

INTERNATIONAL COURT OF JUSTICE

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

12 JUNE 2018

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Annex 800

P.S.N. v Denmark, Communication No.36/2006, CERD/C/71/D/36/2006 (2007)



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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CERD/C/71/D/36/2006
8 August 2007

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-first session
(30 July – 17 August 2007)

OPINION

Communication No. 36/2006

<u>Submitted by:</u>	P. S. N. (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>	10 February 2006 (initial submission)
<u>Date of present decision:</u>	8 August 2007

[ANNEX]

* 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. 36/2006

<i>Submitted by:</i>	P. S. N. (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>	10 February 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 Mr. P. S. N., a Danish citizen born on 11 October 1969 in Pakistan, now residing in Denmark, and a practising Muslim. He alleges a violation by Denmark¹ 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 23 June 2006.

¹ The Convention was ratified by Denmark on 9 December 1971, and the declaration under article 14 made on 11 October 1985.

Factual background:

2.1 In view of the elections of 15 November 2005, Ms. Louise Frevert, Member of Parliament for the Danish People's Party, published on her website statements against immigration and Muslims, under the headline "articles no one dares to publish". These included statements relating to Muslims, such as:

"...because they think that we are the ones that should submit to Islam, and they are confirmed in this belief by their preachers and leaders. (...) Whatever happens, they believe that they have a right to rape Danish girls and knock down Danish citizens."

2.2 In the same text, Ms. Frevert mentioned the possibility of deporting young immigrants to Russian prisons, and added:

"Even this solution is a rather short-term one, however, because when they return again, they will just be even more determined to kill Danes"².

Another article on the website stated that:

2 The State party provides the context of this statement, by quoting the article:

"(...)

The law that Islam lays down as the only true law is the law construed on the basis of the words of the Koran and as preached by their preachers during prayers – and the boys have never in their short lives heard any other interpretation. This is the only truth that they know, so no Danish official will ever get a chance of influencing these boys into another direction. As seen by Danish eyes, they are lost to society!

The Danish laws cannot handle these "misguided" young people at all, because they think we are the ones that should submit to Islam, and they are confirmed in this belief every day by their preachers and leaders. The fact that they were born in Denmark and speak Danish does not alter their fundamental attitude – whatever happens, they believe that they have a right to rape Danish girls and cut down Danish citizens indiscriminately. If they are caught and sentenced according to Danish law, it inspires them merely with scorn and contempt – they will just become real martyrs and heroes among their own people, for they have proved that they are the holy warriors who will one day take over the leadership of the ungodly underlings, the Danes.

So where is the way forward for Denmark?

We have to consider these young people our opponents at war and not just as disturbed young Danish boys of Muslim background, and opponents at war must be caught and rendered harmless. Our laws forbid us to kill our opponents officially so we only have the option of filling our prisons with these criminals.

This is an extremely costly solution, and as they will never repent of their acts, they will quickly gain control of the prisons in the same way the outlaw bikers do today. We probably have to think along other lines and, for example, accept a Russian offer of keeping the petty criminals in Russian prisons for DKK 25 per day – that is far cheaper, and their possibilities of influencing their surroundings will be eliminated. Even this solution is a rather short-term one, however, because when they return again, they will just be even more determined to kill Danes.

"(...)"

“We can spend billions of Kroner and hours in trying to integrate Muslims into the country, but the result will be what the doctor observes. The cancer spreads without hindrance while we are talking.”

2.3 Several of these statements were previously published in a book by Ms. Frevert, under the title “In short - a political statement”. In this book, other statements against Muslims read:

“We are hit by our own ‘human rights’ laws and have to see our culture and governmental system yield to a superior force building on 1000 years of dictatorship, a clerical rule” (*page 36*).

“The march of events is certainly true. It can be measured. But the Muslim means of achieving the goal of the ongoing third holy war (third Jihad) are secret” (*page 37*).

2.4 Ms. Frevert later withdrew some of the material from the webpage as a result of the public debate generated by her statements. However, on 30 September 2005, in an interview to the Danish newspaper “Politiken”, she upheld the statements. The following extract is from an article entitled “The Danes are overrun”:

“(…)

(Reporter) *How many are there of those who believe that they have a right to rape Danish girls?*

(Ms. Frevert) I don’t know anything about that. It should be seen in consideration of the fact that the Koran says in certain places that you may behave as you like to women in a male chauvinist spirit. It is a rhetorical way of expression relative to the saying of the Koran.

(Reporter) *Are you saying that it is ok according to the Koran to rape Danish girls?*

(Ms. Frevert) I am saying that the Koran allows you to use women as you like.

(Reporter) *How many Danish girls get raped by Muslims?*

(Ms. Frevert) I have no knowledge about that as such, other than that it is very well known that there has been a rape in a toilet by the courthouse. So that is a concrete example. How many I don’t know, but you know too from court cases that there have been rapes.

(Reporter) *Yes, but if it more or less appears from the Koran that rape is ok, then one would presumably be able to bring forth substantially more examples.*

(Ms. Frevert) I am not saying that it is a pattern, I am saying that this is what may happen.

(Reporter) *In the chapter that you have now removed, you wrote that our laws forbid us to kill them. Is that what you would like the most?*

(Ms. Frevert) No, but I am certainly allowed to write it. I am allowed to write exactly whatever suits me. If they rape and kill other people the way they do with suicide bombs, etc.- well, you aren't allowed to do so in our country, are you?"

2.5 On 30 September, 13 October and 1 November 2005, the DACoRD, on the petitioner's behalf, filed three complaints against Ms. Frevert for violations of section 266b of the Danish Criminal code³, which prohibits racial statements. In the first complaint, DACoRD claimed that the website statements were directed against a specific group of people (Muslims), that they were taunting and degrading, and that they had a propagandistic character, as they were published on a website directed at a large audience, and at the same time sent to various Danish newspapers for purposes of publication. The DACoRD quoted several decisions of conviction by Danish courts for statements published on websites, which were considered as "dissemination to a wide circle of people". The second complaint related to Ms. Frevert's book, in particular pages 31 to 41, which the petitioner claimed contained threatening, taunting and degrading statements against Muslims. The third complaint related to the article published in the "Politiken". DACoRD claimed that the statements in the article violated section 266B of the Criminal Code and that they confirmed the statements published on the website.

2.6 The first complaint (relating to the website) against Ms. Frevert was rejected by the Copenhagen Police on 10 October 2005, on the ground that there was no reasonable evidence to support that an unlawful act had been committed. In particular, the decision pointed out that it did not appear, with the necessary reasonable prospect for a conviction, that Ms. Frevert had the intent to disseminate the listed quotations, and that it appeared that she was unaware that those statements had been posted on the web. The webmaster (Mr. T.) took entire responsibility for the publication of the statements and was charged with violation of section 266 b of the Criminal Code. On 30 December 2005, the Copenhagen Police forwarded the case file to the Helsingør Police for further investigation of the case against him. The case is still under investigation by the Helsingør Police.

2.7 On 13 December 2005, the Regional Public Prosecutor of Copenhagen, Frederiksberg and Tårnby confirmed the decision of the police not to prosecute Ms. Frevert, because she and Mr. T. had concurrently explained their collaboration and that the articles had by mistake been posted unedited on the website. He found that it could not be proved that Ms. Frevert had any knowledge that the articles were put on her website and that she had the necessary intent to disseminate them. This decision cannot be appealed.

2.8 The second complaint (relating to the book) was rejected by the Commissioner of the Copenhagen Police on 18 October 2005, as there was no reasonable evidence to support that an unlawful act had been committed. The decision indicated that the book had been published for the purpose of a political debate and did not contain specific statements which could be

3 "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."

covered under the Criminal code section 266b. The DACoRD did not appeal the Commissioner's decision.

2.9 The third complaint (relating to the interview) was rejected by the Commissioner of the Copenhagen Police on 9 February 2006, as there was no reasonable evidence to support that an unlawful act had been committed. In reaching this decision, the Commissioner took into consideration the principles of freedom of expression and free debate. He also took into account that the statements were made by a politician in the context of a public debate on the situation of foreigners. He considered that in light of the right of freedom of expression, the statements made by Ms. Frevert were not offensive enough to constitute a violation of section 266b of the Criminal Code.

2.10 On 19 May 2006, the Regional Public Prosecutor confirmed the police's decision not to prosecute Ms. Frevert for the statements in the interview. He considered that the representation of Muslims and second generation immigrants by Ms. Frevert in the interview was not so offensive as to be considered insulting or degrading to Muslims or second generation immigrants within the meaning of section 266 b of the Criminal Code. This decision is final and cannot be appealed.

2.11 The petitioner argues that questions relating to the pursuance by the police of charges against individuals are entirely discretionary, and that there is no possibility to bring the case before Danish courts. Legal actions against Ms. Frevert would not be effective, given that the police and prosecutor have rejected the complaints against her. 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 Liability⁴. The petitioner concludes that he has no further remedies under national law.

2.12 The petitioner indicates that he has not availed himself of any other procedure of international investigation or settlement.

The complaint

3.1 The petitioner claims that the decision of the Copenhagen police not to initiate an investigation on the alleged facts, violates articles 2, paragraph 1(d); 4(a); and 6 of the Convention, as the documentation presented by the petitioner should have motivated the police to make a thorough investigation of the matter. He contends that there have been no effective means to protect him from racist statements in this case.

3.2 The petitioner further claims that the decisions of the Copenhagen police and the prosecutor to reject his complaints violate article 6 of the Convention. He contends that the Danish authorities did not examine the material in full and did not take his arguments into account.

⁴ 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 10 November 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 failed to establish a *prima facie* case for purposes of admissibility, as a large number of the various statements comprised by the communication concerns persons of a particular religion and not persons of a particular "race, colour, descent, or national or ethnic origin" within the meaning of article 1 of the Convention. However, the State party acknowledges that it is possible to argue to a certain extent that the statements refer to second-generation immigrants and set up a conflict between "the Danes" and them, thereby falling to some degree within the scope of the Convention.

4.2 The State party further submits that the part of the communication relating to the statements in Ms. Frevert's book is inadmissible under article 14, paragraph 7 (a), of the Convention, as the petitioner has not exhausted all available domestic remedies. When the Commissioner of the Copenhagen Police decided, on 18 October 2005, to discontinue investigation of the case against Ms. Frevert in relation to the publication of her book, the petitioner did not appeal the decision to the Regional Public Prosecutor. Thus, he has failed to exhaust domestic remedies, and the part of the communication concerning the statements in the book should be declared inadmissible.

4.3 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 of the matter, 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 wanted 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 authorities' investigation of such alleged statements. The State party argues that these requirements have been satisfied in the case, as the Danish authorities did take effective action, by processing and investigating the reports lodged by the petitioner.

Ms. Frevert's website

4.4 The State party indicates that under section 749(2) of the Administration and Justice Act⁵, the police may discontinue an investigation already initiated when there is no basis for continuing the investigation. 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 certain strength for the courts to convict an accused. Pursuant to section 96(2)

5 "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."

of the Administration of Justice Act⁶, public prosecutors have a duty to observe the principle of objectiveness. They cannot prosecute a person unless they are of the opinion that the prosecution will lead to conviction with a reasonable prospect of certainty. This principle is designed to protect innocent persons from prosecution.

4.5 The State party is aware that it has a duty to initiate an investigation when complaints related to acts of racial discrimination are filed. An investigation must be carried out with due diligence and expeditiously, and must be sufficient to determine whether or not an act of racial discrimination has occurred.

4.6 The State party points out that upon receipt of the complaint regarding Ms. Frevert's website, the Copenhagen Police initiated an investigation of the case. When interviewed, both Ms. Frevert and Mr. T. stated that the webmaster had created the website and that he had uploaded the relevant material without Ms. Frevert's knowledge. The agreement was that only articles and contributions approved by Ms. Frevert were to be posted on the website. By mistake, 35 articles by Mr. T. were posted on the website in unedited form and without Ms. Frevert's prior approval. When the mistake was discovered, the articles were removed. The webmaster was charged with violation of section 266b of the Criminal Code.

4.7 The State party contends that the police investigated the matter thoroughly. Once it appeared that the articles were posted without Ms. Frevert's knowledge, the public prosecutors rightly assessed that it would not be possible to prove that she had intended a wide dissemination of the statements. Criminal proceedings could therefore not be expected to result in her conviction and the public prosecutors therefore decided not to prosecute her. That the investigation against Mr. T. remains pending shows that the police takes reported acts of racial discrimination seriously and investigates them thoroughly and effectively. The State party argues that the police made a thorough investigation of the matter, that the material was examined in full and that the arguments presented by the DACoRD were taken into consideration, in accordance with article 6 of the Convention. The investigation revealed Ms. Frevert's lack of intent to violate section 266b of the Criminal Code. The fact that the case had another outcome than wished by the petitioner is irrelevant.

Ms. Frevert's book

4.8 Under section 749(1)⁷ and section 742(2)⁸ of the Administration and Justice Act, the public prosecutor must assess whether a criminal offence subject to public prosecution was

6 "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."

⁷ See above.

8 "Section 742.

(1) Criminal offences must be reported to the police.

(2) The police shall institute investigations upon a report lodged or on its own initiative when it may reasonably be presumed that a criminal offence subject to prosecution has been committed."

committed. If there is no basis for assuming that a criminal offence has been committed, the public prosecutor has to dismiss the report. The Commissioner of the Copenhagen Police discontinued the investigation concerning the book as it had been published for the purpose of generating a political debate, and as it contained no specific statements that might fall under section 266b of the Criminal Code. In addition, the DACoRD did not mention in its report which statements it considered to fall within the scope of that provision.

4.9 The State party emphasises that there were no problems of evidence and no need for the police to continue the investigation, as the police was in possession of the book in question, and both Ms. Frevert and Mr. T. were interviewed on this matter. Both stated that the disputed contribution to the book was written by Mr. T., but that this contribution had been edited and approved by Ms. Frevert, who was responsible for the publication of the book. The only question left for the Police Commissioner was whether there were statements in the book that could be considered to fall within the scope of section 266b of the Criminal Code. After a thorough analysis of the book's contents, he considered that the statements were broad and clearly published as part of a political debate in anticipation of the upcoming election. This legal assessment was thorough and adequate, and the public prosecutor's handling of the case satisfied the requirements that can be inferred from article 2, paragraph 1(d), and article 6 of the Convention.

Statements made by Ms. Frevert in the newspaper "Politiken" on 30 September 2005

4.10 The State party recalls that it does not follow from the Convention and the jurisprudence of the Committee that prosecution should be initiated in *all* cases reported to the police, in particular if no basis is found for prosecution. In this case, there were no problems of evidence, as the statements were printed in the newspaper as quotations of Ms. Frevert, and therefore there was no need for the police to initiate an investigation to identify the specific contents or the originator of the statements.

4.11 The State party argues that the legal assessment made by the public prosecutors was thorough and adequate. They evaluated the statements in the light of the fact that they were made by a politician in the context of a political debate about religion and immigrants, and balancing the protection of the right to freedom of expression, protection of the freedom of religion and 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 religion and immigrants, and without regard as to whether the reader supports Ms. Frevert's viewpoint on these issues. A democratic society has to make room for a debate about such viewpoints, within certain limits. The prosecutors considered that the statements were not so gross that they could be deemed "insulting or degrading" within the meaning of section 266b of the Criminal Code.

4.12 The State party argues that the right to freedom of expression is particularly imperative for an elected representative of the people. She represents her electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of a Member of Parliament, like Ms. Frevert, call for close scrutiny on the part of public prosecutors. In this case, they interpreted section 266b in the light of the context in which the statements were made and with due consideration of the fundamental principle of the right to freedom of expression for a Member of Parliament. The State party concludes that the public prosecutors' handling of the case satisfies the requirements that can be inferred from article 2, paragraph 1(d), and article 6 of the Convention.

4.13 The State party concludes that it is not possible to infer an obligation under the Convention to prosecute in situations that have been found not to provide a basis for prosecution. The Administration of Justice Act offers the requisite remedies compatible with the Convention and the relevant authorities have fully met their obligations in this case.

Petitioner's comments:

5.1 On 29 December 2006, the petitioner commented on the State party's submissions. On the argument that domestic remedies were not exhausted with regards to the complaint about Ms. Frevert's book, it is submitted that the text of the book was also published on her website. The report to the police was meant to cover the whole website, not only the articles under the heading "Articles that nobody dares to publish". When she was interviewed about the website, the police failed to ask her if she was the author of the book, which had been posted as a document on the website. The police apparently based its decision on a very small part of the material placed on the website.

5.2 The petitioner acknowledges that no appeal was filed against the decision of 18 October 2005 of the Copenhagen Police to discontinue the investigation of the case in relation to the book. However, the day before, a complaint was filed against the website, which included the text of the book. Consequently, an appeal of that decision would only have been a duplication of the complaint already sent to the regional prosecutor's office. Therefore, the final decision by the Regional Prosecutor of 13 December 2005 is a final decision both regarding the statements posted on the website and contained in the book. The petitioner therefore considers that he exhausted domestic remedies in respect of all parts of the complaint.

5.3 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 argues that CERD 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 CERD's 2002 Concluding Observations on Denmark⁹:

["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

⁹ CERD/C/60/CO/5, 21 May 2002 and CERD/C/CO/DEN/17, 19 October 2006

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).

5.4 On the merits, the petitioner refers to the fact that Ms. Frevert was not found responsible for the material on the website. However, in the interview, the journalist quoted the article and asked her “Are you saying that it is ok according to the Koran to rape Danish girls?” She replied: “I am saying that the Koran allows you to use women as you like”. The journalist gave her the possibility to disagree, but she stated that “I am certainly allowed to write that. I am allowed to write exactly whatever suits me. If they rape and kill other people the way they do...”. The petitioner considers that these statements are insulting and that the Danish Courts should strike the balance between the right to freedom of speech for politicians and the prohibition against hate speech. By not bringing the case to court, the authorities violated articles 2, 4 and 6 of the Convention.

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 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.¹⁰ 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”¹¹. 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.¹² 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:

(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.]

¹⁰ General Assembly resolution 1779 (XVII), General Assembly resolution 1780 (XVII), and General Assembly resolution 1781 (XVII).

¹¹ See Petition No. 33/2003, Opinion adopted on 9 March 2005, para. 7.3

¹² CERD/C/60/CO/5, 21 May 2002, and CERD/C/DEN/CO/17, 19 October 2006.

Annex 801

CERD Committee, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, United States of America, CERD/C/USA/CO/6 (8 May 2008)



**International Convention
on the Elimination
of all Forms of
Racial Discrimination**

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-second session
Geneva, 18 February - 7 March 2008

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

UNITED STATES OF AMERICA

1. The Committee considered the fourth, fifth and sixth periodic reports of the United States of America, submitted in a single document (CERD/C/USA/6), at its 1853rd and 1854th meetings (CERD/C/SR.1853 and 1854), held on 21 and 22 February 2008. At its 1870th meeting (CERD/C/SR.1870), held on 5 March 2008, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the reports, and the opportunity to continue an open and constructive dialogue with the State party. The Committee also expresses appreciation for the detailed responses provided to the list of issues, as well as for the efforts made by the high-level delegation to answer the wide range of questions raised during the dialogue.

B. Positive aspects

3. The Committee welcomes the acknowledgement of the multi-racial, multi-ethnic, and multi-cultural nature of the State party.

4. The Committee notes with satisfaction the work carried out by the various executive departments and agencies of the State party which have responsibilities in the field of the elimination of racial discrimination, including the Civil Rights Division of the U.S. Department of Justice, the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development (HUD).

5. The Committee welcomes the reauthorisation, in 2005, of the Violence Against Women Act of 1994 (VAWA).
6. The Committee also welcomes the reauthorisation, in 2006, of the Voting Rights Act of 1965 (VRA).
7. The Committee commends the launch, in 2007, of the E-RACE Initiative (“Eradicating Racism and Colorism from Employment”), aimed at raising awareness on the issue of racial discrimination in the workplace.
8. The Committee notes with satisfaction the creation, in 2007, of the National Partnership for Action to End Health Disparities for Ethnic and Racial Minority Populations, as well as the various programmes adopted by the U.S. Department of Health and Human Services (HHS) to address the persistent health disparities affecting low-income persons belonging to racial, ethnic and national minorities.
9. The Committee also notes with satisfaction the California Housing Element Law of 1969, which requires each local jurisdiction to adopt a housing element in its general plan to meet the housing needs of all segments of the population, including low-income persons belonging to racial, ethnic and national minorities.

C. Concerns and recommendations

10. The Committee reiterates the concern expressed in paragraph 393 of its previous concluding observations of 2001 (A/56/18, paras. 380-407) that the definition of racial discrimination used in the federal and state legislation and in court practice is not always in line with that contained in article 1, paragraph 1, of the Convention, which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect. In this regard, the Committee notes that indirect, or de facto,– discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (art.1 (1)).

The Committee recommends that the State party review the definition of racial discrimination used in the federal and state legislation and in court practice, so as to ensure, in light of the definition of racial discrimination provided for in article 1, paragraph 1, of the Convention,– that it prohibits racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect.

11. While appreciating that the Constitution and laws of the State party may be used in many instances to prohibit private actors from engaging in acts of racial discrimination, the Committee remains concerned about the wide scope of the reservation entered by the State party at the time of ratification of the Convention with respect to discriminatory acts perpetrated by private individuals, groups or organisations (art. 2).

The Committee recommends that the State party consider withdrawing or narrowing the scope of its reservation to article 2 of the Convention, and to broaden the protection afforded by the law against discriminatory acts perpetrated by private individuals, groups or organizations.

12. The Committee notes that no independent national human rights institution established in accordance with the Paris Principles (General Assembly resolution 48/134, annex) exists in the State party (art. 2).

The Committee recommends that the State party consider the establishment of an independent national human rights institution in accordance with the Paris Principles.

13. While welcoming the acknowledgement by the delegation that the State party is bound to apply the Convention throughout its territory and to ensure its effective application at all levels, federal, state, and local, regardless of the federal structure of its Government, the Committee notes with concern the lack of appropriate and effective mechanisms to ensure a coordinated approach towards the implementation of the Convention at the federal, state and local levels (art. 2).

The Committee recommends that the State party establish appropriate mechanisms to ensure a coordinated approach towards the implementation of the Convention at the federal, state and local levels.

14. The Committee notes with concern that despite the measures adopted at the federal and state levels to combat racial profiling, including the elaboration by the Civil Rights Division of the U.S. Department of Justice of the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies,— such practice continues to be widespread. In particular, the Committee is deeply concerned about the increase in racial profiling against Arabs, Muslims and South Asians in the wake of the 11 September 2001 attack, as well as about the development of the National Entry and Exit Registration System (NEERS) for nationals of 25 countries, all located in the Middle East, South Asia or North Africa (arts. 2 and 5 (b)).

Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party strengthen its efforts to combat racial profiling at the federal and state levels, inter alia, by moving expeditiously towards the adoption of the End Racial Profiling Act, or similar federal legislation. The Committee also draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens, according to which measures taken in the fight against terrorism must not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin, and urges the State party, in accordance with article 2, paragraph 1 (c), of the Convention, to put an end to the National Entry

and Exit Registration System (NEERS) and to eliminate other forms of racial profiling against Arabs, Muslims and South Asians.

15. The Committee notes with concern that recent case law of the U.S. Supreme Court and the use of voter referenda to prohibit states from adopting race-based affirmative action measures have further limited the permissible use of special measures as a tool to eliminate persistent disparities in the enjoyment of human rights and fundamental freedoms (art. 2 (2)).

The Committee reiterates that the adoption of special measures “when circumstances so warrant” is an obligation arising from article 2, paragraph 2, of the Convention. The Committee therefore calls once again upon the State party to adopt and strengthen the use of such measures when circumstances warrant their use as a tool to eliminate the persistent disparities in the enjoyment of human rights and fundamental freedoms and ensure the adequate development and protection of members of racial, ethnic and national minorities.

16. The Committee is deeply concerned that racial, ethnic and national minorities, especially Latino and African American persons, are disproportionately concentrated in poor residential areas characterised by sub-standard housing conditions, limited employment opportunities, inadequate access to health care facilities, under-resourced schools and high exposure to crime and violence (art. 3).

The Committee urges the State party to intensify its efforts aimed at reducing the phenomenon of residential segregation based on racial, ethnic and national origin, as well as its negative consequences for the affected individuals and groups. In particular, the Committee recommends that the State party:

- (i) Support the development of public housing complexes outside poor, racially segregated areas;**
- (ii) Eliminate the obstacles that limit affordable housing choice and mobility for beneficiaries of Section 8 Housing Choice Voucher Program; and**
- (iii) Ensure the effective implementation of legislation adopted at the federal and state levels to combat discrimination in housing, including the phenomenon of “steering” and other discriminatory practices carried out by private actors.**

17. The Committee remains concerned about the persistence of de facto racial segregation in public schools. In this regard, the Committee notes with particular concern that the recent U.S. Supreme Court decisions in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) and *Meredith v. Jefferson County Board of Education* (2007) have rolled back the progress made since the U.S. Supreme Court’s landmark decision in *Brown v. Board of Education* (1954), and limited the ability of public school districts to address de facto segregation by prohibiting the use of race-conscious measures as a tool to promote integration (arts. (2), 3 and 5 (e) (v)).

The Committee recommends that the State party undertake further studies to identify the underlying causes of de facto segregation and racial inequalities in education, with a view to elaborating effective strategies aimed at promoting school desegregation and providing equal educational opportunity in integrated settings for all students. In this regard, the Committee recommends that the State party take all appropriate measures, including the enactment of legislation,– to restore the possibility for school districts to voluntarily promote school integration through the use of carefully tailored special measures adopted in accordance to article 2, paragraph 2, of the Convention.

18. While appreciating that some forms of hate speech and other activities designed to intimidate, such as the burning of crosses, are not protected under the First Amendment to the U.S. Constitution, the Committee remains concerned about the wide scope of the reservation entered by the State party at the time of ratification of the Convention with respect to the dissemination of ideas based on racial superiority and hatred (art. 4).

The Committee draws the attention of the State party to its general recommendations No. 7 (1985) and 15 (1993) concerning the implementation of article 4 of the Convention, and request the State party to consider withdrawing or narrowing the scope of its reservations to article 4 of the Convention. In this regard, the Committee wishes to reiterate that the prohibition of all ideas based on racial superiority or hatred is compatible with the right to freedom of opinion and expression, given that the exercise of this right carries special duties and responsibilities, including the obligation not to disseminate racist ideas.

19. While noting the explanations provided by the State party with regard to the situation of the Western Shoshone indigenous peoples, considered by the Committee under its early warning and urgent action procedure, the Committee strongly regrets that the State party has not followed up on the recommendations contained in paragraphs 8 to 10 of its decision 1 (68) of 2006 (CERD/C/USA/DEC/1) (art.5).

The Committee reiterates its Decision 1 (68) in its entirety, and urges the State party to implement all the recommendations contained therein.

20. The Committee reiterates its concern with regard to the persistent racial disparities in the criminal justice system of the State party, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, allegedly due to the harsher treatment that defendants belonging to these minorities, especially African American persons, receive at various stages of criminal proceedings (art.5 (a)).

Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, according to which stark racial disparities in the administration and functioning of the criminal justice system, including the disproportionate number of persons belonging to racial,

ethnic and national minorities in the prison population, may be regarded as factual indicators of racial discrimination, the Committee recommends that the State party take all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs administering justice, including further studies to determine the nature and scope of the problem, and the implementation of national strategies or plans of action aimed at the elimination of structural racial discrimination.

21. The Committee notes with concern that according to information received, young offenders belonging to racial, ethnic and national minorities, including children, constitute a disproportionate number of those sentenced to life imprisonment without parole (art. 5 (a)).

The Committee recalls the concerns expressed by the Human Rights Committee (CCPR/C/USA/CO/3/Rev.1, para. 34) and the Committee against Torture (CAT/C/USA/CO/2, para. 34) with regard to federal and state legislation allowing the use of life imprisonment without parole against young offenders, including children. In light of the disproportionate imposition of life imprisonment without parole on young offenders, including children, belonging to racial, ethnic and national minorities, the Committee considers that the persistence of such sentencing is incompatible with article 5 (a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.

22. While welcoming the recent initiatives undertaken by the State party to improve the quality of criminal defence programmes for indigent persons, the Committee is concerned about the disproportionate impact that persistent systemic inadequacies in these programmes have on indigent defendants belonging to racial, ethnic and national minorities. The Committee also notes with concern the disproportionate impact that the lack of a generally recognized right to counsel in civil proceedings has on indigent persons belonging to racial, ethnic and national minorities (art. 5 (a)).

The Committee recommends that the State party adopt all necessary measures to eliminate the disproportionate impact that persistent systemic inadequacies in criminal defence programmes for indigent persons have on defendants belonging to racial, ethnic and national minorities, inter alia, by increasing its efforts to improve the quality of legal representation provided to indigent defendants and ensuring that public legal aid systems are adequately funded and supervised. The Committee further recommends that the State party allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings, with particular regard to those proceedings where basic human needs, such as housing, health care, or child custody, are at stake.

23. The Committee remains concerned about the persistent and significant racial disparities with regard to the imposition of the death penalty, particularly those associated with the race of the victim, as evidenced by a number of studies, including a recent study released in October 2007 by the American Bar Association (ABA)¹ (art. 5 (a)).

Taking into account its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party undertake further studies to identify the underlying factors of the substantial racial disparities in the imposition of the death penalty, with a view to elaborating effective strategies aimed at rooting out discriminatory practices. The Committee wishes to reiterate its previous recommendation contained in paragraph 396 of its previous concluding observations of 2001, that the State party adopt all necessary measures, including a moratorium, to ensure that death penalty is not imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers.

24. The Committee regrets the position taken by State party that the Convention is not applicable to the treatment of foreign detainees held as “enemy combatants”, on the basis of the argument that the law of armed conflict is the exclusive *lex specialis* applicable, and that in any event the Convention “would be inapplicable to allegations of unequal treatment of foreign detainees” in accordance to article 1, paragraph 2, of the Convention. The Committee also notes with concern that the State party exposes non-citizens under its jurisdiction to the risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment by means of transfer, rendition, or refoulement to third countries where there are substantial reasons to believe that they will be subjected to such treatment (arts. 5 (a), 5 (b) and 6).

Bearing in mind its general recommendation No. 30 (2004) on non-citizens, the Committee wishes to reiterate that States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of the rights set forth in article 5 of the Convention, including the right to equal treatment before the tribunals and all other organs administering justice, to the extent recognised under international law, and that article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination set out in article 1, paragraph 1, of the Convention.

The Committee also recalls its Statement on racial discrimination and measures to combat terrorism (A/57/18), according to which States parties to the Convention are under an obligation to ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent or national or ethnic origin.

¹ American Bar Association, “State Death Penalty Assessments: Key Findings,” 29 October 2007, <http://www.abanet.org/moratorium/assessmentproject/keyfindings.doc>.

The Committee therefore urges the State party to adopt all necessary measures to guarantee the right of foreign detainees held as “enemy combatants” to judicial review of the lawfulness and conditions of detention, as well as their right to remedy for human rights violations. The Committee further requests the State party to ensure that non-citizens detained or arrested in the fight against terrorism are effectively protected by domestic law, in compliance with international human rights, refugee and humanitarian law.

25. While recognising the efforts made by the State party to combat the pervasive phenomenon of police brutality, the Committee remains concerned about allegations of brutality and use of excessive or deadly force by law enforcement officials against persons belonging to racial, ethnic or national minorities, in particular Latino and African American persons and undocumented migrants crossing the U.S.-Mexico border. The Committee also notes with concern that despite the efforts made by the State party to prosecute law enforcement officials for criminal misconduct, impunity of police officers responsible for abuses allegedly remains a widespread problem (arts. 5 (b) and 6).

The Committee recommends that the State party increase significantly its efforts to eliminate police brutality and excessive use of force against persons belonging to racial, ethnic or national minorities, as well as undocumented migrants crossing the U.S.-Mexico border, inter alia, by establishing adequate systems for monitoring police abuses and developing further training opportunities for law enforcement officials. The Committee further requests the State party to ensure that reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.

26. While welcoming the various measures adopted by the State party to prevent and punish violence and abuse against women belonging to racial, ethnic and national minorities, the Committee remains deeply concerned about the incidence of rape and sexual violence experienced by women belonging to such groups, particularly with regard to American Indian and Alaska Native women and female migrant workers, especially domestic workers. The Committee also notes with concern that the alleged insufficient will of federal and state authorities to take action with regard to such violence and abuse often deprives victims belonging to racial, ethnic and national minorities, and in particular Native American women, of their right to access to justice and the right to obtain adequate reparation or satisfaction for damages suffered (arts. 5 (b) and 6).

The Committee recommends that the State party increase its efforts to prevent and punish violence and abuse against women belonging to racial, ethnic and national minorities, inter alia, by:

- (i) Setting up and adequately funding prevention and early assistance centres, counselling services and temporary shelters;**

- (ii) **Providing specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors and judges, and medical personnel;**
- (iii) **Undertaking information campaigns to raise awareness among women belonging to racial, ethnic and national minorities about the mechanisms and procedures provided for in national legislation on racism and discrimination; and**
- (iv) **Ensuring that reports of rape and sexual violence against women belonging to racial, ethnic and national minorities, and in particular Native American women, are independently, promptly and thoroughly investigated, and that perpetrators are prosecuted and appropriately punished.**

The Committee requests the State party to include information on the results of these measures and on the number of victims, perpetrators, convictions, and the types of sanctions imposed, in its next periodic report.

27. The Committee remains concerned about the disparate impact that existing felon disenfranchisement laws have on a large number of persons belonging to racial, ethnic and national minorities, in particular African American persons, who are disproportionately represented at every stage of the criminal justice system. The Committee notes with particular concern that in some states, individuals remain disenfranchised even after the completion of their sentences (art. 5 (c)).

Taking into account the disproportionate impact that the implementation of disenfranchisement laws has on a large number of persons belonging to racial, ethnic and national minorities, in particular African American persons, the Committee recommends that the State Party adopt all appropriate measures to ensure that the denial of voting rights is used only with regard to persons convicted of the most serious crimes, and that the right to vote is in any case automatically restored after the completion of the criminal sentence.

28. The Committee regrets that despite the various measures adopted by the State party to enhance its legal and institutional mechanisms aimed at combating discrimination, workers belonging to racial, ethnic and national minorities, in particular women and undocumented migrant workers, continue to face discriminatory treatment and abuse in the workplace, and to be disproportionately represented in occupations characterized by long working hours, low wages, and unsafe or dangerous conditions of work. The Committee also notes with concern that recent judicial decisions of the U.S. Supreme Court – including *Hoffman Plastics Compound, Inc. v. NLRB* (2007), *Ledbetter v. Goodyear Tire and Rubber Co.* (2007) and *Long Island Care at Home, Ltd. v. Coke* (2007) – have further eroded the ability of workers belonging to racial, ethnic and national minorities to obtain legal protection and redress in cases of discriminatory treatment at the workplace, unpaid or withheld wages, or work-related injury or illnesses (arts. 5 (e) (i) and 6).

The Committee recommends that the State party take all appropriate measures, including increasing the use of “pattern and practice” investigations, to combat de facto discrimination in the workplace and ensure the equal and effective enjoyment by persons belonging to racial, ethnic and national minorities of their rights under article 5 (e) of the Convention. The Committee further recommends that the State party take effective measures, including the enactment of legislation, such as the proposed Civil Rights Act of 2008,– to ensure the right of workers belonging to racial, ethnic and national minorities, including undocumented migrant workers, to obtain effective protection and remedies in case of violation of their human rights by their employer.

29. The Committee is concerned about reports relating to activities, such as nuclear testing, toxic and dangerous waste storage, mining or logging, carried out or planned in areas of spiritual and cultural significance to Native Americans, and about the negative impact that such activities allegedly have on the enjoyment by the affected indigenous peoples of their rights under the Convention (arts. 5 (d) (v), 5 (e) (iv) and 5 (e) (vi)).

The Committee recommends that the State party take all appropriate measures, in consultation with indigenous peoples concerned and their representatives chosen in accordance with their own procedure, – to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention.

The Committee further recommends that the State party recognize the right of Native Americans to participate in decisions affecting them, and consult and cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans. While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party’s obligations under the Convention relating to indigenous peoples.

30. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the right to land, health, living environment and the way of life of indigenous peoples living in these regions (arts. 2 (1) (d) and 5 (e)).

In light of article 2, paragraph 1 (d), and 5 (e) of the Convention and of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In

particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in the United States accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in the United States on indigenous peoples abroad and on any measures taken in this regard.

31. The Committee, while noting the efforts undertaken by the State party and civil society organizations to assist the persons displaced by Hurricane Katrina of 2005, remains concerned about the disparate impact that this natural disaster continues to have on low-income African American residents, many of whom continue to be displaced after more than two years after the hurricane (art. 5 (e) (iii)).

The Committee recommends that the State party increase its efforts in order to facilitate the return of persons displaced by Hurricane Katrina to their homes, if feasible, or to guarantee access to adequate and affordable housing, where possible in their place of habitual residence. In particular, the Committee calls upon the State party to ensure that every effort is made to ensure genuine consultation and participation of persons displaced by Hurricane Katrina in the design and implementation of all decisions affecting them.

32. While noting the wide range of measures and policies adopted by the State party to improve access to health insurance and adequate health-care and services, the Committee is concerned that a large number of persons belonging to racial, ethnic and national minorities still remain without health insurance and face numerous obstacles to access to adequate health care and services (art. 5 (e) (iv)).

The Committee recommends that the State party continue its efforts to address the persistent health disparities affecting persons belonging to racial, ethnic and national minorities, in particular by eliminating the obstacles that currently prevent or limit their access to adequate health care, such as lack of health insurance, unequal distribution of health-care resources, persistent racial discrimination in the provision of health care and poor quality of public health-care services. The Committee requests the State party to collect statistical data on health disparities affecting persons belonging to racial, ethnic and national minorities, disaggregated by age, gender, race, ethnic or national origin, and to include it in its next periodic report.

33. The Committee regrets that despite the efforts of the State party, wide racial disparities continue to exist in the field of sexual and reproductive health, particularly with regard to the high maternal and infant mortality rates among women and children belonging to racial, ethnic and national minorities, especially African Americans, the high incidence of unintended pregnancies and greater abortion rates affecting African American women, and the growing disparities in HIV infection rates for minority women (art. 5 (e) (iv)).

The Committee recommends that the State party continue its efforts to address persistent racial disparities in sexual and reproductive health, in particular by:

- (i) Improving access to maternal health care, family planning, pre- and post- natal care and emergency obstetric services, inter alia, through the reduction of eligibility barriers for Medicaid coverage;**
- (ii) Facilitating access to adequate contraceptive and family planning methods; and**
- (iii) Providing adequate sexual education aimed at the prevention of unintended pregnancies and sexually-transmitted infections.**

34. While welcoming the measures adopted by the State party to reduce the significant disparities in the field of education, including the adoption of the No Child Left Behind Act of 2001 (NCLB), the Committee remains concerned about the persistent “achievement gap” between students belonging to racial, ethnic or national minorities, including English Language Learner (“ELL”) students, and white students. The Committee also notes with concern that alleged racial disparities in suspension, expulsion and arrest rates in schools contribute to exacerbate the high dropout rate and the referral to the justice system of students belonging to racial, ethnic or national minorities (art.5 (e) (v)).

The Committee recommends that the State party adopt all appropriate measures,– including special measures in accordance with article 2, paragraph 2, of the Convention,– to reduce the persistent “achievement gap” between students belonging to racial, ethnic or national minorities and white students in the field of education, inter alia, by improving the quality of education provided to these students. The Committee also calls upon the State party to encourage school districts to review their “zero tolerance” school discipline policies, with a view to limiting the imposition of suspension or expulsion to the most serious cases of school misconduct, and to provide training opportunities for police officers deployed to patrol school hallways.

35. While welcoming the clarifications offered by the State party with regard to the burden of proof in racial discrimination claims under civil rights statutes, the Committee remains concerned that claims of racial discrimination under the Due Process Clause of the Fifth Amendment to the U.S. Constitution and the Equal Protection Clause of the Fourteenth Amendment must be accompanied by proof of intentional discrimination (arts. 1 (1) and 6).

The Committee recommends that the State party review its federal and state legislation and practice concerning the burden of proof in racial discrimination claims, with a view to allowing, in accordance with article 1, paragraph 1 of the Convention, a more balanced sharing of the burden of proof between the plaintiff, who must establish a, prima facie, case of discrimination, whether direct or based on a disparate impact, and the

defendant, who should provide evidence of an objective and reasonable justification for the differential treatment. The Committee calls in particular on the State Party to consider adoption of the Civil Rights Act of 2008.

36. The Committee regrets that despite the efforts made by the State party to provide training programmes and courses on anti-discrimination legislation adopted at the federal and state levels, no specific training programmes or courses have been provided to, inter alia, government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and other public officials in order to raise their awareness about the Convention and its provisions. Similarly, the Committee notes with regret that information about the Convention and its provisions has not been brought to the attention of the public in general (art.7).

The Committee recommends that the State party organize public awareness and education programmes on the Convention and its provisions, and step up its efforts to make government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public in general aware about the responsibilities of the State party under the Convention, as well as the mechanisms and procedures provided for by the Convention in the field of racial discrimination and intolerance.

37. The Committee requests the State party to provide, in its next periodic report, detailed information on the legislation applicable to refugees and asylum-seekers, and on the alleged mandatory and prolonged detention of a large number of non-citizens, including undocumented migrant workers, victims of trafficking, asylum-seekers and refugees, as well as members of their families (arts. 5 (b), 5 (e) (iv) and 6).

38. The Committee also requests the State party to provide, in its next periodic report, detailed information on the measures adopted to preserve and promote the culture and traditions of American Indian and Alaska Native (AIAN) and Native Hawaiian and Other Pacific Islander (NHPI) peoples. The Committee further requests the State party to provide information on the extent to which curricula and textbooks for primary and secondary schools reflect the multi-ethnic nature of the State party, and provide sufficient information on the history and culture of the different racial, ethnic and national groups living in its territory (art. 7).

39. The Committee is aware of the position of the State party with regard to the Durban Declaration and Programme of Action and its follow-up, but in view of the importance that such a process has for the achievement of the goals of the Convention, it calls upon the State party to consider participating in the preparatory process as well as in the Durban Review Conference itself.

40. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and invites it to consider doing so.

41. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by General Assembly resolution 47/111. In this connection, the Committee cites General Assembly resolution 61/148, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

42. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicised in the official and national languages.

43. The Committee recommends that the State party, in connection with the preparation of the next periodic report, consult widely with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination.

44. The Committee invites the State party to update its core document in accordance with the harmonised guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4).

45. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 14, 19, 21, 31 and 36, pursuant to paragraph 1 of rule 65 of the rules of procedure.

46. The Committee recommends that the State party submit its seventh, eighth and ninth periodic reports in a single document, due on 20 November 2011, and that the report be comprehensive and address all points raised in the present concluding observations.

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Annex 802

Turkey, Reports Submitted by States Parties under Article 9 of the Convention, Combined Fourth to Sixth Periodic Reports of States Parties Due in 2013, CERD/C/TUR/4-6 (17 April 2014)



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Consideration of reports submitted by States
parties under article 9 of the Convention**

**Combined fourth to sixth periodic reports of States parties
due in 2013**

Turkey*

[Date received: 10 February 2014]

* The present document is being issued without formal editing.

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I. Introduction

1. Turkey has the honour to present its fourth, fifth and sixth periodic reports in a single consolidated document to the Committee on the Elimination of Racial Discrimination on the legislative, judicial, administrative and other measures which give effect to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the Convention), in accordance with article 9 thereof.
2. The report, which contains data from 2007 until 2013 inclusively, has been prepared under the coordination of the Ministry of Foreign Affairs with the contribution of the relevant ministries, public institutions and Parliamentary commission.
3. Turkey is fully committed to the fight against racism and racial discrimination as defined in the Convention. With this understanding, Turkey became party to the Convention in 2002 and incorporated sound and effective measures into its legislation with a genuine commitment to combating racial discrimination.
4. In its instrument of ratification, Turkey made two declarations and one reservation. In this respect, with regard to paragraph 8 of the Concluding Observations of the Committee of 2009 CERD/C/TUR/CO/3 (hereinafter referred to as the Concluding Observations of the Committee), the Turkish Government is of the view that its declarations and reservation are permissible under international law and compatible with the object and purpose of the Convention. The Government has not announced any decision to withdraw any of its existing declarations or reservation to the Convention.
5. The constitutional system of Turkey is based on the equality of all individuals without discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations (Article 10 of the Constitution).
6. In line with the fundamental principles of equality and non-discrimination, every Turkish citizen is considered an integral part of the nation. Diversity is the source of richness of Turkish society.
7. Concerning paragraph 9 of the Concluding Observations of the Committee whereby Committee regrets the lack of statistical data in the report of Turkey on the ethnic composition of its population, the Turkish Government would like to reiterate that it does not collect, maintain or use either qualitative or quantitative data on ethnicity. It is believed that this is a sensitive issue, especially for those nations living in diverse multicultural societies for a long period of time. Diversity has deep roots in Turkey. Hence, Turkey has focused on commonalities and common aspirations in the legislative and policy framework, rather than measuring differences and making policies thereon.
8. As a testimony to Turkey's commitment to further strengthening human rights and freedoms, yet another "democratization package" was unveiled on 30 September 2013 which proposes comprehensive reforms for improvement and enjoyment of a wide-spectrum of civil and political rights for citizens of Turkey from all walks of life. Relevant provisions of these reform proposals are introduced throughout the report.
9. Information concerning the recommendations contained in the Concluding Observations of the Committee is presented throughout the report.

II. Information on specific articles

Article 1

1. Definition of racial discrimination in domestic law and the Convention

Definition of racial discrimination in domestic law

10. Article 90 of the Turkish Constitution states that international agreements duly put into effect bear the force of law and directly become a part of Turkish domestic legislation. As such, when approved by the Turkish Parliament on 16 October 2002, the Convention became an integral part of Turkey's national legislation and the definition of racial discrimination laid down in the Convention is directly applicable in Turkey and can be invoked before Turkish courts. In case of conflict with the provisions of the national laws on the same matter, international agreements in the area of fundamental rights and freedoms, e.g. the Convention—prevail.

11. The constitutional system of Turkey is based on the equality of all individuals without discrimination before the law, irrespective of “language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations” (Article 10). By referring to “or any such considerations”, the Constitution grants the judiciary wide discretion on its judgment of cases of inequality before the law.

12. Existing Turkish legislation – namely the Constitution, penal code, civil code, labour law, civil servants law, law on political parties, law on the execution of penalties and security, basic law on national education, law on the establishment of radio and television enterprises and their media services, law on social services, law on the establishment of ombudsman, law on the establishment and duties of the Turkish Football Federation, law on prevention of violence and disorder at sport, law on the establishment and duties of the Ministry of Foreign Affairs, Turkish Armed Forces discipline law – provides for prohibition of and protection against discrimination and racism. (For discussion of constitutional provisions and laws providing protections against racial and ethnic discrimination, please see discussion under Article 2.).

13. With regard to paragraph 17 of the Concluding Observations of the Committee concerning the absence of a comprehensive anti-discrimination legislation as well as paragraph 11 regarding the absence of prohibition of all the grounds of discrimination stated in Article 1 of the Covenant, relevant Government institutions drafted a comprehensive anti-discrimination legislation which covers the prohibited grounds of discrimination set out by Article 1 of the Convention. The draft “Law on Anti-Discrimination and Equality” is before the Office of the Prime Minister.

14. According to the Draft Law, the prohibition of discrimination is laid down to include discrimination based on sex, race, color, language, belief, ethnic origin, philosophical or political opinion, social status, marital status, state of health, disability or age. The prohibition shall be binding on the legislative, executive and judicial authorities as well as all natural and legal persons. In cases of violations, the public authorities who have been entrusted with the task and authority in such matters are under the obligation of taking the necessary measures to end such violations, eliminate their consequences, prevent recurrence and conduct judicial and administrative monitoring of the cases.

15. The Draft Law foresees eleven types of discrimination under the titles of, “segregation”, “ordering discrimination and implementing such orders”, “multiple discrimination”, “direct discrimination”, “indirect discrimination”, “workplace mobbing”,

“victimizing”, “failing to make reasonable arrangements”, “hate speech”, “harassment”, “discrimination based on assumptions”.

16. The Draft law envisages the establishment of “the Anti-Discrimination and Equality Board” which will monitor complaints regarding discrimination in the public and private sector as well as “the Consultation Board” which will bring together representatives from universities, trade unions, professional bodies, associations and foundations, and representatives of public institutions functioning in the field of combating discrimination and equality with a view to assisting “the Anti-Discrimination and Equality Board”.

Inclusion of direct as well as indirect forms of discrimination in the definition of racial discrimination in domestic law

The draft Law on Anti-Discrimination and Equality includes provisions dealing with both direct and indirect discrimination.

Differential treatment based on citizenship or immigration status

17. Fundamental rights and freedoms set forth in the Constitution do not lead to any distinction between Turkish citizens and foreigners. Fundamental rights and freedoms are recognized for everybody regardless of citizenship in line with article 10 of the Constitution. Article 16 of the Constitution stipulates that the fundamental rights and freedoms of foreigners can only be limited by law in accordance with international law. Political rights (the right to vote and to be elected, the right to form political parties and to become their members) and the right to enter into public service are however solely vested with Turkish citizens.

18. The new Law on Foreigners and International Protection was enacted on 11 April 2013. The law which aims to strengthen the institutional capacity of Turkey regarding immigration and international protection was prepared in consultation with relevant public institutions, international organizations such as UNHCR and the Council of Europe, civil society organizations and other relevant parties.

2. Information on special measures

19. Article 10 of the Constitution concerning equality before the law was amended following the referendum of 12 September 2010. The new Article provides for measures in favor of groups that require social protection namely women, children, the elderly, the disabled, widows and orphans of martyrs as well as for the invalid and veterans. The introduction of a “special measures” clause for the first time in the Constitution is a significant improvement to strengthen the protection of constitutional rights of these people.

20. With this amendment, it is guaranteed under the constitutional framework that special measures to be taken by the Government in respect of those who require protection shall not be construed to be “contrary to the principle of equality”. As such, the State will be free to take special measures for those in need of protection to ensure equality among all sections of the society.

21. The situation of those Turkish citizens considered disadvantaged is given due consideration within the general framework of combating discrimination in the field of human rights.

22. In 2009, the Turkish Government initiated a “democratic opening” process towards Turkey’s Roma population with a view to identifying and seeking solutions for the problems faced by the Roma particularly in the fields of employment, housing, health and education through increasing dialogue between the Roma and relevant Government units,

raising awareness among the society at large on the challenges faced by the Roma, giving the Roma further opportunities to make their voice heard by public officials at local and national level. The Roma “opening” process has been carried out in a participatory manner, making sure that the Roma themselves have a say in policies and programmes that are targeting them.

23. Please refer to the section for special measures under Article 2 (paragraphs 62-63) for all the events and meetings organized within the framework of the “democratic opening” towards the Roma.

Article 2

1. Brief description of legal framework and general policies

24. In order to eliminate racial discrimination in all its forms and manifestations, Turkey believes that, it is important to take effective legal and administrative measures, including the improvement of existing legislation and the establishment of comprehensive institutional structures where necessary.

25. To this end, since 2001 Turkey has pursued a comprehensive reform process. Major steps have been taken to align the domestic legal framework with the international principles and standards in the area of human rights, democracy and the rule of law. Series of legal reforms have been carried out including constitutional amendments as well as adoption of laws that are fundamentally important for the protection of human rights and prohibition of discrimination including a new civil code, penal code and the code of criminal procedures. A summary of the existing legislation is presented below.

26. As mentioned earlier, according to Article 10 of the Constitution of the Republic of Turkey, all individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. In conformity with this basic tenet of the Constitution, all public authorities and public institutions in Turkey are under the obligation not to engage in any act or practice of racial discrimination. As such, sponsoring, defending or supporting racial discrimination is prohibited. By referring to “or any such considerations”, the Constitution grants the judiciary wide discretion on its judgment of cases of inequality before the law.

27. Article 68 (4) of the Constitution concerning political parties prohibits political parties to aim to protect or establish class or group dictatorship or dictatorship of any kind, or to incite citizens to crime.

28. Article 70 of the Constitution entitles every Turk to enter public service and states that no criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service.

29. The Turkish Penal Code (TPC) prohibits and criminalizes acts of discrimination. Relevant provisions of the TPC are as follows:

- Article 3 of the Turkish Penal Code (TPC) prohibits discrimination in the application of the Penal Code.
- Article 122 of the TPC makes it a criminal offence, punishable by imprisonment for a term of six months to one year or a judicial fine, to discriminate against a person on the grounds of language, race, colour, sex, disability, political opinion, philosophical belief, religion, sect or similar reasons where the offender, on these grounds, prevents the sale or transfer of movable or immovable property or the execution of a service or prevents others from benefiting from a service, or employs or does not employ a person (122/1-a); does not provide food or refuses to provide a

service meant to be provided for the public (122/1-b); or prevents a person from undertaking a regular economic activity (122/1-c).

- Article 216 of the Turkish Penal Code under Section 5 entitled “offences against public peace” prohibits incitement to hatred or enmity on the grounds of social class, race, religion, sect or regional difference.
- Furthermore, Article 218 of the TPC under the same section increases the penalty imposed by half if the offences defined under section 5 including under Article 216 are committed through media and press.
- Articles of the TPC concerning criminalization of genocide (Article 76) and the crimes against humanity (Article 77) include acts against members of a racial group. The articles do not allow statute of limitations pertaining to these offences. Furthermore, Article 78 (1) imposes a penalty of imprisonment for a term of ten to fifteen years for persons who found or direct an organization for the purpose of committing the offences referred to under Article 76 and 77 (first sentence), and a penalty of imprisonment for a term of five to ten years for those who become a member of such organizations (second sentence).
- Article 135 (2) of the TPC penalizes unlawful collection of personal data on grounds of political, philosophical or religious opinions, racial origins; illegal moral tendencies, sexual lives, health conditions and relations to trade unions of persons which constitutes an offence with imprisonment for a term of six months to three years.
- Article 115 of the TPC penalizes the act of hindering the exercise of freedom of belief, thought and conviction, while Article 153 penalizes acts of damaging worship places (churches, mosques etc.), property used in such places, cemeteries and buildings and premises over these areas.
- Article 18 concerning extradition states that the extradition demand shall not be accepted if there are strong suspicions that –upon extradition - the person shall be prosecuted or punished on account of his/her race, religion, nationality, membership of a particular social group or political opinion or shall be exposed to torture or ill-treatment.

30. Other laws and regulations that prohibit discrimination on the basis of race, language, sex, religion, political opinion, nationality or social origin are as follows:

- Civil servants law no. 657 (Article 7 and 125);
- Basic law on national education no. 1739 (Article 4);
- Law on political parties no.2820 (Articles 12, 78, 82, 83);
- Social services law no. 2828 (Article 4);
- Civil code no. 4721 (68);
- Labour law no. 4857 (Article 5);
- Law on the execution of penalties and security measures no.5275 (Article 2);
- Law on the establishment and duties of the Turkish Football Federation no.5894 (Article 3);
- Law on the establishment and duties of the Ministry of Foreign Affairs no.6004 (Article 2);
- Law on the establishment of Radio and Television Enterprises and Their Media Services no. 6112 (Article 8 and 9);

- Law on prevention of violence and disorder at sport no. 6222 (Article 14);
- Law on the establishment of Ombudsman no 6328 (Article 30);
- Turkish Armed Forces discipline law no. 6413.

Recent and ongoing legal reforms related to discrimination

31. Turkey reviews its policies and legislation so as to make them more effective in strengthening democracy, safeguarding human rights and fundamental freedoms and consolidating the rule of law. Many fundamental laws were amended before and during the previous reporting period.

32. In the current reporting period, as discussed under paragraphs 19–20, Article 10 of the Constitution concerning equality before the law was amended following the referendum of 12 September 2010. The new Article provides for measures in favor of groups that require social protection namely women, children, the elderly, the disabled, widows and orphans of martyrs as well as for the invalid and veterans. The introduction of a “special measures” clause for the first time in the Constitution is a significant improvement to strengthen the protection of constitutional rights of these people.

33. In the reporting period, as discussed in detail under Article 1 paragraphs 13–16, Ministry of the Interior in collaboration with relevant institutions drafted a comprehensive anti-discrimination legislation which is currently before the Office of the Prime Minister. The draft law broadens the grounds and scope of discrimination and establishes “the Anti-Discrimination and Equality Board” which will monitor complaints regarding discrimination in the public and private sector.

34. Turkish Government has recently proposed several legislative reforms (referred as “the democratization package”) that concern more effective fight against hate crimes and discrimination. Proposed amendments include incorporation of hate motive into the TPC as an aggravating circumstance and increasing punishment for acts of discrimination under the TPC. Draft laws are before the Parliament.

2. Specific information on the legislative, judicial, administrative or other measures taken:

To give effect to the undertaking to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that public authorities and public institutions act in conformity with this obligation

35. Legislative framework that prohibits public authorities from engaging in any act of discrimination is presented below:

- Article 10 (5) of the Constitution obliges organs of state and administrative authorities to act in compliance with the principle of equality before the law in all their proceedings.
- Article 7 of the Civil Servants Law no. 657 prohibits civil servants from discriminating in undertaking of their duties on the basis of language, race, sex, political view, philosophical belief, religion or sect. Article 125 subjects those engaging in discriminatory action to disciplinary sanctions.
- Article 18 of the Turkish Armed Forces Discipline Law no. 6413 subjects those engaging in acts of discrimination to disciplinary sanctions.
- Social Services Law no. 2828 (Article 4) prohibits discrimination in the execution and provision of social services on the basis of class, race, language, religion, sect or regional differences.

36. In case of an allegation of engaging in an act of racism or discrimination by a law enforcement officer, the investigation is conducted not by the judicial police but by the prosecutor with a view to maintaining objectivity.

37. Relevant public units/institutions implement non-discrimination laws to ensure that public authorities, in particular law enforcement officials, act in conformity with these laws. Information on these units is as follows:

- “Bureau for Inquiry on Allegations of Human Rights Violations” was established within the Inspection Board of the Ministry of the Interior in March 2004. The Bureau examines complaints concerning the allegations of human rights violations, including claims of discrimination related to law enforcement officers.
- The Gendarmerie Human Rights Violations Investigation and Evaluation Centre (JİHİDEM) investigates complaints concerning allegations of human rights violations, including claims of discrimination that occur in the gendarmerie’s area of responsibility, ensures judicial and administrative investigation in the legal framework should the claims be substantiated, and informs the applicant on the developments and outcome of the proceedings, and announces them publicly.
- Office of the Ombudsman is responsible for examining and investigating all kinds of acts and transactions, attitudes and actions of the administration, regarding their compliance with the rule of law and fairness, within the context of an understanding of justice based on human rights, and for making recommendations to the administration. Investigation of allegations of discrimination by public officials naturally falls within the scope of the duties of Ombudsman.
- The Turkish National Human Rights Institution receives and investigates allegations of all human rights violations including allegations of discrimination by public officials.
- Human Rights Inquiry Committee of the Parliament also provides an important assistance on the investigation of alleged cases of ill-treatment by the police officers and other security forces. In this connection, police and gendarmerie stations and prisons are inspected by the Human Rights Inquiry Committee with or without notification. Special sub-commissions are established periodically under the Human Rights Inquiry Committee to inspect prisons and police stations. In this context, a permanent subcommittee has been established; whereby 20 prisons were inspected since June 2011.

38. Concerning civilian review of the security forces, “Draft Law on the Establishment of Law Enforcement Monitoring Commission and Amendment of Certain Laws” has been submitted to the Parliament in 2012 and is expected to be discussed at the Parliament.

39. The draft law aims to reassure public and law enforcement officials’ confidence in the law enforcement complaint system and to bring the current legal framework of the registry and investigation mechanisms regarding complaints about law enforcement officials in line with the European Union standards. A more efficient complaint system will be established without creating a burden on bureaucracy. The draft law envisages the establishment of the Law Enforcement Monitoring Commission. The Commission is envisaged to perform the duties specified in the law independently, under its powers and responsibilities.

To give effect to the undertaking to prohibit and bring to an end racial discrimination by any persons, groups, or organizations

40. With regard to prohibition of discrimination by private actors, Article 5 of the Labour Law No. 4857 entitled “principle of equal treatment” prohibits discrimination on

the ground of language, race, sex, political thought, philosophical belief, religion, sect and similar grounds in employment relations. In case of violation of the provisions of this article, the worker can demand the rights that he/she has been deprived of, in addition to an appropriate indemnity equivalent up to four months' wages.

41. Article 82 of the Law on Political Parties no. 2820 states that political parties are not allowed to function with the aim of regionalism and racism. Article 83 affirms that political parties shall not function in contradiction with the principle that all individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or other similar considerations.

42. Furthermore, principle of non-discrimination also appears in the Law on Political Parties with regard to the provision which regulates membership in a political party. Statutes of political parties cannot contain clauses of discrimination among applicants for membership on grounds of language, race, sex, religion, sect, family, group, class or profession (art. 12).

43. Article 30 (b) of the Law on Associations no. 5253 states that associations shall not be established to realize objectives expressly prohibited by the Constitution and laws or to commit criminal offences. This includes prohibition of discrimination. Persons who establish associations prohibited under article 30 (b) or executives of associations who act in contradiction to the said article, shall be sentenced at minimum to imprisonment for a term of one year to three years and a judicial fine. In such cases, the association in question shall be closed down (Article 32 (b)).

44. Concerning associations, the Civil Code (Law No. 4721) states that no association shall be founded for purposes against the law and morality (art. 56). If an association's objectives are not compatible with the legislation and public morals, a court may order the dissolution of the said association upon the request of the public prosecutor or any other concerned person (art. 89). Furthermore, Article 68 of the Civil Code states that members of an association have equal rights and that discrimination on the basis of language, race, sex, religion, sect, family, group or class among members of an association is prohibited.

45. As stated earlier in paragraph 29, Article 122 of the TPC makes it a criminal offence, punishable by imprisonment for a term of six months to one year or a judicial fine, to discriminate against a person on the grounds of language, race, colour, sex, disability, political opinion, philosophical belief, religion, sect or similar reasons where the offender, on these grounds, prevents the sale or transfer of movable or immovable property or the execution of a service or prevents others from benefiting from a service, or employs or does not employ a person; does not provide food or refuses to provide a service meant to be provided for the public; or prevents a person from undertaking a regular economic activity.

To review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination

46. Turkish government continuously reviews its laws, regulations and policies with a view to bringing them in line with Turkey's international human rights obligations and commitments. In the past decade a major overhaul of fundamental laws were undertaken. Relevant government institutions closely monitor the legislation and its implementation and accordingly propose amendments where necessary.

47. For example, while reviewing the legislation, due attention has also been given in order to remove connotations that might be perceived as discriminatory. Just as an example, Article 21 of the Law regarding the Residence and Travel of Foreigners in Turkey has been amended to ensure the removal of some references which might be perceived as discriminatory with regard to the Roma.

To encourage, where appropriate, non-governmental organizations and institutions that combat racial discrimination and foster mutual understanding

48. Throughout the ongoing reform process in Turkey, NGOs operating in the field of human rights including those focusing on discrimination have been more vocal. The Government has increased dialogue with the representatives of civil society, and met and consulted NGOs on various issues in the reform process.

3. Information on National Human Rights Institution, Ombudsman and other human rights bodies

49. Turkey achieved significant progress in the reporting period with regard to institutionalization in the field of human rights and important institutions were established in order to provide institutional safeguards for human rights. A comprehensive consultation process was carried out with the participation of relevant parties during the preparation of the laws on the establishment of these institutions.

50. The Law on the Turkish National Human Rights Institution entered into force on 30 June 2012 and the process of establishing the Turkish Human Rights Institution, in compliance with the UN Paris Principles, was initiated. The elections of the members of the Human Rights Board, the decision-making body of the institution, were completed as of 2012 September. It is stipulated in this Law that the institution would be independent in its authorities and while carrying out its duties. This institution is responsible for carrying out work on the protection and enhancement of human rights, and in this framework, for undertaking investigations and research, preparing reports, submitting opinions and recommendations, conducting activities for information, awareness-raising and training and investigating allegations of human rights violations.

51. The Turkish National Human Rights Institution is a public legal entity which has administrative and financial autonomy. It is independent regarding its duties and authorities; the Institution may not be given orders or instructions, recommendations or opinions regarding its duties. Due to administrative and financial autonomy, the Institution has its own budget, personnel and property and it is authorized to make its own administrative arrangements regarding matters under its responsibility.

52. The Turkish National Human Rights Institution is given a wide mandate in the protection and promotion of human rights. The mandate naturally includes combatting racial discrimination.

53. The Law on the Ombudsman Institution entered into force on 29 June 2012. With this Law, the Ombudsman Institution was established under the Parliament as a public legal entity with a special budget. Ombudsman is mandated with reviewing and investigating complaints concerning the functioning of the administration, that is to say all kinds of acts and transactions, attitudes and actions of the administration, regarding their compliance with the rule of law and fairness, within the context of an understanding of justice based on human rights. The institution is also entrusted with making recommendations to the administration. In accordance with the principle of independence, the Chief Ombudsman and Ombudsmen may not be given orders or instructions by any authority, body, office or person regarding their duties.

54. The institution began to receive complaints on 29 March 2013 and as of 6 December 2013 6,983 applications were submitted. Lodging an application is free of charge and applications can be submitted electronically as well as through governorates and district governorates in provinces and districts.

55. The Ombudsman Institution is able to perform promotional activities concerning application procedures and principles in different languages within the framework of the

relevant regulation. Accordingly, posters and brochures prepared in Turkish, English, Arabic and Kurdish were sent to provinces.

56. The establishment of an Ombudsman system in Turkey is one of the most important steps taken for accountability, fairness and transparency of the public administration. The Ombudsman Institution will improve the quality and effectiveness of public services, by addressing fairly, speedily and free of charge the complaints of citizens regarding public services, in accordance with the law. Investigation allegations of all forms of public officials fall within the scope of the mandate of the Ombudsman.

57. Complaints brought before the Ombudsman involving allegations of discrimination are discussed under Article 6 paragraph 183.

58. Since 1990 the Human Rights Inquiry Commission of the Parliament functions as a parliamentary monitoring mechanism. The Commission examines the extent to which human rights practices in Turkey comply with the requirements of the Constitution, national legislation and international conventions to which Turkey is party. The Commission possesses powers of investigation and, in the performance of its duties, is empowered to request information from Ministries and other government departments, local authorities, universities and other public institutions as well as private establishments, to conduct inquiries on their premises and to invite the representatives of these bodies to appear before it and provide information. The Commission also conducts on-site inspections in detention centers and prisons with or without notification.

59. The Commission submits to the Presidency of the Parliament annual and ad hoc reports concerning the issues within its mandate and the discharge of its duties. Its findings are also conveyed to competent government offices for action. The Commission has gained public confidence in effectively using its competences in investigating alleged violations. Specific work of the Commission involving complaints of racial discrimination are set out under Article 6 paragraphs 184-187.

60. The Constitutional Amendment Package, which was adopted with the referendum of 12 September 2010, paved the way for the right of individual application to the Constitutional Court. The main aim of adopting an individual application mechanism is to resolve the cases of violation of fundamental rights through domestic law. Furthermore, the individual application mechanism paves the way for enhancing the rule of law and improving standards of democracy in Turkey by effectively protecting human rights.

61. The implementation of the individual application system to the Constitutional Court, which is an exceptional domestic legal remedy for the violation of individual rights and freedoms guaranteed by the Constitution and the international conventions to which Turkey is party through transactions, acts or negligence of public authorities, started as of 23 September 2012. Between September 2012 and December 2013, over 10 thousand individual applications were submitted to the Constitutional Court. Information on the outcome of the individual applications before the Court related to racial discrimination is presented under Article 6 paragraphs 182.

4. Special measures

62. Special measures targeting the Roma are presented below. Southeast Anatolia Project (GAP), aimed at overcoming regional socio-economic disparities follows. In 2009, the Turkish Government initiated a “democratic opening” process towards Turkey’s Roma population. A chronological list of events and meetings organized within this framework is presented below:

- Under the leadership of the then State Minister Faruk Çelik, the government held a workshop in December 2009, bringing together representatives of the Roma

community with public officials to discuss issues of employment, housing and education.

- The workshop was followed by the big “Roma gathering” in March 2010, which was attended by 10,000 Roma citizens from all over Turkey. Prime Minister Erdoğan addressed the crowd, stressing that Roma were equal citizens of the country and promising that the government would do all it could to address the community’s problems.
- In February 2011, the Ministry of National Education held a workshop entitled “Enhancing Educational Opportunities for Roma Children” which was followed by the drafting of a unique and detailed action plan to detect and monitor irregular school attendance, prevent dropping out of school and strengthen preschool education. The initiative was welcomed by the European Union and was noted in Turkey’s progress report.
- The Turkish Employment Agency, under the Ministry of Labour and Social Security, held a two-day workshop in September 2011 entitled “Participation of Roma in the Labour Market”. Following the workshop, the Agency launched a mediator’s programme which aims to select Roma and non-Roma mediators who will be trained to facilitate access of the Roma population to the job market. The Agency also runs the “Work for Public Benefit” programme, which provides six-month temporary jobs for unemployed people in order to facilitate their entry into the job market, teach them skills and provide them with consistent income. Fifty-nine governorates where large Roma populations live have been ordered to prioritize this group when selecting beneficiaries. The Agency expects 1,500 Roma to benefit from this programme. Furthermore, 537 Roma citizens benefited from certificate programmes on vocational education, conducted by the Turkish Employment Agency.
- A Prime Ministerial Circular was sent to all governorates in Turkey instructing them to issue identity cards without any fees to all Roma citizens in their jurisdiction.
- The Housing Administration of Turkey (TOKİ) has constructed 10,000 units of housing in various parts of the country for Roma who lived in poor conditions.
- In addition, Roma, as vulnerable persons, are part of the target group of the European Union Instrument for Pre-Accession Assistance (IPA) funds in Turkey. On 15 June 2012, the Ministry of Labour and Social Security launched the “Improving Social Inclusion and Access to the Labour Market for Disadvantaged Groups” which aims to promote the inclusion of disadvantaged persons into the labour market and eliminate discrimination towards them when seeking jobs. Among all disadvantaged groups, the Roma will specifically be targeted under the programme and 30% of the project budget will be used in areas with a heavy Roma population.
- Since its establishment in 2011, the Ministry of Family and Social Policies has taken over the co-ordination duty for all Roma initiatives of the government, making the process more efficient.
- “The Problems of Roma People and Recommendations for These Problems” meeting was held on 18 July 2012 headed by Deputy Prime Minister Bekir Bozdağ and the Minister of Family and Social Policies Fatma Şahin with the participation of the under-secretaries of relevant Ministries. During the meeting six areas of action were specified and the relevant Ministries were assigned to undertake necessary work in the fields of education, employment, security, settlement, social policy and health.

- On 30 November 2012, Deputy Prime Minister Bekir Bozdağ and Minister of Family and Social Policies Fatma Şahin met with the governors of eighteen provinces where large Roma populations live, and sought their views on problems encountered by Roma people and recommendations for them. Two more provinces joined the undertakings. With a view to coordinating the efforts on social policies for the Roma, a deputy manager was appointed in each of the provincial directorates of Ministry of Family and Social Policies in those twenty provinces.
- Within the framework of the ongoing project entitled “Collaboration of Public Sector and NGOs for Roma Participation”, a workshop on the problems faced by Roma in the field of education, housing, health, social welfare and fundamental human rights was organized by Ministry of Family and Social Policies, Ministry of Labor and Social Security and NGOs that specifically focus on Roma between 13 and 14 December 2012.
- “Meeting Roma People, Working with Roma People” workshop was carried out in collaboration with the Governorate of Kırklareli, Directorate of National Education, Kırklareli University and Thrace Development Agency on 8 April 2013. The workshop focused on Roma people and European examples, the solutions for social, cultural, economic and educational problems faced by the Roma, strategic planning concerning difficulties experienced by the Roma in the field of education and alternative education practices in densely Roma populated areas.
- A workshop entitled “Sociological Outlook of Roma People and Future Scenarios” was held by Kocaeli Municipality with the participation of representatives of Roma organizations on 18 April 2013. Social cohesion, challenges encountered by women, children, disabled and the difficulties in the field of employment, education, health, housing and social support were discussed in the workshop.
- As one of the reform steps announced within the framework of the “democratization package” unveiled by the Government on 30 September 2013, the Higher Education Council has taken a decision for the establishment of the Institute of Roma Language and Culture at Trakya University to carry out research on the problems of the Roma citizens regarding language and culture and to formulate solutions for these. The “democratization package” also calls for further steps to be taken for Roma in the fields of education, housing, education and adequate standard of living.
- On 30 September 2013, the Human Rights Inquiry Commission of the Parliament met with the representatives of the Roma Social Assistance and Solidarity Association from several provinces. The Commission informed the relevant institutions of the complaints and concerns brought to their attention by the association. The Commission closely follows up with the relevant institutions about the outcome of these concerns.
- On 30 October 2013, a meeting titled: “Thrace Region Roma Meeting” was held with the participation of Deputy Prime Minister, Bekir Bozdağ; the Minister of Family and Social Policies; and the Minister of Health as well as the participation of the parliamentarians from the provinces in the region, and the representatives of the Roma non-governmental organizations.
- Ministry of Family and Social Policies is currently working on a national strategy and action plan concerning the Roma.
- In addition, Directorate General of Security, with the framework of “community supported policing” held twelve projects in six provinces between 2007 and 2012 with a view to advancing the integration of the Roma and protecting them against

crimes and harmful habits. As a result of the projects, dialogue with Roma citizens improved, sense of citizenship and belonging of the Roma increased.

- The Roma “opening” process has been carried out in a participatory manner, making sure that the Roma themselves have a say in policies and programmes that are targeting them. In almost all meetings and events, the government has been represented at the highest level, indicating the good-will and solution-oriented approach adopted towards the issue. In addition to the growing number of Roma NGOs due to the community’s heightened awareness of civic participation, an indirect result of the process has been a much-improved sense of self-respect and belonging on the part of the Roma community.

63. As an example of special measures to eliminate regional differences and thus any unintended inequality in economic status among citizens, Southeast Anatolia Project (GAP), which was launched with a view to bridging the gap in the level of development between the Southeast and other parts of Turkey and overcoming regional socio-economic disparities, was revived by the GAP Action Plan of 2008-2012. The Action Plan consisted of 4 axes, namely, economic development, social development, improvement of infrastructure and development of institutional capacity. Within the scope of the action plan, progress on irrigation was made, transport networks were improved, energy investments were almost completed and amounts of loans provided to small and medium enterprises (SMEs) were increased. Education and health indicators reached the country average by means of the investments made. Resource allocated to the investments in the GAP Region was 4.26 billion TL in 2012 and 3.68 billion TL of this amount was allocated for GAP Action Plan investments. The GAP Action Plan was completed at the end of 2012 and the Revised Action Plan (2013-2017) which includes new innovative, sustainable projects and programmes accelerating economic and social development and increasing employment was launched in 2013.

Article 3

64. Racial segregation and apartheid are concepts alien to the Turkish society. Any policy, ideology or regime which defends racial hatred and discrimination is condemned and penalized by law.

65. Intercultural dialogue and harmony have deep roots in Turkey. The Republic of Turkey adheres with great dedication to the legacy of multi-faith tolerance, diversity and cultural pluralism. Every Turkish citizen is considered an indispensable part of the nation. Their origins are the sources of richness in Turkish society and can be enjoyed and preserved through the exercise of individual liberties.

Article 4

1. Information on the legislative, judicial, administrative or other measures that give effect to the provisions of Article 4, including enactment and enforcement of laws

66. Turkey condemns all propaganda and all organizations which are based on ideas of superiority of one race or group of persons of one colour or ethnic origin or which attempt to justify or promote racial hatred and discrimination in any form. Article 216 of the Turkish Penal Code under Section 5 entitled “offences against public peace” prohibits incitement to hatred or enmity on the grounds of social class, race, religion, sect or regional difference. Article 216 reads:

(a) A person who openly incites groups of the population to breed enmity or hatred towards one another based on social class, race, religion, sect or regional difference in a manner which might constitute a clear and imminent danger to the public order shall be sentenced to imprisonment for a term of one to three years.

(b) A person who openly denigrates part of the population on grounds of social class, race, religion, sect, sex or regional differences shall be sentenced to imprisonment for a term of six months to one year.

(c) A person who openly denigrates the religious values of a part of the population shall be sentenced to imprisonment for a term of six months to one year in case the act is likely to distort public peace.

67. Article 218 of the TPC under the same section increases the penalty imposed by half if the offences defined under section 5 including under Article 216 are committed through media and press.

68. With regard to paragraph 14 of the Concluding Observations of the Committee, Turkey would like to reiterate that the first paragraph of Article 216 of the Turkish Penal Code regulates the limits of the freedom of expression with a view to preventing incitement to social, racial, religious or regional enmity or hatred when there is a clear and imminent danger to public order. This article aims to strike a balance between high standards of freedom of expression, while effectively addressing the problem of incitement to hatred on the above-mentioned grounds.

69. Turkey upholds that expressing thoughts in a free environment is a sine qua non for a democratic society. The definition of the offence described is made in the light of this approach. In order for an act to be considered within the scope of the Art 216 (1), it must be conducted in such a manner that it endangers public security in concrete terms. The danger of disruption of public safety should be based on concrete elements. Speeches delivered and thoughts expressed can be prohibited, so long as they constitute a “clear and imminent danger” to the society. Unless the existence of such a danger is established on a concrete and explicit basis, no punishment can be enforced in order to protect the freedom of expression.

70. Furthermore, Article 8 (b) of the Law no. 6112 on the establishment of Radio and Television Enterprises and Their Media Services of 2011 prohibits media services from inciting the society to hatred and hostility by discriminating on the grounds of race, language, religion, sex, class, region and sect and prohibits them from constituting any feelings of hatred in the society.

71. The draft “Law on Anti-Discrimination and Equality” described in paragraphs 13-16 also deals with hate speech.

2. Racial motives as aggravating circumstances under domestic penal legislation.

72. Turkish Government has recently proposed several legislative reforms that concern more effective fight against hate crimes and discrimination. Proposed amendments include incorporation of hate motive into the TPC as an aggravated circumstance and increasing punishment for acts of discrimination under the TPC. Draft laws are before the Parliament.

73. Due consideration was given to the Committee’s recommendation in paragraph 23 of the Concluding Observations with regard to incorporation of hate crimes into the TPC as an aggravating circumstance.

3. Explanation for absence of legislation

Turkey has relevant legislation in place as presented above under article 4, heading 1.

4. Information concerning decisions taken by national tribunals and other State institutions regarding acts of racial discrimination in particular those offences under Article 4

74. The table below indicates the number of accusations and judgments rendered by the courts under Article 216 and 218 of the TPC between the 2009 and 2012.

Article	Year	Number of accusations	Number of judgments rendered under this article	Types of judgments in relation to the accused			Total number of accused
				Number of persons convicted	Number of persons acquitted	Other*	
216/1	2009	108	162	35	71	66	172
	2010	261	249	26	45	188	259
	2011	300	168	5	60	104	169
	2012	141	218	13	83	124	220
216/2	2009	22	18	5	9	5	19
	2010	134	123	5	17	102	124
	2011	32	20	1	13	6	20
	2012	41	66	9	21	40	70
218/1	2009	1	4	0	0	4	4
	2010	1	4	5	1	2	8
	2011	5	1	0	0	1	1
	2012	2	36	0	0	38	38

* Other types of judgments include suspension of pronouncement of judgment, decision of lack of jurisdiction, decision of lack of venue, discontinuance of the proceedings (e.g. time barred), suspension of the case (due to e.g. conditionality placed upon investigation or prosecution).

75. Statistical data concerning other judgments on relevant articles of the TPC, namely Articles 77/2, 78/1 (first sentence), 78/1 (second sentence), 122/1-a, 122/1-b, 122/1-c, 135/2 is set forth under Article 6.

76. Furthermore, the Constitutional Court began to receive individual applications as of September 2012. Information on the outcome of the individual applications before the Court related to racial discrimination is presented under Article 6 paragraph 182.

77. The Ombudsman, the Human Rights Inquiry Commission of the Parliament and the Turkish Human Rights Institution are also authorized to receive and consider individual complaints of discrimination. Information concerning applications involving claims of discrimination is presented under Article 6 paragraphs 183-187.

Article 5

78. It is the underlying principle of the Turkish Constitution that there can be no discrimination in the enjoyment of fundamental rights and freedoms. The Government takes effective measures to prohibit discrimination in the enjoyment of these rights.

III. Information grouped under particular rights

A. The right to equal treatment before the tribunals and all other organs administering justice

79. Article 36 of the Constitution safeguards everyone's right to litigation as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures. No court shall refuse to hear a case within its jurisdiction.

80. Every Turkish citizen has the right to launch legal action before the relevant judicial courts should he/she believe that his/her fundamental rights or freedoms have been violated.

81. Furthermore, everyone has the right to access to lawyer, including free legal assistance in both civil and criminal proceedings.

82. An interpreter is provided by the State should the accused, victim or witness does not speak sufficient Turkish to explain himself/herself.

83. Furthermore, following a recent amendment of the Criminal Procedure Code, defendants who feel better at expressing themselves in a language other than Turkish are allowed to present their defense statements in the language they choose.

1. Measures taken to ensure claims of racial discrimination are investigated thoroughly

84. Any claim of discrimination based on race, colour or any other grounds, including claims made against public officials, is investigated by independent authorities and is subject to independent and effective scrutiny by courts and/or administrative and parliamentary mechanisms established to hear such claims. Further information on these remedies can be found under paragraphs 174-187. Once the domestic remedies are exhausted, applications can be submitted to the European Court of Human Rights, the compulsory jurisdiction of which was recognized by Turkey in 1990.

2. Measures taken to ensure that fight against terrorism do not discriminate on any grounds

85. In the fight against terrorism, Turkey does not discriminate in purpose or effect on the grounds of race, color or any other grounds, and individuals are not subjected to racial or other profiling or stereotyping. The Government revises the anti-terror law on a regular basis with a view to effectively safeguarding fundamental rights and freedoms, the most recent one being in April 2013 within the framework of the fourth judicial reform package.

86. Information on the training of law enforcement officials and judicial officers on human rights including the prohibition of discrimination is presented in paragraphs 193-196 under article 7.

B. The right to security of persons and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution

87. The right to liberty and security of persons is safeguarded by the Constitution. Perpetrators of any criminal act including all acts of violence and hate crimes are swiftly captured and brought to justice. The Government constantly reviews the legislation and its implementation with a view to ensuring prompt, effective, transparent and independent investigations. Requisite inquiries are given effect without delay in order to prevent impunity.

88. Turkish legislation prohibits discriminatory actions by law enforcement officers. The conditions for use of force by the police are defined by Law no. 2559 on “Powers and Duties of Police”. The law was amended in 2007 in accordance with the UN Basic Principles of the Use of Force and Firearms as well as good practices in some other countries. The law stipulates limits on the powers of the police to use weapons inter alia in self-defence and prevention of escape by a lawfully convicted or arrested person. The police may only use weapons, where essential, after a gradual use of proportionate force. Similarly, the Law on Organization, Duties and Competences of Gendarmerie (Law No. 2803) includes limits on the competence of the gendarmerie to use weapons.

89. Law enforcement officers are regularly trained for eradicating the use of excessive force. As regards the measures to avoid disproportionate use of force by the police in Turkey, circulars and written orders have been issued by the relevant authorities and regularly sent to all Police Departments in provinces. Officers violating the circular on “norms of intervention for public demonstrations” (Circular no. 129/2004) are prosecuted.

90. In order to ensure that security personnel wearing riot gear could be identified and discouraged from any use of excessive force, identity numbers are printed on their helmets since 2009.

91. In addition to the judicial ones including the jurisdiction of the European Court of Human Rights, administrative and parliamentary remedies are available against violations of fundamental rights including acts of discrimination by public officials or individuals (please see paragraphs 182-187). Measures taken to ensure non-citizens are not returned to a country of territory where they are at the risk of being subjected to serious human rights violations:

92. Turkey, in accordance with its obligations stemming from the international agreements to which it is a party, does not return any asylum-seeker to any country or territory where he or she will face persecution, and diligently complies with the principle of non-refoulement, pursuant to Article 33 of the UN 1951 Refugee Convention.

93. Asylum-seekers, who are not granted refugee status but are at the risk of being subjected to death penalty, to torture or inhuman or degrading treatment or punishment, or asylum seekers in whose country of origin there is a serious and individual threat against a civilian due to indiscriminate violence resulting from international or domestic armed conflict, are not deported, and allowed to stay temporarily in Turkey under the “Subsidiary Protection and Protection with Humanitarian Considerations” scheme.

94. In the same context, before deporting persons who have not applied for asylum and are caught as illegal immigrants, an investigation with respect to the country of origin is carried out and the illegal immigrant is not returned or deported to the country of origin if he or she is at the risk of being subjected to death penalty, to torture or inhuman or degrading treatment or punishment, or there is a serious and individual threat against a civilian due to indiscriminate violence resulting from international or domestic armed conflict in the country of origin.

95. Asylum seekers can appeal against the procedures undertaken by the Turkish authorities before the Administrative Courts and the European Court of Human Rights.

96. With regard to paragraph 15 of the Concluding Observations of the Committee, the circumstances under which the withdrawal of the geographical limitation to the 1951 Convention relating to the Status of Refugees can be considered were clearly stated in the 2005 National Action Plan on Asylum and Immigration:

- This must not lead to an influx of refugees from the East.

- The legislative changes and infrastructural investments referred to in the National Action Plan on Asylum and Immigration are completed.
- EU Member States show the necessary sensitivity on burden-sharing.
- Turkey and the EU sign the accession treaty.

97. Finally, the new Law on Foreigners and International Protection was adopted on 11 April 2013 in order to form the basis of an effective and strong migration management system by establishing the necessary legal and administrative infrastructure. The law will contribute to filling the gap left by the absence of an asylum law in Turkey and harmonizing the legislation with the EU Acquis on the basis of the UN 1951 Refugee Convention. Prepared with the participation of all relevant national and international stakeholders in a transparent and inclusive manner, the new law aims to establish a viable migration system in full consideration of respect for human rights. Accordingly, General Directorate of Migration Management which is responsible for all aspects of migration management in Turkey was established. According to the Law, a new “Migration Policies Board” will also be established which will be responsible for formulating Turkey’s short and long term migration management strategies.

C. Political rights

98. With regard to paragraph 10 of the Concluding Observations of the Committee concerning “representation of ethnic groups in the Parliament and other elected bodies”, every Turkish citizen has the right to vote, to be elected, and to engage in political activities independently or in a political party, and to take part in a referendum (Article 67 of the Constitution). Accordingly, the Constitution guarantees every Turkish citizen without regard to race, colour or any such consideration the equal right to participate in the political process on an equal footing. The Constitution and the laws safeguard the equal right to take part in the conduct of public affairs and to have equal access to public service.

99. The Law on Political Parties prohibits discrimination on, inter alia, religious and racial grounds and safeguards the principle of equality before the law.

100. Following the amendment of the election law in 2010 (Law. No. 5980), the ban on the use of languages other than Turkish in both written and oral forms during election campaigns and the sanctions related to this ban were lifted. Thus it became possible to carry out election campaigns in a language other than Turkish.

101. Furthermore, with a view to ensuring greater political participation and representation, the Government proposes in “the democratization package”, unveiled on 30 September 2013, to initiate discussions on lowering the 10% election threshold for parties to enter the parliament to 5% with district system or abolishing the election threshold and establishing single member district system; to ease membership to political parties; to expand the scope of state aid to political parties (the limit for aid is to be reduced from 7% vote share to 3%); to facilitate local organization of political parties; to introduce co-chair system for political parties; to enable any kind of political propaganda by political parties and nominees as well as to allow campaign and propaganda in the preliminary elections in languages and dialects other than Turkish by lifting the remaining bans on Law no.298 and Law no. 2820 respectively.

102. All Turkish citizens can actively participate in public and political life and involve in the development and implementation of policies and programmes affecting them through engagement in civil society and local, regional and national politics and administrations.

D. Other civil rights

103. Article 5(d) of the Convention obligates States parties to ensure equality of enjoyment of a number of human rights and fundamental freedoms, including freedom of movement and residence; the right to leave and return to one's country; the right to nationality; the right to marriage and choice of spouse; the right to own property alone as well as in association with others; the right to inherit; the right to freedom of thought, conscience, and religion; the right to freedom of opinion and expression; and the right to freedom of peaceful assembly and association. These rights are guaranteed in the Constitution and relevant laws without distinction as to race, colour or any other consideration.

E. Economic, social and cultural rights

1. Right to work

104. The Constitution guarantees the right to work. Article 5 of Labour Law No. 4857 entitled "principle of equal treatment" prohibits discrimination on the ground of language, race, sex, political thought, philosophical belief, religion, sect and similar grounds in employment relations. In case of violation of the provisions of this article, the worker can demand the rights that he/she has been deprived of, in addition to an appropriate indemnity equivalent up to four months' wages. Article 18 of Labour Law concerning the conditions for termination of labour contracts explicitly states that race, colour, sex, marital status, family obligations, pregnancy, maternity leave, religion, political opinion and similar reasons do not constitute a valid reason for such termination.

105. In Turkey, there exists no distinction, exclusion, restriction or preference, in law or in practice between persons or groups of persons, on the basis of race, colour, sex, religion, political opinion, nationality or social origin, which would have the effect of nullifying or impairing the recognition, enjoyment or exercise of equality of opportunity/treatment in employment or occupation.

106. Furthermore, allegations of discrimination in labour relations can be placed before the Labour Inspection Board of the Ministry of Labour and Social Security.

107. In the reporting period, the new Law on Occupational Health and Safety (no. 6331) was adopted in June 2012 in compliance with ILO Conventions No. 155 and 161. Moreover, by-laws on the implementation of the said Law are under preparation and previous by-laws are under revision. One of the most important novelties of the law is its coverage of employees in all work places. All employees benefit from the services of health and safety at work without any number limits and regardless of the type of work place. Foreign or migrant workers also fall within the scope of the law.

2. The right to form and join trade unions

108. The Constitution safeguards the right to form trade unions and to conduct collective bargaining.

109. In the reporting period, the Law on Trade Unions and Collective Agreements and the Law Amending the Law on Trade Unions of Civil Servants entered into force with a view to reflecting the amendments made to the trade union rights in the Constitution to the related laws. These laws introduce significant changes regarding the extension of the trade union rights.

110. With the Law on Trade Unions and Collective Agreements No. 6356, formation of trade union organs and procedures for the establishment of trade unions are facilitated and

the condition for founders of trade unions to have Turkish citizenship and be Turkish literate is removed.

3. The right to housing

111. Article 57 of the Constitution stipulates that the State shall take measures to meet the need for housing within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.

112. Social Housing Project is being implemented in order to meet housing requirements of disadvantaged groups and poor people under the cooperation of the General Directorate of Social Assistance of the Ministry of Family and Social Policies and TOKİ (TOKİ, the Housing Development Administration is the principal body in the implementation of housing and settlement policies as the provider of funds and land and as facilitator at local level to address the urgent housing needs of the society). Within the framework of the project, it is possible to acquire houses built as 1+1 and 2+1 houses with monthly instalments of 100 TL (less than 50 USD) in 270 months. In this context, construction of 12,000 houses was completed at the end of 2012; a protocol was signed for the construction of 40,000 houses and necessary planning for this purpose was made. It is aimed that 100,000 houses will be completed until 2023 in this context.

113. Social housing program is also implemented in the provinces where the population of Roma is high and their housing requirements are satisfied. Moreover, work is on-going to provide social housing in neighbourhoods and towns where the population of Roma is high. As of November 2013, a total number of 1856 houses were completed in the areas where the Roma population is high. In addition, 2088 houses are under construction in these areas.

114. Concept of racial discrimination by those who rent or sell houses or apartments is alien to Turkish society.

4. The right to public health, medical care, social security and social services

The Constitution safeguards the right to health and the right to social security.

115. Within the framework of the social-security reform process, a general health insurance system is introduced. In accordance with the new Law on Social Insurance and General Health Insurance (No. 5510) which entered into force in 2008, insurance premium of stateless persons, asylum-seekers and refugees are paid by the State and they are considered within the general health insurance. The new law strengthens the effective enjoyment of the right to health and social security for anyone residing in Turkey without social insurance.

116. Furthermore, Circular on Social Assistance and Solidarity Foundation was issued in 2009 in order to determine how the refugees/asylum seekers who do not fall within the scope of the General Health Insurance Law will benefit from the health and the other (in-kind and in-cash) benefits provided by Social Assistance and Solidarity Foundations. The circular was issued with a view to standardizing the different practises among the Governorates.

117. Circular no. 2010/03 of 24 March 2010 was issued and put into effect by the General Directorate of Social Services and Children Protection Institution with a view to ensuring uniformity in practice and coordination with the relevant departments regarding the actions to be carried out during and after the admission of unaccompanied asylum seeking-children, elders, and the persons with disabilities to the institutions.

5. The right to education and training

118. Turkish education system is based on Article 42 of the Constitution stating that “no one shall be deprived of the right to learn and education” and “primary education is compulsory for all citizens of both sexes and is free of charge in state schools”.

119. Article 4 of the Basic Law on National Education states that educational institutions are open to all, regardless of language, race, sex or religion. No privilege shall be granted to any individual, family, group or class. The Higher Education Law also stipulates that educational institutions are open to all and that necessary measures shall be taken to ensure equal opportunity.

120. The basis of Turkey’s education policies is to ensure that all citizens, regardless of language, race, color, sex, political thought, philosophical belief, religion or sect, enjoy their right to education in accordance with modern science and education, endowed with equal rights and opportunities.

121. Compulsory primary education was increased to 8 years in 1998 which in turn raised the enrolment rates in primary education. The new legislation introduced in 2012 extended compulsory education to 12 years.

122. Enrolment and attendance statistics are followed through e-school database so that non-schooling and drop-out cases can be easily detected. School drop-outs are monitored and supported with complementary projects such as “Come on girls, let’s go to school!”, “Increasing the Attendance Rate in Primary Education (1st to 8th graders)”, “Increasing the Enrolment Rate of Girls”.

123. With a view to overcoming regional disparities in socio-economic situation and income levels, social subsidies to increase schooling are provided. The Conditional Cash Transfer System provides monthly payments to families in need conditional to regular attendance of their children. The Directorate General for Social Assistance of the Ministry of Family and Social Policies manages extra schooling aids such as free distribution of education material and lunch aids.

124. The Ninth Development Plan Strategy (2007-2013) prioritizes schooling of girls particularly in rural areas. Eight year compulsory education and the introduction of pre-school education more systematically have contributed positively schooling of girls. School attendance rate of girls in primary education increased sharply in the past decade.

“Supporting Gender Equality in Education Project” will be launched by the Ministry of National Education in 2014

125. The new 12 year education system provides elective courses in languages and dialects traditionally spoken by Turkish citizens in the public education system. The courses are available in following languages: Kurdish (Kurmanji and Zazaki), Circassian (Adige and Abkhaz) and Laz. The 12 year education system also diversified the elective courses offered on the basis of the interests and skills of the students.

126. “The democratization package” announced by the Government on 30 September 2013 proposes the use of languages and dialects traditionally used by Turkish citizens in their daily lives in private schools as the medium of instruction.

127. Turkish nationals belonging to non-Muslim minorities have their own educational institutions. These institutions are regulated by the Law on Private Educational Institutions. In minority schools, children are able to learn their mother tongue. All courses except Turkish and Turkish culture are taught in the students’ own languages.

6. The right to equal participation in cultural activities

128. The preamble of the Constitution includes a reference to the right to take part in cultural life, “acknowledging the birth right of every Turkish citizen to lead an honourable life and to develop his/her material and spiritual existence on the basis of national culture, civilization and the rule of law, through the exercise of the fundamental rights and freedoms set forth in this Constitution in conformity with the requirements of equality and social justice”. Accordingly, every individual is free to participate in cultural life and activities.

Measures taken to prevent racial hatred and prejudice in sports and activities organized for promoting intercultural dialogue among the youth

129. Various penalties related to racism have been defined in the new Law on Prevention of Violence and Disorder in Sports Law (no. 6222) which entered into force on 14 April 2011. In accordance with Article 14 of the law, those chanting in a defamatory manner shall be punished with a punitive fine and those who make a comment or perform a behaviour that contains defamation by discriminating on grounds of religion, language, race, ethnic origin, sex or sect differences of segments of the society in or around sports fields shall be sentenced to an imprisonment for a term of three months to one year. The penalty to be imposed for these offences shall be increased by half if they are committed by the means of holding or hanging a banner or of writing on the wall.

130. Furthermore, Article 3 of the Law on the Establishment and Duties of the Turkish Football Federation (no.5894) spells out the duties of the Federation which include inter alia fight against violence, match-fixing, illegal performance incentives, racism, doping and any kind of discrimination.

131. The Ministry of Youth and Sports prepared the “National Youth and Sports Policy Paper” which focuses on the prevention of all forms of discrimination, provision of equal opportunities, creation of a culture of tolerance and intercultural dialogue amongst the youth as well as prevention of violence, disorder and unethical behaviour in sports.

132. Accordingly, the Ministry of Youth and Sports organized several events aimed at promoting intercultural dialogue, social cohesion and respect for diversity as well as combatting prejudices and discrimination amongst the youth. Information on the projects implemented by the Ministry is presented under Article 7 in paragraph 203.

Measures taken to encourage and facilitate access to the media

133. Restrictions on broadcasting in languages and dialects traditionally used by Turkish citizens in their daily lives were lifted in 2002. The broadcasts first began with a radio programme on the state-run TRT Radio 1 in Bosnian on 7 June 2004, followed by broadcasting on the TRT-3 television channel on the same day.

134. Since 7 March 2006, the Radio and Television Supreme Council (RTUK) has granted permission for several private radio and TV stations upon their applications to broadcast in Kurmanji dialect of Kurdish and Zaza language. The radio and TV stations have started their broadcast in these dialects as of 26 March 2006.

135. Radio-1 and TRT-3 used to broadcast programmes in Bosnian on Mondays, Arabic on Tuesdays, Kurmanji on Wednesdays, Circassian on Thursdays and Zaza on Fridays until a new multilingual state-run TV channel, TRT-6, was established. In January 2009, TRT-6 started to broadcast in the Kurmanji and Sorani dialects of the Kurdish language and in the Zaza language 24 hours a day. Furthermore, TRT-AVAZ, broadcasting in Azeri, Kazakh, Kyrgyz, Uzbek and Turkmen languages, and TRT Arabic, broadcasting in Arabic, have been operational since March 21, 2009 and April 4, 2010 respectively.

136. The number of broadcasters in languages and dialects traditionally used by Turkish citizens in their daily lives increased to 25 in 2012. These broadcasters can freely broadcast without restrictions regarding the content, time limitations or subtitles/consecutive interpreting requirements.

137. The Anatolia News Agency started broadcasting in Kurmanji and Sorani dialects of Kurdish in addition to the English, Arabic, Bosnian, Croatian, Serbian and Russian as of September 2013.

138. Books, newspapers and periodicals are available in the languages and dialects traditionally used by Turkish citizens in their daily lives.

The status of minority languages in the media:

Minorities have their own media outlets.

7. The right of access to places of service

139. There has never been any official regulation or practice in everyday life in Turkey denying anyone, on the grounds of racial discrimination, the right of access to any place or service intended for use by the general public, such as means of transport, hotels, restaurants, cafes, theatres or parks. Such a consideration is alien to the Turkish society.

IV. Information by relevant groups of victims or potential victims of racial discrimination

Information on refugees and asylum seekers as well as the Roma was provided earlier.

1. Stateless persons

140. Persons who have been determined to be stateless on the basis of the investigations and considerations related to their nationalities are provided with a residence permit and access to education, work, health services and foreigner ID number. The naturalization procedure is carried out by the General Directorate of Civil Registration and Citizenship Affairs of the Ministry of the Interior in accordance with the Turkish Nationality Law No. 5901. Pursuant to Law (No.5683) on the Travel and Residence of Foreigners in Turkey, “subsidiary protection” is provided for.

2. Provision of Temporary Protection for Syrians

141. Turkey strictly complies with the principle of non-refoulement at the border and in accordance with the international procedures, provides Syrians with “temporary protection” without any discrimination.

142. The humanitarian operations of the Turkish Government are carried out on three tracks. Firstly, the Government maintains an open border policy. As of December 2013, there are more than 200 thousand Syrians registered at the 21 shelters in Turkey. All their needs (including access to education and health) are provided by the Turkish Government.

143. Secondly, Turkey assists the Syrians who live in various towns in the region outside the shelters (more than 400,000 as of December 2013). Necessary measures are taken to provide them with basic services, such as free health care. The financial burden on the Government has exceeded 2 billion Dollars.

144. The third track pertains to extending humanitarian relief items to northern parts of Syria at the zero point of the border. The total value of the aid channelled to Syria through this operation in support of the UN campaign is in the range of 200 million Dollars.

145. Access to education of Syrian children living at the shelters is safeguarded. Currently 57 thousand Syrian children receive schooling beginning from pre-school to end of high school. Nearly 2 thousand teachers, a great majority of whom are native Arabic speakers, work in these facilities. Furthermore, adult classes are also available. Currently, 9,115 adults are enrolled in 139 courses. In total 27,221 adults attended these courses.

3. Additional protection for persons belonging to non-Muslim minorities in Turkey and Dialogue with Different Faith Groups

146. There exists no universally recognized and legally binding definition of the term minority. Under the constitutional system of Turkey, the word “minorities” encompasses only groups of persons defined and recognized as such on the basis of multilateral or bilateral instruments to which Turkey is party. In this context, minority rights in Turkey are regulated in accordance with the Lausanne Peace Treaty, under which Turkish citizens belonging to non-Muslim minorities fall within the scope of the term “minority”. The term “minority” cannot be used for Muslim Turkish citizens.

147. Articles 37-45 of the Treaty (sect. III) regulate the rights and obligations of individuals belonging to non-Muslim minorities in Turkey. These provisions are recognized as fundamental laws of Turkey: the stipulations contained in articles 38 to 44 shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

148. In line with the constitutional system based on equality of citizens before the law, Turkish citizens belonging to non-Muslim minorities enjoy and exercise the same rights and freedoms as the rest of the population. Additionally, they benefit from their minority status in accordance with the Lausanne Peace Treaty.

149. Turkey honours its commitments under the Lausanne Treaty and recognizes the non-Muslim minorities in line with its obligations. In this connection, concerning paragraph 12 of the Concluding Observations of the Committee, there has therefore not been any change in or consideration to change the definition of minorities in the Turkish Law.

150. The Republic of Turkey adheres with great dedication to its legacy of multi-faith tolerance and cultural pluralism. Non-Muslim places of worship are administered by their own associations or foundations. Property rights regarding places of worship rest with the real or legal persons that have founded them. Non-Muslim minorities have their own schools, hospitals and media outlets. Foreign clergymen are able to serve in places of worship in Turkey. A number of foreign clergymen have been registered in Turkey to serve in places of worship with relevant working permit. There are 387 places of worship belonging to non-Muslim communities, including 87 churches run by foreigners residing in Turkey.

151. Concerning the issues arising from immovable properties of the non-Muslim minority foundations, the Turkish Government has made the necessary amendments in its legislation to remedy the situation. The new “Law on Foundations” (no: 5737) was adopted in 2008. Following the adoption of this Law, 105 community foundations applied for the registration of 1410 immovables. 181 immovable properties were registered in the name of community foundations upon their application.

152. In 2010, Turkish authorities re-registered a former orphanage building on Büyükada to the Greek Orthodox Patriarchate in compliance with the ruling of the European Court of Human Rights.

153. A decree further amending the Law on Foundations was published on 27 August 2011 for further improving the situation of non-Muslim Community foundations regarding the registration of their immovables. Provisional articles of the Law on Foundations and the decree enabled the Community Foundations, within a given period, to apply for registering immovables under their foundation. As a result, 307 properties were returned to the community foundations and it was decided to pay compensation for 21 properties.

154. Foundation Council of the Directorate General of the Foundations unanimously approved on 7 October 2013 to return the property of Mor Gabriel Monastery to the Monastery Foundation.

155. Concerning paragraph 18 of the Concluding Observations of the Committee, Turkish Government has the will to reopen Heybeliada (Halki) Theological School on the basis of a sustainable formula. Efforts to this end are ongoing with a constructive approach.

156. As regards the freedom of worship, in the reporting period, in addition to the return of properties to the community foundations, places of worship belonging to citizens of different faith groups have been renovated. In October 2011, Surp Giragos Church in Diyarbakır started its service following a restoration lasting for nearly two years. After the renovation, Surp Vortvots Vorodman Church belonging Meryem Ana (Virgin Mary) Armenian Church Foundation located in Kumkapı started its services following a ceremony held on 28 December 2011. Several buildings in the Armenian cemetery in Malatya were re-built and put into service by Malatya Municipality in June 2013. Furthermore, the Assyrian Orthodox community residing in Istanbul, who have difficulties in performing their religious service asked for an area to build a new church in Istanbul and this request has been met by Istanbul Metropolitan Municipality.

157. In addition, following the amendment of the Electricity Market Law No. 6446 on 30 March 2013, electricity bills of the places of worship will be covered from the fund under the budget of the Directorate of Religious Affairs. Along with mosques, there are 387 churches and synagogues benefiting from this right.

158. In terms of promoting the environment of tolerance and mutual understanding, religious ceremonies which were held in the reporting period are:

- The Historical Sumela Monastery in Maçka district of Trabzon on 15 August 2010, 15 August 2011, 15 August 2012 and 15 August 2013;
- Surp Hac Armenian Church on the Akhdamar Island of Lake Van on 19 September 2010, 11 September 2011, 9 September 2012 and 8 September 2013;
- Pazar Yeri Mosque, which used to be a church 88 years ago, in Alaçatı District of İzmir, on 28 May 2011;
- Surp Giragos Armenian Orthodox Church in Sur district of Diyarbakır on 23 October 2011 and 10 September 2013;
- Aya Yorgi Church in Alanya in Alanya Hıdır İlyas District on 14 April 2013.

159. In the field of education, permission was given as of 28 March 2013 to open a Greek minority school in Gökçeada following the request of the Greek community. The school in question has been re-opened in the academic year of 2013-2014 and started its activities.

160. Moreover, Ankara 13rd Administrative Court ruled that there is no obstacle before the request of the Assyrian citizens towards delivery of Assyrian courses along with the

curriculum of the Ministry of National Education in certain days or hours of the week in a pre-school to be opened under a community foundation.

161. As regards promoting respect for and protection of minorities, the Prime Ministry Circular of 13 May 2010 emphasizes that citizens of different faith groups are an inseparable part of Turkey and all public institutions are reminded that they should not raise any difficulties and vitiate their rights during their acts and transactions at the public institutions, as required by the Law. The Circular has been implemented meticulously.

162. Dialogue with different faith groups has intensified during the reporting period. On 14 February 2012, the fifth of the Civil Society Dialogue Meetings was held in Istanbul under the auspices of former Minister for EU Affairs and Chief Negotiator Egemen Bağış, with the participation of approximately 300 civil society organizations, foundations and associations representing the citizens of different faith groups and spiritual leaders of the communities. During the meeting, the problems faced by the citizens of different faith groups and the proposals and recommendations of civil society organizations regarding their solution were discussed, and assessments regarding Turkey's accession process were made. On 3 March 2012, Minister of Foreign Affairs Ahmet Davutoğlu paid a courtesy visit to the spiritual leaders of different faith groups in Istanbul. On 5 July 2012, the President of Religious Affairs, Mehmet Görmez visited Greek Orthodox Patriarchate.

163. As Turkish authorities come together with the representatives of different religious groups in Turkey, they also meet with the Assyrian representatives and discuss ways and means to tackle the issues and problems that they might be encountering. In this context President Abdullah Gül and Minister of Foreign Affairs Ahmet Davutoğlu met with Assyrian representatives in February and March 2013 respectively.

164. Most recently, a consultation dinner with the representatives of different faith groups was hosted by Egemen Bağış, former Minister for EU Affairs and the Chief Negotiator on 28 November 2013. In this event attended by the representatives of various community foundations, Director General for Foundations, the Representative of Community Foundations of the Foundations Council and the representatives of the relevant public institutions, an extensive consultation was made on the outstanding problems.

165. With regard to paragraph 24 of the Concluding Observations of the Committee concerning the activities of the Minority Issues Assessment Board, an ad-hoc group of officials, held periodic consultations with the high ranking representatives of the minorities in Turkey in 2004, 2005, 2006 and 2009. During these consultations, religious, cultural, social, administrative problems encountered by these faith groups as well as the challenges they faced concerning their foundations and immovables were discussed.

4. Gender Equality

166. Turkey is committed to the goals of improving the living standards and the rights of women, ensuring their full and equal participation in all spheres of life and strengthening their status in society.

167. Equality between women and men before the law is one of the basic principles of the Turkish Constitution. Article 10 stipulates that "women and men have equal rights" and that "the State is responsible for overseeing that this equality is upheld in practice". With the 2010 Constitutional amendments, a basis for positive discrimination in favour of women was established by stating that measures to guarantee gender equality in practice could not be interpreted as being contrary to the principle of equality.

168. A Commission for Equal Opportunity between Women and Men was established on 24 March 2009 in the Turkish Grand National Assembly. The Commission, whose primary

goal is to contribute to the protection and development of women's rights, also monitors developments on this issue at the national and international levels.

169. Ministry of Family and Social Policies was established in June 2011 so as to unify a number of Government Agencies responsible for developing policies and providing services for the disabled, children, families, the poor and women under a single structure.

170. The representation of women in parliament has increased sharply in the past ten years, as it was 4.4% in 2002 with 21 women parliamentarians, 9.1% in 2007 with 48 women parliamentarians and has risen to 14.1% in 2011 with 78 women parliamentarians. This is a significant improvement towards the achievement of the target for women's representation as 17 per cent in parliament by 2015 as referred to in the Millennium Development Goals Report in 2005.

171. Labour force participation rate for women has risen to 31.3% in 2013. Unemployment rate amounted to 9.8%, while this rate for youth was 18.7%. The women employment rate increased by 0.6 point compared to the same period of the last year and amounted to 27.4%, while unemployment rate for women corresponded to 12.4%. Providing child care services for the working women has become a prerequisite in order to increase the women employment.

172. Turkey actively contributed to the elaboration of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. The Convention, also known as the Istanbul Convention, was opened for signature in May 2011 during Turkey's Chairmanship of the Council of Europe. Having submitted its instrument of ratification to the Secretariat of the Council of Europe on 14 March 2012, Turkey is the first country to sign and to ratify the Convention.

173. The new law on "Protection of the Family and Elimination of Violence Against Women" was adopted by the Turkish Grand National Assembly on 8 March 2012. Being the first law in Turkey which defines and tackles domestic violence, the law broadens the scope of the previous legislation to cover all women victims regardless of their marital status, as well as other members of the family. Seminars were organised at provincial level so as to introduce the new law with a view to reaching the implementing units of the public institutions/organisations which provide direct service to women victims of violence in 81 provinces and ensuring the standards and the uniformity in implementation in providing the services.

174. Moreover, in line with the Law on the Protection of Family and Prevention of Violence against Women, Violence Prevention and Monitoring Centres (ŞÖNİM) which offer counselling and guidance services to prevent violence and effectively implement protective and preventive measures were established in 14 pilot provinces (İstanbul, Ankara, İzmir, Bursa, Denizli, Antalya, Mersin, Adana, Samsun, Trabzon, Gaziantep, Şanlıurfa, Diyarbakır and Malatya). Violence Prevention and Monitoring Centres rendered services to 4,514 persons in total (4,434 women and 80 men), between late December 2012 and June 2013.

175. "National Action Plan on Combating Domestic Violence Against Women" was revised for the years 2012-2015. The Action Plan contains targets such as, implementation of legislative measures, promoting awareness raising activities, empowering of women in economy, ensuring social participation, improvement of preventive services, treatment and rehabilitation. Some temporary special measures have also been taken to this end. For instance, in June 2012, some 150,000 women who lost their husbands were entitled to cash transfers in an attempt to alleviate the poverty of female headed households. Measures are also taken to increase the access of girls to education and women to employment, lowering taxes for women, strengthening the training of public officials in gender equality.

176. Directorate General on the Status of Women of the Ministry of Family and Social Policies is currently implementing the 2012-2016 Project on Increasing Women's Access to Economic Opportunities, in cooperation with the World Bank and with the financial support of the Swedish International Development Cooperation Agency (SIDA).

V. Information on articles 6 and 7 of the Convention

Article 6

1. Information on the legislative, judicial, administrative or other measures taken to give effect to provisions of Article 6

177. Every Turkish citizen has the right to launch legal action before the relevant judicial courts should he/she believe that his/her fundamental rights or freedoms have been violated. All remedies are available against violations of fundamental rights and freedoms including acts of discrimination.

178. Article 40 of the Constitution states that everyone whose constitutional rights and freedoms have been violated has the right to request prompt access to the competent authorities. The State is obliged to indicate, in its official transactions, the legal remedies and authorities to which the persons concerned should apply and their time limits. Damages incurred by any person through unlawful treatment by public officials shall be compensated by the State. The State reserves the right of recourse to the official responsible.

179. Furthermore, everyone has the right to access to lawyer, including free legal assistance in both civil and criminal proceedings. An interpreter is provided by the State should the accused, victim or witness does not speak sufficient Turkish to explain himself/herself.

180. Following a recent amendment of the Criminal Procedure Code, defendants who feel better at expressing themselves in a language other than Turkish are allowed to present their defense statements in the language they choose.

181. Any claim of discrimination based on race, colour or national or ethnic origin, including claims made against public officials, is investigated by independent authorities and is subject to independent and effective scrutiny by courts and/or administrative and parliamentary mechanisms established to hear such claims. Once the domestic remedies are exhausted, applications can be submitted to the European Court of Human Rights, the compulsory jurisdiction of which was recognized by Turkey in 1990.

182. Statistical data concerning accusations and judgments rendered by the courts relating to cases of discrimination on relevant articles of the TPC namely Article 77/2, 78/1 (first sentence), 78/1 (second sentence), 122/1-a, 122/1-b, 122/1-c, 135/2* is presented below.

Article	Year	Number of accusations	Types of judgments in relation to the accused				Total number of accused
			Number of judgments rendered under this article	Number of persons convicted	Number of persons acquitted	Other**	
77/2	2009	1	1	0	0	1	1
	2010	1	1	0	0	1	1
	2011	0	2	1	0	1	2
	2012	0	0	0	0	0	0
78/1-first	2009	3	9	0	9	0	9

Article	Year	Number of accusations	Types of judgments in relation to the accused				Total number of accused
			Number of judgments rendered under this article	Number of persons convicted	Number of persons acquitted	Other**	
sentence	2010	0	6	0	6	0	6
	2011	0	0	0	0	0	0
	2012	0	0	0	0	0	0
78/1-second sentence	2009	2	6	0	0	6	6
	2010	3	2	0	0	2	2
	2011	0	0	0	0	0	0
122/1-a	2009	15	7	1	1	5	7
	2010	3	8	0	7	1	8
	2011	7	7	0	4	3	7
	2012	14	12	1	11	0	12
122/1-b	2009	3	0	0	0	0	0
	2010	2	3	0	1	2	3
	2011	1	3	0	3	0	3
	2012	0	0	0	0	0	0
122/1-c	2009	2	3	0	3	0	3
	2010	3	3	0	2	1	3
	2011	5	2	0	2	0	2
	2012	0	4	0	2	2	4
135/2	2009	44	22	2	6	15	23
	2010	49	24	0	2	22	24
	2011	55	23	16	5	13	34
	2012	34	51	4	8	41	53

* Texts of articles can be found under Article 2 in paragraph 29.

** Other types of judgments include suspension of pronouncement of judgment, decision of lack of jurisdiction, decision of lack of venue, discontinuance of the proceedings (e.g. time barred), suspension of the case (due to e.g. conditionality placed upon investigation or prosecution).

183. Please see the table under Article 4 which indicates the number of accusations and judgments rendered by the courts on Article 216 (incitement to hatred or enmity) and 218 of the TPC between 2009 and 2012.

184. The Constitutional Court started to receive individual applications as of 23 September 2012. Between September 2012 and December 2013, over 10 thousand individual applications were submitted to the Constitutional Court. Of these, 48 applications are related to racial discrimination. 10 of the applications are still under review by the Sections, 27 of them are under the consideration of the Commissions. 7 applications were found inadmissible whereas 4 applications were refused due to improper application.

Administrative and parliamentary remedies

185. These remedies are utilized through the Ombudsman, Turkish National Human Rights Institution and the Human Rights Inquiry Commission of the Parliament. The Law on the Turkish National Human Rights Institution entered into force on 30 June 2012. The Institution began receiving complaints of human rights violations. However, the statistical information on the applications and their outcome is not yet available.

186. The Ombudsman began receiving complaints as of 29 March 2013. Of the complaints received, four cases involve claims of discrimination on the basis of origin. Two of the applications are under preliminary review, one was found inadmissible due to absence of mandatory information in the application, and one application was conveyed to the Ministry of Justice as administrative remedies were not exhausted.

187. A small number of applications from Turkish citizens of various origins comprising claims of discrimination were submitted to the Human Rights Inquiry Commission of the Parliament. The applications concern Roma citizens, Turkish citizens of Kurdish origin and non-Muslim minorities.

188. After a careful examination of the applications, the Commission notifies the relevant public authorities of the allegations. Public authorities review the cases and report back to the Commission about the merits of the case in hand or sometimes remedy the violation upon receiving the Commission's letter. To give a few examples of the remedies, in one case, it was made sure that the information deliberately omitted from the identification card of a Roma citizen was filled duly. In another case, upon the complaint of Turkish citizen of Kurdish origin, obstacles regarding the use of a language other than Turkish during the visits made to the convicts and detainees were lifted.

189. Furthermore, the chair of the Commission called for legal action in accordance with the relevant articles of the TPC about those carrying banners with discriminatory statements against Armenian citizens in a demonstration in Istanbul. Following the call, Istanbul Prosecutor's Office pressed charges against those holding the banners and it was ruled that 6 people be fined on grounds of promoting hate and hostility.

190. In addition, on 30 September 2013, the Commission met with the representatives of the Roma Social Assistance and Solidarity Association from several provinces. The Commission informed the relevant institutions of the complaints and concerns brought to their attention by the association. The Commission closely follows up with the relevant institutions about the outcome of these concerns.

2. Optional declaration provided in article 14 of the Convention

191. As of today, Turkey does not intend to make the declaration under Article 14 of the Convention. It is worth noting that in terms of international complaints mechanisms in the realm of human rights, Turkey has recognized the right of individual petition before the European Court of Human Rights in 1987 and thus accepted the compulsory jurisdiction of what is considered to be one of the most effective human rights mechanisms since 1990.

Article 7

1. Education and Teaching

Legislative and administrative measures taken in the field of education to combat discrimination and steps taken to review textbooks and promote human rights issues in school curricula

192. Information concerning the right to education is provided under Article 5 (please refer to paragraphs 117-126).

193. The regulation on textbooks and educational materials of the Ministry of National Education clearly states that textbooks shall support basic human rights and freedoms and provide an approach that rejects all forms of discrimination. The Ministry annually re-examines course materials to extract connotations which could lead to misinterpretation. As a recent example, upon the request of the Assyrian community, certain phrases regarding Assyrians in the 10th grade history course books that were perceived unfavorably by Assyrians themselves were examined and removed accordingly from the course books. Updated books were used in schools in the 2012/2013 academic year.

194. Within the framework of the project entitled “Democratic Citizenship and Human Rights Education” (EDC/HRE), the Ministry of National Education in partnership with Council of Europe analyses and strengthens the education legislation (regulations, by-laws and directives) and curricula based upon the principles of EDC/HRE, trains the personnel of the Ministry of National Education in order to raise their capacity on EDC/HRE and develops training programmes and materials to be used by teacher trainers to train other teachers. Furthermore, the Ministry provides training for the prospective text book writers and editors, graphic designers and representatives of publishing houses in order for them to prepare course materials that are in line with principles of democratic citizenship and human rights.

195. Democracy and human rights education is one of the fundamental policies of the education system with a view to promoting human rights issues and raising awareness among students on universal rights and freedoms. The system is solidified within the framework of the aforementioned EDC/HRE project. Accordingly, courses on “human rights, citizenship and democracy”, “law and justice”, and “democracy and human rights” are offered at schools.

Measures taken for training of law enforcement officials in the field of human rights and non-discrimination

196. Training of the members of the law enforcement agencies has intensified in the past decade. The Ministry of the Interior organizes periodic seminars, conferences and workshops for the staff at various levels as part of the human rights training. These seminars cover topics such as human rights provisions in Turkish domestic law; the duties and responsibilities of senior administrators and law enforcement officers with regard to human rights under the international conventions to which Turkey is party.

197. The police force continues to train the staff on human rights. Please see below for the number of staff that received training on human rights during the in-service training between 2007 and 2013.

2007	2008	2009	2010	2012	2013	Total
8,996	24,272	32,590	25,328	26,924	34,176	177,587

198. Furthermore, Department of Counter-Terrorism of the Ministry of the Interior provided various trainings on human rights for its staff. Please see below for the number of staff that received training on human rights.

2007	2008	2009	2010	2012	2013	Total
459	914	1,065	938	918	689	5,698

199. Courses on human rights have become mandatory in the curricula of the Police Academy and Police Colleges as well as Gendarmerie Vocational Academy and education of the specialized staff of the Gendarmerie. The Gendarmerie also provides regular in-service training on human rights for the staff.

200. In 2011, the Department of Human Rights was established within the Ministry of Justice (MoJ) to follow up on the ongoing cases before the European Court of Human Rights (ECtHR) and to prevent human rights violations, notably through full and effective execution of the judgments of the ECtHR in cooperation with the Ministry of Foreign Affairs.

201. Human rights training and awareness raising activities conducted by the MoJ in cooperation with the EU Commission and the Council of Europe between 2011 and 2013 are as follows:

- Project on “Freedom of Expression and the Media in Turkey”;
- Project on “Improving the efficiency of the Turkish Criminal Justice System”;
- Project on “Raising Awareness on Human Rights within the Judiciary”;
- Matra Project on Awareness-Raising on Freedom of Expression;
- Translation of the Court’s case-law.

202. Justice Academy of the Ministry of Justice runs several courses on human rights for candidate judges and prosecutors which include the exercise of fundamental rights and freedoms and the case-law of the ECtHR. The Academy also provides various courses on human rights as part of the in-service training for staff of the MoJ (judges and prosecutors). The trainings focus on the right to fair trial, prohibition of discrimination, Turkey’s obligations under the relevant UN and Council of Europe Conventions and the case-law of the ECtHR.

203. Justice Academy carried out several projects and activities on human rights between 2012 and 2013. To name a few:

- In partnership with Raoul Wallenberg Human Rights Institute, “Human Rights Fundamental Training” was carried out for the staff of the MoJ between 9 and 11 June 2012.
- Within the framework of Matra, a module on freedom of expression along with a textbook for the course was prepared for the curricula of the Justice Academy. Several workshops were organized for the staff of the MoJ with a view to raising awareness on freedom of expression in 2013.
- Within the framework of the European Union project entitled “Towards an Efficient and Professional Academy”, a handbook on human rights was prepared and seminars were organized with a view to introducing the handbook to the staff of the MoJ. Centre for Human Rights was established within the Academy.

204. With regard to paragraph 22 of the Concluding Observations of the Committee, in the reporting period, the Government continued to provide training on human rights for

judges, prosecutors and law enforcement officers. Trainings include Turkey's obligations under the UN Conventions including the ICERD.

2. Culture

Actions taken to combat racial prejudices, to promote respect for cultural diversity and tolerance, for example in the area of artistic creation

205. The Ministry of Youth and Sports prepared the "National Youth and Sports Policy Paper" which focuses on the prevention of all forms of discrimination, provision of equal opportunities, creation of a culture of tolerance and intercultural dialogue amongst the youth as well as prevention of violence, disorder and unethical behaviour in sports.

206. Accordingly, the Ministry of Youth and Sports organized several events aimed at promoting intercultural dialogue, social cohesion and respect for diversity as well as combatting prejudices and discrimination amongst the youth.

- More than 15 youth camps were organized at different regions of the country bringing together young people with various religious, ethnic, cultural and socio-economic backgrounds and origins. Roma youth were particularly encouraged to participate in these camps. Youth camps involve many activities including sports, theatre, music, reading, folk dances, courses on history, literature and health, visits to historical and touristic sites etc. Foreign students studying at Turkish universities also participate in these camps. For example, in addition to 188 Turkish participants from 15 provinces of Turkey, a total of 20 students from Turkmenistan, Kenya, Algeria, Congo, Mozambique, Cameroon, Afghanistan and Somali took part in the Van-Genaş Youth Camp between 6 July and 28 August 2013.
- Youth centers, aimed at increasing the participation of the disadvantaged groups in sports as well as social and cultural life are established in all the provinces of Turkey. Many youth camps and international youth activities are arranged by the youth centers. Roma youth are very much involved in the activities of the youth centers.
- "Traveller Project" was implemented between 21 June and 5 September 2013 with the participation of a total of 53 thousand young people between the ages of 14-26 from all the provinces of Turkey. The project involved travelling to provinces where the participants had not seen before, interacting with young people from different regions of the country, getting to know the culture of different regions and the young people they meet, and visiting the historical, cultural and touristic sites. The participants played sports together and took part in various games in order to bond with each other. They also participated in activities such as theatre, music and dancing.
- At the international level, "Mediterranean Youth Peace Cruise Project" brought together 771 young people between the ages of 18-27 from 43 countries. The cruise called in at three countries and involved many activities aboard for the young people to get to know one another, to learn about different cultures and promote intercultural dialogue and tolerance. Many workshops on arts, games and plays were organized throughout the journey.
- "The Young Journalists Workshop" brought together many young journalists and students of journalism from Eastern Europe and Middle East with a view to creating a platform for discussion among them on 26-27 January 2013. The workshop focused on discussions and raising awareness on Islamophobia as well as combatting discrimination on the basis of religion in Europe.

- International Youth Short Film Festival was organized between 15-19 May 2013 with a view to supporting young film-makers and encouraging youth to get involved in cinema and film-making. 227 films from 25 countries were presented in the festival.
- Within the framework of the campaign entitled “No to Hate Speech”, the posters and videos prepared by the Council of Europe will be translated into Turkish and will be available in the youth centers, youth camps and dormitories. In the same vein, a conference entitled “the Movement against Hate Speech” will be organized.

The linguistic policies adopted and implemented by the State Party

207. Reforms with regard to the languages and dialects traditionally used by the Turkish citizens in their daily lives have continued in the reporting period.

- Obstacles regarding the use of a language other than Turkish during the visits made to the convicts and detainees were lifted.
- It became possible to carry out election campaigns in both written and oral forms in a language other than Turkish.
- Defendants who feel better at expressing themselves in a language other than Turkish are allowed to present their defense statements in the language they choose.
- Following the establishment of the new 12-year education system in 2012, students have started to take the elective course “Living Languages and Dialects” beginning from the fifth class. Upon request, Kurdish (Kurmanji and Zazaki), Circassian (Adige and Abkhaz) and Laz language classes are available in public schools. In the past 2 academic years in total 23,697 fifth graders and 19,896 sixth graders enrolled at these language classes.
- It became possible to conduct academic research on different languages and dialects used by the Turkish citizens, to open elective courses and to set up departments/institutes.
- Within this framework, Kurdish Language and Literature Department was established in Mardin Artuklu University in 2011. 250 post-graduate students studied at the department in the 2012/2013 academic year. Graduates of the programme are foreseen to be appointed as teachers of Kurdish language.
- Department of Aramaic Language and Literature was also established at Mardin Artuklu University.
- A post-graduate programme in Kurdish language has started as of 2012/2013 academic year in the Department of Kurdish Language and Literature in Muş Alparslan University. In 2012/2013 academic year 50 students studied at the department. A graduate programme was established within this field.
- Department of Zaza Language and Literature was established in the Department of East Languages and Literatures in Tunceli University.
- An institute for living languages in Siirt University will be established.
- The Higher Education Council has taken a decision for the establishment of the Institute of Roma Language and Culture at Trakya University.
- One of the most prominent reform proposals of the “democratization package” is the introduction of the use of languages and dialects traditionally used by Turkish citizens as the medium of instruction in private schools.

- The Government proposes to enable any kind of political propaganda by political parties and nominees as well as to allow campaign and propaganda in the preliminary elections in languages and dialects other than Turkish by lifting the remaining bans on Law no.298 and Law no. 2820 respectively. Proposed legislative amendments are currently before the Parliament.

3. Information

208. There is both private and state media available in Turkey. Radio and Television Supreme Council (RTUK) is the impartial public legal entity responsible for monitoring, regulating, and sanctioning radio and television broadcasts.

Prohibition of incitement to hatred and discrimination by media services

209. Article 8 (b) of the Law no. 6112 on the establishment of Radio and Television Enterprises and Their Media Services of 2011 prohibits media services from inciting the society to hatred and hostility by discriminating on the grounds of race, language, religion, sex, class, region and sect and prohibits them from constituting any feelings of hatred in the society. Article 8 (e) prohibits broadcasts that discriminate on the basis of race, colour, language, religion, nationality, sex, disablement, political and philosophical opinion, sect and any such considerations. Article 9 bans discrimination based on sex, race, colour or ethnic origin, nationality, religion, philosophical belief or political opinion, disablement, age and any other issues in commercial communications.

210. In addition, currently, there are no limitations as to time, types of programs or content in broadcasting or providing media services in languages or dialects traditionally used by Turkish citizens in their daily lives. Procedures are the same for public or private broadcasters or media service providers who apply to RTUK for those languages and dialects.

Human rights sensitive coverage by the media

211. The Directorate General of Press and Information of the Office of the Prime Minister initiated a series of local media workshops to strengthen the capacity of the local media to provide human rights sensitive coverage, including the principle of non-discrimination, taking into account the principles of professional journalism and media ethics. Between 1998 and 2013, twenty three workshops were organized in 23 provinces with the participation of local and national media representatives, academics, politicians, local administrators and representatives of civil society.

Annex 803

**Kenya, Reports Submitted by States Parties under Article 9 of the Convention, Fifth to Seventh
Periodic Reports of States Parties Due in 2014, CERD/C/KEN/5-7 (28 January 2016)**



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Consideration of reports submitted by States
parties under article 9 of the Convention**

Fifth to seventh periodic reports of States parties due in 2014

Kenya*

[Date received: 3 December 2015]

* The present document is being issued without formal editing.



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Acronyms and Abbreviations

ASALs	Arid and Semi-Arid Lands
CAJ	Commission on Administrative Justice
CRA	Commission on Revenue Allocation
DPP	Director of Public Prosecution
FPE	Free Primary Education
IEBC	Independent Electoral and Boundaries Commission
IPCRM	Integrated Public Complaints Referral Mechanism
IPOA	Independent Policing Oversight Authority
KNCHR	Kenya National Commission on Human Rights
MTP I	Second Medium Term Plan
NCAJ	National Council on Administration of Justice
NCIC	National Cohesion and Integration Commission
NGEC	National Gender and Equality Commission
NPS	National Police Service
NPSC	National Police Service Commission
TJRC	Truth, Justice and Reconciliation Commission

I. Introduction

1. The Government of the Republic of Kenya has the honour to submit to the Committee on the Elimination of Racial Discrimination, in conformity with the International Convention on Elimination of All Forms of Racial Discrimination, its 5th-7th Combined Periodic Report under the Convention. The report covers the period from 2011 to 2015. Responses to the Concluding Observations of the Committee on Elimination of Racial Discrimination Made to Kenya for the initial-Fourth Periodic Reports to the Committee are attached herewith as an annexure.

2. This Periodic Report is divided into three parts. Part I is the Report's introduction. Part II explains the measures which Kenya has taken in the period from 2011-2015 to ensure implementation of its obligations under the Convention.

3. This Report was prepared by the Office of the Attorney General and Department of Justice in consultation with relevant line Ministries, relevant Constitutional and statutory bodies, and civil society organisations. In particular, the National Cohesion and Integration Commission (NCIC), the Kenya National Commission on Human Rights (KNCHR) and the National Gender and Equality Commission (NGEC) were part of these consultations. At least two day multi-stakeholders' consultations and one day validation meeting were held.

4. Kenya has realised notable milestones in the elimination of racial discrimination since it last reported to the Committee in 2010. The Constitution of Kenya 2010 is at the core of the State's normative and institutional framework. It establishes a governance structure comprising two levels of governments, at the national and county levels. The national governance structure includes the Executive branch headed by the President of the Republic, a two-chamber Legislature comprising the National Assembly and the Senate, and a Judiciary including the Supreme Court, Court of Appeal, High Court and Magistrates' Courts. The Constitution also establishes multiple Constitutional Commissions and Independent Offices to deal with key governance themes such as human rights, land, corruption, prosecution, revenue allocation, financial management and security. The Bill of Rights in the Constitution embraces a far broader range of rights than ever before and includes economic, social and cultural rights which are framed as justiciable rights. Kenya has 47 devolved governments which operate at the county level and include County Executives and County Assemblies.

5. The Constitution under Article 2 (6) provides that international and regional human rights instruments to which Kenya is a party are part of the law. The State has enabled this Constitutional provision by passing the Treaty Making and Ratification Act 2012 which gives Parliament the function of approving treaty ratification.

6. The last General Elections were notable in consolidating protection against racial discrimination. The March 4 2013 polls were undertaken without any inter-ethnic violence. This was particularly important in light of the post-election violence which ravaged the country following the 2007 General Elections. The challenge to the presidential results was also undertaken in line with the law through a presidential petition before the Supreme Court (*Raila Odinga & 2 others v. Independent Electoral and Boundaries Commission & 3 others* (2013) eKLR) whose decision all the contending parties respected.

7. The Second Medium Term Plan (MTP II) (2013-2017) establishes strategies that the State will use towards the comprehensive realisation of the Kenya Vision 2030. The social pillar establishes policy guidance in respect of key sectors such as education and training; health; environment, water and sanitation; population, urbanisation and housing; and gender, youth and vulnerable groups. The framing and implementation of development policies is now informed by a rights based approach, as distinct from past supply-side

priorities, particularly in light of the protections and guarantees on economic, social and cultural rights established in Article 43 of the Constitution.

8. Following an extremely consultative process, the Office of the Attorney General and the Department of Justice finalised the National Policy and Action Plan on Human Rights (2013) which is presently awaiting parliamentary approval. The Policy provides a comprehensive framework to give effect to the Bill of Rights in the Constitution.

II. Policy, Legislative, Judicial, Administrative and other measures adopted to give effect to the Convention

A. Article 1: Definition of racial discrimination and application of Convention

1. Definition of racial discrimination

9. Article 27 of the Constitution outlaws direct or indirect discrimination by the State or a person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. This provision is strengthened further by Article 10 (2) (b) of the Constitution which lists the national values and principles to include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.

10. Kenya's understanding of the meaning of discrimination on ethnic grounds is guided by the definition of racial discrimination in Article 1 of the Convention and arises from the recognition that racial discrimination in the country manifests itself by and large through ethnic-based discrimination. The State has instituted policy, legislative, administrative and judicial measures to protect individuals against such discrimination. While the Constitution and statutes do not define racial discrimination, the National Cohesion and Integration Commission Act (No. 12 of 2008), which outlaws discrimination on ethnic grounds, describes an ethnic group as a group of persons defined by reference to colour, race, religion or ethnic or national origins; and it lists ethnic grounds as colour, race, religion, nationality or ethnic or national origins.

11. At the same time, Kenya's approach to the subject of racial and ethnic discrimination involves Article 56 of the Constitution which requires the State to put in place affirmative action programmes for minorities and marginalised groups. Article 260 of the Constitution provides a comprehensive definition of a marginalised community: A community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole; A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole; An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or Pastoral persons and communities, whether they are (i) nomadic; or (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.

2. Application of Convention

12. The Convention is applicable to all persons in Kenya with the exception of a few rights which apply only to citizens. Article 35 of the Constitution excludes non-citizens from enjoying the right of access to information held by the State; or information held by

another person and required for the exercise or protection of any right or fundamental freedom. Article 38 of the Constitution precludes non-citizens from exercising political rights such as forming or participating in the formation of a political party; the right to free, fair and regular elections; and the right to vote or stand for election to public office. Under Article 39 of the Constitution, while every person has the right to freedom of movement and the right to leave Kenya, only citizens have the right to enter, remain in and reside anywhere in the country. Under Article 78 of the Constitution, a person who holds dual citizenship may not be a member of the Defence Forces or a State Officer such as the President, member of Cabinet or Member of Parliament. The Basic Education Act 2013 which prohibits the charging of tuition fees in public schools nonetheless provides that such fees may be charged in relation to non-citizens. As well, under Section 19 of the Social Assistance Act 2013, the entitlement to receive social assistance does not extend to non-citizens.

13. The limitations to non-citizens described above arise from genuine concerns that the country has limited resources and that these should first and foremost benefit citizens. The State though continues to recognise that the basic human rights of all individuals should be guaranteed and in particular that individuals under distress of life or limb should be given protection regardless of their nationality. Kenya has also lately suffered greatly from acts of terrorism, and the Government has sought firmer measures to ensure the protection of Kenyans and other residents. The courts though have remained steadfast in ensuring protection of the fundamental rights of all individuals residing in Kenya.

3. Discrimination against particular nationalities

14. The Constitution, in respect of a few rights, makes distinctions between citizens and non-citizens (cf: paragraph 13). No law however targets any particular nationality for discrimination. Kenya continues to have a high population of refugees who have fled civil strife in their countries and sought shelter in the country. By the end of 2015, the UNHCR estimates that, Kenya will host about 700,000 refugees. In *Coalition for Reform and Democracy and Kenya National Commission on Human Rights v. Republic of Kenya (Petition No. 628 and Petition No. 630 of 2014)*, the High Court determined that the number of refugees in the country could not be capped to a specific maximum figure because this would violate the country's international obligations.

4. Special measures

15. Article 27 (6) of the Constitution provides that the State shall take legislative and other measures, including affirmative action programmes and policies, designed to redress any disadvantage suffered by individuals or groups because of past discrimination. In adopting this provision, Kenyans appreciate the importance of ensuring all individuals and groups are substantively equal as well as protecting all from direct as well as indirect discrimination. Indeed, courts have recognised that State policy may from time to time involve specific measures that ensure substantive equality for disadvantaged Kenyans. In *John Kabui Mwai and 3 Others v. Kenya National Examination Council and 2 Others (2011) eKLR*, the High Court determined that it was proper for the Government to temper merit with equity to ensure that applicants from public primary schools also get fair access to public secondary schools. Without such a policy, public secondary schools would be occupied almost fully by applicants from private primary schools.

16. The Constitution recognises the importance of not maintaining separate rights for different racial groups and provides that such measures should not be continued once set objectives are realised. Article 260 of the Constitution defines affirmative action as including any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or fundamental freedom. Article 27 (7) of the Constitution

provides that the envisaged special measures shall be determined on the basis of genuine need. In furtherance of this provision, Section 14 of the National Cohesion and Integration Act provides that an act will not be deemed discriminatory if it is done to afford persons of a particular ethnic group access to facilities or services to meet the special needs of persons of that group in regard to their education, training or welfare, or any ancillary benefits.

17. The Constitution also elaborates on how rights and fundamental freedoms apply to certain groups of persons: children (Article 53), persons with disabilities (Article 54), youth (Article 55), minorities and marginalised groups (Article 56), and older members of society (Article 57).

B. Article 2: Measures for Condemning and Seeking Elimination of Racial Discrimination

1. Effecting the undertaking to engage in no acts or practices of racial discrimination against any person or institution and to ensure the conformance of public institutions with the obligation

18. Article 27 (4) of the Constitution prohibits the State from discriminating directly or indirectly against any person on any ground, including race, ethnic or social origin and colour. Article 27 also guarantees everyone the right to equal protection and equal benefit of the law. Article 10 (2) (b) of the Constitution identifies non-discrimination as one of the national values and principles of governance that bind all State organs, State officers, public officers and all persons wherever they apply or interpret the Constitution, enact, apply or interpret any law and make or implement public policy decisions. Under Article 232, the values and principles of the Public Service include: representation of Kenya's diverse communities; and affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of men and women, members of all ethnic groups and persons with disabilities.

19. In conforming to these provisions, State organs as well as public offices, including national and county executives, national and county parliaments as well as the judiciary, are bound to ensure that policies, legislation and administrative actions which they generate do not perpetuate or enhance discrimination. The Government has put in place policies and laws to ensure a normative and institutional framework to ensure that public institutions conform to that requirement.

20. The National Cohesion and Integration Act is the enabling legislation on national cohesion and integration. The Act, outlaws discrimination on the grounds of ethnicity, race, colour, religion, nationality or origin in both the private and public spheres of national life. The legislation establishes the National Cohesion and Integration Commission (NCIC). The Commission's overall mandate is to facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of the different ethnic and racial communities of Kenya, and to advise the Government on all aspects thereof. One function of the Commission is promoting equal access and enjoyment by persons of all ethnic communities and racial groups to public or other services and facilities provided by the Government. Specifically, the Act outlaws: discrimination in employment in all public establishments (Section 7); Discrimination in relation to membership of an organisation (Section 9); Discrimination in the provision of services to clients or prospective clients by agencies such as a qualifying body, licensing authority, planning authority, public authority, employment agency, educational establishment or body offering training (Section 10); Discrimination in access to and distribution of public resources; and discrimination in property ownership, management and disposal.

Other legislation that prohibit discrimination include: the County Governments Act 2012; Section 65 provides that County Public Service Boards must when making appointments ensure that at least thirty percent of entry level vacant posts are filled by candidates who are not from the dominant ethnic community in the county. The challenge here however is that, a study undertaken by the NCIC indicated that to date only 18 of Kenya's 47 Counties have so far complied with this requirement.

21. The Basic Education Act specifically makes it a responsibility of the Government to ensure that children belonging to marginalised, vulnerable or disadvantaged groups are not discriminated against and prevented from pursuing and completing their basic education. The Act also creates several criminal offenses.

22. The State continues to take policy and administrative measures to ensure that public institutions do not exacerbate racial or ethnic discrimination. The NCIC has drafted the Kenya Ethnic and Race Relations Guidelines which provide a strategic framework for promoting and ensuring integration, cohesion and peaceful coexistence amongst all communities. The Guidelines emphasise ethnic and racial inclusion to ensure that people from all groups are represented in employment, governance structures, planning, development initiatives, public deliberations, democratic arrangements and national educational institutions. The NCIC has also prepared the Inclusivity Charter which requires County Governments to be inclusive in their recruitment process. It also has prepared Diversity Charters for staff recruitment by Universities.

23. Ensuring compliance by public institutions with the obligation to desist from engaging in any practice of racial discrimination has taken many forms. The Constitution and statutes have established institutions to check the performance of other institutions and persons. Ensuring conformity by the Police Service has been a particular concern for the State and Kenyans generally, leading among other things to the establishment of the National Police Service (NPS), established by the National Police Service Act; and the National Police Service Commission (NPSC), established by the National Police Service Commission Act. The National Police Service Commission Act in section 5 requires the NPSC to ensure gender, regional and ethnic balance while undertaking police recruitment. At the same time, more than 17,000 police officers have been trained on fair, just and humane treatment of people.

24. The functions of the Independent Policing Oversight Authority (IPOA), which is established by the Independent Policing Oversight Authority Act 2011, include investigating and recommending sanctions in relation to complaints relating to disciplinary or criminal offenses committed by members of the Police Service. When allegations were made that security operations were profiling individuals on the basis of ethnicity in countering terrorism, the IPOA advised the National Police Service (NPS) to ensure that its officers execute their work in terms of the Constitution and that they should not use racial, ethnic, national or religious characteristics as a basis for making decisions on those suspected to have committed crimes, since this may amount to discrimination. Similarly, the IPOA stressed that Constitutional guarantees for detained persons apply to all persons regardless of their nationality, ethnicity or religion. As a last resort, the Authority has on occasion sought judicial intervention to ensure that the NPS and National Police Service Commission (NPSC) execute their mandates without discrimination. In *Independent Policing Oversight Authority & Another v. Attorney General & 660 others (2014) eKLR*, the IPOA successfully sought the annulment of a police recruitment exercise undertaken by the NPSC in July 2014 on the basis that the recruitment exercise did not comply with the Constitution.

25. The country faces challenges with regard to expressions of negative ethnicity which continue to permeate some areas of life. Devolution and its attendant creation of 47 counties as well as the rapid increase of universities across the country, reaching 22 in

2014, has encouraged a misplaced sense of local ethnic entitlement at the expense of other ethnic communities. To combat this state of affairs the Courts have interpreted Article 27 of the Constitution in ways that have stopped State institutions from engaging in acts or practices of racial discrimination against persons, groups of persons or institutions. In *Hersi Hassan Gutale and Another v. Attorney General and Another (2013) eKLR*, two Kenyans of Somali origin sought orders against the Registrar of Persons who had denied them second-generation identity documents. They had been denied new-generation identity cards after being screened by a Government task force which had been appointed to confirm the veracity of registration documents of all Kenyans of Somali origin. The High Court directed the Principal Registrar of Persons to consider the petitioners' application for new-generation identity documents within 45 days. The Court determined *inter alia* that nothing in the case showed that the Registrar had addressed himself to the question of the petitioners' citizenship. The petitioners held Kenyan birth certificates, and had Kenyan passports and old-generation identity cards. Furthermore, the citizenship of a natural born citizen or privileges or benefits of citizenship could not be taken away by refusal to provide documents of identification.

2. Giving effect to the undertaking to prohibit and eradicate racial discrimination by any person or organisation

26. Article 27 (5) of the Constitution prohibits a person from discriminating directly or indirectly against another person on any grounds including race, ethnic or social origin and colour. The classes of persons bound by this prohibition include a company, association or other body of persons whether incorporated or unincorporated (Article 260 of the Constitution).

27. Article 46 of the Constitution read together with the Consumer Protection Act 2012 offers extensive protections for consumers to prevent unfair practices in consumer transactions. The Act protects consumers against suppliers in respect of matters such as reasonable merchantability of the quality of goods or services; maximum chargeable percentage ceiling on a consumer agreement that includes an estimate; interpretation of ambiguities in a consumer agreement in favour of the consumer; and protection of a recipient of unsolicited goods or services in respect of their use or disposal. The Act establishes the Kenya Consumers Protection Advisory Committee which has policy-making, advisory and administrative functions towards consumer protection. The Government appointed the inaugural Committee in December 2013.

28. Judicial decisions in relation to discrimination by persons or private institutions have also been radical. In *Rose Wangui Mambo & 2 Others v. Limuru Country Club & 17 others (2014) eKLR*, the petitioners successfully challenged as discriminatory a by-law of Limuru Country Club which sought to exclude women golf members from participating in its general meetings. The petitioners were reinstated to full membership of the club with all attendant benefits. In *VMK v. CUEA (2013) eKLR*, a claimant filed successfully for discrimination by her employer who had dismissed her from employment due to her pregnancy and on the basis of her HIV status. The claimant had been tested without her consent and the information disclosed to her colleagues and superiors.

3 Giving effect to the undertaking not to sponsor, defend or support racial discrimination by any persons or organisations

29. One function of the NCIC is to discourage persons, institutions, political parties and associations from advocating or promoting discrimination or discriminatory practices on the ground of ethnicity or race. In fulfilling this function, the NCIC has received complaints about and investigated politicians and other persons who have made statements or acted in a way that tended towards advocacy of ethnic discrimination and to this end at least 7 cases

are being prosecuted. For example, the Director of Public Prosecutions (DPP) is, on the recommendation of the NCIC, is prosecuting a Member of Parliament who made remarks that could be interpreted to be derogatory to Kenyan communities who do not perform the ritual of male circumcision. These comments equated uncircumcised men with boys who therefore were unsuitable as leaders.

4. Implementing effective measures to review amend or repeal national and local policies, laws and regulations whose effect is to create or perpetuate racial discrimination

30. The State has reformed and revitalised its law-making agencies to enable them to undertake their work effectively. In particular, the Kenya Law Reform Commission has been granted an autonomous statutory mandate through the Kenya Law Reform Commission Act, 2013. The functions of the Kenya Law Reform Commission include reviewing and recommending review of laws to align them with the Constitution. This institution is fortified by the Office of the Attorney General and Department of Justice and the Commission for the Implementation of the Constitution, which were given the mandate of monitoring, facilitating and overseeing the development of legislation and administrative procedures required to implement the Constitution. The KLRC is undertaking an audit of all laws in Kenya in order to bring them in line with constitutional provisions.

31. The NCIC has prepared a document known as “a Framework and Checklist for Incorporating National Cohesion and Integration Principles into Kenya’s Laws and Policies” to guide all agencies as they monitor policies, laws and regulations which create or perpetuate racial discrimination. The Framework offers guidance in respect of relevant Constitutional and statutory obligations as well as how to craft implementation and monitoring indicators.

32. One of the ways in which the State has positioned itself to take effective measures against racial discrimination is by collecting accurate data on the racial and ethnic composition of Kenya’s population. Towards this end, the 2009 National and Housing Population Census was disaggregated on multiple bases, including age, sex and administrative units.

33. With this information, public institutions have been directed to ensure that no ethnic community occupies more than one-third of public sector jobs. Recent assessments highlight the challenges the State faces in achieving the right balance between various population groups in public institutions. Table I shows the ethnic distribution of the national population as compared to the ethnic distribution of civil service jobs.

Table I
Ethnic Distribution of national Population and Civil Service Jobs, 2011

<i>Ethnic Group</i>	<i>Population (2009 Census)</i>		<i>Number in the Civil Service</i>	<i>Share of Civil Service Jobs (%)</i>	<i>Population/Job Share Variance</i>
	<i>Numbers</i>	<i>Share (%)</i>			
Kikuyu	6,622,576	17.7	47,146	22.3	+4.6
Luhya	5,338,666	14.2	23,863	11.3	-2.9
Kalenjin	4,976,328	13.3	35,282	16.7	+3.4
Luo	4,044,440	10.8	19,025	9.0	-1.8
Kamba	3,893,157	10.4	20,490	9.7	-0.7
Somali	2,385,572	6.4	19,025	2.7	-3.7
Kisii	2,205,669	5.9	14,287	6.8	+0.9

Ethnic Group	Population (2009 Census)		Number in the Civil Service	Share of Civil Service Jobs (%)	Population/Job Share Variance
	Numbers	Share (%)			
Mijikenda	1,960,574	5.2	7,924	3.8	-1.4
Meru	1,658,108	4.4	12,517	5.9	+1.5
Turkana	-	2.6	-	1.0	-1.6
Maasai	841,622	2.2	3,090	1.5	-0.7
Embu	324,092	0.9	4,118	2.0	+1.1
Taita	273,519	0.7	3,074	1.5	+0.8
Bora	161,399	0.4		1.2	+0.8

Source: The Status of Social Cohesion in Kenya, 2013.

34. There has been substantial developmental growth in some areas in Kenya. However, there still exist areas which have been left behind mainly due to historical injustices. To accelerate development in all parts of Kenya, the Government has adopted various policies, legislative and administrative innovations to remedy the situation. These include:

35. Rolling out of the devolved system of government. The country is now divided into 47 counties, each with its own government and county assembly. Devolution gives Kenyans a greater say in determining the development initiatives in their local areas.

36. The Commission on Revenue Allocation Act 2011 establishes the Commission on Revenue Allocation (CRA) with the overall function of making recommendations concerning the basis for the equitable sharing of revenue raised by the national government between the national and county governments and among the county governments. The CRA facilitates the process of determining the basis of revenue sharing among Kenya's 47 Counties. The basis for revenue-sharing in the financial years 2012-2013, 2013-2014 and 2014-2015 involved the following perimeters and percentage weights: population, 45 per cent; poverty index, 20 per cent; land area, 8 per cent; basic equal share, 25 per cent; and fiscal responsibility: 2 per cent. This formula has enabled the poorest and most marginal Counties to receive the most resources every year. The formula is being reviewed.

37. Additionally, the most marginal counties benefit the most from the Equalisation Fund. This is a Fund established under Article 204 of the Constitution to provide basic services such as water, roads, health facilities and electricity to marginalised areas so as to bring the quality of such services to the level enjoyed by the rest of the nation. In 2011, the CRA identified 14 counties as the most marginalised in the country. According to criteria for identifying marginalised areas for the purposes of the Equalization Fund, Turkana County received the lion's share of the allocation with USD 3,074,305, followed by Mandera with USD 2,824,730, Wajir with USD 2,722,632 and Marsabit with USD 2,586,500. Other marginal counties were Samburu, West Pokot, Tana River, Narok, Garissa, Kilifi, Taita Taveta, Isiolo and Lamu.

38. As Kenya reported in its initial periodic report to the Committee, the Constituencies Development Fund was established in 2003 to channel resources to constituencies for development purposes. The Fund has been highly instrumental in uplifting all constituencies in Kenya in terms of developmental initiatives. While Parliament amended the Constituencies Development Fund through the Constituencies Development Fund Act 2013 in a bid to make it comply with the Constitution, the High Court has recently determined that the Fund is unconstitutional following the 2010 adoption of the Constitution. In *Institute for Social Accountability & Another v. National Assembly & 4 Others (2015) eKLR*, the Court ruled that the Act was invalid in its entirety, but allowed the State a 12-month grace period during which to replace the statute.

5. Encouraging Non-governmental Organisations and institutions that combat racial discrimination and foster mutual understanding

39. The State has reviewed and revitalised the Non-governmental Organisations sector by passing the Public Benefits Act 2013. The Act provides for the establishment and operation of the public benefit organisations sector. The objects and purposes of the Act include: encouraging and supporting public benefit organisations in their contribution to the diverse needs of the people of Kenya including by creating a conducive environment for the growth of the public benefit organisations sector and for the operation of public benefit Organisations. One of the Government's duties in this regard is to provide an enabling environment for public benefit organisations to be established and to operate in a transparent and accountable manner.

40. A number of Constitutional provisions require the State to take specific measures to ensure adequate protection and development 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. As already explained, Article 27 (6) of the Constitution requires the State to take legislative and other measures, including affirmative action programmes and policies, designed to redress any disadvantage suffered by individuals or groups because of past discrimination. Article 56 of the Constitution requires the State to put in place affirmative action programmes designed to ensure that minorities and marginalised groups: participate and are represented in governance and other spheres of life; are provided special opportunities in educational and economic fields; are provided special opportunities for access to employment; develop their cultural values, languages and practices; and have reasonable access to water, health services and infrastructure. Similar measures are provided for in respect of children, persons with disabilities, youth and older members of society.

41. The *Vision 2030*, Kenya's development blueprint, recognises that no society can gain social cohesion if significant sections of it lives in abject poverty and has for this reason included equity as a recurrent principle in all its economic, social and political programmes. It underscores the importance of investing in Arid and Semi-Arid Lands (ASAL) districts, communities with high incidence of poverty, unemployed youth, women, and all vulnerable groups. The *Vision 2030* further outlines strategies aimed at moving the country towards substantive equality by supporting regions and groups which have been historically disadvantaged.

42. The State continues to put in place specific and concrete measures in the social, economic, cultural and other fields to ensure adequate development and protection of certain racial groups or individuals belonging to them. The Social Assistance Act 2013 establishes the National Social Assistance Authority as well as providing a basis for ensuring that persons in need are provided with social assistance. Groups identified for such assistance include: orphans and vulnerable children; poor elderly persons; unemployed persons; widows and widowers; and persons with disabilities.

43. Affirmative action programmes have been rolled out to cover women, youth and persons with disabilities. The Government has reserved 30 per cent of all government contracts for women, the youth and persons with disabilities. The Government established the Uwezo Fund on 8 September 2013, with an initial budget of approximately USD 67,796,610.00. The objective of the Fund is to expand access to finance through grants and credit to promote youth and women businesses and enterprises at the constituency level, thereby enhancing economic growth towards the realisation of the goals of *Vision 2030*; to generate gainful self-employment for Kenyan youth and women; and to model an alternative framework in funding community driven funding.

44. Finally, over 170,000 poor vulnerable households are benefitting from cash transfer programmes (120,000 households under the Orphans and Vulnerable Children Programme, 33,000 households under the Older Persons Programme and 14,700 persons under the Disability Fund).

C. Article 3: Condemnation of racial segregation and apartheid and undertaking to prevent, prohibit and eradicate such practices

45. The State has never condoned or practised racial segregation. This was only experienced during Kenya's colonisation by Britain, when the country was divided into the so-called "White highlands" where the most fertile land was designated for white settlers while indigenous populations had to live in less endowed "Native reserves". Political governance was also designed in such a way as to give Europeans the most influence in government as compared to African and Asian populations.

46. In its definition of ethnic discrimination, the National Cohesion and Integration Act 2008 provides that a person discriminates against another person if, among other things, the former person treats the latter person on ethnic grounds less favourably than other persons. The Act then provides that segregating a person from others on ethnic grounds amounts to less favourable treatment.

47. The NCIC conducts audits to ascertain the ethnic composition of employees in the public service. In 2011, the NCIC conducted a national ethnic audit as the first step towards tackling complaints about skewed ethnic representation in the public service (Cf: Table I). In 2012, a similar Audit was carried out for public universities and their constituent colleges. Just like in the civil service audit, the study on universities found domination of those institutions by a few ethnic communities. The NCIC held follow-up meetings with university administrations and the Ministry of Higher Education, where it was agreed that a progressive approach be adopted in the next three years to include more minorities in employment. More recently, the NCIC has required errant universities to sign diversity charters.

48. With Devolution, the growth of demands that Counties and institutions based in particular Counties should employ people only from locally dominant ethnic groups has emerged as a challenge to the principle of embracing diversity. The Government realises that even where counties seem predominantly mono ethnic such as in the various Kikuyu counties or in the Luo Nyanza counties, the reality is that ethnically minority populations too live in these counties. Section 65 of the County Government Act therefore has sought to remedy this situation by requiring County Public Service Boards to take account of the need to ensure that at least 30 per cent of vacant entry level posts are filled by candidates who are not from the dominant community, while selecting candidates for appointment. Immense difficulties though attend implementation of this provision. In many instances, applicants from non-local ethnic communities do not apply in big enough numbers to fill the minimum one-third quota.

49. In 2015, the NCIC has released an audit which assesses the ethnic composition of County Public Services. Only 18 counties (38 per cent) have adhered to section 65 of the County Governments Act by giving more than 30 per cent of entry level vacancies to members of non-dominant ethnic groups. 62 per cent of the counties have hired more than 70 per cent of their staff from one ethnic group (Cf: paragraph 22). The NCIC has recommended *inter alia* that County Public Service Boards be required to undertake annual ethnic and diversity audits of their employees.

50. The State has taken specific steps to finally resolve the difficulties which the Nubian and some other communities have experienced in the past while seeking documents to

facilitate their citizenship such as identity documents and passports. Section 15 of the Kenya Citizenship and Immigration Act 2011 provides that:

A person who does not have an enforceable claim to the citizenship of any recognised State and has been living in Kenya for a continuous period since 12th December, 1963, shall be deemed to have been lawfully resident and may, on application, in the prescribed manner be eligible to be registered as a citizen of Kenya if that person— (a) has adequate knowledge of Kiswahili or a local dialect; (b) has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer; (c) intends upon registration as a citizen to continue to permanently reside in Kenya or to maintain a close and continuing association with Kenya; and (d) the person understands the rights and duties of a citizen.

51. The Department of Immigration has formed a taskforce to analyze data on the Makonde people in Kwale County and the Swahili-Shirazi to determine whether they are eligible for declaration as citizens of Kenya.

52. The use of force to drive targeted communities from certain areas also remains a concern for the State. Inter-ethnic conflicts continue to arise from time to time amongst various pastoralist communities or between pastoralist and agriculturalist communities, by and large driven by limited natural resources such as pasture. During the last four years, inter-communal conflicts have arisen between the Maasai and the Kisii, the Samburu and the Turkana, the Pokot and the Turkana, and the Pokomo and the Orma. Whenever such conflicts have arisen, various State agencies have stepped in to stop the conflicts and tackle the short-term, medium and long-term causes of such conflict. To illustrate State interventions, when the Pokomo and Orma conflict began in the Tana Delta in 2012, the Government sent security forces as well as relief aid to protect as well as provide assistance to the affected communities. The KNCHR undertook an inquiry of the causes and effects of the conflict. KNCHR subsequently made recommendations to the State on how to respond to the issues at stake from a human rights perspective.

D. Article 4: Condemnation of propaganda and organisations based on ideas or theories of racial or ethnic superiority or that justify or promote racial hatred and discrimination and adoption of immediate and positive measures to eradicate incitement to or acts of such discrimination

53. Apart from being a party to ICERD, Kenya is also a party to the International Covenant on Civil and Political Rights which similarly outlaws any propaganda for war or any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Article 33 of the Constitution, which guarantees every person the right to freedom of expression, limits that right not to extend to propaganda for war, incitement to violence or hate speech. The right also does not extend to advocacy of hatred constituting ethnic incitement, vilification of others or incitement to cause harm; or that is based on any ground of discrimination protected under the Constitution. Electronic, print and other media too may not disseminate this sort of content – Article 34 of the Constitution.

54. This Constitutional provision is enabled by Section 13 of the National Cohesion and Integration Act 2008 which makes it a criminal offense for a person to employ hate speech. This section *inter alia* provides as follows:

(1) A person who— (a) uses threatening, abusive or insulting words or behaviour, or displays any written material; (b) publishes or distributes written material; (c) presents or directs the public performance of a play; (d) distributes, shows or plays,

a recording of visual images; or (e) provides, produces or directs a programme, which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behaviour commits an offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up.

55. In *Chirau Ali Mwakwere v. Robert M. Mabera & 4 Others (2012) eKLR*, the High Court determined that Sections 13, 14 and 62 (1) of the National Cohesion and Integration Act under which the petitioners had been charged do not violate the right to freedom of expression enunciated in Article 33 of the Constitution. The Court stated that because of the deleterious effects of propaganda for war, incitement to violence, hate speech and advocacy for hatred, the State has an interest and indeed an obligation to impose sanctions on such conduct through criminal law. Sections 13 and 62 of the National Cohesion and Integration Act give effect to the State objective to promote ethnic harmony and national cohesion by prohibiting hate speech. This objective is consistent with the national values and principles of the Constitution particularly human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised. Section 13 of the Act curtails such freedom of a person who intends to stir up ethnic hatred or having regard to all circumstances, ethnic hatred is likely to be stirred. The statute lays emphasis on the likely effect of the objectionable information and intention of the person delivering it rather than on the content of the objectionable expression. Section 62 on the other hand emphasises the intention to incite feelings of contempt and hatred. It does not refer to expression such as would expose the petitioner to prosecution for merely expressing or voicing concerns about historical injustice and marginalisation.

56. State agencies have used a variety of approaches to deal with hate speech cases. Presently, NCIC and the DPP are prosecuting at least 7 cases involving use of hate speech by politicians and bloggers. Such prosecutions include *R v. Moses Kuria (CMCC No. 904 of 2014)* and *R v. Allan Wadi (Criminal Case No. 1 of 2015)*.

57. The Media Act 2007 establishes the Media Council of Kenya to set media standards and the Complaints Commission to which a person aggrieved by a media organisation may seek redress. The complaints Commission has in the last few years adjudicated complaints on various issues including protecting individuals and groups from hate speech. For example in *Jamia Mosque Committee v. The Kenya Times*, the complainant alleged that an article published in the *Sunday Times* titled “In the name of Allah” was inaccurate, false, biased and misleading and further submitted that it amounted to hate speech against the Muslim community. The commission ordered the respondents to apologise to the complainant within 30 days.

58. The NCIC has also endeavoured to use non-criminal measures to deal with hate speech. It has trained police officers on the use of recording equipment for monitoring hate speech. The trained police investigators have continued to work closely with NCIC and other focal points in various agencies, including cohesion monitors in the different counties. NCIC has also developed media guidelines to be used by the media and other parties when reporting on elections.

59. Notable efforts have also been undertaken by businesses. For example the *Daily Nation* appointed an internal ombudsman who adjudicates concerns raised by consumers on the content and style of the newspaper. Concerns have been raised on the usage of terms that misrepresent groups on the basis of religion, for example the inappropriate use of the terms “Islamist” or “jihadist” which may have the effect of demonizing all Muslims.

E Article 5: Prohibition and elimination of racial discrimination and guarantee of the right of everyone without distinction on the basis of race, colour or national or ethnic origin to equality before the law in the enjoyment of fundamental human rights

1. Right to equal treatment before the tribunals and other organs administering justice

60. Article 27 of the Constitution guarantees everyone equality before the law and the right to equal protection and equal benefit of the law. This guarantee entails the full and equal enjoyment of all rights and fundamental freedoms.

61. The State has faced particular challenges in identifying and dealing with terrorist threats, particularly from the Al Shabaab terror group based in Somalia and the growth of radicalisation in the country. According to the NPS, in 2014, at least 47 incidents of terrorism took place in Kenya, resulting in at least 173 deaths and 179 injuries. 409 suspects were arrested and arraigned before courts of law. Kenya's security forces have on occasion found it necessary to arrest suspected terrorists, whether citizens or non-citizens. Whenever this has happened, though, due process rights of arrested persons have been respected.

62. While the Government continues to take specific policy, legislative, judicial and administrative measures to fight the terrorist threat presently facing the country, all State organs seek to abide by the need to ensure that measures taken do not discriminate, in purpose or effect, on the grounds of race, colour, descent or ethnic origin. In this, the State is guided by Article 24 of the Constitution which provides the manner of considering the constitutionality of a limitation on fundamental rights by requiring that such limitation be reasonable and justifiable in a free and democratic society, and that all relevant factors are taken into account, including the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the need to balance the rights and freedoms of an individual against the rights of others, the relation between the limitation and its purpose, and whether there are less restrictive means to achieve the purpose.

63. Investigations of claims of racial discrimination by individuals, is undertaken by various institutions depending on where a complaint has been lodged. As at June 2013, the NCIC had investigated 680 complaints on issues including ethnic, racial and religious discrimination and hate speech. 30 cases had been sent to the DPP for consideration for prosecution, and 20 others were referred for conciliation. Cessation notices were issued on 50 cases. The Commission's approach elicited apologies even from politicians.

64. As of May 2015, KNCHR had received 27 complaints on labour discrimination. The NGEC to date has handled 51 complaints on discrimination based on different grounds and five employment/labour complaints. The National Gender and Equality Commission (NGEC) is in the process of concluding its regulations to make operational its functions and mandates in line with its constitutive Act.

2. The right to security of person and protection by the State against violence or bodily harm

65. Article 29 of the Constitution guarantees every person the right to freedom and security of person, including the right not to be: deprived of freedom arbitrarily or without just cause; detained without trial; subjected to any form of violence from either public or private sources; subjected to physical or psychological torture; subjected to corporal punishment; or treated or punished in a cruel, inhuman or degrading manner. Under Article 25, freedom from torture cannot be limited.

66. The State has adopted policy, legislative, administrative and judicial measures to ensure security of person for all in Kenya. The Counter-Trafficking in Persons Act 2010

inter alia criminalises trafficking in persons, which is punishable by a term of at least 30 years' imprisonment or a fine of USD 333,000 or both. This offense entails the recruitment, transportation, transfer, harbouring or receiving of another person for the purpose of exploitation. The Act also establishes the National Assistance Trust Fund for Victims of Trafficking in Persons. It also establishes the Counter-Trafficking in Persons Advisory Committee whose function is to advise the Government on activities aimed at combating trafficking and the implementation of preventive, protective and rehabilitative programmes for trafficked persons. The Government launched the Committee in 2014 in a bid to ensure full implementation of the Act.

67. Kenya remains conscious of its onerous responsibility of tackling counter-trafficking in persons who are sourced from, transited through or destined to the country. Kenya is particularly concerned that a number of its citizens, particularly young women, have been recruited by unscrupulous recruitment agencies that have sent them to Middle-Eastern countries where they are forced to work as domestic workers in slave-like conditions.. The Government is in the process of establishing protocols with relevant countries to ensure that Kenyans who go to work in those countries are not exploited. During 2013, the Government identified at least 47 victims of trafficking, prosecuted 30 trafficking cases and convicted seven traffickers.

68. The State is also seeking to counter the recruitment of youth into terrorist groups and has recently issued an amnesty under which individuals who have become members of terrorist groups may not be prosecuted if they give themselves up to the authorities.

69. The State has also established a number of laws to ensure the country's security forces provide effective protection to citizens and residents. The Independent Policing Oversight Authority Act (Cap. 88) establishes IPOA to provide civilian oversight of the police. The National Police Service Act criminalises torture and other cruel, inhuman or degrading treatment or punishment committed by the police, and prescribes heavy sanctions. The Victim Protection Act, 2014 provides a framework for the reparation and compensation of victims of crime and abuse of power.

70. Similarly, Legal Bills have been prepared to protect the rights of persons to dignified treatment and freedom from torture and slavery in line with the Constitution and other international standards. The Prevention of Torture Bill, 2015 seeks to provide a legislative framework for the prevention, prohibition and punishment of acts of torture and other cruel, inhuman or degrading treatment or punishment and the rehabilitation of victims of torture.

71. The Judiciary has also intervened to ensure the right to protection of the person. Since 2010, Courts have made findings in favour of many persons who sought remedies on allegations of torture and ill-treatment. Awards have been made in various cases. For example, In *Alex J Wagunya v. Attorney General (2013) eKLR*, the court awarded the Petitioner a global sum of USD 20,000 for acts of torture. Similarly, in *Gitobu Imanyara & 2 Others v. Attorney General & 2 Others (2013) eKLR*, the court issued general damages totalling USD 77,000 to the petitioners for acts of torture perpetrated by State agencies.

3. Political rights

72. Article 38 of the Constitution guarantees every citizen the freedom to make political choices, including the rights to: form a political party; participate in the activities of a political party; or campaign for a political party or cause. Adult citizens have the rights to be registered as voters and to vote and to stand for and hold public office. The Constitution also makes specific provisions establishing special measures to ensure the effective participation of all groups in political processes. Article 81 of the Constitution provides for fair representation of women and persons with disabilities. The State is in the process of establishing legislation to enable Article 100 of the Constitution which requires it to enact

legislation to promote the representation of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities. Finally, Article 54 of the Constitution places an obligation on the State to ensure the progressive implementation of the principle that at least five percent of the members of elective and appointive bodies are persons with disabilities.

73. Kenya has passed laws to enable these Constitutional provisions. The Political Parties Act, 2011 provides for the registration, regulation and funding of Political Parties. The Independent Electoral and Boundaries Commission Act, 2011 enables establishment of the Independent Electoral and Boundaries Commission (IEBC) which oversees elections in the country in terms of the Elections. The country's Parliament and County Assemblies are constituted in an elaborate manner to ensure representation across gender, representation of persons with disabilities and youth.

74. Positive results from implementation of these constitutional and statutory provisions are phenomenal. Kenya now has over 21 per cent women representation in Parliament, the highest ever in the country's history. Similarly, Kenya's Parliament now includes at least 12 Senators or members of the National Assembly with disabilities as well as at least 35 legislators, from the Youth category. The representation of women though has not reached the minimum constitutional threshold of at least one third, and Kenya is in the process of devising a formula for realising that threshold.

75. Kenya recognises that money can become a disabler for effective political participation particularly when it is used to peddle political influence. The Election Campaign Financing Act, 2013 therefore provides for the regulation, management, expenditure and accountability of funds during election or referenda campaigns and requires the IEBC to inter alia set campaign finance ceilings. The need for regulation is also based on the fact that Kenya provides political parties with public resources and political parties should use such monies accountably. Indeed, the Political Parties Act which establishes the Political Parties Fund also provides that a political party is not entitled to access the Fund if more than two-thirds of its registered officials are of one gender.

76. The Judiciary too has determined cases to ensure political rights for Kenyans. In *Kituo cha Sheria v. Interim Independent Electoral Commission & 2 Others (2013) eKLR*, the High Court determined that the right to vote is a fundamental right and part of Kenya's system of government. The Constitution, with its emphasis on the values of the rule of law, equity, inclusiveness, equality, human rights as well as the right to vote and the qualification of voters provided under Article 83 does not exclude prisoners from being registered to vote and voting in elections. The State has a positive responsibility to ensure that all the people of Kenya, particularly those who are marginalised or vulnerable, are able to exercise this fundamental right.

77. As it begins to prepare for the 2017 general elections, the IEBC is seeking to ensure higher voter registration levels particularly in sparsely-populated counties, some of which had extremely low voter registration at the last elections. IEBC figures show that 75 per cent of eligible voters in Mandera County remain unregistered; and that, respectively, eligible unregistered voters in Turkana, Wajir, Garissa, West Pokot and Samburu counties are 75, 70, 64, 60, 55 and 46 per cent respectively.

4. The right to freedom of movement and residence within the State

78. Article 39 of the Constitution guarantees every person the right to freedom of movement. Every person has the right to leave Kenya. As well, every citizen has the right to enter, remain in and reside anywhere in Kenya.

79. These rights are governed by laws which also spell out certain restrictions, particularly with regard to national security, public health and morals or other rights and

freedoms. For example, the Kenya Citizenship and Immigration Act prohibits the entry into Kenya of non-citizens who engage in human trafficking, human smuggling, sexual exploitation and sex crimes.

5. The right to nationality

80. Articles 14, 15 and 16 of the Constitution provide for the right to nationality in Kenya. One can be a citizen by birth or registration and dual citizenship is provided for. Article 53 of the Constitution guarantees every child the right to a name and nationality from birth.

81. The Kenya Citizenship and Immigration Act provides for matters relating to citizenship. It makes provisions in key areas of citizenship and residency. It inter alia provides for citizenship by birth, dual citizenship, and citizenship by presumption for foundlings who are or appear to be less than eight years old, citizenship by marriage, stateless persons, migrants and descendants of stateless persons and migrants. The Kenya Citizens And Foreign Nationals Management Service Act, 2011 establishes the Kenya Citizens and Foreign Nationals Management Service whose overall function is implementation of policies, laws and other matters relating to citizenship and immigration, births and deaths, identification and registration of persons, issuance of identification and travel documents, foreign nationals management and the creation and maintenance of a comprehensive national population register. The establishment of the Service brings together a number of related services for their better management.

82. The State has taken a number of measures to streamline matters of citizenship and to ensure that all deserving persons may exercise citizenship or residency rights. The State is in the process of implementing the Integrated Population Registration System which will be a database of all the details of an individual including information on birth and death, and marriage and citizenship status. As of March 2015, the System had information on 16 million Kenyans and 200,000 refugees. The government expects that once the new registry is set up, all Kenyan nationals, including children, will be issued with electronic national identity cards by October next year. The new Ids are expected to be used universally from 2016.

83. The Government has also proposed the Kenya Diaspora Policy (2014) as one strategy of responding to the positive Constitutional approach to citizens' resident outside Kenya and who sometimes hold dual citizenship. This Policy, which is also one of the pillars of Kenya's Foreign Policy, seeks to mainstream the Kenyan Diaspora into the national development process in line with the aspirations and goals of the Kenya *Vision 2030* which recognises Diaspora contribution as a major enabler to the growth of the economy and critical factor in the achievement of the country's overarching vision of a globally competitive and prosperous Kenya by the year 2030. The Kenyan Diaspora has been lobbying strongly for Kenya to put in place measures to enable them to exercise their right to vote; and key State institutions such as the IEBC are reviewing available options, one such option being voting by mail.

6. The right to marriage and choice of spouse

84. Article 45 of the Constitution guarantees every adult the right to marry a person of the opposite sex, based on the free consent of the parties. A couple has equal rights at the time of the marriage, during marriage and at its dissolution.

85. The Marriage Act, 2014 amends and consolidates the various laws relating to marriage and divorce to bring them in line with the Constitution. It legislates for monogamous and polygamous marriages which in every instance must be registered. The Act legislates for civil marriages as well as marriages under Christian, Customary, Hindu or

Islamic traditions. Potentially polygamous marriages may be converted to monogamous marriages with the mutual agreement of both spouses.

7. The right to own property and the right to inherit

86. Article 40 of the Constitution guarantees every person the right to acquire and own property of any type anywhere in Kenya. This provision has particular significance in ensuring that a person from one community is not stopped from acquiring or owning property within territory which historically may have belonged to another community.

87. The Government has consistently emphasised that no Kenyan may be excluded from owning property or working in a particular geographical part of the country merely on the basis that they were not born there or their community does not reside there. However, the National Policy and Action Plan on Human Rights recognises that historical injustices have undermined land use by certain communities. One of the Policy's priority actions is that the State shall take measures to ensure the protection of ancestral land and other rights of these communities in line with the national land policy.

88. The Land Act, 2012 is the key statutory instrument that has been established to regulate the land sector. Land tenures recognised under the Act are freehold, leasehold, and various forms of partial interest and customary land rights consistent with the Constitution. Section 6 (2) of the Act provides that:

There shall be equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of, and access to land under all tenure systems.

89. The functions of the Land Commission, which is established by the National Land Commission Act, 2012, include managing public land on behalf of the national and county governments. Regulations have not been operationalised in respect of this legislation, as a consequence of which teething problems remain in delineating the mandate of the Commission and the Land Cabinet Secretary.

90. The Ministry of Land, Housing and Urban Development has issued 515,989 title deeds in 35 counties in Kenya including: Taita Taveta, Narok, Bomet, Kilifi, Kericho and Kitui.

91. The courts have affirmed that women too have the right to inherit their parents' property alongside their male siblings. In *Zipporah Gaiti v. Samson Rukunga (2011) eKLR*, the High Court held that the marital status of a deceased's daughter is not a basis to deny her right to inherit her deceased father's estate. In *Monica Jesang Katam v. Jackson Chepkwony & Another (2011) eKLR*, the High Court decided that property can devolve to a widow in a woman-to-woman marriage.

92. The Matrimonial Property Act, 2013 establishes significant gains in securing women's access to matrimonial property during and after the marriage. It protects property acquired during the existence of a marriage from being disposed of by one party without the consent of the other party.

8. The right to freedom of thought, conscience and religion

93. Article 8 of the Constitution provides that there shall be no State religion. Article 32 of the Constitution guarantees every person the right to freedom of conscience, religion, thought, belief and opinion, and the right to manifest any religion or belief through worship, teaching or observance. A person may neither be denied access to an institution, employment, facility or the enjoyment of a right on account of religion or belief, nor may one be compelled to act contrary to their belief or religion.

94. When Kenyans were formulating the 2010 Constitution, they recognised the importance of including provisions to ensure Kenyan Muslims could exercise their right to freedom of religion fully while at the same time exercising their fundamental human rights. Article 24 of the Constitution consequently provides that provision on equality:

... shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhis' courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.

95. In addition, Article 170 of the Constitution establishes the Kadhis' Courts whose jurisdiction is limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhis' courts. The question of both parties submitting to the jurisdiction of the Kadhis' Court is important because it protects a party where he or she feels that submitting to the Kadhis' Court jurisdiction may undermine their rights.

96. Ensuring guarantee of the right to freedom of conscience, religion, thought or opinion to every person raises particular challenges for the State. An extremely high number of religious faiths and denominations operate in the country. Some of these entities have used religion to defraud unsuspecting worshipers of their money or indeed to peddle antisocial and even illegal causes such as stopping their faithful from seeking treatment in hospitals or encouraging extremism and radicalisation. Consequently, the Government is in the process of drawing up guidelines to regulate religious organisations and their activities. The Government has consulted relevant stakeholders as it prepares the regulations. Regulations under consideration include requiring religious groups to file annual returns including audited accounts.

97. A further challenge relates to the fact that students from more diverse religious backgrounds are demanding that schools allow them to observe their faiths in a manner that sometimes is not compatible with overall education policy; and a number of judicial cases have been lodged where parents or guardians have felt that their children's rights have been being violated. In *Republic v. The Head Teacher, Kenya High School and Another Ex-parte SMY (a minor suing through her mother and next friend A B) (2012) eKLR*, the High Court was called upon to determine whether the respondents' decision refusing the applicant and other Muslim students the right to wear a *hijab* while in school violated any of their Constitutional rights. In finding that the applicant's rights under Article 27 of the Constitution had not been violated, the Court determined that the respondents' limitation of the applicant's right to outwardly manifest her religion by wearing a *hijab* in school was reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. The uniform school policy was designed by the respondents with the legitimate aim of ensuring equality among all students and to facilitate enforcement of discipline for continued improvement of academic standards in the school. While every person has a right under Article 32 of the Constitution to freedom of conscience, religion, thought, belief and opinion and the right to manifest their religious beliefs through worship and practice, this right is not absolute and can be qualified under Article 24 of the Constitution.

98. In *Seventh Day Adventist Church (East Africa) Limited v. the Minister for Education (Petition No. 431 of 2012)*, the High Court also recognised the importance of balancing the right to freedom of religion and the right to education by requiring the Ministry of Education to promulgate appropriate regulations prescribing the obligations of public schools to respect the rights of students under Article 32 of the Constitution and Section 26 of the Education Act, describing the manner in which the obligations are to be implemented and secured as well as setting up an administrative enforcement and complaints mechanism.

9. The right to freedom of opinion and expression

99. Article 33 of the Constitution guarantees every person the right to freedom of expression, including the freedoms to seek, receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research. This right is fortified by Article 34 of the Constitution which guarantees freedom and independence of electronic, print and other media. The right of every citizen to access information is guaranteed under Article 35 of the Constitution. Every citizen has the right of access to information held by the State; and information held by another person and required for the exercise or protection of any right or fundamental freedom. Article 35 (3) requires the Government to publish and publicise any important information affecting the nation. Article 35 will be enabled once the Access to Information and the Data Protection Bills, 2015 are legislated.

100. The National Cohesion and Integration Commission has facilitated development of Media Guidelines on Hate Speech including by engaging various media stakeholders. These Guidelines consolidated and simplified the laws relating to media and hate speech. The Government wishes to highlight two positive outcomes of the development of these Guidelines. First, in the lead-up to the 2013 general elections, various print and electronic media outlets published specific guidelines on the sort of advertorial content that would not be accepted for broadcast or print. As a consequence, inflammatory advertisements were not aired on television or radio or printed in newspapers. Second, the 2013 general elections, unlike those of 2007, saw no hate speech or incitement disseminated by the media or by politicians in campaign rallies.

101. The State continues to have particular concerns regarding the fact that social media platforms have increasingly been used to spread hate speech and incitement to hatred. Individuals have been prosecuted for matter they disseminated on platforms such as Face book, Twitter and even text messages sent via mobile phones (cf: paragraph 58).

10. The right to freedom of peaceful assembly and association

102. Article 36 of the Constitution guarantees every person the right to freedom of association, including the right to form, join or participate in the activities of an association of any kind and not to be compelled to join an association. Article 37 of the Constitution guarantees every person the right to assemble, demonstrate, picket and present petitions to public authorities.

103. No person or group of persons are stopped from assembling or associating on the basis of their race or ethnicity. Any limitations that the State has applied are in conformity with Article 24 of the Constitution which establishes the extent and nature of limitations to fundamental human rights. Kenya has approximately 50 political parties and 6,500 non-governmental organisations.

11. Rights to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work, and just and favourable remuneration

104. Article 30 of the Constitution protects persons from being held in slavery or servitude or being required to perform forced labour. Article 41 guarantees every worker the rights to: fair remuneration; reasonable working conditions; form, join or participate in trade union programmes; and go on strike.

105. The National Cohesion and Integration Act outlaws employment discrimination in all public establishments (Section 7). Outlawed acts include discrimination in the process of hiring; terms of employment or denial of employment; discrimination of employees; or harassment of an employee or applicant. The Employment Act, 2007 protects persons from

discrimination in the employment sphere. It prohibits discrimination in employment in relation to promotion of equality of opportunity in employment; elimination of discrimination in any employment policy or practice, including against prospective employees based on their race, colour, sex, ethnic origin, HIV status, disability or pregnancy; and the payment of equal remuneration for work of equal value. The Act further mandates the Minister for Labour, Social Security and Services to promote and guarantee equality of opportunities in employment for all persons including migrant workers and members of their families who are lawfully in the country. The Commission for University Education has for example established appointment and promotion guidelines to ensure that individuals may work in any university regardless of their ethnic background. The Government has thus expressed its great concern by attempts in certain universities to demand the appointment or promotion of staff from only certain ethnic communities. The HIV and AIDS Prevention and Control Act, also prohibits discrimination in employment. Further to this the Persons with Disabilities Act prohibits discrimination of persons with disabilities in employment.

12. The right to form and join trade unions

106. Article 41 of the Constitution guarantees every person the right to fair labour practices. As already stated, Article 41 also guarantees every worker the rights to: fair remuneration; reasonable working conditions; form, join or participate in trade union programmes; and go on strike. Trade unions have the rights to determine their administration, programmes and activities; to organize; and to engage in collective bargaining.

107. Persons from particular racial or ethnic communities or non-citizens are not forbidden to join trade unions and participate in their activities. The key limitation applicable to trade union rights is in Article 24 of the Constitution which allows provisions in legislation to limit the application of specified rights or fundamental freedoms to persons serving in the Kenya Defence Forces or the National Police Service. Yet even in this instance courts have been quick to protect the trade union rights of police officers. In *Nicky Njuguna and 3 Others (2013) eKLR*, in an appeal challenging the refusal by the Registrar of Trade Unions to register the Kenya Police Union, the Industrial Court of Kenya determined among other things that Article 24 (2) (b) of the Constitution establishes certain requirements which must be satisfied before a limitation can become valid. A legislative provision limiting a right or fundamental freedom shall not be construed as limiting such right or freedom unless the provision is clear and specific about the right or freedom being limited and the nature and extent of such limitation. The Court held that Section 3 (b) of the Labour Relations Act which provides that the Act shall not apply to any person in respect of their employment or service in the Kenya Police offends Article 24 (2) (b) because it completely denies rather than limits the rights of officers in the National Police Service the right to form, join or participate in the activities of a trade union which is established in Article 41 (2) (c) of the Constitution. The Court also found that the complete denial of the right to all cadres of officers is unreasonable and unjustifiable in an open and democratic society.

13. The right to housing

108. Article 43 of the Constitution guarantees every person the right to accessible and adequate housing, and to reasonable standards of sanitation. While this right is to be realised on a progressive basis, the minimum core content of the right which should apply immediately has not been determined in policy or law. However, since the Constitution of Kenya, 2010, individuals are boldly relying on the constitutional provisions on the right to adequate housing in order to assert their fundamental rights and to seek redress for any

violations. The response of the courts has so far has been to unequivocally acknowledge the justiciability of economic and social rights.

109. For example, in *Satrose Ayuma and 11 Others v. Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme and 3 Others (2013) eKLR*, the High Court found that there was a clear violation of the petitioners' rights to adequate housing by the respondents who undertook forced evictions in a reckless manner and without following the UN Guidelines on forced evictions at the very minimum. The evidence on record showed that the 1st Respondent, through use of means like constructive eviction, absence of participation and absence of a resettlement plan, forcibly intended to evict the petitioners from their houses. Remedies provided by the Court included that: the Attorney General within 90 days file an affidavit detailing existing or planned State policies and legal framework on forced evictions and demolitions in Kenya generally and whether they are in line with acceptable International standards; and that the Attorney General file a further affidavit detailing the measures put in place towards the realisation of the right to accessible and adequate housing and to reasonable sanitation in Kenya.

110. Demand continues to outstrip supply of housing in the country and clearly poorer sections of society are less able to afford housing. Homeless persons are estimated to be 0.05 per cent nationally, comprising 85 per cent male and 15 per cent female. The population living in informal settlements in Nairobi is 36.5 per cent (54 per cent male and 46 per cent female). In Mombasa, 23 per cent of the population lives in informal settlements. In Kisumu, the number is higher with 56 per cent living in informal settlements, 51 per cent of which is male and 49 per cent female.

111. The State is committed to address the high cost of housing and its subsequent implications on socioeconomic development. The policy framework for enabling the right to housing is established in Medium Term Plan II of the Kenya *Vision 2030*. The Vision includes a number of flagship projects such as: production of 200,000 housing units annually under Public Private Partnerships; installation of physical and social infrastructure in informal settlements in 20 Urban Areas; enactment of a housing law; and legislation for a One-Stop Housing Development Approvals Mechanism.

112. The Kenya Informal Settlement Improvement Programme (KISIP) 2011-2016 has been introduced through a partnership between the Kenya Government and the World Bank to undertake tenure regularisation and installation of social and physical infrastructure in selected informal settlements and planning for urban growth in 15 municipalities. A National Youth Service initiative has expedited slum upgrading works, including sanitised ablution facilities, road networks and street lighting initiatives in informal settlements such as Kibera.

14. The right to public health, medical care, social security and social services

113. Article 43 of the Constitution guarantees every person the right to the highest attainable standard of health, including the right to health care services. A person may not be denied emergency medical treatment. Corresponding guarantees of the right to health are established for children in Article 53 (1) (c); for minorities and marginalised groups in Article 56 (e); and for consumers in Article 46 (c). Attendant to the right to health is the right to a clean and healthy environment under Article 42 of the Constitution which also includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures.

114. The State is in the process of legislating on various health-related issues. The Health Bill aims to consolidate the laws relating to health; provide for regulation of health care services and health care service providers; provide for establishment of national regulatory institutions; coordinate the inter relationship between the national and county health

institutions; establish a coordinating agency of professionals within the health industry; and provide for attainment of the basic right to health.

115. The Reproductive Healthcare Bill seeks to recognise reproductive rights, set the standards of reproductive health and provide for the right to make decisions regarding reproduction free from discrimination, coercion and violence.

116. The State is taking a number of administrative measures to ensure realisation of this right. It is taking action to secure health services through the integration, training and certification of traditional birth attendants and community health workers. It has also put in place the innovative Output-Based Aid Voucher system intended to contribute to reduction in both maternal and infant mortality rates by improving access to and utilisation of reproductive health services by economically disadvantaged populations. The programme has been piloted in three rural districts (Kisumu, Kiambu and Kitui) and in two urban sites in Nairobi (Viwandani and Korogocho). Plans are under way to scale-up the initiative to other counties. Since its inception, the programme has reached 51 per cent of poor pregnant women in the pilot sites, an indication that the programme has registered success in increasing the proportion of institutional deliveries with a skilled birth attendant. In 2013, the Government introduced a waiver of maternity fees in all public hospitals, a measure that should play a significant role in reducing maternal mortality rates. Currently, the National Gender and Equality Commission is conducting an audit of the free maternity directive issued by the government to evaluate its effectiveness.

117. Despite the Government's efforts, inequities remain in the provision of health-care services. The 2013 Kenya Household Health Expenditure and Utilisation Survey for example shows that on average Kenyans in the richest wealth quintile compared with those in the poorest wealth quintile were more likely to consult a health service provider when ill – 89 per cent of the former to 86 per cent of the latter. The Survey also found that richer counties such as Kajiado, Nairobi, Mombasa and Kirinyaga spent more on outpatient care at USD 20 than poorer counties such as Turkana and Siaya which spent an average of USD 5 per person. The State continues to take measures to remedy this situation. The Government is implementing plans to scale-up health insurance coverage inter alia using the National Hospital Insurance Fund. The Government also recognises that overall maternal health indicators will not improve significantly until previously marginalised areas and informal settlements are targeted specifically.

118. At the County level, Kisumu County has drafted a number of Bills on health including the Maternal Mortality Bill and the Health Bill. A remaining challenge is the sharing of health delivery responsibilities between the National and County Governments.

119. Courts have started to enforce the right to health in innovative ways. In *P.A.O. & 2 others v. Attorney General (2012) eKLR*, the High Court determined that Sections 2, 32 and 34 of the Anti-counterfeit Act 2008 threatened to violate the right to life of the petitioners, their right to human dignity and their right to the highest attainable standard of health. Any legislative measure that would affect accessibility and availability of ARV medicines would ipso facto threaten the lives and health of the petitioners and others infected with HIV and Aids, and would be in violation of their rights under the Constitution. While intellectual property rights should be protected, where there is the likelihood that their protection will put in jeopardy fundamental rights such as the right to life of others, they must give way to the fundamental rights of citizens.

120. Regarding social security, Article 43 of the Constitution requires the State to provide appropriate social security to persons unable to support themselves and their dependants. The National Social Security Fund Act, 2013 establishes the National Social Security Fund as the vanguard for the State's renewed initiative to ensure universal social security coverage. The functions of the Fund include: providing basic social security for its

members and their dependants; increasing membership coverage; improving adequacy of benefits paid; and enabling self-employed persons to access social security for themselves and their dependants.

121. The Ministry of Labour, Social Security and Services has put in place legislative, policy and administrative measures to ensure social security and services to all persons without discrimination. The National Social Protection Bill has been developed and it seeks to provide for the establishment of a Social Protection Council to oversee implementation of social protection programmes. The Ministry has also developed a National Social Protection Policy (Sessional Paper No. 2 of 2014) that provides measures and interventions to protect people against vulnerabilities and to ensure decent living standards. Cash transfer programmes are carried out regularly to vulnerable persons: old (164,000 households), orphaned and vulnerable children (253,000 households) and persons with severe disabilities (27,000 households). To avoid discrimination, beneficiary households are identified through a process involving community structures and validation to verify data and to ensure all eligible individuals benefit. The purchasing power of beneficiaries has been enhanced, and they have had increased savings and investments.

15. The right to education and training

122. Article 43 of the Constitution guarantees every person the right to education. Children have the right to free and compulsory basic education – Article 53. Persons with disabilities have the right to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person – Article 54. Article 55 requires the State to take measures, including affirmative action programmes, to ensure that the youth access relevant education and training. Finally, Article 56 (b) provides that the State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups are provided special opportunities in educational and economic fields.

123. The Basic Education Act, *inter alia*, gives effect to Article 53 of the Constitution and other constitutional provisions on education, to promote free and compulsory basic education and to establish an education institutional framework including the National Education Board and County Education Boards. The Act requires the Education Cabinet Secretary to provide for the establishment of: pre-primary, primary and secondary schools, mobile schools and adult and continuing education centres, within reasonably accessible distances; appropriate boarding primary schools in Arid and Semi Arid areas (ASALs); academic centres to cater for gifted and talented learners; and special and integrated schools for learners with disabilities. The Cabinet Secretary is required to provide special needs education in special schools or in other schools suitable to the needs of pupils requiring special education. Primary education is compulsory and it is a criminal offence for a parent not to accordingly take their child to school.

124. Another important statute legislated during the reporting period is the Universities Act, 2012 whose purpose is the development of university education, the establishment, accreditation and governance of universities, establishment of the Commission for University Education, the Universities Funding Board and the Kenya Universities and Colleges Central Placement Service Board. The Placement Board is responsible for, *inter alia*, coordinating the placement of government sponsored students to universities and colleges. The Act provides that in the performance of its duties, the Placement Board shall promote equity and access to University and college education by developing criteria for affirmative action for the marginalised, minorities and persons with disabilities.

125. Under Medium Term Plan II, the State's policy priorities include actualising the right to free and compulsory basic education; enhancing quality and relevance of education and training; enhancing post-basic education; and enhancing education in ASALs. Towards

this end, the State has adopted Sessional Paper No. 14 of 2012 on “A Policy Framework for Education and Training on Reforming Education and Training in Kenya”. The Policy proposes reforms that cut across the entire education sector and include policies and strategies for addressing institutional reforms, management and financing of education, the curriculum, teacher education, teacher development and management, and strategies for bringing digital technology within the reach of every Kenyan child.

126. Sessional Paper No. 8 of 2012 on National Policy for the Sustainable Development of Northern Kenya and other Arid Lands has committed the State to the introduction of flexible education systems of high quality which are responsive to the needs of the area and which reinforce traditional knowledge systems in pastoral societies; promote the use of appropriate information and communication technology and other technologies in service delivery; revise the Education Act to incorporate alternative ways of providing education services to nomadic communities such as distance and mobile education and establish the National Council on Nomadic Education. Interventions under this Policy include: improving infrastructure for education and training at all levels including the tertiary level; increasing the number of trained professionals and developing a mechanism to attract and retain high calibre officers; introducing affirmative action programmes for people from arid areas especially women to all public institutions; targeting a percentage of bursaries for students from arid areas who wish to pursue tertiary and university education; and expanding adult literacy levels and using education to reduce inequalities experienced by certain social groups.

127. Administrative measures continue to be implemented towards full attainment of this right. The State is committed to enhancing access to education as the key to empowering the most marginalised and vulnerable individuals in society. Marginalised individuals like the girl-child, pastoralists and persons with disabilities also tend to have the least opportunities of acquiring an education; and the State continues to make conscious and concerted efforts on an affirmative basis to enable these individuals to best exploit their life-chances alongside their other Kenyan peers through primary, secondary and tertiary education. Investment in Free primary education (FPE) and Free Day Secondary Education has remained a priority, coming among the top five recipients of public expenditure in the last five years. Since the introduction of FPE, enrolment has improved dramatically.

128. The Government continues to implement affirmative action on school admission (using a quota system) for children from ASALs. The Quota system of selection was launched on 11 January 2011. The quota system for national schools involves a formula in which the total number of pupils in a district is divided by that of the entire country and then multiplied by the vacancies available. The figure arrived at represents the national school slots available for each district with the final selection based on the public-private school ratio. The move was meant to address concerns that pupils from public schools who are presumed to be disadvantaged in terms of education facilities and social background lose out to pupils from private schools who have better facilities and learning atmosphere. The Kenya Private Schools Association has opposed this criterion arguing that it is discriminatory; but the High Court has determined that this discrimination is justifiable (Cf: paragraph 16).

129. The Government has made tremendous progress in providing universal access to education. However, there has been concern on the quality of education. To improve the quality of education and ease the financial burden on many households with school going children, the allocation for free tuition in secondary schools has been increased by 33 percent to USD 313 million in the 2014/ 2015 fiscal budget. Allocation for FPE has also been increased by the same percentage to USD 150 million. This is a major step towards ensuring that primary schooling and secondary education is truly free within the next three years.

130. During the current financial year 2016/2016, the Government has provided USD 25 million for the school feeding programme and USD 4 million for sanitary towels to ensure that no child misses out on school due to poverty. The Njaa Marufuku (No Hunger) Project is being spearheaded in schools in the ASALs.

131. To further improve the quality and accessibility of education to all school going children, a comprehensive e-learning programme remains a priority. Towards this end, a total of USD 193 million has been set aside for e-learning, including laptops for children, building capacity of teachers and rolling out computer laboratories for classes 4 to 8 in all public schools throughout the country.

132. The Revision of Bursary Rules has seen County governments increase the amounts given to needy students to USD 50 for day scholars and USD 100 for boarders.

133. The government faces a challenge in ensuring the safety of teachers in far flung areas including the North Eastern part of Kenya which has been targeted on several occasions by terrorist groups.

16. The right to equal participation in cultural activities

134. The Constitution recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation – Article 11. It requires the State to promote all forms of national and cultural expressions through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage. Article 44 of the Constitution guarantees every person the right to use the language and to participate in the cultural life of the person's choice. A person belonging to a cultural or linguistic community has the right in communion with the rest of the community to enjoy his culture and use his language; and to form, join and maintain cultural and linguistic associations. A person may not be compelled to perform, observe or undergo any cultural practice or rite.

135. Kenya's various communities perform distinct rites of passage which from time to time have been used notably in social media to engender inter-communal dissension. The State has in particular endeavoured to discourage hate speech which has presented members from certain communities as inferior or not fit to assume political leadership on the mere basis that they do not perform circumcision as a rite of passage for their males. Further, the Prohibition of female genital Mutilation Act, 2011 prohibits female genital mutilation and creates various offences against crimes of female genital mutilation.

136. Inter-communal expressions of culture are shared during schools drama and music festivals which take place annually. Local language broadcasts are aired by the public broadcaster, Kenya Broadcasting Corporation, as well as by private broadcasters like Citizen Radio. In the last four years, local language television stations have also begun to operate. State occasions such as Madaraka Day and Jamhuri Day are graced by cultural dances from across the country.

17. The right of access to any place or service intended for use by the general public

137. Article 54 of the Constitution guarantees every person with disability the right to reasonable access to all places, public transport and information. In some instances, some regulations have had the effect of denying certain persons access to places or services. When the Government sought to regulate the public transport industry, it quickly realised that its rearrangement of bus stops for public transport vehicles made it inconvenient for commuters with disabilities who could not walk for long. As already explained in paragraph 31 of this Report, the Judiciary has dealt firmly with private bodies which have excluded persons on the basis of their identity from certain services.

F. Article 6: Effective protection and remedies against racial discrimination through national tribunals and other state institutions and the right to seek just and adequate reparation or satisfaction for damage suffered from such discrimination

1. Statutory and institutional framework

138. Article 48 of the Constitution requires the State to ensure access to justice for all persons and this shall not be impeded by unreasonable fees. Furthermore, Article 47 guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The State is committed to the establishment of an institutional and legislative framework for the provision of affordable legal aid and awareness services for all. The Legal Aid Bill and the National Legal Aid Policy have already been prepared. The National Legal Aid and Awareness Programme has for some time now been implemented on a pilot basis. To date, the pilot project has been launched in Nairobi, Nakuru, Eldoret, Mombasa and Kisumu. The Government will roll out the Programme countrywide once relevant legislation is in place.

139. The Judiciary offers the key framework of tribunals for dealing with racial discrimination but it is supported by a series of quasi-judicial institutions. The Constitution establishes a hierarchy of courts, including the Supreme Court, Court of Appeal and High Court as well as Magistrates Courts. These courts entertain various levels of criminal jurisdiction including in relation to crimes prosecutable in pursuance of the Convention's provisions. The High Court has original unlimited jurisdiction in criminal and civil matters, while criminal matters may be appealed to the Court of Appeal and in some instances further to the Supreme Court.

140. The Constitution and statutes also establish the KNCHR, the NGEC and the Commission on Administrative Justice (CAJ), to which every person has the right to complain alleging denial, violation, infringement of or threat to a right or fundamental freedom. These Commissions promote the protection and observance of human rights and equality and non-discrimination in public and private institutions; monitor and investigate the observance of human rights in all spheres, the abuse of power within the public sector; and receive and investigate alleged complaints of human rights and equality and non-discrimination in all spheres and maladministration in the public service. These Commissions' powers include compensation and other remedies.

141. The KNCHR is an autonomous national Human rights institution established under article 59 of the Constitution and enabled by the Kenya National Commission on Human Rights Act, 2011 with the core mandate of furthering the promotion and protection of human rights in Kenya. The main goal of KNCHR is to investigate and provide redress for human rights violations, to research and monitor compliance of human rights norms and standards, to conduct human rights education, to facilitate training, campaigns and advocacy on human rights as well as collaborate with other stakeholders in Kenya. KNCHR also conducts public education aimed at informing indigenous groups of their rights while engaging the government on its obligations. As we have already explained, the KNCHR was one of the petitioners in the Security Laws (Amendment) Act Petition and the High Court upheld KNCHR's contentions that capping the number of refugees in the country to a maximum 150,000 would violate international law as well as the rights of refugees.

142. The NGEC is a Constitutional Commission operationalised by the National Gender and Equality Commission Act, 2011 as one of the successor commissions to the Kenya National Human Rights and Equality Commission pursuant to Article 59 of the Constitution. The key goal of NGEC is to contribute to the reduction of gender inequalities and the discrimination against all: women, men, persons with disabilities, the youth,

children, older persons, minorities and marginalised communities. NGEC has severally sought to ensure protection and effective remedies against racial discrimination by prosecuting cases to remedy violations. The NGEC acted as *amicus curiae* in *Seventh Day Adventist Church (East Africa) Limited v. the Minister for Education (Petition No. 431 of 2012)* in which the High Court required the Ministry of Education to provide necessary guidance for ensuring schools respect the rights of pupils to exercise their right to freedom of religion. The NGEC also sought judicial intervention to ensure that persons with disabilities and other marginalised groups would gain effective representation in Parliament following the 2013 general elections. In the *National Gender and Equality Commission v. the Independent Boundaries and Electoral Commission, Petition 147 of 2013 (unreported)*, the High Court at the behest of the NGEC determined among other things that The IEBC failed to meet its obligation to conduct and supervise the conduct of elections for special seats under Article 90 by not publicising the party lists submitted to it. The IEBC also failed to issue sufficient guidelines consistent with its obligation to observe, respect, protect, promote and fulfil the rights of persons identified as vulnerable and marginalised to participate in the political process. The Court required IEBC to liaise with other Commissions to resolve the situation.

143. The CAJ is an independent commission established by the Commission on Administrative Justice Act, 2011 pursuant to Article 59 (4) of the Constitution. The CAJ is mandated to address all forms of maladministration and promote good governance and efficient service delivery in the public sector by enforcing the right to fair administrative action. CAJ investigates abuse of power, manifest injustice and unlawful, oppressive, unfair or unresponsive official conduct.

144. A number of other statutory institutions have mandates to ensure effective protection against racial discrimination. The NCIC has been established as Kenya's specific statutory response to ethnic-based discrimination. Relevant functions of the Commission include: investigating complaints of ethnic or racial discrimination and making recommendations to the Attorney-General, the KNCHR or any other relevant authority on remedial measures where such complaints are valid; investigating on its own accord or on request from any institution, office, or person any issue affecting ethnic and racial relations; and promoting arbitration, conciliation, mediation and similar forms of dispute resolution mechanisms in order to secure and enhance ethnic and racial harmony and peace. The NCIC seeks to ensure effectiveness of remedies throughout the country by participating in the Integrated Public Complaints Referral Mechanism (IPCRM). IPCRM is an e-based system that enables members of the public to lodge complaints on discrimination, hate speech, corruption, administrative injustice and human rights violations. Apart from the NCIC, other IPCRM partners are the Ethics and Anti-Corruption Commission, KNCHR, CAJ, National Anti-Corruption Campaign Steering Committee and Transparency International Kenya Chapter. Finally, the HIV AIDS Tribunal, established under the HIV and AIDS Prevention and Control Act 2006, came into force in 2011 and by 2012; it had received 400 complaints, admitted 14 and delivered two judgments.

2. Effectiveness of remedies

145. The Constitution guarantees that available remedies should also amount to effective remedies. Article 159 establishes principles to guide courts and tribunals while exercising their judicial authority. In particular, they are enjoined to ensure that: Justice is done to all irrespective of status; Justice is not delayed; Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms are promoted; Justice is administered without undue regard to procedural technicalities; and the purpose and principles of the Constitution are protected and promoted.

146. In the same vein Article 20 of the Constitution further enjoins courts or tribunals, while interpreting the Bill of Rights, to promote: the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and the spirit, purport and objects of the Bill of Rights.

147. The State continues to undertake Judiciary and justice sector transformation through the expansion of infrastructure to reach parts of the country which received minimal judicial services in the past. In the period 2012-2013, new courts were built bringing the total number of High Courts to 16 and the number of Magistrates Courts to 111, the National Council for the Administration of Justice was revitalised, and the Court Users Committees became more influential.

3. Article 14 Optional Declaration

148. The Constitution and the Treaty Making and Ratification Act have introduced an elaborate process for the ratification of regional and international instruments, which include deeper analysis, public participation and parliamentary consent. Kenya is in the process of analysing all human rights instruments which have not yet been ratified with a view to determining which ones to accept. Kenya will therefore in due course communicate to the Committee its decision on whether it will make the Article 14 Declaration.

G. Article 7: Adoption of immediate and effective measures in the fields of teaching, education, culture and information for combating prejudices that lead to racial discrimination

1. Promotion of understanding, tolerance and friendship among nations and racial and ethnical groups

149. Kenya believes that education plays critical roles in combating prejudice. A baseline survey on Ethnic Interaction and Tolerance undertaken by the NCIC in 2012 showed that up to 57 per cent of Kenyans interacted with people from different ethnic communities, and that the frequency of interethnic interaction increased with the level of education.

150. One of the functions of the NCIC is promoting tolerance, understanding and acceptance of diversity in all aspects of national life and encouraging full participation by all ethnic communities in the social, economic, cultural and political life of other communities. The NCIC is further required to plan, supervise, co-ordinate and promote educational and training programmes to create public awareness, support and advancement of peace and harmony among ethnic communities and racial groups.

151. The NCIC has worked with the Kenya Institute of Curriculum Development to promote national cohesion and integration by infusing those tenets in primary and secondary school curricula. The NCIC was the thematic sponsor of the 53rd Annual Kenya Schools and Colleges National Drama Festival held in 2012 whose theme was “National Cohesion, Integration and Reconciliation”. The Commission also sponsored the 54th Festival held in 2013, whose theme was “Performance for National Healing and Reconciliation”. The Commission has also encouraged inter-ethnic dialogue particularly covering regions of the country which are prone to inter-ethnic conflict. The NCIC for example sponsored the Loiyangalani Cultural Festival in Turkana County. This County is prone to inter-ethnic and inter-clan conflict over pasture and livestock. This Festival, involving contributions from ten ethnic communities, gave participants opportunities for cross-cultural interaction, cooperation and exchange. NCIC carries out research on coded language and stereotypes used by specific communities to discriminate against others. Finally, the NCIC has worked with the Ministry of Education to establish Amani (peace)

Clubs to enhance cohesion and integration among school-going children and there are 300 such clubs in schools.

152. Most recently, the NCIC has been facilitating dialogue amongst professionals of communities from Kenya's northern region which undertake inter-communal cattle raids. It is working with an initiative called Northern Peace Caravan which is implementing activities to discourage interethnic conflict for resources.

153. The Ministry of Education, Science and Technology has expanded the number of national secondary schools which admit students from across the country and it has facilitated increased admission of students from other counties to county schools. The Ministry ensures that students from marginal districts can also attend national schools by implementing a system which uses a level of affirmative action alongside considerations of merit. The Ministry has set up a committee to vet and approve set books and plays that will be examined. The National Museums of Kenya has prepared several publications to educate Kenyans on diverse cultures.

2. Propagation of the purposes and principles of relevant human rights instruments

154. The application of the Convention is founded on Article 2 (6) of the Constitution which provides that treaties and conventions ratified by Kenya form part of its laws. Courts now accept this position wholly. For example, in *Muigai v. John Bosco Mina Kariuki & Jerioth Wangechi Muigai (2014) eKLR*, the Court of Appeal relied on international instruments that prohibit discrimination against women, stating that the yoke and burden of discrimination should not be worn by the female gender any more. Under the Constitution, the general rules of international law form part of the Laws of Kenya. Further, Kenya continually amends its laws to be in line with ratified International treaties. Kenya is currently in the process of reviewing the Persons with Disabilities Act to align it to the Convention on the Rights of Persons with Disabilities.

Annexure

Responses to the concluding observations of the Committee on Elimination of Racial Discrimination made to Kenya for the initial-fourth periodic reports to the Committee

1. Imposing sanctions for acts of racial discrimination; and outlawing racial discrimination including in employment and housing

The government is reviewing the National Cohesion and Integration Act to include more sanctions for acts of racial discrimination and a number of new criminal penalties will be created. The Act already outlaws discrimination on the basis of employment.

2. Raising awareness among the population about the legal prohibition of racial discrimination and about their right to equality and non-discrimination

The Kenya National Integrated Civic Education Programme was undertaken from 2012-2013 by the Government in partnership with non-state actors to provide civic education to Kenyans on the Constitution with the broad aim of achieving fundamental national transformation through policy, legal and institutional reforms, as well as creating awareness, reorienting the national psyche for the new dispensation and engendering robust public engagement in the constitution implementation process. In addition to this, the KNCHR, NGEC, CAJ and NCIC undertake civic education on a continuous basis.

3. Providing free legal aid throughout the country

The Kenyan *Vision 2030* identifies lack of access to justice as having a direct link to poverty and, accordingly, recognises the need for access to justice as a pillar for economic development and poverty reduction. The government of Kenya thus recognises that Legal aid is a critical instrument in the enhancement of access to justice, especially for the poor, marginalised and vulnerable. The Legal Aid Bill 2013 and The Draft National Legal Aid Policy 2013 are awaiting Cabinet approval. The National Legal Aid and Awareness Programme will be rolled out in all Counties once the Legal Aid Bill is enacted.

4. Reviewing judicial procedures to speed up the processing of cases of racial discrimination

Measures which the government has taken to speed up cases of racial discrimination include recruitment and posting of 20 new Kadhis, bringing the total number of Kadhis to 35, to reduce the distances travelled by those seeking justice. The Judiciary has established Court Users Committees comprising stakeholders from different agencies. The National Committee on Administration of Justice is mandated to develop institutional linkages with all bodies engaged in administration of justice. In addition, the Constitution has established an independent office of Public Prosecutions mandated to investigate and prosecute cases.

5. Establishing institutional arrangements for Kenya's national human rights institution, by ensuring full compliance with the Paris Principles

The three Commissions established under Article 59 of the Constitution, i.e. KNCHR, NGEC and CAJ are fully established and operational. The commissions are strong constitutional institutions for safeguarding and upholding the principles of equality, democracy and human rights. Racial discrimination is broad enough to incorporate the core mandate of the three commissions. The Commissions budgets are drawn from the Consolidated Fund. It is expected that the challenge of mandate overlap amongst the three institutions will be resolved once they finalise their regulations.

6. Giving full effect to Article 4 of ICERD on prohibition of hate speech and incitement to hatred including by amending the National Cohesion and Integration Commission Act and the Penal Code

The Government is in the process of reviewing hate speech legislation to ensure it fits in with the laid down standard in Article 4 of the Convention.

7. Adopting firm stand against the use of ethnic lines for political purposes; strict and fair investigation, enforcement and sanction of hate speech and incitement to hatred legislation and liability of the media

The Government is committed to prosecuting all cases of hate speech. For example, on 18 June 2014, the DPP ordered the prosecution of Ms Mishi Juma Mboko, Mombasa County Women Representative, for remarks made on 1 June during Madaraka Day celebrations which amounted to incitement to violence. The NCIC and the DPP are prosecuting at least 7 cases involving use of hate speech by politicians and bloggers on hate speech charges. There is also in place a code of conduct that prohibits journalists from reporting hate speech. The Government has prepared the Cyber Crime & Computer Related Crimes Bill that seeks to criminalise specific offences dealing with hate speech especially through social media. The Kenya Law Reform Commission is also reviewing the Penal Code to align it with the Constitution.

8. Continuing to fully support the work of the Truth, Justice and Reconciliation Commission and upholding its findings and implementing its recommendations

The Truth, Justice and Reconciliation Commission (TJRC), which was established in 2008 pursuant to the Truth, Justice and Reconciliation Act, 2008 to investigate serious human rights violations and other injustices dating from December 1963 to February 2008, conducted countrywide investigations and prepared a final report setting out comprehensive recommendations. The final report was published on 7 June 2013. In December 2013, the National Assembly amended the Truth, Justice and Reconciliation Commission Act to make provision for consideration of the TJRC Report by Parliament and grant the AG authority to set in motion a mechanism to monitor its implementation. The report is currently before the National Assembly and as soon as it has been considered and released, the Amendment act recommends that the implementation commences immediately. A task force on the implementation of the TJRC report has also been established.

Many of the TJRC's recommendations are already being implemented. This is especially the case for those that concern judicial reforms, police reforms, mandate of the National Land Commission, the Article 59 Human Rights Commissions and their mandate to inquire into human rights violations, Resettlement and compensation of internally displaced persons (IDPs).

9. Compensating all victims of the violence that occurred following the 2007 elections and proper prosecution of perpetrators.

The Multi-Agency Taskforce on the Post-Election Violence cases was established by the DPP on 9 February 2012. The taskforce was mandated to assess the progress of current investigations into the post-election violence, and to decide whether there was enough evidence to pursue 4,575 case files that had been opened. After reviewing the files, the task force concluded that there was inadequate evidence to support any prosecutions. The Government remains committed to implement restorative justice measures involving reconciliation, resettlement and other reliefs to victims of the violence; and it has established a fund of USD 90,000,000 during three years to be used for restorative justice.

10. Providing full attention to the plight of internally displaced persons and ensuring their settlement or resettlement and other reparative measures

663,921 people (245,416 households) were displaced during the post- election violence of 2008. Out of these, 350,000 individuals were persuaded to return to their homes and offered various modes of assistance, including start-up capital, reconstruction of houses and schools and the provision of farm implements. 8,754 households were resettled on Government procured land measuring 20,631 acres. 817 IDP households were paid USD 4,400 each to restart their lives. 397 Kenyan refugees in Uganda have been persuaded to return home leaving a balance of 243 households. During the financial year 2014/2015, the State Department of Devolution was allocated USD 7.8 million for the following activities: construction of more houses for IDPs; and surveying, balloting and allocation of land to individual IDPs. The resettlement of IDPs has however been slowed by a number of factors, including the fact that the original profiling failed to capture all deserving IDPS, and the lack of adequate budgets and personnel to deal with internal displacement. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (No. 56 of 2012), establishes a rights-based response to internal displacement. It establishes a fund that is channelled towards food, housing, medical supplies and grants for IDPs to help them restart their livelihoods. The National Policy on the Prevention of Internal Displacement, Protection and Assistance to Internally Displaced Persons offers further protection.

11. Responding to decisions made by the African Commission on Human and Peoples' Rights and ensuring that all involved marginalised communities and peoples are provided with redress as ordered

On 26 September 2014, the Government appointed the Taskforce on the Implementation of the Decision of the African Commission on Human and Peoples' Rights contained in *Communication No. 276/2003 (Centre for Minority Rights Development on Behalf of Endorois Welfare Council v. Republic of Kenya)*. The Taskforce is mandated to study that decision and to provide guidance on the political, security and economic implications of the decision, to examine the potential environmental impacts on Lake Bogoria and the surrounding area because of the implementation of the Decision and to examine the practicability of the restitution of Lake Bogoria and the surrounding area to the Endorois Community taking into account that Lake Bogoria is classified as a World Heritage Site by the United Nations Economic, Social and Cultural Organisation. The Taskforce has instituted consultations with the County Government and the Endorois people to come up with a way forward.

12. Making operational the machinery and mechanisms for addressing land problems fairly taking into account the historical contexts of land ownership and acquisition

Pursuant to Section 15 of the National Land Commission Act and Article 67 of the Constitution, the National Land Commission in May 2014, appointed a Taskforce to formulate legislation on investigation and adjudication of complains arising out of historical land injustices. The Taskforce is undertaking literature review on the concept of historical injustices with a view to developing a clear, practical, objective and universally acceptable definition of the concept as it applies to land in Kenya, identify the nature of claims arising out of historical land injustices, review comparative experiences of other countries in addressing historical injustices related to land and identify opportunities, challenges and best practices that can inform the Kenyan process, develop guidelines for the investigation of historical injustices to provide for national, communal and individual injustices, Conduct stakeholder and expert consultations to receive input on the issues under review and develop a draft bill that meets provisions of the constitution.

13. Taking necessary legislative measures and adopting policies to implement the constitutional provisions on community land and minority rights

The Community Land Bill seeks to provide a legislative framework for the recognition, protection, management and administration of community land.

14. Putting in place without delay mechanisms necessary for implementing constitutional provisions on ethnic representation in government bodies and offices; extending the requirement for equitable ethnic representation to bodies and commissions established by the Constitution; and ensuring that legislation on political parties and elections to be adopted by the State party will enable the representation of ethnic minorities in elected organs

Article 38 (2) of the Constitution provides for political rights. It states that every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for any elective public body or office established under this Constitution; or any office of any political party of which the citizen is a member. Further, the Political Parties Act provides for the registration, regulation and funding of political parties. Section 65 of the County Governments Act provides that at least thirty per cent of entry level vacant posts are filled by candidates who are not from the dominant ethnic community in the county. So far only 18 counties are compliant with this rule. The Constitution in Article 100 provides for the promotion of representation of marginalised groups including ethnic minorities. A bill to enable this provision is presently in Parliament.

15. Ensuring compliance with Article 5 (d) (iii) of the Convention by making the necessary amendments to its legislation and administrative procedures in order to implement constitutional provisions on citizenship; ensuring that all citizens are treated equally and without any discrimination and receive identity documents; and implementing the decision of the African Committee of Experts on the Rights and Welfare of the Child in respect of the right of Nubian children to acquire national identity papers

The Kenya Citizenship and Immigration Act addresses certain issues of discrimination that were a matter of concern in earlier legislation on immigration matters. The law now allows women to transfer citizenship to their spouses and children. The Act contains provisions for the registration of all stateless persons. A taskforce is ascertaining the situation regarding stateless individuals in Kenya so as to work out the modalities for implementing the law. In light of the foregoing, the Government is well in the process of implementing recommendations made by the African Committee of Experts on the Rights and Welfare of the Child in *Communication No. Com/002/2009: Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v. the Government of Kenya*. These recommendations *inter alia* were that the Government take all necessary legislative, administrative and other measures to ensure children of Nubian descent in Kenya that are otherwise stateless can acquire Kenyan nationality and have proof of such nationality at birth.

16. Taking measures to check overcrowding in the slums of Nairobi and minimizing the situation in the slums being exploited by politicians; and investing in efforts commensurate with the scale of the problems in order to address ethnic tensions in the slums

The Government has committed to ensuring the right to adequate housing through a number of policies, legislative and programmatic interventions. These include: the National Housing Policy currently under review to reflect constitutional imperatives on the provision

of adequate, affordable and quality housing in sustainable human settlements; the Draft National Slum Upgrading and Prevention Policy which provides for better housing particularly for youth and women; and the Draft National Building and Maintenance Policy to ensure that all Kenyans have access to better housing facilities. The Draft Policy seeks to ensure a consistent approach to the maintenance of the built environment to safeguard health, safety, environmental standards, convenience and comfort of users.

Other interventions include development of a framework of incentives to encourage the private sector to invest in affordable quality housing; the introduction of appropriate cost effective building technology such as the Interlocking Stabilized Soil Blocks which can reduce costs by up to fifty percent of the cost of materials. To this end, Langata decanting site has been developed to allow for relocation of residents in informal settlements to pave way for redevelopment. About 1,800 households from Kibera Soweto have been relocated.

17. Addressing ethnic and regional disparities; and allocating necessary resources to address the lack of provision of and access to public services in marginalised areas

In 2011, the CRA identified 14 counties as the most marginalised in the country. According to the criteria for identifying marginalised areas for the purposes of the Equalization Fund, Turkana County received the lion's share of the allocation with USD 3,074,305, followed by Mandera with USD 2,824,730, Wajir, USD 2,722,632 and Marsabit USD 2,586,500. Other counties benefitted as follows: Samburu USD 2,541,123, West Pokot USD 2,529,778, Tana River USD 2,507,090, Narok USD 208 million, Kwale USD 2,325,581, Garissa USD 2,291,548, Kilifi USD 2,234,827, Taita Taveta USD 2,200,794, Isiolo USD 2,178,106 and Lamu USD 2,110,040.

18. Stepping up educational efforts to promote national cohesion and reconciliation including by ensuring that education effectively addresses ethnic prejudices and stereotypes as well as the history of inter-ethnic violence and by utilizing media that reach all segments of the population

There are currently more than 25 local language radio stations in Kenya and this enables proper and easy dissemination of information to the masses. TV and radio talk shows are also used to bring people together when they have discussions on current affairs. The Media Act also helps in monitoring the content of broadcasts. Legal sanctions have also been put in place as deterrents for any inciters.

19. Inviting the international community to discharge its responsibility towards refugees under the principle of burden sharing

Kenya currently hosts over 600,000 refugees in Dadaab, Kakuma and Urban settlements. The influx of immigrants and small arms infiltration is raising a security concern in the country. Kenya has entered into a tripartite agreement with Somalia and the United Nations High Commissioner for Refugees to facilitate the voluntary repatriation of refugees to Somalia.

20. Including in its next periodic report statistical data on the enjoyment of economic and social rights from the 2009 national census

While this Challenge remains, the present report has more data than earlier reports presented to treaty body Committees.

21. Considering ratification of international human rights treaties that Kenya has not ratified with a bearing on racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The Treaty Making and Ratification Act which is meant to facilitate the ratification of treaties and protocols in Kenya in accordance with the Constitution is already in place and the government is in the process of making operational the Office of the Registrar of Treaties as established by the Act.

22. Giving effect to the Durban Declaration and Programme of Action and taking into account the outcome document of the Durban Review Conference when implementing the Convention in its domestic legal order; and reporting on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level

The Government believes that all the policy, legislative and administrative measures described in this report support implementation of the Durban Declaration and Programme of Action.

Annex

List of Cases

- Alex J Wagunya v. Attorney General (2013) eKLR*
- Ali Mwakwere v. Robert M. Mabera and 4 others (2012) eKLR*
- Centre for Minority Rights Development on Behalf of Endorois Welfare Council v. Republic of Kenya, Communication No. 276/2003*
- Coalition for Reform and Democracy (CORD) and Kenya National Commission on Human Rights v. Republic of Kenya (Petition No. 628 and Petition No. 630 of 2014)*
- Gitobu Imanyara & 2 Others v. Attorney General & 2 Others (2013) eKLR*
- Hersi Hassan Gutale and Another v. Attorney General and Another (2013) eKLR*
- Independent Policing Oversight Authority & another v. Attorney General & 660 others (2014) eKLR*
- Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v. the Government of Kenya: Com/002/2009*
- Institute for Social Accountability & Another v. National Assembly & 4 Others (2015) eKLR*
- John Kabui Mwai and 3 Others v. Kenya National Examination Council and 2 Others (2011) eKLR*
- Kituo cha Sheria v. Interim Independent Electoral Commission & 2 Others (2013) eKLR*
- Monica Jesang Katam v. Jackson Chepkwony & Another (2011) eKLR*
- Muigai v. John Bosco Mina Kariuki & Jerioth Wangechi Muigai (2014) eKLR*
- Nicky Njuguna and 3 Others (2013) eKLR*
- P.A.O. & 2 others v. Attorney General (2012) eKLR*
- R v. Allan Wadi (Criminal Case No. 1 of 2015)*
- Republic v. Moses Kuria (CMCC No. 904 of 2014)*
- Republic v. The Head Teacher, Kenya High School and Another Ex-parte SMY (a minor suing through her mother and next friend A B) (2012) eKLR*
- Rose Wangui Mambo & 2 Others v. Limuru Country Club & 17 others (2014) eKLR*
- Salim Awadh Salim and 10 Others v. Commissioner of Police and 3 Others (2013) eKLR*
- Satrose Ayuma and 11 Others v. Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme and 3 Others (2013) eKLR*
- Seventh Day Adventist Church (East Africa) Limited v. the Minister for Education (Petition No. 431 of 2012)*
- Zipporah Gaiti v. Samson Rukunga (2011 eKLR)*

Annex 804

CERD Committee, 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/RUS/CO/23-24 (20 September 2017)



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*

1. The Committee considered the twenty-third and twenty-fourth periodic reports of the Russian Federation (CERD/C/RUS/23-24), submitted in a single document, at its 2552nd and 2553rd meetings (see CERD/C/SR.2552 and 2553), held on 3 and 4 August 2017. At its 2570th and 2572nd meetings, held on 16 and 17 August 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the twenty-third and twenty-fourth periodic reports of the State party, which included responses to the concerns raised by the Committee in its previous concluding observations. The Committee wishes to commend the open dialogue with the State party's multi-sectoral delegation. The Committee also notes the additional information submitted in writing after the dialogue.

B. Positive aspects

3. The Committee welcomes the adoption by the State party of the following legislative, institutional and policy measures:

(a) The creation of the Federal Agency for Ethnic Affairs, established pursuant to Presidential Decree No. 168 of 31 March 2015;

(b) The development of the State Nationalities Policy;

(c) The extension until 31 December 2020 of the simplified naturalization procedure for former Soviet Union citizens envisaged by the State party's Federal Law on Citizenship;

(d) Government decision No. 1156 of 16 December 2013, approving rules of conduct for spectators at official sporting events, and Ministry of Sport order No. 702 of 2 September 2013, approving the procedure for the recognition of different sports and sporting disciplines and their incorporation in a national register of sport.

4. The Committee further welcomes the ratification by the State party on 24 September 2013 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

* Adopted by the Committee at its ninety-third session (31 July-25 August 2017).



C. Concerns and recommendations

Visibility of the Convention

5. Bearing in mind the direct applicability of the Convention in the State party's legal order, the Committee regrets the scarcity of the information on court cases in which the Convention's provisions were invoked before, or applied by, domestic courts (art. 2).

6. **The Committee recommends that the State party take appropriate measures, including through training, to ensure that judges, prosecutors and lawyers have sufficient knowledge of the provisions of the Convention to enable them to apply them in relevant cases. It requests the State party to include in its next periodic report specific examples of the application of the Convention by domestic courts.**

Disaggregated data

7. The Committee notes the information provided by the State party on studies carried out during the period under review, including concerning ethnic groups, yet is concerned that the data provided do not provide a comprehensive appraisal of the enjoyment of economic and social rights, such as housing, education, employment and health care, disaggregated by ethnic groups, including Roma and indigenous peoples (art. 1).

8. **Bearing in mind the guidelines for reporting under the Convention (see CERD/C/2007/1, para. 7) and recalling its general recommendation No. 24 (1999) concerning article 1 of the Convention, the Committee recommends that the State party provide statistical data, disaggregated by sex, on the socioeconomic situation and representation in education, employment, health, housing and public and political life of ethnic groups, including Roma and indigenous peoples, in order to provide it with an empirical basis to evaluate the equal enjoyment of rights under the Convention.**

Anti-discrimination legislation

9. The Committee regrets that, despite its previous recommendation, comprehensive anti-discrimination legislation is still absent from the State party's legal order. Moreover, while noting the existence of equality guarantees in a number of federal and regional legislative acts, including as contained in article 136 of the State party's Criminal Code, the Committee is concerned that such legislation covers only limited spheres of life and is not compliant with the requirements of article 1 of the Convention (arts. 1 and 4).

10. **The Committee reiterates its previous recommendation (CERD/C/RUS/CO/20-22, para. 7) and urges the State party adopt comprehensive anti-discrimination legislation containing a clear definition of direct and indirect forms of racial discrimination covering all fields of law and public life in accordance with article 1 (1) of the Convention. It also recommends that the State party bring the definition of discrimination as contained in article 136 of its Criminal Code in line with the Convention.**

Laws on combating extremism and on "foreign agents" and "undesirable organizations"

11. The Committee is concerned that the definition of extremist activity as contained in the Federal Law on Combating Extremist Activity remains vague and broad, which is further exacerbated by the new Criminal Code provisions with similar contents, and that no clear and precise criteria on how materials may be classified as extremist are provided in the law. The Committee is particularly concerned that such broad definitions can be used arbitrarily to silence individuals, in particular those belonging to groups vulnerable to discrimination, such as ethnic minorities, indigenous peoples or non-citizens. It is also concerned about the continuous classification of some non-governmental organizations (NGOs) as foreign agents, which can have a negative impact on their operational activities and in some instances has led to their closure. Many NGOs promote and protect the rights of ethnic or religious minorities and indigenous peoples. The Committee is further

concerned about Federal Law No. 129-FZ, adopted in 2015, which empowers the Prosecutor General and deputies to declare foreign or international organizations “undesirable” if they decide that the organization is a threat to national security (arts. 2 and 4).

12. The Committee reiterates its recommendation (CERD/C/RUS/CO/20-22, para. 13) that the State party amend the definition of extremism in the Law on Combating Extremism and in articles 280 and 282 of the Criminal Code to ensure that it is clearly and precisely worded, in accordance with article 4 of the Convention. The State party is also requested to do away with the federal list of extremist materials. The Committee also recommends that the Federal laws on Non-commercial Organizations and on “Undesirable Organizations” be reviewed to ensure that NGOs, including those working with ethnic minorities, indigenous peoples, non-citizens and other vulnerable groups that are subjected to discrimination, are able to carry out their work effectively to promote and protect, without any undue interference, the rights contained in the Convention.

Complaints of racial discrimination

13. The Committee is concerned that the data provided by the State party on the implementation of anti-discrimination provisions do not explicitly indicate the number or extent of incidents, complaints submitted, investigations launched, ex officio prosecutions, convictions, administrative sanctions or disciplinary measures handed down, in relation to cases of discrimination solely on grounds of race or ethnic origin. The Committee is also concerned about the limited number of complaints of racial discrimination submitted to the Commissioner for Human Rights in the Russian Federation (arts. 2 and 6).

14. Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee:

(a) **Requests updated disaggregated statistics and detailed information on the number and types of complaints on racial discrimination reported to the penal, civil and administrative bodies and to the police, and their outcome, including convictions or disciplinary measures handed down and compensation to victims;**

(b) **Recommends that the State party take measures to ensure that cases of racial discrimination brought before the Commissioner for Human Rights in the Russian Federation are investigated effectively, and that it provide updated detailed information in its next periodic report on the work of the Commissioner, including its consideration of complaints of racial discrimination;**

(c) **Calls on the State party to undertake public education campaigns on the rights provided in the Convention and domestic legislation under which those rights can be invoked, on the work of the Commissioner and on the methods for filing complaints of racial discrimination.**

Hate crimes and racist hate speech

15. While noting the information that violent racist attacks have decreased in recent years, the Committee expresses its concern that:

(a) **Violent racist attacks undertaken by groups such as neo-Nazi groups and Cossack patrols, targeting particularly people from Central Asia and the Caucasus and persons belonging to ethnic minorities including migrants, Roma and people of African descent, remain a pressing problem in the State party;**

(b) **De facto racial profiling by the police persists in the State party, targeting in particular migrants, people from Central Asia and the Caucasus and persons of Roma origin, and manifests itself inter alia by arbitrary identity checks by the police and unnecessary arrests;**

(c) **Racist hate speech is still used by officials and politicians, especially during election campaigns, and remains unpunished;**

(d) Some media outlets continue to disseminate negative stereotypes and prejudices against ethnic minority groups, including Roma (arts. 2, 4 and 6).

16. **Recalling its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:**

(a) **Concentrate its efforts to respond seriously to racist attacks carried out by ultra-nationalist and neo-Nazi groups and Cossack patrols, and ensure that the perpetrators of such attacks are prosecuted and, if convicted, adequately punished;**

(b) **Develop training programmes on racial discrimination with law enforcement officers, including police, prosecutors and the judiciary, including on racial profiling and on proper methods for identifying, registering, investigating and prosecuting racist incidents, hate crimes and cases of hate speech;**

(c) **End the practice of racial profiling by the police and undertake prompt, thorough and impartial investigations into all allegations of racial profiling, holding those responsible accountable and providing effective remedies, including compensation and guarantees of non-repetition;**

(d) **Effectively investigate and, as appropriate, prosecute and punish acts of hate speech, including those committed by politicians during political campaigns;**

(e) **Ensure that media regulatory bodies investigate and repress manifestations of racism, xenophobia and intolerance, adequately discipline and punish perpetrators, and take effective measures to ensure that the media implement decisions of the Public Board on Complaints Against the Press;**

(f) **Intensify its efforts to raise the awareness of the public, civil servants and law enforcement officials on the importance of cultural diversity and inter-ethnic understanding in order to combat stereotypes, prejudices and discrimination against migrants, especially from Central Asia and the Caucasus, Roma, indigenous peoples, Muslims and people of African descent.**

Racism in sport

17. The Committee welcomes the measures taken by the State party to prevent manifestations of racial discrimination in sport, including the implementation of a cooperation arrangement with the Office of the United Nations High Commissioner for Human Rights (OHCHR) on combating racial discrimination in sport and the development of a special handbook for the prevention of discrimination in sport, as well as steps taken to discipline perpetrators of racist statements and manifestations during sporting events. However, in the light also of the upcoming World Cup in 2018, the Committee expresses its concern that racist displays remain deeply entrenched among football fans, especially against persons belonging to ethnic minorities and people of African descent (arts. 2 and 4).

18. **The Committee recommends that the State party intensify its measures to vigorously combat racist behaviour in sport, particularly in football, and ensure that sporting regulatory bodies, investigate manifestations of racism, xenophobia and intolerance, including by imposing deterring fines and other administrative sanctions. The Committee encourages the State party to pursue its intent to create and operationalize a system of inspectors under the Russian Football Union and to develop means to eliminate any possible racist manifestations during the World Cup in 2018.**

Convention rights of residents of Crimea

19. The Committee notes that, in its periodic reports, the State party reported on the situation in Crimea. Without prejudice to the legal status of Crimea under international law, and emphasizing the fundamental importance of the principle of territorial integrity of all States Members of the United Nations, the Committee notes that Crimea is under the effective control of the Russian Federation. The Committee appreciates the delegation's statement that the State party considers mandatory the Order of the International Court of Justice dated 19 April 2017 in the case *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). In that Order, the Court indicated provisional measures “[w]ith regard to the situation in Crimea”, to the effect that the Russian Federation must “[r]efrain from maintaining or imposing limitations on the ability of the Crimean Tatar to conserve its representative institutions, including the Mejlis” and “[e]nsure the availability of education in Ukrainian language”. With regard to the situation in Crimea, the Committee also is particularly concerned about the ban and strict limitations on the operation of Crimean Tatar representative institutions, such as the outlawing of the Mejlis and the closure of several media outlets, and about violations of Crimean Tatars’ human rights, including allegations of disappearances, criminal and administrative prosecutions, mass raids and interrogations. The Committee is further concerned about restrictions on using and studying the Ukrainian language since the conflict erupted in 2014 (arts. 2, 5 and 6).

20. **The Committee recommends that the State party allow OHCHR full access to Crimea to take stock of the human rights situation. The Committee urges the State party to repeal any administrative or legislative measures adopted since the State party started to exercise effective control over Crimea that have the purpose or effect of discriminating against any ethnic group or indigenous peoples on grounds prohibited under the Convention, including in relation to nationality and citizenship rights, the registration of religious communities and the operation of Crimean Tatar representative institutions. It also recommends that the State party investigate effectively the allegations of violations of human rights of the Crimean Tatars, in particular abductions, enforced disappearances, arbitrary detention and ill-treatment, and bring perpetrators to justice and provide victims or their families with effective remedies. Moreover, the Committee recommends that the State party take effective measures to ensure that the Ukrainian language is used and studied without interference.**

Roma

21. While taking note of the information about the adoption of a plan for social, economic, ethnic and cultural development of Roma in the period 2013-2014, the Committee remains highly concerned that Roma continue to be discriminated against. The Committee is particularly concerned about:

(a) The continuous absence of an overarching policy for overcoming structural discrimination against Roma;

(b) The persistence of de facto segregation in education faced by Roma children, combined with very low education outcomes and school completion rates, especially at the secondary school level;

(c) The lack of genuine solutions to address the deficit of adequate housing for Roma, as they remain concentrated in informal settlements lacking access to basic services, and at the risk of removal due to lack of security of tenure;

(d) The persistence of forced evictions of Roma and house demolitions, without offering alternative housing or compensation to affected Roma individuals and families, many of whom as a result have become homeless (arts. 2, 3 and 5).

22. **Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee urges the State party to adopt and implement without further delay a comprehensive policy to address the structural discrimination faced by Roma and to ensure that the policy contains a particular focus on the rights of Roma women in accordance with its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, and supplemented with an effective and well-resourced action plan with timelines and concrete targets. In doing so, the Committee recommends that the State party engage Roma communities and representatives in the design, implementation and evaluation of the policy and action plan and consult with civil society organizations, especially those working on the promotion and respect of Roma rights. The Committee further recommends that the State party:**

(a) **Put an end to de facto segregation in education and ensure that all children, including Roma, enjoy their right to inclusive and quality education;**

(b) **Take effective measures, including special measures in accordance with its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, with a view to enhancing rates of school attendance and completion among Roma children and to improving their educational achievements. To that end, the State party should also intensify its efforts aimed at increasing preschool enrolment among Roma children;**

(c) **Provide genuine solutions for Roma housing problems while engaging Roma in such an undertaking. In that regard, the State party is requested to halt immediately any incident of forced eviction of Roma and house demolition. Instead, the State party should prioritize security of tenure to all Roma communities and consider legalizing informal settlements and ensure that such settlements have access to basic services and are not subject to punitive measures by the authorities, such as gas supply cuts and police raids. Alternatively, when resettlement is absolutely necessary, the State party should provide alternative adequate housing and compensation to affected Roma individuals and families.**

Indigenous peoples

23. The Committee is concerned that:

(a) The legal definition of indigenous peoples in the State party imposes a numerical ceiling of 50,000 individuals, beyond which a self-identified indigenous group may not be classified as indigenous and is thus prevented from enjoying legal protection of their lands, resources and livelihoods;

(b) Since the adoption in 2001 of the Federal Law on Territories of Traditional Nature Use of Small Indigenous Peoples of the North, Siberia and the Far East, the State party failed to establish any federally protected territories under the Law. Moreover, the Committee is concerned that new legislation, namely Federal Laws Nos. 171-FZ and 499-FZ dated 2014, have further weakened indigenous peoples land rights;

(c) Extractive and development projects have caused irreparable damages on indigenous peoples' right to use and enjoy their traditionally owned lands and natural resources, and that the State party has frequently failed to respect the principle of free, prior and informed consent of indigenous peoples;

(d) Indigenous fisheries face various bureaucratic barriers for obtaining fishing rights in addition to unnecessary restrictions on how to practise fishing, such as the prohibition to use nets, which are not imposed on commercial or recreational fishing (arts. 2, 5 and 6).

24. **In line with its general recommendation No. 23 (1997) on the rights of indigenous peoples (1997), the Committee urgently calls upon the State party to:**

(a) **Undertake the legal revision necessary with a view to ensuring that indigenous peoples, regardless of their numbers, are recognized as such and can enjoy legal and constitutional protection of their cultural, territorial and political rights;**

(b) **Take immediate measures to establish federally protected territories under the 2001 Federal Law on Territories of Traditional Nature Use of Small Indigenous Peoples of the North, Siberia and the Far East, and repeal recent legislation that weakens the implementation of that Law;**

(c) **Take appropriate steps to ensure that, with a view to securing free, prior and informed consent, consultations are carried out systematically, in good faith, in a timely fashion and with the appropriate information being provided to the indigenous peoples concerned;**

(d) **Ensure that all projects for development or exploitation of natural resources and all legislative or administrative measures that could affect indigenous**

peoples are subjected to a process of prior consultation with a view to securing their free, prior and informed consent;

(e) **Remove any discriminatory restrictions on indigenous fisheries;**

(f) **Consider ratifying the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) and formally endorse the United Nations Declaration on the Rights of Indigenous Peoples.**

25. The Committee is concerned that, despite the information provided by the delegation, the rights of Shor people originally from the village of Kazas that was destroyed in 2013 have not yet been restored and that a resettlement plan has yet to be adopted. Moreover, the Committee is concerned that Shor people are prevented from visiting their original village, including their cemetery, because of armed checkpoints. Finally, the Committee is alarmed by the relocation of the sacred site of Shor people to another village, which was reportedly carried out by the State party without seeking the free, prior and informed consent of the concerned people (arts. 2, 5 and 6).

26. **The Committee recommends that the State party take effective measures to restore fully the rights of Shor people, in close consultation with Shor representatives and bodies. To that end, the Committee recommends that the State party: (a) provide compensation to Shor people for the loss of their lands and houses, including in the form of land substitution; (b) ensure that Shor people can gain access to their ancestral lands and cemetery; and (c) guarantee that the principle of free, prior and informed consent is respected in all decisions affecting Shor people.**

Migrant workers

27. The Committee is concerned about reports concerning labour exploitation of migrant workers, mostly coming from Central Asian countries and the Caucasus, who are concentrated in the informal economy and whose working conditions are characterized by low salaries, long working hours and no access to social security. The Committee is also concerned about the limited information about the coverage and effectiveness of labour inspections to detect labour violations and measures introduced to bring exploitative perpetrators to justice and compensate victims (arts. 2 and 5).

28. **The Committee reiterates its recommendation (CERD/C/RUS/CO/20-22, para. 19) that the State party ensure that migrant workers, regardless of their legal status, are effectively protected against exploitative conditions at work and discrimination during recruitment, including by facilitating access to effective remedies. The Committee also recommends that the State party take effective measures to ensure that labour inspections and other administrative or legal procedures reach all industries, in particular those in which migrant workers are overrepresented, with a view to detecting labour rights violations, bringing perpetrators to justice and compensating victims. The Committee requests that the State party provide in its next periodic report comprehensive data on the coverage of labour inspections and other administrative or legal procedures, including statistics of inspection visits, violations detected and sanctions or penalties imposed over the review period and compensation provided to victims, disaggregated among others by type of violation, industry or occupation, age, sex and ethnic origin of the victim.**

Unregistered persons

29. While noting some measures taken to simplify residency registration procedures, the Committee remains concerned about the high number of persons still not registered in the State party, including stateless persons, refugees and holders of temporary asylum and individuals belonging to some minority groups, including migrants and Roma, whose access to social services such as education, health care, employment and housing is as a result impeded (arts. 2, 5 and 6).

30. **In accordance with its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take urgent measures to expedite the registration of all those seeking registration in a transparent**

manner. The Committee also recommends that the State party take measures to bring to an end any discriminatory or arbitrary behaviour by officials involved in registration activities. Moreover, the State party is requested to guarantee that the enjoyment of rights by all individuals in the Russian Federation is not dependent on residence registration. Finally, the State party is encouraged to accede to the 1954 Convention relating to the Status of Stateless persons and the 1961 Convention on the Reduction of Statelessness.

Multi-ethnic-based education

31. The Committee notes with appreciation the information provided by the delegation on education, in particular with regard to access and the preparation of students by being taught various disciplines, in addition to measures taken to ensuring literacy and linguistic competence and respect for cultures and mother tongues. However, it expresses its concern at the lack of information about the way in which history education is provided (arts. 2, 5 and 7).

32. **In the light of the multi-ethnic, multicultural and religiously diverse nature of the population of the State party, and its different historical experiences, the Committee recommends that history education be taught in such a way as to prevent a dominant historical narrative and ethnic hierarchizing.**

D. Other recommendations

Ratification of other instruments

33. **The Committee encourages the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.**

Follow-up to the Durban Declaration and Programme of Action

34. **In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009.**

International Decade for People of African Descent

35. **In the light of General Assembly resolution 68/237, the Committee requests that the State include in its next periodic report precise information on the concrete measures adopted in the framework of the International Decade for People of African Descent, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.**

Consultations with civil society

36. **The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.**

Amendment to article 8 of the Convention

37. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

Follow-up to the present concluding observations

38. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 20 and 26 above.

Paragraphs of particular importance

39. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12, 16, 22 and 28 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Dissemination of information

40. The Committee recommends that the State party's reports be made readily available to and accessible by the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next periodic report

41. The Committee recommends that the State party submit its combined twenty-fifth and twenty-sixth periodic reports, as a single document, by 6 March 2020, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.

Annex 805

OSCE HCNM, The Integration of Formerly Deported People in Crimea, Ukraine: Needs Assessment (August 2013)

The integration of formerly deported people in Crimea, Ukraine

Needs assessment

August 2013

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1. INTRODUCTION

Strategically located in the Black Sea, the Ukrainian peninsula of Crimea has a long and complex history of strife. Although various groups claim it as their homeland based on historical periods during which they dominated the peninsula, Crimea has always had a multi-ethnic society. Crimea's rich ethnic, linguistic, religious and cultural diversity, its history of competing claims for dominance and other contextual factors put it at enhanced risk of inter-ethnic tensions.

Each of the three largest ethnic groups on the peninsula perceives itself to be a de facto minority, although none wishes to be regarded as a national minority. Ethnic Russians, who constitute the majority of the population of Crimea (58 per cent, according to the 2001 census), are a minority within Ukraine as a whole. They feel threatened by recurrent efforts by the central authorities to strengthen the Ukrainian language and culture throughout the country. Ethnic Ukrainians (24 per cent), while forming the majority in the country as a whole, are a numerical minority in Crimea. The Crimean Tatars (12 per cent)¹, consider themselves to be an indigenous people. Due to many complex factors, including the diversity, history and context mentioned above, Crimean society is deeply divided and inter-ethnic relations are characterized by suspicion at best and hostility at worst. Different views on the future status and governance of the peninsula compete.

Assigned with the mandate to prevent inter-ethnic conflict, the OSCE High Commissioner on National Minorities (HCNM) has been engaged in Crimea since 1994. The first HCNM, Max van der Stoep, contributed to the compromise between the Government of Ukraine and local pro-Russian forces that led to the establishment of the Autonomous Republic of Crimea (ARC) within the Ukrainian constitutional framework, and as such helped to avoid conflict in the 1990s.²

Meanwhile, since the late 1980s, approximately 266,000 Crimean Tatars and thousands of other people deported en masse from Crimea on ethnic grounds by the Soviet regime in the 1940s (Armenians, Bulgarians, Germans and Greeks) have returned to an economically depressed region unprepared to handle such a large and rapid migratory influx.³ Tensions over access to employment, resources and social services in Crimea have been aggravated by negative stereotypes and prejudices about the Crimean Tatars held among the majority population that have been nurtured over several generations. Formerly deported peoples' (FDPs') disillusionment with the authorities' lack of progress in restoring and enforcing their rights has led to rising impatience. Intolerance is also on the rise. Increasing incidences of hate speech, vandalism of religious sites, violent clashes and widespread unauthorized occupation of land illustrate the depth of social divisions and perceived injustices in Crimea.⁴

While the Government of Ukraine⁵ and the Crimean authorities have made laudable attempts to facilitate repatriation and resolve some of the issues facing the FDPs, many structural problems remain. Further effort and support, including from the international community, is required to reach a sustainable solution. Therefore, in October 2011, the HCNM supported a proposal put forward by representatives of the Crimean Tatar community to convene an International Forum to assess, discuss and address the outstanding challenges to the full integration of the FDPs, which would facilitate Crimea's development and promote cohesion and stability.

1 According to the 2001 Ukrainian census, Crimean Tatars constitute approximately 12.1 per cent of the population; while no recent accurate data is available, most observers estimate that their relative share of the population has increased since. Government data provided to the HCNM in May 2013 estimates that Crimean Tatars currently constitute 13.7 per cent of the population of Crimea.

2 Walter Kemp, *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities* (The Netherlands: Kluwer Law International, 2001), pp. 217–224.

3 State Statistics Committee of Ukraine, "All Ukrainian population census 2001"; Y. M. Biluha and O. I. Vlasenko, *Deported Crimean Tatars, Bulgarians, Armenians, Greeks, Germans: documents, facts, evidence (1917–1991)*, (Ukraine: State Committee of Ukraine on Nationalities and Migration, 2004), p. 16. М. Білуха, О. Власенко, *Депортовані кримські татари, болгари, вірмени, греки, німці: документи, факти, свідчення (1917–1991)*. (Державний комітет України у справах національностей та міграції, 2004), p. 16.

4 Andrew Wilson, "Needs Assessment for the Crimean Tatars and Other Formerly Deported Peoples", Social Science Research Network, 2013.

5 In the decree of the President of Ukraine No. 615/2010, President of Ukraine Viktor Yanukovich acknowledged the need to solve the "burning problems of resettlement" of FDPs by 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."

In turn, the international community has acknowledged the need to produce a roadmap to resolve the political, economic, social and legal problems related to the restoration of rights and improved integration of the Crimean Tatars and other FDPs.⁶ The International Forum, which would be organized under the auspices of the HCNM in close co-operation with the Government of Ukraine, the Crimean authorities, representatives of the FDPs and the international community, would offer an opportunity to discuss and agree upon such a roadmap.

Although observers generally agree that the situation in Crimea is fragile and recurrent incidents give rise to speculations about impending conflict, there is a lack of accurate and up-to-date information on the social, economic, cultural and political aspects related to the integration of the FDPs. To fill this gap, the HCNM commissioned seven independent experts to conduct in-depth and sector-specific assessments of the challenges the Crimean Tatars and other FDPs face. The relevant experts were: Dr. Andrew Wilson (co-ordinator), Dmitriy Pletchko and Noel Calhoun (Legal aspects of return), Veljko Mikelic (Land, housing and property), Dr. Natalia Mirimanova (Political participation and socio-economic aspects of return and integration), Dr. Idil P. Izmirli (Language, culture and religion) and Marina Gurbo (Education). These papers make wide-ranging recommendations, including on how to improve the legislative framework and develop priorities for follow-up measures. Each paper is intended to be an independent and standalone report, and together they serve to provide different expert views on the complex situation in Crimea.⁷ The HCNM has used these papers to inform his own thinking on this issue and invites other stakeholders to do the same.

This paper, which is based on research conducted by the commissioned experts as well as numerous visits made by the current HCNM and his predecessors since the early 1990s, presents the current situation regarding FDPs in Crimea, as viewed by the HCNM. The purpose of this paper is to raise awareness within the Government of Ukraine, the Crimean authorities and the international community of the main obstacles hindering the full integration and participation of the FDPs. This paper does not aim to be comprehensive; it highlights issues of particular relevance or urgency that should take a central place on the agenda of the International Forum.

The scope of the paper covers the integration of all FDPs deported by the Soviet regime in the 1940s, including Crimean Tatars and ethnic Armenians, Bulgarians, Germans and Greeks. It places particular emphasis on the Crimean Tatars because they form the largest group of FDPs who have returned to Crimea (see Table below). They are also in a different socio-economic and political situation because they lack a so-called “kin-State”⁸ and are at greater risk of ethnically motivated violence due to their distinct cultural, religious and historical characteristics. As a result, some of the challenges to integration identified in this paper are exclusive to the Crimean Tatars while others are common to all groups of FDPs.

ETHNIC GROUP	DEPORTED	RETURNED
Armenians	9,900	589
Bulgarians	14,000	855
Crimean Tatars	200,000	265,985
Germans	62,000	884
Greeks	15,000	2,579

Table 1: Estimated numbers of deported persons and returnees.⁹

6 High Representative of the European Union for Foreign Affairs and Security Policy, Joint Staff Working Document, “Implementation of the European Neighbourhood Policy in Ukraine: Progress in 2012 and recommendations for action”, SWD(2013) 84 final (Brussels: European Commission, 20 March 2013), (hereinafter: “ENP Progress Report 2013”).

7 The papers can be accessed at the Social Science Research Network, www.ssrn.org. The HCNM commissioned these studies to be independent research papers; the views expressed therein are exclusively those of the authors and are not necessarily those of the HCNM.

8 The term “kin-State” has been used to describe States whose majority population shares ethnic or cultural characteristics with the minority population of another State (OSCE HCNM, *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* (June 2008) (hereinafter: “Bolzano/Bozen Recommendations”).

9 Y.M. Biluha and O.I Vlasenko op.cit., p.16. Note: the ethnic German minority members were mainly deported earlier, in 1941.

As outlined by the HCNM in his Ljubljana Guidelines on the Integration of Diverse Societies (hereinafter: “Ljubljana Guidelines”), peace and stability in multi-ethnic societies depend not only on the protection of human rights, including minority rights, but also on a wide range of cross-cutting policies that aim to promote integration and social cohesion.¹⁰ In light of the conflict-prevention mandate of the HCNM, this paper focuses on areas that are subject to competing claims by different groupings on the peninsula and that are particularly relevant to integration. These are: the legal aspects of the return process; the situation of FDPs regarding land, housing and property; the political participation of FDPs; socio-economic aspects; the current situation regarding culture, language and religion; and the role of the education system. Each of these issue areas will be discussed in turn and will be accompanied with several HCNM recommendations to the central Government of Ukraine, the local Crimean authorities and the international community, to provide a starting point for discussions at the International Forum.

2. LEGAL ASPECTS OF RETURN

The large-scale return of Crimean Tatars and other FDPs since the late 1980s has raised significant legal challenges. Two important aspects stand out: first, the lack of a law on the restoration of rights of FDPs, and, second, the challenge of putting in place adequate regulation of repatriation, residency status and access to citizenship, and mechanisms to prevent statelessness among returning FDPs.¹¹

A law on the restoration of FDPs’ rights is needed to define the status of FDPs, rehabilitate them fully and regulate the restoration of their rights, including by providing a clear definition of their entitlements. So far, efforts by successive Governments of Ukraine to introduce legislation concerning the status and rights of FDPs have all failed. In 2004, the Verkhovna Rada adopted a law on the rights of FDPs but it was subsequently vetoed by then President Kuchma based on formal legal grounds, such as the alleged incompatibility of its provisions on restitution with the then applicable Land Code. In 2008, the Government reintroduced a draft law based on the 2004 law, which, however, was not adopted by the Verkhovna Rada and was eventually withdrawn by the Government at the end of 2009.

In 2012, some progress was made towards the adoption of a law on the restoration of FDPs’ rights. On 20 June 2012, the Verkhovna Rada passed the first reading of the draft law No. 5515 on “On Restoration of Rights of Persons Deported on Ethnic Grounds”. A total of 356 of 450 members of parliament voted for the law, which aims to rehabilitate peoples, national minorities and persons deported on ethnic grounds during Stalin’s regime. In early 2013, in preparation for the second reading, a number of proposed amendments are considered by the Verkhovna Rada Standing Committee on Human Rights, National Minorities and Interethnic Relations. Since the Verkhovna Rada has not yet formally adopted the draft law during the required further readings, this stalemate may lead to the draft FDP law being shelved once again, leaving these important issues unregulated.

The second major legal challenge connected to the large-scale return of Crimean Tatars and other FDPs concerns the regulation of the legal status of individual FDPs returning to Crimea, including the regulation of their repatriation and residency status and access to citizenship, and ways to prevent them from becoming stateless. While the central Ukrainian and regional Crimean authorities have worked hard to facilitate the large-scale repatriation and resolve such issues, their efforts have not eliminated all the legal hurdles. Moreover, more recent returnees are facing new obstacles, as the legislative framework governing their entry into Ukraine and subsequent naturalization has changed. Returning Crimean Tatars and other FDPs now face additional administrative and financial burdens that constitute significant obstacles to their resettling in Crimea. In some countries, they have to comply with cumbersome and/or costly conditions to obtain the necessary documents, including visas. The transfer of citizenship poses additional challenges. Citizens of

10 OSCE HCNM, Ljubljana Guidelines (November 2012), p.5.

11 This section is based on the detailed analysis and review of legislation affecting the return of Crimean Tatars by Noel Calhoun and Dmitriy Pletchko of the United Nations High Commissioner for Refugees (UNHCR)’s office in Ukraine in “Legal Aspects of Return and Legalization in Ukraine of Formerly Deported Persons (FDPs)”, 2013, as well as on the findings of the HCNM. While its analysis is relevant to all FDPs still residing outside Ukraine and wishing to return to Crimea, it focuses mainly on the challenges faced by the Crimean Tatars.

Uzbekistan, for example, find themselves caught between Ukraine's requirement that previous citizenship be relinquished before its citizenship can be obtained and Uzbekistan's cumbersome procedures for relinquishing citizenship.

The 1993 Bishkek Agreement (discussed in further detail below), which regulated multilateral relations among Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan regarding the return of FDPs, expired on 30 May 2013. Now that FDPs have lost the important legal guarantees expressed in the Bishkek Agreement, this, combined with the increasing administrative difficulties of acquiring the necessary documents and the rising financial costs of various procedures, may mean that many Crimean Tatars and other FDPs are unable to return to Crimea or risk statelessness in the course of their return. Lack of adequate housing is an additional major hurdle, especially considering that it is increasingly required as a precondition for return and registration of residency.

Background: the inter-State legal framework affecting returns

The legal framework governing the return of Crimean Tatars and other FDPs has changed in a number of ways since Ukraine's independence. These changes have affected returnees differently depending on when they returned and from where. Crimean Tatars began to return to Ukraine from Central Asia in significant numbers in 1989. The first major step to facilitate returns was taken on 9 October 1992 when ten countries of the Commonwealth of Independent States (CIS) signed "the Agreement on the issues related to the restoration of the rights of deported persons, national minorities and peoples".¹² The so-called Bishkek Agreement condemns "without reserve the totalitarian practice of forcible displacement of peoples, national minorities, and individual citizens of the former USSR that took place in the past as an evil deed contradicting the universal humane principles." It also confirms the "right of deported persons, national minorities, and peoples to restoration of historical justice and return to places of their residence at the moment of deportation." It obliges signatory States to co-operate in facilitating the return of FDPs and in ensuring protection of their rights.¹³

The commitments contained in the Bishkek Agreement were far reaching but its provisions were only partially implemented and even then only after considerable delay. The general and underlying commitment undertaken by the States parties to the Bishkek Agreement to "restore historical justice" and to "ensure the required conditions for an unimpeded voluntary resettlement [of FDPs] including the conditions of free departure" has not been met fully, even after more than 20 years. This applies both to FDPs who have returned since 1989 and to those FDPs still wishing to return. Both categories face fundamental difficulties in obtaining the necessary travel, residency and citizenship documents, in transferring and registering their property, in obtaining assistance for the construction or acquisition of housing and in realizing other important rights that were previously guaranteed by the Bishkek Agreement.

The Bishkek Agreement entered into force in 1993 for an initial period of ten years. On 30 May 2003, it was extended for a further ten years, with a new expiration date of 30 May 2013.¹⁴ Since its provisions were never fully implemented, it is essential that Ukraine and the other relevant parties renew their commitments. This could be done either by extending it once again and renewing the commitment to its implementation or by concluding other bilateral agreements to the same effect. The Committee on Human Rights, National Minorities and Inter-ethnic Relations of the Ukrainian Verkhovna Rada requested its extension on 15 April 2013. At the time of writing this request was still under consideration by the Ukrainian authorities. A new

12 The Bishkek Agreement was signed in 1992 by ten CIS States (Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan). It was subsequently ratified by most of these States, including Ukraine and Uzbekistan. For the original text see: http://zakon3.rada.gov.ua/laws/show/997_090. The English translation is available at www.unhcr.org.ua/attachments/article/226/BishkAgrE.doc.

13 The Bishkek Agreement states, *inter alia*: "The Parties shall ensure the political, economic and social rights and settlement arrangements – employment, education, national, cultural and spiritual development – for deported persons who voluntarily return to where they were living immediately prior to their deportation, on an equal basis with the rights of citizens." And: "The Parties shall decide issues regarding the citizenship of persons resettling under the terms of this Agreement in accordance with their national legislation, provisions of bilateral treaties between them, and considering the generally recognized norms of international law." And: "The Parties shall create the necessary conditions for unimpeded, voluntary resettlement of persons referred to in Article 1 of this Agreement, including the conditions of free exit from the territory of one Party to the territory of the other Party and of transit through the territories of third Parties."

14 See: http://zakon3.rada.gov.ua/laws/show/997_654. On 18 February 2004 the Protocol on the extension of the Agreement's validity was ratified by the "Law of Ukraine No. 1501-IV". See: <http://zakon3.rada.gov.ua/laws/show/1501-15>.

bilateral agreement between Ukraine and Uzbekistan is particularly important, as the largest group of deported Crimean Tatars and their descendants still reside in Uzbekistan.

Extending the Bishkek Agreement would be in line with recent policy decisions adopted by the Government of Ukraine in an effort to comply with the requirements of the Visa Liberalization Action Plan with the European Union. For example, the new “State Migration Policy Concept” issued in May 2011 contains several references to the situation of FDPs.¹⁵

The State Migration Policy Concept also sets forth plans for specific activities related to FDPs, including “assistance in the return to Ukraine and integration into the society of foreign Ukrainians, persons deported on ethnic grounds, and use of their intellectual and professional potential.” This policy, with its associated plan of action, provides a strong basis for further improving the legislative framework affecting the return of FDPs, and, if implemented, would deliver many of the recommendations included in this chapter.¹⁶

Legal and administrative framework for returns and the acquisition of Ukrainian citizenship

Ukrainian legislation sets forth different mechanisms for return depending on the deported person's country of residence. FDPs from Uzbekistan face fewer administrative and legal barriers to return, but have greater difficulty renouncing their Uzbek citizenship. FDPs from Uzbekistan do not need an immigration permit to enter Ukraine. While still in Uzbekistan, they fill in a “departure sheet” and sign out from wherever they are registered as residing. As a part of this process, they need to show that they have no on-going or pending obligations in Uzbekistan, such as civil or criminal cases against them.

Returning from other Central Asian countries is more complicated. According to the information provided by the Mejlis of the Crimean Tatar people, smaller numbers of Crimean Tatars remain in these countries: an estimated 8,000 in Kazakhstan, 5,000 in Kyrgyzstan and 1,500 in Tajikistan.¹⁷ In line with Ukraine's bilateral treaties with Kazakhstan, Kyrgyzstan and Tajikistan, FDPs must obtain an immigration permit before entering Ukraine to take up permanent residence. An immigration permit is subject to strict conditions and is costly for the applicant. The decision to issue one is made by the regional office of the State Migration Service (SMS), which assesses whether the FDP has close relatives already living in Crimea. The relatives have to have sufficient housing available, verified by proof of ownership or a rental agreement. Lack of housing is the single most important factor inhibiting returns from these countries. Additionally, Ukrainian embassies charge \$150 per individual for issuing an immigration permit and \$85 for a visa. The procedure for processing an immigration permit is lengthy, requiring six to eight months.

The situation was most complicated in Tajikistan. Until recently Ukraine had no diplomatic mission there and FDPs from Tajikistan had to start by obtaining entry visas for Uzbekistan to visit the Ukrainian embassy there.¹⁸ Such challenging requirements and high costs have deterred many FDPs. As of September 2012, the United Nations High Commissioner for Refugees (UNHCR) has seen only 20 FDPs from Tajikistan with immigration permits and visas.

The significant financial and administrative obstacles have led some FDPs to seek unofficial ways of returning to Crimea. The UNHCR is aware of numerous FDPs who have entered Ukraine without following established procedures. However, unofficial returnees face a much longer and costlier battle to obtain

15 Presidential Decree No. 622/2011 of 30 May 2011, see: www.president.gov.ua/documents/13642.html. Among others, it aims to: “[I]ntensify the State foreign policy to conclude international treaties regarding the regulation of the restoration and protection of rights of persons deported on ethnic grounds and their descendants, as well as the development and implementation of an effective mechanism for the implementation of such treaties.” (one of the Policy's strategic guidelines) and “promote the voluntary return to Ukraine of persons deported on ethnic grounds, as well as their descendants, and their integration into Ukrainian society.” (listed as a mechanism of the Policy).

16 Cabinet Ministers of Ukraine Order No. 1058 “On the Plan of Action for Implementation of the Concept of State Migration Policy”, 12 October 2011, see: <http://zakon2.rada.gov.ua/laws/show/1058-2011-%D1%80>.

17 Further research is required to assess the number of potential returnees.

18 The Ukrainian Ministry of Foreign Affairs opened a diplomatic representation in Tajikistan in December 2012. It is unknown whether consular services are provided to FDPs.

Ukrainian citizenship after they arrive. Some individuals have been threatened with deportation because of irregularities in their return.

Most returning FDPs want to obtain Ukrainian citizenship, as this is an essential condition for their long-term integration. They benefit from a simplified procedure for naturalization under Article 8 of Ukraine's Law "On the Citizenship of Ukraine" (hereinafter: "Citizenship Law").¹⁹ They must submit an application with supporting documents confirming that they (or their immediate ancestors) were born or resident in Ukraine prior to its Declaration of Independence on 24 August 1991. This procedure costs \$27–30 per person, and the process takes six to 12 weeks.

Although the simplified naturalization procedure is in principle straightforward, a number of practical difficulties may arise. First, many FDPs arrive without original birth certificates, evidence of family relationships or certificates of deportation. As the State does not provide free legal aid to help FDPs, the UNHCR continues to offer assistance by filing inquiries with the Civil Registry and other Government offices to obtain necessary documents. Second, even when documents are available, minor inaccuracies in spelling and transliteration can create major problems. Holders of such documents have to contact the authorities or the courts in the country of their previous residence/citizenship and have the errors corrected. Third, approximately eight per cent of FDPs are challenged during the naturalization process because of irregularities in the documentation they bring from their previous country of residence. Some have to renew their passports or update the personal data in the passports. Others have to obtain a "certificate of non-belonging to citizenship" because they are not eligible to renew their national passports. People who still hold USSR passports and cannot prove they were resident when the relevant successor State adopted its citizenship law face additional complications that often take time and money to resolve. Fourth, many FDPs are accompanied by spouses who are not FDPs. This can cause complications, as these people are not eligible for the simplified procedure.

Some FDPs have entered Ukraine as stateless persons. As of 1 July 2012, 498 persons residing in Crimea are officially registered as stateless. However, according to the UNHCR, this figure under-represents the true level of statelessness. Many persons are not officially registered as stateless or are at risk of becoming stateless; for example, because they still hold USSR passports. Moreover, Uzbekistan and Tajikistan cancel the citizenship of anyone who lives abroad for five years and does not register with the relevant local consulate. Other stateless persons entered Ukraine as children on the basis of their birth certificates and have not been issued identity documentation since reaching the age of majority. The UNHCR helps these persons to register as stateless. On the basis of the statelessness identification document, as well as other documents required for the simplified naturalization procedure, individuals can apply for Ukrainian citizenship. Between 2007 and 2011, some 2,000 previously stateless individuals managed to obtain Ukrainian citizenship. If FDPs do not have the documents they need to apply for naturalization, they may have to leave Ukraine and return after 90 days. This obviously delays returning and adds to the cost.

Ban on dual citizenship and the risk of statelessness

Ukrainian law does not permit dual citizenship. This means that FDPs returning to Ukraine must relinquish the citizenship of the country in which they formerly resided in order to complete the naturalization process in Ukraine. According to the Ukrainian Citizenship Law, applicants for Ukrainian naturalization must submit their foreign passports to the competent authorities of their previous State and file a declaration to the Ukrainian authorities on termination of foreign citizenship.

This requirement is particularly challenging for FDPs from Uzbekistan because it costs \$110 per person to renounce Uzbek citizenship and takes in theory one year, but in practice three to four years, to complete the process. Ukrainian law contains a safeguard to protect persons who cannot renounce their foreign citizenship "for reasons beyond their control" or if the costs are more than half the minimum monthly salary in Ukraine. However, discussions over changes to the Ukrainian Citizenship Law are ongoing and may bring further challenges for returning FDPs. In 2012, draft amendments proposed introducing sanctions

19 Law No. 2235-III (2235-14) "Citizenship Law" "as amended by Law No. 2663-IV (2663-15) of 16 June 2005).

on Ukrainian citizens who hold another citizenship without notifying the Ukrainian authorities. The draft amendments also proposed deleting the “safeguard clause” exempting persons from renouncing their foreign citizenship if the costs are excessive.

On 30 October 2012, the President vetoed the proposed amendments to the Citizenship Law and requested several clarifications. While amendments to the Citizenship Law will be considered again by Parliament in 2013, it will be important to retain the current safeguards to ensure that FDPs are not exposed to excessive costs or to an increased risk of statelessness in the process of returning to Ukraine. In particular, persons holding both Ukrainian and Uzbek citizenship may be at risk of losing their Ukrainian citizenship and the rights acquired with that citizenship. They may also be at risk of statelessness if they have in the meantime initiated the process of renouncing their Uzbek citizenship.

Recommendations

To the Government and Verkhovna Rada of Ukraine

- As an immediate priority, establish an effective legal framework for the restoration of the rights of persons deported on ethnic grounds by adopting relevant legislation and fully implementing the 2011 State Migration Policy Concept.
- Consider exempting FDPs from complicated, lengthy and costly immigration procedures, including by abolishing the requirement that FDPs from Kazakhstan, Kyrgyzstan and Tajikistan obtain an immigration permit and visa, as this significantly hinders the return process.
- Consider amending Ukraine’s procedures for the implementation of relevant bilateral treaties “on the facilitation of the acquisition and termination of citizenship” so that persons who legally enter Ukraine, including through the visa-free regime, are allowed to apply for naturalization. This could be done by amending procedures so that FDPs can prove they are staying in Ukraine legally by showing their national passports.

To the Governments of Ukraine and the Central Asian States

- Improve planning for returns and integration by ascertaining the potential number of FDPs who would like to return to Ukraine in the next ten years.
- Raise awareness among FDPs about Ukraine’s legal framework on returns and naturalization. Also provide legal aid to FDPs before returning, in order to ensure that they are able to gather the necessary documents, thereby reducing the time and costs related to naturalization.
- Intensify co-operation between Ukraine and Uzbekistan to mitigate the risk of statelessness among FDPs and reduce the time and costs related to renouncing citizenship. The Government of Ukraine could initiate negotiations on adopting a bilateral agreement on simplified procedures for acquisition and renunciation of citizenship among citizens of Ukraine permanently residing in Uzbekistan and citizens of Uzbekistan permanently residing in Ukraine. Such an agreement could be based on similar agreements that Ukraine has concluded with Kazakhstan, Kyrgyzstan and Tajikistan.
- Ukraine and Kyrgyzstan, Kazakhstan and Tajikistan should amend their respective “treaties on mutual travels of its citizens” to remove the visa requirement for “citizens who have the right to citizenship of Ukraine by virtue of their territorial origin”.

3. LAND, HOUSING AND PROPERTY

As in all countries of the former Soviet Union, land reform in Ukraine is wrought with the formidable difficulties associated with the privatization and allocation of economically valuable assets by State structures. In Crimea, land, housing and property are by far the most sensitive issues and the most likely to cause tensions, both between the FDP communities and the authorities and between or within the communities themselves. Property disputes abound, and many returnees have lived in spontaneous and irregular settlements for over 20 years under conditions that have an adverse effect on their health and their socio-economic integration. Recent research shows that the land disputes in Crimea have led to a “vicious land cycle” that has negative effects on the economy, the political and social climate, and the institutional framework.²⁰ This section will briefly trace the origins and causes of these land disputes and then set out the current situation regarding the pervasive phenomenon of land squatting (*samozakhvata*). Other socio-economic aspects of the situation of FDPs, such as healthcare and employment, will be covered in more detail in section 5.

Origins of the land conflict

The roots of the land disputes can be traced back to the deportations on ethnic grounds in the 1940s and the inability of official mechanisms to handle the large-scale returns. Returning in waves, each set of returning FDPs faced different circumstances. The first, relatively small group returned during the 1960s and 1970s as part of a USSR programme to promote local agricultural development. These approximately 5,400 returnees received secure employment and housing from the Soviet authorities and integrated with relatively little difficulty.

The second wave returned in the last years of the Soviet Union as part of an official and ambitious resettlement programme announced in late 1989 by a State Commission “On the Issues of the Crimean Tatars”. The authorities intended to construct up to 80 settlements in economically depressed areas of Crimea and to involve the returnees in the collective farms. This highly centralized and bureaucratic programme was soon overtaken by events, both by the bankruptcy and collapse of the USSR and by the large number of spontaneous returns outside the programme. Numerous Crimean Tatars, dissatisfied by the slow dynamic of the official programme, began to return on their own initiative and started constructing unauthorized settlements.

The third and largest wave began returning shortly before and immediately after Ukraine’s independence in 1991. Within a few years, over 200,000 Crimean Tatars returned to their historic homeland, regardless of the unfavourable social, economic and political conditions in Ukraine. In the absence of a legal framework and large-scale official programme, most of the burden to reintegrate the returnees initially fell to the local authorities, who proved unprepared to handle it. It took several years before the newly established Government of Ukraine was able to articulate a national-level programme. In the lacuna, significant numbers of FDPs started settling spontaneously around the Crimean peninsula and established compact settlements.

Obstacles faced by the returnees

The Government of Ukraine set up two institutions mandated to handle the return and reintegration of the FDPs: the State Committee for Nationalities and Religion (Derzhkomnats, initially the Ministry for Nationalities) at the national level and the Republican Committee for Inter-ethnic Relations and Deported Citizens (Reskomnats) at the Crimean level. These two agencies were responsible for implementing a “State Programme for the Integration of Formerly Deported People” to assign land plots, construct housing and meet other social, economic and educational needs. The 2004 Cabinet of Ministers’ Resolution “On measures for providing social needs of FDPs who returned to Ukraine for permanent residence”, for example, states that settlements should be supplied with water and FDPs should receive a lump-sum equivalent to

20 Veljko Mikelic, “Housing, Land and Property Issues of FDPs in Crimea”, Social Science Research Network, 2013, p. 16.

not more than 30 minimum monthly salaries (about USD 2,900 in 2009) to construct housing.²¹ In the past, the Government programme had an average annual budget of approximately USD 10 million but this has since been reduced significantly; the Government of Ukraine reports that since 1991, budgetary allocations for accommodation of the needs of FDPs totals approximately UAH 1.2 billion (USD 150–300 million).²² While this commitment in a time of financial hardship indicates the Ukrainian authorities' determination to address the housing and other social needs of the FDPs, the programme has been hampered by irregular funding, slow implementation and frequent changes to procedures and institutional competences. It also has come under considerable domestic and international criticism for the way the funds were allocated, with disbursements falling short of the earmarked budgets or not reaching their intended population.²³

TIME PERIOD	PLANNED FUNDING (million UAH)	ALLOCATED FUNDING	
		(million UAH)	Percentage of the planned
1991 – 1995	552.2	552.2	100 %
1996 – 2000	195.2	88.1	45.1 %
2001	44.7	44.7	100 %
2002 – 2005	267.3	217.6	81.4 %
2006 – 2010	640.8	356.6	55.6 %
2011	27	25.1	93 %
2012	45.3	11.2	24.7 %
TOTAL	1844.8	1295.5	70 %
Average per year	83.9	58.9	70 %

Table 2: Planned and allocated funding for accommodation of the needs of FDPs.²⁴

One obstacle facing the FDPs upon their return is the difficult economic situation. In the wake of the dissolution of the USSR, the banking collapse and hyper-inflation wiped out the savings of all former Soviet citizens, including the FDPs. For returnees, this is exacerbated by the disparities between the low monthly salaries in the Central Asian countries they are returning from (where on average people earn less than USD 200 per month) and the high cost of living, particularly of housing, in Crimea.²⁵ They also face substantial outlays to finance the move itself, including the costs related to visas and permits (see section 2). According to estimates from the non-governmental organization (NGO) Vatandash-Compatriot and the UNHCR, FDPs from Uzbekistan pay about USD 550 per person for travel and shipping. In principle, the bulk of these costs should be reimbursed when an FDP is naturalized. However, between 1999 and 2011, only 23,202 FDPs, or approximately 16 per cent of the FDPs who acquired Ukrainian citizenship in this

21 According to the Reskomnats, the following housing assistance was disbursed from 1989–2011: 4,892 families received housing (apartments) through the State programme, 64,453 persons received land for housing construction and 35,654 persons received household agricultural plots. Meanwhile, 7,670 families are on a waiting list for apartments. Mikelic, op.cit., p. 3.

22 Figures provided by the Government of Ukraine, May 2013. This amount does not only include State funding but also funding provided through international organizations and bilateral donors. In July 2012, the Reskomnats highlighted to the UNHCR the need for up to UAH 7 billion (USD 865 million) to provide dwelling, communication and material assistance to around 130,000 FDPs who are living in poverty in Crimea. The current annual State budget allocation is only UAH 25 million (USD 3 million). The 2013 State budget allocation for settlement of FDPs is UAH 10.9 million (USD 1 million). As of 1 December 2012, only UAH 9.5 million (USD 1 million) out of the planned UAH 24.9 million (USD 3 million) had been allocated for FDPs. Note: due to the fluctuating exchange rate, the dollar figures are an approximation. Conversions made at the exchange rate (UAH 1 = USD 0.123533) prevailing on 3 May 2013; figures are rounded to the closest million.

23 Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), "Third Opinion on Ukraine", adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013), paragraph 149, based on reports of the Audit Chamber of Ukraine (published by Interfax-Ukraine, 2012).

24 Information on the state of realization of programs aimed at accommodating the needs of formerly deported peoples in Ukraine (results from 1991-2012), disseminated during the Field Session of the Committee of Verkhovna Rada of Ukraine on Human Rights, National Minorities and Interethnic Relations, which was held on 11 April 2013 in Simferopol.

25 Noel Calhoun and Dmitriy Pletchko, "Legal Aspects of Return and Legalization in Ukraine of Formerly Deported Persons (FDPs)", Social Science Research Network, 2013, p. 7.

period, were reimbursed. Furthermore, due to regional price differences, property sold in Central Asia, especially in Uzbekistan, is worth considerably less (often ten times less) than the costs of constructing a new home in Crimea. Finally, as mentioned above, the State programme meant to provide FDPs with access to affordable accommodation was insufficient to meet their social needs. As a result, around half of the returning families make a return to Crimea in stages. First the father or eldest son moves to Crimea, spending six to 12 months to secure citizenship, housing and – if possible – employment. Later, the rest of the family sells the real estate in Central Asia and joins him.

A second obstacle facing returnees is the, at times, unfavourable political circumstances. Those returning in the early 1990s arrived in the midst of a secessionist challenge mounted by pro-Russian forces in Crimea. These groups regarded the large number of newly arriving Crimean Tatars, who predominantly were strong supporters of Ukrainian statehood, as an additional burden and as new political opponents. Relations between the FDPs and the Russian-speaking community were tense and mistrustful from the very beginning, which set the stage for political dynamics still present today (as described in more detail in section 4). Especially at the local level, village and city councils – which control land allocation – were reluctant to welcome a new electoral base with different political positions within their administrative boundaries. And finally, as already mentioned in section 2, returnees arriving after 1991 also had to face administrative obstacles, such as the difficulties connected with renouncing prior citizenship and obtaining Ukrainian citizenship.

Land ownership and conflict

Within the context described above, at least three causes can be discerned for the current disputes over land ownership. First, there is disagreement between returnees and authorities over the location of return. The FDPs want to return to the regions where they resided before the deportation, mostly in the coastal areas, and apply accordingly to the local branches of the Reskomnats. The coastal areas are attractive for tourism and are therefore the most lucrative parts of Crimea. The authorities systematically refuse requests for land plots in these regions, claiming that there is no land available for individual construction within their administrative boundaries. As a result, the FDPs, and especially the Crimean Tatars, have had to seek alternative land elsewhere, mostly near major urban centres, such as Simferopol and Bakhchisaray, or in districts such as Bilogorsky, Pervomaysky, Kirovsky and Sovietsky. The FDPs therefore not only feel deprived of the land of their forebears but also economically disadvantaged. They point to the non-transparent allocation of prime land to developers with political connections, often in violation of lawful procedure, as justification for land squatting actions.²⁶

The situation was further complicated by contradictions between the Programme for Integration of FDPs and the 2001 Land Code of Ukraine, which made each Ukrainian citizen eligible for a free plot to construct housing. There was no clear mechanism in the Land Code to reconcile the land allocation procedure with the existing programme for FDPs. As a result, many FDPs applied to both programmes, causing confusion and difficulties for the local authorities and an enormous increase in the number of applications. In addition, one of the most controversial provisions in the Land Code delegated the decision on land allocation to local self-administrative units, such as village and city councils, which are dependent on economic and political elites for their political survival and as such have often been criticized for non-transparent allocation of land plots. Consequently, the FDPs, as an economically and politically relatively weak constituency, were disadvantaged in the competition to obtain prime land, which further fuelled squatting (described in more detail below).

Thirdly, the FDPs were disadvantaged quantitatively and qualitatively by the land reform process in Ukraine, which privatized agricultural land primarily in favour of former employees of State farms (*sovkhoz*) or members of collective farms (*kolkhoz*). While this is in principle a valid criterion, it did not take the specific circumstances of FDPs into account, as many had only returned to Crimea after the collapse of the *kolkhoz*

²⁶ The National Security Department of the Ukrainian President mentioned in 2005 that approximately 5,000 hectares of land had been allocated "without a clear legal basis." UNHABITAT, "Housing, Land and Property in Crimea", 2006, p. 37.

and *sovkhoz* system. The vast majority of FDPs were therefore excluded from the privatization process.²⁷ To counter this problem, the Ukrainian authorities expanded the list of beneficiaries to include “workers in the social sphere”, who were entitled to two hectares of land (against five to seven hectares for *sovkhoz* and *kolkhoz* members). While it may well have been well-intentioned, this programme nonetheless failed to reach most of the FDPs: only 17 per cent have received agricultural land under this programme even though 75 per cent live in rural areas.²⁸ Finally, many FDPs who did eventually receive land were granted plots from State reserve funds, which are often qualitatively poor and located in isolated areas. This perceived discrimination in quantitative and qualitative access to agricultural land is a third driver of land seizures by the FDPs, many of whom have been traditionally involved in farming.

Land squatting

Within Ukraine, the unauthorized seizure of land known as “land squatting” is a phenomenon specific to Crimea and is a consequence of both the unmanaged return process and the real or perceived injustices in land allocation outlined above. The number of individuals and land involved is significant: according to official data from the Republican Land Resource Committee (Reskomzem), approximately 2,000 hectares are occupied by 56 unauthorized settlements, involving an estimated 8,000 to 15,000 people.²⁹

Even though all FDPs face difficulties regarding access to land for individual construction and agriculture, only Crimean Tatars have actively engaged in land squatting. Other FDP groups, such as Armenians, Bulgarians, Germans and Greeks, have responded differently, although they also claim to have received only piecemeal assistance from the authorities. In addition, the vast majority of these groups have resettled outside Crimea as part of assistance programmes by their “kin-States” (see Table 1). Therefore, this section focuses on the specific situation of land squatting by Crimean Tatars, as well as counter-squatting movements by Russian-speaking and Ukrainian communities.

The squatting phenomenon has changed over the past two decades, and can be divided into four phases. In the first phase, between 1989 and 1991, squatting was individual and a direct response to the inability or unwillingness of the Crimean authorities to provide returnees with land and housing. Many FDPs constructed dwellings with their own financial means and without any official permission, often forming compact settlements. These settlements were largely legalized in 1996 but many still lack basic infrastructure, such as water and electricity, because of the high costs or physical difficulties of connecting them to the grid.³⁰

In the second phase, which started in 1999, squatting took place mostly on agricultural land in the north of Crimea as a consequence of perceived problems with the land reform process. In contrast, the third phase, between 2002 and 2005, focused on land for individual housing, and was a protest against perceived injustices and non-transparent land allocation related to implementation of the 2001 Land Code.

The fourth phase occurred in 2005–2006 and was the most organized and large-scale form of squatting. It was directed by the Mejlis of the Crimean Tatar people³¹ as organized protest against what it perceived as the widespread discriminatory practices in land allocation which violated the rights of FDPs. It mostly took place on the outskirts of Simferopol and included picketing, slogans and a permanent presence on the seized lands, which became known as the fields of protest (*polya protesta*).³² In this period, the first groups of ethnic Russians and Ukrainians also started squatting land in the vicinity of Simferopol, in some cases co-operating with Crimean Tatar groups. This provoked a strong reaction from the Crimean authorities, which adopted an “Anti-Squatting Bill” that was adopted in the Ukrainian Verkhovna Rada in 2007. This

27 Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013), paragraph 148.

28 Mikelic, *op.cit.*, p. 8.

29 Mikelic, *op.cit.*, p. 15.

30 As of 2012, an estimated 117,000 FDPs lived in 297 compact settlements, of which 258 have electricity, 220 have running water and only 91 have gas. An estimated 75,000 FDPs are living in temporary, uncompleted houses without any basic infrastructure. Source: Reskomnats, 1 January 2012.

31 For more information on Crimean Tatar self-governance structures, see section 4 on political participation.

32 According to data by the Reskomzem, 1,331.5 of the total 1,913.1 hectares that are currently registered as “squatting” are either in Simferopol city area or in Simferopol district. Reskomzem, Official Statistics dated 10 September 2012.

phase was marked by eviction operations and clashes between Crimean Tatars and the Ukrainian law enforcement authorities, most notably during the forced eviction of the Ay-Petri plateau in November 2007, when about 1,000 special police forces clashed with hundreds of Crimean Tatars who wanted to prevent the demolition of their homes and businesses.

The nature of the land seizures have evolved from individual, spontaneous actions to organized and collective forms of squatting. The protest fields that initially demarcated the sites with temporary homes (*vremenki*) are gradually becoming more permanent. Squatters are organized, co-ordinated by committees and expected to contribute both financially and personally to the construction, running and defence of the site. Plots are sometimes informally traded, and the squatters are no longer exclusively FDPs; some are ethnic Ukrainians or Russians who hoped to get a land plot under the 2001 Land Code close to an urban centre instead of in a remote rural area.

Actors and conflicting views on the land issue

There are numerous conflicting interpretations of the causes and possible solutions to the land disputes. The Crimean authorities claim that data from the Reskomzem shows that Crimean Tatars are actually favoured by the land allocation process, receiving more than their proportional share, and that the squatting movements are organized by businessmen with economic motives. The Crimean Tatars argue that the Reskomzem counts land that was seized in the earlier phases of squatting, and that it disregards qualitative differences. The Crimean Tatar community itself is divided over the strategy to follow, ranging from collective civil disobedience to engagement with the authorities.

This disagreement is reflected by the growing number of actors involved with the squatting issue. Until 2006, the Mejlis of the Crimean Tatar people was the primary organization directing most of the land squatting actions.³³ It has a special Land Commission and aims to prevent land disputes from escalating into violent conflicts through negotiation and engagement with the authorities. In 2007, the group “Avdet” registered itself as an NGO to defend the interests of land squatters through civil disobedience, direct actions and lobbying for legislative changes. In 2011, the group split into two factions, one aligning itself with the Mejlis and the other registering as a new NGO called “Sebat”. Sebat positions itself in opposition to the Mejlis as a human rights NGO that aims to resolve the squatters’ problems within the legal framework and through dialogue with the authorities. As a result, there is internal competition among Crimean Tatar organizations over who gets to be the principal mediator who can “deliver” on the land issue.

In addition, squatters from other ethnic groups have organized themselves in the Tavrian Union (*Tavricheskiy Soyuz*), which claims that FDPs are not the only ones who have been disadvantaged by the non-transparent land allocation process in Crimea. They see land allocation to FDPs as undermining their right to land, and opt for a strategy of “counter-squatting” to reinforce their demands for equal treatment for all. Finally, there are several organizations that vehemently oppose the squatters, such as the Russian Community of Crimea (*Russkaya Obshchina Kryma*), Our Rights (*Nashi Prava*), the Council of Atamans in Crimea (*Rada Atamanov u Krymu*), the Cossacks’ co-ordination body in Crimea and the Anti-Squatting Union (*Soyuz Anti Zakhvat*). Some of these organizations advocate for stronger solutions, such as forced evictions, or even attempt to evict squatting sites themselves, thereby sparking further inter-ethnic tensions.

Responses by the authorities

Analysts have categorized the squatting problem as a “vicious land cycle”, starting with non-transparent land allocation by the land management institutions, which leads to real or perceived land deprivation among the FDPs. In turn, the FDPs seize land to exercise pressure on the land management institutions, which may lead to further allocations that are perceived by others as unjust, repeating the cycle. This has negative consequences on economic, political, institutional and social stability, which discourages investment, undermines institutions’ legitimacy and fosters a sense of impunity in Crimean society.

33 For more details on Crimean Tatar self-governance structures, see section 4 on political participation.

The authorities oscillate between repressive and conciliatory responses but predominantly favour the latter. While some forced evictions took place, especially in 2007, the 2006 law that declared squatting a criminal offence remains largely unenforced. By addressing one symptom of the vicious land cycle without addressing the root causes, the authorities have been unable to stop the phenomenon. In 2011, the law was amended to make squatting an administrative and civil infraction rather than a criminal act. By and large, with the exception of the heavy-handed operations in 2007, the Crimean authorities have pragmatically abstained from directly confronting the squatters with physical force and have acknowledged the significant conflict potential inherent in such actions.

Instead, the authorities have taken a pragmatic approach, negotiating with land-claim representatives either individually or at a higher political level, aiming to find non-violent solutions outside the institutional framework. This process was improved and given a legal mandate with the establishment of the “Commission for Solving Issues related to Land Squatting and Land Claims of FDPs and other citizens for individual housing construction” in January 2011, under the auspices of the Council of Ministers of the ARC. This holistic and multi-sector commission is empowered to make far-reaching recommendations on amending urban plans and legalizing squatting plots. The first 91 plots were legalized in November 2012, and in March 2013 a number of squatters represented by Sebat received land for construction. While these are positive first steps, the total number of outstanding land issues remains daunting.

Recommendations

To the Government of Ukraine and the Council of Ministers of the ARC

While the scope of the task to resolve outstanding land issues is vast and the challenges related to land allocation, registration and ownership in Ukraine are not exclusive to Crimea, the Crimean land disputes should nonetheless be solved in a strategic and comprehensive manner. Such an approach could consist of three phases:

- In the short term, the Crimean authorities should conduct a complete inventory of Crimean land resources and consider inviting international technical assistance. Priority should be given to those areas affected by land disputes and those areas where a high demand for allocation is identified, such as on Crimea’s southern coast.
- In the medium term, within the next 18 months to two years, all existing land squatting issues should be resolved through the “Commission for Solving Issues related to Land Squatting and Land Claims of FDPs and other citizens for individual housing construction”, based on the land inventory. This should be done under the following conditions:
 - To avoid creating a “pull factor” for further land seizures, any legalization of squatting sites should be understood as ad hoc and valid only for the resolution of current squatting issues.
 - All land squatting actors should be represented in the Commission’s work on an equal footing to depoliticize land allocations as much as possible.
 - Once their status has been clarified, former squatting sites should be integrated into relevant territorial development plans to avoid economic and social isolation. Existing settlements, including those legalized in 1996, should be connected to the gas, electricity, water and sewage infrastructure.
 - A specific body should be tasked with monitoring land allocation and empowered to report alleged abusive practices in land management to the appropriate authorities. Key organizations of FDPs and other squatters should be represented and agree to co-operate within this institution.
- In the longer term, Ukraine should create an efficient and transparent land management system by introducing structural reforms in land management policy and by amending relevant legislation. This can be done by inviting an internationally profiled technical support mission, as has been done in other countries of the former USSR. Especially in the run-up to the expected lifting of the moratorium on the sale of agricultural land in 2016, a transparent land market should be created.

To the international community

Given the daunting tasks ahead, international actors should be more proactive in preventing and decreasing the land conflict in Ukraine. They could, for instance, set up a co-ordination body that would undertake an institutional mapping of all relevant land management institutions and legislation, and could suggest solutions for improvement, which they could support with international assistance and expertise.

4. POLITICAL PARTICIPATION

The full participation of persons belonging to national minorities in public affairs is of crucial importance for the development of a stable, cohesive and just society.³⁴ Participation in political life can take many forms, from voting to running for public office, and from representation in State structures to establishing institutions of self-governance. Real or perceived exclusion from decision-making processes fuels grievances and can lead to tensions between and within ethnic communities, as excluded groups employ other strategies to pursue their goals.

As recent research shows, the level and form of political participation in Crimea varies greatly between the different groups of FDPs.³⁵ While all five groups share a common aim to see their rights restored and their socio-economic situation improved, ethnic Armenians, Bulgarians, Germans and Greeks tend to deal with these issues on an individual basis, either by running for public office or emigrating to their respective “kin-States”. The Crimean Tatars, on the other hand, have a long track record of striving for collective rights as a group and exhibit much higher levels of political mobilization. This section will therefore focus on the different types of political participation employed by the Crimean Tatars to further their aims and the obstacles they encounter while doing so.

Institutional arrangements

In line with its 1995 Special Autonomous Status, the main legislative body of the ARC is the Crimean Parliament or “Supreme Council”, composed of 100 directly elected members. The executive power in the ARC is vested with the Council of Ministers, headed by a Chairman who is nominated by the Supreme Council and confirmed by the President of Ukraine. The President of Ukraine also appoints a Presidential Representative. The ARC is further subdivided into 25 regions, consisting of 14 districts and 11 city municipalities, each with a directly elected local council.

At the national level, the main Government agency responsible for minority issues until late 2010 was the Derzhkomnats. As mentioned in section 3 above, this institution not only administered State assistance to the FDPs, it also fulfilled other important functions related to minority participation and protection of minority rights. International monitoring bodies, such as the Advisory Committee of the Framework Convention on National Minorities (FCNM), have expressed strong concern about the institutional vacuum that resulted from the dissolution of the Derzhkomnats in late 2010. While some of its functions have been transferred to a much smaller subdivision within the Ministry of Culture, its role as co-ordinating agency for minority participation has been lost and the Council of Representatives of All-Ukrainian Associations of National Minorities that met under its auspices has ceased to meet regularly.³⁶

34 OSCE HCNM, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (September 1999); OSCE HCNM, Ljubljana Guidelines.

35 Natalia Mirimanova, “Political participation and representation of Crimean Tatars and other formerly deported people: needs assessment”, Social Science Research Network, 2013.

36 Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013), paragraph 144.

At the regional level, the main agency responsible for minority issues and assistance to the FDPs is the Reskomnats. It continued to function after the dissolution of the Derzhkomnats and is one of the agencies where persons belonging to national minorities are actively represented, as will be further discussed below.

Self-governance: organizations representing the Crimean Tatars

As is the case in any community, individual Crimean Tatars have different views on the best strategy and tactics to improve their situation. In May 1956, the Crimean Tatars founded the “National Movement of the Crimean Tatars” (NMCT). In 1989, it was transformed into the “Organization of the Crimean Tatar National Movement” (OCTNM), headed by Mustafa Dzhemilev. OCTNM advocated for immediate, large-scale return and national self-determination, while the minority faction of the NMCT that did not join the OCTNM preferred a more gradual approach in close co-operation with the then Soviet authorities. This division still exists within the Crimean Tatar community and has become more pronounced since, with some groups advocating for an even more radical approach while others prefer to work on establishing closer links with the authorities.

In June 1991, the second congress or “Qurultay” of the Crimean Tatar people was held, which is regarded by most Crimean Tatars as their representative body. It has 250 delegates elected by local communities for five-year terms. The Qurultay in turn elects an executive council or “Milli Mejlis” (hereinafter: “Mejlis”) of 33 members that implements decisions of the Qurultay and represents the community between sessions. In addition to the Crimea-wide Mejlis, there are also 250 local mejlises grouped into 22 regional mejlises.³⁷

The Qurultay only tolerates a certain level of pluralism: once a decision is adopted by majority vote, all delegates are expected to comply. For example, to avoid a split Crimean Tatar vote in Ukraine’s winner-take-all electoral district system, Qurultay delegates are prohibited from running against candidates proposed by the Mejlis, upon penalty of expulsion from the Qurultay. This constraint on internal political pluralism is sharply criticized as undemocratic by opponents of the Mejlis. As a result, several opposition groups such as “Milli Firqa”, the Sebat association of land squatters and other groups that have recently allied themselves in the “Crimean Tatar National Front” (CTNF) fiercely challenge the Mejlis for the right to represent the interests of the Crimean Tatar people. This internal competition within the Crimean Tatar community is a source of constant tensions and is sometimes instrumentalized by the Crimean authorities.

Some, including the authorities, claim that Crimean Tatar support for the Mejlis is waning and cite evidence such as a recent decision by the Qurultay to lower the quorum for Crimean Tatar participation to one-third. While reduced popularity is difficult to verify, research shows that Crimean Tatar turnout at Mejlis-organized events and votes for Mejlis candidates are considerable.³⁸ Regardless of the increased competition within the Crimean Tatar political landscape, the Qurultay and the Mejlis remain major organizations that can legitimately claim to represent a significant portion of the Crimean Tatars and as such should be ensured effective participation in decisions affecting the Crimean Tatar community, while not precluding the involvement of others.

The relationship between the Mejlis and the Ukrainian and Crimean authorities is complicated by the Mejlis’s lack of legal status. The Government of Ukraine refuses to recognize the Mejlis as an institution of minority self-governance, while the Mejlis in turn refuses to register as an NGO. In the past, Ukrainian leaders have adopted a pragmatic approach, including by creating a new consultative body affiliated with the President of Ukraine that coincides with the composition of the Mejlis. The establishment of the “Council of Representatives of Crimean Tatar People” by President Kuchma in 1999, which included all 33 members of the Mejlis, was widely seen as a positive example that established an institutional forum for dialogue while side-stepping the thorny question of the legal status of the Mejlis.

³⁷ The exact number of Qurultay delegates varies from session to session.

³⁸ Mirimanova, *op.cit.*, p. 4. Turnout in the early phases of the 2013 Qurultay elections ranged between 57 and 68 per cent of the Crimean Tatar electorate. www.qmmm.org, accessed on 29 April 2013. For example, celebration of Hydyrlez, a Crimean Tatar tradition, organized by the Mejlis reportedly attracted 35,000 participants (see <http://crimea.comments.ua/news/2013/05/06/150631.html>, accessed on 14 May 2013).

However, without a clear legal framework, this proved to be a fragile compromise. The Council had ceased to meet regularly already under President Yushchenko, but its composition was altered unilaterally by President Yanukovich in 2010, who reduced its membership from 33 to 19. Out of these, eight were also members of the Mejlis and 11 were selected from the Crimean Tatar opposition.³⁹ The Advisory Committee of the FCNM expressed regret at “this development, as it undermines the representative nature of this Council”.⁴⁰ The Mejlis has since boycotted the Council, but the Ukrainian and Crimean authorities have proceeded to work closely with it and have appointed several of its non-Mejlis members in positions within the Crimean authorities.⁴¹ On 24 March 2013, the NMCT and the CTNF organized a “Third Nationwide Meeting” in support of the Council; although only a few hundred people took part in the event, a resolution was adopted, recognizing the Council as “the only legitimate body representing the interests of the Crimean Tatar people with the central authorities of Ukraine.”

The already strained relations between the Mejlis and the Crimean authorities deteriorated further after the appointment of Anatoliy Mohylov as Chairman of the Council of Ministers of the ARC on 7 November 2011. In practice, constructive channels of engagement between the authorities and the Mejlis have broken down, although individual Mejlis members can still influence decisions in their capacities as members of the Ukrainian and Crimean Supreme Councils respectively. Instead, the authorities are increasingly and consistently co-operating with Crimean Tatar groups in opposition to the Mejlis.⁴² This manipulation of political competition within the Crimean Tatar community has led to further tensions, including in May 2013 prior to and during the organization of events commemorating the deportations.

Participation in elections and representation in elected bodies

At the national level, some aspects of Ukraine’s electoral system pose considerable obstacles to the effective participation of persons belonging to national minorities in elected bodies. These obstacles include the requirement for political parties to be present nationwide, the recently increased electoral threshold of five per cent and the ban on electoral blocs. Taken together, these make it difficult for national minorities to run for elections with their own political parties.⁴³ Instead, the Mejlis forms coalitions with nationwide parties in exchange for support and positions within the Verkhovna Rada of Ukraine. In the past, due to ideological closeness and solidarity with activists struggling for Ukrainian independence, the Mejlis has allied itself with the Narodny Rukh-Nasha Ukraina party, the Yulia Tymoshenko Bloc and the United Opposition, all parties in an adversarial position towards the current ruling Party of Regions. Although this tactic has enabled Crimean Tatars to be represented in the Verkhovna Rada of Ukraine, it also makes them dependent on negotiations and alliances with nationwide parties for their representation in elected State structures.

This conundrum is even more apparent at the autonomous republic level and especially at lower levels of governance (districts and local councils), where the Crimean Tatars need to co-operate with the authorities to advance the position of their community. Due to the mixed electoral system with single-mandate constituencies, the demographic distribution of Crimean Tatars across districts and the absence of cross-ethnic voting, not a single Crimean Tatar was elected in single-mandate districts in the 2010 elections for the Supreme Council of the ARC. On the other hand, the threshold for ARC elections (three per cent) is lower than the nationwide elections in Ukraine (five per cent). In total, six Crimean Tatars were elected on party lists. There have been some allegations of gerrymandering: in its report on the 2012 parliamentary

39 The Council met for the first time on 30 January 2013 and elected Lentun Bezaziev, a Party of Regions deputy in the Supreme Council of the ARC, as its head.

40 Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013), paragraph 139.

41 Some of the most notable examples include the appointment of businessman Enver Abduraimov as the head of the Permanent Commission on International Relations and FDP-issues at the Supreme Council of the ARC in February 2013, replacing deputy Mejlis chairman Remzi Ilyasov.

42 For example, decisions by the Crimean authorities in March to award land plots to Sebat-supported squatters, while Avdet-supported squatters received nothing, seems to indicate that the authorities are willing to use land allocation decisions to influence the intra-Crimean Tatar political competition.

43 Law on Political Parties No. 2365-III of 5 April 2000, which requires parties to have branches in two-thirds of the regions of Ukraine. This provision has been found by the Advisory Committee of the FCNM as presenting “serious obstacles for persons belonging to national minorities to obtain representation in elected bodies” and as “not in line with the requirements to promote their full and effective participation in public affairs, as contained in article 15 of the FCNM.” (Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013), paragraph 134.

elections, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) also noted that electoral boundaries “should not be altered for the purpose of diluting or excluding minority representation.”⁴⁴

Overall, in the Supreme Council of the ARC, Crimean Tatar representation is gradually decreasing, from 14.5 per cent in 1994 (when a short-lived quota system gave 14 guaranteed seats to Crimean Tatars and one each to the other four groups of FDPs) to only six per cent in the 2010 elections. In addition, an increasing number of Crimean Tatar candidates are elected on lists other than those approved by the Mejlis. While the percentage of Crimean Tatars elected onto district councils varies and in some cases Crimean Tatars are even overrepresented relative to their numbers, especially in local councils, overall their representation in elected bodies is below their proportion of the total population of the ARC.⁴⁵ This generates demands by Crimean Tatars for a reintroduction of the quota system, which is firmly opposed by ethnic Russian groups as discriminatory and in violation of Article 24 of the Ukrainian Constitution. While a quota may be a counterproductive measure that solidifies ethnic differences, the current single-mandate electoral district system hinders the political participation of Crimean Tatars.

Representation in the executive branch

The Ukrainian authorities do not collect statistical data disaggregated by ethnicity, notwithstanding recommendations by international monitoring bodies to do so in order to develop targeted policies to establish full and effective equality of disadvantaged minority groups.⁴⁶ As a result, there is only limited data available on the level of representation of Crimean Tatars within governmental institutions, leading to a discrepancy in claims by Crimean Tatars and figures provided by the authorities. Recent research estimates that Crimean Tatars account for approximately ten per cent of all Government officials and public servants in Crimea, less than their percentage of the population of the ARC. Of the ARC Ministers and Deputy Ministers, seven per cent are of Crimean Tatar origin, a figure that increases to 13 per cent for the level of Head and Deputy Head of Department, and even to 20 per cent for other executive and expert staff positions. However, the vast majority of these Crimean Tatar professionals work for the Reskomnats; if staff from this particular institution is excluded, the total expert-level positions drops to 4.9 per cent. At the level of districts and city councils, there is only one Crimean Tatar head of a district administration (seven per cent), although there are ten deputy heads (22 per cent). Likewise, only one Crimean Tatar heads a city council (nine per cent), while six hold the position of Deputy Head (ten per cent).⁴⁷

The relatively low level of participation of Crimean Tatars in public administration could have many causes and is difficult to analyse in the absence of accurate and relevant quantitative and qualitative data. Authorities cite a lack of qualified personnel among the Crimean Tatar community, while targeted efforts to improve this situation have been limited. Attempts to establish a pool of professionals that could be drawn upon if vacancies open up have so far not delivered results. In turn, Crimean Tatars often complain about discrimination. As described further in the section on socio-economic participation, both awareness of discrimination and the institutional framework to combat it are weak.⁴⁸ There is a need for effective institutions with a specific mandate to monitor the situation and assist victims of alleged discrimination.⁴⁹ In this regard, it also has to be noted that the general practice of appointments and recruitment in Crimea is often criticized for being insufficiently meritocratic, with patronage and party affiliation allegedly trumping professional qualifications.⁵⁰

44 ODIHR report, www.osce.org/odihr/98578, page 3.

45 According to Mirimanova, in 2010, the percentage of Crimean Tatars in elected bodies in Crimea was as follows: six per cent in the Verkhovna Rada, ten per cent in city and rayon councils, 15.4 per cent in village and township councils, and seven per cent were elected as heads of village councils (Mirimanova, *op.cit.*, p. 13).

46 Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013), paragraphs 54–56.

47 Mirimanova, *op.cit.*, p. 19-20, 22.

48 Although Ukraine adopted a new law to combat discrimination in 2012 (Law of Ukraine “On the Principles of Prevention and Combating Discrimination in Ukraine”, No. 5207-VI, adopted on 6 September 2012), further amendments to the legal framework on non-discrimination are currently under discussion with a view to signing an association agreement between Ukraine and the European Union. This concerns, in particular, Draft Law 09451 (formerly Draft Law 8711), which was introduced before the Verkhovna Rada on 12 December 2012.

49 See ENP Progress Report 2013 *op.cit.*

50 Mirimanova, *op.cit.*, p. 23.

Recommendations

To the Government of Ukraine and the Council of Ministers of the ARC

- The Government of Ukraine and the Council of Ministers of the ARC should reconsider their policy of principled non-recognition of the Mejlis as an immediate priority. While the Mejlis currently still lacks a clear legal status, it nonetheless represents a sizable part of the Crimean Tatar community and as such should be provided with the opportunity to effectively participate in the governance process, while maintaining an inclusive approach to such participation. An agreement on the legal status of the Mejlis should be reached based on a process of broad public consultations. In the meantime, the authorities should resume their past policy of pragmatic engagement.
- The central Ukrainian and regional Crimean authorities should develop effective mechanisms that promote the political representation of FDPs in general and Crimean Tatars in particular, in line with the Lund Recommendations and Article 15 of the FCNM. The authorities should invite international expertise to review and evaluate the current mixed electoral system in Crimea, in which half of the mandates are allocated through majoritarian vote in single-mandate districts.
- Ukraine should reinforce its anti-discrimination legal and institutional framework, including at the level of Crimea, ensuring that effective remedies are accessible in cases of discrimination and that policies are introduced to ensure full and effective equality.
- Ukraine should take measures to improve the opportunities for candidates from disadvantaged ethnic groups to join the civil service, including through scholarships, internships, preparatory programmes or in-service training or by expanding good initiatives, such as support for their studies at the Presidential State Service Academy. The authorities should also develop mechanisms to collect relevant quantitative, including statistical and/or survey data on the representation of persons belonging to national minorities in the civil service, in line with the principle of voluntary self-identification and personal data protection standards.

To the Crimean Tatar community

- All factions within the Crimean Tatar community should acknowledge that pluralism of views and internal political competition is inherent to a democratic society.

5. SOCIO-ECONOMIC ASPECTS OF RETURN AND INTEGRATION

Inter-ethnic tensions on the Crimean peninsula may be further aggravated by real or perceived differences in the socio-economic status of different ethnic groups.⁵¹ Due to disadvantageous residence and housing situations caused by factors including the shortcomings in the legal framework regulating their return and settlement, FDPs are often unable to address the structural obstacles they face in other areas. These problems are acknowledged in legal documents and policies, but efforts to implement corrective activities lags behind. For example, the Government of Ukraine's "Programme for Settlement, Adaptation and Integration of Formerly Deported Crimean Tatars and Other Nationalities in Ukrainian Society until 2015"⁵² mentions various obstacles to the full socio-economic integration of FDPs but the Programme has not yet achieved its stated objectives, as explained in section three.

51 This section draws mostly on two studies, namely, the United Nations Development Programme (UNDP) Human Security and Development Council under the Chairman of the Verkhovna Rada of Crimea, "Living Standards in the Autonomous Republic of Crimea", 2012 (hereinafter, "Living Standards in the Autonomous Republic of Crimea, 2012"), which is the first study to provide indicators of socio-economic integration in Crimea disaggregated by ethnicity, and field research led by Mirimanova. While the analysis is relevant to all FDPs, it focuses mainly on the challenges faced by the Crimean Tatars for reasons cited above.

52 <http://zakon2.rada.gov.ua/laws/show/637-2006-%D0%BF/paran13#n13>.

Socio-economic disadvantages, such as poverty, poor housing, unemployment or lack of access to social and healthcare services, are consequences of the incomplete settlement and rehabilitation processes of returnees and create obstacles to the successful integration of Crimean society. Such disadvantages limit the full participation of FDPs in all spheres of life. International monitoring bodies have noted with concern that the socio-economic situation of FDPs, and Crimean Tatars in particular, has not improved in recent years.⁵³

Poverty

Crimea as a whole faces high levels of poverty. According to the UNDP, the income level of 43.1 per cent of households in Crimea is below the official poverty line. This situation is worse in rural regions, where 53.8 per cent live in poverty (compared to 30 per cent in urban areas). Crimean Tatars belong to one of the most vulnerable groups: 43 per cent of Crimean Tatar households qualify as poor, compared to 33 per cent for ethnic Russians and 38 per cent for ethnic Ukrainians. The higher levels of poverty among Crimean Tatars can partially be attributed to the fact that on average their households are larger (3.2 people per household, compared to 2.28 among ethnic Russians and 2.19 among ethnic Ukrainians) and have a lower ratio of working to non-working persons.⁵⁴

A total of 54 per cent of families of all income groups in Crimea cannot afford to save. That may restrict entrepreneurial incentives or limit education opportunities, as well as prevent people from acquiring goods and services associated with higher standards of living, further worsening the situation among the poorer groups in Crimea.⁵⁵ As poverty is more common among Crimean Tatars compared to other ethnic groups, it presents an enormous obstacle to their successful socio-economic integration.

While rural residents can grow their own food, many Crimean Tatars respond to poverty by accumulating debt, delaying payments for rent or communal services or not purchasing food, clothing or medicine, which has an adverse impact on human development in Crimea.⁵⁶ Some support has been provided by international development organisations such as the Turkish Agency for International Development (TIKA). UNDP's grassroots development support has been provided to Crimean rural communities at large, with a special focus on multi-ethnic communities.

Social services and healthcare

Social services in Crimea are provided by the Crimean Ministry of Social Policy. Even though the authorities do not recognize FDPs as a specifically vulnerable category in need of additional assistance⁵⁷, FDPs are nonetheless eligible for financial support in emergency situations. However, as explained in section three above, many FDPs live in unauthorized settlements or houses that do not meet legally established technical requirements. As such, they are unable to obtain formal residency registration (propiska) and cannot prove their eligibility for social assistance.

Provision of healthcare is problematic in Crimea in general. According to the UNDP, 33 per cent of the population of Crimea does not have access to healthcare in case of sickness that requires surgical intervention or long-term care. Short-term, out-patient care is more accessible, with only nine per cent having limited access to such services.⁵⁸ The public healthcare system is chronically underfunded, and is unable to meet demand. Private healthcare is out of reach for many FDPs, as the fees are very high.

53 Advisory Committee on the FCNM, "Third Opinion on Ukraine", adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013); The Advisory Committee notes that there has been no progress since the second monitoring cycle regarding the socio-economic situation of the Crimean Tatars.

54 UNDP, "Living Standards in the Autonomous Republic of Crimea", 2012.

55 UNDP, "Living Standards in the Autonomous Republic of Crimea", 2012.

56 UNDP, "Living Standards in the Autonomous Republic of Crimea", 2012.

57 Ministry of Social Policy of the ARC, Programme on Social Protection and Employment in Autonomous Republic of Crimea 2011–2013, 2010 (available at <http://msp.ark.gov.ua/programma/>).

58 UNDP, "Living Standards in the Autonomous Republic of Crimea", 2012.

Employment and self-employment

In the early stages of the return process, unemployment was one of the most pressing issues for FDPs and in particular Crimean Tatars, whose unemployment level reached up to 50 per cent. Initially they were caught in a vicious circle, linking employment and legal status of residence. Residence registration was necessary for acquiring a job, and official employment was a precondition for residence registration. Furthermore, as many returnees resettled from towns to rural areas, they were excluded from higher-paying positions corresponding to their qualifications, and had to accept low-paid or occasional jobs.⁵⁹ Moreover, discrimination at the recruitment stage limits employment opportunities for Crimean Tatars, especially in the public sector, as mentioned in section four.⁶⁰

In Crimea, the level of registered unemployment is low – 1.7 per cent⁶¹, but a significant share of unemployment remains unregistered. A recent UNDP survey indicates that 39 per cent of the Crimean Tatar labour force is currently employed, which is similar to ethnic Ukrainians (40 per cent) and ethnic Russians (46 per cent).⁶² Despite the fact that the employment levels of Crimean Tatars are similar to those of other groups, a set of factors that hinder employment of FDPs can be identified. First, there may be discrimination at the recruitment phase and at the workplace in general, as indicated by perceptions among Crimean Tatars; other FDP groups express less concern about possible discrimination.⁶³ The prevalent perception of discrimination among Crimean Tatars highlights the necessity for further research and investigation of potential discriminatory practices within the labour market. Second, the residency of FDPs outside urban areas complicates their access to jobs in the cities, and employment opportunities in rural areas have been limited since the closure of the collective agricultural enterprises. A high share of unpaid work, such as housekeeping, among FDPs can be partly explained by the lack of facilities for families, especially for women, to combine childcare, housework and paid employment, as State childcare or pre-schooling are not easily accessible.

Crimean Tatars are also under-represented in most sectors of the economy, with the exception of agriculture and transport services. Crimean Tatars have responded to employment challenges by taking on informal employment, working extra hours, becoming self-employed or starting small businesses.⁶⁴ In a recent survey by the Razumkov Centre, approximately 11 per cent of Crimean Tatar respondents indicate that they engage in entrepreneurial activity, against 5.5 per cent for ethnic Russians and 5.3 per cent for Ukrainians.⁶⁵ While there are industries that seem promising for small-scale entrepreneurial activity, such as agriculture or tourism, FDPs perceive small and medium businesses as vulnerable and adversely influenced by interference by the authorities, reflected by administrative pressure and selective regulatory controls.⁶⁶ The Crimean authorities have developed a Programme on Social Protection and Employment in the Autonomous Republic of Crimea 2011–2013 to foster employment in Crimea and provide support to the unemployed; the programme does not include, however, specific measures to address the FDPs labor integration measures and it is too early to assess its impact.⁶⁷

59 Razumkov Centre, "Political Processes in the Crimea", National Security and Defence, No. 4, 2001 (available at www.uceps.org/additional/analytical_report_NSD16_eng.pdf).

60 Advisory Committee on the FCNM, "Third Opinion on Ukraine", adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013).

61 UNDP, "Living Standards in the Autonomous Republic of Crimea", 2012.

62 UNDP, "Living Standards in the Autonomous Republic of Crimea", 2012, p.27.

63 Natalia Mirmanova, Socio-economic Dimensions for the Integration of the Formerly Deported Peoples in Crimea, Social Science Research Network, 2013, p. 7-9.

64 Mirmanova, *op.cit.*, p. 10-11.

65 "Quality of Life of Residents of Crimea and Prospects for Its Improvement in the Context of Strategy of Economic and Social Development of ARC 2011–2020" ("*Якість життя кримчан та перспективи її покращання в контексті реалізації Стратегії економічного та соціального розвитку Криму на 2011–2020 рр.*"). (Ukraine: Razumkov Centre, 2011).

66 Mirmanova, *op.cit.*, p. 11.

67 Ministry of Social Policy of the ARC, Programme on Social Protection and Employment in the Autonomous Republic of Crimea 2011–2013, 2010 (available at <http://msp.ark.gov.ua/programma/>).

Recommendations

To the Government of Ukraine

- Elaborate a systematic approach to combat discrimination, including by adopting comprehensive legislation and establishing an appropriate institutional set-up to ensure effective remedies, monitoring and analysis of the situation and the development of anti-discrimination policies at the national and regional levels.

To the Council of Ministers of the ARC

- Collect and analyse data disaggregated by ethnicity on all aspects of the socio-economic situation in Crimea in order to formulate and implement targeted and co-ordinated measures to promote the socio-economic inclusion and participation of FDPs.
- Include FDPs as a specific target group in a future phase of the Programme on Social Protection and Employment in the Autonomous Republic of Crimea to address the specific challenges to their socio-economic integration.
- Develop effective mechanisms to increase the access of FDPs living in compact settlements to social and healthcare services, including by reviewing current regulations on registration.

6. LANGUAGE, CULTURE AND RELIGION

Any integration policy should be grounded in firm respect for human rights and fundamental freedoms, including minority rights. Accommodating diversity requires safeguards for the maintenance of diverse identities, including by providing minorities with appropriate opportunities to develop their cultures and languages and to practise their religions.⁶⁸ As part of Ukraine's international commitments, including those enshrined in treaties it has ratified, such as the FCNM and the European Charter on Regional and Minority Languages (ECRML), the Government of Ukraine has undertaken to protect and promote the language and cultural heritage of national minorities on its territory, including those of the FDPs. International monitoring bodies have repeatedly urged the Government to do more, including for the FDPs residing in Crimea.⁶⁹

In Ukraine as a whole, the question of language policy has long been dominated by disagreements over the status of the Russian language, which to some extent has overshadowed concerns related to other, less widely spoken languages in the country. Although the legal framework of Ukraine aims to fulfil the country's international commitments, recent research shows that FDPs lack opportunities to preserve and develop their language, culture and religious practices, and that these difficulties can constitute potential triggers of tensions within and between communities.⁷⁰

68 Ljubljana Guidelines, Guideline 4.

69 Such as the 19th and 21st Periodic Reports on Ukraine prepared by the UN Committee on the Elimination of Racial Discrimination (CERD/C/UKR/19-21), the European Commission against Racism and Intolerance Report on Ukraine (fourth monitoring cycle, CRI (2012)6), the Third Opinion on Ukraine of the Advisory Committee on the FCNM, "Third Opinion on Ukraine", adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013).

70 Unless otherwise indicated, this section is based on Idil P. Izmirli, "On Revitalization of the Language and Culture of the Crimean Tatars and Other Formerly Deported People in Crimea", Ukraine: Assessment of Needs and Recommendations, Social Science Research Network, 2013; Idil P. Izmirli, "Fragmented Islam and Inter-Ethnic Conflict in Crimea", Social Science Research Network, 2013.; Advisory Committee on the FCNM, "Third Opinion on Ukraine", adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013).

Status of FDP languages

Support mechanisms for “development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities” are enshrined in the Constitution of Ukraine.⁷¹ Ukraine also ratified the European Charter for Regional or Minority Languages in 2005, committing itself to promoting the language diversity and cultural heritage of minorities in Ukraine.

According to Article 10.1. of the Constitution of the ARC adopted in 1998, “alongside the official language [Ukrainian], the application and development, use and protection of Russian, Crimean Tatar and other ethnic groups’ languages shall be secured.”⁷² In addition, the new Language Law of Ukraine gives a language the status of regional language if it is used by at least ten per cent of the population in a certain administrative unit, based on census data. While the law in principle offers a strong foundation for the use of minority languages in public administration, media and education, implementation so far appears to vary considerably.

In practice, while Armenians, Bulgarians, Germans and Greeks state little concern about the status of their respective languages in Crimea, the Crimean Tatars are in a different position and express a strong preference to maintain and strengthen their native language, which they point out is not spoken anywhere else.⁷³ UNESCO’s Endangered Languages Programme categorizes Crimean Tatar as a severely endangered language, and the Committee of Experts on ECRML has expressed its concern about the “particularly vulnerable situation” of the Crimean Tatar language and urged the Ukrainian authorities to “adopt strong protective measures.”⁷⁴

This is partially due to the fact that intergenerational language transmission was weakened among Crimean Tatars in exile as a result of the assimilationist Soviet language policies and other factors, leading to poor Crimean Tatar language acquisition among younger generations. Russian remains the primary language of interaction in Crimean business, education and public institutions, and the authorities allocate limited resources to provide opportunities to use minority languages in the public domain.⁷⁵

In terms of language proficiency, 92 per cent of Crimean Tatars regard Crimean Tatar as their “mother tongue”,⁷⁶ but the question of what a person considers his or her mother tongue tends to elicit answers that reflect ethnic loyalty or genealogical descent, rather than actual language preference or competence. Day-to-day observations and local surveys indicate much lower levels of practical knowledge and use of the Crimean Tatar language. Many Crimean Tatars know only a few expressions in their “native language”. According to a recent survey, only 4.8 per cent of Crimean Tatars consider that their co-ethnics know the language perfectly.⁷⁷ The public communications of Crimean Tatar organizations are frequently conducted in Russian.⁷⁸

On the whole, Crimea’s rich cultural and linguistic diversity is insufficiently reflected in the public domain. Over 95 per cent of Crimean towns and settlements that once had Tatar names were replaced with Russian names and their former names have not been restored. Initiatives to use the historic names in parallel to the

71 Constitution of Ukraine, article 11.

72 Law of Ukraine “On Approval of the Constitution of the Autonomous Republic of Crimea”, article 10.

73 Idil P. Izmirli, “On Revitalization of the Language and Culture of the Crimean Tatars and Other Formerly Deported People in Crimea”, Ukraine: Assessment of Needs and Recommendations, Social Science Research Network, 2013, p. 3.

74 Report of the Committee of Experts on the Application of the European Charter for Regional or Minority Languages by Ukraine (7 July 2010), in particular, paragraph 84, and the UNESCO Atlas of the World’s Languages in Danger.

75 Izmirli, *op.cit.*, p. 5.

76 ECRML, The European Charter for Regional or Minority Languages, Application of the Charter in Ukraine, 2010, 6, paragraph 24.

77 Izmirli, *op.cit.*, p. 6.

78 Izmirli, *op.cit.*, p. 13.

current names are often rejected by the majority.⁷⁹ There have been limited efforts to restore some Crimean Tatar toponyms, such as to attract ethnographical tourism.⁸⁰

Access to minority-language media

The Russian language also dominates the media in Crimea. According to the Law of Ukraine “On Television and Radio Broadcasting”, broadcasting to specific regions may be in the languages of ethnic minorities residing in such regions as distinct communities. There are several initiatives to broadcast in minority languages, such as short programmes in Crimean Tatar on public television. As of 2012, Crimean Tatar-language programmes on the State-run Crimean TV channel GTRK Krim have been allocated three and a half hours of airtime per week.⁸¹ In addition, the private TV company ATR broadcasts some content in Crimean Tatar, but Russian is still the main language of communication. Other FDP communities are allocated 13-minute time slots weekly on public TV. Crimean Tatar radio broadcasts 24 hours a day, but its coverage outside of Simferopol is limited. Numerically smaller FDP communities, such as Armenians, Bulgarians and Greeks, have also expressed concern that their needs are not met by public TV and radio broadcasts.⁸² In addition, international monitoring bodies have criticized the procedures used for the allocation of frequencies and the enforcement of the nationwide quota on the use of the State language prior to the adoption of the new Language Law in 2012.⁸³

Even though several publications (weekly, monthly or quarterly) in Crimean Tatar exist, according to recent estimates non-Russian newspapers and journals account for around five per cent of the total print circulation in Crimea. All minority-language media struggle with funding, which limits their capacity to produce original content and threatens their long-term survival.⁸⁴ The State provides some funding for six minority-language newspapers in Ukraine, including the Crimean Tatar-language newspaper Krim. While funding has marginally increased in recent years, there are no clear criteria or transparent procedures to apply for this funding, and the communities regard the amounts allocated as insufficient.⁸⁵

Culture

The Ministry of Culture oversees a programme to support the cultures of national minorities in Ukraine, including through State funding for cultural activities. So far, the Ukrainian authorities have supported a range of minority-association activities, such as maintaining minority-language libraries and theatres and organizing cultural events. All FDP groups have their own organization and hold annual festivals. For example, the Crimean Republican Association of the Bulgarian Community organizes a Bulgarian festival every year and the Crimean Armenian Community puts on celebrations and publishes a yearly Almanac.⁸⁶ There are several efforts to revitalize minority languages and cultures. The Gaspirinsky Crimean Tatar library in Simferopol holds events to promote Crimean Tatar culture and language and the International Mother Tongue Day is supported by the Ministry of Culture and minority organizations.⁸⁷ Cultural institutions, such as the library and the Crimean Tatar art museum and drama theatre, operate in poorly equipped and maintained buildings and report a severe lack of funding to preserve documentation and artefacts.

79 The UN Committee on the Elimination of Racial Discrimination, 79th Session, CERD/C/SR.2099, paragraph 67, and the Committee of Experts on European Charter for Regional or Minority Languages, Application of the Charter in Ukraine, ECRML, 2010, 6, paragraph 429 and Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013).

80 <http://qha.com.ua/historical-toponyms-to-attract-more-tourists-to-crimea-119976en.html>.

81 Izmirli, *op.cit.*, p. 7.

82 Izmirli, *op.cit.*, p. 16-18.

83 Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013), paragraphs 87 and 88.

84 Izmirli, *op.cit.*, p. 8.

85 Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013).

86 Izmirli, *op.cit.*, p. 18.

87 Izmirli, *op.cit.*, p. 11.

Some of these cultural institutions and activities are supported by the national, regional and local authorities, although it appears that budget allocations vary from year to year. Nor are there clear administrative guidelines, procedures or criteria to regulate the allocation of cultural subsidies. The ARC or local authorities have provided some organizations with baseline funding and general administrative or logistical support, such as reduced rates for the rent of premises, but decisions appear to be ad hoc and practices vary widely for different minority organizations in Crimea.⁸⁸ Moreover, there is reportedly a major gap between the intended and allocated budget, with cultural organizations of FDPs claiming that they receive very little or nothing at all from the republican budget and are not consulted during the decision-making process. There are also reports that the total amount of support for cultural activities and institutions is dwindling as a result of the impact of the economic downturn in Ukraine.⁸⁹

Religion

While Orthodox Christianity is the predominant religion in Ukraine as a whole, it is estimated that there are about 500,000 Muslims residing in the country. Out of these, Crimean Tatars are the single largest Muslim group and mostly follow the Sunni branch of Islam. The way most Crimean Tatars practise their religion was profoundly affected by their deportation and prolonged exile. As a result of the official discouragement of all religious practices in the USSR, the practice of Islam was severely restricted. After the mass return of FDPs to Crimea, identification with Islam increased among the Crimean Tatar returnees as an essential part of their ethno-national identity. Since their mosques had been destroyed or used for other purposes during the Soviet era, Crimean Tatars had to rebuild their religious establishments and practices almost from scratch.⁹⁰

The main centre of Islamic worship is the Kebir Cami Mosque in Simferopol. While it was used as a factory in Soviet times, this mosque was returned to the Crimean Tatar community and also houses an Islamic library and a madrasa. While hundreds of mosques existed before 1944, many were destroyed during the Soviet times. Today, most of the mosques in Crimea are too small to accommodate all attendants of weekly prayers. One of the main concerns regarding the existing mosques is the fact that almost none of them have official documents granting permanent use of the land they are located on, which creates anxiety and insecurity among Crimean Tatars. Efforts to build a new, larger central mosque in Simferopol have been stalled for many years: a building permit was obtained in 2004 and land was allocated by the Simferopol City Council in 2011, but construction has still not begun.⁹¹ Crimea has been described by the Ukrainian Ministry of Culture as one of the regions facing “a complex religious situation” inter alia due to a large number of lawsuits over property issues and registration of religious communities.⁹²

The Islamic community in Crimea is also deeply divided internally, which occasionally leads to tensions. In 1991, the Muftiyat or Spiritual Administration of Muslims of Crimea (DUMK)⁹³ was established in accordance with the Ukrainian Constitution, with significant support by the Mejlis. It is headed by a Crimean Tatar Mufti, currently Mufti Emirali Ablaev, who was first elected through the Qurultayin 1999. The DUMK adheres to the Turkish model of traditional Sunni Islam of the Hanafi School and as such co-operates closely with the religious authorities in Turkey. The DUMK faces opposition from other Islamic organizations in Crimea. There is another Muslim spiritual administration or Muftiyat in Evapatoria – the Spiritual Centre of Muslims

88 The Advisory Committee on the FCNM, for example, learned about significant support to a Russian culture centre in Crimea, while an initiative of several minorities to create a “House of Friendship” was turned down, Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013).

89 Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013), paragraphs 58–60. For example, in 2010, instead of the planned UAH 1,050,000 (USD 128,993), only UAH 760,000 (USD 93,389) was actually allocated. In 2011, only UAH 235,000 (USD 28,871) was allocated instead of the already decreased planned funding for UAH 420,000 (USD 51,597) (Note: due to the fluctuating exchange rate, the dollar figures are an approximation. Conversions made at the exchange rate (UAH 1 = USD 0.123533) prevailing on 3 May 2013; figures are rounded to the closest million). “Information on the status of inter-ethnic relations in ARC” (“Информация о состоянии межнациональных отношений в Автономной Республике Крым”, available at: <http://reskomnac.ark.gov.ua/mejnacotnosh/inform-anal-mat/95-o-sostoyanii-megnacionalnih-otnosheniy>) (ARC Republican Committee on Nationalities and Deported People, 4 April 2011) and Izmirli, op.cit., p. 16.

90 Idil P. Izmirli, “Fragmented Islam and Inter-Ethnic Conflict in Crimea”, Social Science Research Network, 2013, p. 1.

91 Izmirli, op.cit, p. 4-5.

92 Information Report of the Ukrainian Ministry of Culture, “On the State and Trends of the Religious Situation and Church-State Relations in Ukraine”, 11 April 2013 (available at <http://mincult.kmu.gov.ua> or <http://bit.ly/16RjDzm>).

93 DUMK is the acronym of the Russian name, “Духовное управление мусульман Крыма”.

of Crimea (DTsMK) – which was registered by the Republican Committee for Religious Affairs in 2010. Its authority is contested by the DUMK, which claims that the DTsMK’s activities are a threat to Crimea’s security and foster internal religious conflicts.⁹⁴ There are several other independent Islamic movements in Crimea that are often lumped together but in reality have different aims and characteristics. Three will be briefly mentioned here: the Hizb-Ut-Tahrir (HuT) movement of political Islam, which strives to establish a pan-Islamic caliphate and rejects the religious authority of the DUMK and the DTsMK; the conservative Salafis, who dismiss the concept of politics altogether and do not identify with the two Muftiyats or with the HuT; and the community organization Ar’Raid, which has links to the global Muslim Brotherhood and co-operates closely with the DUMK.⁹⁵ There are no objective figures available on the relative sizes of the different religious groups within the Islamic community, but the competition between the different movements and ideologies is intense and fraught with tensions.

In addition to intra-religious tensions within the Muslim community, there are also significant inter-religious tensions between Crimean Tatars and Orthodox Christian groups. In its extreme forms manifestations of intolerance include hate speech, vandalism of religious sites and even violent clashes. The Advisory Committee of the FCNM in 2012 “noted with concern that the number of inter-ethnic and inter-religious incidents, including vandalism against religious and cultural sites, appears to be increasing throughout Ukraine, but particularly in western regions and Crimea.”⁹⁶ There have been many reported incidents of desecrations of cemeteries and religious sites and hateful graffiti appears regularly. Perpetrators of such acts are rarely caught and brought to justice and the authorities often remain silent.⁹⁷ Russian Cossack groups have repeatedly placed unauthorized, large crosses close to Crimean Tatar settlements, which has led to tense standoffs or even clashes, such as in the case of Feodosia in July 2011.⁹⁸

Recommendations

To the Government of Ukraine

- Ensure support for the maintenance and development of minority cultures as well as equal access of all minority communities to financial and general administrative support for cultural activities, including premises for their organizations, libraries and museums.
- Develop more effective policies and take specific measures to protect and promote minority languages, in line with Ukraine’s international commitments. This includes financial support to minority-language media and cultural institutions.

To the Crimean authorities

- Develop measures to acknowledge the multi-ethnic character of Crimea and to promote intercultural and inter-religious understanding, including by facilitating the restoration of historic toponyms, the restitution of religious property and the construction of new cultural or religious buildings.
- Swiftly condemn, investigate and prosecute instances of inter-ethnic and religious hatred, including vandalism of religious sites. Strengthen the capacity of law enforcement structures and the police officers’ understanding of hate crimes and policing in multi-ethnic communities.
- As a confidence building measure, promote the legalization of land plots currently earmarked as sites of worship, including for the Kebir Cami mosque, which has been functioning in Crimea since 1991 without a certificate of land ownership.

94 Izmirlı, *op.cit.*, p. 5.

95 Izmirlı, *op.cit.*, p. 6-9.

96 Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013), paragraph 70.

97 Idil P. Izmirlı, *op.cit.*, p. 10.

98 <http://www.gazeta.ru/social/2011/07/04/3684589.shtml>.

7. EDUCATION

As outlined by the HCNM in his thematic recommendations, education is one of the key tools available to Governments to both promote integration of societies and provide persons belonging to national minorities with adequate opportunities to protect and promote their culture and language.⁹⁹ In Crimea, the successful integration of FDPs and the maintenance and revitalization of their culture and language is contingent upon a solid education system that serves both of these objectives. Each will be briefly discussed in turn.¹⁰⁰

Role of the education system in fostering integration and tolerance

The Crimean authorities have fully recognized the importance the education system can play in promoting mutual understanding and intercultural awareness. The “Concept of Priority Areas of Educational Work in Schools (2011–2015)” specifies teaching of “tolerance as a major democratic principle” as one of its aims. Two State-funded programmes support cultural and educational activities that foster respect for the culture, history, language, customs and traditions of the various ethnic groups inhabiting Crimea. Notably, the Crimean Ministry of Education, Science, Youth and Sports (hereinafter: “Crimean Ministry of Education”) has approved and introduced intercultural education courses at different levels of the curriculum and has endorsed several special courses on different cultures and religions. It has also initiated a process to revise the history curriculum, aiming to improve standards and promote multiculturalism.

These are positive initiatives that could be further built upon, although sustainability remains a concern due to limited resources and ongoing financial reform within the education system. In addition, the active involvement of parents and communities in the design and planning of educational activities can deliver numerous benefits both in the curricula and in improving inter-ethnic relations. Unfortunately, there is insufficient direct impact data available to evaluate the extent to which such projects have improved inter-ethnic relations on the Crimean peninsula, which, according to the Crimean authorities, remain marred by negative stereotypes and prejudices.¹⁰¹

Obstacles to access to minority-language education in Crimea

In Crimea, as elsewhere in Ukraine, parents have the right to freely choose the school and the language of instruction of their child. However, the legal framework does limit this choice to one language only and presumes that the language of choice is also the child’s first language. This is not always the case. Many FDPs are most proficient in Russian, while their community language (Armenian, Bulgarian, Crimean Tatar, German or Greek) may be used at home or in social circles. This makes the term “mother tongue” a deceptive concept in this context.¹⁰² In addition, as will be further discussed below, learning a minority language may be regarded as a right but not as an asset by the minority and the majority alike, leading to limited supply and demand.

This disjunction between ethnic language and language of instruction is reflected in the choices made by parents from FDP communities, who overwhelmingly opt for their children to be educated in the Russian language. There are only 15 schools with instruction in Crimean Tatar (before WWII, there were 371); in these, only in elementary grades instruction is in Crimean Tatar before switching to Russian in higher grades.¹⁰³ Some schools offer Armenian, Bulgarian, Crimean Tatar, German and modern Greek language

99 OSCE HCNM, *The Hague Recommendations regarding the Education Rights of National Minorities* (October 1996) and the Ljubljana Guidelines.

100 The content of this chapter is largely based on the research conducted by Marina Gurbo, “Assessment of the Educational Needs of Crimean Tatars and Other Formerly Deported Peoples”, Social Science Research Network, 2013.

101 “Information on the status of inter-ethnic relations in the ARC” (“Информация о состоянии межнациональных отношений в Автономной Республике Крым”, available at: <http://reskomnac.ark.gov.ua/mejnacotnoosh/inform-anal-mat/95-o-sostoyanii-megnacionalnih-otnosheniy>) (ARC Republican Committee on Nationalities and Deported People, 4 April 2011).

102 Idil P. Izmirli, “On Revitalization of the Language and Culture of the Crimean Tatars and Other Formerly Deported People in Crimea”, Social Science Research Network, 2013, p. 5.

103 According to data provided by the Crimean Ministry of Education and Science, of the 576 general schools in Crimea, 331 offer a full educational programme in Russian and another 222 are mixed schools, with some groups taught in Russian and other, separate groups taught in Ukrainian and/or Crimean Tatar. Approximately 89 per cent of the pupils in Crimea study in the Russian language, eight per cent study in Ukrainian and three per cent study in Crimean Tatar.

classes as optional subjects or extracurricular courses. Only 16 per cent of pupils of Crimean Tatar ethnic origin are studying in the Crimean Tatar language, while 39 per cent study it as a subject. The number of pupils studying other FDP languages is far lower, less than 0.3 per cent of the total school population in the 2012/2013 school year.¹⁰⁴ As a result, in 2013, 92 per cent of Crimean secondary school pupils chose to write their graduation exams in Russian, 7.5 per cent in Ukrainian and none in Crimean Tatar.¹⁰⁵ The Crimean Ministry of Education and representatives of the relevant communities consider these numbers to be unsatisfactory. To increase the numbers, it is necessary to identify the structural causes behind the low level of pupils accessing minority-language education.¹⁰⁶

As is common practice throughout the OSCE area, a parent's right to choose their child's language of instruction is contingent upon available resources and sufficient demand. The two are closely linked: parents are less likely to apply for underfunded and lower-quality education for their children, while the authorities can use low applications to justify budgetary cuts to minority-language education. Both of these trends are apparent in Crimea.

First, resource shortages disproportionately affect minority-language education, given the higher costs involved in teaching to relatively small numbers of pupils. As defined within Ukrainian legislation, classes in secondary schools must have between a maximum of 30 pupils and a minimum of five. Local authorities are free to change the minimum threshold to open classes in particular languages depending on available funds. This has led to considerable divergences in practices between districts; in recent years, some district authorities, such as Belogorsk, have reduced the number of classes in Crimean Tatar due to financial constraints. The lack of clear legal guarantees for minority-language education and the fact that this right is not always granted in an equitable manner has been criticized by international monitoring bodies, including the Advisory Committee of the FCNM.¹⁰⁷

The inability or unwillingness of local authorities to finance minority-language education often leads to irregular education patterns, in which parents and NGOs, such as the "Maarifci" Association of Crimean Tatar Educators, actively seek alternative sources of financing to open classes in Crimean Tatar.¹⁰⁸ In a 2011 Crimean survey, 59 per cent of parents reported that they needed to provide additional financial resources to get quality primary education for their children.¹⁰⁹ The forthcoming financial reform in education may put further financial burdens on parents, since it allows schools to manage their own budgets and charge parents fees for some services. In addition, school administrations and teachers of Crimean Tatar-language schools often cite concerns regarding unequal access to quality educational resources, such as facilities and technical resources. They feel disadvantaged compared to Russian-language schools and claim to be almost entirely dependent on external donor investment to develop school infrastructure. The financial pressure is exacerbated by the fact that most Crimean Tatars live in rural areas, where all social infrastructure is significantly less developed, as mentioned in section three above, and education facilities generally face more difficult conditions compared to urban schools.

A second factor impacting parental demand for minority-language education is the opportunity to use that language throughout one's academic and professional career. Given the preponderance of Russian in Crimea's society and economy, it is understandable that parents and pupils opt for this language instead of the lesser-used FDP languages, especially for the later stages of secondary education. For example, in 2012, only 62 pupils took Crimean Tatar language courses as a "career subject", and only six pupils took their 11th-grade external exam in Crimean Tatar. However, supply and demand are inextricably linked in

104 Marina Gurbo, "Assessment of the Educational Needs of Crimean Tatars and Other Formerly Deported Peoples", Social Science Research Network, 2013. p.5.

105 "Not one Crimean matriculant wanted to be tested in Tatar", 30 May 2013. (Available at: <http://crimea.comments.ua/news/2013/05/30/180035.html>, accessed 31 May 2013).

106 Gurbo, *op.cit.*, p.5.

107 Advisory Committee on the FCNM, "Third Opinion on Ukraine", adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013), paragraph 128.

108 Izmirlı, *op.cit.*, p. 10.

109 Centre for Problems in Education of the Crimean Ministry of Education (7 November 2011 No. 01-14/3321). Information about the results of national monitoring of co-operation between the education authorities of cities and regions in the ARC with executive power and local self-government, other organizations and institutions in the implementation of the constitutional right to equal access to quality education. Retrieved on 23 November 2012 from <http://cpe.krimedu.com/en/site/monitoringa-vzaimodeistvi.html>.

this regard: since there are only limited opportunities to study in Crimean Tatar in higher education, to find job opportunities requiring Crimean Tatar or to access Crimean Tatar media or culture, this makes it difficult to revitalize the language.

Thirdly, the quality of education is widely regarded as the decisive factor influencing parental choice, making it essential that all groups have access to education of equal quality, regardless of their language of choice. Teaching in and of FDP languages in Crimea is hampered by a lack of qualified teachers, which in turn is a consequence of inadequate teacher training and the relatively low value that Ukraine's teacher-evaluation system attaches to the ability to teach in a minority language. The professional and career development of teachers is not linked to their competencies in any language other than Ukrainian, and the ability to teach bilingually is not recognized as a competency that opens up additional career opportunities or remuneration. Several Crimean Tatar teacher-training programmes exist at a few higher-education institutions in Crimea, but these programmes only train teachers of the language, not those who can teach other subjects in the language.¹¹⁰

Fourthly, there are problems regarding the availability of textbooks, especially in the Crimean Tatar language. In line with Ukraine's legislation, all textbooks are financed from the budget of the Ministry of Education and Science of Ukraine and are provided free of charge. In terms of quantity and range, the provision of textbooks in Crimean Tatar has steadily improved since 2006: textbooks of Crimean Tatar language and literature are published for all 11 grades and a number of textbooks for other subjects at primary and secondary school have been translated. The Crimean Ministry of Education reports that in 2011, 95 per cent of needs in Crimean Tatar schools had been met compared to 72 per cent in 2007. However, problems concerning the quality of the textbooks remain, especially regarding the poor translation and mismatch with the linguistic competence of pupils. Teachers claim that the textbooks are insufficiently related to the curriculum and are too difficult to use, requiring them to spend significantly more time to prepare their classes. The translated textbooks also do not appear to have the aim of gradually raising the linguistic competence of the pupils.

Opportunities to revise language education policy in Crimea

One of the structural causes underpinning the limited access to teaching in and of FDP languages is that Ukraine's education system presents parents in Crimea with a choice of education in Russian, Ukrainian or Crimean Tatar, which is then taught as if it is the child's first language. This model does not address the language-needs of pupils who are learning in a language that is not their first language, which is a serious issue for the 30–70 per cent of pupils in Crimean Tatar schools who hardly speak Crimean Tatar. As of grade 1, they are taught in Crimean Tatar and learn Ukrainian and a foreign language, while none of these is their first language.

Furthermore, because several languages are taught as subjects, language classes compete with one another for teaching hours within the already dense curriculum. Parents therefore face a stark choice between instruction in Russian or Ukrainian, both of which are perceived as having a higher socio-economic value, or in the language of their community. Although multilingual education (MLE) – where teachers use both languages simultaneously in the classroom – does exist in Crimea, practitioners are exceptions to the rule: the Ukrainian education policy does not aim to produce bilingualism as an educational outcome. This affects the methodologies used to teach the courses and evaluate the results: teaching strategies are less effective, the linguistic competencies of teachers are not certified or targeted by professional development programmes and the degree to which bilingual instruction contributes to enhanced language competencies is not assessed.

MLE in Crimea might be approached by gradually introducing trilingualism through using Russian, Ukrainian and Crimean Tatar languages in the education process. Such an approach would not only ensure further development of the Crimean Tatar language, but also promote integration and consolidation of the Crimean Society as a whole. This initiative (developed within the framework of the Crimea Policy dialogue, supported

¹¹⁰ The 2012 "Concept on Sustainable Professional Development of Teachers" adopted by the Ukrainian Ministry of Education allows teachers to obtain two pedagogical qualifications, which could, in theory, offer an opportunity to prepare teachers who are both subject teachers and language teachers.

by the Foreign Ministry of Finland) has been endorsed by numerous Crimean teachers, parents and pupils; Crimean regional authorities, as well as some officials from the responsible central Ministry also welcomed it.

Schools currently do not collect information about the language abilities of children nor about languages spoken at home, whereas such data would allow them to target the medium of instruction appropriately to a child's linguistic needs. As a result, opportunities are missed to use the education system to serve the dual purpose of protecting and promoting the languages of FDPs on the one hand, and to encourage acquisition of Ukrainian and Russian to increase the professional opportunities on the other.

Recommendations

To the Government of Ukraine and the Crimean authorities

- The Ukrainian Ministry of Education should exercise leadership to ensure that the right to receive instruction in and of minority languages is granted in an equitable manner. The current system in which local authorities are setting their own minimum thresholds should be revised, including with clear procedures and criteria for the opening of classes, to reduce discrepancies between regions.
- The authorities should acknowledge that instruction in and of minority languages is inherently more costly than instruction in the language of the majority. As such, additional investment may be required to meet the specific needs of FDP communities and to ensure sustainable funding to schools that offer instruction in and of the languages of FDPs.
- In schools with instruction in minority languages, the authorities should ensure that the linguistic competencies of FDP children are duly taken into account, especially for those children who receive instruction in languages other than their first language. The development of linguistic competencies should be recognized as a specific objective with its own clear targets and indicators. Teachers should be trained accordingly.
- The authorities should consider reducing the existing separation and competition in the curriculum between the learning of different languages; to do so, they could expand on existing multilingual education initiatives and consider introducing methodologies listed in the Council of Europe's Platform of resources and references for plurilingual and intercultural education, such as Content and Language Integrated Learning (CLIL).¹¹¹
- The authorities should continue their efforts to promote inter-cultural and inter-religious understanding through the education system, including by expanding on existing initiatives such as the course on the Culture of Good Neighbourhood as well as the review of the history curriculum.

8. CONCLUSIONS

Nearly a quarter of a century has passed since the members of the communities that were deported on ethnic grounds began returning to Crimea in large numbers. The passing of time has not resolved all problems in Crimea; if anything, it has made them worse. The lack of a comprehensive legal and political agreement on the restoration of rights of the FDPs has presented formidable obstacles to their full integration into public and socio-economic life. The needs assessment shows that unresolved questions of identity, land, property and inclusion in political decision-making are deeply dividing the different groups in Crimea and give rise to tensions, both between communities and within them.

To date, all sides have largely and prudently refrained from resorting to violence to achieve their aims or address their grievances, but the potential for conflict remains as protracted problems are left unresolved.

¹¹¹ In CLIL, courses are taught with the dual objective of teaching the language and the subject simultaneously. This teaching methodology is endorsed by the European Commission as a priority area in its Action Plan for Language Learning and Linguistic Diversity and is widely used throughout Europe to promote multilingualism.

Crimea faces a volatile mixture of acrimonious political competition, socio-economic exclusion, inter- and intra-religious strife and a general atmosphere of increasing intolerance. The risk of inter-ethnic violence is real and requires urgent attention, both from Ukraine and from its international partners.

This paper has reviewed six issue areas that the HCNM has identified as particularly concerning and in need of attention from the Ukrainian and Crimean authorities and the international community. Of these, the lack of a legal framework for the restoration of rights of the FDPs stands out as one of the most pressing. The adoption of appropriate legislation that defines the FDPs as a separate legal category and clearly outlines their rights to land, housing and State support is a prerequisite for the development of targeted and effective policies. The Ukrainian Verkhovna Rada should therefore pass the Law “On Restoration of Rights of Persons Deported on Ethnic Grounds”, already adopted in the first reading on 20 June 2012, as an immediate priority. Together with the Central Asian States, it should also remedy problems within the legal framework that are negatively affecting returnees, including with regard to citizenship, residency permits and the high costs of relevant paperwork. If an extension of the Bishkek Agreement is not agreed upon by all of its signatories, Ukraine and the Central Asian States could sign bilateral agreements to address these concerns.

Targeted policies are also required to end the disadvantages facing FDPs in the spheres of land, housing, education, language, culture and political participation. The institutional framework is insufficiently equipped to do so, especially after the dissolution of the State Committee for Nationalities and Religion in late 2010. The Government should therefore follow up the adoption of the law “On Restoration of Rights of Persons Deported on Ethnic Grounds” by re-establishing a dedicated agency with the mandate to implement the Law and to co-ordinate the development and funding of related policies.

In terms of acute social needs, the research revealed that lack of land and housing were the two most prevalent factors inhibiting the improvement of the socio-economic situation of the FDPs. Tens of thousands of FDPs still reside in unauthorized settlements that lack basic infrastructure. A “vicious land cycle” has emerged whereby different ethnic communities respond to perceived injustices in the allocation of land by the authorities with land squatting, leading to tensions and profound uncertainty of land ownership that undermines Crimea’s economic potential. A comprehensive approach to resolve the land issue is urgently required, especially in anticipation of the lifting of the moratorium on land sales in 2016. In addition, existing programmes meant to provide FDPs with affordable accommodation require revision and stringent monitoring to ensure they meet their intended beneficiaries.

A comprehensive approach to the integration of society in Crimea requires inclusive decision-making, which in turn requires genuine opportunities for FDP communities to participate in political affairs. While political competition between and within communities is an essential part of pluralist systems, the current divisions within the Crimean Tatar community between the Mejlis and its opponents – and the instrumentalization of these divisions by the authorities – undermine the legitimacy of the institutions resolving the problems of the FDPs. An agreement on the legal status of the Mejlis and a removal of existing obstacles to equitable political representation of Crimean Tatars would contribute considerably to the efficiency and legitimacy of governance in Crimea and should be considered as an integral part of the process of restoration of rights and integration of the FDPs.

Research shows that the FDPs are also disproportionately affected by the generally difficult socio-economic circumstances facing Crimea. While poverty affects all communities, those who reside in rural areas – often in compact settlements without basic infrastructure – are particularly deprived of adequate social care and employment opportunities. Due to a lack of specialized institutions and data disaggregated by ethnicity, it is difficult to develop targeted policies and to counter the strong feelings of discrimination that prevail among FDPs. Further research is required, including in the context of existing poverty reduction strategies. In addition, the adoption of comprehensive anti-discrimination legislation and empowerment of relevant institutions, including at the regional level, could contribute significantly to reduce the perceived socio-economic exclusion and concomitant grievances of the FDPs.

Of the different FDP communities, the Crimean Tatars are most concerned about obstacles to the preservation and development of their language, culture and religion. The Crimean Tatar language is endangered and its proponents struggle to revitalize it in a predominantly Russian linguistic environment.

While the authorities provide some support, large sections of society appear reluctant to accommodate the development of Crimean Tatar identity and culture. This is exemplified by resistance to the restoration of historic place names, vandalism of religious sites and occasional clashes between Muslim and Orthodox communities. In addition, the Crimean Tatar community itself is divided over religious issues, with two spiritual directorates or Muftiyats vying for control and various Islamic movements attempting to increase their influence. Real or perceived threats to the Crimean Tatar identity and religious intolerance both increase social tensions and require State involvement, including by safeguarding minority rights and by swiftly condemning, investigating and prosecuting acts inciting religious or inter-ethnic hatred.

The education system, which should play a crucial role in the preservation and development of the languages and cultures of FDPs, is fraught with difficulties. While the legal framework acknowledges the right to mother-tongue education, in reality available resources and existing methodologies are not conducive to equitable educational outcomes. Parental demand for education in languages of FDPs, especially in Crimean Tatar, is low because children in Crimean Tatar-language schools are seen as disadvantaged compared to their peers in Russian-language schools. Multilingual solutions that break the zero-sum game of either Russian or Crimean Tatar are being explored but require further support and expertise. Over the longer term, a fundamental reform of the education system is required, from teaching methodology to teacher training and curriculum review. This demands central leadership, as research shows that local authorities are sometimes unable or unwilling to make the required investments.

Finally, the needs assessment shows that while the Ukrainian authorities should take the lead on addressing the current protracted problems facing the FDPs, Ukraine cannot be expected to solve all the problems on its own. Expertise and resources from abroad should be deployed to support and enhance their efforts. The international community has a clear stake in helping to build a stable and prosperous Crimea, which in turn will contribute to the stability and development of Ukraine as a whole. This is why the HCNM strongly advocates for the convocation of an International Forum on the Integration of the Formerly Deported People in Crimea. Such a Forum will provide an opportunity for all stakeholders to design a joint road map, identify areas where they can provide support and expertise, and agree on joint monitoring of the implementation of the road map. This paper serves as a starting point for this discussion. While the obstacles facing the successful restoration of rights and integration of the FDPs are numerous and will require strong local, national and international support to overcome, the research shows that they are by no means insurmountable.

Annex 806

OSCE, Report by the OSCE Representative on Freedom of the Media (28 November 2013 to 23 May 2014)



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
Dunja Mijatović**

Report by the OSCE Representative on Freedom of the Media

“Media Freedom under siege in Ukraine”

This report is a comprehensive overview of the activities, interventions and an assessment of the situation in Ukraine between 28 November 2013 and 23 May 2014 by the OSCE Representative on Freedom of the Media, Dunja Mijatović.

Overview

The current media freedom situation in Ukraine reflects the overall security situation. We are clearly witnessing an information war in the regions of Ukraine affected by conflict. As I have already warned on several occasions, this situation must be reversed to avoid further escalation of the conflict.

As we know too well, in times of crisis and conflict, journalists and members of the media are among the first to be attacked, both physically and psychologically. Because those in power during periods of conflict demand complete control of all information free media is often their first target. Media outlets are blocked and journalists are silenced in a bid to control information.

In the past few months I travelled to Ukraine three times - to Kyiv, Kharkiv, Odesa and Simferopol - to speak with journalists, and civil society from these and many other cities including Luhansk, Donetsk, Yalta, Sevastopol, Mykolaiv and Kerch.

During my visits I also discussed media freedom related issues with senior officials including the Acting Foreign Minister Andrii Deshchytsa, Deputy Foreign Minister Andrii Olefirov, Deputy Interior Minister Mykola Velychkovych, Vice-Speaker of Verkhovna Rada Ruslan Koshulynskyi, Head of Rada Committee on freedom of speech and information Mykola Tomenko and Head of the General Prosecutor's Department of Supervision over the observance of laws by the interior forces Yuriy Sevruck.

In February my Office participated in an [international assessment mission](#) to Kyiv together with the International Federation of Journalists, the European Federation of Journalists, the World Association of Newspapers, Article 19, Reporters Without Borders, International Media Support and the Open Society Foundation.

Since the end of November there have been nearly 300 reported cases of violence against journalists, including murder, physical assaults, kidnappings, threats, intimidations, detentions, imprisonments, and damage and confiscation of equipment.

Again and again, broadcasts stemming from conflict-ridden areas have been illegally switched off, often accompanied by violence or the threat of violence. In Crimea and eastern Ukraine broadcasts have repeatedly been replaced by state media channels originating from the Russian Federation.

Members of the media have continually been denied access to events and information, often by force.

In many cases balanced and professional journalism is being superseded by blatant propaganda. On 15 April, I issued a [Communique](#) warning that propaganda is a dangerous instrument that can be used to dominate the public sphere, restricting access to information and thus distorting pluralism and the open exchange of ideas.

The examples listed in this text are the cases I have raised, both publicly and in direct communication with the relevant authorities, as grave breaches of OSCE media freedom and freedom of expression commitments. A full list of my public interventions is annexed to this report and will also be included in my next report to the Permanent Council on 19 June 2014.

Since my Office was established it has closely been following the complex, multi-faceted developments related to media freedom in Ukraine. In the years after 2005, Ukraine has served as an outstanding example among the CIS countries in upholding media freedom commitments. The work of independent media has improved considerably, media pluralism flourished and liberal legislation, including decriminalization of defamation was adopted to create an environment that encouraged a wealth of ideas and opinions.

Since 2010, however, there has been a clear deterioration of the media freedom situation. I have kept OSCE participating States abreast of this alarming situation since my first visit to Ukraine in October 2010.

I also criticized the obvious attempts to suppress media freedom via direct and indirect forms of censorship, including interference in the work of media outlets and staff, the abolishment of the National Commission on Freedom of Speech, the political appointees to the National Council on TV and Radio, the replacement of the Heads of the National TV and Radio and the pressure on critical media via threats to licensing restrictions as was the case with *5 Kanal* and *TVi*. I expressed my particular concern regarding negative trends in media legislation, including the adoption of new restrictive laws and the delay in the adoption of the PSB and Access to Information Laws.

I have been especially troubled by the increasing number of violent attacks against journalists since 2010 and subsequent impunity from prosecution that has significantly curtailed previous gains for media freedom in the country. I have repeatedly denounced all attacks against journalists and urged the authorities to investigate all cases, especially 2000 murder of Georgiy Gongadze and the disappearance of Vasiliy Klimentyev in 2010, the latter was solved in 2012. Olexiy Pukach, a former police chief, was found guilty and sentenced to life imprisonment in January 2013 for Gongadze's murder, the masterminds of this horrible crime are still at large and the impunity in this case still has an enormous chilling effect on members of the media in the country. Therefore, while welcoming the conviction in I have stated that there is still a long way to go to break the vicious circle of impunity for those who instigate violence against journalists.

Unfortunately, my warnings were ignored.

Starting in 2010 these restrictions have led, slowly but surely, to an atmosphere of increased self-censorship and have, without any doubt, contributed to the current political and media freedom crisis in Ukraine.

Safety of journalists

Given the sheer number of recent attacks with no sign that they will stop, the safety of journalists and other media workers is my primary concern. Attacks of any kind are simply not acceptable. Journalists' safety must be guaranteed at all times and those responsible for the crimes against journalists must be brought to justice to prevent an environment of intimidation, fear and impunity from taking hold.

There are clearly two phases of the current conflict that have triggered attacks on media freedom in Ukraine. During the first phase - the protests in Kyiv and other cities throughout Ukraine between November and February - one journalist, Viacheslav Veremyi, was killed and nearly 200 others were victims of violence. The second phase is linked to the current crisis and events in the south and east of the country.

First phase

I have repeatedly called on the Ukrainian authorities to fully investigate the murder of Viacheslav Veremyi and bring the perpetrators to justice. As it now stands, a suspect has been arrested and the investigation continues. All other attacks on journalists must also be thoroughly investigated. It is clear that of the majority of the 200 journalists received injuries from stun grenades and rubber bullets used by the police. In some cases, journalists were specifically targeted by law enforcement despite displaying clear identification as members of the press.

Listed below in chronological order, I have raised the following cases with OSCE participating States:

On 28 and 29 November, Vlad Puchich, Chief Editor of "20 Minutes" newspaper, was attacked and injured in Zhitomir. Dmitry Gnap and Yakov Lyubchich from Hromadske.tv were attacked while reporting on the demonstrations in Kyiv. They were injured and their equipment was damaged.

In December 2013, more than 40 journalists were physically assaulted and severely injured while covering the protests in Kyiv. Among them were: Dmitriy Larin - Ukrainskaya Pravda; Mustafa Nayyem - Hromadske.tv, Nataliya Zhijko, Yurii Usik, Ivan Nakonechniy - 5 Kanal, Roman Kupriyanov – Euronews, Gleb Garanich – Reuters, Sergei Supinskiy - Agence France-Presse, Sergei Chuzavkov - The Associated Press, Joseph Sywenskyj - The New York Times, Tomasz Piechala – Eastbook, Oleksandr Perevoznik – Liga Business Inform, Valeriya Burlakova, Stanislav Kozlyuk – Ukrainskii Tizhden', Max Levin – LB.ua, Johannes Wamberg Andersen – Danish freelance journalist, Maxim Kudimets – Insider, Pawel Pieniazek – Polish freelance journalist, Anton Chernyshov – Independent Journalist Union, Denis Dan'ko and Dmitriy Volkov – 1+1, Yaroslav Galata – Demokratichna Ukraina, Mikhail Zagorskii – Zhitomir.info, Dmitriy Kachura – Kommentarii, Yevgenii Golovatyuk – Ukrainskiye Novini, Oleg Khavruk – Comments.ua, Sergei Dolzhenko – European Pressphoto Agency, Yevgenii Feldman – Novaya Gazeta, Yurii Butusov – Censor.net, Emin Kalantarov – Lifenews, Sergei Polezhaka – freelance journalist, Yevgenii

Maloletka – Unian, Valeriy Kolosyuk – Aratta.Vikno v Ukrainu and Sergei Yurchenko – Novoross.info.

On December 15, Yurii Kot a journalist with Inter TV channel was attacked near his house in Kyiv and injured.

On December 16, Svetlana Malitskaya, a photojournalist with Internet-based newspaper “Dorozhnyi Kontrol”, was attacked by two assailants at her home and also suffered injuries.

On December 24, Tatyana Chernovil, a journalist with Ukrainskaya pravda was severely beaten after being followed from Boryspil to Kyiv. She suffered serious injuries, including a concussion and broken nose.

In January 2014, more than 30 journalists from various media outlets, including Novaya Gazeta, Vesti, Spilno TV, Radio Svoboda, 1+1, and 5 Kanal, were severely injured while covering the protests in Kyiv.

On 18 February 2014, assailants opened fire on Vyacheslav Veremyi, a Vesti daily journalist, who was shot in the chest and died in the hospital. A number of other journalists were targeted and injured including: Glib Garanych - Reuters, Maksym Trebukhov - news photographer, Yevhenia Taganovych and Leonid Taranenko - Channel 5, Yevhen Kotenko - Holos Stolytsi, Oleksander Kozachenko - UNN photographer, Maksym Trebukhov and Azad Safarov - Channel 5, Sergiy Klymenko - Channel 5, Anatoliy Morozov - HromadskyTV, Andriy Gudzenko - PHL, Alla Khotsianivska and Artem Bagrov - 1+1 TV channel, Olena Maksymenko - freelance photographer, Ivan Lyubysh-Kirdey - 1+1 TV channel, Sergiy Holovniiov - Insider, Oleksiy Byk - Glavkom, Yarmea Horodchuk - Dilova Stolytsia, Kyrylo Chebotin - Kommersant, Volodymyr Borodin - Vesti, Maksym Kudymets - Insider, Igor Lypynsky - Ukraina TV, Marianna Hardy - Chernihiv-info, Igor Volosiankin - Uyezdnye Novosti, Oleksander Ratushniak, Mykyta Didenko - Hromadske.TV, Oleksiy Kondakov - TV channel Business, Oleksander Mykhelson - Ukrainsky Tyzhden and Victor Hatsenko - From UA.

Second phase

In March attacks on journalists intensified in the south and east of the country. That these assaults have gone without prosecution is deplorable and points to the breakdown of the rule of law in the parts of Ukraine affected by conflict.

Starting in March in Crimea, in April in Sloviansk and Donetsk, and in May in Luhansk, broadcasting stations and related infrastructure were attacked by unidentified and often armed individuals who then supplanted regularly scheduled television programming with state media from the Russian Federation, although there is a ban on cable rebroadcasts of the Russian television channels. On 27 March I issued a [Communique](#) denouncing the switching off and banning channels.

While the situation in Crimea dominated the headlines in February and March, the situation for journalists on the peninsula is still dire today, with regular threats and harassment and possible eviction from the region for those who are not considered loyal to the effective de facto authorities and for those who refuse to change citizenship.

On 2 March I reacted to attacks in Donetsk and Kharkiv, where journalists from Radio Liberty, Perviy Delovoi and the Ura-Info Donbass portal were assaulted by protesters in the presence of law enforcement officers who did not intervene. On the same day in Simferopol, a group of about 30 men, in military uniform, attacked offices of the Information and Press Centre, a hub for independent media in the region, and the Crimean Centre for Investigative Journalism.

On 3 March, the Chernomorskaya television and radio station, the largest independent broadcaster on the Crimean peninsula, was shut down.

On 6-8 March, signals of the Ukrainian television stations were illegally shut down in Crimea and replaced with broadcasts from Russia. Over these few days, the terrestrial signals of Ukrainian television stations Inter, Briz, 1+1, 5 channel, 1st National, STB and Chernomorskaya TV were replaced with the state Russian channels NTV, 1st channel, Rossiya 24, Rossiya RTR, TNT and Zvezda.

Print media have also not been exempt from attack. –On May 8 and May 6 respectively, the editorial offices of the Provintsiya newspaper in Kostyantynivka and the Gorniyak newspaper in Torez were ransacked.

At the beginning of March, I met with a number of journalists in Simferopol who have been victims of violence as well as representatives of the Crimean Human Rights Center, National Union of Journalists of Ukraine, Centre of Investigative Journalism and others, and members of the Russian Presidential Council for Civil Society and Human Rights.

During our mission my team and I were delayed by a demonstration and a group of unidentified uniformed people.

During the first days of March, unidentified and often uniformed, armed individuals attacked and harassed local and foreign journalists in Crimea. Journalists from Argumenti nedeli-Krym (Stanislav Yurchenko), Associated Press Television News, BBC, CNN, Inter channel (Olena Mekhanik, Andrii Tsaplienko and two operators), Russkaya Planeta (Pavel Nikulin), STB (Oleksii Simakov, Oleksandr Albinskyi, Vyacheslav Skvorchevskyi, Igor Levenok), 5 channel (Anton Laktionov) and a number of freelancers, including Boryana Katsarova and Dimiter Kenarov were also attacked during this time period. Tatar staff members at the local state broadcaster were threatened by their management.

On 9 March, Oles Kromplyas and Olena Maksimenko, journalists with the Glavkom and Ukrainskiy Tizhden' news portals respectively, and their driver Eugene Rakhno, were stopped by representatives of the Berkut law enforcement squad at the checkpoint near Armyansk, Crimea. They were then kidnapped by unidentified people in military uniform and only released several days later.

I strongly oppose official banning of broadcasts as was done on 11 March by the National Television and Radio Broadcasting Council of Ukraine. During this event, all cable operators were ordered to stop broadcasts of the state Russian television channels Rossiya 24, ORT, RTR Planeta and NTV-Mir. The stations were accused of broadcasting propaganda and currently, these four broadcasters have been suspended by court ruling. On 14 May, the Kyiv Administrative Court of Appeals, having heard the case, upheld the suspension. My Office is closely following developments in the case.

On 17 March, the director of state television in the Chernigov region, Arkadiy Bilibayev, was forced to resign.

On 18 March, a group of individuals reportedly belonging to the Ukrainian political party “Svoboda”, including some members of Verkhovna Rada, stormed the office of the acting President of the National Television Company of Ukraine in Kyiv, Aleksandr Panteleymonov, intimidated him and forced him to sign a resignation letter.

On 4 April, Vasily Sergiyenko, a contributor to Nadrossia newspaper in Cherkasskaya Oblast, Central Ukraine, was kidnapped near his house. The next day his body was found, bearing signs of torture, in a nearby forest.

On 7 April, a group of protesters broke into the offices of the Kharkiv-based ATN television channel, seized and destroyed equipment and harassed ATN journalists. On the same day there were also attempts to storm the offices of the state television station in Donetsk and the Kharkiv Regional Broadcasting Centre. The IRTA channel in Luhansk was also attacked.

On April 15-16, Yevgen Polojii, editor of Panorama, and Mikhail Dugin of Polytavska Dumka-2000 were beaten. In addition, a BBC television crew and Frederick Paxton of Vice News were threatened and had their equipment stolen and destroyed. Graham Phillips, a freelance journalist for RT, Alexander Belinsky, editor of Gorlovka.ua and journalists from Hromadske TV and Lenta.ru were kidnapped and later released. The offices of Gorlovka.ua and newspaper Kriminal Ekspress were vandalized and cars belonging to Alexei Matsuka of Novosti Donbassa and to Odesa First City Channel were set on fire.

On 17 April, a group of unidentified individuals took over the television tower in Sloviansk that provides terrestrial signals to the neighbouring towns of Horlivka, Kramatorsk and Makiyivka. Reportedly, the broadcasting of Ukrainian channels was cut off and replaced with channels originating from the Russian Federation.

On 21 April, Maxim Danilchenko, journalist with Tochka Opori magazine, was attacked by unidentified individuals and sustained several injuries while covering a protest in Luhansk. On the same day, Dmitriy Galko, a journalist with Belarusian Noviy Chas newspaper, and Italian and French journalists Paul Gogo and Kossimo Attanasio were reportedly detained by unidentified individuals in uniform in Sloviansk. They were released shortly thereafter.

On 22 April, Simon Ostrovsky, a journalist with Vice News, was abducted and tortured by people claiming loyalty to the so-called "People's Mayor" of Sloviansk. Less well-known were the two-week detention, also in Sloviansk, of Yuri Leliavski, a reporter for the Ukrainian TV station ZIK, who was released on 9 May and the kidnapping in Artemivsk of Pavel Kanygin of Novaya Gazeta, who was later released in Sloviansk.

From April 22-24, Nikolai Ryabchenko, a journalist contributing to a number of local and international media outlets, was attacked and had his equipment damaged by a group of unidentified people while covering an attack on the city council in Mariupol. On the same day, Stepan Chirich, a journalist with Russian NTV channel and citizen of Belarus, disappeared in Dnepropetrovsk oblast. He is currently standing trial on suspicion of espionage. Evgenii Gapich, a photojournalist with Reporter newspaper from Ivano-Frankivsk, disappeared in Horlivka and was later released after being held in Sloviansk for two days. The editorial office of Provintsia newspaper in Konstantinovka was set on fire after the newspaper staff had been harassed and publicly labelled as supporters of the Praviy Sektor movement.

Seitislam Kishveev and Shevket Ganiyev, Director and Editor of Crimean Tatar programs on Crimean State TV, were forced to take two weeks of leave after reporting on the increasing censorship placed on the channel .

On April 25, Julia Shustraya and Mikhail Pudovkin, a journalist and a cameraman with LifeNews disappeared in Donetsk. It was later determined that Shustraya and Pudovkin had been apprehended by an armed group and subsequently deported from Ukraine.

On April 27, new accreditation procedures were introduced by unofficial local leaders in Sloviansk. According to the new procedures, journalists without accreditation are not allowed into administrative buildings, to attend press briefings and could possibly be barred access to the town.

On April 28, in Donetsk, Richard Gaisford and Simon Llewellyn from ITV (UK), along with Yevgenii Shibalov, a journalist with the Zerkalo Nedeli newspaper, were attacked by protesters during a rally. Shibalov received head injuries and the ITV camera was damaged. In Donetsk, the staff of 62.ua news portal was intimidated by a uniformed and armed group who demanded that the journalists obtain their approval before publishing any reports.

On the same day in Kyiv, protesters demanded that the Inter and ICTV channels stop broadcasting a Russian television series. During the protest, the office's doors and windows were damaged and smoke grenades were thrown inside. The channel continued with regular broadcasting.

On April 29, Yurii Lelyavskii, a freelance journalist with ZIK channel from Lviv and Sergei Shapovalov, a journalist with VolynPost news portal from Lutsk, were detained for 2 weeks in Sloviansk. Ruslan Kukharchuk, a journalist with the Novomedia journalists' association, was also detained by unidentified persons in Sloviansk and released after 13 hours.

On the same day, a group of unidentified uniformed and armed people seized the Donetsk Regional Television and Radio Company and a regional transmission centre and replaced some of the local broadcasts with Rossiya 24. Digital broadcasts of all Ukrainian channels were switched off along with analogue signals of UT1, ICTV, 1+1 and 5 Kanal, many of which were replaced with Russian broadcasts.

On May 1, armed individuals entered a regional television station in Lugansk switched programming from the First Ukrainian National Channel to Russia 24. On the same day, a journalist from Radio Liberty was intimidated and bullied by a crowd in Kharkiv while reporting on a protest and had to seek police protection.

On May 2, journalists from BuzzFeed and the television channels Sky News and CBS were detained by armed individuals for three hours at a road block in Sloviansk. They were blindfolded, interrogated and some of them were reportedly beaten before they were released. On the same day, a lifenews.ru correspondent in Sloviansk, Hermine Kotanjyan, reportedly received death threats through social media platforms.

On May 7-9, Privet/Novosti Kramatorska newspaper and its web portal ceased operation, reportedly because of threats from separatists. Lanet Cable Operator switched off nine Ukrainian channels (Inter, Ukraine, 1+1, ICTV, STB, Noviy Kanal, 5 Kanal, 112 Ukraine and TVi) in Severodonetsk, reportedly because of threats from separatists and demands that the operator broadcast Russia 24 and LifeNews instead. Terrestrial broadcasting of 1+1 channel was switched off in Lisichansk, and an armed, separatist group took control of the Donbass and Union channels in Donetsk. In Luhansk,

1+1 and 5 Kanal cable and terrestrial feeds were switched off. Previously, the First Ukrainian National Channel was switched off. In Donetsk, after seizure of the regional transmission centre, Ukrainian TV channels 1+1, K1, ICTV and 5 Kanal were replaced by Russian channels STS, TVN, ORT and RTR Planeta. Electric cables of the Kyiv TV tower were set on fire, reportedly as a result of arson. Broadcasts of some channels were suspended, but resumed shortly after the reserve cables were made operational. In Kostyantynivka, the editorial office of Provintsia newspaper was seized by armed individuals in uniform and its staff was told to leave town (the newspaper's office had previously been set on fire). Nikolai Ryabchenko, a journalist contributing to many local media outlets, reportedly disappeared near Mariupol (he was also the target of earlier attacks). The editorial office of Gornyak newspaper in Torez was raided by approximately 50 unidentified people. No journalists were injured, however the office was seriously damaged and much of the equipment was destroyed or stolen. Russia Today journalist, Graham Phillips, tweeted that a bounty had been placed on him. Sergei Garmash, editor of the Ostrov news portal, was attacked and shot at near Donetsk. Oleg Konstantinov from Dumskaya, Petr Rakul from Information Centre and Anton Dotsenko from Timer were shot and seriously injured. Natalya Tarasovskaya from 5 Kanal and Anna Levchenko from Timer were attacked and threatened during protests in Odesa. The crew of ICTV was stopped by unidentified people in uniform on the outskirts of Sloviansk, threatened, searched and interrogated. The journalists were set free but their equipment was confiscated.

On 18 May, the Ukrainian military forces detained journalists Marat Saichenko and Oleg Sidyakin from LifeNews and, reportedly, handed them over to law enforcement authorities.

The same day, Osman Pashayev and Cengiz Kizgin, journalists with Otkritiy Krymskiy Kanal, were detained by a group in military uniform in Simferopol. The journalists were interrogated, beaten and had their equipment seized. They were later released.

On 20 May, Graham Phillips, a journalist with RT, was arrested by Ukrainian law enforcement and released after almost 36 hours.

Propaganda

While the role of the OSCE Representative on Freedom of the Media is not to evaluate media content, there have been a number of accusations, in which the media has been used to disseminate propaganda, that require close scrutiny. Propaganda and the deterioration of media freedom combine to fuel and contribute to the escalation of conflict.

I deplore state propaganda and understand the need to regulate hate speech in some particular cases, everyone has the right to receive information from as many sources as he or she wishes. Propaganda is especially dangerous when it dominates the public sphere and limits access to information, thereby preventing individuals from expressing and forming opinions and ideas.

No matter how loud and outrageous certain voices are, they will not prevail in a competitive and vibrant marketplace of ideas. Therefore, any potentially problematic speech should be countered with arguments and more speech, rather than engaging in censorship. Participating States should always strive to protect and promote free and equal access to the marketplace of ideas. In my 15 April [Communique](#) I called on the OSCE participating States to:

- Stop manipulating media; stop information and psychological wars;

- ensure media plurality and free media as an antidote to propaganda;
- refrain from introducing new restrictions; existing laws can deal with extreme propaganda;
- invest in media literacy for citizens to make informed choices; and
- reform state media into genuine public service broadcasting.

Denial of Entry

In the last few months I have also intervened in approximately 30 cases in which journalists were denied entry into Ukraine, as well as in cases of *de facto* authorities in Crimea denying entry to journalists crossing into the peninsula.

I have serious concerns about excessive restrictions on such travel, which ultimately affects the free flow of information and free media. This practice goes against the principles outlined in the Helsinki Final Act. I have raised a number of individual cases of denial of entry in my communications with Ukrainian officials, including with the Acting Foreign Minister and Minister of Interior.

On 10 December 2013, various media outlets reported on the attempted expulsion of the Georgian Tabula TV channel's journalists by law enforcement for allegedly participating in public protests in Kyiv.

On 20 December of this year, David Kakulia, a journalist with Georgian Rustavi-2 TV channel was denied entry to Ukraine. The ban is reportedly in place for one year on the grounds of Kakulia's alleged involvement in suspicious activities.

On 7 March, the journalists and camera crews of NTV, TV Tsentr and Vesti channels were denied entry to Ukraine at the Donetsk airport.

On 9 March, Sergei Fadeichev, a photojournalist with the Itar-Tass news agency, was reportedly denied entry at the Donetsk airport on the bases of insufficient personal funds to finance his stay in Ukraine.

On 13 March, Ilya Barabanov and Alexander Miridonov from Kommersant publishing house were denied entry to Nikolayev.

19 and 21 March reports from the State Border Service of Ukraine indicate that six journalists with NTV and Perviy Kanal were denied entry to the country.

On 2 April, Roman Super from Ren TV channel and his cameraman were denied entry to Odessa.

On 7 April, Pavel Sedakov and Artem Goloshapov with Forbes magazine (Russian edition) were denied entry at Dnepropetrovsk. The same day, journalist Andrey Ivanov with RT RUPTLY agency was denied entry at Donetsk.

On 8 April, Andrey Malyshkin from RIA Novosti was denied entry on his way to Lugansk, while his colleague, Alexei Kudenko, was denied entry at Donetsk. Stanislav Bernwald and Constantine Krylov from 5 Kanal and Maxim Dodonov with Zvezda television channel were also denied entry at Donetsk. Journalist from Zvezda channel, Anatoliy Maiyorov and cameraman Sergei Guryanov, were denied entry at Kharkiv. Andrey Kolesnikov and Dmitry Azarov from Kommersant newspaper were denied entry at the Kharkiv train station on their way to Donetsk.

On 7 May, the crew of Russian TVC channel was denied entry into Kyiv by the Ukrainian Border Guard Service.

On 15-16 May, Russian journalists from various media outlets, including Zvezda, NTV, Perviy Kanal and TVC channels, were denied entry to Ukraine. Reportedly, all journalists were accredited by responsible Ukrainian authorities and had been given permission to cover the presidential election.

On 17 May, representatives of the Federal Security Service detained Waclaw Radziwinowicz, a journalist with Gazeta Wyborcza, in Simferopol. He was reportedly accused of illegally crossing the border and, despite presenting all required entry documents, was released only after six hours of interrogation. Nikolai Semeni, a journalist with the Ukrainian newspaper Den, and photojournalist Len'yara Abibulayeva were also detained with Radziwinowicz and released after interrogation.

On 19 May, the crew of Rossia channel was deported from the Ukrainian town of Ujgorod.

On 20 May, REN TV Reporter and cameraman Viktor Senyok and Alexander Malyshev were denied entry to Ukraine, despite having all required accreditations and journalist IDs.

Russia Today's Arabic news crew, Anna Knishenko, Elderra Khaled and Konstantin Bolshakov who arrived in Kiev to cover the May 25 Ukrainian presidential election were refused entry at immigration.

Two crews from the All-Russia State Television and Radio Broadcasting Company (VGTRK) were not allowed to enter Ukraine. Cameramen Alexander Chukanov and Dmitri Vishkevich as well as two video-engineers had planned to cover the Presidential elections and had all required accreditations.

Reporter from Russian radio channel, Vesti FM Yaroslav Lukashev, was denied entry into Ukraine. He was stopped at the airport and despite having required accreditation was forced to take a return flight out of the country.

On 21 May, a Rossiya-1 TV crew from Zakarpattia were deported from Ukraine. The journalists reportedly claimed to be Finnish.

Legislation

My assessment of the media freedom situation in Ukraine would not be complete without taking into account relevant legislative developments. In January I criticised the amendments to the Criminal Code adopted by the Parliament that recriminalized defamation, gave additional protection for public officials from critical speech and introduced criminal responsibility for distributing extremist materials - very broadly defined through the media and the Internet.

This package of amendments sparked tremendous public outrage. I welcomed the fact that these provisions were later repealed by the Ukrainian Parliament on 28 January 2014.

I am very pleased that the Parliament heeded my advice and put an end to state-controlled broadcasting and adopted new legislation on public service television and radio broadcasts in May. My office conducted a legal review of the legislation and concluded that the new law provides an excellent institutional basis to reinforce media freedom in the country.

I am also pleased to report that in April, the Supreme Rada adopted amendments that, after several years of stalemate, enable full access to governmental information.

Confidence building

In order to contribute to the de-escalation of the conflict in Ukraine, on 19 May, my Office brought together senior representatives of journalist's associations from Ukraine and the Russian Federation to discuss journalist's role in easing tensions, improving communication and preventing propaganda.

It was an extremely constructive meeting that resulted in agreements on many key issues faced by Ukrainian and Russian journalists. The participants signed a [memorandum](#) in which they outlined practical steps to improve the safety of journalists and also called for their respective governments to stop manipulating the media and engaging in propaganda. The next meeting is planned for the end of June 2014.

We are also preparing training seminars for journalists on safety and reporting in conflict. The project "Safety of Journalists and Reporting During Crisis" (ExB 1500089) will not only better equip journalists and media workers with the tools necessary to ensure their physical safety but will also to reinforce high professional standards and objective reporting in times of conflict.

My office will continue to work with the government of Ukraine, civil society, International Organisations and OSCE structures to reduce tensions and create an environment conducive to media freedom.

Conclusion

This report highlights a concerning pattern of grave violations of media freedom commitments. I have and will continue to review and report the details of these developments to the OSCE participating States.

As the Representative on Freedom of the Media of a security-based organization it is my responsibility to warn OSCE participating States of the severity of the situation. Attacks on media freedom and free expression can set in motion the deterioration of the overall human rights situation throughout the OSCE region and beyond.

This conflict, as every other, is fuelled by attacks on journalists and media freedom as well as accusations of propaganda.

ANNEX I - Interventions by the OSCE Representative on Freedom of the Media

Communiqués:

- 1) **Statement by OSCE Representative on Freedom of the Media on blocking television channels**, 27 March 2014 <http://www.osce.org/fom/116888> ;
- 2) **Statement by the OSCE Representative on Freedom of the Media on denial of entry of journalists from one OSCE participating State to another**, 3 April 2014, <http://www.osce.org/node/117092> ;
- 3) **Statement by OSCE Representative on Freedom of the Media on Propaganda in times of Conflict** 15 April 2014, <http://www.osce.org/fom/117701> .

Statements

Year 2013:

- 1) **Journalists' safety in Ukraine must be ensured, says OSCE media freedom representative** , 29 November 2013, <http://www.osce.org/fom/109091> ;
- 2) **OSCE Representative concerned by magnitude of violence against journalists in Ukraine**, 2 December 2013, <http://www.osce.org/fom/109108> ;
- 3) **OSCE media freedom representative condemns brutal attack against Ukrainian journalist, calls for thorough investigation**, 25 December 2013, <http://www.osce.org/fom/110034> .

Year 2014:

- 1) **OSCE representative calls on President Yanukovich to veto legislation criminalizing speech, endangering media freedom in Ukraine**, 16 January 2014, <http://www.osce.org/fom/110347> ;
- 2) **Attacks on journalists in Ukraine must stop, says OSCE media freedom representative**, 22 January 2014, <http://www.osce.org/fom/110460> ;
- 3) **OSCE media freedom representative condemns killing of journalist in Ukraine**, 19 February 2014, <http://www.osce.org/fom/111478> ;
- 4) **Banning TV, radio broadcasts poses threat to media freedom in Ukraine, OSCE representative says**, 26 February 2014, <http://www.osce.org/fom/115832> ,
- 5) **OSCE media freedom representative gravely concerned about presence of armed people at state-run channel Krym in Ukraine**, 28 February 2014, <http://www.osce.org/fom/115929> ;

- 6) **Media censorship and intimidation of journalists in Ukraine must stop, says OSCE media representative**, 3 March 2014, <http://www.osce.org/fom/115983> ;
- 7) **Stop attacks on journalists, de-escalate situation by allowing media to report freely in Ukraine, says OSCE representative**, 7 March 2014, <http://www.osce.org/fom/116208> ;
- 8) **Media freedom under siege in Crimea, Ukraine, says OSCE representative**, 8 March 2014, <http://www.osce.org/fom/116240> ;
- 9) **OSCE media freedom representative calls for immediate release of kidnapped journalists in Crimea, Ukraine**, 10 March 2014, <http://www.osce.org/fom/116294> ;
- 10) **OSCE media freedom representative concerned about new steps to restrict media plurality in Ukraine**, 11 March 2014, <http://www.osce.org/fom/116312> ;
- 11) **OSCE media freedom representative outraged by attacks against managers of Ukrainian National TV**, 19 March 2014 <http://www.osce.org/fom/116599> ;
- 12) **OSCE media freedom representative lauds changes to Ukrainian law to enforce effective access to information**, 28 March 2014 <http://www.osce.org/fom/116921>
- 13) **OSCE representative deeply concerned about deteriorating media freedom situation in eastern Ukraine**, 8 April 2014, <http://www.osce.org/node/117259> ;
- 14) **OSCE media freedom representative to visit Ukraine 14-16 April**, 8 April 2014, <http://www.osce.org/fom/117271> ;
- 15) **Journalists face violence, intimidation and psychological warfare in conflict areas in Ukraine says OSCE Freedom of Media Representative**, 16 April 2014, <http://www.osce.org/fom/117785> ;
- 16) **OSCE representative deeply worried about illegal interference in broadcast retransmissions in eastern Ukraine**, 17 April 2014, <http://www.osce.org/fom/117836> ;
- 17) **Journalists' safety in eastern Ukraine worsening, says OSCE Representative, calls for immediate release of detained Vice News journalist**, 22 April 2014, <http://www.osce.org/fom/117911> ;
- 18) **New attacks on media in eastern Ukraine, warns OSCE representative**, 24 April 2014, <http://www.osce.org/fom/117985> ;
- 19) **OSCE media freedom representative concerned by disappearance of journalists in Eastern Ukraine**, 25 April 2014, <http://www.osce.org/fom/118021> ;
- 20) **OSCE media freedom representative denounces continuing attacks, kidnappings of journalists, forced switching of TV channels in Ukraine conflict areas**, 29 April 2014, <http://www.osce.org/fom/118144> ;

- 21) **OSCE media freedom representative deeply troubled by continuing deterioration of journalists' safety in Eastern Ukraine**, 2 May 2014, <http://www.osce.org/fom/118257> ;
- 22) **Media freedom situation in Ukraine continues to deteriorate drastically, says OSCE representative**, 9 May 2014, <http://www.osce.org/fom/118407> ;
- 23) **OSCE Representative welcomes new Ukrainian public service broadcasting law as way to improve media pluralism**, 14 May 2014, <http://www.osce.org/fom/118565>.
- 24) **Attacks on journalists must stop, say journalists' unions at meeting with OSCE representative**, 19 May 2014 <http://www.osce.org/fom/118691> ;

Memorandum of representatives of the Russian and Ukrainian media organizations on the situation in and around Ukraine, 19 May 2014 <http://www.osce.org/fom/118692> ;

NOTE: This report is based on bona fide sources and information gathered through the monitoring and previous reporting activities of the Office of the Representative on Freedom of the Media. It therefore might not cover additional cases eventually collected by NGOs and other relevant actors also present in the field.

Annex 807

OSCE, OSCE Representative Warns of Further Threats to Media Pluralism in Luhansk and
Crimea, Notes Threats to Media Workers (11 July 2014)

OSCE representative warns of further threats to media pluralism in Luhansk and Crimea, notes threats to media workers

VIENNA 11 July 2014



OSCE Representative on Freedom of the Media, Dunja Mijatović, delivering her regular report to the OSCE Permanent Council, Vienna, 28 November 2013. (OSCE/Micky Kroell)

VIENNA, 11 July 2014 – OSCE Representative on Freedom of the Media Dunja Mijatović today warned about actions that could further limit media freedom and media pluralism in Luhansk and Crimea.

“I am deeply concerned about the continuous attacks of the separatist forces against television channels in Luhansk and Crimea. These actions effectively endanger the safety of journalists and violates the right of people to freely receive information,” Mijatović said.

On 9 July the staff of Luganskoye Kabelnoe Televideniye (LKT) was forced to leave the channel’s building by a group of armed separatists. The transmission of LKT was replaced by broadcasts of Russian 5 Kanal. On 4 July separatists seized the office of the Luhansk Regional State Television and Radio Company and broadcasting was suspended as a result of the attack.

Mijatović also noted reports about the exclusion of the biggest independent broadcaster on the Crimean peninsula, Chernomorskaya TV, from several cable networks in Crimea. According to reports, Chernomorskaya TV and a number of other Ukrainian television channels, were taken off leading cable networks in Crimea on June 28.

“The unilateral decision to stop retransmission of Chernomorskaya TV can further curb media freedom and limit media pluralism, not least since the channel is known for its balanced and objective reporting,” Mijatović said. “I strongly encourage those responsible

for broadcasting regulations on the Crimean peninsula to immediately look into this matter.”

At the beginning of March the terrestrial broadcasting of the channel was cut and replaced with Russian channel Rossiya 24 (see [//www.osce.org/fom/115983](http://www.osce.org/fom/115983) and [//www.osce.org/fom/116240](http://www.osce.org/fom/116240)).

Further, Mijatović noted with deep concern reports about death threats against a group of Ukrainian journalists and owners of media outlets by the so-called ‘Russian Liberation Front’ on 10 July. She said her office will monitor these incidents closely.

The OSCE Representative on Freedom of the Media observes media developments in all 57 OSCE participating States. She provides early warning on violations of freedom of expression and media freedom and promotes full compliance with OSCE media freedom commitments. Learn more at www.osce.org/fom, Twitter: @OSCE_RFoM and on facebook.com/osce.rfom.

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Annex 808

OCSE, OSCE Representative Condemns Steps Aimed at Full Silencing of Chernomorskaya TV in
Crimea (4 August 2014)



OSCE representative condemns steps aimed at full silencing of Chernomorskaya TV in Crimea

VIENNA 4 August 2014

VIENNA, 4 August 2014 – OSCE Representative on Freedom of the Media Dunja Mijatović today condemned the seizure of the property of the Chernomorskaya company, the largest independent broadcaster on the Crimean peninsula.

“Continuing attempts to put pressure on the independent media in Crimea which provide space for critical voices is a clear sign of censorship and cannot be tolerated under any circumstances,” Mijatović said. “This creates an atmosphere of fear in which independent journalism cannot exist.”

On 1 August representatives of the Russian federal bailiff service, accompanied by self-defence militants, seized Chernomorskaya’s property in Simferopol, citing debts owed to the Broadcasting Centre of the Autonomous Republic of Crimea. All employees were banned from entering the channel’s premises.

Mijatović said that while arresting the Chernomorskaya’s property, the bailiffs also seized the equipment of the Information and Press Centre, a hub for independent media in the region, as well as property of the Crimean Centre for Investigative Journalism, which rented office space there.

“I again call on those responsible in the Crimean peninsula to refrain from steps that further endanger media freedom and seriously limit media pluralism,” Mijatović said.

Chernomorskaya’s terrestrial broadcasting was cut off in early March and replaced with the channel Rossiya 24 ([//www.osce.org/fom/116240](http://www.osce.org/fom/116240)). At the end of June, the channel was also taken off major cable networks in Crimea, along with a number of Ukrainian channels ([//www.osce.org/fom/121169](http://www.osce.org/fom/121169)).

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Annex 809

OSCE, Latest from OSCE Special Monitoring Mission to Ukraine (SMM) Based on Information
Received as of 18:00 (Kyiv time) (11 September 2014)

Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 18:00 (Kyiv time), 11 September 2014

 osce.org/ukraine-smm/123526

This report is for media and the general public.

The SMM continued to observe the situation in regard to the Minsk agreement with a focus on the non-use of weapons.

At the Shchastya filtration point (25km northwest of **Luhansk** city) the SMM saw more traffic compared to previous days. More than 70 cars and hundreds of people were using the possibility to leave Luhansk city. In Shchastya the SMM spoke with the Ukrainian commander near the bridge over the Siverskyi Donets River. He reported that on 9 September he did not observe any significant incidents in regard to the Minsk agreement on non-use of weapons within Shchastya but he did hear shooting in the distance towards Stanitsa Luhanska. The SMM proceeded towards Stanitsa Luhanska (25km northeast of Luhansk) and entered territory controlled by the “Luhansk People’s Republic (“LPR”) –the southern bank of the Siverskyi Donets River. No significant incidents were reported by the “LPR”. The SMM observed 50 to 60 civilian vehicles per hour, departing and arriving into “LPR”-controlled area. The Ukrainian military commander at a nearby checkpoint (CP) likewise did not report any incidents. The Ukrainian military reported that at 20:30hrs, on 10 September, a civilian car drove into a marked but unguarded minefield. One civilian was killed, and one Ukrainian soldier seriously wounded in the blast. The SMM saw two destroyed cars and human remains at the site.

In Stanitsa Luhanska, at the last Ukrainian CP, the Ukrainian commander informed the SMM that there had been no shelling but that he had heard shooting from the south-western part of “LPR”-controlled territory. The SMM then continued to the “LPR” CP behind the Siverskyi Donets River. The “LPR” CP commander likewise reported no problems during the last 24 hours, and attributed the shooting in the distance to target practice by the “LPR”.

The SMM monitored the situation in **Donetsk** city and around the international airport. On the way to the airport, the SMM observed that the main bridge was closed for traffic and guarded by soldiers from “Vostok” battalion (affiliated to the “Donetsk People’s Republic”-“DPR”).

In Avdeevka (15km north of Donetsk) the situation appeared relatively calm. The SMM saw that a couple of shops were open. Electricity supply was partially restored, though surrounding villages were still not supplied due to repair works. The SMM spoke with the commander of a Ukrainian CP located at the south exit of Avdeevka, who stated that for the past days the situation was calm and quiet, though shelling and explosions could be heard farther southwest.

The SMM could hear artillery coming from a southwest direction for approximately 30 minutes at the CP at the eastern exit of Andeeveka. The SMM spoke to local inhabitants who said that schools and kindergartens remained closed.

In Orlivka (26km north of Donetsk), a local resident stated that the fields south of the village were shelled with Grad rockets and mortars. The SMM could not confirm the shelling, as no shelling craters were visible. However, the SMM observed one unexploded ordnance, a Multiple Launch Rocket System rocket.

In Karlivka (30km northwest of Donetsk), the SMM observed that schools were operational and the situation appeared to be calm. At a Ukrainian military CP the SMM was informed that there had been shelling in the night of 10 to 11 September on the neighbouring villages. Leaving the village, the SMM spoke to the military personnel from the Ukrainian Army on the H15 road CP, who said that the CP was attacked during the night of 10 to 11 September with two mortars located approximately 500 meters north of their location; the shelling lasted for 40 minutes, according to the interlocutor.

At the Ukrainian CP on the road from Debaltsevo towards the Russian Federation the commander stated that on 11 September around 08:00hrs, two Ukrainian soldiers in armoured personnel carrier (APC) were shot from the direction of Vulegirsk supposedly controlled by irregular armed forces. The injured were sent to the hospital in Artemivsk (80km north of Donetsk). The SMM visited the hospital in Artemivsk and learnt that one soldier died of injuries and the other one survived.

The SMM met with a representative of DTEK Electrical Company in the Donetsk region who presented the report on “Restoring Electricity Supply in Donetsk region” saying that as of 10 September, power engineering specialists using specially equipped vehicles were working on electricity restoration in the Donetsk region. All information about the status of the electricity supply provided by this company was available on their public website. Electricity was restored to 30 towns in the Donetsk region. The representative explained that in the region 132 settlements remained without power, either partially or completely. The first section of the pumping facility of Yuzhno-Donbassky water line was still without power, thus water was not supplied to Krasnoarmeysk and Velikoanadol filtering stations. Donetsk filtering station, Novostozhkovskiy water juncture, and Kirovskiy water juncture were left without power.

In **Mariupol** on 10 September the SMM observed a live concert “in support of the defenders of the city”. The event was attended by 100 participants (aged from 20 to 50 years, with equal representation of women and men). A significant number of police and perhaps two dozen “Azov” battalion soldiers in full combat gear were present. On the other hand, security restrictions were introduced in the area, on 10 September, by Ukrainian headquarters of the security operation “for the purpose of providing for national security, promoting peace, contributing to the country’s defense, and countering terrorism”. Vehicle and personal movement restrictions were enforced from 20:00hrs until 6:00hrs. Other limitations include hunting, fishing, public assembly, vehicle speed, and movement without identification documents, using radio stations, taking pictures and recording videos of military objects. The

area covered by the restrictions include several districts of the Donetsk region (Pershotravneviy, Novoazovsky and Telmanovsky), but did not include the city of Mariupol. The Ukrainian army stated that the restrictions were not a curfew, and in no way limited citizens' rights. The SMM visited several CPs around Mariupol city (15km northeast of the city centre) and was told by local residents living in the respective area that they had heard gun fire during the night 10 to 11 September coming from the southeast direction.

The Director of the Regional Employment Centre in Zaporizhzhia city (67km south of **Dnipropetrovsk** city) told the SMM that the region was suffering from unemployment. The interlocutor said that Zaporizhzhia's industries were not working to their full capacity, partly because exports to Russia have decreased sharply. In the case of "Motor Sich" – the largest employer in Zaporizhzhia, a manufacturer of helicopters, aeroplane engines – sales to Russia had been affected by the imposed sanctions. According to the interlocutor, "Motor Sich" was on the verge of ceasing production and laying off 16,000 people as a result. The unemployment rate in Zaporizhzhia Region was 7.7 % and more businesses were closing than opening.

In Mykolaiv (70km northwest of **Kherson**) the region's first secretary of the Communist Party of Ukraine explained to the SMM that, despite required documentation stipulated in the electoral law, the party had not received a certified copy of the party's registration certificate and charter by the Ministry of Justice. These documents were needed in order to register candidates for the elections. He criticized limitations imposed on his party regarding campaigning on local TV channels.

In **Kharkiv, Odessa, Chernivtsi** and **Ivano-Frankivsk** the situation remained calm.

In **Lviv**, the SMM attended a meeting between Crimean Tatar IDPs and Refat Chubarov, the head of the Mejlis of the Crimean Tatars, at the Regional Department for Social Protection. The aim of the meeting was to establish co-operation among all Crimean Tatars. The head of the Mejlis said that an umbrella organization had been established in Kyiv to support Crimean Tatars at the local level and co-ordinate between regional associations. The interlocutor informed the SMM that a representation office of the Crimea Mejlis would be opened in Kyiv.

In **Kyiv** the SMM met with the former editor of the Crimean based magazine "Zerkalonedeli" who said that, in her opinion, freedom of the press in Crimea was severely limited. According to the interlocutor, accreditation for meetings with officials was only provided to journalists complying with the *de facto* authorities. The journalist stated that all Crimean media companies were currently still registered in Ukraine, but, as of next year, Russian legislation would be applied, and expected that registration of media companies with critical political views would become impossible.

On 11 September the SMM spoke on the phone with a member of the Mejlis who had difficulties when crossing the administrative boundary line (ABL) in Armyansk from Crimea towards mainland Ukraine. The Mejlis member was, at the time of the conversation, on his way

to Lviv where he would seek medical treatment. The interlocutor said that his intention was to return to Crimea but again expected difficulties at the ABL.

Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 18:00 (Kyiv time), 12 September 2014

 osce.org/ukraine-smm/123528

This report is for media and the general public.

The SMM observed a simultaneous release of 68 people in Donetsk; and monitored the non-use of weapons regime established under the Minsk Protocol.

In the early hours of 12 September, the SMM observed the simultaneous release of 68 hostages/prisoners close to Avdeevka (18km north of Donetsk city). The Ukrainian side handed over 31 members of the “Donetsk People’s Republic” (“DPR”), whilst the “DPR” side handed over 37 Ukrainian servicemen. In addition, the SMM at 17:00 hrs that day observed the handover of six more prisoners by the Ukrainian side to the “DPR” at the same location, thereby balancing the figures. The releases followed a verbal agreement between the sides made the previous evening – as part of the implementation of the Protocol signed in Minsk on 5 September – at an SMM-facilitated session of the Tri-lateral Contact Group held in Kyiv.

The SMM – located close to Donetsk airport – heard what appeared to be a number of detonations, seemingly coming from the direction of the airport, at 11:00hrs. Local people told the SMM that sporadic fire of automatic weapons had been heard throughout the night in the same area.

The SMM observed a large crater near a bus-stop in the village of Gornikov (15 km northeast of Donetsk city). Four people in the village separately told the SMM that the crater was the result of shelling at 08:00 hrs that morning. They said three people had been wounded as a result. The SMM observed another crater in the neighbouring village of Khanjenkovo (26 km northeast of Donetsk city), also caused by shelling at around 08:00 hrs, according to a local man whose home had sustained some minor damage as a result of the shelling. No casualties were reported.

Mariupol appeared to have been calm during the reporting period, with various interlocutors in and around the city reporting no signs of fighting.

The SMM received numerous reports– from Ukrainian military personnel and local people in a number of towns in the vicinity of Pervomais’k (70 km west of **Luhansk** city) – that there had been small arms fire and shelling over the previous 24 hours in the area. The acting District Police Chief of one of the towns – Popasna – later outlined several alleged incidents spanning the period of 8 to 11 September, in which Popasna had been shelled. In another of the towns in the area – Zolotoye – local people told the SMM that four different separatist groups were engaged in a power struggle in the area.

Later in Luhansk city, a senior representative of the “Lugansk People’s Republic” (“LPR”) told the SMM that Pervomais’k was under the control of a Cossack commander unanswerable to the “LPR”. The SMM subsequently visited Pervomais’k, where they met the commander, the self-styled Colonel Pavel Dremov. He confirmed that he had been involved in shelling, saying he had done so because he had received information that there had been a substantial build-up of Ukrainian military forces around Pervomais’k, including at least 64 tanks. He said there were about 700 Cossack armed personnel in the town, equipped with three D-30 artillery pieces.

In Stanitsa-Luhanska (24 km northeast of Luhansk city), the SMM observed a civilian vehicle carrying at least half a dozen separatists, armed with a 122 m anti-tank weapon, moving in the direction of a Ukrainian military checkpoint.

The SMM, at around 09:30 hrs, observed Ukrainian military personnel laying 10 to 12 anti-tank mines, in two rows, on the road from Shchastye (24 km north of Luhansk city) to Metallist (9 km north of Luhansk city).

The situation remained calm in **Kharkiv** and **Dnipropetrovsk**.

The SMM observed on 11 September people in Tavriis’k (80 km east of **Kherson** city) digging trenches on the side of the main road connecting Kherson with Crimea. There is also a hydro-power plant and a bridge over the Dnepr River in the vicinity.

A high-ranking Ukrainian military official told the SMM in Odessa that there had been a significant recent build-up of Russian military forces in both Transdnistria and northern Crimea.

The situation remained calm in **Chernivtsi**.

The SMM in **Ivano-Frankivsk** city, observed 1,000 college students, wearing yellow and blue t-shirts, moving along the streets, singing Ukrainian patriotic songs and chanting slogans. The participants dispersed peacefully.

The situation remained calm in **Lviv** and **Kyiv**.

Annex 810

Organization for Security and Co-operation in Europe, Freedom of Assembly in Crimea
Occupied by the Russian Federation, Supplementary Human Dimension Meeting (16–17 April
2015), PC.SHDM.NGO/14/15 (17 April 2015)



Freedom of Assembly in Crimea Occupied by the Russian Federation

Problem Statement

A rapid collapse of freedom of peaceful assembly in Crimea started at the very beginning of the annexion with the use of both the proven practices in accordance to Russian federal laws (restricting the peaceful assemblies and persecuting their members) and extralegal methods such as beating, kidnapping and even murders. Human rights organizations have documented the beatings of participants of peaceful assemblies and accelerations for the unity of Ukraine, kidnapping and torturing of their organizers, falsifying administrative and criminal cases against members using various means of administrative pressure (preventive talks with the FSB, illegal searches and seizure of personal stuff, discharging from employment).

The paramilitary criminal group called "Crimean self-defense" is one of the main tools for limiting freedom of assembly in Crimea. It was founded in the middle of February 2014 as a riot squad force for non-peaceful assemblies and capturing of the administrative buildings. June 11, 2014 the occupation authorities passed a special law¹ that gave control to the so-called "Crimean self-defense" directly from the self-proclaimed Crimea head S. Aksionov and Crimean Council of Ministers awarded the status of "people's guard" to these paramilitary criminal groups. Despite the evidence proving that "Crimean self-defense" committed a number of serious crimes, no one of the representatives was prosecuted.

There is a clear traceable connection between the actions of these paramilitary criminal groups and law enforcement. Thus on March 9, 2014 after illegal arrest of the organizer of the rally for the unity of Ukraine, Andriy Shchekun and the social activist Anatoly Kowalski by the "Crimean self-defense" at the railway station, both of them were brought to the nearest police office. Police officers at the police office detained both of these community activists without any registration and gave them back to the hands of other members of the "Crimean self-defense." Both men were held captive for 11 days; during these days Andriy Shchekun was constantly tortured (by electric current, shooting limbs, etc.).

In contrast to the Ukrainian law, where only a preliminary notice of peaceful assembly is needed, Russian law establishes a series of harsh restrictions incompatible with the guiding principles of freedom of peaceful assembly. Here are some of them: the authorization procedure for peaceful assemblies, limiting the number of places for peaceful assemblies, prohibition for children younger than 14 to participate in assemblies, criminal liability for repeated violations of procedure or peaceful assembly and so on.

The occupation authorities pled the Russian law to make their decisions. Thus, the State Council of the Republic of Crimea passed the Law "On ensuring the right of citizens of the Russian Federation to hold meetings, gatherings, demonstrations and pickets in the Republic of Crimea"

¹ <http://jankoy.org.ua/wp-content/uploads/2014/05/Zakon-O-narodnom-opolchenii-Kryma.pdf>

August 8, 2014, restricting the freedom of peaceful assemblies. This law requires the notification submitted in writing directly to the local authority of the municipality in time no earlier than 15 and no later than 10 days before the public event. The designated places for the peaceful assembly are determined by the Council of Ministers of the Republic of Crimea taking into account the requirements of the Federal Law "On meetings, gatherings, demonstrations, marches and pickets." For example, Simferopol, a city with more than three hundred thousand people, has only four such places.

There is an obvious discriminatory approach in the application of the Russian laws in Crimea. Some cases of unjustified refusals on granting the permission to peaceful assembly were documented, while the others were allowed when the topic of the assembly was acceptable for the occupying authority. A striking example of this is the "Antimaidan" campaign, held in Simferopol, on February 21, 2015 supporting the policy of Russian President Vladimir Putin. The Crimean branch of the "United Fatherland" party, "Antymaidan" social movement and Russian biker club called "Night Wolves" (who have taken part in the dispersal of Ukrainian shares on the southern coast of Crimea) were the organizers. The event was held in the center of Simferopol, at the intersection of Karl Marx and Pushkin streets. In addition to that, the occupation authorities allowed the organizers to drive cars and motorcycles in the pedestrian zone. Earlier, the very same authorities have identified only four places in Simferopol, where peaceful assembly were allowed to be conducted, and the center of Simferopol is not one of them.

According to the Human Rights Watch: *«The last eight months actual Crimean authorities restricted the freedom of speech and the freedom of assembly and intimidated and persecuted those who were opposing Russia's actions in Crimea²»*. Because of this deliberate policy of the occupation authorities the number of assemblies in Crimea has declined dramatically. The situation is complicated by the fact that there are no NGOs or lawyers specializing in defense of the freedom of peaceful assembly in Crimea. Almost all of them were forced to leave the peninsula for fear of politically motivated prosecutions or impossibility of continuing professional activities.

Here are some cases to illustrate the observation of the right to peaceful assembly in Crimea.

Prohibition of peaceful actions on cultic dates of Crimean Tatars

May 16, 2014 self-proclaimed Crimean Prime Minister Sergei Aksionov issued a decree prohibiting the assemblies in Crimea until June 6, 2014, including mourning actions on the occasion of the 70th anniversary of the deportation of Crimean Tatars. S. Aksionov justified the decision in such a way: *"Taking into account the continuing events in many cities of the south-eastern Ukraine, resulting in injured and killed civilians, in order to eliminate possible provocations performed by extremists, who are able to enter the territory of Republic of Crimea, to avoid disruption of the holiday season in the Republic of Crimea, we prohibit any mass events in the Republic of Crimea until June 6, 2014"*.

During negotiations, the Crimean Tatars were allowed to hold the collective prayer and memorial run on May 18, but only on the suburbs of Simferopol. In all other cities of Crimea the Crimean Tatar memorial events were prohibited. During several meetings between the organizers and the self-proclaimed authorities, the authorities repeatedly demanded the Crimean Tatars to demonstrate their loyalty to the Russian Federation in the form of appropriate public

² <http://www.hrw.org/sv/node/124221>

statements or performance of the Russian national anthem during the celebration; however, the Crimean Tatars refused to do that.

June 11, 2014 Tatar Mejlis gave notice to the Simferopol City Council about the mass cultural event dedicated to Tatar Crimean flag on June 26 that was to be held in the city central park. However, on June 17, Mejlis received a written response, refusing to hold this assembly.

The refusal of the local authorities states the following: *"In the park named after K.A. Trenov there are playgrounds and attractions currently functioning, especially popular during the school holidays; classes, competitions, exhibitions and other events involving hundreds of children are held here, the School of Music is enrolling students on the 2014-2015 academic year (listening)... gathering of a large number of people in a limited area, not intended for extra number of participants, can create conditions that would disturb public order, the rights and legitimate interests of the others".*

In addition, Simferopol City Council refused to approve the route of the motor rally proposed by Mejlis on the Crimean Tatar Flag Day. The city authorities proposed to change the route of the rally and exclude the downtown streets from it. Thus, the Crimean Tatars were prevented from holding a peaceful assembly (rally) in the sight of the target audience.

Crimean Tatar NGO "Kardashlyk" planned to hold a mourning meeting devoted to the European Day of Remembrance for the Victims of Stalinism and Nazism on August 23, 2014. The assembly had to be held in Simferopol in the Gurzufskay street in the "Salgirka" park. The Notice of the assembly was directed to the Simferopol City Council on August 13, 2014, but in 10 days authorities forbade to hold memorial service, explaining its refusal by hot weather, which, according to the local authorities, might harm the health of the participants.

They also forbade the remembrance assembly dedicated to the national hero of Crimean Tatar Noman Chelebidzhihan on February 23, 2015, despite the fact that Crimean Tatar Mejlis proposed to move the action from Simferopol to the private courtyard of the palace Khan in Saray, Bakhchisarai.

"The case of February 26": prosecution for participating in the assembly against the annexion of Crimea

A mass assembly of the pro-Ukrainian activists devoted to the unity of Ukraine was held on February 26, 2014 in front of the building of the Supreme Soviet of the Autonomous Republic of Crimea. At the same time under the building of the Verkhovna Rada of Crimea was counter collections, one of which was attended by representatives of the pro-Russian organizations demanding autonomy joining into. Given neefktyvni actions of the police to ensure the safety of peaceful assembly sutychkya occurred, which resulted in 30 people injured. Thus, participants received head injuries, blunt abdominal trauma etc. 6 people were hospitalized, three of them were in serious condition, 3 - Average³. According to the leader of the Crimean Tatars Mustafa Dzhemilev a rally in support of saving the Crimea as part of Ukraine was attended by about 12-13 thousand Tatars; He also reported the death of 2 people during the confrontation, one man had a heart attack, another woman trampled crowd.

A year after on 30th of December in Bakhchysarai law enforcement officers conducted a search in the house of the deputy head of Mejlis (executive-representative body of the Crimean Tatars) Akhtem Chyigoz⁴. On 4th of February they conducted the interrogation of Asan Chebiyev, a

³ http://dt.ua/UKRAINE/kilkist-postrazhdalih-u-sutichkah-u-krimu-zrosla-do-30-osib-138439_.html

⁴ <http://qha.com.ua/krimskimtatarom- ne-razreshili-provodit-miting-v-podderjku-chiigoza-142978.html>

close relative of one of the coordinators of The Committee for the Protection of Rights of Crimean Tatars Abmedjit Suleimanov. On 7th of February 2015 they arrested Iskender Kantemyr who was suspected in the organization and participation in civil disorder. On 8th of February the court decided to keep Iskender Kantemyrov in prison for two months. According to the investigators he “inflicted bodily harm on several people on 26th of February 2014 in Simferopol”. Akhtem Chyigoz was arrested on 29th of January 2015 on suspicion of organizing and participating in civil disorder. Right now he is under arrest.

On 11th of March 2015 a Crimean Tatar activist Taliata Junusov was arrested; on 23th of March 2015 another member of Mejlis, Ilm Umerov was called for an interrogation. On 27th of March 2015 another interrogation of a member of Mejlis Nariman Jelial⁵ was conducted. According to the members of Mejlis legal proceedings directed at them are conducted by the Investigating Committee of the Russian Federation nearly every day.

It should be noted that the rally itself was held on 26th of February 2014 before the pseudo-referendum “at the point of the gun” and the attempts of Russia to legally settle the annexion of Crimea. The human-rights Ombudsman in the Supreme Council of Ukraine commented on the situation the following way “*It is the jurisprudential surrealism – I can’t think of a different name for it, because people had the right to participate in peaceful assemblies on Ukrainian territory according to the law. At the moment there is no particular law that would regulate the freedom of assembly, but there is a direct constitutional provision giving each person the right to take part in peaceful assemblies. It is absolutely certain. Actually, these people have been arrested and their houses have been searched, because they used their constitutional right according to Ukrainian law. This is a clear indicator of how the occupying authority treats the law and by the law I mean both, international and Ukrainian.*”⁶

The murder of Reshat Akhmetov and the kidnapping of Andriy Shchekun

On 3rd of March 2014 Reshat Akhmetov, 39-year-old inhabitant of Simferopol, the father of three children, left his house. The video cameras recorded his one-man protest against the occupation of Crimea by the Russian military troops on Lenin Square in front of the Crimean Minister’s Council building. There is an episode in the video that clearly shows how several members of the “Crimean self-defense” put an armlock on him and force him to go into the car right at the square. After two weeks Reshat Akhmetov was found dead in the middle of the field near the village called Sunychne of Bilohirskyi district. Numerous signs of torture were found on his body, his head was covered in scotch tape, next to him there was a pair of handcuffs. The cause of his death, as it was later found out, is the stabbing in the ocular region.^{7 8}

The Investigation Committee of the Russian Federation launched criminal proceedings into the murder only at the beginning of April 2014. The bother of the murdered claims that despite the fact that the Russian police has supposedly identified several people accessorial to kidnapping, there is no apprehension or accusation and it is already March, 2015. According to the report of the international organization «*In one of the cases documented by the Human Rights Watch in*

⁵ <http://qha.com.ua/kajdii-chlen-medjlisa-jdet-obiska-v-svoem-dome-djelyal-143933.html>

⁶ <http://www.ombudsman.gov.ua/ua/all-news/pr/30115-es-valeriya-lutkovska-aresht-vo-golovi-medzhlisu-krimskotatarskogo-narodu/>

⁷ <http://www.szona.org/ubijtsy-ne-najdeny-s-momenta-pohishheniya-i-ubijstva-reshata-ametova-proshel-god/>

⁸ <http://www.slideshare.net/UkraineCrisisMediaCenter/1-201520150312132710441>

March, there were signs of the involvement of self-defense to kidnapping and death through violence of Reshat Akhmetov.”

At the same time, namely before the initiative dedicated to the 200 anniversary of Taras Shevchenko's birthday, there was another heinous kidnapping. This time it happened to the civic activist Andriy Shchekun who was the manager and promoter of the initiative planned to honour the Ukrainian poet. On 9th of March he was arrested at the Simferopol railway station by paramilitary groups. Police denied the fact of Andrew Shchekun mobile group Euromaidan SOS is 10 minutes after the incident came to police station. Instead, police officers gave Andrew the hands of other members of the "Crimean self" captivity in which he and others stayed for 11 days.

During the illegal detention Andrew used torture (electric current, prostrileni limbs, beating). According to him, questioning a so-called "experts", most likely representatives of special services of Russia.⁹ March 20, 2014 was released with six Ukrainian, who also were in captivity paramilitary criminal gang. *"Both Andriy's hand are shot by traumatic rubber guns"* his wife Liudmyla Shchekun says, wife of Andrew¹⁰. *"These horrific kidnapping and evidence of torture in Crimea necessarily require a thorough investigation," - said Hugh Williamson, a representative of Human Rights Watch, - "for a few weeks unidentified armed groups had free rein on the Crimean peninsula without explicit legal authority or accountability, and this resulted in a dangerous situation, arbitrary detention, kidnapping and torture."*¹¹

“Case of May 3”: the pursuit of Crimean Tatars

The occupying authorities banned Mustafa Dzhemilev from entering the territory of Crimea after his stay in mainland Ukraine. On May 2, 2014 he was prevented from flying from Moscow to Simferopol. Next, the leader of Crimean tatars attempted to enter the peninsula by car, but was stopped at a checkpoint “Turetskiy Val” in Armyansk. In protest, crimean tatars headed towards him and blocked the road and the neutral territory (no man's land). Nevertheless, occupying authorities still prevented Mustafa Dzhemilev from entering the Crimean peninsula. In order to prevent escalation of the situation, Mustafa Dzhemilev urged the protesters to return to Crimea before going back to Kyiv. Self-proclaimed attorney of Crimea Nataliya Poklonska sent the investigative committee and the Federal Security Service of the Russian Federation a resolution on basis of “unlawful public events” in Armyansk during the greeting of Dzhemilev by crimean Tatars. According to Nataliya Poklonska, “Crimean Tatar Mejlis, led by Refat Abdurahmanovich Chubarov held illegal public events of extremist nature in connection with mass disturbances, road blockings, illegal crossing of international border with RF, combined with unlawful obstruction of government agencies, as well as violence.”

“The persecution of those who attempted to peacefully meet Mustafa Dzhemilev in Armyansk or the ones who protested the prohibition of Dzhemilev's entrance to Crimea, became the first evidence of the government's intent to restrict the right to freedom of peaceful assembly in Crimea. Until the recent occupation of the peninsula by Russia, such restrictions did not exist.” This was the comment on the situation in the report of department of operations security of interim president of Ukraine in the affairs of Crimean Tatar people. *“Crimean Tatar people on the threshold of 2015”*¹²

⁹ https://www.youtube.com/watch?v=IZWd_F4UTs

¹⁰ <http://www.wz.lviv.ua/ukraine/126295>

¹¹ <http://www.hrw.org/sv/node/124221>

¹² <http://www.slideshare.net/UkraineCrisisMediaCenter/1-201520150312132710441>

After this incident occupying authorities filed administrative proceedings against dozens of Crimean Tatars across the entire peninsula. Licence plates of cars of Crimean Tatars that came to meet Dzhemilev were recorded on video. Attendants of the peaceful gathering were accused of participating in “public disturbances” and “illegal crossing of the Russian border.” During the first three weeks of hearings at least 49 persons were made to pay fines ranging from 10,000 (approximately \$160) to 15,000 Rubles (approximately \$240), additionally another six people had to pay a 40,000 Ruble fine (approximately \$640). According to “Crimean Field Mission,” as of February 13, 2015, over 100 persons have been fined.

Additionally, 5 persons who were detained in cells with video surveillance had criminal cases opened against them for use of force against the police officers. In December of 2014, Musa Apkerimov, Rustam Abdurakhmanov, Tahir Smedlyayev, Eden Ebulisov. Later they were released on bail due to changes in their preventive measures at the request of the self-proclaimed head of Crimea Sergey Aksenov. On January 19, 2015, 34 year old Eden Osamanov, who was meeting the leader of Crimean Tatars in Armyansk with thousands of other Crimean Tatars, was arrested. On February 6, 2015 investigation unit of FSB of Russia in Crimea and Sevastopol called in to testify the head of CEC of Kurultai of Crimean people, ex member of Mejlis Zair Smedlyayev. However examination scheduled for February 6, 2015 did not take place, due to the lack of Crimean Tatar language interpreter. Investigation on these criminal cases is currently in progress.

Human Rights Watch has reported that organization “*did not have an opportunity to hold an independent investigation on the events of May 3 and assess compliance of administrative charges and fines in the particular situation. Eventually the self proclaimed authorities used these events to justify mass searches, warnings and other measures in relations to Crimean Tatar groups and individuals. No additional specific grounds for such measures were cited by the self proclaimed authorities. Considering the scale and intensity and also the vagueness of charges, these measures were likely used as a means of pressure on the representatives of the Crimean Tatar community, who are opposed to the occupation of Crimea and therefore are against Russia.*”¹³

The prosecution of participants of the peaceful assembly on August 23, 2014

On August 22-23, 2014 in honor of the state holiday - the Day of National Flag of Ukraine, residents of various regions in Crimea placed Ukrainian flags (in nature reserves, on the tops of mountains, in the park areas, etc.). In different cities Crimeans went out in public places with Ukrainian flag or other Ukrainian symbols.

On this day representatives of the "Crimean self-defense" illegally detained Sergei Oak, the head of the Adult Intensive Care Department of the Simferopol Perinatal Center, who came to the monument to Taras Shevchenko in Simferopol with Ukrainian flag. Representatives of the "Crimean self-defense" illegally handcuffed him and without police participation took Sergei to the police station. The interrogation was led by the chief of the Central Police Department and one of the captains, who, according to Sergei's words, acted in accordance with the instructions, which the head of the "Crimean self-defence" gave him by telephone. Sergey said that police officers were ordered to apply Art. 20.1 of the Code of Administrative Offences of the Russian Federation which meant "petty hooliganism". The "Crimean self-defense" accused him of using foul language in the public place, which is denied both by Sergei, and other witnesses. Sergey

¹³ <http://www.hrw.org/news/2014/11/17/crimea-human-rights-decline>

has paid a fine of 1,000 Rubles (approximately \$ 16) and was removed from the post of the head of department, currently he is an ordinary doctor.¹⁴

On August 24, 2014 on the Independence Day of Ukraine in Sevastopol, 8 people with the flags of Ukraine came to the pedestal, which was installed in the place of the monument to Ukrainian hetman P.Sahaydachny. After that two activists Victor Nehanov, who was the organizer of the assembly, and Sergey Kornienko were detained by police and taken to the police station of Gagarin district. The attendants of peaceful gathering were held in the police station of Gagarin district for several hours and released without charges. Victor reported that he was threatened with physical violence and that psychological pressure was used against him. During the illegal detention passports and car keys were seized. During the arrest of Sergei Kornienko he felt bad, but the police refused to call the ambulance, which led to his fainting.

The prohibition of the peaceful assembly on the International Human Rights Day

On December 2, 2014, the Chairman of the Central Election Commission Zaire Kurultai Smedlyayev reported that the self-proclaimed authorities of Simferopol do not permit a Crimean Tatar demonstration dedicated to the International Human Rights Day.

On December 7, 2014 the self-proclaimed Crimean prosecutor's office made a warning to Ahtem Chyyhoza, the deputy chairman of the Majlis, about the inadmissibility of unauthorized assemblies. The corresponding document was handed to him on Saturday night at the border of Ukraine and Crimea in the checkpoint "Armiansk." In response, the organizers Eskender Bariev, Sinaver Kadyrov and Abmedzhyt Suleymanov decided to stage a protest on December 10, 2014, and informed local authorities about their plan. They did not receive a response on their letter. Instead, the Crimean prosecutor's office made an official warning to the three men that holding protests without official permission will be considered illegal.

On December 9, 2014 the Simferopol authorities refused Committee for the Protection of the Crimean Tatars to hold a peaceful protest on December 10 on the Lenin square. The refusal was substantiated by the needs to hold activities connected with celebrations of Christmas and New Year. Later on January 23, 2015 Eskender Bariev, Sinaver Kadyrov and Abmedzhyt Suleymanov were trying to get to the mainland Ukraine, but were stopped by the Russian border guards at the checkpoint in Armyansk. After checking the documents Sinaver Kadyrov was said that as a "foreigner" (Sinaver is a resident of Crimea with Ukrainian passport) he exceeded the maximum time period of 90 days on the peninsula. On the same day he was taken to court, which ruled his deportation from Crimea and ordered to pay a fine of 2000 Rubles (approximately \$30). Sinaver Kadyrov was immediately deported and the appeal against the judgment was denied on February 6.

Some time later Eskender Bariev and Limit Suleymanov also left the Crimea, due to the notice from the self-proclaimed Crimean prosecutor about initiating criminal proceedings against them. The notice mentioned that "*... among the current criminal investigations there are files concerning the illegal actions of three coordinators of one of unregistered organizations*"¹⁵ - which is a direct reference to these people as the "Committee for Protection the Rights of the Crimean Tatars" is the only unregistered organization in accordance with Russian law which has three coordinators.

¹⁴ http://www.pravda.com.ua/rus/articles/2015/02/27/7059999/view_print/?attempt=1

¹⁵ <http://qha.com.ua/poklonskaya-peredala-sledstviyu-materiali-po-mitingu-26-fevralya-142716.html>

Persecution of the members of a peaceful assembly commemorating Taras Shevchenko's birth anniversary.

Restriction of peaceful assembly is realized not only in political sphere but also in cultural sphere by occupation power. A peaceful assembly commemorating Taras Shevchenko's birth anniversary on 9 March, 2015 was restricted too. An application for the peaceful assembly in front of a poet's monument in Simferopol was declined. Afterwards the organizers of the peaceful assembly moved on another place where around 50 persons recited poetries and shouted pro-Ukrainian slogans with Ukrainian symbols.

Oleksandr Kravchenko, Vilidar Shukurdzhiev and Leonid Kuzmin were arrested because of participation in "illegal" assembly. Their cases are considered apart. Court decided that an organizer of the assembly Leonid Kuzmin made a violation because Ukrainian symbols were demonstrated on the assembly and this fact was not indicated in the application. Leonid was fired from a school where he had worked as a history teacher because of "discrepancy of filled post".

Besides, court decided that a member of the assembly Oleksandr Kravchenko violated order of the assembly because he used symbols which were not indicated in the application, in particular he was dressed with a national Ukrainian shirt and he kept in his hand Ukrainian flag. Vilidar Shukurdzhiev was adjudged guilty of using forbidden symbols, which were not indicated in the application, during the assembly because he kept in his hand Ukrainian flag too. He was imposed punishment 40 hours of corrective labor but no more than 4 hours per day.¹⁶

Persecution of Alexander Kostenko, who took part in Euromaidan

The alarm bell was detention of Alexander Kostenko, Euromaidan participant, on 8 February 2015, with his further arrest. The charge against him is that on 18 February 2014, in Kyiv, "being aware of mass unrest in Kyiv aimed at unlawful overthrow of constitutional system" (this is how the occupation powers call Euromaidan protest movement), "he cast a stone with precision" at a militia man due to "the feeling of ideological hatred and animosity to internal affairs officers".

Thus, a dangerous precedent has occurred, when the Russian Federation prosecutes a Ukrainian citizen for the acts allegedly committed by him in Kyiv, Ukraine, during Euromaidan, against another Ukrainian citizen (according to their words), moreover against a person who, at the time, represented the Ukrainian law-enforcement authorities, i.e. served in a subdivision of the Crimean Berkut. Needless to say that such charge is outside of the legal territory. Given the indefinite number of people in the Crimea who may be subject to prosecution of such kind for participation in or support of Euromaidan and in view of vigorous activity of so called International Civil Committee for Protection of the Rights of People Who Suffered from Maidan founded in March of 2014, such illegal practice may become quite common.¹⁷

«This incident [Kostenko's case], like the case of the Deputy Head of Majlis, is tied to «March Referendum» and transition to the Russian Federation Laws. It obviously contradicts Article 15(1) of ICCPR «No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed» as provides the report of UN High Commissioner.¹⁸

¹⁶ <http://www.newsru.ua/ukraine/12mar2015/ispravitelnye.html>

¹⁷ http://www.rada.crimea.ua/news/02_04_14

¹⁸ <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf>

Conclusion

The occupation powers of the Crimea use all the tools developed by the legislation and practice of the Russian Federation to suppress peaceable assemblies. Instead they arrange and encourage activities loyal to the Russian Federation. The situation is aggravated by the current absence of any efficient mechanism on the peninsula for protection against the political persecutions of peaceable assembly participants arranged by the occupation powers both with application of legal mechanisms (false arrests, interrogations, invention of criminal and administrative cases) and by non-legal means (kidnapping, torture and murder).

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Annex 811

Organization for Security and Co-operation in Europe, Thematic Report: Freedom of Movement
across the Administrative Boundary Line with Crimea (19 June 2015)

Freedom of movement across the administrative boundary line with Crimea

 osce.org/ukraine-smm/165691

Organization for Security and Co-operation in Europe

Date

19 June 2015

This thematic report provides an overview of the situation on freedom of movement across the administrative boundary line (ABL) between Ukraine's Kherson region and Crimea. Crossing the ABL has gradually been limited by various measures, and this has particularly affected the most vulnerable and economically disadvantaged groups.

The views, opinions, conclusions and other information expressed in this document are not given nor necessarily endorsed by the Organization for Security and Co-operation in Europe (OSCE) unless the OSCE is explicitly defined as the Author of this document.

This document is part of a collection



Thematic Reports from the Special Monitoring Mission to Ukraine

In-depth thematic reports are the result of the SMM's work in the human dimension, an important part of the SMM mandate given to the mission by the OSCE 57 Participating States. The reports focus on different aspects of life affected by the conflict in Ukraine and complement the SMM daily reports.

Annex 812

OSCE, Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015) (17 September 2015)

ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

**Office for Democratic Institutions and Human Rights
&
High Commissioner on National Minorities**

**Report of the Human Rights Assessment Mission on
Crimea (6–18 July 2015)**



17 September 2015

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LIST OF ABBREVIATIONS

ABL	Administrative Boundary Line
CESCR	UN Committee on Economic, Social and Cultural Rights
CRC	UN Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
FCNM	Framework Convention for the Protection of National Minorities
FMS	Federal Migration Service (of the Russian Federation)
FSB	Federal Security Service (of the Russian Federation)
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
HCNM	OSCE High Commissioner on National Minorities
HRAM	Human Rights Assessment Mission
ICRC	International Committee of the Red Cross
IDP	Internally displaced person
MFA	Ministry of Foreign Affairs
MSP	Ministry of Social Policy (of Ukraine)
NGO	Non-governmental organization
NPM	National Preventive Mechanism
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OHCHR	Office of the UN High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
OST	Opioid substitution therapy
RFE/RL	Radio Free Europe/Radio Liberty
QHA	Crimean News Agency
UCIPR	Ukrainian Center for Independent Political Research
UN	United Nations
UNCAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNHCR	UN High Commissioner for Refugees

Executive Summary

1. Following an invitation by the Government of Ukraine on 15 June 2015, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE High Commissioner on National Minorities (HCNM) conducted a joint Human Rights Assessment Mission (HRAM) on Crimea from 6 to 18 July 2015.
2. The HRAM evaluated the current human rights situation in Crimea, including the situation of minority groups, as impacted by developments since the release of the previous ODIHR/HCNM report¹ on Ukraine in May 2014, soon after the occupation and annexation of Crimea by the Russian Federation.²
3. Notably, the most critical human rights problems in Crimea today are largely congruent with the concerns and negative trends identified in that previous assessment, which ODIHR and HCNM then called upon *de facto* authorities in Crimea to address.³
4. Despite their clear mandates to monitor the human rights situation in Crimea, the institutions and independent experts of the OSCE, the United Nations and the Council of Europe have all had their access to the Crimean peninsula either fully or partially restricted since the annexation. The *de facto* authorities in Crimea did not respond to requests to facilitate access to Crimea for the HRAM,⁴ for which reason the HRAM primarily conducted fact-finding and

¹ OSCE-ODIHR/HCNM, Report of the Human Rights Assessment Mission to Ukraine (The Hague/Warsaw: 12 May 2014), available at: <http://www.osce.org/odihr/118476>.

² Note on terminology: for the purposes of this report, “occupation” refers to the exercising of control over Crimea by Russian Federation forces since late February 2014 (*see* note 15 below); whereas “annexation” refers to the Russian Federation’s integration of Crimean institutions into the Russian Federation under the imposition of its domestic legal framework, beginning on 21 March 2014 (*see* note 17 below). With regard to the status of Crimea, *see also*, United Nations (UN) General Assembly Resolution No. 68/262 on the “Territorial integrity of Ukraine” (UN Doc. A/RES/68/262; adopted 27 March 2014).

³ In their 2014 joint report (note 1 above), ODIHR and HCNM issued the following recommendations to *de facto* authorities in Crimea, *inter alia*: (i) to apply the principle that the change in authorities exercising effective control over Crimea should not have regressive effects on the enjoyment of rights, with particular attention to the principle of non-discrimination; (ii) to guarantee that all individuals permanently residing in Crimea, including both Russian and Ukrainian citizens, retain all their rights, including permanent residency status, employment rights, property and land rights, without discrimination by authorities or private actors; (iii) to protect participants of public assemblies from attacks, harassment or intimidation; (iv) to protect journalists and activists from attacks, threats, harassment and intimidation so that they can carry out their activities freely and without fear; (v) to protect all persons from arbitrary or unlawful detentions, mistreatment or torture in detention; (vi) to respect in full all fair-trial and due-process rights of persons detained under the law; (vii) to exercise due diligence in the investigation, prosecution and punishment of human rights violations, particularly against activists, journalists, and vulnerable or minority groups; (viii) to promptly disband “self-defence” groups and any other groups *de facto* exercising the functions of law-enforcement agents.

⁴ Letter from the Director of ODIHR to Mr. Sergey Aksyonov (dated 2 April 2015). On 11 June 2015, the Records Management Department of the Crimean Ministers Council confirmed receipt of the letter (upon request), which it informed ODIHR had been reviewed by Mr. Aksyonov and forwarded to Ms.

research in the territory of mainland Ukraine, as well as through remote interviews with relevant contacts in Crimea and elsewhere.

5. Through extensive meetings and interviews with over 100 civil society actors, Ukrainian authorities, internally displaced persons and cross-boundary travellers, the HRAM received numerous credible, consistent and compelling accounts of human rights violations and legal irregularities in Crimea – some of them of a serious nature. The allegations documented and trends established by the HRAM demand urgently to be addressed by Crimean *de facto* authorities, and underscore the need for systematic independent monitoring of the human rights situation in Crimea by impartial international bodies.
6. As a result of the annexation, the changes in government and the legal framework being applied in Crimea have dramatically impacted the enjoyment of the full spectrum of human rights and fundamental freedoms by residents there, particularly of those residents who were opposed to the annexation, were unable to reject forced Russian citizenship, and/or did not seek to acquire Russian passports.
7. Fundamental freedoms of assembly, association, movement, expression and access to information have all been restricted in some fashion – whether through formal measures, or through the sporadic targeting of individuals or communities representing opposing views, voices or socio-political structures.
8. Re-registration requirements by the Russian Federation for non-governmental organizations (NGOs), media outlets, and religious organizations have reportedly been leveraged against those opposed to Russian rule, significantly restricting freedom of association, constricting the space for civil society, and decimating the number of independent voices in the media landscape.
9. Through the justice system, the *de facto* authorities in Crimea have applied vague charges of “extremism” and “separatism” under criminal law of the Russian Federation to a wide variety of assemblies, speech and activities – in some cases retroactively to events prior to annexation and/or outside of Crimea in mainland Ukraine. Based on interviews with those targeted and primary documentation reviewed by the HRAM, numerous such criminal warnings, investigations and prosecutions appeared to be politically motivated – directed at pro-Ukrainian activists, journalists and minority community members – without due process guarantees for the accused, and without effective remedies for alleged procedural violations.
10. In contrast, there appear to have been neither proactive investigations nor any prosecutions of pro-Russian “self-defence” groups accused of committing serious human rights abuses at the start of and since the occupation of Crimea.

Lyudmila Lubina, the Crimean Human Rights Commissioner, under Document No. 6158/01-01 (dated 08 April 2015).

Those alleged abuses included disappearances, extrajudicial killings, torture and ill-treatment, as documented by ODIHR and HCNM in their 2014 joint HRAM report.⁵ Since then, “self-defence” groups have reportedly continued to intimidate, harass, detain and seize the properties of Crimean residents – particularly those suspected of opposing Russian rule – without an adequate legal basis.

11. In terms of accountability, the European Court of Human Rights has extended the Russian Federation’s deadline until 25 September 2015 to submit its observations on the admissibility of two inter-State applications lodged against it by Ukraine – including in relation to forced citizenship, discrimination, property rights, the right to private life, and the prohibition against torture and ill-treatment.⁶ During that extended response period, the Constitutional Court of the Russian Federation issued a concerning ruling on 14 July 2015 that the government would not be required to implement judgments of the European Court of Human Rights if they contravened the Russian Constitution.⁷ Apparently conflicting with the Russian Federation’s obligations under international treaty law,⁸ such a decision could further undermine the right to an effective remedy for claimants, and the execution of judgments by the European Court in future claims, including in the dozens of individual cases that have already been submitted to the Court in relation to recent events in Crimea.
12. In the realm of economic, social and cultural rights, the imposition of Russian Federation citizenship and laws on residents of Crimea has caused problems for those Ukrainian citizens who have not sought Russian passports (despite having Russian citizenship nominally imposed upon them). Without Russian passports, residents face obstacles in every aspect of their lives, including: re-registering and/or selling private properties and businesses; gaining or retaining employment; and accessing education, health care, or other social services. Language studies and native-language education in the Ukrainian and Crimean Tatar languages have also reportedly been reduced in schools and universities throughout Crimea, to the detriment of those communities’ enjoyment of their cultural and language rights.
13. In the penitentiary system, more than 2,000 convicts imprisoned in Crimea at the time of annexation reportedly were unable to opt out of mandatory Russian citizenship, did not benefit from Ukrainian-ordered amnesties and conditional releases in 2014, and are potentially subject to transfer to penal colonies in mainland Russia, as has reportedly transpired in some cases. Injecting drug

⁵ See 2014 joint report of ODIHR/HCNM (note 1 above), paras. 88, 109 *et seq.*

⁶ Registrar of the European Court of Human Rights, Press release, “European Court of Human Rights extends time allowed for Russia’s observations on admissibility of cases concerning Crimea and Eastern Ukraine”, Doc. No. ECHR 122 (2015), issued on 13 April 2015.

⁷ See the Russian Constitutional Court’s statement on the ruling, available at: <http://www.ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3244>.

⁸ Article 27 of the Vienna Convention on the Law of Treaties (1969) provides: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

users and persons living with HIV/AIDS in the pre-trial detention facility and three penal colonies in Crimea have also reportedly lacked necessary medical care.

14. Exacerbating the legal and practical problems enumerated above are the existence of dual and parallel citizenship records, civil registries, cadastral records, pension systems, and justice systems exercising jurisdiction over the same persons and properties. As neither Russia nor Ukraine recognizes official documentation issued by the other in relation to Crimea, residents are caught between two overlapping and conflicting legal and regulatory systems. In order to navigate these complexities, many Crimean residents keep both Russian and Ukrainian passports, despite both countries not recognizing those residents' dual citizenship of the other.⁹
15. The HRAM received numerous accounts of Crimean residents and displaced persons who were unable to: sell their properties or businesses; acquire Ukrainian birth certificates for newly born children; or have their divorces in Crimea acknowledged by Ukrainian authorities, resulting in restrictions of the freedom of movement of many children with single parents under new Ukrainian regulations on travel to Crimea. Students graduating from Crimean secondary schools since annexation have also been unable to enrol in Ukrainian universities with diplomas issued by unrecognized authorities (and without sufficient opportunities to seek alternative qualifications), spurring surges in migration of families with school-age children from Crimea to mainland Ukraine.
16. The HRAM found in Crimea that those Crimean Tatars and Ukrainians who openly supported the territorial integrity of Ukraine and did not support the *de facto* authorities continued to be in a particularly vulnerable position. The suppression of activities of Mejlis – a self-governing body of Crimean Tatars – as well as intimidation, expulsion, or incarceration of prominent leaders of the Mejlis of the Crimean Tatar People has had a detrimental effect on the exercise of political and civil rights of persons belonging to the Crimean Tatar community.
17. Effectively forcing Crimean Tatar community-run media outlets, such as ATR, to close by denying their registration has not only restricted media freedom and access to information, but also deprived the Crimean Tatar community of a vital instrument to maintain and revitalize its identity.
18. The space for Ukrainian culture in the illegally annexed Crimea has also decreased. Cultural, religious and symbolic elements of Ukrainian identity have been restricted and/or suppressed through various administrative or law-

⁹ See Law of Ukraine No. 1207-VII “On legal guarantees of the rights and freedoms of citizens in the temporarily occupied territory of Ukraine”, Article 5(4); and Federal Law No. 62-FZ “On Russian Federation Citizenship”, Article 6(1); and Constitution of the Russian Federation, Article 62.

enforcement measures. Hostile attitudes in Crimea towards residents of Crimea who support the territorial integrity of Ukraine, display Ukrainian state and cultural symbols and publicly celebrate important dates for the Ukrainian culture and history are widespread.

19. Education in and of the Ukrainian language is disappearing. Pressure on school administrations, teachers, parents and children to discontinue teaching in and of the Ukrainian language is growing, which further curtails the presence of the Ukrainian language and culture on the peninsula. Education both in and of the Crimean Tatar language continues to face obstacles.
20. As obligated under its international human rights commitments and the Constitution of Ukraine,¹⁰ the Ukrainian government has adopted numerous policy measures to meet the needs of its citizens remaining in, or displaced from Crimea, despite lacking effective control over the peninsula. Those measures have reportedly been most effective where conjoined with awareness-raising campaigns to inform affected populations of solutions available for the challenges they face. However, many of those citizens impacted by the political and security challenges in Crimea over the last year have called for more relief and administrative assistance from the Ukrainian government to overcome those problems – particularly in relation to accessing the civil registry and education, and acquiring personal identification or other official documents. People crossing back and forth between Crimea and mainland Ukraine have also criticized newly increased restrictions on freedom of movement between the two regions, and inadequate infrastructure at land crossing points.
21. Through the Crimean *de facto* authorities, the Russian Federation is likewise obligated to respect, protect and fulfil the human rights and fundamental freedoms of persons in Crimea – in line with the international treaties to which it is party, as well as its commitments as an OSCE participating State to uphold those human rights and fundamental freedoms. Those OSCE commitments encompass the Russian Federation’s obligations under international human rights law and international humanitarian law, per its role as an occupying power in effective control of the Crimean peninsula.

¹⁰ See, the Constitution of Ukraine, Article 25: “A citizen of Ukraine shall not be deprived of citizenship and of the right to change citizenship. A citizen of Ukraine shall not be expelled from Ukraine or surrendered to another State. Ukraine guarantees care and protection to its citizens who are beyond its borders.”

Recommendations

To Russian Federation authorities and the de facto authorities in Crimea:

General recommendations:

- Immediately grant unimpeded access to Crimea for international agencies, institutions, special procedures and independent experts of the OSCE, the United Nations and the Council of Europe, as well as for any human rights NGOs or news media that wish to visit, assess and report on the situation in Crimea.
- Expand co-operation with the Office of the Ukrainian Parliament Commissioner for Human Rights (particularly in its mandate as the National Preventive Mechanism, or NPM), including to *inter alia*:
 - Facilitate visits of the NPM to places of detention, orphanages and other social care institutions as relevant; and
 - Negotiate the possible transfer of those persons to mainland Ukraine who were in detention or social care institutions prior to annexation and desire to be transferred.
- Recognize as binding and fully implement all decisions of the European Court of Human Rights, guaranteeing full restitution or other reparations ordered for any violations identified.
- Assist the Government of Ukraine in the facilitation of the execution of any judgments by the European Court of Human Rights in relation to cases submitted prior to the occupation of Crimea by the Russian Federation.
- Refrain from transferring persons in detention or social care institutions to other territories controlled by the Russian Federation.

Citizenship and residency:

- In line with international humanitarian law, refrain from automatically imposing Russian citizenship on residents of Crimea.
- Extend indefinitely the opportunity for Ukrainian citizens from or residing in Crimea – including in places of detention or other public institutions – to retain their Ukrainian citizenship and register as permanent residents in Crimea.
- In particular, provide all prisoners with the opportunities to retain their Ukrainian citizenship, and to transfer to places of detention in mainland Ukraine, if they so desire.
- Extend to permanent residents of Crimea full entitlement to all social services available to citizens of Russia in Crimea.
- Provide all children with the option to retain their Ukrainian citizenship and reject Russian citizenship, upon reaching the age of majority. Until such time as they are presented with the opportunity to reject Russian citizenship, refrain from transferring those children in the custody or care of public institutions outside of Crimean territory, whether in private or public custody or care, unless to facilitate family reunification or otherwise in the best interest of the child.

- Allow permanent residence in Crimea based on Ukrainian documentation, without the need for Russian residency permits.
- In line with international humanitarian law, refrain from conscripting Crimean residents into the armed forces of the Russian Federation.

Law enforcement and justice system:

- In line with international humanitarian law, ensure that Ukrainian penal law remains in force in Crimea, and applied by courts of law, with the exception of provisions that constitute a threat to the security of the occupying power, or an obstacle to the application of relevant international humanitarian law provisions.
- In Crimea, halt all criminal detentions, investigations and prosecutions of persons alleged to have committed crimes under the Criminal Code of the Russian Federation, including those that occurred prior to annexation and/or outside of the territory of the Russian Federation.
- Review any sentences imposed on persons prosecuted and convicted of such charges, with a view to their exoneration or amnesty.
- Refrain from applying any criminal sanctions to Russian citizens in Crimea who fail to disclose dual Ukrainian citizenship, by introducing an exemption through amendments to the legislation providing for such criminal punishments, which will enter into force on 1 January 2016.
- Investigate allegations of discrimination against members of ethnic minority groups in Crimea (including in the sphere of abusive targeting for regulatory inspections of their private enterprises), and adopt necessary measures to halt, prevent and sanction any such discrimination.
- Investigate and as appropriate prosecute all “self-defence” groups, and any other individuals or private parties, alleged to have committed abuses at the time of occupation or since then, particularly in relation to recent arbitrary detentions and seizures of properties – as well as past allegations of disappearances, extrajudicial killings, torture and ill-treatment, including those that were documented by ODIHR and HCNM in their 2014 joint report.
- In line with international humanitarian law, acknowledge the nationality of Ukrainian citizens in any legal procedures; and, as such, in line with the Vienna Convention on Consular Relations, afford them all consular rights.

Penitentiary system:

- Immediately grant access to places of detention in Crimea for ODIHR and other OSCE institutions, international organizations, the International Committee of the Red Cross (ICRC), and any international or local NGOs seeking to monitor places of detention and/or provide needed services to persons in detention, including but not restricted to medical care.

Freedom of assembly:

- Respect and ensure the rights of all people in Crimea to organize and/or participate in public assemblies, for any peaceful purpose they wish, particularly in relation to their cultural, national or religious holidays.
- Refrain from imposing unnecessary or disproportionate restrictions on the right to freedom of peaceful assembly, including in relation to the time, location or content of public assemblies.

Freedom of association:

- Allow all previously operating Ukrainian media, non-governmental and religious organizations to operate freely without re-registration in Crimea, and without being considered unlawful.
- Extend indefinitely all application periods to re-register legal entities that were registered under Ukrainian law (including private enterprises), and provide a simplified procedure to do so without excessive application requirements.
- Facilitate local consultations with all organizations and legal entities seeking to re-register under Russian laws, in order to identify and provide solutions for any obstacles encountered by potential applicants.

Freedom of expression:

- Cease applying politically motivated criminal charges (including “extremism”, “separatism” and “incitement of hatred”) to peaceful public assemblies and public expression of cultural identities or political opinions and beliefs.
- Halt politically motivated criminal investigations and warnings for journalistic or private expression of allegedly “extremist” opinions or topics (including in publications and on social media).

Freedom of the media:

- Facilitate greater media pluralism, including by:
 - Allowing Ukrainian- and Crimean Tatar-language media organizations greater opportunities to establish local media and conduct journalistic reporting freely and openly, without restrictions;
 - Providing adequate time and opportunities for media organizations to apply for any future tenders on broadcast frequencies in Crimea, actively soliciting applications from those organizations previously or presently holding such broadcasting rights.
- Cease online censorship through the blocking of websites, including on vague grounds of “extremist” content.
- Review and remove excessive requirements for media accreditation, particularly where it imposes unnecessary limitations on the number of media, in total or

from any specific outlet, that can attend and report on activities of public institutions.

Freedom of movement:

- Lift the unlawful entry bans against Crimean Tatar leaders, and any other Crimean residents or IDPs from Crimea who have effectively been banned from entering Crimea.
- Prevent any restrictions by government bodies or private actors on the freedom of movement of Crimean residents, particularly in relation to their travel outside of Crimea for participation in civil society activities.
- Rescind any deportations of Russian or Ukrainian residents of Crimea, which run counter to their rights to enter and exit Crimea freely.

Right to property

- Expand co-operation with Ukrainian authorities to facilitate access to and enjoyment of private properties by Crimean residents and IDPs, including through any necessary agreements on suspension of taxes on properties and their sales, or placement of such taxes in escrow for mutually agreed purposes.
- Immediately halt expropriations (“nationalizations”) and other seizures of properties and enterprises in Crimea, by *de facto* authorities and private actors;
- Review the legality of all past expropriations and seizures of properties and enterprises in Crimea, and adopt measures to grant full restitution and other forms of reparations to those who have suffered from damages resulting from any such wrongful actions.

Economic, social and cultural rights:

- For those Ukrainian citizens and other Crimean residents not wishing to become Russian citizens, respect all of their economic, social and cultural rights, including by:
 - Conferring all property and business ownership rights equivalent to those enjoyed under Ukrainian law prior to annexation;
 - Providing education free of charge to all school-age children and youths, without requirement of Russian citizenship;
 - Allowing all Ukrainian citizens and Crimean residents to work in Crimea without Russian documentation or special permits to do so;
 - Providing health insurance and services to all Crimean residents, regardless of their citizenship status, without discrimination;
 - Facilitating the issuance of official copies of live-birth medical certificates by hospitals to the parents of newborn children in Crimea, upon their request and at any time.
- Provide native-language education and language studies in the Ukrainian and Crimean Tatar languages, with a view to reaching, at a minimum, previous

levels of accessibility of such education in schools and universities throughout Crimea.

- Allow harm-reduction specialists to continue provision of opioid substitution therapy for injecting drug users in Crimea, including in places of detention, without criminal liability.

Minority communities:

- Immediately stop the intimidation, expulsion, or incarceration of prominent leaders of the Mejlis of the Crimean Tatar People and members of other community organizations. They should be allowed freedom of movement and residence in Crimea.
- Take immediate action to uphold media freedom and access to information by ensuring that independent Crimea Tatar media outlets obtain registration and are provided appropriate conditions for their operation.
- Maintain unimpeded access and dedicate appropriate resources to education in and of the Ukrainian language at school and university levels.
- Remove obstacles for maintenance and expansion of education both in and of the Crimean Tatar language.
- Restore the availability of instruction in a mother tongue in the upper high school grades.
- Refrain from interfering with parental choice for language of instruction.
- Take action to resolve pre-existing problems concerning the housing and land of Crimean Tatars, which have been compounded by legal uncertainty over property rights.
- Carry out measures related to the rehabilitation and restoration of the rights of formerly deported people, including activities to protect and revitalize the Crimean Tatar language and culture.
- Grant access to the OSCE High Commissioner on National Minorities to visit Crimea.
- Implement all recommendations previously made to *de facto* authorities by the HCNM, including those contained in the 2014 HRAM report.

To Ukrainian authorities:

General recommendations:

- Expand co-operation with the High Commissioner for Human Rights (Ombudsperson) in the Russian Federation to resolve any problems faced by citizens of either Russia or Ukraine resulting from the occupation and annexation of Crimea, including the problems highlighted in this report.
- Facilitate the provision of all necessary documentation for ex-convicts from Crimea, upon or following their release from places of detention, including official documentation recognizing their previous residency in Crimea.

Freedom of movement:

- Amend the requirements provided by Cabinet of Ministers Resolution No. 367¹¹ that unnecessarily restrict the freedom of movement of foreigners (including media, NGOs, and other individuals traveling privately) across the Administrative Boundary Line (ABL).
- Provide necessary funding to relevant authorities to improve transportation infrastructure at the three crossing points of the ABL, in consultation with affected communities and cross-boundary travellers, and in line with the recommendations of the State Border Guard Service of Ukraine.

Right to property:

- Expand co-operation with Crimean *de facto* authorities to facilitate access to and enjoyment of private properties by Crimean residents and IDPs, including through any necessary agreements on suspension of taxes on properties and their sales, or placement of such taxes in escrow for mutually agreed purposes.

Economic, social and cultural rights:

- Facilitate a simpler or consolidated standardized test to more easily allow Crimean students to earn Ukrainian diplomas (for example, to be administered in a single sitting rather than several), and assist Crimean graduates to replace Russian-issued diplomas with Ukrainian diplomas, in order to enter Ukrainian universities if so desired.
- Allow and facilitate the exchange by parents of Russian-issued birth certificates of their Ukrainian children born in Crimea since occupation, for Ukrainian-issued birth certificates at any time requested.
- Allow and facilitate the exchange of other civil registration documents as appropriate (e.g. marriage certificates; divorce certificates; death certificates; etc.).
- Raise awareness of procedures for Crimean residents to claim social entitlements and rights (including to obtain civil registration documents), through targeted information campaigns.
- Conduct inclusive consultations, with the participation of community leaders, both women and men, and vulnerable groups and individuals, in order to identify problems and proactively assist affected individuals and groups to overcome any procedural challenges in their access to economic, social and cultural rights.

¹¹ See note 258 below.

Methodology

22. The *de facto* authorities in Crimea did not respond to requests to facilitate access to Crimea for the HRAM.¹² For that reason, the scope of the fact-finding and field research for this report was restricted to the territory of mainland Ukraine, augmented by remote interviews with relevant contacts in Crimea and elsewhere in Ukraine.
23. The HRAM was carried out by two teams of two researchers each, one team from ODIHR and the other from HCNM. Information on conditions and developments in Crimea were gathered through first-hand witness accounts, meetings and interviews with relevant actors, an on-site visit to the Administrative Boundary Line (ABL) between Crimea and mainland Ukraine, as well as background desk research on relevant legal frameworks and previous human rights reporting on Crimea since March 2014.
24. From 6 to 18 July 2015, the HRAM conducted 50 meetings in Kyiv, Odessa and Kherson Oblasts, with 45 civil society actors (including 6 journalists, 9 Crimean Tatar leaders, and 30 representatives of 20 NGOs) and 45 representatives of 15 government offices. Additionally, the joint team met with 28 Crimean IDPs residing in Kyiv, and interviewed 24 individuals traveling alone or with their families across the ABL, primarily from Crimea into mainland Ukraine. Before, during and after the HRAM, researchers also conducted phone, Skype, and in-person interviews with activists, lawyers, journalists and Crimean Tatar representatives who were either in Crimea at the time of interview, or were in mainland Ukraine yet cross back-and-forth between the two regions.
25. In conformity with their respective institutional mandates and in line with their established methodologies, ODIHR and the HCNM have carried out their fieldwork independently. The HCNM and ODIHR have different mandates and had a different focus in the preparation of this report, which is why a number of reported facts are referenced both in Section 4 and elsewhere in the report. Therefore, the findings from Section 4 should be read in conjunction with the findings in other parts of the report. Successive High Commissioners have been actively engaged in Ukraine since the early 1990s. The HRAM takes relevant long-term observations into account by providing a brief outline of concerns that pre-date the illegal annexation of Crimea, but which have become more urgent in light of the recent developments.
26. The OSCE Representative on Freedom of the Media provided input on the situation of journalists and media professionals in Crimea during the reporting period. The OSCE Special Monitoring Mission to Ukraine also supported the research teams with information and logistical assistance during the HRAM. The co-operation of the Government of Ukraine was essential for the successful

¹² See letter from ODIHR to Mr. Aksyonov (note 4 above).

completion of this research, as was the invaluable input of numerous Crimean residents, displaced persons, activists, journalists and community representatives who provided accounts of their experiences for this report.

International Standards

27. As OSCE participating States, both Ukraine and the Russian Federation have consented and committed to respect, protect and fulfil the human rights of those under their respective jurisdictions, in order to advance both regional and human security. For the purposes of this research and reporting, the HRAM has assessed and presented its findings in light of the human rights standards and obligations of participating States that those OSCE commitments reaffirm.
28. A number of OSCE human dimension commitments notably recognize the vital importance of participating States' realization of their binding human rights obligations under international treaties.¹³ OSCE human dimension commitments also reaffirm the binding nature of States' obligations under international humanitarian law, including the Geneva Conventions.¹⁴
29. The Ukrainian government officially derogated in whole from its human rights obligations to Crimean residents, deferring to the responsibility of the Russian Federation to uphold their human rights, as an occupying power¹⁵ in effective control of the Crimean peninsula.¹⁶ In that regard, the Fourth Geneva

¹³ For instance, Budapest Document (Budapest Declaration, "Towards a Genuine Partnership in a New Era", 6 December 1994), para. 14 (available at: <http://www.osce.org/mc/39554>).

¹⁴ For instance, Helsinki Document ("The Challenges of Change", Helsinki, 10 July 1992), "Decision VI: The Human Dimension", paras. 47–52 (available at: <http://www.osce.org/mc/39530>); Budapest Document (note 13 above), "Code of Conduct on Politico-Military Aspects of Security", paras. 29–35. In its Resolution No. 68/262 on the "Territorial integrity of Ukraine" (*see* note 2 above), the UN General Assembly further recalled the Helsinki Final Act of 1975 ("Conference on Security and Co-operation in Europe Final Act", Helsinki, 1 August 1975), Section 1(a)(IV) on "Territorial Integrity of States" (available at: <https://www.osce.org/mc/39501?download=true>), which provides: "The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal." *See also*, Istanbul Document 1999 (Charter for European Security: III. Our Common Response), para. 22 (available at: <http://www.osce.org/mc/39569>); and Rome Document 1993 (Decision X, "Declaration on Aggressive Nationalism, Racism, Chauvinism, Xenophobia and Anti-Semitism", paras. 4 and 5 (available at: <http://www.osce.org/mc/40401?download=true>).

¹⁵ Under international humanitarian law, military occupation is defined as follows: "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." *See* Article 42, Hague Convention (IV) of 1907, respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (The Hague, 18 October 1907).

¹⁶ The derogation resolution was adopted in line with Article 4 of the ICCPR (note 23 below) and Article 15 of the ECHR (note 19 below), which provide for limited derogations from the rights provided by those instruments. *See* Verkhovna Rada of Ukraine, "Resolution on Approval of statement 'On Ukraine derogation from certain obligations defined by the International Covenant on Civil and

Convention applies to the Russian Federation's military occupation of Crimea, as with all cases of partial or total occupation of a foreign State's territory, "even if the said occupation meets no armed resistance" and "even if the state of war is not recognized by one of them".¹⁷ As an occupying power, the Russian Federation has obligations to uphold the rights of Crimean residents under international human rights law as well as under international humanitarian law.¹⁸

30. Both Ukraine and the Russian Federation are party to many of the same international human rights and humanitarian law treaties, which thus provide them with common binding standards of conduct and positive obligations toward residents of Crimea, including among others:

Political Rights and the European Convention on Human Rights" (21 May 2015), available at: <http://zakon2.rada.gov.ua/laws/show/462-19>. See also, Council of Europe statement, "Ukraine derogation from European Convention on Human Rights" (10 June 2015), available at: <http://www.coe.int/en/web/portal/-/ukraine-derogation-from-european-convention-on-human-rights>.

- ¹⁷ Article 2 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (Fourth Geneva Convention), provides: "In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or any other armed conflict which may arise between two or more High Contracting Parties, even if the state of war is not recognized by one of them." The International Law Commission further recognized in its draft Articles on the Responsibility of States for Internationally Wrongful Acts that even "consent" by public authorities to an annexation of territory of one State by another does not make that annexation legitimate under international law, particularly where such consent could be considered to be given under a form of duress (Article 20 and its Commentary, para. 4). The draft Articles also reaffirm the impermissibility of violations of the peremptory norm prohibiting aggression, and obligations on all States not to recognize illegitimate annexations resulting therefrom, including as ordered by the UN Security Council in the case of Iraq's illegitimate "annexation" of Kuwait through aggression (Articles 40 and 41, and their Commentaries). See United Nations, International Law Commission, Report on the work of its fifty-third session (2001), General Assembly, Official Records, Fifty-fifth Session, Supplement No. 10 (A/56/10), available at: <http://www.un.org/ilc>. The UN General Assembly took note of the draft Articles in its Resolution No. A/RES/56/83 of 12 December 2001. The UN General Assembly specifically underscored in Resolution No. 68/262 (see note 2 above) "that the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014, having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol" (para. 5). The Council of Europe's European Commission for Democracy through Law (Venice Commission) similarly found the referendum and annexation of Crimea to be illegitimate, concluding that "the circumstances in Crimea did not allow the holding of a referendum in line with European democratic standards." See Venice Commission *Opinion No. 762/2014*, Doc. No. CDL-AD(2014)002, para. 28. Available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)002-e). Additionally, on 3 April 2014, the Council of Europe's Committee of Ministers "stressed that the illegal referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014 and the subsequent illegal annexation by the Russian Federation cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol." Decisions adopted at the 1196th meeting (2–3 April 2014); Doc. No. CM/Del/Dec(2014)1196 (4 April 2014). Available at: <https://wcd.coe.int/ViewDoc.jsp?id=2180249&Site=CM>.
- ¹⁸ In particular, Articles 47–78 of the Fourth Geneva Convention (ibid.).

- European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, or ECHR);¹⁹
- Protocol 1 to the European Convention on Human Rights;²⁰
- Protocol 4 to the European Convention on Human Rights;²¹
- Framework Convention for the Protection of National Minorities (FCNM);²²
- International Covenant on Civil and Political Rights (ICCPR);²³
- International Covenant on Economic, Social and Cultural Rights (ICESCR);²⁴
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);²⁵
- UN Convention on the Rights of the Child (CRC);²⁶
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);²⁷
- Fourth Geneva Convention;²⁸
- Additional Protocol I to the Geneva Conventions;²⁹
- Additional Protocol II to the Geneva Conventions.³⁰

31. Respecting and ensuring human rights is the responsibility of governments, yet principally in territories where they exercise effective control. As the scope of this report is primarily focused on the enjoyment of human rights within the territory of Crimea, the majority of recommendations are addressed to the authorities exercising *de facto* control in Crimea, and to the Russian Federation authorities that direct them. There are also recommendations addressed to the Ukrainian government, where it continues to be able to fulfil its human rights-

¹⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS No. 5, entered into force 3 September 1953.

²⁰ Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS No. 9, entered into force 18 May 1954.

²¹ Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 16 September 1963, ETS No. 46, entered into force 2 May 1968.

²² Framework Convention for the Protection of National Minorities, 1 February 1995, ETS No. 157, entered into force 1 February 1998.

²³ International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), UN Doc. A/6316 (1966), entered into force 23 March 1976.

²⁴ International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XXI), UN Doc. A/6316 (1966), entered into force 3 January 1976.

²⁵ International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, entered into force 4 January 1969.

²⁶ Convention on the Rights of the Child, GA Res. 44/25 (20 November 1989), UN Doc. A/44/49, (entered into force Sept. 2, 1990).

²⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res. 39/46, annex, UN Doc. A/39/51 (1984), entered into force 26 June 1987.

²⁸ Fourth Geneva Convention (note 17 above).

²⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3 (entered into force 7 December 1978).

³⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609 (entered into force 7 December 1978).

related responsibilities towards its citizens in or displaced from Crimea on account of their current situations and needs.

1. Imposition of Russian Laws and Citizenship

32. In their May 2014 joint report, ODIHR and HCNM raised concerns about the “legal uncertainty that arose from the change in authorities exercising *de facto* control over Crimea”, cautioning specifically of “potential infringements of the rule of law and human rights”, especially with respect to “citizenship and residency status, employment and the right to work, land and property rights, as well as the situation of particularly vulnerable groups.”³¹ ODIHR and HCNM therefore called on *de facto* authorities in Crimea to ensure that the change in government following the referendum and annexation by the Russian Federation did not have “regressive effects on the enjoyment of human rights”, and in particular to “ensure that all individuals permanently resident in Crimea, including both Russian and Ukrainian citizens, retain all their rights, including permanent residency status, employment rights, property and land rights, without discrimination”.³²
33. The Russian Federation and the Crimean *de facto* authorities are obligated to ensure non-discrimination with regard to the enjoyment of all human rights of those in their jurisdictions. The prohibited grounds of discrimination include, among others: national or social origin, political or other opinion, language, religion, property, birth or other status (including nationality, place of residence, health status, sexual orientation, disability, etc.).³³ Notably, the Additional Protocols to the Geneva Conventions also prohibit discrimination on grounds of political or other opinion, national origin, birth or other status, even during armed conflict.³⁴
34. The imposition of automatic Russian citizenship on residents of Crimea was (and continues to be), in and of itself, contrary to international humanitarian law. Specifically, it is impermissible for an occupying power to compel inhabitants of occupied territories to swear allegiance to it, and allegiance to the displaced sovereign cannot be severed under duress.³⁵ Additionally, the actual

³¹ See 2014 joint report of ODIHR/HCNM (note 1 above), paras 97 and 98.

³² See 2014 joint report of ODIHR/HCNM (note 1 above), recommendations to the authorities exercising *de facto* control in Crimea.

³³ See Articles 2(1) and 26, International Covenant on Civil and Political Rights; and Article 2(2), International Covenant on Economic, Social and Cultural Rights, 1966 (993 UNTS 3). See also, UN Committee on Economic, Social and Cultural Rights, *General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights (Article 2, para. 2)*, UN Doc. E/C.12/GC/20 (10 June 2009), paras. 30–35.

³⁴ See Additional Protocol I (note 29 above), preamble and Articles 9(1) and 75(1); and Additional Protocol II (note 30 above), Articles 2(1) and 4(1).

³⁵ Hague Convention (IV) of 1907 (note 15 above), Article 45. International good practices are also reflected in the European Convention on Nationality (ETS No. 166; Strasbourg, 6 November 1997), which provides in Article 16 that: “A State Party shall not make the renunciation or loss of another

process of imposing forced Russian citizenship was neither transparent nor equitable, providing an inadequate timeframe and insufficient locations for all those wishing to reject Russian citizenship to do so. After the deadline to reject forced Russian citizenship, Russian authorities also enacted criminal penalties for failure to disclose dual citizenship as well as caps on temporary residency permits for foreigners in Crimea.

35. Taken together, these measures run counter to the binding prohibition of discrimination under international human rights law and international humanitarian law, specifically with regard to Ukrainian citizens whose human rights have been limited or prejudiced on account of their nationality since the occupation and annexation of Crimea.
36. Under the Russian legal framework now being applied in Crimea, the conditioning of social entitlements and fundamental freedoms on Russian citizenship or residency permits for foreigners has resulted in regressive effects on the enjoyment of human rights by Crimean residents without those statuses. Among those regressive effects, the new requirements to register or re-register legal entities under Russian law have resulted in excessive limitations on the right to freedom of association for non-Russian citizens.

1.1 Forced citizenship

37. Upon annexation of Crimea in March 2014, the Russian Federation enacted legislation recognizing all permanent residents in Crimea and Sevastopol as Russian citizens.³⁶ The only exceptions were those Ukrainian citizens and stateless persons who informed Crimean *de facto* authorities by 18 April 2014 of their intentions to opt out of Russian citizenship and retain their (and their minor children's) existing citizenship, or remain stateless.³⁷ Since both statuses of citizenship and permanent residency were only open to permanent residents in Crimea, they automatically excluded those without Crimean residency stamps in their passports, if they were unable alternatively to obtain a court's decision proving the fact of their residence.³⁸

nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required", available at:

<http://conventions.coe.int/Treaty/EN/Treaties/Html/166.htm>.

³⁶ See Article 4(1) of Federal Constitutional Law No. 6-FKZ, "On the Acceptance 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), Rossiiskaya Gazeta: <http://www.rg.ru/2014/03/22/krym-dok.html>. See also, Article 5 of the "Agreement between the Russian Federation and the Republic of Crimea on the Accession of the Republic of Crimea in the Russian Federation and on Forming New Constituent Entities within the Russian Federation" (18 March 2014).

³⁷ Ibid.

³⁸ For information on application requirements, see the official webpage of the Russian Federation's Federal Migration Service (FMS) at:

38. Crimean residents seeking to reject automatic Russian citizenship within the designated period (from 18 March to 18 April 2014) reportedly faced a variety of obstacles in their efforts to do so. The Russian Federal Migration Service (FMS) only on 1 April 2014 issued instructions on how to reject automatic citizenship in practice.³⁹ According to the Office of the UN High Commissioner for Human Rights (OHCHR), additional requirements were then introduced during the application period, including that applications had to be submitted in person and that both parents had to be present to apply on behalf of minors. Information on where such applications could be submitted was available only starting from 4 April. From 4 to 9 April, there were reportedly only two locations on the Crimean peninsula to formally apply to renounce Russian citizenship, and a total of nine such sites from 10 to 18 April.⁴⁰
39. After the application period expired, the FMS reported that only 3,427 permanent residents of Crimea successfully opted out of automatic Russian citizenship.⁴¹ One successful applicant told the HRAM that he spent several days in line in order to officially submit a refusal form to the FMS, and received a formal certificate acknowledging his decision. According to the resident, the application sites were dually designated also for those seeking to acquire Russian passports, leading to queues of thousands of people, as well as some harassment and intimidation of those wishing to reject Russian citizenship.⁴² In her 2014 annual report, Crimea's local ombudsperson also reported lines of up to 2,000 people at those designated sites.⁴³
40. Those who applied for Russian passports within the designated period likewise reported encountering problems, including procedural irregularities and corruption in some cases. One Crimean resident told the HRAM his mother was requested to pay a US\$1,500 bribe to obtain a Russian passport, since she had

http://www.fms.gov.ru/russian_national/dlya_zhiteley_kryma_i_sevastopolya/ and http://www.fms.gov.ru/russian_national/dlya_zhiteley_kryma_i_sevastopolya/chst_zdvm_vprs/.

³⁹ See 2014 joint report of ODIHR/HCNM (note 1 above), p. 118; Office of the UN High Commissioner for Human Rights, *Report on the human rights situation in Ukraine* (15 May 2014), para. 127; and Ukrainian Center for Independent Political Research (UCIPR), *Problems with a citizenship in Crimea*, p. 17 (http://www.ucipr.org.ua/userfiles/PROBLEMS_CITIZENSHIP_CRIMEA_r_19Dec2014.pdf). Additionally, the FMS only acquired its competence in Crimea as of 28 March 2014; see, Article 14 of Regulation No. 299 “On the Department of the Federal Migration Service in the Republic of Crimea” (28 March 2014), available at: <http://www.fms.gov.ru/about/apparatus/details/101285/>.

⁴⁰ OHCHR report (15 May 2014), *ibid.* Notably, a number of publications by Ukrainian human rights NGOs reported that only eight application sites were ultimately available to reject Russian citizenship, yet that a few were accepting such declarations as early as 1 April 2015.

⁴¹ See, public statement of the Deputy Head of the FMS of the Russian Federation, available at: http://rian.com.ua/CIS_news/20140422/345528247.html.

⁴² Interview with Crimean resident (Kyiv, 7 July 2015).

⁴³ Crimea ombudsperson, *Report of the Human Rights Commissioner of the Republic of Crimea 2014* (Simferopol, 19 January 2015), p. 5; available at: http://ombudsman.rk.gov.ru/file/File/UPCHvRK/%D0%95%D0%B6%D0%B5%D0%B3%D0%BE%D0%B4%D0%BD%D1%8B%D0%B9_%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%E2%84%961.pdf.

not been registered formally as a Crimean resident at the time of the annexation.⁴⁴ Another Crimean resident said he paid a bribe to receive a Russian passport since he lacked the proper documentation required.⁴⁵

41. Crimean residents held in places of detention, as well as legal minors, persons with mental disabilities and others in social care institutions, were reportedly not presented with opportunities to reject Russian citizenship.⁴⁶ However, the Ombudsperson of the Russian Federation reported that 18 Ukrainian citizens in detention successfully rejected Russian citizenship in writing, in addition to 22 convicts who filed petitions asking to be transferred to prisons in mainland Ukraine.⁴⁷ At the time of annexation, the State Penitentiary Service of Ukraine reported that 2,033 imprisoned convicts in Crimea were local residents prior to incarceration, and that there were 1,086 detainees being held at the Simferopol pre-trial detention facility.⁴⁸ Some persons in places of detention have reportedly been subject to potential transfer to other prison facilities in mainland Russia.⁴⁹ Another 5,500 convicts from Crimea were imprisoned at penal colonies in other regions of Ukraine at the time of annexation,⁵⁰ such that they would not have been able to reject or accept Russian citizenship. According to Ukraine's Ministry of Social Policy, there were 4,323 children without parental care residing in social care institutions on the Crimean peninsula at the time of

⁴⁴ Interview with Crimean resident (ABL, 12 July 2015).

⁴⁵ Interview with Crimean resident (10 July 2015).

⁴⁶ Meeting with Ombudsperson of Ukraine and NPM chief (Kyiv, 16 July 2015).

⁴⁷ See, Ombudsperson of the Russian Federation, *Report of the Commissioner for Human Rights in the Russian Federation in 2014* (7 May 2015), Crimea chapter, available at: <http://ombudsmanrf.org/www/upload/files/docs/appeals/doklad2014.pdf> (Russian); and http://eng.ombudsmanrf.org/www/upload/files/prezent/doklad_eng_Sample_view.pdf (English).

⁴⁸ State Penitentiary Service of Ukraine, public statement (3 April 2014): <http://www.kvs.gov.ua/peniten/control/main/en/publish/article/715893>.

⁴⁹ The transfer of criminal defendants detained in Crimea following annexation has also occurred, including in the cases of Mr. Oleg Sentsov and Mr. Oleksandr Kolchenko, who were convicted on 25 August 2015 for alleged pro-Ukrainian terrorism-related charges. Notably, the Ombudsperson of the Russian Federation reported that Mr. Sentsov and Mr. Kolchenko submitted written appeals to Russian authorities through her good offices to confirm their Ukrainian citizenship, yet that those appeals were rejected by the FMS (report of the Ombudsperson of the Russian Federation, note 47 above). In a 10 August 2015 letter to Russian authorities, ODIHR requested to observe the trials of those defendants in Rostov and to be granted access to them in their places of detention, as well as to be granted such access in any other similar cases in the future. In a letter dated 24 August 2015, the day before their convictions, the delegation of the Russian Federation declined to facilitate access to the defendants in their places of detention, though did confirm that any ODIHR monitors would be provided with the same level of access as "Russian citizens" to any public proceedings in Russia. Letter to the Director of ODIHR from the Deputy Permanent Representative of the Delegation of the Russian Federation to the OSCE (dated 24 August 2015). On 27 August 2015, ODIHR observed in a statement on the convictions of Mr. Sentsov and Mr. Kolchenko that OSCE participating States have "reaffirmed their commitment to international humanitarian law guaranteeing fair-trial rights in occupation situations." See ODIHR statement, "ODIHR Director expresses concern about continued detention and sentencing of foreign nationals in the Russian Federation", available at: <http://www.osce.org/odihhr/178921>.

⁵⁰ State Penitentiary Service of Ukraine, public statement of 3 April 2014 (note 48 above).

its occupation and annexation,⁵¹ though only two dozen of those children were able to return to mainland Ukraine at that time.⁵² The National Preventive Mechanism of the Ukrainian Ombudsperson's office was not aware of any public information on additional citizenship options being presented to children from Crimea as they reach the age of majority.⁵³

42. On a larger scale, the Russian Federation's Ombudsperson Ella Pamfilova estimated in a May 2015 report that at least 100,000 Crimean residents were unable to obtain Russian citizenship in the year following annexation. The report asserted that many of that estimated population were long-time Crimean residents from other regions of Ukraine who had never formally re-registered as residents in Crimea.⁵⁴ According to a Ukrainian NGO, some Crimean Tatars have encountered similar difficulties claiming residency status, having only recently returned to Crimea from deportation after long periods away (in Uzbekistan and Tajikistan especially). As a result of long absences, they struggled to prove their place of residence to courts.⁵⁵

1.2 Residency permits

43. Crimean residents who were able to prove their permanent residency status at the time of annexation were able to apply to the FMS for permanent residency permits.⁵⁶ According to the Ombudsperson of the Russian Federation, "All residents of the Republic of Crimea who rejected citizenship of the Russian Federation were granted a temporary residence permit entitling them to live and work in Russia, and to apply (a year after) for permanent residency, if necessary."⁵⁷ Those who were not able to do so could instead apply for

⁵¹ See, Ombudsperson of Ukraine, *Annual report of the Parliamentary Commission on Human Rights of Ukraine on the observance and protection of human rights and citizens in Ukraine*, p. 50: http://lib.rada.gov.ua/LibRada/static/about/text/Dopovid_2015_10b.pdf.

⁵² Meeting with Ministry of Social Policy (Kyiv, 8 July 2015). The circumstances of those children's return is unclear. However, a news article posted to a pro-Ukrainian activist website, EuromaidanSOS, similarly reported in July 2014 that "22 orphan children who refused to accept Russian citizenship were deported from the occupied Crimea," citing Ukrainian MP Iryna Herashchenko, the President's Envoy for Peaceful Regulation of the Conflict in Donetsk and Luhansk Oblasts: <http://euromaidansos.org/en/newsletter-eastern-ukraine-july-17-2014>. The HRAM is unaware of any opportunities presented to children to refuse Russian citizenship, though it is notable that such a refusal may have provoked deportation of children, if that allegation is true.

⁵³ Meeting with Ombudsperson of Ukraine and NPM chief (Kyiv, 16 July 2015).

⁵⁴ See, Ombudsperson of the Russian Federation, *Annual Report 2014*, Crimea chapter (note 47 above). See also, Eva Hartog, "Crimeans Left Stateless in Bureaucratic Fumble" (*Moscow Times*, 10 July 2015).

⁵⁵ UCIPR, "Citizenship, Land and Nationalization of Property in Occupied Crimea: Rights Deficit", Final Analytical Report, p. 6.

⁵⁶ For information on application requirements, see the official webpage of the FMS at: http://www.fms.gov.ru/russian_national/dlya_zhiteley_kryma_i_sevastopolya/chst_zdvm_vprs/.

⁵⁷ See, Ombudsperson of the Russian Federation, *Annual Report 2014*, Crimea chapter (note 47 above).

temporary residency permits.⁵⁸ Without residency permits or Russian passports, Ukrainian citizens and other residents lost not only certain social entitlements – including access to public health care and schools – but also their right to stay in Crimea, making them potentially subject to deportation.⁵⁹ According to numerous Crimean residents and IDPs interviewed by the HRAM, many Crimean residents applied for Russian passports in addition to retaining their Ukrainian passports and citizenship, in order to protect themselves from the adverse consequences of this legal transition, as well as to retain their jobs, properties and social entitlements.

44. In June 2014, however, the Russian Federation passed new legislation requiring its citizens to inform the FMS of any non-Russian citizenship; failing to disclose a second citizenship is now subject to criminal prosecution (as of 1 January 2016, for Crimean residents).⁶⁰ In July 2014, the Russian Federation then additionally established annual caps on the issuance of temporary residency permits, which in 2014 were set at 5,000 permits in the Republic of Crimea and 400 permits in Sevastopol.⁶¹ Those numbers were widely viewed as insufficient to cover even those foreigners already residing in Crimea at the time of annexation, let alone any Ukrainian citizens who were unable to opt out of Russian citizenship and then secure permanent residency status.⁶²
45. After successfully rejecting Russian citizenship, one Ukrainian resident in Crimea said he nonetheless had to pay a bribe to obtain a permanent residency permit, in addition to paying local notaries to certify Russian translations of his Ukrainian documents. Reportedly, only in the spring of 2015 did he finally receive the permit, after living and working in Crimea for a year with only a Ukrainian passport, though he was able to keep his same job informally, despite his lack of a residency permit.⁶³

⁵⁸ Federal Law No. 115-FZ “On the Legal Status of Foreign Citizens in the Russian Federation” (25 July 2002, as amended on 20 April 2014): http://www.consultant.ru/document/cons_doc_LAW_37868/.

⁵⁹ Under Article 5 of the Russian Federal Law “Concerning the Legal Status of Foreign Citizens in the Russian Federation” (ibid.), foreign citizens are prohibited from staying in the Russian Federation more than 90 days in any 180-day period, with violations of those rules punishable by fines and deportation, per Article 18.8.1 of the Russian Federal Law No. 195-FZ, “Code of Administrative Offences of the Russian Federation” (30 December 2001).

⁶⁰ See, Federal Law of the Russian Federation No 142-FZ “On Amendments to Articles 6 and 30 of the Federal Law ‘On Citizenship of the Russian Federation’ and certain legislative acts of the Russian Federation” (4 June 2014, entered into force 4 August 2014).

⁶¹ Regulation No. 1343 (19 July 2014) amending the Order of the Government of the Russian Federation No. 2231-r (30 November 2013) “On establishing quotas for the issuance of temporary residence permits to foreign citizens and stateless persons in the Russian Federation for 2014”.

⁶² Notably, an FMS official previously stated that the cap would not apply to Ukrainian citizens permanently residing in Crimea, though this was not in reference to any official policy or regulation known to the HRAM. “Crimean FMS department explained that more than 5000 foreign citizens can reside in Crimea,” *KrymInform* (23 September 2014), available at: <http://www.c-inform.info/news/id/12604>. Cited in Human Rights Watch, *Rights in Retreat* (17 November 2014), p. 33 (available at: <https://www.hrw.org/report/2014/11/17/rights-retreat/abuses-crimea>).

⁶³ Interview with Crimean resident (Kyiv, 7 July 2015).

46. In contrast, another Crimean resident was reportedly fired from a public hospital where she worked, since she had not obtained either a Russian passport or a residency permit after missing the deadline to reject Russian citizenship; she was reportedly considered ineligible for a temporary residency permit when she later applied, supposedly since she had already been automatically recognized as a Russian citizen.⁶⁴

1.3 Civil registration (birth certificates)

47. International human rights standards recognize every person's right to be registered after birth and acquire a nationality, which are essential to the enjoyment and protection of other human rights without discrimination.⁶⁵
48. As an adverse consequence of both Ukrainian and Russian civil registries now covering the same population, many families told the HRAM they encountered problems acquiring Ukrainian birth certificates in order to recognize their newly born children's Ukrainian citizenship. Hospitals in Crimea reportedly issue only a single official medical certificate recording live birth, for which reason many reported the paying of bribes was a common practice to obtain a second official copy, and then later to acquire a Ukrainian birth certificate in mainland Ukraine issued by the Ministry of Justice.⁶⁶ Additionally, multiple government officials, community leaders, IDPs and NGOs described to the HRAM a lack of clarity, information and awareness among Crimean IDPs and residents on the procedures to acquire Ukrainian birth certificates. Many Crimean residents and IDPs expressed their hope that Ukrainian authorities would make it easier to acquire birth certificates and passports for newly born children in Crimea, including by exchanging Russian-issued birth certificates or through other means.⁶⁷
49. The director of a Kherson-based NGO, which has supported about 100 Crimean families in obtaining Ukrainian birth certificates since October 2014, said he knew of many cases of people who tried but failed to register their children with Ukrainian authorities. He also recounted allegations that Crimean parents have faced intimidation at Crimean hospitals when seeking to acquire second official copies of live-birth medical certificates. Nonetheless, he informed the HRAM that the Ukrainian Ministry of Justice had recently simplified the application process, facilitating the civil registration of children born in Crimea at its

⁶⁴ Interview with Crimean resident (Skype, 17 July 2015).

⁶⁵ See Article 24(2), ICCPR (note 23 above); and, Articles 7 and 24, CRC (note 26 above). Of special relevance to children's rights, see: Human Rights Committee, *General Comment No. 17: Article 24* (7 April 1989), paragraph 7; available at:

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/cc0f1f8c391478b7c12563ed004b35e3?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/cc0f1f8c391478b7c12563ed004b35e3?OpenDocument).

⁶⁶ Interviews with Crimean residents and IDPs (Kyiv, Odessa and Kherson, 7 to 15 July 2015). Note that live-birth medical certificates issued by hospitals are separate documents required in turn to apply for birth certificates issued by State authorities.

⁶⁷ Interviews with Crimean residents and IDPs (Kyiv, Odessa and Kherson, 7 to 15 July 2015).

branches in Kherson and Kyiv. He said those authorities also allowed third parties such as his organization to present official second copies of live-birth medical certificates from hospitals, in order to handle civil registration on parents' behalf.

50. The existence of dual civil registries has put parents of newly born children in Crimea in a difficult situation, including as they seek to claim their children's right to Ukrainian citizenship, despite the application of the Russian legal framework in Crimea. Both the *de facto* authorities in Crimea and the Ukrainian government are obligated to uphold the right of Ukrainian parents to register their children at birth, and to acquire any preferred nationality for which they are eligible. The Ukrainian government could accomplish this by uniformly allowing parents to exchange Russian-issued birth certificates for Ukrainian ones. If *de facto* authorities wish also to extend Russian citizenship to children born in Crimea, despite it not being recognized by Ukrainian authorities, they should facilitate the issuance of official copies of live-birth medical certificates by hospitals for that purpose.

1.4 Business re-registration

51. Article 6 of the International Covenant on Economic, Social and Cultural Rights provides the right to gain a living by freely chosen work, and obligates States parties to safeguard that right without discrimination.⁶⁸ The UN Committee on Economic, Social and Cultural Rights elaborated that any "denial of access to work to particular individuals or groups, whether such discrimination is based on legislation or practice" constitutes a violation of the right to work.⁶⁹
52. Under newly introduced Russian regulations, business owners in Crimea were required to re-register their private enterprises by 1 January 2015 (later extended to 1 March 2015), or cease their operations.⁷⁰ However, some Crimean residents and IDPs reported being unable to do so as a consequence of not obtaining Russian citizenship and passports or residency permits, which were required for the application process.⁷¹ In her 2014 annual report, Crimea's local ombudsperson also identified lack of Russian passports as a major problem for those seeking to re-register their businesses, which contributed to the low number of business re-registrations following annexation. The annual report of the Russian Federation's ombudsperson noted that only 12,752 entrepreneurs

⁶⁸ Article 6, ICESCR (note 24 above).

⁶⁹ CESCR, *General Comment No. 18: The Right to Work* (adopted on 24 November 2005), UN Doc. E/C.12/GC/18 (6 February 2006), para. 32.

⁷⁰ See Russian Federal Law No. 124-FZ of 5 May 2014, "On the Introduction of Amendments to the Federal Law 'On the Enactment of the Civil Code of the Russian Federation (First Part)' and to Article 1202 of the Civil Code of the Russian Federation (Third Part)" (entry into force 1 July 2014), available at: http://www.consultant.ru/document/cons_doc_LAW_162572/. See also, UCIPR, "Citizenship, Land and Nationalization of Property in Occupied Crimea: Rights Deficit", Final Analytical Report, p. 6.

⁷¹ Ibid.

had successfully re-registered their businesses as legal entities by the end of 2014, compared to 52,885 that had been locally registered as of 1 March 2014.⁷²

53. Additionally, ethnic Ukrainian and Crimean Tatar residents reported being pressured by *de facto* authorities to close their registered businesses, sometimes being targeted for surprise inspections by authorities, or denied business registrations on various technical grounds. If those allegations are true, that authorities rejected applications to re-register existing businesses under Russian legislation, or engaged in regulatory harassment of some businesses of only certain ethnic communities, those practices could constitute discrimination and denial of business owners' right to work and gain a living.
54. Several Crimean residents and IDPs informed the HRAM that the requirement to re-register local businesses presents the most immediate obstacle for existing business owners in Crimea, and has prevented some Ukrainian citizens from continuing to do business there. A representative of the Mejlis in Kherson said many Crimean Tatar residents owned small- or medium-sized businesses, so were compelled to acquire Russian passports to keep from losing their businesses and means of income, as happened in some cases.⁷³ Another member of the Kherson regional Mejlis, who previously lived on the income of his private business in Crimea, said he was unable to re-register the business without a Russian passport.⁷⁴ At the Administrative Boundary Line between Crimea and mainland Ukraine, a Ukrainian business owner told the HRAM that in order to attempt to re-register his agribusiness in Crimea, he had to apply through a liaison officer, who acquired Russian citizenship and initiated the process on his behalf in 2015.⁷⁵
55. Approximately 30 per cent (7 out of 24) of Crimean residents and IDPs who were asked by the HRAM in Kyiv reported owning their own businesses. Two of those business owners reported observing widespread interethnic pressure on Crimean Tatars and ethnic Ukrainians in Crimea to close their businesses, including harassment by inspection authorities through extensive new regulatory and tax rules under Russian legislation. One commercial property lawyer who still lives in Crimea reported commonplace regulatory harassment of Ukrainian and Crimean Tatar business owners, such as a large fine imposed on one business owner for burning a box that fell off a truck. The lawyer viewed such actions as intended to drive out Ukrainian and Crimean Tatar business owners. This sort of harassment allegedly occurred at all strata of the economy – from beach sellers, to big businesses and hotels that have been nationalized by the *de facto* authorities.⁷⁶

⁷² See, Ombudsperson of the Russian Federation, Annual Report 2014, Crimea chapter (note 47 above).

See also, Crimea ombudsperson, Annual Report 2014 (note 43 above), p. 13.

⁷³ Interview with Mejlis representative in Kherson (14 July 2015).

⁷⁴ Interviews with Kherson regional Mejlis representatives (Genichesk, 13 July 2015).

⁷⁵ Interview with cross-boundary traveller (ABL, 12 July 2015).

⁷⁶ Interview with Crimean residents and IDPs (Kyiv, 7 July 2015).

56. One Crimean resident, who studied tax administration and helped people with their paperwork and documentation, said Crimean *de facto* authorities would seldom officially refuse registrations of businesses, but rather would repeatedly find small problems in paperwork that would need to be fixed, but could not be fixed.⁷⁷ A Mejlis representative in Kherson told the HRAM that he had tried to re-register his own retail business five times, but was denied registration on each occasion, prior to moving to mainland Ukraine with other community members and forfeiting his business outright. An NGO in Kherson assisting IDPs from Crimea reported hearing multiple accounts of surprise tax inspections and sanitation service inspections targeting Crimean Tatar businesses, particularly fast food restaurants.⁷⁸
57. In one case, the café of a Crimean Tatar business owner in Crimea was reportedly destroyed by arson, leading his family to flee to Lviv as IDPs.⁷⁹
58. The aforementioned challenges have led some people to lose their sources of income, and pushed others into displacement. Compounded by the already ailing economy of Crimea, impacted by European Union sanctions and a drop in tourism, the profile of many IDPs fleeing from Crimea has increasingly adopted an economic character, including some seeking to move or re-register their businesses in mainland Ukraine.⁸⁰ According to a Ukrainian activist displaced from Crimea, IDPs have faced additional challenges when seeking to close and move their businesses from Crimea – including the risks of seizure of assets when transporting money and goods across the Administrative Boundary Line between Crimea and mainland Ukraine.⁸¹
59. For those seeking to move their businesses to mainland Ukraine, another major problem is that the Crimean *de facto* authorities reportedly do not allow business owners to access their property and financial papers in order to claim their assets. As many original records are still stored in Crimean government offices,⁸² the Ministry of Justice indicated it is the obligation of Crimean *de facto* authorities to provide that documentation, and incumbent upon individual business owners to appeal internationally for further remedies if necessary.⁸³

⁷⁷ Interview with Crimean resident (10 July 2015).

⁷⁸ Interview with Kherson office director of Crimea-SOS (Kherson, 14 July 2015).

⁷⁹ Ibid. This incident was also relayed to the HRAM by the Crimea Unit of the Office of the Prosecutor General of Ukraine, which had documented the case (Kyiv, 16 July 2015).

⁸⁰ Meeting with Crimea-SOS (Kyiv, 6 July 2015); meeting with Crimean Diaspora (Kyiv, 7 July 2015).

⁸¹ Interview with Andriy Shekun, Chairman of the organization Crimean Center for business and cultural co-operation “Ukrainian House” (Kyiv, 9 July 2015).

⁸² Meeting with Ministry of Justice (Kyiv, 8 July 2015); and meeting with State Emergency Service of Ukraine (Kherson, 14 July 2015).

⁸³ Meeting with Ministry of Justice (Kyiv, 8 July 2015). However, even when business owners successfully re-register their enterprises in Crimea under Russian law, those business registrations are invalid in Ukraine, which does not recognize any documentation emanating from the *de facto* authorities in Crimea. The Department on Business Issues of the Ukrainian Ministry of Justice said that this causes problems for business owners in terms of contracting and sanctions, even if they have dual

1.5 Property re-registration

60. Both Russia and Ukraine are parties to Protocol 1 to the European Convention on Human Rights, Article 1 of which prohibits the deprivation of private property, except in the public interest and in keeping with principles of legality.
61. Under new Crimean legislation, Crimean residents are required to re-register their properties under Russian law prior to 1 January 2017, and are disallowed from selling their properties until doing so.⁸⁴ If they fail to re-register their properties by that deadline, their property rights will be lost entirely.⁸⁵
62. Numerous Crimean landowners recounted facing challenges when trying to re-register and sell their private properties in Crimea, with a majority of IDPs informing the HRAM that they have been unable to sell their properties when they tried. Most concerns stemmed from the reportedly complex new requirements for Crimean residents to re-register their properties, prior to any property sales. A number of Crimean IDPs expressed fears that other Crimean residents would exploit the existence of dual Russian and Ukrainian cadastral records to unlawfully sell the IDPs' properties during their displacement. Significantly, the European Court of Human Rights has recognized that an occupying power is responsible for potential violations of property rights and the right to respect for home in the territory under occupation.⁸⁶
63. All but three of 24 Crimean residents and IDPs in Kyiv (12 men and 12 women) who were asked by the HRAM said they owned land in Crimea. Of the seven landowners who tried to sell their properties, only two were successful; both of those property sales were through unofficial arrangements with people the

registrations, and that wiring payments in some circumstances would appear to Ukrainian authorities to be financing terrorism. For that reason, the Ministry of Justice reported that few Crimean residents register their businesses at Ukrainian business registration offices in Kherson, Mykolaiv and Zaporizhia, except for those moving them outright to mainland Ukraine. (Ibid.) From March to December 2014, the State Registration Service of Ukraine recorded the re-registration of 677 legal entities in mainland Ukraine, which were previously registered in Crimea. See UCIPR, "Citizenship, Land and Nationalization of Property in Occupied Crimea: Rights Deficit", Final Analytical Report, p. 6; citing:

http://www.bbc.co.uk/ukrainian/ukraine_in_russian/2015/03/150302_ru_s_crimea_economy_business.

⁸⁴ Article 3, Law of the Republic of Crimea No 38-LRC "On peculiarities of regulation of property and land relations in the Republic of Crimea" (30 July 2014), available at:

<http://www.rg.ru/2014/08/05/krim-zakon38-reg-dok.html>. This is also in line with Articles 131 and 551 of the Civil Code of the Russian Federation, which conditions legal transfers of properties on their inclusion in the immovable property registry. As defined by Article 132 of the Civil Code of the Russian Federation, immovable property includes both land and "enterprises", defined as "a property complex used for the performance of business activities". See also Russian Federal Law No. 122-FZ "On State Registration of Real Estate and Transactions with it" (21 July 1997), Article 1.

⁸⁵ Article 4, Law of the Republic of Crimea No 38-LRC (ibid.).

⁸⁶ See European Court of Human Rights, *Loizidou v. Turkey*, Application no. 15318/89, Judgment of 23 March 1995; and *Cyprus v. Turkey*, Judgment of 10 May 2001 (Grand Chamber – principal judgment).

sellers knew, and one of them said he sold his property for virtually nothing. Several landowners complained about greater difficulties for Crimean residents without Russian passports to re-register their property titles under Russian law, which was reportedly an expensive process that required new contracts with Russian utilities firms.⁸⁷ Two Crimean landowners (one of them a lawyer) claimed that *de facto* authorities had announced residents would have to become Russian citizens or obtain residency stamps by 2017 to regularize their property ownership – whether as a Russian citizen, or as a foreigner with much more rigid requirements.⁸⁸

64. According to an NGO that assists Crimean IDPs, those who are now leaving Crimea for mainland Ukraine spend sometimes days queuing to navigate Russian bureaucracy, in order to prove they own their properties and sell them before leaving Crimea. Those who are displaced for political reasons have reportedly had a harder time trying to sell their properties, since they are unable to return.⁸⁹ Two families who spoke with the HRAM at the Administrative Boundary Line as they crossed into mainland Ukraine complained about the laborious requirement to re-register their properties in Crimea.⁹⁰ The Deputy Head of the District Administration in Genichesk, who supports IDPs in that border district, reported that many people who cannot re-register their properties are leaving them with relatives in Crimea when moving to Ukraine.⁹¹ According to the Representative office of the President of Ukraine in Crimea, now located in Kherson, people also seek to sell their properties remotely by using powers of attorney under Russian legislation.⁹² The State Emergency Service of Ukraine informed the HRAM that many of the first IDPs arriving in Kherson in early 2014 wanted help selling their properties, and were successful in doing so, yet they then faced problems bringing money into mainland Ukraine, and being able to prove that the money was not obtained illegally.⁹³
65. Compounding those problems, Ukrainian authorities and Crimean *de facto* authorities keep separate cadastral records for properties in Crimea, and neither administration communicates or shares documentation with the other.⁹⁴ Crimean

⁸⁷ Interviews with Crimean residents and IDPs (Kyiv, 7 July 2015).

⁸⁸ The law was supposedly going to be made public by 1 August 2015, yet the HRAM was unable to independently verify these allegations at time of writing.

⁸⁹ Meeting with Crimean Diaspora (Kyiv, 7 July 2015).

⁹⁰ Interviews with cross-boundary travellers (ABL, 12 July 2015).

⁹¹ Meeting with Deputy Head, District State Administration (Genichesk, 13 July 2015).

⁹² Meeting with Ms. Nataliya Popovych, Representative office of the President of Ukraine in the Autonomous Republic of Crimea (Kherson, 14 July 2015).

⁹³ Meeting with State Emergency Service (Kherson, 14 July 2015).

⁹⁴ Interview with Crimean resident (Skype, 17 July 2015); meeting with Ms. Nataliya Popovych (*ibid*); meeting with State Emergency Service (Kherson, 14 July 2015). In her annual report, the Ombudsperson of the Russian Federation recognized that both Russian and Ukrainian citizens in Crimea faced many of the same problems due to lack of sharing of documentation by both sides, as well as “many other challenges faced by Ukrainian citizens residing in Crimea”, yet that both Ombudsperson institutions of Ukraine and the Russian Federation continued to collaborate to help citizens resolve those problems (see note 47 above).

residents and IDPs also expressed concerns about potential infringements of their security of tenure and property rights in Crimea, including: skyrocketing property taxes; new ambiguities surrounding property inheritance (including due to dual citizenship); fears that former neighbors would attempt to seize their land; and the possibility of forced evictions, due to the ongoing lack of regularization of informal settlements (particularly those of Crimean Tatars).⁹⁵ According to media accounts, *de facto* authorities have also issued a decision to implement a moratorium on the sale and transfers of agricultural land from 1 August 2015 until 1 January 2016.⁹⁶

1.6 Business and property ‘nationalization’ (expropriations)

66. As noted above, the European Court of Human Rights has recognized that an occupying power is responsible for violations of property rights and the right to respect for home when it renders properties inaccessible to their owners in the occupied territory.⁹⁷ Additionally, under international humanitarian law, an occupying power is prohibited from confiscating public or private property in the occupied territories, except where such seizure is required by imperative military necessity.⁹⁸
67. Since March 2014, the Crimean *de facto* authorities have undertaken to expropriate (or “nationalize”) Ukrainian public properties and enterprises, as well as many private properties and businesses of Crimean residents.⁹⁹ The law on nationalization itself does not specify a procedure for property purchase, and provides neither a requirement of actual notification of the owner of the property being nationalized, nor an appeal procedure.
68. According to Crimean lawyers, NGOs, residents and IDPs who spoke with the HRAM, as well as NGO reports, the ensuing seizures of public and private properties and businesses have reportedly been without adequate notification, compensation, legal basis or opportunity for appeal. In some cases the seizures

⁹⁵ Interviews with Crimean residents and IDPs (Kyiv, 7 July 2015).

⁹⁶ News story, “The Ukrainians are in no hurry to sell the land in the Crimea” (24 May 2015): <http://news.allcrimea.net/news/2015/5/24/ukrainsy-ne-toropyatsya-prodavat-zemlju-v-krymu-37247/>.

⁹⁷ European Court of Human Rights, *Case of Loizidou v. Turkey*, Application no. 15318/89, Judgment of 23 March 1995.

⁹⁸ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law: Vol. I* (ICRC and Cambridge University Press, 2009), Rule 51. *See also*, Article 147 of the Fourth Geneva Convention (note 17 above).

⁹⁹ *See*: Decision No.1836-6/14 of the State Council of the Republic of Crimea “On Nationalization of the Property of Companies, Establishments, Organizations of the Agricultural Industry Located in the Territory of the Republic of Crimea” (26 March 2014), and its appendix listing properties to be nationalized in Crimea; and Law No. 47-LRC of the Republic of Crimea “On peculiarities of foreclosure properties in the Republic of Crimea: Law of the Republic of Crimea” (8 August 2014).

were reportedly enforced by “self-defence” militia, or apparently targeting civil society, media organizations, ethnic minorities or religious communities.¹⁰⁰

69. According to a pro-Ukrainian activist who moved to Kyiv at the time of annexation, authorities tried to seize his home in Crimea in May 2014 after he left – posting an unofficial eviction notice at his residence, signed by a neighbourhood police officer. He reported that it was unclear whether he was targeted for his activities, or whether it was simply an act of lawlessness, yet the effort failed and his relative retained ownership of the property.¹⁰¹
70. Crimean *de facto* authorities in February 2015 reportedly identified 250 public enterprises that had been nationalized; while the Ministry of Justice of Ukraine estimated the actual number to include approximately 4,000 such enterprises, valued by Ukrainian authorities at over US\$1 trillion.¹⁰² Additional to the list of 141 public properties Crimean *de facto* authorities designated in March 2014 for nationalization, countless other public and private properties have also reportedly been seized under recently enacted legislation – including a large portion of the tourism and industrial sectors.¹⁰³ The Ukrainian government claims that there have been thousands of cases of expropriations of private properties and enterprises from Crimean residents or IDPs who were the legal owners prior to annexation.¹⁰⁴ An Associated Press investigation throughout Crimea also estimated that, already by December 2014, there had been “thousands of businesses seized from their owners since Crimea was annexed by Russia”, identifying in its detailed report a range of expropriation practices including:

“legal owners strong-armed off their premises; buildings, farms and other prime real estate seized on dubious pretenses, or with no legal justification at all; non-payment of the compensation mandated by the Russian constitution; and targeting of assets belonging to or used by independent news media, the Crimea Tatar ethnic minority and the pro-Kiev branch of the Orthodox Church.”¹⁰⁵

¹⁰⁰ Interviews with Crimean IDPs (Kyiv, 7 July 2015); interview with NGOs and human rights lawyers in Kyiv (9 July 2015); interview with NGO in Odessa (10 July 2015). Interviewees were directly knowledgeable of the expropriations of hotels and a production plant, among other enterprises. For an exhaustive review of the scope and scale of “nationalizations” of properties and enterprises since annexation, see: UCIPR, “Citizenship, Land and Nationalization of Property in Occupied Crimea: Rights Deficit” (3 June 2015), p.11; Final Analytical Report, p. 7. See also, Ukrainian Helsinki Human Rights Union, *Human Rights in Ukraine – 2014* (Kharkiv: 2015), “Situation in AR Crimea and Human Rights” (pp. 35–54), at pp. 47-49 (“Crimea: The Protection of Property Rights”).

¹⁰¹ Interview with activist (Kyiv, 9 July 2015).

¹⁰² See reports cited in note 100 above. Also noted by Ministry of Justice (Kyiv, 8 July 2015).

¹⁰³ Ibid; and interviews with Crimean residents and IDPs (Kyiv, 7 July 2015).

¹⁰⁴ Interview with Andriy Ivanets, Head of the Ukrainian President’s Department on Crimea (Kyiv, 8 July 2015).

¹⁰⁵ Associated Press, “Crimea’s New Russian Overlords Are Seizing Thousands of Businesses” (2 December 2014), reported by Laura Mills and John-Thor Dahlburg; available at: <http://www.businessinsider.com/crimeas-new-russian-overlords-are-seizing-thousands-of-businesses-2014-12>; with profiles of seized properties available at: <http://hosted.ap.org/interactives/2014/crimea>.

71. This systematic pattern of seizures has spurred the submission of individual and inter-State claims to the European Court of Human Rights with regard to “the peaceful enjoyment of possessions” under Article 1 of Protocol 1 to the European Convention on Human Rights. On 25 March 2015, the European Court granted the Russian Federation’s request for an extension until 25 September of its deadline to submit observations on the admissibility of two inter-State applications lodged against it by Ukraine – including in relation to property rights, as well as forced citizenship, the right to private life, discrimination, and the prohibition of torture.¹⁰⁶
72. Potentially diminishing the impact of any future decisions on both the individual and inter-State cases of private property seizures, Russia’s Constitutional Court issued a ruling on 14 July 2015 regarding the Russian Constitution’s provision for the supremacy of international law, in which it found Russia’s government not to be bound to implement judgments of the European Court of Human Rights which it views to contravene the Russian Constitution.¹⁰⁷ Additionally, on 27 May 2015, Russia’s Supreme Court upheld the law on nationalization of property in Crimea, ruling that it corresponds to the Russian Constitution.¹⁰⁸

1.7 Media organization re-registration

73. Article 2 of the ICCPR obligates States to “adopt legislative or other measures as may be necessary to give effect to the rights recognized by the Covenant”, including freedom of expression through any media, as provided by Article 19 of the ICCPR. As such, States are required not only to respect and refrain from interfering with the right to freedom of expression by the media, but also to adopt positive measures to ensure that right through pluralistic media. The European Court of Human Rights has recognized that the imparting of “information and ideas of general interest [...] cannot be successfully accomplished unless it is grounded in the principle of pluralism.”¹⁰⁹
74. In a joint declaration on regulation of the media, the OSCE Special Representative on Freedom of the Media, the UN Special Rapporteur on Freedom of Opinion and Expression, and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression observed that “imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided”, and that “the allocation of broadcast

¹⁰⁶ Registrar of the European Court of Human Rights, Press release, “European Court of Human Rights extends time allowed for Russia’s observations on admissibility of cases concerning Crimea and Eastern Ukraine” (note 6 above).

¹⁰⁷ See the Russian Constitutional Court’s statement on the ruling, available at: <http://www.ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3244>.

¹⁰⁸ Ruling of the Supreme Court of the Russian Federation No.127-APG15-2 of May 27, 2015. Available at: http://www.supcourt.ru/stor_pdf.php?id=1339844.

¹⁰⁹ European Court of Human Rights, *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38.

frequencies should be based on democratic criteria and should ensure equitable opportunity for access.” Moreover, the three mandate holders declared that “there should be no legal restrictions on who may practice journalism”, additionally “condemning attempts by some governments to limit freedom of expression and to control the media and/or journalists through regulatory mechanisms which lack independence or otherwise pose a threat to freedom of expression.”¹¹⁰

75. Upon annexation, Crimean *de facto* authorities ordered all previously registered media organizations in Crimea to re-register under new Russian rules or cease operations, with an initial deadline of 1 January 2015, which was subsequently extended to 1 April 2015.¹¹¹ When that deadline expired, the Russian media registration agency Roskomnadzor reported the total number of media outlets that had registered and were authorized to work in the Russian Federation and Crimea was 232 (including 207 previously licensed media, and 25 being licensed for the first time) – a decrease from approximately 3,000 registered media under Ukrainian regulations.¹¹² Procedural mistakes were the main reason cited by Roskomnadzor for rejections of applications.
76. Due to repeated denials of their applications on procedural grounds, the most prominent and widely consumed media channels and publications of the Crimean Tatar community were unable to re-register and forced to cease operations in Crimea. Those outlets unable to re-register included the ATR and Lale television channels, the Meydan and Lider radio stations, the Crimean News Agency (QHA), the internet site 15minut, and the widely read newspaper Avdet. The *de facto* authorities have since claimed to have registered at least 30 other media including content in Crimean Tatar language.¹¹³
77. Since October 2014, ATR attempted four times to re-register as a media organization in Crimea under the new Russian regulations, yet all of its applications were rejected for technical reasons. Two applications were rejected

¹¹⁰ See, “Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression” (18 December 2003), available at: <http://www.osce.org/fom/28235>.

¹¹¹ See, Russian Federal Law No. 402-FZ “On the Peculiarities of the Legal Regulation of the Relations in the field of mass media 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”” (2 December 2014), available at: <http://www.rg.ru/2014/12/03/pravo-dok.html>. See also, Information Policy Directorate Mininform RK, “V Krymu prodlena pereregistratsiya SMI do aprelia 2015 goda” (24 November 2014), available at: <http://rk.gov.ru/rus/index.html/news/289528.htm>.

¹¹² See MFA of the Russian Federation, submission to UNESCO (14 April 2015, available at: <http://russianunesco.ru/eng/article/2070>); and OHCHR, *Report on the human rights situation in Ukraine, 16 February to 15 May 2015* (May 2015), available at: <http://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf>.

¹¹³ OHCHR report of May 2015 (ibid.). See also, statements by the OSCE Representative on Freedom of the Media on the media freedom situation in Crimea, available at: <http://www.osce.org/fom/143841>.

without review, in one case because a stamp duty had supposedly been wired to the wrong official bank account.¹¹⁴ After failing to re-register before the ultimate deadline, ATR stopped broadcasting on 31 March 2015, in order to avoid facing criminal charges and asset seizures. On 18 June 2015, ATR began broadcasting by satellite from Kyiv, though the majority of its former staff members have reportedly remained in Crimea. As of July 2015, ATR continued to appeal the rejection of its re-registration application.¹¹⁵

78. According to Amnesty International, QHA initially had applied to re-register in October 2014, then re-applied in November 2014 after consulting with Roskomnadzor to correct supposed procedural mistakes. In February 2015, Roskomnadzor nonetheless rejected the re-registration application – providing as a justification only that the application information “does not correspond to reality”.¹¹⁶
79. Notably, under the Russian Federation’s Law on Mass Media, which outlines the criteria for re-registrations,¹¹⁷ foreign citizens and stateless persons who do not reside permanently in the Russian Federation are not eligible to be founders of mass media organizations. Applications submitted on such persons’ behalf are likewise inadmissible, based on stipulated grounds of rejection that also include (among others) providing application information “that does not correspond to reality”.¹¹⁸
80. Under separate new procedures, six local radio stations lost their broadcasting frequencies in Crimea’s biggest towns, following a sudden and brief tender period (from 15 December 2014 to 29 January 2015) announced by Roskomnadzor to redistribute Crimean frequencies, ultimately to other broadcasters including Russian companies.¹¹⁹ According to the Crimean Field Mission on Human Rights, the competitive bidding for those radio frequencies used criteria designed to exclude existing stations, including by requiring bidders to already have universal broadcasting licenses registered with Russian Federation authorities, which would take at least one month to obtain prior to application.¹²⁰ The three Crimean radio stations that bid on the tenders reportedly received their required universal broadcasting licenses only on 11 February 2015, two weeks after the application deadline, and were therefore

¹¹⁴ Russian Federal Oversight Service for Communications, IT and Mass Communications; Letter No. 04-6235 (dated 26 January 2015), addressed to ATR Director-General, “Re: Returning the registration application to ATR T TV channel without review”.

¹¹⁵ Interview with Lilya Budzhurova, former Deputy Director of ATR-TV (phone interview, 1 July 2015).

¹¹⁶ Amnesty International report, *One Year On: Violations of the Rights to Freedom of Expression, Assembly and Association in Crimea* (March 2015).

¹¹⁷ See Articles 10, 11 and 13 of the Law No. 2124-1 “On Mass Media” (27 December 1991), available at: <http://www.rg.ru/1991/12/27/smi-zakon.html>.

¹¹⁸ Ibid, Article 7(2).

¹¹⁹ Amnesty International, *One Year On* (note 116 above).

¹²⁰ Meeting with Crimean Field Mission on Human Rights (Kyiv, 7 July 2015).

ineligible for the tenders.¹²¹ On a positive note, the Ombudsperson of the Russian Federation appealed to Russian authorities to postpone the tender procedure to “provide all candidates with equal possibilities for participation in the tender”, yet the authorities did not accept the appeal.¹²²

1.8 Non-governmental organization (NGO) re-registration

81. The OSCE Guidelines on the Protection of Human Rights Defenders note that, *inter alia*: “Laws and administrative procedures for NGOs to register officially or obtain legal personality – if they so wish – should be clear and simple and not discriminatory. They should not impose undue and burdensome requirements on the organizations that may obstruct their work.”¹²³
82. As with other legal entities, NGOs were required to re-register with the Crimean *de facto* authorities under the newly applied Russian Federation legal framework. In her 2014 annual report, Crimea’s local ombudsperson reported that only 396 NGOs had successfully re-registered in Crimea under Russian law by the end of 2014, compared to more than 10,000 NGOs that had been locally registered a year earlier.¹²⁴ The ombudsperson’s report blamed an overly complex re-registration process for the low re-registration rate.¹²⁵
83. Under the Civil Code of the Russian Federation, as amended in May 2014 to regulate the re-registration of NGOs in Crimea, the required application documents include, *inter alia*, a new version of the NGO’s statute and a formal decision by the NGO’s executive body to align its founding documents with requirements under Russian Federation legislation. If the NGO is not registered at the local address of a founder who is a Crimean resident, applicants are also required to provide a letter from the owners of the NGO’s intended rental premises guaranteeing that they do not object to such a registration.¹²⁶

¹²¹ *The Fear Peninsula: Chronicle of Occupation and Violation of Human Rights in Crimea* (Kyiv: 2015), p. 59; available at: <https://books.google.pl/books?id=FRTqCAAAQBAJ>. Authors: S. Zayets (Regional Center for Human Rights); O. Matviichuk (Center for Civil Liberties); T. Pechonchyk (Human Rights Information Center); D. Svyrydova (Ukrainian Helsinki Human Rights Union); and O. Skrypnyk (Almenda Civic Education Center).

¹²² See, Ombudsperson of the Russian Federation, Annual Report 2014, Crimea chapter (note 47 above).

¹²³ OSCE-ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: 10 June 2014), para. 67 (available at: <http://www.osce.org/odihr/119633>).

¹²⁴ Crimea ombudsperson, Annual Report 2014 (note 43 above), p. 12. Cited in Amnesty International, *One Year On* (note 116 above). In contrast, as of 10 August 2015, the website of the Federal Tax Service of the Russian Federation listed a total of 189 NGOs registered in the Republic of Crimea and Sevastopol. See online registration database of the Federal Tax Service, available at: <http://egrul.nalog.ru/>.

¹²⁵ Crimea ombudsperson, Annual Report 2014 (note 43 above), p. 12. See also, for a similar account, Ombudsperson of the Russian Federation, Annual Report 2014, Crimea chapter (note 47 above).

¹²⁶ Russian Federal Law No.124, “On Amending a Federal Law ‘Entering into force the chapter 1 of the Civil Code of Russian Federation’ and Article 1202(3) of the Civil Code of Russian Federation” (5 May 2014), available at: <http://base.garant.ru/70648870/>.

84. The requirement for all NGOs working in Crimea to align their founding documents with “requirements under Russian Federation legislation” points to the burdensome and restrictive legal environment in which NGOs would be operating under Russian Federation laws on “foreign agents” (Russian NGOs receiving foreign funding for “political activities”) and “undesirable organizations”¹²⁷ (foreign NGOs viewed as “undesirable” by the Russian government).¹²⁸ Since entering into force in 2012, a total of 81 organizations in Russia have been designated as “foreign agents” under the Russian law, seven of which were later removed from the list.¹²⁹
85. According to OHCHR and the Crimean Field Mission on Human Rights, the re-registration of NGOs was stymied in particular by the looming implementation of Russia’s “foreign agents” law in Crimea. Many NGOs reportedly decided not to seek re-registration, including for example an environmentalist organization that previously operated mainly from foreign grants and would thus need to register as a “foreign agent”. Other pro-Ukrainian NGOs reportedly chose not to register as a matter of principle since they would likely or certainly be excluded even if they amended their operational statutes to meet registration requirements.¹³⁰
86. On 7 July 2015, the Russian parliament’s upper house recommended a list of 12 organizations to be blacklisted from Russia under the May 2015 law on “undesirable organizations”. The US-based National Endowment for Democracy was the first organization to be labeled as such, and was officially banned from Russia on 28 July 2015.¹³¹ The proposed list also included the Crimean Field Mission on Human Rights, though it is not a formal organization with legal personality, but rather a loose consortium of human rights activists.¹³² As of August 2015, Russia’s Prosecutor’s Office was still carrying out checks before any decision would be made to include the Crimean Field Mission on

¹²⁷ Russian Federal Law No. 129-FZ “On correction of some legal acts of the Russian Federation” (23 May 2015).

¹²⁸ Russia Federal Law No. 121-FZ “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).

¹²⁹ See Amnesty International, “Russia Begins Blacklisting ‘Undesirable Organizations’” (28 July 2015), available at: <https://www.amnesty.org/en/latest/news/2015/07/russia-begins-blacklisting-undesirable-organizations>.

¹³⁰ Meeting with Crimean Field Mission on Human Rights (Kyiv, 7 July 2015); and OHCHR *Report on the human rights situation in Ukraine* (15 June 2014), para. 309, available at: <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>.

¹³¹ National Endowment for Democracy, “Russia’s crackdown on civil society shows the regime’s weakness” (29 July 2015), available at: www.ned.org/russias-crackdown-on-civil-society-shows-the-regimes-weakness/.

¹³² *Moscow Times*, “Kremlin Human Rights Council Defends Crimean NGO Against ‘Undesirables’ List” (15 July 2015), available at: <http://www.themoscowtimes.com/news/article/kremlin-human-rights-council-defends-crimean-ngo-against-undesirables-list/525692.html>. The Crimean Field Mission on Human Rights has been among the key sources of information on the human rights situation in Crimea following its annexation of the territory and includes human rights activists from both Ukraine and the Russian Federation.

Human Rights on the list of “undesirable organizations”,¹³³ though the process clearly created a form of pressure on the association and its constituent members conducting activities within Crimea.

87. One human rights activist still residing in Crimea informed the HRAM he had considered re-registering his human rights organization, but that the *de facto* authorities’ Ministry of Justice consultant advising on registration of legal organizations informed him that his papers were not in order – and that authorities knew what his organization was interested in doing, implying it would not get approved anyhow. Ultimately he decided not to re-register his organization due to an unrelated lack of private funding, resulting from the economic situation in Crimea.¹³⁴

1.9 Religious organization re-registration

88. The right to freedom of thought, conscience, religion or belief is a fundamental right, as recognized under international human rights treaties¹³⁵ and OSCE commitments.¹³⁶ That right includes the freedom to manifest one’s religion or belief in community with others, including through organizations with legal personality.¹³⁷ The Guidelines on the Legal Personality of Religious or Belief Communities, jointly issued by ODIHR and the Council of Europe’s Venice Commission, further observe that: “Any procedure that provides religious or belief communities with access to legal personality status should not set burdensome requirements”, and “legislation should not deny access to legal personality status to religious or belief communities on the grounds that some of the founding members of the community in question are foreign or non-citizens, or that its headquarters are located abroad.”¹³⁸
89. Legal organizations of religious communities were also required to re-register under Russian legislation in order to continue their organizational activities, such as renting facilities, hiring employees, or inviting foreigners to participate in their religious activities.¹³⁹ Notably, only Russian citizens are legally

¹³³ Phone conversation with Crimean Field Mission on Human Rights (21 August 2015).

¹³⁴ Meeting with Crimean resident (July 2015).

¹³⁵ *Inter alia*, Article 9 of the ECHR (note 19 above); and Article 18, ICCPR (note 23 above).

¹³⁶ For instance, OSCE participating States committed in the Vienna Document (1989) to “grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries”. Concluding Document of the Vienna Meeting (Third Follow-up Meeting to the Helsinki Conference, 15 January 1989, Vienna), para. 16.3.

¹³⁷ OSCE-ODIHR and Venice Commission, *Guidelines on the Legal Personality of Religious or Belief Communities* (Warsaw: 4 February 2015), para. 20; available at: <http://www.osce.org/odihr/139046>.

¹³⁸ *Ibid.*, paras. 25 and 29.

¹³⁹ Russian Federal Law No. 124-FZ of 5 May 2014, “On the Introduction of Amendments to the Federal Law ‘On the Enactment of the Civil Code of the Russian Federation (First Part)’ and to Article 1202 of the Civil Code of the Russian Federation (Third Part)” (entry into force 1 July 2014), available at: http://www.consultant.ru/document/cons_doc_LAW_162572/.

permitted to register religious organizations as legal entities.¹⁴⁰ While the initial deadline for re-registration was 1 January 2015, it was subsequently extended twice after religious communities continued to experience serious difficulties completing the bureaucratic application procedure. The deadline was extended first to 1 March 2015, and then again to 1 January 2016.¹⁴¹

90. Reportedly, the main technical problems faced by religious organizations seeking to re-register were extensive documentation requirements, lack of necessary legal knowledge, and long queues for those seeking to re-register.¹⁴² Those organizations able to subordinate themselves to structures of their religious communities that were already registered in Russia could complete a simplified procedure.¹⁴³ However, those seeking to register for the first time under Russian rules were reportedly required to provide additional information, such as on the organization's doctrine and political views.¹⁴⁴
91. At the time of annexation, over 1,400 religious communities were formally registered as legal entities under Ukrainian law, and 674 additional communities (mostly belonging to the Muftiate) operated informally without registration.¹⁴⁵ Prior to the first deadline of 1 January 2015, 150 applications had reportedly been rejected for technical reasons, including all 20 applications by the Jehova's Witness community, and the applications of the Catholic Church due to providing some documents in the Ukrainian language.¹⁴⁶ At the time of the first extended deadline, Russian authorities reported that only 60 religious organizations (including 9 communities) had successfully re-registered under Russian law.¹⁴⁷ Following the second extended deadline, OHCHR reported that fewer than 200 religious communities had applied for re-registration, and that still only 51 of them had yet been successful as of 8 May 2015 (excluding the 9 religious communities). By 10 August 2015, the website of the Federal Tax Service of the Russian Federation listed as registered in the Republic of Crimea and Sevastopol a total of 53 local religious organizations (excluding any

¹⁴⁰ See Articles 8(1) and 9(1), Russian Federal Law No. 125-FZ of 26 September 1996, "On the Freedom of Conscience and Religious Associations" (with amendments), available at: http://legislationline.org/download/action/download/id/4379/file/RF_Freedom_of_Conscience_Law_1997_am2008_en.pdf.

¹⁴¹ OHCHR report of May 2015 (note 112 above).

¹⁴² Crimean Field Mission on Human Rights, *Brief Review of the Situation in Crimea* (February 2015 report), p. 15 ("Freedom of Conscience and Religion").

¹⁴³ See note 139 above.

¹⁴⁴ *Ibid.*, as prescribed by order No. 53 of the Ministry of Justice "On State Religious Expertise" (18 February 2009).

¹⁴⁵ See MFA of the Russian Federation, submission to UNESCO (14 April 2015, available at: <http://russianunesco.ru/eng/article/2070>); Crimean Field Mission on Human Rights, *Brief Review of the Situation in Crimea* (February 2015 report), p. 15 ("Freedom of Conscience and Religion"); and Forum 18, "Crimea: Only one percent of religious organisations re-registered" (26 March 2015), available at: http://www.forum18.org/archive.php?article_id=2050.

¹⁴⁶ *Ibid.*

¹⁴⁷ See MFA of the Russian Federation, submission to UNESCO (14 April 2015, available at: <http://russianunesco.ru/eng/article/2070>).

communities registered under Moscow-based legal entities through the simplified procedure).¹⁴⁸

1.10 Summary of findings

92. The post-annexation period has been characterized by a steady consolidation of control by the *de facto* authorities, including through the rapid application of new and existing Russian Federation laws and regulations to all aspects of public and private life in Crimea. For Crimean residents who were in penal or social care institutions at the time of annexation, there was reportedly no option to reject automatic Russian citizenship. For those residents who wished but were unable to renounce Russian citizenship and obtain permanent residency status, or were unwilling to accept Russian passports, the imposition of Russian laws and citizenship has in some cases resulted in the loss of access to employment and social services, and invalidity at the local level of property titles and registrations of businesses, NGOs, media and religious organizations. In her 2014 annual report, Crimea's local ombudsperson noted that the lack of Russian passports had caused problems for Crimean residents to gain employment and access public services, including: re-registration of NGOs and private businesses; cadastral records for property transactions; vehicle registrations; and registration for social security, including pensions and health insurance.¹⁴⁹
93. Under new Russian regulations requiring the re-registration of legal entities, no more than 5 to 10 per cent of the NGOs, media and religious organizations previously registered under Ukrainian law have successfully re-registered with Crimean *de facto* authorities. In some cases, those re-registration processes appeared to be used to administratively exclude pro-Ukrainian organizations and media, and have quite literally decimated the breadth and diversity of civil society space, while simultaneously chilling dissent. The European Court of Human Rights has found that refusal or delay by authorities in the registration of associations, including where necessary to obtain legal personality, may constitute an interference with the freedom of association.¹⁵⁰
94. The Guidelines on Freedom of Association, jointly issued by ODIHR and the Venice Commission, further underscore that "re-registration should not automatically be required following changes to legislation on associations". Yet even when re-registration is necessary, due to exceptional and fundamental changes in the legal framework, "if they do not re-register, the associations should be able to continue to operate without being considered unlawful."¹⁵¹

¹⁴⁸ See online registration database of the Federal Tax Service, available at: <http://egrul.nalog.ru/>.

¹⁴⁹ Crimea ombudsperson, Annual Report 2014 (note 43 above), pp. 5, 12.

¹⁵⁰ *Case of Ismayilov v Azerbaijan*, Judgment of the European Court of Human Rights (17 January 2008).

¹⁵¹ See OSCE/ODIHR and Venice Commission, Guidelines on Freedom of Association (17 December 2014), para. 166. Available at: <http://www.osce.org/odihr/132371>. The Guidelines further recall that the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association reaffirmed

95. By excluding thousands of NGOs, media and religious organizations from operating in Crimea (including based on citizenship of founders), under the auspices of mandatory re-registration requirements, *de facto* authorities have also set the table for violations of other interrelated human rights and fundamental freedoms.¹⁵² As ODIHR and the Venice Commission have previously observed, “freedom of association must also be guaranteed as a tool to ensure that all citizens are able to fully enjoy their rights to freedom of expression and opinion, whether practiced collectively or individually.”¹⁵³

2. Civil and Political Rights

96. Following the annexation of Crimea by the Russian Federation, some residents seeking to assemble and express dissenting political opinions or non-Russian cultural identities have had their civil and political rights heavily restricted by multiple new regulations, including their freedoms of peaceful assembly, expression, and movement in particular. Media freedoms have also deteriorated radically as a result of new regulations and criminal punishments restricting freedom of expression, leading to both self-censorship and prosecutions in relation to the content of journalistic work.
97. Those restrictions have appeared to constitute discriminatory measures targeting individuals and groups at least on the prohibited grounds of their ethnicity and political or other opinions.

2.1 Freedom of expression

98. In their May 2014 joint report, ODIHR and HCNM called on the authorities exercising *de facto* control over Crimea, *inter alia*: “to ensure that journalists and activists are protected from attacks, threats, harassment and intimidation so that they can carry out their activities freely and without fear”; and “to ensure that any attacks, harassment, threats or intimidation targeting journalists and activists are effectively, promptly, thoroughly and impartially investigated with a view to bringing those responsible to justice.”¹⁵⁴

that: “Newly adopted laws should not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities.” *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association)*, UN Doc. A/HRC/20/27 (21 May 2012), para. 62.

¹⁵² The Guidelines on Freedom of Association (para. 17, *ibid.*) observe: “The right to freedom of association is interrelated with other human rights and freedoms, such as the rights to freedom of expression and opinion, freedom of assembly and freedom of thought, conscience and religion.”

¹⁵³ See OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2011), para. 37. Available at: <http://www.osce.org/odihr/77812>.

¹⁵⁴ See 2014 joint report of ODIHR/HCNM (note 1 above), p. 17.

99. OSCE participating States have committed to promoting and protecting freedom of expression, media freedom and access to information,¹⁵⁵ recognizing in particular the key role of independent and pluralistic media in a free and open society.¹⁵⁶ Participating States have also highlighted that fomenting ethnic tension through the media can lead to increased conflict.¹⁵⁷
100. Both Ukraine and the Russian Federation are legally obligated under the same international human rights treaties to guarantee freedom of expression without discrimination, including the right of all people to hold opinions, and to receive and impart information without interference by public authorities.¹⁵⁸ Freedom of expression includes the right of journalists and media professionals to gather, report and disseminate information freely.¹⁵⁹ Freedom of expression is necessary for the enjoyment of many other human rights and fundamental freedoms, including among others: freedom of assembly; freedom of association; freedom of thought, conscience or religion; the right to participate in public affairs; and the right to take part in cultural life.¹⁶⁰
101. As the UN Human Rights Committee has elaborated, such offenses as “extremist activity” should be “clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression.”¹⁶¹ Moreover, with respect to freedom of the media, “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.”¹⁶² Also notable, limited accreditation must not be applied to restrict access to information and freedom of expression, based on a process that discriminates against and excludes some media actors based on their political opinions or otherwise.¹⁶³ OSCE participating States have likewise committed that the legitimate pursuit of journalists’ professional activity will neither render them liable to expulsion nor otherwise penalize them and to refrain from taking restrictive measures such as withdrawing journalists’ accreditation or expelling

¹⁵⁵ See, for example, Helsinki Final Act (note 14 above); Vienna Document 1989 (note 136 above); “Concluding Document of the Madrid Meeting 1980 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-up to the Conference”, Madrid (9 September 1983), available at: <http://www.osce.org/mc/40871>.

¹⁵⁶ Budapest Document (note 13 above), “Decision VIII: The Human Dimension”, para. 36.

¹⁵⁷ Ibid., para. 38.

¹⁵⁸ Article 19, ICCPR (note 23 above); Article 10, ECHR (note 19 above).

¹⁵⁹ Moscow Document 1991: “Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE”, Moscow (4 October 1991), available at <http://www.osce.org/odihr/elections/14310>.

¹⁶⁰ Articles 18, 21, 22 and 25, ICCPR (note 23 above); Article 15, ICESCR (note 24 above).

¹⁶¹ UN Human Rights Committee, General Comment No. 34, *Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34 (12 September 2011), para. 46. Available at: <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

¹⁶² Ibid., para. 42.

¹⁶³ Ibid., para. 44.

them because of the content of their reporting or the reporting of their information media.¹⁶⁴

102. Despite these commitments and obligations, *de facto* authorities in Crimea have applied expansive interpretations of Russian criminal law since annexation. The Criminal Code of the Russian Federation includes newly added provisions banning so-called “extremist” or “separatist” statements,¹⁶⁵ which have been used to prevent and punish the expression of views allegedly opposed to the Russian government or its annexation of Crimea. Those new criminal provisions, which entered into force in May 2014, are punishable by large fines and up to three years in prison; additionally, they provide enhanced punishments for media professionals, including up to five years in prison and/or a ban on conducting journalistic work for up to three years. Criminal charges of “extremism” and “separatism” have frequently been threatened and applied to restrict the rights of activists, journalists, minority communities and other members of the public seeking to present dissenting views on the Russian occupation of Crimea – whether at public assemblies, in private gatherings, through online social media, or in journalistic activities.

2.1.1 Right to hold opinions without interference

103. While Crimean Tatar and pro-Ukrainian activists and media have been especially targeted, restrictions on freedom of expression have likewise been applied to speech at the marketplace, in the streets, in education institutions, and frequently in online social media forums. Crimean residents and IDPs informed the HRAM of the chilling of dissent by public authorities and a widespread climate of discrimination resulting from pro-Russian propaganda in Crimea, which has led to self-censorship as well as intimidation, harassment and threats to those expressing independent voices.¹⁶⁶
104. As an example of common restrictions on freedom of expression, a member of the Crimean Tatar Mejlis in Kherson cited public posters allegedly disseminated by *de facto* authorities in Crimea, which call on residents to inform a hotline of the Russian security services (FSB) about anyone speaking critically against the occupation and annexation.¹⁶⁷ A Ukrainian media channel published an image of one such announcement, allegedly distributed in Simferopol:

“Although peace has been established in our land, there still are scums who want chaos, disorder, and war. They live among us, go to the same shops as we do,

¹⁶⁴ Vienna Document 1989 (note 136 above), para. 39.

¹⁶⁵ Article 280.1, Criminal Code of the Russian Federation (Law No. 63-FZ of 13 June 1996), *as amended by*, Russian Federation Federal Law No. 433-FL “On changes to the Criminal Code of the Russian Federation” (entered into force 9 May 2014), available at: <http://www.rg.ru/2013/12/30/uk-izm-dok.html>.

¹⁶⁶ Interviews with Crimean residents and IDPs in Kyiv (7 July 2015) and at the ABL (12 July 2015).

¹⁶⁷ Interview with Mejlis representative (Kherson, 14 July 2015).

ride with us in public transport. You may know the people who were against the return of Crimea to the Russian Federation or took part in the regional ‘Maidan’. Such personalities should be reported immediately to the FSB at: 13, Franko Boulevard, Simferopol, or by phone: 37-42-76 (anonymity guaranteed).”¹⁶⁸

105. A Crimean IDP in Kyiv informed the HRAM that she and her husband were chased from Crimea by “self-defence” forces, on account of her husband’s pro-Maidan blog. After their neighbours allegedly reported him to the Russian security service, she claimed that a local Russian Cossack organization (which organized the local “self-defence” group) published a list of pro-Ukrainian residents on its VKontakte social media page. She reported that the list included a photo of her husband and threats against him. In October 2014, her husband was attacked and beaten, at which point she said they fled to mainland Ukraine.¹⁶⁹
106. A journalist still operating in Crimea informed the HRAM of Crimean residents receiving heavy sentences for their use of social networks, allegedly on charges of “extremism”, “separatism” or “incitement of ethnic hatred”. In one such case of alleged “hate speech”, reported both by the Crimean journalist and a Ukrainian human rights NGO, a village Imam in Bakhchysarai region received a two-year suspended sentence from Bakhchysarai Raion Court for incitement of hatred.¹⁷⁰
107. A Kyiv resident informed the HRAM that her Crimean Tatar friend in Yalta had received criminal warnings from authorities for the opinions and links he had posted on his Facebook page, which included views he expressed against annexation and about discrimination faced by Crimean Tatars.¹⁷¹
108. As a result of widespread surveillance, multiple sources informed the HRAM that Crimean residents commonly conceal their opinions when speaking publicly or communicating through email, Skype, Viber or other commonly used online media platforms, due to fears of reprisals for expressing their views.¹⁷² A journalist still operating in Crimea said that the journalists remaining there often use social networks to monitor developments, but that people are very afraid to speak with them online, as they “could be accused of anything” by authorities.¹⁷³

¹⁶⁸ SocKrainera TV Channel website; available at <http://sockrainia.com/news/8571>. Cited also in the report *The Fear Peninsula* (note 121 above), Section 3.2, p. 33.

¹⁶⁹ Interview with Crimean IDP (Kyiv, 7 July 2015).

¹⁷⁰ Interview with journalist in Crimea (Skype, July 2015); *see also*, Kharkiv Human Rights Protection Group, “Convicted of ‘hate speech’ for criticizing Russian annexation of Crimea” (28 July 2015): http://humanrights.org.ua/en/material/convicted_of_hate_speech_for_criticizing_russian_annexation_of_crimea.

¹⁷¹ Interview with Kyiv resident (Kyiv, 17 July 2015). The HRAM reviewed the Yalta resident’s Facebook postings, though not the official warning he allegedly received from authorities in response.

¹⁷² Interview with head of Kherson regional Mejlis (Novooleksiivka, 13 July 2015). Interview with Nataliya Popovych (note 92 above).

¹⁷³ Interview with journalist in Crimea (Skype, July 2015).

109. The HRAM was informed by several sources and reviewed primary documentation indicating that ethnic Ukrainian and Crimean Tatar communities in Crimea have also faced discrimination and threats of prosecution for displaying Ukrainian and Crimean Tatar flags to express their cultural identities. For example, the head of the Kherson regional Mejlis informed the HRAM that a local mullah and another member of the Mejlis in the Soviet Raion of Crimea, were both summoned for questioning by *de facto* authorities – and subsequently fined 10,000 rubles – for displaying the Crimean Tatar flag during the community’s annual flag day on 26 June.¹⁷⁴ After Simferopol authorities reportedly rejected multiple requests by Crimean Tatar youth groups to hold their annual commemoration of Crimean Tatar flag day on 26 June 2015, the Prosecutor’s Office reportedly issued a warning letter on 25 June to members of the Mejlis in Crimea, cautioning them on the inadmissibility of extremist messages in “unsanctioned protest events” dedicated to the day of the Crimean Tatar flag.¹⁷⁵

2.1.2 Freedom of access to information

110. In the Istanbul Document, OSCE participating States reaffirmed their commitments to freedom of access to information, noting: “the importance of independent media and free flow of information as well as the public’s access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.”¹⁷⁶

111. In contrast, since occupation, practically all of the Ukrainian terrestrial television channels have been switched off in Crimea and replaced with channels originating from the Russian Federation.¹⁷⁷ That process began in early March 2014 with the cut-off of seven Ukrainian television stations (including Chernomorskaya, the largest independent broadcaster on the Crimean

¹⁷⁴ Interview with head of Kherson regional Mejlis (Novooleksiiivka, 13 July 2015).

¹⁷⁵ Crimean Field Mission on Human Rights, *Brief Review of the Situation in Crimea* (June 2015 report), p. 11).

¹⁷⁶ See Istanbul Document 1999 (note 14 above), “Charter for European Security”, para. 26. See also the Moscow Document 1991 (note 159 above), in which OSCE participating States committed they “will not discriminate against independent media with respect to affording access to information, material and facilities” (para. 26.2).

¹⁷⁷ See statement by the OSCE Representative on Freedom of the Media, “Media freedom situation in Crimea, Ukraine, at all-time low” (5 March 2015, <http://www.osce.org/fom/143861>). See also, *Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his mission in Kyiv, Moscow and Crimea, from 7 to 12 September 2014* (27 October 2014), Doc. No. CommDH(2014)19, paras. 30–33, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH\(2014\)19&Language=lanEnglish](https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH(2014)19&Language=lanEnglish).

peninsula),¹⁷⁸ which *de facto* authorities replaced with Russian channels.¹⁷⁹ At the end of June 2014, Chernomorskaya and a number of other Ukrainian channels were also removed from major cable networks in Crimea.¹⁸⁰

112. Crimean IDPs and a Ukrainian media expert in Kyiv reported that the Crimean media landscape has come entirely under the control of *de facto* authorities, who attribute all positive developments to the Russian Federation and all negative developments to Ukrainian authorities. They noted that residents with Internet access are more exposed to alternative views, but that they are the minority, as media consumption in Crimea is primarily of television, followed by print media, and then by the Internet since there has never been extensive online access.¹⁸¹

113. A human rights activist in Simferopol reported that *de facto* authorities often block websites they find objectionable, thereby limiting people's access to information deemed critical of the government. However, such restrictions are not consistent, he said, as some websites are blocked entirely, while other sites will display an "error" message on one day, and then become accessible again a week later.¹⁸²

114. On 8 August 2015, Crimea's chief prosecutor Natalia Poklonskaya confirmed in a statement on her Facebook page that her office is actively involved in monitoring online content and blocking sites deemed to be "extremist":

"The Prosecutor's Office of the Republic of Crimea has blocked 30 extremist websites. In this respect, a certain procedure is being followed: we are sending information to the Centre to Counter Extremism, the Federal Security Service (FSB), and then we conduct linguistic research, and then send information to the Prosecutor General of the Russian Federation to block these sites. We would be very grateful to our young citizens, who have more knowledge on the Internet, if they could help us to identify extremist Internet resources."¹⁸³

115. Several sources interviewed by the HRAM pointed to the decimation of media voices – and in particular those of Ukrainian and Crimean Tatar linguistic communities – as not only violations of freedom of expression, but also a direct

¹⁷⁸ Inter; Briz; 1+1; Channel Five; First National; STB; and Chernomorskaya Television and Radio Company.

¹⁷⁹ NTV, Channel One, Rossiya24, Rossiya RTR, TNT and Zvezda.

¹⁸⁰ Ukrainian television channels taken off cable networks in Simferopol included: Inter; 1+1; 2+2; 5 Channel Five; ICTV; Novyi Kanal; News 24; NTN; and Rada.

¹⁸¹ Interviews with Crimean IDPs (Kyiv, 7 July 2015); interview with Oksana Romanyuk, Director of the Institute of Mass Information (Kyiv, 17 July 2015).

¹⁸² Interview with Crimean resident (10 July 2015).

¹⁸³ Facebook page of Crimea's chief prosecutor, Natalia Poklonskaya, available at: <http://www.facebook.com/NVPolonskaya/posts/1620051244946122:0>.

assault on the education and information infrastructure for ethnic and linguistic minorities in Crimea.¹⁸⁴

2.1.3 Freedom of the media

116. As part of the broader crackdown on freedom of expression, *de facto* authorities have singled out independent journalists, media professionals and political activists for some of the most serious restrictions. On top of onerous registration requirements,¹⁸⁵ and additionally restrictive accreditation procedures,¹⁸⁶ news media have been repeatedly targeted for criminal investigations into the content of their reporting.
117. Multiple Crimean journalists informed the HRAM that crackdowns against individual reporters have come in waves over the last year, during which numerous journalists and bloggers have been detained, searched, interrogated, threatened, physically attacked, banned from entry or forced to flee Crimea, and had their equipment confiscated or damaged (including through deletion of stored content).¹⁸⁷ One journalist informed the HRAM that he and his colleagues recorded over 100 instances of attacks against journalists in just the first three months of occupation, while they were still reporting from Crimea.¹⁸⁸
118. In May 2014, Osman Pashayev and Cengiz Kizgin (journalists with Otkritiy Krymskiy Kanal) were reportedly detained, interrogated, beaten and robbed of their equipment in Simferopol by a group of “self-defence” forces in military uniforms.¹⁸⁹ Also in May 2014, journalists from *Tvoya Gazeta* were allegedly attacked by armed men in Crimea while filming a public event.¹⁹⁰ On 8 September 2014, Elizaveta Bohutskaya, a vocal Crimean blogger and contributor to various media outlets, including Radio Free Europe/Radio Liberty’s (RFE/RL) Crimean desk, was reportedly detained and accused of

¹⁸⁴ Interview with Andriy Ivanets (note 104 above). Interview with Andriy Shekun (note 80 above). Meeting with Crimea-SOS (Kyiv, 6 July 2015).

¹⁸⁵ As detailed above in Section 1.7 Media organization re-registration.

¹⁸⁶ See below in this section.

¹⁸⁷ Interviews with Crimean journalists and media organizations (Kyiv, 17 July 2015). *See also* statements by the OSCE Representative on Freedom of the Media on the media freedom situation in Crimea (available at: <http://www.osce.org/fom/143841>), including in particular: , “Media freedom situation in Crimea, Ukraine, at all-time low” (5 March 2015, <http://www.osce.org/fom/143861>); “Conflicting sides should stop targeting media professionals covering Ukraine crisis” (19 May 2014, <http://www.osce.org/fom/118686>); “Attacks on journalists, switching off channels and denial of access continue in Ukraine” (30 May 2014, <http://www.osce.org/fom/119329>); and, “OSCE Representative condemns continued intimidation of free voices in Crimea” (9 September 2014, <http://www.osce.org/fom/123314>).

¹⁸⁸ Interview with Crimean journalist (Kyiv, 17 July 2015).

¹⁸⁹ The annual report of the Russian Ombudsperson also noted their arrest on 18 May 2014 (see note 47 above).

¹⁹⁰ OSCE Representative on Freedom of the Media, public statement, “Attacks on journalists, switching off channels and denial of access continue in Ukraine” (30 May 2014, <http://www.osce.org/fom/119329>).

“extremism”. At 05:30 that morning, law enforcement personnel (four armed and eight in plainclothes) allegedly burst into her apartment, shot her dog, seized equipment and materials related to her work, and interrogated her for a number of hours at the Counter-Extremism Centre in Simferopol. She was charged with disseminating extremist material online, and then was released and fled to mainland Ukraine, where she has continued her reporting since then.¹⁹¹

119. For the entire period since annexation, the Crimean Tatar television station ATR has faced repeated harassment and restrictions by *de facto* authorities. On 16 May 2014, the Crimean Prosecutor’s Office sent a formal warning letter to ATR in relation to its coverage of an unsanctioned gathering of Crimean Tatars on 3 May 2014, at the Armyansk crossing point between Crimea and mainland Ukraine. The letter warned ATR against broadcasting information that may include “incitement to ethnic or other hatred” or “contain characteristics of extremism” – specifically statements by the Crimean Tatar leader Mustafa Dzhemilev – noting that “federal law prohibits mass media organizations from distributing extremist materials or engaging in extremist activities.”¹⁹² ATR viewed the warning letter as an injunction, and subsequently reportedly implemented a policy of self-censorship, omitting footage of unsanctioned meetings, any statements on Crimea being part of Ukraine, as well as terms such as “occupation,” “annexation” or other language that could put ATR at risk of facing criminal charges.¹⁹³ Other media still working in Crimea also informed the HRAM that they exclude terms such as “annexation” or “occupation”, since they now carry potential criminal responsibility for their use. In that sense, they work in line with the restrictive Russian laws that are now being applied in Crimea.¹⁹⁴

120. Despite ATR’s pre-emptive self-censorship, on 24 September 2014, the Counter-Extremism Centre wrote a letter to ATR’s Director General requesting a wide range of information about the station and its individual staff members. The letter relayed claims allegedly received by the FSB from the “Russian Oversight Committee in Crimea and Sevastopol” that:

“the ATR TV channel has changed its media information content and persistently implants the idea about possible national and religious repressions and facilitates development of anti-Russian public opinion and intentionally ignites distrust to the authorities and their actions among Crimean Tatars, which poses an indirect extremist threat.”¹⁹⁵

121. On 26 January 2015, the ATR television office was reportedly raided by about 30 special police armed with automatic weapons. Staff members were allegedly

¹⁹¹ OSCE-SMMU interview with Elizaveta Bohutskaya (Odessa, 26 September 2014).

¹⁹² Letter of warning issued by the Prosecutor’s Office in Simferopol (dated 16 May 2014).

¹⁹³ Interview with Lilya Budzhurova, former Deputy Director of ATR-TV (phone interview, 1 July 2015).

¹⁹⁴ Interview with Crimean journalists (phone interview, July 2015).

¹⁹⁵ Letter issued to ATR Director General by the Ministry of Internal Affairs of Crimea, Counter-Extremism Centre (Simferopol, dated 24 September 2014).

isolated and effectively detained for the day, though they continued to broadcast. For several hours, law enforcement personnel reportedly searched the building for video records of a 26 February 2014 rally in Simferopol, seizing boxes of records from ATR archives, which they copied and mostly returned a few days later.¹⁹⁶

122. As noted above, throughout the course of these incidents, ATR attempted four times to re-register under new Russian media regulations, though was ultimately unsuccessful and ceased broadcasting from Crimea on 31 March 2015.¹⁹⁷
123. On 13 March 2015, in a concerning escalation, the Kyiv-based Crimean journalist Anna Andrievska learned that a criminal investigation had been opened against her under extremism charges in Crimea, following the publication of an online article she wrote in December 2014 – seven months after leaving Crimea for Kyiv in May 2014. Published on the website of the Centre for Journalistic Investigations, the article profiled Crimean civilian volunteers who provided assistance to Ukraine’s “Crimea battalion” fighting pro-Russian rebels in Ukraine’s east. On 13 March 2015, FSB agents searched her parents’ home in Crimea, questioned them regarding her whereabouts and activities, and confiscated their computer, a USB stick and nine notebooks belonging to Ms. Andrievska.¹⁹⁸ Subsequently, the FSB questioned two other Crimean journalists she knew, searched their homes, and seized their equipment, as witnesses in the case against Andrievska. During those interrogations, the *de facto* authorities reportedly mentioned that the charges were being brought against her as a Russian citizen,¹⁹⁹ despite her never having accepted Russian citizenship and having left Crimea almost a year before. A witness of the search of one of the journalists’ homes informed the HRAM that the FSB would not allow a defence attorney into the home during the search, and later collected passport information from journalists gathered outside the FSB building during one of the interrogations, which lasted several hours.²⁰⁰
124. Such incidents have continued more recently as well. In May 2015, the Institute of Mass Information registered five cases of searches and arrests of media in Crimea, including an ATR cameraman who was subsequently detained for two months in relation to his attendance at a 26 February 2014 pro-Ukraine rally in Simferopol.²⁰¹
125. Among other forms of harassment and intimidation faced by media in Crimea over the last year, Crimean journalists reportedly: received anonymous threats over the phone; were followed by plainclothes officers; experienced

¹⁹⁶ Interview with Lilya Budzhurova, former Deputy Director of ATR-TV (phone interview, 1 July 2015).

¹⁹⁷ Ibid. See also, above at Section 1.7 Media organization re-registration.

¹⁹⁸ FSB search protocol (dated 15 March 2015).

¹⁹⁹ Interview with Anna Andrievska (Kyiv, 17 July 2015).

²⁰⁰ Interview with witness (Kyiv, 17 July 2015).

²⁰¹ Interview with Oksana Romanyuk, Director of the Institute of Mass Information (Kyiv, 17 July 2015).

surveillance of their telecommunications; and received periodic phone calls or visits from law enforcement authorities, who would sometimes ask obscure or threatening personal questions. One journalist reported that Crimean law enforcement officers have also started calling news media in Crimea to ask them for the Internet service provider (ISP) addresses of their online readers, whenever they post comments that are critical of either Russia or *de facto* authorities in Crimea.²⁰²

126. Several Crimean journalists reported that most independent and pro-Ukrainian media have left Crimea due to the incumbent risks of working there now. The independent journalists remaining were either operating from hiding (without their names included in their stories), or were working as foreign journalists with accreditation from the Russian Ministry of Foreign Affairs (MFA). However, several journalists said that even those media which are registered or MFA-accredited still face constant obstacles in gaining local accreditation to access *de facto* authorities and their institutions.²⁰³ Media still reporting from Crimea confirmed that assertion, and told the HRAM that they were not invited to the meetings of *de facto* authorities, their phone calls were not returned, and officials would not give them interviews. They could still work on the street, yet reportedly had their documents checked frequently by police.²⁰⁴
127. The HRAM reviewed the Kerch City accreditation regulation, as well as a formal complaint submitted by a Kerch-based media outlet to the local Prosecutor's Office about the local administration's denials of accreditation.²⁰⁵ In response to the complaint, the Prosecutor's Office concurred with the complainant that the Regulation restricted media rights, potentially contrary to the Russian constitution and federal law.²⁰⁶ However, according to a Kyiv-based Crimean journalist familiar with the incident, staff at the complaining media outlet then received anonymous phone calls warning that if they continued to communicate with the Prosecutor, they would have their news outlet shut down.²⁰⁷

²⁰² Interviews with Crimean journalists (Kyiv, 17 July 2015).

²⁰³ Interviews with Crimean journalists (in Kyiv, and in Crimea by phone; July 2015). The MFA of the Russian Federation has noted its application of foreign accreditation rules to Ukrainian journalists, in its submission to UNESCO (14 April 2015), available at: <http://russianunesco.ru/eng/article/2070>.

²⁰⁴ Interviews with Crimean journalists (phone interview, July 2015).

²⁰⁵ Letter to the Prosecutor of the city of Kerch from the media outlet, in relation to the Regulation of Kerch City Council "On the accreditation of media representatives at the Kerch City council of the Republic of Crimea" (30 January 2015), available at: http://hromadskeradio.org/sites/default/files/wp-content/uploads/2-R_Akkreditatsiya_predstavitelej_SMI_2015_01_30_15_14_22_538.pdf.

²⁰⁶ Letter to the media outlet from the Prosecutor of the city of Kerch (dated 26 May 2015).

²⁰⁷ Interviews with Crimean journalists (Kyiv, 17 July 2015).

2.2 Freedom of peaceful assembly

128. OSCE participating States have committed to guarantee the right to freedom of peaceful assembly, and not to restrict the right beyond circumstances permitted by international standards.²⁰⁸ According to Article 11 of the ECHR and Article 21 of the ICCPR, authorities have a responsibility to respect and ensure freedom of peaceful assembly – including by protecting assemblies from attacks or disruption by third parties – and any restrictions of this right must be proportionate to achieve a legitimate aim that is demonstrably necessary in a democratic society.²⁰⁹
129. In their May 2014 joint report, ODIHR and HCNM called on the authorities exercising *de facto* control over Crimea “to ensure that law-enforcement agents effectively protect participants of public assemblies, including journalists and activists, from attacks, harassment or intimidation by State or non-State actors.”²¹⁰
130. Crimean *de facto* authorities have in several prominent instances rejected formal requests to hold peaceful assemblies – or restricted their content and/or locations – on the basis of procedural technicalities, conflicts with previously approved (pro-Russia) events scheduled for the same days, or allegations of “extremist” or “separatist” messages that would purportedly be disseminated at the events. Numerous Crimean residents, IDPs, activists and journalists provided the HRAM with consistent accounts of many of the same such incidents over the last year – primarily targeting pro-Ukrainian activists and ethnic minorities.²¹¹ The HRAM also received and reviewed copies of correspondence between authorities and organizers regarding some requests and denials to hold public assemblies, as well as legal warnings and court decisions on allegedly impermissible content of assemblies, including Ukrainian flags and traditional Ukrainian attire.

2.2.1 Regulatory restrictions on freedom of peaceful assembly

131. Since annexation, Crimean *de facto* authorities have adopted a number of restrictive measures to curtail peaceful assemblies, which have been applied

²⁰⁸ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990), available at: <http://www.osce.org/odihr/elections/14304>.

²⁰⁹ Article 21, ICCPR (note 23 above).

²¹⁰ See 2014 joint report of ODIHR/HCNM (note 1 above), p. 18.

²¹¹ For more examples, details of which were confirmed by knowledgeable individuals or participants interviewed by the HRAM, see e.g.: *The Fear Peninsula* (note 121 above), Amnesty International, *One Year On* (note 116 above), monthly reports of the Crimean Field Mission on Human Rights, *Brief Review of the Situation in Crimea* (including from June 2015, with details of a series of administrative penalties and warnings in relation to public assemblies); *Human rights in Ukraine 2014: Human rights organizations' report* (Kharkiv: Ukrainian Helsinki Human Rights Union, 2015), “Situation in AR Crimea and Human Rights”, pp. 35 *et seq.*, Available at: <http://helsinki.org.ua/index.php?id=1432628132>.

selectively to prohibit or disproportionately limit events by pro-Ukrainian and ethnic minority groups, including to prevent them from voicing dissenting political opinions. Under new Crimean legislation that entered into force in August 2014, the organizers of public assemblies now must be Russian 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.²¹² A separate regulation in force since November 2014 introduced further restrictions on the locations where public assemblies can be held, which for instance in Simferopol now include only four official sites.²¹³ Additionally, amendments to Russian federal legislation have provided for criminal punishments of individuals who repeatedly violate rules on the organization of assemblies;²¹⁴ have prohibited children under 14 years old from being present at political assemblies;²¹⁵ and have restricted the hours of permissible assemblies (from 07:00 to 22:00 on any given day), unless the events are to commemorate memorable dates of the Russian Federation.²¹⁶

132. On 16 May 2014, the head of the *de facto* Crimean government Mr. Sergey Aksyonov further issued a decree banning all public assemblies in Crimea – two days prior to the 70th anniversary of the deportation of Crimean Tatars on 18 May 2014 – until 6 June 2014. Mr. Aksyonov justified the order as a measure to “eliminate possible provocations by extremists, who were able to penetrate the territory of the Republic of Crimea, and to avoid disruption of the holiday season”.²¹⁷

²¹² Article 2 (paras. 1 and 4) of the Law of the Republic of Crimea No. 56-LRC “On Ensuring of the Conditions for Realization of the Rights of Russian Citizens to Hold Meetings, Rallies, Demonstrations, and Pickets in the Republic of Crimea” (21 August 2014). This law reflects identical provisions in Article 7 of the Federal Law of the Russian Federation No. 54-FL “On Meetings, Rallies, Demonstrations, Marches and Pickets” (4 July 2004).

²¹³ Council of Ministers of Crimea, Order No. 452 “On the Approval of the List of Places for Public Events in the Republic of Crimea (12 November 2014). See also, Regulation “On the procedure of organization of Public Events on the Territory of the Simferopol City Municipality” (28 January 2015), available at:

http://simadm.ru/media/acts/2015/02/05/%D0%9F%D1%80%D0%B8%D0%BB%D0%BE%D0%B6%D0%B5%D0%BD%D0%B8%D0%B5_%D0%BA_29_%D0%BE%D1%82_28.01.2015.pdf.

²¹⁴ Federal Law of the Russian Federation No. 258-FL “On Amendments to Certain Legislative Acts of the Russian Federation in Terms of Improving the Legislation on Public Events” (21 July 2014).

²¹⁵ Ibid.

²¹⁶ Federal Law of the Russian Federation No. 292-FL “On Amendments to Article 9 of the Federal Law ‘On Meetings, Rallies, Demonstrations, Marches and Pickets’” (9 October 2014). *Human rights in Ukraine 2014: Human rights organizations’ report* (note 211 above), p. 44.

²¹⁷ Amnesty International, *One Year On* (note 116 above), p. 16; *The Fear Peninsula* (note 121 above), Section 4.8, p. 67. The decree itself is linked to in the following news story on the banning of the subsequent “Day of Remembrance” in 2015; see “Crimean Tatars barred from holding march in memory of 1944 deportation” (20 May 2015), available at: http://rbth.co.uk/politics/2015/05/20/crimean_tatars_barred_from_holding_march_in_memory_of_1944_deportati_46203.html.

2.2.2 Restrictions imposed prior to assemblies

133. The European Court of Human Rights has found that prior restrictions imposed on assemblies to prevent minor disorder are often disproportionate measures, and that any minor incidents of violence are better dealt with by way of subsequent prosecution or disciplinary actions.²¹⁸ However, the HRAM documented multiple accounts of outright rejections of requests to hold public assemblies, as well as apparently disproportionate restrictions on the time, place and content of those planned assemblies. *De facto* authorities expressly restricted the content of planned assemblies by Crimean-Tatar and Ukrainian organizers, requiring that they exclude political opinions and cultural expression by those groups. In contrast, such restrictions were reportedly not imposed on public assemblies by pro-Russian organizations and civic associations.
134. In one example, on 28 November 2014, a co-ordinator of the informal Committee on the Rights of the Crimean Tatar People, Sinaver Kadyrov, communicated his intention to organize two activities in Simferopol to commemorate International Human Rights Day on 10 December 2014. The activities included a conference on the topic of human rights and freedoms, and a children's competition of chalk drawings about Crimea in the parking lot outside the conference room. Simferopol City authorities rejected the request, indicating that it provided inadequate information about the number of participants. On 5 December 2014, the Committee reapplied with the requested information, which city authorities rejected for a second time – voicing concerns of a “real threat” to participants due to the location of the planned event, as preparation works for Christmas and New Year celebrations were already planned in the same vicinity from 1 December 2014 to 7 January 2015.²¹⁹ In the authorities' second rejection letter of 8 December 2014, they offered to change the location of the 10 December demonstration to a local park, but stated “the organizer shall notify local self-government authorities no later than *three days* prior to the demonstration in written form about acceptance (non-acceptance) of the proposal about change of location for the demonstration” (*emphasis added*).²²⁰ On 9 December 2014, Kadyrov received a three-page warning letter from the Simferopol Prosecutor's Office threatening that any unsanctioned public assembly would be legally impermissible, and

²¹⁸ See Guidelines on Freedom of Peaceful Assembly (2nd ed, 2010), para. 109. For example, European Court of Human Rights, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), para. 94.

²¹⁹ Interview with Sinaver Kadyrov, Committee on the Rights of the Crimean Tatar People (Kyiv, 9 July 2015). Official warning letter by Simferopol City Department of the Interior. Letter from Simferopol City Administration (dated 8 December 2014). Official warning by Simferopol City Office of the Prosecutor (dated 9 December 2014).

²²⁰ Interview with Sinaver Kadyrov, Committee on the Rights of the Crimean Tatar People (Kyiv, 9 July 2015). Letter from Simferopol City Administration (dated 8 December 2014).

could give rise to criminal violations of federal laws on extremism and public assemblies.²²¹

135. In response, Mr. Kadyrov and the two other Committee organizers, Eskender Bariev and Abdulemjit Suleymanov, instead convened a press conference on the prohibition by *de facto* authorities of their planned events on International Human Rights Day. However, the event was disrupted by a group of 10 to 20 unknown men, who sprayed the speakers with green dye. According to Mr. Kadyrov, when the press conference dispersed, the police were already waiting outside, apparently ready to arrest the organizers if they had reacted to the provocation of the assailants, who had left without being detained by police. On 17 January 2015, the organizers finally held a human rights conference, at which their Committee discussed issues of concern and adopted decisions – then transmitting their conclusions to the Ukrainian and Turkish governments, as well as the UN Secretary-General.²²²
136. On the night of 23 January 2015, the three co-ordinators of the Committee attempted to travel from Crimea to mainland Ukraine via the Armyansk crossing, but were stopped and questioned by Russian border personnel. As the other two were released and travelled on after 10 hours, Kadyrov was officially deported from Crimea by court order, as a foreigner who had overstayed the 90 days permitted under Russian law.²²³ After living in Crimea on his Ukrainian passport for almost a year since occupation, Mr. Kadyrov pleaded not guilty and claimed as a citizen of Ukraine that he was staying legally in Crimea. Despite the automatic citizenship imposed on Crimean residents, the Court found Kadyrov to be a foreigner guilty of the administrative offense, and ordered both a fine and deportation.²²⁴ Following an appeal, Crimea's Supreme Court upheld the lower court decision on 6 February 2015.²²⁵ Subsequently, the three organizers were advised that the prosecutor in Crimea had opened criminal

²²¹ Interview with Sinaver Kadyrov, Committee on the Rights of the Crimean Tatar People (Kyiv, 9 July 2015). Official warning by Simferopol City Office of the Prosecutor (dated 9 December 2014).

²²² Interview with Sinaver Kadyrov, Committee on the Rights of the Crimean Tatar People (Kyiv, 9 July 2015). Interview with Abhezhid Suleimanov, Mejlis representative in Kherson (Kherson, 14 July 2015).

²²³ Interview with Sinaver Kadyrov, Committee on the Rights of the Crimean Tatar People (Kyiv, 9 July 2015). Interview with Abhezhid Suleimanov, Mejlis representative in Kherson (Kherson, 14 July 2015).

²²⁴ Decision of Armyansky Municipal Court of the Republic of Crimea rendered on 23.01.2015 on charges of committing an administrative offense by Kadyrov S.A // Case no. 5-49/2015. Interview with Sinaver Kadyrov, Committee on the Rights of the Crimean Tatar People (Kyiv, 9 July 2015). Interview with Abhezhid Suleimanov, Mejlis representative in Kherson (Kherson, 14 July 2015).

²²⁵ Decision of the Supreme Court of the Republic of Crimea rendered on 06.02.2015 on appeal of Kadyrov S.A // Case no. 12-225/2015. Interview with Sinaver Kadyrov, Committee on the Rights of the Crimean Tatar People (Kyiv, 9 July 2015). Interview with Abhezhid Suleimanov, Mejlis representative in Kherson (Kherson, 14 July 2015).

cases against all of them, due to which none has returned to Crimea out of fear of prosecution.²²⁶

137. In another illustrative case on 24 June 2015, several days before Ukraine's Constitution Day, the Ukrainian Cultural Centre organizer Mr. Leonid Kuzmin received a warning letter from the Prosecutor's Office in Simferopol, cautioning him in relation to extremist activities and unapproved public assemblies. The warning letter cited information that "a group of radical Crimean-Tatar and Ukrainian activists are planning to provoke the use of force by Crimean law-enforcement authorities through demonstrating Ukrainian symbols and chanting slogans 'Glory to Ukraine! Glory to the Heroes!'"²²⁷ The warning letter sent by the Prosecutor's Office did not indicate a source of the alleged information, though appeared to discourage any public assemblies involving political speech or cultural expression by ethnic Ukrainian and Crimean Tatar communities.

2.2.3 Sanctions and penalties imposed after assemblies

138. As with prior restraints, the principle of proportionality applies to liability for any offenses allegedly committed in the course of public assemblies. The UN Human Rights Committee and the European Court of Human Rights have found in multiple cases that excessive sanctions of minor violence or disorderly conduct during assemblies may also constitute disproportionate interference with the right to freedom of assembly or expression.²²⁸ Any prosecutions or administrative sanctions should thus be proportionate to the severity of the offence, including when minor in nature.

139. Conversely, *de facto* authorities in Crimea have aggressively prosecuted the organizers and participants of peaceful assemblies for "extremism", which in some cases has appeared to amount only to the peaceful and public expression of participants' cultural identities or political beliefs.

140. For instance, organizers of the Ukrainian Cultural Centre notified the Simferopol authorities of their intention to hold a public assembly on 9 March 2015, in commemoration of the 201st birthday of the revered Ukrainian poet Taras Shevchenko. After initially rejecting the request to hold the event at a

²²⁶ Interview with Sinaver Kadyrov, Committee on the Rights of the Crimean Tatar People (Kyiv, 9 July 2015). Interview with Abhezhid Suleimanov, Mejlis representative in Kherson (Kherson, 14 July 2015).

²²⁷ Letter of warning issued to Leonid Kuzmin by the Prosecutor's Office in Simferopol (dated 24 June 2015).

²²⁸ See Guidelines on Freedom of Peaceful Assembly (2nd ed, 2010), para. 109. For example, *Patrick Coleman v. Australia* (2006) CCPR/C/87/D/1157/2003, para. 7.3 (the UN Human Rights Committee considered a fine and a five-day custodial sentence to be a disproportionate penalty for making a speech without a permit). Also see *Ezelin v. France* (1991) (assembly), and *Incal v. Turkey* (1998) (expression).

central location, authorities permitted it to be held at a more peripheral park.²²⁹ Despite the official approval for the event, police reportedly detained three participants (Mr. Kuzmin, Mr. Shukurdziev and Mr. Kravchenko) for brandishing a Ukrainian flag inscribed with the phrase, “Crimea is Ukraine”. On 12 March 2015, all three were found guilty and ordered to conduct public works for violating the rules of public assemblies by displaying “extremist” symbols (an inscribed Ukrainian flag and an embroidered Ukrainian shirt), which had not been specifically approved as content for the celebration of the Ukrainian poet. The opinion of the court also noted that the use of Ukrainian symbols was not in line with historical facts, since Ukraine had been part of the Russian Empire when the poet was born two centuries earlier.²³⁰ Following an appeal, on 20 April 2015, the Supreme Court of Crimea upheld the lower court’s order based on the impermissibility of the “extremist” content at the peaceful assembly.²³¹

141. Mr. Kuzmin, the nominal organizer the 9 March 2015 event, was reportedly fired the next day from his job as a schoolteacher in Simferopol, and informed that “an employee of the school has no right to participate in political activity”.²³² According to media accounts and interviews with Crimean IDPs in Kyiv who knew them, both Kuzmin and Shukurdziev were then detained and questioned twice more by authorities in May 2015 – respectively in relation to the 26 February 2014 public assembly for Ukrainian unity prior to the referendum on annexation,²³³ and a private outdoor gathering in traditional Ukrainian shirts on the day of Ukrainian embroidery.²³⁴ The third individual found guilty in the 9 March incident, Mr. Kravchenko, had reportedly already moved to mainland Ukraine after being contacted again by the Russian intelligence service.

²²⁹ Letter from the Simferopol City Administration to Mr. Kuzmin (dated 27 February 2015), approving the request to organize the public assembly.

²³⁰ Decisions of Zheleznodorozhniy (Railway) District Court of Simferopol rendered on 12 March 2015 on charges of committing administrative offenses by Kuzmin L.A. (Case no. 5-401/2015), Kravchenko A.S. (Case no. 5-402/2015), and Shukurdziev V.S. (Case no. 5-403/2015). The decisions referred specifically to Article 20.2.5 of the Code of Administrative Offences of the Russian Federation (<http://www.zakonrf.info/koap/20.2/>); Article 16 of the Law of the Russian Federation No. 114-FL from July 25, 2002 "On combating extremist activity" (<http://www.legislationline.org/documents/id/4368>); and Article 6.3.2 of the Federal Law No. 54 “On assemblies, meetings, demonstrations, marches and pickets”.

²³¹ Decision of the Supreme Court of the Republic of Crimea rendered on 20 April 2015, on appeal of Shukurdziev V.S. (Case no. 12-445/2015).

²³² Multiple accounts of interviewees. See also, *The Fear Peninsula* (note 121 above), Section 4.8, p. 71.

²³³ The 26 February 2014 event was documented in the 2014 joint report of ODIHR/HCNM (note 1 above), at pp. 45 (para. 85) and 111.

²³⁴ See the following news stories: “Day embroidered: arrest, interrogation, search and threats” (22 May 2015), available at <http://voicecrimea.com.ua/main/news/developments/den-vishivanki-aresht-dopit-obshuk-i-znovu-pogrozi.html>; and “Pro-Ukrainian activists "invited" for questioning in Crimea (video)”, available at <http://voicecrimea.com.ua/main/news/yak-zaproshuyut-v-krimu-na-dopit-proukra%D1%97nskix-aktivistiv-video.html> (18 May 2015). *The Fear Peninsula* (note 121 above), Section 4.8, p. 71.

142. In more recent cases, the Prosecutor’s Office of the Republic of Crimea has also begun to retroactively prosecute Crimean residents and IDPs under the Criminal Code of the Russian Federation – and as Russian citizens – for their alleged roles as organizers of, or participants in the “Euromaidan” protests in Kyiv. Those cases are remarkable also in that they pertain to incidents that occurred prior to the Russian occupation and annexation of Crimea, as well as outside of the territory of Crimea – thus extending the jurisdiction of Russian courts in Crimea both extraterritorially and to alleged crimes committed prior to the introduction of the Russian criminal code in Crimea.
143. The first prosecution and conviction in such a case was that of Aleksandr Kostenko. Mr. Kostenko was arrested on 6 February 2015 for allegedly throwing a rock at a Ukrainian *Berkut* special police officer a year earlier, on 2 February 2014, during the demonstrations at Independence Square (Maidan) in Kyiv. The court judgment confirming the detention of Mr. Kostenko refers to him as a Russian citizen, who was “aware of the mass public disorder [at Maidan] aimed at unlawful and violent toppling of the Constitutional order of Ukraine”, and who “felt ideological hatred towards law enforcement officers who were securing public order”.²³⁵ According to public accounts of his lawyer, Mr. Kostenko was abducted, beaten, tortured with electricity and subjected to mock execution on 5 February 2015, the day prior to his arrest under a court order issued on 6 February. Though his detention order noted that Kostenko was suspected of “committing a minor crime entailing the sentence for up to two years in detention”, the court ultimately sentenced him to four years and two months in prison.²³⁶
144. The Crimean Prosecutor, who personally prosecuted the case against Kostenko, celebrated the verdict on her Facebook page as a “legitimate and justified [...] restoration of justice”.²³⁷ Two weeks after the verdict in Kostenko’s case, the Crimean Prosecutor announced on her Facebook page that a criminal investigation identified all the other organizers “who gathered in Crimea the supporters of the so-called ‘Euromaidan’ to send them to Kyiv, and they also co-ordinated all the ‘peaceful demonstration’ actions. [...] The people in question have not yet been arrested, but the punishment for them will be inevitable – they soon will be in the dock.”²³⁸ A few days later, partial scanned copies of apparently official documentation from the criminal investigation were leaked to the media, identifying approximately 25 people under investigation for traveling to Kyiv to participate in the Maidan

²³⁵ Kyiv District Court of Simferopol, Judgment of 8 February 2015, Case No. 3/1-30/201.

²³⁶ Crimean Field Mission on Human Rights, *Brief Review of the Situation in Crimea* (May 2015 report), Section 2, p. 4.

²³⁷ Public post on the official Facebook profile of the Chief Prosecutor of Crimea, Natalia Poklonskaya (15 May 2015).

²³⁸ Public post on the official Facebook profile of the Chief Prosecutor of Crimea, Natalia Poklonskaya (29 May 2015).

demonstrations.²³⁹ The list also included information on the current location of alleged participants in demonstrations and whether or not they supported the political opposition.

145. The targeted prosecutions of alleged participants in Euromaidan assemblies in Kyiv appear not only to be politically motivated – and thereby to violate the prohibition on discrimination based on political opinion – but also to conflict with the Russian Federation’s obligations under both international human rights law and international humanitarian law. In particular, Article 15(1) of the ICCPR provides, “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence [...] at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.” The Fourth Geneva Convention further observes: (1) that the penal laws of the displaced sovereign State’s legal system should remain in force; (2) that courts in the occupied territory should only enforce laws that were applicable prior to any alleged offence; (3) that courts “shall take into consideration the fact that the accused is not a national of the Occupying Power,” and (4) an occupying power “shall not arrest, prosecute or convict protected persons for acts committed or opinions expressed before the occupation [...] with the exception of breaches of the laws and customs of war.”²⁴⁰
146. Five Crimean Tatars have also been detained and face retroactive prosecution under the Russian criminal code for their crimes allegedly committed while participating in the 26 February 2014 rally in Simferopol. One of those five is Akhtem Ciygoz, vice chairman of the Mejlis in Crimea, who was arrested by Crimean *de facto* authorities on 29 January 2015.²⁴¹ In April 2015, the Russian MFA referred to Mr. Ciygoz as a citizen of Ukraine who “is well known in Crimea for his regular extremist escapades”.²⁴²
147. In contrast, the Crimean Prosecutor has not apparently sought to investigate or prosecute pro-Russian “self-defence” groups, which have been accused of committing serious human rights abuses at the start of and since the occupation of Crimea – including in the context of political assemblies, and against many of the same activists on the prosecutor’s supposed investigation list. As documented by ODIHR and HCNM in their 2014 joint report, those alleged abuses include disappearances, extrajudicial killings, torture and ill-treatment of Euromaidan activists, journalists and others that “self-defence” groups allegedly abducted.²⁴³ Rather than prosecute those groups, the Russian parliament

²³⁹ See Krym Realii, “Who Polonskaya is going to pursue for Euromaidan (LIST)” (3 June 2015), available at: <http://ru.krymr.com/content/article/27052049.html>.

²⁴⁰ Articles 64, 67 and 70, Fourth Geneva Convention (note 17 above).

²⁴¹ MFA of the Russian Federation, submission to UNESCO (14 April 2015, available at: <http://russianunesco.ru/eng/article/2070>); and interviews with Mejlis members (13 and 14 July 2015).

²⁴² MFA, *ibid*.

²⁴³ See, 2014 joint report of ODIHR/HCNM (note 1 above), paras. 88, 109 *et seq*.

proposed measures to amnesty their past abuses (which have not yet been publicly adopted),²⁴⁴ and their legal statuses were formalized in Crimea.²⁴⁵ “Self-defence” groups reportedly continue with impunity to intimidate, harass, detain and seize the properties of Crimean residents, particularly those accused of opposing the Russian annexation, without an adequate legal basis.²⁴⁶

2.3 Freedom of movement

148. International human rights law guarantees everyone the right to freedom of movement within the borders of the State where they are located, and the right to leave and enter their own country.²⁴⁷ OSCE participating States have further committed themselves to removing all legal and other restrictions with respect to travel within their territories and with respect to residence for those entitled to permanent residence within their territories.²⁴⁸ They have further committed to facilitating the voluntary return, in safety and dignity, of internally displaced persons in accordance with international standards, recognizing also that the reintegration of people in their places of origin must be pursued without discrimination.²⁴⁹ The OSCE recognizes the UN Guiding Principles on Internal Displacement as the relevant framework.²⁵⁰
149. In their 2014 joint report, ODIHR and HCNM called on both the Ukrainian authorities and *de facto* authorities in Crimea to ensure that IDPs would not face regressive human rights conditions, including in relation to their citizenship and residency, on account of their displacement. The report also called on Ukrainian authorities to refrain from taking measures to limit the freedom of movement of IDPs in any fashion that could have a negative impact on their enjoyment of human rights, including social and economic rights.²⁵¹
150. Since the establishment of the Administrative Boundary Line (ABL) between Crimea and mainland Ukraine, marked by three main crossing points, both the Ukrainian government and Crimean *de facto* authorities have implemented

²⁴⁴ The State Duma of the Russian Federation on 2 October 2014 considered draft Law No. 613379-6 “On Amendments to the Federal Constitutional Law No. 6-FKZ of 21 March 2014”, available at: <http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=613379-6&02>. (As cited in short report “Crimean Self-Defence”, authored by Olga Skrypnik, director of Almenda and deputy head of the Crimean Field Mission on Human Rights.)

²⁴⁵ Under the “Law on the People’s Militia” (11 June 2014, as amended on 26 November 2014), available at: <http://jankoy.org.ua/wp-content/uploads/2014/05/Zakon-O-narodnom-opolchenii-Kryma.pdf>.

²⁴⁶ For example, *see* above at notes 100, 169 and 190.

²⁴⁷ Article 12, ICCPR (note 23 above); Articles 2 and 3, Protocol 4 to the ECHR (note 21 above).

²⁴⁸ *See* Moscow Document (note 159 above), para. 33.

²⁴⁹ Lisbon Document 1996 (Lisbon, 3 December 1996), para. 10. Available at: <http://www.osce.org/mc/39539>.

²⁵⁰ Maastricht Ministerial Council Decision No. 4/03 on Tolerance and Non-discrimination, para. 13.

²⁵¹ *See*, 2014 joint report of ODIHR/HCNM (note 1 above), at pp. 15–18.

restrictions on the freedom of movement that have impacted Crimean residents and IDPs on both sides of the ABL.²⁵²

2.3.1 Restrictions imposed by de facto authorities in Crimea

151. The most serious restrictions imposed by Crimean *de facto* authorities have targeted Crimean Tatar political leaders, including in the forms of: routine surveillance and interrogations at the ABL; legal summons and abductions, apparently to prevent their travel abroad; bans on re-entry to Crimea; and, in one case, a formal court-ordered deportation from Crimea.
152. On 22 April 2014, the leading member of the Crimean Tatars' Mejlis representative body, Mustafa Dzhemilev, was banned from entering Crimea for a period of five years. On 5 July 2014, another of the highest-ranking Crimean Tatar leaders, Refat Chubarov, was also banned from entering Crimea for five years, and branded as an extremist by *de facto* authorities. Both Dzhemilev and Chubarov are members of parliament in Ukraine.
153. Other Crimean Tatar activists and members of the Mejlis still residing in Crimea have reportedly faced restrictions on their movement, including intensive interrogations whenever entering or leaving Crimea over the Administrative Boundary Line. On 23 January 2015, as noted above, Sinaver Kadyrov was the first Crimean resident since annexation to be formally deported as a foreigner from Crimea by court order, despite having been theoretically granted automatic Russian citizenship in April 2014.²⁵³
154. According to a member of the Mejlis in Crimea, the head of the Mejlis' political-legal department, Nadir Bekirov, was attacked in September 2014 while trying to leave Crimea to attend the UN World Conference on Indigenous Peoples in New York. Masked men allegedly pulled him out of a taxi, beat him, and seized his passport in order to prevent him from attending the meeting. Without his passport, he was unable to leave Crimea and missed the World Conference.²⁵⁴
155. On 28 July 2015, two of the most senior members of the Mejlis in Crimea – first deputy chairman of the Mejlis, Nariman Dzheljalov; and chairman of the central electoral commission of the Kurultay parliamentary body, Zair Smedlyaev – were served with a summons letter by Russian intelligence services for questioning in Crimea on 1 August 2015. The summons was apparently served

²⁵² For an assessment focused solely on the freedom of movement of Crimean IDPs and residents crossing the ABL to and from mainland Ukraine, see the 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>.

²⁵³ See above at note 225.

²⁵⁴ Interview with Mejlis member (Kherson, 14 July 2015). The incident was also widely reported in the media.

to prevent them from attending the World Congress of the Crimean Tatars in Ankara, Turkey, on 1–2 August 2015.²⁵⁵ The deputy head of the Mejlis, Ilmi Umerov, was also summoned for 29 July 2015. Prior to the summons, Russian intelligence services reportedly invited many members of the Mejlis to questioning, and warned them they could subsequently face problems re-entering Crimea if they attended the World Congress.²⁵⁶

156. Entry bans and exit restrictions imposed upon Crimean inhabitants run directly counter to the Russian Federation’s aforementioned obligations under the ICCPR and Protocol 4 to the ECHR.
157. In contrast, the Russian Federation’s Migration Service has reportedly accommodated thousands of IDPs from mainland Ukraine into Crimea without any serious restrictions on their freedom of movement. Since occupation, the *de facto* authorities in Crimea have reportedly claimed that as many as 200,000 IDPs from mainland Ukraine have crossed into Crimea.²⁵⁷ According to the ICRC, most such IDPs were given temporary relief for a few weeks, and then resettled through a Russian Federation program to continental Russian destinations, including Siberia. *De facto* authorities have reportedly estimated there to be about 40,000 IDPs from mainland Ukraine residing in Crimea, mostly lodged informally with families or privately without public support.

2.3.2 Restrictions imposed by Ukrainian authorities

158. The Ukrainian authorities have imposed restrictions on travel across the ABL, which have primarily created obstacles for Crimean residents and IDPs without adequate documentation under the new requirements – particularly for young children and their families. The freedom of movement of foreigners has also been heavily restricted under the new regulations on cross-boundary travel.
159. On 4 June 2015, the Ukrainian Cabinet of Ministers adopted Resolution No. 367,²⁵⁸ which imposed widely criticized restrictions on children and foreigners

²⁵⁵ On 28 July 2015, Zair Smedlyaev posted a photo of the summons letter he received on his Facebook page. All three summons were also widely reported in the media.

²⁵⁶ Interview with Mejlis member (Kherson, 14 July 2015).

²⁵⁷ The Ombudsperson of the Russian Federation also cited this number in her Annual Report 2014, Crimea chapter, p. 95 (note 47 above). Such figures are not possible to verify independently, though are magnitudes larger than the numbers of cross-boundary migrants into Crimea as reported by Ukrainian border services. In any event, the true number would also be included in the estimated total of Ukrainian displaced persons who have reportedly sought asylum or refuge in Russia. As of 31 July 2015, the Russian Federation claimed to be hosting 756,600 displaced persons from Ukraine. See UNHCR, “Ukraine Situation: UNHCR Operational Update (16 July – 3 August 2015).

²⁵⁸ See Cabinet of Ministers Resolution No. 367, “Special Order of Entry and Exit from/to Temporarily Occupied Territory of Ukraine”, available at: <http://www.kmu.ua/control/uk/cardnpd?docid=248222450>. The resolution implemented Article 10 of the Law “On Ensuring the Rights and Freedoms of Citizens of Ukraine and the Legal Regime on Temporarily Occupied Territory of Ukraine” (15 April 2014).

seeking to cross the ABL. Under the new regulation, children under 16 years old are newly required to have international travel documents issued by Ukraine in order to cross from mainland Ukraine into Crimea – or, for young children, to be included in their parents’ passports.²⁵⁹ Non-Ukrainian nationals are required to obtain a permit under one of seven qualifying criteria.²⁶⁰

160. In the first month of implementing Resolution No. 367, the State Border Guards Service said that it denied passage to a total of 562 people; 245 of them were foreign nationals. In one 24-hour period (on 12 July 2015), 21 people were refused entry to Crimea, including: 18 Ukrainian citizens (17 of them children without adequate documentation), and 3 Russian citizens without permits.²⁶¹
161. NGOs, IDPs and Crimean residents interviewed by the HRAM identified the new regulation as one of the greatest obstacles to freedom of movement in both directions. Unless foreigners have family or real estate in Crimea, the resolution only foresees granting them permits upon the invitation of the Ukrainian government, and only as either representatives of international organizations, or for activities in the national interest of Ukraine.²⁶² However, those criteria appear not adequately to accommodate the activities of journalists, human rights activists or NGOs, whose presence in Crimea is in all parties’ interests – not only Ukraine’s national interest. In that regard, Resolution No. 367 could restrict freedom of movement according to political opinions or even activities that the Ukrainian government views not to be in its interest. According to the Crimean Field Mission on Human Rights, as of August 2015, the Ukrainian government had established a working group to review and potentially amend those restrictions, including to prevent unnecessary restrictions of human rights organizations’ freedom of movement to and from Crimea.²⁶³
162. One Ukrainian official relayed concerns that excessive restrictions on travel into Crimea could risk ghettoizing Crimea, noting: “If we restrict something, we should offer something else instead – we need to offer some solutions for people.” One key problem, he stated, was that there are no Ukrainian passport

²⁵⁹ Article 3 of Resolution No. 367 (ibid.). Notably, multiple interviewees informed the HRAM that Ukraine’s Ministry of Internal Affairs (MIA) worked extended hours to accommodate increased demand for newly required documents. Prior to the new regulations also, the MIA informed the HRAM that it routinely provided Ukrainian identification documents to Crimean IDPs and residents. From 18 March 2014 until 3 July 2015, the MIA’s National Migration Service informed the HRAM that it issued to persons residing in Crimea: 23,000 passports for international travel; 3,600 internal passports; 1,300 travel documents for children; 8,600 insertions of pictures and names of children in their parents’ passports; 6,150 certificates of resident status to help residents claim their entitlements. During the same period, the Kherson office of the Migration Service reported receiving more than 16,000 visitors from Crimea who travelled to submit applications for official Ukrainian documentation. Those applications included about 10,000 for passports for foreign travel; and 3,000 for insertions of pictures in passports. Meeting with MIA Migration Service (Kherson, 15 July 2015).

²⁶⁰ Article 21, ibid.

²⁶¹ Meeting with State Border Guard Service of Ukraine (Kherson, 13 July 2015).

²⁶² Article 21, Resolution No. 367 (note 259 above).

²⁶³ Phone conversation with Crimean Field Mission on Human Rights (21 August 2015).

offices in Crimea for residents to obtain the newly required documentation – resulting in families with children, in particular, getting stuck on the Ukrainian side while they await new documents for their children. He suggested the process could be streamlined in order to better facilitate freedom of movement and thereby increase access to education and medical assistance, while keeping families from being divided by increased restrictions.²⁶⁴

163. Senior members of the Mejlis agreed that the new requirements of foreign passports have increased both bureaucratic and financial obstacles for travellers – and have resulted in Crimean Tatar families waiting sometimes for weeks to obtain requisite documentation for the new travel documents. The process thus takes money and time that people are short on to navigate transportation and bureaucracy in both directions. Crimean Tatars from Turkey and other countries have also reportedly encountered problems visiting Crimea through the ABL, due to not meeting the strict requirements for foreign nationals under the new regulation; some have instead travelled by air through Moscow as a result, which has then further restricted their rights to re-enter Crimea via mainland Ukraine in the future.²⁶⁵
164. Lack of awareness of new requirements has appeared to be one of the greatest challenges faced as a result of the recent regulation. According to NGOs supporting IDPs at the ABL, a large number of single divorced parents have faced problems when trying to bring their children across the ABL, due to the new requirement of written permission from the other parent if not present.²⁶⁶ Three single mothers from Crimea informed the HRAM that they encountered the same problem, because they lacked letters of permission from their recently divorced ex-husbands, who stayed in Crimea while the mothers moved to mainland Ukraine with the children. They complained that Ukrainian authorities would not recognize the divorce certificates issued by Crimean *de facto* authorities, and that authorities should facilitate some way to obtain recognized divorce papers.²⁶⁷ However, one family interviewed at the ABL informed the HRAM that they had no problem crossing into Crimea from mainland Ukraine with their 1.5-year-old daughter, since the father had researched the new regulations in advance, and entered her into his own passport at the Kharkiv passport office in advance of their travel.
165. Crimean residents, IDPs, NGOs and Ukrainian authorities all agreed that inadequate infrastructure and disruptions of transportation across the ABL have caused considerable problems for those seeking to cross the boundary. Since rail and bus service between mainland Ukraine and Crimea were terminated in December 2014, travellers have either relied on private cars, or had to walk up

²⁶⁴ Meeting with Ukrainian official (Kyiv, 8 July 2015).

²⁶⁵ Interview with Refat Chubarov, member of Mejlis and the Ukrainian parliament (Kyiv, 9 July 2015).

²⁶⁶ Interview with head of Kherson regional Mejlis (Novooleksiivka, 13 July 2015).

²⁶⁷ Meeting with NGO (Odessa, 10 July 2015).

²⁶⁷ Meetings with Crimean residents and IDPs (Kyiv, 7 July 2015).

to two kilometres across the boundary area between Russian and Ukrainian crossing points. Older persons, persons with disabilities or illnesses, and families with children have been particularly impacted by those difficulties, including by the costs and physical demands of the journey. Some residents reported that those crossing the ABL on foot have faced adverse weather conditions in every season: wading through snowdrifts, rain and floodwaters in winter; and blistering heat in the summer. At an Oblast-level meeting on the topic in July 2015, with all relevant government offices and stakeholders, the State Border Guards Service of Ukraine presented recommendations to improve the infrastructure at the Chongar crossing point in particular, which the Ministry of Infrastructure is the competent body to address. Among the recommended improvements it identified were: service areas; canopies; toilets; fresh water; benches; access roads; and lighting.²⁶⁸

166. In an unpredicted development, long-term prisoners from Crimea who were recently released from State penitentiary facilities in mainland Ukraine have also faced serious problems obtaining the necessary documentation of their previous Crimean residency, in order to gain permission from authorities on both sides to travel home to Crimea after years or decades incarcerated. Statistics published on 3 April 2014 by the State Penitentiary Service indicated that a total of 5,500 convicts from Crimea were imprisoned at penal establishments in mainland Ukraine at the time of annexation.²⁶⁹ Prior to Ukrainian presidential elections in 2014, there were large-scale amnesties and conditional releases of prisoners throughout Ukraine, resulting in the release of many of those long-term convicts from Crimea.
167. According to the State Emergency Service of Ukraine, the phenomenon arose very suddenly and is not addressed adequately in legislation, such that there is little information about the scale of the problem, and no government offices are gathering comprehensive statistics on the topic. Ex-convicts have had problems in particular when they have been released without passports, or with Soviet-era passports that have no residency stamps. In those situations, the people get shuffled between Ukrainian ministries seeking new documentation, yet *de facto* authorities in Crimea also will not admit them. Reportedly, only six such people were successful in getting to Crimea; in those six cases, the individuals had Ukrainian passports, in addition to release certificates. Those seeking to cross back into Crimea only with their release certificates have reportedly been unsuccessful.²⁷⁰
168. According to the Ministry of Internal Affairs, released convicts only have to confirm they are citizens of Ukraine in order to request new passports. For some people it is enough to provide a detailed explanation of where they are from, but situations are handled on a case-by-case basis when information has been lost

²⁶⁸ Meeting with State Border Guard Service of Ukraine (Kherson, 13 July 2015).

²⁶⁹ State Penitentiary Service of Ukraine, public statement of 3 April 2014 (note 48 above).

²⁷⁰ Meeting with State Emergency Service of Ukraine (Kherson, 14 July 2015).

(or is unavailable in Crimea). The Ministry indicated it is possible to establish identity with a certificate of release, yet establishing Crimean residency is more problematic.

169. The HRAM met with one Kherson-based NGO that has provided assistance and shelter to former prisoners from Crimea who were released without passports from places of detention in mainland Ukraine. The primary problems faced by those ex-convicts are that they have been unable to find jobs or homes without passports, when they only have prison release certificates. Yet when seeking to obtain new passports from Ukrainian institutions, they have lacked the paper records of their place of residency, which are still stored with old applications in Crimea. According to the NGO, the State Penitentiary Service indicated as of December 2014 that 92 such persons in detention were up for release in Kherson region alone, who did not have passports in their records. The NGO was working with 36 of them, seven of whom were able to obtain necessary original documentation through friends or family. Six who were released locally obtained Kherson residency stamps, while one got a Crimea residency stamp (though remained in prison as of 15 July 2015).

2.3.3 Demographics of populations impacted by restrictions

170. The official number of Crimean IDPs in mainland Ukraine, as registered with Ukrainian authorities, is approximately 20,000. However, Ukrainian NGOs working closely with IDPs at the ABL and throughout Ukraine estimate the real figure to be closer to 40,000 or 50,000.²⁷¹ The State Emergency Service of Ukraine has likewise observed that many Crimean IDPs do not register with authorities in mainland Ukraine, for a variety of reasons – including the vast majority of displaced Crimean Tatars,²⁷² who are estimated to number as many as 20,000.²⁷³ Those IDPs have reportedly left Crimea for mainland Ukraine in a series of surges marking different human rights-related challenges they faced, such that subsequent restrictions of their freedom of movement have sometimes had ripple effects in relation to their enjoyment of other rights.
171. According to the NGO Crimea-SOS, which is the main implementing partner of the UN refugee agency (UNHCR) in Ukraine, the main surges of displacement occurred: before the Crimea referendum, due to uncertainty of what would happen; immediately after the referendum, as people fled for political reasons; at the end of May 2014, as young people travelled to mainland Ukraine for university entrance exams; and in August and September 2014 as students entered schools and universities in mainland Ukraine.

²⁷¹ Meeting with Crimea-SOS (Kyiv, 6 July 2015); meeting with Crimean Diaspora (Kyiv, 7 July 2015); interview with Andriy Shekun (note 80 above).

²⁷² Meeting with State Emergency Service of Ukraine (Kherson, 14 July 2015).

²⁷³ Meeting with Crimea-SOS (Kyiv, 6 July 2015).

172. In March 2015, a smaller surge was observed of youths fleeing forced conscription notices from *de facto* authorities, as many parents reportedly encouraged their children to flee to mainland Ukraine to avoid conscription.²⁷⁴ Notably, under the Fourth Geneva Convention, an occupying power may not compel civilians in the occupied territory to serve in its armed or auxiliary forces.²⁷⁵
173. Crimea-SOS informed the HRAM that the profile of persons displaced from Crimea has changed since the time of its initial occupation. Those who left early were considered patriots of Ukraine, who often required assistance upon arrival. More recently, those fleeing have often been financially stable business people seeking to move their operations to mainland Ukraine. In combination with the stagnant economy, regulatory harassment of Crimean Tatar businesses has allegedly also driven economic displacement, including surprise tax inspections, sanitation service inspections, and in some instances arson or other attacks targeting business owners.²⁷⁶
174. The formal and informal IDP populations have been augmented by a large traffic of Crimean residents travelling to southern mainland Ukraine to resolve administrative issues – often related to their citizenship status, documentation requirements, and social entitlements (primarily passport applications, standardized school testing, and economic transactions). For both the transit itself and those administrative tasks, Crimean residents and IDPs have encountered numerous interrelated problems with their documentation, which have hampered their freedom of movement, and secondarily their enjoyment of other (primarily economic and social) human rights. Those documentation problems are largely due to original Ukrainian records now being in the possession of *de facto* authorities in Crimea, while both governments implement policies of non-recognition of legal documents issued by the other in relation to Crimean territory.

2.4 Summary of findings

175. Following the annexation of Crimea by the Russian Federation, fundamental freedoms of assembly, expression and movement have been restricted and eroded in Crimea. This is primarily the case for individuals, organizations and communities attempting to express dissenting political opinions or cultural identities.
176. Through regulatory restrictions and stifling administrative procedures, *de facto* authorities have reduced the access and number of independent media in

²⁷⁴ Meeting with Crimea-SOS (Kyiv, 6 July 2015).

²⁷⁵ Article 51, Fourth Geneva Convention (note 17 above).

²⁷⁶ Interview with Crimean residents and IDPs (Kyiv, 7 July 2015), *see* note 76; meeting with Crimea-SOS (Kherson, 14 July 2015), *see* note 78.

Crimea, have cut off the free flow of information to the public (particularly online and broadcast media), and have threatened criminal sanctions against private and public figures for expressing views opposed to Russia's annexation of Crimea.

177. The Crimean Prosecutor has applied “extremism” and “separatism” charges under the Russian criminal code to a wide variety of assemblies and speech, in some cases retroactively to events prior to annexation and/or outside of Crimea. The targeted prosecutions of Crimean activists, journalists and ethnic community leaders under Russian criminal laws appear to conflict with Russia's obligations under both international human rights law and international humanitarian law.²⁷⁷ Additionally, those prosecutions appear to be politically motivated, and thus to violate the prohibition of discrimination based on political or other opinion. On a positive note, the Ombudsperson of the Russian Federation also cautioned Crimean *de facto* authorities in her annual report for 2014 that law enforcement should adopt “a well-balanced approach that rules out any arbitrary, excessively broad interpretation of the notion of ‘extremism’.”²⁷⁸
178. With regard to the freedom of movement, both the Russian and Ukrainian governments have implemented excessive restrictions across the Administrative Boundary Line between Crimea and mainland Ukraine. *De facto* authorities in Crimea have especially restricted the movement of Crimean Tatar community leaders, including through entry bans, restrictive measures to prevent travel abroad, and in one case deportation, despite those targeted individuals' originating from Crimea and theoretically being conferred Russian citizenship following annexation. In the case of Ukraine, restrictions implemented since June 2015 appear disproportionately to restrict the movement of foreigners, including journalists, NGOs and individuals with ethnic or other personal connections to Crimea and its residents. The Ukrainian government could also seek ways to simplify procedures of civil registration, document application and educational testing, among others, in order to reduce the needs and difficulties of Ukrainian citizens residing in Crimea to cross back and forth.
179. Grave breaches of international humanitarian law, as provided under the Fourth Geneva Convention, include *inter alia*: torture and ill-treatment; unlawful detention, transfer or deportation of protected civilians; forced conscription into the armed forces; willful deprivation of the Convention's protections of the right to a fair trial; the taking of hostages; and extensive appropriation of property, where not justified by military necessity.²⁷⁹
180. In light of the prohibition of those forms of conduct, the Russian Federation and Crimean *de facto* authorities should ensure that any instances of torture, ill-

²⁷⁷ See above at note 240.

²⁷⁸ See, Ombudsperson of the Russian Federation, Annual Report 2014, Crimea chapter (note 47 above).

²⁷⁹ Article 147, Fourth Geneva Convention (note 17 above).

treatment, hostage taking and expropriation of properties in Crimea are duly investigated, prosecuted and punished – regardless of whether committed by State or non-State actors. Russian Federation authorities and *de facto* authorities should likewise refrain from any of those forms of conduct in the future, as well as the forced conscription of Crimean residents into the armed forces, and refrain from the transfer or deportation of Crimean residents to outside of Crimea (including detainees, convicts, and other persons residing in social-care institutions).

3. Economic, Social and Cultural Rights

181. Crimean residents and IDPs expressed serious concerns to the HRAM regarding the extensive limitations (and potential violations) of their and their families' economic, social and cultural rights – largely resulting from the changes to the legal framework being applied in Crimea. As detailed above, the imposition of Russian citizenship and laws in Crimea has especially impacted the enjoyment of rights by those unwilling to obtain Russian passports or unable to obtain permanent residency permits. Without Russian passports, residents face obstacles re-registering or selling their private properties and businesses;²⁸⁰ gaining or retaining employment; and accessing education, health care, or other social services. While social services and entitlements are legally available to those few people with permanent residency status,²⁸¹ Crimean residents and IDPs described challenges and denials in service resulting from widespread stigmatization and discrimination against those without Russian passports.
182. In addition to exclusion from services, Crimean residents and IDPs also reported facing daunting challenges to obtain documentation and official records from both the Russian and Ukrainian governments, which are often necessary but inaccessible as they try to claim their rights. Both governments thus have roles to play in remedying the problems faced by those seeking to negotiate the two overlapping and conflicting legal regimes.
183. Notably, under Russian federal law and Crimean regulations, Crimea was in a transitional period until 1 January 2015, during which Ukrainian legislation issued prior to 21 February 2014 continued to be applied until corresponding legal acts were adopted by Crimean *de facto* authorities.²⁸² This was applicable

²⁸⁰ See Section 1 above.

²⁸¹ For instance, see Article 1 of the State Council of the Republic of Crimea Law No. 35-LRC “On measures of social support of Certain Categories of Citizens Residing on the Territory of the Republic of Crimea” (entered into force 1 January 2015, amended on 11 February 2015), which indicates the restriction of social support measures to Russian citizens and foreign nationals or stateless persons with permanent residency status.

²⁸² This was confirmed in an August 2014 letter issued by Crimea’s Ministry of Social Policy, which was reviewed by the HRAM, regarding the clarification of social categories of population entitled to obtain social benefits. See “Resolution of the Crimean State Council on Independence of the Crimea” (17

to the Ukrainian Law on Social Services,²⁸³ among other laws, yet those assurances did not appear to translate fully into practice, as multiple sources reported denial of service based on lack of Russian citizenship or documentation.

3.1 Right to education²⁸⁴

184. Under international human rights law and international humanitarian law, the *de facto* authorities in Crimea are required to uphold the right to education of all children in Crimea, irrespective of their nationality.²⁸⁵ The UN Committee on Economic, Social and Cultural Rights elaborated that: “States parties have immediate obligations in relation to the right to education, such as the ‘guarantee’ that the right ‘will be exercised without discrimination of any kind’”.²⁸⁶ Furthermore, children have the right to receive education in their native language, to the extent provided by international standards.²⁸⁷
185. Since annexation, however, children without Russian citizenship or permanent residency status have lost their right to enrol in public education institutions, and potential exclusion from education has allegedly been leveraged by *de facto* authorities to compel citizens to obtain Russian passports. Russian passports have become required for students to continue their studies in both secondary schools and public universities. In schools throughout Crimea, native-language education and language studies in the Ukrainian and Crimean Tatar languages were widely reduced or eliminated, and parents reportedly have been discouraged from requesting such classes be made available – both to the detriment of those communities’ enjoyment of their cultural and language rights. Books in the Ukrainian language, on Ukrainian topics, and by Ukrainian authors were reportedly removed from schools and public libraries. Additionally, diplomas issued by Crimean schools became invalid overnight in the eyes of Ukrainian universities, spurring secondary surges in migration by families seeking to move their children to mainland Ukraine for schooling purposes.
186. As of 5 May 2014, university students were required to re-register as Russian citizens at Crimean universities, presenting their applications to re-enrol with

March 2014); and Russian Federal Constitutional Law of 21 March 2014, available at: http://consultant.ru/document/cons_doc_LAW_160618.

²⁸³ See Law of Ukraine “On Social Services” (19 June 2003).

²⁸⁴ For further analysis of potential discrimination against minority groups, and socio-political dimensions of the regressive developments in the right to education and mother-tongue education, see Section 4 below.

²⁸⁵ Article 13, ICESCR (note 24 above); Article 2, Protocol 1 to the ECHR (note 20 above); Article 4(3)(a) Additional Protocol II (note 30 above); Articles 28–30, CRC (note 26 above).

²⁸⁶ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The right to education (Article 13 ICESCR)*, 8 July 1999, paras. 6(b), 43, 50.

²⁸⁷ Article 27 ICCPR (note 23 above); Art 15. ICESCR (note 24 above); Articles 12-14, FCNM (note 22 above); Articles 29–30, CRC (note 26 above).

Russian passports at latest by 1 March 2015.²⁸⁸ Also in May 2014, local *de facto* Crimean and federal Russian authorities together visited secondary schools in Crimea and reportedly encouraged families to obtain Russian passports. According to a member of the Mejlis, the officials warned him and other parents at the school his children attended that students over 14 years old would be unable to enter secondary school or study thereafter without Russian passports. The officials reportedly started collecting documents on the same day to facilitate registration and processing of passports. The Mejlis member said he was unaware of students who were excluded, since he believed most of the families sought and obtained passports for their children as instructed.²⁸⁹

187. Under the Constitution and legal framework applied in Crimea since annexation, Russian citizens are entitled to receive pre-school, primary general, and basic general education “in their native languages, including Russian, Ukrainian and Crimean Tatar, and the right to learn their native language”.²⁹⁰

188. In practice, however, native-language education and language studies in the Ukrainian and Crimean Tatar languages have been drastically reduced across Crimea. Despite their legal entitlements, the number of students receiving education in the Ukrainian language has dropped precipitously by almost 85 per cent since annexation. As of 24 December 2014, Crimea’s *de facto* Council of Ministers reported that 1,990 students were receiving their academic lessons in the Ukrainian language during the 2014/2015 academic year, as compared to 12,694 students in the 2013/2014 school year. The number of students with the option to study the Ukrainian language had decreased by over 75 per cent in seven months, from 162,764 students in the 2013/2014 school year to 39,150 in the 2014/2015 school year. According to the *de facto* Council of Ministers, the number of students receiving instruction in the Crimean Tatar language dropped more modestly by 12 per cent, from 5,551 in the 2013/2014 school year (in 576 classes), to 4,895 in the 2014/2015 school year (in 331 classes).²⁹¹

²⁸⁸ See Article 5(5) of the Russian Federation Federal Law No 84-FL “On peculiarities of legal regulation of relations in the sphere of 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’” (5 May 2014); available at: <http://www.rg.ru/2014/05/07/regulirovanie-dok.html>.

²⁸⁹ Interview with Mejlis member (Kherson, 14 July 2015).

²⁹⁰ See Article 11(2) of Crimea’s Law “On education in the Republic of Crimea”, adopted by the State Council on 17 June 2015 (enters into force on 1 January 2016). Articles 1(3) and 10 of the Constitution of the Crimean Republic (11 April 2014) provide that the official languages of the Republic of Crimea are Russian, Ukrainian and Crimean Tatar. However, Crimea’s newly adopted education program for 2015 to 2017 reportedly has no section dedicated to language rights Ukrainian Center for Independent Political Research, *‘Annexed’ Education in Temporarily Occupied Crimea* (2015), section I, para. 2. The report cites Crimea’s Council of Ministers Resolution No. 651 “On the Approval of the State Program for the Development of Education and Science in the Republic of Crimea for 2015–2017” (30 December 2014).

²⁹¹ Statistics provided in an official letter from the Council of Ministers of the Republic of Crimea on the number of educational institutions and students studying in the Ukrainian, Russian and Crimean Tatar languages (as of 24 December 2014); facsimile annexed to a submission by Ukrainian NGOs to the

189. An unofficial Turkish delegation to Crimea in May 2015 was informed by Crimean Tatar residents that the hours of instruction in the Crimean Tatar language were reduced in the schools where it was offered.²⁹² One member of the Mejlis in Crimea told the HRAM, “in Crimea, the situation of Ukrainian speakers is even worse in terms of language education [than the situation of Crimean Tatars], since the families are not as well organized as the Crimean Tatar community.”²⁹³
190. According to multiple sources, only about 50 of the 400 classes previously instructed in Ukrainian language remain available to students in Crimean schools.²⁹⁴ However, two sources claimed that officials continue to intimidate parents not to request or enrol their children in those Ukrainian-curriculum classes that are available.²⁹⁵ Out of seven schools instructing solely in the Ukrainian language prior to annexation, only one in Simferopol reportedly remains open. In April 2014, the school’s principal was fired, and subsequently moved to Kyiv.²⁹⁶ The school has since had its Ukrainian-language sign removed; the language of instruction was changed to Russian; and only one course in the Ukrainian language remains available for grades 1 to 9.²⁹⁷
191. *De facto* authorities in Crimea also reportedly closed the Faculty of Ukrainian Philology in the Tauride National University.²⁹⁸ According to one source researching the topic, the faculty had been graduating about 50 Ukrainian-language teachers per year, with three university chairs, which were reduced in the 2014/2015 academic year to a single chair for the Ukrainian language in a “Slavonic” language department, which accepted only 15 students to become

UN Human Rights Committee in its 113th Session. Those statistics were also verified by the Russian MFA on the website of its delegation to UNESCO, available at:

<http://russianunesco.ru/eng/article/2070>.

²⁹² Report of the Unofficial Turkish Delegation to Crimea, *The Situation of the Crimean Tatars since the Annexation of Crimea by the Russian Federation* (5 June 2015), Section 5(g), at pp. 14–15.

²⁹³ Interview with Crimean Field Mission on Human Rights (Kyiv, 7 July 2015).

²⁹⁴ Interview with Andriy Ivanets (note 104 above); interview with Andriy Shekun (note 80 above); also cited as part of Shekun’s presentation of an “Analytical Review: Situation of the Ukrainian Language in Ukraine in 2014–2015”, reported in the news media at http://censor.net.ua/news/343066/v_edinstvennyyu_v_krymu_ukrainskuyu_shkolu_konkurs_57_detevi_na_mesto.

²⁹⁵ Interview with Andriy Shekun (note 80 above); *see also*, Ukrainian Center for Independent Political Research, *‘Annexed’ Education in Temporarily Occupied Crimea* (2015), section II.

²⁹⁶ Interview with Andriy Shekun (note 80 above); interview with Andriy Ivanets (note 104 above). *See also*, News story, “Crimea closed the only Ukrainian-language school” (10/04/2014), available at: <http://www.aif.ua/politic/ukraine/1147286>.

²⁹⁷ Interview with Andriy Shekun (note 80 above); *See also*: http://censor.net.ua/news/343066/v_edinstvennyyu_v_krymu_ukrainskuyu_shkolu_konkurs_57_detevi_na_mesto.

²⁹⁸ Interview with Andriy Ivanets (note 104 above); interview with Andriy Shekun (note 80 above); *see also*, Ukrainian Center for Independent Political Research, *‘Annexed’ Education in Temporarily Occupied Crimea* (2015), section II.

Ukrainian-language teachers, only one of whom agreed to attend.²⁹⁹ In August 2014, the Ministry of Education directed 276 teachers of Ukrainian language and literature to be re-trained for ten months in teaching Russian language and literature.³⁰⁰ Ukrainian language and literature are reportedly now taught in some Crimean schools only once a week or optionally.³⁰¹

192. *De facto* authorities have also reportedly removed all textbooks and educational materials issued by the Ministry of Education of Ukraine,³⁰² and seized books written by blacklisted Ukrainian authors.³⁰³ Crimean Tatar residents informed the unofficial Turkish delegation that Crimean Tatar schools are experiencing a shortage of school textbooks, as those used during Ukrainian rule were banned upon annexation, and new textbooks have not yet been supplied.³⁰⁴ Additionally, the Crimean Field Mission on Human Rights observed that Crimean Tatars are no longer able to hire Turkish teachers for cultural education, as those teachers are now unable to work in Crimea so they have left.³⁰⁵
193. According to Crimean IDPs and media accounts, *de facto* authorities have also taken aim at school and public libraries to purge them of some of their Ukrainian-language contents.³⁰⁶ Some libraries reportedly discarded Ukrainian-language periodicals (including *Dumka*, *Crimean Word*, and *Word of Sevastopol*); and schools named after Ukrainian writers (including Olena Teliga and Ivan Franko) have allegedly been renamed.³⁰⁷ The allegations in the media were consistent and reportedly based on eyewitnesses quoted, though the HRAM was unable to independently verify their claims.

²⁹⁹ Interview with Andriy Shekun (note 80 above).

³⁰⁰ Ukrainian Center for Independent Political Research, *'Annexed' Education in Temporarily Occupied Crimea* (2015), section II. The report cites Order No. 132 of the Ministry of Education in Crimea. *See also*, news story, "Kremlin stooge 'smooth out' the Crimea from the teachers of the Ukrainian language" (15 July 2014), available at: http://censor.net.ua/news/293933/marionetki_kremlya_zachischayut_krym_ot_uchitelevi_ukrainskogo_yazyka.

³⁰¹ Ukrainian Center for Independent Political Research, *'Annexed' Education in Temporarily Occupied Crimea* (2015), section I, para. 3. *See also*, news story, "Only in Crimea" (8 July 2014), available at: http://censor.net.ua/news/343066/v_edinstvennyyu_v_krymu_ukrainskuyu_shkolu_konkurs_57_deteyi_na_mesto.

³⁰² MFA of the Russian Federation, in its submission to UNESCO (14 April 2015), available at: <http://russianunesco.ru/eng/article/2070>; interview with Andriy Shekun (note 80 above); Ukrainian Center for Independent Political Research, *'Annexed' Education in Temporarily Occupied Crimea* (2015), section I, para. 1.

³⁰³ Interview with Andriy Shekun (note 80 above); Ukrainian Center for Independent Political Research, *'Annexed' Education in Temporarily Occupied Crimea* (2015), section I, para. 1.

³⁰⁴ Report of the Unofficial Turkish Delegation to Crimea, *The Situation of the Crimean Tatars since the Annexation of Crimea by the Russian Federation* (5 June 2015), Section 5(g), at pp. 14–15.

³⁰⁵ Interview with Mejlis member (13 July 2015).

³⁰⁶ Interview with Crimean IDP (Kyiv, 9 July 2015). News article, "Ukrainian books are being destroyed in front of students in Crimean schools – Mejlis" (14 October 2014): <http://censor.net.ua/n306932>. News article from 30 December 2014: <http://censor.net.ua/p318668>.

³⁰⁷ Interview with Andriy Shekun (note 80 above). *See also*, news story, "Only in Crimea" (note 301 above).

194. Many Crimean residents and IDPs expressed concern to the HRAM about the drop in availability of Ukrainian-language education in Crimean schools.³⁰⁸ One mother from Yalta said that education had previously been available in Russian, Ukrainian and Tatar languages in the local school system. However, only one school in Yalta continued to offer Ukrainian-language education, out of seven that did so previously, which she said presents problems for children seeking to transfer to Ukrainian schools.³⁰⁹ One Yalta school principal, who was a Ukrainian-language teacher, was also fired by *de facto* authorities, she said. Another Crimean resident noted that the primary school his son was entering was Russian-language only, without any option for Ukrainian studies despite the constitutional guarantees. A Crimean IDP from Bakhchysarai claimed that his child's Ukrainian-language school not only dispersed his whole class, but also split the class members across many classes to keep them from staying in touch as a Ukrainian-language group.
195. Children enrolled in Crimean schools now face additional difficulties to enter Ukrainian universities. As diplomas issued by Crimean schools are now invalid in the eyes of Ukrainian universities, there were reportedly numerous families migrating to mainland Ukraine from Crimea in August and September 2014, or traveling back and forth, in order to take standardized tests and enrol their children in the Ukrainian school system.³¹⁰ Crimean residents and IDPs expressed relief to the HRAM that their children are now able to do some distance learning programs to acquire Ukrainian high school diplomas, and hoped those opportunities would be expanded.³¹¹
196. According to the Ukrainian President's representative for Crimea, Natalya Popovych, only 300 of approximately 12,000 school graduates from Crimea received official Ukrainian diplomas in the 2014/2015 school year, including through standardized tests which they took in mainland Ukraine.³¹² Popovych informed the HRAM that she planned to appeal to the Ministry of Education to simplify the process for Crimean students wishing to gain Ukrainian diplomas and transition into Ukrainian universities, including since repeatedly traveling to mainland Ukraine is a stressful process for students wishing to take multiple-phase entrance exams.³¹³

³⁰⁸ Interviews with Crimean journalists (in Kyiv, and in Crimea by phone; July 2015).

³⁰⁹ The drop to one from seven schools previously offering Ukrainian-language education in Yalta is also confirmed in the report by Ukrainian Center for Independent Political Research, *'Annexed' Education in Temporarily Occupied Crimea* (2015), section II.

³¹⁰ Interview with director of NGO Crimean Diaspora (Kyiv, 7 July 2015).

³¹¹ One such distance learning program is available at: <http://educrimea.org>.

³¹² News story, "Out of 12,000 school graduates in Crimean, only 300 persons received Ukrainian diplomas", available at: <http://ru.slovoidilo.ua/2015/05/29/novost/obshhestvo/iz-12-tys.-vypusnikov-krymskix-shkol-ukrainskie-attestaty-poluchili-tolko-300> (29 May 2015).

³¹³ Meeting with Nataliya Popovych (note 92 above).

197. In order to combat discrimination against Crimean IDPs in the field of education, the Crimea Unit of the Office of the Prosecutor General in Ukraine informed the HRAM it supported students seeking to enrol in Ukrainian universities. In November 2014, the unit said it submitted a lawsuit against a public university for not accepting the transfer of a student from Crimea for lack of credits, even though he had all adequate credits, such that it constituted a discriminatory exclusion. The University then allowed the student to enrol, likely in order to avoid a lengthy legal process.³¹⁴

3.2 Right to work

198. In their May 2014 joint report, ODIHR and HCNM said it was critical for the *de facto* authorities in Crimea to prevent discrimination on the basis of citizenship in the enjoyment of the right to work, and “to ensure that all individuals permanently resident in Crimea, including both Russian and Ukrainian citizens, retain their employment rights in Crimea”.³¹⁵

199. Article 6 of the International Covenant on Economic, Social and Cultural Rights provides the right to gain a living by freely chosen work, and obligates States parties to safeguard that right without discrimination.³¹⁶ Under the Fourth Geneva Convention, an occupying power is also prohibited from sanctioning or changing the status of civil servants and judges in the occupied territory for not fulfilling their functions for reasons of conscience.³¹⁷

200. As with other rights, however, the right to work has not been enjoyed equally in Crimea since annexation. According to Crimean human rights lawyers now working from Kyiv, Ukrainian citizens face obstacles obtaining and retaining employment in Crimea, and in some cases have been fired from their jobs due to lack of Russian passports.³¹⁸ Stigmatization is reportedly also very high for Ukrainians without Russian passports, and is coupled with the legal hurdles. One Crimean resident and one IDP from Crimea reported considerable social and economic discrimination against pro-Ukrainian residents who did not obtain Russian passports in Crimea, who they said faced difficulties obtaining both permits and work.³¹⁹ Another Crimean resident was reportedly fired from the public hospital where she worked, since she had not obtained either a Russian passport or a permanent residency permit after the annexation.³²⁰

201. The most serious restrictions of Crimean residents’ right to work have been in the public sector, for those holding government and municipal jobs in Crimea.

³¹⁴ Meeting with the Crimea Unit of the Office of the Prosecutor General of Ukraine (Kyiv, 16 July 2015).

³¹⁵ See, 2014 joint report of ODIHR/HCNM (note 1 above), paras. 101–102.

³¹⁶ Article 6, ICESCR (note 24 above).

³¹⁷ Article 54 of the Fourth Geneva Convention (note 17 above).

³¹⁸ Interview with Crimean lawyers (Kyiv, 9 July 2015).

³¹⁹ Interviews with Crimean resident and Crimean IDP (Kyiv, 7 July 2015).

³²⁰ Interview with Crimean resident (Skype, 17 July 2015).

Under the March 2014 law of the Russian Federation that annexed Crimea, residents with second citizenships or permanent residency status in another country were expressly prohibited from holding civil service positions after one month from the start of annexation.³²¹ In May 2014, a new Crimean law on civil service further required civil servants not only to possess a Russian passport, but also “a copy of the document confirming denial of existing citizenship of another State and the surrender of a passport of another State.”³²² Crimean residents working in the civil service were thus required to either leave their jobs, or forfeit their Ukrainian citizenship and obtain Russian passports. Members of the judiciary were required to do the same, and contrary to international humanitarian law had their status redefined on a temporary basis during a probation period.³²³

202. The Ukrainian government reported the total number of civil servants working in Crimea was 10,670 in 2009.³²⁴ In contrast, the head of the FMS department for citizenship, asylum and readmission in Crimea claimed in the media that 19,000 Crimean residents applied to renounce their Ukrainian citizenship.³²⁵ As judges, lawyers, doctors and other professions also faced limitations in their professions without Russian passports,³²⁶ it is possible workers outside the civil service were likewise compelled to renounce their Ukrainian citizenship in order to keep their jobs, including in the face of reportedly widespread discrimination.

203. One Crimean IDP who had worked as a government lawyer in Sevastopol informed the HRAM that she moved to Kyiv with her colleagues immediately after the referendum, and was thereby able to keep her job.³²⁷ Another Crimean

³²¹ Article 4 of Federal Constitutional Law No. 6- FKZ, “On the Acceptance 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” (23 March 2014).

³²² Article 11, Law of the Republic of Crimea “On State Civil Service of Republic of Crimea” from May 29, 2014 No.7-LRC.

³²³ Article 9, Federal Constitutional Law No. 6- FKZ, “On the Acceptance 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). *See also, Human rights in Ukraine 2014: Human rights organizations’ report* (note 211 above), p. 38.

³²⁴ *See* the website of the National Agency of Ukraine on Civil Service, “Statistical data on civil servants in the Autonomous Republic of Crimea in 2007–2009”, available at:

<http://guds.gov.ua/sub/krym/ua/publication/content/10636.htm?lightWords=%D0%BA%D1%96%D0%BB%D1%8C%D0%BA%D1%96%D1%81%D1%82%D1%8C%20%D0%B4%D0%B5%D1%80%D0%B6%D0%B0%D0%B2%D0%BD%D0%B8%D1%85%20%D1%81%D0%BB%D1%83%D0%B6%D0%B1%D0%BE%D0%B2%D1%86%D1%96%D0%B2>.

³²⁵ *See* news article, “FMS of Russia: 19 thousand people renounced the Ukrainian citizenship in Crimea”: <http://ru.krymr.com/content/news/27024784.html>.

³²⁶ Survey of free legal aid lawyer working in Crimea (August 2015). For instance, lawyers without Russian citizenship are not allowed to provide legal assistance in the territory of the Russian Federation on issues related to State secrets of the Russian Federation. Russian Federal Law No. 63-FZ “On Advocacy and the Legal Profession in the Russian Federation” (31 May 2002), available at: http://www.consultant.ru/document/cons_doc_LAW_36945/.

³²⁷ Interview with Crimean IDP (Kyiv, 7 July 2015).

IDP noted that many civil servants who left their jobs were being replaced with immigrating Russian citizens.³²⁸

3.3 Right to health

204. Under Article 12 of the International Covenant on Economic, Social and Cultural Rights, the Russian Federation and Ukraine are obligated to realize the highest attainable standard of physical and mental health for Crimean residents.³²⁹ In its General Comment No. 14 on the right to health, the UN Committee on Economic Social and Cultural Rights, reminded all States party to the ICESCR of the “minimum essential levels of each of the rights enunciated in the Covenant, including essential primary health care.” Those minimum essential levels include, *inter alia*: “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. Of comparable priority is the obligation “to take measures to prevent, treat and control epidemic and endemic diseases”.³³⁰ Additionally, under international humanitarian law, an occupying power is obligated to ensure food, hygiene, public health and medical supplies for the inhabitants of occupied territories.³³¹
205. According to Crimean residents and IDPs, as well as organizations supporting their health needs in mainland Ukraine, there have been multiple retrogressive measures introduced in Crimea since annexation that have undermined enjoyment of the right to health. Namely, the availability of public health care has been restricted for those without Russian citizenship; basic medicines have become much less available; the number of medical doctors has decreased; testing and treatment are widely unavailable for TB and HIV/AIDS;³³² and harm-reduction substitution therapies previously available to injecting drug users have been criminalized and cut off, including for persons in places of detention.
206. The availability of health care to persons in places of detention has been further reduced by the cut-off of access to prisons for NGOs providing medical services.³³³ Additionally, persons in places of detention are unable as-of-yet to seek transfers to Crimean hospitals or to specialized facilities in mainland Ukraine, as many other Crimean residents have chosen to do since annexation.

³²⁸ Interview with Crimean IDP (Kyiv, 7 July 2015).

³²⁹ Article 12, ICESCR (note 24 above).

³³⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, UN Doc. E/C.12/2000/4, paras. 43 and 44.

³³¹ Articles 55 and 56 of the Fourth Geneva Convention (note 17 above).

³³² Notably, according to media accounts, a TB epidemic was spreading in the Crimean region of Feodosia, which recorded a 39 per cent increase in new cases compared to the preceding year, and led to fears the problem could spread throughout Crimea: <http://grim.in.ua/news/2015/06/12/21883>.

³³³ Email drafted by health-related NGO in Crimea (July 2015).

Notably, the prison-monitoring National Preventive Mechanism of the Ukrainian Ombudsperson institution reported that one-third (six of 18) individual complaints it has received from Crimean places of detention since annexation have been in relation to the right to health, including requests for medical and sanitary support.³³⁴

207. In a positive development, however, *de facto* authorities in Crimea in April 2015 introduced financial support for the prevention and treatment of HIV and hepatitis B and C, under a region-wide long-term health program.³³⁵
208. Three Crimean IDPs, one of whom previously worked in a hospital in Crimea, informed the HRAM that shortages of medicines in Crimea have often forced people to travel to mainland Ukraine to purchase pharmaceuticals, or else to have friends or relatives send them.³³⁶ Three Ukrainian officials independently confirmed that the increased cost and inaccessibility of pharmaceutical drugs in Crimea were some of the driving factors of travel to mainland Ukraine,³³⁷ including for some Crimean residents and IDPs who are in need of special medications for serious illnesses.³³⁸
209. For Crimean residents without Russian passports, there are reportedly challenges to access even those services that are available in Crimea. All Crimean residents and IDPs interviewed who had sought healthcare in Crimea since annexation claimed that it is necessary to have a Russian passport or residency permit to receive treatment at public hospitals.³³⁹ A current Crimean resident without a Russian passport, yet who was able to obtain a permanent residency permit, informed the HRAM that he was technically eligible to go to public hospitals, though he had not tested the system and sought medical

³³⁴ Meeting with Ombudsperson of Ukraine and NPM chief (Kyiv, 16 July 2015). The National Preventive Mechanism and international organizations have had no direct access to prisons in Crimea since annexation, so are unable to monitor conditions directly. However, a legal aid lawyer in Crimea informed the HRAM that pre-trial detention facilities are overcrowded to the point that detainees are forced to sleep in shifts due to lack of beds. Survey of free legal aid lawyer working in Crimea (August 2015).

³³⁵ Council of Ministers of Crimea, Resolution No. 220 “On financial support of purchases of antiviral drugs for the prevention and treatment of people infected with HIV and hepatitis B and C, as well as the implementation of measures for the prevention of HIV and hepatitis B and C. under the State health Development Program in the Republic of Crimea for years 2015–2017” (28 April 2015), available at: http://rk.gov.ru/rus/file/pub/pub_244185.pdf.

³³⁶ Interviews with Crimean IDPs (Kyiv, 7 July 2015).

³³⁷ Meeting with Aslan Omer Kirimli, Chairman of the State Service of Ukraine on issues of the Autonomous Republic of Crimea and city of Sevastopol (Kyiv, 8 July 2015); and meeting with Nataliya Popovych (note 92 above).

³³⁸ Meeting with State Emergency Service of Ukraine (Kherson, 14 July 2015).

³³⁹ See Article 11, Federal Constitutional Law No. 6- FKZ (note 36 above), in conjunction with Russian Federal Law No. 326-FZ “On compulsory health insurance in the Russian Federation” (29 November 2010); and Federal Law No. 313-FZ of 29 November 2010 “On Amendments to Certain Legislative Acts of the Russian Federation in connection with adoption of the Federal Law ‘On Mandatory Medical Insurance in the Russian Federation’” (1 January 2011), available at: <http://www.rg.ru/2010/12/03/medicina-dok.html>.

assistance in Crimea, due to the long lines and bribes that must be paid to receive health care.³⁴⁰ Those without Russian citizenship claimed that they could only go to private clinics. Another current resident observed that the number of medical doctors has now decreased, from about 20 per neighbourhood previously to now only 7 or 8, and is insufficient to meet demand. The resident reported that this was due to recent reductions in doctors' salaries, which did not meet the former promises of high pay or their expectations, and thus drove some doctors to leave Crimea.³⁴¹

210. According to an NGO in Kherson that works with people living with HIV/AIDS, as well as injecting drug users requiring opioid substitution therapy (OST), approximately 1,000 Crimean residents have travelled to mainland Ukraine for the NGO's assistance since annexation.³⁴² Of the OST patients, most of them reportedly came from Sevastopol, Simferopol and Yalta, where they now lack access to substitution therapy in Crimea, as possession of the OST drugs is a criminal offense under Russian law.³⁴³ The NGO estimated that over 100 injecting drug users have come to them for assistance regularly for more than a year, who are not otherwise receiving treatment. Most of those receiving substitution therapy treatment not only have drug addictions, but also HIV and accompanying diseases. The NGO provides them with testing for HIV, TB and other diseases, and refers them to appropriate help as needed. Some recipients of assistance have moved to mainland Ukraine, while others have come for detox and treatment and then returned to Crimea.³⁴⁴
211. Those people coming to the NGO for assistance have reportedly alleged that Crimean *de facto* authorities have searched local NGOs previously providing assistance, and that narcotics units in Crimea frequently harass injecting drug users, plant drugs on them and arrest them. As a result, the network of people needing and providing substitution therapy in Crimea was dispersed. Some care recipients expressed fears that they would be easy to find through health database records, so have decided not to get new passports, due to which they can no longer travel. Other people reportedly crossed the ABL illegally without documentation.³⁴⁵

³⁴⁰ Skype and in-person interviews with Crimean residents and IDPs (July 2015).

³⁴¹ Ibid.

³⁴² Meeting with NGO Mangust in Kherson (15 July 2015). The NGO said that the geographical origins of patients from Crimea were identifiable through their encoded personal case file number.

³⁴³ Articles 188 and 228 of the Criminal Code of the Russian Federation (note 165 above). For further background, see, Human Rights Watch, "Submission to the Committee on Economic, Social and Cultural Rights regarding the Russian Federation's Fifth Periodic Report", available at: http://www2.ohchr.org/english/bodies/cescr/docs/ngos/HRW_RussianFederationWG44.pdf. See also, "Information submitted by the Russian Federation in response to the enquiry of the Special Rapporteurs of the United Nations Human Rights Council", available at: https://spdb.ohchr.org/hrdb/25th/Russie_19.02.14_%2811.2013%29_Trans_Pro.pdf.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

212. In May 2014, the UN Secretary-General's Special Envoy on HIV/AIDS in Eastern Europe and Central Asia forecasted drastic increases in HIV infection rates and increased risks to public health as a consequence of the policy changes in Crimea, including the criminal ban on methadone substitution therapy for injecting drug users.³⁴⁶ According to OHCHR, up to 30 people reportedly died in Crimea due to drug overdoses or chronic illnesses from March 2014 to May 2015.³⁴⁷
213. In April 2014, an OST patient and activist from Simferopol produced a video featuring 10 of the 803 people reportedly receiving substitution therapy at the time of annexation, who each pleaded publicly for their treatment to continue, saying "don't let me die."³⁴⁸ A follow-up video produced by the same filmmaker in December 2014 reported: "2 of 10 participants of this video have died. 3 of 10 left Crimea to survive. In total, more than 20 people died in Crimea after closure of substitution therapy programs. Why should there be any more victims? While we were making this film, one more patient from the Simferopol OST program died."³⁴⁹

3.4 Right to social security (pensions)

214. Under the International Covenant on Economic, Social and Cultural Rights, both the Russian Federation and Ukraine are obligated to ensure social security for their citizens in Crimea.³⁵⁰ The UN Committee on Economic, Social and Cultural Rights has elaborated that the right to social security is broad and multi-faceted:

"The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents."³⁵¹

215. In their May 2014 joint report, ODIHR and HCNM called on authorities to "ensure citizenship issues do not negatively affect access to social benefits and

³⁴⁶ Michel Kazatchkineun, UN Secretary-General Special Envoy on HIV/AIDS in Eastern Europe and Central Asia, "Russia's Ban on Methadone for Drug Users in Crimea Will Worsen the HIV/AIDS Epidemic and Risk Public Health" (9 May 2014), available at: <http://www.michelkazatchkine.com/?p=149>.

³⁴⁷ OHCHR Report of May 2015 (note 112 above), para. 171.

³⁴⁸ See online video, "Save 800 OST patients being held hostage in Crimea" (April 2014), available at: <https://www.youtube.com/watch?v=H8gF7SgPbjk>.

³⁴⁹ See online video, "The First Crimean Victims" (December 2014), available at: <https://www.youtube.com/watch?v=G9zhiLK5AGY>.

³⁵⁰ Article 9, ICESCR (note 24 above).

³⁵¹ See, CESCR, General Comment No. 19: The right to social security (Article 9), UN Doc. E/C.12/GC/19 (4 February 2008), para. 2.

pensions for all current residents of Crimea.”³⁵² In July 2015, several Crimean IDPs and residents who did not accept Russian citizenship and pension entitlements in Crimea informed the HRAM of specific difficulties they experienced in seeking to continue to claim their Ukrainian pension payments while in or displaced from Crimea.

216. The Russian Federation has applied a number of social security protections in Crimea under Russian legislation,³⁵³ and thousands of pension-age Crimean residents who acquired Russian citizenship after annexation have reportedly seen their pensions double in size under the Russian system.³⁵⁴ According to the Ombudsperson of the Russian Federation, in spite of the absence of Russian citizenship, those who rejected Russian citizenship and stayed in Crimea “who are pensioners are entitled to pension benefits until December 2015 under Russian legislation.”³⁵⁵ However, Crimean IDPs and residents who rejected Russian passports while retaining their Ukrainian citizenship have experienced obstacles in continuing to receive their Ukrainian pension payments. In large part, those challenges have comprised Ukrainian requirements for pensioners to physically re-register in mainland Ukraine, and present confirmation from Russian authorities that they are not already receiving pensions in Crimea.³⁵⁶
217. According to the Ukrainian Ministry of Social Policy (MSP), IDPs from Crimea in mainland Ukraine are required to present a passport and IDP registration certificate, in order to resume payments at their new residence outside of Crimea. Ukrainian citizens still residing in Crimea are required to physically register to redirect their payments at the local branch office in Kherson Oblast. All Crimean residents and IDPs are required to send a request letter to Moscow authorities (not *de facto* authorities in Crimea) to confirm they are not receiving pensions from the Russian Federation. Even if Russian authorities do not respond, MSP indicated that the effort of confirmation is considered to be a sufficient demonstration. As of 8 July 2015, a total of 2,700 registered IDPs from Crimea had applied to redirect their pension payments to new residences in mainland Ukraine, whereas approximately 200 Ukrainian pensioners still residing in Crimea have applied to continue their pension payments through the Kherson Oblast administration.

³⁵² 2014 joint report of ODIHR/HCNM (note 1 above), at p. 125.

³⁵³ See, e.g., Russian Federal Law No. 326-FL “On mandatory health insurance in the Russian Federation” (2010).

³⁵⁴ The HRAM could not independently confirm this assertion, though notes that the legal framework presently being applied in Crimea did foresee the extension of previously received Ukrainian entitlements during the transition to Russian rule, though only until 31 December 2014 (see note 282 above). See, Ombudsperson of the Russian Federation, Annual Report 2014, Crimea chapter (note 47 above).

³⁵⁵ Ibid.

³⁵⁶ Meeting with MSP in Kyiv (8 July 2015); meeting with Departments on Social Protection of Population (Odessa, 10 July 2015), meeting with Departments on Social Protection of Population (Kherson, 14 July 2015). According to MSP, Resolution No. 234 of 2 July 2014 explains the application procedure in general.

218. Crimean IDPs informed the HRAM that there was a lack of awareness of the requirements for Crimean residents to continue receiving their Ukrainian pensions, as well as difficulties obtaining evidence from Russian authorities that applicants were not receiving Russian pensions.³⁵⁷ An organization that helps Crimean IDPs in Kyiv region said that those who have left Crimea have had few problems claiming pensions in Ukraine, and that it just takes time and some bureaucratic hurdles – including to gain local residency status and request required documentation through Moscow.³⁵⁸
219. The State Emergency Services of Ukraine (SES) informed the HRAM that Crimean residents who are not presently paying into the pension fund will have equivalent funds deducted from later payments, yet that they only have to prove their eligibility to continue receiving payments. However, Ukraine’s Department on Social Protection of Population in Kherson Oblast claimed that IDPs seeking to register for payments are generally unable to obtain official documents previously issued by the Ukrainian government from *de facto* authorities in Crimea. For instance, documentation of Crimean residency and statements of past benefits received, were previously only available in hard copies at local social services offices, which are now in the possession of Crimean *de facto* authorities. The Ministry of Social Policy recently developed electronic forms to simplify the procedure, and liaises with other agencies or ministries to seek and request additional records as necessary to approve disbursements.³⁵⁹ However, not all IDPs are aware of the revised process yet, so it appears that greater awareness raising is necessary to facilitate broader access of Crimean IDPs and eligible residents to their Ukrainian pension entitlements.

3.5 Summary of findings

220. The imposition of Russian citizenship and laws on residents of Crimea has had regressive effects in the enjoyment of economic, social and cultural rights by some residents of Crimea. In particular, the conditioning of social entitlements on Russian citizenship or residency permits for foreigners has resulted in loss of employment, especially in the public sector; and restrictions on access to health care, education and other social services. Crimean residents and IDPs have also reported reductions in the availability of language studies and native-tongue education in the Ukrainian and Crimean Tatar languages.
221. Due to the differential impact of those regressive effects on ethnic Ukrainians and Crimean Tatars, as well as on those refusing Russian citizenship for

³⁵⁷ Interviews with Crimean IDPs and residents (Kyiv, 7 July 2015).

³⁵⁸ Meeting with NGO Crimean Diaspora (Kyiv, 7 July 2015).

³⁵⁹ Meeting with Department on Social Protection of Population (Kherson, 14 July 2015).

political or other reasons, they appear to result in both direct and indirect discrimination in the fulfilment of economic, social and cultural rights.³⁶⁰

222. In keeping with the obligation of progressive realization under the ICESCR, and the presumption against retrogressive measures, *de facto* authorities should facilitate and ensure equal enjoyment by Crimean residents of all economic, social and cultural rights and entitlements.³⁶¹ At a minimum, such entitlements should be equivalent to those provided under the Ukrainian legal framework, including for Ukrainian citizens who continue to reside in Crimea, irrespective of their possession of Russian passports or residency permits.³⁶² As civil servants and members of the judiciary in Crimea are already familiar with the Ukrainian legal framework and its entitlement system, implementation of equivalent entitlements would likely not entail an excessive burden on the bureaucracy of Crimean institutions.

4. Situation of Minority Communities

223. Since the annexation of Crimea in March 2014, the Crimean Tatar and ethnic Ukrainian communities have been subjected to increasing pressure on and control of the peaceful expression of their political views and cultural practices. The situation has become particularly precarious for those who have openly opposed the takeover of Crimea or refused to take Russian citizenship.

224. This section reviews the situation in several areas of particular importance to minority communities, including related to the exercise of their political and civil rights, the functioning of self-government institutions, relevant aspects of freedom of religion, their cultural rights, and their right to education in and of their mother-tongue languages. It also briefly discusses developments related to the future of informal settlements of Crimean Tatars – an important issue in view of the return of Crimean Tatars to Crimea and the necessity of restoring

³⁶⁰ See Article 2(2), International Covenant on Economic, Social and Cultural Rights, 1966 (993 UNTS 3); and, UN Committee on Economic, Social and Cultural Rights, *General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights (Article 2, para. 2)*, 10 June 2009, E/C.12/GC/20; 16 IHRR 925 (2009), paras. 30-35.

³⁶¹ The Committee on Economic, Social and Cultural Rights has noted there is a “strong presumption of impermissibility of any retrogressive measures.” See CESCR, *General Comment No. 13: The right to education (Article 13)*, 8 December 1999, E/C.12/1999/10; 7 IHRR 303 (2000) at para. 45. See also CESCR, *General Comment No.14: The right to the highest attainable standard of health (Article 12)*, 11 August 2000, E/C.12/2000/4; 8 IHRR1 (2001), at para. 32.

³⁶² Extending equal social entitlements to Ukrainian residents of Crimea as they enjoyed prior to annexation would also reflect international standards and best practices. Though it applies to successor States, as opposed to situations of occupation such as in Crimea, Article 20 of the European Convention on Nationality (note 35 above) similarly provides: “Each State Party shall respect the following principles: nationals of a predecessor State habitually resident in the territory over which sovereignty is transferred to a successor State and who have not acquired its nationality shall have the right to remain in that State; persons referred to in sub-paragraph (a) shall enjoy equality of treatment with nationals of the successor State in relation to social and economic rights.”

their rights as formerly deported people. The situation of the Crimean Tatar media is covered in Section 1.7 above.

4.1. Crimean Tatar community

4.1.1 Self-governing organizations of Crimean Tatars

225. The Mejlis and prominent Crimean Tatar leaders have been the main targets of reprisals by the *de facto* authorities against communities opposing the illegal annexation. The Mejlis is a self-governing body of the Crimean Tatars elected by a people's assembly, the Qurultai.³⁶³
226. Since the beginning of mass return in the late 1980s, the Mejlis has played a key role in protecting and promoting the rights of Crimean Tatar returnees to Crimea.³⁶⁴ After the illegal annexation of Crimea, the Mejlis represented and defended the interests of the community in dealings with the authorities exercising *de facto* control in Crimea.³⁶⁵
227. The Mejlis openly opposed what it sees as the Russian Federation's illegal annexation of Crimea and called on Crimean Tatars to boycott the so-called March 2014 referendum on Crimea's status and the September 2014 *de facto* local elections. It also exposed the targeted actions by so-called "self-defence" militias, who were implicated in a number of serious human rights abuses and in a campaign of intimidation of the Crimean Tatar and other people with pro-Ukrainian views on the peninsula,³⁶⁶ calling on the authorities exercising *de facto* control in Crimea to rein in, disarm and disband the militia.³⁶⁷
228. Prominent Crimean Tatar leaders and Mejlis members have remained staunch and vocal opponents to the rule of the authorities exercising *de facto* control in Crimea and have galvanized the support of the Crimean Tatar community. After initial attempts in March 2015 to win over the support of the Mejlis failed,³⁶⁸ the

³⁶³ The Qurultai is considered to be the highest representative body of Crimean Tatars. Members of the Qurultai are directly elected by the Crimean Tatar community. Between sessions of the Qurultai, the representative and executive powers, on behalf of the Crimean Tatar people, are vested in the Mejlis. The Qurultai elects the members of the Mejlis. The Mejlis was not recognized as a body of self-governance or as a legal entity by the Ukrainian authorities until the Verkhovna Rada adopted a decision on the recognition of Crimean Tatars as an indigenous people on 20 March 2014.

³⁶⁴ OSCE HCNM, *The Integration of Formerly Deported People in Crimea, Ukraine: Needs Assessment* (The Hague: August 2013, available at: <http://www.osce.org/hcnm/104309>); and 2014 joint report of ODIHR/HCNM (note 1 above), pp. 112–113.

³⁶⁵ *Ibid.*, p.116.

³⁶⁶ Human Rights Watch, *Rights in Retreat* (see note 62 above), pp. 20–23.

³⁶⁷ Заявление Президиума Меджлиса "Об эскалации беззакония в Крыму" от 22 апреля 2014 г. (Statement of the Presidium of the Mejlis of Crimean People "On the escalation of lawlessness in Crimea" from 22 April 2014), available in Russian at: <http://qtmm.org/об-эскалации-беззакония-в-крыму>.

³⁶⁸ See 2014 joint report of ODIHR/HCNM (note 1 above), p. 116–117.

authorities exercising *de facto* control in Crimea adopted repressive policies, first and foremost targeting the Mejlis and its most prominent activists.

229. In April and May 2014, the long-time leader of the Crimean Tatar people and former chairperson of the Mejlis, Mustafa Dzhemilev, and QHA news agency general co-ordinator and adviser to the Mejlis, Ismet Yuksel, were declared *personae non grata* and banned from entering Crimea for five years. On 3 May 2014, Dzhemilev attempted to enter the territory of Crimea and was stopped at the administrative border of Kherson Oblast. Up to 2,000 Crimean Tatars gathered to support Dzhemilev and to protest the entry ban.
230. On 5 May 2014, the *de facto* prosecutor of Crimea issued a warning to the Chairperson of the Mejlis, Refat Chubarov, notifying him that the Mejlis could be banned on the grounds of involvement in the organization of extremist activities in connection with the 3 May event (see paragraph above). On 5 July, while he was away from Crimea, Chubarov was also served a notice by the *de facto* Prosecutor's Office of Crimea, banning him from entering the peninsula for five years.
231. The period since early July 2014 has been marked with a wave of "preventive talks" by the security service; warnings from the *de facto* Prosecutor's Office of Crimea; and the interrogation and detention of Crimean Tatar leaders and activists, on charges related to extremism, participation in and membership of radical religious organizations and/or taking part in illegal assemblies. During this period, using the Russian Federation's broad anti-extremism legislation, the authorities exercising *de facto* control in Crimea have issued several "anti-extremist warnings" to the organizations and activists connected with the Mejlis. The pressure mounted further in the run-up to the local elections organized by the *de facto* authorities in September 2014 and especially after the Crimean Tatar community largely heeded the calls of the Mejlis leaders to boycott them.
232. On 16 September 2014, just two days after the elections, the police in Simferopol conducted a 17-hour search of the offices of the Mejlis on the premises owned by the Crimea Fund, a charitable organization that provides administrative support to the Mejlis, and the Mejlis newspaper *Avdet*. The next day, the executive director of the Crimea Fund was given a court order stipulating that the property of the Crimea Fund was to be confiscated. Hence, the Mejlis' property was effectively seized.³⁶⁹
233. On 25 September 2014, the economic court ruled in favour of the company that manages the real estate property of Bakhchysarai City Council to terminate a contract with the public foundation Council of Teachers, which had rented premises to the regional Mejlis in Bakhchysarai. In March 2015, the appeals

³⁶⁹ Interview with Crimean Tatar activists (Kyiv, 20 July 2015).

court in Sevastopol upheld this decision. On 31 March 2015, the regional Mejlis vacated the premises.³⁷⁰

234. In October 2014, the *de facto* Prosecutor's Office of Crimea opened a number of cases related to the 3 May events mentioned earlier, which are known as the "3 May" case. To date, two activists have been tried and sentenced and three more remain under criminal investigation.³⁷¹
235. The authorities exercising *de facto* control in Crimea also initiated and completed administrative proceedings against scores of Crimean Tatars in connection with the 3 May events, fining at least 140 of them for "public disorder" and "unlawful border crossing".³⁷²
236. At the end of January 2015, the *de facto* Prosecutor's Office of Crimea opened a criminal case in relation to the events of 26 February 2014, when Crimean Tatars and pro-Russia demonstrators clashed in front of Crimea's parliament building, events that took place before the annexation of Crimea. Seven people, including the deputy chairperson of the Mejlis and the head of the regional Mejlis in Bakhchysarai, Akhtem Chiyoqoz, were arrested and charged with the organization of and participation in mass riots. The majority of them are facing from four to ten years in prison, in accordance with Article 212(1)(2) of the Criminal Code of the Russian Federation. Chiyoqoz's custody has been extended until 19 November 2015. Dozens of people have been interrogated and over 30 homes have been searched in relation to this case.³⁷³

³⁷⁰ Ibid.

³⁷¹ "May 3" case: five people were arrested in October 2014 and January 2015, namely, Edem Osmanov, Edem Ebulisov, Tair Smedlyayev, Musa Apkerimov and Rustam Abdurakhmanov. Edem Osmanov was released on bail guaranteed by Remzi Ilyasov, the *de facto* Deputy Speaker of the State Council of Crimea. The rest were released on bail guaranteed by Eskander Bilyalov, Advisor to the so called Plenipotentiary Representative of the President of the Russian Federation in the Crimea Federal District and chairman of Sakskiy Regional Mejlis. Musa Abkerimov was tried and sentenced on 28 May 2015 to a suspended sentence of four years and four months with a three-year probation period. On 4 August 2015, the Court of Armyansk tried Edem Ebulisov, who was charged under Article 318 (1) of the Russian Criminal Code – "The use of violence against a state official" – and sentenced him to a fine in view of his pleading guilty. On 18 August, the Court in Armyansk continued to hear the case of Tair Smedlyayev. The next hearing will take place on 7 September 2015. The next hearing in the case of Edem Osmanov will take place on 15 September 2015. The HRAM is not aware of the current status of Rustam Abdurakhmanov's case.

³⁷² Human Rights Watch, *Rights in Retreat* (note 62 above), p. 10.

³⁷³ "26 February" case: Seven Crimean Tatars were initially arrested, namely Akhtem Chiyoqoz (date of arrest – 29 January 2015), Eskender Nabiev (date of arrest – 22 April 2015), Mustafa Degirmenci (date of arrest – 7 May 2015), Ali Asanov (date of arrest – 15 April 2015), Talyat Unusov (date of arrest – 11 March 2015), Eskander Kantemirov (date of arrest – 7 February 2015), and Eskander Emirhvaliev (date of arrest – 18 February 2015). Asan Charukhov was arrested on 6 March 2015, but released after several hours of interrogation. Eskander Kantemirov was bailed on a guarantee provided by Eskander Bilyalov, Advisor to the so-called Plenipotentiary Representative of the President of the Russian Federation in Crimea Federal District and chairperson of Sakskiy Regional Mejlis. On 8 May, on the same conditions, Talyat Unusov, was released on bail. On 18 June, Eskender Nabiev was released on bail guaranteed by the leader of the Spiritual Administration of Muslims of Crimea (DUMK), mufti Emirali Ablayev. Mustafa Degirmenci has remained in the pre-trial detention facility. On 19 August, his

237. In May 2015, a criminal case was brought against Refat Chubarov in Crimea. He was charged under Article 280(1) of the Criminal Code of the Russian Federation for “Public calls to extremist activities” and could face up to five years in prison.
238. As of late, the persecution of the Mejlis members has slightly subsided, but the *de facto* authorities continue to create obstacles to the activities of its leaders. Most recently, on various grounds, several prominent Mejlis leaders were prevented from leaving Crimea to attend the World Congress of Crimean Tatars in Ankara on 2–3 August 2015.
239. In June 2014, a number of smaller organizations that had been traditionally in opposition to the Mejlis merged to create the organization Kyryym Birligi.³⁷⁴ On 20 October 2014, the *de facto* Deputy Speaker of the Crimean Parliament, Remzi Ilyasov,³⁷⁵ announced the establishment of the regional public movement, Kyryym.³⁷⁶ Both organizations have pledged co-operation with the authorities exercising *de facto* control in Crimea in the name of solving problems of the Crimean Tatar community. Thus far, Kyryym has had the upper hand in terms of securing the backing of the authorities exercising *de facto* control in Crimea. Remzi Ilyasov, formally being a member of the Mejlis,³⁷⁷ has not challenged its authority, but announced the intention to organize early elections to the Mejlis to change its composition. So far, this tactic has not been successful, as Ilyasov has not gathered the support of a sufficient number of Qurultai members. The popularity of Kyryym among Crimean Tatars reportedly remains low.³⁷⁸
240. Being deprived of resources and with its leaders in exile, detention or under constant pressure, the Mejlis is blocked from fully performing its functions as a

remand term was extended until 7 November 2015. On 12 August, the remand term was extended for Ali Asanov until 15 October 2015. On 18 August, Akhtem Chiyozy's remand term was extended until 19 November 2015.

³⁷⁴ Агентство Крымские Новости: В Крыму создана новая общественная организация «Къырым бирлиги» (Crimean News Agency: A new public organisation “Kyryym Birligi” is established in Crimea), news story in Russian, 11 June 2014, available at: <http://qha.com.ua/v-krimu-sozdana-novaya-obschestvennaya-organizatsiya-kirim-birligi-136970.html>.

³⁷⁵ Remzi Ilyasov was a close competitor to Refat Chubarov in the September 2013 Mejlis elections. See: Wilson, A., “The Crimean Tatars: A Quarter of a Century after Their Return”, *Security and Human Rights*, 24 (2013) p.427. Available at: http://shron.chtyvo.org.ua/Andrew_Wilson/The_Crimean_Tatars_A_Quarter_of_a_Century_after_Their_Return_en.pdf.

³⁷⁶ Агентство Крымские Новости: В Крыму создается межрегиональное Общественное движение «Къырым» (Crimean News Agency: Establishment of the Inter-regional public movement “Kyryym” in Crimea), news story in Russian, 20 October 2014, available at: <http://qha.com.ua/v-krimu-sozdaetsya-mejregionalnoe-obschestvennoe-dvijenie-kirim-140663.html>.

³⁷⁷ On 23 August 2014, Ilyasov's membership in the Mejlis was suspended by the Mejlis. Решение Меджлиса крымскотатарского народа № 24 от 23 августа 2014 года (Decision of the Mejlis of the Crimean Tatar People No. 24, dated 23 August 2014). Available in Russian at: <http://qtmm.org/>.

³⁷⁸ Interview with Crimean Tatar activists (Kyiv, 20 July 2015).

representative and self-governing body of Crimean Tatars on the territory of Crimea. Its capacity to reach out to the community and solve the daily problems of the Crimean Tatars is significantly constrained by the actions of the *de facto* authorities.

241. Having failed to garner the support of the Mejlis's elected leaders and the Qurultai, the authorities exercising *de facto* control in Crimea have sought to sideline the Mejlis. As the Mejlis commands the support of the majority of the Crimean Tatar community, this policy essentially aims to restrain political participation and, most importantly, undermines the role of the Mejlis as a representative structure that formulates issues of concern on behalf of the community, including at international forums, and that is capable of defending the rights and interests of members of the Crimean Tatar community. Ultimately, these policies and those targeting independent Crimean Tatar media outlets, as described earlier in this report, seek to silence influential voices of dissent among the community.³⁷⁹

4.1.2 Religious organizations of Crimean Tatars

242. The pressure on Crimean Tatar religious organizations exhibits a clear pattern of increasing and subsiding periods. From June to September 2014, the *de facto* Crimean law-enforcement bodies conducted searches in mosques and madrassas (Islamic schools) across the peninsula and interrogated dozens of Crimean Tatars suspected of possession of banned extremist materials or of affiliation with religious organizations banned under Russian Federation legislation, such as *Hizb-ut-Tahrir*. Many of these searches took place in mosques and madrassas that belong to the Spiritual Administration of Muslims of Crimea (DUMK).
243. On 24 June 2014, the Federal Security Service (FSB) raided a madrassa in the village of Kolchugino in the Simferopol district.³⁸⁰ On 13 August 2014, three madrassas in Simferopol, the Education Centre on Victory Avenue, a women's madrassa in Kamenka and Seit-Settar madrassa were also searched.³⁸¹

³⁷⁹ This policy is not new, and the Crimean authorities have always had an ambivalent and often confrontational relationship with the Mejlis. However, the pressure on the Mejlis in the past was largely through political machinations and never took the form of open repression. See: OSCE HCNM, *The Integration of Formerly Deported People in Crimea, Ukraine: Needs Assessment*, p.16, (The Hague: 16 August 2013). Available at: <http://www.osce.org/hcnm/104309>. See also, Wilson, A., "The Crimean Tatars: A Quarter of a Century after Their Return", *Security and Human Rights*, 24 (2013) p.427. Available at: http://shron.chtyvo.org.ua/Andrew_Wilson/The_Crimean_Tatars_A_Quarter_of_a_Century_after_Their_Return_en.pdf.

³⁸⁰ Forum 18 News Service: Felix Corley, "Crimea: Raids, violence, threats – but what protection do victims get?" Available at: http://www.forum18.org/archive.php?article_id=1972.

³⁸¹ Forum 18 News Service: Felix Corley, "Crimea: First known Russian religious literature 'extremism' prosecution". Available at: http://www.forum18.org/archive.php?article_id=1989. Other raids and searches over the summer of 2014 were also reported in this news piece.

244. On 22 September 2014, a seven-hour search was carried out at the Derekoï Mosque in Yalta.³⁸² Three Crimean Tatars, Ruslan Zeytullaev, Nuri Primov and Rustam Vaitov, were charged with participation in extremist religious organizations under Article 205(5) of the Criminal Code of the Russian Federation.³⁸³
245. After the initial wave of raids against religious communities under control of the DUMK, the authorities modified their approach. In January 2015, Sergey Aksyonov, *de facto* head of Crimea, publicly admitted the excessive nature of searches in the homes of religious Crimean Tatars. On 17 February 2015, the Yevpatoria City Court also ruled that the Juma-Jami Mosque in Yevpatoria belonged to the DUMK, and that a recently formed splinter group that had broken away from DUMK, which calls itself *Tavrichseskiy Muftiyat*, has no title to it. The latter was founded by the former head of the Juma-Jami religious community.³⁸⁴ At the end of February 2015, the DUMK was officially registered in accordance with the Russian Federation legislation on registration of religious organizations.
246. The *de facto* authorities most likely changed their policies towards the DUMK due to the more moderate stance of the DUMK's leader mufti Emirali Ablaev, who, importantly, is a member of the Mejlis. As of late, he has refrained from direct criticism of the authorities exercising *de facto* control over Crimea, and has participated in official meetings organized by the *de facto* authorities.³⁸⁵

4.1.3 Situation around disputed informal settlements

247. In the reporting period, the situation of disputed informal settlements of Crimean Tatars remained largely unchanged.³⁸⁶

³⁸² Ялтинскую мечеть «трясли» 7 часов (Yalta Mosque was "ransacked" for seven hours), news story in Russian, 23 September 2014, available at: <http://15minut.org/article/jaltinskuju-mechet-trjasli-7-chasov-v-musulmanskij-hram-siloviki-voshli-ne-snim-2014-09-23-18-59-09>.

³⁸³ Е. Скворода, «Боюсь, что будет не один десяток обвиняемых» (Skovoroda, E, "I am afraid there will be more than one dozen persons of the accused), news story in Russian, 18 March 2015, available at: <http://zona.media/story/crimean-tatars-persecution/>.

³⁸⁴ Tavrichseskiy Muftiyat positions itself as a pro-Kremlin and anti-DUMK religious community. In its public statements, it accuses the DUMK of "having links with Hizb-ut-Tahrir and the Mejlis". See, for example, Обращение Президенту Российской Федерации В.В. Путину (Appeal to the President of the Russian Federation V.V. Putin), 27 March 2015. Available in Russian at: <http://cdumk.ru/novosti/175-obrashchenie-prezidentu-rossijskoj-federatsii-v-v-putinu>.

³⁸⁵ Mufti Emirali Ablaev allegedly has helped, behind the scenes, individual Crimean Tatars who had been arrested by the *de facto* authorities by negotiating their release on bail. For instance, reportedly, one of the suspects in the 26 February case – the ATR cameraman, Eskender Nabiev – was released from custody on the personal guarantee of mufti Emirali Ablaev.

³⁸⁶ The settlements, known as the "fields of protest", have appeared mostly in the last ten years and are the Crimean Tatars' reaction to the lack of progress in restoring their rights, including compensation on lost land and property. See : OSCE HCNM, The Integration of Formerly Deported People in Crimea,

248. The *de facto* authorities have promised to solve this issue by legalizing land plots.³⁸⁷ In 2015, they adopted a number of regulatory acts to this effect.³⁸⁸ Several sites were cleared of unauthorized constructions.³⁸⁹ The process of legalization is going very slowly and meets various obstacles, including resistance from the title holders of these land plots.³⁹⁰
249. The Crimean Tatars are concerned that the procedures for legalizing or applying for a plot of land on the basis of having the status of a formerly deported person is only open for citizens of the Russian Federation. They are also concerned that on 28 January 2015, the *de facto* authorities arrested Seidamet Gemedzhi, a member of the board of *Sebat*, the organization of activists involved in the “fields of protest”. The date of his trial has not been announced and he remains on remand.³⁹¹

4.1.4 Impact of restrictions on public assemblies organized by Crimean Tatar community

250. Another instrument of pressure and control used by *de facto* authorities has been a ban on almost all public gatherings traditionally organized under the auspices of the Mejlis. The requests of the Mejlis or organizations close to the Mejlis to hold these assemblies have been consistently rejected. At the same time, all other kinds of festivities and assemblies organized by pro-Russian groups have been allowed, including among the Crimean Tatar community. In other words, the *de facto* authorities are not banning such events because they are directly related to the history or culture of the Crimean Tatar people, but because they are organized by the Mejlis and independently of the *de facto* authorities. This has an adverse impact on the community’s ability and freedom to maintain its traditions and culture.

Ukraine: Needs Assessment (The Hague: August 2013), available at: <http://www.osce.org/hcnm/104309>.

³⁸⁷ Аксенов рассказал, какие «самозахваты» претендуют на легализацию (Aksyonov stated which “samozakhvaty” [unauthorized taking-over of land] are laying claim to legalization, news story in Russian, 12 November 2014, available at: <http://news.allcrimea.net/news/2014/11/12/aksenov-rasskazal-kakie-samozahvaty-pretendujut-na-legalizatsiju-25252/>).

³⁸⁸ See relevant document at: http://rk.gov.ru/rus/file/pub/pub_246882.pdf.

³⁸⁹ Участникам “полян протеста” в Крыму дали еще неделю на снос своих построек (Members of “fields of protest” [lands seized by Crimean Tatars at will] in Crimea were given one more week to pull down their constructions), news story in Russian, 20 April 2015, available at: http://realty.newsru.com/article/20Apr2015/polyany_krym.

³⁹⁰ Два крымских предприятия отказались отдать землю участникам «полян протеста» (Two Crimean enterprises refused to cede land to members of “fields of protest”), news story in Russian, 12 August 2015, available at: <http://news.allcrimea.net/news/2015/8/12/dva-krymskih-predpriyatiya-otkazalis-otdat-zemlju-uchastnikam-polyan-protesta-42716>.

³⁹¹ Арестованный в Крыму активист «полян протеста» Сейдамет Гемеджи прекратил голодовку (Seidamet Gemedzhi, an activist of “fields of protest”, arrested in Crimea, gave up his hunger-strike) news story in Russian, 4 February 2015, available at: <http://m.rosbalt.ru/federal/2015/02/04/1364527.html>.

251. On 18 February 2015, the Bakhchysarai authorities prohibited the local Mejlis from carrying out a rally commemorating the 97th anniversary of the death of Noman Çelebicihan, an important figure in Crimean Tatar history.
252. In May 2015, on public safety grounds, the authorities refused to issue a permit for a ceremony commemorating the victims of the 1944 deportation, which had been traditionally held on the main square of Simferopol and organized under the auspices of the Mejlis. Instead, the authorities exercising *de facto* control in Crimea held their own commemoration of victims of the 1944 deportation, involving only loyal Crimean Tatar organizations.
253. In June 2015, the Mejlis' application to celebrate the Crimean Tatar Flag Day was also rejected.
254. Repressive measures have not been confined to the Mejlis, but have also been used against other organizations that support or act in association with the Mejlis. The co-ordinator of the Committee on the Rights of Crimean Tatars, Sinaver Kadyrov, received several warnings from the *de facto* prosecutor before eventually being forced to leave Crimea on 23 January 2015.³⁹²
255. There is essentially a blanket ban on public assemblies organized by the Mejlis or other outspoken pro-Ukrainian Crimean Tatar activists, and assemblies dedicated to significant dates of Crimean Tatar history and personalities who are of particular importance for the Crimean Tatar communal memory and identity.³⁹³

4.2 Ukrainian identity and culture

256. The state of Ukrainian culture under the annexation was a recurrent topic mentioned by many HRAM interlocutors. They stated that the *de facto* authorities suppress various manifestations of Ukrainian culture.
257. The HRAM was provided with information that broadcasting in the Ukrainian language on the State-run Crimean TV channel was reduced from three programmes to one (*Ridna Hata*, 13 minutes, twice a week, on the channel Crimea 1). Since the annexation, all Ukrainian TV and radio broadcasts from the mainland have been jammed. The residents of Crimea can only access Ukrainian-language TV from the mainland through satellite services. They are able to listen to limited radio broadcasts from the mainland. The only Ukrainian newspaper *Krymskaya svetlitsa*, which had been funded by the Government of

³⁹² See note 224 above. See also, Crimean News Agency, "Sinaver Kadyrov reportedly deported from Crimea", available at: <http://qha.com.ua/sinaver-kadyrov-reportedly-deported-from-crimea-133001en.html>.

³⁹³ Interview with Crimean Tatar activists (Kyiv, 20 July 2015).

Ukraine since 1992, was banned from distribution and had to vacate its rented premises.³⁹⁴

258. In September 2014, the Ukrainian Academic Music Theatre was renamed the State Music Academic Theatre.³⁹⁵ There are also plans to change a number of geographical names that are connected with Ukrainian history or prominent figures.³⁹⁶ In February 2015, the Museum of Ukrainian Vyshyvanka in Crimea was closed.³⁹⁷ On 22 March 2015, three people were arrested and fined for celebrating Vyshyvanka day, a day to celebrate traditional Ukrainian embroidery. Reportedly, books by contemporary Ukrainian authors have been removed from the Franko Library. The Fund of Ukrainian-language literature in the library is not accessible.
259. On 9 March 2015, three people were arrested in Simferopol for brandishing Ukrainian flags inscribed with pro-unity slogans at a public gathering in Simferopol Gagarin Park to mark the anniversary of the birthday of the Ukrainian poet Taras Shevchenko.³⁹⁸
260. As of the 2015/2016 academic year, all Ukrainian-language schools have become mixed schools and studies in the Ukrainian language have dramatically decreased. No first-grade classes in Ukrainian were opened on 1 September 2015. The leading Ukrainian school in Simferopol was renamed during the reporting period. Many Ukrainian language and literature teachers claimed they had to leave Crimea because of job loss or fear of reprisals.³⁹⁹
261. Throughout the reporting period, some residents of Crimea displaying Ukrainian flags or the Ukrainian trident sign were arrested and fined, especially if the flag contained the inscription “Crimea is Ukraine”.⁴⁰⁰

³⁹⁴ Interview with Andriy Shekun, Chairperson of the Crimean Centre for business and cultural co-operation “Ukrainian House” (Kyiv, 9 July 2015).

³⁹⁵ “В Симферополе переименовали украинский театр” (In Simferopol, an Ukrainian theatre was renamed), news story in Russian, 11 September 2014, available at: <http://ru.krymr.com/content/article/26691326.html>.

³⁹⁶ “В Симферополе вместо Франка будет улица Султан-Крым-Гирея” (In Simferopol, Franko street will be renamed Sultan-Kryum-Girei), news story in Russian, 10 November 2014, available at: <http://vesti-ukr.com/krym/76991-v-simferopole-zapridumali-ulicu-sultan-krym-gireja>.

³⁹⁷ В Симферополе закрыли музей украинской вышивки имени Веры Ройк (The Vera Roik Museum of Ukrainian Embroidery was shut down in the city of Simferopol), news story in Russian, 6 February 2015, available at: http://censor.net.ua/news/323574/v_simferopole_zakryli_muzeyi_ukrainskoyi_vyshivki_imeni_very_r_oik_krymrealii.

³⁹⁸ See note 230 above. See also, “У Криму затримали учасників акції з нагоди дня народження Шевченка” (In Crimea, three participants of a gathering to mark the birthday of Shevchenko are arrested), news story in Ukrainian, 9 March 2015, available at: <http://www.pravda.com.ua/rus/news/2015/03/9/7060920/>.

³⁹⁹ See also sub-section 4.3 on education below.

⁴⁰⁰ See also periodic reports of the Crimean Human Rights Field Mission for more details at: <http://crimeahr.org/en/>.

262. In the reporting period, the activities of the Ukrainian Cultural Centre came under scrutiny by law-enforcement bodies of the *de facto* authorities. The activists of this organization were arrested, interrogated, fined and sentenced to community work.⁴⁰¹
263. The October 2014 census conducted by the *de facto* authorities indicated fewer ethnic Ukrainians and native Ukrainian speakers in Crimea compared with the 2001 census conducted by the Ukrainian Government. The share of ethnic Ukrainians was reported at 15.68 per cent compared to 24.12 in 2001; Ukrainian as a native language was named by 3.3 per cent of the Crimean population compared to 9.55 per cent in 2001. Russian was named as a native language by 79.7 per cent of ethnic Ukrainians.⁴⁰² HRAM interlocutors claimed that the *de facto* authorities manipulated these figures to show that ethnic Ukrainians do not comprise a significant part of Crimea and to justify further limiting access of Crimean residents to the Ukrainian language and culture. They also claimed that many residents of Crimea were afraid to indicate that they belong to the ethnic Ukrainian community.⁴⁰³
264. The future of the Ukrainian Orthodox Church of Kyiv Patriarchate remains uncertain. Reportedly, Sergey Aksyonov, *de facto* head of Crimea, has made a proposal to Archbishop Kliment that the land and property of the Kyiv Ukrainian Orthodox Church in Crimea will be protected if Archbishop Clement becomes a member of the Council on Religious Affairs of Crimea. Some legally rented property of the Ukrainian Orthodox Church of Kyiv Patriarchate has been already put to auction.⁴⁰⁴ The deadline for registration of religious communities with the *de facto* authorities was extended to 1 January 2016 and also applies to the Ukrainian Orthodox Church of Kyiv Patriarchate.
265. Soon after the 2014 Russian Federation annexation of Crimea, several places of worship inside what were previously Ukrainian military bases were seized. These were churches of the Ukrainian Orthodox Church Kyiv Patriarchate, such as St. Clement's Church in the Nakhimov Naval Academy in Sevastopol, and the Greek Catholic Church.⁴⁰⁵ The Kyiv Patriarchate reportedly claimed that five of its ten priests in the region had been forced to leave Crimea. Greek

⁴⁰¹ Interview with Andriy Shekun. See also other sections of this HRAM report on the persecution of activists of the Ukrainian Cultural Centre.

⁴⁰² Statistics on the ethnic composition of Crimea from the *de facto* authorities is available at: http://www.gks.ru/free_doc/new_site/population/demo/perepis_krim/tab-krim.htm.

⁴⁰³ Interview with Andriy Shekun.

⁴⁰⁴ За Россию стоит Путин, за крымских татар – весь мир, за украинцев в Крыму – никто. Интервью Оксаны Наумко с Архиепископом Климентом (Putin is standing up for Russia; the entire world for Crimean Tatars; but nobody for Ukrainians in Crimea. Interview with Archbishop Clement by Oksana Naumko), in Russian, 3 June 2015, available at: <http://ru.krymr.com/content/article/27051858.html>.

⁴⁰⁵ Forum 18 News Service: Felix Corley, "Crimea: Religious freedom survey", March 2015, available at: http://www.forum18.org/archive.php?article_id=2051.

Catholic priests also fled Crimea following these church seizures, fearing for their safety.⁴⁰⁶

4.3 Education in mother-tongue

4.3.1 General context

266. The situation regarding teaching in minority languages has long been a complex issue in Crimea, reflecting the peculiarities of the political and linguistic situation on the peninsula. The lack of clear legal guarantees for minority-language education in Ukraine and the fact that this right was not always granted in an equitable manner have been criticized by international monitoring bodies, including the Advisory Committee of the Framework Convention for the Protection of National Minorities (FCNM).⁴⁰⁷ Most of these challenges have remained after the annexation, especially concerning instruction in the Crimean Tatar language.⁴⁰⁸ Meanwhile, instruction in the Ukrainian language, which was a *de facto* minority language on the peninsula prior to the annexation, has become a more acute problem, raising concerns that it may, in the long run, disappear from the education system in Crimea.

267. On 17 June 2015, the State Council of Crimea, a *de facto* legislative body, adopted the Law “on Education”.⁴⁰⁹ In Article 11(1), this Law provides that instruction in State schools is to be conducted in the State language of the Russian Federation. Teaching and study of the State language is organized according to federal education standards. The proposal to introduce teaching, by choice, of the other State languages mentioned in the Constitution of Crimea – the Ukrainian and Crimean Tatar languages – was not supported.⁴¹⁰ The decision drew a negative reaction from the Crimean Tatar community and among ethnic Ukrainians on the peninsula. They consider this a violation of the

⁴⁰⁶ Ibid.

⁴⁰⁷ Advisory Committee on the FCNM, “Third Opinion on Ukraine”, adopted on 22 March 2012, ACFC/OP/III(2012)002 (Strasbourg: Council of Europe, 28 March 2013), paragraph 128.

⁴⁰⁸ The HCNM has addressed this issue extensively in the past, including in the report *The Integration of Formerly Deported People in Crimea, Ukraine: Needs assessment*. The report, *inter alia*, discusses such issues as resource shortages, which disproportionately affected minority-language education given the higher costs involved in teaching to relatively small numbers; factors that impact parental demand for minority-language education, including the opportunity to use that language throughout one’s academic and professional career; and the issue of quality of education, which was affected by the limited supply of teachers in minority languages and poor quality of textbooks. OSCE HCNM, *The Integration of Formerly Deported People in Crimea, Ukraine: Needs Assessment*, (The Hague: August 2013), pp.28–29. Available at: <http://www.osce.org/hcnm/104309>.

⁴⁰⁹ The Law enters into force from 1 January 2016. Text of the Law at: http://rk.gov.ru/rus/file/pub/pub_252464.pdf.

⁴¹⁰ “Госсовет Крыма принял закон «Об образовании»” (State Council adopts the Law “on Education), news story in Russian, 17 June 2015, available at: <http://news.allcrimea.net/news/2015/6/17/gossovet-kryma-prinyal-zakon-ob-obrazovanii-38946/>.

so-called Constitution of Republic of Crimea, which provides for three State languages – Russian, Ukrainian and Crimean Tatar.⁴¹¹

268. According to Article 11(2) of the Law “on Education”, instruction in other mother tongues, including Ukrainian or Crimean Tatar, is regulated depending on the capacity of the education system. The implementation of this right is provided by opening the necessary number of educational institutions, classes and groups, as well as by creating conditions for their functioning. The teaching and study of a mother tongue is organized in line with federal education standards.
269. The *de facto* authorities apply Russian Federation education standards, which provide that instruction in the mother tongue is based on parents applying for it, and can be organized from the first to ninth grades (in the Ukrainian education system, such instruction is formally available up to the 11th grade).⁴¹²
270. There is no clear procedure that regulates the introduction, changing or stopping of instruction in a mother tongue, and there is no numeric threshold for opening such schools or classes.⁴¹³ Several HRAM interlocutors reported numerous examples when applications for instruction or teaching of a mother tongue were not accepted, were not reacted to, or disappeared. They said they suspected that such lack of responsiveness or, at times, direct opposition to Ukrainian or Crimean Tatar language instruction/teaching was aimed at confusing and preventing parents and their children from taking advantage of their right to have instruction for children in their mother tongue.⁴¹⁴
271. The mother tongue can be studied as a subject in its own right or as an optional course. At schools with Russian as the language of instruction, pupils may have up to three hours a week to learn their mother tongue, as per the school and/or regional component of their model curriculum.⁴¹⁵ However, there is no clarity as to how these hours can be claimed by pupils. Often, school administrators justify their decision not to allocate hours to mother-tongue teaching on the grounds that inclusion of teaching in a mother tongue would result in the allocation of fewer hours for other classes and would negatively influence pupils’ academic performance.⁴¹⁶

⁴¹¹ Interview with Crimean residents (Kyiv, 15 July 2015).

⁴¹² Although such a possibility exists under Ukrainian legislation, Crimean Tatar interlocutors stated that it was not fully implemented in Crimea under the Ukrainian regulatory framework (Kyiv, 15 July 2015). See: OSCE HCNM, *The Integration of Formerly Deported People in Crimea, Ukraine: Needs Assessment*, (The Hague: August 2013), p.27. Available at: <http://www.osce.org/hcnm/104309>.

⁴¹³ Phone interview with expert on education issues in Crimea (20 August 2015).

⁴¹⁴ Interview with Crimean civil society activists (Kyiv, 9 July 2015). See: Ukrainian Centre for Independent Political Research, «*Annexed*» *Education in Temporarily Occupied Crimea*, Monitoring Report, p.7. Available at: http://www.ucipr.kiev.ua/userfiles/monitoring_report_education_ARC_Mar2015e.pdf.

⁴¹⁵ Phone interview with expert on education issues in Crimea (20 August 2015).

⁴¹⁶ Ibid.

272. By the end of the 2014/2015 academic year, the *de facto* Ministry of Education provided the following set of statistics: there were 15 schools with the Crimean Tatar language as a language of instruction (2,814 pupils) and it was taught as a subject in 62 schools (1,926 pupils). The Ukrainian language was studied as a subject in 142 classes (1,990 pupils).⁴¹⁷
273. In comparison, in the 2013/2014 academic year in Crimea, seven secondary schools used Ukrainian as the language of instruction and one in the city of Sevastopol (2,215 pupils, 103 classes). There were 15 secondary schools with Crimean Tatar as the language of instruction (2,982 pupils, 182 classes). There were 142 schools that offered teaching in Ukrainian and Russian, where the Ukrainian-language instruction was provided to 8,536 pupils (602 classes). Thirty-one secondary schools taught in three languages (Ukrainian, Russian and Crimean Tatar), where Ukrainian-language instruction was provided to 1,847 pupils (132 classes). In Sevastopol, ten schools had classes in Ukrainian and Russian as the languages of instruction (994 pupils in Ukrainian). Also in the 2013/2014 academic year, 22 schools provided teaching in the Russian and Crimean Tatar languages, where the Crimean Tatar language was studied by 638 pupils (66 classes). In addition, there were 31 schools with instruction in three languages (Ukrainian, Russian and Crimean Tatar), where 1,284 pupils (111 classes) studied the Crimean Tatar language.⁴¹⁸
274. In the 2014/2015 academic year, pupils in Crimean schools studied with new textbooks, a new curriculum, retrained teachers and a new five-point knowledge-assessment scale that was introduced by the *de facto* authorities. Ukrainian language and literature classes were substituted with Russian

⁴¹⁷ Информация, характеризующая развитие курируемой сферы деятельности на 01.06.2015 года. Приложение к письму МОИМ РК от 21.06.2015 № 01-15/464 (Information on the situation in the supervised sphere of activity as of 1 June 2015. Attachment to the letter of the Ministry of Education of the Republic of Crimea dated 21 June 2015 No. 01-15/464). Document in Russian was uploaded on 1 June 2015 on the site of the *de facto* Ministry of Education and Science of the Republic of Crimea, <http://monm.rk.gov.ru/rus/info.php?id=617082>. Earlier, the Russian Federation gave UNESCO the following figures: in the 2014/2015 school year, there were 184,869 pupils. Instruction in Russian was provided to 177,984 pupils (96.2 per cent), in Crimean Tatar to 4,895 (2.7 per cent) and in Ukrainian to 1,990 (1.1 per cent). This document in Russian was filed under the title “Подробная справка о состоянии дел в Республике Крым (Российская Федерация) в сферах компетенции ЮНЕСКО” (Detailed reference document on the situation in the Republic of Crimea (Russian Federation) in the sphere of UNESCO competence) and was dated 8 April 2015. Available at: <http://russianunesco.ru/rus/article/2069>.

⁴¹⁸ Reply of the Ministry of Education and Science of Ukraine to the HRAM inquiry about the education system in Crimea, dated 17 August 2015, No. 2/1-13-1636-15. According to data provided by the Crimean Ministry of Education and Science in 2013 to the HCNM, of the 576 general schools in Crimea, 331 offered a full educational programme in Russian and another 222 were mixed schools, with some groups taught in Russian and other separate groups taught in Ukrainian and/or Crimean Tatar. Approximately 89 per cent of the pupils in Crimea studied in the Russian language, eight per cent in Ukrainian and three per cent in Crimean Tatar. OSCE HCNM, *The Integration of Formerly Deported People in Crimea, Ukraine: Needs Assessment*, (The Hague, August 2013) p.27. Available at: <http://www.osce.org/hcnm/104309>.

language and literature lessons. Hours for teaching Russian increased significantly, allegedly to catch up with federal education standards.⁴¹⁹

275. New textbooks based on Russian Federation standards in the Crimean Tatar language or in Ukrainian had not yet been published by 1 September 2014. So, teaching in 2014/2015 was carried out based on Russian-language textbooks.⁴²⁰

4.3.2 Education in and of the Ukrainian language

276. Ukrainian language instruction in Crimea is rapidly declining and is confined mostly to those who continued to study in the Ukrainian language after the annexation of Crimea by the Russian Federation. Schools with Ukrainian as the language of instruction are no longer mentioned in the reports of the *de facto* authorities.⁴²¹ Only 20 schools in Crimea still offer some classes with Ukrainian as the language of instruction. Ukrainian continues to be taught as a subject in some schools, but on a constantly decreasing level; and in a few more schools, the language is studied as an elective course (without credit) for one hour per week.⁴²²

277. In 2015/2016, there will be no first-grade classes with Ukrainian as the language of instruction, as school administrations reportedly received no applications from parents requesting such instruction.⁴²³

278. According to the data of the Ukrainian Government, at the start of the 2013/2014 academic year, Crimea had seven secondary schools with Ukrainian as the language of instruction and one secondary school with Ukrainian as the language of instruction in Sevastopol (2,215 pupils, 103 classes).⁴²⁴ By the end of the 2013/2014 academic year, all Ukrainian-language schools introduced instruction in Russian, thereby becoming dual-language schools.

⁴¹⁹ Phone interview with expert on education issues in Crimea (20 August 2015).

⁴²⁰ Ibid.

⁴²¹ See footnote 56 above.

⁴²² Подробная справка о состоянии дел в Республике Крым (Российская Федерация) в сферах компетенции ЮНЕСКО. По состоянию на 8 апреля 2015 г. (Detailed reference document on the situation in the Republic of Crimea (Russian Federation) in sphere of competence of UNESCO as of 8 April 2015'), document in Russian, available at: <http://russianunesco.ru/rus/article/2069>; See also: Информация, характеризующая развитие курируемой сферы деятельности на 01.06.2015 года, Приложение к письму МОИМ РК от 21.06.2015 № 01-15/464) (Information on the situation in the supervised sphere of activity as of 1 June 2015. Attachment to the letter of the Ministry of Education of the Republic of Crimea dated 21 June 2015 No. 01-15/464), document in Russian, available at: <http://monm.rk.gov.ru/rus/info.php?id=617082>.

⁴²³ Министр: сеть крымско-татарских школ в Крыму сохранена (Minister: network of Crimean Tatar schools in Crimea will be retained), news story in Russian, 27 August 2015, available at: <https://news.mail.ru/society/23114851/>.

⁴²⁴ Reply of the Ministry of Education and Science of Ukraine to the HRAM inquiry about the education system in Crimea, 17 August 2015, No. 2/1-13-1636-15.

279. In 2014/2015, secondary education in Ukrainian was provided for 1,990 pupils, which amounts to 1.1 per cent of the total number of pupils (184,869 pupils in the 2013/2014 academic year). Before the annexation, 8.2 per cent of pupils were studying in Ukrainian. This means that in the course of one year, more than 85 per cent of the pupils who studied in Ukrainian classes switched to Russian classes.⁴²⁵
280. Several HRAM interlocutors who are parents of children who entered the first grade in 2014 said that after annexation they felt too intimidated to demand instruction in Ukrainian for their children. Moreover, other parents took the decision to transfer their children from classes with Ukrainian language of instruction to classes with Russian as the language of instruction. Some justified this decision by stating that most likely their children would not be able to study in Ukrainian at university level or it would not be required in their future career any more.⁴²⁶
281. According to one account, there were informal surveys of parents' wishes on language preferences, but the school authorities did not explain that there was a need for every parent to formally request that the Ukrainian language be taught.⁴²⁷ According to one parent, seeing that demand was quite high, the school authorities used every possible pretext not to introduce the teaching of Ukrainian. In one school, the administration promised to provide classes in the Ukrainian language, but never delivered on this promise during the 2014/2015 school year. In other schools, the Ukrainian language ceased to be taught anymore; according to the school administrations, this was due to low demand.⁴²⁸
282. In the previously leading Ukrainian-language school in Simferopol, instruction in Ukrainian is only carried out in nine of 40 classes. Out of 986 pupils in the school, only 147 continue to study in Ukrainian. In April 2015, the long-time director of this school had to leave Crimea for the mainland due to threats and harassment.

⁴²⁵ These changes in the language of instruction taught also led to job losses among teachers of Ukrainian.

⁴²⁶ Interviews with Crimean residents who have children of school age (Chongar administrative border crossing (ABL), interviews with Crimean internally displaced people in Kyiv and Lviv (July 2015).

⁴²⁷ Ibid.

⁴²⁸ Ibid. This line of argumentation continues the one that used to be offered by Crimean officials prior to the annexation in relation to instruction in Crimean Tatar. In the HCNM's 2013 needs assessment on the integration of formerly deported people in Crimea, Ukraine, it was noted that "as is common practice throughout the OSCE area, the parental right to choose their child's language of instruction is contingent upon available resources and sufficient demand. The two are closely linked: parents are less likely to apply for underfunded and lower-quality education for their children, while the authorities can use low applications to justify budgetary cuts to minority-language education. Both of these trends are apparent in Crimea." OSCE HCNM, *The Integration of Formerly Deported People in Crimea, Ukraine: Needs Assessment*, (The Hague: August 2013), p.27. Available at: <http://www.osce.org/hcnm/104309>.

283. The situation with the Ukrainian language at the university level is even more problematic. In September 2014, the Department of Ukrainian Philology was closed down in Vernandskiy Tavrida National University and the majority of its teaching staff was laid off. Currently, Ukrainian philology, the culture of the Ukrainian language, and the theory and history of the Ukrainian language have been merged into one department. Interlocutors informed the HRAM that the department will be closed if there are fewer than 15 applications for the 2015/2016 academic year.⁴²⁹
284. By the end of 2014, the Ukrainian language as a language of instruction was completely removed from university-level education in Crimea. Previously in Crimea, all higher educational institutions offered classes in Ukrainian and/or offered some courses in Ukrainian.⁴³⁰
285. Compared with the preceding year, in the 2015/2016 academic year, the chances of Ukrainian-speaking children from Crimea enrolling at universities in mainland Ukraine are low due to a cumbersome system of registration that the school leavers have to follow, and because they were supposed to take the same exam as their counterparts from mainland Ukraine, which required additional preparation and time. Generally, according to several HRAM interlocutors, the Ukrainian authorities have not done enough to reach out to school leavers in Crimea.⁴³¹

4.3.3 Education in and of the Crimean Tatar language

286. In 2013/2014, 15 schools offered instruction in the Crimean Tatar language (2,982 pupils, 182 classes).⁴³² Also, in the 2013/2014 academic year, 22 schools offered instruction in Crimean Tatar and Russian, where Crimean Tatar was provided as a language of instruction to 638 pupils (66 classes). In 31 schools with three languages of instruction (Ukrainian, Russian and Crimean Tatar), Crimean Tatar was provided as a language of instruction to 1,284 pupils (111 classes).
287. In the reporting period, the number of schools with Crimean Tatar as the language of instruction remained unchanged (15 schools). The authorities announced that they would open 24 first-grade classes with Crimean Tatar as a language of instruction as of September 2015. Two first-grade classes may not be opened, as only a few parents applied. Natalya Goncharova, the *de facto*

⁴²⁹ Министр: сеть крымско-татарских школ в Крыму сохранена (Minister: network of Crimean Tatar schools in Crimea will be retained), news story in Russian, 27 August 2015, available at: <https://news.mail.ru/society/23114851/>.

⁴³⁰ Phone interview with expert on education issues in Crimea (20 August 2015).

⁴³¹ Interviews with Crimean internally displaced people in Kyiv, 7 July 2015.

⁴³² The cities of Evpatoria and Sudak; and the following raions: Bakhchysarai, Belogrodsky, Dzhankoi, Kirov, Krasnogvadesky, Pervomaysky, Simferopol and Sovetsky.

Minister of Education, claims that to open a class, the school administration needs to receive at least eight applications from parents.⁴³³

288. The teachers of Crimean Tatar schools assert that the current network of schools is not sufficient for the community and that the *de facto* authorities use every possible excuse not to open classes with Crimean Tatar as the language of instruction or to introduce teaching in the Crimean Tatar language, especially in the areas where the Crimean Tatar population is more dispersed.⁴³⁴
289. The teachers mentioned several cases in the 2014/2015 school year, including in Simferopol and Alushta, where parents' applications for their children to study the Crimean Tatar language were ignored. These situations resolved and the teaching of the Crimean Tatar language reintroduced after official complaints were filed. More recently, in August 2015, classes with Crimean Tatar language of instruction were closed in a school in Leninskiy Raion.⁴³⁵ The Crimean Tatar activists claimed that the school administration blocked the opening of more classes with Crimean Tatar language at a school in Simferopol Raion. They also complained that the number of hours for studying in the Crimean Tatar language in schools with Russian as the language of instruction was not sufficient.⁴³⁶
290. For the 2014/2015 academic year, the schools with Crimean Tatar as the language of instruction did not receive textbooks in the Crimean Tatar language that would reflect the new curriculum. At the same time, they were not allowed to use the textbooks used under the Ukrainian curriculum. At the beginning of the 2015/2016 academic year, the situation remained the same.
291. The basic training for teachers of the Crimean Tatar language and literature was carried out by the Crimean Polytechnic-Pedagogic University and Philology School of Vernadskiy Tavrida National University. This training is no longer offered.

⁴³³ Министр: сеть крымско-татарских школ в Крыму сохранена (Minister: network of Crimean Tatar schools in Crimea will be retained), news story in Russian, 27 August 2015, available at: <https://news.mail.ru/society/23114851/>.

⁴³⁴ Interviews with Crimean Tatar teachers from Crimea (7 July 2015).

⁴³⁵ Родителей крымских школьников заставляют отказываться от уроков крымскотатарского языка (Parents of Crimean school students are under pressure to drop Crimean Tatar language lessons), news story in Russian, 27 August 2015, available at: <http://avdet.org/node/13842>.

⁴³⁶ Крымскотатарские работники образования пожаловались на ущемление родного языка (Crimean Tatar education workers complain about infringement of their mother tongue), news story in Russian, 24 August 2015, available at: <http://nazaccent.ru/content/17319-krymskotatarskie-rabotniki-obrazovaniya-pozhalovalis-aksenovu-na.html>.

4.4 Summary of findings

292. Crimean Tatars and Ukrainians who openly support the territorial integrity of Ukraine and do not support the *de facto* authorities continue to be in a particularly vulnerable position. The Mejlis – a self-governing body of Crimean Tatars – became the main target of administrative and criminal reprisals by the *de facto* authorities. Intimidation, expulsion, or incarceration of prominent leaders of the Mejlis of the Crimean Tatar People has a detrimental effect on the exercise of the political and civil rights of persons belonging to the Crimean Tatar community. The *de facto* authorities have recently imposed severe limits to the right to freedom of assembly of persons belonging to the Crimean Tatar and Ukrainian communities who openly express their identity and opposition to the illegal annexation of Crimea by the Russian Federation. Cultural, religious and symbolic elements of Ukrainian identity have been restricted and/or suppressed through various administrative or law-enforcement measures.
293. Education in and of the Ukrainian language is disappearing in Crimea through pressure on school administrations, teachers, parents and children to discontinue teaching in and of the Ukrainian language. This may further limit the presence of the Ukrainian language and culture on the peninsula. Education both in and of the Crimean Tatar language continues to face obstacles and new challenges brought by the annexation and remains in need of support and revitalization.

Annex 813

United States Mission to the OSCE, Ongoing Violations of International Law and Defiance of OSCE Principles and Commitments by the Russian Federation in Ukraine (26 May 2016)



United States Mission to the OSCE

**Ongoing Violations of International Law and
Defiance of OSCE Principles and
Commitments by the Russian Federation in
Ukraine**

As delivered by Ambassador Daniel B. Baer
to the Permanent Council, Vienna
May 26, 2016

Despite efforts to build on the Easter ceasefire recommitment and create a better security environment, this week began with the highest casualties incurred since August of last year. The security zone in eastern Ukraine continues to be defined by tension and instability, as Special Monitoring Mission (SMM) Deputy Chief Monitor Alexander Hug said this week. Combined Russian-separatist forces increased their attacks while simultaneously obstructing SMM monitors, preventing them from accounting for those ceasefire violations. Coordinated attacks by combined Russian-separatist forces on May 24 resulted in the heaviest losses suffered by Ukrainian forces in a single day this year: seven killed and nine wounded.

Russia continues to arm, train, and fight alongside separatist forces, and the security zone remains awash in heavy weapons, tanks, armored personnel carriers, and anti-aircraft guns. These weapons appear in part of the conflict zone one day, vanish the next, and then reappear somewhere else, undermining confidence between the sides and efforts toward a sustainable ceasefire and Minsk implementation. On May 15 alone, the SMM counted 81 tanks on separatist-held territory. Regrettably, combined Russian-separatist forces have not hesitated to put these weapons to use, pounding residential areas of Avdiivka with mortars and artillery fire on May 21 and 22, killing two Ukrainian soldiers, wounding eight others, and damaging or destroying six homes. These attacks were premeditated and came shortly after combined Russian-separatist forces disconnected the SMM's static observation cameras in Donetsk, cameras they had promised the SMM could operate without interference.

Colleagues, the Permanent Council has often heard the Russian Federation call for intensive monitoring of hotspots. We call on Russia to direct the separatists it backs to immediately allow the SMM full access to the areas under their control and to restore its cameras, which are essential to monitoring hotspots that are too dangerous for monitors to patrol.

It is essential that Russia and the separatists agree to a disengagement plan, which can then be endorsed by the Trilateral Contact Group as quickly as possible. Many of the proposed locations for disengagement are at crossing points on the line of contact. In this regard, we note that the Government of Ukraine has already taken steps that will support disengagement efforts. In keeping with its agreement to open up more crossing points, Ukraine has cleared mines and constructed proper crossing facilities at its checkpoint in Zolote. The separatists have not upheld their commitments – neither to allow civilians to cross nor to pull back the heavy weapons that put lives at risk. Civilians are subjected to

kilometers-long lines, and are exposed to the ever-present risk of getting caught in crossfire. We, therefore, underscore the need for an agreement on disengagement – not only to stabilize the ceasefire, but to improve the lives of people living on both sides of the contact line.

Colleagues, over the last few months fresh evidence has come to light of Russia's continued supply of sophisticated military equipment to the separatists – in clear contravention of measure 10 of the Minsk Package of Measures. A SMM UAV recently took a photo of a Russian Orlan-10 UAV flying from the direction of separatist-held parts of Donetsk. The Orlan-10 is a Russian system; it is not commercially available and can only be flown by trained operators. The Ukrainian military reported that an armed UAV dropped munitions on Ukrainian soldiers on May 18. The SMM once again found evidence of Russian jamming equipment, an IVO Mineralny antenna, on separatist-held territory on April 12. The presence of sophisticated military technology on the battlefield exposes the fallacy of Russia's contention that this is an internal conflict; it is Russia which instigated this conflict, Russia which has fueled it, and Russia which must now act to end it.

Resolving this conflict requires the return of separatist-controlled areas of Donetsk and Luhansk to Ukrainian control. On this the Minsk agreements are crystal clear. We therefore condemn the decision by the Russian Federation to accept phony separatist "passports" as valid for crossing between Ukraine and the Russian Federation.

In Russia-occupied Crimea, Russia continues to violate the rights of those who oppose the occupation, including members of religious and ethnic minorities – in defiance of OSCE principles and commitments. Russian authorities have shut down Crimean Tatar media. Russian forces have raided homes and mosques, and harassed and imprisoned Crimean Tatar activists, some of whom have disappeared or been killed. Having banned the Mejlis – the legal, legitimate representative body of the Crimean Tatar people – Russian authorities have accelerated a crackdown on its leadership. On May 12, the Deputy Chairman of the Crimean Tatar Mejlis, Ilmi Umerov, was arrested, along with three others. We remind the Russian Federation that sanctions related to its occupation of Crimea will remain in place until the occupation ends. And we join the EU in many times reaffirming that sanctions imposed upon the Russian Federation for its aggression in eastern Ukraine will also remain in place until Russia fully implements its Minsk commitments.

Thank you, Mr. Chair.

Annex 814

EU Statement on “Russia’s Ongoing Aggression against Ukraine and Illegal Occupation of Crimea”, OSCE Permanent Council No. 1106, PC.DEL/945/16 (24 June 2016)



EUROPEAN UNION

**OSCE Permanent Council No 1106
Vienna, 23 June 2016**

**EU Statement on “Russia’s Ongoing Aggression against
Ukraine and Illegal Occupation of Crimea”**

We are deeply concerned by the deteriorating security situation in eastern Ukraine. The dense concentration of heavy weapons and the close proximity of military formations across the line of contact, exacerbated by the separatists' recent provocative advancement of two checkpoints, increase the risk of further escalation. Meanwhile, the SMM continues to face obstruction, particularly in separatist-held areas, where an exclusively in Russia produced Zhitel jamming station was recently observed again by the SMM. We condemn all attempts to prevent the SMM from fulfilling its mandate, by intimidating the mission's members and by depriving the SMM of technological assets. All sides must immediately disengage, strictly adhere to the ceasefire, unconditionally and verifiably withdraw all Minsk-regulated weapons and ensure the SMM full, safe and unhindered access throughout Ukraine, including along the Ukrainian-Russian State border and to the illegally annexed Crimea. These are necessary steps in order to move towards a sustainable political solution in line with OSCE principles and commitments.

We again call on the sides in the Trilateral Contact Group and its working groups to agree on steps toward the full implementation of the Minsk agreements. We welcome progress made on the principles and priority areas for disengagement, and call on the sides to build on this by agreeing to a complete disengagement plan without further delay. We also call for an agreement on the modalities of local elections in certain areas of the Donetsk and Luhansk regions in accordance with Ukrainian legislation, OSCE standards and monitored by ODIHR. We recall our firm position that established conditions for ODIHR monitoring, including ensuring security and access, must be met.

We are concerned by the continuous disinformation campaign by separatist-controlled media outlets targeting the SMM and its monitors. Instead of working to broaden public support for the SMM, separatists are curbing or conditioning the SMM's access to the local population and orchestrating mass protests, as seen recently in Donetsk. This runs contrary to repeated assurances of cooperation. We commend the SMM for continuing its outreach to the local population in the face of such obstacles and support further steps to this end.

We remain firm in our call on all sides to swiftly and fully implement the Minsk agreements and honour their commitments in full. We underline Russia's responsibility in this regard and yet again call on Russia to use its considerable influence over the separatists it backs to meet those commitments in full. Moreover, we again call on Russia to immediately stop providing financial and military support to the separatists. The ceasefire must be respected. All Minsk-regulated weapons must be withdrawn and foreign armed formations, military equipment and mercenaries removed from Ukraine. Re-establishing full Ukrainian control over its state border is essential. The duration of the European Union's economic sanctions against Russia is linked to the complete implementation of the Minsk agreements. We reiterate our deep concern about information on the presence of Russian military equipment and personnel in separatist-held areas.

We remain deeply concerned by the significant deterioration of the human rights situation in Crimea since the peninsula's illegal annexation by Russia. As the Office of the UN High Commissioner for Human Rights, ODIHR, the High Commissioner National Minorities, and others have documented, fundamental freedoms have been systematically curtailed. Over the past two years, those responsible for the situation on the ground have created a pervasive climate of fear and repression in Crimea. Crimean voices who have dared oppose Russia's actions have faced harassment, arrest and torture. The persecution of Crimean Tatars has been particularly brutal, including the ban of the activities of the Mejlis. The case of the enforced disappearance of Crimean Tatar Evin Ibragimov, member of the Bakhchysaray Regional Medzhilis, abducted by uniformed persons on 24 May, is regrettably only one of the most recent examples. We condemn this repression, call on those responsible for the situation on the ground to protect the human rights of all in

Crimea and reiterate our call for full, immediate and unfettered access for international human rights actors to the peninsula.

The EU recalls its unwavering support to the sovereignty, territorial integrity, unity and independence of Ukraine, and calls upon Russia to do likewise. We urge Russia to recognise these fundamental principles that it has itself invoked many times and to contribute, by acts and public pronouncements, to stabilise the situation and reverse moves that contravene these principles. We reiterate our strong condemnation of the illegal annexation of Crimea and Sevastopol to the Russian Federation and we will not recognise it. Accordingly, on 17 June, the European Council extended the EU's restrictive measures in response to the illegal annexation to 23 June 2017.

The Candidate Countries the FORMER YUGOSLAV REPUBLIC OF MACEDONIA*, MONTENEGRO* and ALBANIA*, the Country of the Stabilisation and Association Process and Potential Candidate BOSNIA and HERZEGOVINA, and the EFTA countries ICELAND and NORWAY, members of the European Economic Area, as well as UKRAINE, the REPUBLIC OF MOLDOVA, GEORGIA and SAN MARINO align themselves with this statement.

* The Former Yugoslav Republic of Macedonia, Montenegro and Albania continue to be part of the Stabilisation and Association Process.

Annex 815

Organization for Security and Co-operation in Europe, Press Release: Parliamentary Assembly
Human Rights Chair Calls for Release of Crimean Tatar Leader Umerov (27 August 2016)

Press Releases

 oscepa.org/news-a-media/press-releases/2570-osce-parliamentary-assembly-human-rights-chair-calls-for-release-of-crimean-tatar-leader-umerov

COPENHAGEN, 27 August 2016 – The forced commitment to a psychiatric clinic of Ilmi Umerov represents a worrying new low in Russia’s stigmatization of the Crimean Tatar community and should be immediately reversed, said the Chair of the OSCE Parliamentary Assembly’s human rights committee, Ignacio Sanchez Amor (MP, Spain) today.

“Already facing charges for simply having the courage to speak his mind, Russian authorities are now using an old and particularly worrying tactic to try and silence Umerov,” said Sanchez Amor. “This ugly allegation of mental instability is a transparent attempt to punish Ilmi Umerov for speaking out in favour of Ukraine’s territorial integrity. I call for the immediate reversal of this decision and the release of Mr. Umerov.”

Ilmi Umerov, Deputy Head of the Crimean Tatar Mejlis, which was banned in April, is facing prosecution for reportedly saying during an interview earlier this year that “Russia must be forced to leave Crimea and Donbas.” Earlier this month a court ordered Umerov to undergo psychiatric testing and he was subsequently committed to Simferopol’s Psychiatric Hospital No. 1 for a 28-day period.

In its Tbilisi Declaration adopted last month the OSCE Parliamentary Assembly called on the Russian Federation to reverse the illegal annexation of Crimea and expressed grave concern over the deterioration of the situation of human rights in the region.

At the OSCE Parliamentary Assembly’s 2015 Winter Meeting, Mustafa Dzemiliev, a former Chairman of the Tatar Mejlis and member of the Ukrainian Parliament, reported that thousands of his people have fled to mainland Ukraine in response to attempts to restrict their political and linguistic autonomy by the de facto authorities since the Russian annexation in March 2014. He called for the OSCE and the broader international community to focus efforts on bringing the peninsula back under Ukrainian sovereignty.

Annex 816

Council of Europe, European Commission for Democracy Through Law (Venice Commission),
Opinion on the Federal Law No. 54-FZ of 19 June 2004 On Assemblies, Meetings,
Demonstrations, Marches and Picketing of the Russian Federation (adopted 16-17 March 2012)



Strasbourg, 20 March 2012

Opinion no. 659/2011

CDL-AD(2012)007
Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OPINION

ON THE FEDERAL LAW NO. 54-FZ OF 19 JUNE 2004

**ON ASSEMBLIES, MEETINGS, DEMONSTRATIONS, MARCHES
AND PICKETING**

OF THE RUSSIAN FEDERATION

**Adopted by the Venice Commission
at its 90th Plenary Session
(Venice, 16-17 March 2012)**

on the basis of comments by

**Mr Richard CLAYTON (Member, United Kingdom)
Ms Finola FLANAGAN (Member, Ireland)
Mr Wolfgang HOFFMANN-RIEM (Member, Germany)**

I. Introduction

1. By a letter dated 19 December 2011, the President of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to provide an opinion on, inter alia, the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation (CDL-REF(2012)010, hereinafter “the Assembly Law”). The Monitoring Committee refers specifically to its concern relating to “the ambiguous provisions allowing for the refusal to authorise demonstrations”. This opinion focuses on this issue.

2. Mr Richard Clayton, Ms Finola Flanagan and Mr Wolfgang Hoffmann-Riem were appointed as rapporteurs. They travelled to Moscow on 9 and 10 February 2012 and met with representatives of the Ministry of the Interior and of the Council of Federation of the Federal Assembly of the Russian Federation, with the Ombudsman, with the Institute for Legislation and Comparative Law under the government of the Russian Federation and with representatives of the civil society. The Institute for Legislation and Comparative Law provided comments on the law under consideration (CDL(2012)023), which were duly taken into account in the preparation of the opinion. The working group found useful information in the Comments of the Russian Federation on the letter of the Council of Europe Commissioner for Human Rights on ensuring the right to freedom of assembly in the Russian Federation.¹

3. The present opinion is based on an unofficial English translation of the Russian Assembly Law. The translation may not accurately reflect the original version on all points and, consequently, certain comments can be due to problems of translation. Further, the law under consideration is a Federal Law, which is to be complemented by legislation of the relevant subjects of the Russian Federation. The Venice Commission has not examined such acts of the subjects of the Federation. It recalls that it is the task of the Federal level to ensure that such acts are in full compliance with the international obligations of the Russian Federation, in particular the European Convention of Human Rights. In addition, the law under consideration often refers to other legal acts, that were not at hand of the Venice Commission and are therefore not in the scope of this opinion. This holds as well for the sanctions regime established in the Penal Code, the Administrative Code etc.

4. The present opinion was discussed at the meeting of the sub-commission on fundamental rights on 15 March 2012 and subsequently adopted by the Commission at its 90th Plenary Session of 16-17 March 2012.

II. Standards on freedom of assembly

5. Freedom of assembly constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual’s self-fulfilment. On national level it is enshrined in Article 31 of the Constitution of the Russian Federation with the following terms: “Citizens of the Russian Federation shall have the right to meet peacefully, without arms, and to organise discussions, meetings and demonstrations, as well as processions and pickets.” It may only be subject to restrictions under the conditions laid down in Article 55.3 Constitution (the protection of constitutional order, morality, health, rights and lawful interests of others and the security of the state), as well as in state of emergency as foreseen in Article 56 Constitution.

¹ CommDH(2011)32, 30 September 2011, <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1967194&SecMode=1&DocId=1794540&Usage=2>.

6. At the European and international level, freedom of assembly is guaranteed by Article 11 of the European Convention on Human Rights (ECHR) and Article 21 of the International Covenant in Civil and Political Rights (ICCPR), together with the corresponding case law.

7. As the European Court of Human Rights has reiterated in the *Barankevich v. Russia* judgment,² *“the right of peaceful assembly enshrined in Article 11 is a fundamental right in a democratic society and, like the right to freedom of thought, conscience and religion, one of the foundations of such a society (...). As has been stated many times in the Court's judgments, not only is democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11 (...), the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from a “democratic society” (...). The right to freedom of assembly covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individuals participants of the assembly and by those organising it (...). States must refrain from applying arbitrary measures capable of interfering with the right to assemble peacefully. (...).”*

8. The OSCE/ODIHR and the Venice Commission have elaborated a set of Guidelines on freedom of assembly (hereinafter referred to as “the Guidelines”),³ which reflect the ECtHR case-law as well as the practice in other democratic countries adhering to the rule of law. Although they are not binding, these guidelines provide useful guidance for implementing national legislation on freedom of peaceful assembly in accordance with Article 11 ECHR.

III. Analysis of the law

A. Title and scope of the law

9. At the outset, the Venice Commission wishes to emphasise, as it has done on previous occasions⁴, that this law should guarantee freedom of assembly and not merely regulate the conduct of public events. Therefore, after due amendment of the law as indicated in the present opinion, its title should include the words “freedom of assembly”.

B. The notification procedure

10. Articles 5, 7 and 12.1 of the Assembly Law set out the procedure of notification of public events.⁵ Written notice must be given by the organiser to the authorities not earlier than fifteen and not later than ten days prior to the holding of the public event (not earlier than three days for pickets). The law does not provide that such notification must be followed by an authorisation by the executive authorities: Article 7 therefore requires a “notice of intent” and not a request for permission. The Venice Commission recalls in this context that the subjection of public assemblies to an authorisation or notification procedure should not encroach upon the essence of the right as long as the purpose of the procedure is to allow the authorities to take

² ECtHR, *Barankevich v. Russia* judgment of 26 July 2007, paras. 24 and 25.

³ OSCE/ODIHR - Venice Commission Guidelines on Freedom of Peaceful Assembly, as revised in 2010, [http://venice.coe.int/docs/2010/CDL-AD\(2010\)020-e.asp?PrintVersion=True](http://venice.coe.int/docs/2010/CDL-AD(2010)020-e.asp?PrintVersion=True).

⁴ See among others, CDL-AD(2010)031; CDL-AD(2010)050; CDL-AD(2010)049.

⁵ Single-person assemblies and pickets are exempted from notification. It should be noted in this regard that under the ECHR an assembly requires multiple participants, while a picketing of only one individual enjoys protection under freedom of expression as it is enshrined in Article 10 ECHR.

reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering, be it political, cultural or of another nature.⁶

11. Upon receipt of the notification, the executive authority must issue a receipt (Article 12.1): this is a positive provision.⁷

12. Article 12.1.3 requires the executive authority to "*deliver to the organiser..., within three days from receipt of the notice on holding the public event ...a well-motivated proposal to alter the place and/or time of holding the public event and also suggestions that the promoter...remedy any discordances, if any, between the goals, forms and other conditions for holding the public event specified in the notice and the requirements of [the] law.*"

13. Article 12.3 of the Assembly Act indicates that the proposal must be "well-reasoned". The Assembly Act sets out some of the grounds for proposing alternatives: a danger that the building collapse or any other threats for the participants in the demonstration (Article 8 § 1), if the assemblies are planned to be held in banned places (listed in Article 8 §2) and if the intended location of assembly may accommodate fewer persons than are expected to participate (Article 12.1.4). In addition and in general, Article 12.1.3 indicates as a ground for amending the format "*discordances, if any, between the goals, forms and other conditions for holding the public event specified in the notice and the requirements of [the] law.*"

14. The Institute of Legislation and Comparative Law under the Russian Government has explained⁸ that "the executive authorities of the constituent entities of the Russian Federation or local self-government authorities may request changing the venue and/or time-frames of an event only for appropriate reasons, such as either the need to further the normal and smooth operation of crucial elements of public utility systems and transport infrastructure or the need to maintain public order and ensure the security of citizens (both the participants in the public event and persons who may be present at the venue of the event when it takes place), or *any other such reason.*"

15. The Ombudsman indicated to the Venice Commission delegation that there was a high degree of confusion about what was required to be in the motivated proposal.

16. Pursuant to Article 5.4.2, the organiser has to react on the alternative proposals of the authorities within three days prior to the scheduled assembly date at the latest, indicating to the authorities whether he/she accepts the modifications. According to Article 5.5, he or she has to reach an agreement (as already referred to in Articles 5.3.1 and 5.4.3) with the authorities, failing which the assembly cannot take place.

17. Indeed, Article 5.5 provides that the promoter has no right to hold an event where no agreement is reached with the executive authority on the alteration of the format of the event. The tenor of Article 5 § 5 was confirmed by the Russian representatives: where an alternative location for a public event is proposed by the municipal authorities, it is illegal to assemble elsewhere, as originally notified. Illegal public events may be terminated (Article 16.2) and indeed are often immediately dispersed by the police.

⁶ ECtHR, Sergey Kuznetsov v. Russia of 23 October 2008, § 43; Bukta and Others v. Hungary, § 35; Oya Ataman v. Turkey of 5 December 2006, § 39; Rassemblement jurassien et Unité jurassienne v. Switzerland, no. 8191/78, Commission decision of 10 October 1979, DR 17, p. 119; and also Plattform "Ärzte für das Leben" v. Austria, judgment of 21 June 1988, Series A no. 139, p. 12, §§ 32 and 34.

⁷ See Guidelines, Explanatory notes, para. 117.

⁸ Comments of the Institute of Legislation and Comparative Law under the Russian government, CDL(2012)023; CommDH(2011)32, 30 September 2011. These comments do not contain references to court decisions on assembly law or empirical/statistical Data on the practice of assemblies in Russia or on the restrictions imposed by public authorities.

18. The Constitutional Court of the Russian Federation has examined Article 5.5 of the Assembly Act⁹ and has set out the key principles which should guide its interpretation. As concerns the precision of the law, the Court has indicated that the legislative recognition of an exhaustive list of such reasons would groundlessly limit the discretion of public authorities to carry out their constitutional obligations.

19. In the view of the Russian Constitutional Court, the terms “motivated proposal” and reconciliation in Article 5 are unambiguous and this provision does not confer on the authorities the right to prohibit assemblies. The Court has also indicated that the alternative time and place should correspond to the social and political objectives of the event.

20. The Court further indicated that if agreement was not achieved as a result of reconciliation, the organisers had the right to apply to the court of general jurisdiction (Article 19 of the Assembly Act), which had jurisdiction to examine the lawfulness of the decision of the authorities. The courts were competent to decide cases involving value judgments to ensure the balance of interests between the public in general and particular political associations. Courts had to assess the lawfulness of the actions of the authorities in order to prevent unjustified restrictions of the right to assembly guaranteed by Article 31 of the Russian Constitution.

21. The Venice Commission stresses that, while the Assembly Law formally does not empower the executive authorities not to accept a notification or to prohibit a public event, it does empower them to alter the format originally envisaged by the organiser for aims which go far beyond the legitimate aims required by the ECHR. One of these aims is the “need to maintain a normal and smooth operation of vital utilities and transport infrastructures”: which is practically impossible in case of large or moving demonstrations. It has further been conceded and is indeed explicitly set out in Article 5.5 of the Assembly Law that if the organisers disagree with the local authorities’ motivated proposal to change the format of the public event, the latter is de facto prohibited. Therefore, in the Venice Commission’s view, since the permission is rarely given, the notification or notice, in substance, amounts to a substitute for a request of a previous permission, to an “authorization procedure de facto”.¹⁰

22. While the terms “proposal”, “suggestion” and “agreement” in particular create an impression of non-directive instruments and while the Constitutional Court refers to a procedure of reconciliation of differing interests, there is no specification in the law as to how this should take place. Due to this kind of regulation, there is a high risk that in practice reconciliation does not take place.¹¹ Thus, if the organizer fails to accept the authorities’ proposal, the public event is simply not authorised. The organizer is thus often left with the choice of either giving up the public event (which will then be de facto prohibited) or accepting to hold it in a manner which may not correspond to the original intent. The need to choose only between these two options is not compatible with Article 11 ECHR. This regulation of the notification procedure in the Assembly Act therefore calls for the following comments from the Venice Commission.

⁹ Judgment N 484-O-P of 2 April 2009. The Venice Commission could not read the full text of this judgment. It had access to an abstract in English, published by Oxford Reports on International Law, ILDC 1480 (RU 2009) and also to a summary of the main findings of the judgment, in CommDH(2011)32.

¹⁰ This latter expression is used in the opinion of the dissenting constitutional Judge Kononov in relation to Judgment N 484-O-P of 2 April 2009. The same view was expressed by the Commissioner for Human Rights in the Russian Federation: “the notification procedure of holding all kinds of public assemblies established by the Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing tends to degenerate into an authorisation procedure, which is not founded in the law”: Special Report of the Commissioner for Human Rights in the Russian Federation “On the constitutional right to peaceful assembly in the Russian Federation”, 2007.

¹¹ The realisation of this risk may be the basis for the information, the Venice Commission received from representatives of NGOs, that in practice an agreement is rarely reached on the terms requested.

23. The alteration of the place of the assembly by the authorities means that events cannot be held in places chosen by the organizer within sight and sound of their targeted audiences or at a place with a special meaning for the purpose of the assembly. The Venice Commission recalls that respect for the autonomy of the organizer in deciding on the place of the event should be the norm. The Constitutional Court has rightly specified that the newly proposed time and place must correspond to the social and political objectives of the event, and this requirement provides some safeguard against depriving the proposed public event of any impact. But even assuming that the alternative proposals do comply with this principle, it must be underlined that in principle the organisers should be permitted to choose the venue and the format of the assembly without interference. The Venice Commission agrees with the Institute of Legislation and Comparative Law that “organisers, while implementing their right to determine the place and time of the event should, in turn, endeavour to reach an agreement on the basis of a balance of interests” and indeed the Commission has recently pointed out the benefits to the organiser, if he/she is willing to cooperate with the authorities, thus preventing “the imposition of further restrictions (and even the termination of the entire assembly, if this is proportionate in the circumstances)”. However, this is only true where the changes in the format are caused by *compelling* reasons as required by Article 11.2 ECHR. In all other cases, the authorities should respect the organisers’ autonomy in the choice of the format of the public assembly. In this respect, the Guidelines clearly state: “An assembly organizer should not be compelled or coerced either to accept whatever alternative(s) the authorities propose, or to negotiate with the authorities about key aspects (particularly the time or place) of a planned assembly. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly.”

24. As concerns *de facto* prohibitions to hold public events, it must be remembered that “in order to be “necessary in a democratic society” the limitation of the freedom must correspond to a pressing social need, be proportionate (i.e. there must be a rational connection between public policy objective and the means employed to achieve it and there must be a fair balance between the demands of the general community and the requirements of the protection of an individual’s fundamental rights), and the justification for the limitation must be relevant and sufficient.”¹² Use of public space for an assembly is just as much a legitimate use as any other. Restrictions are only permitted where an assembly will actually disrupt unduly and a mere possibility of an assembly causing inconvenience does not justify its prohibition. Indeed, inconvenience to designated institutions or to the public, including interference with traffic, should not be as such a sufficient basis for prohibition.

25. The Venice Commission agrees with the Russian Constitutional Court that the Assembly Law needs to leave some discretion to the executive authorities. It recalls in this respect that the European Court of Human Rights has clarified that “a law which confers a discretion must indicate the scope of that discretion”, but has recognised “the impossibility of attaining absolute certainty in the framing of laws”.¹³ Discretion must be exercised “reasonably, carefully and in good faith”.¹⁴ In the opinion of the Commission, however, the Assembly Law confers too broad discretion and fails to indicate in clear terms that interferences by the executive authorities with the organisers’ right to determine the format of the public even must always comply with the fundamental principles of “presumption in favour of holding assemblies”, “proportionality” and “non-discrimination”. Under the current law, for example, the executive authorities are empowered to transform a moving event into a static event in order to prevent mere traffic perturbations, which is not in conformity with Article 11 ECHR. As the Assembly Law itself

¹² ECtHR, *Christian Democratic People’s Party v. Moldova*, no. 28793/02, § 70; *Barankevich v. Russia* judgment of 26 July 2007, paras. 26. ; *Sergey Kuznetsov v. Russia* of 23 October 2008, § 40.

¹³ In primis ECtHR, *Sunday Times v. UK* judgment of 26 April 1979, para. 49.

¹⁴ See *mutatis mutandis* ECtHR, *Barankevich v. Russia*, § 26.

confers on the executive authorities too broad a discretion and fails to set out the essential principles within which such discretion must be exercised, there is a high risk that judicial review may not lead to a reversal of decisions even if they are based on grounds not justified by Article 11.2 ECHR.

26. The Venice Commission welcomes the possibility for the organisers to apply to the courts to seek reversal of the municipal authorities' decision (Article 19 of the Assembly Act). The Venice Commission recalls that one of the fundamental principles of a democratic society is the rule of law, which is expressly referred to in the Preamble to the ECHR¹⁵). The rule of law implies, inter alia, that interference by the executive authorities with an individual's rights should be subject to an effective control which should normally be assured by the judiciary, at least in the last resort, as judicial control offers the best guarantees of independence, impartiality and a proper procedure.¹⁶ The Constitutional Court of the Russian Federation has clarified that courts must review the legality of the decisions of the executive authorities.

27. In addition, the Venice Commission underlines that it is crucial not only that the court may genuinely review the decision of the public authorities, but also that it may do so before the assembly takes place, or else that a system of relief via court injunctions be available.

28. The Venice Commission has found information about the appeal process in the Communication submitted by the Russian authorities to the Committee of Ministers of the Council of Europe in relation to the Alekseyev case.¹⁷ According to these submissions, appeals against the decisions of the municipal authorities are examined within ten days (the common time-limit is two months). Within a further ten days, the appeal judgments may be appealed to the Court of Cassation; if there is no appeal on points of law, the appellate decision becomes final and may be immediately enforced.

29. The Venice Commission notes that it is unlikely that the appeal procedure may be completed in time before the date proposed by the notification for the public event and there does not seem to be provision for an injunction enabling the organiser to proceed with the public event pending the appeals.

30. In conclusion as regards the procedure for notification of public events as set out in the Assembly Law, the Venice Commission considers that this procedure is in substance a request for permission. Furthermore, the Assembly Law confers too broad discretion on the executive authorities to restrict assemblies, for instance by giving them the power to alter the format of the public event for aims (in particular the need to preserve the normal and smooth circulation of traffic and people) which go beyond the legitimate aims contained in Article 11 ECHR. The Law fails to indicate explicitly that such discretion must be exercised with due respect for the essential principles of "presumption in favour of holding assemblies", "proportionality" and "non-discrimination". Judicial review is potentially rendered ineffective because the courts do not have the power to reverse decisions which are within the broad discretion of the executive authorities and they cannot complete review in time before the proposed date of the public event to preserve its original timeframe. As a consequence, in the opinion of the Venice Commission the Assembly Law does not sufficiently safeguard against the risks of an excessive use of discretionary power or even arbitrariness or abuse. Risks of an overbroad use

¹⁵ EctHR, Golder judgment of 21 February 1975, Series A no. 18, pp. 16-17, para. 34

¹⁶ ECtHR, Klass and others v. Germany judgment of 06/09/1978, § 55.

¹⁷ Communication from the Russian Federation concerning the case of Alekseyev against the Russian Federation, at:
<https://wcd.coe.int/ViewDoc.jsp?id=1849691&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

of discretionary powers in order to suppress assemblies can always arise and therefore any assembly law must aim at reducing them as far as possible.

31. The Assembly Law should secure the autonomy of the assembly, fostering co-operation on a voluntary basis only. If an agreement cannot be reached, a prohibition may only be considered if it is justified in itself and not due to the failure of cooperation, i.e. of not reaching an agreement. The executive authorities may only suggest to the organiser to change the place and time under Article 12.2 of the Assembly Law, but their decision should necessarily be motivated on the grounds of concrete and direct threats and dangers to public safety (including to the safety of citizens, both participants in the public event and passers-by) and to national security. Other kinds of reasoning should be excluded.

C. Blanket rules

32. The Assembly Law contains several so-called blanket prohibitions,¹⁸ that is, absolute prohibitions that do not allow for any exception. Blanket rules will often be disproportionate because no consideration may be given to exceptional cases which should be treated differently. As the European Court of Human Rights has stated,¹⁹ “sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.”

33. Art 5.5 of the Assembly Law states in terms that the promoter shall not have a right to hold an event when notice was not filed in due time. This rule is disproportionate: as a blanket rule, it does not permit any exceptional circumstances of a particular case to be taken into consideration.

34. A list of excluded premises is supplied in Articles 8.2 and 3 Assembly Act. The Institute of Legislation and Comparative Law has indicated to the Venice Commission that the concerned buildings have a strategic purpose and their exclusion is designed to protect the safety of participants in the public event as well as other citizens (Article 8.2.1), to protect the special constitutional status of the President, to avoid pressure on court trials and for security reasons (8.2.3). The Venice Commission agrees with the Institute that it may be necessary and legitimate to prevent a public event from taking place on the premises listed in Article 8.2. However, such a decision should be taken in view of each specific case and according to the criteria indicated by the European Court of Human Rights (notably when it is necessary in a democratic society). Not all assemblies (of all sizes, for example) may be considered to endanger court buildings, or monuments of history and culture. The term “territories directly adjacent” (Article 8.2.3) is overly broad and calls for narrow interpretation.²⁰ Rather than listing premises on which public events are always prohibited or are dependent on a procedure determined by the President of the Russian Republic (see Article 8.4 Assembly Act), general criteria in the Assembly Act should set out in what circumstances and to what extent an assembly might pose a threat to the listed buildings or to the function carried out in them. Such criteria could then be applied to specific cases when an assembly is proposed. These criteria should be laid down in the Assembly Act itself in order to give adequate guidelines for

¹⁸ Under Article 5 of the Assembly Law, non-citizens, persons younger than 18 (for demonstrations, marches and pickets) and younger than 16 (for meetings and rallies) and legally incapable persons cannot organise public events. This is a blanket prohibition which is excessive: see CDL-AD(2010)033, § 28 ; CDL-AD(2009)052, § 29.

¹⁹ ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* judgment (2001), para. 97.

²⁰ See also the Special Report of the Commissioner for Human Rights in the Russian Federation “On the constitutional right to peaceful assembly in the Russian Federation”, 2007.

implementing decrees. The same suggestions must be made in relation to Article 8.2.3.1 Assembly Act (concerning regulations on the procedure for holding public events at transport infrastructure sites).

35. Article 9 prohibits assemblies taking place between 11 p.m. and 7 a.m. This is a restriction of the right to freely choose the time of an assembly. According to the Institute of Legislation and comparative Law, this general restriction pursues the aims of protecting public order and the tranquillity of citizens. The Venice Commission stresses however that the subject/goal of the assembly may justify holding a specific assembly after 11 p.m. or one that lasts for more than a single day. Decisions should be taken by the executive authorities in each single case with due respect for the principle of proportionality.

D. Spontaneous assemblies, urgent assemblies, simultaneous assemblies and counter demonstrations

36. The absolute terms of Article 7.1 in relation to the notification period of 10-15 days entail that there is no possibility to hold an assembly at shorter notice. In the opinion of the Institute of Legislation and Comparative Law, these terms are sufficient for the effective implementation of the constitutional right of citizens to assemble peacefully, they are proportionate and serve as a procedural guarantee as to organisers and for the authorities. The establishment of such terms allows state organs and local authorities to ensure the security of the participants, to prevent breaches of public order, to facilitate within its competence the conduct of a public event.

37. The Venice Commission agrees, in general, that provision for a timeframe for the notification of public events may be helpful as it enables the authorities to take reasonable and appropriate measures in order to guarantee their smooth conduct. It recalls however that there may be cases in which a public event is organised as an urgent or spontaneous response to an unpredicted event, in which case it may not be possible to respect the ordinary timeframe for notification. Spontaneous and urgent assemblies are protected by Article 11 ECHR: indeed the ECtHR has stated that "a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly".²¹ Assemblies which carry a message that would be weakened if the legally established notification period were adhered to, especially if assemblies take place as an immediate response to an actual event, require protection as well. Such spontaneous assemblies, including counter demonstrations are required by ECHR to be facilitated by the authorities, even if they do not meet the normal notification requirement, as long as they are peaceful in nature.

38. As regards simultaneous demonstrations, the Commission understands from the Institute of Legislation and Comparative Law that simultaneous and counter demonstrations are generally considered to be a danger to safety and order and, as such, they are not allowed in the sense that the competent executive authorities change the format of an event if it is scheduled to take place at the same time and place of a previously notified one. Some regional and local legislation expressly empowers the executive authorities to do so.

39. The Commission underlines in this respect that where notification is given for more than one assembly at the same place and time, they should be facilitated as far as possible. It is a disproportionate response not to allow more than one assembly at a time as a blanket rule. It is only where it would be impossible to manage both events together using adequate policing and stewarding that it would be permissible to restrict or even move one of them. A policy described as "separate and divide" where the same place is sought by several organisers is not permissible. Similar considerations apply for counter demonstrations.

²¹ See ECtHR judgement, *Bukta v. Hungary* (2007), para.36.

40. The Commission delegation was told that the previous organisation of other events, especially cultural events to be held at the venue and on the day of the notified public assembly, regularly entailed the proposal by the municipal authorities to alter the format of the latter. Since such other events are not covered by the time limitation for a notification the organizer of an assembly has to comply with (Article 7 Assembly Law), it violates the freedom of assembly if the assembly cannot take place solely due to the fact that someone else wants to use the place for another kind of event at the same time, who is not bound by the same timeframe-restriction as the organizer of an assembly. Public spaces should be available to all and other events like cultural events should not have automatic priority. The constitutional protection to conduct cultural or similar events is not superior to the constitutional protection of the freedom of assembly. Obligations of the organiser

41. Article 5.4 of the Assembly Law imposes a number of obligations on the organiser. While most of them can be seen as reasonable taking into account that the organiser bears the primary responsibility for the assembly, others seem too onerous or should be formulated less strictly. This applies to Nos 4, 7 and 8 of Article 5.4 of the Assembly Law, requiring the organiser to uphold certain aspects of public order. Whereas the organiser is indeed responsible for exercising due care to prevent disorder, he/she cannot revert to the exercise of police power and cannot be required to do so. Moreover, the citizen's right of peaceful assembly mirrors the state's duty to facilitate and protect such events. This leads to the conclusion that the overall responsibility to ensure public order must lie with the law enforcement bodies, not with the organiser of an assembly. The obligations of organisers should be reduced to the exercise of due care, taking into account the limited powers of the organiser, the more so since the responsibility of the authorities to provide public security, medical aid etc. is already set out in Article 18.3 of the Assembly Law.

42. The term "to ensure public order" in Article 7.3 No 6 should be revised in view of the above, too. The latter especially refers to No 6 of Article 5.4 of the Assembly Law, requiring the organiser "to suspend or terminate the public event in case of perpetration by its participants of any illegal actions", which refers to the grounds for termination in Article 16 Assembly Act. This does not reflect proportionality, since on the one hand the illegal actions are not further specified, thus comprising even minor breaches of the law such as administrative offences, on the other hand misbehaviour of just one participant, irrespective of the conduct of the assembly as a whole, does necessarily lead to the suspension/termination of the entire assembly. In the light of proportionality the Russian legislator should adopt a more appropriate wording allowing for a wide range of flexible solutions adjusted to the different types of imminent infringements.

E. Suspension or termination of public events

43. A public event may be suspended (and subsequently terminated) in case of "violation of law and order" by the participants (Article 15). It can also be terminated in case of "deliberate violation" by the organiser of the provisions on the procedure for holding a public event (Article 16.2).

44. These provisions appear too rigid. Not all violations of the law should lead to the suspension and termination of the public event, which should be measures of last resort. Reasons for suspension and termination should be narrowed to public safety or a danger of imminent violence (see Article 16.1 of the Assembly Law).

F. Legal consequences of failure to comply with the Assembly Law

45. There are several references in the Assembly Law to legal consequences of failure to comply with the Law itself. Article 12.2 of the Assembly Law mentions a motivated written warning which may be addressed by the executive authorities to the organiser that he/she may be held responsible as appropriate.

46. The Russian authorities have clarified²² that “according to the Federal Law, actions of an organiser of a public event are declared unlawful and therefore entail administrative penalties in the following three cases: if a notification of a mass gathering has not been submitted within the legally defined time-limits; if the executive authority of the constituent entity of the Russian Federation or local self-government authority has not been invited to negotiate its request for changing the venue and/or time-frames of the public event; or if an organiser of a public event has not removed inconsistencies between the purposes, format and other modalities of the public event and the Federal Law from the notification of the event to satisfy a well-reasoned request made in writing by a designated authority under part 2 of Article 12 of the Federal Law. In the third case, if information contained in a notification of a public event and other information convey the suggestion that the purposes and format of the planned public event are inconsistent with the provisions of the Constitution of the Russian Federation and/or constitute violations of prohibitions envisaged in the administrative and criminal laws of the Russian Federation, the executive authority of the constituent entity of the Russian Federation or local self-government authority immediately informs the organiser of a public event via a well-reasoned written warning that in case such inconsistencies and (or) violations occur during the event, the organiser of the public event, as well as other participants therein, may be brought to justice in accordance with the established procedure. The designated authorities consider other information in each case on the basis of an evaluation criterion, taking into account specific evidence, such as communications from individuals and legal entities, mass media reports and operational information indicative of the possibility that the organisers of a mass gathering and participants therein may commit crimes or administrative offences while such gathering is being arranged and held, although the executive authority or local self-government authority possessing such information is not entitled to prohibit a mass gathering. In this context, the literal interpretation of the legislation and the law enforcement practice are illustrative of the fact that the designated authorities decide on “other evidence” in each case on the basis of an evaluation criterion, taking into account specific evidence, such as communications from individuals and legal entities, mass media reports and operational information indicative of the possibility that the organisers of a mass gathering and participants therein may commit crimes or administrative offences while such gathering is being arranged and held.”

47. The Venice Commission did not have access to court decisions or other sources which allow an evaluation of the practice on sanctions on failures to comply with the Assembly Law as described by the Russian authorities and to confront this description with the criticism raised by NGOs. The Venice Commission restricts its comment to raising concern that sanctions following the mere failure by the organiser to meet the time-limits for notification or to “invite the authorities to negotiate” their request for changing the venue and/or time-frames of the public event or to comply with the alternative proposal of the authorities are likely to be disproportionate and have an unwarranted chilling effect on organisers of public events.

²² CommDH(2011)32.

IV. Conclusions

48. The Venice Commission recalls that the right of peaceful assembly enshrined in Article 11 of the European Convention on Human Rights is a fundamental right and one of the foundations of a democratic society. In its view, the effective guarantee of the right to freedom of assembly depends in primis on the quality of the legal regulation of its exercise, but also and importantly on the manner in which such legal regulation is interpreted and implemented. The presumption in favour of assemblies is essential and must influence the use by the executive authorities and by the law-enforcement agencies of the discretionary powers which the legal regulations confer upon them.

49. The main results of the analysis of the Assembly Law by the Venice Commission with regard to Article 11 ECHR can be summarised as follows:

- It is recommended that the presumption in favour of holding assemblies and the principles of proportionality and non-discrimination be expressly included in the Assembly Law
- the regime of prior notification under Article 5.5, 7 and 12 Assembly Act should be revised; the co-operation between the organisers and the authorities in Article 12 Assembly Act should be settled on a voluntary basis respecting the assemblies' autonomy and without depriving the organisers of the right to hold an assembly on the ground of a failure to agree on any changes to the format of an assembly or to comply with the timeframe for notification of the public event; the power of the executive authorities to alter the format of a public event should be expressly limited to cases where there are compelling reasons to do so (Article 11.2 ECHR), with due respect for the principles of proportionality and non-discrimination and the presumption in favour of assemblies.
- the right to appeal decisions before a court (Article 19 Assembly Act) is welcomed; it should be provided that a court decision will be delivered before the planned date of the assembly, for instance via the availability of court injunctions;
- spontaneous assemblies and urgent assemblies as well as simultaneous and counter demonstrations should be allowed as long as they are peaceful and do not pose direct threats of violence or serious danger to public safety;
- the grounds for restrictions of assemblies should be narrowed to allow application of the principle of proportionality in order to bring them in line with Article 11.2 ECHR and reasons for suspension and termination of assemblies should be limited to public safety or a danger of imminent violence;
- the obligations of the organisers in Article 5.4 Assembly Act should be reduced; their responsibility to uphold public order should be restricted to the exercise of due care;
- the blanket restrictions on the time and places of public events should be narrowed.

50. The Venice Commission hopes that the Russian authorities will engage in a constructive dialogue with a view to improving the Assembly Law and ensuring the unimpeded exercise of the right of freedom of peaceful assembly in the Russian Federation. The Venice Commission stands ready to assist.

Annex 817

Council of Europe, European Commission for Democracy Through Law (Venice Commission),
Opinion No. 660/2011 on the Federal Law on Combating Extremist Activity of the Russian
Federation, CDL-AD(2012)016 (20 June 2012)



Strasbourg, 20 June 2012

Opinion no. 660 / 2011

CDL-AD(2012)016
Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OPINION

**ON THE FEDERAL LAW
ON COMBATING EXTREMIST ACTIVITY
OF THE RUSSIAN FEDERATION**

**Adopted by the Venice Commission
at its 91st Plenary Session
(Venice, 15-16 June 2012)**

On the basis of comments by

**Mr Vojin DIMITRIJEVIC (Member, Serbia)
Ms Finola FLANAGAN (Member, Ireland)
Mr Christoph GRABENWARTER (Member, Austria)**

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I. Introduction

1. By a letter of 19 December 2011, the Chair of the Parliamentary Assembly's Monitoring Committee requested the opinion of the Venice Commission on the Russian Federation Federal Law on Combating Extremist Activity (CDL-REF(2012)012, hereinafter "the Extremism Law").
2. The present opinion is based on the English translation of the consolidated version of the Extremism Law, as provided by the Parliamentary Assembly's Monitoring Committee. The translation may not always accurately reflect the original version on all points and, consequently, certain comments can be due to problems of translation.
3. Mr Dimitrijevic, Ms Flanagan and Mr Grabenwarter acted as rapporteurs. The present Opinion is based on their comments and the very limited information provided to the delegation of the Venice Commission during its visit to Moscow on 9 -10 February 2012. The Institute for Legislation and Comparative Law under the Government of the Russian Federation provided comments on the law under consideration (CDL(2012)024), which were duly taken into account in the preparation of the Opinion. Some additional clarifications were provided by the representatives of the Russian authorities during a meeting held in Paris on 27 April 2012.
4. The present opinion was discussed by the Sub-Commission on Fundamental Rights during the Commission's 90th Plenary Session in March 2012 and subsequently adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012).

II. Preliminary remarks

5. The Federal Law on Extremism (Federal Law No. 114 FZ on Combating Extremist Activity) was originally adopted on 25 July 2002, with the aim of defining extremism and extremist activities and providing the authorities of the Russian Federation, at all levels, with tools for the detection, prevention and suppression of extremist activities. In particular, the Extremism Law empowers prosecutors to take preventive and corrective measures aimed at combating the activities listed in the Law as being "extremist". Since 2002, several rounds of amendments were made to the Law (twice in July 2006, May and July 2007 and April 2008). The Law is applicable both to organisations - public, religious and other organisations - and to individuals and needs to be read in conjunction with related provisions of other important laws of the Russian Federation, such as the Criminal Code, the Code of Administrative Offences, the Law on the Federal Security Service (FSB) as well as media and information-related legislation.
6. As it now stands, in addition to provisions devoted to measures available to the authorities for combating and punishing extremism, the Extremism Law contains definitions of extremism-related notions ("extremist organisation", "extremist materials") and an inventory of actions or purposes qualifying an activity as being "extremist", which has evolved over time.
7. The broad interpretation of the notion of "extremism" by the enforcement authorities, the increasing application of the Law in recent years and the pressure it exerts on various circles within civil society, as well as alleged human rights violations reported in this connection have raised concerns and drawn criticism both in Russia and on the international level.¹

¹ "[t]he Law on fighting extremist activity (the Extremism law) continues to raise concern. It was adopted in 2002, but over the last years it has allegedly been increasingly used by the authorities to harass NGOs, journalists, human rights groups, and, in particular some religious groups. We were approached by the representatives of the Jehovah's Witnesses who presented us with a number of documented cases of disruption of religious meetings and other forms

8. This Opinion is limited in scope and should not be seen as a comprehensive and detailed review of all the provisions of the Extremism Law. As suggested by the Monitoring Committee in its request, its main purpose is to assess, in the light of the applicable international standards, the definition of “extremism” and the means which are at the disposal of the authorities under the Law, to deal with activities considered “extremist”. Nonetheless, since the analysis of the above-mentioned issues cannot disregard the more general context of the Law, the Opinion also addresses other related provisions of the Law that may raise concern in the light of human rights standards.

9. The Venice Commission is aware of the challenges faced by the Russian authorities in their legitimate efforts to counter extremism and related threats and has taken this fact into account in preparing this Opinion. However, the Commission wishes to underline the critical importance it attaches to the need to ensure full compliance in the adoption, interpretation and implementation of any anti-extremism policies and measures with international standards in the field of the protection of fundamental rights and freedoms of individuals. It recalls that “[an] individual, his rights and freedoms are the supreme value” and that “[r]ecognition, observance and protection of rights and freedoms of individual and citizen shall be an obligation of the state” according to the Constitution of the Russian Federation (Article 2).

10. Since its adoption, the Extremism Law has been amended several times, reflecting the efforts of the Russian legislator to provide stronger means to combat extremism. The Commission has been informed that new amendments to this law are currently being discussed, at the initiative of the Presidential Council for Civil Society and Human Rights. However the Commission has not been provided with any text by the authorities of the Russian Federation. In the Commission’s view the authorities of the Russian Federation should take the opportunity to improve the Russian Federation’s legal framework pertaining to the fight against extremism, bring it in full compliance with the applicable international standards and enable the Russian authorities effectively to address shortcomings noted in this field, both in the law and in practice.

III. International and European standards related to combating extremism

11. The Law regulates and affects a number of human rights enshrined in customary law and international treaties binding the Russian Federation: the Universal Declaration of Human Rights of 10 December 1948, the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) with its Protocols. These rights are freedom of thought, conscience and religion (Article 18 ICCPR and Article 9 ECHR), freedom of expression (Article 19 ICCPR and Article 10 ECHR) and freedom of assembly and association (Article 22 ICCPR and Article 11 ECHR).

12. The Shanghai Convention on Combating Terrorism, Separatism and Extremism of 15 June 2001 (“Shanghai Convention”)², ratified by the Russian Federation in October 2010, and the International Convention on the Elimination of all Forms of Racial Discrimination of 21 December 1965 are also of relevance³.

of harassment. Criticism about the law stems mainly from the vague definition of key words such as extremism, terrorism and social groups, thus giving enforcement authorities broad latitude in determining which organisations, individuals, and activities are covered by the law”.

(http://assembly.coe.int/CommitteeDocs/2011/amondoc09rev_2011.pdf).

² <http://www.unhcr.org/refworld/publisher,ASIA,,49f5d9f92,0.html>.

³ See also Parliamentary Assembly Recommendation 1933 (2010) on the “Fight against extremism: achievements, deficiencies and failures”.

13. The rights and freedoms guaranteed by Articles 9, 10 and 11 ECHR are qualified and each article contains a limitation clause. No restrictions are permitted other than those expressly listed and such restrictions must have a legitimate aim. Article 18 ECHR prohibits restrictions for any purpose other than those for which they have been prescribed. Even if the restriction corresponds to one of the specified reasons in the limitations clause, it must also be "prescribed by law" i.e. have a basis in domestic law, be accessible and sufficiently foreseeable. Both the nature and the quality of domestic legislation are important, as are the interpretation and the application of the law. Furthermore, any limitation must also be "necessary in a democratic society"⁴, i.e. according to the long-established case law of the ECtHR these must correspond to a pressing social need, be proportionate and be relevant and sufficient. The Extremism Law has to be examined in the light of permitted restrictions.

14. According to Article 9 ECHR, any limitations to manifestations of the freedom of thought, conscience and religion may only be motivated by the interests of public safety, by the protection of public order, health or morals, and by the rights and freedoms of others. Article 18 ICCPR is very similar: the freedom of thought, conscience and religion may be restricted if this is necessary to protect "public safety, order, health, morals or the fundamental rights and freedoms of others". It should be noted that both instruments only address limitations regarding "the freedom to manifest one's religion or beliefs" and not the substance or contents of such religion or beliefs. According to Article 18.2 ICCPR, "*no one shall be subject to coercion which would impair his freedom to adopt a religion or belief of his choice*".

15. Under Article 10.2 ECHR, to fulfil the "legitimacy" requirement, limitations to freedom of expression shall only be: "*in the interests of the national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary*".

16. Restrictions on the exercise of freedom of assembly and association under Article 11 ECHR are allowed if they are "*in the interests of the national security, or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*" Article 11(2) states that the article does not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces and the police and on the administration of the state.

IV. Constitutional background

17. The Constitution of the Russian Federation states in Article 2 that "*An individual, his rights and freedoms, shall be the supreme value*" and guarantees that "*[r]ecognition, observance and protection of rights and freedoms of individual and citizen shall be an obligation of the state*". Article 17 provides that "*...the rights and freedoms of individual and citizen shall be recognised and guaranteed according to the generally accepted principles and rules of international law and according to the...Constitution*". The basic rights and freedoms are said to "*...be inalienable and belong to every person from birth*". However "*[t]he exercise of rights and freedoms of individual and citizen shall not infringe upon the rights and freedoms of other persons*".

18. Under Article 19 of the Constitution, the State guarantees equal human and civil rights and freedoms irrespective of gender, race, ethnicity/nationality, language, origin, property or employment status, place of residence, religion, convictions, membership of public associations

⁴ See *Chassagnou and Others v France*, No. 25088/94, 28331/95 and 28443/95, Judgment of 29 April 1999.

or any other circumstances. Any restrictions of citizens' rights on social, racial, ethnic/national, linguistic or religious grounds are prohibited.

19. Specific guarantees are enshrined in Article 28 for the right to freedom of conscience, freedom of religion, including the right to profess, either alone or together with others, any or no religion, to freely choose, have and disseminate religious or other convictions and to act according to them.

20. Article 29 guarantees freedom of thought and speech. In this context, however, the Constitution of the Russian Federation prohibits propaganda or agitation arousing social, racial, ethnic/national or religious hatred and enmity as well as propaganda of social, racial, ethnic/national, religious or linguistic supremacy.

21. Article 30 provides that *"[e]very person shall have the right to freedom of association, including the right to establish trade unions to protect his interests. Free activity of public associations shall be guaranteed"*.

22. Article 31 provides that *"[c]itizens of the Russian Federation shall have the right to meet peacefully, without arms, and to organise discussions, meetings and demonstrations, as well as processions and pickets"*.

23. At the same time, as stated in Article 13 of the Constitution, the creation and activity of public associations, whose aims and actions are directed at forcibly changing the foundations of constitutional governance, violating the integrity of the Russian Federation and undermining state security, creating armed formations and instigating social, racial, ethnic/national and religious discord, are prohibited.

24. A general restriction clause can be found in Article 55: human and civil rights and freedoms may be restricted by federal law only to the extent needed for certain constitutionally significant purposes, i.e. the foundations of its constitutional system, morals, health, rights and legitimate interests of other persons, and ensuring the defence of the nation and security of the state. Moreover, Article 55 stipulates that the enumeration of fundamental rights and freedoms in the Constitution of the Russian Federation shall not be interpreted as denial of or derogation from other universally recognised rights and freedoms of individual. It is important to point out that, as stipulated by Article 15.4 of the Russian Federation Constitution, *"[t]he universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied"*.

25. Finally, Article 118 provides that *"[j]ustice in the Russian Federation shall be administered by courts alone"*.

V. Specific remarks

A. The definition of "extremism"

26. Preventive and corrective measures under the Extremism Law represent interferences with fundamental rights guaranteed by the ECHR. As such, these interferences must be "in accordance with the law", must be pursue a legitimate aim and must be proportionate to that aim.

27. The European Court of Human Rights (ECtHR) has said in a number of cases that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the ECHR not only require that the impugned measure should have some basis in domestic law,

but also refer to the quality of the law in question⁵. The law should be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual to regulate his or her conduct⁶. The level of precision required of domestic legislation - which cannot in any case provide for every eventuality - depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed⁷.

28. The only definition of “extremism” contained in an international treaty binding on the Russian Federation is to be found in the Shanghai Convention. In Article 1.1.1.3) of the Extremism Law, “extremism” is defined as “*an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties*”. The latter clause allows signatory states to prosecute such “extremist” actions according to their national laws.

a) “*Extremist actions*”

29. Article 1 of the Extremism Law provides the following list of extremist activity/extremism⁸:

1. *forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation;*
2. *public justification of terrorism and other terrorist activity;*
3. *stirring up of social, racial, ethnic or religious discord;*
4. *propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion;*
5. *violation of human and civil rights and freedoms and lawful interests in connection with a person's social, racial, ethnic, religious or linguistic affiliation or attitude to religion;*
6. *obstruction of the exercise by citizens of their electoral rights and rights to participate in a referendum or violation of voting secrecy, combined with violence or threat of the use thereof;*
7. *obstruction of the lawful activities of state authorities, local authorities, electoral commissions, public and religious associations or other organisations, combined with violence or threat of the use thereof;*
8. *committing of crimes with the motives set out in indent "f" ["e" in the original Russian] of paragraph 1 of article 63 of the Criminal Code of the Russian Federation;*
9. *propaganda and public show of nazi emblems or symbols or of emblems or symbols similar to nazi emblems or symbols to the point of confusion between the two;*
10. *public calls inciting the carrying out of the aforementioned actions or mass dissemination of knowingly extremist material, and likewise the production or storage thereof with the aim of mass dissemination;*
11. *public, knowingly false accusation of an individual holding state office of the Russian Federation or state office of a Russian Federation constituent entity of having committed*

⁵ *Hasan and Chaush v. Bulgaria*, App. No. 30985/96, Judgment of 26 October 2000, para 84.

⁶ *Ibid.* See also: *Sunday Times v. the United Kingdom* (no. 1) judgment of 26 April 1979, Series A no. 30, p. 31, § 49; the *Larissis and Others v. Greece* judgment of 24 February 1998, *Reports 1998-I*, p. 378, § 40; *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, § 31, ECHR 1999-VIII; and *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000 -V. ; see also *Maestri v. Italy*, no. 39748/98, Judgment of 17 February 2004, para. 30

⁷ *Groppera Radio AG and Others v. Switzerland*, judgment of 28 March 1990, Series A no. 173, p. 26, para. 68. See also see *Kruslin*, 24 April 1990, §§ 24-25; 5. 5. 2011, *Editorial Board of Pravoye Delo u. Shtekel*, 5 May 2011, §§ 63-64

⁸ Numbers (1 to 13) have been added for the purpose of the present Opinion.

actions mentioned in the present Article and that constitute offences while discharging their official duties;

12. organisation and preparation of the aforementioned actions and also incitement of others to commit them;

13. funding of the aforementioned actions or any assistance for their organisation, preparation and carrying out, including by providing training, printing and material/technical support, telephony or other types of communications links or information services;

30. The Venice Commission notes that the definitions in Article 1 of the Law of the “basic notions” of “extremism” (“extremist activity/extremism”, “extremist organisation” and “extremist materials”) do not set down general characteristics of extremism as a concept. Instead, the Law lists a very diverse array of actions that are deemed to constitute “extremist activity” or “extremism”. This should mean that, according to the Law, only activities defined in Article 1.1 are to be considered extremist activities or fall within the scope of extremism and that only organisations defined in Article 1.2 and materials defined in Article 1.3 should be deemed extremist⁹.

31. The Commission however has strong reservations about the inclusion of certain activities under the list of “extremist” activities. Indeed, while some of the definitions in Article 1 refer to notions that are relatively well defined in other legislative acts of the Russian Federation, a number of other definitions listed in Article 1 are too broad, lack clarity and may open the way to different interpretations. In addition, while the definition of “extremism” provided by the Shanghai Convention, as well as the definitions of “terrorism” and “separatism”, all require violence as an essential element, certain of the activities defined as “extremist” in the Extremism Law seem not to require an element of violence (see further comments below).

Article 1.1 point 1: “forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation”

32. According to the clarification provided by the Russian authorities, the term “forcible” in point 1 governs both “change of the foundations of the constitutional system” and “violation of the integrity of the Russian Federation”, so that only *forcible* acts aiming at changing the territorial settlement of the country fall under the definition of an extremist activity. According to the Russian Institute for Legislation and Comparative Law, “*It should be noted that “the forcible changing of the foundations of the constitutional order and the violation of the unity of the Russian Federation” the lawmaker is speaking about forcible and violent changes. In other words the means of changing the constitutional order which are provided for in the legislation should not be treated as extremist activities (extremism). Besides, resorting to such means which are not directly mentioned in this law but which do not involve violence must not be considered as extremism. We suppose that it is very important because the expression of a different point of view on the one hand and the forcible changing of the foundations of the constitutional order on the other are quite distinct*”.

33. The Commission notes these observations of the Institute. The Commission underlines that advocacy of the right to self-determination of peoples or peacefully advocating a different territorial arrangement within a country are generally not considered to be criminal actions, and may on the contrary be seen as a legitimate expression of a person’s views¹⁰.

⁹ According to the information received by the Rapporteurs, the initial list established by the 2002 version of the law (Federal Law No. 114 FZ on Counteraction of Extremist Activities) was expanded in 2006 (Federal Act 27 July 2006 No. 148-FZ) and subsequently shortened in 2007.

¹⁰ See in this respect *Guidelines on political party regulation by OSCE/ODIHR and Venice Commission*, CDL-AD(2010)024, 15-16 October 2010, para. 96: “[...] where allowed at all, prohibition and dissolution are applicable only in extreme cases including the following : threat to the existence and/or sovereignty of the state, threat to the basic

Article 1.1 point 2: “public justification of terrorism and other terrorist activity”

34. The Venice Commission notes that “terrorism” is defined in article 205 of the Russian Federation Criminal Code¹¹ and requires the element of violence. Article 1.1.2 of the Extremism Law defines as “extremist” the “public justification of terrorism and other terrorist activity”. It appears that public justification of terrorism is also defined in Article 205.2 of the Russian Federation Criminal Code¹². The Venice Commission also takes note of the clarification provided by the Plenum of the Supreme Court of the Russian Federation that academic or political discussion and texts not pursuing the aim of inciting hatred on grounds of gender, race, ethnicity/nationality, language, origin, religious beliefs or affiliation to any social group do not constitute a criminal offence as provided for in Article 282 of the Criminal Code (dealing with incitement to national, racial, or religious enmity)¹³. A similar reasoning might be applied to the question on whether scientific/academic work on the causes of terrorism could be considered to be a “justification” of “terrorist activities”. The Venice commission recommends that this be clarified in legislation.

Article 1.1 point 3: “stirring up of social, racial, ethnic or religious discord”

35. Extremist activity under point 3 is defined in a less precise manner than in a previous version of the Law (2002). In the 2002 Law the conduct, in order to fall within the definition, had to be “associated with violence or calls to violence”. However the current definition (“*stirring up of social, racial, ethnic or religious discord*”) does not require violence as the reference to it has been removed. According to non-governmental reports¹⁴, this has led in practice to severe anti-extremism measures under the Extremism Law and/or the Criminal Code. The Venice Commission recalls that, as stated in its Report devoted to the relation between freedom of expression and freedom of religion¹⁵, hate speech and incitement may not benefit from the protection afforded by Article 10 ECHR and justify criminal sanctions. The Commission notes that such a conduct is criminalized under Article 282 of the Russian Criminal Code¹⁶ and that,

*democratic order, violence which threatens the territorial integrity of the state, inciting of ethnic, social, or religious hatred, and the use or threat of violence.^[...] Even where such reasons for prohibition or dissolution are listed in legislation it is important to note that prohibition must meet the strict standards for legality and proportionality discussed above in order to be justified”; see also ECtHR, *Batasuna v. Spain*, application nos. 25803/04 and 25817/04, Judgment of 30 June 2009).*

¹¹ Terrorism, that is, the perpetration of an explosion, arson, or any other action endangering the lives of people, causing sizable property damage, or entailing other socially dangerous consequences, if these actions have been committed for the purpose of violating public security, frightening the population, or exerting influence on decision-making by governmental bodies, and also the threat of committing said actions for the same ends, shall be punishable by deprivation of liberty for a term of five to ten years.

¹² According to a “Note” to article 205.2 of the Russian Criminal Code, “*a public justification of terrorism means a public declaration of acceptance of the ideology and practices of terrorism as right and in need of support and imitation.*”

¹³ The Resolution No. 11 of 28 June 2011 (paragraph 8) of the Plenum of the Supreme Court of the Russian Federation states: “Statements of judgment and inference using instances of inter-ethnic, inter-faith or other social relations in academic or political discussion and texts and not pursuing the aim of inciting hatred or enmity or abasing the dignity of an individual or a group of individuals on grounds of gender, race, ethnicity/nationality, language, origin, religious beliefs or affiliation to any social group do not constitute a criminal offence as provided for in Article 282 of the Criminal Code of the Russian Federation.”

¹⁴ See <http://www.sova-center.ru/en/>; <http://www.forum18.org/>

¹⁵ See [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)026-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)026-e.pdf), paras 50-58

¹⁶ Article 282 of Russia's Criminal Code prohibits “[a]ctions aimed at the incitement of hatred or enmity, as well as abasement of dignity of a person or a group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group, if these acts have been committed in public or with the use of mass media.” Article 282(1) prohibits the creation of extremist groups, organized to prepare or carry

under Article 282.2, the use of violence or the threat of its use in committing this crime is an aggravating circumstance.

36. The Venice Commission is of the opinion that in order to qualify "*stirring up of social, racial, ethnic or religious discord*" as "extremist activity", the definition should expressly require the element of violence. This would maintain a more consistent approach throughout the various definitions included in article 1.1, bring this definition in line with the Criminal Code, the Guidelines provided by the Plenum of the Supreme Court¹⁷ and more closely follow the general approach of the concept of "extremism" in the Shanghai Convention.

Article 1.1 point 4: "propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion"

37. At first sight, this provision reiterates the usual non-discriminatory clauses in international treaties and national laws, which prohibit a difference in treatment of persons on the basis of their inherent or inherited qualities, such as race, ethnic origin, religion or language. Nevertheless, under the headings contained therein, all kinds of propaganda activities including preaching such difference in treatment, whether or not they are associated with violence or calls to violence, are deemed "extremism".

38. In the view of the Venice Commission, to proclaim as extremist any religious teaching or proselytising activity aimed at proving that a certain worldview is a superior explanation of the universe, may affect the freedom of conscience or religion of many persons and could easily be abused in an effort to suppress a certain church thereby affecting not only the freedom of conscience or religion but also the freedom of association. The ECtHR protects proselytism and the freedom of the members of any religious community or church to "try to convince" other people through "teachings". The freedom of conscience and religion is of an intimate nature and is therefore subject to fewer possible limitations in comparison to other human rights: only manifestations of this freedom can be limited, but not the teachings themselves¹⁸.

39. It therefore appears that under the extremist activity in point 4, not only religious extremism involving violence but also the protected expressions of freedom of conscience and religion may lead to the application of preventive and corrective measures. This seems to be confirmed by worrying reports of extensive scrutiny measures of religious literature having led, in recent years, to the qualification of numerous religious texts as "extremist material" (see below point (b)).

40. In the Commission's view, the authorities should review the definition under article 1.1 point 4 so as to ensure/provide additional guarantees that peaceful conduct aiming to convince other people to adhere to a specific religion or conception of life, as well as related teachings, in the

out crimes motivated by "*ideological, political, racial, national or religious hatred or enmity*" and prohibits "*participation in an extremist community*".

¹⁷ See also the Resolution of the Plenum of the Supreme Court, § 9 : "*In distinction from violent crimes against life and health, provided for by chapter 16 of CCRF, committed in accordance with motives of political, ideological, racial, national, or religious enmity or strife or with motives of hatred or strife with regard to any social group, force used in the commission of a crime provided for by article 282 of CCRF is not only an expression of hatred with regard to a specific victim but is also intended to achieve a special goal—incitement of enmity or strife in other people (which, for example, might be demonstrated by the use of force in public places in the presence of strangers with regard to a victim--or victims--on the basis of membership in a particular race or nationality, accompanied by racist or nationalistic statements)*"

¹⁸ Human Rights Committee, *General Comment n° 22: The right to Freedom of Thought, Conscience and Religion*, UN Doc. CCPR/C/21/Rev. 1/Add. 4, 30 July 1993, para. 3.

absence of any direct intent or purpose of inciting enmity or strife¹⁹, are not seen as extremist activities and therefore not unduly included in the scope of anti-extremism measures.

Article 1.1 point 5: “violation of human and civil rights and freedoms and lawful interests in connection with a person’s social, racial, ethnic, religious or linguistic affiliation or attitude to religion”

41. Extremist activity under point 5 brings together a collection of criteria, the combination of which may or may not be required before establishing that the Law applies to them. Clarification is required of what is intended here. If violating rights and freedoms “in connection with a personal’s social, racial, ethnic, religious or linguistic affiliation or attitude to religion”, in the absence of any *violent* element is an extremist activity, it is clearly a too broad category.

Article 1.1 point 10: “public calls inciting the carrying out of the aforementioned actions or mass dissemination of knowingly extremist material, and likewise the production or storage thereof with the aim of mass dissemination”

42. Similarly, under point 10 incitement to extremist activity is in itself an extremist activity. This provision is problematic to the extent that certain of the activities listed, as pointed out above, should not fall into the category of extremist activities at all.

Article 1.1 point 11: “public, knowingly false accusation of an individual holding state office of the Russian Federation or state office of a Russian Federation constituent entity of having committed actions mentioned in the present Article and that constitute offences while discharging their official duties”

43. Extremist activity in point 11 is of a particularly convoluted nature. In ordinary words, false accusations of extremism are also considered extremism, but this only applies if the victim of the accusation is a state official, not an ordinary citizen for whom one has to rely on the general provisions that cover slander or defamation. Such an approach is contrary to the established practice of the ECtHR, according to which public officials, acting civil servants and other public officials are required to tolerate more criticism than ordinary people²⁰. This issue should be addressed by the authorities of the Russian Federation.

44. The latter principle has been reiterated by the Committee of Ministers of the Council of Europe in its Declaration on the Freedom of Political Debate in the Media, according to which “[p]olitical figures should not enjoy greater protection of their reputation and other rights than other individuals, and thus more severe sanctions should not be pronounced under domestic law against the media where the latter criticise political figures”²¹.

45. It is entirely possible that, in the heat of a political debate, some state officials, including those of the highest rank, could be accused by their political opponents of undermining the security of the Russian Federation through, for example, the defence policy or for having committed other acts mentioned in Article 1.1 of the Extremism Law. Although such accusations might not be examples of good practice, they certainly should not be unduly qualified as extremist conduct and should not lead to the application of preventive or corrective

¹⁹ See Resolution of the Plenum of the Supreme Court, § 8.

²⁰ *Lingens v. Austria*, 8 July 1986, App. No. 9815/82, para. 42. This principle has later been extended to acting civil servants and other public officials: *Thoma v. Luxembourg*, 29 March 2001, Application No. 38432/97, para. 47.

²¹ Declaration adopted by the Committee of Ministers of the Council of Europe on 12 February 2004 at the 872nd meeting of the Ministers' Deputies (Article 4).

measures. This would endanger the democratic debate on the performance of government officials, which is essential for the preservation of a democratic society.

b) *“Extremist materials”*

46. According to Article 1.3 of the Extremism Law, *“extremist materials”* are *“documents intended for publication or information on other media calling for extremist activity to be carried out or substantiating or justifying the necessity of carrying out such activity, including works by leaders of the National Socialist worker party of Germany, the Fascist party of Italy, publications substantiating or justifying ethnic and/or racial superiority or justifying the practice of committing war crimes or other crimes aimed at the full or partial destruction of any ethnic, social, racial, national or religious group”*.

47. This provision defines extremist materials not only as documents which have been published but also as documents intended for publication or information, which call for extremist activity (to be understood, most probably, by reference to the definition of such an activity in Article 1.1) or which justify such activity. The explicit mention of the *“ works by leaders of the National Socialist Workers’ Party of Germany, the Fascist Party of Italy [...]”* in the second part of this provision contributes to the better understanding of its first part, provided that the works of Nazi and fascist ideologies are quoted as examples. References to Nazism and fascism are justified and understandable in view of the historical experience of Russia²², and similar provisions can be found in the legislations of other countries that were exposed to Nazi or fascist occupation and rule.

48. According to Article 13 of the Law, information materials shall be declared as extremist by court decision, on the basis of a submission by the prosecutor or in proceedings in a corresponding administrative infringement, civil or criminal case. The relevant court decision shall be sent to the federal state registration authority, with a view to the inclusion of the material at issue in a Federal List of Extremist Materials, which is made public on the internet and in the media.

49. Considering the broad and rather imprecise definition of *“extremist documents”* (Article 1.3), the Venice Commission is concerned about the absence of any criteria and any indication in the Law on how documents may be classified as extremist and believes that this has the potential to open the way to arbitrariness and abuse. The Commission is aware from official sources, that the court decision is systematically based on prior expert review of the material under consideration and may be appealed against in court. It nonetheless considers that, in the absence of clear criteria in the Law, too wide a margin of appreciation and subjectivity is left both in terms of the assessment of the material and in relation to the corresponding judicial procedure. According to non-governmental sources, the Federal List of Extremist Materials has in recent years led to the adoption, in the Russian Federation, of disproportionate anti-extremist measures²³. Information on how this list is composed and amended would be necessary for the Commission to comment fully.

c) *“Extremist organisation”*

50. The definition of an extremist organisation contained in Article 1.2 is circular. According to its provisions, an *“extremist organisation”* is *“a public or religious association or other*

²² See e.g. *Refah Partisi and Others v. Turkey*, App. nos. 41340/98, 41342/98, 41343/98 and 41344/98, Judgment of 13 February 2003, para. 124; *Leyla Sahin v. Turkey*, App. No. 44774/98, Judgment of 29 June 2004, para. 109.

²³ See http://www.sova-center.ru/en/misuse/reports-analyses/2012/04/d24302/#_ftnref17.

organisation in respect of which and on grounds provided for in the present Federal law, a court has made a ruling having entered into legal force that it be wound up or its activity be banned in connection with the carrying out of extremist activity". This raises problems with respect to the actions taken by state agencies against non-governmental organisations to which reference will be made later (see §§ 57-61 below).

51. The Law appears to apply to all types of organisations, including public, religious and mass media ones, as well as to natural persons as is shown by Article 6, on issuing "official warnings", and Articles 7 and 8 on "written notices", and Articles 9, 10 and 11 that deal with liability issues. Moreover, the Law imposes duties and responsibilities not only on legal and natural persons of Russian nationality, but also on foreign nationals and stateless persons (see Articles 3, 14 and 15). It appears, however, that the means provided by the Law to counteract extremist activities (written notices and official warnings) may only be directed to organisations or to their heads/editors. According to the interpretation provided by the Russian authorities, an individual cannot be punished for extremism *per se*, unless his or her behaviour falls under the Code of Administrative Offences or the Criminal Code.

B. The means for counteracting extremism. Warnings and notices

52. The means that are available to the authorities, according to the Extremism Law, in order to counteract any "extremist activity" of a public or religious or other organisation may be "preventive" and, subsequently, may consist in the suppression or liquidation of an organisation or the temporary suspension of its activities. The Law devotes considerable attention to the prevention of extremist activities. It exhorts state agencies at all levels to undertake preventive measures (including "educational and publicity measures" as it results from Article 5) as a matter of priority.

53. Under Article 6 of the Law, the Prosecutor-General may, in case there is "*sufficient and previously confirmed information on unlawful acts in preparation presenting the characteristics of extremist activity*" and in the absence of sufficient grounds for bringing criminal prosecution, send a "written warning" to the head of a public, religious or other organisation and other relevant persons, "*to the effect that their activity is inadmissible and that there are concrete grounds for giving a warning*". Moreover, article 6 states that "*in the event of failure to comply with the demands set out in the warning, the individual issued with that warning may be prosecuted under the established procedure*". According to the Russian authorities, article 17.7 of the Code of Administrative Offences²⁴ is applicable in this case: "*Wilful failure to satisfy the demands of a prosecutor resulting from his authority established by federal law, as well as the lawful demands of an investigator, an inquirer or an official carrying out proceedings related to an administrative offence shall entail the imposition of an administrative fine on citizens ... and on legal entities ...*"

54. However, it is not clear how the presence of "concrete grounds for issuing warnings" is assessed. According to the Russian Institute of Legislation and Comparative Law, "*[a] warning is pronounced if there are no sufficient grounds for criminal prosecution that is if there is no crime proper and before the actions which may later be considered extremist have been committed. Should there exist sufficient grounds for prosecution different steps are to be taken.*" So, whilst there does not appear to be an offence under the Criminal Code for failure to obey a warning, there is an administrative offence backed by a fine²⁵. It has been

²⁴ Code of Administrative Offences of The Russian Federation, No. 195-FZ of December 30, 2001 (with the Amendments and Additions of April 25, December 31, 2002, June 30, July 4, November 11, December 8, 2003, April 25, 2002).

²⁵ The Venice Commission notes in this context that the warnings under the FSB law are excepted from the application of sanctions under the new § 4 of Article 19.3 of the Code of Administrative Offences as amended by

explained to the Commission that if the warning is ignored and the organisation then engages in extremist activities its leaders might be prosecuted for engagement in extremist activities. In this case the court may take the failure to obey the warning into account in sentencing.

55. Notwithstanding the above explanations, the Venice Commission is of the view that article 6 of the Extremism Law lacks clarity and it does appear that an administrative offence is committed where a warning is not obeyed even though no extremist activity has been engaged in. It thus recommends to reformulate the Law to make it clear that prosecution will only be brought against the person to whom the warning has been addressed if that person has engaged in extremist activity and has committed a criminal act and not for the mere failure to comply with the warning.

56. The Commission further notes that the Law does not provide for any procedure for the person to whom a warning is addressed to challenge the evidence of the Prosecutor-General upon which it is based at the point when the warning is given, though it is noted that article 6 of the Law provides that the warning may be appealed to a court. It also notes that, according to the law “On the public prosecutor’s service in the Russian Federation”²⁶, a warning about the unacceptability of breaking the law may be appealed against not only in court but also to a superior public prosecutor.²⁷

57. Under Article 7 of the Law, where there are “characteristics of extremism” within the activities of a public, religious or other organisation, another procedure applies. While Article 6 covers preparatory acts with characteristics of extremism, Article 7 deals with on-going extremist activities indicated, in a “written notice”, which, according to the legislator, need to cease within a strict time limit. If the breaches are not removed within the time fixed by the notice, the organisation may be “liquidated”. There is a possibility to appeal the “notice” to a court but if no such appeal is taken or if it is unsuccessful, or if, within 12 months following the date of the notice, there are new facts pointing to the presence of characteristics of extremism within the activities of the public or religious association or other organization, this association or organisation shall be liquidated “*under the procedure established by the present Federal law*” and its activity banned.

58. The Venice Commission has been informed in this connection that, as stipulated by Article 9 of the Law dealing with the “[l]iability of public or religious associations or other organisations for the carrying out of extremist activity”, such a decision under Article 7 winding up an organisation and banning its activities must be ordered by a court upon application by the Prosecutor General (or a prosecutor subordinated to them or by the federal state registration authority or a respective territorial authority thereof). The Commission nonetheless considers that, to achieve the required legal clarity, the link between article 7 and the procedural rules described in article 9 should be made explicit.

59. The Venice Commission acknowledges that the final decision with regard to the liquidation of an association or organisation having engaged in extremist activities belongs to a court²⁸. It

the 2010 Federal Law no. 238-FZ of 27 July 2010. In addition, pursuant for the Order of November 2, 2010 n° 544 (see CDL-RED(2012)022), warnings issued under the FSB Law do not contain any request for a specific conduct.

²⁶ Federal Law of 17.01.1992 N° 2202-1 “On the Public Prosecutor’s Service in the Russian Federation”

²⁷ The Commission also notes that under Article 254 of the Civil Procedure Code, any citizen or organisation can sue any government agency, government agency, local self- government, official, civil servant or municipal officer for an action or failure to take action, if he or she believes that his or her rights and freedoms have been violated.

²⁸ The Venice Commission wishes to recall that, as indicated by the Committee of Ministers in its Recommendation on the legal status of non-governmental organizations, NGOs should not be subject to direction by public authorities and that “[t]he termination of an NGO or, in the case of a foreign NGO, the withdrawal of its approval to operate

has also noted that, within the Russian Federation legal system, the Prosecutor General enjoys a wide competence of issuing warnings about the unacceptability of breaking the law (art. 25.1 of the law on the public prosecutor's service). In the Commission's view, the powers of the public prosecutor and his or her subordinates nonetheless seem to be unduly extended in the sphere of freedom of association - as well as of freedom of expression. It is unusual for a law enforcement agency to issue warnings and to examine the activity of a non-governmental organisation in the absence of its leaders and without the study of its publicly defined aims and registered statutes. A generally accepted method to prevent freedom of association from being abused for criminal purposes, including the violation of human rights, is to react to its real activities and to conduct proceedings which would determine whether these are prohibited by law.

60. The Venice Commission has already stated²⁹, with regard to the role of Prosecutor-General, that "*there is a very strong argument for confining prosecution services to the powers of criminal prosecution and not giving them the sort of general supervisory powers which were commonly found in "prokuratura" type systems*". While aware that there are no commonly agreed international standards as to the tasks, functions and organisation of prosecution service outside the criminal law, the Commission further stressed that any other functions that the prosecutors may exercise must not interfere with or supplant the judicial system in any way.

61. Moreover, the Venice Commission wishes to stress that "liquidation" should occur, in principle, as a last resort or in particularly serious cases³⁰ and following a public hearing providing the possibility for the organisation or individual concerned to be aware of and challenge the evidence brought against it or him/her. This does not seem to be clearly provided for in the Extremism Law. Such procedures may be provided for elsewhere in other laws, but the Commission has doubts that a full understanding of the implications of this law with the necessary legal certainty is possible. More generally, in the Commission's view the Law should be made more specific as to the procedures available in order to guarantee the effective enjoyment of the right to appeal both the warning/the notice issued, and the liquidation or suspension decision before an independent and impartial tribunal, as enshrined in Article 6 ECHR.

62. The Commission has been informed that these procedural aspects will be further clarified as part of the amendment proposals which are under discussion. It encourages the authorities of the Russian Federation to make sure that full attention is paid in this legislative process to the international standards relevant to freedom of association. The Commission recalls that, according to Article 11 ECHR and ECtHR case law, no restrictions may be placed on the exercise of the right to freedom of association "*other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, the protection of public health or morals or the protection of*

*should only be ordered by a court*²⁸. Moreover, such an order, which can only be based on clearly specified grounds - bankruptcy, prolonged inactivity or serious misconduct - should be subject to prompt appeal.

²⁹ Report on European Standards as regards the independence of the judicial system: Part II The Prosecution service, CDL-AD(2010)040,3 January 2011; see also CDL-JD(2008)001, for an overview of the European practice on this issue see the report by Mr. András Varga for the CCPE (CCPE-Bu(2008)4rev). See also Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System, according to which "[w]here public prosecutors are entitled to take measures which cause an interference in the fundamental rights and freedoms of the suspect, judicial control over such measures must be possible".

³⁰ See Association of Citizens Radko & Paunkovski v. "the former Yugoslav Republic of Macedonia", Application no. 74651/01, Judgment of 15 January 2009, para. 76 and Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan, Application no. 37083/03, Judgment of 8 October 2009; see also Korneenko et al. v. Belarus, (Human Rights Committee), 31 October 2006, Case no 1274/2004. Belyatsky et al. v. Belarus, (Human Rights Committee), 24 July 2007.

the rights and freedoms of others.” Restrictions on the freedom of association are to be construed strictly; only convincing and compelling reasons can justify restrictions on the freedom of association.³¹

63. Under Article 8, “media outlets” may also be liquidated by court decision for failure to eliminate the “violations” pointed out by the notice. The Venice Commission received information in relation to specific cases where a particularly broad interpretation of the notion of “extremism” has been taken and of reportedly³² disproportionate measures taken under the Extremism Law, such as the liquidation of media outlets for carrying out “extremist activities” or for “disseminating “extremist materials”, or adding to the Federal List of Extremist Materials literature of religious communities known to be peaceful. The Extremism Law is reportedly often used against organisations and individuals that are critical of the Government and frequently impairs the rights and freedoms of citizens. It is worrying at the same time that, as a result of the vagueness of the Law and of the wide margin of interpretation left to the enforcement authorities, undue pressure is exerted on civil society organisations, media outlets and individuals, which undoubtedly has a negative impact on the free and effective exercise of human rights and fundamental freedoms.

64. The Venice Commission has already adopted legal opinions assessing legislation and/or practices relating to official warnings touching upon the freedoms of expression and association³³. In this context, while stressing these rights’ fundamental importance for any democratic society and their close inter-relation³⁴, the Commission emphasized that the freedom of expression of an association cannot be subject to the direction of public authorities, except for purposes narrowly and clearly defined by the law and necessary in a democratic society. It also recalled that any restriction of these must meet a strict test of justification: “*Any restriction of the right to freedom of association must according to Article 11.2 of the ECHR be prescribed by law and it is required that the rule containing the limitation be general in its effect, that it be sufficiently known and the extent of the limitation be sufficiently clear.*”³⁵ A restriction that is too general in nature is not permissible due to the principle of proportionality.³⁶ The

³¹ ECtHR, *Gorzelik and Others v. Poland*, No. 44158/98, Judgment of 17 February 2004

³² http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/4_6_jehovahwitnesses_/4_6_jehovahwitnesses_en.pdf; http://www.forum18.org/Archive.php?article_id=1701; http://www.forum18.org/Archive.php?article_id=1652; <http://www.csmonitor.com/2007/0809/p06s01-woeu.html>; <http://www.tdgnews.it/en/?p=3002>; <http://www.osce.org/fom/29576>; http://www.rapsinews.com/judicial_news/20120125/259763485.html; <http://www.sova-center.ru/en/misuse/news-releases/2012/02/d23664/>

³³ See CDL-AD(2011)026, *Opinion on the compatibility with universal human rights standards of an official warning addressed by the Ministry of Justice of Belarus to the Belarusian Helsinki Committee* (Venice, 17-18 June 2011); CDL-AD(2011)036, *Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus* (Venice, 14-15 October 2011).

³⁴ See *Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan*, CDL-AD(2011)035, § 84;

³⁵ See, e.g., ECtRH, *Sunday Times v. UK*, no. 6538/74, Judgment of 26 April 1979, para. 49; ECtHR, *Silver et al. v. UK*, no. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75, Judgment of 25 March 1983, para. 87-88; ECtHR, *Malone v. UK*, no. 8691/79, Judgment of 2 August 1984, para. 66; ECtHR *Groppera Radio AG et al. v. Switzerland*, no. 10890/84, Judgment of 28 March 1990, para. 68; ECtHR, *Autronic AG v. Switzerland*, no. 12726/87, Judgment of 22 May 1990, para. 57.

³⁶ See discussion of Wino J.M. van Veen, Negative Freedom of Association: Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in *The International Journal of Not-for-Profit Law*, Vol. 3, Issue 1, September 2000.

*restriction must furthermore pursue a legitimate aim and be necessary in a democratic society.*³⁷

65. It is therefore essential, in order for the warnings and notices or any other anti-extremism measures to fully comply with the requirements of Articles 10 and 11 of the ECHR, to ensure that any restrictions that they may introduce to fundamental rights stem from a pressing social need, are proportionate within the meaning of the ECHR and are clearly defined by law. The relevant provisions of the Extremism Law should thus be amended accordingly.

66. Article 16 of the Extremism law prohibits extremist activity during the holding of assemblies. Apart from the difficulties that arise in relation to the definition of "extremist activity" addressed above, this article imposes on organisers of assemblies the obligation of the "timely suppression" of any extremist activity. The article also imposes obligations and liabilities on organisers of an assembly to take steps to eliminate the involvement of extremist organisations, use of their symbols or emblems and the dissemination of extremist materials. Failure to do so shall involve the halting of the assembly. Where a person or organisation organises an assembly which is for extremist purposes, they may be made subject to the law under examination and to the criminal law. However, organisers who arrange a peaceful assembly which is unconnected with extremist activity should not be made liable for failure to perform their responsibilities if they have made reasonable efforts to do so and should not be made liable for the actions of individual participants or *agents provocateurs*. Enforcement of the law is in principle a matter for the police.³⁸

67. The Venice Commission notes as a positive development the Resolution No. 11 of 28 June 2011, of the Plenum of the Supreme Court of the Russian Federation, on judicial practice in criminal cases involving extremist offences, in which the Supreme Court, in order to help unify the judicial practice in this field, gave lower courts a number of recommendations on how to deal with such cases.

68. In its Resolution, the Court *inter alia* drew attention to the fact that criticism of political or religious associations, as well as of national or religious convictions or customs in itself should not be seen as an action intended to incite enmity or strife. The Resolution also makes reference to international law standards establishing that the limits of permissible criticism of political figures are broader than those regarding private individuals. In addition, it addresses a number of procedural issues, including the need for more complex expert analysis, involving specialists in different fields (such as psychologists, historians, religious studies specialists, anthropologists) in the assessment of information materials from the "extremist" perspective.

69. Similarly, the 15 July 2010 Resolution of the Supreme Court Plenum regarding judicial practice related to the Russian Federation Statute on the Mass Media, represents a further attempt to harmonise the relevant judicial practice and to provide more liberal and constructive guidelines, with references to the relevant ECtHR case-law, for the interpretation and the application of the anti-extremist legislation in respect of the media.

70. In the opinion of the Venice Commission, the Resolutions suggest answers to some of the uncertainties which derive from the text of the Extremism Law while implicitly acknowledging the shortcomings in the Law. However, the Commission believes that the Law itself should

³⁷ See ECtHR, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, Judgment of 29 April 1999, para 104. See also CDL-AD(2011)036, para 81; CDL-AD(2012)007, Opinion on the Federal Law n°54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches and Picketings of the Russian Federation, § 41.

³⁸ CDL-AD(2010)020 OSCE/ODIHR - Venice Commission Guidelines on Freedom of Peaceful Assembly (2nd Edition p. 12).

achieve the required international standards concerning certainty and foreseeability. It welcomes any legislative steps aiming at bringing the Extremism Law fully in line with the applicable standards.

71. The Venice Commission wishes to underline in addition that, apart from improving its provisions and providing the required clarification, the extent to which the Extremism Law is in compliance with the applicable standards depends to a large extent on its actual implementation. The Commission therefore considers that all the necessary measures should be taken to ensure that, in the interpretation and application of the Law by all stakeholders involved, no restriction of fundamental rights and freedoms be allowed other than those expressly permitted by the international instruments to which the Russian Federation is a Party, in particular the ECHR.

72. The Venice Commission further notes that under article 17 of the Law on “International co-operation in the sphere of combating extremism”, the Russian Federation shall co-operate with other states and international organisations engaged in combating extremism “in accordance with the international treaties of the Russian Federation”. In the Commission’s view, this shall include extradition of non-citizens to another state, as provided by the Penal Procedure Code and the Constitution of the Russian Federation and in line with article 11 of the Shanghai Convention.

VI. Conclusions

73. The Venice Commission is aware of the challenges faced by the Russian authorities in their legitimate efforts to counter extremism and related threats. It recalls that, in its recent recommendation devoted to the fight against extremism,³⁹ the Parliamentary Assembly of the Council of Europe expressed its concern over the challenge of fighting extremism and its most recent forms and encouraged the member States of the Council of Europe to take resolute action in this field, “*while ensuring the strictest respect for human rights and the rule of law*”.

74. However, the manner in which this aim is pursued in the Extremism Law is problematic. In the Commission’s view, the Extremism Law, on account of its broad and imprecise wording, particularly insofar as the “basic notions” defined by the Law - such as the definition of “extremism”, “extremist actions”, “extremist organisations” or “extremist materials” - are concerned, gives too wide discretion in its interpretation and application, thus leading to arbitrariness.

75. In the view of the Venice Commission, the activities defined by the Law as extremist and enabling the authorities to issue preventive and corrective measures do not all contain an element of violence and are not all defined with sufficient precision to allow an individual to regulate his or her conduct or the activities of an organisation so as to avoid the application of such measures. Where definitions are lacking the necessary precision, a law such as the Extremism Law dealing with very sensitive rights and carrying potential dangers to individuals and NGOs can be interpreted in harmful ways. The assurances of the authorities that the negative effects would be avoided thanks to the guidelines of the Supreme Court, the interpretation of the Russian Institute for Legislation and Comparative Law or good faith are not sufficient to satisfy the relevant international requirements.

76. The specific instruments that the Law provides for in order to counter extremism - the written warnings and notices - and the related punitive measures (liquidation and/or ban on the activities of public religious or other organisations, closure of media outlets) raise problems in

³⁹ “Fight against extremism: achievements, deficiencies and failures”, Parliamentary Assembly Recommendation 1933 (2010).

the light of the freedom of association and the freedom of expression as protected by the ECHR and need to be adequately amended.

77. The Venice Commission recalls that it is of crucial importance that, in a law such as the Extremism Law, which has the capacity of imposing severe restrictions on fundamental freedoms, a consistent and proportionate approach that avoids all arbitrariness be taken. As such, the Extremism Law has the capacity of imposing disproportionate restrictions of fundamental rights and freedoms as enshrined in the European Convention on Human Rights (in particular Articles 6, 9, 10 and 11) and infringe the principles of legality, necessity and proportionality. In the light of the above comments, the Venice Commission recommends that this fundamental shortcoming be addressed in relation to each of the definitions and instruments provided by the Law in order to bring them in line with the European Convention on Human Rights.

78. The Venice Commission remains at the disposal of the Russian authorities should they require assistance.

Annex 818

**Council of Europe, European Commission for Democracy Through Law (Venice Commission),
Opinion on Federal Law No. 65-FZ of 8 June 2012 of the Russian Federation Amending Federal
Law No. 54-FZ of 19 June 2004 on Assemblies, Meetings, Demonstrations, Marches**



Strasbourg, 11 March 2013

CDL-AD(2013)003

Opinion no. 686/2012

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OPINION

ON FEDERAL LAW NO. 65-FZ OF 8 JUNE 2012

OF THE RUSSIAN FEDERATION

AMENDING

**FEDERAL LAW NO. 54-FZ OF 19 JUNE 2004 ON ASSEMBLIES,
MEETINGS, DEMONSTRATIONS, MARCHES AND PICKETING
AND THE CODE OF ADMINISTRATIVE OFFENCES**

**Adopted by the Venice Commission
at its 94TH Plenary Session
(Venice, 8-9 March 2013)**

on the basis of comments by

**Mr Richard CLAYTON (Member, United Kingdom)
Ms Finola FLANAGAN (Member, Ireland)
Mr Wolfgang HOFFMANN-RIEM (Member, Germany)**

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I. Introduction

1. By a letter dated 5 July 2012, the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to provide an opinion on the Federal Law of the Russian Federation as amended by law of 8 June 2012.

2. Mr Richard Clayton, Ms Finola Flanagan and Mr Wolfgang Hoffmann-Riem were appointed as rapporteurs.

3. The present opinion is based on an English translation of the amendments of June 2012 provided by PACE (CDL-REF (2012)028 hereinafter “the amendments of June 2012”; see also CDL-REF(2012)029).

4. The present opinion was discussed at the Sub-Commission on Fundamental Rights on 11 October 2012 and was subsequently adopted by the Commission at its 94th Plenary Session (Venice, 8-9 March 2013).

II. Previous opinion of the Venice Commission

5. Federal Law No. 65-FZ of 8 June 2012 (CDL-REF (2012)028, hereinafter “the amendments of June 2012”; see also CDL-REF(2012)029) has amended both the Code of Administrative Offences and Federal Law No. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing (“the Assembly Act”).

6. In March 2012, prior to the adoption of the amendments of June 2012, the Venice Commission adopted an opinion on the Assembly Act (CDL-AD(2012)007), at the request of PACE. In its Opinion on the Assembly Act, the Venice Commission has dealt with its standards for evaluating laws on the freedom of assembly (para 5-8) and it has referred to its Guidelines on the freedom of assembly¹. The Guidelines reflect the Commission’s deep conviction that the protection of the freedom to peacefully assemble is crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices or policies can exist peacefully together. As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. The state should always seek to facilitate and protect public assemblies². The Venice Commission is aware of the fact that several assembly laws in Europe, especially older ones, contain provisions which are drafted in rather restrictive terms³. The Commission

¹ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, as revised in 2010.

² Guidelines, § 1.3-2.2.

³ During the process of amending the Russian Assembly Law, a paper was posted on the Duma’s website under the title “Analytical Review. Individual Norms in Foreign Legislation regarding a Responsibility for Failure to Obey Regulations in the Conduct of Mass Events” (Аналитическая справка Государственной Думы РФ, май 2012,

stresses in this respect that the manner of implementation of similar provisions may contribute to restricting their negative impact on the exercise of freedom of assembly. At any rate, as the Commission has previously said⁴, “risks of an overbroad use of discretionary powers in order to suppress assemblies can always arise and therefore any assembly law must aim at reducing them as far as possible”: it is the Commission’s firm belief that when designing or amending assembly laws, Council of Europe member states should reflect the fundamental principles of “presumption in favour of holding assemblies”, “proportionality” and “non-discrimination” in their wording.

7. In its March 2012 Opinion, the Commission made the following recommendations:

- *It is recommended that the presumption in favour of holding assemblies and the principles of proportionality and non-discrimination be expressly included in the Assembly Law*
- *the regime of prior notification under Article 5.5, 7 and 12 Assembly Act should be revised; the co-operation between the organisers and the authorities in Article 12 Assembly Act should be settled on a voluntary basis respecting the assemblies’ autonomy and without depriving the organisers of the right to hold an assembly on the ground of a failure to agree on any changes to the format of an assembly or to comply with the timeframe for notification of the public event; the power of the executive authorities to alter the format of a public event should be expressly limited to cases where there are compelling reasons to do so (Article 11.2 ECHR), with due respect for the principles of proportionality and non-discrimination and the presumption in favour of assemblies.*
- *the right to appeal decisions before a court (Article 19 Assembly Act) is welcomed; it should be provided that a court decision will be delivered before the planned date of the assembly, for instance via the availability of court injunctions;*
- *spontaneous assemblies and urgent assemblies as well as simultaneous and counter demonstrations should be allowed as long as they are peaceful and do not pose direct threats of violence or serious danger to public safety;*
- *the grounds for restrictions of assemblies should be narrowed to allow application of the principle of proportionality in order to bring them in line with Article 11.2 ECHR and reasons for suspension and termination of assemblies should be limited to public safety or a danger of imminent violence;*
- *the obligations of the organisers in Article 5.4 Assembly Act should be reduced; their responsibility to uphold public order should be restricted to the exercise of due care;*
- *the blanket restrictions on the time and places of public events should be narrowed.*

8. Regrettably, the amendments of June 2012 to the Assembly Act failed to address the Commission’s recommendations.

9. On 10 July 2012, a Chamber of the European Court of Human Rights issued a judgment (Berladir and others v. Russia) which relates to the Assembly Law and in which the Court found no violation of Article 11 ECHR. The Court noted that the applicant had not fully exhausted legal remedies. It further accepted that - in the instant case - the authorities had acted within

"Отдельные нормы зарубежного законодательства об ответственности за несоблюдение правил проведения массовых мероприятий" <http://iam.duma.gov.ru/node/3/4910/19824>). Some of the information on the basic legislative norms in the countries referred to in this paper does not match with the information collected by the Venice Commission. The Venice Commission in particular strongly disputes the conclusions that “there is not a single democratic state in which rallies, marches or demonstrations can be organised and carried out on the basis of strictly formal notification” and that “the demands of legislation in developed democratic countries are considerably (when compared to Russian) harsher in prioritising public order and in detailing the authorities of the police”.

⁴ CDL-AD(2012)007, para. 30 in fine

their broad margin of appreciation as concerns the reasons for amending the modalities of the planned demonstration and for rejecting the proposal by the organiser. In the *Berladir* case, as usual, the ECtHR did not examine the compatibility of the Assembly Law with the ECHR *in abstracto*, but limited itself to the examination of the application of the Law in that case. The ECtHR therefore did not examine whether the Assembly Law contains a violation of the ECHR, for instance a potential for abuse, which, by chance, did not materialize in that case. In this opinion the Venice Commission will also deal with this topic.

10. The constitutionality of certain specific amendments contained in the law of June 2012 was challenged by a group of deputies of the State Duma before the Constitutional Court of the Russian Federation which reviewed the law in open sitting. Judgment in the case was delivered on 14 February 2013 and published and came into force immediately (the English translation of extracts of this judgment appears in document CDL-REF(2013)012). The judgment is in principle welcomed by the Venice Commission. It reflects many of the critical points seen by the Commission, though it does not solve all problems. Besides this, the Venice Commission bears in mind that it still needs to be implemented by the executive authorities and the courts. In particular with respect to those provisions which the Constitutional Court decided to interpret in conformity with the Constitution rather than demanding clarifications in the law itself, there might be a lack of clarity for the executive authorities and the organizers and participants of assemblies. The implementation in practice remains to be seen.

11. In this regard it should be noted that in its judgment the Constitutional Court addressed only the arguments (which were of limited scope) that were made by the applicants in the case who alleged the unconstitutionality of certain specific provisions of the law of June 2012. In contrast the role of the Venice Commission in preparing this Opinion and the previous Opinion on Federal Law No. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing (“the Assembly Act”) which was adopted in March 2012(CDL-AD(2012)007), is to address the laws as a whole in relation to their compatibility with international human rights standards. The Court’s analysis does not therefore address or propose remedies for all of the problems identified by the Venice Commission in this previous Opinion. Furthermore, some of the issues considered by the Court appear not to have been discussed in our Opinion in any detail. The Venice Commission therefore recommends that each of its conclusions in the previous Opinion on Federal Law No. 54-FZ of 19 June 2004 on assemblies, meetings, demonstrations, marches and picketing (“the Assembly Act”) should be addressed so that the laws in their entirety comply with international human rights standards. The Duma has yet to decide on the amendments to the Assembly Law which are required following the judgment of the Constitutional Court and it is hoped that the Venice Commission’s Opinion concerning those parts of the law which were not dealt with by the Court will be taken into consideration as well as its opinion in regard to the Court’s judgement.

12. The careful analysis of international human rights norms and, in particular, the discussion of Article 11 and the ECtHR’s jurisprudence at point 2 (pp10-12) of the Constitutional court’s judgment are welcomed. Amongst other points, the Constitutional Court acknowledges that “...the right of freedom of peaceful assembly is not subject to any restrictions other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.” The Constitutional Court also acknowledges that the State bears an obligation to guarantee protection, including judicial protection, for civil and human rights and freedoms and notes that “...the reaction of a public authority to the organisation and holding of assemblies, rallies, demonstrations, marches and picketing must be neutral and in all cases...geared to ensuring conditions...for the lawful exercise by citizens and associations thereof of their right to freedom of peaceful assembly...”

13. The Venice Commission notes that the judgment speaks only of the guarantee of the freedom of assembly in relation to “citizens”. However it is required to be extended to all persons on the national territory. This reference to “citizens” is repeated throughout the judgment. Care should be taken to ensure that guarantees of fundamental freedoms in the law should not be limited to citizens but be applied to all persons.

III. Analysis of the Law

A. The amendments to the Assembly Act (Article 2 of Federal Law 65-FZ of 8 June 2012)

14. The June 2012 amendments have introduced several amendments to the Assembly Act. A new provision (Article 5.2.1.1) bans from organising public events persons having been convicted of serious crimes against constitutional order and State security as well as persons having been convicted more than once of Articles 5.38 (violation of the Assembly Act), Article 19.3 (Failure to Follow a Lawful Order of a Militiaman, a Military Serviceman, an Officer of the Bodies for Control over the Traffic of Narcotics and Psychotropic Substances or an Officer of the Criminal Punishment System), Article 20.1 (Disorderly Conduct), Article 20.2 (Violating the Established Procedure for Arranging or Conducting a Meeting, Rally, Demonstration, procession or Picket), Article 20.3 (Displaying Fascist Attributes and Symbols), Article 20.18 (Blocking Transport Lines) and 20.29 of the Code of Administrative Offences. The bans applies pending the execution of the sentence.

15. The judgment of the Constitutional Court finds this provision “not contrary to the Russian Federation Constitution”. It observes in its judgment (CDL-REF(2013)012, page 8) that the restrictions introduced by this provision of the law do not “encroach upon the very essence of the right to freedom of peaceful assembly, as it does not create insurmountable barriers to the organisation and holding of a public event and does not hinder participation in it by a citizen in respect of whom such a ban is imposed: a citizen in this situation is restricted only in their right to be the organiser of a public event, and only for a defined period; they are not deprived of the right to take part in public events and retain the possibility of requesting other citizens and also political parties, other public associations and religious associations, their regional branches and other structural sub-divisions to organise such events; they are not prohibited from providing assistance to the organisers of public events, including the performing of administrative/stewardship functions, in the capacity of persons authorised by the organiser, relating to the organisation and holding of a public event...”

16. The Venice Commission observes that an important part of the right to assemble peacefully includes the right to become involved in all aspects of the organisation of an assembly including playing the role of “organiser” as provided for in the 2004 Law on Assemblies.

17. Article 5.2.1.1 (coupled with new para. 3 of Article 12) provides a blanket prohibition (limited in time) in respect of the exercise of the right guaranteed by Article 31 of the Russian Constitution “*to organise discussions, meetings and demonstrations, as well as processions and pickets*”. The right to freedom of peaceful assembly as enshrined in Article 11 ECHR also guarantees the right to be an organiser of an assembly.

18. Only compelling reasons may justify that a person be deprived of his/her right to organise public events which is part of the freedom of assembly. The exclusion of whole categories of people for breaches of a variety of not only severe criminal but also administrative provisions, and irrespective of the gravity of such breaches, represents, in the Commission’s view, a disproportionate restriction of the right of freedom of assembly. Restrictions must always be justified. Under paragraph 3 of Article 55 of the Russian Constitution, restrictions to individual rights and freedoms are possible “only to the extent needed for the purposes of protecting the

foundations of its constitutional system, morals, health, rights and legitimate interests of other persons, and ensuring the defence of the nation and security of the state.” The requirements for justification are strict since the restrictions relate to the core of the freedom of assembly. The interpretation provided by the Constitutional Court (“*the aforementioned prohibition may be imposed only in a case where a repeat administrative prosecution of that person for the corresponding administrative infringement has occurred within a period for which administrative punishment is applicable for an administrative infringement previously committed by them and has resulted in the imposing of administrative punishment, and only for the period during which the person in question is considered to be subject to administrative punishment*”) does not satisfy the requirements, since there is no distinction made in relation to the kind (severe or minor) of the administrative offence or punishment. The basic restriction is the limit in time. That is not sufficient.

19. The Venice Commission stresses again that an important part of the right to assemble peacefully includes the right to become involved in all aspects of the organisation of an assembly including playing the role of “organiser” as provided for in the 2004 Law on Assemblies. The right to organise should not therefore be limited in the blanket fashion prescribed in the Law and merely allowing an individual to participate but not organise is not a legitimate restriction under the terms of article 11(2) ECHR.

20. The June 2012 amendments (Art. 5 para 3.6) give the organisers the right to demand that an authorized representative of the internal affairs authorities remove from the site of the public event those participants who do not comply with their lawful requests. The Venice Commission considers that this provision should specifically indicate that failure to do so will not entail any negative consequences for the organiser. It must be stressed that the authorities are entitled (and may even be obliged) to act even without such a demand from the organiser.

21. The June 2012 amendments also add to the responsibilities of the organiser a responsibility that concerns the number of participants. Under Article 7 para. 3.5 of the Assembly Act, the organiser has to indicate in the notice the expected number of participants in the public event, and under Article 5 para. 4.3 he or she has to “ensure compliance with the conditions for holding an event specified in the notice or with those that have been altered as a result of the agreement reached with the authorities”. New paragraph 4.7¹ of Article 5 of the Assembly Act requires the organiser specifically “to take measures to prevent the number of participants announced in the notice from being exceeded, where exceeding that number creates a threat to public order and/or public safety, the safety of participants or other persons or risks to damage the property”. It is placed after Article 5 para. 4.7 which refers to the “holding capacity of the premises of the public event”.

22. In May 2012 the Constitutional Court of the Russian Federation issued a decision⁵ whereby it found that Article 5 para. 4.3 was not contrary to the Russian Constitution, insofar as the discrepancy between the expected number of participants declared in the notice and the actual number of participants entails the organiser’s administrative responsibility “only if it is established that this discrepancy, due to the fault of the organiser, has caused a real threat to public order and/or public safety, and the safety of both the participants in the public event and those not participating in it, as well as damage to the property of physical individuals and moral persons”. The wording of new paragraph 4.7¹ echoes this decision.

23. The Venice Commission agrees with the important principle stated by the Russian Constitutional Court that an organiser may not incur administrative responsibility on account of a mere failure to comply with the notice of the public event. This provision was also challenged before the Constitutional Court in 2012 and, again, the Court found that the organiser’s possible

⁵ Decision of 18.05.2012, N 12-P, CDL-REF(2012)036

liability where the numbers who attend an event exceed the number anticipated in the notice of the holding of the event does not contravene the Constitution of the Russian Federation. The Court noted the constitutional presumption of innocence in favour of the organiser, if prosecuted, and that the organiser must be “directly at fault” for the anticipated number being exceeded and that “irremediable doubt as to their guilt must be interpreted in their favour”. The Court noted that in deciding whether to apply administrative sanctions to the organiser of a public event, special attention must be devoted to clarifying what objective possibility that person had of correctly estimating what the real number of participants in the public event would be. The Court pointed out that in a prosecution there might be legal appraisal of the organiser’s actions/failure to act. The Venice Commission agrees that these are matters that must be taken into account in any prosecution.

24. However, as concerns the holding capacity of the premises of the public event and an estimate of how many people will turn up to the assembly, the Venice Commission considers it unrealistic to assume that an organiser could foresee the number of participants or that he or she could count them at the time of the event, or that he or she could always be able to prevent participants from staying if the number has been exceeded. An organiser is entitled to encourage as many participants as possible to attend and persons who wish to attend have the right in principle to do so as part of their freedom of assembly. The Venice Commission therefore considers it disproportionate to require the organiser to take measures (what measures is unclear) to contain the number of participants and to make the organiser responsible if he or she does not succeed. The organizer should only be liable, if he/she intentionally provided false information relevant to estimating the possible number of participants or tried to impede measures taken by the authorities in order to keep the number of participants within the holding capacity of the place of the assembly during the event and that this caused a threat to public order. The Commission therefore recommends that this provision as well as Article 5 para. 4.3 be amended.

25. Under the June 2012 amendments, organisers are made responsible for damages caused by the participants at the public event in case of non-respect of the obligations listed in para. 4 of Article 5 of the Assembly Law. Damages are to be determined by a court. The Constitutional Court found unconstitutional the rule making the organiser of the public event civilly liable for damage caused by a participant because it effectively places the organiser under obligation to indemnify the damage even when it was not linked to the actions or failure to act of the event organiser. The Court considered that this would have a deterrent effect on the exercise of the freedom of peaceful assembly and would result in the unjustified restriction of the property rights of persons who are organisers of public events.

26. The Commission welcomes this finding and stresses in the first place, as it has previously done⁶, that whereas the organiser is indeed responsible for exercising due care to prevent disorder, he or she cannot exercise police power and cannot be required to do so. Moreover, the right of peaceful assembly mirrors the state’s duty to facilitate and protect such events. This leads to the conclusion that the overall responsibility to ensure public order must lie with the law enforcement bodies, not with the organiser of an assembly. The obligations of organisers should be reduced to the exercise of due care, taking into account the limited powers of the organiser, the more so since the responsibility of the authorities to provide public security, medical aid etc. is already set out in Article 18.3 of the Assembly Law. In any case, the primary responsibility for damages should be on the perpetrators and not on the organisers of the event.

⁶ CDL-AD(2012)010, para. 41.

27. Under the new amendments (Article 5 para. 4.11 of the Assembly Act as amended), the organiser is required to demand that participants do not conceal their faces, and participants are obliged (Article 6 para. 4.1 of the Assembly Act as amended) not to conceal their faces, including through the use of masks, means of disguise or other items “specially intended to make them more difficult to identify”.

28. The prohibition of the use of masks and other means of disguise, which is part of Assembly Laws of several other countries, can, in principle, be justified. However, the test of proportionality has to be applied in this field as well. The Venice Commission and OSCE/ODIHR have previously expressed the view that “the wearing of a mask for expressive purposes at a peaceful assembly should not be prohibited so long as the mask or costume is not worn for the purposes of preventing the identification of a person whose conduct creates probable cause for arrest and so long as the mask does not create a clear and present danger of imminent unlawful conduct.”⁷ In the Commission’s view, a blanket ban on wearing any kind of mask at a peaceful assembly represents a disproportionate restriction of freedom of assembly.

29. Participants may not carry weapons etc. (Art. 6 para 4.2). This is adequate in order to guarantee the peaceful nature of assemblies. The prohibition against bringing or consuming alcohol (Article 6 para. 4.2 of the Assembly Act as amended) should instead be restricted to cases where there are objective and reasonable grounds for believing that the person in question has consumed alcohol and that the consumption may lead to risks of concrete violations of public order or where people, being in a state of inebriation, want to participate. In addition and importantly, the prohibition of alcohol should not be used as a justification for routine controls of all participants.

30. Pickets by one single person under the Assembly Act are exempt from notification (indeed an assembly is made up of more than two persons). New Article 7 para. 1¹ specifies that there must be a distance to be determined but of no more than 50 metres between single picketers. The possibility is given to the courts to declare (retrospectively) that the sum of the single picketers “united by a single concept and overall organisation” constituted a public event. The consequences of such a decision would be that the public event has not met the applicable legal regulations, and the organisers and the participants are exposed to administrative liability.

31. The Venice Commission notes in the first place that this provision makes the administrative offence dependent on the subjective assessment carried out a posteriori by a court of the unity of the concept and the common arrangement. This makes it impossible for a picketer to anticipate whether his or her a priori lawful conduct – picketing without prior notice – will lead to an administrative offence, which is incompatible with the requirement of legality of any interference with the right to freedom of free expression as well as of assembly.

32. In addition, the Venice Commission is of the opinion that, as the ECtHR has said, state authorities are entitled to require that the reasonable and lawful regulations on public events be respected and to impose sanctions for failure to respect such regulations. When rules are deliberately circumvented, it is reasonable to expect the authorities to react. The Commission however recalls the important principle stated by the Constitutional Court of the Russian Federation in 2012 that administrative responsibility may not arise only out of the non-respect of the rules, but must be dependent on an actual threat to public order and safety. Where sporadic and scattered picketers do not represent any such threat, they should not be sanctioned even though they did not follow the rules. The fact alone that they do not adhere to the norm does not pose a threat in itself. The Venice Commission welcomes the statement by the Constitutional Court (CDL-REF(2013)012, page 22) that the rules concerning single pickets “...are intended to prevent abuses of the right not to notify the public authorities of the holding of

⁷ See Guidelines, para. 98.

a one-person picket, [but] they do not rebut the presumption of lawfulness of the actions of a citizen observing the established procedure for holding a one-person picket, and they intend the sum total of picketing actions carried out by a single participant to be declared as a public event only on the basis of a court decision and only where it is established by the court that these picketing actions were from the outset united by a single concept and overall organisation and do not amount to a coincidental coming together of actions of individual pickets”.

33. Former Article 9 of the Assembly Law prohibited assemblies taking place between 11 p.m. and 7 a.m. Under the June 2012 amendments, this restriction has been extended with no justification and now applies between 10 p.m. and 7 a.m., except in cases of commemorative dates of Russia or cultural events. The Venice Commission has already expressed the view that blanket restrictions should be avoided and decisions to limit the time of a public event should only be taken by the executive authorities in each single case with due respect for the principle of proportionality⁸. An extension of the period, as provided for in the Amendment, increases the problem of disproportionality.

34. Under the June 2012 amendments, campaigning for a public event is no longer permitted starting from the time of submission of the notice, but only starting from the time of agreement between the organiser and the authorities on the format of the event. This provision is problematic because it enables the authorities to delay the organisers' campaigning, thus hampering severely the possibility in practice to campaign for and organise a public event. The constitutionality of this provision was challenged in the case before the Constitutional Court. The Constitutional Court found that this rule was “not tantamount to establishing a procedure for authorising...citizens to exercise the rights guaranteed to them by Article 31 of the...Constitution” and “did not exceed the discretionary powers defined by the ...Constitution”. The Constitutional Court (CDL-REF(2013)012, page 11) draws a distinction between providing information about an event which is permitted once the notice is submitted on the one hand, and prior promotion/inciting citizens to take part which is not permitted until agreement is reached on the other:

“Permitting prior promotion of a public event following agreement with the corresponding public authority on its place and/or time does not mean that, prior to that time, the organiser of a public event is not entitled to disseminate any information on it whatsoever: Article 4 of the Federal Law "On assemblies, rallies, demonstrations, marches and picketing" does not rule out informing potential participants of a public event – both before and after the corresponding notice is submitted to an executive authority of the Russian Federation or a local authority. Informing potential participants of a public event – as distinct from prior promotion of an event, which, within the meaning of the legal viewpoint expressed by the Constitutional Court of the Russian Federation in Judgment no. 15-P of 30 October 2003, pursues the aim of inciting citizens and their associations to take part in the public event, – enables its organisers to provide timely information to potential public event participants on a planned rally, demonstration, march or picketing and also, where necessary, on the process of its agreement. In providing such early warning, the organiser of a public event is entitled to disseminate information through any means on the aims, form and announced place and time of the event, the anticipated number of participants and other details of the public event; however, that information must not contain invitations or incitements to take part in it.”

35. Contrary to the judgment of the Constitutional Court, the Commission is of the view the distinction between giving information and promotion is not clearly described in the Law so as to be readily understood. In any event the Venice Commission considers the purported

⁸ CDL-AD(2012)010, para. 35.

distinction not to be a real one and therefore likely to give rise to arbitrary decisions which will limit the capacity of organisers to advertise assemblies. Besides this, the lack of clarity can cause chilling effects.

36. In the Commission's opinion, this change confirms its previous conclusion that the notice is in substance a request for authorisation or permission: "As regards the procedure for notification of public events as set out in the Assembly Law, the Venice Commission considers that this procedure is in substance a request for permission. Furthermore, the Assembly Law confers too broad discretion on the executive authorities to restrict assemblies, for instance by giving them the power to alter the format of the public event for aims (in particular the need to preserve the normal and smooth circulation of traffic and people) which go beyond the legitimate aims contained in Article 11 ECHR. The Law fails to indicate explicitly that such discretion must be exercised with due respect for the essential principles of "presumption in favour of holding assemblies", "proportionality" and "non-discrimination". In the opinion of the Venice Commission the Assembly Law does not sufficiently safeguard against the risks of an excessive use of discretionary power or even arbitrariness or abuse. Risks of an overbroad use of discretionary powers in order to suppress assemblies can always arise and therefore any assembly law must aim at reducing them as far as possible." The Venice Commission sees no reason to change this evaluation of the law. The amendment of Article 10 para. 1 leads to further problems related to the system of notification.

37. It should be made clear in the law that the courts have the power to reverse decisions which are within the broad discretion of the executive authorities and the review must be completed in time before the proposed date of the public event to preserve its original timeframe. At page 16 of its judgment the Constitutional Court states that where there is failure to reach agreement with the authorities there is a right to judicial review and that the judicial examination must be carried out "within the shortest possible time ... i.e. before the planned date for holding the public event. If not, judicial protection would largely lose its sense, which would not be permissible under Article 46 of the Russian Federation Constitution (Ruling no. 484-O-P of the Constitutional Court of the Russian Federation of 2 April 2009)." However, the Constitutional Court did not address problems arising when a court decision will be rendered shortly before the date of the planned assembly. The fact that after an agreement or a court decision all forms of advertising can be used does not compensate for drastically shortening the period that remains until the event takes place. In many cases there will not be sufficient time to promote the assembly effectively.

38. A major novelty brought about by the June 2012 amendments is the provision of "specialty designated places" for public events to be designated by the public (local) authorities. *As a rule*, public events must be held there. In exceptional cases, the organiser may submit a notice for holding a public event elsewhere following the ordinary procedure, and the law specifies that the executive authorities may only refuse to agree on the event under the terms of Article 12 para. 3 of the Assembly Act (when the organiser cannot act as organiser and when the chosen venue is prohibited under the law). The regional and local authorities may determine the prohibited sites for reasons including hindrance to pedestrians or traffic. The procedure for using the specially designated places may be simplified. The Russian authorities have explained to the Venice Commission that in some cases notification may not be necessary, but this is not clearly indicated in the Assembly Act (Article 8 para. 1.1 seems to subordinate the exemption from notification to a given maximum number of participants). As for the criteria for determining the specially designated places, the Assembly Act specifies that they must "provide for the possibility of attaining the aims of the public event and must be accessible, respect safety and health rules and so on".

39. The Venice Commission has already had occasion to examine laws of other countries providing for a list of specially designated places for public events. The Commission considered that "designation by the authorities of assembly locations raises concerns as it is incompatible

with the very concept of the right to peaceful assemble as a fundamental freedom”⁹; the existence of such facilities may be acceptable only so long as it facilitates the exercise of freedom of assembly and in particular only if it is clear that these places represent an additional option - and not the only option or the rule – to hold an event¹⁰ or if the places are explicitly indicated as notification-free¹¹.

40. In the present case, instead, the Commission notes that the specially designated places become the “natural” venues for public events, while other venues, possibly “within sight and sound” of the target of the public event, become an exception which needs a special justification. Even though the law limits the possibility for the authorities to refuse to agree on an event, the law removes the discretion of the authorities and requires them to prefer the specially designated places to any other location. The authorities will therefore propose to hold the event at one of the specially designated places instead, or at any rate change the format of the event, thus obliging the organiser either to agree or to give up. In the eyes of the authorities, the possibility to hold the public event at one of the specially designated places practically with neither burden nor notice will weigh against the organiser’s claim that the public event must be held in another specific place. Article 8 para. 1.1 thus removes the autonomy of the organiser to choose the location of the public event. The Commission notes that the European Court of Human Rights, while in the context of the *Berladir* judgment it ruled that there was no right to the forum chosen by the organisers, has always required that the reasons given by the authorities for changing the format of a public event be relevant, sufficient and in pursuit of a legitimate aim¹². The Court has gone on to examine whether the organiser was afforded an opportunity to express his or her views at another suitable and equivalent¹³ location.

41. As concerns the “prohibited locations”, the Commission refers to its previous criticism on blanket prohibitions.

42. In conclusion, the Venice Commission stresses that it is the privilege of the organiser to decide which location fits best, as in order to have a meaningful impact, demonstrations often need to be conducted in certain specific areas in order to attract attention (“Apellwirkung”, as it is called in German)¹⁴. Respect for the autonomy of the organizer in deciding on the place of the event should be the norm. The State has a duty to facilitate and protect peaceful assembly¹⁵. The judgment of the Constitutional Court finds the law unconstitutional (CDL-REF(2013)012, page 15) in relation to the powers of the Russian Federation constituent entities’ to establish specially designated sites but only insofar as it does not set clear statutory criteria for the executive authorities which adequately guarantee equal legal conditions for all citizens to exercise their right of assembly when deciding upon such sites. The judgment confirms that such sites are, in principle, permissible. The Venice Commission does not agree with this position.

⁹ Joint OSCE/ODIHR, Venice Commission Opinion on the Public Assembly Act of the Republic of Serbia, CDL-AD(2010)031, para. 38)

¹⁰ In its opinion on the draft amendments to the law on freedom of assembly in Azerbaijan, the Venice Commission accepted a list of designated places to the extent that “The list referred to in paragraph VI contains the places which are proposed, not designed, for assemblies. In addition, this list can be changed. This means without ambiguity that the holding of an assembly in a venue not explicitly mentioned in the list is not necessarily prohibited as the list cannot be exhaustive” (CDL-AD(2007)042, para. 25).

¹¹ Joint OSCE/ODIHR – Venice Commission Opinion on the amendments to the law on the right of citizens to assemble peaceably without weapons to freely hold rallies and demonstrations of the Kyrgyz Republic, CDL-AD(2008)025, para. 42

¹² *Berladir*, paras. 58-59

¹³ notably, equally in the city centre: *Berladir*, para. 60

¹⁴ See e.g. Opinion on the law on conducting meetings, assemblies, rallies and demonstrations of Armenia, CDL-AD(2004)039, para. 38: Joint Opinion on the Public Assembly Act of the Republic of Serbia, para. 34

¹⁵ Guidelines, principle 2.

43. The Venice Commission has already expressed the view that the Russian Assembly Law confers too broad discretion on the executive authorities to restrict assemblies, for instance by giving them the power to alter the format of the public event for aims (in particular the need to preserve the normal and smooth circulation of traffic and people) which go beyond the legitimate aims contained in Article 11 ECHR. The Assembly Law fails to indicate explicitly that such discretion must be exercised with due respect for the essential principles of “presumption in favour of holding assemblies”, “proportionality” and “non-discrimination”.

44. In conclusion, the Commission finds that the provision in the June 2012 amendments of specially designated places as the venues to be used as a rule for all public events will hinder rather than facilitate the exercise of the right to freedom of assembly and is therefore incompatible with international standards.

45. New paragraph 3 of Article 12 empowers the executive authorities to refuse to agree to the holding of a public event if the notice has been submitted by an individual who is banned from organising a public event (see paras. 14-20 above) or if it concerns a prohibited venue.

46. In addition to reiterating its criticism of Article 5 para. 2.1.1 and of Article 8 para.2.2, the Venice Commission recalls that the Constitutional Court of the Russian Federation has stated in very clear terms¹⁶ that the authorities may not prohibit a public event, and may only propose an alternative time and place corresponding to the social and political objectives of the event. New paragraph 3 of Article 12 is in contradiction with this judgment and also with international standards.

B. The amendments to the Code of administrative offences (Article 1 of Federal Law 65-FZ of 8 June 2012)

47. The impact of the amendments of the Federal Law on Assemblies on the freedom of Assembly is further increased by the amendments of the Code of administrative offences introduced by the Law of 8 June 2012. These amendments consist in:

- a) an increase in the upper end of the scale of penalties applicable in case of violation of the Assembly Act, notably: Article 5.38¹⁷ (only paras 1-4 for officials), Article 20.2¹⁸,

¹⁶ Judgment N 484-O-P of 2 April 2009

¹⁷ Article 5.38. Violating the Laws on Meetings, Rallies, Demonstrations, Processions and Picketing Obstructing the arrangements for, or the conduct of, a meeting, rally, demonstration, or a procession, or picketing held in compliance with the laws of the Russian Federation, or obstructing participation therein, as well as forcing to take part therein - shall entail a warning or the imposition of an administrative fine on citizens in the amount of up to one minimum wage and on officials in the amount of from one to three times the minimum wage. (unofficial translation)

¹⁸ Article 20.2. Violation of the established procedure for organising or holding assemblies, rallies, demonstrations, marches and picketing (provision amended by Federal Law FZ-65 of 8 June 2012, unofficial translation)

1. The violation by an organiser of a public event of the established procedure for organising or holding assemblies, rallies, demonstrations, marches and picketing, except in the cases provided for in paragraphs 2 - 4 of the present Article, shall entail the imposition of an administrative fine on citizens of between ten thousand and twenty thousand roubles or community service for a period of up to forty hours; on officials of between fifteen thousand and thirty thousand roubles; and on legal entities of between fifty thousand and one hundred thousand roubles.

2. The organising or holding of a public event without submitting notice thereof under the established procedure, except in the cases provided for in paragraph 7 of the present Article, shall entail the imposition of an administrative fine on citizens of between twenty thousand and thirty thousand roubles or community service for a period of up to fifty hours; on officials of between twenty thousand and forty thousand roubles; and on legal entities of between seventy thousand and two hundred thousand roubles.

Article 20.2.2 (introduced by the amendments of 2012, see CDL-REF(2012)028), Article 20.18¹⁹ and (for citizens only) Article 20.25 §4 (also introduced by the amendments of 2012): from 5,000 to 300,000 RUR for citizens and from 50,000 to 600,000 RUR for officials; there is no indication about the lower end of the scale.

- b) the introduction of a new kind of sanction - community work:

Article 3.13 Community work

1. Community work shall entail unpaid work of public utility performed by a physical individual having committed an administrative infringement, carried out during free time outside their principal work, duties or studies. Community work shall be imposed by a judge.

2. Community work shall be established for a period of between 20 and 200 hours and shall be performed for no more than four hours a day.

3. Community work shall not be applicable to pregnant women, women with children under three years of age, category-I and -II invalids, servicemen, citizens conscripted for military training or special-ranked staff of internal affairs agencies, criminal law enforcement system authorities and institutions, the state fire service, agencies combating trade in narcotics and psychotropic substances and customs authorities.";

- c) the creation of a new offence (Organisation of a mass simultaneous presence and/or movement of citizens in public places resulting in a breach of public order, Article 20.2.2, see CDL-REF(2012)028).

3. Acts/failures to act provided for in paragraphs 1 and 2 of the present Article resulting in hindrance to the movement of pedestrians or traffic or overcrowding exceeding the maximum occupancy norms applying to an area/premises, shall entail the imposition of an administrative fine on citizens of between thirty thousand and fifty thousand roubles or community service for a period of up to one hundred hours; on officials of between fifty thousand and one hundred thousand roubles; and on legal entities of between two hundred and fifty thousand and five hundred thousand roubles.

4. Acts/failures to act provided for in paragraphs 1 and 2 of the present Article resulting in harm to human health or property, where such acts/failures to act entail no action that is punishable under criminal law, shall entail the imposition of an administrative fine on citizens of between one hundred thousand and three hundred thousand roubles or community service for a period of up to two hundred hours; on officials of between two hundred thousand and six hundred thousand roubles; and on legal entities of between four hundred thousand and one million roubles.

5. The violation by a participant in a public event of the established procedure for holding assemblies, rallies, demonstrations, marches and picketing, except in the cases provided for in paragraph 6 of the present Article, shall entail the imposition of an administrative fine of between ten thousand and twenty thousand roubles or community service for a period of up to forty hours.

6. Acts/failures to act provided for in paragraph 5 of the present Article resulting in harm to human health or property, where such acts/failures to act entail no action that is punishable under criminal law, shall entail the imposition of an administrative fine of between one hundred and fifty thousand and three hundred thousand roubles or community service for a period of up to two hundred hours.

7. The organisation or holding of unauthorised assemblies, rallies, demonstrations, marches or picketing in the immediate vicinity of an area occupied by a nuclear installation, a radiation source or a site used to store nuclear materials and radioactive substances or active participation in such public events, where this has made it more difficult for workers at the aforementioned installations, sources or sites to fulfil their duties or has created a threat to the safety of the population and environment, shall entail the imposition of an administrative fine of between one hundred and fifty thousand and three hundred thousand roubles or administrative detention for a period of up to fifteen days; on officials of between two hundred thousand and six hundred thousand roubles; and on legal entities of between five hundred thousand and one million roubles."

¹⁹ Article 20.18. Blocking Transport Lines

The organisation of the blocking, as well as an active participation in the blocking of transport lines except in the cases provided in paragraph 3 of Article 20.2 and Article 20.2.2 of the present code, shall entail the imposition of an administrative fine in the amount of from twenty to twenty five times the minimum wage or administrative arrest for a term of up to fifteen days. (provision amended by Federal Law FZ-65 of 8 June 2012, unofficial translation).

Article 20.2.2 Organisation of a mass simultaneous presence and/or movement of citizens in public places, resulting in a breach of public order

1. The organisation of a mass simultaneous presence and/or movement of citizens in a public place that is not a public event, public calls for a mass simultaneous presence and/or movement of citizens in a public place or participation in a mass simultaneous presence and/or movement of citizens in a public place, where such a mass simultaneous presence and/or movement of citizens in a public place has resulted in a breach of public order or health standards and rules, the compromising of the functioning and integrity of facilities serving vital activities or communications or in damage to green spaces or created a hindrance to the movement of pedestrians or traffic or to citizens' access to dwellings or transport or social infrastructure facilities, except in the cases provided for in paragraph 2 of the present Article, shall entail the imposition of an administrative fine on citizens of between ten thousand and twenty thousand roubles or community service for a period of up to fifty hours; on officials of between fifty thousand and one hundred thousand roubles; and on legal entities of between two hundred thousand and three hundred thousand roubles.

2. Acts provided for in paragraph 1 of the present Article resulting in harm to human health or property, where such acts/failures to act entail no action that is punishable under criminal law, shall entail the imposition of an administrative fine on citizens of between one hundred and fifty thousand and three hundred thousand roubles or community service for a period of up to two hundred hours; on officials of between three hundred thousand and six hundred thousand roubles; and on legal entities of between five hundred thousand and one million roubles.

Note. An organiser of a mass simultaneous presence and/or movement of citizens in a public place that is not a public event shall, for the purposes of the present Article, be taken as meaning an individual having de facto fulfilled an organisational/administrative function for the organisation or holding of a mass simultaneous presence and/or movement of citizens in a public place that is not a public event.

48. The constitutionality of the provisions of paragraphs 3, 6, 7, 8, 9 and 10 of Article 1 of the Law was challenged on the basis that the amendments introduced by them to the Code of Administrative Infringements of the Russian Federation increased the amounts of administrative fines for administrative infringements linked to the organisation and holding of public events or other mass events resulting in breaches of public order, up to three hundred thousand roubles for citizens and up to six hundred thousand roubles for officials. The Constitutional Court held that the maximum fines prescribed by the Law were permissible since the maximum amount did not need to be applied. However in relation to the minimum fines the Court held that this was not in accordance with the Constitution because even the minimum possible amount of the fine frequently exceeded the average monthly wage and where it was not possible for a court in all cases to fully to take into account all the circumstances of the offender, the administrative fine could change from a measure intended to prevent infringements into an instrument of extreme restriction of citizens' right to property that was incompatible with the requirements of fairness. The Venice Commission welcomes this aspect of the Constitutional Court's judgment.

49. Nonetheless, the Venice Commission considers that the judgment is not far-reaching enough as the Court unfortunately stops short of clearly demanding both the minimum and the maximum amounts to be substantially lowered. The Commission recalls that, as concerns sanctions for failure to comply with the legal regulations on the exercise of freedom of assembly, the European Court of Human Rights has stated the following principles:

- An authorisation procedure is in keeping with the requirements of Article 11 § 1, if for the purpose of enabling the authorities to ensure the peaceful nature of a meeting. Thus, the requirement to obtain authorisation for a demonstration is not incompatible with Article 11 of the Convention. Since States have the right to require authorisation, they must be able to apply some sanctions to those who participate in demonstrations that do not comply with the requirement (see *Berladir and others v. Russia* judgment of 10 July 2012, 41; *Ziliberberg v. Moldova* (dec.), no. 61821/00, 4 May 2004, and *Rai and Evans v. the United Kingdom* (dec.), nos. 26258/07 and 26255/07, 17 November 2009). The impossibility to impose such sanctions would render illusory the power of the State to require authorisation (*Ziliberberg*, cit.);
- Conviction of an administrative offence and the subsequent imposition of a sanction for failure to comply with the applicable rules on the exercise of freedom of assembly represent an interference with the right to freedom of assembly guaranteed by Article 11 of the European Convention on Human Rights, and as such they must be not only foreseen by the law but also proportionate to the legitimate aim pursued (*Berladir*, cit., para. 50, 54);
- These administrative sanctions are criminal and thus require “particular justification” (*Rai and Evans*, cit.);
- In order to assess its proportionality, the amount of the administrative fine imposed on the applicant and its impact on his/her revenue must be taken into consideration (*Rai and Evans*, cit.; *Berladir*, cit., para. 61).

50. In their joint guidelines on freedom of assembly, the OSCE/ODIHR and the Venice Commission have argued that “the imposition of sanctions (such as prosecution) after an event may sometimes be more appropriate than the imposition of restrictions prior to, or during, an assembly”. They have added that “as with prior restraints, the principle of proportionality also applies to liability arising after the event. Any penalties specified in the law should therefore allow for the imposition of minor sanctions where the offence concerned is of a minor nature.”²⁰

51. While the proportionality of an administrative conviction and sentencing must be assessed in each single case, the Venice Commission will examine the amendments brought about by article 1 of Federal Law No. 65-FZ of 8 June 2012 against the background of the applicable international standards.

52. By application of the June 2012 amendments:

- a) the penalties applicable in case of violation of the Assembly Act have been dramatically increased;
- b) such amounts are expressed in figures and not by reference to the minimum wage, as is normally done in the code of administrative sanctions;
- c) the maximum amounts (300 000 RUR for citizens and 600 000 RUR for officials) have the potential to severely affect the revenue of the individual concerned when compared to the average per capita monthly money income in the Russian Federation, which in 2011 was of RUR 20 702,7²¹: the new maximum amounts of the administrative fines correspond to 14,5 and 29 times the average monthly income respectively;
- d) violations of the Assembly Act are treated in a significantly more severe manner than any other administrative offence;
- e) the new sanction of community work (up to 40 hours, 50 hours, 100 hours, 200 hours or 300 hours, for up to 4 hours a day, of compulsory, unpaid work) is severe and carries undoubtedly a chilling effect.

²⁰ OSCE/ODIHR-Venice Commission Guidelines on freedom of assembly, Explanatory notes, § 109 (CDL-AD(2010)020) [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)020-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)020-e.pdf).

²¹ See http://www.gks.ru/free_doc/doc_2012/rus-eng12.pdf

53. The Venice commission appreciates that the Constitutional Court derives a prohibition of forced labour both from the Russian Constitution and human rights guarantees under public international law. Moreover, it even points out correctly that applying community work only with respect to organizers of public assemblies gives rise to concerns that it might be intended primarily as a means to crush dissent, including political dissent. However, there is no justification for applying community work to organizers, where their failures have “caused damage ...to the property of a physical individual or corporate entity or the onset of other similar consequences”. Damage to property is quite a broad term and minor damage can easily occur in the course of public assemblies. Hence, this cannot be seen as a sufficient criterion for distinction. As far as damage to human health” is concerned, community work may be an adequate sanction, but only in cases of severe damage.

54. Even though their actual implementation depends ultimately on the courts²², the June 2012 amendments impose penalties (both pecuniary sanctions and community service) which are excessive for administrative offences with no violence involved and would be disproportionate. These amounts will undoubtedly have a considerable chilling effect on potential organisers and participants in peaceful public events. In addition, the different and more severe treatment which is reserved to violations of the Assembly Act as compared to any other administrative offence does not appear to be prima facie justified.

55. The Venice Commission therefore recommends that the sanctions be revised and drastically lowered.

56. As concerns the new offence (Article 20.2.2, “Organisation of a mass simultaneous presence and/or movement of citizens in public places resulting in a breach of public order”), it has been explained to the Venice Commission by the Russian authorities that it applies to events which do not have as an object “to exercise the free expression and shaping of opinions and to put forward demands concerning various issues of political, economic, social and cultural life of the country and also issues of foreign policy” (see the definition of public event in Article 2 of Federal Law 54-FZ). Examples of these events are sport events, concerts, flash mobs and so on.

57. The Commission stresses its conviction that sanctioning as an offence – with rather heavy minimum and maximum penalties - not only the organisation of, but also “public calls for” and “participation in a mass simultaneous presence or movement of citizens” which have caused the almost inevitable consequences of a mass presence of people, that is any “damage to green spaces or hindrance the movement of pedestrians or traffic or to citizens’ access to dwellings or transport or social infrastructure facilities”, amounts to a disproportionate interference with the right to freedom of assembly. As it stands, this provision will have deterrent effects on many events, notably creative activities using new forms of public activities and of participation in matters of public interest, including flash mobs. The freedom of assembly is not restricted to traditional forms of assemblies; the guarantee is open to new ones.

IV. Conclusions

58. In March 2012 the Venice Commission examined the Law on assemblies, meetings, demonstrations, marches and picketing (the Assembly Act), and expressed the view that it presented several fundamental shortcomings; the Commission made several recommendations designed to assist the Russian Federation in bringing the Assembly Act in line with the applicable international standards. The Venice Commission regrets that none of these

²² A report of the Ombudsman of the Russian Federation suggests that the proceedings of application of administrative fines do not meet the requirements of adversarial proceedings and equality of the parties on account of the role of the prosecutor (he provides evidence of the administrative violations).

recommendations has been taken into consideration by the Russian authorities, when they amended the Assembly Act in June 2012.

59. The Venice Commission is firmly convinced that the June 2012 amendments to both the Assembly Act and to the Code of Administrative Offences raise a number of serious concerns and represent a step backward for the protection of freedom of assembly in the Russian Federation; their implementation may result in infringements of the fundamental right to peaceful assembly guaranteed by the Russian Constitution and by the European Convention on Human Rights. Therefore, in order to ensure compliance of the Assembly Act with international standards, the Venice Commission makes the following recommendations, in addition to those contained in its previous opinion on the Assembly Act and it strongly recommends to reconsider the amendments:

- a. It is recommended to reconsider new Article 5 paragraph 2.1.1 and to remove the exclusion from the right to organise public events of whole categories of people for breaches of a variety not only of criminal but also of administrative offences, irrespective of their gravity;
- b. It is recommended to indicate in sub-paragraph 6 of paragraph 3 of Article 5 that failure by the organiser to demand the intervention of the internal affairs authorities will not entail any negative consequences for the organiser;
- c. It is recommended to reconsider paras. 4.3 and 4.7.1 of Article 5 so as to exclude responsibility on the part of the organiser on account of the number of participants in the public event;
- d. It is recommended to limit, in paragraph 6 of Article 5, the organiser's responsibility for damages to cases of failure to exercise due care;
- e. It is recommended to reconsider the blanket ban on wearing masks or similar ;
- f. It is recommended to limit the responsibility of picketers to cases of actual threats to public order and safety;
- g. It is recommended to reconsider the time-limitations on public events in Article 9;
- h. It is recommended to reconsider the limitations to campaigning for a public event to after the authorities' agreement;
- i. It is recommended to reconsider the provision of specially designated place where public events should take place 'as a rule';
- j. It is recommended to remove Article 12 paragraph 3;
- k. It is recommended to revise and lower drastically the penalties applicable in case of violation of the Assembly Act;
- l. It is recommended to reconsider Article 20.2.2
- m. Care should be taken to ensure that guarantees of fundamental freedoms in the law should not be limited to citizens but be applied to all persons.

Annex 819

**Council of Europe, European Commission for Democracy through Law (Venice Commission),
Opinion 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**



Venice, 21 March 2014

Opinion no. 762 / 2014

CDL-AD(2014)002
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OPINION

**ON “WHETHER THE DECISION TAKEN
BY THE SUPREME COUNCIL
OF THE AUTONOMOUS REPUBLIC OF CRIMEA IN UKRAINE
TO ORGANISE A REFERENDUM
ON BECOMING A CONSTITUENT TERRITORY
OF THE RUSSIAN FEDERATION
OR RESTORING CRIMEA’S 1992 CONSTITUTION IS COMPATIBLE
WITH CONSTITUTIONAL PRINCIPLES”**

**adopted by the Venice Commission
at its 98th Plenary Session
(Venice, 21-22 March 2014)**

on the basis of comments by

**Mr Peter PACZOLAY (Honorary President, Hungary)
Ms Hanna SUCHOCKA (Member, Poland)
Mr Evgeni TANCHEV (Member, Bulgaria)
Mr Kaarlo TUORI (Member, Finland)**

I. Introduction

1. By letter dated 7 March 2014 the Secretary General of the Council of Europe, Mr Jagland, asked the Venice Commission to provide an opinion on “whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea’s 1992 Constitution is compatible with constitutional principles”.
2. Mr Paczolay, Ms Suchocka, Mr Tanchev and Mr Tuori were appointed as rapporteurs for this opinion.
3. The present opinion was adopted by the Venice Commission at its 98th Plenary session in Venice on 21 March 2014.
4. On 6 March 2014 the Supreme Rada (Council) of the Autonomous Republic of Crimea adopted a Resolution “On the all-Crimean referendum”. According to the Resolution, the voters are given two options: "1) Do you support the reunification of the Crimea with Russia as a subject of the Russian Federation? 2) Do you support the restoration of the Constitution of the Republic of Crimea as of 1992 and the status of the Crimea as a part of Ukraine?" Article 3 of the Resolution provides that the option supported by the majority of the votes shall be deemed a direct expression of the will of the Crimean population.
5. On the ballot paper the two questions appear as alternatives, i.e. the voters are not asked to say yes or no to each question but they can either vote for the first or the second alternative.
6. The Resolution was passed on the basis of Articles 18.1.7 and 26.2.3 of the Constitution of the Autonomous Republic of Crimea. Article 18.1.7 provides that among the powers of the Autonomous Republic of Crimea is “calling and holding of republican (local) referendums upon matters coming under the terms of reference of the Autonomous Republic of Crimea”. In turn, according to Article 26.2.3 “passing of a resolution upon holding of a republican (local) referendum” belongs to the powers of the Supreme Rada”. These provisions are based on Article 138.2 of the Constitution of Ukraine according to which the “organising and conducting local referendums is within the competence of the Autonomous Republic of Crimea”.
7. In order for the referendum to be constitutional and legal, it would be required that the issues put before the voters be issues which can be the object of a local referendum under the Constitutions of Ukraine and the Autonomous Republic of Crimea. The Constitution of Ukraine enjoys supremacy over the Constitution of Crimea as an autonomous republic. Ukraine is a unitary state (Article 2.2 of the Constitution of Ukraine). According to Article 132 of the Constitution of Ukraine, “the territorial structure of Ukraine is based on the principles of unity and indivisibility of the state territory, the combination of centralisation and decentralisation in the exercise of state power, and the balanced socio-economic development of regions (...)”. Under Article 134 of the Constitution of Ukraine, “the Autonomous Republic of Crimea is an inseparable constituent part of Ukraine and decides on the issues ascribed to its competence within the limits of authority determined by the Constitution of Ukraine”. The Autonomous Republic of Crimea therefore enjoys autonomy only to the extent that powers were transferred to it by the Constitution of Ukraine.
8. Accordingly, Article 135 of the Constitution of Ukraine holds that, “regulatory legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea and decisions of the Council of Ministers of the Autonomous Republic of Crimea shall not contradict the Constitution and laws of Ukraine and shall be adopted in accordance with and in pursuance of the Constitution of Ukraine, laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine”. A corresponding provision is included in Article 28 of the Constitution

of the Autonomous Republic of Crimea: “The statutory acts of the Supreme Rada of the Autonomous Republic of Crimea and the Council of Ministers of the Autonomous Republic of Crimea upon any and all matters regarding the powers of the Autonomous Republic of Crimea shall conform to the Constitution of Ukraine and Ukrainian laws.” An act by an authority of the Autonomous Republic of Crimea which is contrary to the Constitution of Ukraine is therefore also contrary to the Constitution of Crimea.

II. Alternative 1: Unification with Russia

9. The first alternative proposed to the voters, which is for Crimea to join the Russian Federation, would imply secession from Ukraine. The question is whether the Constitution of Ukraine allows referendums on secession.

10. It is true that the Constitution of Ukraine, in particular Article 69, recognises referendums as an expression of the will of the people. This does, however, not mean that any referendum is automatically constitutional. On the contrary, there are numerous provisions of the Ukrainian Constitution which show very clearly that the secession of a part of the territory of the country cannot be the object of a local referendum.

11. The Constitution of Ukraine makes it very clear that the sovereignty and territorial integrity of the country are fundamental principles of the Ukrainian constitutional order. Article 1 of the Constitution refers to Ukraine as a sovereign country. Article 2 of the Constitution is worded as follows:

“The sovereignty of Ukraine extends throughout its entire territory.

Ukraine is a unitary state.

The territory of Ukraine within its present border is indivisible and inviolable.”

Already in its study on “Self-determination and secession in constitutional law” (CDL-INF(2000)002), the Venice Commission noted that “Affirmation of the indivisibility of the state plainly implies outlawing of secession...”

12. Article 2 of the Constitution of Ukraine shows that the indivisibility of the territory of Ukraine is one of the highest values of the Ukrainian Constitution and is an indication that a referendum on secession cannot be constitutional in Ukraine.

13. Chapter X of the Constitution of Ukraine pertaining to the Autonomous Republic of Crimea does not contradict but confirms this approach. Article 134 of the Constitution refers to the Autonomous Republic of Crimea as an “inseparable constituent part of Ukraine”. As regards referendums, Article 138.2 of the Constitution of Ukraine explicitly limits the competence of the Autonomous Republic of Crimea to “organising and conducting local referendums”. From the outset, issues of altering the territory of Ukraine cannot be decided by a local referendum. Article 73 of the Constitution of Ukraine explicitly provides:

“Issues of altering the territory of Ukraine are resolved exclusively by an All-Ukrainian referendum.”

14. Since Article 134 of the Constitution of Ukraine defines Crimea as an inseparable constituent part of Ukraine, the secession of Crimea would require amending the Constitution of Ukraine. Such a constitutional amendment is, however, prohibited by Article 157.1 of the Constitution of Ukraine which provides:

“The Constitution of Ukraine shall not be amended, if the amendments foresee the abolition or restriction of human and citizens’ rights and freedoms, or if they are oriented toward the liquidation of the independence or violation of the territorial indivisibility of Ukraine.”

15. It is therefore clear that the Ukrainian Constitution prohibits any local referendum which would alter the territory of Ukraine and that the decision to call a local referendum in Crimea is not covered by the authority devolved to the authorities of the Autonomous Republic of Crimea by virtue of Article 138 of the Ukrainian Constitution. This is confirmed by the judgment of the Constitutional Court of Ukraine of 14 March 2014 recognising the decision as unconstitutional. Since Article 28 of the Constitution of the Autonomous Republic limits the authority of the Supreme Soviet of the Autonomous Republic to matters within the authority of the Autonomous Republic under the Ukrainian Constitution, the decision also violates the Constitution of the Autonomous Republic.

16. The provisions of the Constitution of Ukraine pertinent to this opinion are part of the initial text of the Constitution adopted in 1996 and were never amended. The question whether the constitutional amendments adopted in 2004 are part of the Constitution or not is therefore not relevant for this opinion.

17. If the Constitution of Ukraine does not allow a referendum on secession, this does not in any way contradict European constitutional standards. Rather, it is typical for constitutions of Council of Europe member states not to allow secession. In its Report on “A general legal reference framework to facilitate the settlement of ethno-political conflicts in Europe” (CDL-Inf(2000)16 the Venice Commission noted:

“The principle of territorial integrity commands very widespread recognition - whether express or tacit - in constitutional law. On the other hand, constitutional law just as comprehensively rules out secession or the redrawing of borders. This should come as no surprise since that branch of law is the very foundation of the state, which might be deprived of one of its constituent parts if such possibilities were provided for.”

18. This does not mean that the notion of self-determination would be alien to European constitutional law. However, in its Report on “Self-determination and secession in constitutional law” quoted above, the Venice Commission concludes that self-determination is understood primarily as internal self-determination within the framework of the existing borders and not as external self-determination through secession.

19. The decision of the Ukrainian constituent power not to grant a right to secession can therefore not be criticised on the basis of European constitutional standards.

III. Alternative 2 – Return to the 1992 Constitution

20. According to the second alternative provided for in the referendum, a return to the 1992 Constitution of the Autonomous Republic, Crimea would remain part of Ukraine. The constitutional objections to the first alternative therefore do not apply. A consultative referendum on increasing the autonomy of Crimea would be possible as a local referendum within Crimea. However, since this second alternative is provided not as a separate question, but only as an alternative to secession, it cannot be regarded as valid on its own. In any case, such a referendum could not be regarded as binding. According to Article 135 of the Constitution of Ukraine, the Constitution of the Autonomous Republic has to be approved by the Verkhovna Rada. It could only be regarded as a consultative local referendum on the basis of Article 48.2 of the Constitution of the Autonomous Republic of Crimea, which is worded as follows: “The Supreme Rada of the Autonomous Republic of

Crimea may, by a resolution of an advisory republican (local) referendum, make motions on alterations regarding the limitation of the status and powers of the Autonomous Republic of Crimea, the Supreme Rada of the Autonomous Republic of Crimea and the Council of Ministers of the Autonomous Republic of Crimea determined by the Constitution of Ukraine and Ukrainian laws.” The compatibility of the 1992 Constitution with the Constitution of Ukraine, which was adopted in 1996, would then have to be ascertained.

IV. Compatibility of the referendum with European constitutional principles

21. While the first requirement for the validity of the referendum is that it may not contradict the provisions of the Constitution of Ukraine, this is by no means sufficient. It is also necessary that the referendum comply with basic democratic standards for the holding of referendums, such as those established by the Venice Commission’s Code of Good Practice on Referendums (CDL-AD(2007)008rev). In its Opinion on the Compatibility of the Existing Legislation in Montenegro concerning the organisation of referendums with applicable international standards (CDL-AD(2005)041), the Venice Commission noted (at 11):

“11. Any referendum must be organised in full conformity with internationally recognised standards. A consideration of these standards must begin with an examination of European standards. ...

12. The internationally recognised fundamental principles of electoral law, as expressed for example in Article 3 of the First Protocol to the ECHR and Article 25 ICCPR, have to be respected, including universal, equal, free and secret suffrage. For a referendum to give full effect to these principles, it must be conducted in accordance with legislation and the administrative rules that ensure the following principles:

- the authorities must provide objective information;*
- the public media have to be neutral, in particular in news coverage;*
- the authorities must not influence the outcome of the vote by excessive, one-sided campaigning;*
- the use of public funds by the authorities for campaigning purposes must be restricted.”*

22. A number of circumstances make it appear questionable whether the referendum of 16 March 2014 could be held in compliance with international standards. Such circumstances are:

- Ukraine does not, at the moment, have a law regulating local referendums. It is therefore not clear according to which legal rules the referendum will be carried out.
- While the Venice Commission has not made a comprehensive assessment of the current situation in Crimea, the massive public presence of (para)military forces is not conducive to democratic decision making.
- Concerns have been expressed, including by the OSCE, with respect to the freedom of expression in Crimea.
- The period of only 10 days between the decision to call the referendum and the referendum itself is excessively short.
- On 11 March the Supreme Rada adopted a declaration on the independence of Crimea. This raises doubt with respect to the legal effects of the referendum and the neutrality of the authorities.

23. Moreover, the referendum question is not worded neutrally. It provides two alternatives: independence or return to the 1992 Constitution. It is not possible to directly express the wish to maintain the current Constitution. In addition, the reference to the 1992 Constitution is ambiguous. This text underwent major changes in September 1992, making it much clearer that the Autonomous Republic is part of Ukraine. Does the referendum refer to the

original text adopted in May or the revised text, as amended in September? The Code of Good Practice on Referendums requires (at I.3.1.c) that “c. The question put to the vote must be clear; it must not be misleading; it must not suggest an answer; electors must be informed of the effects of the referendum; voters must be able to answer the questions asked solely by yes, no or a blank vote.”

24. Holding a referendum which is unconstitutional in any case contradicts European standards. The Code of Good Practice on referendums provides in Part III.1 on the Rule of Law:

The use of referendums must comply with the legal system as a whole, and especially the procedural rules. In particular, referendums cannot be held if the Constitution or a statute in conformity with the Constitution does not provide for them, for example where the text submitted to a referendum is a matter for Parliament’s exclusive jurisdiction.

25. It must also be taken into account that the referendum concerns an issue of outstanding importance. In its opinion on Montenegro quoted above, the Venice Commission noted (at 24) that “*the issue at stake is possibly the most important decision that a political community may take by democratic means: its independence. Hence, the matter requires the broadest possible commitment of the citizens to the resolution of the issue.*” The Venice Commission recommended serious negotiations among all stakeholders to ensure the legitimacy and credibility of the referendum and such negotiations subsequently took place.

26. With respect to the referendum of 16 March 2014, the Venice Commission can only note that no negotiations aimed at a consensual solution took place before the referendum was called. Due to the multi-ethnic composition of the population of Crimea (Russian, Ukrainians, Tatars and others), such negotiations would have been particularly important.

V. Conclusions

27. The Constitution of Ukraine, like other constitutions of Council of Europe member states, provides for the indivisibility of the country and does not allow the holding of any local referendum on secession from Ukraine. This results in particular from Articles 1, 2, 73 and 157 of the Constitution. These provisions in conjunction with Chapter X of the Constitution show that this prohibition also applies to the Autonomous Republic of Crimea and the Constitution of Crimea does not allow the Supreme Soviet of Crimea to call such a referendum. Only a consultative referendum on increased autonomy could be permissible under the Ukrainian Constitution.

28. Moreover, circumstances in Crimea did not allow the holding of a referendum in line with European democratic standards. Any referendum on the status of a territory should have been preceded by serious negotiations among all stakeholders. Such negotiations did not take place.

Annex 820

Parliamentary Assembly of the Council of Europe, Committee on Honouring of Obligations and Commitments by Member States of the Council of Europe, Recent Developments in Ukraine: Threats to the Functioning of Democratic Institutions (8 April 2014)



Doc. 13482
08 April 2014

Recent developments in Ukraine: threats to the functioning of democratic institutions

Report¹

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Co-rapporteurs: Ms Mailis REPS, Estonia, Alliance of Liberals and Democrats for Europe, and Ms Marietta de POURBAIX-LUNDIN, Sweden, Group of the European People's Party

Summary

The Monitoring Committee deeply regrets the dramatic events on Maidan (Kyiv) from 18 to 20 February 2014 that led to the death of over 100 protesters and 17 police officers and strongly condemns the unacceptable use of snipers and live ammunition against protesters by the Ukrainian authorities at that time. All fatalities, and all human rights abuses that occurred in relation to the Euromaidan protests need to be fully investigated and the perpetrators, including those in the line of command, brought to justice. There can be no impunity for human rights abuses, irrespective of who committed them

The committee considers that the new political environment following the events on Maidan between 18 and 21 February, and the resulting change of power, has opened a window of opportunity for Ukraine's democratic development. In that respect, constitutional reform and the adoption of a new unified election code should be the immediate priority for the Ukrainian authorities. In addition, far-reaching judicial reform and decentralisation of government, including the strengthening of local and regional authorities, should be considered.

The committee regrets that the democratic changes and political developments in Ukraine have been overshadowed by the developments in Crimea and strongly condemns the Russian military aggression and subsequent annexation of Crimea, which is in clear violation of international law, including the United Nations Charter, the OSCE Helsinki Act and the Statute and basic principles of the Council of Europe.

It reaffirms its strong support for the independence, sovereignty and territorial integrity of Ukraine and expresses its great concern about the build-up of large numbers of Russian military troops along the border with Ukraine which are detrimental to the already tense situation in the country.

1. Reference to committee: Reference 4029 of 7 April 2014.



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A. Draft resolution²

1. The Parliamentary Assembly deeply regrets the dramatic events on Maidan (Kyiv) from 18 to 20 February 2014 that led to the death of over 100 protesters and 17 police officers. It considers and regrets that the unprecedented escalation of violence was largely the result of the increasingly hard-handed approach of the authorities, including the so-called anti-terrorist action to break up the Euromaidan protests by force, contrary to all advice given by national and international interlocutors, including by the Assembly in its [Resolution 1974 \(2014\)](#) on the functioning of democratic institutions in Ukraine.

2. The Assembly strongly condemns the use of snipers and live ammunition against protesters by the Ukrainian authorities at that time. Such actions are unacceptable. All fatalities and all human rights abuses that occurred in relation to the Euromaidan protests need to be fully investigated and the perpetrators, including those in the line of command, brought to justice. There can be no impunity for human rights abuses, irrespective of who committed them. At the same time, it is important that these investigations are impartial and free from political motivation or any desire for retribution. They should take place transparently and in full accordance with the requirements of Article 6 of the European Convention on Human Rights (ETS No. 5). The advisory committee proposed by the Council of Europe could play an important role in helping the authorities to ensure that these conditions are met.

3. The Verkhovna Rada played an important and constructive role in resolving the crisis when, in unity and consensus, it managed the change of power and implementation of the main provisions of the 21 February 2014 agreement, in line with the overall tenets of the agreement and with due consideration for constitutional principles. The Assembly therefore fully recognises the legitimacy of the new authorities in Kyiv and the legality of their decisions. It regrets attempts to question the legitimacy of the new authorities, which can only serve to destabilise the country.

4. The Assembly considers that the new political environment following the events on Maidan between 18 and 21 February, and the resulting change of power, has opened a window of opportunity for Ukraine's democratic development. It is now important to use this window of opportunity to establish a genuinely democratic and inclusive system of governance that will guarantee and strengthen the unity of the country.

5. The Assembly takes note of the 2004 constitutional amendments that have been re-enacted by the Verkhovna Rada with a constitutional majority. The Assembly recalls and reiterates its concerns with regard to these constitutional amendments, as expressed in various Assembly resolutions adopted when these amendments were first in force. Further constitutional reform is therefore urgently necessary. The Assembly urges the Verkhovna Rada to use its unique unity at this moment to adopt, without further delay, the constitutional amendments necessary to establish a better balance of power between President and Legislature and to bring the Constitution fully into line with Council of Europe standards and principles. In that respect, the Assembly welcomes the clearly expressed commitment of all political forces in Ukraine to adopt such constitutional amendments in first reading before the next presidential election takes place and in final reading at the start of the next session of the Verkhovna Rada, in September 2014. In view of the short period of time available, the Assembly calls upon the Verkhovna Rada to make full use of the already existing opinions of the European Commission for Democracy through Law (Venice Commission) on previous drafts and concepts for constitutional reform in Ukraine.

6. There can be no question about the legitimacy of the Verkhovna Rada, which was elected in 2012 in elections that were, *inter alia*, observed by the Assembly. At the same time, the Assembly recognises that, as a result of the recent political developments, including the disarray of the Party of Regions, several groups of people in Ukraine fear that they are not, or not well, represented in the Verkhovna Rada and therefore at the level of the central government. In order to ensure the fullest possible representativity of the Verkhovna Rada, which will benefit the unity and stability of the country, pre-term parliamentary elections should be organised as soon as is technically and politically feasible.

7. The next parliamentary elections should be conducted on the basis of a new unified election code and a regional proportional election system, as repeatedly recommended by the Assembly and the Venice Commission. In order to avoid any unnecessary delays in the adoption of such an election code, the Assembly recommends that the Verkhovna Rada develop a unified election code based on the draft that was prepared by the Kliuchkovsky working group, in which all political forces participated and which benefited from the expertise of the Venice Commission.

2. Draft resolution adopted by the committee on 8 April 2014.

8. While constitutional reform and the adoption of a new unified election code should be the immediate priority for the Ukrainian authorities, far-reaching judicial reform and decentralisation of government, including the strengthening of local and regional authorities, should also be urgently considered and implemented.

9. Regrettably, recent events have increased the east-west divide in the country and led to unease among the population of both parts of the country. In the view of the Assembly, the divide is mostly of political origin, despite the clear historical and cultural differences between the east and the west of Ukraine. It recommends therefore that the authorities develop a comprehensive and inclusive strategy to strengthen local and regional authorities and to decentralise government. Such a decentralisation strategy should be based on the principles of a strong unitary State with an effective system of central governance with delegated responsibilities and powers to the regions. The Assembly strongly objects to any notion of a federalisation of Ukraine, as this would substantially weaken the unity and stability of the country.

10. The lack of independence of the judiciary and the structural deficiencies in the judicial system have been long-standing concerns of the Assembly. Far-reaching judicial reforms should now be promptly implemented. The Assembly reiterates its recommendations made in previous resolutions, which remain valid. The Assembly underscores that constitutional amendments are necessary to establish a judicial system that is fully in line with European standards.

11. The Assembly takes note of the conclusions by the Advisory Committee of the Framework Convention for the Protection of National Minorities that visited Ukraine from 21 to 26 March 2014. The Assembly welcomes the fact that there is no immediate threat to the enjoyment of minority rights in the current situation in Ukraine. At the same time, it calls on the authorities to be proactive in adopting all possible measures that could strengthen the unity of the country and to refrain from any discourse or actions that are divisive and that could undermine – or be instrumental in undermining – the national unity of the country. In this context, the Assembly regrets the decision by the Verkhovna Rada to cancel the Law on the State language, even if this decision was never enacted or implemented.

12. The Assembly expresses its concern about the increasing number of credible reports of violations of the human rights of the ethnic Ukrainian and Crimean Tatar minorities in Crimea, including access to their homes, following its annexation by Russia. It calls upon the Russian authorities to ensure that these violations are immediately halted and all perpetrators prosecuted. In addition, international human rights monitors from the Organization for Security and Co-operation in Europe (OSCE) should be given full access to the region.

13. The frequent and unsubstantiated reports of minority rights violations in Ukraine, as well as the negative portrayal of the new government in Kyiv, by certain national and international media, have had a negative impact on interethnic relations in Ukraine, and ultimately on the unity and stability of the country. We call on all media to refrain from such unsubstantiated reports and to cover the developments in the country and its regions impartially and factually. We call upon the authorities to refrain from any censorship of the media.

14. The Assembly regrets that the democratic changes and political developments in Ukraine have been overshadowed by the developments in Crimea. The Assembly strongly condemns the Russian military aggression and subsequent annexation of Crimea, which is in clear violation of international law, including the United Nations Charter, the OSCE Helsinki Act and the Statute and basic principles of the Council of Europe.

15. In the view of the Assembly, none of the arguments used by the Russian Federation to justify its actions hold true to facts and evidence. There was no ultra-right wing takeover of the central government in Kyiv, nor was there any imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea. Given that neither secessionism, nor integration with the Russian Federation, was prevalent on the political agenda of the Crimean population, or widely supported, prior to Russian military intervention, the Assembly considers that the drive for secession and integration into the Russian Federation was instigated and incited by the Russian authorities, under the cover of a military intervention.

16. The so-called referendum that was organised in Crimea on 16 March 2014 was unconstitutional both under the Crimean and Ukrainian Constitutions. In addition, its reported turnout and results are implausible. The outcome of this referendum and the illegal annexation of Crimea by the Russian Federation therefore have no legal effect and are not recognised by the Council of Europe. The Assembly reaffirms its strong support for the independence, sovereignty and territorial integrity of Ukraine.

17. The Assembly expresses its great concern about the build-up of large numbers of Russian military troops along the border with Ukraine, which could be an indication that the Russian Federation is considering further unprovoked military aggression against Ukraine, which is unacceptable.

18. Given the risk of destabilisation and the deterioration of the security regime of the whole region by further Russian military aggression against Ukraine, the Assembly recommends that the signatories of the Budapest Agreement, as well as other relevant European States, explore the possibility for tangible security agreements to ensure Ukraine's independence, sovereignty and territorial integrity.

B. Explanatory memorandum by Ms Reps and Ms de Pourbaix-Lundin, co-rapporteurs

1. Introduction

1. On 30 January 2014, the Assembly adopted, in a debate under urgent procedure, [Resolution 1974 \(2014\)](#) on the functioning of democratic institutions in Ukraine.

2. In this resolution, the Assembly expressed its deep concern about the political crisis that erupted following the decision by the Ukrainian authorities to suspend the procedure for the signing of an association agreement between Ukraine and the European Union. The Assembly was especially concerned and regretted the brutality and excessive and disproportionate use of force by the police forces against the protesters in the demonstrations that followed the decision by the government. It considered that the attempts of the authorities to forcefully break up these so-called “Euromaidan” protests only escalated the political crisis and galvanised the protesters. The Assembly, in very clear terms, therefore called on the authorities to refrain from any attempt to forcefully break up the Euromaidan protest or from any action that could further escalate the crisis. Similarly, the Assembly called upon the protesters to refrain from any actions provoking violent reactions from the police.

3. At the same time, the Assembly was extremely concerned about the credible reports of human rights violations by police and security forces – or persons under their control – against persons involved in the Euromaidan protests. It asked the authorities to ensure that such violations be brought to an immediate halt and that all reports of human rights violations be credibly investigated.

4. In the context of the developments that took place after the adoption of the resolution, it is important to note that the Assembly highlighted the fact that the decision by the authorities in Kyiv not to sign the association agreement was also taken as the result of heavy pressure from the Russian authorities, including threats of economic and political sanctions, contrary to diplomatic norms and obligations and accession commitments. In that context, the Assembly explicitly reminded the Russian Federation of its obligations as a Council of Europe member State.

5. Following the adoption of [Resolution 1974 \(2014\)](#), we travelled to Kyiv for a fact-finding visit from 17 to 21 February 2014. This visit coincided with the dramatic events on Maidan, when the violent attempts by the authorities to break up the Euromaidan protests resulted in over 80 fatalities.³ As a result of our presence, including on the Maidan itself, we were able to see – first-hand – how the events unfolded on the ground. During the visit, we were able to maintain comprehensive and frequent contacts with all sides in the conflict – authorities, opposition, civil society and protesters – through which we gained a good oversight of the developments. We wish to thank the Verkhovna Rada and the Head of the Council of Europe Office in Kyiv, and his staff, for all the assistance given to our delegation, especially in such difficult circumstances.

6. Sadly, the events on Maidan in Kyiv were soon overtaken by the developments in Crimea as a result of Russia’s military intervention that cumulated into the illegal annexation of Crimea by the Russian Federation.

7. In reaction to the events in Kyiv, as well as the developments in Crimea, the Monitoring Committee, at its meeting in St Julian’s (Malta) on 28 February 2014, decided to request a debate under urgent procedure on “Recent developments in Ukraine: threats to the functioning of democratic institutions” during the April part-session of the Assembly. On 6 March 2014, the Bureau of the Assembly decided to recommend to the Assembly to hold this debate during the April part-session and to refer it to the Monitoring Committee for report.

8. In order to study the consequences of Russia’s annexation of Crimea, as well as the political developments following the events on Maidan, the Presidential Committee and the co-rapporteurs of the Assembly for Ukraine went to the country from 21 to 25 March 2014. In addition to meetings with the authorities in Kyiv, the delegation met with regional authorities and civil society groups, including ethnic organisations, in Donetsk and Lviv.

3. There is confusion around the exact number of fatalities, although all sources agree they exceed a hundred. The Ukrainian authorities initially announced that approximately 88 people died – including 17 policemen – as a result of the violence on Maidan between 18 and 20 February 2014 and that several hundred people were injured, many of them remaining in a critical condition. Reportedly, since then, at least 16 people have died from the injuries received during the clashes from 18 to 20 February. In addition, 9 persons died in the period from 22 January (when the first person died) to 17 February 2014, bringing the total number of fatalities of the Euromaidan protest to at least 110-120. Given that a number of the injured are still in a critical condition, it is possible that this number will increase.

2. Euromaidan⁴ events

9. Following the repeal by the Verkhovna Rada, on 28 January 2014, of the so-called anti-protests laws, the negotiations between the authorities and the opposition, united on Euromaidan, gained new intensity. These negotiations focused on the possibility of reintroducing (parts of) the 2004 amendments to the Constitution that had been declared invalid in 2010 by a Constitutional Court decision. These amendments provide for a greater equilibrium in the division of powers between parliament and President than the 1996 Constitution that was in force at that time. In addition, these provisions make the government accountable to the parliament, instead of to the President, which would pave the way for a possible unity government, consisting of members of both the opposition and ruling majority. Reportedly, authorities and opposition had come to an agreement on the principle of the need for changes to the Constitution, although, again reportedly, not on the exact details and the procedure needed to enact them. The plenary session of the Verkhovna Rada of 18 February 2014 was set to discuss constitutional reform on the basis of opposition proposals to re-enact the 2004 constitutional amendments.

10. A detailed outline and discussion of the exact sequence of events on and around Maidan during the period of 18 to 21 February 2014 is beyond the scope of this report. We will limit ourselves to the key moments and an overall assessment of the developments during that week.

11. A large peaceful protest march to the Verkhovna Rada was planned and announced for 18 February 2014, when the Rada was slated to discuss opposition proposals for changes to the Constitution. However, on the morning of 18 February, Verkhovna Rada Speaker Rybak announced that he refused to register the draft bills on constitutional changes prepared by the opposition, ostensibly on technical grounds. Following this decision, the protest rally to the Verkhovna Rada turned violent. Who started the violence is unclear and is a point of contention between the authorities at that time and the protesters, with the then authorities blaming the protesters. The protesters, from their side, blamed the outbreak of violence on *Titushky* – agents provocateurs – hired by the authorities.

12. Whoever started the violence, it is clear, in the words of one diplomat we met, that the authorities were well prepared for this eventuality and soon the events entered into an escalating spiral of violence. Police forces were using live ammunition and police snipers were targeting protesters from vantage points on roofs of buildings with rubber bullets and stun grenades. Protesters fought back with Molotov cocktails, home-made explosives and small arms. Moreover, protesters stormed the headquarters of the Party of Regions and occupied it for several hours. By the afternoon of 18 February 2014, when the demonstrators were pushed back to Maidan, at least five protesters had lost their lives.

13. Late in the afternoon, the authorities announced that they would start an “anti-terrorist” operation on Maidan and gave the protesters till 18:00 that day to leave the square. That same night, the authorities shut down Channel 5,⁵ a television channel supporting the protests, reportedly without a proper legal basis, in order to prevent broadcasting of the events on Maidan to the Ukrainian population. Despite several urgent calls to the authorities from Ukrainian personalities and the international community, including by your rapporteurs, urging them not to attempt to clear the square and to avoid further bloodshed, the authorities started, at 20:00 that day, a full-fledged attack on Maidan with the stated intention of clearing the square. The increasingly brutal clashes between police and protesters continued all night. Despite that, the police was only able to clear part of Maidan. By the beginning of the morning of 19 February 2014, 26 persons had lost their lives, 10 of them policemen.

14. An emergency meeting between President Yanukovich and opposition leaders (Mr Arseniy Yatsenyuk of Batkivshchyna or the Fatherland Party, Mr Vitali Kliitsko of UDAR, and Mr Oleh Tyahnybok of Svoboda) took place during the night of 18 to 19 February 2014. While this meeting failed to reach concrete agreements on how to stop the stand-off, it led to a drop of intensity in the clashes from the morning of 19 February that was mostly maintained during that day. Still, four persons lost their lives during the clashes on 19 February, two of them reportedly being shot by *Titushky*.

15. During the afternoon of 19 February 2014, an informal truce had been declared between protesters and police. While direct clashes temporarily stopped, the police continued to fire stun grenades and to use water cannons against the protesters’ encampment all night. As during the previous night, protesters from inside

4. In this report, we use “Maidan” to denote Independence Square in Kyiv, the geographical space in which the protests were taking place, “Euromaidan” is used to denote the protest movement itself.

5. With the exception of Channel 5, all other national broadcasters are owned by business interests considered to be close to the authorities at that time.

and outside Kyiv continued to join the crowd on Maidan. There are different estimations of the number of protesters on Maidan on the morning of 20 February, but most estimates seem to agree that at least 30 000 protesters were present at that time.

16. During the morning of 20 February 2014, the police suddenly withdrew from the square. Protesters quickly moved in to recover Maidan Square and started to push the police towards the barricades surrounding Maidan that had previously been the unofficial line of contact between police and protesters. The clashes that ensued showed a level of brutality not seen during previous days, with police and special forces opening fire with automatic weapons and special forces sniper teams starting to pick out protesters, as well as emergency medical personnel, one by one. By the end of that day, a staggering number of over 60 protesters had lost their lives, most of them by sniper fire. By mid-afternoon the clashes quietened, when increasing numbers of members of the ruling majority were defecting from the Party of Regions and government and the Foreign Ministers of France, Germany and Poland arrived in Kyiv.

17. During the afternoon of 20 February 2014, a meeting took place between President Yanukovich and the Foreign Ministers of France, Germany and Poland, representing the European Union, in order to mediate a solution to the rapidly escalating situation. This meeting followed a decision by the European Union to impose a visa ban and freeze of the assets of the people responsible for the violence and human rights abuses in Ukraine. Following a meeting with opposition leaders, an agreement between the opposition and authorities was announced on 21 February 2014.

18. The political developments following the Maidan clashes will be discussed below. At the same time, a number of aspects regarding the events of that week should be highlighted.

19. The increasingly escalating spiral of violence was largely the result of the hard-handed approach of the authorities, including their decision to break up the Euromaidan protests by force, contrary to all advice given by national and international interlocutors. We underscore that this is not to say that protesters bear no responsibility for some of the events that occurred during that week. However, during that week, several opportunities came up for the authorities to de-escalate the crisis and stop the violence, but none of them were taken despite advice to the contrary from many different sides. Regrettably, instead, action was often taken that was sure to further escalate the tensions. As a result, the clear impression was created, a position confirmed by several interlocutors, that the presidential administration was deliberately trying to escalate the protests to such an extent that it would justify the declaration of a state of emergency and the deployment of the army to break up the protests. The increasing number of army vehicles in Kyiv by the end of that week seems to support this view.

20. While the escalation of violence seems to have been supported by the President and his inner circle, this was not the case for the rank and file of his Party of Regions. As noted in our previous report,⁶ the Party of Regions was divided over both the causes for, and handling of, the Euromaidan protests, and considerable pressure was deployed to keep potential dissidents in the fold. However, the increasing violence and brutality during the week of 17 to 21 February 2014, culminating in the deployment of snipers, seemed to have been the breaking point. By early Thursday 20 February 2014, the main financial interests reportedly withdrew their support from the President, as evidenced by the fact that many of the television stations under their control – which until then had avoided covering the protests, or had been broadcasting mostly the government's view of them – started to cover the violent events non-stop and largely impartially. This was followed by the resignation of large numbers of key personalities and MPs from the Party of Regions. By Friday morning 21 February 2014, when President Yanukovich was still discussing with the Foreign Ministers of Germany, France and Poland, it was already clear, including to President Yanukovich himself, that the President had lost the support of his party and was actively disowned by them. In our view, this was a key reason for his sudden departure/escape from Kyiv on the Friday evening. Probably even more than statements by a number of Euromaidan factions that they would not accept the part of the European Union agreement that allowed President Yanukovich to remain in power, despite popular lore to the contrary.

21. There has been considerable speculation in the media, some reportedly instigated for political purposes, regarding the snipers that were used on Maidan. Allegations have been made that the snipers were in reality provocateurs from the side of the protesters. However, this is contradicted by official statements acknowledging that orders to use live ammunition were given, as well as considerable footage by renowned media outlets that show special forces sniper teams firing at the protesters. In addition, we ourselves witnessed sniper teams being armed in the grounds of the presidential administration building. We can therefore categorically and authoritatively state that there is no doubt that sniper teams were deployed by, and

6. [Doc. 13405](#).

with full consent of, the authorities. At the same time, it should be acknowledged that the spiralling violence had led to calls for protesters to arm themselves. Indeed, a small number of protesters armed with hunting rifles and small arms captured from police officers were witnessed on Maidan, including by your rapporteurs.

22. There have been persistent allegations about Russia's involvement in the events on Maidan from 18 to 21 February 2014, including of involvement of Russian personnel in the police and special forces operations on Maidan. An official investigation into possible Russian involvement in these events has been launched by the Ukrainian authorities. Without wishing to make a judgment on the merits of these allegations, we note that Russia on no occasion used its considerable influence on the authorities at that time to de-escalate the tensions and violence. On the contrary, on numerous occasions the Ukrainian authorities were exhorted by high-level Russian officials to break down the protests by force. In this respect, the deplorable statement, on 20 February 2014, by Russian Prime Minister Medvedev that the Ukrainian authorities should stop allowing themselves "to be used as a doormat" by the protesters was utterly inappropriate and irresponsible at best.

3. The 21 February agreement

23. A translation of the text of the agreement of 21 February 2014 between the authorities and opposition that was brokered by the European Union can be found in Appendix 1 to this report.

24. Some forces have suggested that this agreement was never implemented due to the unexpected flight of President Yanukovich immediately following the signing of the agreement. In our view, a careful assessment shows that the agreement has to a large extent been implemented, if not to the letter then at least to the spirit of the agreement.

25. President Yanukovich had signed the agreement as President on behalf of his administration. However, as mentioned, by the time he signed this agreement, it was clear to him that he had lost the support of, and control over, his party and administration. He therefore decided to flee Kyiv and later the country.

26. Despite the unexpected flight of President Yanukovich, both the opposition and ruling majority in the Verkhovna Rada agreed to re-enact the 2004 amendments to the Ukrainian Constitution, agreed on an early presidential election, and formed a new government on the basis of a consensus in the Verkhovna Rada.⁷ These were all issues that were part of the agreement. The only major change was the impeachment of President Yanukovich. In line with legal and constitutional requirements, the implementation of the 21 February agreement depended on the President to sign the different decisions into law after they were adopted by the Verkhovna Rada. His flight therefore impeded the implementation of the agreement, and in the tense situation at that time, put the stability of the country at risk. Therefore, the Verkhovna Rada decided in near consensus (with only two votes against) to impeach the President. In line with constitutional provisions, the new Speaker of the Verkhovna Rada, Alexander Turchinov,⁸ became acting President of the country, with all the legal powers to implement the agreement and govern the country in tandem with the Verkhovna Rada and the newly appointed government.

27. The agreement also stipulated that the protest encampment on Maidan would be cleared and the barricades removed to unblock the roads. This part of the agreement was not implemented. Following the sudden change of power, Maidan turned into an *impromptu* memorial for those that had fallen on Maidan and became a rallying point for the population to demand respect for the nation's sovereignty during the military invasion and subsequent annexation of Crimea by Russia. In addition, it has become a tourist attraction in the capital. The ongoing presence of the encampments on Maidan, which are totally peaceful, are widely accepted by all political forces and cannot be considered problematic. Regrettably, until 1 April 2014, the Right Sector continued to occupy a limited number of buildings, which reportedly stopped after the police surrounded their headquarters in the Dniepro Hotel and demanded they leave and disarm.

28. The 21 February 2014 agreement foresaw the disarming of all armed civil groups.⁹ This was only partially implemented. The new authorities originally decided to set up joint patrols of police and self-defence groups to restore public trust in the police and security forces. However, according to the authorities, some of the groups started to engage in criminal activities and criminal gangs started disguise themselves as self-defence groups. A meeting with the self-defence forces and the Minister of the Interior was convened where

7. The agreement had called for a government of national unity. However, following the departure of the President and the full revelations of what had happened in the week before the agreement was signed, the ruling majority expressed its wish not to take part in the new government, but fully supported its establishment in the Verkhovna Rada. This is clearly in line with the spirit of the agreement.

8. Former Speaker Rybak resigned on the morning of Saturday 22 February 2014, citing health reasons.

9. Maidan self-defence groups as well as titushkyi.

the former were told to disarm. Practically all groups complied, but the Rights Sector regrettably refused. All joint patrols between police and protesters, with the exception of Maidan itself, were discontinued. We strongly welcome the public statements of the Minister of the Interior that there will not be any impunity for criminal acts committed by members of self-defence groups. The seriousness of the authorities in this respect was underscored by their decision to issue an arrest warrant for Right Sector leader Oleksandr Muzychk, who was shot when he resisted arrest and opened fire on the police officers sent to arrest him. On 1 April 2014, after a shooting on Maidan that involved a member of the Right Sector, the police surrounded their makeshift headquarters in the Dnipro Hotel in Kyiv and forced them to disarm and leave the building. On that same day, the Verkhovna Rada adopted a decision to immediately disarm all illegally armed groups in Ukraine. In addition to the Right Sector, this decision also covers a number of armed pro-Russian groups that are active in the country, mostly in the East. We welcome the decision of the authorities to disarm all these groups, whose existence hampers the stability and unity of the country.

29. While not part of the agreement, on 22 February 2014 the parliament decided with consensus to release Ms Yulia Tymoshenko from prison.

4. The Euromaidan movement

30. There have been widespread speculations about the nature of the Euromaidan movement. Allegations have been made that the Euromaidan protest movement was in essence an extremist, fascist and anti-Semitic movement. This position was especially promoted in the Russian media, in what seems to have been a reflection of the official view of the Russian Government.

31. We have described the origin and subsequent development of the Euromaidan movement in detail in our previous report.¹⁰ Euromaidan originally started as a protest against President Yanukovich's decision to cancel the signature of the association agreement with the European Union. It soon transformed itself into a general protest movement against the authority's perceived corruption and mismanagement, and indeed a protest movement against the political class as such. This anti-establishment undertone was the main reason that the political opposition parties could not claim full control over the Euromaidan movement and had to negotiate their position with the other civil organisations and movements that made up Euromaidan.

32. In addition to being "anti-political establishment", Euromaidan also had a decidedly nationalistic or patriotic basis. Considerable support of Euromaidan was the result of the fact that the cancellation of the association agreement was seen to be the result of Russian pressure and an infringement of Ukraine's sovereignty. This was a much stronger motive for the protests than the support for closer association with the European Union as such. This was also clear from the considerable number of Russian speakers from the east that joined the protests in Kyiv, and protesters that publicly argued against joining either the European Union or the Eurasian Union.

33. Euromaidan was made up of individuals and groups representing a very wide range of political opinions. It involved civil movements from all sides of the political spectrum and from both east and west of the country. These movements and parties also contained radical groups from both sides of the political spectrum. Radical right-wing and ultranationalist groups were indeed part of the Euromaidan movement. The most visible of these groups was the so-called Right Sector, due to its prominence in the Maidan self-defence groups. However, despite their notoriety, they made up only a small part of the Euromaidan movement and it would therefore be incorrect to qualify the Euromaidan movement as such as extremist right-wing or ultranationalist.

34. Right-wing groups, some originating from football supporter organisations, formed the core of the so-called self-defence groups which sprang up in reaction to the attempts to break up the protest by force in December 2013. However, by mid-January, the protest movement had been radicalised to such an extent that members of the self-defence groups came from all political sides, although right-wing and nationalist groups continued to be dominant in leadership positions in these groups.

35. The Right Sector, or *Pravyi Sektor*, is a collective of ultra-nationalist groups that was formed in the early days of the Maidan movement and it played an important role in the developments on Maidan. The Right Sector originally refused to disarm after the change of powers and some of its members have been implicated in criminal gang activities following the Maidan events. One of the leaders of the Right Sector, Oleksandr Muzychko, was killed by Ukrainian police forces after he opened fire when they tried to arrest him in a town in western Ukraine. Following his death, protests were organised in front of the Verkhovna Rada by the Right

10. Doc. 13405.

Sector, which demanded the resignation of the Minister of the Interior, Arsen Avakov, which the latter refused to do. In a sign that the moderate majority of the Euromaidan forces were distancing themselves from the Right Sector, Speaker, and acting President Turchynov condemned, on 28 March 2014, the Right Sector's "destabilising" actions. In addition, as mentioned above, on 1 April 2014, the parliament voted to disarm all illegally armed groups in Ukraine, including the Right Sector.

36. It has been alleged that the Euromaidan movement was essentially anti-Semitic in nature. Anti-Semitism is a concern in most of the former Soviet Union geographical area, and not only in Ukraine. However, the Ukrainian Jewish Congress, as well as the Chief Rabbi of Ukraine, has made on several occasions public statements that Euromaidan was not more, nor less anti-Semitic than the rest of Ukraine, and that several Jewish organisations were actively involved in the protests. It should be noted that the anti-Semitic nature also seems to be belied by the fact that some of the leaders of Euromaidan, reportedly including current Prime Minister Arseniy Yatsenyuk, are Jewish or of Jewish descent. The alleged anti-Semitic nature of Euromaidan has been used as one of the arguments by Russia to justify its military operations and subsequent annexation of the Crimea and Sevastopol regions. In that context it should be noted that all Jewish organisations in Ukraine, including in Crimea, have expressed their support for the sovereignty and territorial integrity of Ukraine and have denounced the Russian annexation of Crimea and Sevastopol.¹¹

37. Another group that is often mentioned to justify claims that Euromaidan was an extremist movement is Svoboda. Together with UDAR and Batkivshchyna, Svoboda is one of the three parliamentary political parties that were part of the Euromaidan movement. Svoboda is a nationalist, or patriotic, right-wing party. Svoboda has been associated with a number of questionable statements, including by its leader Oleh Tyahnybok. However, under the leadership of the latter, the party has formally dissociated itself from its extremist origins and has become a mainstream political force in Ukraine. In recent meetings after the Maidan events, Svoboda leaders informed us about the wish of Svoboda to reach out more to the east¹² of Ukraine and to become a centrist, but staunchly nationalist, party. While Svoboda is a nationalist and right-wing party, classifying it as fascist or extremist would be an incorrect exaggeration and not contribute to a proper understanding of the political environment in Ukraine.

5. Legitimacy and elections

38. Questions have been raised, mainly by the Russian authorities, with regard to the impeachment process of former President Yanukovich. Reportedly, this was mostly in order to challenge the legitimacy of the new authorities in Kyiv and the legality of their decisions, in order to destabilise the democratic institutions in Ukraine. Nearly all Council of Europe member States, as well as the G7 member States, have recognised the legitimacy of the new Ukrainian Government. Many interlocutors and legal experts have pointed to the fact that the act of impeachment, and indeed all the decisions to implement the 21 February agreement, were taken with a constitutional two-thirds majority and most of them by consensus. The impeachment decision seems therefore to have been in line with the spirit of the constitutional provisions, although the procedure itself left a lot to be desired. There is no question about the legitimacy of the Verkhovna Rada, which was elected in 2012 and whose composition did not change as a result of the events of February 2014. There can therefore be no question with regard to the legitimacy of the new authorities and their decisions. The legitimacy of the government will be further strengthened by the upcoming presidential election, which will take place on 25 May 2014.

39. While there can be no question about the legitimacy of the current parliament, the Euromaidan was largely an anti-political establishment movement that reflected the lack of public trust in the political establishment of the country. The current ruling majority can therefore not claim to fully represent the Euromaidan movement. At the same time, the MPs that resigned from the Party of Regions have formed two new parties,¹³ while the leftover Party of Regions is in the process of re-establishing its party structures. As a result of the disarray in the Party of Regions, part of the Russian-speaking population in the east of the country, which was the support base for the Party of Regions, fear that their interests are not, or only partly, represented in the Verkhovna Rada.

11. The Crimean peninsula of Ukraine consists of the Autonomous Republic of Crimea and the City with Special Status of Sevastopol. For brevity we will use the term "Crimea" in the remainder of this report.

12. While Svoboda's strongest support is in the west of the country, it also obtained considerable support in the east of the country, indicating that it has increasing national appeal.

13. It should be noted that the Party of Regions and these two groups together still hold the majority in the Verkhovna Rada.

40. In the current political and social context, with a considerable external threat to the unity of the country, it is important to ensure that the Verkhovna Rada genuinely represents all of the people of Ukraine. It is therefore important that the presidential elections are followed by parliamentary elections as soon as practically and politically feasible.¹⁴

6. Constitutional and political reform

41. The re-enactment of the 2004 amendments to the Ukrainian Constitution was a central part of the 21 February agreement. These amendments prescribe a more inclusive division of power, and more comprehensive democratic safeguards in situations where there is tension or conflict between the President and the Verkhovna Rada or where the Verkhovna Rada is divided. However, in a situation where the President can count on the support of the constitutional majority in the Rada, the effect of the constitutional provisions is, *de facto*, not very different.

42. In the light of the above, the issue of whether these amendments were enacted correctly will change little with regard to the current situation. However, for the record, when in Kyiv in February 2014, several constitutional experts informed us that the Constitution could be re-enacted by a two-thirds majority in parliament using the same argumentation that allowed the Court in 2010 to cancel the enactment of the 2004 amendments. So either the re-enactment is legal or, if not, then the suspension of these amendments in 2010 was illegal. Therefore, the 2004 amendments would be valid whichever way you look at it.¹⁵

43. It should be noted that the 2004 amendments to the Constitution were criticised by both the European Commission for Democracy through Law (Venice Commission) and the Assembly when they were in force.¹⁶ In 2004, these amendments added further deficiencies to an already deficient 1996 Constitution. The division of power between the parliament, President and government as defined by the 2004 Constitution lacks clarity and was a source of tension and conflict during the Yushchenko administration. Under these amendments, the presidency still remains a powerful post and conflicts between the different branches of power can easily paralyse the executive, which was evident between 2004 and 2010. In addition, the 2004 Constitution codifies the principle of an imperative mandate and cemented the *procuratura* style oversight function of the Prosecutor General in the Constitution. The deficiencies that have been reintroduced will hinder the implementation of the reforms that have been initiated and adopted in close co-operation with the Council of Europe. The recently adopted Criminal Procedure Code and the draft law on the Prosecutor General are in all likelihood unconstitutional under the 2004 Constitution.

44. It is therefore of the utmost importance that further constitutional reform is implemented and amendments to the Constitution are adopted that bring it fully into line with Council of Europe standards.¹⁷ This should be the main priority for the Verkhovna Rada at the moment, especially given its current internal unity. Until now, most legal reforms have been based on a faulty foundation as the Constitution was hindering reforms. Constitutional reform should therefore be implemented without any further delay, before any factions and individual MPs might be tempted to fall back into the old habit of putting limited self-interest before the common good, as unfortunately was often witnessed during the last decade. We therefore welcome the assurances by the Speaker of the Verkhovna Rada that the constitutional amendments will be adopted in first reading before the presidential election on 25 May 2014 and in final reading – in line with constitutional provisions – during the next sitting of the Verkhovna Rada in September this year.

45. Given the short period of time to draft the constitutional amendments, we urge the Verkhovna Rada to make good use of the work previously done with regard to constitutional reform and especially the opinions of the Venice Commission on the different drafts and concepts for amendments to the Ukrainian Constitution that were developed over the last few years.

14. The pre-term elections should not stand in the way of the implementation of urgently needed reforms. In addition, in order to ensure that all parts of Ukraine will feel represented in the new convocation of the Verkhovna Rada, it is important that the Party of Regions, and split-offs, are given sufficient time to re-establish themselves.

15. The main legal argument was that the Constitutional Court did not declare the 2004 amendments unconstitutional but only their enactment, as that took place before the Constitutional Court's opinion was received. As there was no two-thirds majority in 2010 to re-enact them at that time, the Constitution reverted back to the 1996 version. Now the parliament has the two-thirds majority needed to enact the 2004 amendments. The fact that the Constitutional Court decided in 2010 on the 2004 amendments would indicate that there are no time limits for the adoption and enactment of constitutional amendments.

16. See, *inter alia*, documents CDL-AD(2005)015, CDL-AD(2010)044 and Doc. 10058, Resolution 1364 (2004), Doc. 10676, Resolution 1466 (2005), Doc. 12357 and Resolution 1755 (2010).

17. As in previous reports, we maintain the position that constitutional reform should be implemented by adopting amendments to the current Constitution and not by adopting a totally new Constitution from scratch.

46. Electoral reform is another priority issue. In order to ensure that the Verkhovna Rada is fully representative of Ukrainian society, it is important that parliamentary elections are organised soon and are based on a new unified election code. We urge that this code introduce the regional proportional election system, as recommended for some time by the Assembly and the Venice Commission, lest the systemic problems that have plagued the division of powers and functioning of the Verkhovna Rada be perpetuated. The adoption of such a new election code is far less problematic than it may seem. In 2010, a new unified election code was drafted by the so-called Kliuchkovsky working group of the Verkhovna Rada. All parties participated in the drafting of this code, which took place in close co-operation with the Venice Commission. Regrettably, this draft was removed from the agenda by the Party of Regions after the 2010 Constitutional Court decision re-instating the 1996 Constitution. However, it could be adopted quite quickly and could count on the support of most if not all political forces in the country.

47. Constitutional and electoral reform should have absolute priority as practically all other reforms that are needed for the country are based on them. This priority is recognised by both the Ukrainian authorities as well as other international partners. Other reforms are important and their preparations should continue, but they should not be allowed to deflect focus from the speedy implementation of constitutional and electoral reform.

48. Two other key reforms that need to be addressed promptly, after the constitutional and electoral reform are finalised, are judicial reform and decentralisation of government and strengthening of local and regional authorities.

49. The lack of independence of the judiciary and the structural deficiencies in the judicial system have been long-standing concerns of the Assembly and were discussed in detail in previous reports.¹⁸ Judicial reform should be implemented without any unnecessary delays and our recommendations made in previous reports and resolutions adopted by the Assembly are still fully valid. However, as highlighted on previous occasions, a successful reform of the judiciary is dependent on constitutional reform being implemented first.

50. The events following Maidan have increased the east-west divide in the country and led to unease among the population in both sides of the country. As we will argue below, despite the clear historical and cultural differences between the east and the west of Ukraine, the divide is mostly of political making. Therefore the best manner to counteract this divide is to strengthen local and regional authorities and to decentralise government. A decentralisation strategy and policy should therefore be drafted as a matter of priority. However, given the sensitivity of this issue and its potential impact on intercommunity relations, it is important that such decentralisation strategy is adopted by a parliament that is seen as fully representative of Ukrainian society. We therefore recommend that it be adopted only after the next parliamentary elections.

51. We wish to underscore that decentralisation does not equal the federalisation of Ukraine, which would severely damage the unity of the country and is only favoured by Russia, ostensibly for ulterior motives.

52. Both constitutional reform and electoral reform are areas in which the Assembly has considerable experience and expertise and could therefore be areas *par excellence* for the concrete assistance of the Assembly.

7. Intercommunity relations and protection of minorities

53. The political crisis in Ukraine that started in November 2013 brought the east-west divide in Ukraine to the foreground again. While support for President Yanukovich was more pronounced in the east and support for the Euromaidan movement more prevalent in the west, it is important to underscore that there was large participation and support from both eastern and western Ukraine for the Euromaidan protests.

54. While the recent political crisis has exacerbated the east-west divide, it should be noted that this division had been largely absent from the political agenda in recent years and the extent of this divide in reality seems less than is often reported by the media. At the same time, it is clear that tensions and mistrust are very near the surface, especially after the recent events, and can be easily misused or made to flare up.

55. A detailed discussion of the historical origins and evolvement of the east-west divide in Ukraine is beyond the scope of this report. While there are clear and distinct historical and cultural differences between the two sides, the divide is mainly ethno-linguistic and to a large extent political in making.

18. See, *inter alia*, Doc. 12814.

56. It is important to make a differentiation between the number of ethnic Ukrainians and ethnic Russians and the distribution of the use of the Russian and Ukrainian languages in Ukraine. According to the 2001 census, ethnic Ukrainians make up around 78% of the population while ethnic Russians amount to around 17%. The percentage of ethnic Russians in the west and centre of the country is between 1.2% to 9%, while in the east and south, ethnic Russians make up between 14% and 40% of the population. The Crimea is the only region of Ukraine where ethnic Russians are in the majority, with 58%.

57. According to the same census, Russian is the native language of approximately 30% of the population and Ukrainian around 67%. Again, the use of Ukrainian is much more prevalent in the west and centre where for 81% to 97% of the population Ukrainian is the native language (and Russian the native language for 1% to 10%). In the east and south, Ukrainian is the native language for 24% to 70% (and Russian the native language for 25% to 75%) of the population. Again the exception is Crimea where Russian is the native language of 77% of the population (90% in Sevastopol).

58. It should be noted that the use of the Russian language in Ukraine is larger than the percentage of persons who speak it as a native language. A number of polls have been conducted that show that 40% to 50% of the population consider Russian to be their main language of communication. This percentage is much higher in urban centres, including in the centre of the country, where Russian is the language of communication for the majority of the population. The exception is the west of the country, where Ukrainian is by far the language used by the majority of the population, including in urban centres.

59. These ethno-linguistic differences between east and west also have a distinct political component, with parties that are considered to be in favour of closer relations with Russia more popular in the East and parties that favour a closer integration with Western Europe more popular in the West. The Party of Regions, which is historically considered the party that represented the interests of the Russophone part of the population, has its strongest support base in the eastern part of the country, while the parties traditionally considered to be closest to the interest of ethnic Ukrainians and the Ukrainian-speaking part of the population, such as Svoboda and Batkivshchyna, have their strongest support-base in the western part of Ukraine. At the same time, it is important not to overestimate these political differences. In the 2012 parliamentary elections the Party of Regions led the proportional races in the eastern and southern oblasts with 40% to 60% of the vote, but Batkivshchyna/United opposition still gained between the 10% and 20% of the vote in these regions, with the exception of Donetsk oblast where it only gained 6%. Similarly, Batkivshchyna/United Opposition led the proportional races in the western and central oblasts, with 30 to 40%, but the Party of Regions still gained 4% to 20% in these Oblasts and even led the race in Zakarpatska oblast with 30% of the votes. Svoboda, which is considered a Ukrainian nationalist or patriotic party, only led in Lviv oblast with 38% of the vote. It had an average support of 17% in the western oblasts but still gained between 4% and 10% and in the central, southern and eastern oblasts, with the exception of the oblasts of Donetsk and Luhansk, as well as Crimea where it only gained around 2% of the vote.

60. It is important to note that hardly any radical pro-Russian political parties exist that favour integration with Russia. In the 2012 parliamentary elections, the only pro-integrationist party was the Russian Bloc which gained 0.31% of the vote, while in the Crimean elections in 2010 the pro-integration party Russian Unity of Sergey Aksyonov only scored 4.2% of the vote. In addition, during the visit to Donetsk on 23 March 2014, despite the tense political situation and beautiful weather, only around 1 500 persons showed up at a previously announced demonstration in favour of the integration of the Donbas region with Russia. This underscores the very low level of support of secessionist or integrationist ideas and movements in Ukraine.

61. In this context, the collapse of the Party of Regions is of serious concern. As mentioned, the Party of Regions had its strongest support base in the east of the country. Following the events on Maidan of 18 to 20 February 2014, 89 MPs resigned from the Party of Regions. They later formed two new parties, the Economic Development Party and the Sovereign European Ukraine Party, which do not – yet – have well-established party structures. The remainder of the Party of Regions is re-establishing and reorganising itself. As a result, as we noted when in Donetsk, many people in the east currently fear that their interest are not, or not correctly, represented in the Verkhovna Rada and at the level of the central government in Kyiv. For the unity of the country it is therefore essential that such representation is re-established quickly and that parliamentary elections take place as soon as feasible. At the same time, it is important to give sufficient time before the elections for the different political parties, including the Party of Regions and its split-offs, to (re)establish their party structures in all parts of the country. In the meantime, alternative channels for communication and consultation need to be established between the central authorities and oblasts in the east and south of the country.

62. In the current tense situation, it is important that all sides refrain from actions and discourse that could further exacerbate the east-west divide. Reportedly, a multitude of law initiatives have been tabled in the Verkhovna Rada. Many of these initiatives seem to be primarily aimed at satisfying the expectations of one group or another that participated in the protests. We urge the Rada not to adopt any initiatives that are contentious or divisive and that could undermine the unity of the country. While many of these initiatives are unlikely to be implemented, one initiative, even if never implemented, had a disruptive impact on the national unity of the country.

63. On 25 February 2014, the Verkhovna Rada adopted a law to cancel the Law on the State Language (commonly called the language law). The language law, in its first draft, had intended to make Russian the second national language in Ukraine, on a par with Ukrainian. This provision was later deleted and not included in the language law that was adopted by the Verkhovna Rada, but it resulted in the law being both notorious and contested among the Ukrainian public. The adoption of the law to cancel the language law was therefore highly symbolic¹⁹ and construed as an attack on the Russian-speaking minority, whose rights would be weakened.

64. It is important to note that the law to cancel the language law was never signed into force by the President. The language law and all its provisions therefore have remained continuously in force. Moreover, even if the cancellation had been enforced, its effects would have been limited, especially in Crimea. The protection of minorities and the use of their languages are guaranteed and regulated in the Constitution; the Law on Minorities; as well as the Ratification Law of the European Charter for Regional or Minority Languages (ETS No. 148). The language law does not alter this. The language law is an implementing law that lowered to 10% the threshold for the use of minority languages in public affairs and for receiving a full education in a minority language. Given that Russian is spoken by more than 50% of the population in Crimea, their rights were not substantially affected by the adoption of the language law; neither would they be by its withdrawal. That notwithstanding, the adoption of the law to cancel the language law sent a wrong message, especially to the east of the country and was a big mistake by the Verkhovna Rada.

65. The Russian ethnic minority is well integrated in Ukrainian society and the cohabitation of the Russian and Ukrainian language groups is largely unproblematic, although tensions sometimes arise. Following allegations by Russia of discrimination of ethnic Russians, the Committee of Ministers of the Council of Europe decided to request the Advisory Committee of the Framework Convention for the Protection of National Minorities to make an *ad hoc* visit to Ukraine. This *ad hoc* visit took place from 21 to 26 March 2014. Regrettably, due to the annexation of Crimea by the Russian Federation, the advisory group was not in a position to visit Crimea. The report of the Advisory Committee is in Appendix 2 to this report.

66. In its report, the Advisory Committee concluded that there was no immediate threat to the enjoyment of minority rights in Ukraine, with the exception of Crimea where the Advisory Committee expressed its great concerns about the reported threats to the safety and rights of the Crimean Tatar and Ukrainian minorities. In addition, the Advisory Committee expressed its concerns about the negative impact on inter-ethnic relations in the Ukraine of media coverage by some national and international media, including frequent unsubstantiated reports of minority rights violations in Ukraine.

67. During our visit to Donetsk, several interlocutors also pointed at the importance of the socio-economic factors on the unity of the country and the importance of ensuring economic development in the east. Worsening socio-economic conditions could make Russia an attractive option for certain parts of the population living in the Russian-Ukrainian border regions, especially given the considerable economic resources invested in the Russian regions bordering Ukraine by the Russian authorities.

8. Human rights violations and investigations

68. All human rights violations committed in relation to the Euromaidan protests should be investigated and the perpetrators brought to justice. There can especially be no impunity for human rights violations by police and security forces. Police and security forces, which have a legal mandate for the use of force, should be held to higher standards when in function than normal citizens.

69. At the same time, it is important that these investigations are impartial and free from political motivation or any desire for retribution. The advisory committee proposed by the Council of Europe could play a key role in ensuring not only that all violations are properly investigated by the authorities, but also that these

19. Reportedly the law was proposed to placate the more radical Maidan forces after it was clear that they would not be given key positions in the new government.

investigations take place in accordance with European norms and the requirements under Article 6 of the European Convention on Human Rights (ETS No. 5). We welcome that the authorities and opposition have now appointed their representatives on this panel, enabling it to start its work in the very near future.

70. The European Court of Human Rights has started looking into the complaints filed with it in relation to the ongoing protests. On 3 February 2014, the Court communicated the application *Sirenko v. Ukraine* (Application No. 9078/14) to the Ukrainian authorities and asked it to submit its observations. This case deals with a complaint by a participant in the protests that he was beaten up by the police and illegally arrested.

71. Following the joint visit with the Presidential Committee, we met with the Prosecutor General and his deputies. He informed us that all fatalities, policemen and demonstrators, are being investigated as homicides, irrespective of who may be responsible for the deaths. The investigations are complicated, as they do not only concern protesters and law-enforcement officials, but also *Titushky*.

72. On 3 April 2014, the Minister of the Interior, Arsen Avakov, announced that the investigations had identified the special police forces snipers that shot the Euromaidan protesters on 20 February 2014. On the same day, the head of the Ukrainian Secret Service announced that the authorities had proof that Russian Federal Security Service operatives had been involved in planning the operations against the protesters on Maidan.

9. The illegal annexation of Crimea by the Russian Federation

73. The developments in Crimea, cumulating in the illegal annexation of this region by the Russian Federation, has dominated and overshadowed the political developments in Ukraine. As mentioned, while the political crisis that ensued after November 2013 has exacerbated the east-west divide, it should be noted that this division had been largely absent from the political agenda in recent years and the extent of this divide has been less than is sometimes erroneously reported by the media.

74. The Crimea has a special status in Ukraine as an Autonomous Republic, while Sevastopol is a city with a special status under Ukrainian law. The Crimea (the Autonomous Republic of Crimea and the City of Sevastopol) is the only region of Ukraine where ethnic Russians are in the majority (58% of the population). The total population is approximately 1.9 million inhabitants. Ethnic Ukrainians make up 24% and Crimean Tatars, who were originally deported by Stalin, make up 12% of the population. The Crimea, historically Russian, was transferred to Ukraine in 1954 reportedly by Khrushchev, although this is disputed.²⁰ In return for Crimea, Russia received Taganrog and other land areas.

75. We visited Crimea (both Simferopol and Sevastopol) in September 2011. While nearly all interlocutors, including the Speaker of the Crimean Verkhovna Rada and the Deputy Prime Minister, were decidedly pro-Russian, independence or integration with Russia was not on the political agenda and only supported by some small radical pro-Russian groups. In the words of the Crimean leadership at that time, the overall position was that it was more advantageous to “be special” in Ukraine, than to “be normal” in Russia.

76. Immediately following the change of power in Kyiv, several prominent members of the State Duma and Council of the Federation of Russia – including members of our Assembly – visited Crimea and made statements there, as well as in Moscow, expressing the clear support of the Russian authorities for any attempts by Crimea to change its relationship with the rest of Ukraine or possible requests to join the Russian Federation. This, together with numerous other issues, including the low level of support for secession expressed during the visit of the co-rapporteurs in September 2011, gives credence to reports by several interlocutors that the drive for secession and integration into the Russian Federation was largely instigated and incited by the Russian authorities.

77. On 26 February 2014, the Crimean Tatars organised a large pro-Ukrainian demonstration. This demonstration clashed with a pro-Russian counter rally. The causes of the violence are disputed by the two sides.

78. On 28 February 2014, Russian military troops occupied strategic points all over Crimea, including the regional government buildings, the Crimean Parliament and transport hubs such as the airport, and blockaded Ukrainian military bases. While the soldiers did not wear military insignia – which is in contravention to international law – the military hardware and weaponry used – which are unavailable to civilians – and the

20. Others say the decision to transfer Crimea was made by Malenkov.

discipline and apparent military experience in evidence, are clear proof that these were Russian military forces. This was confirmed in numerous press interviews as well as by posterior statements by leading Russian politicians.

79. In this context, it should be noted that the presence of Russian troops in Crimea is governed by the base agreement between Russia and Ukraine. This agreement allows Russia up to 25 000 military personal in Crimea. However their movements are strictly delimited and defined. They should remain in their bases of deployment and can only be moved outside their bases with the explicit agreement of the Ukrainian authorities, which they did (and do) not have.

80. While occupied by military forces, reportedly Russian, the Crimean Parliament convened in a closed extraordinary session and dismissed the government. It elected Sergey Aksyonov as the new Crimean Prime Minister. The proceedings and vote took place behind closed doors and are widely questioned and regarded as circumspect. Mr Aksyonov is the leader of the radical pro-Russian party, Russian Unity. In the 2010 regional elections his party gained only 4% of the votes in the elections to the Crimean Verkhovna Rada.

81. On 1 March 2014, the Council of the Federation of the Russian Parliament authorised President Putin to use military force in Crimea, which was condemned by the international community. In the meantime, there were attempts by Russian forces to entice Ukrainian military battalions to defect and switch sides. However, these attempts were largely unsuccessful. On 6 March 2014, the Crimean Parliament decided to organise a referendum on 16 March on whether Crimea should join the Russian Federation. In response, the Ukrainian Prosecutor indicted the Crimean leadership for illegal secession and high treason.

82. The referendum in Crimea was illegal under the Ukrainian (as well as Crimean) Constitution, and violated international standards and norms, according to the opinion of the Venice Commission on this issue.²¹ As a result, its conduct and outcome are illegal and have no legal basis. In addition, the reported outcome is highly questionable. According to reports, the turnout was 82% and 96% voted in favour of joining the Russian Federation. However, Russians account for only 54% of the population; around 12% are Crimean Tartars and 24% ethnic Ukrainians and these groups had announced a boycott of the referendum, as had some Russian groups. The combination of an 82% turnout and a 96% vote in favour of annexation is therefore implausible.²²²³

83. On 28 February 2014, a draft Federal Constitutional Law on “Amending the Federal Constitutional Law on the Procedure of Admission to the Russian Federation and Creation of a New Subject within the Russian Federation” was introduced in the Russian State Duma. This law aimed to make it possible to accept new subjects of the Russian Federation on the basis of a referendum in the region that asks to join the Federation without the consent of the State to which it belongs. The explanation accompanying this law clearly refers to the events in Crimea. According to the draft opinion of the Venice Commission²⁴ on this law, requested by the Secretary General of the Council of Europe, the draft law “is not compatible with international law. It violates in particular the principles of territorial integrity, national sovereignty, non-intervention in the internal affairs of another state and *pacta sunt servanda*”. The law was withdrawn from the agenda of the State Duma, as the legal avenue of declaring independence by Crimea, followed by a request for integration in the Russian Federation, was chosen.

84. On 17 March 2014, the Crimean Parliament declared that it seceded from Ukraine and was a new independent nation. At the same time, and in that capacity, it made a request to join the Russian Federation, bypassing in this manner the Russian constitutional requirement that the country to whom it pertained should be in agreement.

85. On the same day, President Putin informed the Russian Parliament that such a request had been made and called for a session on 18 March, during which the treaty by which Crimea and Sevastopol joined the Russian Federation as two new entities was signed. On 19 March, this treaty was accepted by the Russian Constitutional Court. The treaty was ratified by the State Duma on 20 March and by the Council of the Federation on 21 March, after which the illegal annexation of Crimea by the Russian Federation was a fact.

21. CDL-AD(2014)002.

22. Some interlocutors we met during our visit in March reported that the turnout of the referendum was closer to 35%-40%, less than the reported 82%.

23. During our visit to Ukraine interlocutors with extensive contacts in Crimea claimed that in reality the turnout of the referendum was closer to 30%-40%. We have no possibility to independently verify these claims.

24. CDL-AD(2014)004.

Following the annexation, Russian troops occupied the military bases of Ukraine that are situated in Crimea and confiscated its navy ships and airplanes. The Ukrainian authorities estimate that the value of military assets confiscated by the Russian Federation exceeds US\$20 billion.

86. There are fears that the Russian intervention in Ukraine will not stop with Crimea. In several statements President Putin has announced that Russia will protect the interests of the Russian minority also elsewhere in the territory of Ukraine. The Donbas area, which is home to most of Ukraine's arms industry, as well as the Odessa region, are potentially at risk of Russian military intervention and occupation. The occupation of the Odessa region would bring Ukraine's access to the Black Sea fully under Russian control and would provide Russia with a direct land corridor to Transnistria which is under *de facto* Russian control. In this context, it should be noted that, on 17 February 2014, the *de facto* authorities in Tiraspol announced that they would soon make a formal request to join the Russian Federation as a new entity.

87. On 24 March, the Supreme Allied Commander of NATO, General Breedlove, announced that Russia had amassed around 30 000 soldiers, including logistical and support units on the borders with Ukraine and that this provided Russia with enough military capability to invade eastern Ukraine and to create a land bridge to Transnistria. Russian authorities have claimed that these troops are participating in military exercises. However, this has been countered by NATO officials as well as other military specialists, who have noted that the troops do not seem to be engaged in any form of exercise and that, in addition, the makeup of the military force is very unusual for a military exercise. We wish to add that, even if this were indeed a military exercise, the wisdom of organising a military exercise of this scale, close to the borders to Ukraine, in the tense and nervous present environment, should be questioned at best. The Russian authorities announced that they had reduced their military strength on the Russian border, however this was contradicted by, *inter alia*, NATO officials.

88. The unprovoked military aggression by Russia against Ukraine and the occupation/annexation of Crimea is in clear violation of international law, including the United Nations Charter, the Organization for Security and Co-operation in Europe (OSCE) Helsinki Act and the Statute and basic principles of the Council of Europe. In addition, it violates at least two accession commitments, namely to refuse the notion of a special interest zones and the commitments to resolve international disputes peacefully according to international law. They possibly also violate Russia's commitment to fulfil its obligations under the Conventional Armed Forces (CFE) agreement. Their action also violates several bilateral agreements, most importantly the 1994 Budapest Agreement signed by the United Kingdom, the United States, Russia and Ukraine, in which Russia pledged to respect and protect Ukraine's internationally recognised borders, to refrain from the threat or use of force against the territorial integrity of Ukraine, and to refrain from any economic coercion to affect political decision-making in Kyiv.

89. On 13 March 2014, the Ukrainian authorities lodged an inter-State case against the Russian Federation with the European Court of Human Rights under Article 33 of the Convention. On the same day, considering that the situation in Crimea gave rise to a continuing risk of serious violations of the Convention, the Court granted an interim measure under Article 39 of its Rules of Court and called upon "both Contracting Parties concerned to refrain from taking any measures, in particular military actions, which might entail breaches of the Convention rights of the civilian population, including putting their life and health at risk, and to comply with their engagements under the Convention".²⁵

10. Concluding remarks

90. The new political environment following the events on Maidan between 18 and 21 February 2014 and the resulting change of power have opened a new window of opportunity for Ukraine's democratic development. It is now important that a democratic, inclusive system of governance of the country is established that will guarantee the unity of the country.

91. These democratic developments should be based upon constitutional reform that should be implemented without any further delay and on pre-term presidential elections to ensure the fullest possible democratic legitimacy of the new authorities. That should then be followed, when technically and politically feasible, by pre-term parliamentary elections, to ensure that all regions of the country feel represented in the central government. Constitutional and electoral reform are areas in which the Assembly has considerable expertise that could be offered to the Verkhovna Rada.

25. ECHR 073(2014). In its decision of 3 April 2014, the Committee of Ministers of the Council of Europe called upon both parties to comply without delay with this interim measure.

92. The parliamentary elections should be based on a new unified election code. We urge the Verkhovna Rada to adopt a unified election code on the basis of the draft that was prepared by the Kliuchkovsky working group in order to avoid any unnecessary delays in the adoption of such an election code.
93. While the adoption of constitutional reform and a new unified election code should be the main priorities for the Ukrainian authorities, far-reaching judicial reform and decentralisation of government, including strengthening of local and regional authorities should also be urgently considered and implemented by the authorities. The decentralisation of government could especially help to strengthen the country. Such a decentralisation strategy should be based on a strong unitary State with an effective and efficient central system of governance. The federalisation of Ukraine, as sometimes proposed by some parties for seemingly ulterior motives, should be avoided as this would, conversely, weaken the unity of the country.
94. All human rights violations committed in relation to the Euromaidan protests should be fully and impartially investigated and the perpetrators brought to justice. There can be no impunity for human rights violations irrespective of who committed them.
95. We welcome the conclusion by the Advisory Committee of the Framework Convention for the Protection of National Minorities that visited Ukraine from 21 to 26 March, that there is no immediate threat to the enjoyment of minority rights in the current situation in Ukraine. This confirms our impressions during the visit with the Presidential Committee to Ukraine from 21 to 25 March 2014. At the same time, we call on the authorities to be proactive and to adopt all possible measures to strengthen the unity of the country and to refrain from any discourse or actions that are divisive and that could undermine – or be instrumental in undermining – the national unity of the country.
96. We express our concern about the increasing number of reports by credible organisations – confirmed by the Advisory Committee – about the increasing number of violations of the human rights of the ethnic Ukrainian and Crimean Tatar minorities in Crimea. We call on the Russian authorities, as the power in *de facto* control of the region, to ensure that these violations are immediately brought to an end and all perpetrators prosecuted.
97. We regret that the democratic changes and political developments in Ukraine have been overshadowed by the developments in Crimea. The Russian military aggression and subsequent annexation/occupation of Crimea is in clear violation of international law, including the United Nations Charter, the OSCE Helsinki Act and the Statute and basic principles of the Council of Europe. Russia's violation of the Statute of the Council of Europe and its accession commitments and obligations, as well as the consequences that these should have, is the subject of another report under consideration by the Assembly. However, from the perspective of co-rapporteurs of the monitoring procedure we can clearly say that none of the arguments used by the Russian Federation to justify its actions hold true. There was no ultra-right wing takeover of the central government in Kyiv, nor was there any imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea where they are in the majority. In addition, neither secessionism, nor integration with the Russian Federation was prevalent on the political agenda of the Crimean population prior to Russian military intervention, nor could these issues count on the support of more than a small percentage of the population. The drive for secession and integration into the Russian Federation was instigated and incited by the Russian authorities and mostly implemented by Russian military forces with the assistance of some small civil organisations aligned with it. The referendum was neither legal, nor, as we outlined, was its outcome plausible. In short, it was a classic case of unprovoked military aggression resulting in the annexation/occupation of the territory of a neighbouring country. Clear signals need to be given to avoid further aggression and military action, given the build-up of Russian troops on the Ukrainian borders.
98. All the Ukrainian political forces that we met expressed their disappointment that none of the other signatories of the Budapest Agreement had stood by the security guarantees they had given Ukraine in return for it giving up its nuclear arsenal. Some of them even went as far as suggesting that Ukraine should reconsider its non-nuclear status if security guarantees continue not to be honoured. We naturally strongly advise against such a move, which would be detrimental to the security of the region as a whole. However, to avoid the destabilisation of the region as a whole by further military action, we would suggest that the signatories of the Budapest agreement, as well as other relevant European States, explore tangible security agreements to ensure Ukraine's independence, sovereignty and territorial integrity.
99. At the moment of finalising this explanatory memorandum we regrettably have to report that the situation in Ukraine is not calming down. On the contrary, pro-Russian protesters stormed regional government buildings in Donetsk and Kharkiv on 6 April and today, 7 April, occupied the State Security Service buildings in Donetsk and Luhansk, reportedly robbing the armoury of the weapons present in Luhansk. The Ukrainian authorities have blamed Russia for instigating these seizures. In a separate

development, a Ukrainian Naval officer was killed by a Russian soldier in Crimea and another one beaten and detained by Russian troops. Needless to say that these developments greatly risk destabilising the already tense situation in Ukraine.

Appendix 1 – 21 February 2014 agreement

Agreement on the Settlement of Crisis in Ukraine

Concerned with the tragic loss of life in Ukraine, seeking an immediate end of bloodshed and determined to pave the way for a political resolution of the crisis,

We, the signing parties, have agreed upon the following:

1. Within 48 hours of the signing of this agreement, a special law will be adopted, signed and promulgated, which will restore the Constitution of 2004 including amendments passed until now. Signatories declare their intention to create a coalition and form a national unity government within 10 days thereafter.
2. Constitutional reform, balancing the powers of the President, the government and parliament, will start immediately and be completed in September 2014.
3. Presidential elections will be held as soon as the new Constitution is adopted but no later than December 2014. New electoral laws will be passed and a new Central Election Commission will be formed on the basis of proportionality and in accordance with the OSCE & Venice commission rules.
4. Investigation into recent acts of violence will be conducted under joint monitoring from the authorities, the opposition and the Council of Europe.
5. The authorities will not impose a state of emergency. The authorities and the opposition will refrain from the use of violence. The Parliament will adopt the 3rd amnesty, covering the same range of illegal action as 17th February 2014 law.

Both Parties will undertake serious efforts for the normalisation of life in the cities and villages by withdrawing from administrative and public buildings and unblocking streets, city parks and squares.

Illegal weapons should be handed over to the Ministry of Interior bodies within 24 hours of the special law, referred to in point 1 hereof, coming into force. After the aforementioned period, all cases of illegal carrying and storage of weapons will fall under the law of Ukraine. The forces of authorities and of the opposition will step back from confrontational posture. The Government will use law enforcement forces exclusively for the physical protection of public buildings.

6. The foreign Ministers of France, Germany, Poland and the Special Representative of the President of the Russian Federation call for an immediate end to all violence and confrontation.

Kyiv, 21 February 2014

Signatories:

President of Ukraine:

Viktor Yanukovich

For the Opposition:

Vitaliy Klichko, UDAR

Oleh Tyahnibok, Svoboda

Arsenij Yatseniuk, Batkivshchyna

Witnessed by:

For the EU:

Poland

Radoslaw Sikorski, Foreign Minister

Doc. 13482 Report

Germany

Frank-Walter Steinmeier, Foreign Minister

France

Laurent Fabius, Foreign Minister

For the Russian Federation

Vladimir Lukin, Special Envoy

Appendix 2 – Report of the Advisory Committee on the Framework Convention for the Protection of National Minorities ad hoc visit to Ukraine 21-26 March 2014

CM(2014)46

2 April 2014²⁶

1196 Meeting, 2 April 2014

1 General questions

1.8 Situation in Ukraine

Report of the Advisory Committee on the Framework Convention for the Protection of National Minorities – Ad hoc visit to Ukraine 21-26 March 2014

Introduction

1. This report of the Advisory Committee on the Framework Convention for the Protection of National Minorities is prepared in response to the decision of 14 March 2014 of the Committee of Ministers, instructing the Advisory Committee to review, in light of recent developments, the situation of national minorities in Ukraine and report on its findings as soon as possible (CM/Del/Dec(2014)1194/1.7). In line with this decision, a delegation of the Advisory Committee travelled to Ukraine from 21 to 26 March 2014. Given the ad hoc nature of this request, the report is not based on a comprehensive assessment of the implementation of the Framework Convention in Ukraine. Rather, it reflects the findings of the Advisory Committee as regards the situation pertaining to minority rights following meetings with representatives of the Afghan, Armenian, Azeri, Bulgarian, Crimean Tatar, Gagauz, Georgian, Hungarian, Jewish, Karaim, Kazakh, Lezghin, Moldovan, Polish, Roma, Romanian, Russian, Tajik and Uzbek communities in Ukraine. These meetings took place in Odessa, Kharkiv and Kyiv; minority representatives in Western Ukraine were contacted by phone and the delegation met Crimean Tatar representatives in both Odessa and Kyiv.

2. This report is adopted in the context of fundamental structural reform processes that are ongoing in Ukraine, including with regard to its Constitution, Electoral Law, and local self-government arrangements. These all have a vital impact on the enjoyment of rights of persons belonging to national minorities as citizens of Ukraine. The report is also adopted ahead of presidential elections on 25 May 2014 and parliamentary elections to be possibly conducted in autumn 2014.

3. The Advisory Committee is grateful to the representatives of minority associations, civil society, international organisations and the authorities who agreed to meet the delegation at short notice. Given the particular focus of this report, not all concerns that were shared are reflected but only those that are of direct relevance to recent developments. The Advisory Committee looks forward, however, to conducting a comprehensive assessment in the course of the upcoming fourth cycle of monitoring under the Framework Convention.

Main findings

4. According to representatives of all minorities with whom meetings took place, the level of implementation of minority rights has not changed in 2014. Recent events have had no repercussions on the extent of schooling in minority languages or the possibility to use minority languages or regional languages in official contacts with authorities. While these events have created uncertainty and there is considerable fear among minority populations about possible military conflict following developments in Crimea, the Advisory Committee observed generally stable conditions and no sense of lawlessness. Most minority representatives reported that their daily life is continuing as before and that they have no specific concerns with regard to the enjoyment of their minority rights in the current context. While apprehensive about the overall situation in the country, they expressed their support for Ukrainian sovereignty and territorial integrity and conveyed their expectations in the new authorities to strengthen minority rights protection frameworks in line with “European values”, in particular as regards respect for human and minority rights.

5. The Advisory Committee is concerned, however, about the negative impact of some media coverage, at national and international level, on inter-ethnic relations in Ukraine. The regular and, based on the delegation’s assessment, frequently unsubstantiated media reports of ongoing human and minority rights

26. This document has been classified restricted until examination by the Committee of Ministers.

violations in Ukraine raise tension and fears among the population that are not conducive to calming the overall environment and are particularly unhelpful in the current pre-election context. This situation requires the immediate attention of national and international actors to avoid further escalation.

Main concerns regarding specific national minorities

6. There are grave and immediate concerns regarding the safety and access to rights of persons belonging to the Crimean Tatars. The overall security situation in Crimea is reportedly very tense with armed but unidentifiable paramilitary groups manning a variety of check-points, where they stop residents and check their identity and belongings. The Advisory Committee points to civil society reports of kidnappings, intimidation and ill-treatment in connection with these so-called “self-defence groups”, which constitute an immediate obstacle to the freedom of movement of Crimean residents, including persons belonging to national minorities. Given the open resistance to events unfolding in Crimea demonstrated by Crimean Tatar leaders and the fact that most Crimean Tatars boycotted the referendum called for by the local authorities on 16 March, persons belonging to the Crimean Tatars are exposed to particular risk. According to representatives, some 5 000 persons, predominantly Crimean Tatars and mainly women and children, have left the peninsula for mainland Ukraine in recent weeks.

7. In addition, there is great uncertainty and fear among Crimean Tatars regarding their future. Representatives expressed their full commitment to Ukrainian territorial integrity but pointed to the practical necessity for residents of Crimea to co-operate with the local authorities in daily life, particularly when it comes to issues related to property or the performance of public duties by legal professionals. Wide parts of the Crimean Tatar population are afraid that they may be forced to leave the territory – a fear felt all the more intensely as Crimean Tatars have twice suffered from deportations in the past, in 1783 and in 1944. The Advisory Committee is further deeply concerned about the safety and enjoyment of cultural, education and language rights of all national minorities in Crimea, including in particular the numerically smaller ones such as the Karaim and Krimchak as well as persons belonging to the Ukrainian community who are in a minority situation in Crimea.

8. A number of legislative drafts concerning Crimea are under consideration in the Verkhovna Rada in Kyiv, including the Law on the Status and Rights of Formerly Deported Persons, a law for the ratification of ILO Convention 169 on the Rights of Indigenous Peoples, and a Law on Occupied Territories. While welcoming the concern and attention paid to the situation of the Crimean Tatars and the adoption, after many years of discussions, of a declaration on 20 March 2014 to recognise the Crimean Tatars as indigenous people, the Advisory Committee is concerned that the Law on Occupied Territories may severely penalise all those who are forced by circumstances to co-operate with the authorities who are in effective control, including by accepting Russian citizenship to maintain their properties.

9. According to representatives of the Jewish community, there has been no increase in anti-Semitism in Ukraine in recent months and there is no fear of such developments within the broader Jewish community. Reports of a surge in hate crime against members of the Jewish community and synagogues have publicly been denounced as propaganda by Jewish representatives themselves who expressed, including towards the delegation of the Advisory Committee, their confidence in the authorities in Kyiv. The Advisory Committee is, however, concerned that these unverified media reports of hate crimes against persons belonging to the Jewish community may further raise tensions and thereby in fact provoke such attacks.

10. The Advisory Committee observed a variety of views among the Russian minority, ranging from full support for the Ukrainian authorities and the view that minority rights, including language rights, are sufficiently established, to the likening of the current situation related to language rights to “genocide of the Russian people”. The Advisory Committee is concerned that the natural diversity of opinions and geopolitical viewpoints existing within the Russian minority may be instrumentalised in the current climate and may give rise to additional tension, including intra-ethnic friction. Given the amplification by the media in particular of radical views among the minority, some representatives expressed serious concerns about being affiliated with these views based on their ethnic and linguistic identity. While there have been to date no reports of limitations or perceived threats to the use of Russian language in Western parts of Ukraine, the Advisory Committee considers it crucial for the authorities to ensure that the use of all minority languages continues to be actively encouraged throughout Ukraine.

11. Persons belonging to the Kazakh and Armenian minorities reported concerns within their communities that their loyalty to Ukraine may be called into question following reports in the media about statements issued by the Governments of Armenia and Kazakhstan in support of the Russian Federation. The Advisory Committee

also notes the particularly complex situation for persons belonging to the Lezghin minority given that they originate from the territory of the Russian Federation and fear losing contact with their families and community in Dagestan.

12. Apart from the above concerns, the Advisory Committee did not encounter any particular threat to or immediate concern for access to rights, including language rights, of persons belonging to national minorities in Ukraine. Representatives of most minorities reported no deterioration in access to rights but rather expectations that their situation may in fact improve. There are hopes within the Polish minority, for instance, that any new language legislation will extend safeguards also to languages of smaller and dispersed minorities. Representatives of the Moldovan and Gagauz minorities agreed that support for their languages must be increased but considered that the first priority of the authorities should be to promote the socio-economic conditions of persons belonging to national minorities, particularly in the regions. The Roma minority, whose representatives expressed deep disappointment with the Government Strategy for the Integration of Roma adopted in March 2013 and the very limited attention that has been paid to their urgent concerns thus far, is hopeful that Ukraine may indeed join the Roma Decade in the coming months.

13. The Advisory Committee is, however, concerned about reports of nationalist aggression against Roma settlements in the recent past. While hate crime against persons belonging to the Roma minority in Ukraine has been regularly reported over the last years and interlocutors of the delegation indicated that attitudes of law enforcement towards Roma had not deteriorated in 2014, the Advisory Committee considers it crucial that particular attention is paid by the authorities to prevent further such attacks in the current context.

Findings of the Advisory Committee with regard to the implementation of specific rights under the Framework Convention

a) Language rights

14. According to representatives of all minorities with whom meetings were arranged and in line with monitoring conducted by the Ministry of Education in 2013, the August 2012 Law on the Principles of State Language Policy had no practical impact on the number of minority language schools or the use of languages in official contacts. Nonetheless, the call by the Verkhovna Rada to abrogate the law on 23 February 2014 created significant apprehension among parts of the Russian, Hungarian, and Romanian minorities, whose languages are considered regional languages in some of Ukraine's 27 regions as a result of the Law. The Advisory Committee notes that this Law remains in force today, following the decision of the Acting President on 27 February 2014 to veto its abrogation. It further notes that the Law has been controversial from its adoption as a number of critical concerns from minority communities as well as from international experts including the Venice Commission had not been taken into account.

15. In its third Opinion on the implementation of the Framework Convention in Ukraine, adopted in March 2012, the Advisory Committee considered that the Law, then in its draft stage, could promote mono-lingualism by the larger minorities and jeopardise the use of Ukrainian as the official language and main tool of communication, and that it did not foresee sufficient safeguards for the languages of numerically smaller minorities, such as the Karaim and Krimchak, whose languages are indeed threatened. Most interlocutors of the Advisory Committee in March 2014 attested to the absence of any special measures to protect and promote the languages of numerically smaller minorities, in particular those without a kin-state. Except for the Russian, Hungarian and Romanian minorities, representatives of most other minority groups described the law as a political instrument to appease and manage the claims of Russian speakers without giving Russian official language status, rather than an effort to address the needs and expectations of all, including numerically smaller minorities.

16. In addition, the Advisory Committee considered in its third Opinion that the Language Law could further polarise society around the issue of language and that much more comprehensive consultations with representatives of all minorities should have been conducted prior to its adoption. This assessment remains even more valid now, in particular given the very strong demands expressed by representatives of the Russian minority. The Advisory Committee considers it vital that the authorities do not adopt any hasty amendments to language legislation at a moment when they are likely to have destabilising effects. They should instead ensure that comprehensive consultations give effective opportunities to minority representatives to participate in the drafting process. While representatives of the Romanian and Hungarian minorities are reportedly involved as experts in the current working group tasked to review the language legislation, Russian minority representatives consider that they are not adequately represented in the working

group. The Advisory Committee considers the genuine representation of the important concerns of different minorities, including the numerically smaller ones, in the working group as a precondition for any credible discussion of future language legislation.

b) Education rights

17. The Advisory Committee refers to its assessment of the education situation in its third Opinion, as no changes in the number of or practices in minority language schools have been reported. Teaching in the official language remains insufficient in a number of minority language schools. The incentive to learn Ukrainian has reportedly further diminished as a result of the current language legislation, particularly in regions where minority languages have been recognised as regional languages. Moreover, representatives of the Romanian minority continue to be concerned about the limited availability of suitably trained teachers who are able to teach in Romanian, which raises broader concerns about access to quality education for this community.

18. The Advisory Committee welcomes the commitment expressed by the Ministry of Education to reassure minority communities that their minority language education will continue to be available. It also welcomes assurances that, despite the current austerity and the limited budget, no cuts will be made in the printing and distribution of textbooks in minority languages, including for the Crimean Tatar and Ukrainian language schools located in Crimea.

c) Participation rights

19. The participation of persons belonging to national minorities in public as well as in socio-economic life of Ukraine was considered insufficient by the Advisory Committee in 2012 and remains so. In the current context, particular efforts must be made to ensure that minority representatives are informed of ongoing developments, including in the legislative and constitutional field, and are given effective means to participate. The collapse of the Party of Regions has further diminished opportunities for persons belonging to the Russian minority to be effectively represented in political decision-making, particularly in the East. Urgent efforts must be made to create alternative channels of participation for the Russian minority to avoid further isolation and radicalisation. It is of regret to the Advisory Committee in this respect that representatives of the Russian minority in Kharkiv declined the several invitations for a meeting. Confidence-building measures are immediately needed to ease tensions and promote an environment in which minority protection legislation and frameworks can be negotiated with effective participation of minority representatives. Efforts of some political figures, including the Prime Minister, to address the population in the Russian language and to reconfirm Ukraine's commitments towards its minority populations are welcome first steps in this regard.

Conclusions

20. The Advisory Committee observed no immediate threat to the enjoyment of minority rights in the current situation in mainland Ukraine. It expresses urgent concerns, however, for the safety and access to rights of minority populations in Crimea, in particular the Crimean Tatars, numerically smaller minorities as well as persons belonging to the Ukrainian community, who are in a minority situation in Crimea. There is an urgent need for an international presence to monitor the evolving situation on the ground in Crimea, including as regards ongoing institutional arrangements led by the local authorities, which have a direct impact on the enjoyment of rights of persons belonging to national minorities. In addition, it is vital that any Law on Occupied Territories that is discussed in the Verkhovna Rada in Kyiv fully takes the concerns of Crimean residents into account and does not penalise those who are forced to co-operate with the authorities in effective control.

21. With the present language legislation remaining in force, there is no immediate necessity to adopt amendments. Moreover, doing so could create considerable further tension in the current context. The Advisory Committee urges the authorities to refrain from moving too hastily in this field and to engage in a comprehensive and effective consultation process with representatives of all minorities before taking any further steps. In addition, any review of the language legislation should be undertaken within a broader and long-term engagement concerning the review and implementation of minority rights related policies. Such engagement should also draw upon the expertise available in the Council of Europe and the OSCE High Commissioner on National Minorities. The Advisory Committee looks forward to continuing its constructive co-operation with the OSCE as well as the United Nations structures on the ground in Ukraine for this purpose.

22. Despite the support for and trust in the authorities expressed by most minority representatives, there is an urgent need for the central and regional authorities to engage in more direct and structured dialogue and confidence-building measures with minority populations throughout Ukraine. Functioning channels must be

established without delay to ensure that all minority populations in Ukraine are duly informed of and can effectively participate in the ongoing reform processes concerning important legislative frameworks directly affecting their concerns.

23. It is further crucial that targeted measures are taken to promote responsible journalism, curtail the propagation of prejudice and stereotypes based on ethnic and linguistic identity, and limit the negative effects of some media reporting on inter-ethnic relations in Ukraine.

Annex 821

Parliamentary Assembly of the Council of Europe, Recent Developments in Ukraine: Threats to the Functioning of Democratic Institutions, Resolution 1988 (2014) (9 April 2014)



Resolution 1988 (2014)¹

Final version

Recent developments in Ukraine: threats to the functioning of democratic institutions

Parliamentary Assembly

1. The Parliamentary Assembly deeply regrets the dramatic events in Kyiv (Maidan) from 18 to 20 February 2014 that led to the death of over 100 protesters and 17 police officers. It considers that the unprecedented escalation of violence was, regrettably, largely the result of the increasingly hard-handed approach of the authorities, including the so-called anti-terrorist action to break up the Euromaidan protests by force, contrary to all advice given by national and international interlocutors, including by the Assembly in its [Resolution 1974 \(2014\)](#) on the functioning of democratic institutions in Ukraine.
2. The Assembly strongly condemns the use of snipers and live ammunition against protesters by the Ukrainian authorities at that time. Such actions are unacceptable. All fatalities and all human rights abuses that occurred in relation to the Euromaidan protests need to be fully investigated and the perpetrators, including those in the line of command, brought to justice. There can be no impunity for human rights abuses, irrespective of who committed them. At the same time, it is important that these investigations are impartial and free from political motivation or any desire for retribution. They should take place transparently and in full accordance with the requirements of Article 6 of the European Convention on Human Rights (ETS No. 5). The advisory committee proposed by the Council of Europe could play an important role in helping the authorities to ensure that these conditions are met.
3. The Verkhovna Rada played an important and constructive role in resolving the crisis when, with unity and consensus, it managed the change of power and implementation of the main provisions of the 21 February 2014 agreement, in line with the overall tenets of the agreement and with due consideration for constitutional principles. The Assembly therefore fully recognises the legitimacy of the new authorities in Kyiv and the legality of their decisions. It regrets attempts to question the legitimacy of the new authorities, which can only serve to destabilise the country.
4. The Assembly considers that the new political environment following the events on Maidan between 18 and 21 February, and the resulting change of power, has opened a window of opportunity for Ukraine's democratic development. It is now important to use this window of opportunity to establish a genuinely democratic and inclusive system of governance that will guarantee and strengthen the unity of the country. In order to fully restore the rule of law, the Assembly calls for the immediate disarmament of all illegally armed persons and groups in Ukraine and for continuous action by the authorities to protect Ukrainian citizens against the endemic corruption in the whole country.
5. The Assembly takes note of the 2004 constitutional amendments that have been re-enacted by the Verkhovna Rada with a constitutional majority. The Assembly recalls and reiterates its concerns with regard to these constitutional amendments, as expressed in various Assembly resolutions adopted when these amendments were first in force. Further constitutional reform is therefore urgently necessary. The Assembly urges the Verkhovna Rada to use its unique unity at this moment to adopt, without further delay, the constitutional amendments necessary to establish a better balance of power between the president and the

1. *Assembly debate* on 9 April 2014 (15th Sitting) (see [Doc. 13482](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Ms Mailis Reps and Ms Marietta de Pourbaix-Lundin). *Text adopted by the Assembly* on 9 April 2014 (15th Sitting).



legislature and to bring the constitution fully into line with Council of Europe standards and principles. In that respect, the Assembly welcomes the clearly expressed commitment of all political forces in Ukraine to adopt such constitutional amendments in first reading before the next presidential election takes place and in final reading when the next session of the Verkhovna Rada begins, in September 2014. In view of the short period of time available, the Assembly calls upon the Verkhovna Rada to make full use of the already existing opinions of the European Commission for Democracy through Law (Venice Commission) on previous drafts and concepts for constitutional reform in Ukraine.

6. There can be no question about the legitimacy of the Verkhovna Rada, which was elected in 2012 in elections that were, *inter alia*, observed by the Assembly. At the same time, the Assembly recognises that, as a result of the recent political developments, including the disarray of the Party of Regions, several groups of people in Ukraine fear that they are not, or not well, represented in the Verkhovna Rada and therefore at the level of central government. In order to ensure the fullest possible representativeness of the Verkhovna Rada, which will benefit the unity and stability of the country, pre-term parliamentary elections should be organised as soon as is technically and politically feasible.

7. The next parliamentary elections should be conducted on the basis of a new unified election code and a regional proportional election system, as repeatedly recommended by the Assembly and the Venice Commission. In order to avoid any unnecessary delays in the adoption of such an election code, the Assembly recommends that the Verkhovna Rada develop a unified election code based on the draft that was prepared by the Kliuchkovsky working group, in which all political forces participated and which benefited from the expertise of the Venice Commission.

8. While constitutional reform and the adoption of a new unified election code should be the immediate priority for the Ukrainian authorities, far-reaching judicial reform and the decentralisation of government, including the strengthening of local and regional authorities, should also be urgently considered and implemented.

9. Regrettably, recent events have increased the east–west divide in the country and led to unease among the population of both parts of the country. In the view of the Assembly, the divide is mostly of political origin, despite the clear historical and cultural differences between the east and the west of Ukraine. The Assembly recommends therefore that the authorities develop a comprehensive and inclusive strategy to strengthen local and regional authorities and to decentralise government. Such a decentralisation strategy should be based on the principles of a strong unitary State with an effective system of central governance with delegated responsibilities and powers to the local and regional communities. The Assembly strongly objects to any notion of a federalisation of Ukraine and any outside pressures to pursue federalisation in future, as this would substantially weaken the unity and stability of the country.

10. The lack of independence of the judiciary and the structural deficiencies in the judicial system have been long-standing concerns of the Assembly. Far-reaching judicial reforms should now be promptly implemented. The Assembly reiterates its recommendations made in previous resolutions, which remain valid. It stresses that constitutional amendments are necessary to establish a judicial system that is fully in line with European standards.

11. The Assembly takes note of the conclusions by the Advisory Committee of the Framework Convention for the Protection of National Minorities that visited Ukraine from 21 to 26 March 2014. It welcomes the fact that there is no immediate threat to the enjoyment of minority rights in the current situation in Ukraine. At the same time, it calls on the authorities to be proactive in adopting all possible measures that could strengthen the unity of the country and to refrain from any discourse or actions that are divisive and that could undermine – or be instrumental in undermining – the national unity of the country. In this context, the Assembly regrets the decision by the Verkhovna Rada to cancel the Law on the Principles of State Language Policy, even if this decision has never been enacted or implemented.

12. The Assembly expresses its concern about the increasing number of credible reports of violations of the human rights of the ethnic Ukrainian and Crimean Tatar minorities in Crimea, including denying access to their homes, following its annexation by Russia. It calls upon the Russian authorities to ensure that these violations are immediately halted and all perpetrators prosecuted. The report of the Advisory Committee of the Framework Convention for the Protection of National Minorities, following its visit to Ukraine from 21 to 26 March 2014, points out that people belonging to the Crimean Tatar minority are exposed to particular risks in Crimea. There is a growing fear and uncertainty among Crimean Tatars, who have suffered from deportations in the past. The concerns regarding their safety and access to rights, including the enjoyment of cultural,

language, education and property rights, have to be duly addressed. In addition, international human rights monitors from the Organization for Security and Co-operation in Europe (OSCE) should be given full access to the region.

13. The frequent and unsubstantiated reports of minority rights violations in Ukraine, as well as the negative portrayal of the new government in Kyiv by certain national and international media, have had a negative impact on interethnic relations in Ukraine, and, ultimately, on the unity and stability of the country. The Assembly calls on all media to refrain from such unsubstantiated reports and to cover the developments in the country and its regions impartially and factually. It also calls upon the authorities in Ukraine to reconsider the decision to stop the broadcasting of some television channels in the country and to refrain from any censorship of the media.

14. The Assembly regrets that the democratic changes and political developments in Ukraine have been overshadowed by the developments in Crimea. The Assembly strongly condemns the authorisation of the Parliament of the Russian Federation to use military force in Ukraine, the Russian military aggression and the subsequent annexation of Crimea, which is in clear violation of international law, including the Charter of the United Nations, the Helsinki Final Act of the OSCE and the Statute and basic principles of the Council of Europe.

15. In the view of the Assembly, none of the arguments used by the Russian Federation to justify its actions hold true to facts and evidence. There was no ultra-right wing takeover of the central government in Kyiv, nor was there any imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea. Given that neither secessionism, nor integration with the Russian Federation, was prevalent on the political agenda of the Crimean population, or widely supported, prior to Russian military intervention, the Assembly considers that the drive for secession and integration into the Russian Federation was instigated and incited by the Russian authorities, under the cover of a military intervention.

16. The so-called referendum that was organised in Crimea on 16 March 2014 was unconstitutional under both the Crimean and Ukrainian Constitutions. In addition, its reported turnout and results are implausible. The outcome of this referendum and the illegal annexation of Crimea by the Russian Federation therefore have no legal effect and are not recognised by the Council of Europe. The Assembly reaffirms its strong support for the independence, sovereignty and territorial integrity of Ukraine. In connection with the denunciation by the Russian Federation of the agreements, concluded with Ukraine in 1997, on the Black Sea Fleet deployment in Crimea, the Assembly calls on Russia to withdraw its troops from Crimea immediately.

17. The Assembly expresses its great concern about the build-up of large numbers of Russian military troops along the border with Ukraine, which could be an indication that the Russian Federation is considering further unprovoked military aggression against Ukraine, which is unacceptable.

18. Given the risk of destabilisation and the deterioration of the security regime of the whole region by further Russian military aggression against Ukraine, the Assembly recommends that the signatories of the Budapest Agreement, as well as other relevant European States, explore the possibility for tangible security agreements to ensure Ukraine's independence, sovereignty and territorial integrity.

Annex 822

Council of Europe, Report by Nils Muižnieks Following His Mission in Kyiv, Moscow, and
Crimea from 7 to 12 September 2014 (27 October 2014)



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 27 October 2014

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English only

REPORT

BY NILS MUIŽNIEKS

COMMISSIONER FOR HUMAN RIGHTS OF THE
COUNCIL OF EUROPE

**FOLLOWING HIS MISSION IN KYIV, MOSCOW
AND CRIMEA**

FROM 7 TO 12 SEPTEMBER 2014

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INTRODUCTION

1. Commissioner Nils Muižnieks and his delegation carried out a mission to Kyiv, Moscow and Crimea¹ from 7 to 12 September 2014.² The present report represents an overview of the issues which have been discussed during his mission.
2. The Commissioner would like to thank the authorities of Ukraine and the Russian Federation for their co-operation and efforts to ensure that his mission was carried out in full compliance with his mandate. In particular, he would like to express his gratitude to the Permanent Representations of both countries to the Council of Europe, as well as the respective Ministries of Foreign Affairs for facilitating this mission. The Commissioner would also like to thank the Council of Europe Offices in Kyiv and Moscow for their valuable help and assistance provided in the course of this mission. More generally, the Commissioner would like to thank all of his interlocutors for their valuable contributions and willingness to share their views on human rights issues.

1 KYIV (7-8 SEPTEMBER 2014)

3. In Kyiv, the Commissioner had meetings with the Minister of Foreign Affairs, Mr Pavlo Klimkin; the Deputy Minister of Justice, Ms Inna Yemelianova;³ the Parliamentary Commissioner for Human Rights (Ombudsperson), Ms Valeria Lutkovska, as well as representatives of civil society organisations, including those representing the interests of persons displaced from Crimea.
4. Issues discussed included the situation of displaced persons in Ukraine;⁴ judicial and police reforms; the need to ensure accountability for serious human rights violations, in particular those which have occurred since December 2013, as well as the importance of combating impunity as part of the reconciliation process.
5. The Commissioner welcomed the ceasefire agreement signed in Minsk on 5 September 2014 as an important step towards improving the humanitarian situation in the east of Ukraine. However, he expressed concern to his official interlocutors about the provision related to the adoption of an amnesty law. He received assurances that the relevant legislation will be compliant with international human rights standards, which require that those responsible for serious human rights violations be brought to justice.
6. The Commissioner also had an in-depth discussion with various interlocutors as to the best ways of ensuring a more systematic approach towards working on human rights issues in

¹ The mission of the Commissioner for Human Rights was aimed at fostering the effective enjoyment of human rights. It cannot be interpreted as recognising either the authorities that exercise de facto jurisdiction or any altered status of the territory in question.

² The Commissioner was accompanied by Ms Isil Gachet, Director of his Office, Ms Bojana Urumova, Deputy to the Director, and two Advisers, Ms Olena Petsun (Kyiv and Moscow only) and Mr Vahagn Muradyan.

³ Ms Yemelianova has since resigned from the function of Deputy Minister of Justice.

⁴ According to figures provided by UNHCR, the number of displaced persons in Ukraine as of 16 October 2014 was 417 246, including 398 467 from the east and 18 779 from Crimea. See also in this regard the [letter](#) the Commissioner sent to the Prime Minister of Ukraine, Mr Arseniy Yatsenyuk, on 27 June 2014 (published 17 July 2014), in which the Commissioner outlined his main concerns regarding displaced persons in the country and made recommendations aimed at improving their situation.

Ukraine. To this end, he encouraged his interlocutors to consider the development of a national human rights action plan in order to better address the most pertinent issues.

2 MOSCOW (9 SEPTEMBER 2014)

7. In Moscow, the Commissioner had meetings with Mr Alexander Konovalov, Minister of Justice; Mr Aleksey Meshkov, Deputy Minister of Foreign Affairs; Ms Ella Pamfilova, Commissioner for Human Rights of the Russian Federation (Ombudsperson); Mr Leonid Slutsky, member of the State Duma and Vice-Chairperson of the delegation of the Russian Federation to the Parliamentary Assembly of the Council of Europe; and various civil society organisations. The Commissioner also met a delegation of Amnesty International, headed by its Secretary General, Mr Salil Shetty.
8. The issues the Commissioner discussed in Moscow included the situation of human rights defenders in the light of the implementation of the legislation on non-commercial organisations (“Law on foreign agents”); on-going reforms in the penitentiary and judicial systems; as well as certain aspects of the implementation of the judgments of the European Court of Human Rights. With the Commissioner for Human Rights, the discussion was focused on possible ways and potential areas for co-operation in the future.
9. The Commissioner noted with concern the increasingly challenging environment in which human rights defenders carry out their work in the Russian Federation. The recently-adopted amendments introducing changes to the legislation on non-commercial organisations pertaining to registration as a “foreign agent”⁵ did not address the main concerns of the Commissioner, as expressed in his [Opinion](#) on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards. The Commissioner expressed his readiness to continue discussions with the authorities on this and other relevant issues.

3 CRIMEA (10-11 SEPTEMBER 2014)

10. In Simferopol, the Commissioner had a joint meeting with Mr Oleg Belaventsev, representative of the President of the Russian Federation in the region, Mr Sergei Aksionov, the current leader of the region, Mr Vladimir Konstantinov, speaker of the local legislative body, Ms Natalya Poklonskaya, in charge of the prosecutorial authorities, as well as Mr Iskander Bilialov and Mr Remzi Ilyasov, members of the Mejlis of Crimean Tatars. He also had an exchange of views with the local Ombudsperson, Ms Lyudmila Lubina. Furthermore, he held discussions in Simferopol and Bakhchisaray with representatives of the Mejlis of Crimean Tatars, including Mr Akhtem Chiygoz, Deputy Chairman of the Mejlis, and met several representatives of civil society, lawyers, journalists, and religious leaders.
11. Issues raised by the Commissioner in his discussions in Simferopol and Bakhchisaray covered the following: accountability for serious human rights violations, including efforts to combat

⁵ On 23 May 2014, the State Duma adopted new amendments to the legislation in question allowing the Ministry of Justice to register non-commercial organisations in the Registry of the non-commercial organisations performing functions of a foreign agent without their consent (previous legislation provided that the organisations concerned should themselves apply to be registered if they correspond to the criteria specified in the law). On 28 May 2014 the Council of Federation endorsed those amendments, and on 4 June 2014 they were signed into law by the President of the Russian Federation. As of 17 October 2014, 15 organisations were listed in the above-mentioned Registry (<http://unro.minjust.ru/NKOForeignAgent.aspx>).

impunity; status of “self-defence” forces; conditions of detention and the possible transfer for humanitarian reasons of persons who are currently imprisoned in the region (both sentenced and remand); national and other minorities; nationality-related issues; and the situation of human rights defenders. Issues relating to Crimea were also addressed during the Commissioner’s meetings with the Ombudspersons and civil society representatives in Kyiv and Moscow.

3.1 HUMAN RIGHTS SITUATION IN CRIMEA

3.1.1 ACCOUNTABILITY FOR SERIOUS HUMAN RIGHTS VIOLATIONS

12. The Commissioner for Human Rights received reports from international organisations and human rights groups about cases of deaths and disappearances under suspicious circumstances which occurred after February 2014 in Crimea.⁶ During his stay in Simferopol, the Commissioner had an opportunity to discuss those matters with lawyers and civil society representatives and subsequently raised five specific cases (two deaths and three cases of missing persons) at his meeting with the local leadership.⁷
13. One of the above-mentioned cases involves Reshat Ametov, who was reportedly last seen at a protest on the main square in Simferopol on 3 March 2014. He was allegedly then led away by three men in military-style jackets, and footage of the incident was shown on the Crimean Tatar television channel ATR. His body - reportedly bearing signs of ill-treatment - was found on 16 March 2014 at a locality 67 km east of Simferopol, in the village of Zemlyanichne (Bilohirsk district).⁸ The circumstances of Mr Ametov’s disappearance and death have not been clarified to date. The local prosecutorial authorities informed the Commissioner that the investigation was still ongoing and that 300 expert examinations had been carried out. The Commissioner considers that all relevant video recordings purportedly showing Mr Ametov being taken from the site of the 3 March protest should be subject to an expert analysis. Further, steps should be taken to identify the three men shown in those videos, and to question them.
14. Another case concerned a 16-year old student, Mark Ivanyuk, who died under unclear circumstances on the highway Chernomorskoe-Olenevka on 21 April 2014. While the leadership in the region released information that the death was due to a hit-and-run car

⁶ OSCE/HCNM and OSCE/ODIHR, Ukraine, Human Rights Assessment Mission: Report on the Human Rights and Minority Rights Situation, March-April 2014, <http://www.osce.org/odihr/118476?download=true>, UN OHCHR Reports on Human Rights Situation in Ukraine, <http://www.ohchr.org/en/countries/ENACARegion/Pages/UAIndex.aspx>, Reports by the Crimean Field Mission on Human Rights, <http://crimeahr.org/ru/standpoint>. The Crimean Human Rights Field Mission is a joint initiative of several human rights organisations from Ukraine and the Russian Federation.

⁷ A case not raised by the Commissioner during his stay in Simferopol, but which has been referenced in reports by OHCHR and the Crimean Field Mission, is that of Vasyl Chernysh, a resident of Sevastopol and Avtomaidan activist who went missing on 15 March 2014. See Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 16 September 2014, §178, http://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf, as well as *Krymskaya polevaya missia po pravam cheloveka, Kratky obzor situatsii po Krymu*, June 2014, page 5, and July-August 2014, page 6 (http://crimeahr.org/sites/default/files/crimea_field_mission_report_june_2014.pdf and http://crimeahr.org/sites/default/files/otchet_krymskoy_polevoy_missii_-_iyul-avgust_2014.pdf).

⁸ Cf. in this regard Human Rights Watch (18 March 2014) *Crimea: Disappeared Man Found Killed*, www.hrw.org/news/2014/03/18/crimea-disappeared-man-found-killed.

accident,⁹ certain media reported that the person's mother had alleged police involvement in his death.¹⁰ When the Commissioner raised the case, Ms Poklonskaya indicated that the local prosecutorial authorities were not aware of it.

15. The Commissioner also enquired about the cases of three local civil society activists, Leonid Korzh, Timur Shaimardanov, and Seiran Zinedinov, who went missing at the end of May 2014 (respectively, since 22, 26, and 30 May). Mr Shaimardanov and Mr Zinedinov are included in the publicised list of missing persons.¹¹ According to information provided by the prosecutorial authorities in a letter dated 31 July 2014 addressed to the Crimean Human Rights Field Mission, criminal proceedings have been opened in connection with the disappearances of Mr Shaimardanov and Mr Zinedinov, while the disappearance of Mr Korzh has not been confirmed and additional verifications in this regard have been ordered.¹² After the mission, the Commissioner became aware of reports about the abduction by uniformed men of Islyam Dzhapparov and Dzhevdet Islyamov on 27 September 2014 near the Simferopol – Feodosia highway.¹³ The men were placed in a minibus and taken in an unknown direction, and criminal proceedings have been opened in relation to their abduction.¹⁴
16. A contact group on missing persons had its first meeting on 14 October 2014 with the leader of the region, Mr Aksionov, and investigative authorities. The contact group includes victim representatives and its coordinator, Mr Mammot Mambetov, is a Crimean activist. According to a press release issued by the contact group following the aforementioned meeting, the representative of the investigating authorities, Mr Bogdan Frantsishko, had indicated that criminal proceedings into the premeditated murders of Mr Shaimardanov and M Zinedinov had been initiated. Further, criminal proceedings had been initiated into the abduction of Mr Dzhapparov and Mr Islyamov.¹⁵
17. During his meeting with the regional decision-makers, the Commissioner highlighted the need to ensure prompt, effective and adequate investigations into all cases of serious human rights violations, while emphasising that those cases which fall under Articles 2 and 3 of the European Convention on Human Rights should be treated as a priority. All investigations should be conducted in compliance with the principles established in the case-law of the European Court of Human Rights. One of the most important of these elements is independence: it is a very basic principle that those involved in the operational conduct of an investigation should be independent from those who may be implicated. Furthermore, investigations must be thorough and all reasonable steps must be taken to secure evidence concerning the incidents in question, including identifying and interviewing the alleged suspects and eyewitnesses, and victims (in cases of possible Article 3 violations), seizing

⁹ Cf. in this regard <http://82.mvd.ru/news/item/2167514/>.

¹⁰ <http://www.segodnya.ua/politics/society/mat-pogibshego-v-krymu-16-letnego-parnya-moego-syna-ubili-iz-za-ukrainskogo-yazyka-516091.html>

¹¹ See <http://82.mvd.ru/citizens/Rozisk/rubric/1/?page=1>, last accessed 9 October 2014.

¹² See http://crimeahr.org/sites/default/files/otchet_krymskoy_polevoy_missii_-_iyul-avgust_2014.pdf (Appendix I).

¹³ Human Rights Watch, (7 October 2014) *Crimea: Enforced Disappearances, Crimean Tatars, Other Pro-Ukraine Figures Among the Missing*, <http://www.hrw.org/news/2014/10/07/crimea-enforced-disappearances>

¹⁴ "Po faktu propazhi dvukh chelovek v Belogorske organizovano ugovolnoe rassledovanie", 29 September 2014, <http://rkproc.ru/news/po-faktu-propazhi-dvuh-chelovek-v-belogorske-organizovano-ugovolnoe-rassledovanie>.

See also "V Krymu vzbuzhdeno ugovolnoe delo po faktu pokhishchenia dvukh zhitel'ei goroda Belogorska", 30 September 2014, <http://crim.sledcom.ru/news/detail.php?news=10544>.

¹⁵ Press reliz Kontaktnoy grupy po poisku pokhishchennykh lyudey v Respublike Krym, 14 October 2014.

instruments or weapons which may have been used in perpetrating the violation, and gathering forensic evidence, including through medical expertise and autopsy where applicable. The investigation must be comprehensive and seek to shed light on all significant events and circumstances related to the case. The investigation must also be conducted in a prompt and reasonably expeditious manner, without unjustifiable delays. In addition, there should be sufficient public scrutiny of the investigation, and in all cases, the victim or the victim's survivor(s) must be involved in the procedure to the extent necessary to safeguard their interest.

18. A person's disappearance is a grave violation of human rights. The deleterious effects of such a tragedy are far-reaching. Disappearances have a profound effect on the whole of society, starting with the individual's close family and friends, all of whom suffer from not knowing and from a sense that their plight is being ignored. This lack of knowledge can cast those concerned in a state of perpetual distress, depriving them of the possibility to lead a normal life.¹⁶ Therefore, the truth should be established and the relatives of the victims must receive a satisfactory and convincing explanation about the fate of their loved ones.
19. The Commissioner noted with concern that at least some of the above-mentioned cases involved activists who – according to various reports – have openly expressed critical views of the events unfolding in the region after February 2014.¹⁷ It is also worrisome that there have been allegations of implication of members of the “self-defence” forces in these violations (cf. the section on “Self-Defence forces”). There is an urgent need to carry out effective investigation into all allegations about abuses by the police and other auxiliary forces that have been operating in the region since February 2014.

3.2 SITUATION OF MINORITIES

20. The situation of ethnic minorities was the main topic of the previous Commissioner's visit to the region which took place in November 2011, and a follow-up letter to the Prime Minister of the Autonomous Republic of Crimea, Mr Anatolii Mohyliov.¹⁸ Within the framework of the current mission the Commissioner paid particular attention to the situation of the Crimean Tatar community and ethnic Ukrainians residing on the peninsula.
21. The Commissioner received reports about a number of searches - carried out by armed and masked members of the security forces - in Muslim religious institutions, as well as businesses and private homes belonging to members of the Crimean Tatar community. The purpose of those actions was to search for prohibited items, including weapons and “extremist literature”. By the time of the Commissioner's visit, such searches had been carried out in 8 out of 10

¹⁶The European Court of Human Rights has frequently found violations of Article 3 of the European Convention on Human Rights in respect of families of disappeared persons, due to the emotional distress and suffering they experience as a result of their relative's disappearance.

¹⁷ See Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 15 June 2014, §288, <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>, *Krymskaya polevaya missia po pravam cheloveka, Kratky obzor situatsii po Krymu* (June 2014), p.5 http://crimeahr.org/sites/default/files/crimea_field_mission_report_june_2014.pdf.

¹⁸ Letter from the Council of Europe Commissioner for Human Rights to Mr Anatolii Mohyliov, Prime Minister of the Autonomous Republic of Crimea, [https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH\(2012\)11&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH(2012)11&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

religious schools (madrasas) belonging to the Spiritual Directorate of the Muslims of Crimea (*Dukhovnoe Upravlenie Musulman Kryma*). There were also reports that “informative talks” had been carried out with scores of persons in order to check whether they adhered to “undesirable” or “non-traditional” forms of Islam. The perception among various representatives of the Crimean Tatar community was that the above-mentioned actions were intrusive and performed with an intent to intimidate them. Moreover, Mr Mustafa Dzhemilev, one of the key leaders of the Crimean Tatar community and former Chairman of the Mejlis,¹⁹ and Refat Chubarov, the current Chairman of the Mejlis have respectively been barred since 22 April and 5 July 2014 from entering the territory of Crimea.

22. During his meeting with the regional leadership on 11 September 2014, the Commissioner expressed the opinion that the above-mentioned searches and checks were disproportionate and excessive, and that care should be taken to avoid any further actions which selectively target members of the Crimean Tatar community in the name of fighting extremism. In response, the authorities indicated that they would engage with representatives of the Crimean Tatar community with a view to resolving the problem. However, on 18 September 2014, after the Commissioner’s return from the mission, he was informed that the building of the Crimean Tatar Mejlis in Simferopol - which he had visited - was seized by security forces and that the employees of the organisations located in the building were evicted, reportedly on the basis of a court order.
23. The local leaders also informed the Commissioner about certain steps they have been taking with regard to promoting the economic and social rights of the Crimean Tatar community, aimed at resolving some of their long-standing issues of concern. They specifically referred to initiatives such as a “land amnesty” and efforts to address housing problems. In addition, they maintained that the status of the Crimean Tatar language and the possibility to observe religious holidays were better protected.
24. The Commissioner also looked into the situation of ethnic Ukrainians residing on the peninsula. In the wake of the events of February-March this year, some of them decided to leave the region because they no longer felt secure, while others preferred to refrain from openly stating and/or manifesting their views.
25. The Commissioner took note of the allegations about attempts to gain control over churches owned by the Ukrainian Orthodox Church of the Kyiv Patriarchate and apply pressure upon priests serving in the Crimean diocese. One such incident was reported on 1 June 2014 when uniformed men, said to be Cossacks and members of the “self-defence” forces, entered a local church in the village of Perevalne proclaiming that they were seizing it with the intention of transferring it to the authority of the Moscow Patriarchate.²⁰ According to the local head of the Ukrainian Orthodox Church of the Kyiv Patriarchate, archbishop Kliment, six out of fifteen churches belonging to that religious denomination were no longer under the control of the Kyiv Patriarchate. The Commissioner raised the matter with the local leaders and urged them to enter into a dialogue with the representative of that church with a view to resolving the foregoing issues. The Commissioner’s interlocutors promised to organise such a meeting.

¹⁹ On 20 August 2014, the President of Ukraine, Mr Petro Poroshenko, signed a decree whereby Mr Dzhemilev was appointed as Commissioner of the President on the Affairs of Crimean Tatars.

²⁰ Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 15 June 2014, §315, <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>

26. The Commissioner is of the opinion that multiculturalism is a unique feature and asset of this territory and should be nurtured and preserved, including through the media, as well as in schools and public institutions.²¹ Despite the changing legal framework, the three languages - Russian, Crimean Tatar and Ukrainian – continue to be used as languages of communication. However, the Commissioner received reports that the use of Ukrainian language in the schools has been diminishing. Apparently, the only Ukrainian-language gymnasium in Simferopol has been transformed into a school where in some classes education will continue to be provided in Ukrainian, while in other classes Russian will become the language of instruction. Whether this was done on the basis of the requests received from the parents of the schoolchildren has been a matter of some dispute. Moreover, whether parents can make language choices free of pressure has also been questioned.²²
27. The Commissioner encouraged his interlocutors to do their utmost to nurture the linguistic diversity of this region and to provide the necessary means for all young persons to have access to quality education in different languages. The use of the bilingual and multilingual methodologies in the educational processes should be encouraged.
28. It is essential to create a sense of security for the Crimean Tatars, ethnic Ukrainians and everyone else who has been rendered more vulnerable by the changed circumstances in the region. It is important to continuously and consistently send an unambiguous message of “*zero tolerance*” of violence and any kind of discriminatory practices, as well as to pay special attention to the need to protect human rights and uphold the rule of law in any circumstances. Minorities should enjoy secure conditions enabling them to practice their religion in public or private, receive education in their languages and openly manifest their views without fear and intimidation. It is of paramount importance to refrain from any further measures which may worsen their situation. Failure to do so may lead to new cases of displacement from the region.

3.3 MEDIA SITUATION

29. The Commissioner has received reports that certain of the Internet media resources and other media outlets which did not support the turn of events in the region since February have either relocated or closed down. Some media outlets and journalists have reportedly come under pressure due to the changing institutional and legal framework which has resulted in the application of more restrictive rules related to media work.
30. The Commissioner received information about two main “waves” of attacks against journalists: in March 2014, around the time of the “referendum”,²³ and in 15-19 May 2014, around the commemoration day of the 1944 deportation of Crimean Tatars (18 May). One case involved a

²¹Cf. also the letter from the Council of Europe Commissioner for Human Rights to Mr Anatolii Mohyliov, Prime Minister of the Autonomous Republic of Crimea, <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=2175019&SecMode=1&DocId=1859320&Usage=2>

²² Crimean Field Mission on Human Rights Brief Review of the Situation in Crimea, July-August 2014, p. 30 http://crimeahr.org/sites/default/files/otchet_krymskoy_polevoy_missii_-_iyul-avgust_2014.pdf

²³ At their 1196th meeting on 2-3 April 2014, the CoE Committee of Ministers adopted a decision, whereby “[t]he Deputies [...] stressed that the illegal referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014 and the subsequent illegal annexation by the Russian Federation cannot form the basis for any alteration of the status of the Autonomous Republic of Crimean and the city of Sevastopol [...]”

local journalist, Osman Pashaev, who was detained and physically assaulted by members of “self-defence” forces on 18 May 2014 in Simferopol and subsequently left Crimea.²⁴ The Commissioner had an opportunity to meet with some of the affected journalists who shared with him their accounts of being intimidated or assaulted by members of the “self-defence” forces.

31. In Simferopol, the Commissioner received confirmation of reports that media outlets had received warnings and/or were undergoing checks with regard to their alleged involvement in “extremist” activities.²⁵ Those journalists who were covering the march of Crimean Tatars on 3 May 2014 to the Armyansk checkpoint to meet the leader of Crimean Tatar community, Mr Mustafa Dzhemilev, were notably affected by these measures. Despite such actions, the Crimean Tatar television channel ATR continued to be broadcast at the time of the Commissioner’s stay in the region. However, subsequently (24 September 2014), its general director received a letter from officials charged with combating extremism motivated by the channel’s change in content. In particular, the letter specified that the channel “persistently instils the perception about possible repression based on ethnic or religious grounds, fosters the formation of anti-Russian views, deliberately foments distrust among Crimean Tatars towards the authorities and their actions, which indirectly carries with it the threat of extremist activity”.²⁶
32. A few days before the Commissioner’s arrival in Simferopol, the apartment of a popular blogger, Elizaveta Bohutska, had been searched and she had reportedly been questioned in connection to the 3 May rally (see previous paragraph) and in relation to her media reports critical of the policies of the current power-holders in the region.²⁷ Following those incidents, she decided to relocate from Crimea. The local leadership confirmed they were aware of this particular case, but had no intention to take any action on the matter.
33. According to the case-law of the European Court of Human Rights, the press performs a vital role of “public watchdog” in a democratic society.²⁸ The Court has emphasised that “freedom of the press and other news media affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders.”²⁹

3.4 STATUS OF “SELF-DEFENCE” FORCES (*SAMOOBORONA*)

34. The legal status and functions of the Crimean “Self-Defence” (*Samooborona Kryma*) – auxiliary forces which have been playing a visible role in the events of February-March 2014 and thereafter - were also among the issues raised by the Commissioner with his interlocutors in

²⁴ “Pamfilova: zaderzhanie zhurnalista v Krimu – narushenie prav cheloveka,” Ria Novosti, 19 May 2014, <http://ria.ru/society/20140519/1008461921.html>, see also “Osman Pashaev leaves Crimea”, Kharkiv Human Rights Protection Group, 20 May 2014, <http://khpg.org/en/index.php?id=1400529448>

²⁵ It may also be noted that during the week following the Commissioner’s mission, the OSCE Representative on Freedom of the Media expressed concern about “a pattern of hostile behavior towards members of the media” via a press release issued in Vienna on 19 September 2014 and entitled “Pressure on Tatar media in Crimea must stop”: <http://www.osce.org/fom/123790>

²⁶ See Crimean Field Mission on Human Rights Brief Review of the Situation in Crimea, September 2014, Appendix 2, http://crimeahr.org/sites/default/files/obzor_krymskoy_polevoy_missii_sentyabr_2014.pdf

²⁷ See also OSCE Representative condemns continued intimidation of free voices in Crimea, Vienna 9 September 2014, <http://www.osce.org/fom/123314>

²⁸ See *Observer and Guardian v. the United Kingdom*, judgement of 26 November 1991, §59 (b) and *Jersild v. Denmark*, judgement of 23 September 1994, §35.

²⁹ Cf. for example *Oberschlick v Austria*, judgement of 23 May 1991, §58.

the region. As was mentioned in previous sections, the Commissioner received numerous reports that those forces have apparently been engaged in performing certain quasi-police functions and that, on a number of occasions, members of those forces have reportedly been implicated in cases of serious human rights violations, including abductions, arbitrary detention, ill-treatment and attacks against journalists. One of the many cases communicated to the Commissioner involved two activists, Andriy Schekun and Anatoly Kovalsky, who were detained and allegedly ill-treated by those forces on 9 March 2014. After spending eleven days detained in an unknown location, they were transferred to the territory under control of the Ukrainian government.³⁰

35. During his mission, the Commissioner heard several accounts about abuses committed by members of these units in relation to those expressing critical views about the events unfolding in the region, including journalists, representatives of ethnic minorities and other vulnerable groups. He was also informed about their alleged involvement in the seizure and “nationalisation” of private enterprises. One such case occurred during the Commissioner’s mission and was effectively acknowledged by the local leadership, who indicated that the interference was made due to unlawful actions by the company in question.
36. In June this year the local legislative body, in an apparently retroactive manner, endorsed a proposal to “legalise” those forces through an act³¹ which provided them with a rather wide range of functions, but included only a limited number of checks and appropriate safeguards. Furthermore, the Commissioner was informed that there were two legislative initiatives – one introduced locally³² and another one pending in the State Duma³³ – which provides for immunity from prosecution for actions committed by members of those forces after February 2014.
37. During his encounter with the local leaders and the ombudsperson, the Commissioner raised a number of concerns related to the accountability of the above-mentioned forces. In this context, the Commissioner urged all those responsible to effectively investigate and prosecute all alleged cases of human rights violations committed by members of “self-defence” forces. He reiterated his principled position on this issue – as supported by the ECtHR jurisprudence and other international standards - that amnesties should not be applied for serious human rights violations (in particular cases covered by Articles 2 and 3 of the European Convention on Human Rights). The obligation to protect the right to life and take effective action against torture and other cruel, inhuman or degrading treatment or punishment must be upheld in all circumstances.
38. In a recent judgement, the ECtHR noted that there was a growing tendency in international law “to see amnesties for serious human rights violations as unacceptable because they are

³⁰ Human Rights Watch, *Ukraine: Activists Detained and Beaten, One Tortured*, (25 March 2014), <http://www.hrw.org/news/2014/03/25/ukraine-activists-detained-and-beaten-one-tortured>

³¹ <http://www.rada.crimea.ua/textdoc/ru/6/act/22z.pdf>

³² <http://www.rada.crimea.ua/law-draft-card/4038>

³³ Lower house of the Federal Assembly (Parliament) of the Russian Federation. See [http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/16740DBDDF67CCDF43257D650048D45D/\\$FILE/613379-6.PDF?OpenElement](http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/16740DBDDF67CCDF43257D650048D45D/$FILE/613379-6.PDF?OpenElement).

incompatible with the unanimously recognised obligation of States to prosecute and punish grave breaches of fundamental human rights”.³⁴

39. The concerns of the Commissioner about amnesty for members of “self-defence” forces in cases of serious violations were shared by the local ombudsperson. The current leader of the region, Mr Aksionov, stated during the meeting with the Commissioner that any violations - if they were indeed committed by the members of these forces – would be thoroughly investigated and those responsible brought to justice.
40. In the Commissioner’s opinion, the above-mentioned auxiliary forces should be disbanded. Those who have not been implicated in cases of human rights violations may - if they wish so - be integrated into the local police force after undergoing comprehensive professional training, including on the European and international standards concerning protection of human rights by police.

3.5 SITUATION OF HUMAN RIGHTS DEFENDERS AND HUMAN RIGHTS STRUCTURES

41. On 5 March 2014, a group of human rights defenders from Ukraine, the Russian Federation and Crimea established the Crimean Human Rights Field Mission, with a view to ensuring the continued monitoring of the human rights situation on the ground.³⁵ The mission acts from a politically neutral position and pays particular attention to interethnic and interreligious relations, as well as the actions of public authorities and their representatives. Since its creation, the mission has been issuing reports regularly and has come to represent a key source of information about human rights developments in Crimea. During his stay in the region, the Commissioner had an opportunity to meet with several activists working with the Crimean Human Rights Field Mission and other local civil society organisations who provided him with their insights into the complex environment in which they have to operate and the challenges that they encounter. In the course of discussions with various interlocutors throughout the mission, the Commissioner emphasised the need to promote safe and favourable conditions for the work of human rights NGOs. An open and meaningful dialogue between the authorities and civil society would certainly contribute to promoting better understanding and reconciliation among the different groups of people residing in Crimea.
42. The Commissioner received certain reports about instances of intimidation and harassment against human rights activists.³⁶ Such episodes - if they are not condemned unequivocally - may foster negative stereotypes and prejudices towards human rights defenders in general. They can also lead to concrete difficulties and obstacles for the effective conduct of human

³⁴ See *Marguš v. Croatia* (Grand Chamber judgement of 27 May 2014). In that case, the Court also noted that “even if it were to be accepted that amnesties are possible where there are some particular circumstances, such as a reconciliation process and/or a form of compensation to the victims, the amnesty granted to the applicant in the instant case would still not be acceptable since there is nothing to indicate that there were any such circumstances.” In that judgement the Court declared inadmissible the complaint under Article 4 of Protocol No. 7 to the Convention regarding the applicant’s right not to be tried or punished twice in relation to crimes committed during the war in Croatia in the 1990s which were amnestied pursuant to a General Amnesty Law. The applicant, a former commander of the Croatian army, had been convicted of war crimes against civilians committed in 1991.

³⁵ The Crimean Human Rights Field Mission receives support from the United Nations Development Program (UNDP) as well as from the Centre for Citizens’ Freedoms in Ukraine.

³⁶ As an illustration, two human rights defenders working for the Crimean HR Field Mission (a Ukrainian national and a Russian national) were taken off the train and questioned by the Russian border officials on 12 September 2014 in Bryansk while they were travelling to Kyiv.

rights work. The Commissioner would like to reiterate the principle that when individuals – together with others or alone – speak out for human rights or work for them with other means, they should be free to do so without being subjected to pressure. He would like to pay tribute to the human rights organisations working in the region for their commitment to fulfilling their mission, despite the challenges and risks involved.

43. In addition to his discussions with human rights organisations, the Commissioner had a fruitful exchange of views and an opportunity to share his concerns with the local ombudsperson,³⁷ Ms Lyudmila Lubina. He would like to underline that human rights structures can play a key role in promoting awareness of European and international human rights standards and norms and ensuring that people living in the region are able to enjoy them fully in practice. The effectiveness of such institutions is in many respects linked to the degree of independence they are able to enjoy and to the attitude of the local authorities to the institution of ombudsperson as such. The authorities should respect their integrity and independence, thus enabling them to perform their duties properly and effectively.

3.6 CITIZENSHIP-RELATED ISSUES

44. During his mission, some of the Commissioner’s interlocutors drew his attention to various aspects of the on-going process of issuance of Russian passports (commonly referred to as “passportisation”) and shared their concerns as to how the choices made by various individuals may eventually affect their access to and enjoyment of a number of human rights.
45. The Russian Federation stipulated in its legislation³⁸ that all permanent residents on the territory of Crimea, unless they explicitly refuse Russian citizenship, will become citizens of the Russian Federation one month after the date on which, according to the Russian Federation, Crimea was incorporated into its territory. Ukraine does not recognise “forced automatic admission” into Russian citizenship by Crimean residents and does not consider it a ground for deprivation of Ukrainian citizenship.³⁹
46. The Commissioner received several reports suggesting that the wish of the person concerned was not always taken into account throughout the above-mentioned process. It is difficult to establish at present in how many cases persons have “automatically” become Russian citizens, i.e. since they did not refuse Russian citizenship within the allocated period of time. In at least some of these cases there are reasons to believe that the affected persons did not have an effective possibility to exercise their choices (see below). The Commissioner was also made aware of some cases of persons who reportedly wished to acquire Russian citizenship but were not in a position to do so due to certain “eligibility” criteria (lack of proof of permanent residence has frequently been invoked in such cases).
47. In the Commissioner’s view, people should have a choice in matters relating to their citizenship. The consent of the person concerned should be the paramount consideration in

³⁷The office of the local ombudsperson was established on 25 June this year. Until April 2014, a representative office of the Ukrainian Parliamentary Commissioner for Human Rights was functioning in the Autonomous Republic of Crimea.

³⁸ Russian Federation Constitutional Law “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 level Sevastopol”, dated 21 March 2014, Article 4.

³⁹ Law of Ukraine “On legal guarantees of people’s rights and freedoms on the temporarily occupied territories of Ukraine”, Article 5.4.

this regard, and this consent should be active and clearly stated. Whereas States have obligations related to the prevention and reduction of statelessness, such obligations could hardly be invoked in the cases referred to above since the persons concerned were not stateless.⁴⁰

48. Another issue of concern raised by the Commissioner's interlocutors relates to the effective possibility to express one's wishes. The period granted for initiating a procedure to refuse Russian citizenship was very short (one month, expiring on 18 April 2014). Moreover, instructions from the relevant migration service as to the exact procedure to follow were only available as of 1 April 2014. Furthermore, information about the places where the relevant application should be submitted was only available after 4 April; from 4 to 9 April only two such places, in Sevastopol and in Simferopol, were functioning; as of 10 April, a total of nine localities had been made available. Finally, additional requirements were introduced during the process, such as the necessity to make an application in person, or that both parents were required for the application of a child.⁴¹
49. Certain persons in closed institutions might have experienced difficulties with expressing their consent. This in particular applies to those imprisoned on remand or serving a sentence,⁴² as well as people in other closed institutions (geriatric institutions, hospitals and psycho-neurological clinics, orphanages, etc.) Concerning prisoners, the Commissioner received information that they had been "consulted" as to their preference, but no details were provided as to the exact procedure followed.
50. Persons who find themselves in the situation described above should also have all the necessary information enabling them to make an informed choice. In other words, they should be fully informed and have a clear understanding of all possible legal consequences attached to one option or the other.⁴³ While individuals who initiated a procedure for refusing Russian citizenship were asked to sign a document stating they were fully aware of the legal consequences of their decision, it would appear that a whole range of important issues related to their future status has not been clarified to date. First and foremost, questions have been raised as to whether these individuals will "automatically" acquire permanent resident status or not, and to what extent this will affect their social and economic rights, access to employment, and similar issues.
51. For certain groups of individuals – such as civil servants – the decision not to accept Russian citizenship meant the loss of their current employment. The Commissioner also received

⁴⁰ Even in cases involving granting of citizenship to a stateless person, such an act cannot be carried out against the wishes of an adult (the situation of stateless children is treated in a more nuanced way, since the principle of "the best interests of the child" should also apply). Otherwise this could be qualified as an interference with the person's private and family life, since the acquisition of citizenship may also entail certain obligations, such as military service.

⁴¹ Report on the human rights situation in Ukraine, Office of the United Nations High Commissioner for Human Rights, 15 May 2014, §127.

⁴² This also applies to the case of the Ukrainian filmmaker Oleg Sentsov and others who were detained in connection with the charges invoked against him. While he maintains that he is a citizen of Ukraine, the Russian authorities consider him as a Russian citizen on the basis of the argument that he did not explicitly refuse Russian citizenship.

⁴³ The European Court of Human Rights requires that any legal norm should be both accessible and foreseeable as to its effects.

reports suggesting that public sector employees (e.g. teaching staff in universities and other educational institutions) were also “advised” to renounce their Ukrainian citizenship.

3.7 OTHER ISSUES

52. Several of the Commissioner’s interlocutors in Kyiv, Moscow and Simferopol drew his attention to the poor conditions of detention in the penitentiary establishments in the region. The local ombudsperson expressed particular concerns over the lack of food and medical supplies and overcrowding in places of detention. The observations and recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁴⁴ following its delegation’s visit, *inter alia*, to the temporary detention facilities in Alushta, Simferopol and Yalta and the pre-trial detention establishment (SIZO) in Simferopol remain relevant in this regard.

3.8 ACCESS OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS ORGANISATIONS

53. There appears to be an issue with regard to free and unhindered access of international organisations and missions to the region, including those whose mandate is to provide independent and impartial monitoring of the human rights situation. Some of these obstacles stem from the relevant legislative framework, others from its practical implementation; still others arise from what appears to be an arbitrary or selective application of the rules by the relevant executing bodies. Except for the Council of Europe Commissioner for Human Rights, representatives of other international institutions, including UN OHCHR, have not been able to secure access of their monitors to the region after March 2014.⁴⁵
54. On 15 April 2014, the Ukrainian Parliament (*Verkhovna Rada*) adopted a law "On legal guarantees of people's rights and freedoms on the temporarily occupied territories of Ukraine." While it contains no restrictions on the freedom of movement for Ukrainian citizens to/from Crimea, the law provides for restrictions on the freedom of movement of foreigners and stateless persons. According to Article 10.2 of the law, these categories of visitors should obtain a special permit to enter/leave the territory of the peninsula through specific entry points (along the boundary line between the Crimean peninsula and Kherson oblast). The procedure for obtaining special permits is to be determined by the Cabinet of Ministers (Government of Ukraine). At the same time, Article 5 of the law reiterates the State’s obligation to undertake all the necessary measures to guarantee rights and freedoms of the persons residing on the territory of the peninsula. At the time of drafting this report, the procedure for entry into the region was still under elaboration. In his discussions with the official interlocutors in Kyiv, the Commissioner emphasised that it was of utmost importance to ensure that the procedure in question be formulated in a way that would facilitate the work of humanitarian organisations and international human rights monitors and missions in the region.
55. During his exchange of views in Moscow with the Deputy Minister of Foreign Affairs, the Commissioner formed the impression that the Russian authorities consider that the access route via Moscow represents the best option under the current circumstances. Apart from the requirement to obtain a Russian visa, the Commissioner does not have information suggesting that the legislation which is effectively (de facto) applied in the region imposes any additional

⁴⁴ CPT/Inf (2014) 15, report published by CPT following its visit to Ukraine from 9 to 21 October 2013.

⁴⁵ The International Committee of the Red Cross (ICRC) does have access to Crimea.

or separate rules or procedures on foreign citizens and/or stateless persons wishing to enter the region by land from the north.

56. The Commissioner wishes to stress that the question of access to the region should not be politicised: free and unconditional access of international humanitarian and human rights organisations to the peninsula (from all directions and at all times) and effective international monitoring, in particular of minority rights, is of key value in the present situation and will undoubtedly contribute to strengthening a climate of respect and co-operation between various ethnic communities and other minority groups residing in the region. This position is shared by several of the Commissioner's interlocutors who have noted that the present mechanisms for the monitoring of the human rights situation on the ground were not sufficient. International human rights monitors could effectively operate in coordination with the local human rights defenders and relevant human rights structures and should be encouraged rather than prevented from exercising their respective mandates in the region.

Annex 823

Council of Europe Media Freedom Alert, Harassment of Journalists Natalya Kokorina and Anna Andrievska in Crimea, Ukraine by Russian Officials (2 April 2015)

Platform to promote the protection of journalism and safety of journalists

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Harassment of Journalists Natalya Kokorina and Anna Andrievska in Crimea, Ukraine by Russian Officials



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Country : Ukraine

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Source of threat : State

Submitted by : EFJ/IFJ

Alert level : Level 1

On 6 March 2015, agents from the FSB, the Russian secret services, searched the homes of parents of journalists Natalya Kokorina and Anna Andrievska in the Crimea peninsula, according to reports. On the same day, Ms Kokorina was detained and initially refused access to her lawyer. She was finally freed after six hours of detention for which no reason was given.

A computer belonging to the father of Anna Andrievska was taken away. Anna, a board member of the Independent Media Trade Union of Ukraine (IMTUU), has been charged with anti-state activities. The charges are based on an article published in December 2014, which authorities claimed "aimed at violating the territorial integrity of the Russian Federation". If found guilty, she faces up to five years in prison.

The two journalists worked for the news portal of the Crimean Centre for Investigative Journalism. After the annexation of Crimea by Russia last year, the center, initially based in Simferopol, was forced to relocate to Kiev after its staff was subjected to attacks, harassment and legal restrictions by the authorities. Andrievska moved to Kiev in early May 2014 but her family stayed in Crimea.

ADDITIONAL INFORMATION

[Article on IFJ Website on "IFJ and EFJ Condemn Repressive Actions against Journalists in Crimea"](#)

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- [Recommendation CM/Rec\(2016\)4](#) of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, 13 April 2016
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Annex 824

Council of Europe, Thematic Commentary No. 4, The Scope of Application of the Framework
Convention for the Protection of National Minorities (adopted on 27 May 2016)

The Framework Convention: a key tool to managing diversity through minority rights



Thematic commentary No. 4
The scope of application
of the Framework Convention
for the Protection
of National Minorities

Adopted on 27 May 2016

The Framework Convention: a key tool to managing diversity through minority rights

Thematic commentary No. 4
The scope of application
of the Framework Convention
for the Protection
of National Minorities

French edition:

*Convention-cadre: un outil essentiel pour gérer
la diversité au moyen des droits des minorités*

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Executive summary

Diversity has been an integral part and a major asset of European societies for centuries. It remains an essential feature of contemporary societies. The purpose of the Commentary is to consolidate the manner in which the Advisory Committee has interpreted, over the years, the scope of application of the Framework Convention for the Protection of National Minorities (ETS No. 157), bearing in mind specific societal, economic and demographic developments.

The Commentary shows that, since 1995, the Framework Convention has been and continues to be a key tool for states to accommodate increasing pluralism through minority protection in a way that carefully balances broader societal concerns with individual rights. It supports states parties in managing diversity by creating appropriate societal conditions that allow for the expression and acknowledgement of difference, for equal access to rights and resources despite difference and for social interaction and inclusion across difference.

The Framework Convention is based on the principle that the protection of national minorities is essential to stability, democratic security and peace. Its main purpose is to prevent interethnic tensions and to promote dialogue in open and inclusive societies. Accordingly, the Commentary underlines that the Framework Convention addresses society as a whole and not just individuals or specific groups. Rather than asking “who” should be protected, it asks “what” is required to manage diversity most effectively through the protection of minority rights. It is for this reason that the Convention does not contain a definition of the term “person belonging to a national minority”.

The Framework Convention was deliberately conceived as a living instrument. Its interpretation must be adjusted regularly to ensure that minority rights can be enjoyed effectively in societies that are affected by constant transformation, including through mobility and migration. The right to free self-identification is central to minority protection, including multiple and situational affiliations. It must not be disregarded through imposed categorisation based on predetermined characteristics. Individuals self-identify and form communities through a variety of evolving shared practices and through the common exercise of rights. Societal changes also have an impact on identity perceptions of individuals and of communities and thereby on the applicability of minority rights.

Among the broad range of rights contained in the Framework Convention, some explicitly apply to all individuals in the territory of the state, while the application of others may be linked to specific conditions. When examining the implementation of the Framework Convention by states parties, the Advisory Committee has therefore consistently encouraged the authorities to be inclusive and context specific and to consider, on an article-by-article basis, which rights should be made available to whom in order to ensure the most effective implementation of the Framework Convention based on facts rather than status.

The Commentary concludes that access to minority rights can only be ensured in a society where dialogue, understanding and cultural diversity are viewed as sources of enrichment rather than of division.

Part I

Introduction

1. This Commentary is intended to provide guidance to states parties to the Framework Convention, to persons belonging to national minorities, to international organisations and to civil society and academia regarding the ongoing debate on the scope of application of the Framework Convention. It is based on a close comparative and analytical reading of the Opinions adopted by the Advisory Committee throughout four cycles of monitoring in the states parties since 1998,¹ and builds on three previous thematic commentaries that were adopted by the Advisory Committee: on education in 2006;² on effective participation in public life in 2008;³ and on language rights in 2012.⁴ Valuable input has also been collected from national minority and civil society representatives,⁵ academics and other interlocutors, including during broader consultations held in the final stages of the drafting process.

2. Minority rights are granted at the individual level to each person belonging to a national minority. It is further specified in Article 3(2) of the Framework Convention that minority rights are “exercised individually and in community with others”. In fact, a number of rights only make sense if exercised in community with others, and the enjoyment of some rights presupposes the presence of or even formal association with others. Minority rights therefore have an individual, a social and a collective dimension. Despite the fact that a number of international instruments make reference to minority cultures, languages or traditions, and some common understanding exists as to what the term ‘minority’ entails, there has never been a universally shared definition.⁶ In line with this tradition, the Framework Convention does not contain a definition of the term ‘national minority’ or of the phrase ‘person belonging to a national minority’. As a result, the question of who is to be recognised as a right holder under the Framework Convention has, since its adoption, been the subject of extended debate at international and national, academic and political levels.

3. It is the goal of the Framework Convention to ensure that the space for diversity and for being “different” in society is protected and affirmed, thereby promoting the integration and cohesion of societies.⁷ Broader questions relating to the integration of societies have therefore always featured in the monitoring work of the Advisory Committee, sometimes resulting in disapproval by the respective state party.⁸ Indeed, as a result of the increased diversity of European societies in recent years, increased attention has been paid by a number of actors to the imperative of forming inclusive and integrated societies where diversity is respected and preserved.⁹ With that in mind and in order to clarify both the personal and substantive reach of its work, the Advisory Committee considers it appropriate to devote its Fourth Thematic Commentary to the Framework Convention’s scope of application.

-
1. The Commentary makes references to first, second, third or fourth cycle, country-specific Opinions where findings of particular relevance to the scope of application were made. These references are illustrative only.
 2. See Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) First Commentary on Education under the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002, 2 March 2006, www.coe.int/minorities.
 3. See ACFC Second Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, ACFC/31DOC(2008)001, 27 February 2008, www.coe.int/minorities.
 4. See ACFC Third Commentary on the Language Rights of Persons belonging to National Minorities under the Framework Convention, ACFC/44DOC(2012)001, 24 May 2012, www.coe.int/minorities.
 5. The term “minority representative” throughout the text does not contain a legal notion; it refers to advocates or spokespersons who have come forward to share their views.
 6. See *travaux préparatoires*, various attempts in the Parliamentary Assembly of the Council of Europe (PACE), and, in particular, the Commentary of the Working Group on Minorities to the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
 7. See the Preamble of the Framework Convention: “[...] Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society [...]”.
 8. See, *inter alia*, First Opinion on Denmark and Government Comments on the First Opinion on Denmark, and First Opinion on Germany and Government Comments on the First Opinion on Germany.
 9. The increased preoccupation with integration-related issues is, for instance, reflected in the work of the OSCE High Commissioner on National Minorities (HCNM) (see Ljubljana Guidelines on Integration of Diverse Societies November 2012) as well as in the fact that the European Commission against Racism and Intolerance (ECRI) has included integration policies in the four topics common to all member states in its fifth round country reports.

4. The adoption of the Framework Convention in 1995, in the aftermath of violent conflicts in Europe, as the only legally binding international instrument on the rights of persons belonging to national minorities, firmly anchored the protection of minority rights within the universal set of multilaterally recognised human rights. Minority rights, according to Article 1 of the Framework Convention, form part of the international human rights protection system, which is based on the premise that everyone is born free and equal in dignity and rights.¹⁰ The purpose of embracing minority rights as an integral part of human rights was not to challenge the notion of equality among all individuals, but to advance it further by establishing a set of specific rights for persons belonging to national minorities to ensure that they are enabled to participate fully and equally in society while being protected from assimilation. Importantly, persons belonging to national minorities require guarantees to enable them: (i) to express difference and to have that difference recognised; (ii) to gain equal access to resources and rights despite difference; and (iii) to engage in social interaction on the basis of respect and understanding across difference.

5. The superficial conclusion is sometimes made that the application of the Framework Convention, given the absence of a definition of national minority, is in practice left solely to the discretion of states parties. This interpretation, however, is incorrect. It runs counter to Article 26 of the Vienna Convention on the Law of Treaties and the basic principle of *pacta sunt servanda*. The purpose of this Commentary is to make it clear that the absence of a definition in the Framework Convention is indeed not only intentional but also necessary to ensure that the specific societal, including economic and demographic, circumstances of states parties are duly taken into account when establishing the applicability of minority rights. The Framework Convention was deliberately conceived as a living instrument whose interpretation must evolve and be adjusted regularly to new societal challenges. Multiple identities and increasing mobility, for instance, have become regular features of European societies. However, such features must not limit access to minority rights. This approach is fully in line with the principle of dynamic interpretation developed by the European Court of Human Rights with respect to the European Convention on Human Rights.

6. While the Framework Convention binds states parties from its entry into force within the domestic jurisdiction, its framework character nevertheless requires additional legal instruments at domestic level to make it fully operational. In many states, definitions of rights holders have been established in domestic legislation to give effect to the provisions laid down in the Framework Convention. The Advisory Committee has consistently acknowledged that states parties have a margin of appreciation in this context, but has also noted that this margin must be exercised in accordance with the general rules of international law contained in Articles 31 to 33 of the Vienna Convention on the Law of Treaties. In particular it must be exercised in line with the obligation to interpret a treaty in good faith and in the light of its object and purpose. In the case of the Framework Convention, its fundamental principles set out in the Preamble remind states parties to seek maximum expression of the spirit of friendly relations and co-operation in all of their actions pertaining to minority protection. Moreover, its Article 2 underlines the essential character of the principles of good faith, good neighbourly relations and non-interference in another state's internal affairs to ensure that the many diverse interests that are affected in the implementation of the Framework Convention can be reconciled by states parties.¹¹

7. When examining the approaches taken by states parties with regard to the scope of application of the Framework Convention, the Advisory Committee has therefore consistently encouraged the authorities to be inclusive and context specific and to consider on an article-by-article basis which rights should be made available to whom. Such an approach not only ensures the most effective implementation of the Framework Convention based on fact rather than status, but it also promotes a societal climate of dialogue and understanding, where cultural diversity is viewed as a source of enrichment rather than division.

8. This Commentary begins with an analysis of the right to free self-identification of persons belonging to national minorities as a cornerstone of minority rights (Part II). It thereafter discusses the various practices developed by states parties to define the beneficiaries of minority rights according to personal and other criteria (Part III). Part IV explains the open and contextual approach that has been applied by the Advisory Committee throughout its monitoring activities in line with the basic principles contained in Articles 3-6 of the Framework Convention. Based on the article-by-article approach developed by the Advisory Committee from its inception, Parts V-VII present an analysis of the scope of application of the various rights contained in the Framework Convention. While some articles explicitly address all persons in the territory of the state party (Part V), there are some minority rights with a broad scope of application that, given their nature, must apply to all national minorities (Part VI), while there are other minority rights where states parties may require specific preconditions for their enjoyment (Part VII).

10. See Article 1 of the Universal Declaration of Human Rights.

11. See also the Framework Convention's Explanatory Report, paragraph 32: "This article provides a set of principles governing the application of the Framework Convention. [...] The principles mentioned in this provision are of a general nature but do have particular relevance to the field covered by the Framework Convention".

Part II

The right to free self-identification

1. General considerations

9. The right to free self-identification contained in Article 3 of the Framework Convention is a cornerstone of minority rights.¹² The Advisory Committee has consistently underlined the centrality of this provision. “Free” implies, in this context, the individually established and informed decision to avail oneself of the protection of the Framework Convention. Article 3 is thus necessarily applicable to everyone, as every person must have the right to identify freely as a member of a specific group, or to choose not to do so. The Framework Convention’s Explanatory Report points out, however, that the choice of the individual is not to be arbitrary but must be linked to some objective criteria.¹³

10. The Advisory Committee has intentionally refrained from interpreting what such objective criteria may be, as it is clear from the wording of the Explanatory Report that they must only be reviewed vis-à-vis the individual’s subjective choice. Thus, objective criteria do not constitute elements of a definition. Self-identification begins with the free decision of the individual which, if no justification exists to the contrary, is to be the basis of any personal identification.¹⁴ In the view of the Advisory Committee, a person’s free self-identification may only be questioned in rare cases, such as when it is not based on good faith. Identification with a national minority that is motivated solely by the wish to gain particular advantages or benefits, for instance, may run counter to the principles and purposes of the Framework Convention, in particular if such action diminishes the intended benefits and rights available to persons belonging to national minorities.

11. While the official recording of a self-identification may, in some cases, require the evidence of objective criteria,¹⁵ a minority identity must not be externally imposed. The Advisory Committee has criticised the mandatory recording of ethnicity in identity documents or in internal records of administrative entities, including the police and health care facilities, as contrary to the right to free self-identification.¹⁶ Moreover, it has considered that free self-identification implies the right to choose on a situational basis when to self-identify as a person belonging to a national minority and when not to do so.¹⁷

12. In practice, this means that each person belonging to a national minority may freely decide to claim specific rights contained in the Framework Convention, while under certain circumstances or with respect to certain spheres of rights, he or she may choose not to exercise these rights.¹⁸ Such individual decisions must, however, not result in disadvantages for other individuals identifying with the same minority by precluding them from claiming their minority rights. In this context, the Advisory Committee has reiterated its view that any numerical thresholds established as a precondition for the applicability of certain minority rights must be interpreted flexibly (see also paragraph 82). Otherwise, an indirect obligation to self-identify would be placed on persons belonging to national minorities in order to ensure that access to a specific right is maintained. At the same time, the individual decision to identify or not to identify with a particular minority must be respected by others who affiliate themselves with the same group and who equally must not exert pressure one way or the other.

12. According to Article 3(1), “Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.”

13. According to para. 35, Article 3(1) “does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity.”

14. See also General Recommendation VIII of the Committee on the Elimination of Racial Discrimination (1990).

15. See also *Ciubotaru v. Moldova* (application no. 27138/04), Judgment of 27 April 2010, where the European Court of Human Rights acknowledged the right of a government to require the existence of objective evidence of a claimed identity.

16. See Fourth Opinion on the Czech Republic, First Opinion on Germany, Third Opinion on Ireland, First and Third Opinions on the Russian Federation and First and Second Opinions on Ukraine.

17. Persons belonging to national minorities may for instance choose to have their name officially recognised in a minority language but in parallel not use their minority language in contact with local administrative authorities. See also Third Thematic Commentary (footnote 4), especially paragraphs 16-18.

18. Persons belonging to national minorities may for instance take an informed decision to enrol their children in mainstream schools without suffering any disadvantages in terms of access to other minority rights as a result, and without such a decision having an impact on the general availability of minority language education to other members of the same group.

13. The right to free self-identification also extends to multiple affiliations. In fact, the Framework Convention implicitly acknowledges multiple affiliations by promoting the preservation of minority identities in parallel to successful and effective integration in broader public life. Persons belonging to national minorities should never be obliged to choose between preserving their minority identity or claiming the majority culture, as both options must be fully available to them.¹⁹ This implies that practices by which an individual affiliates with a particular minority should not be seen as exclusive, as he or she may simultaneously identify with other minorities or with the majority.²⁰ In some instances, such a choice may be the consequence of previous assimilation processes into the majority or into another dominant minority. However, this must not be used as an argument against the rights of persons belonging to national minorities to self-identify freely and to claim minority protection.

14. The Advisory Committee has further called on states parties to ensure that all persons and groups who may benefit from the Framework Convention are made aware and enabled to avail themselves of the right to self-identify freely in order to access the rights contained in the Framework Convention. This is the case when the choice of affiliating with a minority is not made difficult in practice and when it is assured that the choice is made free of fear of resulting disadvantages or of loss in social prestige.

2. Free self-identification in the context of census and other general data collection processes

15. In countries where data on national, ethnic or religious affiliation are collected in the context of broader population census exercises, such exercises must be organised and conducted in line with internationally recognised principles, including personal data protection standards.²¹ It follows further from the right to free self-identification that any participation in data collection exercises related to ethnic background must be voluntary. In particular, there must be no automatic inference from a particular indication (for example language use) to another indication (for instance religion, ethnicity) and no assumption of certain linguistic, religious or ethnic affiliations is to be made based on a person's name or other characteristics.²²

16. The right to free self-identification applies in each data collection exercise separately. This means that persons belonging to national minorities must not be required always to self-identify in the same manner. Lists of possible responses to identity-related questions should be open not closed, and the opportunity to express multiple affiliations should be provided explicitly. Given the importance attached in some states parties to the size of a minority population for access to minority rights, multiple affiliations must also not only be recorded but also adequately processed, analysed and displayed. These considerations on the collection, processing and reporting of data must also be applied to other situations (for example school enrolment) that can imply self-identification.

17. In situations where the enjoyment of particular minority rights is linked to numerical thresholds,²³ the right to free self-identification further requires that persons belonging to national minorities are informed of the importance attached by the authorities to census and other data collection exercises. The Advisory Committee has therefore systematically encouraged states parties to make all information on the methodology and aim of data collection available in the languages of national minorities, and to include persons belonging to national minorities in the organisation and operation of such processes, particularly in areas where national minorities are settled in substantial numbers.²⁴

19. See also First and Third Thematic Commentaries (footnotes 2 and 4).

20. This may for instance occur in mixed families where several languages are spoken on an equal basis.

21. In the context of population census exercises, the Advisory Committee has encouraged states parties to adhere to the EUROSTAT/ UN recommendations for the organisation of population and housing censuses. See Conference of European Statisticians Recommendations for the 2010 Censuses of Population and Housing, prepared in co-operation with the Statistical Office of the European Communities (EUROSTAT) and the United Nations Economic Commission for Europe, paragraph 426: "respondents should be free to indicate more than one ethnic affiliation or a combination of ethnic affiliations if they wish so", paragraph 431: "Questions will generally refer to one language only. Multiple languages may be required for the mother tongue and main languages of minority groups". See, for example, Fourth Opinion on Cyprus, Third Opinions on Estonia and Romania.

22. See, for example, consecutive Opinions on Italy and the United Kingdom.

23. The opening of minority language schools or the official use of minority languages at local level, for instance, may be linked to the actual number of persons belonging to national minorities (see also Part VII).

24. See, for example, Third Opinion on Hungary and Second Opinion on Slovenia.

18. At the same time, the Advisory Committee has cautioned states parties against exclusively relying on official statistics and figures, as these, for a variety of reasons, may not fully reflect reality.²⁵ Results should be reassessed periodically and analysed flexibly, in close consultation with minority representatives. Authorities should also further avail themselves of other sources of information, including the general labour force and other surveys, as well as independent qualitative and quantitative research available on issues pertaining to the access to rights of persons belonging to national minorities.

25. Due to a history of past disadvantage, discrimination or even persecution based on ethnic origin, some persons belonging to national minorities are still unwilling to indicate their ethnic background to any official entity. Misperceptions about the use or apparent dangers inherent in census exercises are sometimes disseminated among minority communities for political purposes with the very aim of preventing them from being counted in high numbers.

Part III

Approaches taken by states parties to the scope of application of the Framework Convention

1. Declarations and reservations at the time of ratification

19. The Framework Convention is open for signature by member states of the Council of Europe and, in principle, also by other states.²⁶ There are currently 39 states parties to the Framework Convention, all of them member states of the Council of Europe. The last ratification took place in 2006 when Montenegro became a party to the Convention.²⁷ In addition to the 39 states parties, where the implementation of the Framework Convention is monitored by the Advisory Committee, Kosovo* is subject to a specific monitoring arrangement in conformity with the 2004 Agreement between the United Nations Interim Administration in Kosovo (UNMIK) and the Council of Europe.

20. Eight Council of Europe member states are not parties to the Framework Convention. Belgium, Greece, Iceland and Luxembourg have signed the Framework Convention and have therefore committed themselves to act in line with the objectives and purpose of the Framework Convention,²⁸ while Andorra, France, Monaco and Turkey have neither signed nor ratified the treaty.

21. The Advisory Committee considers that the implementation of the rights contained in the Framework Convention, given its objectives of managing diversity through the effective protection of minority rights,²⁹ and promoting balanced approaches to the sometimes conflicting goals of individual rights protection and the safeguarding of broader state interests, is beneficial to all societies. It notes that any reasoning provided in the 1990s for not ratifying the Framework Convention must be regularly reassessed as societies have substantially changed since then. Similarly, the argument that no national minorities exist in the country may well no longer reflect contemporary realities. For the same reason, the Advisory Committee also regularly invites states parties that have not yet done so to ratify the European Charter for Regional or Minority Languages (ECRML, ETS No. 148). While placing the emphasis on the obligation of the state to protect and promote regional or minority languages as part of cultural heritage, rather than granting individual rights to the speakers of these languages, the Charter represents a unique international instrument in this field and plays a complementary role to the Framework Convention.³⁰

22. According to Article 27 of the Framework Convention, non-member states of the Council of Europe may ratify the Framework Convention upon invitation by the Committee of Ministers. The Explanatory Report makes it clear that Article 27 refers to participating states of the Organization for Security and Co-operation in Europe (OSCE). The Advisory Committee agrees that the Framework Convention could indeed be particularly relevant in some OSCE participating states, such as Central Asian states, due to the broad diversity of their societies. It further notes that some interest in this regard has already been expressed. In line with its general principle of dynamic interpretation, it considers however that the Explanatory Report should not be understood as preventing other states that co-operate with the Council of Europe in a variety of ways, including as observer states, from becoming a party to the Framework Convention.

26. See the wording of Article 27 of the Framework Convention.

27. Following the declaration of independence on 3 June 2006, the Framework Convention was ratified on 6 June 2006.

* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

28. See Article 18 of the Vienna Convention on the Law of Treaties.

29. See Explanatory Report, paragraph 28.

30. See also Third Thematic Commentary (footnote 4), paragraph 11.

23. States parties to the Framework Convention have developed various approaches to establish the beneficiaries of the rights contained in the Framework Convention. In 18 cases, declarations and reservations were deposited at the time of ratification or signature, clarifying to whom the rights contained in the Framework Convention are to be applied or how certain provisions are to be interpreted.³¹ The declarations typically either establish a general definition with specific criteria that must be met,³² list explicitly which groups are to be covered,³³ or state that there are no national minorities present in the territory.³⁴ Reservations at the time of signature or ratification were declared in two cases.³⁵

24. The Advisory Committee has systematically reviewed the effects of these declarations and reservations on persons belonging to national minorities and on their access to rights. Given that, in many cases, the declarations date back to the late 1990s, and taking into account the substantially changed conditions in states parties since then, their pertinence should be reviewed at regular intervals by the states parties concerned to ensure that the approach to the scope of application accurately reflects the present-day societal context.

25. Other states parties have incorporated statements into the first state report or have adopted national legislation containing references to the groups of persons who are to be considered as belonging to national minorities. These definitions, again, are usually formulated as delimitations to the scope of application, either by explicitly naming specific groups of beneficiaries, or by enlisting the preconditions that must be met in order for individuals to become eligible to benefit from the Framework Convention.³⁶

26. According to Article 26 of the Framework Convention, the Committee of Ministers is to be assisted by the Advisory Committee in evaluating the adequacy of the measures taken to give effect to the principles set out in the Framework Convention. In doing so, the Advisory Committee has reviewed the measures taken by states parties with respect to the scope of application in the same way as any other measure aimed at implementing the Framework Convention. In particular, the Advisory Committee has considered it to be its duty to assess whether the approach taken to the scope of application is in good faith and does not constitute a source of arbitrary or unjustified distinction among communities with regard to access to rights.³⁷ In its work, it has thus assessed the various approaches and delimitations established by states parties in order for the Framework Convention to become applicable, which are often based on the elements below.

2. Criteria applied by states parties

a. Formal recognition

27. The formal recognition of a national minority as such is required in a number of states parties in order for persons belonging to these groups to access minority rights. The Advisory Committee has consistently criticised such an approach as per se exclusionary and not in line with the principles contained in the Framework Convention. While some states parties have explicitly acknowledged the impracticality of relying on a formal recognition for the application of minority rights,³⁸ a number of other states have, on a *de facto* basis, disregarded a requirement for formal recognition, thereby broadening the scope of application of the Framework Convention in practice.³⁹ Such developments have always been welcomed by the Advisory Committee and understood as efforts to correct the shortcomings that arise from applying formal criteria that are either too rigid or no longer reflect the actual situation. This further reaffirms that the Framework Convention is not suited for static definitions or criteria.

31. See Full List of Reservations and Declarations for Framework Convention for the Protection of National Minorities (ETS No. 157) www.coe.int/en/web/dlapil/treaty-office.

32. See the declarations by Austria, Estonia, Latvia, Luxembourg, Poland and Switzerland.

33. See the declarations by Albania, Denmark, Germany, the Netherlands, Norway, Sweden, the Slovak Republic, Slovenia and “the former Yugoslav Republic of Macedonia”.

34. See the declarations by Liechtenstein, Luxembourg and San Marino. Some states declared that they viewed the ratification of the Framework Convention as an act of solidarity with the objectives of the Convention. See First State Reports submitted by Liechtenstein and by Malta.

35. Belgium declared that the Framework Convention should apply without prejudice to the constitutional provisions and principles and the legislative rules governing the use of languages, and that the notion of national minority would be defined at national level. Malta reserved the right not to be bound in some respects by the provisions of Article 15.

36. See First State Reports submitted by Armenia, Bulgaria and Hungary.

37. References to this duty can be found in all First Opinions of the Advisory Committee.

38. See First State Report submitted by Finland, stating that “the existence of minorities does not depend on a declaration by the Government but on the factual situation in the country”.

39. Roma have, for instance, been included under the protection offered by the Framework Convention in Cyprus, despite not officially being recognised as national minorities. See Second State Report submitted by Cyprus. Finland has applied guarantees provided to “Old Russians” as well as to newer Russian-speaking arrivals. See Third Opinion on Finland.

28. The Advisory Committee has further observed that the *de facto* inclusion of beneficiaries under the protection of the Framework Convention or of certain of its articles often forms part of an evolutionary process that eventually may lead to formal recognition. Beginning with the free self-identification of individuals who are acknowledged by society as forming a distinct – albeit equally valued – minority, access to rights is then granted to promote and preserve the practices by which the group defines itself, leading in some cases to the inclusion of the minority in formal mechanisms of national minority protection.⁴⁰ Thus, official recognition as a national minority or the granting of a specific status, do not constitute the beginning of the process of minority rights protection, nor are they essential for the application of the Framework Convention or of specific articles of it. Recognition as a national minority has a declaratory rather than a constitutive character. Access to minority rights should therefore not depend on formal recognition.

b. Citizenship

29. A recurrent precondition used by states parties is the requirement that a person belonging to a national minority must be a citizen in order to benefit from the protection of the Framework Convention. The Advisory Committee has pointed out in this regard that the inclusion of the citizenship requirement may have a restrictive and discriminatory effect, given that it is often the members of particularly disadvantaged groups and minorities, including those who have suffered or been displaced as a result of conflict, who face difficulties in obtaining citizenship and are therefore affected by this restriction.

30. In a number of regions in Europe, persons belonging to national minorities have lost their citizenship or even become stateless due to the creation of new states, despite having long-lasting ties to their places of residence. The Advisory Committee has consistently underlined the specific challenges faced by persons belonging to national minorities who are *de jure* or *de facto* stateless and has drawn attention in this context to the right of each person to a nationality in line with the European Convention on Nationality (ETS No. 166).⁴¹ Indeed, it should be considered for each right separately whether there are legitimate grounds to differentiate its application based on citizenship.⁴² The Advisory Committee has always welcomed instances in which states parties have extended minority rights to non-citizens, thereby in practice disregarding an officially still existing precondition of citizenship.⁴³ In some instances, it has explicitly recommended the more consistent application of minority rights to “non-citizens”.⁴⁴

c. Length of residency

31. In their definitions of national minorities, a number of states parties refer to the length of residency of a particular group in the territory of the state.⁴⁵ Attempts at creating time limits in definitions such as “prior to the 20th century”,⁴⁶ or “approximately 100 years”,⁴⁷ have been used in this context. Less absolute concepts that are subject to interpretation have also been developed, including the notion of “traditional residence”, “traditional minorities” or the term “autochthonous national minorities”.⁴⁸ In some cases the notion of “long-lasting ties to a particular region” is applied, including with regard to non-residents who express a willingness to return to this region and to benefit from the protection of the Framework Convention.⁴⁹ The Advisory Committee considers that it follows by implication from the fact that only Articles 10(2), 11(3) and 14(2) of the Framework Convention establish specific guarantees in areas traditionally inhabited by persons belonging to national minorities, that the length of residency in the country is not to be considered a determining factor for the

40. In the Czech Republic and Finland, for instance, immigrant groups such as Somalis and Vietnamese are also represented in cultural consultation mechanisms and receive state support for their activities.

41. See in particular Article 4 of the European Convention on Nationality (ETS No. 166).

42. See also the Venice Commission Report on Non-citizens and Minority Rights (CDL-AD(2007)001) adopted at its 69th plenary session (Venice, 15-16 December 2006), comprehensively analysing international and European standards and practice as regards the relevance of citizenship and other criteria for defining beneficiaries of minority rights, and calling for a nuanced approach to the citizenship criterion for the applicability of minority rights, depending on the specific right in question.

43. See Third Opinion on the Czech Republic, for instance.

44. See Second Opinion on Latvia.

45. See, *inter alia*, Austria, Denmark, Germany and Hungary. The request for access to minority rights by the Polish minority in Austria, for instance, has been rejected based on the argument that there has not been uninterrupted and “traditional” residence. See Fourth State Report of Austria.

46. See, for instance, First State Report of Sweden.

47. See, for instance, First State Report of Austria.

48. At the time of depositing the instrument of ratification, Slovenia declared, for instance, that it would consider as national minorities “the autochthonous Italian and Hungarian National Minorities”, and that “the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia.”

49. See, for instance, Second Opinion on Georgia, welcoming the government’s open approach towards Meshketians and Ossetians who were deported or displaced by conflict.

applicability of the Framework Convention as a whole (see also Part VII).⁵⁰ It has further consistently held that any temporal restrictions should be regarded flexibly and that distinctions in the treatment of otherwise similar groups based solely on the length of their residency in the territory can be unjust.⁵¹

d. Territoriality

32. A number of states parties have also applied territorial criteria for the identification of rights holders under the Framework Convention, establishing that minority rights may only be enjoyed within specific areas. The Advisory Committee has argued that flexibility should be applied and that persons belonging to a national minority who live outside such areas should not be disproportionately disadvantaged.⁵² In particular the fact that only some rights (that is Articles 10(2), 11(3) and 14(2)) allow for territorial limitations implies again that the applicability of other rights should not in principle be restricted to certain regions. The Advisory Committee has indicated on a number of occasions that this approach is in line with Article 29 of the Vienna Convention on the Law of Treaties which determines that a treaty is binding in respect of the state party's entire territory unless a different intention is ascertained. In addition, territorial limitations may constitute an a priori exclusion of persons belonging to national minorities from the scope of application which is incompatible with the principles contained in the Framework Convention.⁵³

33. The Advisory Committee has further criticised situations in which imposed differentiations between members of a group based on territorial features lead to the weakening of a group and, as a result, to the reduced access to rights for persons belonging to that national minority.⁵⁴ It has in particular argued that demographic changes over time must be taken into account.⁵⁵ Increased mobility in many countries has resulted in a high number of persons belonging to national minorities moving from areas of their traditional settlement to other regions that offer more favourable economic conditions or educational opportunities, such as industrialised areas or urban centres.⁵⁶ While residence in a specific area might thus be conducive to the more effective enjoyment of some minority rights, it must not result in the arbitrary denial of the enjoyment of all minority rights.⁵⁷

e. Substantial numbers

34. Also linked to the territorial criteria is the notion of "in substantial numbers", as found in Articles 10(2) and 14(3) and in Article 11(3) (see also Part VII). As with other criteria contained in these articles, various interpretations by states parties have been made. In some cases, the term 'compact settlement' has been used to define the specific rights holders.⁵⁸ While acknowledging that it may be more problematic to ensure access to some minority rights for persons belonging to national minorities who live dispersed throughout the country, the Advisory Committee has pointed out repeatedly that their recognition as national minorities and their access to minority rights in general must not be impeded through the use of numerical criteria. It has expressed its deep concern, for instance, when Roma⁵⁹ have been excluded altogether from the scope of application of the Framework Convention and thereby entirely denied protection as a national minority, because of the fact that they live territorially dispersed and not settled in substantial numbers anywhere in the country.⁶⁰

f. Support by "kin-states"

35. A number of states parties define the term 'national minorities' as those groups who have a link with a "kin-state", classifying those without such link as 'ethnic minorities' or 'ethno-linguistic groups'. The Advisory Committee considers that the question whether support is or is not available from another state cannot be

50. The length of residency within the state is irrelevant in terms of the applicability of minority rights arising under Article 27 of the International Covenant on Civil and Political Rights (ICCPR). See General Comment of the UN Human Rights Committee No. 23(50), CCPR/C/21/Rev.1/Add5/26 April 1994.

51. See Third Opinion on Austria. See also Fourth Opinion on Denmark, where Roma are not recognised as national minorities with the argument that they "have no historical or long-term and unbroken association with Denmark".

52. For instance, Third Opinion on the Slovak Republic.

53. See, for instance, First Opinion on Denmark and First Opinion on Italy.

54. See Second Opinion on Austria with regard to the differentiation between Burgenland Croats and Croats.

55. See, for instance, Fourth Opinion on the Slovak Republic.

56. See Third Opinions on Finland and Germany.

57. See, for instance, consecutive Opinions on Denmark, Italy and Portugal.

58. See, *inter alia*, First State Reports submitted by Austria, Azerbaijan and Germany.

59. The term "Roma and Travellers" is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term "*Gens du voyage*", as well as persons who identify themselves as Gypsies.

60. See First Opinion on the Netherlands.

used as a relevant point of differentiation with respect to recognition or access to rights. While not favouring any particular terminology, it has criticised cases when different categories lead to the formation of hierarchies and different “categories” of minorities, as this may result in unjustified distinctions with respect to applicable rights.⁶¹

36. The Advisory Committee has welcomed bilateral agreements to facilitate cross-border relations and co-operation, for instance regarding the supply of textbooks and exchanges of teachers for the benefit of high-quality education in minority language schools. However, it has disapproved of agreements that out-source such fundamental aspects of minority protection to another state.⁶² It follows from the international law principle of state sovereignty that states hold the single jurisdiction over their territory and population, a jurisdiction that can be restricted only within the limits of international law. Overall, the responsibility to protect minority rights, as part of general human rights, lies primarily with the state where the minority resides.⁶³ While the Advisory Committee interprets Article 17 to imply that states parties must not interfere with the enjoyment of benefits from other countries, they must not rely on them instead of striving themselves for the realisation of minority rights.

g. Specific identity markers and ascribed categories

37. In a variety of states parties, the understanding of the term ‘national minority’ is linked to specific characteristics that are often considered as emblematic for identity and for differentiating the minority from the majority, including language, religion, culture, ethnic background, specific traditions or visible features. These markers are often based on common perceptions that are shared within society, by members of the majority and minorities alike. Nevertheless, employing such externally defined markers entails the danger of including or excluding individuals against their will.⁶⁴ The Advisory Committee reiterates its position that a person’s identification must be based on free self-identification, unless there is a valid justification for not doing so (see paragraph 10).

38. Moreover, caution must be applied in the use of externally defined markers, as they are often based on presumptions. The categorisation of the minority as a static and homogeneous group may reinforce stereotypes and does not pay adequate attention to the broad diversity and intersectionality that exists within minorities, as within all groups (see also paragraph 40). In some states parties, legislation makes reference to other externally imposed criteria, such as “ethnic minority threatened by social exclusion” or “citizens in a vulnerable socio-economic situation”;⁶⁵ while in others, an affiliation with a particular national minority may be presumed based on names.⁶⁶ The Advisory Committee considers such practices of association of persons with a specific group based, without consent, on presumptions such as names, language, or visible features, as incompatible with Article 3(1) and the right to free self-identification (see also paragraph 15).⁶⁷

61. See, for instance, Second and Third Opinions on Albania and First Opinion on Poland.

62. See Second Opinion on Albania and First Opinion on Germany.

63. See also OSCE HCNM Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations, June 2008.

64. The Advisory Committee considered, for instance, that the over-reliance on the “racial group” criterion applied in the United Kingdom might, despite its wide application, result in a priori exclusions of groups that have legitimate claims. See Third Opinion on the United Kingdom.

65. See, *inter alia*, Third Opinion on Bulgaria.

66. See, *inter alia*, First Opinion on Italy.

67. See Third Thematic Commentary (footnote 4).

Part IV

Context-specific article-by-article approach developed by the Advisory Committee

1. Fundamental principles

39. The Framework Convention contains a catalogue of rights in different spheres of public life, ranging from individual freedoms, to media, language and education rights and the right to effective participation. Given their different nature, the scope of application of the various rights must be adjusted accordingly: the right to manifest one's religion, for instance, as also stipulated in Article 9 of the European Convention on Human Rights, must be extended to all persons belonging to national minorities, while the right to display a minority language on topographical signs may, for legitimate reasons, be made available only under certain preconditions. Depending on the nature of the minority rights contained therein, the scope of application of the Framework Convention must therefore be established separately for each article, which is why, from its first monitoring cycle, the Advisory Committee has referred to its article-by-article approach.⁶⁸ Overall, the implementation of the Framework Convention must always be based on the fundamental principles contained in its Articles 3-6, which are interlinked and which must inform the interpretation of the instrument as a whole.

40. National minorities within one country typically vary in number and size, and they may live compactly or be more or less dispersed throughout the territory. It is also important to consider the diversity that exists within minorities as in any population group, including on the basis of gender, sexual orientation, age, disability, religion, political beliefs or access to economic resources. Accordingly, the priorities of minority communities and the individual priorities of persons belonging to these communities often diverge. For some persons belonging to minorities, the main priorities are equality and integration; for others, it may be the quest for a protected space to maintain and promote their minority identity. These priorities may further change over time, depending on the context, the political climate and socio-economic conditions. It is the Advisory Committee's view that the diversity within and among national minorities must be acknowledged and respected in the implementation of all minority rights, regardless of their specific nature.

41. With respect to the obligation of states parties to promote the conditions for the preservation and development of national minority cultures, this also implies that the term 'minority culture' must not be interpreted in a static, unitary or limiting sense. It is each person belonging to a national minority who, in line with the right to free self-identification, decides how he or she will practise the minority culture or identity. Accordingly, not only is the right to preserve traditions protected but also the right to develop a minority culture in line with broader societal evolution, and to form contemporary expressions of minority identity.

42. Equality considerations are essential for the promotion of all minority rights, not only with respect to relations between national minorities and the majority but also, importantly, regarding relations between the various minorities. In the view of the Advisory Committee, the general equality principle is called into question when altogether different principles or disproportionately different protection mechanisms are applied to the various minorities, or when separate government bodies are responsible for the protection and promotion of their respective rights.⁶⁹ While efforts to promote equal opportunities for all persons belonging to national minorities must be tailored to the specific needs and situations of the various groups in order to be effective, the basic approaches and rights standards that are applied must be equal.

68. See all First Opinions of the Advisory Committee.

69. In a variety of states, the protection of the rights of Roma is considered to be a socio-economic and sometimes even a security issue. As a result, protection and promotion measures are frequently co-ordinated separately from those related to other minority groups which may result in the application of different standards. While the Advisory Committee values the specific attention that is paid to the particular socio-economic disadvantages that many Roma face, it considers that these measures must be additional to other minority rights' protection measures, such as those related to the preservation of Roma cultures, languages and traditions.

43. Full equality cannot be effectively achieved when diversity as such is perceived negatively or when only certain forms of diversity are accepted and tolerated. The Advisory Committee has repeatedly criticised situations where hierarchies are created among the various minorities and existing inequalities are reinforced through uneven attention and support.⁷⁰ In addition, an environment in which diversity is viewed as “alien” or “imported” and rather disconnected from mainstream society does not offer the appropriate conditions for the expression, preservation and development of minority cultures. Article 6 therefore calls for deliberate efforts to foster a climate of mutual respect, understanding and co-operation where persons belonging to national minorities are recognised as integral elements of society, who effectively enjoy equal access to rights and resources, while being provided with opportunities for social interaction and inclusion across difference. Given its purpose, as established by the Preamble, of promoting broader societal peace and stability through the enhancement of minority rights, the Framework Convention has an immediate relevance for the whole society.

44. The Advisory Committee’s established position is that integration is a process of give-and-take and affects society as a whole. Efforts cannot therefore be expected only from persons belonging to minority communities, but they must also be made by members of the majority population.⁷¹ This is particularly relevant in distinguishing successful integration from forced assimilation, which is explicitly prohibited in Article 5(2) of the Framework Convention. While assimilation forces persons belonging to a minority to relinquish their specific characteristics to blend into a society that is dominated by the majority, integration requires both the majority and the minorities to mutually adapt and change through an ongoing negotiation and accommodation process.

45. In the view of the Advisory Committee, the above fundamental principles of the Framework Convention contained in Articles 3-6 must be considered in the interpretation of all further articles in order to ensure that the rights of persons belonging to national minorities are effectively enjoyed.

2. Practice

46. In line with its article-by-article approach, the Advisory Committee has repeatedly considered the application of the Framework Convention to persons who do not belong to national minorities but live in a similar situation. Persons belonging to the majority population who live in areas that are mainly inhabited by minority communities, for instance, have been considered in the context of the education rights under the Framework Convention.

47. The Advisory Committee has emphasised in this context that the same protective measures that are applied in minority-language schools, such as the requirement of fewer pupils per class, should also apply to state schools that teach in the official language in otherwise minority-language dominated areas.⁷² Furthermore, the Advisory Committee has considered that other groups which enjoy special protection but are not recognised as national minorities may, in addition, benefit from the protection of the Framework Convention.⁷³ In some contexts, it has also noted that extending the protection of the Framework Convention on a case-by-case basis to persons belonging to the constituent peoples who live in a minority situation could provide an additional tool for promoting their access to rights and addressing the issues they are faced with, without implying a weakening of their status. Indeed, the applicability of minority rights to them is considered by the Advisory Committee as fully in line with the objective and aim of the Framework Convention.⁷⁴

48. In addition, the Advisory Committee has emphasised that the protection offered by the Framework Convention also extends to persons belonging to indigenous peoples without this having an effect on their status as members of indigenous peoples. Specific rights may be applicable to them, whether or not they are formally recognised as a national minority, and without implying recognition as a national minority.⁷⁵ This means that individuals are free to avail themselves, beyond the rights they hold as members of indigenous groups,

70. See, for instance, Third Opinion on Romania and Second Opinion on Georgia.

71. See, for instance, Third Opinion on Estonia. See also Third Thematic Commentary (footnote 4).

72. See Third Opinions on Estonia and Lithuania.

73. See, for instance, Fourth Opinion on Spain with respect to speakers of Catalan, Basque and Galician, namely languages with co-official or protected status. The Advisory Committee found here that language rights can particularly benefit speakers of languages who live outside the designated areas.

74. See Third Opinion on Bosnia and Herzegovina.

75. The Norwegian Sami Parliament stated, for instance, that the Sami did not wish to be considered a national minority as they wished to maintain their status as an indigenous people. The Advisory Committee, however, considered that both protection schemes are not exclusive and may provide parallel benefits to individuals of the group. See First and consecutive Opinions on Norway. See also consecutive Opinions on Denmark, Finland, the Russian Federation and Sweden.

of the protection under the Framework Convention, or to refuse to do so. This has been particularly relevant with respect to the rights contained in Article 5 of the Framework Convention where the Advisory Committee has held that the protection from assimilation also implies that affected individuals must be supported in their efforts to adjust their traditional practices to contemporary challenges, or to engage in economic activities in order to be able to preserve their culture.⁷⁶

49. As regards disputed territories or regions of states parties to the Framework Convention that are *de facto* outside the control of the authorities, the Advisory Committee observes that the applicability of the rights contained in the Framework Convention is not altered as a result of the change in *de facto* authority. On the contrary, the rights of persons belonging to national minorities remain in force and often gain a particular urgency in times of conflict.⁷⁷ International access and the continuation of regular monitoring activities, however, are deeply affected if not entirely stalled by such territorial disputes. The Advisory Committee has repeatedly called on all parties to take a constructive approach in line with the general principles of international law and of the Framework Convention, with a view to safeguarding the rights of persons belonging to national minorities as an integral part of universally applicable human rights throughout the territories of all states parties to the Framework Convention.⁷⁸

76. See, for instance, Third Opinion on the Russian Federation.

77. See also the Advisory Committee ad hoc report on the situation of national minorities in Ukraine, April 2014.

78. See the Advisory Committee Open Statement on the situation of national minorities in Crimea, May 2014, at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069faed>.

Part V

Framework Convention rights applying to all persons

50. A number of articles of the Framework Convention apply to all persons on the territory of states parties, including those not belonging to national minorities, either explicitly or by implication through their specific link with provisions that are applicable to all.

1. Protection against discrimination – Article 6

51. Article 6 of the Framework Convention explicitly applies to “all persons” living in the territory of states parties. Its protection extends into two areas: firstly, effective measures must be taken to promote mutual respect, understanding and co-operation among all persons irrespective of their ethnic, cultural, linguistic or religious identities. Secondly, all persons must be protected against discrimination based on those aspects of their identities.

52. The Advisory Committee has consistently underlined this broad application of Article 6 as the lack of respect for or ill-treatment of migrants, asylum seekers, refugees and/or other individuals who are, for whatever reason, considered to be different from the majority population, may prompt a general environment of fear. This may entice persons belonging to minorities to strive for conformity rather than for the active enjoyment of their rights. Based on Article 6, the Advisory Committee has also evaluated the implementation of the Framework Convention in states parties where, according to the authorities, no persons belonging to national minorities reside.⁷⁹ This has allowed the Advisory Committee to engage in comprehensive discussions with state authorities on “measures taken in pursuance of their general integration policies”.⁸⁰

a. Promotion of mutual respect and intercultural dialogue

53. Some states parties have argued against the relevance of societal cohesion and broader concepts of tolerance and respect for diversity in the protection of national minorities. The Advisory Committee has consistently held, however, that an exclusive view that separates the issue of traditional minority protection from broader questions surrounding the integration of society does not do justice to the aim and purpose of the Framework Convention but rather hinders the enjoyment of the rights of persons belonging to national minorities.⁸¹ In fact, the promotion of tolerance and openness towards diversity in society is essential not only for the development and implementation of successful integration strategies, but it is also a central precondition for persons belonging to national minorities to self-identify as such without hesitation and proactively claim the rights contained in the Framework Convention.

54. Openness and tolerance in society can only be genuine if they are not limited to certain predefined groups but embrace everyone. The Advisory Committee therefore considers questions surrounding the formulation and implementation of effective integration strategies as one of its important concerns. Integration strategies are being developed in many European states today, chiefly in order to address the situation of often large communities of immigrants, some second and third generation, who share linguistic and cultural practices and backgrounds, and who often live in the country as citizens, whether naturalised or by birth.⁸² It is essential that all segments of society, majorities and minorities alike, are addressed in order for integration strategies to effectively facilitate the formation of societal structures where diversity and respect for difference are acknowledged and encouraged as normal, through recognition, mutual accommodation and active engagement on all sides.⁸³

79. See, for instance, Fourth Opinion on Liechtenstein or Third Opinion on Malta.

80. See Article 5(2) of the Framework Convention.

81. Broader concerns related to the integration of society and effective mechanisms regarding protection from discrimination have also consistently been raised in Council of Europe Committee of Ministers' resolutions on the implementation of the Framework Convention, such as, *inter alia*, in the Fourth Resolution on Denmark, the Third Resolution on Estonia, the Fourth Resolution on Germany, and the Third Resolution on Malta.

82. See consecutive Opinions on Liechtenstein, for example.

83. The OSCE HCNM has taken a similar approach. The Ljubljana Guidelines on Integration of Diverse Societies, adopted in 2012, define integration as a process that requires all members of society to accept and create a shared sense of belonging to a given state and common public institutions. See the Ljubljana Guidelines on Integration of Diverse Societies, OSCE HCNM, November 2012.

b. Protection from hostility and hate crime

55. Article 6(2) contains the obligation of states parties to protect all persons against violence and discrimination on ethnic grounds, in other words not only persons belonging to national minorities. Minorities cannot thrive in a society in which diversity is not tolerated or even serves as a pretext for hate crimes and discrimination. This is why it is vital that all states parties strive to apply and achieve the aims of Article 6 of the Framework Convention fully, even those states parties that have explicitly declared that they have only ratified the Framework Convention out of solidarity.

56. The Advisory Committee considers that ethnically based violence must be recognised as an especially nefarious form of violence that concerns and threatens society as a whole, and must thus be resolutely opposed and prevented. In order to address hate crime in a comprehensive manner, criminal codes must contain appropriate provisions that criminalise hate speech, threats and violence based on ethnic grounds as well as public incitement to violence and hatred. In addition, racial motivation must be considered an aggravating circumstance of any offence and law enforcement agents should be appropriately trained to ensure that racially or ethnically motivated attacks and discrimination are identified and recorded, as well as duly investigated and punished through targeted, specialised and prompt action.

57. Fear of discrimination or even violent attack may discourage persons belonging to national minorities from enjoying their right to free self-identification. The downplaying of ethnically based violence as “hooliganism” or the usual wrongdoings of youth can lead to perceptions of tacit approval of such actions by law enforcement agents and thereby dramatically weaken efforts to promote respect and dialogue among different groups. In order to protect individuals from such attacks, it is therefore of equal importance that any such incidents are promptly and unequivocally condemned by senior public figures and community leaders at all levels, and that appropriate messages are communicated to the public through the media and government information channels.

58. The Advisory Committee refers in this context to other bodies with the specific mandate and expertise to address issues related to racial discrimination and protection from hate crime.⁸⁴ It notes in particular the role of the European Commission against Racism and Intolerance (ECRI) in assessing the applicability and effectiveness of anti-discrimination tools and mechanisms, whose monitoring work and reports are central for a systematic interpretation of the Framework Convention in an evolving society.⁸⁵ It is the goal of the Framework Convention to affirm differences in cohesive and integrated societies. Striving for *de facto* equality in the context of the Framework Convention requires adequate and effective strategies to support different identities, including the effective protection from discrimination that is based on any of these differences. In addition, the right to be effectively protected from discriminatory threats or violence contained in Article 6(2) plays an important role in complementing the enjoyment of a number of rights contained in the Framework Convention, in particular those related to political freedoms, such as the freedom of expression, by obliging states parties effectively to sanction any undue interferences or attempts at its limitation.

2. Education and the media as tools for integration – Articles 6(1) and 12

59. Article 6(1) explicitly refers to education, culture and the media as particular fields of importance to the objective of promoting tolerance and intercultural dialogue. In addition, the special significance of education for the integration of society and for the promotion of respect for diversity is reflected in Article 12 of the Framework Convention. Article 12(1) provides that education and research should foster knowledge of the history, cultures, languages and religions of the minorities and of the majority, thereby clearly addressing society as a whole.⁸⁶ In addition, Article 12(2) calls for the development of intercultural exchanges and competencies through the facilitation of “contacts among students and teachers of different communities”. Adequate information on the composition of society, including national and other minorities, must form part of the public curriculum and of textbooks and education materials used in all schools throughout the territories of states parties, not only to promote intercultural understanding and respect among all students, but also to raise the prestige and self-awareness of persons belonging to numerically smaller or disadvantaged groups.

⁸⁴. See in particular the UN Committee on the Elimination of Racial Discrimination and the OSCE/ODIHR hate crime reporting initiative.

⁸⁵. See in particular in this context ECRI General Policy Recommendation (GPR) No. 15 on Combating Hate Speech, adopted on 8 December 2015. This GPR builds on the findings and recommendations published by ECRI during its fifth monitoring cycle, providing additional guidance to member states.

⁸⁶. A similar provision is also contained in Article 7(3) of the ECRML, calling on states to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country.

60. Education materials featuring content on minorities must further be prepared in close consultation with representatives of the respective groups and must not be limited to stereotyped images. Moreover, adequate professional development opportunities and training must therefore be available to all teachers to prepare them for the handling of linguistically and culturally diverse environments.⁸⁷ With respect to the teaching of history throughout states parties, critical thinking and the accommodation of multiple perspectives must be promoted in all efforts.

61. The work of the Advisory Committee is based on the recognition and appreciation of the benefits of intercultural dialogue and multilingualism to promote tolerance and respect for diversity in societies. Language and cultural policies must therefore ensure that all languages and cultures that exist in society are visibly and audibly present in the public domain, so that everybody is aware of the diverse character of society and recognises himself or herself as an integral part of it.

62. The Advisory Committee has therefore consistently encouraged language policies that promote the use of different languages in public places and in the media in order to create respect for lesser-used languages and enhance their visibility and prestige. Overall, inclusive language policies should cater for the needs of everybody based on their different characteristics and needs, including persons belonging to national minorities living outside their traditional areas of settlement, immigrants and “non-citizens”.⁸⁸ In view of the overarching aim of establishing integrated societies that are respectful of their diversities, the Advisory Committee has also encouraged measures that promote the knowledge and the use of minority languages by persons belonging to majority communities.

63. Article 6(1) of the Framework Convention also underlines the role of the media as a tool for the promotion of intercultural understanding and a sense of solidarity in society. Given the immediate amplification of messages and values, the Advisory Committee has consistently called on states parties to ensure that public broadcasters take their responsibilities seriously and promote respect for diversity and ethical journalism in all their programmes. Efforts in states parties to promote ethical standards among journalists and media professionals, and to promote media literacy in society more generally, must include minority representatives. Furthermore, it is important for the formation of an open and pluralist media environment that issues of concern and interest to minority communities generally are given weight in the broader public media debate and that persons belonging to such minorities are portrayed as integral members of society, be it in the role of journalists, presenters and/or interviewees.

87. See, *inter alia*, Third Opinion on Estonia, Second Opinion on Georgia, Third Opinion on Kosovo and Fourth Opinion on the Slovak Republic.

88. See Third Thematic Commentary (footnote 4), paragraph 53.

Part VI

Minority rights with a broad scope of application

64. The Framework Convention's Explanatory Report refers to minority rights being exercised "in community with others", pointing to the fact that communities are formed around a variety of shared practices and the common exercise of rights. The practices by which persons seek to identify themselves are dynamic and evolving, built on what people have in common rather than on differences. They include transmitted knowledge or shared memories that may not always be actively demonstrated. As such, they may vary in intensity and scope, depending on the circumstances. They may evolve over time and they may also be performed from a distance. Given its task to monitor the effective implementation of rights contained in the Framework Convention, the Advisory Committee has primarily been concerned with access to rights and only secondarily with questions surrounding status. Indeed, it considers formal recognition of national minorities an act of a declaratory rather than a constitutive nature (see paragraph 28). In order to ensure that minority rights are not arbitrarily withheld from persons belonging to national minorities who should be protected under the Framework Convention, the Advisory Committee has consistently employed a broad scope of application with respect to the rights contained in the Framework Convention and has commended states parties which do the same. In particular it considers that the following articles of the Framework Convention, given their nature, have a broad scope of application, also including under their protection therefore persons belonging to national minorities who are not recognised as such by the respective state party.

1. Equality – Article 4

65. All persons belonging to national minorities, irrespective of their status or recognition, must be guaranteed the right to equality before the law and equal protection of the law. This general principle of human rights contained in Article 4(1) has not been contested by states parties. The Advisory Committee has repeatedly emphasised the gender dimension in this context, drawing the attention of states parties to the phenomenon of multiple discrimination, as frequently experienced by women belonging to national minorities.⁸⁹ Article 4(2) further calls for special measures to overcome structural disadvantages between the minority and the majority in all spheres. These must be developed and implemented in close consultation with those affected and due account must be taken of the specific conditions of the persons concerned in their design.

66. The Advisory Committee has consistently encouraged states parties to base their equality promotion policy instruments or special measures on comprehensive data related to the situation and access to rights of persons belonging to national minorities, also taking into account the various manifestations of multiple discrimination that may be experienced, including those arising from factors that are unrelated to the national minority background such as age, gender, sexual orientation and lifestyle markers. Moreover, particular attention must be paid to members of the most disadvantaged segments of society, that is those who have been disempowered economically, socially or geographically, due to their size or because of past experiences of conflict. In this context of special and targeted measures for the promotion of effective equality, the Advisory Committee has consistently emphasised the importance of regularly collecting reliable and disaggregated equality data related to the number and situation of persons belonging to national minorities. It has, however, cautioned states parties against the over-reliance on statistics and encouraged the authorities also to avail themselves of independent research, in particular when carried out by persons belonging to national minorities themselves, in order to assess and comprehensively address the particular shortcomings faced by persons belonging to national minorities (see also paragraph 18).

⁸⁹. See, *inter alia*, Third Opinions on Azerbaijan and Finland.

2. Culture – Article 5

67. Article 5 of the Framework Convention and the obligation of states parties to promote the conditions for the preservation and development of national minority cultures and identities are best served if the scope of application is interpreted widely. The article's aim is to ensure that persons belonging to national minorities do not assimilate but are enabled to maintain and develop their distinct identities and to actively enjoy minority rights. The Advisory Committee has welcomed the availability of assistance schemes not only to recognised national minorities but also to other groups who would otherwise not be able to maintain their distinct features.⁹⁰ All support measures must be tailored to the specific needs and situations of the various groups, to ensure that the cultural differences that are regarded as specific to each group are affirmed and protected. This may often require targeted efforts by the authorities to revitalise essential elements of the minority culture, without which the expression of some aspects of that identity may not be possible.⁹¹ Numerically larger minorities whose cultures are well represented will usually not experience the same reliance on government support as numerically smaller groups or dispersed national minorities which may be struggling to preserve their distinct characteristics and resist assimilation.⁹² While it is often the cultural associations that are the recipients of funds, the Advisory Committee considers that all national minority representatives, including those not formally linked with such associations or those representing different views, must be consulted and provided with effective opportunities to obtain funding for the preservation of their identities and cultures.

3. Association and religion – Articles 7 and 8

68. The rights to freedom of assembly, freedom of association, freedom of expression, thought and conscience, as well as the right to hold and manifest a religion or belief, as stipulated in Articles 7 and 8 of the Framework Convention, are based on corresponding articles of the European Convention on Human Rights. The Explanatory Report underlines explicitly that they apply to every person, whether belonging to a national minority or not, but that they are considered of such specific importance to persons belonging to national minorities that they were deemed to merit special attention.⁹³ The Advisory Committee has therefore interpreted their scope of application in the broadest sense, in line with the case law of the European Court of Human Rights. It has in particular expressed its deep concern when the overall working conditions for non-governmental organisations engaged in the protection of minority rights have been made difficult, as their role in promoting the awareness and understanding of human and minority rights standards in society is crucial and must be supported rather than hindered.⁹⁴ The Advisory Committee has further held that any measures taken by the authorities to restrict the freedom of assembly or the freedom of expression, which necessarily includes the freedom to express criticism of the government or diverging opinions, can have a direct, negative impact on the enjoyment of rights contained in the Framework Convention as they are likely to deter persons belonging to national minorities, like other members of society, from exercising their rights and to create an intimidating environment that is not conducive to the implementation of minority rights and human rights generally. In this context, the Advisory Committee has also underlined that persons belonging to national minorities should not be banned from forming political parties in order to formulate and better pursue their interests and rights,⁹⁵ or from registering religious organisations in order to manifest their beliefs in community with others.⁹⁶

4. Media – Article 9

69. Article 9 and the media-related rights contained in the Framework Convention have a particular significance for the protection and promotion of minority rights. The availability of print, broadcast and electronic media in minority languages has very specific emblematic value for national minorities, in particular for the numerically smaller ones. Through them, persons belonging to national minorities not only gain access to information, but minority-language media also raise the visibility and prestige of the minority language as an active tool of communication. In particular, these media can play a significant role for persons belonging to national

90. See Third Opinions on the Czech Republic and Finland.

91. See Third Opinion on Finland, welcoming the specific efforts of the authorities to revitalise the Sami culture through "language nests" and other similar activities.

92. See, however, Committee on the Elimination of Racial Discrimination (CERD) General Recommendation No. 32 underlining the distinction between permanent rights (such as those contained in Article 5 of the Framework Convention) and the additional and temporary benefits of special measures as provided for in Article 4(2).

93. See paragraphs 51 and 54 of the Explanatory Report.

94. See Third Opinions on Azerbaijan and the Russian Federation.

95. See Third Opinion on Bulgaria, Second Opinion on Georgia and Third Opinion on the Russian Federation.

96. See Third Opinions on Azerbaijan and the Russian Federation.

minorities who are dispersed for, among other reasons, increased mobility, as they allow for communication and contact over distances. This, in turn, can encourage persons belonging to national minorities to enjoy their rights more actively. The active participation of members of national minority communities in a pluralist media environment may further require targeted training and awareness-raising activities, including in the use of electronic and social media.⁹⁷ In this respect, the Advisory Committee has stressed that the possibility to participate actively in the media and to receive and impart information of interest to persons belonging to national minorities, presupposes access to relevant infrastructure such as high-speed Internet throughout the country, including in remote areas which are often inhabited by national minority communities.

70. The marginalisation of minority identities in the local media, including through the exclusive use of minority languages only for certain programmes, often about folklore, traditional costumes, food and habits, may contribute to the stereotyping of minorities as separate entities and does not promote their respect and prestige in society.⁹⁸ In addition, the division of media audiences according to linguistic backgrounds may enhance the formation of separated and mutually exclusive public spheres. Support for media in national minority languages must therefore be accompanied by targeted steps towards the training of journalists and other media professionals to promote their awareness of and sensitivity towards the specific needs and concerns of diverse groups in society. Moreover, it is important to ensure that minority representatives effectively participate in relevant decision-making processes as well as in media supervisory bodies. The more minority representatives take part in shaping their image in the public media, the more the negative effects of “misrecognition” and stereotyping can be reduced.⁹⁹

5. Language – Articles 10(1), 10(3), 11(1) and 11(2)

71. The right to use one’s language in public and in private, contained in Article 10(1) of the Framework Convention, the right to use one’s personal name in the minority language and to have it officially recognised (Article 11(1)), and the right to put up signs of a private nature in minority languages (Article 11(2)) carry a particular weight for the personal identity, dignity and self-awareness of persons belonging to national minorities.¹⁰⁰ The Advisory Committee considers that, as such, they must be applicable to everyone and any restrictions must be carefully reviewed to ensure that they do not infringe upon the personal dignity and privacy of the individual.¹⁰¹ States may adopt laws aimed at strengthening and protecting the state language. This legitimate aim, however, must be pursued in a manner that is in line with the rights contained in Articles 10 and 11 and other relevant provisions of the Framework Convention and its general spirit of encouraging tolerance and mutual understanding within society. Laws and other measures that are aimed at promoting the state or official languages must not, in particular, infringe on the private sphere of a person but must be implemented in a way that respects the identities and the linguistic needs present in society.

72. Article 10(3), similarly to Articles 7 and 8, reflects the individual human right of being promptly informed in a known language, if necessary through an interpreter, of the reasons for an arrest and of the nature and cause of any accusation. According to the Explanatory Report, the provision, which is based on guarantees contained in Articles 5 and 6 of the European Convention on Human Rights, does not go beyond those safeguards. Thus, it does not imply a right to legal process and trial in one’s minority language and applies to all persons belonging to national minorities.

6. Education – Articles 12(3), 14(1) and 14(3)

73. According to Article 12(3), equal opportunities for access to education at all levels for persons belonging to national minorities must be promoted.¹⁰² Given the particular link to Article 4 and the general principle of equality, the Advisory Committee has consistently encouraged a broad and inclusive approach, referring also to the United Nations Convention on the Rights of the Child. Accordingly, the Advisory Committee has strongly condemned all instances of segregated education and has urged states parties to take all necessary

97. See Fourth Opinion on Cyprus.

98. See also Second Opinion on Georgia.

99. See also Third Opinion on Croatia.

100. For a comprehensive analysis and discussion of the Advisory Committee’s findings on access to language rights of persons belonging to national minorities, reference is made to its Third Thematic Commentary (footnote 4).

101. See also Communication No. 1621/2007 *Leonid Raihman v. Latvia*, made public by decision of the Human Rights Committee UN Doc. CCPR/C/100/D/1621/2007 (2010), finding a violation of Article 17 of the ICCPR with respect to the unilateral change of the author’s name by the state party.

102. For a comprehensive analysis and discussion of the Advisory Committee’s findings on access to education rights of persons belonging to national minorities, reference is made to its First Thematic Commentary (footnote 2).

measures to ensure equal access to integrated education for all children.¹⁰³ In addition, Article 14(1) makes provision for the right to learn one's minority language, while Article 14(3) stresses the right to learn or be taught in the official language or languages.

74. The Advisory Committee has repeatedly expressed its view that both opportunities to learn a minority language and adequate opportunities to learn the official languages are applicable to all persons belonging to national minorities and must be available in parallel.¹⁰⁴ It has generally pointed to the substantial research that suggests noticeable benefits of first language learning for the learning of other languages, including official languages, and has expressed its general preference for bilingual and multilingual approaches in education that are equipped to accommodate more than one language in integrated classrooms. While consistently acknowledging the importance of language for the integration of a diverse society, the Advisory Committee has reiterated its standpoint that pressure and conditionality are generally inappropriate tools for the promotion of integration, and that the relevant strategies meant to promote skills in the official language must not rely disproportionately on efforts to be made by persons belonging to national minorities.¹⁰⁵

7. Participation – Article 15

75. Undue exclusions from the right to effective participation in public life can result in significant obstacles to the enjoyment of a variety of minority rights.¹⁰⁶ Public life in this context does not only extend to public affairs and decision making but is equally important with respect to economic and social life.¹⁰⁷ The Advisory Committee has therefore consistently underlined the importance of an inclusive approach to the application of Article 15, as effective participation is often a precondition to gaining access to the rights contained in the Framework Convention. Consultation mechanisms and advisory bodies on issues pertaining to minority rights protection that are intended to enhance, for instance, discussion and dialogue among different groups in society, should be open to all, including groups that are not recognised as national minorities but might have expressed an interest in the protection of the Framework Convention.

76. The availability of effective platforms for the discussion of relevant concerns with such groups may not only promote trust among minority communities, but it may also serve to facilitate open and flexible solutions to issues that prevent access to rights, and may thereby promote societal cohesion and stability. In its discussions of Article 15 of the Framework Convention, the Advisory Committee has also further applied a broad scope of application with respect to the comprehensiveness of the matters on which representatives of national minorities should be consulted. These should not be limited to questions related to the preservation of national minority cultures or the allocation of funding, but should include all issues of broader concern to society, including national minority communities.¹⁰⁸

77. Due to the centrality of effective participation of national minorities in public life, particular attention must be paid to ensure that the views and concerns within the various minority communities are adequately taken into account. National minority communities, as is the case in any community, are diverse and their members often hold divergent views. This means that the diversity within the minorities, including women and young people, as well as their various needs and concerns, must be effectively represented in all relevant decision making.

78. Controversies may arise between factions among or within minorities and it is the responsibility of the state authorities to seek flexible solutions that can accommodate them, ensuring that they are all enabled to participate effectively. It is therefore essential for governments to have standards and procedures available to put in place suitable arrangements for the promotion of the effective participation of persons belonging to minorities, in consultation with those concerned. In addition, these arrangements must be sufficiently flexible to allow for renegotiations when conditions or priorities change. In a number of states parties, the granting of different forms of self-governance or autonomy (territorial and non-territorial) is used at regional

103. See, *inter alia*, Third Opinion on Bulgaria, Third and Fourth Opinions on the Czech Republic and Third and Fourth Opinions on the Slovak Republic.

104. Different modules may be applied depending on the size of the group wishing to learn the minority language.

105. See, for instance, Second Opinion on Latvia and Fourth Opinion on Liechtenstein.

106. For a comprehensive analysis and discussion of the Advisory Committee's findings on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, as contained in Article 15, reference is made to its Second Thematic Commentary (footnote 3).

107. The term 'economic and social life' covers a wide range of issues, from access to adequate housing, health care and social protection (social insurance and social benefits), to social welfare services and access to the public and private labour market, as well as access to business and other self-employment opportunities, which are closely linked to property rights and privatisation processes. See Second Thematic Commentary (footnote 3), paragraphs 23ff.

108. See Third Opinion on Estonia and on "the former Yugoslav Republic of Macedonia".

level, to varying degrees, in order to protect further and more thoroughly and to promote the rights of persons belonging to national minorities. These instruments are fully in line with the international law principle of territorial integrity and can be a useful tool to promote the enjoyment of minority rights, particularly with respect to the preservation and development of minority identities and cultures.¹⁰⁹

109. See also OSCE HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note, September 1999.

Part VII

Minority rights with a specific scope of application

79. Given the particular financial and administrative commitment required in order to give effect to some language rights contained in the Framework Convention, states parties may establish special conditions for their enjoyment.¹¹⁰ The right to use a minority language in relations with local administrative authorities (Article 10(2)), the right to have topographical indications and signposts also displayed in the minority language (Article 11(3)), and the right to learn minority languages or receive instruction in minority languages (Article 14(2)) therefore have a specific scope of application, in that their availability may be limited to certain areas where persons belonging to national minorities reside traditionally (see also paragraph 31) and/or in substantial numbers (see also paragraph 34). In accordance with the express wording of the Framework Convention, the right to use a minority language with local authorities must be guaranteed either in areas where national minorities are settled in substantial numbers or in areas that are traditionally inhabited by national minorities; one of the two alternatives suffices. However, an accumulation of these two criteria, namely traditional settlement and substantial numbers, may be required for the implementation of the right to display topographical signposts in minority languages. Overall, the Advisory Committee has repeatedly encouraged states parties also to promote the enjoyment of the rights contained in Articles 10(2), 11(3) and 14(2) in situations where the conditions are not formally met but where implementation would serve to promote an open society, where multilingualism is encouraged as a reflection of diversity.¹¹¹

80. Given the particular significance of language for the expression and preservation of minority identity, as well as for promoting access to rights and social interaction,¹¹² the Advisory Committee has consistently recommended a flexible and context-specific approach with respect to these conditions and in particular with respect to numerical thresholds. It has purposefully refrained from proposing an acceptable threshold for the applicability of minority rights because it considers that the specific context, history and conditions in the state party must be considered on a case-by-case basis and in consultation with the concerned minority representatives.

81. It is important to underline that any threshold must be applied in a flexible manner so that situations are avoided where a negligible decrease in the minority population or the decision of some persons belonging to national minorities no longer to avail themselves of a specific right, alter the accessibility of the right because a predetermined threshold is no longer met. States parties are explicitly obliged to refrain from any measures, including territorial reforms, which alter the proportions of the population in areas inhabited by persons belonging to national minorities and aim to restrict access to minority rights.¹¹³ It is therefore essential that the specific impact on national minorities and the use of minority languages is taken into account in close consultation with national minority representatives when reviewing administrative borders, as the creation of larger self-government units may indeed result in certain thresholds no longer being met.

82. In the view of the Advisory Committee, increased population mobility in all states requires a careful and flexible approach with respect to numerical or territorial delimitations to the enjoyment of minority rights. This is particularly the case with respect to persons belonging to numerically smaller minorities for whom the use of their minority language in official communications may have a distinct emblematic value. Overall, the Advisory Committee has consistently held that numerical thresholds should be considered indicative and should be flexibly used,¹¹⁴ as regular consultations with the national minority representatives concerned are more apt to promote the enjoyment of minority rights than fixed thresholds. Attention must further be paid to ensure that multiple affiliations are not used as a pretext to lower the numerical size of national minorities. Any self-identification as a person belonging to a national minority must be recorded and processed as such, also when part of a multiple affiliation (see also paragraph 16).

110. See also Explanatory Report, paragraph 64.

111. See, *inter alia*, Third Opinion on Finland, Second Opinion on Latvia and Third Opinion on Lithuania.

112. See also Third Thematic Commentary (footnote 4).

113. See Article 16 of the Framework Convention.

114. Flexibility in this context may mean, for instance, that it is decided on a case-by-case basis whether the number of learners is sufficient to open a class in the specific context and what the modalities of teaching may entail. See Third Opinion on Finland.

83. The right to learn the minority language or receive instruction in it (Article 14(2)) may also be made available only in certain areas where persons belonging to national minorities reside traditionally or in substantial numbers. In addition, this right also presupposes demand for such education. It is essential therefore to ensure that parents are adequately made aware of the possibility contained in Article 14(2) to have instruction in the minority language, as well as of the benefits attached to first language education for the learning of other languages. State obligations to ensure opportunities for minority-language education contained in Article 14(2) are further limited to “as far as possible”, which again indicates that the resources of the state party must be taken into account.¹¹⁵ Yet, the Advisory Committee has encouraged states parties also to extend the ability to access education in and of minority languages to persons belonging to national minorities who live in capitals or other urban centres, including through making contemporary and online learning tools available as such provision does not always have to be cost-intensive.¹¹⁶

115. See Explanatory Report, paragraph 75.

116. See Second and Third Opinions on Austria and Second and Third Opinions on Finland.

Part VIII

Conclusions

84. The common understanding of the protection of national minorities and what it entails has changed over the two decades since the adoption of the Framework Convention in 1995. At that time the concept of minority rights was mainly associated with the preservation of minority identities and with their protection from assimilation during partially violent state-formation and nation-building processes. Since then, the increased global and regional mobility of populations has transformed the demographic profile of European societies, and attention has shifted to the challenge of forming integrated and inclusive societies where diversity is acknowledged and welcomed as their integral feature. The present-day European context is further marked by migratory movements of an unprecedented scale which, coupled with the effects of recurrent economic crises and with growing security concerns, are destabilising societies and altering the manner in which minority rights are perceived in society and by policy makers.¹¹⁷

85. The Framework Convention was deliberately designed as a living instrument that is neither constrained by static definitions, nor by the question of who should be considered as a national minority or who should not. Rather, its interpretation must evolve and be adjusted to the prevailing societal context to ensure effective implementation. Adopted as a result of the courage and commitment shown by state leaders in the 1990s to prevent further interethnic violence through the promotion of individual rights and in the spirit of dialogue and solidarity, it is based on the understanding that minority identities are not exclusive. Persons belonging to national minorities must be allowed both to preserve their identities and to participate effectively in public life as an integral part of society. The Framework Convention therefore lays out a catalogue of rights that are of particular importance in order to maintain and encourage diversity while also promoting integration and social interaction.

86. While in some cases increasing diversity is embraced and conceived as a resource for societal development, in other cases there are references to the dangers of diversity and the threat to an asserted cultural homogeneity of the nation state. The latter perspectives disregard the fact that linguistic, ethnic and cultural diversity has been an integral part and an asset of European society over centuries. Moreover, they lay the foundations for two increasing trends that are of deep concern to the Advisory Committee. Firstly, hate speech and racist, xenophobic and extremist discourse, which is on the rise throughout Europe, often directed at anybody who is perceived as “different”, including persons belonging to national minorities. Secondly, a deepening polarisation along ethnic and linguistic, and at times religious lines, which has in some countries been cemented in parallel education systems that deepen divisions over generations.

87. The Framework Convention was designed as a tool for states to manage diversity in a way that carefully balances broader societal concerns, such as cohesion and democratic stability, with the protection of individual rights. As such, it is of particular relevance today when courage and commitment are again needed to meet the contemporary societal challenges, such as intensifying polarisation, the continued exclusion of some minorities, and the resultant threat of radicalisation in many European countries. Europe today must again meet urgent societal challenges that undermine stability, democratic security and peace. Courage and commitment are again needed to overcome the existing divisions through the enhancement of the principles on which the Council of Europe was founded, including the effective protection of minority rights. The Framework Convention is a powerful tool to assist states to address these challenges and create stable and sustainable societies where difference is expressed and affirmed, where equal access to rights and resources is facilitated despite difference, and where social interaction and constant dialogue is promoted and encouraged across difference.

¹¹⁷. See also the Tenth Activity Report of the Advisory Committee, covering the period from 1 June 2014 to 31 May 2016.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

Annex 825

Council of Europe, Report of 11 April 2016

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**Information Documents
SG/Inf(2016)15 rev**

11 April 2016

Please find appended the Report presented to me by Ambassador Gérard Stoudmann on his human rights visit to Crimea (25-31 January 2016)

In a decision taken during their 1225th meeting on 15 April 2015 (Item 1.8, paragraph 5) the Ministers' Deputies expressed their "serious concern regarding the continued deterioration of the human rights situation in Eastern Ukraine and Crimea; underlined once again the need to secure respect for all human rights, including for persons belonging to national minorities, in particular the Crimean Tatars, and to ensure that the relevant human rights bodies of the Council of Europe can carry out their monitoring activities unimpeded; to this end". In this respect, they invited the Secretary General to "hold political consultations with the Russian Federation and Ukraine in order to propose viable solutions".

The Secretary General, after consultations with the two Governments, managed to send the first human rights delegation to Crimea following a period of 18 months during which no international organisations were present on the Peninsula. The delegation was headed by Ambassador Gérard Stoudmann, a prominent Swiss diplomat. The delegation, after having stayed for 7 days in Crimea and having had more than 50 meetings with representatives of civil society, minorities, religious communities and media, prepared a report.

This report does not deal with any issue related to the status of Crimea. The Council of Europe fully respects the territorial integrity of Ukraine as repeatedly expressed by its Committee of Ministers.

**Report to the Secretary General of the Council of Europe
by Ambassador Gérard Stoudmann
on his human rights visit to Crimea
(25-31 January 2016)**

11 April 2016

EXECUTIVE SUMMARY

Following consultations with the governments of Ukraine, as well as the Russian Federation, Secretary General Thorbjørn Jagland announced on 20 January 2016 to the Ministers' Deputies that he was sending a Human Rights delegation to Crimea, having taken into account the various calls from the Committee of Ministers, the Parliamentary Assembly and from individual member States for the Council of Europe to review the human rights situation in Crimea. The delegation's objective was to assess the Human Rights and Rule of Law situation of the 2.5 million people who live on the Peninsula and are covered by the European Convention on Human Rights, as well as to make relevant recommendations. The delegation was bound by the relevant decisions of the Committee of Ministers of the CoE relating to Crimea, and was not to deal with any issue related to the status of Crimea.

The delegation was led by a Swiss diplomat, Ambassador Gerard Stoudmann, accompanied by three members of the Secretariat of the Council of Europe. It left for Kyiv on 23 January and arrived in Simferopol on 25 January after having visited Moscow. It left Crimea for Moscow on 31 January. The Head of Delegation visited Kyiv again on 8 February.

During its stay in Crimea, it met without obstacles with numerous representatives of civil society, NGOs, religious communities, national minorities (in particular the Crimean Tatars), media, as well as local authorities in Simferopol, Yalta, Bakhchisaray and Sebastopol. In particular, there were meetings with the Crimean Tatar community expressing critical and dissenting views. They were held privately, in locations chosen by the interlocutors or the delegation. It also visited Crimean Tatar and Ukrainian classes in two schools. The Head of the delegation was allowed, at his specific request, to visit Mr Akhtem Chygoz, Vice Chairman of the "Mejlis of the Crimean Tatar People" at his place of detention.

The following report contains the main points that were raised, notably the issues related to standards and commitments enshrined in the European Convention on Human Rights ("the ECHR" or "the Convention"), as well as recommendations and proposals for possible rapid action, for the attention of the Secretary General. Among the issues that required rapid action, the transfer of 16 Ukrainian citizens in prison in Crimea, requesting their transfer to another prison in Ukraine-controlled territory was raised by the delegation at the request of Ukrainian authorities, with a view to facilitating this transfer on humanitarian grounds. Moreover, also at the request of the Ukrainian side, the issue of persons currently in pre-trial detention elsewhere in Ukraine but whose criminal files remained in Crimea in 2014 was raised with a view to ensuring the transfer of those files.

Issues that have been raised regularly and which are directly relevant to certain ECHR provisions, such as Article 2 (right to life), Article 3 (prohibition of torture or inhuman or degrading treatment or punishment), Article 5 (right to liberty and security) and Article 6 (right to fair trial) relate in particular to alleged abuses by law enforcement officers, such as when conducting searches. The disappearance of Ukrainian and Crimean Tatar opponents was also raised.

The searches (at times without warrant) and the behaviour of some law enforcement officers, (in some cases with clear indications of disproportionate use of force), as well as intimidation and threats of

abduction, combined with the fact that many interlocutors indicated that any complaint against such behaviour was “useless”, are indicative of the existing tensions.

It appears that the law on extremism is applied and extensively interpreted as a basis for such operations. They seem to target mostly Crimean Tatars, often with links to family members or friends in exile, as they are considered by the local authorities as the biggest threat of extremism and dissent towards the present order. In this context, the creation in the Kherson region (to the North of the Peninsula) of a paramilitary unit known as the “Tatar battalion” (which is however allegedly not only recruiting Crimean Tatars, but is open to all Muslim volunteers), is regularly mentioned: on the one hand, the threat of violent action by this group is referred to as a reason for the application of the law on extremism, for searches and other operations; on the other hand, some of the Crimean Tatar interlocutors of the delegation expressed the fear that the use of violence by this group would turn part of the population against the Crimean Tatars and lead to a deterioration of the interethnic relations on the Peninsula.

Regarding the disappearances, the delegation asked for information on cases concerning a total of 21 persons. It noted that there are no major divergences between the sources on the number of particularly problematic cases – which vary from 10 to 15 individuals, both Crimean Tatars and Ukrainians, 5 of them found dead. Many of the suspect cases mentioned date back to 2014. According to the prosecutor, there is one case of murder under investigation, one person has been found alive and all other cases are still under investigation. To be noted, 2 most recent cases (2016) were solved at the time of the departure of the delegation and had apparently no political connotation. It is important that independent, diligent and transparent investigations are carried out and that ongoing developments and conclusions are presented publicly to instil confidence and to avoid further rumours; families and the public in general should be informed regularly on the state of the investigations, including through the reactivation of the Contact Group created to this effect.

Today, the perception of the delegation is that the cases of repression, as severe as they may be, seem more targeted against individual opponents, whether they are Crimean Tatars, Ukrainians or others, rather than reflecting a collective repression policy against the Crimean Tatars as an ethnic group.

However, in this sensitive context, the procedure aiming at declaring “the Mejlis of the Crimean Tatar people” an “extremist organisation”, should it lead to a court decision on a ban, would indicate a new level of repression targeting the Crimean Tatar community as a whole. It should be noted in this context that the Court in Simferopol has already postponed the procedure several times. Today some members of the Mejlis are sitting in senior local positions, while others are in exile or in prison – a clear indication of a split within the Crimean Tatar leadership. The Mejlis is an important traditional and social structure of the Tatar community. Its qualification as an extremist organisation would considerably increase the risk of further alienation of the Crimean Tatar community and of isolating it from the rest of the population living in the Peninsula. Additionally, the ban of the Mejlis would appear to contradict some of the policy measures adopted up to now, such as the recognition of the Crimean Tatar as an official language, the rehabilitation of deported Crimean Tatars, the building of a mosque in Simferopol and the continuation of the Crimean Tatar curricula in schools.

Finally, many of the recurring issues that came out of the meetings with civil society representatives did not always have a direct link with relevant articles of the ECHR. They are related to complaints

about inefficient bureaucracy, widespread corruption, the effect of the blockade (in particular on water and energy supplies), the effect of sanctions on prices, trade, travel and communications. They reflected at times an emotionally loaded atmosphere and frustration.

Conclusions

The present situation significantly affects the population of Crimea in many ways. This report is an attempt at presenting some of the issues related to the application of the European Convention on Human Rights, as requested under the delegation's mandate. It is only through the establishment of a regular access to the Peninsula, under the authority of the Secretary General of the Council of Europe, that some issues could be addressed in a more comprehensive manner.

Therefore, the main overriding conclusion of this report is the need to re-open the Peninsula for the Council of Europe monitoring structures and other relevant international mechanisms, and to identify viable solutions, allowing for their effective functioning under the present circumstances. It is also important to allow for contacts with and access to civil society and their representatives in Crimea, in particular through facilitation of travel procedures.

It is indeed neither normal, nor acceptable, that a population of 2.5 million people should be kept beyond the reach of the human rights mechanisms established to protect all Europeans. In this context, many interlocutors, in particular from the Crimean Tatar community, expressed the hope that the visit of this delegation would not be a one-off visit and that the Council of Europe monitoring structures would soon be allowed back.

I. Introductory remarks

1. In accordance with the mandate given by the Secretary General, the present report does not deal with any issue related to the status of Crimea. In addition, the present report does not interfere with the pending applications before the European Court of Human Rights against the Russian Federation and Ukraine (including inter-State cases)¹, the supervision of the Court's judgments related to Crimea by the Committee of Ministers in the framework of its functions under Article 46 of the Convention, nor the Council of Europe programmes and projects in Ukraine, or the work of the International Advisory Panel².
2. The delegation spent seven days in Crimea, carrying out more than 50 meetings. It operated in full independence, including with respect to the possibility of holding meetings originally not included in the preliminary negotiated programme. It met representatives from all sectors in Crimea and held meetings in several cities, including Simferopol, Yalta, Sebastopol and Bakhchisaray. Ambassador Stoudmann was also able to visit Mr Akhtem Chiygoz, Vice Chairman of the Mejlis of the Crimean Tatar People, who is detained in Simferopol pending his trial. Before the visit to Crimea, Ambassador Stoudmann visited both Kyiv and Moscow. In Kyiv on 23 January, he had meetings with Mr Pavlo Klimkin, Minister for Foreign Affairs of Ukraine, Ms Valeriya Lutkovska, the Ombudsperson of Ukraine, as well as with representatives of the Crimean Tatar minority Refat Chubarov and Mustafa Dzhemilev and with NGOs. On 25 January, Ambassador Stoudmann had meetings in Moscow with Deputy Foreign Minister and Secretary of State Grigory Karasin and Ombudsperson Ella Pamfilova. Upon the delegation's return, Ambassador Stoudmann had meetings in Kyiv and Moscow.

II. Law Enforcement

3. An issue regularly brought to the attention of the Council of Europe's team concerns the conduct of some law enforcement officers. It would appear that searches, arrests and identity controls would be in many cases carried out without respecting the necessary legal safeguards and in some cases with clear indication of disproportionate use of force (including in the presence of children), based on the provisions regarding the fight against extremism and terrorism. Although in some cases discussed by the delegation, law enforcement authorities carried out their duties correctly, concurring elements seem to indicate the existence of misconduct by law enforcement officers in the exercise of their functions, leading to a consequent degree of mistrust of part of the population towards the law enforcement authorities. This can also explain the fact that complaints about such alleged violations are often not formally submitted to the competent authorities.

¹ There are currently three inter-State applications lodged by Ukraine against Russia: For more information see the press release: <http://hudoc.echr.coe.int/eng-press?i=003-5187816-6420666>.

² The International Advisory Panel was constituted by the Secretary General of the Council of Europe to oversee that the investigations into the violent incidents which took place in Ukraine from 30 November 2013 onwards met all the requirements of the European Convention on Human Rights and the case-law of the European Court of Human Rights.

4. The delegation can confirm the 2011 findings and recommendations of the European Commission against Racism and Intolerance (ECRI)³ about the need to intensify efforts to put a stop to racist or racially discriminatory misconduct by the police and to investigate any allegations of misconduct by law enforcement officials towards persons coming within ECRI's mandate.
5. Concerning allegations of ill-treatment and torture, there is at least one pending case before the North Caucasus District Military Court concerning allegations against members of the FSB during the detention and interrogations of a Ukrainian citizen, Mr Oleksandr Kostenko. It would be important to ensure effective investigations of this and of other reported cases of ill-treatment⁴ and, where appropriate, impartial judicial proceedings.

"Self-defence forces"

6. A separate aspect of the issue concerns the so-called "self-defence forces". The delegation was informed by the regional leadership that they had been disbanded and transformed into two separate security companies, one armed and the other without weapons. However it has not been possible to fully clarify their current legal status and functions nor the allegations about their involvement in enforced disappearances and other violations, and the state of investigations on such cases. Legislative initiatives proposing immunity from prosecution ("amnesty law") for actions committed by the "self-defence forces" after February 2014 have not been pursued; an issue raised by the Council of Europe Commissioner for Human Rights during his visit in 2014.⁵ However, the delegation noted that members of the unarmed security company created after the "self-defence forces" were disbanded still use military-type uniforms and insignia, which can create confusion as to their actual status and powers.

Recommendations:

- *To ensure that effective investigations are carried out in alleged cases of ill-treatment and other human rights violations by law enforcement forces and by former "self-defence forces".*
- *To ensure that law enforcement authorities always carry out their functions in accordance with applicable law and that appropriate safeguards protecting the rights of individuals involved in law enforcement operations are fully respected.*
- *It is important that initiatives are taken to provide training to law enforcement authorities about applicable internal and international human rights standards, and to recommend*

³ ECRI 4th report on Ukraine, adopted on 9 December 2011, paragraphs 164, 166 and 168. See also ECRI Conclusions on the Implementation of the Recommendations in respect of Ukraine subject to interim follow-up, paragraph 3.

⁴ Such as, for instance: Andriy Shekun and Anatoly Kovalsky, allegedly abducted by "self-defence forces" and brought first to a police station and then to a secret place, where they would have been detained (and one of them tortured) for 11 days; Gennadiy Afanasiev, involved in the case of Oleg Sentsov and Alexander Kolchenko, who withdrew his testimony declaring he had testified under torture.

⁵ See the report of the Council of Europe Commissioner for Human Rights, document CommDH(2014)19, paras. 36-40.

particular attention in the exercise of their functions when dealing with minorities, in order to avoid any perception of discrimination based on ethnic, religious or other grounds.

- *To avoid that members of security companies wear uniforms that could lead to confusing them with law enforcement or military personnel.*

III. Disappearances

7. Suspicious cases of disappearances brought to the attention of the delegation concern a relatively limited number of persons (between 10 and 15, both Crimean Tatars and Ukrainians), a large part of which occurred in 2014, although this remains a highly sensitive issue as already stressed in the report of the Council of Europe Commissioner for Human Rights⁶. The delegation's interlocutors were convinced that, in certain cases, the disappeared had been killed.
8. In light of the seriousness of the allegations, it is essential to ensure effective investigations – especially in cases where persons had been abducted or subsequently found dead – and to inform their families and the general public. A Contact Group for the families of disappeared persons was set up in October 2014, but it has not met since April 2015, while disappearances have continued to occur. The prosecutor has been cooperative in providing information to the delegation on a number of cases⁷, and recognised the need to increase transparency about the state of investigations. The prosecutor declared a readiness to take steps in this respect, for instance through regular press briefings.

Recommendations:

- *Investigations in cases of alleged abductions and disappearances must be effective and in accordance with the relevant standards of the European Convention on Human Rights (“the Convention”), with particular regard to the requisites of adequacy, thoroughness, impartiality, independence, promptness and public scrutiny.*
- *It is vital to provide appropriate information to the families of alleged victims and to the general public.*

⁶ See the report of the Council of Europe Commissioner for Human Rights, document CommDH(2014)19, pp.

5-7.

⁷ Information was provided upon request regarding: Reshat Ametov, found dead on 15 March 2014, with signs of ill-treatment; Mark Ivanyuk, found dead on 21 April 2014 as a result of a road accident; Timur Shaymardanov and Seyran Zinedinov, disappeared on 26 and 30 May 2014; Leonid Korzh (whose disappearance was announced on 28 May 2014 in connection with those of Mr Shaymardanov and Mr Zinedinov) still living in Crimea today and – according to information provided by the prosecutor – denying having been victim of unlawful acts; Izlyam Dzhapparov and Dzhavdet Islyamov, allegedly abducted on 27 September 2014; Edem Asanov, disappeared and subsequently found hanged on 5 October 2014. Other cases where further information is expected include: Ivan Bondarets and Vladislav Vashchuk, disappeared on 7 March 2014; Vasyl Chernish, disappeared on 15 March 2014; Eskender Apselyamov, disappeared on 3 October 2014; Fyodor Kostenko, father of Oleksandr, disappeared on 3 March 2015 on his way from Kyiv to Crimea; Kachok Mukhiddin, killed on 26 July 2015; Mukhtar Arislanov, 45, allegedly abducted in a minibus on 27 August 2015; Memet Selimov and Osman Ibragimov, disappeared and then found dead on 29 August 2015; Arlen Terikhov and Ruslan Ganiev, disappeared on 15 December 2015 in Kerch. The cases of two minor Crimean Tatar girls disappeared in early 2016 was also solved by the time of departure of the delegation.

- *It is important to re-activate the Contact Group for the families of disappeared persons as a confidence-building measure.*

IV. The Judiciary

9. In the short time available, the delegation was not able to make a comprehensive and detailed assessment of the current functioning of the judiciary in Crimea. It was mentioned during the meetings that information on the Convention case-law is offered *via* trainings, and that the European Court of Human Rights (“the Court”) case-law is published and disseminated. Further, the modernisation of court rooms was noted.
10. However, the delegation received information on allegations of important shortcomings in the functioning of the local criminal justice, including of persisting corruption. In this context, the delegation received reports on alleged discrepancies with respect to arrest or pre-trial detention and noted in particular the allegations of applicants’ representatives that arrest and/or pre-trial detention lacked legal basis and that pre-trial detention was often prolonged without justification. Those matters fall under the Convention (Article 5-right to liberty and security). It is worth recalling in this respect that in older judgments concerning Crimea the Court had found violations of that provision of the Convention.
11. The prosecutor noted that these Convention requirements are taken into account by law enforcement officials. However, from discussions in various meetings, the delegation observed that the pertinent Convention standards as interpreted by the Court are not, in some instances, well understood by all sides.
12. This wide range of information led the delegation to observe a strong feeling of mistrust in the application of justice, and not only amongst members of the opposition. This lack of confidence hampers the possibility to lodge complaints and seek reparation for alleged human rights violations. Despite some positive measures, such as those mentioned above, the delegation believes that much more needs to be done to ensure that the Convention requirements regarding the right to a fair trial are enshrined among the judiciary but also in the society in general.
13. It should be noted that during the meeting between the Head of the delegation and Mr Akthem Chygoz, Vice Chairman of the Mejlis of the Crimean Tatar People (meeting referred to in detail below under “the penitentiary establishments”), Mr Chygoz requested that his trial be public and monitored by the Council of Europe.
14. At the request of the Ombudsperson of Ukraine, the issue of persons currently in pre-trial detention elsewhere in Ukraine but whose criminal files remained in Crimea in 2014 was raised with a view to ensuring the transfer of those files, thus allowing access to the criminal files.

15. In addition, the delegation noted two specific issues with implications on the effective functioning of the Judiciary:
- *The adaptation of legislation after March 2014 and its impact on rights and freedoms*
16. According to information given by the prosecutor, 1557 legal acts have been enacted since March 2014. The prosecutor indicated that the public is informed of the enactment of new acts via a weekly television programme. Given however the proliferation of new laws, it is not clear for the delegation whether those information measures are adequate.
17. The delegation noted the general perception in the society that legislation became more restrictive and had an impact on fundamental rights and freedoms (see below notably under Freedom of expression, Freedom of association and assembly).
18. The delegation heard several accounts that the re-registration process imposed in many sectors (e.g. business, associations, property, media, identity documents, license plates, etc.) had an impact on the related rights and freedoms, and also created new opportunities for corruption. The latter is more generally seen as a longstanding problem. The delegation was informed about positive measures adopted to tackle corruption, including the creation of anti-corruption committees. The delegation was also informed of specific cases of corruption that led to dismissals and/or charges against officials. Despite the efforts deployed, which were acknowledged by several interlocutors, results would still be below the public's expectations. Whilst the delegation perceives the importance of the matter, it is not within its mandate to further explore the issue. The same goes for questions of citizenship and the related issue concerning residence permits; also outside the scope of the mandate.
- *The legal basis for criminal proceedings*
19. The delegation noted that, in certain instances, persons have been convicted or indicted on the basis of legislation introduced after March 2014 for facts which occurred before that date. Two cases in particular were brought to the delegation's attention. The case of Mr Oleksandr Kostenko - sentenced in May 2015 to 4 years and 2 months for "intentional infliction of bodily harm" for having hit a Ukrainian policeman in Kyiv with a stone on 18 February 2014, and for "illegal possession of firearms", and the case currently pending involving six people, among others Mr Akthem Chiygoz, in connection with the events which occurred in Simferopol on 26 February 2014.
20. The issue of indictments and convictions on the basis of laws which did not exist in Crimea at the time of the events (which amounts to retroactively applying a new legislation) or applied to facts occurred in Kyiv, was addressed at the meeting with the prosecutor. The prosecutor underlined the absolute need not to leave the crimes unpunished and further noted that the indictments were subsequent to the lodging of applications by the families of the victims. Subject to further analysis and verification of the specific legal provisions, the delegation observes that these indictments or convictions might raise concerns as to their compatibility

with the principle of legality, also in the sense of Article 7 (No punishment without law) of the Convention, as interpreted by the Court. It appears that a review of these cases needs to be considered.

21. The prosecutor informed the delegation that 118 offences were decriminalised after March 2014 in line with the applicable legislation, and that a review of sanctions was carried out, which led to the reduction of sanctions and to the release of 2783 inmates out of 3142 between March 2014 and January 2016. The prosecutor indicated that this measure could also prevent overcrowding in prisons.

Recommendations:

- *Cases where the legal basis for indictment/conviction appears based on a retroactive application of the legislation should be reviewed.*

V. Penitentiary Establishments

22. The situation regarding the conditions of detention in penitentiary establishments in Crimea had in the past been examined by the Court⁸ and the CPT⁹. In its last visit to the Peninsula (2013), the CPT underlined a number of areas of concern regarding the material conditions in the Simferopol pre-trial establishment-SIZO.
23. Although short-term measures focusing on the improvement of food and health care were reported to the delegation, the local authorities acknowledged that there is still a need for substantive work in this area in order to bring the material conditions of detention in the local penitentiary establishments up to international standards. To this end, the construction of two new detention centres was noted.
24. A number of technical and specific questions fall within the CPT's expertise and mandate, and require more time for their consideration.
25. During the visit, Mr Stoudmann was also allowed to visit Mr Akthem Chiygoz, who is detained in Simferopol pending his trial. During that meeting, in addition to his other requests (see under Judiciary, p.7), Mr Chiygoz challenged the lawfulness of his arrest. Mr Chiygoz did not make complaints about his treatment by the penitentiary administration or ill-treatment in prison, but mentioned health problems having led him to request to be examined by a civil doctor in order to get appropriate medication and treatment. However, no civil doctor had accepted to examine him despite the agreement of prison authorities. In addition, while acknowledging that he received regular visits by family members, he expressed the wish that it be made possible to receive a visit by his elderly mother who suffers from mobility problems.

⁸ For instance in *Dvoynych* (App. No. 72277/01) of 12 October 2006 (regarding conditions of detention the Simferopol pre-trial establishment-SIZO); *Yakovenko* (App. No. 15825/06) of 25 October 2007 regarding the Sevastopol Temporary Detention Isolator- ITT.

⁹ Report to the Ukrainian Government on the visit to Ukraine from 9 to 21 October 2013, doc. CPT/Inf (2014)15; see in particular Appendix I List of CPT Recommendations, comments and requests for information.

Both requests have been transmitted to the prosecutor who noted that she would personally follow up on the matter. This attitude of refusal by “ordinary civilians” (in this instance, civil doctors) to intervene in politically delicate cases is, however, an element that contributes to corroborate the allegations about a climate of intimidation and of isolation of those who are perceived as opponents. Additionally, the issue of Mr Chygoz’s health should also be examined from a humanitarian perspective.

26. The case of 16 Ukrainian citizens¹⁰ convicted before March 2014 and serving their sentence in Crimea was raised, as they formally requested their transfer to another prison in Ukraine. This issue was raised originally in December 2015 by the Ukrainian Foreign Minister Pavlo Klimkin with Secretary General Jagland, requesting him to help in securing this transfer. The issue was thus discussed by the delegation with interlocutors at all levels, in particular with the Ombudsperson in Kyiv, with a view to the identification of a suitable solution on a humanitarian basis.

Recommendations:

- *All interested parties should find a viable solution to guarantee CoE monitoring bodies’ access to the places of detention in the Peninsula.*
- *To encourage the training of law enforcement officials (judges and prosecutors) as well as of lawyers regarding the ECHR requirements pertaining to arrest and pre-trial detention.*

VI. Crimean Tatars and other minorities

27. General difficulties and concerns affecting the rights of minorities – and notably Crimean Tatars – had already been largely identified in previous reports of Council of Europe monitoring structures¹¹, and have been confirmed by many interlocutors of the delegation, including Crimean Tatars in Kyiv.
28. In the context of the current crisis, the allegations of abuses by law enforcement authorities on the one side and the accusations of religious-based radicalisation on the other contributed to create a situation in which Crimean Tatars are particularly exposed to violations and restrictions of their rights and freedoms. Today, the repression seems more targeted towards those perceived as opponents and/or those close to them, rather than reflecting a systematic policy against the Crimean Tatars as a minority, which does not exclude cases of discriminations as reported below.

¹⁰ Originally, 22 convicts reportedly filed petitions requesting their transfer. However, it was explained to the delegation that the situation now concerns only 16 of them.

¹¹ See, in particular: the report of the **Advisory Committee on the Framework Convention for the Protection of National Minorities following its ad hoc visit to Ukraine (21-26 March 2014)**; the **Committee of Ministers’ resolution CM/ResCMN(2013)8 on the implementation of the Framework Convention for the Protection of National Minorities by Ukraine (adopted on 18 December 2013)**; the **Third Opinion on Ukraine by the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted on 22 March 2012**; the **4th ECRI report on Ukraine, adopted on 9 December 2011**.

29. Indeed, a number of measures adopted after March 2014 are perceived by the interested persons as having a discriminatory effect - directly or indirectly – on Crimean Tatars. This is the case, for instance, of procedures for re-registration of business – which would have according to some interlocutors disproportionately affected small business owned by Crimean Tatars - and for the recognition of land property rights. With respect to the latter, a procedure of regularisation of property rights for land occupied by Crimean Tatars after their return in Crimea had been set up prior to March 2014, and the delegation had been informed that those who had not completed such procedures by then are now experiencing difficulties. Clarifications were obtained from the local authorities on these two particular issues, which nevertheless need to be further examined (see recommendation below).
30. Note was taken of a number of measures recently adopted aiming to address some concerns of the Crimean Tatar community, combining “symbolic” recognition with more concrete action, such as the rehabilitation of Crimean Tatars (which also implies an increase in pensions of ex-deported people), the recognition of Crimean Tatar as an official language, the building of a mosque in Simferopol, the continuation of the Crimean Tatar curricula in schools. The adoption of these measures is positively perceived by the concerned population.
31. At the same time, another part of the Crimean Tatar minority sees itself as the deliberate target of discrimination and human rights violations and consider such measures ineffective or irrelevant. Most allegations of disappearances and of violations committed by law enforcement authorities indeed concern Crimean Tatars (see above).
- *Representation of Crimean Tatars / freedom of assembly issues*
32. Several interlocutors also reported difficulty for the Crimean Tatar community in obtaining authorisations to hold rallies. These allegations were however nuanced by other representatives of the Crimean Tatar community who argued that past restrictions in 2014 were linked to the specific political context at the time.
33. It should be noted that, due to the boycott of the September 2014 local elections by part of the community, the number of Crimean Tatars elected drastically diminished, from around 1290 before the elections to only 138.
34. In addition, the delegation learned after its visit that the prosecutor requested, on the basis of the law on countering extremist activity, that the “Mejlis” (the permanent executive body of the “Kurultay” – the traditional Crimean Tatar assembly) be declared as an extremist organisation and be banned, which would undoubtedly have consequences for all Mejlis members, should this decision be taken by the Court (it should be noted that the Court has already postponed the procedure several times). Such a decision would indicate a new level of repression targeting this time the Crimean Tatar community as a whole.

35. One should bear in mind the importance of the “Mejlis” for the Crimean Tatar people, as underlined by many different sources; and therefore the risk that such a negative decision would further alienate the Crimean Tatar community, as well as the importance of maintaining traditional organs to ensure their representation.
36. Moreover, in the context of the current crisis, some of the most prominent members of the “Mejlis” left Crimea and have been charged and others such as Mr Chiygoz are detained, while others occupy important official positions in Crimea. Against this background, the growing tensions and divisions within the Crimean Tatar community are obvious.
37. The delegation also took note of the information (confirmed by both sides), on the creation and training of a paramilitary group in the Kherson region to the North of the Peninsula – “the Tatar battalion”, open both to Crimean Tatars and other Muslim volunteers. There is increasing fear within the Crimean Tatar community living in Crimea that, should this group be in the future involved in violent action against Crimea, this would fuel anti-Tatar sentiments, deepen the divisions within the community, and lead to the adoption of even more severe measures, in particular based on the law against extremism, limiting the exercise by Crimean Tatars of their rights. The situation is in any event very tense and could lead to serious security implications.
 - *Freedom of expression / media*
38. The delegation noted that Crimean Tatars are generally free to display flags and Crimean Tatar symbols in public. Public buildings visited by the delegation continue to carry inscriptions in Tatar alongside other official languages.
39. However, regarding the Crimean Tatar media, the delegation also took note of concerns about a reduction in media diversity, as illustrated by the case of “ATR TV.” An online daily newspaper (previously printed), continued to operate at the time of the visit.¹²
40. On 1 April 2015, private Crimean Tatar ATR TV was taken off the air along with the children’s TV channel “Lale” and radio station “Meydan”, all belonging to the same group.¹³ Whatever was the administrative process leading to the shutting down of ATR (the re-registration process seems to have played a role in this case), the delegation took in any event note of the attachment towards ATR TV and of the sense of loss and frustration caused by its shutting down – which can therefore be considered as having significantly reduced media diversity in Crimea. This sentiment of frustration was probably one the main reasons which led to the establishment of the new public Crimean Tatar TV “Millet TV” – re-hiring part of former ATR staff and which had just started operating at the time of the visit. It remains therefore to be seen whether “Millet” will be considered as a representative media outlet by the Crimean Tatar community.

¹² The Crimean Tatar newspaper “Advet” reportedly turned into an online newspaper only after it faced difficulties in the re-registration process. Reportedly, it also received warnings on the basis of the legislation against extremism.

¹³ Headed by Lenur Islamov, one of the main Crimean Tatar leaders now outside Crimea.

- *Other minorities*

41. The delegation had the opportunity to meet with representatives of most of other minorities living in Crimea (Armenians, Germans, Greeks, Italians, Jewish, Karaites, Krimchak) on various occasions – but it did not have the opportunity to meet with Roma representatives. They reported no deterioration in access to their rights but rather expectations that their situation may in fact improve (e.g. restitution of religious property to the Karaites, rehabilitation decree regarding the Crimean Italians). They deplored the effect of their current isolation on the possibility of travel and exchanges with countries of origin, including with respect to family reunion when part of a family lives abroad and/or with respect to possible financial support.

Recommendations:

- *To find a viable solution for access to the territory of Crimea to the competent Council of Europe structures, and other international institutions dealing with minority issues.*
- *The newly created public Crimean Tatar TV “Millet” programmes and approach should respond to the needs and expectations of the whole Crimean Tatar community, so as to be perceived as a representative channel, truly contributing to media diversity.*
- *To refrain from taking measures that may have a detrimental effect on the representation of the Crimean Tatar community, or have a directly or indirectly discriminatory effect.*
- *The procedure for regularisation of land of Crimean Tatars should be completed smoothly and all legal and practical obstacles should be overcome.*
- *To identify viable ways to facilitate contact between members of a minority and their country of origin.*

VII. Freedom of Religion

42. After the 2014 referendum, legal organisations of religious communities (as other legal entities) were required to re-register in order to continue exercising their organisational activities. Most representatives of religious communities, including those sitting in the Council of inter-ethnic and inter-confessional relations, indicated that re-registration did not cause major difficulties. However a sharp reduction in the number of registered religious organisations was noted – from over 1400 to a number variable between 250 and 400 according to the sources. Reportedly, many of them were not active.

43. Two Muslim holidays have now been recognised as public holidays in Crimea, and the construction of a central mosque in Simferopol has been announced. Representatives of smaller religious communities, such as the Karaites, welcomed recent efforts for the restitution of religious property and attention paid to the particular significance of religious buildings and monuments for their cultural and religious identity.

44. This notwithstanding, the delegation noted the particular attention of law enforcement authorities as regards Islam, particularly in connection with the application of the legislation against extremism. Reportedly, many of the religious organisations that have ceased to exist were Muslim organisations allegedly funded from abroad. The search for prohibited extremist

literature (as well as for weapons and proof of connections with extremist and terrorist groups) has been one of the main reasons given for repeated interventions of law enforcement authorities in mosques, madrassas and private homes of Muslims, in most cases Crimean Tatars. According to the Chief Mufti of Crimea and the Mufti of Sebastopol, this has led religious authorities to replace their religious literature with religious publications from Russia.

45. This issue should be considered also in light of the requirements under Article 9 of the Convention (freedom of thought, conscience and religion) as interpreted by the Court.
46. Ambassador Stoudmann met Archbishop Clement in Kyiv, representing the Ukrainian Orthodox Church of the Kyiv Patriarchate, who declared that there are 250 believers remaining in Crimea and complained about difficulties with regard to the full use and access to their administrative buildings in Simferopol.

Recommendations:

- *Favourable and secure conditions for the practice of all religions must be guaranteed.*

VIII. Freedom of expression and media freedom

47. During its visit, many interlocutors confirmed to the delegation the restrictive effect of the application of the new legislation (since March 2014) to media outlets and journalists in Crimea. There are also concerns that stricter requirements, interpretation of the legislative framework or administrative bias led to a reduction of media diversity. This impression of limited media diversity emerged clearly from a meeting of the delegation with local media representatives.

- *Freedom of expression*

48. The delegation took note of allegations of restrictions to freedom of expression under the argument of “extremist contents”, including through the monitoring of social media. Several interlocutors underlined the risk faced under the applicable law (e.g. the legislation against extremist and/or separatists statements) by activists and/or bloggers who express their objection to the March 2014 referendum and to its outcome. The same interlocutors insisted on the climate of intimidation by law enforcement officials, threats to individual journalists, and the practice of addressing warnings to individuals over the content they publish online, based on the legislation against extremism. These concerns were raised with the prosecutor. This issue should be looked at in light of the level of protection afforded by the Court to a pluralistic public debate, journalistic freedom and the protection of journalistic sources¹⁴. Any interference with freedom of expression under Article 10 of the Convention should comply with the requirements set in Article 10 §2 as interpreted by the Court.

¹⁴ See judgments *Castells* (App. No. 11798/85, 23 April 1992), *Roemen and Schmit* (App. No. 51772/99, 25 February 2003) and *Ernst & Others* (App. No. 33400/96, 15 July 2003).

- *Media freedom*

49. The delegation received information that, apart from ATR TV and its affiliated outlets (see under the “Crimean Tatars and other minorities”), most media outlets completed the re-registration process after March 2014.¹⁵ However, beside the Crimean Tatar media, it was also confirmed that several Ukrainian newspapers ceased their activities after March 2014, reportedly for financial and/or other reasons. There are indications however that a limited access to dedicated Ukrainian media is possible in some regions or through satellite TV. The situation regarding both Crimean Tatar and Ukrainian media confirms a reduction in media diversity after March 2014. In this context, the launch of a new Crimean Tatar media – “Millet TV” – should be considered as recognition of the needs and expectations of the Crimean Tatar community. Still, an in-depth analysis of the media situation would require more time and expertise on a case-by-case basis, looking in particular at the re-registration process.
50. Based on discussions with representatives of media and civil society, the delegation had an overall impression that local Crimean media are rather hesitant to dig into sensitive issues – political or not. Some civil society representatives shared the view that it is easier to attract the attention of media in Moscow than that of local media on issues of high sensitivity. In the same vein, some civil society representatives expressed concerns that access to air time with the local public TV/Radio company (e.g. for advocacy purposes) is rather limited in Crimea. Increased exchanges and contact of local journalists with international journalists could help in strengthening the role of local media as a “public watchdog”¹⁶.

Recommendations:

- *An easier access for foreign journalists to Crimea would be very important.*
- *Programmes and approach of the newly created public Crimean Tatar TV “Millet” should respond to the needs and expectations of the whole Crimean Tatar community, so as to be perceived as a representative channel, truly contributing to media diversity.*

IX. Freedom of association and assembly

51. Like other entities, Crimean NGOs had to re-register after March 2014. According to figures provided during the visit there would be 2,833 registered non-profit organisations in Crimea. Many are still in the process of re-registration, and 331 NGOs were denied registration in 2015. It was explained that the decrease in the numbers was partly due to the fact that the applicable legislation is particularly complicated and administratively demanding (as confirmed by NGOs met by the delegation, especially in order to comply with the “Foreign Agents” provisions), and partly to the fact that a large number of previously registered NGOs

¹⁵ According to local authorities, 207 medias that were already registered in Crimea prior to March 2014 successfully managed to re-register after March 2014.

¹⁶ According to the case-law of the European Court of Human Rights, the press performs a vital role of “public watchdog” in a democratic society. The Court has emphasised that “freedom of the press and other news media affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders.”

were reportedly not active. NGO representatives complained about the difficulty to maintain and/or develop contacts with their counterparts abroad due to communication and travel restrictions.

52. Based on preliminary information, the delegation is under the impression that the re-registration process had a shrinking effect on the Crimean civil society sector, and that the Crimean NGOs seem to be rather weak and still uncertain about how to operate under the current conditions. One of the meetings organised with NGOs – at the office of the Crimean ombudsman - left the delegation with serious doubts about the independence of many of them. At the same time, the delegation was told by re-registered associations and NGOs active in the social field (for instance supporting elderly people, people with disabilities, etc.) that they now have access to greater opportunities for public financial support for their activities.
53. The delegation also raised the issue of restrictions on freedom of assembly targeting opposition activists and/or Crimean Tatar groups¹⁷. It was reported that in the second half of 2015 alone around 1000 mass rallies took place, that 4 public areas in Simferopol are allocated for the holding of rallies, and that authorisations are granted in accordance with the applicable legislation. However, these figures do not allow for concerns to be eluded about arbitrary or politically-oriented decisions in the treatment of requests to hold rallies, and possibly in the related sanctions. The delegation notes in this context that it is essential that any interference with the right to association be in conformity with Article 11 para. 2 of the Convention (freedom of assembly and association) as interpreted by the Court.

Recommendations:

- *Registration of associations should be granted in a non-discriminatory manner and without unjustified obstacles.*
- *Authorisation of rallies and other public gatherings should be granted in a non-discriminatory manner and without unjustified obstacles.*
- *It would be important to identify viable ways of facilitating contacts between Crimean civil society actors and civil society actors from outside Crimea.*

¹⁷ For instance, the delegation heard allegations that rallies organised and/or attended by pro-Ukraine protesters usually lead to administrative sanctions. Law enforcement authorities are reportedly particularly zealous, notably when Ukrainian symbols are displayed.

X. Education

54. The question of the right to receive education in and of minority languages in Crimea had already been addressed by Council of Europe monitoring structures in the past¹⁸. As regards schooling in Crimean Tatar language, the delegation did not identify evident signs of a deterioration of the situation. Although some uncertainty on the provided figures persists,¹⁹ the delegation found that the number of classes providing teaching in Crimean Tatar may have diminished, but not to a significantly worrying extent, at least for the current academic year. The same is true as regards, for instance, newly trained teachers and the availability of textbooks which have been adapted and re-edited in Tatar language in 2015.
55. For schooling in Ukrainian language, the delegation can, on the contrary, confirm that the number of schools and classes providing teaching in Ukrainian language has sensibly diminished compared to 2013. This is, according to local authorities, the result of a free choice of parents who now prefer to pursue the education of children in Russian. It was not in a position to verify allegations about the inadequacy of information of parents, pressures not to choose Ukrainian or Crimean Tatar as schooling languages and unjustified refusals.
56. An important change in the legal framework is that Article 10 of the Constitution of the Republic of Crimea, adopted on 11 April 2014, recognises Crimean Tatar, Russian and Ukrainian as official languages. The delegation visited “model” schools where renovation had been recently carried out, and received concurrent information that investments are being carried out throughout Crimea to renovate and build new schools.

Recommendations:

- *To facilitate the full information of parents about possible choices for main languages of schooling.*

XI. Humanitarian issues

57. During the visit the humanitarian situation in Crimea was addressed by many interlocutors, in particular as a result of the blockade of the Peninsula. Several civil society interlocutors in Crimea indicated to the delegation that the situation had worsened for citizens as a result of the successive blockades (water, food and electricity). Based on preliminary findings, there are reasons to believe that these blockades had and/or still have a non-negligible impact on living

¹⁸ See in particular the concerns expressed in the Committee of Ministers Resolution CM/ResCMN(2013)8 on the implementation of the Framework Convention for the Protection of National Minorities by Ukraine, adopted on 18 December 2013, which recommended *inter alia* to “provide clear legal guarantees for the right to receive education in and of minority languages and regularly monitor their effective implementation; increase and diversify opportunities to study in minority languages at university level; increase efforts to provide minority language institutions with adequate supplies of quality textbooks and strengthen opportunities for the training of minority language teachers; adopt clear law provisions in order to ensure the use of minority languages for access to higher education”.

¹⁹ The delegation received information by local authorities that demand of classes providing teaching in Crimean Tatar is further decreasing, but the same local authorities also confirmed that this would not lead to the suppression of further schools or classes.

conditions in Crimea. The main concern in that regard is related to the “water blockade” (see below). The blockades notably had a negative impact on prices, and were depicted as a form of collective punishment. While the electricity blockade still has a negative impact, notably on hospitals (e.g. for new born babies or intensive care patients), allegations of victims directly linked to electricity shortages were not confirmed. The delegation also took note of concerns expressed by several interlocutors with regard to restrictions to freedom of movement along the crossing points, notably resulting from excessively tight crossing regulations imposed by both sides, and by the lack of adequate documentation.

- *Water blockade*

58. The Peninsula has experienced water shortages after the Ukrainian authorities decided, in May 2014, to shut off the supply of water from the Dnieper River via the North Crimean Canal. It was mentioned to the delegation that the water blockade had important negative effects on agricultural activities due to the lack of irrigation, in particular for rice culture. According to different sources, residents were also directly affected in their daily life by the reduction of water supply – which would still affect some areas. Moreover, it was reported to the delegation that alternative solutions – relying on artesian wells – may have contributed to a salinization of underground reserves, and ecological concerns were raised. The delegation is not in a position to draw any conclusion on the matter, which should be examined by experts.

Recommendations:

- *A technical assessment visit from international experts would clarify the impact of the water blockade.*

Annex 826

Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, Legal Remedies for Human Rights Violations on the Ukrainian Territories Outside the Control of the Ukrainian Authorities (26 September 2016)



Doc. 14139

26 September 2016

Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities

Report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Ms Marieluise BECK, Germany, Alliance of Liberals and Democrats for Europe

Summary

The Committee on Legal Affairs and Human Rights is deeply worried about the human rights situation in Crimea and in the self-proclaimed “people’s republics” of Donetsk and Luhansk (“DPR” and “LPR”) and the lack of legal remedies for victims.

The “DPR” and “LPR”, established, supported and effectively controlled by the Russian Federation, do not enjoy any legitimacy under Ukrainian or international law. This applies to all their “institutions”, including the “courts” established by the *de facto* authorities.

Under international law, the Russian Federation, which exercises *de facto* control over these territories, is responsible for the protection of their population. Regarding Crimea, Russian military presence and effective control have been officially acknowledged by the Russian authorities. Regarding the “DPR” and the “LPR”, effective control is based on the well-documented crucial role of Russian military personnel in taking over and maintaining control of these regions, and on the complete dependence of the “DPR” and “LPR” on Russia in logistical, financial and administrative terms.

Both in Crimea and in the conflict zone in the Donbas region, serious human rights violations have occurred. The committee finds that free and fair elections are not possible in these regions as long as the climate of insecurity, intimidation and impunity and the lack of freedom of expression and information prevail.

1. Reference to committee: [Doc.13700](#), Reference 4108 of 30 January 2015 and [Doc.13728](#), Reference 4124 of 24 April 2015.



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A. Draft resolution²

1. The Parliamentary Assembly is deeply worried about the human rights situation in Crimea and in the self-proclaimed “people’s republics” of Donetsk and Luhansk (“DPR” and “LPR”).
2. It reaffirms its position that the annexation of Crimea by the Russian Federation and the military intervention by Russian forces in eastern Ukraine violate international law and the principles upheld by the Council of Europe, as stated in Assembly [Resolution 2112 \(2016\)](#), [Resolution 2063 \(2015\)](#), [Resolution 1990 \(2014\)](#) and [Resolution 1988 \(2014\)](#).
3. The “DPR” and “LPR”, established, supported and effectively controlled by the Russian Federation, do not enjoy any legitimacy under Ukrainian or international law. This applies to all their “institutions”, including the “courts” established by the *de facto* authorities.
4. Under international law, the Russian Federation, which exercises *de facto* control over these territories, is responsible for the protection of their population. Russia must therefore guarantee the human rights of all inhabitants of Crimea and of the “DPR” and “LPR”.
5. Regarding Crimea, Russian military presence and effective control have been officially acknowledged by the Russian authorities. Regarding the “DPR” and the “LPR”, effective control is based on the well-documented crucial role of Russian military personnel in taking over and maintaining control of these regions, against the determined resistance of the legitimate Ukrainian authorities and on the complete dependence of the “DPR” and “LPR” on Russia in logistical, financial and administrative terms.
6. Both in Crimea and in the conflict zone in the Donbas region, serious human rights violations have occurred, and are still occurring, as documented by numerous reports of, *inter alia*, the Council of Europe’s Commissioner for Human Rights, the United Nations Human Rights Monitoring Mission for Ukraine, the Special Monitoring Mission to Ukraine of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), as well as leading Ukrainian and international non-governmental human rights organisations. These violations include extrajudicial killings, enforced disappearances, torture and inhuman and degrading treatment, unlawful detentions and disproportionate restrictions of the freedom of expression and information.
7. Victims of human rights violations have no effective internal legal remedies at their disposal:
 - 7.1. as far as the residents of the “DPR” and “LPR” are concerned, local “courts” lack legitimacy, independence and professionalism; the Ukrainian courts in the neighbouring government-controlled areas to which jurisdiction for the non-controlled areas was transferred by Ukraine are difficult to reach, cannot access files left behind in the “DPR” and “LPR” and cannot ensure the execution of their judgments in these territories;
 - 7.2. as far as the residents of Crimea are concerned, the climate of intimidation also affects the independence of the courts and, in particular, the willingness of the police and the prosecution service to hold to account perpetrators of crimes against perceived or actual Ukrainian loyalists.
8. In Crimea, Ukrainians in general, and Crimean Tatars in particular, have been severely intimidated by the above-mentioned human rights violations and the fact that they remain largely unpunished. Many were forced to leave Crimea. In parallel, all inhabitants of Crimea have been placed under immense pressure to obtain Russian passports and renounce their Ukrainian nationality in order to have access to health care, housing and other essential services. The Crimean Tatars, following the dissolution of the Mejlis and its local branches, have lost their traditional democratic representation. Tatar media and the Tatar’s Muslim religious practice were also targeted. The cumulative effect of these repressive measures is a threat to the Tatar community’s very existence as a distinct ethnic, cultural and religious group.
9. In the conflict zone in the Donbas region, the civilian population as well as a large number of combatants suffered violations of their rights to life and physical integrity and to the free enjoyment of property, by war crimes and crimes against humanity including the indiscriminate or even intentional shelling of civilian areas, sometimes provoked by the stationing of weapons in close proximity.
10. Numerous inhabitants of the conflict zone in the Donbas, on both sides of the contact line, still suffer on a daily basis from numerous violations of the ceasefire agreed in Minsk. These violations are documented daily by the OSCE Special Monitoring Mission in Ukraine, despite the restrictions on access imposed mainly by the *de facto* authorities of the “DPR” and “LPR”. The inhabitants also suffer from the prevailing climate of

2. Draft resolution adopted unanimously by the committee on 6 September 2016.

impunity and general lawlessness due to the absence of legitimate, functioning State institutions, and in particular of access to justice in line with Article 6 of the European Convention on Human Rights (ETS No. 5). They also endure severe social hardship worsened by restrictive measures imposed by the Ukrainian authorities regarding pension and social assistance payments. Finally, persons displaced from the “DPR” and “LPR” face expropriation of the properties they left behind due to the unlawful re-registration requirements imposed by the *de facto* authorities.

11. The Ukrainian authorities have begun prosecuting alleged perpetrators of war crimes and other human rights violations on the side of pro-government forces. But they have not yet granted international observers access to all places of detention, in particular those run by the Security Service of Ukraine (SBU).

12. The Minsk Agreements include amnesty clauses for the participants in the armed conflict in the Donbas region. The Assembly recalls that under international law, such clauses cannot justify impunity for the perpetrators of serious human rights violations.

13. Regarding the elections foreseen in the Minsk Agreements, the Assembly considers that as long as the present situation in the “DPR” and “LPR”, characterised by a climate of insecurity, intimidation and impunity and a lack of freedom of expression and information, prevails, free and fair elections (as guaranteed by Article 3 of the Protocol to the European Convention on Human Rights (ETS No. 9)) are not possible in these regions.

14. The Assembly regrets that neither the Russian Federation nor Ukraine have ratified the Rome Statute establishing the International Criminal Court (ICC), whilst noting that Ukraine has accepted the ICC’s jurisdiction for the conflict zone in the Donbas region in its declarations of 17 April 2014 and 8 September 2015 under Article 12.3 of the Rome Statute. The Assembly welcomes the changes to the Constitution of Ukraine, finally adopted by the Ukrainian Parliament, by which the ratification of the Rome Statute will be possible. At the same time, the Assembly is concerned that these changes will come into effect only in three years’ time, and not as soon as possible, as was recommended by the Assembly.

15. The Assembly is deeply worried about the lack of progress in the international investigation into the downing of flight MH17 in Donbas.

16. The Assembly therefore urges:

16.1. the competent authorities, both in Ukraine and in the Russian Federation, to:

16.1.1. effectively investigate all cases of serious human rights violations allegedly committed in all areas under their effective control;

16.1.2. prosecute their perpetrators, thereby also discouraging any such violations in future;

16.1.3. compensate their victims to the extent possible;

16.1.4. accede to the Rome Statute of the ICC;

16.1.5. fully implement the Minsk Agreements;

16.2. the Russian authorities to:

16.2.1. end their repressive actions against people loyal to the Ukrainian authorities in all areas under their effective control, including Crimea; in particular, to restore the historical rights of the Crimean Tatar community and to enable the re-establishment of the rule of law in the whole of eastern Ukraine;

16.2.2. meanwhile, ensure the protection of the fundamental rights of all inhabitants of the “DRP” and the “LPR” and the fulfilment of their basic needs, and exercise their influence with the *de facto* authorities to this end;

16.2.3. facilitate the independent monitoring of the human rights situation in all Ukrainian territories under their effective control, including Crimea;

16.3. the Ukrainian authorities to make easier, as far as is in their power, the daily life of the inhabitants of the territories outside of their control and of the displaced persons from these areas by reducing administrative burdens in access to pensions and social allowances and by facilitating the inhabitants’ access to justice by adequately equipping and staffing the courts in government-controlled areas to which jurisdiction for the non-controlled areas has been transferred;

16.4. the international community to continue focusing on the human rights and humanitarian situation of the people living in the territories of Ukraine not under the control of the Ukrainian authorities and refrain from placing demands on Ukraine the fulfilment of which would cement the unlawful status quo;

16.5. the ICC to exercise its jurisdiction regarding the conflict zone in the Donbas region to the extent that is legally possible following the declarations filed by Ukraine.

17. The Assembly resolves to continue observing the human rights situation in the conflict zone in the Donbas region and in Crimea as a matter of priority.

B. Explanatory memorandum by Ms Marieluise Beck, rapporteur

1. Introduction

1. Due to the annexation of Crimea by the Russian Federation and the «hybrid war» in the Donbas region, which led to the proclamation of the so-called “people’s republics” of Donetsk (“DPR”) and Lugansk (“LPR”), Ukraine lost effective control over substantial parts of its territory. The Assembly has strongly condemned both the annexation of Crimea by the Russian Federation and the Russian military intervention in the Donbas region as violations of international law and of the fundamental values of the Council of Europe.³ Whilst I fully share this point of view, the focus of my mandate as rapporteur is to look into the human rights situation of the people living in these regions, with a view to identifying legal remedies for their plight. But in order to be fully objective and to avoid giving in to the temptation of simply blaming “both sides”, it is useful to recall who is the aggressor and who is the victim of the aggression. In such a situation, equidistance is in reality a form of unequal treatment. This said, Ukraine’s “victim status” does not give this country a licence to violate human rights. To the contrary, as Ms Kristýna Zelenkova and I learnt during our joint visit to the Donbas region earlier this year: the brave people still living in the conflict zone and the wonderful civil society activists devoted to helping them as well as those displaced by the conflict rightly have high expectations vis-à-vis the Ukrainian authorities – these must set the right example, to the very best of their abilities.

2. In this report, I will thus deal with the human rights situation in Crimea and the “DPR” and “LPR” and with the legal remedies available to victims of human rights violations – including measures to prevent such violations in the future. Human rights also include the right to free and fair elections protected in Article 3 of the Protocol to the European Convention on Human Rights (ETS No. 9).

3. As regards the facts, I rely in the first place on my own fact-finding activities, including the joint information visit with Ms Zelenkova as the Assembly’s rapporteur and the experience gained in dozens of visits to the conflict zone over the last years as a member of the German Bundestag and the hearings with eminent experts before our committee during the Assembly’s January, April and June 2016 part-sessions.

4. In addition, I rely on the remarkably comprehensive and coherent reports published since the beginning of the conflicts by representatives of the Council of Europe, other international bodies and numerous non-governmental organisations (NGOs), including:

- the Council of Europe Commissioner for Human Rights, and the special representative of the Secretary General, Ambassador Gérard Stoudmann;
- the Human Rights Monitoring Mission in Ukraine of the United Nations Office of the High Commissioner for Human Rights (OHCHR HRMMU);
- the Special Monitoring Mission to Ukraine of the Organisation for Security and Co-operation in Europe (OSCE SMM), as well as the OSCE’s Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and High Commissioner on National Minorities (HCNM);
- numerous reports presented by international and national NGOs, including Amnesty International (AI), Human Rights Watch (HRW), International Crisis Group (ICG), Open Dialogue Foundation (ODF), the Open Russia Foundation, the Kiyv Center for Civil Liberties, the Kiyv International Partnership for Human Rights, the Crimean Human Rights Group, the Coalition “Justice for Peace in Donbas”, the Kharkiv Human Rights Group, and numerous grass-roots groups whose representatives we met in Mariupol and Dnipro.

5. As regards the legal analysis, I base myself first and foremost on the European Convention on Human Rights (ETS No. 5, “the Convention”) as interpreted by the European Court of Human Rights (“the Court”).

6. To conclude, I will make some suggestions – as summed up in the draft resolution – as to how the victims of the human rights violations in the regions covered by my mandate may obtain redress and how their situation may be improved in future.

3. Resolution 2112 (2016); Resolution 2063 (2015), Resolution 1990 (2014) and Resolution 1988 (2014). In this context, the repeated visits by Assembly members to Crimea and the “DPR” and “LPR” on the invitation of the *de facto* authorities are unacceptable (most recently by a French delegation headed by Mr Mariani, see <https://www.rt.com/news/354024-french-lawmakers-visit-crimea/> and the fully justified criticism in *Libération* (www.liberation.fr/planete/2016/07/31/le-voyage-de-parlementaires-francais-en-crimee-condamne-par-l-ukraine_1469594).

2. The human rights situation in the Ukrainian territories outside the control of the Ukrainian authorities

2.1. The human rights situation in Crimea

7. As I was not able to travel to Crimea, I am relying mostly on the reports by the Council of Europe's Commissioner for Human Rights, Mr Niels Muižnieks, and the special representative of the Secretary General, Ambassador Gérard Stoudmann,⁴ as well as reports from other international organisations (in particular, the OHCHR's HRMMU) and from NGOs. Very importantly, Mr Mustafa Dzhemilev, former chairperson of the Mejlis and currently a member of the Verkhovna Rada and of the Ukrainian delegation with the Parliamentary Assembly, gave an impressive description of the situation in his homeland at our committee meeting on 21 June 2016.

2.1.1. 1 The Council of Europe Commissioner for Human Rights

8. The Council of Europe's Commissioner for Human Rights published a report on 27 October 2014 on the human rights situation in Crimea following visits to Kyiv, Moscow and Crimea from 7 to 12 September 2014.⁵ The Commissioner insisted that all investigations should be conducted in compliance with the principles established in the case law of the European Court of Human Rights and stressed the need for accountability for serious human rights violations. He flagged a number of individual cases including:

- the disappearance and death of a protester, Mr Reshat Ametov, whose abduction on 3 March 2014 was shown on the Crimean Tatar television channel ATR;
- the suspect death of 16-year old Mark Ivanyuk on 21 April 2014;
- the cases of three local civil society activists, Leonid Korzh, Timur Shaimardanov and Seiran Zinedinov, who went missing between 22 and 30 May 2014;
- the abduction by uniformed men of MM. Islyam Dzhapparov and Dzhevdet Islyamov on 27 September 2014.

9. Mr Muižnieks also refers to the alleged implication in acts of violence of the so-called "Samo-oborona" (Self-Defence) units, whose status and functions remain unclear, and to acts of intimidation against Crimean Tatars and ethnic Ukrainians who had criticised "the recent political developments".⁶ In April 2015, the Commissioner made a public statement in defence of the Crimean Tatar ATR television channel and reiterated his point of view that minorities in Crimea should be able to freely practise their religion, receive education in their languages and manifest their views without fear.⁷

2.1.2. The Stoudmann report

10. The visit by Ambassador Stoudmann, mandated by the Secretary General of the Council of Europe, gave rise to some controversy. A number of Ukrainian, and in particular Tatar representatives found the report biased in favour of the Russian side.⁸ The report, published before the outlawing of the Mejlis as an "extremist organisation", considered that "the cases of repression, as severe as they may be, seem more targeted against individual opponents, whether they are Crimean Tatars, Ukrainians or others, rather than reflecting a collective repression policy against the Crimean Tatars as an ethnic group".⁹

11. But the report also stated that a ban on the Mejlis of the Crimean Tatar people as an "extremist organisation" (which has indeed been imposed in the meantime) would "indicate a new level of repression targeting the Crimean Tatar community as a whole".

12. Very importantly, Mr Stoudmann concluded that the situation is such that it is "neither normal, nor acceptable, that a population of 2.5 million people should be kept beyond the reach of the human rights mechanisms established to protect all Europeans". I cannot but agree with this statement.

4. SG/Inf(2016)15 rev dated 11 April 2016, Report to the Secretary General of the Council of Europe by Ambassador Gérard Stoudmann on his human rights visit to Crimea (25-31 January 2016) (hereafter: "Stoudmann report").

5. Document CommDH(2014)19 dated 27 October 2014.

6. See also statement on 12 September 2014, "Human rights abuses in Crimea need to be addressed, mission to Kyiv, Moscow and Simferopol".

7. Commissioner Muižnieks calls for unhindered broadcasting of ATR TV, statement of 2 April 2015.

8. See, for example, "What the special mission of the Council of Europe 'didn't notice' in occupied Crimea", Euromaidan Press, 30 May 2016.

9. Stoudmann report, op. cit., p. 4.

2.1.3. Reports by the Human Rights Monitoring Mission for Ukraine of the Office of the United Nations High Commissioner for Human Rights (HRMMU)

13. The HRMMU,¹⁰ which was prevented from opening an office on the territory of Crimea by the *de facto* authorities, has frequently reported on acts of intimidation against members of “pro-Ukrainian” population groups, including national and religious minorities such as the Crimean Tatars. In its June 2015 report, it stresses the tightening of the control of the media, including the denial of re-registration under Russian law and the subsequent closure of at least seven media outlets using the Crimean Tatar language. Re-registration requirements have also jeopardised freedom of religion. The HRMMU has also flagged the “dramatic” situation of vulnerable groups, such as people with a drug addiction deprived of life-saving substitution therapy.¹¹ In its December 2015 report, the HRMMU also points out the violation of the right to citizenship:

“Their right to citizenship has been violated. Although they may keep their Ukrainian passports and will not be sanctioned for not disclosing this fact, Crimean residents were granted Russian Federation citizenship by default and given no choice but to take up Russian Federation passports or lose their employment and social entitlements.”¹²

14. In its most recent (14th) report published in June 2016,¹³ the HRMMU highlights the continuing climate of intimidation fostered by the failure to investigate the killings and disappearances in 2014/15 and in particular the continuing harassment of the Tatar minority (violent searches and seizures, mass arrests, transfer of Crimean detainees to Russian prisons, opening of a new television channel (‘Millet’) broadcasting in the Tatar language with the declared aim of countering “anti-Russian propaganda”).¹⁴

2.1.4. European Union reports

15. At the request of the European Parliament’s Subcommittee on Human Rights, the European Parliament’s Directorate-General for External Policies prepared a study on “The situation of national minorities in Crimea following its annexation by Russia”,¹⁵ which concentrates on the situation of national minorities in Crimea and describes numerous human rights violations targeted specifically at minorities, including the rights to life, liberty, security and physical integrity and property, the freedom of assembly, expression, association, religion, freedom of movement, and education and cultural rights of minorities.

2.1.5. NGO reports

16. Regarding the situation in Crimea, the monthly monitoring reports by the “Crimea Field Mission on Human Rights” set up in March 2014 by a group of NGOs including the Ukrainian Helsinki Human Rights Union, the Youth Human Rights Movement and the Human Rights Centre “Almenda” (with the support of the United Nations Development Program (UNDP) and of the Ministry of Foreign Affairs of Denmark) appear to be the most serious and reliable non-governmental source of information.¹⁶ The Crimea Field Mission’s monthly reports provide useful information on the progress of individual cases and on trends developing over time. The Field Mission also provides detailed information on threats to freedom of expression in Crimea, including media freedom, freedom of assembly and freedom of religion since the annexation. As an example of the kind of cases followed up by the Field Mission, its May 2015 report¹⁷ noted that a practice has evolved in Crimea whereby pro-Ukrainian activists residing in Crimea are prosecuted for acts committed prior to the establishment of control of the Russian Federation, or for participation in events that took place outside of Crimea (for example in other Ukrainian cities), which, in the opinion of the Crimean authorities, threatened the established order of power. This also applies to the “Case of 26 February”, where criminal proceedings under Article 212 of the Criminal Code of the Russian Federation (organising and participating in “mass disorders”)

10. See paragraphs 24-34 below.

11. OHCHR, *Report on the human rights situation in Ukraine*, 16 February-5 May 2015, p. 6, paragraph 19.

12. OHCHR, *Report on the human rights situation in Ukraine*, 16 August-15 November 2015, p. 4, paragraph 15.

13. OHCHR, *Report on the human rights situation in Ukraine*, 16 February-5 May 2015.

14. *Ibid.*, p. 46, paragraph 194.

15. www.europarl.europa.eu/committees/en/droi/supporting-analyses.html.

16. All reports of the Field Mission and of the Crimea Human Rights Group since April 2014 (the most recent covering June 2016) are available at: <http://crimeahr.org>; leading international human rights groups have also published in-depth reports on the human rights situation in Crimea, see Amnesty International, “Ukraine: One year on: Violations of the rights to freedom of expression, assembly and association in Crimea,” 18 March 2015, Index number: EUR 50/1129/2015; Human Rights Watch, “Rights in retreat: abuses in Crimea”, 17 November 2014; and “Russia: independent group targeted over Crimea”, 23 June 2015.

17. Dated 24 June 2015, available at: <http://crimeahr.org/en/>.

were opened against the Deputy Chairperson of the Mejlis, Mr Ahtem Chiygoz, and four other activists (MM. Ali Asanov, Eskender Nebiev, Eskender Kantemirov and Eskender Emirvaliev).¹⁸ The May 2015 report provides disturbing details about the arrest and torture of the pro-Ukrainian activist Oleksandr Kostenko, who was convicted by a court in Simferopol on the basis of confessions allegedly obtained under torture, and following a flawed trial presenting numerous characteristics pointing to its political motivation.¹⁹ The May 2016 report relates a new case of disappearance of a Tatar activist, namely the abduction, on 24 May 2016, of Erwin Ibragimov. In its latest report covering June 2016, the NGO Group cites public statements by the Crimean chief prosecutor which cast doubt on the effectiveness of the investigation into Mr Ibragimov's disappearance. In addition to the monthly reports, the Crimea Human Rights Group publishes thematic reports. One such report published in February 2016 presents numerous instances of politically motivated persecution and discrimination on the ground of pro-Ukrainian views ("Crimea: Ukrainian identity banned"). The most recent thematic report, dated June 2016, on "The victims of enforced disappearance in Crimea as a result of the illegal establishment of the Russian Federation control (2014-2016)" provides detailed descriptions of the circumstances of these disappearances and analyses the obstacles in the path of effective investigation (including at best unclear relations between the "Crimean self-defence forces" suspected of involvement in these crimes and the – de facto – Crimean law-enforcement authorities).

17. Other detailed reviews of specific human rights issues under the occupation are provided by a group of Ukrainian expert analysts (CHROT,) regarding in particular the right to liberty of movement and freedom to choose residence and the right to property, including nationalisation of property (companies, institutions and organisations State-owned and owned by trade unions, private enterprises); prevention of disposition of private property in case of non-registration of real property in accordance with the Russian procedure; demolition of constructions not authorised by the *de facto* authorities (example: demolition of a 16-storied building at Cape Crystal in Sevastopol); difficulties while removing private property from the occupied territory to mainland Ukraine and vice versa; and mandatory re-registration in accordance with Russian law of all legal entities registered on the territory of Crimea and Sevastopol with denial in some cases and nationalisation of the property.²⁰

18. Leading international human rights groups have also published in-depth reports on the human rights situation in Crimea, including Amnesty International and Human Rights Watch.²¹ The most comprehensive factual documentation of human rights violations in Crimea, covering the period between February 2014 and February 2016, can be found in the report by a coalition of Ukrainian NGOs entitled "The Peninsula of Fear: Chronicle of Occupation and Violation of Human Rights in Crimea".²² Last but not least, the "Memorial" Anti-Discrimination Centre dedicated a detailed report to the violation of the rights of lesbian, gay, bisexual and transgender (LGBT) people in Crimea (and the Donbas region).²³ Based on dozens of eyewitness reports, it describes the persecution of sexual and gender minorities and the atmosphere of fear, secrecy and insecurity created by openly homophobic armed people, decrees and regulations passed by local "authorities" under the influence of Russian laws restricting the rights of minorities and prohibiting "propaganda of non-traditional sexual orientations".

18. Human Rights Field Mission report May 2015 (note 16 above), p. 3.

19. *Ibid.*, pp. 5-6.

20. "Crimea beyond rules. Thematic review of the human rights situation under occupation", Issue No. 2, Right to property, http://crimeahumanrights.org/wp-content/uploads/2015/11/Crimea_Beyond_Rules_EN_Issue_2.pdf.

21. Amnesty International, "Ukraine: One year on: Violations of the rights to freedom of expression, assembly and association in Crimea," *op. cit.*; Human Rights Watch, "Rights in retreat: abuses in Crimea", *op. cit.*; "Russia: independent group targeted over Crimea", *op. cit.*; and "Ukraine: Fear, Repression in Crimea, rapid rights deterioration in 2 years of Russian rule", 18 March 2016.

22. Sergiy Zayets (Regional Center for Human Rights), Olexandra Matviychuk (Center for Civil Liberties), Tetiana Pechonchuk (Human Rights Information Centre), Darya Svyrydova (Ukrainian Helsinki Human Rights Union) and Olga Skrypnyk (Crimean Human Rights Group): http://helsinki.org.ua/wp-content/uploads/2016/05/PeninsulaFear_Book_ENG.pdf.

23. Memorial Anti-discrimination Centre, "Violations of the rights of LGBT people in Crimea and Donbass: The problem of homophobia in territories not under Ukrainian control", June 2016: <http://hro.rightsinrussia.info/hro-org/lgbtrights-10>.

2.2. The human rights situation in the “DPR” and “LPR”

2.2.1. The Council of Europe Commissioner for Human Rights

19. From 30 November to 5 December 2014, the Commissioner visited Kyiv and the eastern regions of Ukraine, including two towns (Kurakhove and Krasnoarmiysk) situated close to the (then) frontline. The Commissioner stated that

*“[n]umerous serious human rights violations have occurred, as reported by the United Nations Office of the High Commissioner for Human Rights (OHCHR) and others, implicating primarily the rebel forces, but also governmental forces and volunteer battalions fighting alongside them”.*²⁴

20. The Commissioner referred to information on “hundreds of cases of unlawful killings, abductions and enforced disappearances, as well as torture and ill-treatment” and insisted on the need for accountability of those responsible no matter which side of the conflict they are on. He also pointed out the plight of the 500 000 internally displaced persons (IDPs) and the hardships suffered by the persons residing in the territories outside the control of the Ukrainian authorities, in particular vulnerable groups such as the elderly, persons with disabilities and persons living in penal or psychiatric institutions.²⁵

21. From 29 June to 3 July 2015, the Commissioner undertook another visit to Ukraine, including some regions in eastern Ukraine outside the control of the Ukrainian authorities (Donetsk). His statement following the visit focuses mainly on humanitarian issues, including access to humanitarian aid for residents and their freedom of movement across the dividing line and buffer zone.²⁶

22. The Commissioner’s most recent visit to the conflict region in the Donbas took place from 21 to 25 March 2016. A brief visit to Donetsk City, including a meeting with a senior staff member of the “Ombudsman” of the “DPR”, was facilitated by the United Nations HRMMU. In his report dated 11 July 2016,²⁷ the Commissioner presented *inter alia* the results of interviews with more than a dozen people who had been deprived of their liberty on both sides of the contact line. He found their detailed accounts of torture and ill-treatment particularly convincing in that they were strikingly consistent, having regard to the fact that the people were interviewed individually. Regarding unacknowledged detention, the Commissioner noted that several interviewees detained in government-controlled areas claimed that they were held incommunicado and/or in unacknowledged places of detention for at least part of the time of their detention. Those who had been deprived of their liberty in non-government controlled areas were held in basements of administrative buildings used by “various local structures performing military and security-related functions, as well as by armed groups”. The Commissioner noted that his request to visit places of detention in Donetsk was refused by the de facto authorities, who did not allow any such visits by international monitors as they were not foreseen by “local legislation”. He also noted that the Ukrainian authorities generally granted such access. But regarding certain alleged places of detention run by the Security Service of Ukraine (SBU), he had received information from a number of interlocutors on suspicious movements of detainees ahead of an anticipated international monitoring visit.²⁸ Commissioner Muižnieks also called the reintroduction of the death penalty in the non-government controlled areas “a regrettable step backwards, which must be reversed”.²⁹ Last but not least, the Commissioner’s report also recalls the difficult social and administrative situation of the inhabitants of the conflict zone.

23. In an interview dated 26 July 2016, Commissioner Muižnieks expressed his disappointment that during his visit to Donetsk City, he did not have the level of access that he had anticipated to representatives of the de facto authorities and to places of special interest from a human rights perspective.

24. Statement dated 8 December 2014, “Conflict in eastern Ukraine has dire impact on human rights”.

25. See also Nils Muižnieks, “Eastern Ukraine: the humanity behind the headlines”, in: Open Democracy, 17 December 2014.

26. Statement on “Eastern Ukraine: freedom of movement is vital to preventing isolation and favouring reintegration”, 4 July 2015.

27. CommDH(2016)27.

28. At paragraph 25; the Commissioner’s report also refers to a statement of 25 May 2016 by the UN Subcommittee on the Prevention of Torture complaining about the denial of access to places in several parts of the country where it suspected people were detained by the SBU.

29. See Executive Summary, 2nd paragraph; and paragraphs 13 and 14.

2.2.2. The OHCHR's Human Rights Monitoring Mission in Ukraine

24. In March 2014, the OHCHR deployed a strong human rights monitoring mission in Ukraine (HRMMU) with offices in Kyiv, Lviv, Odessa, Donetsk and Kharkiv.³⁰ The mission, totalling about 35 observers initially headed by Mr Armen Harutunyan,³¹ has been tasked with reporting on the human rights situation and providing support to the Government of Ukraine in the promotion and protection of human rights.

25. The HRMMU has so far published 14 human rights monitoring reports,³² the most recent one in June 2016 covering the period between 16 February 2016 and 15 May 2016. These regular reports are valuable resources in that they provide relevant details, which may enable the identification of the victims and suspected perpetrators of serious human rights violations, including arbitrary killings (for example of captured soldiers), torture, kidnappings, and the indiscriminate shelling of civilians. The mission clearly performs its job neutrally and independently, on the basis of its international mandate. This is particularly valuable in the prevailing climate of mutual distrust between the Ukrainian authorities on the one hand and the leadership of the self-proclaimed "people's republics" of Donetsk and Luhansk and the Russian authorities on the other, which is fuelled by frequent violations of the ceasefire and an ongoing propaganda war.

26. The findings of the OHCHR mission are indeed devastating. Regarding human rights violations by the armed groups (pro-Russian separatists), the HRMMU made the following findings, *inter alia*:

*"[T]here has been deliberate targeting by the armed groups of crucial public utilities like water, electricity and sewerage plants that have shut down essential supplies to the residents. Public and private properties have been illegally seized and residences destroyed. Banks have been robbed and coal mines attacked. Railways were blown up. Hospitals and clinics were forced to shut down (...) The rule of law no longer existed and was replaced by the rule of violence."*³³

*"[A]rmed groups continue to terrorise the population in areas under their control, pursuing killings, abductions, torture, ill-treatment and other serious human rights abuses, including destruction of housing and seizure of property. They abducted people for ransom and forced labour and to use them in exchange for their fighters held by the Ukrainian authorities."*³⁴

*"[T]he collapse of law and order on the territories controlled by the self-proclaimed 'Donetsk people's republic' and the self-proclaimed 'Luhansk people's republic' continued to be aggravated by ongoing armed hostilities between the Ukrainian armed forces and armed groups. The hostilities continue to be accompanied by violations of international humanitarian law and have had a devastating impact on the overall enjoyment of human rights by an estimated five million people living in the area. In places directly affected by the fighting, such as Debaltseve, Donetsk and Horlivka, people pleaded to the HRMMU: 'we just want peace'."*³⁵

27. HRMMU reports also candidly observe how the "professionalisation" of the "armed groups" fighting in eastern Ukraine has become more and more "openly acknowledged" and "self-evident":

*"Their leadership, many of whom are nationals of the Russian Federation are trained and hardened by experience in conflicts such as Chechnya and Transnistria (...) Heavy weaponry including mortars and anti-aircraft guns, tanks and armoured vehicles, and landmines are now being used by them."*³⁶

30. See [Concept Note, UN human rights monitoring in Ukraine](#). The planned office in Simferopol, in Crimea, could not be opened because the de facto authorities would not receive the mission nor guarantee its security; see [UN-Assistant Secretary-General for Human Rights Ivan Simonovic Press Conference in Kiev, Ukraine, 14 March 2014](#).

31. On 23 June 2015, Mr Harutunyan was elected as judge of the European Court of Human Rights on behalf of Armenia.

32. www.ohchr.org/EN/Countries/ENACARRegion/Pages/UARports.aspx.

33. OHCHR, [Report on the human rights situation in Ukraine](#), 15 July 2014, p. 3, paragraph 5.

34. Statement to the Security Council by Ivan Šimonović, Assistant Secretary-General for Human Rights, meeting on Ukraine, 24 October 2014: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15212&LangID=E.

35. OHCHR, [Report on the human rights situation in Ukraine](#), 16 February to 15 May 2015, p. 3, paragraph 4.

36. OHCHR [Report on the human rights situation in Ukraine](#), 15 July 2014, paragraph 8; [Report on the human rights situation in Ukraine](#), 17 August 2014, paragraph 2 ("Armed groups are now professionally equipped and appear to benefit from a steady supply of sophisticated weapons and ammunition, enabling them to shoot down Ukrainian military aircraft such as helicopters, fighter jets and transport planes"); OHCHR, [Report on the human rights situation](#), 16 September 2014, paragraph 3: "Armed groups of the self-proclaimed 'Donetsk people's republic' and 'Luhansk people's republic' were bolstered by an increasing number of foreign fighters, including citizens of the Russian Federation. On 27 August, the so-called 'prime minister' of the 'Donetsk people's republic', Alexander Zakharchenko, stated on Russian State television that 3 000-4 000 Russians were fighting alongside the armed groups, including former or serving Russian soldiers, on leave from their posts."; see also p. 7, paragraph 21; OHCHR, [Report on the human rights situation in Ukraine](#), 16 February to 15 May 2015, p. 4, paragraph 6.

“The absence of effective control of the Government of Ukraine over considerable parts of the border with the Russian Federation (in certain areas of Donetsk and Luhansk regions) continued to facilitate an inflow of ammunition, weaponry and fighters to the territories controlled by the armed groups. Robust military presence on both sides of the contact line carried persistent risks of resurgence of hostilities. Despite the general observance of the ceasefire, the presence of military equipment near civilian facilities continued to threaten the security of the local population.”³⁷

28. Between the beginning of hostilities in mid-April 2014 and 15 May 2016, at least 9 371 people were documented as killed and 21 532 as wounded, and hundreds of people remain missing. The HRMMU considers this as a conservative estimate. The overall trend of lower levels of civilian casualties since the September 2015 ceasefire continued. Nevertheless, the HRMMU recorded 113 new conflict-related casualties in eastern Ukraine between February and May 2016 (14 killed and 99 injured).³⁸ The HRMMU received new reports on killings, torture and ill-treatment as well as unlawful arrests, forced labour, looting, ransom demands and extortion of funds on the territories controlled by the armed groups. The persecution and intimidation of persons suspected of supporting the central authorities remained widespread. The population of the territories controlled by the armed groups is increasingly isolated from the rest of Ukraine since the Government of Ukraine decided to temporarily relocate State institutions from these territories and to stop allocations of funds and disbursements of social payments to institutions and individuals. Obviously, the most vulnerable population groups (pensioners, families with children, persons in institutional care) suffer the most. Last but not least, the inhabitants of the “people’s republics” suffer from the permit system introduced by a Temporary Order of the Security Service of Ukraine (SBU) on 21 January 2015, which limits freedom of movement across the contact line. According to the OHCHR mission, the system continues to give rise to intolerable delays and corrupt practices (though a hotline for complaints established by the Headquarters of the Anti-Terrorist Operation seems to have brought some relief³⁹). Four civilians were killed and eight others wounded on 27 April 2016 by the shelling at night of a checkpoint in the village of Olenivka (on the road between Mariupol and Donetsk City). The OSCE crater analysis indicates the responsibility of the Ukrainian armed forces.⁴⁰ For HRMMU, “[t]his is a stark illustration of the impact of the limitations on freedom of movement, which have compelled civilians to spend prolonged periods exposed to the violence and risks of ongoing hostilities near the contact line”.

29. Earlier reports by the HRMMU provide detailed accounts of other specific violations of human rights and international humanitarian law by the separatist fighters, such as:

- the rocket attacks on 24 January 2015 on the market place in the government-controlled city of Mariupol, killing at least 31 people and wounding 112, and on 13 January 2015 on a bus at a Ukrainian checkpoint near the Government controlled town of Volnovakha, killing 13 civilians and wounding 18;⁴¹
- the use of human shields, by locating military assets in, and conducting attacks from, densely populated areas, thereby putting the civilian population at risk;⁴²
- the shelling of civilians trying to leave the conflict areas (including an attack on 18 August 2014 on a column of vehicles with civilians evacuating from Luhansk, allegedly by armed groups, between the settlements of Novosvitlivka and Khryashchuvate, killing at least 17 persons).⁴³ According to the HRMMU, “[r]eports suggest that some incidents of shelling coincided with the evacuation of civilians and may have been targeted to prevent it”;⁴⁴
- the deliberate killing of soldiers who had surrendered or were trying to do so;⁴⁵ and the ill-treatment of captured servicemen;⁴⁶
- the introduction of the death penalty by the “people’s republics” of Donetsk⁴⁷ and Luhansk;⁴⁸

37. OHCHR, [Report on the human rights situation in Ukraine](#), 16 August to 15 November 2015, p. 5, paragraph 22.

38. OHCHR, [Report on the human rights situation in Ukraine](#), 16 February to 15 May 2016, paragraphs 3, 23 (and note 23), 24 and 26.

39. *Ibid.*, paragraph 88.

40. *Ibid.*, paragraph 20.

41. OHCHR, [Report on the human rights situation in Ukraine](#), 1 December 2014 to 15 February 2015, p. 4, paragraph 6, and p. 7, paragraphs 24 and 25.

42. OHCHR, [Report on the human rights situation in Ukraine](#), 17 August 2014, p. 3, paragraph 4; Report 16 September 2014, p. 3, paragraph 4 and p. 7, paragraph 24.

43. OHCHR, [Report on the human rights situation in Ukraine](#), 16 September 2014, p. 7, paragraph 24; see also Report 17 August 2014, p. 3, paragraph 4: “Armed groups have continued to prevent residents from leaving, including through harassment at checkpoints where residents report being robbed, and firing at vehicles conveying fleeing civilians.”

44. OHCHR, [Report on the human rights situation in Ukraine](#), 1 December 2014 to 15 February 2015, p. 8, paragraph 29.

- the violation of the election rights of the residents of the “people’s republics” of Donetsk and Luhansk, who were prevented by the armed groups from participating in the national presidential and parliamentary elections in May and October 2014⁴⁹ and subjected to the so-called “referendum on self-rule” on 11 May 2014 and the so-called “elections” on 2 November 2014 organised by the armed groups in violation of the Ukrainian Constitution and of the most basic international standards.⁵⁰

30. The HRMMU observed the further strengthening of parallel “governance structures” of the “Donetsk People’s Republic” and the “Luhansk People’s Republic”, with their own legislative frameworks, including parallel systems of law enforcement and administration of justice (“police”, “prosecutors” and “courts”), in violation of the Constitution of Ukraine and in contravention of the spirit of the Minsk Agreements. The most recent report published in June 2016 states that the “OHCHR is concerned that the development of parallel structures of ‘administration of justice’ leads to systematic abuses of the rights of persons deprived of their liberty by the armed groups and issuance of decisions which contravene human rights norms”.⁵¹

31. The HRMMU recalls that the “officials” of the “DPR” and the “LPR” are responsible and shall be held accountable for human rights abuses committed on territories under their control. This particularly applies to people bearing direct command responsibility for the actions of perpetrators.⁵²

32. The HRMMU does not fail to report also on alleged violations of international humanitarian and human rights law by Ukrainian forces, in particular the SBU and certain volunteer battalions, in the form of disproportionate or indiscriminate shelling of populated areas,⁵³ abductions of civilians for prisoner exchange purposes,⁵⁴ arbitrary arrests, secret detentions and ill-treatment of prisoners.⁵⁵ The HRMMU is right in insisting that the perpetrators of such abuses must be held to account in the same way as the separatist fighters.⁵⁶ In its most recent report, HRMMU relates allegations of over 20 cases of arbitrary and incommunicado detention as well as torture. A detention centre run by the Ukrainian Security Service (SBU) in Kharkiv is suspected of being used for such abuses.⁵⁷ The SBU has so far refused access to international monitors, as have the “de facto authorities” of the “LPR” and “DPR”.⁵⁸ The HRMMU notes that “arbitrary detention, torture and ill-treatment remain deeply entrenched practices”.⁵⁹

33. Regarding accountability, the HRMMU notes the efforts of the Ukrainian authorities to bring perpetrators from their own ranks to justice. Between March 2014 and February 2016, the Office of the Military Prosecutor reportedly investigated 726 crimes committed by members of the armed forces (including 11 killings, 12 cases of torture and 27 of arbitrary deprivation of liberty). A total of 622 persons were charged

45. *Ibid.*, p. 9, paragraph 32 (referring to incidents at Krasnyi Partyzan on 24 January 2014, documented by video footage made by the armed groups themselves, and to the bodies of executed Ukrainian soldiers found at Donetsk airport with “their hands tied with white electrical cable”; see also OHCHR, Report on the human rights situation in Ukraine, 16 February to 15 May 2015, pp. 8-9, paragraphs 31-32, with details on the case of the summarily executed Ukrainian serviceman Ihor Branovytskyi, including specific allegations against the commander of the “Sparta battalion”).

46. OHCHR, Report on the human rights situation in Ukraine, 1 December 2014 to 15 February 2015, p. 10, paragraph 33, referring to an incident on 22 January, 2015, when a dozen Ukrainian servicemen captured at Donetsk airport were forced to march through the streets of Donetsk, several of them having been assaulted by an armed group commander and by onlookers.

47. OHCHR, Report on the human rights situation in Ukraine, 16 September 2014, paragraph 9 (establishment of military tribunals to implement death sentences to be applied in cases of aggravated murder).

48. “Belarus and Ukraine rebels keep death penalty alive”, *Euractiv*, 17 April 2015.

49. OHCHR, Report on the human rights situation in Ukraine, 15 December 2014, p. 7, paragraph 25.

50. *Ibid.*, p. 3, paragraph 3, and p. 4, paragraph 11.

51. OHCHR, Report on the human rights situation in Ukraine, 16 February to 15 May 2016, paragraph 66.

52. OHCHR, Report on the human rights situation in Ukraine, 16 August to 15 November 2015, p. 3, paragraph 6.

53. OHCHR, Report on the human rights situation in Ukraine, 1 December 2014 to 15 February 2015, p. 7, paragraph 25 (shelling of a trolley bus and public transport stop in Donetsk on 22 January 2015 killing 13 civilians and wounding 12; and shelling of the town of Horlivka held by the armed groups on 29 January 2015 killing eight and wounding 19 civilians).

54. For example, OHCHR, Report on the human rights situation in Ukraine, 16 February to 15 May 2015, p. 13, paragraph 53 (referring to a person from the Government-controlled town of Sloviansk who was reported to have been “exchanged” three times).

55. *Ibid.*, pp. 10-12, paragraphs 40-49.

56. For example, OHCHR, Report on the human rights situation in Ukraine, 15 June 2015, p. 3, paragraph 5, p. 5, paragraph 13; Report on the human rights situation in Ukraine, 17 August 2014, p. 3 paragraph 4; Report on the human rights situation in Ukraine, 16 September 2014, p. 3, paragraph 4, p. 5, paragraph 10, p. 7, paragraph 24.

57. OHCHR, Report on the human rights situation in Ukraine, 16 February to 15 May 2016, paragraphs 30-34 and 58-59.

58. At its June 2016 meeting, the committee invited its Chairperson to request information from the CPT on this issue.

59. OHCHR, Report on the human rights situation in Ukraine, 16 February to 5 May, paragraph 29.

and 381 of them prosecuted. So far, 272 persons have been judged.⁶⁰ But the OHCHR remains concerned about the administration of justice by the Ukrainian authorities, in particular towards persons accused of involvement with the armed groups:

“The application of a counter-terrorism and security framework to conflict-related detention has created a permissive environment and climate of impunity.”⁶¹

34. The OHCHR also notes that the armed groups have also taken some steps to “prosecute” perpetrators from their own ranks. The “Office of the Prosecutor General” of the “LPR” reportedly stated that criminal cases against members of two armed groups headed by “Batman” and Serhii Kshorov were submitted to the “military court” of the “LPR”.

2.2.3. The OSCE observation mission

35. The OSCE’s Special Monitoring Mission to Ukraine (SMM), currently headed by Ambassador Ertuğrul Apakan (Turkey), was established on 21 March 2014 by OSCE Permanent Council Decision No. 1117. The decision tasked the SMM to, *inter alia*, “establish and report facts in response to specific incidents and reports of incidents, including those concerning alleged violations of fundamental OSCE principles and commitments” as well as to “monitor and support respect for human rights and fundamental freedoms, including the rights of persons belonging to national minorities”.⁶² The SMM is an unarmed, civilian mission, present on the ground around the clock in all regions of Ukraine, with the exception of Crimea. Its main tasks are to observe and report in an impartial and objective way on the situation in Ukraine; and to facilitate dialogue among all parties to the crisis. The mandate of the Mission covers the entire territory of Ukraine, including Crimea. The Mission’s Head Office is in Kyiv, where Ms Zelenkova and I had a very constructive meeting with Ambassador Apakan. The SMM’s monitoring teams work in 10 of the biggest cities of Ukraine: Chernivtsi, Dnepropetrovsk, Donetsk, Ivano-Frankivsk, Kharkiv, Kherson, Kyiv, Luhansk, Lviv and Odessa. About 350 monitors currently work in the Donetsk and Luhansk regions.

36. The SMM produces daily reports⁶³ summed up in weekly reports⁶⁴ providing (very) detailed information on facts observed, including ceasefire violations (with details on the number and nature of shootings, detonations, and their likely origin and responsibility), damage assessment (including assessment of the likely origin of the grenade or missile strike, through “crater analysis”), supervision of the sites to which certain weapons systems were withdrawn in line with the Minsk I and II ceasefire agreements, documentation of border crossings, etc. The SMM also reports on incidents in which the monitors were refused access to certain sites or were unable to access such sites due to unresolved security and safety issues. According to the SMM, the majority of these incidents are the responsibility of the armed groups. On 26 July 2015, an OSCE monitoring patrol came under targeted machine gun, mortar and grenade fire leading to serious injury of one of the monitors.⁶⁵

37. I have read a large number of these reports, which are impressive in terms of their objectivity, neutrality and detail. It is regrettable that they have received so little attention in the political arena in Europe. In light of these reports, it is very difficult not to despair, given that violations of the ceasefire agreements still occur on a daily basis. It is also very regrettable that due to its limited mandate, the SMM is at times even prevented from reporting facts it actually observed, such as transports over the border between Russia and Ukraine.

38. The SMM also produces thematic reports.⁶⁶ The most recent such report on “Access to Justice and the Conflict in Ukraine” (22 December 2015) studies the implications of the relocation of all judicial, prosecution and administrative services from non-government- to government-controlled areas. It describes constraints on access to effective and fair judicial services caused by a combination of actions taken by the self-proclaimed “people’s republics”, and the relocation of government services motivated by the loss of government control

60. *Ibid.*, paragraph 55.

61. *Ibid.*, paragraph 57.

62. OSCE Permanent Council Decision No. 1117 [Deployment of an OSCE Special Monitoring Mission to Ukraine](#), PC.DEC/1117, 21 March 2014; see in particular the “fact sheet”.

63. www.osce.org/ukraine-smm/daily-updates.

64. Not in the public domain (made available to OSCE member States’ governments).

65. [Statement by Deputy Chief Monitor Alexander Hug, “Direct violence committed against OSCE monitors, one monitor hospitalised”](#), 30 July 2015.

66. www.osce.org/ukraine-smm/156571; See for example the reports on “Gender Dimensions of SMM’s Monitoring: One Year of Progress” (22 June 2015); on “Freedom of movement across the administrative boundary line with Crimea” (19 June 2015), on “Protection of Civilians and their Freedom of Movement in the Donetsk and Luhansk Regions” (13 May 2015) and on “Findings on Formerly State-Financed Institutions in the Donetsk and Luhansk Regions” (30 March 2015).

over certain areas. The report states that access to justice remains severely limited due to the absence of legitimate justice services in non-government-controlled areas, the loss of case files, restrictions on freedom of movement and the difficulty of giving notice of proceedings in these areas. The SMM also points out that the “relocated” administration of justice faces challenges such as resource constraints, difficulties in the reconstitution of case files, and in particular the inability to enforce judgments in the areas outside of the control of the Ukrainian authorities. The report also scrutinises unlawful detentions both in government- and non-government-controlled areas. The process of court relocation and the development of parallel “justice” systems has also led to the arbitrary deprivation of liberty of persons on both sides of the contact line. In government-controlled areas, the loss of files for cases relating to the “DPR”- and “LPR”-controlled areas prevents convicted persons from lodging an appeal, and pre-trial detention periods are prolonged as prosecutors attempt to rebuild case files. In “DPR”- and “LPR”-controlled areas, people deprived of their liberty are subject to newly established parallel “courts” which are non-transparent and raise fair trial concerns; and judicial decisions by the “relocated” courts to acquit or otherwise release a person detained in the non-government-controlled areas cannot be executed. In sum, the report demonstrates the inability both of the Ukrainian authorities and of the self-proclaimed “people’s republics” of Donetsk and Luhansk to guarantee access to justice.⁶⁷

2.2.4. Reports by international and national NGOs and human rights defenders

39. Leading international human rights groups such as Amnesty International and Human Rights Watch have published several in-depth reports on human rights violations during the ongoing conflict in eastern Ukraine, which confirm and further underpin the findings of the OHCHR and OSCE observation missions. Local human rights groups also maintain a steady flow of reports, including shorter articles and statements, which contribute to keeping the victims’ plight in the public conscience.⁶⁸ Amnesty International has mostly concentrated on “core” human rights violations such as murder, enforced disappearance and torture.⁶⁹ Human Rights Watch has chosen to focus mainly on alleged violations of international humanitarian law, such as attacks with unguided rockets on populated areas⁷⁰ and the use of cluster munitions, allegedly by both sides of the conflict,⁷¹ and finally the failure to grant access to medical care to civilians.⁷² In a joint report with the Harvard Law Human Rights Program, Human Rights Watch generally questions the legality of explosive weapons in populated areas and calls for a mutual agreement to curb their use.⁷³

40. In July 2016, Amnesty International and Human Rights Watch published a joint report⁷⁴ presenting 18 cases of enforced disappearance in the conflict zone in eastern Ukraine – 9 allegedly committed by the Ukrainian authorities, in particular the SBU, and 9 by the de facto authorities of the “DPR” and “LPR”. The report, based on interviews with numerous witnesses, family members and officials, does not claim to cover all relevant cases, or that the number of such cases is the same on both sides.⁷⁵ But it documents a pattern of abuse which may well be linked indirectly to the Minsk Agreement clauses on prisoner exchange: people are apparently arrested as “currency” for exchange. This would be a highly unlawful form of “hostage taking”, which must be stamped out.

67. OSCE SMM to Ukraine report on “Access to Justice and the Conflict in Ukraine”, 22 December 2015, pp. 4-5.

68. Another report by the hitherto unknown Foundation for the Study of Democracy and the Russian Public Council for International Cooperation and Public Diplomacy on “War crimes of the armed forces and security forces of Ukraine: torture of the Donbass region residents”, published in Russian and English in November 2014, is written in such a polemic tone that it may rather fall into the category of “propaganda war”.

69. “Eastern Ukraine conflict: Summary killings, misrecorded and misreported”, 20 October 2014; “Ukraine: Breaking Bodies: Torture and Summary Killings in Eastern Ukraine”, 22 May 2015, Index number: EUR 50/1683/2015.

70. “Ukraine: Rising Civilian Death Toll, Unlawful Unguided Rocket Attacks on Populated Areas”, 3 February 2015.

71. “Ukraine: Widespread Use of Cluster Munitions, Government Responsible for Cluster Attacks on Donetsk”, 20 October 2014. “Ukraine: More Civilians Killed in Cluster Munition Attacks, Both Sides Have Used Widely Banned Weapon”, 19 March 2015.

72. “Ukraine: Civilians Struggle to Get Medical Care, All Sides Should Ensure Delivery of Aid to Civilians in Rebel-Held Areas”, 13 March 2015.

73. “Civilian Harm from Explosive Weapons: Agreement Needed to Curb Use in Towns, Cities”, 19 June 2015.

74. “You Don’t Exist” – Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine, 21 July 2016, available at: <https://www.hrw.org/report/2016/07/21/you-dont-exist/arbitrary-detentions-enforced-disappearances-and-torture-eastern>.

75. The selection by the HRW/AI of these cases was based on their ability to document them in the most reliable way.

41. A report by the International Crisis Group (“Ukraine: the Line”) dated 18 July 2016⁷⁶ describes, in particular, the dramatic situation of the still substantial civilian population living along the line of contact. They suffer frequent casualties and live in a state of permanent fear, which has serious health consequences. Civilians are still endangered by the practice, observed on both sides, of stationing heavy weaponry in densely populated areas.

42. A report by a group of Ukrainian NGO’s named “Justice in exile”⁷⁷ highlights problems concerning the administration of justice on both sides of the contact line similar to those described in the above-mentioned thematic report by the OSCE, with a special focus on the functioning of the “exiled” courts in the government-controlled parts of the Donetsk and Luhansk oblasts to which jurisdiction for cases in the non-government controlled areas has been transferred.

43. Last but not least, the “Memorial Anti-discrimination Centre”, in its June 2016 report on “Violations of the rights of LGBT people in Crimea and Donbass: The problem of homophobia in territories not under Ukrainian control” gives a dramatic account of the deteriorating situation of sexual minorities in the self-proclaimed people’s republics.⁷⁸

3. Which legal remedies for victims of human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities?

44. Among the legal remedies available to the victims themselves, the possibility of an application to the European Court of Human Rights is of paramount importance, in particular in the situation where the “courts” established by the *de facto* authorities lack legitimacy and are still underdeveloped (as in the “DPR” and “LPR”) and/or unlikely to provide a fair hearing to persons alleging to be victims of human rights violations caused by the actions of the same authorities. The International Criminal Court (ICC) may also have a role to play after the two declarations by Ukraine which effectively grant the ICC jurisdiction for all international crimes committed on Ukrainian territory since 21 November 2013.

3.1. Application to the European Court of Human Rights

45. Both Ukraine and the Russian Federation are States Parties to the European Convention on Human Rights.⁷⁹ Any person who considers that his or her rights under the Convention have been violated may submit an application to the European Court of Human Rights, after the exhaustion of available domestic remedies (Article 3.1).

3.1.1. The Court’s previous practice and pending cases

46. Under the Court’s case law developed with regard to the situation in the northern part of Cyprus⁸⁰ in the Transnistria region of the Republic of Moldova,⁸¹ and, most recently, in the Nagorno-Karabakh region of Azerbaijan,⁸² residents of a region in one State Party that is *de facto* under the control of another State Party may lodge an application both against the State to whom the territory in which he or she resides belongs *de jure* and the State which exercises *de facto* control. The Court found the northern part of Cyprus to be *de facto* controlled by Turkey, Transnistria by Russia, and the Nagorno-Karabakh region by Armenia. Similar cases emanating from South Ossetia and Abkhazia, the breakaway regions of Georgia supported by Russia, have been brought before the Court, but at the end of July 2016, they had not yet been decided.

76. “Ukraine: the Line”, Paul Quinn-Judge (<https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/ukraine-line>).

77. “Justice in exile – Observance of the right to a fair trial in the east of Ukraine, including the territory that is temporarily not controlled by the Ukrainian government”, Center for Civil Liberties and Coalition of Public Organizations and Initiatives “Justice for Peace in Donbas”, January 2016.

78. <http://adcmemorial.org/www/publications/violation-of-lgbti-rights-in-crimea-and-donbass-the-problem-of-homophobia-in-territories-beyond-ukraine-s-control?lang=en>.

79. Both States have also ratified the International Covenant on Civil and Political Rights (ICCPR) as well as its First Optional Protocol allowing for individual communications to the Human Rights Committee. But for reasons of space and competence, I intend to focus mainly on remedies available under the European Convention on Human Rights.

80. See *Cyprus v. Turkey*, Application No. 25781/94, judgments (Grand Chamber) of 10 May 2001 (merits) and 12 May 2014 (just satisfaction).

81. See *Ilascu and others v. Moldova and Russia*, Application No. 48787/99, judgment of 8 July 2004 (Grand Chamber).

82. See *Chiragov and others v. Armenia*, Application No. 13216/05, judgment of 16 June 2015 (Grand Chamber).

47. This is true also for the numerous applications brought before the Court by inhabitants of Crimea and of the conflict zone in the Donbas.⁸³ I was informed by the Registry of the Court that by mid-June 2016, the Court had received several thousand individual applications related to the events in Crimea (prior to and after the annexation of the peninsula by Russia, including ones not directly relating to the conflict but requiring examination of the issue of jurisdiction). The applications concern a wide range of issues – right to life, prohibition of torture, right to liberty, right to fair trial, right to private life, freedom of expression, right to effective remedy, protection of property, etc.

48. More than 3 400 complaints have been introduced against Ukraine and Russia in relation to the conflict situation, some of them against only one or the other. 420 applications were introduced against Russia, Ukraine and the United Kingdom – the latter on the ground that the United Kingdom, being party to the 1994 Budapest Memorandum and a guarantor of Ukraine’s security and sovereignty, failed to take necessary steps in order to provide assistance to Ukraine as a victim of aggression.

49. More than 250 applications have been lodged by soldiers and/or their relatives in connection with the abduction and subsequent captivity of servicemen/women in the course of military action. In those cases, the applicants also allege unlawful detention, ill-treatment in the course of detention, poor conditions of detention, as well as forced labour. More than 3 500 applications have been introduced by civilians who mainly complain about their property being damaged in the course of military activity in the region. The majority of applicants also complain about the lack of access to a court, violations of the right to respect for private life, freedom of expression, and about the impossibility to receive a pension. In 150 cases, the complaints lodged by victims or their relatives relate to killings, injuries, torture or enforced disappearances by separatist fighters or in the course of military activity.

50. In my view, the Court’s case law developed with regard to northern Cyprus, Transnistria and Nagorno-Karabakh allowing victims of human rights violations occurring in these regions to file applications (also) against Turkey, Russia and Armenia due to the effective control they exercise over these regions could also apply to Crimea and the “DPR” and “LPR”.⁸⁴

51. As summed up by Professor Luzius Wildhaber, a former President of the Court:

“According to the Court’s case law, jurisdiction is established where a State actually exercises effective control over a certain area. The control may be exercised either directly through armed forces or indirectly through a subordinate local administration. Violations of the European Convention on Human Rights are imputable to the controlling State where the local administration survives by virtue of the military, economic and political support of the State.”⁸⁵

3.1.2. “Effective control” by Russia over Crimea and the “DPR” and “LPR”?

52. In the case of Crimea, actual, effective control by the Russian Federation is not actually denied by Russia. Control is clearly exercised by Russian armed forces, even though the fact that the “little green men” without insignia who took control of strategic points during the “creeping annexation” were Russian servicemen was officially denied⁸⁶ until President Putin publicly conceded their involvement in November 2014.⁸⁷ There is also no doubt that the de facto authorities in Crimea are “subordinate” to the Russian Federation. They are in fact considered as part and parcel of the Russian State structures by the Russian authorities themselves.

83. On 28 July 2016, the Court declared an application against Ukraine and Russia by persons who claimed their houses were destroyed because of the conflict as inadmissible, for lack of evidence. The applicants had submitted only their passports and photographs of destroyed houses, but not evidence of their ownership of these houses nor any explanations why such evidence was not submitted (see the Court’s press release: [http://hudoc.echr.coe.int/eng-press?i=003-5449480-6831542#itemid:\[\]003-5449480-6831542](http://hudoc.echr.coe.int/eng-press?i=003-5449480-6831542#itemid:[]003-5449480-6831542))).

84. See Luzius Wildhaber, former President of the European Court of Human Rights, “Crimea, Eastern Ukraine and international law”, 2016 (in German).

85. Luzius Wildhaber, “Crimea, Eastern Ukraine and International Law”, in *El Tribunal Europeo de Derechos Humanos. Una visión desde dentro*, p. 394 (with further references, including to the Court’s judgments in *Loizidou v. Turkey*, *Issa v. Turkey*, *Ilascu v. Moldova and Russia*, *Cyprus v. Turkey*, *Al-Skeini v. United Kingdom* and *Chiragov and others v. Armenia*).

86. Initially, President Putin reportedly stated that the “men in green” were not Russian servicemen, but groups of local militia who had seized their weapons from the Ukrainian army (“‘Little green men’ or ‘Russian invaders?’”, BBC News, 11 March 2014).

87. See NZZ, 18 November 2014, p. 1; in May 2015, a monument to the “polite men” who took part in the operation in Crimea was unveiled in Belogorsk, see www.rferl.org/content/russia-monument-polite-people-crimea-invasion/27000320.html.

53. In the case of the conflict zone in the Donbas, some chronological differentiation may be necessary. During the actual military conflict, effective control was – literally – fought over between the Ukrainian forces and the “pro-Russian” armed groups, and their respective zones of control shifted every day. In order to establish jurisdiction of Russia, potential applicants to the Court will need to establish not only that the “armed groups” were in fact controlled by Russia, but also that they were in control of the “locus delicti” where the alleged violation took place at the time when it took place.

54. Regarding the former issue, the parallel with the run-up to the annexation of Crimea speaks for a strong role of serving Russian military personnel in these armed groups. This form of “hybrid warfare” by unmarked soldiers was apparently used by Russia for the first time in the 1992 Transnistrian conflict.⁸⁸ An investigative report on the military involvement of Russia in the conflict in eastern Ukraine and Crimea (“Putin.The War”⁸⁹), initiated by Boris Nemtsov before his assassination and completed by Ilya Yashin and others, was presented by Mr Vladimir Kara-Murza during our committee meeting in January 2016.⁹⁰ This report and another referenced by Mr Kara-Murza (“An invasion by any other name: the Kremlin’s dirty war in Ukraine”⁹¹) provides strong elements of proof for the presence of Russian soldiers and their decisive role during the fighting in the Donbas. Their active involvement also led to numerous casualties among them, many of which have been documented by the Committee of Soldiers Mothers⁹² and other civil society activists collecting and verifying information on “cargo 200” (a codename for the transport of “body bags” with dead soldiers), in particular by the use of social media – despite aggressive attempts by the authorities to keep this information secret.⁹³ Russian soldiers were also taken prisoner by Ukrainian forces.⁹⁴ During our fact-finding visit, at the “townhall meeting” in Mariupol, we also heard the detailed testimony of a Ukrainian military pastor, a survivor of the battle of Ilovaisk, and who spoke very convincingly about the Russian prisoners his unit had taken. Their presence among the Ukrainian soldiers caught in the “green corridor” through which they were meant to withdraw did not stop the prisoners’ fellow soldiers on the other side from shelling them at close range. Senior separatist leaders boasted of the participation of numerous Russian soldiers in the conflict, though they went on to claim that these were “volunteers”, who were in fact “on holiday”.⁹⁵ Ironically, Russian army regulations cited by the Nemtsov report⁹⁶ require soldiers to obtain prior permission for any holiday abroad and expressly forbid any participation in combat during their holidays. In any case, the two reports presented by Mr Kara-Murza show that at the most critical time, entire military units were deployed to eastern Ukraine from Russia;⁹⁷ and artillery attacks against Ukrainian positions (“sector D”) were launched from Russian territory, across the border.⁹⁸ The initial “rollback” by the Ukrainian forces of the rebellion during the spring and early summer of 2014 was brought to a standstill following the “professionalisation” of the armed groups, which was also reported by the HRMMU,⁹⁹ in particularly as of August 2014. The Ukrainian forces’ situation became more and more untenable – which forced Ukraine to accept the disadvantageous terms of the two ceasefire agreements brokered in Minsk. Such decisive military power could clearly not be mustered by mere local militias who stole some weapons from Ukrainian arsenals. Ukraine simply did not have some of the modern, sophisticated weapons used by the “armed groups”, which had never been exported before – for example, a

88. Jeff Hahn, “Russia’s use of hybrid warfare as a tool of foreign policy in the near abroad”.

89. “Putin. The War – about the involvement of Russia in the Eastern Ukraine conflict and in the Crimea”, Boris Nemtsov/Ilya Yashin, 12 May 2015.

90. Full text of the statement by Vladimir V. Kara-Murza, Coordinator of Open Russia and Deputy Leader of the People’s Freedom Party (Moscow, Russia) available from the Committee secretariat.

91. “An invasion by any other name: the Kremlin’s dirty war in Ukraine”, Institute of Modern Russia/The Interpreter.

92. See “Mothers compiled a list of 400 Russian soldiers killed and wounded in Ukraine”; see also *The Guardian*, 19 January 2015, “They were never there, Russia’s silence for families of troops killed in Ukraine”.

93. See “Invasion by any other name”, op. cit., pp. 45-78, presenting numerous very specific facts and testimonies; *Newsweek*, 7 March 2016, “Over 2000 Russian fighters killed in Ukraine: President’s spokesman”; see also “Russia May Have Inadvertently Posted Its Casualties In Ukraine: 2 000 Deaths, 3 200 Disabled”, 25 August 2015 (the author bases himself on the budget made available for compensating the families of killed and disabled soldiers).

94. See, for example, “Russian servicemen captured in Ukraine convicted of terror offenses”, *The Independent*, 18 April 2016; many more examples are provided in the two reports referenced by Mr Kara-Murza.

95. Statements by Alexander Zakharchenko, “prime minister” of the “DPR” and former “DPR defence minister” Igor Girkin (aka Strelkov), quoted in “Putin. The War”, op. cit., pp. 17 and 53.

96. “Putin. The War”, op. cit., p. 18.

97. See, for example, “An invasion by any other name”, op. cit., p. 40 (with reference to the testimony of a wounded Russian tank gunner interviewed by *Novaya Gazeta*); and “Putin.The War”, op. cit., p. 18 (nine Russian soldiers detained by Ukrainian forces on 24 August 2015; the Russian Defense Ministry stated that their presence on Ukrainian territory (20 km from the border) was due to them having “lost their way” on a training exercise).

98. “An invasion by any other name”, op. cit., pp. 22-25; see also “Where did the shells come from? Investigation of cross-border attacks in eastern Ukraine”, prepared by International Partnership for Human Rights, Norwegian Helsinki Committee and Ukrainian Helsinki Human Rights Union, 2016.

99. See paragraph 27 above.

recently modernised version of the T72 main battle tank (T72 B3)¹⁰⁰ and the “Tornado” multiple rocket launcher system. As Mr Kara-Murza pointed out in January, the Russian Government itself acknowledged the presence of the “Tornado” system when its representative signed a protocol to the Minsk Agreement that referred to its withdrawal from the line of contact.

55. For the purposes of the legal analysis regarding the Court’s jurisdiction, it is irrelevant whether this military power was brought to bear by Russia through the open deployment of military forces or by “hybrid warfare” using “volunteers” or “soldiers on holiday”, equipped with modern, high-powered military hardware. A senior separatist commander admitted himself that the massive support provided by Russia was decisive, that the militia units were “subordinate” to “vacationers” and that the Russian “deliveries” were vital for them.¹⁰¹ Such (explicitly acknowledged) dependency generates effective control. I would therefore not hesitate to attribute effective control over the armed groups, and consequently over the areas controlled by these groups, to Russia.

56. This dependency continues despite the reduced intensity of the fighting following the ceasefire and the reported withdrawal of part of the Russian “soldiers on leave” from Ukrainian territory. This is true as long as a possible new “rollback” attempt by Ukrainian Government forces is effectively deterred by the threat of another intervention, which is clearly implicit in the military build-up recently observed on the Russian side of the border.¹⁰² Whilst the immediate, acute dependency of the armed groups on military support in the form of “volunteers”, weapons and ammunition is somewhat reduced, the progressive establishment of the parallel structures observed by, *inter alia*, the HRMMU,¹⁰³ fulfilled the second alternative developed by the Court’s case law for the justification of effective control, namely control through a subordinate local administration. As is the case with military presence, the existence of a subordinate local administration is a matter of fact, which must be determined by the Court in light of all available evidence. There can be no doubt that the “DPR” and “LPR” are wholly dependent on Russia. During our fact-finding visit, Ms Zelenkova and I came across so many elements in support of this dependency that we spoke of “creeping hybrid annexation” of these regions by Russia.¹⁰⁴ These elements include the economic dependence of the de facto authorities, shown for example by the delivery from Russia of basic goods (labelled “humanitarian assistance”, delivered in large convoys of trucks removed from any control by Ukraine). Alexander Khodakovsky, secretary of the “security council” of the “DPR”, announced in September 2015 that the “humanitarian convoys” represent only a tiny fraction of Russian’s financial assistance and that in fact some 70% of the “DPR”’s budget comes from Russia.¹⁰⁵ Even the power grid has reportedly been re-oriented towards provision of electricity from Russia.¹⁰⁶ The Russian rouble has become the currency most in use in the “DPR” and “LPR”, and key officials of the de facto authorities are Russian citizens.¹⁰⁷ We were told that salaries of “DPR” and “LPR” officials are paid by Russia, and even the history books used in the “people’s republic” schools are from Russia (and present history accordingly). A German media report gives details of the financial arrangements made and even identifies specific chains of command from different ministries in Moscow to their “counterparts” in the “people’s republics”, at vice-ministerial level.¹⁰⁸ The parallels to the situation of the de facto authorities in northern Cyprus, Transnistria and Nagorno-Karabakh are obvious.

3.1.3. The United Kingdom as an additional respondent State?

57. As to the applications lodged (also) against the United Kingdom as one of the guarantee powers under the 1994 Budapest Memorandum on Security Assurances,¹⁰⁹ I am rather more sceptical. I do consider the violation, by Russia as one of the guarantee powers, of Ukraine’s territorial integrity, which Russia, the United States and the United Kingdom had solemnly guaranteed in return for Ukraine giving up the nuclear arsenal

100. “An invasion by another name”, op. cit., pp. 25-26, 29 and 31; one of these tanks was even captured by Ukrainian forces, at Ilovaisk.

101. See statements referred to in note 95; see also the ICG report (“Ukraine: the Line”, note 76), which stresses the decisive role of Russia (p. 1).

102. See ICG report (note 76), p. 1.

103. See paragraph 30 above.

104. See joint statement by Ms Zelenkova and myself at the end of our fact-finding visit to Ukraine on 8 April 2016: <http://website-pace.net>.

105. Interview with A. Khodakovsky of 8 September 2015, cited by Mr Kara-Murza in his presentation before the committee in January 2016 (text available on request from the Secretariat).

106. “Russian power keeps Lugansk lights on for the holidays” (a pro-separatist website quoting local leaders).

107. See “Putin. The War”, op. cit., pp. 51-55, with numerous examples.

108. “How Russia finances the Ukrainian rebel territories”, *BILD*, 16 January 2016; the ICG report (note 76) also sees Russia as “the sole source of military, economic and other assistance to the two entities”.

109. www.cfr.org/nonproliferation-arms-control-and-disarmament/budapest-memorandums-security-assurances-1994/p32484.

“inherited” from the Soviet Union, as a sad violation of the international rule of law. The idea of somehow making the Budapest Memorandum “justiciable” is an attractive one; and in criminal law, a failure to act despite a legal duty to prevent a violation of a legally protected interest can indeed be the legal equivalent of an active violation of that interest. But the European Convention on Human Rights is not a criminal law-type instrument for “punishing” States. It is an agreement among States to protect the rights of the persons under their jurisdiction. The inhabitants of the conflict zone were only indirectly affected by the failure of the signatories of the Budapest Memorandum to stop the aggression (or to refrain from one). It will be difficult for the applicants to establish that the United Kingdom not only had a legal duty to intervene against Russia (despite the danger of a major war? *Ad impossibilia nemo tenetur?*) but also somehow exercised “effective control” over the conflict zone by merely failing to intervene in the conflict.

3.1.4. Exhaustion of internal remedies

58. In order to determine at which point in time victims of human rights violations can successfully seize the European Court of Human Rights, it will be necessary to examine the effectiveness of any legal remedies available within the States Parties concerned. According to the Court’s case law, domestic remedies need exceptionally not be exhausted if they are ineffective or if it would be too dangerous or not feasible for other reasons for victims to first apply to local courts.¹¹⁰

59. Both in Crimea and in the “DPR” and “LPR”, the de facto authorities have set up (or maintained) “courts” of their own, whilst the Ukrainian authorities have “delocalised” justice by moving entire courts out of the non-controlled areas and/or attributing jurisdiction to existing courts in neighbouring, government-controlled regions. Victims of human rights violations are in a dilemma: if they address themselves to the legitimate “delocalised” courts, they may well obtain a judgment in their favour (despite the administrative difficulties described in paragraph 38 above), but it will not be executed by the de facto authorities on their territory. If they seize the “courts” set up by the de facto authorities, they are unlikely to have the benefit of a fair hearing, especially if their complaint is related to the consequences of occupation or annexation. Similarly, Russian courts would be unlikely to accept jurisdiction over such cases, or provide relief.¹¹¹ I would therefore tend to consider that the victims of alleged human rights violations by the de facto authorities should be spared having to address themselves to the “courts” run by these authorities.

60. Such a solution would also be the most consistent with the non-recognition of the annexation of Crimea and of the unilateral secession by the “DPR” and “LPR” from Ukraine in international law. Admittedly, the International Court of Justice held in its 1971 Advisory Opinion on Namibia¹¹² that not all acts by the (South African) de facto authorities are void, in particular not those favouring the rights of the population. In the words of the ICJ,

“(...) non-recognition should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, the illegality or invalidity of acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate cannot be extended to such acts as the registration of births, deaths and marriages”.

61. The European Court of Human Rights, in its *Demopoulos v. Turkey* judgment,¹¹³ referred to the ICJ’s opinion when it recognised the “Immovable Property Commission”, established by the *de facto* authorities in northern Cyprus, as an effective domestic remedy which Greek-Cypriot applicants, who had been displaced by the Turkish intervention in 1974 and suffered violations of their property rights, had to exhaust before taking their case to Strasbourg. The Court, which understandably wants to avoid creating a legal vacuum and being forced to act as a court of first instance in a large number of cases, pragmatically states that “allowing the respondent State to correct wrongs imputable to it does not amount to an indirect legitimisation of a regime unlawful under international law”.¹¹⁴

110. See the summary of the Court’s case law in the *Chiragov* judgment, op. cit., paragraphs 115 and 116.

111. The Strasbourg Court came to a similar conclusion in the *Chiragov* judgment (op. cit., at paragraphs 117-120) in the case of Azerbaijani citizens displaced from the Nagorno-Karabakh region, who were not required to first bring their cases before the “courts” set up by the de facto authorities or before an Armenian court.

112. Legal consequences for States of the continued presence of south Africa in Namibia (south-west Africa) notwithstanding security council resolution 276 (1970), *Advisory Opinion of 21 June 1971*, Official summary.

113. *Demopoulos and others v. Turkey*, Applications Nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, Admissibility decision dated 1 March 2010 (Grand Chamber).

114. *Ibid.*, paragraph 96.

62. This report is not the appropriate place to participate in the discussion whether the Court's *Demopoulos* judgment was too pragmatic at the expense of legal principle and whether decisions of the "Immovable Property Commission", empowered to substitute restitution by monetary compensation, can be compared to the registration of births or marriages.¹¹⁵ The Court relies *inter alia* on the passage of time (since 1974), whilst the annexation and occupation of Ukrainian territories go back only three years. Especially where alleged human rights violations are linked directly to the occupation and unlawful annexation, the Court would therefore be perfectly free to distinguish such cases from the *Demopoulos* precedent – as it did in its *Chiragov* judgment (see paragraph 46 above).

3.2. Reference to the International Criminal Court

63. Ukraine signed the Rome Statute of the International Criminal Court in 2000, but has not yet ratified it, following a ruling of the Constitutional Court in 2001 finding ratification to be in conflict with the Constitution. I was told during my meetings at the Verkhovna Rada in April 2016 that a modification of the Constitution to enable ratification of the Rome Statute would be part of the package of constitutional reforms under preparation, though further delays were possible. But Ukraine has made two declarations under Article 12.3 of the Rome Statute, which enables a State not Party to the Rome Statute to accept the exercise of jurisdiction by the ICC.¹¹⁶ The first declaration explicitly covers alleged crimes committed between 21 November 2013 and 22 February 2014. On 8 September 2015, Ukraine made another declaration extending the acceptance of the ICC's jurisdiction indefinitely.¹¹⁷ This means that the ICC now has jurisdiction over the period of the most violent combats between the separatist fighters and the Ukrainian forces, without limitation in time – and without being limited to the alleged perpetrators (all on the "pro-Russian" side) named in the declaration.¹¹⁸

64. On 25 April 2014, the ICC's Office of the Prosecutor launched a "preliminary examination" of the situation in Ukraine, which was initially focused on alleged crimes against humanity in the context of the "Maidan" protests, which are outside of my rapporteur mandate. Following the second declaration under Article 12.3, the Office extended the scope of the preliminary examination to include any alleged international crimes committed on the territory of Ukraine from 20 February 2014 onwards. In its most recent "Report on Preliminary Examinations Activities",¹¹⁹ the Office of the Prosecutor indicated that it had carried out three missions to Ukraine to hold meetings with the Ukrainian authorities and representatives of civil society and announced that it would "continue to gather information from reliable sources in order to conduct a thorough factual and legal analysis of alleged crimes committed across Ukraine, including in Crimea and the Donbas, to determine whether the criteria established by the Rome Statute for the opening of an investigation are met".¹²⁰

65. Among the international crimes listed in the Rome Statute, the most relevant ones would be the war crimes under Article 8. Some alleged human rights violations could also fulfil the definition of a crime against humanity under Article 7. The "Elements of Crimes" reproduced from the records of the Assembly of States Parties of the ICC list the criteria for criminal liability under these provisions in a self-explanatory way.¹²¹ Whether "hybrid warfare" of the kind described above would fulfil the elements of the newly defined crime of aggression is an issue that would warrant a separate report – in any case, neither Russia nor Ukraine are Parties to the Rome Statute, let alone the amendments adopted in Kampala in 2010.

115. Elena Katselli Proukaki, The Right of Displaced Persons to Property and to Return Home after *Demopoulos*, *Human Rights Law Review* (2014), 14(4), pp. 701-732.

116. ICC press release, 17 April 2014, Ukraine accepts ICC jurisdiction over alleged crimes committed between 21 November 2013 and 22 February 2014.

117. ICC press release, 8 September 2015, Ukraine accepts ICC jurisdiction over alleged crimes committed since 20 February 2014.

118. Alexander Wills, *Old Crimes, New States and the Temporal Jurisdiction of the International Criminal Court*, *Journal of International Criminal Justice* (2014); see also Valentyna Polunina, *Between Interests and Values – Ukraine's Contingent Acceptance of International Criminal Justice*, International Nuremberg Principles Academy, 2016. Ms Polunina examines the political background of the two declarations, which may reflect failure to fully comprehend the complementary character of international criminal justice and respond to the deep distrust of the Ukrainian population in the country's own judicial system.

119. Dated 12 November 2015: <https://www.icc-cpi.int/ukraine>.

120. *Ibid.*, paragraph 110.

121. <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>; see also the report on "Co-operation with the International Criminal Court: towards a concrete and expanded commitment", Doc. 14136 (rapporteur: Mr Alain Destexhe, Belgium, ALDE).

66. I do not consider it as part of my mandate to subsume my factual findings under the relevant articles of the Rome Statute. This will be the task of the ICC, in due course. But it is important to stress already now that indiscriminate attacks, such as the rocket attack on the market in Mariupol on 24 January 2015¹²² can under certain circumstances give rise to prosecution as international crimes or war crimes. The same can of course be true for any indiscriminate or disproportionate attacks committed by the Ukrainian forces involved in the operations termed “anti-terrorist” by the authorities in Kyiv.

67. There can be no doubt that a situation of armed conflict existed during the period of intense fighting in eastern Ukraine until the conclusion of the Minsk II ceasefire agreement and even far beyond. Despite the ceasefire agreement, which was never really fully respected, the threat of a further military escalation is still very real. Military action by both sides will therefore have to be assessed in light of the principles of international humanitarian law, in particular the principles of distinction (between combatants and non-combatants), proportionality (between the expected military gain and the “collateral damage” to civilians) and precaution (reasonable care taken to minimise unavoidable and proportionate “collateral damage”). Military action violating any of these principles, for example indiscriminate artillery attacks against residential areas, but also the use of “human shields” by placing weapons and other likely targets in the midst of civilians, can qualify as war crimes, which give rise to the individual criminal responsibility of fighters and their commanders.

4. The amnesty clause under the Minsk II Agreement – an obstacle to accountability?

68. The Minsk II Agreement, signed on 12 February 2015 after dramatic negotiations involving the German Chancellor, the French, Russian and Ukrainian Presidents as well as representatives of the European Union, the OSCE and – indirectly – of the two self-proclaimed “people’s republics”, includes an amnesty clause to “ensure pardon and amnesty by enacting the law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of the Donetsk and Luhansk regions of Ukraine”.¹²³

69. Given the dramatic circumstances in which the agreement was concluded, it is obvious that some issues require clarification and interpretation.¹²⁴ This includes the amnesty clause, which gave rise to some worries soon after the agreement was published – in particular in the Netherlands, where it was feared that the perpetrators of the downing of flight MH17 could be covered by the amnesty.¹²⁵ For the interpretation of the Minsk II amnesty clause, recent developments and trends in international and international human rights law must be taken into account, which favour accountability for serious human rights violations and abhor impunity.¹²⁶ Any clause that provides an exception from the rule of accountability for perpetrators of serious human rights violations must be interpreted restrictively. This should exclude persons from the scope of the amnesty clause who committed or ordered murder, torture or war crimes, in particular those reaching the threshold of international crimes covered by the Rome Statute. The amnesty clause would still remain applicable by shielding those who instigated the armed rebellion and those who participated in the fighting in accordance with the rules of international humanitarian law (*ius in bellum*) from the criminal responsibility they would normally incur for high treason and the killings and destruction caused by taking up arms against their government. But it would not give impunity to those who committed serious crimes on the occasion of the conflict. Such impunity would constitute a serious obstacle to reconciliation and peace.

70. As regards the possible role of the ICC, similar arguments are likely to come into play. Unjustified amnesties for perpetrators of international crimes are even considered to positively underpin the ICC’s subsidiary competence in that they show that the authorities of the State concerned are either unwilling or unable to prosecute the perpetrators themselves.¹²⁷

122. See paragraph 29.

123. Full text of the Minsk Agreement available at: www.elysee.fr/declarations/article/package-of-measures-for-the-implementation-of-the-minsk-agreements/.

124. See, for example, Gustav Gressel, “The Minsk II agreement – the long game”, European Council on Foreign Relations, 13 February 2015; Neil MacFarquhar, Ukraine’s latest peace plan inspires hope and doubt, *New York Times*, 2 February 2015.

125. See, for example, “Hastily signed Minsk agreement forgot the perpetrators of MH17”; German Chancellor Merkel is quoted as saying that in her understanding there was “no obligation” that the amnesty include “everyone”.

126. See, for example, Impunity and the rule of law, OHCHR, 2011, and Mary Griffin, “Ending the impunity of perpetrators of human rights atrocities, a major challenge for international law in the 21st century”, *International Review of the Red Cross*, 30 June 2000; “Eradicating impunity for serious human rights violations, Guidelines and reference texts”, Council of Europe, Strasbourg, 2011; see also OHCHR Report on the Human Rights Situation in Ukraine, 1 December 2014 to 15 February 2015, p. 3, paragraph 4 (and p. 7, paragraph 22): “Regarding the provision on amnesty for those involved in the conflict, OHCHR reiterates the long-standing position of the United Nations that amnesty must not be granted for international crimes, including gross violations of international human rights and humanitarian law.”

71. It would appear that the Russian side also interprets the amnesty clause in the Minsk II Agreement restrictively, as shown by the prosecution of Ukrainian helicopter pilot Nadiia Savchenko for allegedly being involved in the killing, in the combat zone, of two Russian journalists. According to statements by the Russian authorities, the amnesty clause did not apply to her. One argument put forward by the prosecution is that the amnesty provision in the Minsk Agreement applied only to persons in the Donbas region, whilst Ms Savchenko was (now) in Russia.¹²⁸ This argument would condemn all fighters to stay in the conflict zone, or else they would lose the benefit of the amnesty. A statement by Russian Foreign Minister Lavrov on the Savchenko case also shows the narrow view taken by Russia regarding the amnesty clause:

“But to grant amnesty to a person, [the case] should be brought to the court and the court should take the decision. If the court decides that she is not guilty, then probably, amnesty will apply to her, if I can now interpret the Minsk Agreements in this way.”¹²⁹

72. This interpretation seems somewhat surprising to me: once a court of law finds a person not guilty, there is hardly any need for an amnesty.

5. Conclusions

5.1. Regarding the human rights situation in Crimea

73. In sum, it can be safely said in light of all the reports by intergovernmental as well as non-governmental observers that the situation of Crimea is characterised by a climate of intimidation fostered by a number of high-profile killings, abductions and beatings that have remained ominously unpunished. The referendum on “reunification” with Russia was clearly affected by this climate of intimidation to the point that I would consider this vote as a violation of the right to free and fair elections.¹³⁰ Actual or presumed Ukrainian loyalists are subject to different forms of intimidation and harassment. The entire population is pressured into obtaining Russian passports in order to secure access to such basic services as health care and housing. The Crimean Tatars, in particular, have been subjected to a number of repressive measures targeting their historical self-government bodies and cultural and media institutions (dissolution of the Mejlis and its local branches; closure of the Tatar television channel ATR, prosecution of political and cultural leaders of the Tatar community on treason, espionage or “extremism” charges). Numerous Tatars have therefore felt obliged to leave their homeland, and others dare not uphold their historic traditions to such an extent that the very existence of the Crimean Tatar community as a distinct ethnic and cultural group is threatened.

5.2. Regarding the human rights situation in the “LPR” and “DPR”

74. The picture of the human rights situation in the “DPR” and “LPR” painted by the reports summed up above taken together is rather depressing. This picture has been confirmed by the impressions Ms Zelenkova and I collected during our fact-finding visit to the Donbas and by the experts who testified before our committee in January, April and June 2016. I find it equally depressing that these powerful reports, based on long-term, professional monitoring by hundreds of neutral observers duly mandated by the international community have had such little impact on Western public opinion and policies. Do we not want to know what is going on so that we can continue to do nothing (or next to nothing) to stop it?

75. It is undeniable that numerous human rights violations took place during the most violent phase of the conflict, up until the Minsk II Agreement, in February 2015, and that such violations continued and are still continuing after the ceasefire agreement.

127. See, for example, The Peace and Justice Initiative, “Amnesties and the ICC”; www.jstor.org/stable/25659262?seq=1#page_scan_tab_contents.

128. Catherine Fitzpatrick, “Interpreting the Minsk Agreement Regarding Amnesty and Release of Prisoners”, “Lavrov: Savchenko may be granted amnesty after going on trial”; see also “Savchenko amnesty depends on stated article of Criminal Code in final charge – justice minister”; Ms Savchenko insists that she was captured by separatist fighters on Ukrainian territory and then abducted to Russia, whereas the Russian authorities claim that she crossed the border voluntarily.

129. Cited in <http://tass.ru/en/russia/791032>.

130. See Luzius Wildhaber (note 85), p. 386: the former President of the European Court of Human Rights points out that the official results (83% participation, 97% in favour of accession to Russia) are “quite implausible. Crimea was inhabited by some 58-59% ethnic Russians, 24-25% Ukrainians and 12-13% Crimean Tatars. The Crimean Tatars had called for a boycott of the plebiscite, and certainly not all Ukrainians had opted for an accession to Russia. Members of Putin’s Human Rights Council communicated much more credible figures, i.e. that some 30-50% had taken part in the vote, and out of these, some 50-60% had opted to accede to Russia (roughly 22% of the potential voters)”.

76. First of all, there is still heavy loss of life and property due to shelling, especially in some well-known hotspots around the line of contact.¹³¹ Despite the restrictions on their movement imposed on the OSCE observers – imposed mostly by the “armed groups” of the so-called “people’s republics” – the OSCE SMM has documented numerous ceasefire violations where the crater analysis shows that the shelling originated in rebel-controlled areas. As a result, civilians are exposed to dangers to life and limb, especially those still living near the line of contact and those who must spend many hours at the checkpoints waiting to cross into or out of the “people’s republics”.

77. Secondly, acts of repression and intimidation such as extrajudicial killings, unlawful arrests, incommunicado and/or unacknowledged detentions, torture and ill-treatment as well as the taking of hostages still occur. Whilst less numerous than during the most violent phase of the conflict, such violations are encouraged by the prevailing climate of impunity. I am dismayed by the well-documented cases presented by Amnesty International and Human Rights Watch showing that such crimes have also been committed by representatives of the Ukrainian authorities, in particular the SBU. It is paramount that Ukraine sets an example by investigating any such allegations and prosecuting the perpetrators, in line with Articles 2 and 3 of the European Convention on Human Rights as interpreted by the Court. The temporary derogation made by Ukraine under Article 15 of the Convention does not concern the rights to life and protection from torture guaranteed by Articles 2 and 3. As a first step, both sides should establish lists of all places of detention and open them up to inspection by national and international monitors. Monitors must also be given swift access to places that are merely suspected of holding, or having held detainees.

78. Thirdly, the inhabitants of the “DPR” and “LPR” have serious social and administrative problems, which must urgently be resolved in a pragmatic way. It is legitimate that the Ukrainian authorities take precautions in order to avoid fraud (including the collection of pensions and other social payments both from the *de facto* authorities and from Ukraine) and the illicit recuperation of funds transferred to the “people’s republics” by the *de facto* authorities. But the necessary checks must be carried out in such a way as to avoid blocking vital payments for extended periods of time. When we raised these issues with representatives of the Verkhovna Rada in April, we were told that the relevant laws had already been adopted and that their proper implementation by the competent ministries was under way. The most recent reports by international monitors indicate that important issues have still not been resolved. For the sake of a durable solution of the conflict, it must be ensured that the inhabitants of the non-government-controlled areas and of the “grey zone” are not made to feel abandoned by their government. We noticed during our visit in April that such feelings still prevailed. It must also be recalled that the *de facto* authorities and their Russian handlers are responsible, under international law, for the safety and welfare of the population in the territories under their *de facto* control. They are under a duty to provide basic infrastructures, commodities and services, including food, housing and health services. This also means that they must refrain from expropriating inhabitants and displaced persons by creating re-registration requirements for property which can only be fulfilled by the inhabitants subjecting themselves to unlawful rules and by displaced persons exposing themselves to the risks involved in returning to the regions under the control of the *de facto* authorities.

79. Last but not least, lack of access to justice is a serious problem for the inhabitants of the “DPR” and “LPR” as well as some persons living in the government-controlled areas. Ukraine has “delocalised” courts situated in the areas over which the government has lost control, and/or the jurisdiction for cases concerning these areas has been attributed to existing courts in neighbouring, government-controlled areas. But many case files were lost in the sometimes chaotic move, or are now inaccessible. Access to the delocalised courts is difficult for residents of the “people’s republics”, whereas the “judicial” services offered by the newly established parallel structures in the “DPR” and “LPR” are not only illegitimate, but also lacking professionalism and independence. The resulting problems are particularly difficult to resolve without a return to the rule of law upheld by the legitimate authorities. Meanwhile, the Ukrainian authorities should do what is in their power in order to enable the “delocalised” courts to function properly, by providing adequate staff and other resources.

5.3. Regarding the implementation of the Minsk Agreements: link between ceasefire and elections

80. The Minsk Agreements clearly have the merit of considerably reducing the loss of life, both among combatants and civilians. But the ceasefire has never been fully implemented. The OSCE observers note numerous violations, but they are unable to do anything about them. The local population is well aware of their

131. In particular, according to the SMM’s reports, the vicinity of Avdiivka and Yasynutava, the northern outskirts of Donetsk City, Horlivka, Shyrokyne (east of Mariupol), Stanytsia Luhanska Bridge area (see, for example, the OSCE SMM Weekly Report dated 20 July 2016 and its Daily Report 181/2016 dated 1 August 2016).

inability to act. During our “townhall meeting” in Mariupol with local citizens and grass-roots activists, we heard numerous complaints about nightly artillery shelling terrorising the population, in particular in the so-called “grey zone” on both sides of the contact line. Our question regarding possible help from the OSCE observers was greeted with bitter laughter. One of the locals said: “They are not allowed to leave their accommodation at night, as the other side knows full well, and when they turn up in the morning, the damage is done and the observers can only make sure that our side does not return fire.” The Minsk Agreements, as they stand, have not resolved the conflict, at best they have frozen it. As there is nothing better in sight, their implementation by both sides is necessary. But it is not sufficient: without the restoration of the legitimate, lawful authorities there can be no rule of law, nor any effective protection of human rights in this region. This requires re-establishing the full control of Ukraine over its border with the Russian Federation and holding truly free and fair regional elections – as foreseen by the Minsk Agreement. But the conditions for such elections have yet to be created. They require proper security, during the campaign and during the election itself. This condition is far from fulfilled, as is shown, for example, by the fact that the OSCE was unable to provide security even for a short visit of our small delegation to the “people’s republics”. Free and fair elections also require freedom of speech and information, including access to the media both for the “pro-Ukrainian” and the “pro-Russian” side. It is hard to see how this can be achieved without the prior establishment of law and order by Ukraine – under strong international supervision to avoid any intimidation or retaliation “the other way round”. The very fact that such a solution can realistically only be achieved in agreement with Russia and not against Russia is, incidentally, a clear indication of who really pulls the strings in this conflict, on the “pro-Russian” side.

5.4. Regarding legal remedies

81. As I see it, the best available legal remedies provided to victims of alleged human rights violations both in the territory of Ukraine outside the control of the Ukrainian authorities – e.g. in Crimea and in the so-called “people’s republics” of Donetsk and Luhansk are those provided by the European Convention on Human Rights. Given the effective control of the Russian Federation based on the numerous indications presented above (paragraphs 52-56), whether admitted by Russia (as in the case of Crimea) or not (as in the “DPR” and “LPR”), victims of alleged human rights violations should be able to make applications both against Russia – under the Court’s case law attaching jurisdiction to effective control, exercised either directly, through a military presence, or indirectly, through a dependent local administration – and against Ukraine, to whose territory these regions belong under international law.

82. I have also argued that in cases linked to the annexation of Crimea or the action of the de facto authorities of the “DPR” and “LPR”, the alleged victims should not be obliged to first exhaust such internal remedies as the “courts” run by the de facto authorities. These cannot be considered as “effective” remedies in that they lack the necessary degree of independence and/or professionalism.

83. Concerning the accountability of individual perpetrators (and their commanders), it is first and foremost up to the law-enforcement authorities both in Ukraine and in Russia to fully and swiftly investigate alleged crimes and prosecute the perpetrators robustly, without regard to their allegiance in the conflict. Whilst the Ukrainian side has made some progress, it must do more, in particular regarding unlawful detentions and torture allegedly committed by members of the SBU. All official and alleged unofficial places of detention must urgently be made accessible to national and international monitors.

84. The International Criminal Court potentially has an important role to play since Ukraine has accepted its jurisdiction for all international crimes committed on the territory of Ukraine since 21 November 2013. Whilst the progress of the “preliminary examination” launched by the ICC’s Office of the Prosecutor seems to be rather limited so far, the potential scope is considerable, in particular as regards the conflict in the Donbas.

85. Last but not least, accountability for serious human rights violations or international crimes should not be hampered by the amnesty clauses in the Minsk Agreements, which must be interpreted in such a way as to exclude perpetrators of serious crimes committed on the occasion of the conflict. Such a narrow interpretation of the amnesty clauses is also supported by statements from senior representatives of the Russian authorities. In my view, true reconciliation and lasting peace require justice for the victims of the conflict.

Annex 827

Council Directive 2000/43/EC of 29 June 2000

COUNCIL DIRECTIVE 2000/43/EC

of 29 June 2000

implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 13 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Having regard to the opinion of the Committee of the Regions ⁽⁴⁾,

Whereas:

(1) The Treaty on European Union marks a new stage in the process of creating an ever closer union among the peoples of Europe.

(2) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States, and should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community Law.

(3) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.

(4) It is important to respect such fundamental rights and freedoms, including the right to freedom of association. It is also important, in the context of the access to and provision of goods and services, to respect the protec-

tion of private and family life and transactions carried out in this context.

(5) The European Parliament has adopted a number of Resolutions on the fight against racism in the European Union.

(6) The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term 'racial origin' in this Directive does not imply an acceptance of such theories.

(7) The European Council in Tampere, on 15 and 16 October 1999, invited the Commission to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty as regards the fight against racism and xenophobia.

(8) The Employment Guidelines 2000 agreed by the European Council in Helsinki, on 10 and 11 December 1999, stress the need to foster conditions for a socially inclusive labour market by formulating a coherent set of policies aimed at combating discrimination against groups such as ethnic minorities.

(9) Discrimination based on racial or ethnic origin may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity. It may also undermine the objective of developing the European Union as an area of freedom, security and justice.

(10) The Commission presented a communication on racism, xenophobia and anti-Semitism in December 1995.

(11) The Council adopted on 15 July 1996 Joint Action (96/443/JHA) concerning action to combat racism and xenophobia ⁽⁵⁾ under which the Member States undertake to ensure effective judicial cooperation in respect of offences based on racist or xenophobic behaviour.

(12) To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such as education, social protection including social security and health-care, social advantages and access to and supply of goods and services.

⁽¹⁾ Not yet published in the Official Journal.

⁽²⁾ Opinion delivered on 18.5.2000 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 12.4.2000 (not yet published in the Official Journal).

⁽⁴⁾ Opinion delivered on 31.5.2000 (not yet published in the Official Journal).

⁽⁵⁾ OJ L 185, 24.7.1996, p. 5.

- (13) To this end, any direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation.
- (14) In implementing the principle of equal treatment irrespective of racial or ethnic origin, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.
- (15) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence.
- (16) It is important to protect all natural persons against discrimination on grounds of racial or ethnic origin. Member States should also provide, where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination on grounds of the racial or ethnic origin of their members.
- (17) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin, and such measures may permit organisations of persons of a particular racial or ethnic origin where their main object is the promotion of the special needs of those persons.
- (18) In very limited circumstances, a difference of treatment may be justified where a characteristic related to racial or ethnic origin constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.
- (19) Persons who have been subject to discrimination based on racial and ethnic origin should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities should also be empowered to engage, as the Member States so determine, either on behalf or in support of any victim, in proceedings, without prejudice to national rules of procedure concerning representation and defence before the courts.
- (20) The effective implementation of the principle of equality requires adequate judicial protection against victimisation.
- (21) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought.
- (22) Member States need not apply the rules on the burden of proof to proceedings in which it is for the court or other competent body to investigate the facts of the case. The procedures thus referred to are those in which the plaintiff is not required to prove the facts, which it is for the court or competent body to investigate.
- (23) Member States should promote dialogue between the social partners and with non-governmental organisations to address different forms of discrimination and to combat them.
- (24) Protection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims.
- (25) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (26) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.
- (27) The Member States may entrust management and labour, at their joint request, with the implementation of this Directive as regards provisions falling within the scope of collective agreements, provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive.
- (28) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the EC Treaty, the objective of this Directive, namely ensuring a common high level of protection against discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved by the Community. This Directive does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2

Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

4. An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.

Article 3

Scope

1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals and pay;

(d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;

(e) social protection, including social security and healthcare;

(f) social advantages;

(g) education;

(h) access to and supply of goods and services which are available to the public, including housing.

2. This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

Article 4

Genuine and determining occupational requirements

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

Article 5

Positive action

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.

Article 6

Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

CHAPTER II

REMEDIES AND ENFORCEMENT

Article 7

Defence of rights

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

Article 8

Burden of proof

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.
2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.
3. Paragraph 1 shall not apply to criminal procedures.
4. Paragraphs 1, 2 and 3 shall also apply to any proceedings brought in accordance with Article 7(2).
5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

Article 9

Victimisation

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

Article 10

Dissemination of information

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by all appropriate means throughout their territory.

Article 11

Social dialogue

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.
2. Where consistent with national traditions and practice, Member States shall encourage the two sides of the industry without prejudice to their autonomy to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and the relevant national implementing measures.

Article 12

Dialogue with non-governmental organisations

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of racial and ethnic origin with a view to promoting the principle of equal treatment.

CHAPTER III

BODIES FOR THE PROMOTION OF EQUAL TREATMENT

Article 13

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.
2. Member States shall ensure that the competences of these bodies include:
 - without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
 - conducting independent surveys concerning discrimination,
 - publishing independent reports and making recommendations on any issue relating to such discrimination.

CHAPTER IV

FINAL PROVISIONS

Article 14

Compliance

Member States shall take the necessary measures to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) any provisions contrary to the principle of equal treatment which are included in individual or collective contracts or agreements, internal rules of undertakings, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations, are or may be declared, null and void or are amended.

Article 15

Sanctions

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 19 July 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 16

Implementation

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 19 July 2003 or may entrust management and labour, at their joint request, with the implementation of this Directive as regards provisions falling within the scope of collective agreements. In such cases, Member States shall ensure that by 19 July 2003, management and labour introduce the necessary measures by agreement, Member States being required to take any necessary measures to enable them at any time to be in a

position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 17

Report

1. Member States shall communicate to the Commission by 19 July 2005, and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. The Commission's report shall take into account, as appropriate, the views of the European Monitoring Centre on Racism and Xenophobia, as well as the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, this report shall, *inter alia*, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

Article 18

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 19

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 29 June 2000.

For the Council

The President

M. ARCANJO

Annex 828

European Commission, Statement, Joint Statement by President of the European Council Herman Van Rompuy and President of the European Commission José Manuel Barroso on Crimea (Brussels, 16 March 2014)



EUROPEAN COMMISSION

STATEMENT

Brussels, 16 March 2014

Joint statement by President of the European Council Herman Van Rompuy and President of the European Commission José Manuel Barroso on Crimea

Brussels, 16 March 2014 – As stated by all 28 EU Heads of State or Government on 6 March 2014, the European Union considers the holding of the referendum on the future status of the territory of Ukraine as contrary to the Ukrainian Constitution and international law. The referendum is illegal and illegitimate and its outcome will not be recognised.

The solution to the crisis in Ukraine must be based on the territorial integrity, sovereignty and independence of Ukraine, in the framework of the Ukrainian Constitution as well as the strict adherence to international standards. Only working together through diplomatic processes, including direct discussions between the Governments of Ukraine and Russia, can we find a solution to the crisis. The European Union has a special responsibility for peace, stability and prosperity on the European continent and will continue pursuing these objectives using all available channels.

We reiterate the strong condemnation of the unprovoked violation of Ukraine's sovereignty and territorial integrity and call on Russia to withdraw its armed forces to their pre-crisis numbers and the areas of their permanent stationing, in accordance with relevant agreements.

In advancing these goals, the Ministers of Foreign Affairs will evaluate the situation tomorrow in Brussels and decide on additional measures in line with the declaration of the Heads of State and Government of the EU of 6 March.

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Annex 829

European Parliament Policy Department Study, The Situation of National Minorities in Crimea
Following Its Annexation by Russia (April 2016)

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**The situation
of national minorities
in Crimea
following its annexation
by Russia**

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2016



STUDY

The situation of national minorities in Crimea following its annexation by Russia

ABSTRACT

National minorities in Crimea have been subject to systematic violations of their rights since the illegal annexation of Crimea by Russia on 18 March 2014. Documented violations have occurred in the areas of freedom of expression, conscience, and religion; the right to peaceful assembly and association; freedom of the media and access to information; the right to a fair trial and effective remedy; the right to education in one's native language; and linguistic and cultural rights. The de facto authorities in Crimea have neglected to investigate cases of grave violations of the rights to life, liberty, security, and physical integrity. The response of the international community has been limited. While Western countries pursue non-recognition policies towards Crimea, international sanctions introduced in response to the occupation of Crimea are weak, and there have been no measures taken to address the international humanitarian law and human rights violations in Crimea. Limited support is available to human rights organisations focused on or working in Crimea, and human rights monitors still cannot gain access to Crimea. The European Union, and the European Parliament, in particular, should actively advocate for the establishment of an international human rights monitoring presence in occupied Crimea. Tailor-made support programmes should be offered to Ukrainian government agencies and civil society working towards the protection of the rights of Ukrainian citizens in Crimea. The European Parliament should continue raising the issue of human rights violations in Crimea and monitor individual cases. Furthermore, the Council of the European Union should consider imposing sanctions for the violations of international humanitarian law and human rights in occupied Crimea.

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Executive summary

This study examines the situation of national minorities in Crimea since its illegal annexation by Russia on 18 March 2014 up to the time of the writing of this report in March 2016. It focuses on the systematic violations of the rights of persons belonging to the two largest minority groups in the occupied peninsula – Crimean Tatars, who are also indigenous to Crimea, and Ukrainians, who became a de facto minority following Crimea's annexation. Such violations have occurred in the areas of freedom of expression, conscience, and religion; the right to peaceful assembly and association; freedom of the media and access to information; the right to a fair trial and effective remedy; the right to education in one's native language; and linguistic and cultural rights. Russian legislation on extremism and terrorism and on criminal code provisions has been applied extensively by the de facto authorities in Crimea in order to silence the dissent of the Crimeans who opposed its annexation and to target non-Russian religious and ethnic groups, especially Crimean Muslims, most of whom are Crimean Tatars. There are also cases of grave violations of the rights to life, liberty, security, and physical integrity of minority group representatives that have not been investigated by the de facto authorities. Against the worsening backdrop of human rights violations in occupied Crimea, the de facto authorities have further aggravated inter-ethnic relations by using intolerant and hateful language, including through mass media, and by labelling minority representatives and groups as 'loyal' or 'disloyal'.

As an occupying power, Russia is responsible for the implementation of international humanitarian law and for respecting the human rights of Crimean residents. Furthermore, even though Ukraine does not have effective control over Crimea, it is still obliged to use all available legal and diplomatic means to protect the rights of its citizens in the occupied territory.

This study also examines the response of the international community, including the European Union, to the human rights situation in occupied Crimea. Major international security and human rights institutions, many to which Russia is a party, were unable to convince Russia to cease its illegal annexation of Crimea or to respect international laws of occupation. While Western countries pursue non-recognition policies towards Crimea, international sanctions introduced in relation to the occupation of Crimea are weak, and there have been no restrictive measures introduced in response to the violations of international humanitarian and human rights law in occupied Crimea. The international community has also been unable to secure the presence of international human rights organisations in Crimea. Support to human rights organisations working on and in Crimea remains extremely limited.

In this regard, a number of recommendations for the European Union and, specifically, the European Parliament, are made, namely:

- to advocate for and establish an international human rights monitoring presence in occupied Crimea. Meanwhile, the European Union should encourage the government of Ukraine to ease the rules of entry to the peninsula for foreigners to allow access for representatives of international human rights non-governmental organisations and journalists;
- to strengthen sanctions against Russia for the occupation of Crimea and to link these sanctions to violations of international humanitarian law and human rights in occupied Crimea to comply with the European Union's own commitments set out in the Treaty on Functioning of the European Union and relevant European Union guidelines;
- to continuously raise the issue of the illegal annexation at all international fora and meetings with Russian representatives and to demand Russia's compliance with international humanitarian law and international human rights law and the de-occupation of Crimea;

- to introduce tailor-made programmes to support Ukrainian government agencies and civil society in devising effective policies towards the occupied territory and population and effective strategies towards a peaceful de-occupation, and to provide support to media outlets broadcasting in Crimea and organisations representing the indigenous people of Crimea; and
- to encourage the government of Ukraine to improve its domestic policies towards internally displaced people, especially Crimean Tatars, ensuring their right to preserve their language and culture on mainland Ukraine, and to adopt international standards on the rights of indigenous peoples and develop national legislation on the rights of Crimean Tatars in Ukraine.

Any efforts of the European Union and the international community to address the violations of human rights and the worsening situation of minorities in occupied Crimea should also take into account the pressing need to reform and strengthen the relevant international and regional human rights and security institutions, which have failed to adequately respond to Russia's acts of aggression towards Ukraine and its illegal occupation of Crimea. The European Parliament could also play a role in this effort by encouraging debate on these issues.

List of abbreviations

ABL	Administrative Boundary Line
CoE	Council of Europe
CSDP	Common Security and Defence Policy
ECHR	European Court on Human Rights
ECRI	European Commission against Racism and Intolerance
EEAS	European External Action Service
EIDHR	European Instrument for Democracy and Human Rights
EP	European Parliament
EU	European Union
FSB	Federal Security Service of the Russian Federation
HCNM	High Commissioner on National Minorities of the OSCE
ICC	International Criminal Court
IcSP	Instrument contributing to Stability and Peace
IHL	International Humanitarian Law
IHRL	International Human Rights Law
NGO	Non-governmental organisation
ODIHR	Office for Democratic Institutions and Human Rights of the OSCE
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organisation for Security and Cooperation in Europe
OSCE SMM	Special Monitoring Mission of the OSCE to Ukraine
PACE	Parliamentary Assembly of the Council of Europe
UN	United Nations
UNGA	United Nations General Assembly
UNDP	United National Development Programme
USA	United States of America

1 Introduction

Historically, Crimea is a multicultural, multi-ethnic region. According to the Ukrainian Population Census of 2001, Russians comprised the majority (58.5 %) of persons in Crimea, followed by Ukrainians (24.4 %), Crimean Tatars (12.1 %), Belarusians (1.5 %), Tatars (0.5 %), Armenians (0.4 %), Jews, Poles, Moldovans, Azeris (0.2 % each), and other ethnic groups; altogether, representing over 125 nationalities in the two million people that populated Crimea.¹ Despite the wide use of the Russian language, Crimea is a multi-lingual society in which Russian was considered the native language by 76 % of its inhabitants, Crimean Tatar by 11 %, and Ukrainian by 10 % in 2001.² The region is also diverse in terms of religious beliefs and denominations. According to data from Ukraine's Ministry of Culture, among the 1 409 registered religious communities present in Crimea as of January 2014, 42.7 % represented Christian Orthodoxy, 29 %—Islam, 20 %—Protestantism, 1.6 %—Catholicism, 0.9 %—Judaism, and 5.6 %—other religions.³

The annexation of Crimea on 18 March 2014 was justified by Russia and the de facto authorities as a move to protect the Russian and Russian-speaking populations from the 'nationalists, neo-Nazis, anti-Semites, and Russophobes' who 'seized power in Ukraine' and to return to Russia what 'was and has always been an integral part of the country'.⁴ The annexation has dramatically changed the legislative framework de facto applied in Crimea, including that which regulates human rights and fundamental freedoms, but also the situation of its ethnic groups. While a minority in Ukraine, Russians have strengthened their position in Crimea after the annexation. Ukrainians, in contrast, have turned into a de facto minority and their rights, especially linguistic, were affected almost immediately, despite the fact that the 'Constitution of the Republic of Crimea', approved on 11 April 2014 by the de facto authorities, declared Ukrainian, together with Russian and Crimean Tatar, as the state languages on the local level. Crimean Tatars have found themselves in an unsafe position because, in addition to being a minority, they are indigenous people of Crimea, with no kin-state to seek protection from.⁵ They have strong memories of the forcible deportation of the Crimean Tatars from Crimea by the Soviet Union and of the earlier Russian colonisation of Crimea. The Russian annexation of Crimea has evoked fears among Crimean Tatars of new persecutions, forced assimilation, or forced emigration. While the de facto authorities and the government of Russia have made a number of declarations that the rights of the minorities on the peninsula would be protected, including the Russian President's decree on the

¹ All-Ukrainian Population Census 2001, National Structure of Population in the Autonomous Republic of Crimea, <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea/>. By early 2014, the share of the Crimean Tatar population was likely higher than in the census data, given that there was a continuous return of Crimean Tatars from Central Asia between 2001 and 2014 and a relatively high birth rate in the Crimean Tatar community, as compared to the negative indicators for the Russian and Ukrainian populations. See N. Useinov, 'Crimea: from annexation to annexation, or how history has come full circle', in K. Bachmann & I. Lyubashenko, eds., *The Maidan Uprising, Separatism and Foreign Intervention: Ukraine's complex transition*, Series: Studies in Political Transition - Vol. 4, Peter Lang: Frankfurt am Main, 2014.

² All-Ukrainian Population Census 2001, Share of population by native language, Autonomous Republic of Crimea (% of all population). Retrieved from <http://database.ukrcensus.gov.ua/> on 1 March 2016. In October 2014, the occupying power conducted a population census, according to which the share of Russians increased to 67.9 %, the share of Ukrainians decreased to 15.6 %, the share of Crimean Tatars dropped to 10.5 %, and the share of Tatars was 2 %. However, the occupying authorities may have manipulated the data in order to legitimise the annexation of Crimea as a region with a population of over two thirds ethnic Russians. Given the atmosphere of fear and intimidation in Crimea, ethnic minorities may also have been unwilling to reveal their true ethnicity or may have boycotted the census.

³ Institute for Religious Freedom, Religious map of Crimea – infographics, 8 April 2014,

http://www.irf.in.ua/eng/index.php?option=com_content&view=article&id=407:1&catid=36:com&Itemid=55

⁴ President of Russia, *Obraschenie Prezidenta Rossiyskoy Federatsii* [Address of the President of the Russian Federation], 18 March 2014. Retrieved from <http://kremlin.ru/events/president/news/20603> on 1 March 2016.

⁵ See also A. Osipov, 'What Do the Crimean Tatars Face in Crimea?', European Centre for Minority Issues Brief 32, April 2014.

rehabilitation of the peoples deported from Crimea in 1944,⁶ ethnic Ukrainians and Crimean Tatars who support Ukraine's territorial integrity and oppose the change of the status of Crimea have found themselves in an extremely vulnerable position. According to the State Emergency Service of Ukraine, over 21 000 Crimeans have fled to mainland Ukraine.⁷ However, the real number of displaced persons is believed to be much higher.⁸ Moreover, of those displaced, according to Refat Chubarov, Chairman of the Mejlis (the self-governing body of the Crimean Tatar people), about half are Crimean Tatars.⁹

Since the first days of the military occupation in Crimea, pro-Ukraine Crimeans, especially Crimean Tatars, have been targeted by the de facto authorities, Crimean 'self-defence', and other paramilitary groups through various restrictive measures and human rights abuses, including forced disappearances, murders, unlawful searches, interrogations, seizures and arrests, intimidation, and entry bans on political leaders. The de facto authorities have also enacted a wide ban on independent media, including Crimean Tatar outlets, and imposed restrictions on civil, social, and cultural rights.

This study aims to analyse the situation of the national minorities in Crimea since its annexation by Russia (March 2014-March 2016) as well as the policies and practices adopted by the de facto authorities, and to evaluate the response of the international community, including the European Union (EU), to the human rights violations in the occupied peninsula.

This study draws on numerous reports from international intergovernmental organisations and non-governmental organisations (NGOs) that assess the human rights situation in Crimea since its annexation. These reports will be examined in the next section as the principal sources of data and analysis on the situation of the national minorities in Crimea. The reports are complemented by recent accounts from the media, as well as by interviews and informal discussions with representatives of human rights organisations, think tanks, and international organisations, and by participant observation at a number of events on the human rights situation in Crimea during February through early March 2016 in Kyiv.

The remainder of this report is divided into seven sections. The next section examines the available sources of information on the human rights situation in Crimea. Section 3 provides an overview of the situation of national minorities in Crimea and the major violations of their rights from the annexation in March 2014 to the time of the writing of this report in March 2016. Section 4 outlines the de facto legislative framework affecting the rights of minorities in Crimea, including the application of Russian legislation and the relevant acts passed by the de facto authorities. Section 5 reviews the international legal norms and standards relevant to the situation of the occupation of Crimea. Section 6 discusses the actions taken by the international community to improve the situation of these minority groups and to ensure the application of international law. Section 7 evaluates the actions taken by the EU. The report concludes with recommendations for future policy measures.

⁶ Ukaz Prezidenta Rossiyskoy Federatsii ot 21 apreliya 2014 No 268 [Decree of the President of the Russian Federation from 21 April 2014 No 268], Rossiyskaya Gazeta No 6363, 23 April 2014. Retrieved from <http://www.rg.ru/2014/04/21/reabilitaciya-site-dok.html> on 1 March 2016.

⁷ State Emergency Service of Ukraine, Vid pochatku roku regionalnymy shtabamy DSNS zareyestrovano ponad 7 tysiach vnurishnio peremishchenyh osib [Since the beginning of the year regional offices of the SES have registered over 7 thousand internally displaced persons], 5 February 2016 <http://www.mns.gov.ua/news/45731.html?PrintVersion>

⁸ UNIAN, 'Chubarov: Okupirovannyi Krym pokinuli okolo 35 tysiach chelovek, polovina kotoryh – krymskie tatar'y' ['Chubarov: Occupied Crimea is left by about 35 thousand people, half of which are Crimean Tatars'], UNIAN, 17 February 2016, <http://www.unian.net/politics/1268050-chubarov-okkupirovannyiy-kryim-pokinuli-okolo-35-tyisyach-chelovek-polovina-kotoryih-kryimskie-tataryi.html>

⁹ UNIAN, 'Chubarov: Okupirovannyi Krym pokinuli okolo 35 tysiach chelovek, polovina kotoryh – krymskie tatar'y' ['Chubarov: Occupied Crimea is left by about 35 thousand people, half of which are Crimean Tatars'], UNIAN, 17 February 2016, <http://www.unian.net/politics/1268050-chubarov-okkupirovannyiy-kryim-pokinuli-okolo-35-tyisyach-chelovek-polovina-kotoryih-kryimskie-tataryi.html>

2 Overview of available sources of information

Since Russia's annexation of Crimea, regarded as illegal by the vast majority of the international community, including the EU and the United Nations General Assembly (UNGA) through its Resolution 68/262 of 27 March 2014, the human rights situation in Crimea has been the focus of many reports from international intergovernmental organisations, international human rights NGOs, Ukrainian and Russian human rights groups, and ombudspersons. These reports, as a rule, include overviews of the situation of the national minorities in Crimea.

Among these reports, several provide a greater focus on the situation of the minorities in Crimea. The report of the **United Nations (UN) High Commissioner for Human Rights Special Rapporteur on Minority Issues** Rita Izsák, based on her mission to Ukraine in early April 2014, analysed the situation of national minorities in Ukraine along with the policy framework for the protection of their rights. Though the Special Rapporteur was not allowed to enter Crimea, she was able to meet with representatives of the national minorities, including the Crimean Tatars and ethnic Ukrainians, as 'de facto minorities in some localities including the Autonomous Republic of Crimea'.¹⁰ The report raised concerns over the situation of minority groups, including religious communities, in Crimea in the immediate aftermath of the annexation and called for further international presence and monitoring. At the **Council of Europe (CoE)**, the **Advisory Committee on the Framework Convention for the Protection of National Minorities** issued an ad hoc report based on their visit to Ukraine during 21-26 March 2014.¹¹ The Advisory Committee did not travel to Crimea, but instead met with representatives of the minority groups in Kharkiv, Kyiv, and Odesa. The report expressed concerns over 'the safety and access to rights of minority populations in Crimea', in particular, the Crimean Tatars, numerically smaller minorities such as the Karaim and the Krimchak, and persons belonging to the Ukrainian community 'who are in a minority situation in Crimea'.¹² Another **CoE** report delivered by the **Commissioner for Human Rights** Nils Muižnieks upon his visits to Kyiv, Moscow, and Crimea in September 2014 also reviewed the main violations of the rights of ethnic and religious minorities in the context of the human rights situation in Crimea.¹³

The most extensive reports on minority rights in Crimea were prepared by the **Organisation for Security and Cooperation in Europe (OSCE) High Commissioner on National Minorities (HCNM)** within the human rights assessment mission conducted jointly with the **Office for Democratic Institutions and Human Rights (ODIHR)**. The first report of the ODIHR and the HCNM provided an assessment of the human rights situation in Ukraine in the spring of 2014 and featured specific sections on Crimea in the context of human rights and, in particular, the situation of minorities. The findings of the Crimea sections were based on visits conducted separately by ODIHR and HCNM delegations to Crimea in March and April 2014. While the ODIHR delegation raised concerns over the situation of the pro-Maidan activists, the Ukrainian military, and Crimean Tatars as communities opposed to the annexation, the HCNM delegation noted:

Ethnic Ukrainians and Crimean Tatars who espouse pro-Ukrainian views on the status of Crimea or manifest a will to uphold their identity, especially their religious, cultural or

¹⁰ UN High Commissioner for Human Rights Special Rapporteur on Minority Issues, Rita Izsák, Report Addendum Mission to Ukraine (7-14 April 2014), Distr. General 27 January 2015.

¹¹ Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, Ad hoc Report on the situation of national minorities in Ukraine adopted 1 April 2014, Public ACFC (2014) 001.

¹² Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, Ad hoc Report on the situation of national minorities in Ukraine adopted 1 April 2014, Public ACFC (2014) 001.

¹³ Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Report Following His Mission in Kyiv, Moscow, and Crimea from 7-12 September 2014, Strasbourg, 27 October 2014.

linguistic rights, appear increasingly vulnerable, and are in urgent need of protection – an obligation borne first and foremost by the authorities exercising de facto control in Crimea.¹⁴

Centring on the human rights situation in Crimea, the second ODIHR and HCNM report of September 2015 is the most recent report issued by an international organisation that explicitly focused on the rights of minorities in the occupied peninsula. However, this time, the OSCE human rights assessment mission was not allowed access to Crimea and, thus, the report is based on interviews conducted on mainland Ukraine as well as on remote interviews with contacts in Crimea. The report emphasised ‘a particularly vulnerable position’ of the Crimean Tatars and Ukrainians ‘who openly supported the territorial integrity of Ukraine and did not support the de facto authorities,’ and noted the shrinking space for maintaining Ukrainian and Crimean Tatar identity in Crimea.¹⁵

The **UN Human Rights Monitoring Mission in Ukraine** conducts continuous monitoring of the human rights situation in Crimea, though the mission is denied access to Crimea by the de facto authorities. The results of this monitoring have been published by the Office of the UN High Commissioner for Human Rights (OHCHR), first as monthly reports and since 2015, as quarterly reports. The reports contain a separate section that provides an overview of civil, political, economic, social, and cultural rights in Crimea, paying special attention to the rights of indigenous people.¹⁶

International NGOs, such as **Amnesty International**,¹⁷ **Human Rights Watch**,¹⁸ the **Atlantic Council/Freedom House**,¹⁹ and the Ukrainian-American human rights group **Razom**²⁰ have produced reports focusing specifically on human rights abuses in Crimea. Regular monitoring of the human rights situation in Crimea was conducted by the **Crimean Human Rights Field Mission**, a coalition of Ukrainian and Russian human rights groups, which monitored violations of international humanitarian law (IHL) and international human rights law (IHRL) in Crimea between March 2014 and June 2015. These reports covered, inter alia, inter-ethnic and inter-religious relations and the situation of minorities in Crimea.²¹

Supported by the **Turkish authorities**, in June 2015, an unofficial delegation led by Professor Zafer Üskül published a report on the situation of Crimean Tatars following Crimea’s annexation by Russia, which was based on their four-day visit to Crimea in April 2015.²² The report noted ‘a serious decline in the exercise of fundamental rights and freedoms, such as the right to assembly and demonstration, and the freedom

¹⁴ OSCE Office for Democratic Institutions and Human Rights & High Commissioner on National Minorities, Human Rights Assessment Mission in Ukraine. Human Rights and Minority Rights Situation. ODIHR HRAM: 6 March-1 April 2014. HCNM HRAM: 8 March-17 April 2014, the Hague/Warsaw, 12 May 2014, 79 p.

¹⁵ OSCE Office for Democratic Institutions and Human Rights & High Commissioner on National Minorities, Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015), the Hague/Warsaw, 17 September 2015, p. 7-8.

¹⁶ OHCHR reports on the human rights situation in Ukraine are available at <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/UAReports.aspx>

¹⁷ Amnesty International, One Year On: Violations of the Rights to Freedom of Expression, Assembly and Association in Crimea, March 2015, p. 26.

¹⁸ Human Rights Watch, Rights in Retreat: Abuses in Crimea, November 2014, p. 45.

¹⁹ A. Klymenko, Human Rights Abuses in Russian-Occupied Crimea, Washington, DC: The Atlantic Council of the United States and Freedom House, March 2015, p. 23; Freedom House, 'Crimea', [in] Freedom in the World 2015, available at <https://freedomhouse.org/report/freedom-world/2015/crimea>

²⁰ I. Bilych et al., Human Rights on Occupied Territory: Case of Crimea, New York: Razom, 2015, <http://razomforukraine.org/crimeareport>

²¹ The Crimean Field Mission monitoring reports for the period between March 2014 and June 2015 are available in Russian and English at <http://cfmission.crimeahr.org/category/monitoring/>

²² The Turkish delegation first visited Kyiv, then from Kyiv travelled to Moscow and from there to Crimea. See S. Erkuş, ‘Turkish delegation chooses Russia’s way in Crimea’, Hurriyet Daily News, 29 April 2015, <http://www.hurriyetdailynews.com/turkish-delegation-chooses-russias-way-in-crimea.aspx?pageID=238&nID=81738&NewsCatID=510>

of expression' and 'a systematic policy of suppression and intimidation' pursued by the de facto authorities.²³

Experts of the **Eurasian Jewish Congress**, an organisation uniting Jewish communities and organisations from post-Soviet (but not only) countries, produce monthly chronicles of anti-Semitism and xenophobia in Ukraine, including in the Autonomous Republic of Crimea. Based on these chronicles, a special report entitled 'Two years of repressions: the rights of national minorities in Crimea, 2014-2015' was issued, and assessed the human rights situation in the occupied region as 'catastrophic'.²⁴

There are also numerous reports produced by **Ukrainian NGOs**, such as the Ukrainian Helsinki Human Rights Union,²⁵ the Ukrainian Centre for Independent Political Research,²⁶ and coalitions of human rights groups.²⁷ The Kyiv-based Crimea Human Rights group stepped up the work of the Crimean Human Rights Field Mission by publishing reports from July 2015 onwards.²⁸ The Centre for Civil Liberties and Euromaidan-SOS issue monthly 'Chronicles of the Occupation' covering politically motivated human rights violations.²⁹ Crimea-SOS, a Ukrainian NGO, runs an interactive map of human rights violations in Crimea based on information available in open sources. The map has a separate section entitled 'Repressions against Crimean Tatars'.³⁰

As for the Ukrainian authorities, the **Ukrainian Parliament Commissioner for Human Rights** (ombudsperson) discussed the situation in Crimea in the 2014 annual report.³¹ The 2014 annual report produced by the **High Commissioner for Human Rights in the Russian Federation** features a section entitled 'Crimea: despite the difficulties of the transition period'.³² It focused on the restoration of rights of Crimean Tatars and inter-ethnic relations mainly by describing the steps conducted by 'the authorities in Crimea' to improve the situation of Crimean Tatar people.

The most fundamental and persistent challenge for independent monitoring and reporting on human rights in Crimea is the lack of access to the peninsula since the annexation. International

²³ Z. Üskül et al., The Situation of the Crimean Tatars Since the Annexation of Crimea by the Russian Federation. Report prepared based on information obtained during interviews conducted by an unofficial Turkish Delegation in Crimea on 27-30 April 2015, 5 June 2015. Retrieved from

https://www.researchgate.net/publication/292906164_The_Situation_of_the_Crimean_Tatars_since_the_Annexation_of_Crimea_by_the_Russian_Federation on 1 March 2016.

²⁴ V. Likhachev, Dva goda repressiy: prava natsionalnykh menshinstv v Krymu, 2014-2015. Ksenofobia, narusheniya prav natsionalnykh menshinstv, religioznye presledovaniya i repressii v otnoshenii nezavisimogo krymskotatarskogo dvizheniya [Two years of repressions: the rights of national minorities in Crimea. Xenophobia, violations of national minority rights, religious persecutions and repressions against independent Crimea Tatar movement], Report. Retrieved from http://eajc.org/data/file/Qirim_under_the_Occupation.pdf on 1 March 2016.

²⁵ O. Martynenko, Y. Zakharov, Human Rights in Ukraine - 2014. Human rights report of the Ukrainian Helsinki Human Rights Group, Kharkiv: LLC "Publishing Human Rights", 2015. p. 324.

²⁶ Y. Tyshchenko, ed., Hromadianstvo, zemlia, 'natsionalizatsiya vlasnosti' v umovah okupatsiyi Krymu: deficyt prav [Citizenship, land, 'nationalisation of property' under the occupation of Crimea: The rights deficit], Kyiv: Ukrainian Centre for Independent Political Research, 2015; Y. Tyshchenko, O. Smyrnov, eds, 'Anneksovana' osvita v tymchasovo okupovanomu Krymu ['Annexed' education in the temporary occupied Crimea], Kyiv: Ukrainian Centre for Independent Political Research, 2015.

²⁷ For example, T. Pechonchyk, ed., The Fear Peninsula: Chronicle of Occupation and Violation of Human Rights in Crimea, Kyiv, 2015, 77 p.

²⁸ The Crimea Human Rights Group reports are available at <http://crimeahrg.org/category/monitor/>

²⁹ The website of the Centre for Civil Liberties <http://ccl.org.ua/> is temporarily unavailable, but their monthly digests are available at http://www.prostir.ua/category/library/?filter-type=novyyny_po_rehionah&filter-value=krym

³⁰ The map and data on violations are available at <http://crimeamap.krymsos.com/ru/list.html>

³¹ Schorichna dopovid Upovnovazhenoho Verkhovnoyi Rady Ukrainy z prav liudyny pro stan doderzhannia ta zahystu prav i svobod liudyny i hromadianyna [Annual report of Ukrainian Parliament Commissioner for Human Rights on the situation of respect and protection of human and citizen rights and freedoms], Kyiv, 2015, p. 552.

³² Doklad Upolnomochennogo po pravam cheloveka v Rossiyskoy Federatsiyi za 2014 god [Report of the High Commissioner for Human Rights in the Russian Federation for 2014], Moscow, 2015.

intergovernmental organisations and international NGOs have access to the peninsula for human rights monitoring regularly denied or impeded. Since the mission of the CoE Commissioner for Human Rights Nils Muižnieks to Crimea in September 2014 until late January 2016, when the delegation sent by the CoE Secretary General and led by Gérard Stoudmann visited Crimea, no international organisations were able to visit the peninsula.

Impediments to access of international organisations to Crimea are related to its disputed status. If the international organisations are invited by the government of Ukraine to monitor the human rights situation in Crimea, the Russian occupying authorities block access (as it occurred in the case of the UN Human Rights Monitoring Mission and the OSCE Special Monitoring Mission in Ukraine). Even if this obstacle could be overcome, the government of Ukraine could not ensure security of an international delegation on territory that it does not control. Furthermore, if monitors from international NGOs attempt to enter Crimea in a personal capacity, without disclosing the true purpose of their visit, they may face significant security risks during their stay. Thus, cooperation with Russia is necessary in order to obtain third-party access to occupied Crimea; however, as the occupying power, Russia does not recognise that human rights are violated in Crimea, nor do they recognise a need for independent monitoring.

Moreover, given the restrictive climate for civic activism in Crimea, the monitoring and documentation of human rights violations by local activists constitutes a major risk, as these activists could be arrested (a member of the human rights contact group Emir-Usein Kuku was jailed for two months on 11 February 2015 after previous detentions) or deported. A number of prominent Crimean human rights organisations have ceased activities or relocated to mainland Ukraine. The above-mentioned Russian-Ukrainian Crimean Human Rights Field Mission, which was one of few groups present on the ground in 2014 and the first half of 2015, was forced to terminate its work due to persecution by Russian authorities and the restrictive conditions of entry to the peninsula imposed by Ukrainian authorities.³³ The Crimea Human Rights Group, the organisation that assumed the activities of the Russian-Ukrainian Crimean Human Rights Field Mission following the termination of its work, conducts its monitoring in complete secrecy through a network of local activists.³⁴ Another Kyiv-based group that was interviewed decided to end its monitoring of education rights due to risks to their informants: fearful of persecution, Crimean teachers would refuse any contacts with this organisation.³⁵ A human rights group representative stated that there is only awareness of the documented human rights violations; many Crimeans are simply too scared to report what has happened to them.³⁶ Thus, the real scale and scope of the human rights violations in Crimea is unknown.

3 The situation of national minorities following the annexation

The situation of the minorities in Crimea should be considered, first and foremost, in the broader context of the human rights situation on the occupied peninsula. Since the occupation and annexation of Crimea by Russia, fundamental human rights and freedoms have been severely restricted. On the one hand, the more restrictive (as compared to that of Ukraine) legislation regulating political and civil rights of Russia has been extended to Crimea to curtail the fundamental freedoms of assembly, expression, association, access to information, and religion. This has had a negative impact on the rights of all residents in Crimea, especially those who oppose or resist the occupation. As one interviewee in Kyiv noted, the path towards

³³ Crimean Human Rights Field Mission, Statement about reformatting activities of the Crimean Human Rights Field Mission, 9 September 2015. Retrieved from <http://cfmission.crimeahr.org/en/statement-about-reformatting-activities-of-the-crimean-human-rights-field-mission/> on 1 March 2016.

³⁴ Interview with a civil society group member, Kyiv, 11 February 2016.

³⁵ Interview with a civil society group member, Kyiv, 18 February 2016.

³⁶ Interview with a civil society group member, Kyiv, 17 February 2016.

the full suppression of fundamental rights and political and civic freedoms, which Russia has been following for two decades, has been implemented in Crimea over the course of one year.³⁷ On the other hand, the *de facto* authorities of Crimea have applied the new rules in a manner that is particularly restrictive and repressive towards certain groups, namely human rights and civil society organisations, journalists, activists, and representatives of non-Russian ethnic groups, as well as the Russians who have opposed the annexation. Compared to ethnic Ukrainians, the largest *de facto* minority on the peninsula, Crimean Tatars are better organised and consolidated and are more visible (as they can be distinguished physically); this has made them particularly vulnerable to discrimination and violations of their collective and individual rights by the *de facto* authorities as well as by the Crimean 'self-defence' and other paramilitary groups in Crimea. As far as ethnic Ukrainians are concerned, they become victims of discrimination and political persecution when they explicitly express pro-Ukraine views or their Ukrainian identity (speaking in the Ukrainian language, celebrating Ukrainian holidays, or wearing symbols of Ukraine). Some human rights defenders speak of systematic repressions against the 'political Ukrainians' among Crimeans, referring to civic rather than ethnic identity and identification with the Ukrainian state.

As the ODIHR and HCNM joint 2015 report concluded:

As a result of the annexation, the changes in government and the legal framework being applied in Crimea have dramatically impacted the enjoyment of the full spectrum of human rights and fundamental freedoms by residents there, particularly of those residents who were opposed to the annexation, were unable to reject forced Russian citizenship, and/or did not seek to acquire Russian passports.

Fundamental freedoms of assembly, association, movement, expression and access to information have all been restricted in some fashion – whether through formal measures, or through the sporadic targeting of individuals or communities representing opposing views, voices or socio-political structures.³⁸

Against the backdrop of a general deterioration in the situation of human rights and fundamental freedoms in Crimea, the *de facto* authorities have adopted more restrictive policies towards national minorities than those that existed in Ukraine. These restrictions have been felt first by ethnic Ukrainians, Crimean Tatars, and other smaller ethnic and religious groups on the peninsula (such as the Karaims, Krimchaks, Jews, Jehovah's Witnesses, non-Russian Orthodox Church believers, and Muslim communities). These restrictions can also be viewed in the context of attempts by the *de facto* authorities to silence dissent and to suppress disloyal ethnic groups, and to justify the 'self-determination' of Crimea as a 'historically Russian land'. Some long-standing Russian policies, especially those towards religious minorities, such as non-Russian Orthodox Christian churches or Muslim groups (in the context of the North Caucasus insurgency), have been transferred to Crimea. The situation of minority groups in Russian-occupied Crimea has been summarised in the following statement by the OSCE High Commissioner on National Minorities, Astrid Thors, based on the results of the 2015 monitoring mission:

We found in Crimea that those Ukrainians and Crimean Tatars who openly supported the territorial integrity of Ukraine, refused Russian citizenship, or did not support the *de facto* authorities were in a particularly vulnerable position. Since the annexation of Crimea, the Crimean Tatar and Ukrainian communities have been subjected to increasing pressure on and control of the peaceful expression of both their culture and their political views.³⁹

³⁷ Interview with a civil society group member, Kyiv, 17 February 2016.

³⁸ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 7.

³⁹ The OSCE ODIHR and HCNM joint report identifies widespread human rights violations, discrimination, and legal irregularities in Crimea, Kyiv, 17 September 2015. Retrieved from <http://www.osce.org/odihr/182526> on 1 March 2016.

It must be mentioned that whereas the most noticeable and grave violations of the rights of Crimean Tatars and Ukrainians as well as certain religious groups are documented and reported, there is a lack of reliable information about the situation of other smaller minority groups, including those groups previously deported on ethnic grounds. This lack of information may imply that they are either not specifically persecuted, or not sufficiently numerous and organised to be heard by those who monitor and report on human rights violations in Crimea. While it is beyond the limits of this study to resolve this lack of knowledge regarding the situation of other minorities, there is a pressing need to bridge this gap, including through international human rights monitoring on the ground in Crimea, in order to make a complete and comprehensive assessment of the situation of all minority groups, inter-ethnic relations, and the risks of an ethno-political conflict in annexed Crimea.⁴⁰

3.1 Grave human rights violations targeted at minorities: the rights to life, liberty, security, and physical integrity

The most serious human rights violations to which minority groups have become especially vulnerable involve the **rights to life, security, liberty, and physical integrity**. Since the annexation of Crimea by Russia, numerous cases of disappearances have been reported. Mustafa Dzhemilev, a Crimean Tatar leader, Member of Parliament of Ukraine, and Commissioner of the President of Ukraine on Crimean Tatar People's Affairs, said in December 2015 that since the beginning of the occupation, 20 Crimean Tatars have disappeared.⁴¹ However, the exact number of disappeared Crimeans is unknown. The most recent cases include the **disappearances** of Marcel Aliautdinov (February 2016), Ernest Ablyazimov (January 2016), and Ruslan Ganiev and his friend Arlen Terekhov (in December 2015).⁴² It is worth noting that the de facto authorities endeavour to present the disappearances of Crimean Tatars as an intentional exodus to serve in extremist religious groups or to fight in Syria (as was the case regarding the disappearance of 16-year-old Elvina Razakova; however, she was later found by her relatives). Other similar cases include: Muhtar Arislanov, abducted by uniformed men on 29 August 2015;⁴³ Fyodor Kostenko, father of an arrested Euromaidan activist, who disappeared on 4 March 2015 upon his return to Crimea after speaking to the press in Kyiv about his son's case;⁴⁴ Eskender Apselyamov who went missing in October 2014;⁴⁵ Islyam Dzhapparov and Dzhevdet Islyamov, who were abducted on 27 September 2014 by unknown men in military uniform;⁴⁶ and Leonid Korzh, Timur Shaimardanov, and Seiran Zinedinov, all members of pro-Ukraine civil society groups, disappeared in May 2014.⁴⁷

Moreover, two people who had disappeared were found **dead**: Edem Asanov (September 2014)⁴⁸ and Belial Belialov (October 2014).⁴⁹ Those responsible for the disappearances and deaths of these persons, as

⁴⁰ The media covering Crimea increasingly reports incidents of societal discrimination and hate speech that may fuel inter-ethnic tensions; however, there is a need for a systematic documentation of such cases. This issue definitely deserves further investigation.

⁴¹ Ukrainska Pravda, 'Z pochatku okupatsii Krymy znykly vzhe 20 krymskyh tatar – Dzhemilev' ['20 Crimean Tatars are already missing since the start of the occupation – Dzhemilev'], Ukrainska Pravda, 24 December 2015, <http://www.pravda.com.ua/news/2015/12/24/7093547/>

⁴² Data retrieved from Crimea-SOS, Interactive Map of Human Rights Violations, <http://crimeamap.krymsos.com/ru/list.html> on 1 March 2016.

⁴³ OHCHR, Report on the human rights situation in Ukraine - 16 August to 15 November 2015.

⁴⁴ T. Pechonchyk, op. cit., p. 49.

⁴⁵ T. Pechonchyk, op. cit., p. 51; Crimea-SOS, Interactive Map.

⁴⁶ OHCHR, Report on the human rights situation in Ukraine - 16 August to 15 November 2015.

⁴⁷ OHCHR, Report on the human rights situation in Ukraine - 16 May to 15 August 2015; Crimea-SOS, Interactive Map.

⁴⁸ Regarding Edem Asanov, he may have been abducted due to the resemblance of his name to another person who was allegedly connected to the case of Oleg Sentsov, who was accused of terrorism and sentenced to 20 years in prison. See T. Pechonchyk, op. cit., p. 50.

⁴⁹ OHCHR, Report on the human rights situation in Ukraine 15 November 2014.

well as of Reshat Ametov, who was abducted and found dead in early March 2014, and those responsible for the murders of Ukrainian military officer Stanislav Karachevsky (6 April 2014) and Ukrainian teenager Mark Ivaniuk (20 April 2014), have not been brought to justice.⁵⁰ All of the abductions involved uniformed military men, allegedly, the Crimean 'self-defence'.⁵¹

According to the Centre for Civil Liberties, which is leading the public campaign 'Let My People Go!', of the 25 Ukrainian citizens who have been **illegally arrested** by the Russian authorities and have faced politically motivated charges based on the Russian Criminal Code, 18 are Crimeans (see Annex 1).⁵² Six were **illegally transferred to Russia** (including Oleg Sentsov, Oleksandr Kolchenko, Oleksiy Chyorny, and Gennadiy Afanasiev, who were convicted as 'Crimean terrorists'). Twelve Crimeans have been **unlawfully placed in Crimean prisons and tried as Russian citizens** (including the Mejlis Deputy Chairman Ahtem Chygoz and other Crimean Tatars arrested in the 'Case of 26 February', Crimean Tatar Muslims arrested in the 'Case of Hizb ut-Tahrir', and Yuriy Ilchenko, who is facing 20 years in prison for publishing an article on his website opposing Russia's annexation and the war in Donbas).⁵³

The Case of 26 February

In January 2015, Ahtem Chygoz, Deputy Chairman of the Mejlis of the Crimean Tatar people, was arrested along with six other Crimean Tatars. They were accused of the organisation of or participation in mass riots according to the Russian Criminal Code. The case concerns the events of 26 February of 2014, when two opposite rallies – one pro-Ukrainian and one pro-Russian – took place in front of the building of the Crimean Supreme Council. Violating the norms of international humanitarian law, in particular the Geneva Convention of 1949, as well as the Russian Criminal Code, the de facto authorities retroactively applied Russian legislation to events that occurred before the occupation. Only the Crimean Tatars who rallied to support Crimea within Ukraine were prosecuted. Out of the nine persons accused in this case, Ahtem Chygoz, Mustafa Degermendzi, and Ali Asanov remain imprisoned. Arsen Yunusov, Eskender Kantemirov, and Eskender Emirvaliev were released under personal surety. At the end of 2015, Eskender Nebiev and Talyat Yunusov were sentenced to two and a half and to three and a half year suspended sentences, respectively. This case is widely seen as another instance of political repression against the Mejlis and Crimean Tatars. Nikolay Polozov, Chygoz's attorney, is afraid that given the intention of the de facto authorities to outlaw the Mejlis as an extremist organisation, Chygoz could face new criminal charges in addition to the current accusation of the organisation of mass riots.⁵⁴

In the case of Oleksandr Kostenko, a Crimean Euromaidan activist who was arrested on 5 February 2015 and sentenced to three years and 11 months in prison on the territory of Russia for the alleged infliction of bodily harm to a riot police officer from Crimea during the protests of 2013-2014, the de facto authorities applied the Russian criminal code to the events taking place in Kyiv and involving only Ukrainian citizens, thus violating international law and Russian legislation. The de facto authorities also opened a criminal case against Kostenko's brother, Yevgeniy, and attempted to place him in a psychiatric facility.⁵⁵

⁵⁰ OHCHR, Report on the human rights situation in Ukraine 15 November 2014.

⁵¹ Ibid; Muižnieks, op. cit.

⁵² T. Urbanskaya, 'Uzniki sovesti: zachem Kremlyu zalozhniki iz Ukrainy' ['Prisoners of conscience: why the Kremlin needs hostages from Ukraine'], UNIAN, 24 March 2016, <http://www.unian.net/politics/1299675-uzniki-sovesti-zachem-kremlyu-zalozhniki-iz-ukrainyi.html>; Let My People Go! campaign Facebook page <https://www.facebook.com/letmypeoplegoukraine>

⁵³ Centre for Civil Liberties and E-SOS, Let my People Go! Ukrainian prisoners in Russia. Information leaflet, 2015; Let My People Go! Facebook page.

⁵⁴ Skype intervention by Nikolay Polozov at the press conference organised by the Ukrainian Helsinki Human Rights Union and Human Rights Information Centre, Kyiv: Interfax, 26 February 2016.

⁵⁵ Crimea Human Rights Group, Crimean Human Rights Situation Review, December 2015, p. 7.

Whereas no independent group has access to the detention facilities in Crimea, there have been reports of the **torture** of several Crimean political prisoners, including Sentsov, Kolchenko, Afanasiev, Chyryniy, Kostenko, and Ilchenko,⁵⁶ and extremely poor conditions of detention.⁵⁷ In December 2015, there was a report of the torture of a Crimean Tatar by the Federal Security Service of the Russian Federation (FSB) after he had refused to cooperate.⁵⁸

Detentions, searches, and interrogations targeting Crimean Tatars and Ukrainian activists have become a regular practice in Crimea. As of November 2015, the de facto authorities have launched unlawful searches and interrogations in the houses and offices of the organisers of the Crimea Blockade, which was a civic action occurring on the territory of mainland Ukraine. The organisers were: Lilia Budzhurova, ex-chief editor of ATR, a Crimean Tatar TV channel, Elzara Islyamova, ex-director of ATR, Refat Chubarov, Mejlis Chairman, and Lenur Islyamov, businessman and owner of ATR. A criminal case has been opened against them (the '**Case of the Crimea Blockade**'). Pressure was also exerted on the organisers by other means. In November, the licence of Just Bank, owned by Islyamov, was cancelled. CinCityTrans, a company owned by Lenur Islyamov's father, was fined in November and further searched by the de facto authorities in January 2016. In December 2015, a Crimean court seized the property of Lenur Islyamov. The de facto prosecutor of Crimea, Natalia Poklonskaya, said that his property may be nationalised to compensate for the harm caused by the blockade.⁵⁹

Prominent political and civil society leaders are not the only targets. Media and human rights groups reported a series of house searches in the districts populated by Crimean Tatars in the autumn of 2015 and winter of 2016.⁶⁰ For example, on 28 December 2015, FSB officers and Crimean Cossacks interrogated Crimean Tatars living in Dolynka, an ethnically mixed village, because a Ukrainian flag had been painted on a bus stop nearby, and then photographed all houses that were displaying Crimean Tatar flags.⁶¹ The OHCHR reported that the apparent intention behind the raid was to intimidate local Crimean Tatars.⁶²

3.2 Violations of the freedom of assembly targeted at minorities

The ODIHR and HCNM joint report has stated that 'some residents seeking to assemble and express dissenting political opinions or non-Russian cultural identities have had their civil and political rights heavily restricted by multiple new regulations, including their freedoms of peaceful assembly, expression, and movement in particular'.⁶³ These restrictions mainly concern the assemblies and expressions attempted by Crimean Tatars and Ukrainians. The de facto authorities **routinely deny** human rights groups and opposition political groups, such as the Mejlis, **the right to hold public assemblies on days important for their national identity**, such as Deportation Day or the Day of the Crimean Tatar flag. Participants in such public gatherings, even if these gatherings are not mass events, are penalised. Public assemblies organised by pro-Russian organisations do not face any reported restrictions⁶⁴ if they are not openly critical of the de facto authorities.

⁵⁶ A. Osavlyuk, P. Brodyk, and M. Lysenko, 28 zalozhnikov Kremliia [The 28 Hostages of the Kremlin], Kyiv: E-SOS, Open Dialogue Foundation, Let my people go! Centre for Civil Liberties, January 2016.

⁵⁷ 15minut, 'Advocat: Zaderzhannyh krymskikh tatar soderzhat v nevyinosimyh usloviyah' ['Attorney: Detained Crimean Tatars are kept in unbearable conditions'], 15minut, 29 February 2016, <http://15minut.org/news/158082-advokat-zaderzhannyh-krymskih-tatar-soderzhat-v-nevyinosimyh-usloviyah>

⁵⁸ Crimea Human Rights Group, Crimean Human Rights Situation Review, December 2015, p. 4.

⁵⁹ Crimea-SOS, Interactive Map.

⁶⁰ Crimea-SOS, Interactive Map.

⁶¹ OHCHR, Report on the human rights situation in Ukraine 16 November 2015 - 15 February 2016.

⁶² OHCHR, Report on the human rights situation in Ukraine 16 November 2015 - 15 February 2016.

⁶³ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 41.

⁶⁴ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 53.

The Case of 3 May

One of the most notorious cases where not only the freedom of assembly but also other rights, such as the right to a fair trial, have been violated by the de facto authorities is the 'Case of 3 May'. The de facto authorities used the provisions of the Russian Criminal Code to prosecute members of the Crimean Tatar community who came to greet Mustafa Dzhemilev during his attempt to enter the peninsula from mainland Ukraine on 3 May 2014. Around 200 Crimean Tatars were fined and five were arrested under accusations of participating in an unauthorised gathering, riots and acts of violence against a representative of authority, and the illegal crossing of 'the state border of the Russian Federation'.⁶⁵ Of the five arrested, four Crimean Tatars, Musa Abkerimov, Eden Osmanov, Rustem Abdurahmanov, and Tair Smedliaev, were sentenced to several years in prison (suspended), and Edem Ebulisov was sentenced to paying a fine of 40 000 RUB (about 500 EUR).⁶⁶

On 16 May 2014, two days before the 70th anniversary of the deportation of the Crimean Tatars, the de facto authorities banned all public assemblies in Crimea for 18 days. In 2015, the de facto authorities also banned or significantly restricted peaceful assembly for civic organisations or groups wishing to commemorate the 71st anniversary of the deportation. On 18 May 2015, 60 participants of a car rally commemorating Deportation Day were **detained and delivered to the police**.⁶⁷ The statement of de facto leader Sergey Aksenov sheds some light on why Crimean Tatar public assemblies are banned in Crimea: 'During 20 years, [Crimean Tatar] events were used to blackmail the authorities in order to show the strength and say that Tatars are ready for everything. And, after each demonstration, the authorities would accede to their demands. [...] The crowd of Crimean Tatars, especially youth, behaved provocatively, went with Crimean Tatar flags and, no doubt, tried to humiliate the Russians'.⁶⁸

Attempts at peaceful assembly and the public expression of pro-Ukraine views through waving Ukrainian flags or displaying Ukrainian identity, such as gathering in Ukrainian national embroidered shirts,⁶⁹ commemorating the birthday of Ukrainian poet and writer Taras Shevchenko⁷⁰, or mourning the death of Ukrainian musician Andriy Kuzmenko,⁷¹ are **punished by detention, interrogation, or administrative penalties**, such as fines, compulsory labour, or dismissal from public jobs. To discourage peaceful assembly, the de facto authorities have also threatened Ukrainian activists with the **application of legal norms on extremism**. On 24 June 2015, several days before Ukraine's Constitution Day, Leonid Kuzmin from the Ukrainian Cultural Centre received a letter from the Prosecutor's Office warning him against holding an unauthorised public assembly and to refrain from extremist activity.⁷²

⁶⁵ See T. Pechonchuk, op. cit., p.51-52; Crimea-SOS, Interactive Map.

⁶⁶ I. Putilov, "Delo 3 maya": chetyre sroka za vstrechu s Dzemilevym' ["The Case of 3 May": four sentences for a meeting with Dzemilev], Krym.Realii, 11 December 2015, <http://ru.krymr.com/content/article/27421680.html>

⁶⁷ Crimea-SOS, Interactive Map.

⁶⁸ O. Gerasimenko, A. Galustyan, "Ni u kogo net chetkogo plana deistviy", govorit ispolniayuschiy obiazanosti glavy Kryma Sergey Aksenov' ["Nobody has a clear plan of action", says the interim chief of Crimea Sergey Aksenov], Kommersant, 22 September 2014, <http://www.kommersant.ru/doc/2569810>

⁶⁹ Crimean Field Mission on Human Rights, Brief Review of the Situation in Crimea (May 2015), p. 7. Retrieved from http://cfmmission.crimeahr.org/wp-content/uploads/2015/06/Crimea_Field_Mission_Review_May_2015_ENG.pdf on 1 March 2016.

⁷⁰ Crimean Field Mission on Human Rights, Brief Review of the Situation in Crimea (March 2015), p. 10. Retrieved from http://cfmmission.crimeahr.org/wp-content/uploads/2015/04/Crimea_Field_Mission_Report_March_2015_ENG.pdf on 1 March 2016.

⁷¹ Crimean Field Mission on Human Rights, Brief Review of the Situation in Crimea (February 2015), p. 14. Retrieved from http://cfmmission.crimeahr.org/wp-content/uploads/2015/03/Crimea_Field_Mission_Report_February_2015_Eng.pdf on 1 March 2016.

⁷² OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 55.

3.3 Violations of the freedoms of expression and the media targeted at minorities

From the very first days of the occupation, the de facto authorities have **shut down the broadcasting of Ukrainian television** stations in Crimea and launched **attacks against independent journalists and local television and radio** stations airing dissenting voices. Chernomorskaya television and radio station, which belonged to a Ukrainian politician, the Centre of Independent Journalists, key Crimean Tatar television station ATR, Mejlis newspaper Avdet, and the Crimean News Agency (QHA) were targeted both by the 'self-defence' and the de facto authorities through attacks against journalists, intimidation, searches and property seizures, arrests, and close-downs. After the annexation of Crimea, the de facto authorities **used Russian legal norms on extremism and separatism to prosecute** independent media, journalists, bloggers, and even ordinary residents posting on social networks. The de facto authorities further limited the freedom of expression and access to information by **ordering the re-registration of media outlets**. As a result, in 2015, only 232 media outlets were authorized under Russian law to work in Crimea, as compared to the approximately 3 000 media outlets previously registered under Ukrainian regulations.⁷³ By denying registration to such popular Crimean Tatar media outlets as ATR and Lale television channels, Meydan and Lider radio stations, the QHA news agency, Avdet newspaper, and the Internet site 15minut, the de facto authorities have not only 'restricted media freedom and access to information, but also deprived the Crimean Tatar community of a vital instrument to maintain and revitalize its identity'.⁷⁴

Ukrainians of Crimea can only watch Ukrainian channels via satellite. There is one 13-minute television programme in Ukrainian shown twice a week on the state-run Crimean television. The only Ukrainian language newspaper, 'Krymska Svitlytsia', funded by the government of Ukraine, was closed.⁷⁵

3.4 Violations of the freedom of movement of minorities

The de facto authorities have enacted policies and commenced activities aimed at suppressing and politically prosecuting Crimean Tatars who resist Russian occupation and, in particular, Mejlis members. In April 2014, Russia's FSB **banned the entry** of Mustafa Dzhemilev, the first Chairman of the Mejlis and a member of the Ukrainian Parliament, to Crimea until 19 April 2019. On 5 July 2014, a five-year entry ban was also issued to the current Mejlis Chairman, Refat Chubarov. By preventing Crimean Tatar leaders from entering Crimea, the de facto authorities are repressing these organisations and their members in Crimea. Subsequently, the Advisor to the Mejlis Chairman on relations with Turkey, Ismet Yuksel, an ethnic Crimean Tatar and Turkish national permanently residing and having business in Crimea, was expelled from the occupied peninsula. Additionally, in March 2016, three Crimean Tatars received a five-year entry ban to Crimea.⁷⁶

In January 2015, three members of the Committee on the Rights of the Crimean Tatar People, Eskender Bariev, Sinaver Kadyrov, and Akmedzhit Suleimanov, were detained when returning to Crimea from mainland Ukraine.⁷⁷ The Committee has been active in advising Crimean Tatars on the protection of their rights and attempts to organise peaceful assemblies, including on International Human Rights Day,

⁷³ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 34.

⁷⁴ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 7.

⁷⁵ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 90.

⁷⁶ Krym.Realii, 'Trem krymskim tataram iz Hersonskoi oblasti zapretili vyezd v Krym na 5 let' ['Three Crimean Tatars from Kherson region were banned to entry Crimea for 5 years'], Krym.Realii, 22 March 2016, <http://ru.krymr.com/archive/news-ru/20160322/16898/16898.html?id=27628205>

⁷⁷ T. Pechonchyk, op. cit., p. 76.

which has been refused by the de facto authorities on multiple occasions.⁷⁸ Sinaver Kadyrov was deported from Crimea based on a court order, while the other two activists fear returning to the peninsula because of criminal cases opened against them on charges of separatism.⁷⁹ These violations of freedom of movement accompany other human rights violations, such as the right to property, the right to respect for family life, and discrimination.⁸⁰

3.5 Violations of the freedom of association targeted at minorities

In September 2014, the de facto authorities **organised searches, seized property, and evicted the charitable organisation the 'Crimea Foundation'** from its premises in Simferopol. The Crimea Foundation is an assembly of Crimean Tatar people and is funded by the Crimean Tatar Kurultai, a general assembly of Crimean Tatar people. The organisation was also **denied registration** by the de facto authorities. The eviction also affected the central office of the Mejlis and the Mejlis weekly newspaper Avdet, which were headquartered in the same building. Furthermore, members of the Ukrainian Cultural Centre are regularly detained and interrogated.

When asked about the prospects for cooperation with the Mejlis in an interview in September 2014, de facto leader of Crimea Sergey Aksenov first denied that such an organisation existed and then said that it has little authority, having only 'support of 15-20 % of Crimea Tatars'.⁸¹ While the de facto authorities have attempted to silence Crimean Tatars who oppose Crimea's annexation, they have also encouraged the **establishment of parallel organisations that represent minorities who are loyal to the de facto authorities**. Examples of such organisations are Kyryym, an initiative of former Mejlis member and de facto Deputy Speaker of the Crimean Parliament Remzi Ilyasov; Kyryym Birligi, chaired by former Chief of Henichesk rayon administration and Party of Regions member Seitumer Nemitullaev; and the Association of Crimean Tatar Businessmen, chaired by the son of Seitumer Nemitullaev, Rustem Nemitullaev.

In the case of other minority groups, the de facto authorities have adopted **a policy of promoting loyal NGOs and stimulating the establishment of 'regional national-cultural autonomies'**.⁸² Such 'autonomies' are eligible to receive public funding to develop their culture, language, and education, according to the Russian law 'On National-Culture Autonomy' of 17 June 1996. Loyal minority leaders are also co-opted into public bodies (e.g. the chairmen of the Regional National-Cultural Autonomies of Greeks and Germans in Crimea are members of the de facto parliament; the Chairman of the National-Cultural Autonomy of Bulgarians in Crimea is a member of the Civic Chamber of Crimea and the Civic Chamber of Russia; the Chairman of the Regional National-Cultural Autonomy of Azeris is a member of the scientific council on law making and the de facto Chairman of the State Council of Crimea). By using loyal minority organisations in 'public diplomacy', Russia attempts to show to their kin states and the world that Crimea, under Russian rule, pursues a friendly policy towards national minorities. However, such a policy of creating internal divisions among minority groups and dividing minority groups into 'loyal' and 'disloyal' threatens to increase inter-ethnic tensions in occupied Crimea. This issue deserves further investigation, which, however, is difficult given the lack of reliable information on the situation of smaller minority groups in occupied Crimea.

⁷⁸ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 54.

⁷⁹ OHCHR, Report on the human rights situation in Ukraine 1 December 2014 to 15 February 2015.

⁸⁰ S. Zaets et al., The right to liberty of movement and freedom to choose residence. Crimea Beyond Rules. Issue 1, Kyiv: Regional Centre of Human Rights, the Ukrainian Helsinki Human Rights Union, and CHROT, 2015, p. 10.

⁸¹ O. Gerasimenko, A. Galustyan, op. cit.

⁸² The list of 'regional national-cultural autonomies' in Crimea is available at the website of de facto State Committee on Inter-ethnic Relations and Deported Citizens of the Republic of Crimea <http://gkmn.rk.gov.ru/rus/info.php?id=616539>

3.6 Targeting the Mejlis as a self-governing body of Crimean Tatars

The de facto authorities have adopted a policy of persecution of the Mejlis as a representative and executive body consisting of 33 members elected by the Kurultai, a general assembly of the Crimean Tatar people. However, while there is no direct ban on the participation of Crimean Tatars in public life, they are only allowed to participate if they support the policies of the de facto authorities. There are three members of Crimean Tatar ethnicity out of 75 total members in the de facto parliament: all entered through the United Russia party list, including Vice-Speaker Remzi Ilyasov. The de facto Vice-Prime Minister is also a Crimean Tatar, as well as the Chairman of the de facto State Committee on Nationalities.⁸³

The Mejlis and its members were the first to resist the military occupation of Crimea and, since the early days of annexation by Russia, have faced numerous instances of persecution and repression. Initially, pressure was exerted on Mejlis leaders. As early as late April-early May 2014, the de facto Prosecutor of Crimea, Natalia Poklonskaya, issued **warnings** to Rize Shavkiev, Mejlis member and Chairman of the 'Crimea Foundation', and Mejlis Chairman, Refat Chubarov, **threatening to ban the Mejlis** for extremist activity.⁸⁴ Further repression against the Mejlis was enacted through the above-mentioned **entry bans** to Mustafa Dzhemilev and Refat Chubarov. The de facto authorities also attempted to exert pressure on Mustafa Dzhemilev through the detention of and criminal charges against his son Haiser, who was arrested and charged with the murder of a man who worked for his family in May 2013.⁸⁵ Despite the fact that Haiser was a Ukrainian citizen and did not accept his forced Russian citizenship, the de facto authorities transferred him to a prison in Russia where he was tried and sentenced by a Russian court according to Russian law. First Ukraine, and later Dzhemilev, appealed to the European Court of Human Rights (ECHR) against Russia. The ECHR ruled to free Haiser Dzhemilev as an interim measure, but this decision was not accepted by Russia. However, his sentence was subsequently revised by the Russian court.⁸⁶

Pressure increased when the de facto authorities began persecuting Mejlis leaders who remained in Crimea (the Case of 26 February, searches and seizures of Mejlis property) and leaders of regional Mejlis, as the body has associations across Crimea. In 2015, a de facto court in Simferopol issued decisions to **arrest** Mustafa Dzhemilev (January) and Refat Chubarov (October).⁸⁷ Since November 2015, house searches of regional Mejlis chairmen and members in Crimea have become a regular occurrence.

The ODIHR and HCNM joint 2015 report concluded:

Being deprived of resources and with its leaders in exile, detention or under constant pressure, the Mejlis is blocked from fully performing its functions as a representative and self-governing body of Crimean Tatars on the territory of Crimea. Its capacity to reach out to the community and solve the daily problems of the Crimean Tatars is significantly constrained by the actions of the de facto authorities.⁸⁸

⁸³ Kommersant, 'Krymskotatarskoye ego' ['Crimean Tatar ego'], Kommersant, 23 March 2015, <http://kommersant.ru/projects/crimeantatars>

⁸⁴ V. Likhachev, op. cit., p. 6 - 8.

⁸⁵ A. Klymenko, op. cit., p. 13.

⁸⁶ Crimea-SOS, Interactive Map.

⁸⁷ Tsentr zhurnalistskih issledovaniy, 'V Krymy sud zaочно arestoval lidera krymskikh tatar Mustafu Dzemileva' ['A Crimean court has arrested in absentia Crimean Tatar leader Mustafa Dzhemilev'], Tsentr zhurnalistskih issledovaniy, 20 January 2016, <http://investigator.org.ua/news/172316/>

⁸⁸ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 86-87.

On 15 February 2016, de facto Prosecutor Poklonskaya appealed to the Supreme Court of Russia to **ban the Mejlis as an extremist organisation**. Human rights defenders are afraid that once the Mejlis is banned, any Crimean Tatar can face imprisonment for extremism, as the Mejlis has structures across the territory of Crimea and many people participate in elections of Mejlis members through the Kurultai. Given that the Mejlis is not a registered organisation with fixed membership, any Crimean Tatar who has ever participated in the public life of his or her community could face persecution.

NB: Upon the completion of this study, a major development occurred which should be reported here briefly given its grave impact on the situation of Crimean Tatars. On 18 April 2016, the Ministry of Justice of the Russian Federation put the Mejlis on the list of extremist organisations based on the decision of the de facto prosecutor of Crimea of 13 April 2016 to ban activities of the Mejlis pending a court decision. On 26 April 2016, the so-called Supreme Court of Crimea ruled to recognise the Mejlis as an extremist organisation and ban its activities.

3.7 Violations of freedom of religion targeted at minorities

Since Russia's occupation of Crimea, representatives of **religious communities other than the Russian Orthodox Church have been targets of attacks** by the 'self-defence' and other aggressive groups and **discriminative policies** of the de facto authorities. Before the occupation, there were over 1 400 registered religious communities in Crimea, with an additional 674 operating informally (mostly Muslim communities);⁸⁹ however, by January 2016, only 365 were re-registered in line with the demands of the de facto authorities.⁹⁰ Moreover, only Russian citizens have the right to register religious organisations, which excludes those who refused to take the forced Russian citizenship. Religious communities to which Crimean Tatars and ethnic Ukrainians typically belong, such as Islamic groups, the Ukrainian Orthodox Church of Kyiv Patriarchate, and the Ukrainian Greek Catholic Church, have faced restrictions and repression.

Priests of the Ukrainian Orthodox Church of Kyiv Patriarchate and the Ukrainian Greek Catholic Church **were intimidated, abducted, interrogated, and accused of extremist activity**. As a result, many have left Crimea. **Church buildings were seized and destroyed**, property inside the churches was damaged, parishes were forced underground, and parishioners are fearful to practice or speak of their religion. The Ukrainian Orthodox Church of Kyiv Patriarchate has lost half of its church buildings since the annexation and a Crimean court ruled to confiscate its cathedral in Simferopol.⁹¹ Only one priest from the Ukrainian Greek Catholic Church has remained in Crimea.⁹² As Ukrainian citizens, priests are not allowed to stay in Crimea over 90 days. The Ukrainian Greek Catholic Church has attempted to register with the de facto authorities; however, the registration has yet to be granted.⁹³

⁸⁹ T. Pechonchyk, op. cit., p. 64.

⁹⁰ OHCHR, Report on the situation of human rights in Ukraine 16 November 2015 to 15 February 2016.

⁹¹ Krym.Realii, 'Ukrainskaya cerkov poteriala polovinu pomescheniy v Krymu za vremya anneksiyi – arkhiepiskop Klement' ['The Ukrainian church has lost half of its buildings since the annexation – Archbishop Klement'], Krym.Realii, 28 January 2016, <http://ru.krymr.com/content/news/27517102.html>; Ukrainska Pravda, 'V UPC KP vidbyrayut prymischennia soboru v centri Simferopolya' ['The UOC KP is being stripped of its cathedral in the centre of Simferopol'], Ukrainska Pravda, 28 January 2016, <http://www.pravda.com.ua/news/2016/01/28/7097102/>

⁹² Y. Stepankovska, 'Yak ukrainskym cerkvam u Krymu vdaetsia zalyshatysia ukrainskymy' ['How the Ukrainian churches in Crimea manage to remain Ukrainian'], Crimea-SOS, 14 January 2016, <http://krymsos.com/news/yak-ukrayinskim-tserkvam-u-krimu-vdayetsya-zalishatysya-ukrayinskimi/>

⁹³ Y. Stepankovska, 'Yak ukrainskym cerkvam u Krymu vdaetsia zalyshatysia ukrainskymy' ['How the Ukrainian churches in Crimea manage to remain Ukrainian'], Crimea-SOS, 14 January 2016, <http://krymsos.com/news/yak-ukrayinskim-tserkvam-u-krimu-vdayetsya-zalishatysya-ukrayinskimi/>

Mosques and Muslim schools (madrassas) have been searched, property has been confiscated, and teachers and staff have been interrogated. Many of these searches took place in mosques and madrassas that belong to the Spiritual Administration of Muslims of Crimea (DUMK).⁹⁴ Incidents of vandalism have also been reported.

The Case of Hizb ut-Tahrir

Representatives of the Islamic movement Hizb ut-Tahrir are in a particularly vulnerable situation. While this movement exists legally in Ukraine (as well as in many European countries), and is involved in religious, political, and educational activities, it is outlawed in Russia as a terrorist organisation. Since early 2015, four Crimean Tatars: Ruslan Zeytullaev, Nuri Primov, Rustem Vaitov, and Ferat Saifullaev, remain under arrest for the alleged 'establishment of a terrorist organisation and participation in the activities of this organisation'.⁹⁵ On 11 February 2016, 14 people, mainly Crimean Tatars, were detained and their houses were searched. Of these people, four, Emir-Usein Kuku, a member of a human rights contact group, Enver Bekirov, Muslim Aliev, and Vadym Siruk were placed under arrest for two months, and, according to de facto Prosecutor Poklonskaya, are accused of creating the terrorist group 'Hizb ut-Tahrir'.⁹⁶ Given that Hizb ut-Tahrir is not registered and does not have a fixed membership, human rights activists warn that any Crimean, in particular, any Crimean Tatar, can potentially be charged with belonging to this movement and convicted of terrorism. Moreover, there is a long list of Muslim religious literature, previously legal in Ukraine, that is now outlawed in Russia and anyone possessing it can be accused of extremism.⁹⁷

The de facto authorities have **promoted the establishment of alternative Muslim groups**, such as the Muftiyat of Taurida, in order to divide the Muslim believers in Crimea, most of whom are Crimean Tatars, and to seize control of Crimean mosques (for example, the Dzhuma-Dzhami mosque in Yevpatoria was illegally seized).⁹⁸ The main goal of such restrictive policies towards religious organisations is seemingly to suppress dissent, including by Crimean Tatars. As the ODIHR and HCNM joint report states, the de facto authorities have softened their approach towards the DUMK after its leader Mufti Emirali Abliev, a member of the Mejlis, refrained from direct criticism of the authorities exercising de facto control over Crimea.⁹⁹

3.8 Violations of the right to education and cultural rights targeted at minorities

Minority groups have been **restricted in their right to education in their native language**. As the ODIHR and HCNM joint 2015 report concluded:

In schools throughout Crimea, native-language education and language studies in the Ukrainian and Crimean Tatar languages were widely reduced or eliminated, and parents reportedly have been discouraged from requesting such classes be made available – both to the detriment of those communities' enjoyment of their cultural and language rights. Books in the Ukrainian language, on Ukrainian topics, and by Ukrainian authors were reportedly removed from schools and public libraries.¹⁰⁰

⁹⁴ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 87.

⁹⁵ T. Pechonchyk, op. cit., p. 54; Crimea-SOS, Interactive Map.

⁹⁶ I. Putilov, 'Nova sprava "Hizb ut-Tahrir": chogo dobyvaetsia FSB u Krymu?' ['The new case "Hizb ut-Tahrir": What does FSB in Crimea attempt to achieve?'], Krym.Realii, 13 February 2016, <http://ua.krymr.com/content/article/27550228.html>

⁹⁷ T. Pechonchyk, op. cit., p. 65.

⁹⁸ T. Pechonchyk, op. cit., p. 65.

⁹⁹ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 88.

¹⁰⁰ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 69.

Ethnic Ukrainians have been particularly limited in their right to education in their native language. There has been a significant decrease in the number of students who receive their secondary education in Ukrainian. As of September 2015, out of the seven schools with Ukrainian as the language of instruction that existed in Crimea before the annexation, none remain. Only 20 schools offer classes with Ukrainian as a language of instruction.¹⁰¹ In the 2014-2015 school year, 1 990 students (or 1.2 %) were enrolled in classes with education in Ukrainian. Before the annexation, this share equalled 8.2 %, or 12 649 students.¹⁰² No first grade classes with Ukrainian as a language of instruction were opened in the 2015-2016 school year.¹⁰³ Ukrainian as a language of instruction was also completely removed from university-level education.¹⁰⁴

The faculty of Ukrainian philology was closed at Taurida State University, and most of the academic staff was fired. Ukrainian language teachers in schools were either fired or were forced to re-train as Russian literature and language teachers.¹⁰⁵ As the authors of a monitoring report on education in annexed Crimea stated, the de facto authorities promoted 'an atmosphere of intolerance towards everything Ukrainian and any expression of "Ukrainian-ness" (Ukrainian identity) that influenced the choice of language of instruction by pupils. According to parents, most felt unsafe and did not submit relevant demands at education institutions'.¹⁰⁶

Ukrainian theatres, museums, and libraries have been closed or renamed. Activists of the Ukrainian Culture Centre, including the Director of its library, were intimidated, detained, or interrogated on various occasions.

Whereas Crimean Tatars had difficulties exercising their right to education in their native language even before 2014, the situation has deteriorated since the annexation. The number of schools in which the Crimean Tatar language is taught as a subject or is used as a language of instruction has not changed. The number of students who receive their education in the Crimean Tatar language, however, has dropped by 12 % (from 5 551 in the 2013-2014 school year to 4 895 in the 2014-2015 school year).¹⁰⁷ Furthermore, the number of hours dedicated to the Crimean Tatar language as a subject has decreased significantly. In the senior classes of secondary schools, Crimean Tatar is not taught as a subject.¹⁰⁸ Seemingly, this is due to the implementation of Russia's education policy, according to which, native languages are not offered in senior-level classes.¹⁰⁹ Additionally, training for teachers of the Crimean Tatar language and literature is no longer offered by Crimean universities.¹¹⁰

¹⁰¹ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 96.

¹⁰² Y. Tyshchenko, O. Smyrnov, op. cit., p. 6-7; OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 70.

¹⁰³ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 91.

¹⁰⁴ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 98.

¹⁰⁵ Y. Tyshchenko, O. Smyrnov, op. cit., p. 7.

¹⁰⁶ Y. Tyshchenko, O. Smyrnov, op. cit., p. 7. See also OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 97.

¹⁰⁷ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 70.

¹⁰⁸ Y. Tyshchenko, O. Smyrnov, op. cit., p. 8.

¹⁰⁹ Interview with a civil society group representative, Kyiv, 18 February 2016.

¹¹⁰ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 99.

3.9 Property rights of the Crimean repatriates

The problems Crimean Tatars have experienced in exercising their **right to land as a deported people** have not been fully solved by the Ukrainian government and, at present, persist. Given that the Ukrainian authorities had not introduced a system of providing land to returning Crimean Tatars, many have seized plots of land and erected houses or other immovable property. The right to land was one of the most contentious issues in Crimea before its annexation. The de facto authorities promised to solve this issue by legalising the land seized by Crimean Tatar repatriates. In 2015, the de facto authorities adopted a law that enabled Russian citizens of Crimea who illegally built property on a seized plot of land to acquire this land as their property.¹¹¹ However, there are numerous obstacles to the implementation of this law, and the process of legalisation advances slowly.¹¹² Moreover, there have been cases of the destruction of the immovable property built by Crimean Tatars on seized land plots. The de facto authorities had requested authorisation from the Russian State Duma to destroy such property without requiring a court decision.¹¹³ This provoked protests by Crimeans. In January 2015, Seidament Gemedzi, the leader of 'Sebat', an NGO providing assistance on land issues, was arrested. In March 2015, the First Deputy Chairman of the Mejlis, Nariman Dzelial, reported an attempt of the de facto authorities to destroy six buildings and a market in Sudak, all belonging to Crimean Tatars, including to the Chairman of the Sudak regional Mejlis.¹¹⁴

Generally, **violations of economic and social rights** in Crimea are related to the imposition of Russian citizenship on Ukrainian citizens in Crimea. Without Russian citizenship, Crimeans are denied access to education, healthcare, social benefits, right to work, and the full enjoyment of property rights.

To summarise, the discrimination and persecution of Crimean residents is based on multiple grounds, such as religion, political views, and belonging to an ethnic group. Expressions of political opinion that contradict the 'official policy' and the expression of non-Russian culture and non-Russian national, religious, or language identity are restricted in Crimea. Three important trends affecting the situation of minorities and the future of inter-ethnic relations in occupied Crimea raise concerns. First, the situation of minority groups in Crimea seems to be moving from bad to worse. In February 2016, there was a spike in violations of the rights of minorities, especially of Crimean Tatars, and a potential ban of the Mejlis will likely initiate a new broader wave of repressions. Second, having analysed statistical data from the open registers of the de facto authorities, Ukrainian human rights defenders warn of a transfer of the civilian population from Russia to Crimea, which is a major breach of international humanitarian law.¹¹⁵ Third, in addition to the discriminatory policies of the de facto authorities, pro-Russian mass media and public officials in Crimea systematically employ hate speech and incite inter-ethnic enmity towards Ukrainians

¹¹¹ No 66-ZRK/2015 of 15 January 2015 'On provision of the land plots which are in state or municipal property and on certain issues of land relations', available at <http://crimea.gov.ru/textdoc/ru/7/act/66z.pdf>. See more Y. Tyshchenko, op. cit., p. 21.

¹¹² OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 89.

¹¹³ H. Karamanoglu, 'L'gotniki v Krymu trebuyut zemli' ['Persons with social benefits demand land in Crimea'], Krym.Realii, 21 October 2015, <http://ru.krymr.com/content/article/27317963.html>

¹¹⁴ Krym.Realii, 'Snosit doma krymskih tatar v Sudake priehali okolo sotni vooruzhennyh silovikov – Dzhelial' ['Nearly a hundred of armed security men arrived to demolish buildings of Crimean Tatars in Sudak'], Krym.Realii, 23 March 2016, <http://ru.krymr.com/content/news/27630899.html>

¹¹⁵ Regional Centre of Human Rights, the Ukrainian Helsinki Human Rights Union and CHROT, Peremeshchenie grazhdanskoho naselenia Rossiyskoy Federatsii na okupirovannuyu territoriu Ukrainy. Krym bez pravil. Spetsialnyi vypusk [The displacement of the civilian population of the Russian Federation to the occupied territory of Ukraine. Crimea beyond rules. Special Issue], Kyiv: 2015.

and Ukraine, which 'causes serious threats to the life and health of Ukrainian activists or persons openly expressing their Ukrainian identity'.¹¹⁶

4 Overview of relevant legislative acts of the Russian Federation and the de facto authorities

Russia has extended its legal framework to occupied Crimea following its annexation. Russian Criminal Code norms have become de facto applicable to Crimea and significantly affect civil and political rights in Crimea, especially the rights of those individuals who oppose the annexation, the free media, NGOs, and religious minorities. By applying Russian legislative norms on extremism and terrorism, the de facto authorities violate the rights of people belonging to minorities in Crimea and create a climate of intolerance towards Crimean Tatars and Ukrainians. The de facto Crimean parliament, the 'State Council', may also adopt legislative acts on Crimea that affect the rights of minorities on the occupied peninsula. This section reviews the most significant norms deriving from **the legislative acts of Russia and those passed by the de facto authorities of Crimea** that have affected or potentially affect the situation of minorities in occupied Crimea (see also Annex 2 for a summary).

1. Forced citizenship: After annexing Crimea, Russia granted Russian citizenship to all Ukrainian citizens in Crimea, including minority group representatives, and strongly discouraged the option to refuse it.¹¹⁷ In June 2014, Russia introduced criminal responsibility for failing to disclose a second citizenship (in force since 1 January 2016 for Crimean residents) by amending the federal law of 31 May 2002 **No 62-FZ 'On citizenship of the Russian Federation'**. The law equally violates the rights of those Crimean residents who had been forced to take Russian passports in order to be able to legally reside in Crimea (to have the rights to work, education, pensions, and medical care, among others), but who have wished to preserve their Ukrainian citizenship, and those Crimean residents who have taken Russian passports voluntarily, but were not able to denounce their Ukrainian citizenship.

2. Criminal prosecution of events prior to the annexation: The Russian federal law of 5 May 2014 **No 91-FZ 'On the Application of Regulations of the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation in the Territories of the Republic of Crimea and the Federal City of Sevastopol'** enabled the prosecution of acts performed in Crimea and the city of Sevastopol before 18 March 2014, according to **the Criminal Code and the Criminal Procedure Code of the Russian Federation** (Article 2). The de facto authorities have applied this law to persecute pro-Ukrainian activists and leaders of the Crimean Tatar community in occupied Crimea.¹¹⁸ In violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Article 70), which prohibits the arrest, prosecution, or conviction by the occupying power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war, the de facto authorities used this norm to bring Ahtem Chiyozy and other Crimean Tatars to trial in the 'Case of 26 February' for the events that occurred in Crimea on 26 February 2014.

3. Freedom of association: The laws regulating the activity of NGOs (the federal law of 12 January 1996 **No 7-FZ 'On non-commercial organisations'**, the federal law of 19 May 1995 **No 82-FZ 'On public**

¹¹⁶ Crimea Human Rights Group, Krym: ukrainskaya identichnost pod zapretom. Analiticheskii doklad o politicheski motivirovannyh presledovaniyah i discriminatsii po priznaku proukrainskikh ubezhedenii [Crimea: Ukrainian identity under the ban. Analytical report about politically motivated persecutions in Crimea and discrimination on the basis of pro-Ukrainian views], Kiev, 2016.

¹¹⁷ For detailed restrictions introduced by Russia, see OHCHR, Report on the human rights situation in Ukraine - 15 May 2014, p.28.

¹¹⁸ T. Pechonchyk, op. cit., p. 17.

associations', the Code of Administrative Offences, and the Criminal Code), including the amendments adopted since July 2012, widely known as the laws on 'foreign agents' and 'undesired organisations', restrict freedom of association. Any Crimean NGO that receives foreign funding and pursues political activity is affected. As a result, most human rights, environmental, media, and other civil society organisations operating in Crimea before the annexation have made the decision to cease activities.¹¹⁹ In May 2014, Russia adopted legislative amendments widely known as the 'law on undesired organisations', according to which foreign NGOs that threaten national security may be banned, money transfers may be blocked, and criminal responsibility for participation in such organisation has been introduced.¹²⁰

According to an OSCE report, 'no more than 5 to 10 per cent of the NGOs, media and religious organisations previously registered under Ukrainian law have successfully re-registered with Crimean de facto authorities. In some cases, those re-registration processes appeared to be used to administratively exclude pro-Ukrainian organisations and media, and have quite literally decimated the breadth and diversity of civil society space, while simultaneously chilling dissent'.¹²¹

Given the recent anti-Turkish turn in Russia's foreign policy, Crimean Tatars receiving support from Turkish organisations or even Turkish cultural organisations supporting educational activities have also been affected. Moreover, Turkish citizens have been banned from employment in Russia from January 2016, which may create constraints for Crimean Tatar organisations as well.¹²² One result of this policy is that the de facto authorities have fired all teachers in the Turkish lyceum for gifted children in Tankove, in the Bakhchisaray region, and have burnt Turkish books. The school has effectively ceased to function.

4. Freedom of assembly: The de facto authorities use the norms of the federal law of 19 June 2004 **No 54-FZ 'On Meetings, Rallies, Demonstrations, Marches, and Pickets'** and the relevant articles of the Code of Administrative Offences to violate the rights of peaceful assembly in Crimea. According to Russian legislation, organisers of public meetings must receive authorisation from authorities. Fines from RUB 300 000 (approximately EUR 3 900) to RUB 600 000 (EUR 7 800) and compulsory labour are envisaged for violations of the law. The law can be applied to events occurring up to one year previously. In July 2014, amendments to the law were adopted to introduce criminal responsibility for repeated violations of the order of organising or conducting of mass events (fines ranging RUB 600 000 to RUB 1 000 000, compulsory labour, and imprisonment for up to five years).¹²³

In addition, on 8 August 2014, the de facto State Council of Crimea adopted **law 56-ZRK 'On Ensuring the Conditions for the Exercise of the Right of Citizens of the Russian Federation to Hold Meetings, Rallies, Demonstrations, and Pickets in the Republic of Crimea'** (amended on 16 September 2015). This act restricts the time period during which a written request should be submitted to the local authorities and the areas where the right to assembly can be exercised.¹²⁴ The legislation of Russia and

¹¹⁹ Moscow Helsinki Group, V Krymu pole grazhdanskogo obschestva I SMI prakticheski polnostiu zachischno. Interview s Andreyem Yurovym [In Crimea, the space for civil society and mass media has been nearly completely destroyed. Interview with Andrey Yurov], 21 March 2015, <http://mhg-main.org/v-krymu-pole-grazhdanskogo-obshchestva-i-smi-prakticheski-polnostyu-zachishcheno>. See also OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 37.

¹²⁰ Moscow Helsinki Group, Monitoring primeneniya novogo zakonodatelstva v Rossijskoi Federatsii [Monitoring of the application of the new legislation in the Russian Federation], Moscow: 2015, p. 9. Retrieved from <http://mhg-main.org/sites/default/files/files/monitoring-zakonodatelstvo-08-2015.pdf> on 1 March 2016.

¹²¹ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 40.

¹²² On 28 November 2014, the President of Russia signed a decree 'On measures to ensure the national security of the Russian Federation and the protection of Russian citizens from criminal and other unlawful activities and the application of special economic measures against the Republic of Turkey'.

¹²³ Moscow Helsinki Group, Monitoring, p. 21.

¹²⁴ Crimean Field Mission on Human Rights, Brief Review of the Situation in Crimea (July-August 2014), p. 8-9. Retrieved from

the de facto State Council of Crimea are used to prohibit the peaceful assembly of Crimean Tatars and Ukrainians under distinct pretexts on such days as the commemoration of the Day of Deportation of Crimean Tatars, Crimean Tatar Flag Day, Ukraine's Flag Day and Independence Day, Taras Shevchenko's birthday, Human Rights Day, and the European Day of Remembrance for victims of Stalinism and Nazism.¹²⁵ These laws were also used by the de facto courts of Crimea to persecute Crimean Tatars who travelled to greet Mustafa Dzhemilev during his attempt to enter Crimea on 3 May 2014 (the Case of 3 May).

5. Legalisation of the Crimean 'self-defence', which is allegedly responsible for serious human rights abuses: On 11 June 2014, the de facto State Council of Crimea passed **law No 22-ZRK 'On the People's Militia – Narodnaya Druzhyna'**, which was further amended on 11 December 2014. This law established a people's militia to support public authorities and law enforcement agencies to ensure public order. It is widely viewed as the legalisation of the 'self-defence' units that played an instrumental role in the occupation of Crimea and were allegedly responsible for serious human rights abuses, including forced disappearances, illegal detention, ill treatment, torture, and murder. According to the initial version of the law, members of the militia were authorised to check identity documents, detain lawbreakers, and, if other measures were exhausted and if the lawbreakers refused to abide by militia instructions or resisted, to use physical force against them. The amendments of December 2014 reduce these rights to assisting police in performing their duties to ensure public order, though they may still apply physical force, according to Russia's federal law No 44-FZ of 2 April 2014 'On participation of citizens in the protection of public order'. Seemingly, the 'self-defence' is financially supported by the authorities (as a public enterprise).¹²⁶ As Human Rights Watch reports, while the people's militia is authorized to act only in conjunction with law enforcement agencies, 'they appear to be operating autonomously and regularly harass, question, and sometimes beat people without the presence of police'.¹²⁷ In July 2014, de facto Prime Minister of Crimea Sergey Aksenov introduced a draft law proposing granting amnesty to all members of the 'self-defence' units for the period between February and April 2014;¹²⁸ however, this law has yet to be passed by the de facto parliament. A similar law is pending in Russia's State Duma, which proposes amnesty for members of the self-defence units for the period between February 2014 and January 2015.¹²⁹

6. Extremism and terrorism: The de facto authorities of Crimea have extensively applied Russian legislation on terrorism and extremist activity to prosecute those who oppose the annexation, including the Crimean Tatar community and pro-Ukraine activists. According to information from the de facto Prosecutor of Crimea, in 2015, 12 criminal cases 'on the criminal responsibility of persons affiliated with

http://cfmission.crimeahr.org/wp-content/uploads/2015/01/crimea_field_mission_report_july-august_2014_eng.pdf on 1 March 2016.

¹²⁵ Crimean Field Mission on Human Rights, Brief Review of the Situation in Crimea (July-August 2014), p. 8-9. Retrieved from http://cfmission.crimeahr.org/wp-content/uploads/2015/01/crimea_field_mission_report_july-august_2014_eng.pdf on 1 March 2016.

¹²⁶ V. Nikiforov, 'Krymskaya samooborona zaputalas v statuse' ['Crimea self-defence is confused about its status'], Kommersant, 20 February 2015, <http://www.kommersant.ru/doc/2673147>

¹²⁷ Human Rights Watch, Rights in Retreat, p. 20-21.

¹²⁸ 'The draft of the law of the Republic of Crimea "On the prevention of prosecution of persons for acts committed in order to protect public order and interests of the Republic of Crimea"', <http://crimea.gov.ru/textdoc/ru/6/project/1664.pdf>

¹²⁹ Human Rights Watch, Rights in Retreat, p. 2. See also the appeal of the 'State Council of Crimea' to the State Duma of the Russian Federation of 30 September 2014.

[http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/16740DBDDF67CCDF43257D650048D45D/\\$FILE/613379-6.PDF?OpenElement](http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/16740DBDDF67CCDF43257D650048D45D/$FILE/613379-6.PDF?OpenElement)

nationalist or extremist organisations or pursuing their ideology' were opened.¹³⁰ These cases include the Case of Kostenko, the Case of the Crimea Blockade, and the Case of 26 February ('on the illegal armed group created by Mejlis members'), among others.

The work of media professionals and independent media outlets, including the Crimean Tatar newspaper Avdet and the ATR television station, was restricted or totally impeded due to the application of the Russian federal law of 25 July 2002 **No 114-FZ 'On Combating Extremist Activities'** by the de facto authorities. A Ukrainian flag with the words 'Crimea is Ukraine' and 'annexation' or 'occupation' are recognised as 'extremist symbols' and 'extremist rhetoric' by the de facto authorities. The de facto authorities also monitor social media 'for propaganda of extremism and terrorism'. In 2014, the Criminal Code of Russia was amended to introduce such crimes as public incitement to extremist activity via the Internet, which is punished by compulsory labour up to five years and may be accompanied by a ban to occupy certain positions or pursue certain activities or incarceration for up to five years. Russian legislation also enables the de facto authorities to shut down media if it repeatedly publishes 'extremist' content; this also includes blogs with over 3 000 readers.

The Federal List of Extremist Materials introduced by the federal law 'On Combating Extremist Activities' has particularly affected the situation of Crimean Tatars. The list currently includes over 3 200 publications, audio and video materials, images, and Internet resources, including, for example, books on the Holodomor of 1932-1933 in Ukraine and Islamic literature.¹³¹ According to Alexander Verkhovsky, the Director of the Russian NGO SOVA Center, which conducts research on nationalism and racism, approximately 25 % of the items on the list pertaining to Islamic literature are widely used by the Islamic community and include no extremist content.¹³² According to Human Rights Watch, enforcement of this law in Crimea 'has had a discriminatory impact on Crimean Tatars who are Muslims' and 'violates international law on the protection of freedom of expression, as well as the obligations of Russia as an occupying power'.¹³³ Indeed, mosques, madrassas, and the homes of Crimean Tatars are frequently searched for extremist items. The federal law of 6 March 2006 **No 35-FZ 'On Combating Terrorism'** and the relevant articles of the Criminal Code of the Russian Federation have been used in cases against eight people – seven Crimean Tatars and one ethnic Ukrainian – who are accused of the organisation of and participation in the 'terrorist organisation Hizb ut-Tahrir'.

7. Separatism: On 28 December 2013, before the annexation of Crimea, the **Russian Criminal Code** was amended to include such crimes as public incitement to actions violating the territorial integrity of the Russian Federation, which carries a fine of up to RUB 300 000 (approximately EUR 3 900), compulsory labour up to 300 hours, or imprisonment up to three years (Article 280.1). If such incitement is conducted via the media or the Internet, the punishment increases to compulsory labour up to 480 hours or five years in prison. On 21 July 2014, Article 280.1 of the Criminal Code was further amended (federal law No 274-FZ) to introduce more severe punishments and a ban to occupy certain positions or to pursue certain activities. As a result, publicly acknowledging that 'Crimea is Ukraine' or calling the de facto authorities in Crimea 'occupying authorities' may lead to four to five years in jail.

8. Access to education: The federal law of 5 May 2014 **No 84-FZ 'On the peculiarities of the legal regulation of relations in the sphere of education in connection with the Admission of the Republic**

¹³⁰ De facto Prosecutor's Office of the 'Republic of Crimea', 'Prokuratura v 2015 godu napravila v organy sledstviya 12 materialov dlya vozbuzhdeniya ugolovnykh del ekstremistskoi napravlenosti' ['In 2015, the Prosecutor's Office passed 12 materials for opening criminal cases on extremist-related crimes to the investigation bodies'], 27 January 2016, <http://rkproc.ru/ru/news/prokuratura-v-2015-godu-napravila-v-organy-sledstviya-12-materialov-dlya-vozbuzhdeniya>

¹³¹ The list can be found at <http://minjust.ru/ru/extremist-materials>

¹³² Human Rights Watch, Rights in Retreat, p. 18.

¹³³ Human Rights Watch, Rights in Retreat, p. 19.

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”” integrated the system of education of Crimea into that of Russia. The education institutions of Crimea were to function according to Russian education standards and programmes. Access to education has been allegedly used by the de facto authorities as a tool to compel citizens to obtain Russian passports as children and students without Russian citizenship or permanent residency status are not eligible for education in public institutions – both secondary schools and public universities.¹³⁴

The ‘Constitution of the Republic of Crimea’ adopted by the de facto State Council of Crimea on 11 April 2014 as the basic law of a constituent entity of the Russian Federation rules that the ‘state languages of the Republic of Crimea are Russian, Ukrainian, and Crimean Tatar’. The law ‘On Education in the Republic of Crimea’ of 17 June 2015, adopted by the de facto legislative body of Crimea, stipulates that Russian citizens residing in Crimea are entitled to receive ‘pre-school, primary general, and basic general education in their native languages, including Russian, Ukrainian, and Crimean Tatar, and the right to learn their native language within the possibilities provided by the system of education in the manner established by the legislation on education. The exercise of these rights is ensured through establishment of a sufficient number of education organisations, classes and groups, and the conditions for their functioning’.¹³⁵ This law entered into force on 1 January 2016. However, current practice largely contradicts the norms of this law, given that native-language education and language studies in Ukrainian and Crimean Tatar have been drastically reduced across occupied Crimea.¹³⁶

9. Rights of minorities: Initially after the annexation, the de facto authorities attempted to demonstrate that they respected the rights of minorities, especially of Crimean Tatars, by declaring their intention to solve pressing economic issues, in hopes of lessening minority resistance to the occupation. However, these declarations have scarcely been put into practice.

On 21 April 2014, Russian President Vladimir Putin signed **decree No 268 ‘On Measures of Rehabilitation of Armenian, Bulgarian, Greek, Crimean Tatar and German peoples and state support to their revival and development’**. Commenting on the decree, Putin emphasised that Crimean Tatar people had suffered the most of all and stated that this decree would be the basis for systematic measures towards the cultural, political, and economic rehabilitation of Crimean Tatars, including the regulation of land property issues.¹³⁷ Crimean Tatar representatives, including Mustafa Dzhemilev, were critical of the decree, as the decree focused on cultural rights and equated Crimean Tatars to other national minorities, instead of treating them as an indigenous people.¹³⁸

Following Putin’s decree, on 4 June 2014, the de facto State Council of Crimea passed in its first reading the draft law ‘On certain guarantees of rights of peoples who were deported in an extra-judicial way on the basis of nationality from the Autonomous Crimean Soviet Socialist Republic in 1941-1944’. The draft law promised many social benefits to the repatriates, such as compensation of transportation expenses for their return to Crimea, compensation of expenses for completing the construction of houses, provisions for accommodation, provisions for land plots to build homes, and other measures.¹³⁹ Similarly, on 30 July 2014, the draft law ‘On the regulation of issues of the self-occupation of land’, which envisaged

¹³⁴ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 69-70.

¹³⁵ The text can be found at http://rk.gov.ru/rus/file/pub/pub_252464.pdf

¹³⁶ OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 70.

¹³⁷ Ria Novosti, ‘Putin: ukaz o rehabilitatsii krymskih tatar – osnova dlia razvitiia’ [‘Putin: Decree on the rehabilitation of Crimean Tatars is the basis for development’], Ria Novosti, 16 May 2014, <http://ria.ru/politics/20140516/1008042615.html>

¹³⁸ Kommersant, ‘Krymskotatarskoye ego’.

¹³⁹ The text can be found at <http://crimea.gov.ru/textdoc/ru/6/act/2203.pdf>

the legalisation of all self-occupied land plots by 2017, was passed in its first reading.¹⁴⁰ On 20 June 2015, the de facto State Council passed in its first reading the draft law 'On measures of social support to victims of political repressions', which offers further social benefits to individuals, including those who had been deported.¹⁴¹ However, this draft legislation has yet to be adopted and seems to have been dropped.

Among the legislative acts that have been adopted and are relevant to the situation of minorities is the law 'On holidays and historic dates in the Republic of Crimea' of 24 December 2014, which provides minorities with the right to celebrate their religious and national holidays. The law 'On the adoption, publishing and entering into force and deposit of laws of the Republic of Crimea' of 11 June 2014 envisages that laws shall be published in each of the state languages of Crimea; however, the website of the de facto State Council where laws are published electronically is only available in Russian. The law 'On crime prevention in the Republic of Crimea' of 8 August 2014, Article 18(3), envisages measures to prevent inter-ethnic conflicts in Crimea, including by creating a culture of tolerance and support for the development of the languages and cultures of the people of Crimea. However, classes on patriotism and studies on extremist legislation are taught in Crimean schools instead.¹⁴²

On 25 June 2014, the de facto State Council of Crimea by its decree No 2254-6/14 ruled to ask the Russian government to include the smaller groups of indigenous peoples of Crimea, namely the Karaims (numbering 850 people, according to the information provided in the decree) and Krimchaks (numbering 380 people, according to the Register of Indigenous People of the Russian Federation), in line with the federal law 'On Guarantees of the rights of small indigenous people of the Russian Federation' which 'would allow the promotion of retaining religion, authentic ethnic culture, and historic heritage'.¹⁴³ The de facto authorities also approved a list of historical geographic names, mainly Crimean Tatar, that had been changed during Soviet times and which are to be used in parallel with their current names.¹⁴⁴

5 Applicability of relevant international legal norms and standards to the de jure and de facto authorities

The occupation of Crimea since the end of February 2014¹⁴⁵ constitutes a grave violation of Ukraine's territorial integrity and is an act of aggression as defined by **UNGA Resolution 3314 (XXIX)** of 14 December 1974. Russia violated the principles of international law that prohibit the threat or use of force against the territorial integrity or political independence of another state as enshrined in the **Charter of the UN** (Article 2(4)). Russia's occupation also violates the principle of non-interference in internal affairs and the principles of territorial integrity and the inviolability of borders, as enshrined in the **Final Act of the Conference on Security and Cooperation in Europe**, signed in Helsinki on 1 August 1975; the Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons (**Budapest Memorandum**) of 5 December 1994; the **Ukraine-Russia Treaty on Friendship, Cooperation and Partnership** of 31 May 1997; and the **Alma-Ata Declaration** of 21 December 1991.¹⁴⁶

¹⁴⁰ The text can be found at <http://www.crimea.gov.ru/draft/4067>

¹⁴¹ The text can be found at <http://www.crimea.gov.ru/draft/4649>

¹⁴² Interview with a civil society representative, Kyiv, 18 February 2016.

¹⁴³ The Russian register of indigenous people only includes those whose population is less than 50 000.

¹⁴⁴ TASS, 'V Krymy naseleennyim punktam vozvrashchaut izmenennyye pri sovetskoi vlasti nazvaniya' ['Crimean municipalities are given back the names which were changed during the Soviet times'], TASS, 8 February 2016, <http://tass.ru/obschestvo/2649277>

¹⁴⁵ The Ukrainian government recognises 20 February 2015 as the start of Russian aggression in Crimea. Russia also indirectly recognised 20 February 2014 as the first day of its military intervention in Crimea by issuing medals of the Ministry of Defence 'For the Return of Crimea: 20.02.2014-18.03.2014'.

¹⁴⁶ Resolution adopted by the UNGA on 27 March 2014 68/262 'Territorial integrity of Ukraine'.

For the purposes of international law, illegally annexed territories are considered occupied. Thus, the illegal annexation of Crimea, which occurred on 18 March 2014, is a continuation of the occupation that began in February 2014.¹⁴⁷ Territory that is controlled by a foreign power is regarded as occupied regardless of whether the occupation has met a violent resistance and whether a state of war was declared.¹⁴⁸

In the case of occupation, International Humanitarian Law (IHL) applies: specifically, the land regulations of the **1907 Hague Convention (IV)** and the **Fourth Geneva Convention** (relating to the Protection of Civilian Persons in the Time of War) of 12 August 1949, and the **Additional Protocol I** (relating to the Protection of Victims of International Armed Conflicts) of 8 June 1977.¹⁴⁹ For example, IHL norms stipulate that the population cannot be transferred from the occupied territory; thus, deportations are violations of IHL (Article 49 of the Fourth Geneva Convention). Additionally, the occupying power cannot transfer its civilian population into the occupied territory; private property shall be respected; and the occupying power shall provide food, medical supplies, and healthcare to the population, and education to the children on the occupied territory regardless of their citizenship (Articles 50, 55, and 56). Resistance to an unlawful occupation is lawful. The occupying power cannot prosecute civilians for crimes occurring before the occupation (Article 70) and the penal laws of the occupied territory shall remain in force, except when they constitute a threat to the security of the occupying power or an obstacle to the application of the Fourth Geneva Convention (Article 64). No derogations can be made from IHL. Despite the fact that Russia refuses to admit the de jure application of the IHL rules of occupation, as it insists on the legality of the annexation of Crimea, IHL remains applicable.

The occupying power bears legal responsibility for the occupied territory, including respect for and protection of all human rights. Russia is also responsible for preventing and taking action against human rights abuses by local authorities and forces acting as its proxies.¹⁵⁰

Russia as the occupying power has to comply with its own human rights obligations in occupied Crimea and with the human rights obligations of the occupied territory – that is, binding commitments taken by the lawful sovereign Ukraine.¹⁵¹ These international human rights obligations include compliance with **international and regional human rights treaties and other instruments to which Russia is a party**, including the International Bill on Human Rights (the Universal Declaration; the International Covenant on Civil and Political Rights and the two Optional Protocols; and the International Covenant on Economic, Social, and Culture Rights and its Optional Protocol); the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the Convention on the Rights of the Child and its three Optional Protocols; and other international conventions, as well as obligations taken under membership in the CoE (first of all, the European Convention for the Protection of Human Rights and

¹⁴⁷ P. Wrangé, S. Helaoui, Occupation/Annexation of a Territory: Respect for International Humanitarian Law and Human Rights and Consistent EU Policy. Study of the European Parliament. Brussels, 25 June 2015, p. 8.

¹⁴⁸ P. Wrangé, S. Helaoui, Occupation/Annexation of a Territory: Respect for International Humanitarian Law and Human Rights and Consistent EU Policy. Study of the European Parliament. Brussels, 25 June 2015, p. 14. See also OSCE, Report of the Human Rights Assessment Mission on Crimea, p. 17.

¹⁴⁹ P. Wrangé, S. Helaoui, Occupation/Annexation of a Territory: Respect for International Humanitarian Law and Human Rights and Consistent EU Policy. Study of the European Parliament. Brussels, 25 June 2015, p.15.

¹⁵⁰ See also Human Rights Watch, Questions and Answers: Russia, Ukraine, and International Humanitarian and Human Rights Law, 21 March 2014, <https://www.hrw.org/news/2014/03/21/questions-and-answers-russia-ukraine-and-international-humanitarian-and-human-rights>

¹⁵¹ OSCE, Report of the Human Rights Assessment Mission on Crimea, p.18.

Fundamental Freedoms), the Helsinki Final Act, and the OSCE human dimension commitments that are politically binding.¹⁵²

Human rights may be limited by the occupying power, especially in the situation of armed conflict, when its security may be threatened or control is fluid; however, some rights are non-derogable in line with international conventions (such as the right to be free from torture and any inhumane and degrading treatment or punishment, the right to life, the right to be free from slavery or servitude, the right to protection from retroactive application of penal laws, and right to freedom of thought, conscience, and religion).¹⁵³ In the context of an illegal annexation where Russia is in full control of Crimea, it has an obligation to respect and protect human rights.

Both Ukraine and Russia are parties to the **CoE Framework Convention for the Protection of National Minorities**; thus, the provisions of this convention are legally binding for Russia in Crimea. Compliance with the Framework Convention is subject to monitoring by the Advisory Committee on the Framework Convention for the Protection of National Minorities. The Russian state report (as well as the Ukrainian state report) on the status of the implementation of this Convention under the fourth monitoring cycle has been overdue since 2014.

Ukraine is also a party to the **European Charter for Regional or Minority Languages**. Russia signed the Charter in 2001, but did not ratify this CoE convention. Therefore, whereas Russia has no obligation to comply with its provisions on its territory, it must comply with it on the territory of Crimea.

Crimean Tatars (as well as Karaims and Krimchaks) are indigenous people whose rights shall be protected in line with the **UN Declaration on the Rights of Indigenous Peoples** of 2007, which sets minimum standards of protection. However, this document is non-binding;¹⁵⁴ hence, the path towards protecting the rights of indigenous people in occupied Crimea is through the norms of other binding conventions. Shortly after the annexation, on 20 March 2014, Ukraine's parliament adopted a resolution on the guarantees of the rights of Crimean Tatar people in the Ukrainian state, in which it recognised Crimean Tatars as indigenous people possessing the right to self-determination within the state of Ukraine and the Kurultai and the Mejlis as their representative and executive bodies, respectively. The parliament called on the government of Ukraine to join the UN Declaration on the Rights of Indigenous Peoples, which it did in May 2014.

There are numerous challenges to compelling Russia's compliance with its obligations as the occupying power in Crimea, from its refusal to recognise itself as such and up to the limited mechanisms of enforcement available under international law. In fact, **many international human rights commitments are not respected by Russia on its own territory**. Over 10 000 applications against Russia are pending before the European Court of Human Rights (ECHR).¹⁵⁵ Furthermore, to avoid compliance with ECHR rulings, in December 2015, Russian authorities passed amendments to the law on the Constitutional Court allowing the court to legalise the non-implementation of ECHR decisions.¹⁵⁶ This act stipulates the supremacy of domestic law; accordingly, any international convention can be overruled by the Russian Constitution. In February 2016, the Ministry of Justice of Russia asked the Constitutional Court to rule on

¹⁵² OSCE, Report of the Human Rights Assessment Mission on Crimea, p.18.

¹⁵³ OSCE, Report of the Human Rights Assessment Mission on Crimea, p.15.

¹⁵⁴ Both Ukraine and Russia abstained during its vote, which may be interpreted as their disinterest in endorsing the rights of indigenous peoples.

¹⁵⁵ European Court on Human Rights, 'Russia', Press Country Profile, Update in January 2016, http://www.echr.coe.int/Documents/CP_Russia_ENG.pdf

¹⁵⁶ V. Hamraev, A. Pushkarskaya, 'Yevropeyski sud Rossii ne ukaz. Gosduma reshila, kak ne ispolniat yego reshenia' ['The European Court has no authority over Russia. State Duma decided how to not implement its decisions], Kommersant, 5 December 2015, <http://www.kommersant.ru/doc/2870960>

whether it may choose not to implement the decisions of the ECHR.¹⁵⁷ Observers believe that this step may signal Russia's intention to avoid the responsibilities of compliance with its international commitments and exit the CoE.¹⁵⁸ In fact, Russian authorities threatened withdrawal from the CoE in 2016 after the CoE Parliamentary Assembly (PACE) voted in favour of continuing the suspension of the Russian delegation's voting rights, a sanction introduced in response to its annexation of Crimea and its activities in eastern Ukraine in April 2014. The Russian Parliament did not send its delegation to participate in the 2016 ordinary session of the PACE.

The government of **Ukraine derogated in whole from certain human rights obligations to Crimean residents**, deferring to the responsibility of Russia as an occupying power in effective control of the peninsula.¹⁵⁹ Despite the fact that Ukraine does not have effective control over Crimea, it is still obliged to use all legal and diplomatic means available to guarantee the rights of its citizens in the occupied territory, as stipulated by the ECHR in cases concerning Moldova in Transnistria.¹⁶⁰ Ukrainian human rights defenders argue that Ukraine must intensify investigations of the crimes committed against its citizens on the territory of Crimea during the occupation and make better use of the available international mechanisms for protection. It is beyond the scope of this study to analyse how the current measures put in place by Ukraine towards Crimea, including the derogation from human rights obligations, the rules on crossing the administrative boundary line with Crimea, and others, affect the human rights of Ukrainian citizens in occupied Crimea and what steps Ukraine should take to protect its citizens in the region. These important issues deserve further investigation in a separate study.

In order to compel Russia to comply with its human rights obligations in Crimea, **Ukraine lodged two inter-state applications to the ECHR**: *Ukraine v. Russia* (no. 20958/14) on 13 March 2014, and *Ukraine v. Russia* (no. 42410/15) on 27 August 2015 for numerous violations of the European Convention on Human Rights in the territories of Ukraine where Russia exercises effective control. Moreover, there are also an unknown percentage of individual applications, out of the total number of over 1 400, concerning events in Crimea and eastern Ukraine (most of which relate to the situation in eastern Ukraine; there are no statistics on what percentage of these are lodged against Russia, Ukraine, or both).¹⁶¹

Though Ukraine has accepted the jurisdiction of the **International Criminal Court (ICC)**, which tries individuals accused of committing genocide, crimes against humanity and war crimes, over the alleged

¹⁵⁷ A. Pushkarskaya, 'Reshenia ESPCh- ni v zhizn. V Konstitutsionnyi sud postupilo pervoe obraschenie Minyusta' ['ECHR decisions are not to put in force. The Constitutional Court receives the first Ministry of Justice request'], *Kommersant*, 2 February 2016, <http://www.kommersant.ru/doc/2906219>. Upon the completion of this report, on 19 April 2016, the Constitutional Court of the Russian Federation ruled it 'impossible' to implement the decision of the ECHR in the case of *Anchugov and Gladkov v Russia* (2013). See <http://www.ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3281>

¹⁵⁸ M. Bushuev, M. Ostaptschuk, 'Russia to ignore international courts', *Deutsche Welle*, 17 December 2015, <http://www.dw.com/en/russia-to-ignore-international-courts/a-18923829>; UNIAN, 'Kremlin strategy: Russia may have long plotted quitting Council of Europe', UNIAN, 5 February 2016; A. Arbatov, A. Kolesnikov, 'Does Russia Need the Council of Europe?' *Carnegie.ru Commentary*, 4 February 2015, <http://carnegieendowment.org/2015/02/04/does-russia-need-council-of-europe>

¹⁵⁹ Postanova Verkhovnoi Rady Ukrainy 'Pro Zayavu Verkhovnoi Rady Ukrainey "Pro Vidstup Ukrainy vid okremykh zobov'язan, vyznachenyh Mizhnarodnym Paktom pro hromadianski i politychni prava ta Konventsieu pro zahyst prav ludyny i osnovopolozhnyh svobod"' ['Resolution of the Parliament of Ukraine "On derogation from certain obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms"'] No 462-VIII of 21 May 2015. It should be noted that some of the rights envisaged by the derogations are non-derogable as defined by the UN Human Rights Committee (such as the right to a fair trial) or still obliged under international humanitarian law (such as the right to effective remedy).

¹⁶⁰ In ECHR judgments of 19 October 2012 in *Catan and Others v. Moldova and Russia* and of 8 July 2004 in *Ilascu and others v. Moldova and Russia*. See OHCHR, Note on the derogation of the Government of Ukraine from certain obligations under international human rights treaties to which Ukraine is a party, 2 March 2016.

¹⁶¹ European Court of Human Rights, 'European Court of Human Rights communicates to Russia new inter-State case concerning events in Crimea and Eastern Ukraine', Press Release, ECHR 296 (2015), 1 October 2015.

crimes committed on Ukraine's territory from 20 February 2014 onwards, crimes of aggression may fall under the jurisdiction of the ICC only after January 2017, subject to a decision to be taken then by participating states. Thus, even if there is a potential case for Ukraine at the ICC, it is likely to focus on the investigation of the crimes committed in eastern Ukraine rather than in Crimea.

6 Actions taken by the international community to improve the situation of minorities in Crimea

Despite the fact that by occupying and illegally annexing Crimea, Russia broke many fundamental provisions of international law and dealt a major blow to post-WWII international and European security, the international community was unable to respond to this breach in a way that would compel Russia to change its behaviour and enforce compliance. Neither the UN Security Council, nor the OSCE, of which Russia is a member, appeared capable of dealing with Russia's military aggression towards Ukraine, just as they were not able to deal with similar earlier crises, though of a more limited scope, such as the war between Russia and Georgia in 2008.

The UN Security Council was unable to adopt any act condemning Russia's aggression due to Russia's veto. The only response that the UN produced was the non-binding UNGA resolution of 27 March 2014 68/262 on Ukraine's territorial integrity, which declares the referendum of 16 March 2014 as 'having no validity, [and it] cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol'. While it was supported by 100 UN members and opposed by only 11 members (Armenia, Belarus, Bolivia, Cuba, Nicaragua, North Korea, Russia, Sudan, Syria, Venezuela, and Zimbabwe), the vote also showed a major schism within the international community, as 58 UN members, mainly South American, African, and Asian states, abstained from providing an unequivocal assessment of Russia's actions in Crimea.

Similarly, the only agreement that OSCE participant states could reach in response to the illegal annexation of Crimea was to deploy an unarmed Special Monitoring Mission to Ukraine (OSCE SMM) on 21 March 2014 with the aim of reducing tensions and fostering peace, stability, and security, and to monitor and support the implementation of all OSCE principles and commitments. One of the OSCE SMM tasks is to monitor and support the respect for human rights and fundamental freedoms, including the rights of persons belonging to national minorities.¹⁶² However, the principal geographical focus of the mission's activity moved to the two eastern regions of Ukraine, where armed conflict is ongoing. Russia effectively blocked access of the mission to Crimea, arguing that 'the Republic of Crimea and Sevastopol have become an integral part of the Russian Federation' and, thus, could not be covered by a mission with a mandate on Ukraine.¹⁶³

¹⁶² OSCE Permanent Council, Decision No 1117 Deployment of an OSCE Special Monitoring Mission to Ukraine, 991st Plenary Meeting, 21 March 2014, <http://www.osce.org/pc/116747?download=true>

¹⁶³ OSCE Permanent Council, Decision No 1117 Deployment of an OSCE Special Monitoring Mission to Ukraine, 991st Plenary Meeting, 21 March 2014, <http://www.osce.org/pc/116747?download=true>

6.1 Non-recognition policy and sanctions against the occupier

Following the UNGA Resolution 68/262, part of the international community is pursuing a **policy of non-recognition** of the illegal annexation of Crimea by Russia. The EU as a bloc has adopted a non-recognition policy as decided by the European Council on 20 March 2014.¹⁶⁴ As part of this policy, the EU has imposed restrictions on economic exchanges with the occupied territory. These restrictions include an import ban on goods originating from Crimea (unless they have Ukrainian certificates); an investment ban; a ban on providing tourism services (European cruise ships may only call at ports of the Crimean peninsula in case of emergency); an export ban on goods and technology for the transport, telecommunications, and energy sectors and the exploration of oil, gas, and mineral resources; and a prohibition on technical assistance, brokering, construction, or engineering services related to infrastructure in the mentioned sectors.¹⁶⁵ On 19 June 2015, the Council extended these measures to 23 June 2016. Similarly, in December 2014, the United States of America (USA) imposed a trade and investment ban on Crimea and prohibited financial transactions with Crimea (later limited only to those for commercial purposes).¹⁶⁶ The consulates of EU countries (e.g. Poland) in Crimea were closed and the states implementing a non-recognition policy do not recognise Russian passports issued in Crimea.

In response to the events in Crimea, on 6 March 2014, the USA was the first to introduce an asset freeze and entry ban against persons involved in the occupation. Similar measures were adopted by Canada. The EU also introduced **restrictive measures against the persons and entities involved** in actions against Ukraine's territorial integrity on 17 March 2014. Subsequently, the EU's asset freezing and travel ban list grew to 149 persons and 37 entities. Of these, over 60 are Russian or Crimean politicians, members of the military, or officials who were added to the list because of their role in the occupation of Crimea, 13 are entities in Crimea that were 'nationalised' by the de facto authorities, and one is a Russian state airline flying directly to Crimea. These measures have been extended to 15 September 2016.

The sanctions against Russia also included **diplomatic measures**, such as the cancellation of high-level meetings with Russian authorities (the G8 summit, the EU-Russia summit, the suspension of negotiations on the new EU-Russia agreement and visa liberalisation talks, the suspension of Russia's accession to the Organisation for Economic Cooperation and Development and the International Energy Agency, the suspension of loans by the European Investment Bank, and the suspension of cooperation programmes, except on cross-border and civil society). As the events in Ukraine evolved, including Russia's intervention in eastern Ukraine, international sanctions were expanded in July-September 2014 and new restrictive

¹⁶⁴ European Council, Conclusions of 20-21 March 2014, Brussels, 21 March 2014 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/141749.pdf. On 20 March 2014, the European Council declared not to recognise the illegal referendum in Crimea, considered it in clear violation of the Ukrainian Constitution, and condemned the illegal annexation of Crimea/Sevastopol to Russia, committing not to recognise it.

¹⁶⁵ Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (OJ L 183, 24.6.2014, p. 9), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0692-20141220&qid=1444987014323&from=EN>

¹⁶⁶ The President of the USA, Executive Order 13685 of December 19, 2014 Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_eo4.pdf; Office of Foreign Assets Control, Executive Order 13685 of December 19, 2014 Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine, General License Nj. 6 Noncommercial, Personal Remittances Authorized, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13685_gl_6.pdf

measures were added by the EU, the USA, Canada, Australia, Japan, Switzerland, and Norway (see Annex 3).¹⁶⁷

On 31 July 2014, shortly after Malaysia Airlines Flight MH17 was shot down in eastern Ukraine, the EU imposed **sanctions targeting Russia as a state**, which were further reinforced in September 2014. The sanctions included bans on the trade of financial instruments and on loans to five state-owned banks, three energy companies, and three defence companies; a trade embargo on arms; an export ban on dual-use goods for military use in Russia or by Russian military users; and a ban on the export of certain energy-related equipment, technology and services, and certain products and services for deep sea oil exploration.¹⁶⁸ These 'economic' sanctions, as they have been called by the EU, are linked to the implementation of the Minsk accord on the ceasefire in Donbas and have been subsequently prolonged to remain in force until 31 July 2016.

The **US sanctions** include measures against people, entities, and companies, including non-recognised institutions in Crimea, as well as sectoral economic measures (financial sanctions against Russian entities, including Russian banks, energy and defence companies, restrictions on military and dual-use technology, and an export ban on technology for deep oil and gas exploration).¹⁶⁹

Turkey, which has a large Crimean Tatar diaspora, condemned the illegal annexation of Crimea, but did not introduce sanctions against Russia related to the occupation. The government sent an unofficial delegation led by Professor Zafer Üskül on 27-30 April 2015 that produced a critical report on the human rights violations of the Crimean Tatar population following the illegal annexation.¹⁷⁰ The Turkish President delivered the report to the Russian President at the European Games in Baku in June 2015.

There are diverse views on the effectiveness and impact of the sanctions against Russia. One view maintains that sanctions have been counterproductive because they have led to a consolidation of the elite in Russia.¹⁷¹ According to another view, though sanctions did not reverse the annexation of Crimea or push Russia to withdraw from eastern Ukraine, they raised the cost of 'Crimea's absorption', making the occupied region the most dependent on federal budget transfers from Russia.¹⁷²

Many civil society representatives in Ukraine, including those interviewed for this study, view the economic sanctions that were introduced by the international community, and specifically the EU, in reaction to the events in Donbas as the most effective mechanism of forcing Russia to change its behaviour towards Ukraine. However, they express concerns that if the 'Donbas' sanctions were to be eventually lifted, the 'Crimean' sanctions would be too weak to force Russia to revisit its behaviour, comply with international law, and end its occupation of Crimea.

¹⁶⁷ For comparison of sanctions by international actors see J. Ćwiek-Karpowicz, and S. Secieru, *Sanctions and Russia*, Warsaw: PISM, 2015.

¹⁶⁸ European Union, 'EU sanctions against Russia over Ukraine crisis', European Union Newsroom, http://europa.eu/newsroom/highlights/special-coverage/eu_sanctions/index_en.htm

¹⁶⁹ The US Department of the Treasury, 'Ukraine/Russia-related Sanctions', <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx>

¹⁷⁰ Anadolu Post, 'Report shows Russian violation of Crimean Tatars' rights', Anadolu Post, 16 June 2015, <http://aa.com.tr/en/world/report-shows-russian-violation-of-crimean-tatars-rights/36012>

¹⁷¹ R. Connolly, 'The impact of EU economic sanctions on Russia', in Dreyer, I., & Luengo-Cabrera, L., eds., *On target? EU sanctions as security policy tools*, ISSUE Report 25, September 2015, Paris: EUISS, p. 29-38.

¹⁷² S. Secieru, 'Have EU Sanctions Changed Russia's Behaviour in Ukraine', [in] Dreyer, I., & Luengo-Cabrera, op. cit., p. 39-48.

6.2 International law enforcement and human rights protection mechanisms

Although the illegal annexation of Crimea by Russia is routinely condemned by the EU, the USA, and allied countries, as well as at international fora, such as the parliamentary delegations of the international organisations to which Russia is a member (the CoE and the OSCE), there is little action taken in practice to force Russia as the occupying power to adhere to its international obligations and respect the rights of the civilian population, including that of the national minorities. The available mechanisms at the UN-level include the UN Human Rights Council and the Universal Periodic Review as an instrument of peer pressure, as well as various monitoring and advisory bodies for compliance with UN human rights treaties. At the CoE, the ECHR is the strongest enforcement mechanism, also available for individuals, whereas monitoring and advisory mechanisms for the promotion of compliance exist within the CoE and the OSCE. However, effective enforcement ultimately depends on the good will of a complying state.

As mentioned above, **the OSCE SMM** does not monitor the human rights situation in Crimea, despite the fact that its mandate covers the entire territory of Ukraine. The closest the mission has approached Crimea is the office in Kherson that monitors the situation at three crossing points on the Administrative Boundary Line (ABL) between Crimea and the Kherson region.¹⁷³

The **OSCE ODIHR** and the **High Commissioner on National Minorities** published two reports covering the human rights situation in Crimea, including that of national minorities, described previously. The **OSCE Parliamentary Assembly** adopted two resolutions (of 1 July 2014 and of 8 July 2015) condemning Russia's actions and expressing support for Ukraine's sovereignty, political independence, unity, and territorial integrity and also attempted to act as a forum for dialogue by hosting meetings between Russian and Ukrainian parliamentarians.

The CoE is the only international organisation whose delegation recently accessed Crimea. The mission, led by Swiss diplomat Ambassador Gérard Stoudmann, visited Crimea on 25-31 January 2016 to assess the human rights and rule of law situation. They held over 50 meetings on the peninsula, including with the imprisoned Mejlis Deputy Chairman Ahtem Chygoz, as well as conducted meetings in mainland Ukraine. The mission is expected to prepare a report with recommendations in a number of key areas within the CoE mandate. This was the second time that the CoE was allowed into the annexed peninsula since Commissioner for Human Rights Nils Muižnieks' visit of September 2014.

Declaring that Russia's annexation of Crimea was 'in clear contradiction with the Statute of the Council of Europe' and Russia's accession commitments, since April 2014, the **PACE** has suspended the voting rights of the Russian delegation, as well as its right to be represented in the Assembly's leading bodies and its right to participate in election observation missions.¹⁷⁴ Through its resolutions, the PACE regularly calls on Russia 'to reverse its illegal annexation of Crimea' and refers to the situation of human rights and fundamental freedoms in occupied Crimea in its resolutions.¹⁷⁵

¹⁷³ See OSCE SMM, Thematic Report: Freedom of movement across the administrative boundary line with Crimea, 19 June 2015, <http://www.osce.org/ukraine-smm/165691?download=true>

¹⁷⁴ PACE, Resolution 1990 (2014) 'Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation' adopted by the Assembly on 10 April 2014.

¹⁷⁵ See, for example, PACE, Resolution 2067 (2015) 'Missing persons during the conflict in Ukraine' adopted by the Assembly on 25 June 2015.

The **International Advisory Panel**, proposed by the CoE Secretary General to oversee the investigations conducted by the Ukrainian authorities of the violent incidents in Ukraine from 30 November 2013 onwards, produced reports related to the Maidan violence of 2013-2014 and the Odessa violence of May 2014, but not on the Crimean events. The CoE Office in Kyiv is conducting a project on the human rights protection of internally displaced people in Ukraine.

The European Commission against Racism and Intolerance (**ECRI**), a CoE body tasked with assisting Member States in combating racism, racial discrimination, xenophobia, anti-Semitism, and intolerance, adopted its conclusions on Ukraine in March 2015; however, they did not discuss Crimea.¹⁷⁶ The last country report on Russia was issued before the occupation.

The activities of **the UN**, and in particular, the ad hoc report of the UN High Commissioner for Human Rights Special Rapporteur on Minority Issues of 2014, and the regular reports covering the situation in Crimea produced by the UN Human Rights Monitoring Mission to Ukraine, which does not have access to the peninsula, have already been mentioned in Section 2. The UN Development Programme (UNDP) office in Ukraine was the first and only international agency that responded promptly to the human rights situation in occupied Crimea by coordinating and administering donor support (chiefly from Denmark's Ministry of Foreign Affairs) to civil society initiatives such as the Crimean Human Rights Field Mission, and for the provision of legal aid, rights monitoring and awareness raising, trainings for human rights activists and journalists, and other projects of Ukrainian NGOs working on and/or in Crimea, all of which have been mentioned previously in this study. Within the project entitled 'Democratisation, Human Rights and Civil Society Development', the UNDP, together with Denmark, supported the Office of the Ukrainian Ombudsperson and assisted in organising an international conference on human rights in Crimea on 31 March 2015 in Kyiv.

7 The implementation of relevant EU policies, frameworks, programmes, and guidelines

Although the EU has strongly condemned the violation of Ukraine's sovereignty and territorial integrity by an act of aggression from Russia from the start of crisis in Crimea and has expressed non-recognition of its subsequent annexation and introduced a system of restrictive measures,¹⁷⁷ not much has been done in practice to effectively respond to the Russian occupation of Crimea. The suspension of high-level meetings with Russian officials and personal sanctions against Crimean and low-level Russian politicians fell short of pushing Russia to revisit its plans for Crimea. Proposals to send an EU fact-finding mission to Ukraine did not find enough support in the Council; consequently, the EU supported the OSCE monitoring mission instead.

The EU's strategy was to **focus on strengthening Ukraine through assistance on reforms rather than dealing with conflict settlement directly**. In April 2014, the EU agreed to send a Common Security and Defence Policy (CSDP) mission to advise Ukraine on security sector reform. Ukrainian civil society representatives, including those interviewed for this study, complained that the mandate of the mission was too narrow and did not deal with conflict issues; thus, they viewed the EU as failing to provide an adequate response to the armed conflict and occupation of Ukraine. France and Germany led diplomatic peace efforts over the conflicts in eastern Ukraine, while Crimea quickly fell off the radar. Many EU

¹⁷⁶ European Commission against Racism and Intolerance, ECRI Conclusions on the Implementation of the Recommendations in respect of Ukraine Subject to Interim Follow-Up. Adopted On 19 March 2015. Published On 9 June 2015, <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-IFU-IV-2015-25-ENG.pdf>

¹⁷⁷ See Council conclusions on Ukraine, Foreign Affairs Council meeting, Brussels, 3 March 2014; Council conclusions on Ukraine, Foreign Affairs Council meeting, Brussels, 17 March 2014; Council Conclusions on Ukraine approved by European Council, 20 March 2014.

Member States, including Poland and the Baltic states, were dissatisfied with such developments, and Bulgaria's Prime Minister publicly criticised the leaders of Germany and France for de facto accepting Russia's annexation of Crimea.¹⁷⁸ The implementation of the Minsk accords overshadowed any discussion on the status of Crimea.

The illegal annexation of Crimea by Russia is routinely mentioned in **public statements and speeches made by EU representatives**, including the High Representative of the Union for Foreign Affairs and Security Policy Federica Mogherini. However, apart from the EU delegation in Kyiv, public statements by Brussels-based high-level EU officials specifically addressing the situation in occupied Crimea and the rights of its residents and directed at the occupying power Russia remain rare, especially since the active military phase of the occupation has ended.¹⁷⁹

The **European Parliament** (EP) has been the most outspoken EU institution on the issue of the occupation of Crimea, adopting resolutions on Ukraine, the Russian Federation, the Eastern Partnership, the strategic military situation in the Black Sea Basin, and, most recently, on the human rights situation in Crimea, in particular with regard to Crimean Tatars. The EP resolution of 4 February 2016 is of special importance as it explicitly acknowledges Crimean Tatars as 'indigenous people of Crimea' and raises awareness of the critical situation regarding human rights on the illegally annexed peninsula and of Russia's responsibility as an occupying power to ensure the safety of the population as a whole and to show respect for the rights of the indigenous Crimean Tatars and all minority groups.¹⁸⁰ This resolution was much welcomed by Crimean Tatar representatives, the Ukrainian government, and civil society.

The **EU** has **guidelines on promoting compliance with IHL**, which can be implemented by means of political dialogue with third countries, public statements and *démarches* on specific conflicts, sanctions, crisis management operations, and cooperation with other international organisations.¹⁸¹ Examining the effectiveness of the implementation of these guidelines in the case of Russia's occupation of Crimea remains outside the scope of this study; however, it seems that their full potential has yet to be realised. For example, these guidelines envisage restrictive measures against state and non-state actors as an effective means of promoting compliance with IHL; yet, the sanctions introduced by the EU do not reflect the ongoing violations of IHL in occupied Crimea (or, for that matter, in eastern Ukraine). In addition, the EU Action Plan on Human Rights and Democracy (2015-2019) sets out a number of objectives to ensure a comprehensive human rights approach to conflicts and crises. They include an evaluation of the implementation of the EU guidelines on promoting compliance with IHL by 2016. It is also envisaged that by 2017, a system for the mandatory reporting of grave violations of IHRL and IHL by staff in EU delegations and CSDP missions will be established. It is important that the implementation of these measures also extends to Crimea.

All EU cooperation programmes on the territory of Crimea have been terminated, including those with civil society organisations. However, the EU could have deployed emergency funding under the European Instrument for Democracy and Human Rights (EIDHR) to assist human rights defenders working in and on Crimea who face risks (e.g. imprisonment, detentions). Nevertheless, the EIDHR has yet

¹⁷⁸ V. Zhelev 'Bulgarian PM criticises France and Germany for accepting Crimea annexation', EUObserver, 2 April 2015, <https://euobserver.com/beyond-brussels/128238>

¹⁷⁹ They include, for example, statements on the reported holding of local "elections" in Crimea, Brussels, 15 September 2014, or statements by High Representative/Vice-President Mogherini on the sentencing by a Russian court of Ukrainian citizens O. Sentsov and O. Kolchenko, Brussels, 25 August 2015.

¹⁸⁰ European Parliament resolution of 4 February 2016 on the human rights situation in Crimea, in particular of the Crimean Tatars (2016/2556(RSP)).

¹⁸¹ Updated EU guidelines on promoting compliance with international humanitarian law (IHL), 2009/C 303/06, published in the Official Journal of the European Union on 15 December 2009.

to be used to support human rights activities in or on Crimea.¹⁸² Additionally, the Instrument contributing to Stability and Peace (IcSP) has not been used to finance projects related to Crimea, either, although it funded the OSCE SMM and a project by the International Organisation for Migration that supported displaced and conflict-affected people. The EU also financially supports the UN Human Rights Monitoring Mission in Ukraine that, being denied access to the occupied region, monitors the human rights situation in Crimea from Kyiv.

There have been routine complaints among Ukrainian human rights groups that there is no universal funding available to support their work in and on Crimea, and that much of this work has been conducted on a volunteer basis. While small grants, including those provided by the embassies of EU Member States, can be applied for, it is still extremely difficult to ensure the sustainability of human rights work. One of the leading groups monitoring the human rights situation in Crimea raised concerns that their time and resources were primarily spent seeking funds and writing grant reports instead of conducting international advocacy and raising awareness on the issues of occupation. Many complained that European and other international organisations providing support to Ukraine perceive Crimea as 'too political' an issue to deal with and are not eager to fund civil society projects on Crimean issues, apart from providing support to internally displaced people.

8 Conclusions and recommendations regarding possible EU policy measures

Since the illegal annexation of Crimea, the human rights and fundamental freedoms of its residents have been violated, including the freedoms of expression, assembly, and association, the freedom of movement, and the right to a fair trial and effective remedy. The most vulnerable groups have been those who opposed the annexation, including journalists, civil society activists, and representatives of national minorities. The most active segments of Crimean civil society have experienced abduction, detention, interrogation, and intimidation, and many have left the peninsula or were forcefully deported or banned from entering, as in the case of the leaders of the Crimean Tatar Mejlis. Minority groups in occupied Crimea, especially Ukrainians and Crimean Tatars, have faced systematic violations of their political, civic, and cultural rights as those associated with the 'enemy' state of Ukraine. While persecution and discrimination in Crimea is complex and based on multiple grounds, most prominently religion, political position, and identity, Crimean Tatars often see their rights violated as both Muslims and opponents of the occupation. Even politically inactive Crimean Tatars or those who do not belong to the Russian-banned Islamic movements (such as Hizb-ut-Tahrir) may face searches, interrogation, intimidation, and arrest. Furthermore, Ukrainians in Crimea are not free to express or demonstrate their identity, because any identification with Ukraine is seen as opposition to the occupation and may be punished.

The Russian legislative framework that has been de facto applied in Crimea since the annexation significantly restricts the political and civil rights of Crimeans. The de facto authorities broadly apply Russian legislation on extremism and terrorism to suppress dissenting voices and to silence the opponents of the annexation. Furthermore, in violation of IHL and the basic principles of law, Russian criminal laws have been used in Crimea retroactively to persecute civil society activists and Mejlis members.

While serious violations of the rights of the two largest minority groups in Crimea, Crimean Tatars and Ukrainians, are regularly reported and documented, information on the situation of other ethnic minorities in Crimea is scarce. At the same time, there are reports that the de facto authorities pursue

¹⁸² Interview by email with a representative of the EU delegation to Ukraine, 1 March 2015.

practices of divide and rule towards minority communities by splitting them into loyal and disloyal groups. These issues certainly deserve further attention.

The language of intolerance and hatred towards Ukraine and Ukrainians is widespread in pro-Russian media and in the discourse of public officials in Crimea. This may aggravate inter-ethnic relations and conflicts on the occupied peninsula. In this respect, there is a pressing need to ensure regular and unbiased monitoring of the human rights situation in Crimea through an international presence.

The international community and the EU have taken a range of actions in response to the annexation by adopting a non-recognition policy and imposing restrictive measures; however, these actions have failed to reverse or improve the situation thus far. Unfortunately, the situation of the minorities in Crimea, especially that of the indigenous Crimean Tatar people, is deteriorating. The attempt of the de facto authorities to ban the Mejlis, if enacted, has the potential to affect every Crimean Tatar. These developments require the international community and the EU to revise and strengthen its response. Any efforts of the EU and the democratic international community to improve the situation of the national minorities in Crimea should deal with its root cause — namely, Russia's illegal occupation of the peninsula.

The following steps should be considered by the EU:

1. The Council of the EU, Member States, and the European External Action Service (EEAS) should work with the UN, the OSCE, and the CoE to **ensure a continuous international presence in Crimea** to monitor compliance with IHL and IHRL. A mission with an ad hoc mandate could be considered, and a compromise solution acceptable for Ukraine and Russia should be reached, with Russia being ultimately responsible for providing access to Crimea and ensuring the security of international monitors. An international presence in Crimea would allow for the monitoring of the situation of all minority groups and inter-ethnic relations and may also have a constraining effect on the de facto authorities. The EP, following its resolution of 4 February 2016 in which it called on Russia and the de facto authorities in Crimea 'to grant unimpeded access to Crimea for international institutions and independent experts from the OSCE, the United Nations, and the CoE, as well as for any human rights NGOs or news media outlets that wish to visit, assess, and report on the situation in Crimea', may be able to facilitate discussion on the type of international monitoring mechanism that can be established in Crimea. The EP may also be able to support this effort by inviting relevant stakeholders and experts to thematic EP hearings.
2. As the first step towards an international human rights presence on the peninsula, the EU, through the Council of the EU and the EEAS, should **encourage the government of Ukraine to ease restrictions on the travel of foreigners to Crimea** from mainland Ukraine in order to facilitate access for representatives of international human rights NGOs, the media, and official EU delegations (including the EP).
3. EU Member States should **impose additional sanctions that would be linked explicitly to ongoing violations of IHL and IHRL in Crimea** in order to comply with their own commitments set out in the Treaty on Functioning of the European Union and relevant EU guidelines. The Council and the EEAS should institute a review of such 'Crimean' sanctions in response to the developments on the ground (such as the attempted ban on the Mejlis and the imprisonment and persecution of the representatives of the national minorities and anyone else who raises their voice against the de facto authorities). Such sanctions would send a strong signal to Russia that Crimea is not 'a case closed', contrary to the Russian leadership's beliefs, and it will not be overshadowed by the events in eastern Ukraine. At the same time, the EU and its allies should **continue and reinforce existing economic sanctions against Russia**, which is viewed as the most effective means to compel Russia to change its behaviour in Ukraine.

4. The EU and its Member States should continuously **raise the issue of the illegal annexation of Crimea at all international fora and meetings with Russian representatives** and demand de-occupation. Discussion on the status of Crimea should not be decoupled from ongoing talks on the status of certain districts in the Donetsk and Lugansk regions of Ukraine.
5. The EP should **ensure that the issue of Crimea remains high on its agenda** and the agendas of other EU institutions. The EP should also continue raising awareness of individual cases of human rights violations in occupied Crimea. To this end, the EP's committees (in particular, the Subcommittee on Human Rights (DROI) and the Committee on Foreign Affairs (AFET)) could **organise regular sessions to review the situation in Crimea**. Inviting experts and human rights activists from the field would provide first-hand knowledge of the situation in Crimea and, at the same time, would serve as a way to endorse their activities.
6. EU Member States, the EEAS, and the European Commission should introduce tailor-made programmes to **support initiatives to promote de-occupation**. There is a need to think innovatively and carefully about how to support dissidents and the victims of human rights violations, as well as how to support societal integration in Crimea without creating substantial risks for Crimean residents. **Independent media outlets** focused on Crimea and available in Crimea via satellite, radio, and the Internet should be supported in order to mitigate the negative consequences of the restrictions on the media and to ensure the cultural and linguistic rights of the minorities and indigenous people.
7. The EU should envisage **special funding for civil society initiatives in Ukraine** and for the organisations representing the indigenous people of Crimea and working on Crimean human rights issues, including monitoring of human rights violations, providing legal support to victims of these violations, and providing domestic and international advocacy and awareness raising. By the mid-term review in 2017, the EEAS and the European Commission should **create a special funding envelope for civil society projects on Crimea** within the EDIHR and the IcSP. In addition, there should be a better use of the European Endowment for Democracy, which can provide quick and flexible funding to non-registered groups and individuals.
8. The EU should consider providing **support for dialogue within Ukraine** on how to engage with occupied Crimea and assistance to both government agencies and civil society organisations in Ukraine to develop effective policies towards the occupied territory, the protection of Ukrainian citizens in Crimea, and strategies for the peaceful restoration of Ukraine's territorial integrity.
9. The EEAS, EU member states and the EP should express **vocal support to the Mejlis**, condemn its ban, continuously remind Russia to respect its international obligations to respect human rights in occupied Crimea, including the rights of minorities, and devise solutions on how to **support Mejlis activities while in exile**.
10. In search of appropriate and creative solutions, the EEAS and the Commission should **draw comparisons from the existing practices of supporting civil society actors in hostile environments and occupied territories**. A thorough reflection in the form of a learning exercise and exchange of best practices on how to enforce a coherent approach to the protection of human rights in occupied territories/non-recognised entities may be needed.
11. EU Member States and the EEAS should **recommend that Ukraine's government improve its domestic policies** and use all available legal and diplomatic measures **to protect the rights of its citizens** in Crimea. The EU should also recommend the government of Ukraine to improve its policies supporting **displaced populations**, especially Crimean Tatars, and to ensure their right to preserve their language and culture while living on mainland Ukraine. As a first step, the EU should encourage the government of Ukraine to sign and ratify the International Labour Convention on

the Rights of Indigenous and Tribal Peoples in Independent Countries No 169 as a legally binding international instrument specifically dedicated to indigenous peoples and to adopt national legislation on the rights of indigenous people. The EP should use its cooperation with the parliament of Ukraine through the EU-Ukraine Parliamentary Association Committee to promote such legislation. The EU should encourage the government of Ukraine to play an active role in the United Nations Permanent Forum on Indigenous Issues and cooperate with the UN Special Rapporteur on the rights of indigenous people.

The above-mentioned steps may help to mitigate the risks of the human rights violations in occupied Crimea and to raise the issue of Crimea on European and international agendas. Nevertheless, it should not be forgotten that the deteriorating human rights situation in Crimea is a result of a failure of the international community to effectively deal with Russia's act of aggression towards Ukraine and the subsequent occupation of Ukraine's territory. Therefore, any efforts of EU institutions and Member States to address the issue of human rights in occupied Crimea should also take into account a pressing need to **reform and strengthen the relevant international and regional human rights and security institutions**, so that they are better equipped to deal with such crises in the future. The EP could support this effort by encouraging debate on these issues.

Annex 1 Crimean political prisoners

	Name	Case	Sentence/Outcome	Current place of incarceration
1	Gennadiy Afanasiev	The Case of the Crimean Terrorists <ul style="list-style-type: none"> • pro-Ukraine activists arrested in May 2014 in Crimea • accused of participating in a terrorist group • forced Russian citizenship and transferred to Moscow for trial 	Sentenced to 7 years in prison plus 1.5 years of limitation of liberty	Mikun, the Komi Republic, Russia (After an appeal, a Russian court ordered the transfer of Gennadiy to closer to Crimea because, according to Russian law, he has to serve his sentence in either his place of residence or where the verdict was issued.)
2	Oleksiy Chyrniy		Sentenced to 7 years in prison	Magadan oblast, Russia
3	Oleksandr Kolchenko		Sentenced to 20 years in prison	Kopeysk, Chelyabinsk oblast, Russia
4	Oleg Sentsov		Sentenced to 10 years in prison	Yakutsk, the Sakha Republic, Russia
5	Oleksandr Kostenko	The Case of Oleksandr Kostenko <ul style="list-style-type: none"> • Euromaidan activist arrested in February 2015 in Simferopol • accused of infliction of bodily harm to a riot police officer from Crimea in Kyiv in February 2014 • Russian legislation was retroactively applied to this incidence that occurred on mainland Ukraine and involved two Ukrainian citizens • Oleksandr's father, Fyodor, disappeared in Crimea in March 	Sentenced to 3 years and 11 months in prison	Kirov oblast, Russia

		<p>2015</p> <ul style="list-style-type: none"> Oleksandr's brother, Yevgeniy, is facing criminal charges for 'undermining the authority of the judicial branch and humiliating Judge V.A. Mozheliansky' 		
6	Haiser Dzhemilev	<p>The Case of Haiser Dzhemilev</p> <ul style="list-style-type: none"> son of Mustafa Dzhemilev arrested and tried in Crimea for homicide committed in Ukraine in May 2013 (occurring before the occupation) in April 2014, his file was re-opened by the de facto authorities in September 2014, he was transferred to Krasnodar Krai, Russia for trial the Russian court retroactively applied Russian legislation against a citizen of Ukraine for a crime that he had already been tried and sentenced for in Ukraine in July 2014, the ECHR ruled to ensure Haiser's right to liberty 	Sentenced to 5 years in prison; the term was later reduced to 3.5 years	Astrakhan, Russia
7	Yuriy Ilchenko	<p>The Case of Yuriy Ilchenko</p> <ul style="list-style-type: none"> blogger, arrested in July 2015 in Sevastopol accused of extremist activity 	Pre-trial detention, pending trial	Crimea
8	Ali Asanov	<p>The Case of 26 February</p> <ul style="list-style-type: none"> Ahtem Chiygoz, Deputy Chairman of the Mejlis was arrested in January 2015 along with six other Crimean Tatars and accused of the organisation of mass riots Ali Asanov was arrested in April 	Ongoing trial	Crimea
9	Ahtem Chiygoz			

10	Mustafa Degermendzi	<p>2015 and Mustafa Degermendzi was arrested in May 2015 and accused of participation in mass riots</p> <ul style="list-style-type: none"> • Russian legislation was retroactively applied to this alleged crime that occurred on the territory of Ukraine before the annexation and involving citizens of Ukraine • a further three Crimean Tatars tried in this case were released under personal surety and another two received suspended sentences 		
11	Ferat Saifullaev	<p>The Case of Hizb ut-Tahrir</p> <ul style="list-style-type: none"> • Crimean Muslims, arrested in Crimea on 23 January and 2 February 2015 • accused of the establishment of the terrorist organisation 'Hizb ut-Tahrir' and participation in its activities 	Pre-trial detention	Crimea
12	Nuri Primov			
13	Rustem Vaitov			
14	Ruslan Zeytullaev			
15	Muslim Aliev	<p>The Case of Hizb ut-Tahrir-2</p> <ul style="list-style-type: none"> • Arrested on 11 February 2016 • accused of creating the terrorist group 'Hizb ut-Tahrir' 	Pre-trial detention	Crimea
16	Enver Bekirov			
17	Emir-Usein Kuku			
18	Vadym Siruk			

Source: Authors' compilation based on A. Osavlyuk, P. Brodyk, and M. Lysenko, *op.cit.*; Let My People Go! Facebook page and media reports.

Annex 2 Key legislative acts of the Russian Federation and the de facto authorities relevant for the rights of national minorities in Crimea

Act	Main issues
<p>The federal constitutional law of the Russian Federation of 21 March 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'</p>	<p>Integration of Crimea into the political and legal space of the Russian Federation; forced Russian citizenship on Crimean residents; only Russian citizens are entitled to be public servants</p>
<p>The federal law of 31 May 2002 No 62-FZ 'On citizenship of the Russian Federation' (with amendments of 4 July 2014)</p>	<p>Criminal responsibility for not disclosing a second citizenship</p>
<p>The federal law of 5 May 2014 No 91-FZ 'On Application of Regulations of the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation in the Territories of the Republic of Crimea and the Federal City of Sevastopol'</p>	<p>Retroactive application of the Russian Criminal Code and the Criminal Procedure Code to the acts performed in Crimea before 18 March 2014</p>
<p>The Code of Administrative Offences of the Russian Federation</p>	<p>Widely applied to limit the civil and political rights of Crimeans</p>
<p>The Criminal Code of the Russian Federation; The Criminal Procedure Code of the Russian Federation</p>	<p>Widely applied to limit civil and political rights of Crimeans</p>
<p>The federal law of 12 January 1996 No 7-FZ 'On non-commercial organisations'; The federal law of 19 May 1995 No 82-FZ 'On public associations'</p>	<p>Restriction of the freedom of association and expression</p>
<p>The federal law of 19 June 2004 No 54-FZ 'On Meetings, Rallies, Demonstrations, Marches, and Pickets'; The law of the Republic of Crimea of 8 August 2014 56-ZRK 'On Ensuring the Conditions for Exercise of the Right of Citizens of the Russian Federation to Hold Meetings, Rallies, Demonstrations, and Pickets in the Republic of Crimea' (with amendments of 16 September 2015)</p>	<p>Restriction of the freedom of assembly and expression</p>
<p>The federal law of 2 April 2014 No 44-FZ 'On participation of citizens in protection of public order';</p>	<p>Reliance on paramilitary groups in restricting civil and political rights in</p>

<p>The law of 11 June 2014 No 22-ZRK 'On People's Militia – Narodnaya Druzhyna' (with amendments of 11 December 2014)</p>	<p>Crimea; encouraging the impunity of paramilitary groups for human rights abuses</p>
<p>The federal law of 6 March 2006 No 35-FZ 'On Combatting Terrorism'</p>	<p>Restriction of the freedom of expression and civil and political rights</p>
<p>The federal law of 25 July 2002 No 114-FZ 'On Combating Extremist Activities', including the Federal List of Extremist Materials</p>	<p>Restriction of the freedom of expression, thought, conscience, and religion, and civil and political rights, persecution of the Mejlis</p>
<p>The Constitution of the Republic of Crimea of 11 April 2014</p>	<p>Established Crimean Tatar and Ukrainian as state languages</p>
<p>Decree of the President of the Russian Federation of 21 April 2014 No 268 'On Measures of the Rehabilitation of Armenian, Bulgarian, Greek, Crimean Tatar and German peoples and state support to their revival and development'</p>	<p>Political guidance on introducing the guarantees of the rights of deported ethnic groups, including Crimean Tatars</p>
<p>The federal law of 30 April 1999 No 82-FZ 'On Guarantees of the rights of small indigenous peoples of the Russian Federation'; Decree of the State Council of Crimea of 25 June 2014 No 2254-6/14 'Request on the inclusion into the Single Register of small indigenous peoples of the Russian Federation of Crimean Karaims and Krimchaks'</p>	<p>Establishing the rights of small indigenous peoples (under 50 000), including economic, social, and cultural</p>
<p>The federal law of 5 May 2014 No 84-FZ 'On peculiarities of legal regulation of relations in the sphere of 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"</p>	<p>Integration of the system of education of Crimea into that of Russia; restrictions of the right to education of non-Russian citizens and limitations of the right to education in their native language for minority groups</p>
<p>The law of the Republic of Crimea 17 June 2015 No 131-ZRK 'On Education in the Republic of Crimea'</p>	<p>The right to education in Ukrainian and Russian at pre-school, primary general, and basic general education levels</p>

Source: authors' compilation.

Annex 3 International sanctions related to the annexation of Crimea by Russia

Sender	Types
EU	<p>Entry ban and asset freeze against separatists and Russian officials</p> <p>Asset freeze against Crimean entities</p> <p>Investment ban on Crimea</p> <p>Import ban on goods from Crimea</p> <p>Export ban on goods and services in the sectors of transport, telecommunications, energy, and the exploitation of oil, gas, or mineral resources</p> <p>Ban on tourism services in Crimea and the docking of cruise ships in Crimean ports</p> <p>Suspension of cooperation programmes, including loans of the European Investment Bank</p> <p>Suspension of talks on the new agreement and visa liberalisation</p> <p>Suspension of bilateral summits</p>
USA	<p>Entry ban and asset freeze against separatists and Russian officials</p> <p>Asset freeze against Crimean entities and some Russian entities (Bank 'Rossiya')</p> <p>Ban on financial, trade, and other commercial transactions with Crimea</p> <p>Suspension of bilateral talks and cooperation programmes</p> <p>Restrictions on military and dual-use technology</p>
Canada	<p>Entry ban and asset freeze against separatists and Russian officials</p> <p>Asset freeze against Crimean entities</p> <p>Investment ban on Crimea</p> <p>Imports and exports ban on Crimea goods</p> <p>Ban on tourism services in Crimea and the docking of cruise ships in Crimean ports</p>
Australia	<p>Entry ban and asset freeze against separatists and Russian officials</p> <p>Imports ban from Crimea</p> <p>Export ban on goods, services, and commercial activity in the sectors of transport, telecommunications, energy, and the exploitation of oil, gas, or mineral resources</p>

Norway	<p>Entry ban and asset freeze against separatists and Russian officials</p> <p>Asset freeze against Crimea entities</p> <p>Investment ban on Crimea</p> <p>Import ban on goods from Crimea</p> <p>Export ban on goods, services, and commercial activity in the sectors of transport, telecommunications, energy, and the exploitation of oil, gas, or mineral resources</p> <p>Ban on tourism services in Crimea and the docking of cruise ships in Crimean ports</p>
Switzerland	<p>Entry ban and asset freeze against separatists and Russian officials</p> <p>Asset freeze against Crimean entities</p> <p>Suspension of free trade talks</p> <p>Suspension of military cooperation</p> <p>Imports ban from Crimea (for transactions after 27 August 2014)</p> <p>Investment and financing ban in the sectors of transport, telecommunications, energy, and exploitation of oil, gas, or mineral resources</p> <p>Export ban on certain key goods used in the extraction of oil and gas (for transactions after 27 August 2014)</p>
Japan	<p>Suspension of new cooperation plans</p> <p>Asset freeze against separatists and two Crimean entities</p> <p>Restrictions on imports from Crimea</p>
New Zealand	<p>Entry ban against separatists</p> <p>Suspension of free trade talks</p>
CoE	<p>Suspension of voting rights of the Russian delegation in the PACE</p>
NATO	<p>Suspension of cooperation</p>
EBRD	<p>Suspension of new projects in Russia</p>
G8	<p>Suspension of membership</p>

Source: authors' compilation.

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Annex 830

European Parliament Resolution of 12 May 2016 on the Crimean Tatars, 2016 O.J. C 76/27



TEXTS ADOPTED

P8_TA(2016)0218

Crimean Tatars

European Parliament resolution of 12 May 2016 on the Crimean Tatars (2016/2692(RSP))

The European Parliament,

- having regard to its previous resolutions on the Eastern Partnership (EaP), Ukraine and the Russian Federation,
- having regard to the reports of the Human Rights Assessment Mission on Crimea conducted by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Cooperation in Europe (OSCE) and the OSCE High Commissioner on National Minorities (HCNM),
- having regard to the European Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP),
- having regard to the European Council decisions of 21 March, 27 June and 16 July 2014 imposing sanctions on the Russian Federation as a follow-up to the illegal annexation of Crimea,
- having regard to UN General Assembly resolution 68/262 of 27 March 2014 entitled ‘Territorial integrity of Ukraine’,
- having regard to the Freedom House report ‘Freedom in the World 2016’, which assesses the state of political and civic freedoms in illegally annexed Crimea as ‘not free’,
- having regard to the ruling of the so-called Crimean Supreme Court of 26 April 2016, which found the Mejlis of the Crimean Tatar People to be an extremist organisation and banned its activity in the Crimean peninsula,
- having regard to the statements of the spokesperson for the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) of 14 April 2016 on suspension of Mejlis activities of the Crimean Tatars and of 26 April 2016 on the decision of the ‘Supreme Court’ of Crimea to ban Mejlis activities,
- having regard to the statement of the Commissioner for Human Rights of the Council of Europe of 26 April 2016 urging a reversal of the ban on the Mejlis, and to the statement of

the Secretary-General of the Council of Europe of 26 April 2016 that the ban of Mejlis risked targeting the Crimean Tatar community as a whole,

- having regard to the Minsk Protocol of 5 September 2014 and the Minsk Memorandum of 19 September 2014 on the implementation of a 12-point peace plan,
 - having regard to Rules 135(5) and 123(4) of its Rules of Procedure,
- A. whereas the Russian Federation has illegally annexed Crimea and Sevastopol and is therefore an occupying state which has violated international law, including the UN Charter, the Helsinki Final Act, the 1994 Budapest Memorandum and the 1997 Treaty of Friendship, Cooperation and Partnership between the Russian Federation and Ukraine;
 - B. whereas the European Union and the international community have repeatedly voiced their concern over the situation of human rights in the occupied territories and the systematic persecution of those who do not recognise the new authorities; whereas these so-called authorities have targeted the indigenous community of Crimean Tatars, a majority of whom oppose the Russian takeover of the peninsula and boycotted the so-called referendum on 16 March 2014; whereas Crimean Tatar institutions and organisations are increasingly branded as ‘extremists’ and prominent members of the Crimean Tatar community are, or risk, being arrested as ‘terrorists’; whereas the abuses against Tatars include abduction, forced disappearance, violence, torture and extrajudicial killings that the de facto authorities have failed to investigate and prosecute, as well as systemic legal problems over property rights and registration;
 - C. whereas Crimean Tatar leaders, including Mustafa Dzhemilev and Rafat Chubarov, have previously been banned from entering Crimea, and are now allowed to do so but under threat of arrest – thus sharing the same fate as numerous other members of the Mejlis and Crimean Tatar activists and displaced people; whereas more than 20 000 Crimean Tatars have had to leave occupied Crimea and move to mainland Ukraine, according to data provided by the Government of Ukraine;
 - D. whereas the leader of the Crimean Tatar people, Mustafa Dzhemilev, who earlier spent 15 years in Soviet prisons, has published a list of 14 Crimean Tatars who are political prisoners of the so-called Russian authorities of Crimea, including Ahtem Çiygoz, the First Deputy Chair of the Mejlis, who is being detained in Simferopol pending trial; calls for particular attention to the state of his health and underlines the importance of his trial being public and being monitored by the Council of Europe and other international organisations;
 - E. whereas the Russian Federation has been restricting access to Crimea for the Organisation for Security and Cooperation in Europe (OSCE), the UN and the Council of Europe, not to mention human rights NGOs and independent journalists; whereas the lack of access makes human rights monitoring and reporting in Crimea very difficult;
 - F. whereas the entire population of Crimean Tatars, an indigenous people of Crimea, was forcibly deported to other parts of the then USSR in 1944, with no right to return until 1989; whereas on 12 November 2015 the Verkhovna Rada of Ukraine adopted a resolution in which it recognised the deportation of the Crimean Tatars in 1944 as genocide and established 18 May as a Day of Remembrance;

- G. whereas on 26 April 2016 the so-called Supreme Court of Crimea ruled in favour of a request by the so-called Prosecutor-General of Crimea, Natalia Poklonskaya, accusing the Mejlis, which had been the representative body of the Crimean Tatars since its establishment in 1991 and had enjoyed full legal status since May 1999, of extremism, terrorism, human rights violations, illegal actions and acts of sabotage against the authorities;
- H. whereas the Mejlis has now been declared an extremist organisation and included in the Russian Justice Ministry's list of NGOs whose activities must be suspended; whereas the activities of the Mejlis have consequently been banned in Crimea and in Russia; whereas this ban could apply to more than 2 500 members of 250 village and town mejlises in Crimea;
- I. whereas the decision of the so-called Prosecutor-General and so-called Supreme Court of Crimea are intrinsic parts of the policy of repression and intimidation on the part of the Russian Federation, which is punishing this minority for its loyalty towards the Ukrainian state during the illegal annexation of the peninsula two years ago;
- J. whereas there is a clear breach of international humanitarian law (including the Fourth Hague Convention of 1907, the Fourth Geneva Convention of 1949 and Additional Protocol I thereto of 1977), under which an occupying power cannot prosecute civilians for crimes occurring before the occupation and the penal laws of the occupied territory shall remain in force;
1. Strongly condemns the decision of the so-called Supreme Court of Crimea to ban the Mejlis of the Crimean Tatar People, and demands its immediate reversal; considers this decision to constitute systemic and targeted persecution of the Crimean Tatars, and to be a politically motivated action aimed at further intimidating the legitimate representatives of the Tatar community; stresses the importance of this democratically elected decision-making body representing the Crimean Tatar people;
 2. Points out that the ban on the Mejlis of the Crimean Tatar People, which is the legitimate and recognised representative body of the indigenous people of Crimea, will provide fertile ground for stigmatising the Crimean Tatars, further discriminating against them and violating their human rights and basic civil liberties, and is an attempt to expel them from Crimea, which is their historical motherland; is concerned that the branding of the Mejlis as an extremist organisation may lead to additional charges in accordance with provisions of the Criminal Code of the Russian Federation;
 3. Recalls that the banning of the Mejlis means that it will be prohibited from convening, publishing its views in the mass media, holding public events or using bank accounts; calls for the EU to provide financial support for the activities of the Mejlis while it is in exile; calls for increased financing for human rights organisations working on behalf of Crimea;
 4. Recalls the sad second anniversary of the illegal annexation of the Crimean peninsula by the Russian Federation on 20 February 2014; recalls its severe condemnation of that act, which was in breach of international law; expresses its strong commitment to the policy of non-recognition of the illegal annexation of Crimea and to the sanctions imposed in the aftermath thereof, and calls for consideration to be given to extending the list of people targeted by EU sanctions in relation to the banning of the Mejlis; calls on all Member States to adhere strictly to that list; regrets the visits to Crimea – organised without the

consent of the Ukrainian authorities – by some politicians from EU Member States, including members of their national parliaments and of the European Parliament, and calls on parliamentarians to refrain from such visits in the future;

5. Reconfirms its full commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognised borders and its free and sovereign choice to pursue a European path; calls on all parties to immediately pursue peaceful reintegration of the occupied Crimean peninsula into the Ukrainian legal order through political dialogue and in full compliance with international law; believes that the restoration of Ukrainian control over the peninsula is fundamental for the reestablishment of cooperative relations with the Russian Federation, including the suspension of Crimea-related sanctions;
6. Condemns the severe restrictions on the freedoms of expression, association and peaceful assembly, including at traditional commemorative events such as the anniversary of the deportation of the Crimean Tatars by Stalin's totalitarian Soviet Union regime and at cultural gatherings of the Crimean Tatars;
7. Condemns restrictions on free media in Crimea, in particular the withdrawal of the licence of the largest Crimean Tatar television channel, ATR; calls for the reopening of that channel and of the children's television channel Lale and the radio station Meydan; considers that these acts deprive the Crimean Tatar people of a vital instrument for maintaining their cultural and linguistic identity; notes the establishment of the new station TV Millet, and calls for its full editorial independence to be ensured;
8. Strongly regrets the systematic restrictions on freedom of expression on the pretext of extremism, and the monitoring of social media with the aim of identifying activists who do not recognise the new order and who criticise the validity of the 'referendum' held on 16 March 2014; recalls that a hundred UN General Assembly member states took the same stance with the adoption of resolution 68/262;
9. Recalls that the indigenous Crimean Tatar people have suffered historic injustices which led to their massive deportation by Soviet authorities and to the dispossession of their lands and resources; regrets the fact that discriminatory policies applied by the so-called authorities are preventing the return of these properties and resources, or are being used as an instrument to buy support;
10. Urges the Russian Federation, which under international humanitarian law bears ultimate responsibility as the occupying state in Crimea, to uphold the legal order in Crimea and protect citizens from arbitrary judicial or administrative measures and rulings, thus fulfilling its own commitments as a member of the Council of Europe, and to conduct independent international investigations of any violations of international law or human rights committed by the occupying forces and the so-called local authorities; calls for the reactivation of the contact group for the families of disappeared persons;
11. Calls for permanent and unimpeded access to Crimea for the relevant international human rights bodies, with the aim of monitoring the human rights situation;
12. Welcomes the Ukrainian initiative to establish an international negotiation mechanism in the 'Geneva Plus' format for the re-establishment of Ukrainian sovereignty over Crimea, which should include direct engagement by the EU; calls on the Russian Federation to

start negotiations with Ukraine and other parties on the de-occupation of Crimea, to lift trade and energy embargos and to revoke the state of emergency in Crimea;

13. Calls for the preservation of the historical and traditional multicultural environment of Crimea and for full respect for Ukrainian, Tatar and other minority languages and distinctive cultures; condemns legal pressure on Crimean Tatar cultural and educational organisations, including those dealing with Crimean Tatar children;
14. Calls on the Russian Federation to investigate all cases of torture of prisoners illegally apprehended in Crimea, including Ahtem Çiygoz, the First Deputy Chair of the Mejlis, Mustafa Degermendzhi and Ali Asanov, who were arrested in Crimea by the so-called local authorities for their peaceful protest against the occupation, and to guarantee their safe return to Ukraine; reiterates its call for the release of Oleg Sentsov and Oleksandr Kolchenko; urges the Russian Federation to end the politically motivated prosecution of dissidents and civic activists; condemns their subsequent transfer to the Russian Federation and the forcible attribution of Russian citizenship; calls on the Russian Federation to cooperate closely with the Council of Europe and the OSCE in the abovementioned cases;
15. Calls on the European External Action Service and the Council to strengthen pressure on the Russian Federation to allow international organisations access to Crimea for the purpose of monitoring the human rights situation in view of the ongoing gross violations of fundamental freedoms and human rights in the peninsula, and of establishing permanent international monitoring and convention-based mechanisms; stresses that any international presence on the ground should be well coordinated, agreed with Ukraine and supported by the major international human rights organisations;
16. Reiterates its grave concern regarding the situation of LGBTI people in Crimea, which has substantially worsened following the Russian annexation;
17. Instructs its President to forward this resolution to the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Commission, the governments and parliaments of the Member States, the President, Government and Parliament of Ukraine, the Council of Europe, the Organisation for Security and Cooperation in Europe, the President, Government and Parliament of the Russian Federation, and the Mejlis of the Crimean Tatar People.

Annex 831

International Criminal Court, Preliminary Examination: Ukraine, accessed at <https://www.icc-cpi.int/ukraine>

Ukraine

 icc-cpi.int/ukraine

Preliminary examination

Ongoing

Focus: Alleged crimes committed in the context of the "Maidan" protests since 21 November and other events in Ukraine since 20 February 2014

Phase 2: Subject-matter jurisdiction

Jurisdiction – General status

Ukraine is not a party to the Rome Statute. However, on 17 April 2014, the Government of Ukraine lodged a declaration under article 12(3) of the Rome Statute accepting the ICC's jurisdiction over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014. Further, on 8 September 2015, the Government of Ukraine lodged a second declaration under article 12(3) of the Statute accepting the exercise of jurisdiction by the ICC in relation to alleged crimes committed on its territory from 20 February 2014 onwards, with no end date. The Court may therefore exercise its jurisdiction over Rome Statute crimes committed on the territory of Ukraine since 21 November 2013.

Procedural history and focus of the preliminary examination

The preliminary examination of the situation in Ukraine was announced on 25 April 2014. On 29 September, the Prosecutor announced, based on Ukraine's second declaration under article 12(3), the extension of the preliminary examination of the situation in Ukraine to include alleged crimes occurring after 20 February 2014. The OTP has received several communications under article 15 of the Rome Statute in relation to the "Maidan protests" as well as to events in Crimea and eastern Ukraine.

The preliminary examination initially focussed on alleged **crimes against humanity** committed in the context of the "Maidan" protests which took place in Kyiv and other regions of Ukraine between 21 November 2013 and 22 February 2014, including murder; torture and/or other inhumane acts. Following the lodging of a new article 12(3) declaration by Ukraine on 8 September 2015, the Office decided to extend the temporal scope of the existing preliminary examination to include any alleged crimes committed on the territory of Ukraine from 20 February 2014 onwards.

Annex 832

The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75), Inter-Am.Ct.H.R. (Ser. A) No. 2 (1982)



**The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights (Arts. 74 and 75),
Advisory Opinion OC-2/82, September 24, 1982, Inter-Am. Ct. H.R. (Ser. A) No. 2 (1982).**

Requested by the Inter-American Commission on Human Rights

Present:

Carlos Roberto Reina, President

Pedro Nikken, Vice President

Huntley Eugene Munroe, Judge

Máximo Cisneros, Judge

Rodolfo E. Piza E., Judge

Thomas Buergenthal, Judge

Also present:

Charles Moyer, Secretary

Manuel Ventura, Deputy Secretary

THE COURT, composed as above, gives the following Advisory Opinion:

1. The Inter-American Commission on Human Rights (hereinafter cited as " the Commission "), by a cable dated June 28, 1982, requested an advisory opinion of the Inter-American Court of Human Rights.
2. By notes dated July 2, 1982, the Secretary, in accordance with a decision of the Court acting pursuant to Article 52 of its Rules of Procedure, requested observations of all of the Member States of the Organization of American States as well as, through the Secretary General, of all of the organs referred to in Chapter X of the Charter of the OAS.
3. The President of the Court fixed August 23, 1982 as the time-limit for the submission of written observations or other relevant documents.
4. Responses to the Secretary's request were received from the following states: Costa Rica, Mexico, Saint Vincent and the Grenadines and the United States of America. In addition, the following OAS organs responded:

the Permanent Council, the Inter-American Juridical Committee and the General Secretariat. The majority of the responses included substantive observations on the issues raised in the advisory opinion.

5. Furthermore, the following organizations offered their points of view on the request as amici curiae: the International Human Rights Law Group and the Urban Morgan Institute for Human Rights of the University of Cincinnati College of Law.

6. The Court, meeting in its Sixth Regular Session, set a public hearing for Monday, September 20, 1982 to receive the oral arguments that the Member States and the organs of the OAS might wish to give regarding the request for the advisory opinion.

7. In the course of the public hearing, oral arguments were addressed to the Court by the following representatives:

For the Inter-American Commission on Human Rights:

Marco Gerardo Monroy Cabra, Delegate and President

For Costa Rica:

Manuel Freer Jimenez, Adviser and Procurador of the Republic.

8. The Commission submitted the following question to the Court:

"From what moment is a state deemed to have become a party to the American Convention on Human Rights when it ratifies or adheres to the Convention with one or more reservations; from the date of the deposit of instrument of ratification or adherence or upon the termination of the period specified in Article 20 of the Vienna Convention on the Law of Treaties?"

9. The Commission notes that its request calls for the interpretation of Articles 74 and 75 of the American Convention on Human Rights (hereinafter cited as " the Convention "). It submits, in this connection, that the issue presented to the Court falls within the Commission's sphere of competence, as that phrase is used in Article 64 of the Convention. To substantiate this contention, the Commission points to the power vested in it by Articles 33, 41 (f), and 44 through 51 of the Convention as well as in Articles 1, 19 and 20 of the Statute of the Commission. The Commission emphasizes that in order to be able to exercise its functions, it must distinguish between States that are parties to the Convention and those that are not.

10. Articles 74 and 75 of the Convention read as follows:

"Article 74.-

1. This Convention shall be open for signature and ratification by or adherence of any member state of the Organization of American States.
2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.
3. The Secretary General shall inform all member states of the Organization of the entry into force of the Convention.

Article 75.-

This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969."

11. In addressing the request of the Commission, the Court must resolve a number of preliminary issues bearing on it. One of them has to do with the question whether the Court is at all competent to hear this request, considering that the Secretary General of the OAS has been assigned depositary functions relating to this Convention (see Arts. 74, 76, 78, 79 and 81), and considering further that, in the practice of the OAS, disputes concerning ratification of treaties, their entry into force, reservations attached to them, etc., have been dealt with traditionally through consultation between the Secretary General and the Member States. (See " Standards on Reservations to Inter-American Multilateral Treaties, " OAS/AG/RES. 102 (III-0/73). See also, M.G. Monroy Cabra, *Derecho de los Tratados* at 58-72 (Bogota, Colombia, 1978); J.M. Ruda, " Reservations to Treaties, " 146 *Recueil des Cours* 95, at 128 (1973).)

12. The Court has no doubt whatsoever that it is competent to render the advisory opinion requested by the Commission. Article 64 of the Convention is clear and explicit in empowering the Court to render advisory opinions " regarding the interpretation of this Convention, " which is precisely what the Commission's request seeks to obtain. Moreover, Article 2 (2) of the Statute of the Court, which was approved by the General Assembly of the OAS at the Ninth Regular Session in October 1979, declares that the Court's " advisory jurisdiction shall be governed by the provisions of Article 64 of the Convention. "

13. It must be emphasized also that, unlike other treaties of which the Secretary General of the OAS is the depositary, the Convention establishes a formal judicial supervisory process for the adjudication of disputes arising under that instrument and for its interpretation. The Court's competence in this regard finds expression not only in the language of Articles 62, 63, 64, 67 and 68, but also in Article 33 (b), which confers on the Court " competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention. " This competence is reinforced by Article 1 of the Court's Statute, which declares that the Court is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights. It is thus readily apparent that the Court has competence to render an authoritative interpretation of all provisions of the Convention, including those relating to its entry into force, and that the Court is the most appropriate body to do so.

14. It must be determined next whether the Commission has standing to request the particular advisory opinion it has asked the Court to render. In this regard, the Court notes that the Convention, in conferring the right to request advisory opinions, distinguishes between Member States of the OAS and organs of the Organization. Under Article 64 all OAS Member States, whether or not they have ratified the Convention, have standing to seek an advisory opinion " regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. " OAS organs enjoy the same right, but only " within their spheres of competence. " Thus, while OAS Member States have an absolute right to seek advisory opinions, OAS organs may do so only within the limits of their competence. The right of OAS organs to seek advisory opinions is restricted consequently to issues in which such entities have a legitimate institutional interest. While it is initially for each organ to decide whether the request falls within its spheres of competence, the question is, ultimately, one for this Court to determine by reference to the OAS Charter and the constitutive instrument and legal practice of the particular organ.

15. With reference to the instant request, the Court notes, first, that the Commission is one of the organs listed in Chapter X of the OAS Charter (OAS Charter, Art. 51(e)). Moreover, the powers conferred on the Commission qua organ of the OAS are spelled out in Article 112 of the OAS Charter, which reads as follows:

"There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.

An Inter-American Convention on Human Rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters."

Finally, Articles 33, 41 and 44 through 51 of the Convention, and Articles 1, 19 and 20 of the Statute of the Commission confer upon it extensive powers. The Commission's competence to exercise these powers depends, in part, on a prior determination whether it is dealing with a State which either has or has not ratified the Convention. Article 112 of the OAS Charter, Article 41 of the Convention, and Articles 1, 18 and 20 of its Statute empower the Commission " to promote the observance and defense of human rights " and to serve " as a consultative organ of the Organization in this matter. " The Commission exercises these powers in relation to all OAS Member States, whether or not they have ratified the Convention; it has even more specific and more extensive powers in relation to the States Parties to the Convention. (Convention, Arts. 33, 41(f) and 44-51; Statute of the Commission, Art. 19.)

16. It is obvious, therefore, that the Commission has a legitimate institutional interest in a question, such as the one that it presented, which relates to the entry into force of the Convention. The Court accordingly holds that the requested advisory opinion falls within the Commission's sphere of competence. Furthermore, given the broad powers relating to the promotion and observance of human rights which Article 112 of the OAS Charter confers on the Commission, the Court observes that, unlike some other OAS organs, the Commission enjoys, as a practical matter, an absolute right to request advisory opinions within the framework of Article 64 (1) of the Convention.

17. Having resolved these preliminary issues, the Court is now in a position to address the specific question submitted to it by the Commission, which wishes to know when the Convention is deemed to enter into force for a State that ratifies or adheres to the Convention with a reservation.

18. In answering this question, the Court notes that two provisions of the Convention provide a starting point for its inquiry. The first is Article 74(2), which reads as follows:

"Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence."

The second provision is Article 75. It declares that:

"This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969."

19. The language of Article 74(2) is silent on the issue whether it applies exclusively to ratifications and adherences which contain no reservations or whether it also applies to those with reservations. Furthermore, whether and to what extent Article 75 helps to resolve the question before the Court can be answered only following an analysis of that stipulation as well as of other relevant provisions of the Convention in their context and in the light of the object and purpose of the Convention (Vienna Convention on the Law of Treaties, hereinafter cited as " Vienna Convention, " Art. 31) and, where necessary, by reference to its drafting history. (Vienna Convention, Art. 32.) Moreover, given the reference in Article 75 to the Vienna Convention, the Court must also examine the relevant provisions of that instrument.

20. The reference in Article 75 to the Vienna Convention raises almost as many questions as it answers. The provisions of that instrument dealing with reservations provide for the application of different rules to different categories of treaties. It must be determined, therefore, how the Convention is to be classified for purposes of the here relevant provisions of the Vienna Convention, keeping in mind the language of Article 75 and the purpose it was designed to serve.

21. The provisions of the Vienna Convention that bear on the question presented by the Commission read as follows:

"Article 19.- Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

- a) the reservation is prohibited by the treaty;
- b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 20.- Acceptance of an objection to reservations

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.
2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.
3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.
4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides.
 - a) acceptance of another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;
 - b) an objection of another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;
 - c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.
5. For the purpose of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later."

22. Turning first to Article 19, the Court concludes that the reference in Article 75 to the Vienna Convention was intended to be a reference to paragraph (c) of Article 19 of the Vienna Convention. Paragraphs (a) and (b) are inapplicable on their face since the Convention does not prohibit reservations and since it does not specify the permissible reservations. It follows that Article 75 must be deemed to permit States to ratify or adhere to the Convention with whatever reservations they wish to make, provided only that such reservations are not " incompatible with the object and purpose " of the Convention.

23. The foregoing interpretation of Article 75 is confirmed by the preparatory work of the Convention, which indicates that its drafters wished to provide for a flexible reservations policy. As is well known, the Convention was adopted at the Specialized Inter-American Conference on Human Rights, which met in San José, Costa Rica, from November 7 to 22, 1969. (The proceedings and documents of this Conference are contained in Conferencia Especializada Interamericana sobre Derechos Humanos, San José, Costa Rica, 7-22 de noviembre de 1969, Actas y Documentos, OEA/Ser. K/XVI/1.2, Washington, D.C. 1973 (hereinafter cited as " Actas y Documentos ").) The San Jose Conference had before it, as its basic working document, the Draft Inter-

American Convention on Human Rights, prepared by the Inter-American Commission on Human Rights. (The Spanish text of the draft is reproduced in *Actas y Documentos* at 13; the English text can be found in 1968 Inter-American Yearbook on Human Rights at 389 (1973).) Article 67 of this text dealt with reservations and read as follows:

"1. Any State Party, at the time of the deposit of its instrument of ratification of or adherence to this Convention, may make a reservation if a constitutional provision in force in its territory should be contrary to any provision of this Convention. Every reservation should be accompanied by the text of the constitutional provision referred to.

2. A provision that has been the subject of a reservation shall not be in force between the reserving state and other States Parties. In order for the reservation to have this effect, it shall not be necessary for the other States Parties to accept it."

24. Already in their preliminary comments on the Draft Convention, a number of governments found Draft Article 67 too restrictive. The clearest articulation of this view can be found in the following statement submitted by the Government of Argentina;

"Article 67, paragraph 1. The system of reservations established in this Article is based exclusively on the existence of contrary constitutional provisions of the State making the reservation, and is not acceptable, since it restricts the sovereign power of the States to make the reservations.

It is accordingly suggested, as more desirable, to have a broader formula similar to that contained in Article 86 of the draft prepared by the Inter-American Council of Jurists, according to which there is a right to make a reservation if a constitutional or legal provision in force in the State concerned is contrary to a provision of the Convention.

Article 67, paragraph 2. The elimination of this paragraph is suggested since it departs from the system provided for in the Draft Convention on the Law of Treaties recently prepared in Vienna (United Nations Conference on the Law of Treaties, April 22 to May 24, 1968). In the proposed Article 67, " acceptance " is eliminated as an element of the system and it is proposed that the reservation operate between the " reserving State and the other States Parties " from the very time it is formulated.

It does not appear wise to make innovations in this difficult subject when a worldwide conference has prepared a different system and, moreover, one that is more suited to international practice and jurisprudence. (*Actas y Documentos* at 48.)"

25. Similar views were expressed by other Governments, either in their official comments or in their interventions at the Conference. Like Argentina, a number of States also sought to amend Draft Article 67 by adding the words " and legal " after " constitutional. " This effort, which would have significantly liberalized the right to make reservations, obtained the approval of the Working Group of Committee II of the San Jose Conference, but was defeated subsequently in Committee II because it was deemed to conflict with Article 1 (2) of the Draft Convention, now Article 2 of the Convention. (*Actas y Documentos* at 365-66 and 379.) The earlier attempt by the U.S. Delegation to substitute a reference to the Vienna Convention for the disputed provision failed in the Working Group (*Actas y Documentos* at 379) but succeeded at the third plenary meeting of the Conference, where the present text of Article 75 was adopted on the motion of Uruguay. (*Actas y Documentos* at 459.) In short, it is impossible to read the drafting history of the Convention without recognizing that the primary purpose of the reference to the Vienna Convention in Article 75 was to provide for a system that would be very liberal in permitting States to adhere to the Convention with reservations.

26. Having concluded that States ratifying or adhering to the Convention may do so with any reservations that are not incompatible with its object and purpose, the Court must now determine which provisions of Article 20 of the Vienna Convention apply to reservations made to the Convention. The result of this inquiry will of necessity also provide the answer to the question posed by the Commission. This is so because, if under the Vienna Convention reservations to the Convention are not deemed to require acceptance by the other States

Parties, then for the here relevant purposes Article 74 of the Convention applies and a State ratifying or adhering to it with or without a reservation is deemed to be a State Party as of the date of the deposit of the instrument of ratification or adherence. (Vienna Convention, Art. 20 (1).) On the other hand, if acceptance of the reservation is required under the Vienna Convention, a reserving State would be deemed to become a State Party only on the date when at least one other State Party has accepted the reservation either expressly or by implication. (Vienna Convention, Arts. 20 (4)(c) and 20 (5).)

27. In the opinion of the Court, only paragraph 1 or paragraph 4 of Article 20 of the Vienna Convention can be deemed to be relevant in applying Articles 74 and 75 of the Convention. Paragraph 2 of Article 20 is inapplicable, *inter alia*, because the object and purpose of the Convention is not the exchange of reciprocal rights between a limited number of States, but the protection of the human rights of all individual human beings within the Americas, irrespective of their nationality. Moreover, the Convention is not the constituent instrument of an international organization. Therefore, Article 20 (3) is inapplicable.

28. In deciding whether the Convention envisages the application of paragraph 1 or paragraph 4 of Article 20 of the Vienna Convention, the Court notes that the principles enunciated in Article 20 (4) reflect the needs of traditional multilateral international agreements which have as their object the reciprocal exchange, for the mutual benefit of the States Parties, of bargained for rights and obligations. In this context, and given the vastly increased number of States comprising the international community today, the system established by Article 20 (4) makes considerable sense. It permits States to ratify many multilateral treaties and to do so with the reservations they deem necessary; it enables the other contracting States to accept or reject the reservations and to determine whether they wish to enter into treaty relations with the reserving State; and it provides that as soon as at least one other State Party has accepted the reservation, the treaty enters into force with respect to the reserving State.

29. The Court must emphasize, however, that modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction. The distinct character of these treaties has been recognized, *inter alia*, by the European Commission on Human Rights, when it declared

"that the obligations undertaken by the High Contracting Parties in the European Convention are essentially of an objective character, being designed rather to protect the fundamental rights of individual human beings from infringements by any of the High Contracting Parties than to create subjective and reciprocal rights for the High Contracting Parties themselves. (Austria vs Italy, Application No. 788/60, 4 European Yearbook of Human Rights 116, at 140 (1961).)"

The European Commission, relying on the preamble to the European Convention emphasized, furthermore,

"that the purpose of the High Contracting Parties in concluding the Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests but to realize the aims and ideals of the Council of Europe...and to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideas, freedom and the rule of law. (Ibid. at 138.)"

30. Similar views about the nature of modern humanitarian treaties have been enunciated by the International Court of Justice in its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (1951 I.C.J. 15). They find expression also in the Vienna Convention itself, particularly in Article 60 (5). (See generally E. Schwelb, " The Law of Treaties and Human Rights, " 16 *Archiv des Völkerrechts* 1 (1973), reprinted in *Toward World Order and Human Dignity* at 262 (W.M. Reisman & B. Weston, eds. 1976).)

31. These views about the distinct character of humanitarian treaties and the consequences to be drawn therefrom apply with even greater force to the American Convention whose first two preambular paragraphs read as follows:

"Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states."

32. It must be emphasized also that the Convention, unlike other international human rights treaties, including the European Convention, confers on private parties the right to file a petition with the Commission against any State as soon as it has ratified the Convention. (Convention, Art. 44.) By contrast, before one State may institute proceedings against another State, each of them must have accepted the Commission's jurisdiction to deal with inter-State communications. (Convention, Art. 45.) This structure indicates the overriding importance the Convention attaches to the commitments of the States Parties vis-a-vis individuals, which can be readily implemented without the intervention of any other State.

33. Viewed in this light and considering that the Convention was designed to protect the basic rights of individual human beings irrespective of their nationality, against States of their own nationality or any other State Party, the Convention must be seen for what in reality it is; a multilateral legal instrument or framework enabling States to make binding unilateral commitments not to violate the human rights of individuals within their jurisdiction.

34. In this context, it would be manifestly unreasonable to conclude that the reference in Article 75 to the Vienna Convention compels the application of the legal regime established by Article 20 (4), which makes the entry into force of a ratification with a reservation dependent upon its acceptance by another State. A treaty which attaches such great importance to the protection of the individual that it makes the right of individual petition mandatory as of the moment of ratification, can hardly be deemed to have intended to delay the treaty's entry into force until at least one other State is prepared to accept the reserving State as a party. Given the institutional and normative framework of the Convention, no useful purpose would be served by such a delay.

35. Accordingly, for the purpose of the present analysis, the reference in Article 75 to the Vienna Convention makes sense only if it is understood as an express authorization designed to enable States to make whatever reservations they deem appropriate, provided the reservations are not incompatible with the object and purpose of the treaty. As such, they can be said to be governed by Article 20 (1) of the Vienna Convention and, consequently, do not require acceptance by any other State Party.

36. The Court notes, in this connection, that Article 20 (1), in speaking of " a reservation expressly authorized by a treaty, " is not by its terms limited to specific reservations. A treaty may expressly authorize one or more specific reservations or reservations in general. If it does the latter, which is what the Court has concluded to be true of the Convention, the resultant reservations, having been thus expressly authorized, need not be treated differently from expressly authorized specific reservations. The Court wishes to emphasize, in this connection, that unlike Article 19 (b), which refers to " special reservations, " Article 20 (1) contains no such restrictive language, and therefore permits the interpretation of Article 75 of the Convention adopted in this opinion.

37. Having concluded that reservations expressly authorized by Article 75, that is, reservations compatible with the object and purpose of the Convention, do not require acceptance by the States Parties, the Court is of the opinion that the instruments of ratification or adherence containing them enter into force, pursuant to Article 74, as of the moment of their deposit.

38. The States Parties have a legitimate interest, of course, in barring reservations incompatible with the object and purpose of the Convention. They are free to assert that interest through the adjudicatory and advisory

machinery established by the Convention. They have no interest in delaying the entry into force of the Convention and with it the protection that treaty is designed to offer individuals in relation to States ratifying or adhering to the Convention with reservations.

39. Since the instant case concerns only questions bearing on the entry into force of the Convention, the Court does not deem it necessary to deal with other issues that might arise in the future in connection with the interpretation and application of Article 75 of the Convention and which, in turn, might require the Court to examine the provisions of the Vienna Convention applicable to reservations not treated in this opinion.

40. For these reasons, with regard to the interpretation of Articles 74 and 75 of the American Convention on Human Rights concerning the effective date of the entry into force of the Convention in relation to a State which ratifies or adheres to it with one or more reservations,

THE COURT IS OF THE OPINION

"By unanimous vote, that the Convention enters into force for a State which ratifies or adheres to it with or without a reservation on the date of the deposit of its instrument of ratification or adherence.

Done in English and Spanish, the English text being authentic, at the seat of the Court in San Jose, Costa Rica, this 24th day of September, 1982."

CARLOS ROBERTO REINA

PRESIDENT

PEDRO NIKKEN

HUNTLEY EUGENE MUNROE

MAXIMO CISNEROS

RODOLFO E. PIZA E.

THOMAS BUERGENTHAL

CHARLES MOYER

SECRETARY

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Annex 833

Russian Federation Note Verbale No. 4413 to Ukraine (25 April 2016)

No. 4413-Н/ДСНГ

The Ministry of Foreign Affairs of the Russian Federation presents its compliments to the Embassy of Ukraine in Moscow and in response to the diplomatic note of the MFA No. 72/22-194/510-839 of April 5, 2016, has the honour to inform the following.

The Russian Side confirms its position, expressed by the Ukrainian [Russian] Side in the notes No. 14279/2ДСНГ of October 16, 2014, No. 15642/2ДСНГ of November 27, 2014, No. 17004/2ДСНГ of December 8, 2014, No. 2697-Н/ДСПЧ of March 11, 2015, No. 3962-Н/ДСПЧ of April 1, 2015, No. 4192-Н/ДСПЧ of April 6, 2015, No. 8761-Н/ДСПЧ of July 9, 2015, No. 11812-Н/ДСПЧ of September 28, 2015, specifically with the reference to the above-mentioned note of September 28, 2015, reminds once again to the Ukrainian Side that unilateral interpretation by the Ukrainian Side of the consultations between the Russian and Ukrainian delegations concerning issues related to the International Convention on Elimination of all forms of Racial Discrimination is inconsistent with the generally recognized international practice.

The Russian Side also urges the Ukrainian Side to provide to the Russian Side more specific information and refrain from vague summaries, including references to “and others,” “other activities,” etc.

This approach does not contribute to constructive and good faith considerations of the issues that may be relevant to the protection of fundamental rights and legitimate interests of persons, entitled to the protection under the International Convention on Elimination of all forms of Racial Discrimination.

The Russian Federation reaffirms its commitment to rigorous implementation of the provisions of the 1965 International Convention on Elimination of all forms of Racial Discrimination and emphasizes its readiness to continue consultations with the Ukrainian Side concerning issues related to the application of the Convention with a view to the preeminent protection of the rights and legitimate interests of persons, entitled to the protection under the Convention. Due to the fact that the subject discussion of the issues concerning application of the Convention requires participation of the interagency delegation as well as taking into account of earlier planned international events relating to human rights topics, the Russian Side suggests to the Ukrainian Side to hold the consultations on May 31, 2016, in Minsk, the Belarus Republic.

The Russian Side referencing to the previously held consultations in April 8, 2015, on Minsk, the Belarus Republic, and in lights of issues raised by the Ukrainian Side in its diplomatic note #72/22-194/510-839 of April 5, 2016, believes that the agenda for the upcoming consultations could be the following:

- the general framework of interpretation and application of the 1965 International Convention on Elimination of all forms of Racial Discrimination, including a potential exchange

of good practice for the highest level of protection of rights and legitimate interests of persons entitled to the protection under the Convention;

- issues of human rights protection of individuals belonging to national minorities, specifically focusing on those living in the Crimean Peninsula, under the Convention during 1992-2013;

- compliance by the Russian Federation and Ukraine with their obligations under the Convention;

- exchange of information regarding the acts which have taken or may have taken place in the territory of the Russian Federation or Ukraine and which may be described by the Parties as acts of racial discrimination as defined in the Convention;

- exchange of information regarding certain events which are related to compliance with the obligations by Ukraine and the Russian Federation under the Convention and were discussed during the consultation on April 8, 2015.

The Russian Side confirms its readiness to provide additional information in response to the Ukrainian Side questions and expects to hear from the Ukrainian Side responses to the information provided by the Russian Side during the consultations on April 8, 2016, in Minsk, the Belarus Republic, concerning certain facts related to Ukraine's obligations under the Convention. A part of these facts was provided to the Ukrainian Side in the note No. 8761-н/ДГПЧ of July 9, 2015.

The Ministry notes that the abovementioned shall be without prejudice to the position of the Russian Side concerning statements and claims of the Ukrainian Side, raised in the diplomatic correspondence and to the question on whether the issues raised falls under provisions of the Convention.

The Ministry avails of this opportunity to renew to the Ukrainian Embassy in Moscow its assurances of its highest consideration.

April 25, 2016

Annex 834

Letter from ATR Holdings to Federal Service for Communications, Information, Technologies,
and Mass Communications, dated 12 February 2014

This document has been translated from its original language into English, an official language
of the Court, pursuant to Rules of the Court, Article 51.

Pursuant to Rules of the Court Article 51(3), Ukraine has translated only an extract of the
original document constituting this Annex. In further compliance with this Rule, Ukraine has
provided two certified copies of the full original-language document with its submission. The
translated passages are highlighted in the original-language document. Ukraine has omitted
from translation those portions of the document that are not materially relied upon in its
Memorial, but stands ready to provide additional translations should the Court so require.

[Stamp: ROSKOMNADZOR

Feb 12, 2015

Date of receipt of document]

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Simferopol, Republic of Crimea 295049
(+38 0652) 55555-1
info@atr.ua, www.atr.ua

Volkov, V.R. ATR [logo]

[illegible]

Date 2/12/2015

No. 35

in resp. to No.

of

**Deputy Head
Federal Service for
Communications, Information
Technologies, and Mass
Communications
(ROSKOMNADZOR)
Ksenzov, M/YU.**

Dear Maxim Yuryevich,

In a January 28, 2015 telephone call beforehand, an appointment was made with you for February 12, 2015 for 5 pm, in the building of the Federal Service for Communications, Information Technologies, and Mass Communications, for General Director E.R. Islyamova and the head of the legal support division, E.E. Gaffarov, who represent the interests of such Republic of Crimea television-and-radio broadcasters as Atlant-SV LLC Television Channel (ATR T Television Channel and Meydan Radio Channel), TSENTR LLC Television and Radio Company (Lider [Leader] Radio Channel), and LYALYE LLC Children's Television Channel (the television channel "Lyalye" in translation from Crimean Tatar is "Tulip").

On February 10, 2015, at 6:08 pm, a telephone call from telephone number +74959876800 came to the telephone of the head of the legal support division, E.E. Gaffarov, and the caller said they were calling from the reception desk of the deputy head of ROSKOMNADZOR, A.Yu. Ksenzov, and the message being relayed was that, because of your heavy workload, the appointment with the above-named individuals, as well as with all who had appointments for the time slot of 5–7 pm on February 12, 2015, was being postponed indefinitely.

At that appointment, we had planned on speaking with you about the difficulties we had encountered in registering those television-and-radio broadcasters in the legal field of the Russian Federation as mass media outlets and with regard to allowing the applications of Atlant-SV LLC Television Channel (Meydan Radio Channel) and TSENTR LLC Television and Radio Company (Leader Radio Channel) to participate in competitions Nos. 1, 5, 9, 16, and 22, which were scheduled by Roskomnadzor for February 25, 2015.

Thus, after completion of the re-registration of the above-named television-and-radio broadcasters under Russian Federation law and our numerous assurances in the territorial offices of Roskomnadzor of our intentions to broadcast and subsequently use the television-and-radio frequencies occupied, and with the receipt of Notice Nos. 2153/91 and 2154/91 of the possibility of the issuance of licenses to perform communication services for purposes of broadcasting, we, from October 2014 to the present day have filed on repeated occasions, and continue to file, applications, with the relevant documents attached, for registering as mass media outlets, which applications, for whatever reasons, are being returned without consideration.

I would like to note that the overall goal of the aforementioned television-and-radio broadcasters, which have, in their years of broadcasting in the Republic of Crimea and beyond its borders, enjoyed well-deserved authority and respect, has always been, is, and will be their work as mass media to strengthen interethnic and interfaith harmony and peace in Crimea and to develop good-neighborly and tolerant relations both among the residents and with guests of the Republic of Crimea, regardless of their ethnic, religious, racial, sexual, social, language, or other affiliation.

On the basis of the above, we petition you to provide assistance in registering Atlant-SV LLC Television Channel (ATR T Television Channel and Meydan Radio Channel), TSENTR LLC Television and Radio Company (Leader Radio Channel), and LYALYE LLC Children's Television Channel (Lyalye Television Channel) as mass media outlets, and we ask that Atlant-SV LLC Television Channel (Meydan Radio Channel) and TSENTR LLC Television and Radio Company (Leader Radio Channel) be allowed to participate in the competitions Nos. 1, 5, 9, 16, and 22 or that the competitions be cancelled.

Respectfully,
General Director

[Signature]

E.R. Islyamova

Prepared by Gaffarov E.E.
+79788333778

Annex 835

Letter from the Prosecutor's Office of the Russian Federation to Mr. Lenur Islyamov of ATR
Television Channel, dated 16 May 2014

This document has been translated from its original language into English, an official language
of the Court, pursuant to Rules of the Court, Article 51.

Pursuant to Rules of the Court Article 51(3), Ukraine has translated only an extract of the
original document constituting this Annex. In further compliance with this Rule, Ukraine has
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from translation those portions of the document that are not materially relied upon in its
Memorial, but stands ready to provide additional translations should the Court so require.



**PROSECUTOR'S OFFICE OF THE
RUSSIAN FEDERATION**

**PROSECUTOR'S OFFICE OF THE
REPUBLIC OF CRIMEA**

Attn: Mr. Lenur Emedovich Islyamov,
founder of Atlant-SV Television Company
LLC (ATR TV Channel, ATR T)

21, Sevastopolskaya Street, Simferopol,
295015

No. 27-271-14 of May 16, 2014

NOTICE

about inadmissibility of violations of the
law on countering of extremist activity
and the law on the mass media

On May 3, 2014, an unauthorized meeting was staged at the Armyansk (Turetskiy Val) state border crossing point of the Russian Federation and in the territory adjacent to it. The meeting was staged to welcome Ukrainian Parliament Member M.A. Dzhemilev by some 1,500 ethnic Crimean Tatars and was accompanied by the use of violence against representatives of the authorities, illegal crossing of the state border of the Russian Federation, and other unlawful activity.

Representatives of Atlant-SV Television Company LLC (ATR TV Channel, ATR T) were filming the events unfolding at the site of this criminal activity that had the potential to incite public disturbances. As a result, the TV channel aired video footage of the unauthorized meeting, during which individual meeting participants were heard making statements that incited criminal (including extremist) activity. Such actions of the mass media outlet (which covers a wide audience) involving public broadcasting of statements that incited ethnic strife and other forms of conflicts may exhibit attributes of extremist activity under Article 1 of the Federal Law *on Countering of Extremist Activity*. This Federal Law prohibits the distribution of extremist materials via the mass media and forbids extremist activity on the part of the mass media.

No. AB 003347

Prosecutor's Office of the Republic of Crimea
No. ISORG-27-271-14

Moreover, under Part 1 of Article 4 of the Law of the Russian Federation *on the Mass Media*, it is prohibited to use the mass media for the commission of acts that carry a criminal penalty, distribute extremist or other related materials.

In preparing their programming and subsequently airing their broadcasts, the mass media must disregard the repeated statements of an extremist nature on the part of M.A. Dzhemilev and other individuals to the effect that there is no alternative way other than to liberate Crimea from representatives of the Russian ethnic group, that the Mejlis supports people who shout anti-occupation slogans during events and manifest aggression toward the flag of the Russian Federation.

Moreover, according to Republic of Crimea Council of Ministers Resolution No. 332-r of April 22, 2014 *On Activities to Commemorate the Memorial Day of Victims of Deportation from Crimea* (with the relevant appendices), L.E. Islyamov is not only a member (deputy chairman) of the Organizing Committee tasked with preparing and holding said activities but is also the only person tasked with monitoring the implementation of this resolution.

And yet he permitted entertainment and mourning events to take place in the immediate vicinity, which could provoke conflicts between participants or other unauthorized public events. For example, a concert of the Russian band Kipelov has been organized under the auspices of the ATR television channel on May 17 of this year beginning at 6 p.m. at the Crimean Academic Ukrainian Musical Theater (Lenin Square, Simferopol). Meanwhile, the Organizing Committee on Preparation and Staging of Events to Commemorate the Memorial Day of Victims of Deportation from Crimea scheduled (with the participation of L.E. Islyamov) a mournful youth event called *Light a Fire in Your Heart* on the same day in Lenin Square, Simferopol. A mournful event of the Mejlis of the Crimean Tatar People is scheduled for May 17, 2014 between 5 p.m. and 10 p.m. to be attended by at least 5,000 - 6,000 people.

These actions, specifically the organization of a rock concert to be attended by a large number of fans of different beliefs along with the staging of mournful events to commemorate the 70th anniversary of deportation from Crimea can potentially become a provocation resulting in public disturbances, manifestations of extremism, endangering the lives and health of citizens, and bringing about other adverse consequences.

Events in neighboring regions of southeastern Ukraine as well as numerous statements issued by Mejlis leaders indicate a potential spike in the crime rate, continued destabilization of inter-ethnic relations, and possible provocations on that day.

Note that prosecutorial agencies are receiving petitions from citizens who fear that inter-ethnic relations might take a turn for the worse and call for appropriate measures to contain the situation.

In light of the foregoing and guided by Articles 22, 25.1 of the Federal Law *on the Prosecutor's Office of the Russian Federation*, Article 6 of the Federal Law *on Countering of Extremist Activity*, with a view to preventing violations of the law,

I HEREBY PUT ON NOTICE

the founder of the Atlant-SV Television Company LLC (ATR TV Channel, ATR T), Lenur Edemovich Islyamov, about the inadmissibility of extremist activity, violations of the Federal Law *on Countering of Extremist Activity*, and the Law of the Russian Federation *on the Mass Media*.

If the requirements presented in this notice are not complied with, the offender may be prosecuted in the manner prescribed by law.

Prosecutor of the Republic of Crimea

Senior Councilor of Justice

[Signature]

N.V. Poklonskaya

I have been put on notice: _____