for an entry on ethnic background in a birth certificate at the applicant's request, and in a death certificate if there is an entry to that effect in the deceased's personal identity document. Information on the ethnic background of migrants is not included in the records of the Office of Statistics. Thus, it is not possible, on the basis of current statistics, to present systematic data on ethnic composition.

410. The Russian Population Census is the sole source of information on the ethnic composition of the population.

411. Data on ethnic composition from the 2002 Census (including basic sociodemographic characteristics) have been posted on the website [www.perepis2002.ru](http://www.perepis2002.ru), where they are publicly accessible in the section entitled "Catalogue of Official Publications of the 2002 Census", volume 4 (Ethnic composition, languages spoken, citizenship); they are also set out in the annex to this report.

412. The results of the 2010 Census with regard to the basic sociodemographic characteristics (marital status, level of education, sources of means of subsistence and occupational activity) of the various ethnic groups will be received in the third quarter of 2012.

### **Paragraph 11**

413. Information on the Russian Federation's policy on this question is set out in paragraphs 61–64 and 402–407 of the report.

### **Paragraph 12**

414. There are in-service training courses for law enforcement officials on human rights and the prohibition of discrimination on racial, ethnic or religious grounds in the performance of official duties (this is explained in greater detail in paragraphs 381–385).

### **Paragraph 13**

415. Reports of violations in 2006 of the rights of Georgian citizens and ethnic Georgians in the Russian Federation were investigated by the offices of the procurator in 2007 and 2008 in the context of an application submitted by the Republic of Georgia to the European Court of Human Rights.

416. The investigation did not find any evidence of destruction of identity papers, detention in inhumane conditions, deportations under a simplified procedure or other repressive measures.

417. It was determined that the investigation into whether citizens of Georgia were in compliance with the regulations on temporary and permanent residence in the Russian Federation had been carried out by the internal affairs and migration authorities in accordance with the powers vested in them by the Code of Administrative Offences. On the basis of the investigation, materials for instituting administrative prosecution against persons who had violated the requirements of migration legislation were referred to the courts in accordance with the procedure prescribed by law. In the vast majority of cases, the court rulings on the deportation of Georgian citizens in administrative proceedings were in strict conformity with the law.



418. The prosecutorial authorities filed appeals against a number of decisions on administrative offences involving Georgian citizens in which the courts had allowed violations of rules of material and procedural law. Following a review of those appeals, the unlawful decisions taken in administrative proceedings were overruled by a higher court.

419. The detention conditions of Georgian citizens held in special facilities pending their deportation were in conformity with the requirements of Russian law. There have not been any complaints from Georgian citizens or their representatives of unlawful placement in detention facilities or of improper detention conditions.

#### **Paragraph 14**

420. Information on the situation with regard to the protection of the rights of members of the Roma community is contained in paragraph 260.

#### **Paragraph 15**

421. Information on measures for the socioeconomic development of the small indigenous peoples of the North, Siberia and the Russian Far East is contained in paragraphs 261–294.

#### **Paragraphs 16–18**

422. The procuratorial authorities attach great importance to building up law enforcement practice, analysing positive experience and elaborating informational and practical material directed at preventing and combating extremism.

423. A memorandum on the improvement of procuratorial oversight of compliance by the regional and local authorities with legislation on countering extremism has been sent out to provide technical and practical assistance to the procurators of the constituent entities.

424. The procurators are requested to ensure the adoption by the regional and local authorities of additional measures to improve monitoring of the state of inter-ethnic and interfaith relations so as to identify risks of their destabilization and to have an overall assessment of potential conflicts.

425. It was also recommended that existing programmes should be reviewed and that new programmes should be drafted which give priority to measures designed to prevent extremist activities, including awareness-raising and educational initiatives.

426. Paragraph 17 of the concluding observations refers to the need to give primary consideration to combating extremist organizations, and their members, engaging in activities motivated by racial, ethnic or religious hatred or enmity.

427. It should be noted that the Criminal Code of the Russian Federation establishes criminal liability for extremist offences, including offences motivated by political, ideological, racial, ethnic or religious hatred or enmity or committed on grounds of hatred or enmity towards any social group, as set out in the relevant articles of the general part of the Criminal Code (article 280 (Public calls for extremist activities), article 282 (Hatemongering and disparagement), article 282.1 (Organization of an extremist association) and article 282.2 (Organizing the activities of an extremist organization)).

428. Procurators have taken part in court proceedings on whether to declare certain organizations to be extremist and to prohibit their activities.

429. For example, on 27 April 2010 Moscow City Court examined the application of the procuratorial authorities to declare the interregional movement “Slavic Union” an extremist organization and to prohibit its activities. The Slavic Union spread ideas propagating national socialism similar to the ideology of fascist Germany. These ideas espouse exclusiveness and superiority on ethnic grounds.

430. A civil action has also been instituted in a court in Moscow province to prohibit the activities in Russia of the interregional voluntary association “Spiritual Ancestral Russian Empire Rus”, which calls for the creation of a so-called “Slavic-Aryan” State, the displacement of persons from other ethnic groups and the repression, and even physical destruction, of persons who do not support the association’s ideas. The procurator of Moscow province has forwarded the application for the prohibition of the activities of the Spiritual Ancestral Russian Empire Rus to Moscow Provincial Court and has suspended its activities.

431. The Supreme Court granted the application of the Procurator-General to prohibit in the Russian Federation the activities of the international association “National Socialist Society”, whose actual aims are to seize power in the country, change the foundations of the constitutional order and create a unitary State based on the principles of the superiority of the Russian nation and the violation of the rights, freedoms and legitimate interests of persons and citizens on grounds of ethnic background.

432. The court granted in full the application of the Procurator-General to declare the National Social Society an extremist organization and to prohibit its activities.

433. With a view to cooperating with voluntary associations, officials of the Office of the Procurator-General have taken part in conferences, round-table discussions and seminars aimed at preventing and combating extremism.

434. In compliance with paragraph 3 of the list of instructions contained in Order No. 488 issued by President Medvedev on 27 February 2011, in November 2011 a seminar was held in conjunction with the Academy of the Office of the Procurator-General and with the participation of the deputy procurators of the constituent entities on the following topic: “The elaboration of measures to detect and remove from circulation printed matter and audio and visual materials whose content is designed to incite ethnic, racial or religious hatred”, the aim of which was to give procuratorial officials in-service training on inter-ethnic relations and ways of combating extremism.

435. Measures are being taken to improve the qualifications of the staff of the regional offices of the procurator (see paragraphs 403–405).

436. Between 2008 and 2011, representatives of the Office of the Procurator-General participated in the following international initiatives, at which questions concerning the elimination of racial discrimination were discussed (paragraph 16 of the concluding observations):

- An additional meeting on combating racism and xenophobia, on the topic “National institutes active in countering discrimination, and their role in the fight against racism and xenophobia” (Vienna, 29–30 May 2008)
- A round-table discussion with the participation of authors of alternative and official reports on Russia’s compliance with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (Moscow, 21 July 2008)
- The seventy-third session of the Committee on the Elimination of Racial Discrimination (Geneva, 31 July–4 August 2008)

- A round-table discussion with the participation of representatives of federal ministries and administrations, organized by the European Commission against Racism and Intolerance (Moscow, 23 September 2008)
- The United Nations Review Conference on the implementation of the Durban Declaration and Programme of Action to combat racism, racial discrimination, xenophobia and related intolerance (Geneva, 20–24 April 2009)
- The OSCE High-Level Conference on Tolerance and Non-Discrimination (Astana, 29–30 June 2010)
- The forty-sixth session of the Committee on the Elimination of Discrimination against Women (New York, 13–16 June 2010)
- A seminar of the Office of the United Nations High Commissioner for Human Rights for CIS member States on the topic “Elaboration and realization of national plans of action to combat racial discrimination and intolerance” (Saint Petersburg, 29–30 September 2011)
- Working meetings of the fifteenth annual OSCE Human Dimension Implementation Meeting on the topic “Tolerance and Non-Discrimination” (Warsaw, 4–6 October 2011)
- A High-Level OSCE Meeting on the topic “Confronting Intolerance and Discrimination against Muslims in Public Discourse” (Vienna, 28 October 2011)

### **Paragraph 19**

437. As of 1 December 2011, 51 constituent entities had received and reviewed applications for refugee status from 1,153 foreign nationals from 45 States. By way of comparison, 43 constituent entities had received and reviewed applications from 2,048 persons from 49 States over the equivalent period in 2010. This year the number of applications compared to 2011 fell by almost half. The decline has been due to the relative stabilization of the situation in Georgia after the 2008 conflict, which has led to a sharp drop in the number of asylum seekers from that country.

438. Fifty-seven applications were received from detention facilities, primarily persons awaiting extradition (approximately 5 per cent of applications), as against 33 persons in the equivalent period in 2010, one third of whom had left Uzbekistan. This year for the first time six applications for refugee status were received from foreign nationals subject to readmission in other States.

439. As of 1 December 2011, 814 refugees from 28 States were registered with 36 regional offices of the Federal Migration Service, as compared to 801 refugees from 30 States in the equivalent period in 2010.

440. It is expected that in 2012, the number of applications for refugee status and temporary asylum will grow by 10 per cent compared to 2011.

441. In the first 11 months of 2011, 34 regional offices of the Federal Migration Service received and reviewed applications for temporary asylum from 945 persons from 36 States, as against 1,606 persons in the equivalent period in 2010, a 1.7-fold decline.

442. There was a preponderance of applications from Afghan nationals (46 per cent). Fifty-nine per cent of applications for temporary asylum submitted in the reporting period were approved, compared to 62 per cent in the equivalent period in 2010. As of 1 December 2011, 3,057 persons were listed with 44 regional offices of the Federal Migration

Service as having been granted temporary asylum, as against 3,781 persons in the equivalent period in 2010.

443. During the reporting period, the Federal Migration Service has explored possibilities for providing temporary accommodation to asylum seekers. To that end, its Serebryaniki public service centre in Tver province was converted to a temporary accommodation facility. The buildings at the centre were overhauled and modernized with funds from the Federal Migration Service and UNHCR.

444. The centre took in the first foreign nationals in December. In order to improve legislation, in the course of 2011 work was carried out on 25 draft regulatory acts on the granting of asylum, including 1 draft international agreement (elaborated in conformity with the Collective Security Treaty Organization), 5 federal bills, 1 draft presidential decree, 10 draft government decisions and 8 draft instructions of the Federal Migration Service.

445. Ten regulatory acts, including one federal act, four presidential decisions and five administrative instructions, were enacted during the reporting period. A bill was submitted to the Government on amendments to several pieces of legislation in connection with the inclusion of biometric data in the residence permits of stateless persons and the travel documents issued to persons granted refugee status.

446. A rough draft has been agreed on a travel document to be issued to persons granted asylum which will contain the biometric data of the holder; it will be used in a pilot project during the presentation of a new generation of passports and visa documents in January 2012 at the Saint Petersburg office of the Federal Passport and Visa Service to permit delegations from the Russian Federation to attend the work of the fiftieth to fifty-second meetings of the UNHCR Executive Committee's Standing Committee. Background documents, analyses and reference material on questions relating to the granting of asylum were prepared at the sixty-second session of the Executive Committee of the High Commissioner's programme.

447. Officials from specialized government bodies regularly attend international forums on questions concerning the protection of refugees. For example, representatives of the Federal Migration Service took part in a regional conference on the protection of refugees and international migration in Central Asia in Alma-Ata (Kazakhstan), a working meeting organized by the Council of Europe and the European Bank for Reconstruction and Development on the problem of refugees from North Africa and the Middle East, held at the European Court of Human Rights in Strasbourg, and other events.

448. In the framework of the Russia-EU dialogue on migration, a thematic session was held on 14 December 2011 in Moscow on the subject of international protection.

449. In conjunction with UNHCR, two workshops were conducted on the topic "International and national protection of refugees, and the procedure for determining refugee status. Readmission", which 35 directors and administrators from 37 regional offices of the Federal Migration Service attended.

## **Paragraph 20**

450. Russian legislation specifies that all citizens of the Russian Federation, irrespective of ethnic background, have the same rights and opportunities. The introduction of official quotas enabling members of small indigenous peoples to have a preferential right to representation in elected government bodies is contrary to established national and international legal norms.

## Paragraph 21

451. Internally displaced persons are registered under the procedure introduced by the regional offices of the Federal Migration Service in Form No. 7, on the registration of families who have arrived in an emergency situation, approved by Federal Migration Service Instruction No. 78 of 27 September 1999 on the registration of citizens from the Chechen Republic.

452. As of 1 April 2009, all citizens who temporarily left their place of permanent residence in the Chechen Republic and were registered under the above-mentioned procedure had been removed from the registry on the basis of a freely expressed declaration of their intention to return to their previous place of permanent residence.

453. Citizens who suffered as a result of the resolution of the crisis in the Chechen Republic are entitled to receive compensation for lost housing and property. To receive such compensation, it is not necessary to have an officially registered status of displaced person.

454. In application of Presidential Decree No. 404 of 4 July 2003 on the procedure for the payment of compensation for loss of life or property to citizens who suffered as a result of the resolution of the crisis in the Chechen Republic and were permanent residents on its territory, compensation totalling 26.43 billion roubles has been paid to 75,510 families (124,745 persons). Citizens who suffered as a result of the resolution of the crisis who left the Chechen Republic permanently have been paid compensation for loss of life or property pursuant to Government Decision No. 510 of 30 April 1997 on the procedure for the payment of compensation in such cases. Compensation totalling 4,075 billion roubles has been paid to more than 38,000 families under this procedure.

455. Act No. 4530-1 of 19 February 1993 (revised 1 July 2011) on Displaced Persons sets out economic, social and legal guarantees for categories of citizens recognized as displaced persons under the prescribed procedure. Currently there are 7,094 displaced persons (2,590 families) from the Chechen Republic, of whom 4,885 persons (1,448 families) chose not to return and opted instead to stay in the Republic of Ingushetia.

456. Since 2011, State support for the housing of displaced persons living in the Republic of Ingushetia has been covered under the special federal programme “Socioeconomic development of the Republic of Ingushetia, 2010–2016”, approved by Government Decision No. 1087 of 24 December 2009.

457. The programme calls for a targeted allocation of subsidies from the federal budget totalling 4.2 billion roubles to the budget of the Republic of Ingushetia to provide social assistance to displaced persons. Initiatives to house these persons will be carried out by the Government of the Republic of Ingushetia. There are sufficient financial resources to provide housing to persons in this category who are registered in Ingushetia.

458. Families of displaced persons from the Chechen Republic registered in other constituent entities (2,209 persons, or 1,141 families) are to receive housing subsidies under the subprogramme “Implementation of the State obligation to provide housing to categories of citizens established by federal law”, and they are to be issued housing certificates to acquire a dwelling as part of the special federal housing programme 2011–2015, approved by Government Decision No. 1050 of 17 December 2010.

459. Initiatives are being carried out in the Russian Federation as part of a special federal programme for the socioeconomic development of the Chechen Republic, 2008–2012, to provide social assistance to citizens for the renovation of homes destroyed as a result of the resolution of the crisis in the Chechen Republic. Under the programme, it is planned to allocate 2,824.4 million roubles in benefits to 3,388 citizens, of which 1,123.3 million

roubles have been paid out; 592 citizens have received the full benefits and 1,392 citizens have received partial amounts. Citizens of the Russian Federation who resided in the North Caucasus Federal Area enjoy the rights accorded to citizens of Russia by the Constitution. Pursuant to article 27 of the Constitution, anyone who is lawfully present in the Russian Federation has the right to freedom of movement and to choose a place of temporary and permanent residence. Neither the Constitution nor other laws or regulations have established any restrictions based on religion, race or ethnic origin for citizens of Russia in the choice of place of residence.

## **Paragraph 22**

460. Act No. 5242-1 of 25 June 1993 on the Right of Citizens of the Russian Federation to Freedom of Movement and Choice of Place of Temporary and Permanent Residence within the Boundaries of the Russian Federation, which requires citizens to register at their place of temporary or permanent residence, also specifies that registration or failure to do so may not serve as grounds for restricting, or as a condition for enjoying, the civil rights and freedoms set out in the Constitution and legislation of the Russian Federation and the Constitution and legislation of the constituent republics. A citizen who submits the documents required under article 6 of the Act and articles 9 and 16 of the regulations on registration may not be denied registration at his or her place of temporary or permanent residence.

461. In accordance with Presidential Decree No. 232 of 13 March 1997 on the basic identity document of citizens of the Russian Federation in the Russian Federation and Government Decision No. 828 of 8 July 1997 on the approval of the regulations governing the passports of citizens of the Russian Federation and passport form and features, there is no provision for an inclusion in the identity document of a reference to the ethnic background of the holder. Consequently, the regional offices of the Federal Migration Service do not have information of this kind.

462. Citizens may submit a complaint or a communication to the offices of the procurator alleging that their social, economic or other rights have been denied on grounds of the presence or absence of registration. In such a case, an investigation is launched, and if it is concluded that there is reason to do so, the procurator may take action, including by petitioning the court on behalf of the citizen to eliminate the violations of his or her rights.

463. Since the presentation of the last report, no complaints or other communications have been received alleging that the registration authorities have violated the interests of citizens of a particular ethnic background or of refugees in connection with their registration.

## **Paragraph 23**

464. With a view to implementing the recommendations of the Committee, on 12 January 2010 Presidential Decree No. 60 was adopted on amendments to the State programme for assisting the voluntary resettlement in the Russian Federation of ethnic Russians living abroad and to the plan of action approved by Presidential Decree No. 637 of 22 June 2006 for the implementation of the programme. The Decree made it possible to expand the scope of the State programme to include former citizens of the USSR currently living in the Russian Federation who are not citizens of the Russian Federation.

465. In accordance with the Decree, Government Decision No. 528 of 15 July 2010 was adopted on the approval of regulations for the issuance in the Russian Federation of a certificate of participation in a State programme to assist the voluntary resettlement in the



Russian Federation of ethnic Russians living abroad and on amendments to Government Decision No. 817 of 28 December 2006.

466. On 20 August 2010, the Federal Migration Service issued Instruction No. 256 on amendments to the legal provisions of the Federal Migration Service, which establishes, for the regional offices of the Federal Migration Service, the operational procedure for the drafting and issuance of a certificate of participation in the State programme to ethnic Russians lawfully residing permanently or temporarily in the Russian Federation.

467. Paragraph 23 of the concluding observations recommends that the Russian Federation facilitate access to Russian citizenship for all former Soviet citizens. Article 14 of Federal Act No. 62 of 31 May 2002 on Citizenship of the Russian Federation makes provision for a mechanism that enables all former Soviet citizens to obtain citizenship on the basis of a simplified procedure.

468. Under current legislation, former Soviet citizens are considered to be ethnic Russians, they may participate in the above-mentioned voluntary resettlement programme, and they are entitled to the benefits under the programme, which include obtaining citizenship of the Russian Federation on the basis of a simplified procedure.

## **Paragraph 24**

469. Russian legislation provides for the preferential right of small indigenous peoples to the use of land and natural resources.

470. Article 7, paragraph 3, of the Land Code (Federal Act No. 136 of 25 October 2001) specifies that, in cases prescribed by federal legislation and the laws and regulations of the regional and local authorities, a special legal regime may be established for the use of land by the small indigenous peoples of the Russian Federation and ethnic communities in their traditional habitat and areas of traditional economic activities.

471. Legislation formalizes the right (including of indigenous peoples) to hold citizens' assemblies and referendums on questions concerning the expropriation, including through purchase, of land for federal or municipal needs and its designation for construction projects whose location affects the legitimate interests of these peoples and communities. When taking decisions on a preliminary agreement on the location of a project, the State and local authorities must take into account the outcome of those citizens' assemblies and referendums (art. 31, para. 3).

472. The Land Code also establishes the right of communities of indigenous peoples to use agricultural land for the preservation and development of their traditional way of life, livelihoods and crafts (arts. 68, 78 and 82).

473. The rights of indigenous peoples concerning natural resources are also set out in the Forest Code (Federal Act No. 22 of 29 January 1997). When forests are used in the traditional habitat of small indigenous peoples, the Forest Code guarantees the protection of their traditional way of life (art. 48) and free provision of wood for their personal needs (art. 30).

474. The Water Code enshrines as one of its principles the right of small indigenous peoples to the traditional use of bodies of water in their traditional habitat (arts. 3 and 54). This does not require the conclusion of water use agreements (art. 11). The Water Code provides for the mandatory presence of representatives of small indigenous peoples on councils elaborating recommendations on the use and preservation of bodies of water within the watershed area so as to ensure the participation of indigenous peoples in the decision-making process (art. 29).

475. The Tax Code specifies that fauna and biological aquatic resources used by the small indigenous peoples of the North, Siberia and the Russian Far East (listed on the inventory approved by the President) to meet their personal needs and by persons who are not members of small indigenous peoples but reside permanently in the traditional habitat of small indigenous peoples and areas of their traditional economic activities and whose subsistence is based on hunting and fishing are not subject to taxation (art. 333.2). Indigenous peoples are also exempted from payment of land tax (art. 395).

476. Federal Mineral Resources Act No. 2395-1 of 21 February 1992 states that the interests of small indigenous peoples must be protected during the exploitation of mineral resources and specifies that the authorities of the constituent entities have responsibility for dealing with these matters (art. 4).

477. The aim of Federal Act No. 49 of 7 May 2001 on Areas of Traditional Resource Use of the Small Indigenous Peoples of the North, Siberia and the Russian Far East was to protect the native habitat and traditional way of life of small indigenous peoples, preserve and develop their distinctive culture and conserve biological diversity in areas of traditional resource use.

478. The Act protects the land rights of small indigenous peoples. In particular, land and other natural sites of equivalent value are awarded to members and communities of small indigenous peoples in exchange for land and other natural sites within the boundaries of areas of traditional resource use which have been expropriated for State or municipal needs. Compensation is paid for loss arising from such expropriation.

479. The growing economic exploitation of these areas and the extraction and processing of subsoil resources in close proximity to areas with large populations of small indigenous peoples may result in a reduction in the amount of land that can be used for traditional economic activities and a deterioration of conditions for traditional industries.

480. The Government is working to reduce the impact of the extraction of natural resources on the living conditions and way of life of small indigenous peoples by elaborating and applying methods for calculating the extent of harm caused to the small indigenous peoples of the North, Siberia and the Russian Far East as a result of the economic and other activities of organizations and individual persons in their traditional habitat and areas of traditional economic activities.

481. Steps are also being taken to introduce legislation on areas of traditional resource use in which the exploitation of mineral deposits or related activities can be restricted or prohibited. To this end, a bill has been drafted to amend the Federal Act on Areas of Traditional Resource Use of the Small Indigenous Peoples of the North, Siberia and the Russian Far East.

482. Legislation defines regulations for the establishment of areas of traditional resource use which simplify the existing procedure, and it makes provision for the creation of such areas on various categories of land in the traditional habitat and areas of traditional economic activities of the small indigenous peoples of the North.

483. This approach is consistent with the aims of the creation of such areas, which is to support the traditional way of life of small indigenous peoples based on natural resource use and to ensure their socioeconomic development.

484. Decisions relating to mining activities in the traditional habitat and areas of economic activities of small indigenous peoples taken by the legislative (representative) body of the constituent entities on whose territory the mineral resources are found must take into account the interests of the small indigenous peoples (Federal Act No. 225 of 30 December 1995 on Production Sharing Agreements (revised 19 July 2011)).

485. Russian legislation does not make provision for the conclusion of agreements or contracts between representatives of small indigenous peoples and the State. However, there are other forms of constructive cooperation with federal, regional and local authorities.

486. For example, representatives of small indigenous peoples are members of the Expert Advisory Board within the Interdepartmental Working Group on inter-ethnic relations, which is chaired by the Deputy Prime Minister. The Council is an effective way of involving representatives of small indigenous peoples in the decision-making process for questions concerning the development of their ethnic culture.

487. Representatives of small indigenous peoples are also members of the national organizing committee responsible for preparing and conducting the Second International Decade of the World's Indigenous People in the Russian Federation. The organizing committee plans and monitors the implementation of a whole set of specific initiatives aimed at the socioeconomic and ethnic cultural development of Russia's small indigenous peoples.

488. An Expert Advisory Board on the affairs of the small indigenous peoples of the North, Siberia and the Russian Far East operates under the authority of the Special Representative of the President in the Siberian Federal Area. Questions concerning cooperation with organizations of small indigenous peoples in the Far East Federal Area are considered within the framework of the Interdepartmental Commission on voluntary and religious associations, which reports to the Special Representative of the President in the Far East Federal Area.

489. Representatives of small indigenous peoples are members of a working group of the Ministry of Regional Development's Advisory Board on questions of ethnic cultural policy and human potential.

490. The current active exploitation of natural resources in northern areas has made it necessary to draft and adopt legislation on a procedure for the payment of compensation for damages caused by the activities of business enterprises to the native environment and traditional way of life of the small indigenous peoples of the North, Siberia and the Russian Far East.

491. To that end, a method has been elaborated and approved for calculating the extent of damage caused by the economic and other activities of organizations of all forms of ownership or by private individuals in the traditional habitat and traditional areas of economic activities of communities of indigenous peoples (details on this method are set out in paragraphs 286–290 of the report).

492. Work is also under way on developing forms of public-private partnership between representatives of the small indigenous peoples of the North, Siberia and the Russian Far East, federal and local authorities and companies operating in the traditional habitat of these peoples.

493. By order of the Ministry of Regional Development, a business model and forms of public-private partnerships were elaborated to promote the traditional industries and crafts of the small indigenous peoples of the North, Siberia and the Russian Far East. Subsequently, on 13 and 14 September 2010 the Social Forum held a seminar to discuss the business model, with the participation of representatives of the Ministry of Regional Development, the State Duma, the Federal Council, the authorities of the constituent entities, voluntary associations and communities of the small indigenous peoples of the North, Siberia and the Russian Far East, and representatives of a number of major business enterprises (the Sakhalin Energy Investment Company, the Kinross Gold Corporation, the Norilsk Nickel Mining Corporation and the Newton State Corporation).

494. Participants in the seminar discussed and endorsed as a whole the business model, methods for promoting the business activities of traditional industries and the main areas of public-private partnership. The relevant documents were forwarded to the constituent entities by the Ministry of Regional Development.

495. On 11 October 2011, the Ministry of Regional Development organized and held an international seminar in Saint Petersburg, attended by experts from a number of government bodies from Russia and Canada, representatives of communities of small indigenous peoples and industrial enterprises, with a view to jointly elaborating and discussing ways of ensuring the sustainable development of the small indigenous peoples of the North, implementing principles of corporate social responsibility and making the activities of associations of indigenous peoples more transparent.

### **Paragraph 25**

496. Article 37 of the Constitution establishes that everyone has the right to working conditions consistent with the requirements of safety and hygiene and to remuneration without discrimination of any kind.

497. Pursuant to that provision, article 3 of the Labour Code states that everyone has equal opportunities for enjoying their labour rights. No one's labour rights and freedoms may be restricted, and no one may enjoy any preference on the basis of sex, race, skin colour, ethnic background, language, origin, material, family, social or official status, age, place of residence, attitude to religion, political convictions, membership or non-membership of a voluntary association or other circumstances unrelated to professional skills.

498. Anyone who considers that they have been subjected to discrimination at work may apply to the courts for the restoration of their violated rights, reparation of material damage and compensation for moral damage.

499. Thus, Russian legislation contains all necessary provisions prohibiting discrimination at work and allowing for the restoration of violated rights.

### **Paragraph 26**

500. Questions associated with the removal of illegally constructed dwellings, including those of Roma, are currently quite topical, and to address them, possible mechanisms for the legalization of Roma settlements are being elaborated. The Russian Federation is of the view that a legalization of home ownership will prevent forced evictions. However, it is still current practice to remove illegally constructed dwellings and to evict the persons concerned. As part of the activities of the Interdepartmental Working Group's Expert Advisory Board, the federal authorities together with the Federal Autonomous Ethnic Cultural Organization of Russian Roma are preparing a plan of action on the socioeconomic and ethnic cultural development of the Roma community which includes measures for addressing this problem.

### **Paragraph 27**

501. In implementing the constitutional right of every citizen to education, Education Act No. 3266-1 of 10 July 1992 (revised 3 December 2011) (with amendments and additions which entered into force on 1 February 2012) stipulates that regulations for State and

municipal primary, secondary and vocational training schools must guarantee the admission of all children who live in a particular area and are entitled to a given level of education.

502. This guarantee is also set out in article 46 of the Model Rules on general education establishments approved by Government Decision No. 196 of 19 March 2001 (revised 10 March 2009). Children not resident in the area may be denied school admission solely on grounds of lack of free places.

503. Article 5, paragraph 3, of the Education Act prohibits the use of an entrance examination as a basis for the admission of children to the first class of all State and municipal schools. In compliance with Circular No. 03-51-57/13-03 of the Ministry of Education of 21 March 2003, which contains recommendations on the organization of admissions to the first class, all children who have attained school age are enrolled in the first class of primary school, regardless of their level of preparation. A teacher may meet with each child in September to plan the child's individual instruction.

504. In accordance with Federal Act No. 115 of 25 July 2002 on the Legal Status of Foreign Nationals, foreign nationals in the Russian Federation enjoy the same right to education as Russian citizens.

505. When enrolling their child in the first class of a primary school, parents or legal representatives must submit an application for admission, the child's medical record and a document certifying the child's place of residence.

506. Particular attention is given to education for Roma children. The focus in general education establishments is on two areas: ensuring that Roma children receive the same instruction as their schoolmates, and providing special remedial classes for children who are lagging in development and cannot be taught under the regular school curriculum.

507. The practice of placing Roma children in special classes exists in a number of constituent entities, in particular in Volgograd province, but it is not a forced segregation measure. Instead, it has to do with the low level of preschool preparation of some Roma children upon enrolling in school. However, procedures exist which enable a child to move to a more advanced class. If the parents and the teacher confirm that the child is able to keep up, he or she may be transferred to a regular class at the parents' request.

508. Most general education establishments (Penza, Tula, Ryazan, Lipetsk, Volgograd and other provinces) advocate integrated education, which makes instruction more complete, ensures that Roma children are included in the mainstream education system and is in compliance with paragraph 27 of the Committee's recommendations.

509. Some schools in the constituent entities have a component on Roma culture. For example, at the secondary school in the town of Oselka (Leningrad province), Roma children can attend classes in which the Roma culture and language are taught.

510. In-service training courses for teachers in areas with large Roma populations (Vladimir, Leningrad and Kaliningrad provinces, Perm Territory and elsewhere) include topics on the history and culture of Roma in the Russian Federation. An alphabet for Roma children has been designed and published by a team of authors at A.I. Gertzen State University.

511. Since 2006, a creative workshop at the Centre for ethnic education problems at the Federal Education Institute of the Ministry of Education and Science has been examining problems relating to the socialization of Roma and has produced handbooks on the ethnic cultural content of general education curricula. In April 2009, in cooperation with the Anti-discrimination Centre Memorial, the Centre conducted a theoretical and practical seminar on the educational problems of Roma in Russia in the context of recent educational legislation, with the participation of representatives of Roma associations, members of the

department of education, scholars, educators and teachers. Its recommendations will be used in practical work. In conjunction with the Centre, a concise guide to the Roma language (Kelderar dialect) was published in the framework of a Memorial project.

512. In accordance with Russian legislation, all schoolchildren, including children from Roma families legally present in Russia, have equal access to education.

## Paragraph 28

513. Separate statistics are not kept on the number of civil and administrative court proceedings involving complaints of racial discrimination, because such acts are uncommon in the Russian Federation. Statistical data on criminal proceedings are set out in the relevant section of this report.

514. The Russian Federation recognizes the right to qualified legal assistance, which is a fundamental human right and an essential aspect of access to the courts. The Constitution guarantees everyone the right to receive qualified legal aid, which is free of charge in cases prescribed by law.

515. Federal Act No. 324 of 21 November 2011 on Free Legal Assistance introduces basic guarantees for ensuring the right of citizens to free qualified legal aid and lays down the organizational and legal foundation for the creation of State and non-State systems of free legal assistance and for educational and public awareness-raising activities in that regard.

516. In 2005, with the publication of Government Decision No. 534 of 22 August 2005 on the creation of a pilot project for a State system for the provision of free legal assistance to low-income citizens, an experiment was launched for the setting up of a State legal aid office.

517. The aim of the pilot project is to optimize the mechanism for giving effect to State policy on providing free legal assistance to low-income citizens, i.e. to address the urgent matter of the practical implementation of the right of access to justice for low-income persons, for whom lawyers only provide free legal aid in very few cases at present.

518. State legal aid offices have been opened in the Republic of Karelia, the Chechen Republic and Volgograd, Irkutsk, Magadan, Moscow, Samara, Sverdlovsk, Tomsk and Ulyanovsk provinces.

519. The offices provide legal assistance to low-income citizens in the following ways:

(a) They offer counselling on legal questions, either orally or in writing, and personal counselling to category I and category II disabled persons, veterans of the Second World War and non-working retirees on an old-age pension, regardless of income;

(b) They prepare statements, complaints, requests and other legal documents;

(c) They participate in representing citizens in civil proceedings and in enforcement proceedings involving civil cases, and they also represent the interests of citizens before the local authorities, voluntary associations and other organizations.

520. All in all, the results of the experiment were considered positive, and Government Decision No. 1029 of 25 December 2008 approved regulations for the provision of free legal assistance by the State legal aid office.

521. Private legal offices which offer free counselling to citizens are an alternative to the State aid office. Yet another alternative are the so-called mobile legal assistance units – buses which travel on a set route and are specially equipped to provide legal aid to persons living in remote areas at a great distance from provincial and district centres.



522. Complaints of human rights violations and discrimination in any area of public life may be referred to the Office of the Human Rights Ombudsman.

523. A written complaint (or application or report), together with attached copies, in the prescribed form, of the judicial or administrative decisions taken on the complaint may be sent to the Ombudsman's Office or submitted by the complainant in person. Citizens may also apply to the Office via the official website of the Human Rights Ombudsman. A form for filing a complaint, application or report by electronic means may be used prior to registration at the website.

524. The Human Rights Ombudsman works to promote public awareness of legislation on human rights and ways and means of safeguarding them, explains various forms of available legal protection, provides information on the administrative, judicial and other authorities that can be applied to and offers legal counselling. The Human Rights Ombudsman also advises citizens wishing to make use of their constitutional right to appeal to international human rights bodies (the European Court, the United Nations Human Rights Committee etc.).

## **Paragraph 29**

525. Pursuant to the Outline for the period until 2025 approved by Presidential Decree No. 1351 of 9 September 2007, the recruitment of migrants in line with the requirements of demographic and socioeconomic development — account being taken of the need for their social adaptation and integration — is an important objective of demographic policy. Meeting this objective calls for the creation of conditions for the integration of immigrants into Russian society and the promotion of tolerance between the local population and persons from other countries in order to prevent inter-ethnic and religious conflicts.

526. Today most migrant workers in Russia speak little or no Russian and are the category of persons most often the target of unlawful acts and discrimination by criminal groups, corrupt officials or employers, as well as by ethnic Russians who have settled in Russia.

527. Efforts are being made to promote an attitude of tolerance towards migrants. One way of influencing public opinion with regard to this category of persons is through the media, as well as through cooperation with representatives of civil society.

528. Government authorities regularly carry out initiatives to foster tolerant attitudes towards migrants, for example by making comments for television and radio in the course of press conferences, interviews and meetings with representatives of news agencies. Universities and general education establishments in a number of regions have conducted classes on tolerance and workshops with prospective students in order to encourage positive attitudes towards foreign nationals among young people. Opinion polls have been held on public attitudes towards foreign nationals. These activities are undertaken in cooperation with ethnic and voluntary associations and international and regional organizations.

529. In 2011, the regional offices of the Federal Migration Service set up working groups to promote integration, and guidelines were drawn up on procedures for organizing cooperation with ethnic communities and for reporting on work accomplished. Seminars and conferences were held with members of the working groups in all Federal Areas in order to provide technical assistance at regional level.

530. Pursuant to Decision No. 3 of 15 September 2010 of the Government Commission on Migration Policy, counselling on questions of migration legislation was organized for foreign nationals and stateless persons with the help of 45 multi-purpose State and local service centres. In 2011, 60,392 foreign nationals requested counselling.

531. The questions primarily concern the procedures for applying for permanent and temporary residence permits, work permits and licences, registering as a migrant and acquiring citizenship of the Russian Federation.

532. Counselling was also provided on participation in the State programme to assist the voluntary resettlement in the Russian Federation of ethnic Russians living abroad; the procedure and time frame for formulating an invitation to foreign nationals and stateless persons to come to the Russian Federation; the rights and obligations of foreign nationals residing in the Russian Federation on the basis of a temporary or permanent residence permit; and visa application procedures for foreign nationals and stateless persons, as well as the issuance, extension and cancellation of such documents.

533. Cooperation on promoting the integration of migrants is also under way with international and non-governmental organizations. The most effective cooperation in this regard has been with the Russky Mir Foundation, on pilot projects to teach Russian to potential migrant workers in Kyrgyzstan and Tajikistan. The Foundation provides funding for the project.

534. Joint projects to promote integration are being elaborated in conjunction with the Etnosfera Centre, the New Eurasia Foundation, the P.A. Stolypin Foundation for population studies and other voluntary associations. Close attention is being given to encouraging the use of Russian among migrants.

535. The regional offices of the Federal Migration Service have organized cooperation with more than 80 ethnic associations. They hold regular meetings with their representatives, explain the provisions of migration legislation, monitor the situation in ethnic communities and elaborate forms of interaction directed at promoting integration.

536. Considerable importance is attached to cooperation with religious organizations. A Joint Commission of the Federal Migration Service and the Russian Orthodox Church has been set up and is operational; it works to elaborate awareness-raising and educational projects.

537. A handbook has been produced in conjunction with the Council of Muftis of Russia for migrant workers from the countries of Central Asia. Agreements have been concluded between the regional offices of the Federal Migration Service and 20 dioceses of the Russian Orthodox Church. Five agreements have been signed on cooperation with a number of Muslim spiritual boards and local Muslim religious organizations. An agreement has been concluded between the office of the Federal Migration Service in the Republic of Buryatia and the Traditional Buddhist Sangha of Russia.

538. To promote integration, courses in Russian for migrants have been started under the above-mentioned cooperation agreements in Russian Orthodox churches and mosques in a number of regions.

### **Paragraph 30**

539. ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and the obligations emanating from its articles have been carefully analysed. The State Duma has held two public hearings on the question, with the participation of representatives of the indigenous peoples of Russia, leading national jurists and international experts. The analysis showed that, although Russia is not a party to ILO Convention No. 169, Russian lawmakers take its provisions into account when making improvements to legislation in the area.

540. According to migration statistics, most migrant workers in the Russian Federation are citizens of countries of the Commonwealth of Independent States (CIS). Today the

Russian Federation and CIS member States are taking specific measures to protect the rights and legitimate interests of migrant workers and members of their families throughout the CIS area.

541. On 14 November 2008, a convention was signed on the legal status of migrant workers and members of their families in the CIS member States which regulates their rights during their employment in CIS countries.

542. Most of the provisions of article 25 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families are consistent with Russian legislation. Migrant workers have the same rights as Russian citizens with regard to favourable conditions of work, the protection of their rights and interests, the prohibition of forced labour and discrimination, the enjoyment of working conditions consistent with standards of safety and health, rest and leisure and the payment of a salary not less than the established minimum wage.

543. In the framework of the single economic area of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation, on 19 November 2010 an agreement was signed on the legal status of migrant workers and members of their families which created conditions for ensuring equal rights and employment opportunities throughout the Customs Union.

544. In compliance with article 37 of the Convention, before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions.

545. To that end, the Ministry of Labour compiles detailed information on job sites at which it is planned to recruit foreign nationals. The information is sent to the Federal Migration Service for subsequent forwarding to its representatives abroad and in the diplomatic representations of the Russian Federation, and also to the Ministry of Foreign Affairs for subsequent forwarding to the consular offices and diplomatic representations of the Russian Federation.

546. The Federal Labour and Employment Service has an information portal entitled "Working in Russia", which can be visited at: [www.trudvsem.ru](http://www.trudvsem.ru).

547. Both citizens and foreign nationals can use this information portal to look for work.

548. Users have access to information on job vacancies, housing and the addresses and telephone numbers of the placement service of the constituent entities in which the vacancy was posted.

549. In accordance with article 49, paragraph 2, of the Convention, migrant workers who in the State of employment are allowed freely to choose their remunerated activity may neither be regarded as in an irregular situation nor may they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.

550. Pursuant to Federal Act No. 115 of 25 July 2002 on the Legal Status of Foreign Nationals in the Russian Federation, foreign nationals temporarily resident in the Russian Federation are entitled to conclude a new employment contract or commercial contract for the performance of work or rendering of services within 15 working days from the date of the early termination of the employment contract or commercial contract for the performance of work or rendering of services which formed the basis for the issuance of

their work permit or the extension of its validity, or they must leave the Russian Federation if their temporary residence permit has expired.

551. Pursuant to article 54 of the Convention, migrant workers enjoy equality of treatment with nationals of the State of employment in respect of unemployment benefits and access to public work schemes intended to combat unemployment.

552. In accordance with Employment Act No. 1032-1 of 19 April 1991, unemployed citizens who are registered with an employment office for the purpose of seeking suitable work have the right to participate in public work schemes. Such persons are entitled to social assistance in the form of unemployment benefits.

553. The authorities of the employment office at the place of residence of the person concerned decide whether a citizen registered for the purpose of seeking suitable work is to be recognized as unemployed.

554. Pursuant to article 16 of Federal Act No. 109 of 18 July 2006 on the Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation, a foreign national may submit a declaration of residence registration with the migration registry at the location of the dwelling chosen as place of residence, within seven days from the receipt of a temporary or permanent residence permit or from the date of the foreign national's arrival at the location of that dwelling.

555. Thus, foreign nationals may obtain the status of unemployed person only if they have a temporary or permanent residence permit and are registered at their place of residence.

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# Annex 794

Finland, Reports Submitted by States Parties under Article 9 of the Convention, Twelfth  
Periodic Reports Due in 1993, CERD/C/240/Add.2 (17 May 1995)







**International Convention  
on the Elimination  
of all Forms of  
Racial Discrimination**

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17 May 1995

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COMMITTEE ON THE ELIMINATION OF  
RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 9 OF THE CONVENTION

Twelfth periodic reports of States parties due in 1993

Addendum

FINLAND\*

[26 March 1995]

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\* This report contains in a single document the eleventh and twelfth periodic reports of Finland due on 16 August 1991 and 1993 respectively. For the ninth and tenth periodic reports submitted by the Government of Finland and the summary records of the meetings of the Committee at which the reports were considered, see:

Ninth periodic report - CERD/C/159/Add.1 (CERD/C/SR.866-SR.867)  
Tenth periodic report - CERD/C/185/Add.1 (CERD/C/SR.866-SR.867)

The annexes are available for consultation in the files of the Secretariat.

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## I. GENERAL

1. This report by Finland on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination is submitted at a time when the situation in Europe and in the world is in many ways different from what it was when the previous report was submitted. In Finland, this is reflected in the demographic composition as a larger number of foreigners. This fact, together with increasing international cooperation in activities against racial discrimination and racism, particularly in the European forums, has served, much more than before, to bring the questions covered by the Convention to the focus of public attention, research and discussion in Finland.

2. The earlier reports by Finland described the measures taken to give effect to the Convention; this was carried out by a decree following a debate in Parliament on the ratification of the Convention. No legislative changes have been introduced since the previous report. The most important reforms under way, which relate to the Constitution Act and the Penal Code, are discussed in the present report.

3. A study for the Conference on Security and Cooperation in Europe (CSCE) on the position of national minorities was commissioned some years ago by the Advisory Board for International Human Rights Affairs established by the Finnish Government (Kristian Myntti, "The Protection of Persons Belonging to National Minorities in Finland", third revised edition, 1993). The study also addresses the position of the Swedish-speaking population. It has been transmitted to the Committee on the Elimination of Racial Discrimination as background material.

Minorities in the general framework of reporting on the implementation of human rights treaties

4. As regards reporting on the implementation of the Convention, an important step was taken in the preparation of the Finnish reports on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. These extensive reports, submitted in 1992 and 1994, covered issues relating to minorities. This new approach is designed to encourage interaction between different ways of looking at the questions involved. This approach itself is part of the implementation of the Convention as foreseen in article 7 and elsewhere.

5. The reports by Finland on women's rights and children's rights have helped to make visible women and children in minorities and to draw attention to problems concerning their position. The relevant parts of the reports on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and on the implementation of the Convention on the Rights of the Child are appended as annex 1. In an attempt to prevent racism and racial discrimination such steps are unarguably important for the attainment of the objectives of the International Convention on the Elimination of All Forms of Racial Discrimination. It is intended that both gender aspect and age aspect will be addressed in future reports by Finland on the implementation of human rights treaties.

6. Finland is active in advancing the goals of the Convention through international cooperation both in the United Nations and in such forums as the Council of Europe, UNESCO and ILO. In the new situation Finland is able to benefit from the experience and the networks available between countries and international organizations. In Vienna in October 1993, the summit of the Council of Europe adopted a Declaration and Plan of Action on Combating Racism, Xenophobia, Anti-Semitism and Intolerance, which was signed by the President of Finland on 8 October 1993.

7. The Finnish Government is willing to enter into an open and constructive communication with the Committee, whose expertise and comments can help Finland in its efforts to improve the implementation of the Convention. Finland made a declaration under article 14 (1) of the Convention on 16 November 1994; the remedy of making petitions to the Committee has since that date been available to individuals.

8. The Finnish Government participates in the international cooperation which, both within the United Nations system and in the Council of Europe, aims at creating new and more effective approaches to prevent developments leading to racism, racial discrimination and xenophobia. These problems have also been a central subject of analysis in scientific research in Finland, something which has helped to outline the extent and complexity of the problem in Finnish society.

9. As part of the preparation of this report, a public hearing on the Convention was held in January 1992. Invited participants included not only representatives from non-governmental organizations (NGOs) of minorities and foreigners but also representatives of authorities and advisory boards, researchers and activists. The report was also discussed by the Advisory Board for International Human Rights Affairs functioning in connection with the Ministry for Foreign Affairs.

10. In the past few years, Finnish NGOs have increasingly focused on the theme of tolerance. A sign of increased activity is that a section of the Minority Rights Group now operates in Finland.

11. On the Government side, the most important step was the establishment of a new, broad-based organ: the Advisory Board for Refugee and Migrant Affairs. Another important factor contributing to positive development was the fact that 1993 was named International Year of the World's Indigenous People; the attention devoted in Europe to Romanies in the framework of the CSCE and the Council of Europe; the work by UNESCO to promote education for international understanding and human rights; and, in June 1993, the World Conference on Human Rights which brought together the entire spectrum of bodies and organizations.

#### Development of administrative structures

12. The most significant administrative change in recent years was the foundation of a new Advisory Board for Refugee and Migrant Affairs, operable from 1 February 1992. It replaced the Advisory Boards for Migration, in existence since 1970, and for Refugee Affairs, which had operated since 1981. The new Board works in connection with the Ministry of Labour. It is chaired

by the highest-ranking civil servant in the Ministry of Social Affairs and Health; the vice-chairpersons are the respective officials from the Ministry of the Interior, which is responsible for aliens affairs, and from the Ministry of Labour.

13. The Advisory Board for Refugee and Migrant Affairs is charged with the tasks of monitoring the position of foreigners and protecting their rights, promoting cooperation between foreigners, authorities and organizations, informing foreigners of legislation and advising them on legal rights.

14. In 1992, to strengthen the organization of the Ministry of Social Affairs and Health, a specific office for refugee affairs was set up, designed to contribute to the implementation of the Convention by making a strong input in information.

15. The status of the Advisory Board for Romany Affairs was reinforced through a decree which entered into force on 1 January 1990 (see annex 2). The decree specifies the duties of the Advisory Board and defines more clearly its connection with the Ministry of Social Affairs and Health. The main duty of the Advisory Board is to improve living conditions for the Romany population. At the time of the structural reinforcement the name of the Advisory Board was changed from Gypsy Affairs to Romany Affairs - a step which reflects the importance of language in eliminating discriminatory practices.

16. An important aspect of the development of administrative structures was the foundation of a unit for the education and culture of the Romany population in 1992. This unit, called the Romany Educational and Cultural Unit, is part of the National Board of General Education. One of its duties is to publish a newsletter (for more details, see annex 3).

17. The administrative structures relating to the position of the Saami people have in recent years been discussed partly as a question relating to the division of labour in the administrative system and partly as a means of increasing the autonomy of decision-making by this indigenous population. It is intended that responsibility for Saami affairs be passed to the Ministry of Justice from the Ministry of the Interior, which now has the main responsibility and which administers Saami affairs in the context of regional policy. This shift of responsibility is an effort to reinforce the implementation of the human rights of Saami people, and thereby a step in the full implementation of the Convention.

18. As described in previous reports, Saami matters are administered by two bodies: the Advisory Board for Saami Affairs, a body for cooperation between the administration and the Saamis, and the Saami Delegation, which is elected by the Saamis themselves.

19. The Advisory Board is chaired by the Governor of the Province of Lapland and has five members, with alternates, each of whom represents a different Ministry (Interior, Education, Agriculture and Forestry, Labour, and Environment) and 10 members appointed by the Saami Delegation. Of the members of the Advisory Board, one representative of both the authorities and the Saamis is a woman; of the alternate members, two representatives of the authorities and one Saami representative are women.



20. Of the 20 members appointed to the Saami Delegation for the term of office 1 January 1992 to 31 December 1995, 20 per cent are women.

#### Statistics on population

21. In the official population statistics on Finnish citizens no statistics on minorities as such are compiled. The following estimates were made on the basis of statistics on languages and, for the Saami population, of statistics related to the election of the members of the Saami Delegation.

22. The number of Saamis in Finland is estimated at 5,700 persons (some estimates put the figure at 6,400), of whom 3,900 live in the northernmost part of the country: 1,100 in the municipality of Utsjoki, 2,100 in Inari and 400 in Enontekiö. In one of the municipalities, Utsjoki, the Saamis are a majority of the population. Some 1,400 Saamis live in other parts of the country. In addition, 400 Finnish Saamis live outside Finland. The 1990 census showed some 1,700 persons who spoke Saami as a mother tongue.

23. It is estimated that Finland has a Romany population of some 6,000. In addition, 3,000 Finnish-speaking Romanies are thought to live in Sweden. The estimated total number of Romanies in the Nordic countries is 15,000 to 20,000 persons, the largest group living in Finland.

24. Finland has for a long time had a small minority of Jews, who have emigrated mainly from Russia. They number 1,400. The Tatar population, who came originally from the Crimea, is about 900 people. Finland has traditionally had a small minority of Russian speakers. In recent years this group has grown considerably.

25. While the Swedish-speaking population is not covered in this report, it may be added that they account for 6 per cent of the population, or 294,000 persons of whom 23,000 live in the self-governing district of Åland which has a small Finnish-speaking minority comprising 1,100 persons.

#### Statistics on foreigners

26. In principle, statistics on foreigners, compiled by nationality, are accurate. However, the disintegration of the Soviet Union has led to problems of classification and interpretation. Appended are statistics on the population resident in Finland on 1 January 1994, classified by continent, population, nationality, sex and province of residence (annex 4). As the statistics show, on 1 January 1994 some 56,000 foreign citizens were living in Finland: 25,800 women and 29,800 men. The breakdown by continent is as follows:

		Women	Men
Europe (excluding citizens of the former Soviet Union; including citizens of the Baltic countries)	23 773	10 470	13 030
Africa	5 244	1 534	3 710
North America	2 206	1 001	3 710
Latin America	607	309	298
Asia + Australia	8 198	3 645	4 883
CIS	13 648	8 131	5 517
Stateless	469	213	256
Citizenship unknown	1 080	455	625

27. Taking into account that as late as 1987 there were only some 17,000 foreigners in Finland, nearly half of whom were Finnish repatriates from Sweden, North America and Australia, the fact that their number has more than tripled in a short time is a significant change in the overall demographic situation of the country. At the end of 1992, the figure stood at 46,250, which means that an increase of 10,000 within a single year was recorded.

28. At present, the largest group of foreigners are those arriving from the former Soviet Union, totalling more than 13,000 persons, of whom 10,000 are of Finnish ethnic origin - Ingrians. Other larger groups are Swedish citizens, who are mainly Finnish repatriates (6,600); Estonians (5,900); Somalis (2,900); Vietnamese (1,400); United States citizens (mostly repatriates, 1,800); Chinese citizens (1,100); and Turkish citizens.

## II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

### Article 2

29. In March 1992 the Advisory Board for Refugee and Migrant Affairs adopted a programme of action against racism and xenophobia which was connected with its report on the principles of Finland's policy on refugees and migrants (committee report 1994:5). With the title "Towards a Tolerant Finland", this programme contains a large number of proposals for measures to be taken by authorities and non-governmental organizations against racism and xenophobia in Finland.

30. The proposed measures address such questions as the revision of legislation and organization of work, the monitoring of racism and discrimination and the compilation of statistics on these phenomena, the diversification of school curricula, the creation of rules to regulate journalistic practice concerning information on minorities, the role of NGOs, and changes in the content of cultural services offered by municipalities so

as to make use of the opportunities for interaction provided by tolerance and multiculturalism. A key recommendation in the report is that resources be allocated to the work envisaged in the programme of action.

31. While the State committee has been preparing the proposals now adopted, Finnish authorities and NGOs have been planning their contribution to another programme of action: the programme against racism to be carried out within the framework of the Council of Europe. The programme relies both on the work of active NGOs, in particular youth organizations, and the cooperation between authorities, NGOs, researchers and policy makers which is to take place in the European Commission against Racism and Intolerance. It is hoped that Finnish participation in these activities will promote the re-evaluation and intensification of measures. At the same time, this work will give fresh impetus to activities required by article 2 of the Convention.

#### Article 3

32. Through both political statements made with other Nordic countries and through voluntary sanctions in force from 1985 to 1987, Finland participated in efforts of the international community to end racial discrimination in South Africa. Following positive developments the sanctions were abolished gradually by May 1993. Humanitarian aid to the African National Congress was discontinued when the ANC became a political party in the Republic of South Africa.

33. Finland continues to support the democratization of South Africa. A new form of support is that given for the preparation of further democratization, training and education for elections, for example.

34. Finland has also given support for the democratization of southern Africa in other States of the area. In Africa, as elsewhere, Finland has been especially active in supporting its traditional partners in their way to democracy.

35. Finland earlier maintained diplomatic relations with the Republic of South Africa on the legation level, but on 6 May 1991 the relations were raised to the embassy level.

#### Article 4

36. With respect to legislation in force, reference is made to the previous reports.

37. The Government of Finland has submitted to Parliament two proposals with important policy implications for the development of legislation referred to in this article. The proposals are part of two extensive bills, one relating to the revision of the provisions on fundamental rights as contained in the Constitution Act and the other to the reform of the Penal Code, which were both put before Parliament in 1993 and are being debated. The reform of the Penal Code is discussed in the following chapter; the revision of the provisions on fundamental rights is described hereunder.

Proposal for the reform of the Penal Code

38. In 1993 the Government submitted to Parliament a proposal (HE 94/93) which was part of an overall reform of the Penal Code and which contained provisions relating to discrimination and to incitement to discrimination against a population group. The present law, or chapter 13, article 5, of the Penal Code from 1975, states:

"Anyone who spreads to the general public statements or other information which contains threats, malicious falsehood or slander directed against a population group which is of a particular race or a particular national or ethnic origin or has a particular religion, shall be sentenced for incitement to the discrimination of a population group to pay a fine or to imprisonment for a maximum term of two years."

As amended in chapter 11, article 8, this provision would be as follows:

"Incitement against a population group.

"If a person spreads to the general public statements or other information which contains threats, malicious falsehood or slander directed against a national, racial, ethnic or religious group or a comparable group, in order to cause violence, hostility or discrimination against that group, and if the act is likely to produce the said consequences, he or she shall be sentenced for incitement against a population group to pay a fine or to imprisonment for a maximum term of one year."

39. The motivation for the amendment is that the tightened provisions would exclude from its scope of application "any statements which are, for example, jocular, thoughtless, or emotional and which need not be taken seriously".

40. As regards the reduction of the maximum punishment from two years to a year, the proposal states that during the present law punishment for incitement has been given only in two or three cases, and in each case the punishment was a fine.

41. Parliament continues its discussion of the revision. The Advisory Board for Human Rights Affairs has made critical comments on the proposal.

Article 5

42. As regards legislation in force, reference is made to the previous reports.

43. Parliament is debating a number of important legislative changes to bring legislation in line with contemporary needs and to harmonize it with the obligations Finland has under human rights treaties. In the context of racial discrimination, the most central reform is a review of the provisions on fundamental rights contained in the Constitution Act. A bill to this effect was submitted to Parliament in December 1993 (HE 309/93) and is now being debated.

44. The bill proposes that a principle be incorporated in the Constitution Act which unequivocally guarantees that, as a rule, the rights enshrined in human rights treaties apply to all persons residing within the jurisdiction of Finland whether or not they are Finnish citizens. This important clarification on a constitutional level would be the foundation of all legislation and of the development of administrative practice.

45. As revised in the bill, article 5 of the Constitution Act would state as follows:

"Persons shall be equal before the law.

"No one shall be placed in a different position with respect to others on the basis of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason relating to person. Children shall be treated equally as individuals. The equality of sexes in activities in society and in working life, especially as regards the conditions of employment, shall be guaranteed by law."

46. The proposed text of article 9 reads:

"Everyone shall have the freedom of religion and conscience. The freedom of religion and conscience shall include the right to profess and practise a religion, the right to express a conviction, and the right to be or not to be a member of a religious community. No one shall be obliged to participate in the exercise of religion contrary to their conscience."

47. The bill also contains a provision on equality regarding languages and on cultural rights which is of central importance to minorities (art. 9):

"Finland's national languages are Finnish and Swedish.

"Everyone's right to use their own language, Finnish or Swedish, before courts of justice and other authorities, and to have records of proceedings in that language shall be guaranteed by law. Public authority shall ensure that the cultural and societal needs of the Finnish and Swedish speaking populations are on an equal footing.

"The Saamis as an indigenous people as well as the Romanies and other groups have a right to maintain and develop their own language and culture. The right of the Saamis to use the Saami language before the authorities shall be provided for in law."

48. As, in addition, article 16 a of the bill contains a provision stating that it is the duty of public authority to ensure implementation of fundamental rights and human rights, it can be said that the above changes would in crucial ways improve the safety nets in Finnish society to achieve equality for all people and to lay a foundation for work against racism and racial discrimination.

49. As part of a reform of the Penal Code it is proposed that chapter 12, article 6, on discrimination practised in trade or business, services, discharge of official duties, public entertainment or public meetings be extended. It now applies to discrimination on the basis of race and national or ethnic origin; in future it would also apply to discrimination on the basis of colour, language, gender, age, family relations, sexual orientation, health, views on society, political or professional activity or for comparable reason. The new provision, chapter 11, article 9, would retain the earlier scale of punishment: a fine or a maximum sentence of imprisonment of six months. Parliament is still debating these amendments.

50. Crime statistics show that it is very seldom that charges are brought in offences of discrimination (chap. 13, art. 6 of the Penal Code) and even more seldom in offences relating to incitement to discrimination against a population group (chap. 1, art. 5 of the Penal Code). Appended are statistics showing that for offences of discrimination the figures seem to have started to increase since 1989 (annex 5). Representatives of minority groups refer to a number of obstacles, some practical and others associated with attitudes, which make it difficult or impossible for a person who has suffered discrimination to rely for the elimination of discrimination on criminal charges brought by an individual.

#### The Saami people

51. On 5 November 1992 Finland signed the European Charter for Regional or Minority Languages of the Council of Europe. It was ratified on 9 November 1994.

52. The following is in reply to the questions posed by the Committee regarding the tenth report by Finland, and is based on information provided by the Ministries of Justice, Education and the Interior.

53. A person is defined as a Saami on the basis of self-identification and Saami origin. The more detailed provisions can be found in the Act on the Use of the Saami Language before the Authorities of 1990.

54. The most important legislative changes are the Act on the Right to Use the Saami Language before the Authorities, which entered into force on 1 January 1992, and an amendment to the Parliament Act which came into force on 1 November 1991. The latter introduces a new principle in guaranteeing the Saamis the right to be heard in their own language in parliamentary proceedings, especially in cases concerning them. The purpose of the Act is to guarantee this right. The underlying thinking is that Saamis should be guaranteed linguistic rights as far as possible following the same principles that under the 1922 Languages Act apply to the use of Finland's national languages, Finnish and Swedish. The practical implications of the Act essentially depend on the resources for interpretation and translation. The Saami Delegation has expressed the opinion that as yet not enough resources have been provided for these purposes.



55. The proposal to amend the Constitution Act, described earlier, would establish cultural autonomy for the Saamis and extend constitutional protection to the right to use the Saami language, and would thereby also strengthen the foundation for the practical implementation of the rights.

56. While there have been some Saami candidates for Parliament, no Saami MPs have been elected. In local administration, Saamis are employed mainly in the Province of Lapland. To increase the opportunities for Saamis to exercise their influence in Lapland, the Saami Delegation has the right to appoint one member to the Provincial Advisory Board.

57. The 1991 amendment to the Parliament Act guarantees the Saamis the right to be heard, especially on questions concerning them. However, at the time when this right was guaranteed on the legislative level, a major reorganization was under way to delegate decision-making powers in matters relating to the division of competence and resources from central authorities to the local level, i.e. to the municipalities where, with one exception, the Saamis are in a small minority.

58. The Finnish Government is aware of the problems that may arise in the practical implementation of the Convention, especially concerning the rights of small minorities, as a result of these decentralization measures, unless a sufficient consolidation of the human rights culture among local authorities and political decision makers can be achieved. This poses new challenges for the education and information activities referred to in article 7, especially to local decision makers and authorities, to whom these responsibilities have been delegated.

59. Legislation on reindeer husbandry and other means of livelihood traditionally part of the Saami culture was revised in 1990. As a result, reindeer owners' associations were granted greater decision-making powers in matters relating to reindeer husbandry within the Area for Reindeer Husbandry. It should be remembered, however, that in Finland reindeer husbandry is not an exclusive right of the Saamis.

60. Another act with relevance to the traditional Saami way of life is the Wilderness Act of 1991. It is designed to preserve the wild nature of 12 wilderness areas to be designated in the Province of Lapland, to safeguard the Saami culture and natural means of livelihood, and to further diversified uses of nature.

61. As yet Finland has not become party to ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, mainly because land ownership and land use in the Saami domicile area may require new legislation.

62. The Advisory Board for Saami Affairs has proposed that the issue of land ownership be settled by introducing a type of collective land ownership. The present legislation and practice by authorities is based on the thinking that the main part of land in the Saami domicile area is considered the property of the State. The situation has led to divisions between the needs of reindeer husbandry and those of competing forms of land use, such as logging.

63. A new cause of concern for the Saamis is the interest in the bedrock in the Saami domicile areas shown by foreign and multinational companies after the conclusion of the Treaty on the European Economic Area.

64. Since the previous report, considerable changes have taken place in the position and teaching of the Saami language which aim at increasing the opportunities for Saamis to be taught in their own language. Since 1991 it has been possible to set up school districts for Saami speakers. This reform is thought to require a considerable increase in resources and has been a negative development in some cases.

65. After an amendment in 1991 to the Comprehensive School Act, schools in the Saami domicile area have been able to use Saami as a language of instruction. Outside the domicile area Saami can be taught as a foreign language with the resources provided under legislation. The respective legislative changes have also been made regarding upper secondary school. In practice, however, the establishment of classes has been prevented by a lack of teachers, materials and teaching hours. In teaching, the position of the Saami language as a mother tongue remains parallel to that of the Finnish language: as a mother tongue, Saami may be taught together with Finnish but not alone. In matriculation (school-leaving) examinations, a person who has studied Saami as a mother tongue may take the examination in the Saami language.

66. Possibilities to study Saami as a foreign language have been increased, thereby giving Finnish-speaking pupils a better opportunity to study Saami.

67. In lower-level comprehensive schools a total of 152 pupils studied Saami as a mother tongue in 1990/91; in 1992/93 the figure was 128. The respective figures for the pupils studying Saami as an optional subject were 171 and 142. In upper-level comprehensive schools in the same periods 95 and 135 pupils studied Saami. For upper-secondary schools the figures were 41 and 52. In adult education in the past few years - both in Lapland and other parts of Finland - some 50 to 80 students have studied the Saami language and culture. Since 1993 the University of Helsinki has offered a course in Saami language and culture.

68. The National Board of General Education has pursued the efforts cited in the tenth report to develop syllabuses. In 1991 pedagogical instructions were finalized for Saami language teaching and tuition in Saami.

69. The International Year of the World's Indigenous People 1993 focused attention on the position and culture of the Saamis as part of the activities to increase awareness of indigenous peoples. A committee set up to prepare for the Year recorded a host of events to celebrate indigenous peoples. Representatives of the Saami people attended international meetings organized to highlight the theme, the special plenary session of the United Nations General Assembly, and the World Conference on Human Rights. The committee gave a final report in spring 1994, making a number of proposals to improve the position of the Saamis.

The Romany people

70. In 1989 the Council of State strengthened the administrative framework for dealing with questions relating to the position of the Romanies by adopting a decision whereby the Advisory Board for Romany Affairs, operating in connection with the Ministry of Social Affairs and Health, was made a permanent organ with the tasks of monitoring the living conditions of Romanies, making any proposals it deems necessary, and developing a minority policy in its special field (see paras. 15-16 above).

71. Concerning the education of the Romany population, the Ministry of Education has stated that the objective is to achieve equality with the majority population. The Advisory Board for Romany Affairs has drawn attention to the fact that the Romany language does not feature in the curricula but is treated rather like an extracurricular activity and is taught outside official school hours. The Ministry of Education states that Romany language classes have been started in several areas on an experimental basis. Some 30 teachers of Romany language and culture have been trained, and there is an intention to train more. The teachers give lessons in schools and work as consultants and intermediaries between the Romanies and the majority population.

72. Romany children have 2 lessons of Romany language a week in some 10 areas. Romany language is also taught in adult education classes which are part of employment services and in courses provided by civic institutes. In 1992 the National Board of General Education confirmed the criteria for the teaching of the Romany language. An active participation of the Romany population has made it possible to establish a plan for language teaching and to put the plan into effect. Teaching is, however, hampered by a lack of teaching materials.

73. To raise the low standard of basic education of the adult Romany population, a small appropriation has been made in the State budget for classes in reading, writing and arithmetic in civic and workers institutes and in prisons. In recent years adult education has expanded to new fields, such as the training of classroom teaching assistants and tuition in working life skills, social welfare, information and the arts. Progress has been made in the production of teaching materials. A Romany-Finnish-English dictionary was published in 1994.

74. A considerable number of Romany children still leave comprehensive school without completing it, and of those who do, very few pursue further studies. As a result, Romanies have difficulty in entering the labour market.

75. In 1989, a booklet on the opportunities of Romany children in Finland and Sweden was published jointly by the two countries. A 1991 report by the Working Group for Day Care established by the Ministry of Social Affairs and Health (Romanilapsen maailma, "The world of a Romany child") gives important background information, drawing attention to the linguistic and cultural needs of Romany children in day care.

76. In the summer of 1991 an international summer school was organized in Finland where participants from Finland and other countries were taught such subjects as the Romany and Hindi languages and the history and culture of the Romany people. In the summer of 1992 the parallel activities by NGOs during the 1992 Helsinki CSCE meeting included an international seminar on the position of the Romany people. Romany representatives on the Advisory Board for Romany Affairs have attended a number of international meetings. Every year Finland and Sweden have a wide-ranging meeting on cooperation, attended by representatives of authorities and the Romany people.

77. Research, information, and education and training projects are envisaged or have been carried out on both the local and regional levels. The Romany population has made an active contribution to these projects.

78. The Advisory Board has drawn attention to the fact that since the early 1970s, no overall investigation has been made into the living conditions of the Romany population. This lack of thorough basic research makes it difficult to intervene in serious problems. The latest survey, from 1985, showed that 20 per cent of the Romanies lived in very poor housing conditions or had no housing, while in the entire population the proportion of those with inadequate housing was 13.5 per cent. Although some municipalities have taken steps to improve the living conditions of Romanies, the Advisory Board believes that, in the country as a whole, the housing conditions of Romanies are at the 1985 level.

79. Romanies continue to face difficulties in finding work, despite the prohibition against discrimination in employment included in the law in 1987. The customs important to the group identity of the Romanies receive little understanding; not even the authorities take them into consideration every time they make decisions. Educational standards which are lower than those for the rest of the population make it difficult for Romanies to get employment.

80. A recent limited survey on racial prejudice revealed negative attitudes towards the Romanies among schoolchildren. Attention has been focused on inadequate education in schools about minorities, Romanies in particular. A need for education about racial discrimination and minorities on a broader basis and in different subjects has become obvious.

81. Relying on the experiences of the Romanies, the Advisory Board for Romany Affairs has criticized the high threshold of legal proceedings undertaken by individuals in discrimination cases. As the Board has noted, very few instances of discrimination have led to court cases, and of those that have, the court has not ruled on aspects constituting incitement to discrimination but rather on access by Romanies to restaurants.

82. On 23 September 1994 the Government submitted a bill to Parliament on amendments to a number of laws on education. This bill contains provisions both to safeguard the right of immigrant children to receive education preparing them for the comprehensive school and to strengthen the right of Saami-speaking children and children with a foreign language as a mother tongue to learn their own language at school.

83. On 28 September 1994, the Government submitted a bill to Parliament for a new, more comprehensive Skolt Act to replace the earlier Act, which mainly focuses on support for housing. The purpose of the new Act is to promote the preservation of the Skolt culture through support for their communities and ways of life. The Act contains provisions to reinforce the position of the traditional village meetings, Skolt councils, and Skolt ways of taking care of various matters.

#### Article 6

84. Very few cases have been heard in court in which criminal charges have been brought under articles in the Penal Code on incitement against a population group (chap. 13, art. 5) and on discrimination (chap. 13, art. 6). Charges of discrimination, however, seem to be on the increase. Statistics for 1977 to 1991 are appended (annex 5).

85. In his reports the Ombudsperson for Aliens refers to cases of suspected discrimination which he helped to clarify. Especially for foreigners, but also for Finnish minorities, the threshold of legal action in cases of discrimination is relatively high.

86. In recent years acts of xenophobia have increased. Violence has been used to desecrate cemeteries. Jews have received threats. Finnish police authorities believe, however, that these are isolated instances. This is evident, for example, from the reply of the Ministry of the Interior to an inquiry made from the floor in Parliament. The Ministry said that both the Ministry and the police authorities responsible to it continuously monitor national and international developments relating to unrest directed against aliens. The reply further stated that it was not very likely that racial unrest would spread to Finland. It said that acts of violence and vandalism against aliens in Finland were sporadic and unorganized, committed by groups under the influence of alcohol or acting on a sudden impulse. According to the reply, these acts were committed out of envy of refugees' conditions, jealousy, or for similar minor reasons.

87. In its report in the spring of 1994, the Advisory Board for Refugee and Migrant Affairs proposed the monitoring and compilation of statistics on racist and xenophobic activities, for example by the Criminological Research Institute operating in conjunction with the Ministry of Justice.

88. The idea of establishing the post of an Ombudsperson against Ethnic Discrimination, modelled on the Swedish example, has been discussed in Finland. A suggestion to this effect has been made by the Advisory Board for Romany Affairs and others. As yet the discussion has not led to concrete proposals. Authorities to whom victims of discrimination can turn to seek help include the Parliamentary Ombudsperson and the Ombudsperson for Aliens.

89. Concerning legal cases, see annex 6.

Article 7Education and teaching

90. The Office for Refugee Affairs in the Ministry of Social Affairs and Health now publishes an annual catalogue of publications about refugees and foreigners. This index is of use to teachers in schools and in adult education. There has been a considerable increase in materials in recent years; not only authorities but several NGOs and the Lutheran Church have produced material. Racial discrimination has been a subject of discussion in many seminars for professionals and events for the general public and the media.

91. Human rights education and education for international understanding, for which the approach of mainstreaming is used in the Finnish school system, are in the new situation increasingly important in addressing and preventing problems of racism and racial discrimination, xenophobia and intolerance. The work is based on the input of active teachers and materials produced by NGOs and others. The approach used in promoting education relating to international understanding, human rights and the environment is to emphasize that in encountering what is different or unfamiliar, multiculturalism should be seen as an asset and that positive attitudes should be adopted.

92. An important step in informing the population about the rights of migrant children was taken with the appearance in 1992 of a manual on the education of migrant children. A new edition came out in 1994. The manual also has wider uses as an information package for encountering different cultures.

93. The International Year of the World's Indigenous People, 1993 brought the subject to teaching and education. The activities organized as part of the celebrations of the Year undoubtedly provided teachers with new impulses. An information sheet was published for teachers by the Finnish United Nations Association which focused on the World Conference on Human Rights, including the problems of indigenous peoples and minorities.

94. Finland's reports on the implementation of human rights treaties have been published in Finnish and circulated widely, in part to give teachers and other professionals basic material for use in human rights education. The fact that minorities and foreigners are made visible in these reports, which are meant for general distribution, promotes open discussion of problems and education for tolerance.

95. In adopting the first periodic report on the implementation of the Convention on the Rights of the Child in the spring of 1994, the Government of Finland made a statement in which it stressed that information and discussion of the rights of the child needed to be increased, and to promote such activities the Government would appropriate funds for human rights education and information. A focal point for these activities in 1995, proclaimed by the United Nations and the Council of Europe as the Year for Tolerance, will be work against racism, xenophobia, anti-semitism and intolerance.



### Culture

96. Culture has played a central role in the work to improve the position of the Saamis and Romanies in particular, as well as the position of foreigners. Some of the strategies utilized by official bodies and NGOs are to draw attention to the enriching aspects of differences between people and cultures and to offer experiences of immediate contact to remove prejudice. A proof of the benefits of this approach is the foundation of the Romany Educational and Cultural Development Unit.

97. A proposal for cultural autonomy made by the Working Group for Saami Affairs in its report in February 1994 may constitute an important cultural development for the Saami population.

98. The Ministry of Education has since 1992 appropriated funds for the support of Saami culture and other minority cultures. Since 1994 separate appropriations have been made for Saami culture and for other minority cultures.

99. In Finland the campaign for tolerance initiated by the Council of Europe is intended to be a collaboration also involving artists. The growing use of the arts and provision of emotional experiences in teaching and education mark a positive development which reinforces the use of factual materials emphasizing multicultural values.

100. It is increasingly felt that the integration of the cultural dimension to education for international understanding and human rights education is a central issue. This is reflected in the activities of such bodies as the Finnish UNESCO Committee and the Ministry for Foreign Affairs. As a contribution to this type of international cooperation, Finland hosted in May 1993 a conference on the relationship between human rights and cultural policies. The conference, which was organized in cooperation with the Council of Europe, Circle and Rights and Humanity, unambiguously stressed the kind of cultural activities that are required to fulfil the purposes of the Convention.

### Information

101. In recent years there has been a considerable increase in information to support the objectives of the Convention. A major reason is the active contribution of the Information Unit established in the Ministry of Social Affairs and Health a few years ago. For the first time in 1991 the funds made available for information exceeded 1 million Finnish marks. In 1993, they amounted to 1.5 million marks; in addition, another 1 million marks were used for campaigning. In the 1994 budget a separate appropriation of half a million was made for education for tolerance.

102. The information activities by the Unit include publication of a newsletter ("Monitori") and of a variety of other materials as well as an annual compendium of available materials.

103. The Ministry of Social Affairs and Health has produced a brochure for "A Foreign Woman in Finland" (2nd edition in 1993 in Finnish, English, Estonian and Russian), which gives practical information for foreign women and Finnish authorities.

104. In 1993 the National Board of General Education printed a booklet on Romanies and health-care services ("Romani ja terveyspalvelut - opas terveydenhuollon ammattilaisille") for health-care professionals. The Ministry of Social Affairs and Health produced a brochure ("Finland's Romani People - E Rhoma and i Finlandia") in Finnish and English. The Romany Educational and Cultural Development Unit has since 1984 published a newsletter called "Latso Diives".

105. The International Year of the World's Indigenous People increased information about the Saamis, and a growing number of people are displaying a positive interest in the Saami culture. The Nordic Council of Ministers gives financial support to the information activities.

106. NGOs and the Lutheran Church increasingly publish material for education for tolerance and understanding cultural and other differences.

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# Annex 795

Consideration of Reports Submitted by States Parties Under Article 9 of the Convention,  
Concluding Observations of the Committee on the Elimination of Racial Discrimination,  
Russian Federation, CERD/C/304/Add.5 (28 March 1996)





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on the Elimination  
of all Forms of  
Racial Discrimination**

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OF RACIAL DISCRIMINATION  
Forty-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES  
PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Concluding observations of the Committee on the  
Elimination of Racial Discrimination

Russian Federation

1. The Committee considered the twelfth and thirteenth periodic reports of the Russian Federation (CERD/C/263/Add.9) at its 1133rd and 1134th meetings (see CERD/C/SR.1133-1134), held on 28 and 29 February 1996, and at its 1150th meeting, held on 12 March 1996, adopted the following concluding observations.

A. Introduction

2. The Committee notes with appreciation the State Party's willingness to continue the dialogue with the Committee by sending a high-level delegation to present the reports, which indicates the importance attached by the Government of the Russian Federation to its obligations under the Convention. However, the Committee regrets that the reports were not submitted on time, that they did not fully comply with the reporting guidelines, did not contain adequate information on the implementation of the Convention in the Republics and that, in particular, the information on Chechnya requested at the forty-sixth session of the Committee was not included, but only supplied orally by the delegation.



B. Positive aspects

3. The establishment in 1993 of a special commission on human rights is welcomed. It is also noted with satisfaction that a parliamentary group has been mandated to investigate human rights and international humanitarian law violations in the Chechen conflict. In addition, the recent establishment of a special authority to implement a State programme on social and economic life in the Northern Territories is appreciated.

4. The entry of the Russian Federation into the Council of Europe, which became official in February 1996, is noted. It is hoped that the Russian Federation will soon ratify the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and will accept its procedure for receiving individual petitions. The recent drafting of two regional human rights conventions, including one on the rights of minorities, in the framework of the Commonwealth of Independent States is also a positive initiative.

C. Factors and difficulties impeding the implementation of the Convention

5. The difficulties facing the Russian Federation in the present period of transition and in a climate of social change and deep economic crisis are taken into account. It is also noted that the Russian Federation is a large multi-ethnic and multicultural society. The factual situation of minorities has also to be taken into account; some of them possess their own statehood and are represented by subjects of the Federation whereas others are dispersed all over the country. In respect of members of the latter groups the full implementation of the Convention may require particular efforts. Finally, it is understood that the establishment and practical application of a new democratic and non-discriminatory political, economic and social framework is a difficult and lengthy process.

D. Principal subjects of concern

6. Concern is raised about the current shortcomings in the general national legal framework for protecting all persons against discriminatory practices. Article 19 of the Constitution of the Russian Federation, which provides for equality of rights regardless of "race, nationality, language, origin or other circumstances", is not broad enough to be regarded as a full implementation of the prohibition of racial discrimination required by the Convention. It is further noted with concern that the legislation necessary for the implementation of article 19 of the Constitution and other constitutional provisions designed to protect the rights of minorities have not yet been fully adopted or effectively implemented.

7. Several minority and indigenous groups have no access to education in their own language. When they deal with administrative and judicial matters, they are frequently precluded from using their own language.

8. The absence of effective measures for the protection and preservation of the traditional ways of life and the right to land use of the people of the Northern Territories is also a cause for concern, although the need for improvement of their economic, social and cultural situation has been recognized.

9. The concrete implementation of the principles and provisions of the Convention remains weak, especially at the regional and local levels. Concern is particularly raised regarding the application of articles 2 and 4 of the Convention.

10. The report contains very limited information on the right to security of person (art. 5 (b) of the Convention), the right to freedom of movement (art. 5 (d) (i)) and non-discrimination with regard to the enjoyment of economic, social and cultural rights, referred to in article 5 (e) of the Convention.

11. The increase in racist positions associated with nationalist movements such as the National Republican Party is of grave concern. Equally, the increase in racist attitudes among the population or of local authorities directed against Caucasians, especially Chechens, also gives cause for concern, as do indications of anti-semitism among part of the population.

12. The use of excessive and disproportionate force in suppressing the attempted secession in Chechnya, resulting in unnecessary civilian casualties, is a matter of very grave concern. The reports of arbitrary arrests, ill-treatment of detainees, excessive destruction of civilian property and pillage in Chechnya also give rise to concern.

13. In particular the reports concerning the situation in the so-called filtration camps give rise to grave concern. It is to be deplored that representatives of humanitarian organizations, such as the International Committee of the Red Cross, have not been permitted to visit such camps.

14. The situation in Ingushetia and North Ossetia is a further matter of deep concern. Large numbers of Ingush exiles are being denied by the North Ossetian authorities the right to return freely to their regions of origin, in particular the Prigoradnyi district, in spite of the Law on Rehabilitation of Repressed Peoples. The Ingush population has also suffered directly and indirectly from the Chechen conflict

#### E. Suggestions and recommendations

15. The Committee strongly recommends that the National Parliament urgently complete and adopt all announced acts and laws concerning human rights, especially the draft law on national and cultural autonomy. The laws on the use of minority languages should be completed at the various legislative levels and fully implemented. The Committee also suggests that the State Party consider ratifying ILO Convention No. 169.

16. The State Party should take all appropriate measures to ensure the promotion of minority and indigenous people's languages. The Committee recommends that education programmes be provided in the appropriate languages.

17. The Committee recommends that special attention be paid to the minority and indigenous groups living in the Northern Territories by taking appropriate and effective measures to promote and protect their rights, especially the rights to use and exploit the land where they are living and to live in their own cultural environment.

18. The Committee recommends that, where appropriate, the State Party take special and concrete measures to ensure the adequate development and protection of less developed groups within the Federation, in accordance with article 2, paragraph 2, of the Convention.

19. The Committee strongly recommends that the Government take concrete and appropriate measures to outlaw and combat all organizations and political groups and their respective activities that promote racist ideas or objectives, as referred to in article 4 of the Convention.

20. The Committee also strongly recommends that the State Party carry out the decision of the Constitutional Court to abolish the permit system effectively.

21. The Committee recommends that the State Party enhance effectively protection against any acts of racial discrimination through the competent national courts, in accordance with article 6 of the Convention, by strengthening the court system, the independence of the judiciary and the confidence of the population therein. The Committee further recommends the training of judges, lawyers and magistrates in human rights. This type of training should also be provided to law enforcement personnel and the military, in line with General Recommendation No. XIII of the Committee.

22. The Committee strongly recommends that the State Party urgently take all measures to restore peace in Chechnya and to ensure full protection of human rights in the region. It further strongly recommends that the Government take all steps to ensure the full respect of fundamental human rights in the region, without discrimination. The Committee reaffirms that persons responsible for massive, gross and systematic human rights violations, and gross violations of international humanitarian law, should be held responsible and prosecuted.

23. The Committee recommends that the State Party guarantee the rights of all victims, especially refugees, of the conflict in Ingushetia and North Ossetia and provide in its next report information on the human rights situation in Chechnya, Ingushetia and North Ossetia.

24. The Committee invites the State Party to provide, in its next report, further information on the breakdown by percentage of all ethnic groups of the population.

25. More information is also requested in the next report on the number of complaints and court cases related to racial discrimination that have been registered recently by the State Party, on the respective decisions and judgments taken, and on the implementation of article 7 of the Convention.

26. The Committee recommends that the State Party ratify the amendments to article 8, paragraph 6, of the Convention, adopted at the 14th meeting of States Parties.

27. The Committee suggests that the State Party ensure the dissemination of its periodic report and of the concluding observations adopted by the Committee. The accepted procedure of individual communications under article 14 of the Convention should be made widely known in the country.

28. The Committee recommends that the State Party's next periodic report, due on 5 March 1996, be a comprehensive one and that the State Party address all the concerns expressed in these observations.

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# Annex 796

CERD Committee, General Recommendation No. XXIX on Article 1, Paragraph 1, of the Convention (Descent) Preamble, contained in U.N. Doc.CCPR/C/21/Rev.1/Add.5 (2002)







**CERD General Recommendation XXIX on Article 1, Paragraph 1, of the  
Convention (Descent)**

*Adopted at the Sixty-first Session of the Committee on the Elimination of Racial  
Discrimination, on 1 November 2002*

*The Committee on the Elimination of Racial Discrimination,*

*Recalling* the terms of the Universal Declaration of Human Rights according to which all human beings are born free and equal in dignity and rights and are entitled to the rights and freedoms therein without distinction of any kind, including race, colour, sex, language, religion, social origin, birth or other status,

*Recalling also* the terms of the Vienna Declaration and Programme of Action of the World Conference on Human Rights according to which it is the duty of States, regardless of political, economic and cultural system, to promote and protect all human rights and fundamental freedoms,

*Reaffirming* its general recommendation XXVIII in which the Committee expresses wholehearted support for the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,

*Reaffirming also* the condemnation of discrimination against persons of Asian and African descent and indigenous and other forms of descent in the Durban Declaration and Programme of Action,

*Basing* its action on the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination which seeks to eliminate discrimination based on race, colour, descent, or national or ethnic origin,

*Confirming* the consistent view of the Committee that the term “descent” in article 1, paragraph 1, the Convention does not solely refer to “race” and has a meaning and application which complement the other prohibited grounds of discrimination,

*Strongly reaffirming* that discrimination based on “descent” includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights,

*Noting* that the existence of such discrimination has become evident from the Committee’s examination of reports of a number of States parties to the Convention,

*Having organized* a thematic discussion on descent-based discrimination and received the contributions of members of the Committee, as well as contributions



from some Governments and members of other United Nations bodies, notably experts of the Sub-Commission for the Promotion and Protection of Human Rights,

*Having received* contributions from a great number of concerned non-governmental organizations and individuals, orally and through written information, providing the Committee with further evidence of the extent and persistence of descent-based discrimination in different regions of the world,

*Concluding* that fresh efforts need to be made as well as existing efforts intensified at the level of domestic law and practice to eliminate the scourge of descent-based discrimination and empower communities affected by it,

*Commending* the efforts of those States that have taken measures to eliminate descent-based discrimination and remedy its consequences,

*Strongly encouraging* those affected States that have yet to recognize and address this phenomenon to take steps to do so,

*Recalling* the positive spirit in which the dialogues between the Committee and Governments have been conducted on the question of descent-based discrimination and anticipating further such constructive dialogues,

*Attaching the highest importance* to its ongoing work in combating all forms of descent-based discrimination,

*Strongly condemning* descent-based discrimination, such as discrimination on the basis of caste and analogous systems of inherited status, as a violation of the Convention,

*Recommends* that the States parties, as appropriate for their particular circumstances, adopt some or all of the following measures:

### **1. Measures of a general nature**

(a) Steps to identify those descent-based communities under their jurisdiction who suffer from discrimination, especially on the basis of caste and analogous systems of inherited status, and whose existence may be recognized on the basis of various factors including some or all of the following: inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation, including in housing and education, access to public spaces, places of worship and public sources of food and water; limitation of freedom to renounce inherited occupations or degrading or hazardous work; subjection to debt bondage; subjection to dehumanizing discourses referring to pollution or untouchability; and generalized lack of respect for their human dignity and equality;

(b) Consider the incorporation of an explicit prohibition of descent-based discrimination in the national constitution;



- (c) Review and enact or amend legislation in order to outlaw all forms of discrimination based on descent in accordance with the Convention;
- (d) Resolutely implement legislation and other measures already in force;
- (e) Formulate and put into action a comprehensive national strategy with the participation of members of affected communities, including special measures in accordance with articles 1 and 2 of the Convention, in order to eliminate discrimination against members of descent-based groups;
- (f) Adopt special measures in favour of descent-based groups and communities in order to ensure their enjoyment of human rights and fundamental freedoms, in particular concerning access to public functions, employment and education;
- (g) Establish statutory mechanisms, through the strengthening of existing institutions or the creation of specialized institutions, to promote respect for the equal human rights of members of descent-based communities;
- (h) Educate the general public on the importance of affirmative action programmes to address the situation of victims of descent-based discrimination;
- (i) Encourage dialogue between members of descent-based communities and members of other social groups;
- (j) Conduct periodic surveys on the reality of descent-based discrimination and provide disaggregated information in their reports to the Committee on the geographical distribution and economic and social conditions of descent-based communities, including a gender perspective;

## **2. Multiple discrimination against women members of descent-based communities**

- (k) Take into account, in all programmes and projects planned and implemented and in measures adopted, the situation of women members of the communities, as victims of multiple discrimination, sexual exploitation and forced prostitution;
- (l) Take all measures necessary in order to eliminate multiple discrimination including descent-based discrimination against women, particularly in the areas of personal security, employment and education;
- (m) Provide disaggregated data for the situation of women affected by descent-based discrimination;

## **3. Segregation**

- (n) Monitor and report on trends which give rise to the segregation of descent-based communities and work for the eradication of the negative consequences resulting from such segregation;



(o) Undertake to prevent, prohibit and eliminate practices of segregation directed against members of descent-based communities including in housing, education and employment;

(p) Secure for everyone the right of access on an equal and non-discriminatory basis to any place or service intended for use by the general public;

(q) Take steps to promote mixed communities in which members of affected communities are integrated with other elements of society and ensure that services to such settlements are accessible on an equal basis for all;

#### **4. Dissemination of hate speech including through the mass media and the Internet**

(r) Take measures against any dissemination of ideas of caste superiority and inferiority or which attempt to justify violence, hatred or discrimination against descent-based communities;

(s) Take strict measures against any incitement to discrimination or violence against the communities, including through the Internet;

(t) Take measures to raise awareness among media professionals of the nature and incidence of descent-based discrimination;

#### **5. Administration of justice**

(u) Take the necessary steps to secure equal access to the justice system for all members of descent-based communities, including by providing legal aid, facilitating of group claims and encouraging non-governmental organizations to defend community rights;

(v) Ensure, where relevant, that judicial decisions and official actions take the prohibition of descent-based discrimination fully into account;

(w) Ensure the prosecution of persons who commit crimes against members of descent-based communities and the provision of adequate compensation for the victims of such crimes;

(x) Encourage the recruitment of members of descent-based communities into the police and other law enforcement agencies;

(y) Organize training programmes for public officials and law enforcement agencies with a view to preventing injustices based on prejudice against descent-based communities;

(z) Encourage and facilitate constructive dialogue between the police and other law enforcement agencies and members of the communities;



## **6. Civil and political rights**

(aa) Ensure that authorities at all levels in the country concerned involve members of descent-based communities in decisions which affect them;

(bb) Take special and concrete measures to guarantee to members of descent-based communities the right to participate in elections, to vote and stand for election on the basis of equal and universal suffrage, and to have due representation in Government and legislative bodies;

(cc) Promote awareness among members of the communities of the importance of their active participation in public and political life, and eliminate obstacles to such participation;

(dd) Organize training programmes to improve the political policy-making and public administration skills of public officials and political representatives who belong to descent-based communities;

(ee) Take steps to identify areas prone to descent-based violence in order to prevent the recurrence of such violence;

(ff) Take resolute measures to secure rights of marriage for members of descent-based communities who wish to marry outside the community;

## **7. Economic and social rights**

(gg) Elaborate, adopt and implement plans and programmes of economic and social development on an equal and non-discriminatory basis;

(hh) Take substantial and effective measures to eradicate poverty among descent-based communities and combat their social exclusion or marginalization;

(ii) Work with intergovernmental organizations, including international financial institutions, to ensure that development or assistance projects which they support take into account the economic and social situation of members of descent-based communities;

(jj) Take special measures to promote the employment of members of affected communities in the public and private sectors;

(kk) Develop or refine legislation and practice specifically prohibiting all discriminatory practices based on descent in employment and the labour market;

(ll) Take measures against public bodies, private companies and other associations that investigate the descent background of applicants for employment;

(mm) Take measures against discriminatory practices of local authorities or private owners with regard to residence and access to adequate housing for members of affected communities;





(nn) Ensure equal access to health care and social security services for members of descent-based communities;

(oo) Involve affected communities in designing and implementing health programmes and projects;

(pp) Take measures to address the special vulnerability of children of descent-based communities to exploitative child labour;

(qq) Take resolute measures to eliminate debt bondage and degrading conditions of labour associated with descent-based discrimination;

### **8. Right to education**

(rr) Ensure that public and private education systems include children of all communities and do not exclude any children on the basis of descent;

(ss) Reduce school drop-out rates for children of all communities, in particular for children of affected communities, with special attention to the situation of girls;

(tt) Combat discrimination by public or private bodies and any harassment of students who are members of descent-based communities;

(uu) Take necessary measures in cooperation with civil society to educate the population as a whole in a spirit of non-discrimination and respect for the communities subject to descent-based discrimination;

(vv) Review all language in textbooks which conveys stereotyped or demeaning images, references, names or opinions concerning descent-based communities and replace it by images, references, names and opinions which convey the message of the inherent dignity of all human beings and their equality of human rights.

# Annex 797

Hagan v. Australia, Communication No. 26/2002, CERD/C/62/D/26/2002 (14 April 2003)





**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

Distr.  
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CERD/C/62/D/26/2002  
14 April 2003

Original: ENGLISH

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION  
Sixty-second session  
3-21 March 2003

**OPINION**

**Communication No. 26/2002**

Submitted by: Stephen Hagan (represented by counsel)

Alleged victim: The petitioner

State Party: Australia

Date of the communication: 31 July 2002

Date of the present decision: 20 March 2003

[ANNEX]

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\* Made public by decision of the Committee on the Elimination of Racial Discrimination.

**Annex**

**OPINION OF THE COMMITTEE ON THE ELIMINATION OF RACIAL  
DISCRIMINATION UNDER ARTICLE 14 OF THE INTERNATIONAL  
CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL  
DISCRIMINATION**

**sixty-second session**

**concerning**

**Communication No. 26/2002**

Submitted by: Stephen Hagan (represented by counsel)

Alleged victim: The petitioner

State party: Australia

Date of the communication: 31 July 2002

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 20 March 2003,

Adopts the following:

**Opinion**

1. The petitioner, Stephen Hagan, is an Australian national, born in 1960, with origins in the Kooma and Kullilli Tribes of South Western Queensland. He alleges to be a victim of a violation by Australia of articles 2, in particular, paragraph 1 (c); 4; 5, paragraphs d (i) and (ix), e (vi) and f; 6 and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination. He is represented by counsel.

**The facts as presented**

2.1 In 1960, the grandstand of an important sporting ground in Toowoomba, Queensland, where the author lives, was named the "E.S. 'Nigger' Brown Stand", in honour of a well-known sporting and civic personality, Mr. E.S. Brown. The word "nigger" ("the offending term") appears on a large sign on the stand. Mr. Brown, who was also a member of the body overseeing the sports ground and who died in 1972, was of white Anglo-Saxon extraction who acquired the offending term as his nickname, either "because of his fair skin and blond hair or because he had a penchant for using 'Nigger Brown' shoe polish". The offending term is also repeated orally in public announcements relating to facilities at the ground and in match commentaries.

2.2 On 23 June 1999, the petitioner requested the trustees of the sports ground to remove the offending term, which he found objectionable and offensive. After considering the views of numerous members of the community who had no objection to the use of the offending term on the stand, the trustees advised the petitioner by letter of 10 July 1999 that no further action would be taken. On 29 July 1999, a public meeting chaired by a prominent member of the local indigenous community, and attended by a cross-section of the local Aboriginal community, the mayor and the chair of the sports ground trust, passed a resolution “That the name ‘E.S. Nigger Brown’ remain on the stand in honour of a great sportsman and that in the interest of the spirit of reconciliation, racially derogative or offensive terms will not be used or displayed in future”.<sup>1</sup>

2.3 On 11 May 2000, the petitioner brought a federal court action, on the basis that the trustees’ failure to remove the offending term violated sections 9 (1)<sup>2</sup> and 18 C (1)<sup>3</sup> of the federal Racial Discrimination Act 1975 (“the Act”). He sought removal of the offending term from the grandstand and an apology from the trustees. On 10 November 2000, the Federal Court dismissed the petitioner’s application. The Court considered that the petitioner had not demonstrated that the decision was an act “reasonably likely in all the circumstances to offend, insult, humiliate or intimidate an indigenous Australian or indigenous Australians generally”. Nor was the decision an act, in the words of the statutory language, “done because of the race ... of the people of the group”. Finally, the Court considered that the Act did not protect the “personal sensitivities of individuals”, as it considered to be the case here, but rather “render[ed] acts against individuals unlawful only where those acts involve treating the individual differently and less advantageously than other persons who do not share the membership of the complainant’s racial, national or ethnic group”. On 23 February 2002, the Full Court of the Federal Court rejected the petitioner’s appeal. On 19 March 2002, the High Court of Australia refused the petitioner’s application for special leave to appeal.

2.4 The petitioner also pursued a complaint to the Human Rights and Equal Opportunities Commission (HREOC), which could not be pursued further because of a subsequent restriction by law of the Commission’s jurisdiction to investigate certain individual complaints.

### **The complaint**

3.1 The petitioner contends that the use of the offending term on the grandstand and orally in connection therewith violates articles 2, in particular, paragraph 1 (c); 4; 5, paragraphs d (i) and (ix), e (vi) and f; 6 and 7 of the Convention. He contends that the term is “the most racially offensive, or one of the most racially offensive, words in the English language”. Accordingly, he and his family are offended by its use at the ground and are unable to attend functions at what is the area’s most important football venue. He argues that whatever may have been the position in 1960, contemporary display and use of the offending term is “extremely offensive, especially to the Aboriginal people, and falls within the definition of racial discrimination in Article 1” of the Convention.

3.2 He clarifies that he has no objection to honouring Mr. Brown or naming a football stand in his honour, but that at the time the nickname “Nigger” was applied to Mr. Brown, non-Aboriginal Australians “either were not aware of or were insensitive to the hurt and offence



that term caused to Aboriginal people”. He argues further that it is not necessary to repeat Mr. Brown’s nickname in order to honour him, for other stadia named after well-known athletes utilize their ordinary names, rather than their nicknames.

3.3 He argues that under article 2, paragraph 1 (c), in particular, any State party to the Convention has an obligation to amend laws having the effect of perpetuating racial discrimination. He contends that use of words such as the offending term in a very public way provides the term with formal sanction or approval. Words convey ideas and power, and influence thoughts and beliefs. They may perpetuate racism and reinforce prejudices leading to racial discrimination. The lawfulness (in terms of domestic law) of the use of this term also runs counter to the objectives of article 7, which indicates that States parties undertake to combat prejudices leading to racial discrimination.

3.4 The petitioner further argues that section 18 (1) (b) of the Act, requiring the offensive conduct to be “because of” a racial attribute is narrower than the associative terms “based on” found in the definition of racial discrimination in article 1 of the Convention. He characterizes that the dismissal of his complaint, inter alia on the grounds that the offensive term was not “because of” a racial attribute, was “technical”.

3.5 By way of remedy, the petitioner seeks the removal of the offending term from the sign and an apology, as well as changes to Australian law to provide an effective remedy against racially-offensive signs, such as the one in question.

### **The State party’s submissions on admissibility and merits**

4.1 By submission of 26 November 2002, the State party disputed both the admissibility and merits of the petition.

4.2 As to admissibility, the State party, while conceding that domestic remedies have been exhausted, considers the petition incompatible with the provisions of the Convention and/or insufficiently substantiated. Concerning incompatibility, the State party refers to jurisprudence of the Human Rights Committee that it will not review the interpretation of domestic law, absent bad faith or abuse of power,<sup>4</sup> and invites the Committee on the Elimination of Racial Discrimination to take the same approach. The State party notes that its courts and authorities considered the petitioner’s complaints expeditiously and according to laws enacted in order to give effect to its obligations under the Convention. The courts, at first instance and appeal, held that the petitioner’s complaints had not been made out. Accordingly, the State party submits it would be inappropriate for the Committee to review the judgements of the Federal Court and to substitute its own views. As to the specific claim under paragraph 1 (c) that the State party should amend the Racial Discrimination Act (being a law having the effect of perpetuating racial discrimination), the State party argues that this claim is incompatible with the Convention, as the Committee has no jurisdiction to review the laws of Australia in the abstract. It invites the Committee to follow the jurisprudence of the Human Rights Committee to this effect.<sup>5</sup>

4.3 In view of the thorough consideration and rejection of the complaint before domestic instances, the State party also argues that the petition is insufficiently substantiated, for purposes of admissibility.

4.4 On the merits, the State party disputes that the facts disclose a violation of any articles of the Convention invoked. As to the claim under article 2, the State party submits that these obligations are of general principle and programmatic in character, and therefore accessory to other articles of the Convention. Accordingly, in the same way that the Human Rights Committee only finds a violation of article 2 of the International Covenant on Civil and Political Rights<sup>6</sup> after finding a separate substantive violation of the Covenant, a violation of article 2 of the Convention could only arise after a violation of the other substantive articles (which is denied in its submissions under articles 4 to 7 below).<sup>7</sup> Even if the Committee considers that article 2 can be directly breached, the State party submits that it has satisfied its obligations: it condemns racial discrimination, has enacted legislation and policy to make its practice by any person or body unlawful as well as to eliminate all forms of racial discrimination and actively promote racial equality, and has provided effective mechanisms of redress.

4.5 In terms of the specific paragraphs of article 2, as to paragraph 1 (a), the State party cites academic commentary to the effect that this provision does not deal with private acts of discrimination (which are referred to in subparagraphs (b) and (d)).<sup>8</sup> As the Toowomba Sports Ground Trust is a private body rather than a public authority or government agent, its acts fall outside the scope of paragraph 1 (a). As to paragraph 1 (b), the State party relies on commentary that this provision is intended to prevent any actor engaged in racial discrimination from receiving State support.<sup>9</sup> The State party submits that neither the establishment of the Sports Ground Trust, its continued existence, nor its response to the communication can be taken as any State sponsorship, defence or support of any racial discrimination committed by the Trust (which is denied).

4.6 As to paragraph 1 (c), the State party refers to its submissions below that no racial discrimination has been suffered.<sup>10</sup> That the petitioner's complaint under the Racial Discrimination Act was unsuccessful does not detract from the effectiveness of that legislation, nor does it suggest that the Act creates or perpetuates racial discrimination. As to paragraph 1 (d), the State party again refers to its submissions that no racial discrimination has occurred, and to its general remarks above on article 2.<sup>11</sup> As to paragraph 1 (e), the State party refers to commentary that this provision is "broadly and vaguely worded", leaving undefined "[w]hat 'integrationist' movements are, and what 'strengthens' racial division".<sup>12</sup> The State party recalls that Australia is a multicultural society, and that its laws and policies are designed to eliminate direct and indirect racial discrimination and actively to promote racial equality. It refers to its periodic reports to the Committee for in-depth description of these laws and policies. As to paragraph 2, the State party submits that the petitioner has failed to indicate how the circumstances of his case warrant the implementation of "special measures". Alternatively, it refers to its submissions that no discrimination has taken place for the conclusion that no need for "special measures" arises.

4.7 As to the petitioner's claim under article 4, the State party invokes its reservation to this article.<sup>13</sup> The State party recalls that pursuant to its obligations under this article, it enacted Part II A of the Racial Discrimination Act, including section 18 C, under which the petitioner

filed his claim. It further argues, based on the jurisprudence of the Human Rights Committee,<sup>14</sup> that States parties must be accorded a certain “margin of appreciation” in implementing their Convention obligations.

4.8 The State party argues that the use of the term “because of” in section 18 of the Act, requiring a causal relationship between offensive conduct and the race, colour or national or ethnic origin of the “targeted group”, is an appropriate manner to implement the obligation to prohibit the intentionally racist acts described in article 4. This is consistent with the Convention and avoids uncertainty. Accordingly, the State party argues that to use “based on” in section 18 of the Act would not give appropriate effect to article 4 of the Convention as implemented in Australian law.

4.9 The State party contends that the petitioner’s complaint was not dismissed on technical grounds, but for lack of substance. The Federal Court, rejecting the contention that any use of the offending term must necessarily be racially offensive, concluded that in the context in which the offending term was used and the community perceptions of the sign on the stand, the decision of the Trust to leave the sign intact did not breach section 18 C of the Act. The State party invites the Committee to adopt the approach of the Federal Court and take into consideration the context in which the word is used in determining issues under article 4.

4.10 The State party refers to the following contextual elements: (i) the fact that the offending term is displayed as “an integral part of the name of a person who is clearly being honoured by having his name publicly attached to the stand”, (ii) the Federal Court’s finding that “[e]ven if the nickname ‘Nigger’ was originally bestowed long ago on Mr. Brown in circumstances in which it then had a racial or even a racist connotation, the evidence indicates that for many decades before the author’s complaint, its use as part of the customary identifier of Mr. Brown had ceased to have any such connotation”, (iii) the consultations with local indigenous persons, (iv) the evidence of a former Aboriginal rugby league personality in the area for whom the name was unproblematic and “simply part of history”, and (v) the absence of any complaint (until the petitioner’s) over 40 years of display at a ground often frequented by many indigenous persons despite increased sensitivities and willingness to speak out in recent years.

4.11 In the light of the above, the State party contends that the Federal Court’s conclusion (upheld on appeal) that the trustees’ refusal, conveyed only after “in good faith [having] taken care to avoid offending the members of a racial group” and which “is not, on an objective view, likely to offend members of that group”, was not an “act done because of the race of” any person. While accepting that the petitioner subjectively felt offended, the Committee should apply an objective test similar to that of the Federal Court in finding that there was no suggestion that the trustees were attempting to justify, promote or incite racial discrimination, contrary to article 4 of the Convention.

4.12 In terms of the specific paragraphs (a) to (c) of article 4, the State party argues that the petitioner has supplied no evidence as to how it may have violated any of these obligations, including that it may be abetting racist activities. It points to Part II A of the Act, which makes unlawful offensive behaviour based on racial hatred, and to further legislation at both State and

Territory level that proscribes racial hatred and vilification, as implementing its obligations under these paragraphs. As to paragraph (a) it recalls its reservation, and, as to paragraph (c), that the Trust is not a public authority or institution.

4.13 As to the petitioner's claim, under article 5, that he is unable to enjoy functions at the sports ground, the State party refers to the jurisprudence of the European Court of Human Rights in assessing discrimination. Under that approach, there must be a clear inequality of treatment in enjoyment of the relevant right, as compared to others in an analogous position. If there is such inequality between similarly situated persons, there must be reasonable and objective justification as well as proportionality of the means applied to achieve a particular aim.<sup>15</sup> The State party observes that sections 9 (making racial discrimination unlawful)<sup>16</sup> and 10 (ensuring equality before the law) of the Act were enacted to implement articles 2 and 5 of the Convention, and section 9 closely follows the definition of racial discrimination in article 1 of the Convention.

4.14 The State party notes that the Federal Court (upheld on appeal) interpreted the phrase "based on" section 9 (1), upon which the author relied, as not "requiring a causal relationship between the act complained of and race etc., but [that it] should rather be read as meaning 'by reference to', i.e., as capable of being satisfied by a less direct relationship than that of cause and effect". Turning to the petitioner's case in terms of section 9 (1), the Court did not consider that the trustees' decision to retain the sign was an act "based on" race. This was so for the decision was not "an act that involved treating members of the Aboriginal race differently, let alone less favourably, from other members of the community", as the offending term was simply part of the customary identifier of a well-known person which had long ceased to have any inappropriate connotation.

4.15 The Court considered that, even if the decision was based or motivated on race, these racial considerations "were taken into account to satisfy the trustees that maintenance of the sign would not give offence to Aboriginal persons generally, as distinct from offence to [the petitioner] personally". Thus, the Court concluded, in finding that there was no racial discrimination, that: "[I]t cannot be said that the act, even if based on race, involved any distinction etc. having either the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom of the kind referred to in section". The State party therefore submits that, as found by the Federal Court, the petitioner has failed to establish that he was treated by the trustees any differently from, or less favourably than, any other person in a similar position, and therefore no racial discrimination has been established.

4.16 In terms of the specific paragraphs of article 5 invoked by the petitioner (paras. (d) (i), (d) (ix), (e) (vi) and (f)), the State party submits that as he failed to establish a racially based distinction in the circumstances of his case, no question of discrimination arises in respect of his freedom of movement, freedom of assembly or association, right to equal participation in cultural activities, or right of access to any public place or service, respectively. As to paragraph (e) (vi), the State party refers to the Committee's jurisprudence that it is beyond its mandate to ensure that this right is established, but rather to monitor its implementation once the right is granted on equal terms.<sup>17</sup>

4.17 On article 6, the State party notes that States possess a wide margin of discretion in fulfilling their obligation under article 6.<sup>18</sup> It submits that its domestic law, which provides for the filing and determination of complaints of racial discrimination and the award of remedies, including monetary compensation for successful complaints, appropriately implements the obligation under article 6. The State party emphasizes that the dismissal of the petitioner's complaint by the Federal Court is no reflection on the effectiveness of the Act's remedies against racial discrimination, or of the remedies available when complaints are successful.

4.18 In any event, the State party submits that article 6, providing for remedies, is accessory in nature and can only be found to have been violated once a separate violation of the specific rights in the Convention has been established.<sup>19</sup> As no other violation of the Convention has been established (under arts. 2, 4, 5 or 7), nor can there be a consequent violation of article 6.

4.19 As to the claim under article 7, the State party notes that the Act came into effect the day after the Convention entered into force for the State party. Moreover, federal, State and Territory governments have, over the years, adopted a wide array of measures to combat effectively racial prejudice and promote racial harmony, which are detailed in the State party's periodic reports. That the petitioner was unsuccessful before the domestic courts does not detract from the immediacy or effectiveness of measures taken by the State party's governments to combat racial prejudice and to promote racial harmony.

### **The petitioner's comments**

5.1 By submission of 20 December 2002, the petitioner responded to the State party's observations. He confirms that he is not asking the Committee to review decisions of the domestic courts, but rather to assess compliance with the Convention of the public display and repeated use in announcements of the offending term. It is apparent from the outcome of the domestic proceedings that the State party's domestic law is cast in overly restrictive terms and does not give full effect to Convention obligations. Nor does the petitioner ask the Committee to review the State party's law in abstracto; rather, he complains of a specific breach of the Convention and the State party's failure to provide a corresponding remedy.

5.2 The petitioner considers that subjective views of individuals referred to by the State party who were not offended by the term in question is of no relevance, as the question is whether the offence was felt by the petitioner and his family. In any event, a considerable number of other persons shared the petitioner's views on the stand, namely the Toowoomba Day Committee, the Toowoomba Multicultural Association, over 80 people participating in a "practical reconciliation" walk and 300 persons who signed a petition. Affidavits to this effect were submitted to the Federal Court, but were not admitted as evidence on technical grounds.<sup>20</sup> The petitioner invites the Committee to take notice of these views. In any event, the petitioner requests the Committee to conclude that the offending term is objectively offensive, whatever the subjective views of various individuals.

5.3 As to the inferences to be drawn from the failure of his domestic proceedings, the petitioner argues that this failure derived from the State party's legislation being so narrowly drawn that it is exceedingly difficult to prove discrimination, and thus it did not give full effect



to the Convention. This failure shows that the State party's law does not provide effective protection against racial discrimination. He emphasizes that he does not approach the Committee arguing a violation of domestic legislation, but rather of the Convention itself.

5.4 As to the State party's specific arguments under article 2, the petitioner observes that the State party has taken no steps to have the offending sign removed, despite the controversy surrounding it for years. This is said to be in violation of the duty, under article 2, to eliminate and bring to an end all forms of racial discrimination. The petitioner rejects the characterization of the Sports Ground Trust as a "private body". He points out that trustees are appointed and can be removed by the Minister, and that their function is to manage land for public (community) purposes. Indeed, the State party's legislation provides that any liability of the trustees attaches to the State.<sup>21</sup> It is therefore a public authority or institution for Convention purposes.

5.5 As to the State party's specific arguments under article 4, the petitioner objects to the reference to its reservation. He contends that the reservation is "probably invalid" as incompatible with the object and purpose of the Convention. Even if valid, he points out that the reservation is temporally limited as it refers to the State party's intention "at the first possible moment, to seek from Parliament legislation implementing the terms of Article 4 (a)". Given that the State party contends that the Part II A of the Act implements its obligations under the article, the reservation must now have lapsed.

5.6 The petitioner points out that he is not objecting to use of the offending term in the distant past, but rather its contemporary use and display. He points out that it is not necessary to repeat the offensive nickname in order to honour Mr. Brown, and it is not common in the State party for stands to feature the nicknames of famous sportspeople in addition to their proper names.

5.7 As to the State party's specific arguments under article 5, the petitioner contends that he has established a racially-based distinction on the basis that the offending term is racially offensive and derogatory, and that white Australians are not affected as the petitioner and his family have been. The inability as a consequence of the petitioner and his family to attend the ground impaired their rights under article 5, including their right to equal participation in cultural activities. As to the State party's specific arguments under article 5, the author observes that the State party failed to identify any measure of "teaching, education, culture and information" directed at combating the trustees' discriminatory conduct, or at promoting reconciliation amongst the many persons offended by the sign.

## **Issues and Proceedings before the Committee**

### *Consideration of admissibility*

6.1 Before considering any claims contained in a petition, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.



6.2 The Committee notes that the State party concedes that domestic remedies have been exhausted. As to the State party's arguments that the petition falls outside the scope of the Convention and/or is insufficiently substantiated, the Committee considers that the petitioner has sufficiently substantiated, for purposes of admissibility, that his individual claim may fall within the scope of application of the provisions of the Convention. Given the complexity of the arguments of both fact and law, the Committee deems it more appropriate to determine the precise scope of the relevant provisions of the Convention at the merits stage of the petition.

6.3 In the absence of any further objections to the admissibility of the communication, the Committee declares the petition admissible and proceeds to its examination of the merits.

*Consideration of the merits*

7.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioner and the State party.

7.2 The Committee has taken due account of the context within which the sign bearing the offending term was originally erected in 1960, in particular the fact that the offending term, as a nickname probably with reference to a shoeshine brand, was not designed to demean or diminish its bearer, Mr. Brown, who was neither black nor of aboriginal descent. Furthermore, for significant periods neither Mr. Brown (for 12 years until his death) nor the wider public (for 39 years until the petitioner's complaint) objected to the presence of the sign.

7.3 Nevertheless, the Committee considers that that use and maintenance of the offending term can at the present time be considered offensive and insulting, even if for an extended period it may not have necessarily been so regarded. The Committee considers, in fact, that the Convention, as a living instrument, must be interpreted and applied taking into the circumstances of contemporary society. In this context, the Committee considers it to be its duty to recall the increased sensitivities in respect of words such as the offending term appertaining today.

8. The Committee therefore notes with satisfaction the resolution adopted at the Toowoomba public meeting of 29 July 1999 to the effect that, in the interest of reconciliation, racially derogatory or offensive terms will not be used or displayed in the future. At the same time, the Committee considers that the memory of a distinguished sportsperson may be honoured in ways other than by maintaining and displaying a public sign considered to be racially offensive. The Committee recommends that the State party take the necessary measures to secure the removal of the offending term from the sign in question, and to inform the Committee of such action it takes in this respect.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

### Notes

<sup>1</sup> It is not clear whether the petitioner attended this meeting.

<sup>2</sup> Section 9 of the Racial Discrimination Act 1975 (Commonwealth) provides:

#### **Racial discrimination to be unlawful**

(1) “It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.”

<sup>3</sup> Section 18 C of the Racial Discrimination Act provides:

#### **Offensive behaviour because of race, colour, or national or ethnic origin**

(1) It is unlawful for a person to do an act, otherwise than in private, if:

(a) The act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and

(b) The act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

<sup>4</sup> Maroufidou v. Sweden Case No. 58/1979, Views adopted on 9 April 1981.

<sup>5</sup> MacIsaac v. Canada Case No. 55/1979, Views adopted on 25 July 1980: “[The Committee’s] task is not to decide in the abstract whether or not a provision of national law is compatible with the Covenant, but only to consider whether there is or has been a violation of the Covenant in the particular case submitted to it.”

<sup>6</sup> Article 2 of the Covenant sets out the right to an effective remedy for violations of the Covenant.

<sup>7</sup> Paras. 4.7 to 4.9, *infra*.

<sup>8</sup> Lerner, N.: The UN Convention on the Elimination of All Forms of Racial Discrimination. The Netherlands, Sijthoff Noordhoff Publishers, 1980, at 37.

<sup>9</sup> Ibid.

<sup>10</sup> Paras. 4.19 to 4.15, *infra*.

<sup>11</sup> Para. 4.4, *supra*.

<sup>12</sup> Op.cit., at 38.

<sup>13</sup> The reservation provides: “The Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 (a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4 (a).”

<sup>14</sup> Hertzberg et al. v. Finland Case No. 61/1979, Views adopted on 2 April 1982.

<sup>15</sup> Airey v. Ireland (A 32 para. 30 (1980)), Dudgeon v. United Kingdom (A 45 para. 67 (1981)), Van der Musselle v. Belgium (A 70 para. 46 (1983)), The Belgian Linguistic Case (Merits) (A para. 6 (1968)).

<sup>16</sup> For full text of the provision, see footnote 2, supra.

<sup>17</sup> Demba Talibe Diop v. France Case No. 2/1989, Opinion of 18 March 1991.

<sup>18</sup> Valencia Rodriguez, L.: “The International Convention on the Elimination of All Forms of Racial Discrimination” in Manual on Human Rights Reporting Under Six Major International Instruments, New York, United Nations, 1997, at 289.

<sup>19</sup> See para. 4.4 and footnote 4, supra.

<sup>20</sup> This evidence is supplied to the Committee.

<sup>21</sup> Section 92 Lands Act 1994 (Queensland).

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# Annex 798

CEDAW, General Recommendation No. 25 on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination Against Women, on Temporary Special Measures (2004)



**General recommendation No. 25, on article 4, paragraph 1, of the  
Convention on the Elimination of All Forms of Discrimination against  
Women, on temporary special measures**

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## **I. Introduction**

1. The Committee on the Elimination of Discrimination against Women decided at its twentieth session (1999), pursuant to article 21 of the Convention, to elaborate a general recommendation on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women. This new general recommendation would build, inter alia, on earlier general recommendations, including general recommendation No. 5 (seventh session, 1988), on temporary special measures, No. 8 (seventh session, 1988), on implementation of article 8 of the Convention, and No. 23 (sixteenth session, 1997), on women in public life, as well as on reports of States parties to the Convention and on the Committee's concluding comments to those reports.

2. With the present general recommendation, the Committee aims to clarify the nature and meaning of article 4, paragraph 1, in order to facilitate and ensure its full utilization by States parties in the implementation of the Convention. The Committee encourages States parties to translate this general recommendation into national and local languages and to disseminate it widely to the legislative, executive and judicial branches of government, including their administrative structures, as well as civil society, including the media, academia, and human rights and women's associations and institutions.

## **II. Background: the object and purpose of the Convention**

3. The Convention is a dynamic instrument. Since the adoption of the Convention in 1979, the Committee, as well as other actors at the national and international levels, have contributed through progressive thinking to the clarification and understanding of the substantive content of the Convention's articles and the specific nature of discrimination against women and the instruments for combating such discrimination.

4. The scope and meaning of article 4, paragraph 1, must be determined in the context of the overall object and purpose of the Convention, which is to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms. States parties to the Convention are under a legal obligation to respect, protect, promote and fulfil this right to non-discrimination for women and to ensure the development and advancement of women in order to improve their position to one of de jure as well as de facto equality with men.

5. The Convention goes beyond the concept of discrimination used in many national and international legal standards and norms. While such standards and norms prohibit discrimination on the grounds of sex and protect both men and women from treatment based on arbitrary, unfair and/or unjustifiable distinctions, the Convention focuses on discrimination against women, emphasizing that women have suffered, and continue to suffer from various forms of discrimination because they are women.

6. A joint reading of articles 1 to 5 and 24, which form the general interpretative framework for all of the Convention's substantive articles, indicates that three obligations are central to States parties' efforts to eliminate discrimination against women. These obligations should be implemented in an

integrated fashion and extend beyond a purely formal legal obligation of equal treatment of women with men.

7. Firstly, States parties' obligation is to ensure that there is no direct or indirect<sup>1</sup> discrimination against women in their laws and that women are protected against discrimination — committed by public authorities, the judiciary, organizations, enterprises or private individuals — in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies. Secondly, States parties' obligation is to improve the de facto position of women through concrete and effective policies and programmes. Thirdly, States parties' obligation is to address prevailing gender relations<sup>2</sup> and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.

8. In the Committee's view, a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.

9. Equality of results is the logical corollary of de facto or substantive equality. These results may be quantitative and/or qualitative in nature; that is, women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and women enjoying freedom from violence.

10. The position of women will not be improved as long as the underlying causes of discrimination against women, and of their inequality, are not effectively addressed. The lives of women and men must be considered in a contextual way, and measures adopted towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.

11. Women's biologically determined permanent needs and experiences should be distinguished from other needs that may be the result of past and present discrimination against women by individual actors, the dominant gender ideology, or by manifestations of such discrimination in social and cultural structures and institutions. As steps are being taken to eliminate discrimination against women, women's needs may change or disappear, or become the needs of both women and men. Thus, continuous monitoring of laws, programmes and practices directed at the achievement of women's de facto or substantive equality is needed so as to avoid a perpetuation of non-identical treatment that may no longer be warranted.

12. Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different

ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.

13. In addition to the Convention on the Elimination of All Forms of Discrimination against Women, other international human rights instruments and policy documents adopted in the United Nations system contain provisions on temporary special measures to support the achievement of equality. Such measures are described in different terminology, and the meaning and interpretation given to such measures also differs. It is the Committee's hope that the present general recommendation on article 4, paragraph 1, will contribute to a clarification of terminology.<sup>3</sup>

14. The Convention, targets discriminatory dimensions of past and current societal and cultural contexts which impede women's enjoyment of their human rights and fundamental freedoms. It aims at the elimination of all forms of discrimination against women, including the elimination of the causes and consequences of their de facto or substantive inequality. Therefore, the application of temporary special measures in accordance with the Convention is one of the means to realize de facto or substantive equality for women, rather than an exception to the norms of non-discrimination and equality.

### **III. The meaning and scope of temporary special measures in the Convention on the Elimination of All Forms of Discrimination against Women**

#### ***Article 4, paragraph 1***

*Adoption by States parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.*

#### ***Article 4, paragraph 2***

*Adoption by States parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.*

#### **A. Relationship between paragraphs 1 and 2 of article 4**

15. There is a clear difference between the purpose of the "special measures" under article 4, paragraph 1, and those of paragraph 2. The purpose of article 4, paragraph 1, is to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as to provide them with compensation. These measures are of a temporary nature.

16. Article 4, paragraph 2, provides for non-identical treatment of women and men due to their biological differences. These measures are of a

permanent nature, at least until such time as the scientific and technological knowledge referred to in article 11, paragraph 3, would warrant a review.

## **B. Terminology**

17. The *travaux préparatoires* of the Convention use different terms to describe the “temporary special measures” included in article 4, paragraph 1. The Committee itself, in its previous general recommendations, used various terms. States parties often equate “special measures” in its corrective, compensatory and promotional sense with the terms “affirmative action”, “positive action”, “positive measures”, “reverse discrimination”, and “positive discrimination”. These terms emerge from the discussions and varied practices found in different national contexts.<sup>4</sup> In the present general recommendation, and in accordance with its practice in the consideration of reports of States parties, the Committee uses solely the term “temporary special measures”, as called for in article 4, paragraph 1.

## **C. Key elements of article 4, paragraph 1**

18. Measures taken under article 4, paragraph 1, by States parties should aim to accelerate the equal participation of women in the political, economic, social, cultural, civil or any other field. The Committee views the application of these measures not as an exception to the norm of non-discrimination, but rather as an emphasis that temporary special measures are part of a necessary strategy by States parties directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their human rights and fundamental freedoms. While the application of temporary special measures often remedies the effects of past discrimination against women, the obligation of States parties under the Convention to improve the position of women to one of de facto or substantive equality with men exists irrespective of any proof of past discrimination. The Committee considers that States parties that adopt and implement such measures under the Convention do not discriminate against men.

19. States parties should clearly distinguish between temporary special measures taken under article 4, paragraph 1, to accelerate the achievement of a concrete goal for women of de facto or substantive equality, and other general social policies adopted to improve the situation of women and the girl child. Not all measures that potentially are, or will be, favourable to women are temporary special measures. The provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and non-discrimination, cannot be called temporary special measures.

20. Article 4, paragraph 1, explicitly states the “temporary” nature of such special measures. Such measures should therefore not be deemed necessary forever, even though the meaning of “temporary” may, in fact, result in the application of such measures for a long period of time. The duration of a temporary special measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time. Temporary special measures must be discontinued when their desired results have been achieved and sustained for a period of time.

21. The term “special”, though being in conformity with human rights discourse, also needs to be carefully explained. Its use sometimes casts women and other groups who are subject to discrimination as weak, vulnerable and in need of extra or “special” measures in order to participate or compete in society. However, the real meaning of “special” in the formulation of article 4, paragraph 1, is that the measures are designed to serve a specific goal.

22. The term “measures” encompasses a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems. The choice of a particular “measure” will depend on the context in which article 4, paragraph 1, is applied and on the specific goal it aims to achieve.

23. The adoption and implementation of temporary special measures may lead to a discussion of qualifications and merit of the group or individuals so targeted, and an argument against preferences for allegedly lesser-qualified women over men in areas such as politics, education and employment. As temporary special measures aim at accelerating achievement of de facto or substantive equality, questions of qualification and merit, in particular in the area of employment in the public and private sectors, need to be reviewed carefully for gender bias as they are normatively and culturally determined. For appointment, selection or election to public and political office, factors other than qualification and merit, including the application of the principles of democratic fairness and electoral choice, may also have to play a role.

24. Article 4, paragraph 1, read in conjunction with articles 1, 2, 3, 5 and 24, needs to be applied in relation to articles 6 to 16 which stipulate that States parties “shall take all appropriate measures”. Consequently, the Committee considers that States parties are obliged to adopt and implement temporary special measures in relation to any of these articles if such measures can be shown to be necessary and appropriate in order to accelerate the achievement of the overall, or a specific goal of, women’s de facto or substantive equality.

#### **IV. Recommendations to States parties**

25. Reports of States parties should include information on the adoption, or lack thereof, of temporary special measures in accordance with article 4, paragraph 1, of the Convention, and States parties should preferably adhere to the terminology “temporary special measures”, to avoid confusion.

26. States parties should clearly distinguish between temporary special measures aimed at accelerating the achievement of a concrete goal of women’s de facto or substantive equality, and other general social policies adopted and implemented in order to improve the situation of women and the girl child. States parties should bear in mind that not all measures which potentially are or would be favourable to women qualify as temporary special measures.

27. States parties should analyse the context of women’s situation in all spheres of life, as well as in the specific, targeted area, when applying temporary special measures to accelerate achievement of women’s de facto or substantive equality. They should evaluate the potential impact of temporary special measures with regard to a particular goal within their national context

and adopt those temporary special measures which they consider to be the most appropriate in order to accelerate the achievement of de facto or substantive equality for women.

28. States parties should explain the reasons for choosing one type of measure over another. The justification for applying such measures should include a description of the actual life situation of women, including the conditions and influences which shape their lives and opportunities — or that of a specific group of women, suffering from multiple forms of discrimination — and whose position the State party intends to improve in an accelerated manner with the application of such temporary special measures. At the same time, the relationship between such measures and general measures and efforts to improve the position of women should be clarified.

29. States parties should provide adequate explanations with regard to any failure to adopt temporary special measures. Such failures may not be justified simply by averring powerlessness, or by explaining inaction through predominant market or political forces, such as those inherent in the private sector, private organizations, or political parties. States parties are reminded that article 2 of the Convention, which needs to be read in conjunction with all other articles, imposes accountability on the State party for action by these actors.

30. States parties may report on temporary special measures under several articles. Under article 2, States parties are invited to report on the legal or other basis for such measures, and their justification for choosing a particular approach. States parties are further invited to give details about any legislation concerning temporary special measures, and in particular whether such legislation provides for the mandatory or voluntary nature of temporary special measures.

31. States parties should include, in their constitutions or in their national legislation, provisions that allow for the adoption of temporary special measures. The Committee reminds States parties that legislation, such as comprehensive anti-discrimination acts, equal opportunities acts or executive orders on women's equality, can give guidance on the type of temporary special measures that should be applied to achieve a stated goal, or goals, in given areas. Such guidance can also be contained in specific legislation on employment or education. Relevant legislation on non-discrimination and temporary special measures should cover governmental actors as well as private organizations or enterprises.

32. The Committee draws the attention of States parties to the fact that temporary special measures may also be based on decrees, policy directives and/or administrative guidelines formulated and adopted by national, regional or local executive branches of government to cover the public employment and education sectors. Such temporary special measures may include the civil service, the political sphere and the private education and employment sectors. The Committee further draws the attention of States parties to the fact that such measures may also be negotiated between social partners of the public or private employment sector or be applied on a voluntary basis by public or private enterprises, organizations, institutions and political parties.

33. The Committee reiterates that action plans for temporary special measures need to be designed, applied and evaluated within the specific national context and against the background of the specific nature of the problem which they are intended to overcome. The Committee recommends



that States parties provide in their reports details of any action plans which may be directed at creating access for women and overcoming their underrepresentation in certain fields, at redistributing resources and power in particular areas, and/or at initiating institutional change to overcome past or present discrimination and accelerate the achievement of de facto equality. Reports should also explain whether such action plans include considerations of unintended potential adverse side-effects of such measures as well as on possible action to protect women against them. States parties should also describe in their reports the results of temporary special measures and assess the causes of the possible failure of such measures.

34. Under article 3, States parties are invited to report on the institution(s) responsible for designing, implementing, monitoring, evaluating and enforcing such temporary special measures. Such responsibility may be vested in existing or planned national institutions, such as women's ministries, women's departments within ministries or presidential offices, ombudspersons, tribunals or other entities of a public or private nature with the requisite mandate to design specific programmes, monitor their implementation, and evaluate their impact and outcomes. The Committee recommends that States parties ensure that women in general, and affected groups of women in particular, have a role in the design, implementation and evaluation of such programmes. Collaboration and consultation with civil society and non-governmental organizations representing various groups of women is especially recommended.

35. The Committee draws attention to and reiterates its general recommendation No. 9, on statistical data concerning the situation of women, and recommends that States parties provide statistical data disaggregated by sex in order to measure the achievement of progress towards women's de facto or substantive equality and the effectiveness of temporary special measures.

36. States parties should report on the type of temporary special measures taken in specific fields under the relevant article(s) of the Convention. Reporting under the respective article(s) should include references to concrete goals and targets, timetables, the reasons for choosing particular measures, steps to enable women to access such measures, and the institution accountable for monitoring implementation and progress. States parties are also asked to describe how many women are affected by a measure, how many would gain access and participate in a certain field because of a temporary special measure, or the amount of resources and power it aims to redistribute to how many women, and within what time frame.

37. The Committee reiterates its general recommendations 5, 8 and 23, wherein it recommended the application of temporary special measures in the fields of education, the economy, politics and employment, in the area of women representing their Governments at the international level and participating in the work of international organizations, and in the area of political and public life. States parties should intensify, within their national contexts, such efforts especially with regard to all facets of education at all levels as well as all facets and levels of training, employment and representation in public and political life. The Committee recalls that in all instances, but particularly in the area of health, States parties should carefully distinguish in each field between measures of an ongoing and permanent nature and those of a temporary nature.

38. States parties are reminded that temporary special measures should be adopted to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour that discriminate against or are disadvantageous for women. Temporary special measures should also be implemented in the areas of credit and loans, sports, culture and recreation, and legal awareness. Where necessary, such measures should be directed at women subjected to multiple discrimination, including rural women.

39. Although the application of temporary special measures may not be possible under all the articles of the Convention, the Committee recommends that their adoption be considered whenever issues of accelerating access to equal participation, on the one hand, and accelerating the redistribution of power and resources, on the other hand, are involved as well as where it can be shown that these measures will be necessary and most appropriate under the circumstances.

### Notes

- <sup>1</sup> Indirect discrimination against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual effect have a detrimental impact on women. Gender-neutral laws, policies and programmes unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently modelled on male lifestyles and thus fail to take into account aspects of women's life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men.
- <sup>2</sup> "Gender is defined as the social meanings given to biological sex differences. It is an ideological and cultural construct, but is also reproduced within the realm of material practices; in turn it influences the outcomes of such practices. It affects the distribution of resources, wealth, work, decision-making and political power, and enjoyment of rights and entitlements within the family as well as public life. Despite variations across cultures and over time, gender relations throughout the world entail asymmetry of power between men and women as a pervasive trait. Thus, gender is a social stratifier, and in this sense it is similar to other stratifiers such as race, class, ethnicity, sexuality, and age. It helps us understand the social construction of gender identities and the unequal structure of power that underlies the relationship between the sexes." *1999 World Survey on the Role of Women in Development*, United Nations, New York, 1999, page ix.
- <sup>3</sup> See, for example, the International Convention on the Elimination of All Forms of Racial Discrimination, which mandates temporary special measures. The practice of treaty monitoring bodies, including the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee, shows that these bodies consider the application of temporary special measures as mandatory to achieve the purposes of the respective treaties. Conventions adopted under the auspices of the International Labour Organization, and various documents of the United Nations Educational, Scientific and Cultural Organization also explicitly or implicitly provide for such measures. The Subcommission on the Promotion and Protection of Human Rights considered this question and appointed a Special Rapporteur to prepare reports for its consideration and action. The Commission on the Status of Women reviewed the use of temporary special measures in 1992. The outcome documents adopted by United Nations world conferences on women, including the Platform for Action of the 1995 Fourth World Conference on Women and its follow-up review of 2000, contain references to positive action as a tool for achieving de facto equality. The use of temporary special measures by the Secretary-General of the United Nations is a practical example in the area of women's employment, including through administrative instructions on the recruitment, promotion and placement of women in the Secretariat. These measures aim at achieving the goal of 50/50 gender distribution at all levels, but at the higher echelons in particular.

<sup>4</sup> The term “affirmative action” is used in the United States of America and in a number of United Nations documents, whereas the term “positive action” is currently widely used in Europe as well as in many United Nations documents. However, the term “positive action” is used in yet another sense in international human rights law to describe “positive State action” (the obligation of a State to initiate action versus a State’s obligation to abstain from action). Hence, the term “positive action” is ambiguous inasmuch as its meaning is not confined to temporary special measures as understood in article 4, paragraph 1, of the Convention. The terms “reverse discrimination” or “positive discrimination” are criticized by a number of commentators as inappropriate.

# Annex 799

A.W.R.A.P. v. Denmark, Communication No. 37/2006, CERD/C/71/D/37/2006 (2007)





**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION  
Seventy-first session  
(30 July – 17 August 2007)

**OPINION**

**Communication No. 37/2006**

<u>Submitted by:</u>	A.W.R.A.P. (represented by counsel, the Documentation and Advisory Centre on Racial Discrimination)
<u>Alleged victim:</u>	The petitioner
<u>State party:</u>	Denmark
<u>Date of communication:</u>	6 July 2006 (initial submission)
<u>Date of present decision:</u>	8 August 2007

[ANNEX]

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\* Made public by decision of the Committee on the Elimination of Racial Discrimination.



ANNEX

**OPINION OF THE COMMITTEE ON THE ELIMINATION OF RACIAL  
DISCRIMINATION UNDER ARTICLE 14 OF THE INTERNATIONAL  
CONVENTION ON THE ELIMINATION OF ALL FORMS  
OF RACIAL DISCRIMINATION**

**Seventy-First session**

**concerning**

**Communication No. 37/2006**

<i>Submitted by:</i>	A.W.R.A.P. (represented by counsel, the Documentation and Advisory Centre on Racial Discrimination)
<i>Alleged victim:</i>	The petitioner
<i>State party:</i>	Denmark
<i>Date of communication:</i>	6 July 2006 (initial submission)

*The Committee on the Elimination of Racial Discrimination*, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

*Meeting on 8 August 2007*

*Adopts the following:*

**OPINION**

1.1 The petitioner is A.W.R.A.P., a Danish citizen born on 1 February 1954 in Sweden, now residing in Denmark, and a practising Muslim. He alleges a violation by Denmark<sup>1</sup> of articles 2, paragraph 1(d), 4 and 6 of the Convention on the Elimination of All Forms of Racial Discrimination. He is represented by counsel, Miss Line Bøgsted of the Documentary and Advisory Centre on Racial Discrimination (DACoRD).

1.2 In conformity with article 14, paragraph 6 (a), of the Convention, the Committee transmitted the communication to the State party on 20 July 2006.

**Factual background**

2.1 In 1997, the Danish Parliament adopted a bill abolishing the right of parents to corporally punish their children. The Danish Peoples Party voted against the bill. In 2005, the

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<sup>1</sup> The Convention was ratified by Denmark on 9 December 1971, and the Declaration under article 14 made on 11 October 1985.

Government introduced a bill amending the Danish Integration Act by introducing the requirement for immigrants to sign “declarations of integration”, designed to ensure improved integration of immigrants. All new immigrants would have to sign a declaration stating that they will respect the fundamental values of Danish society, including observance of the rules of the Danish Criminal Code, that they will promote the integration of their children – not least by making sure that the children attend school, that they will respect the individual’s freedom and personal integrity as well as the equality of the sexes, that they will respect the freedom of religion and expression, and that they recognise the prohibition of corporal punishment of their children.

2.2 The Danish Peoples Party supported the amendment bill which led to a new debate concerning the ban on corporal punishment of children because a politician of the Socialist Peoples’ Party asked members of the Danish People’s Party how it could support a bill demanding that all aliens sign a declaration saying, inter alia, that “corporal punishment of my children is prohibited” when the same party opposed the ban on corporal punishment of children.

2.3 On 5 November 2005, Mr. Søren Krarup, member of the National Parliament for the Danish Peoples Party, in relation to this debate, stated as follows;

“The problem is that the country unfortunately has been flooded with Muslim so-called culture, and according to Islam it is the right of the male to beat his children and wife yellow and blue. That form of violence which they are practising is of sadistic and brutal character. That is why we can not reintroduce the act (on corporal punishment) and that it why it is important to make them sign it.”

2.4 On 13 November 2005, Mr. Krarup added the following to his previous statement;

“What makes it so extremely difficult in relation to discussing the right to corporal punishment today is that we have been flooded by a culture to which violence – the holy right of the male to beat up his wife and children yellow and blue – is a natural thing. And that means that the Danish tradition for corporal punishment had become more or less compromised by a Muslim tradition which is much different, but which means that.....”

2.5 Apparently, after being questioned by the interviewer on the basis for his remarks, Mr. Krarup stated that:

“Is it unknown to you that, according to Sharia and the Koran, a man has a special position requiring his wife and children to abide by his doings? And if they don’t, they’ll be punished?”

2.6 Having read these articles in the newspaper “Politiken”, the petitioner contacted the Documentation and Advisory Centre on Racial Discrimination (DACoRD) and asked them to file a complaint to the police on his behalf against Mr. Krarup, for violation of section 266 b

of the Danish Penal Code which prohibits racial statements<sup>2</sup>. On 15 October 2005, such a complaint was sent to the Copenhagen police. On 27 March 2006, the Police rejected it because there was no reasonable evidence to support the claim that an unlawful act had occurred.

2.7 On 7 April 2006, the petitioner filed a complaint with the Regional Public Prosecutor for Copenhagen. On 24 May 2006, the Public Prosecutor confirmed his agreement with the police decision not to prosecute Mr. Krarup. He referred to the extended freedom of speech which exists for politicians in general and Members of Parliament in particular especially when it comes to politically controversial public matters, including corporal punishment and how it is practised in other cultures. He did not find that the “statements, when read in context, appear to be threatening, demeaning or degrading in the sense of the Penal Code section 266 b.”

2.8 The petitioner argues that questions relating to the pursuit by the police of charges against individuals are discretionary, and that there is no possibility to bring the case before the Danish courts. Any decision by the Public Prosecutor relating to the investigation by the police departments cannot be appealed. A legal action against Mr. Krarup would not be effective, given that the police and Public Prosecutor have rejected the complaints against him. The petitioner refers to a decision of the Eastern High Court of 5 February 1999, where it was held that an incident of racial discrimination does not in itself imply a violation of the honour and reputation of a person under section 26 of the Act in Civil Liability<sup>3</sup>. The petitioner concludes that he has no further remedies under national law.

### **The complaint**

3.1 The petitioner claims that the decision of the Copenhagen police not to initiate an investigation into the alleged facts violates articles 2, paragraph 1(d); 4(a); and 6 of the Convention, as the documentation presented should have motivated the police to investigate the matter thoroughly. There were no effective means to protect him from racist statements in this case.

3.2 The petitioner adds that the decisions of the Copenhagen police and the Public Prosecutor to reject his complaints violate article 6 of the Convention. He contends that the Danish authorities did not examine the material in full, did not take his arguments into account and did not make reference to their obligations under the ICERD.

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<sup>2</sup> According to Section 266b “(1) Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years. (2) When the sentence is meted out, the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance.”

<sup>3</sup> See Communication No. 17/1999, *B.J. v Denmark*, Opinion adopted on 17 March 2000, paras. 2.4 to 2.6.

**State party's observations on the admissibility and merits of the communication:**

4.1 On 20 July 2006, the State party made its submissions on the admissibility and merits of the communication. On admissibility, it submits that the claims fall outside the scope of the Convention and that the petitioner has failed to establish a *prima facie* case, for purposes of admissibility. The statements concern Mr. Krarup's perception of persons of a specific religion and of a religious doctrine but do not concern persons of a particular "race, colour, descent, or national or ethnic origin" within the meaning of article 1 of the Convention. The State party notes that not all Muslims are of a particular ethnic origin and that not all Muslims are of the same race. Even the petitioner himself referred to the statements as "offensive and degrading to persons of the Muslim faith". Thus, confirming that the statements cannot be characterised as "racially discriminating" as they concern a religious and not a racial issue. For this reason, the statements fall outside the scope of article 1 of the Convention.

4.2 On the merits, the State party disputes that there was a violation of articles 2, paragraph 1 (d), 4 and 6 of the Convention. On the claim that the documentation presented to the police should have motivated it to initiate a thorough investigation, the State party argues that the Danish authorities' evaluation of the petitioner's reports of alleged racial discrimination fully satisfies the requirements of the Convention, even though they did not produce the outcome desired by the petitioner. The Convention does not guarantee a specific outcome of cases on alleged racially insulting statements, but sets out certain requirements for the investigation of such statements. For the State party, these requirements were satisfied in the current case, as the Danish authorities did take effective action, by processing and investigating the complaints lodged by the petitioner.

4.3 Under section 749(2) of the Administration and Justice Act<sup>4</sup>, the police may discontinue an investigation already initiated when there is no basis for its continuation. In criminal proceedings, the prosecutor has the burden of proof that a criminal offence was committed. It is important for the sake of due process that the evidence is of a certain weight for the courts to convict an accused. Pursuant to section 96(2) of the Administration of Justice Act<sup>5</sup>, public prosecutors must observe the principle of objectivity. They cannot prosecute a

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<sup>4</sup> "Section 749.

(1) The police shall dismiss a report lodged if it deems that there is no basis for initiating investigation. (2) If there is no basis for continuing an investigation already initiated, the police may decide to discontinue the investigation if no charge has been made (...).

(3) If the report is dismissed or the investigation is discontinued, those who may be presumed to have a reasonable interest therein shall be notified. The decision can be appealed to the superior public prosecutor under the rules of Part 10.

<sup>5</sup> "Section 96.

(1) It is the duty of the public prosecutors, in cooperation with the police, to prosecute offences according to the rules of this Act.

(2) The public prosecutors shall dispatch any one case at the speed permitted by the nature of the case, and shall thus ensure not only that guilty persons are held responsible, but also that prosecution of innocent persons does not occur."

person unless they believe that the prosecution will lead to conviction with a reasonable prospect of certainty.

4.4 The State party accepts that investigations must be carried out with due diligence and expeditiously and must be sufficient to determine whether or not an act of racial discrimination has taken place. It does not follow, however, that a prosecution should be initiated in all cases reported to the police. The State party emphasises that the question in the current case was whether Mr. Krarup's statements could be considered to fall within the scope of section 266b of the Criminal Code. The State party considers that this legal assessment was thorough and adequate. There were no problems concerning evidence, as the statements were printed in the newspaper as Mr. Krarup's quotations. Thus, there was no need for the police to initiate an investigation to clarify the specific contents of the statements, to discover the originator of the statements, or to question the petitioner about his view of the statements.

4.5 In the State party's view, the prosecution service correctly balanced the right to freedom of expression, including politicians' freedom of expression in connection with debates about essential social issues, with the right for protection of religion (or the right for protection against racial discrimination). The statements must be seen in the context in which they were made, namely as contributions to a political debate about the right of chastisement, and whether the reader supports Mr. Krarup's views or not, a democratic society must allow for a debate on such viewpoints within certain limits. The State party highlights its view that freedom of expression is particularly important for elected representatives of the people, who draw attention to their concerns and defend their interests. Thus, interference with the freedom of expression of a Member of Parliament calls for close scrutiny on the part of the prosecution service.

4.6 The State party acknowledges that a politicians right to freedom of expression is not absolute and refers to the data contained in its 16<sup>th</sup> and 17<sup>th</sup> periodic report to the CERD, in which it informed the Committee that between 1 January 2001 and 31 December 2003, the Danish courts considered 23 cases concerning violations of section 266b of the Criminal Code, and that 10 of these cases concerned statements made by politicians – only one of whom was acquitted.

#### **Petitioner's comments**

5.1 On 29 December 2006, the petitioner commented on the State party's submissions. With respect to the argument that the communication falls outside the scope of the Covenant, the petitioner contends that "Islamophobia", just like attacks against Jews, has manifested itself as a form of racism in many European countries, including Denmark. After 11 September 2001, attacks against Muslims have intensified in Denmark. Members of the Danish People's Party use hate speech as a tool to stir up hatred against people of Arab and Muslim background. In their view, culture and religion are connected in Islam. The petitioner recalls that CERD has already concluded that Danish authorities do not ensure an effective implementation of criminal law in relation to hate speech against Muslims and Muslim

culture, especially by politicians. He invokes the CERD's Concluding Observations on Denmark of 2002<sup>6</sup>:

[“16.] The Committee is concerned about reports of a considerable increase in reported cases of widespread harassment of people of Arab and **Muslim** backgrounds since 11 September 2001. The Committee recommends that the State party monitor this situation carefully, take decisive action to protect the rights of victims and deal with perpetrators, and report on this matter in its next periodic report”.

[“11.] The Committee, while taking note of the State party's efforts to combat hate crimes, is concerned about the increase in the number of racially motivated offences and in the number of complaints of hate speech. The Committee is also concerned about **hate speech by some politicians in Denmark**. While taking note of the statistical data provided on complaints and prosecutions launched under section 266(b) of the Criminal Code, the Committee notes the refusal by the Public Prosecutor to initiate court proceedings in some cases, including the case of the publication of **some cartoons associating Islam with terrorism** (arts. 4(a) and 6)” (emphasis added).

5.2 The petitioner concludes that he has made a *prima facie* case, given that he belongs to a so-called “Muslim culture” and that, as a father, he is personally affected by the stereotyping that he and other Muslims beat up their wives and children.

### Issues and proceedings before the Committee

6.1 Before considering any claims contained in a petition, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

6.2 The Committee notes the State party's objection that the petitioner's claims fall outside the scope of the Convention, because the statements in question are directed at persons of a particular religion or religious group, and not at persons of a particular “race, colour, descent, or national or ethnic origin”. It also takes note of the petitioner's contention that the statements in question were indeed aimed at persons of Muslim or Arab background. The Committee observes, however, that the impugned statements specifically refer to the Koran, to Islam and to Muslims in general, without any reference whatsoever to any race, colour, descent, or national or ethnic origin. While the elements of the case file do not allow the Committee to analyse and ascertain the intention of the impugned statements, it remains that no specific national or ethnic groups were directly targeted as such by these oral statements as reported and printed. In fact, the Committee notes that the Muslims currently living in the State party are of heterogeneous origin. They originate from at least 15 different countries, are of diverse national and ethnic origins, and consist of non-citizens, and Danish citizens, including Danish converts.

6.3 The Committee recognises the importance of the interface between race and religion and considers that it would be competent to consider a claim of “double” discrimination on

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<sup>6</sup> CERD/C/60/CO/5, 21 May 2002



the basis of religion and another ground specifically provided for in article 1 of the Convention, including national or ethnic origin. However, this is not the case in the current petition, which exclusively relates to discrimination on religious grounds. The Committee recalls that the Convention does not cover discrimination based on religion alone, and that Islam is not a religion practised solely by a particular group, which could otherwise be identified by its “race, colour, descent, or national or ethnic origin.” The Travaux Préparatoires of the Convention reveal that the Third Committee of the General Assembly rejected the proposal to include racial discrimination and religious intolerance in a single instrument, and decided in the ICERD to focus exclusively on racial discrimination.<sup>7</sup> It is unquestionable therefore that discrimination based exclusively on religious grounds was not intended to fall within the purview of the Convention.

6.4 The Committee recalls its prior jurisprudence in *Quereshi v. Denmark* that, “a general reference to foreigners does not at present single out a group of persons, contrary to article 1 of the Convention, on the basis of a specific race, ethnicity, colour, descent or national or ethnic origin”<sup>8</sup>. Similarly, in this particular case, it considers that the general references to Muslims, do not single out a particular group of persons, contrary to article 1 of the Convention. It, therefore, concludes that the petition falls outside the scope of the Convention and declares it inadmissible *ratione materiae* under article 14, paragraph 1, of the Convention.

6.5 Although the Committee considers that it is not within its competence to examine the present petition, it takes note of the offensive nature of the statements complained of and recalls that freedom of speech carries with it both duties and responsibilities. It takes the opportunity to remind the State party of its Concluding Observations, following consideration of the State party’s reports in 2002 and 2006, in which it had commented and made recommendations upon: (a) the considerable increase in reported cases of widespread harassment of people of Arab and Muslim backgrounds since 11 September 2001; (b) the increase in the number of racially motivated offences; and (c) the increase in the number of complaints of hate speech, including by politicians within the State party.<sup>9</sup> It also encourages the State party to follow-up on its recommendations and to provide pertinent information on the above concerns in the context of the Committee’s procedure for follow-up to its concluding observations.

7. The Committee on the Elimination of Racial Discrimination therefore decides:

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<sup>7</sup> General Assembly resolution 1779 (XVII), General Assembly resolution 1780 (XVII), and General Assembly resolution 1781 (XVII).

<sup>8</sup> See Petition No. 33/2003, Opinion adopted on 9 March 2005, para. 7.3

<sup>9</sup> CERD/C/60/CO/5, 21 May 2002, and CERD/C/DEN/CO/17, 19 October 2006.

(a) That the communication is inadmissible *ratione materiae* under article 14, paragraph 1, of the Convention.

(b) That this decision shall be communicated to the State party and to the petitioner.

[Adopted in English, French, Spanish and Russian, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

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