

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

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

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## **I. EXECUTIVE SUMMARY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *Hostilities*

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

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

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

Donetsk.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Allegations of mass graves*

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

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

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

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

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

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

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

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

### *By the armed groups*

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

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

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<sup>15</sup> The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law (Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance).

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

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

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

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

*By the Government of Ukraine*

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

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

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

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

since 18 September.

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

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

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

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

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

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

#### *By the armed groups*

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

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

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

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

*By the Ukrainian forces*

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

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

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

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

#### A. Freedom of expression

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

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

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

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

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

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

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

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

*Attacks, harassment and intimidation of journalists*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Access to healthcare in the conflict affected area*

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

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

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

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

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

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

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

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

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

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

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

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

## **C. Right to property**

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

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

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

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

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

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

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

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

### *Reprisals*

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

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

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

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

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

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

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

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

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

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

## **F. Right to education**

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

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

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

## **G. Groups facing discrimination**

### *Roma*

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

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

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

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

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

#### *People living with HIV/AIDS*

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

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

#### *Persons deprived of their liberty*

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

#### *LGBTI*

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

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

#### *Trafficking in persons*

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

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

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

abroad, especially to the territory of the Russian Federation.

## **V. HUMAN RIGHTS IN THE ELECTORAL PROCESS**

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

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

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

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

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

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

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

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

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

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

## **VI. SITUATION OF INTERNALLY DISPLACED PERSONS**

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

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

### *Returnees*

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

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

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

### *Accommodation*

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

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

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

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

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

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

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

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

#### *Employment*

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

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

#### *Financial assistance to IDPs*

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

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

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

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

#### *Displaced women*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Command responsibility*

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

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

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

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

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

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

#### *Military prosecutions*

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

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

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

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

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

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

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

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

#### *Case of Nadiia Savchenko*

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

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

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

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

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

#### *Case of Nelia Shtepa*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **D. Administration of justice**

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

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

### *Establishment of parallel structures*

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

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

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

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

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

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

### **A. Constitutional reform**

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

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

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

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

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

### *Lustration of government*

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

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

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

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

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

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

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

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

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

178. Since the start of implementation of the law there have been a number of complaints about its application, particularly regarding the dismissal of those who are pregnant or are on paternity leave.

179. Several provisions of the law are questionable from the point of view of their compliance

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<sup>55</sup> The list of prohibitions covers several hundred positions in the State, as well as regional and local administrations. They include the President, Prime Minister, first Vice Prime Minister, Vice Prime Minister, Ministers, heads of central bodies of executive authority who are not members of the Cabinet of Ministers, the Governor of the National Bank of Ukraine, chairs of all state committees, commissions, directorates and funds, the Prosecutor General of Ukraine and agencies related to the prosecutor's office, the heads of all law enforcement agencies and military institutions, tax and customs institutions, members of judicial institutions, heads and deputy heads of regional, district and city administrations. The prohibition also applies to persons who were elected and worked in supervisory functions in the Communist Party of the USSR, of Ukraine and other republics of the former USSR, or were staff members or secret agents of the KGB.

<sup>56</sup> The five year prohibition to hold office for positions to which lustration applies concerns judges, public prosecution and law enforcement officials who permitted detention, passed guilty verdicts, or implemented measures aimed at prosecution of persons to whom amnesty has been applied under the amendments to the Law 'On Amnesty in Ukraine Concerning Full Rehabilitation of Political Prisoner' of 27 February 2014. It also includes all public officials who implemented measures aimed at power usurpation, undermining national security and infringing human rights, as established by a court decision as well as any official concerning whom it has been established by court decision that he collaborated with the secret services of other countries, implemented measures undermining national security, defence and territorial integrity of Ukraine, or called for violation thereof, and led to the infringement of human rights and fundamental freedoms as determined by a decision of the European Court of Human Rights.

with international standards. The vetting grounds are overly broad in scope and establish a principle of collective responsibility, which is contrary to international human rights law and Recommendation 7568 of the Council of Europe<sup>57</sup>. This recommendation contains Guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a State based on the rule of law.

180. The Guidelines also indicate that lustration should be administered by ‘a specifically created independent commission of distinguished citizens nominated by the head of State and approved by parliament’<sup>58</sup>. However, the law gives responsibility for carrying out lustration to a multiplicity of public government bodies under the control of the Ministry of Justice. The law also prohibits the possibility to maintain or obtain positions for those whose past work has violated the right to peaceful assembly or curtailed the right to life, as proven by court. Return to government service would, in some cases, be banned for 10 years while the Guidelines state that disqualification based on lustration should not exceed five years. Finally, prohibition from holding office on the sole basis of having occupied certain functions, rather than as a consequence of a proven violation or abuse can be viewed as contravening the presumption of innocence<sup>59</sup>.

#### *Lustration of judges*

181. On 24 September and 24 October, the temporary special commission on the Inspection of Judges, which was established according to the Law on Restoration of Trust in the Judicial System, conducted its first public hearings. Pursuant to its mandate, it examined cases involving 12 judges<sup>60</sup> who considered civil, administrative or criminal cases regarding defendants who had participated in the Maidan protests. Several plaintiffs or lawyers representing them were in attendance. All were given the opportunity to make statements. The commission found that eight judges were guilty of a ‘violation of oath’ due to their decisions which the commission viewed as: politically motivated, in violation of procedural rules, or made on the basis of falsified materials. Two judges were found to have taken decisions which, while not constituting violations of oath, were considered as deserving disciplinary sanctions. One judge was acquitted and consideration of one case was postponed upon the request of the plaintiff. In its decisions<sup>61</sup> the commission mentioned violations of national and international legal acts and the practice of the European Court of Human Rights.

182. The commission is not competent to decide on sanctions and its decisions are advisory in nature. Thus, cases involving findings about violations of oath were submitted to the High Council of Justice and those where disciplinary measures are recommended were addressed to the High Qualification Commission of Judges. However, none of these institutions currently function, as their members were dismissed by the same law that established the temporary special commission on the inspection of judges. The HRMMU will continue following the work of the Commission.

#### *So-called ‘public lustration’*

183. The HRMMU is concerned about an increased number of acts of ‘public lustration’<sup>62</sup>,

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<sup>57</sup> See also PACE Res. 1096 (1996), paras. 11-12.

<sup>58</sup> See also Rule of Law Tool for Post Conflict States, ‘Vetting: An operational Framework’ also requesting a specially created mechanism in the form of a commission.

<sup>59</sup> See PACE Res. 1096 (1996), para. 12; ECtHR decision of 30 May 2006, Matyjek v. Poland, app. No. 38184/03, paras. 48 et seq; decision of 24 October 2006, Bobek v. Poland, app. No. 68761/01, para.2.

<sup>60</sup> The cases regarded ten judges in Kyiv and two in Dnipropetrovsk.

<sup>61</sup> Most cases involved decisions limiting the right to take part in protests or applying measures of restraint in the form of pre-trial detention.

<sup>62</sup> Public lustration or the ‘rubbish container challenge’ came to the fore during the month. Under the slogan “that ‘rubbish’ should be in rubbish containers” it aims to publicly lustrate (i.e. purify) state and regional authorities of corrupt officials and politicians, or those who served under the former President Yanukovich. This has usually

and other actions by groups of people deciding to take justice into their own hands<sup>63</sup>, which circumvents the law, placing public officials perceived to be involved in corrupt activities in rubbish containers, and at times forcing them to resign from their positions.

### C. Corruption

#### *Anti-corruption legislation*

184. On 14 October, the Parliament passed a package of laws aimed at uprooting the country's deeply embedded corruption. The legislation was drafted in cooperation with anti-corruption organizations, including Transparency International, which in 2013 ranked Ukraine among the 30 world's most corrupt nations (144 out of 177). The laws, signed by the President, have different dates of entry into force.

185. The package foresees the creation of a State anti-corruption bureau<sup>64</sup>, competent to conduct investigations of crimes believed to have been committed by high level public officials, including judges and prosecutors. After an investigation, the bureau will be able to file cases in court through specially trained prosecutors to be appointed by the Office of the Prosecutor General and responsible to the head of the anti-corruption bureau. The law creating the anti-corruption bureau will enter into force on 25 January 2015.

186. Another law<sup>65</sup> aims at revealing company ownership by requiring disclosure of all information about the actual owners of commercial entities and real estate registered in Ukraine, and creates a public register of assets. A mandatory e-declaration of income and expenditures of all public officials is introduced<sup>66</sup> and a National commission on preventing corruption is created, with responsibilities that include, in particular, checks on the lifestyle and declarations of officials. The law creating the national commission on the prevention of corruption will become applicable on 26 April 2015.

187. Further a law<sup>67</sup> creates conditions for implementing international recommendations on combatting money laundering and the financing of terrorism or proliferation of weapons of mass destruction, and another law provides for a three-year National Anti-corruption Strategy<sup>68</sup>, defining Ukraine's objectives, policy and tools in the fight against corruption until 2017. The law containing the new anti-corruption strategy came into force on 26 October.

188. The adoption of the anti-corruption package should improve Ukraine's ability to fight corruption. It provides new instruments to identify and investigate corruption practices. It enables enhanced transparency and public information about the owners or beneficiaries of assets and properties. It creates specialized anti-corruption bodies, such as the anti-corruption bureau and the commission for prevention of corruption. Civil society will be able to exercise 'civil control' of the new anti-corruption agencies by monitoring their work and assessing their

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involved a mob forcing a particular civil servant into a rubbish container. The actions appear to be led by the Right Sector political party and the 'Automaïdan' activist group, but other parties and groups have also since conducted their own public lustration events. In certain cases where victim refused to be 'dumped', they were beaten. The most emblematic cases are beating of members of the parliament Yurii Miroshnychenko on 17 September in Kyiv and Nestor Shufrych in Odesa on 30 September. There have been numerous events of public lustration in Odesa.

<sup>63</sup> Within the reporting period the 'Right Sector' of Odesa and Kherson also attacked up to ten private shops allegedly involved in drug trafficking. In most cases, the sales assistants were publicly humiliated and tied to trees.

<sup>64</sup> Law No. 1698-VII 'on national anti-corruption bureau'.

<sup>65</sup> Law 1701-VII 'on amendments to several legislative acts of Ukraine on determining ultimate beneficiaries of legal persons and public figures'.

<sup>66</sup> Law No. 1700-VII 'on preventing corruption'.

<sup>67</sup> Law No. 50671702-VII 'on prevention and fighting legalization (laundering) of incomes received illegally, financing of terrorism and financing the spread of weapons of mass destruction'.

<sup>68</sup> Law No. 1699-VII 'on the principles of state anti-corruption policy in Ukraine (anti-corruption strategy) for 2014-2017'.

performance. The new three year anti-corruption strategy contains, for the first time, a clear set of success indicators and performance measurements.

189. While all these novelties constitute clear advances, they are not a panacea. The new legal framework will have to be accompanied by a genuine political commitment to implement it. Corruption investigations of high-level officials conducted by the anti-corruption bureau may turn out to be effective, but the decision on their outcomes remains with the courts, which at times in the past have lacked independence and integrity. The police and the prosecutor's office continue to be responsible for investigating corruption cases involving non-senior public officials, despite very limited success in the past. Eradicating corruption is also inextricably linked to improving the functioning of other institutions. This includes amendments to the legal framework governing public procurement procedures and reforming the public administration and civil service. In all these areas, progress still remains to be made.

#### *National Council on Anti-Corruption Policy*

190. On the same day that Parliament adopted the anti-corruption legislation, President Poroshenko signed a Decree 'On the National Council on Anti-Corruption Policy' (NCACP). This new body placed under the authority of the President replaces the National Anti-Corruption Committee, which was established in 2010 but never became operational. The role of the NCACP will be to analyse the situation of corruption in Ukraine, as well as to coordinate and monitor state anti-corruption policy, including the implementation of the national anti-corruption strategy and Ukraine's international anti-corruption obligations. The NCACP will consist of 17 members, 9 of whom will be from civil society.

191. The creation of an independent anti-corruption body with monitoring functions was a long-standing requirement of international anti-corruption institutions (such as the Council of Europe's anti-corruption monitoring body: the GRECO). Ukraine had been urged to establish a body distinct from the law enforcement bodies, with the responsibility of overseeing the implementation of national anti-corruption strategies and related action plans, as well as proposing new strategies and measures against corruption. Such a body should be given the necessary level of independence to perform an effective monitoring function. While the 2010 anti-corruption committee had been given appropriate functions, its composition reflected a very low representation of civil society, which cast doubt about the level of independence of the commission. The composition of the NCACP appears to have addressed this concern.

### **D. Reform of the judiciary**

192. On 16 October, President Poroshenko issued a decree establishing the Council for Judicial Reforms pursuant to his Strategy for Sustainable Development 'Ukraine – 2020'. The task of this consultative body is to prepare and submit to the President a draft strategy on reforming the judiciary, the administration of justice and legal institutions. This is to be done by the President-appointed Coordinator of the Council within three months, following the appointment of the other Council members who include the heads of appropriate central government bodies and judicial institutions, the Prosecutor General, representatives of legal and scientific institutions, NGOs and international organizations. The Decree abolishes the Working Group on Judicial Reforms established in 2010.

### **E. Office of the Prosecutor**

193. On 14 October, the Parliament adopted a Law on the Office of the Prosecutor General. The law eliminates prosecutorial functions with regard to the supervision of the observance and application of the laws, the so-called *nadzor* ('general supervision'). It contains amendments in respect to the recruitment of prosecutors, their appointment for administrative positions and

hierarchical and disciplinary measures and procedures. The main body of the prosecutorial authorities is the National Conference of Prosecutors. It is to address issues related to the internal activities of the Prosecution Service and to appoint members of its qualification and disciplinary commissions, which, in turn, will carry out the functions of selecting candidates for vacant posts and disciplinary proceedings. This law will enter into force on 25 April 2015. However, a few provisions, including those eliminating the ‘general supervision’ function of the Prosecution became effective on 26 October.

194. While in previous amendments Parliament had considerably limited the overly broad powers of the Prosecution Service not related to the criminal justice process, this new law appears to take into account most of the remaining international recommendations regarding the attributes, internal organization and guarantees for an independent functioning of Office of the Prosecutor General. In particular, a key concern addressed regards the general supervisory powers (*nadzor*) of the Office of the Prosecutor General related to the observance and application of laws. This function used to give the Office extensive ability to interfere with the interests and activities of private individuals and organizations. This capacity was compounded by the entitlement of the Prosecutor General and other public prosecutors to participate in the proceedings of the Parliament, boards of ministries, central executive agencies, local councils and other administrative bodies. These powers and rights ran counter to the separation of powers and posed a threat to rights and freedoms.

195. The new law, however, maintains a function relating to the representation of the interests of the individual and the State in court that go beyond the criminal justice sphere. This ability to represent the interests of citizens is problematic because it confers the right to participate in any legal proceedings where such interests are seen to arise regardless of the wishes of the individual. Furthermore, the Prosecutor General is also mandated to act in pursuit of the State interest, which does not necessarily coincide with the interests of the individual being represented.

## **F. Criminal proceedings in absentia**

196. On 7 October, the Parliament adopted a draft law on criminal proceedings *in absentia*<sup>69</sup> for persons who are accused of crimes and have fled the country. The law entered into force on 31 October. The intention behind this law was to create the legal conditions to try the former President of Ukraine and other high level officials who left the country, and to recover the vast assets they are accused of having usurped. The law allows for proceedings *in absentia* to be opened for defendants who seek to avoid court hearings, but with the presence of their lawyer for the following crimes: overthrow of the constitutional order, violation of the territorial integrity or its financing, high treason, attempt against the life of a statesman, sabotage, espionage, murder, murder committed as a crime of passion, murder in excess of necessary defence, and a list of corruption crimes.

197. In its General Comment № 32, the United Nations Human Rights Committee declared that proceedings in the absence of the accused ‘may in some circumstances be permissible in the interest of the proper administration of justice’, and added that these circumstances emerge when the accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present. In international judicial practice, trial in absentia is usually avoided. Article 63 of the Rome Statute of the International Criminal Court (ICC) provides that such trials are permitted only where the defendant is removed from the proceedings on the

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<sup>69</sup> The draft law ‘On Amendments to the Criminal Code and Criminal Code of Procedure of Ukraine regarding Inevitability of Punishment for Certain Crimes against the Fundamentals of National and Public Security and Corruption-Related Crimes’.

grounds that he has repeatedly and continually disrupted them. In the current document the grounds for prosecution in the absence of the accused are very wide, making the frequent use of this procedure a real possibility. The provisions stipulated to inform the accused in a timely manner of a court hearing, as well as to request attendance, are not in line with international norms and standards, as they do not provide adequate procedures to inform the accused in a timely manner of the date and place of the trial.

#### **G. Legislation in follow up to the Minsk Protocol of 5 September 2014**

198. On 16 September, Parliament passed two laws pursuant to the Minsk Protocol of 5 September.

##### *The Amnesty Law*

199. The draft law on ‘the prevention or punishment of participants in events on the territory of Donetsk and Luhansk regions’ cancels criminal and administrative liability for acts committed by ‘armed formations’ from 22 February 2014 until when the law enters into force, although it lists a number of crimes to which amnesty will not be extended<sup>70</sup>. It should be noted, however, that the law does not explicitly include torture and other ill-treatment in the list of exceptions, which means that such acts could be amnestied. This must be avoided as it would contravene the prohibition under international law of amnesties for international crimes and other gross violations of human rights. The acts of all those suspected of having committed or ordered these acts must be investigated, perpetrators must be brought to justice, and victims should be given full reparation. The law is to be signed by the President.

##### *The Law on Special Status*

200. The other law passed on 16 September and which entered into force on 18 October is the Law ‘On the Special Procedure of Local Self-Government in Some Districts of Donetsk and Luhansk Regions’, which is to be in force for three years. The law provides for local authorities to facilitate the use of Russian and other languages in public life and for local elections to take place on 7 December 2014. The law provides for powers for the local authorities greater than those enjoyed by other local authorities in Ukraine. In particular, they will have the right to take part in the appointment of heads of courts and prosecution offices at local level. The special status allows for the creation of voluntary people’s police, accountable to the local authorities. The law provides for specific financing to be allocated to these areas, without the possibility to diminish this financing, even in case of amendments to the State budget. The territory enjoying special status will be able to establish closer cooperation with administrative and territorial units of the Russian Federation on the basis of treaties on trans-border cooperation.

#### **H. Law on Internally Displaced Persons**

201. On 20 October, the Parliament passed a law “On ensuring the rights and freedoms of internally displaced persons”. It has yet to be signed by the President. The law establishes a unified IDP database, simplifies residence registration and voting rights, prohibits discrimination, protects the rights of IDPs with disabilities and obliges the state to provide free temporary accommodation for 6 months (although the IDPs need to pay for utility fees). It also

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<sup>70</sup> These include: ‘crimes against life and health (murders and infliction of serious bodily harm); sexual crimes; hostage taking; human trafficking; banditry; smuggling; acts of terrorism; violation of graves, burial places, or corpses; attacks against the life of a law enforcement officer, a judge, an official or a citizen performing his/her public duty, a defence attorney, or a foreign state representative; threats or violence against a public official or a citizen who performs his/her public duty, internationally protected persons and institutions in connection with their activity related to the administration of justice; genocide; and persons who committed a crime connected with the crash of the ‘Malaysia Airlines’ flight MH17’.

makes provisions to return home voluntarily and access to social housing or home loans on favourable terms for those who wish to settle elsewhere. Another positive initiative concerning IDPs was the adoption of amendments<sup>71</sup> to the Tax Code of Ukraine exempting IDPs of income tax payment for charitable aid received for the purchase of drug costs, medical items and supplies, and technical and other means of rehabilitation, among others.

202. The new legislation generally conforms to international legal standards, in particular the United Nations Guiding Principles on Internal Displacement. It should be noted, however, that the law does not provide for an on-line registration system for IDPs, which makes the process unnecessarily burdensome and time-consuming. In addition, internally displaced stateless persons as well as foreigners legally residing in Ukraine who have been displaced are not covered by the provisions of this law. This contravenes earlier resolutions of the Cabinet of Ministers of Ukraine on registration of IDPs and on monthly targeted financial support to IDPs, both of which apply to stateless and foreign IDPs legally residing in the country. This contradiction will need to be clarified. Another aspect of these resolutions is that they apply to people coming from the Autonomous Republic of Crimea as well as the 'anti-terrorist operation area'. On 30 October, the Cabinet of Ministers of Ukraine defined a list of territories that are comprised in the 'anti-terrorist operation area'. The list encompasses territories of the Luhansk and Donetsk regions, but also some districts, towns and villages in the neighbouring Kharkiv region. Thus, it would appear that people from territories that have not been directly affected by the fighting in the east could be eligible to be recognized as IDPs. Finally, considering that two thirds of the IDP population are women, specific attention should be devoted to ensure their specific needs and fundamental rights, including access to quality healthcare, the provision, where required, of social security, food, water and sanitation, as well as access to justice.

### **I. Human rights strategy**

203. On 15 October, President Poroshenko signed a Decree tasking the Government to elaborate a draft national human rights strategy for Ukraine by 1 January 2015. The document is to be prepared with the participation of state and local authorities, civil society and international experts on the basis of international experience.

204. The elaboration of a national human rights strategy could ensure greater prominence and attention to the promotion and protection of human rights in the country.

### **J. Police reform**

205. On 22 October, the Minister of Internal Affairs organized a conference to inform about his proposals for police reform. They include: renaming the militia (the current name) as the police; reducing the number of police officers according to United Nations defined standards (from 376 officers to 222 officers per 100,000 people); authorising the MoIA to only conduct the functions of law enforcement, protection of territorial integrity, civil protection, fire and rescue, migration control and protection of the state border; merging of certain departments; terminating separate special police units and instead setting up unified rapid response units; establishing a municipal police accountable to local self-government bodies and the MoIA; demilitarising the police by keeping 'officers in uniform' only for practical law enforcement functions; and re-assessing of staff through the use of the lustration law.

206. Following the conference, the Cabinet of Ministers held a meeting where several provisions of the police reform concept were adopted as decrees<sup>72</sup>. The next steps are to

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<sup>71</sup> In force since 26 September 2014.

<sup>72</sup> The first decree concerns termination of several departments of the police, such as the General Department on Combating Organized Crimes, the veterinary police and the transport police. The second decree concerns

implement the adopted decrees and to draft an act on the general structure and quantity of staff in the MoIA.

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

207. The situation in Crimea was marked by the continued implementation of the policy aimed at integrating the peninsula into the legal and political system of the Russian Federation and by persistent acts of intimidation targeting the Crimean Tatars, as well as those who opposed the March ‘referendum’ or were critical of the *de facto* ‘authorities’. As a result, the number of people leaving Crimea is constantly increasing.

208. On 23 September, the ‘Crimean prosecutor general’ posted a statement mentioning that all actions aimed at the non-recognition of Crimea as part of the Russian Federation will be prosecuted. The position of the United Nations on the status of Crimea and Sevastopol is guided by General Assembly resolution 68/262 of 27 March 2014 on the Territorial Integrity of Ukraine, which calls on all states and international organizations “*not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol*”.

209. Key developments in the period included a new wave of disappearances of Crimean Tatars. Vivid disquiet over this led to the establishment by the *de facto* ‘authorities’ of a ‘contact group’ to tackle the issue of missing people and other instances of human rights violations against Crimean Tatars. Furthermore, following months of intrusive searches (supposedly to fight extremism) affecting dozens of properties and other facilities owned mostly by Crimean Tatars, a ‘moratorium’ on police raids, was announced by the *de facto* ‘authorities’. Nevertheless, the Mejlis<sup>73</sup> continued to be seen as an illegal organization and had to leave its premises in Simferopol. In general, freedom of expression in Crimea remains stifled as a result of actions seeking to influence media content.

210. On 27 October the report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, was made public following his mission to Kyiv, Moscow and Crimea from 7 to 12 September 2014. This was the first *in situ* assessment by an international organisation of the human rights situation in Crimea since March 2014. Mr. Muižnieks noted that more resolve is needed in investigating all cases of serious violations of human rights that have occurred in Crimea since February 2014, including recent abductions. The Commissioner expressed concern about groups rendered vulnerable by events unfolding in the region, including Crimean Tatars, ethnic Ukrainians and all those who have refused Russian citizenship. He also stressed the urgent need to ensure “free and unconditional access of international humanitarian and human rights organizations to Crimea” as well as “unimpeded international monitoring”.

### **A. Civil and political rights**

#### *Rule of law*

211. On 29 September, a Moscow city Court extended the detention until 11 January 2015 of the Ukrainian citizen and film maker Oleg Sentsov, arrested in Simferopol (Crimea) in May 2014 and accused by the FSB under terrorism charges. On 13 October, the same Court upheld the ban on Mr Sentsov’s lawyer from commenting on his criminal case. Mr Sentsov’s defence considers these actions to be a violation of his rights. He also informed that his client’s name has recently been placed on a list of suspected terrorists and extremists on the web-site of the

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identification of police officers by placing special badges on uniform, and the last decree concerns ceasing certain administrative functions for the traffic police, for example the issuance of driver’s license, and so forth.

<sup>73</sup> Crimean Tatar Assembly.

Russian Federal Financial Monitoring Service, under number 2,460 in the section ‘Private persons – Russian citizens’. The prosecution asserts that Mr Sentsov ‘automatically’ became a Russian national as he did not formally and in person indicate his wish to retain Ukrainian citizenship.

*Impunity for human rights violations*

212. Between 27 September and 31 October, five Crimean Tatars disappeared in unclear circumstances. One of them, Edem Asanov, who went missing on 29 September, was later found hanged in a deserted sanatorium in the city of Evpatoria. Other disappearances include two Crimean Tatars cousins, Islyam Dzhepparov and Dzhevdet Islyamov, who are relatives of a former Mejlis member and were abducted on 27 September by unknown men in military uniform in the town of Belogorsk. In October, two more Crimean Tatars from Simferopol went missing on 3 and 23 October respectively.

213. On 1 October, the so-called ‘prime minister’ of Crimea, Sergei Aksionov, met with relatives of the two cousins abducted on 27 September and pledged to create a ‘contact group’ to investigate cases of abduction as well as other incidents involving Crimean Tatars.

214. On 14 October, the first meeting of the ‘contact group’ was chaired by Mr. Aksionov and the deputy head of the Crimean branch of the Russian Federation Investigation Department for especially serious crimes. Five relatives of victims attended. Information was provided on actions undertaken in relation to both recent and earlier disappearances, including the cases of two other Crimean Tatars, Timur Shaimardanov and Seiran Zinedinov, who disappeared in late May. Both were members of a pro-Ukrainian group – ‘Ukrainian House’ and went missing a few days after another group member, Leonid Korzh, also disappeared. Regarding Shaimardanov and Zinedinov, where no witnesses were found, the Crimean police opened criminal proceedings under article 105 (murder) of the Criminal Code of the Russian Federation. In the cases of Dzhepparov and Islyamov, where some witnesses claim to have seen the two being pushed into a car, criminal proceedings were initiated under article 126 (abduction). The investigations, initially conducted by the Crimean police, were subsequently transferred to the Russian Federation Investigation Department. During the meeting, it was decided that this Department would similarly take over the investigation concerning the case of enforced disappearance of 3 October. The ‘prime minister’ stated he was interested in an objective investigation of all criminal acts and invited the contact group to closely cooperate with the investigation bodies.

215. The establishment of the contact group, coupled with the direct involvement of Russian Federation investigative organs and the presence of relatives of the disappeared, are important developments. Investigating all disappearances both before and after the March ‘referendum’ is a duty of the *de facto* authorities. The HRMMU is aware of nine cases of disappearances and two deaths<sup>74</sup> since early March 2014. It would appear that some investigations have not taken place while others were inconclusive, a situation which supports impunity and creates tensions. The HRMMU sent a letter urging the *de facto* authorities to provide information on the state of the investigations regarding all disappearances and deaths in Crimea since March 2014, including those that have not been reviewed during the first meeting of the contact group.

216. Civil society groups and some witnesses claim that the so-called ‘Crimean self-defence’ was directly involved in most cases of abductions, deaths and other human rights abuses in the past six months. Its members supported the takeover of public buildings in the peninsula in late February and early March 2014 and are said to have been responsible for multiple human rights abuses during and after that period, including torture and ill-treatment. However, the *de facto*

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<sup>74</sup> In addition to Edem Asanov who was found hanged on 6 October, another Crimean Tatar, Reshat Ametov, had been found dead, on 16 March, in the village of Zemlyanichne apparently with signs of torture. See HRMMU report of 15 April, pp. 20-21

authorities have always treated these groups with respect due to their active opposition to the Ukrainian authorities and support to the March ‘referendum’.

217. Further, on 11 June, the so-called ‘parliament of Crimea’ passed a law which resulted in the integration of the ‘self-defence’ into a ‘people’s militia’, with powers to assist the police in keeping law and order. More recently, on 2 October, a draft law was submitted by the *de facto* authorities of Crimea to the Parliament of the Russian Federation proposing to amnesty ‘militants’ and members of the ‘self-defence forces’ in Crimea. According to the draft, the actions of the ‘self-defence forces’ and ‘militants’ committed between 27 February 2014 and 1 January 2015, including those which caused physical and moral damage, should be acknowledged as having been ‘of extreme necessity’. The amnesty should also cover suspects, defendants and those convicted in criminal cases. Excluded from the amnesty would be actions committed for financial gain, as well as other self-serving motives<sup>75</sup>. It should be noted that it contravenes the prohibition under international law of amnesties for international crimes and other gross violations of human rights. The acts of all those suspected of having committed or who ordered such crimes or violations must be investigated, perpetrators must be brought to justice, and victims should be enabled full reparation.

*Actions targeting Crimean Tatar institutions and their supporters*

218. On 16 September, FSB officers and the police searched the houses of two Mejlis officials, seizing notebooks, computers and hard drives. Later that day, they conducted an 11-hour search of the Mejlis building in Simferopol. Mejlis session protocols were seized, as well as religious books, computers, hard discs, and some personal belongings of Mustafa Jemiliev, the former head of the Mejlis. On 17 September, a court writ was served on the charitable organization Crimea Fund which owns the Mejlis building, giving it 24 hours to evacuate the building. The document prohibits the charity from carrying out its powers as owner of the building and six other premises. On 19 September, the Mejlis members left the building. On 29 September, the Central District Court of Simferopol upheld a request of the Crimean ‘Prosecutor’s Office’ to exclude Mustafa Jemiliev from the founders of the Crimea Fund.

219. The Mejlis opposed the March ‘referendum’ and has repeatedly criticized human rights violations committed in Crimea since that time. Its supporters consider the actions of the Crimean *de facto* authorities to be part of a concerted effort to undermine the authority and influence of this institution among the Crimean Tatar community. On 22 September, in an interview to a Russian media, ‘prime minister’ Aksionov stated that the Mejlis had no legal existence as it was not properly registered under Russian law.

220. On 22 October, the Crimean ‘police’ arrested Tair Smedlyaev, brother of Zair Smedlyaev, the head of the *Kurultai*’s election committee. The *Kurultai* is the parliament of the Crimean Tatars. Tair Smedlyaev was accused of violating article 318 (violence against police officer) of the Criminal Code of the Russian Federation during the 3 May action in Armyansk, when Crimean Tatars gathered in support of Mr Jemilev’s attempts to enter the Crimea<sup>76</sup>. On 24 October, a Simferopol Court in a closed session ordered the two month pre-trial detention for Mr Smedlyaev as a measure of restraint.

*Actions targeting possession and dissemination of ‘extremist’ literature*

221. The Crimean authorities continued actively searching for weapons, guns and religious literature. Dozens of raids reportedly took place since August, focusing on literature considered

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<sup>75</sup> On 16 October, during a press conference in Moscow, the so-called Crimean ‘prime minister’ Sergei Aksionov said that if the amnesty bill was not passed over 100,000 members of the ‘Crimean Self-Defence’ could be judged and sentenced on the basis of the current legislation.

<sup>76</sup> The protest involved thousands of Crimean Tatars gathering at the Crimean administrative border with the mainland, to meet Crimean Tartar leader Mustafa Jemilev, who earlier had been banned by the Crimean ‘authorities’ from entry to Crimea because of his alleged ‘extremist activity’.

to be of an extremist nature, as listed on a federal list of extremist materials. While the searches have overwhelmingly concentrated on Crimean Tatar properties - mosques, madrassas (Islamic religious school), schools, libraries and private homes - there have also been reports of raids on Jehovah's Witness Kingdom Halls.

222. Possession or distribution of 'extremist material' is punishable under article 20.29 of the Administrative Code of the Russian Federation<sup>77</sup> with a fine or imprisonment of up to 15 days and confiscation of banned literature. For example, on 26 August, the Dzhankoi District Court fined with RUB 2,000 (approximately USD 50) one of the deputy heads of the Crimean *Muftiyat* in charge of education issues after the police raided a madrassa he oversaw in the settlement of Azovskoe and seized religious literature. On 7 October, a librarian of a boarding school in the village of Tankovoe (Bakhchisaray district) was fined RUB 1,000 (approximately USD 25) because the school library contained three books from a collection of sermons by a Turkish Muslim theologian, and one Jehovah's Witnesses booklet. About a dozen other cases have been opened under article 20.29 between August and October 2014 and most have led to fines being imposed.

223. The Crimea 'ministry of education, science and youth' is participating in the campaign to remove extremist religious literature and other banned books. In a letter dated 12 September, the ministry 'orders the administrations of educational organizations to conduct [...] an analysis and audit of literature present in libraries and educational premises on the subject of the presence of materials on the Federal List, with the aim of its removal and destruction'.

224. Confronted with mounting criticism from the Crimean Tatar community<sup>78</sup>, the *de facto* 'authorities' have attempted to lower tensions. On 13 October, whilst meeting 150 Crimean Tatars, including the head of the *Muftiyat*, who returned from the Hajj pilgrimage to Mecca, 'prime minister' Sergei Aksionov announced a three month moratorium indicating that no punishments for possessing such literature would be imposed during that time. Furthermore, in an interview given to a Russian news agency on the following day, 'prime minister' Aksionov stated that the *de facto* authorities would conduct "educational work" among Muslims in cooperation with the *Muftiyat* during the moratorium and that the media would publish a list of materials whose possession was prohibited.

225. The HRMMU is not aware of instructions having been issued to law enforcement organs to halt raids and prosecutions until January 2015. However, the moratorium appears to be respected. Furthermore, on 21 October, in one case involving a schoolteacher from Belogorsk, the 'supreme court' of Crimea cancelled a District Court decision of 16 September, which had found the schoolteacher guilty under article 20.29 of the Administrative Code of the Russian Federation. She allegedly 'repented' and, instead of a fine, was given a 'verbal warning'.

#### *Freedom of expression*

226. The space for free media in Crimea continued to shrink. The latest media outlet whose activities were disrupted by actions of the *de facto* 'authorities' was the weekly *Mejlis* newspaper, *Avdet*. On 17 September, *Avdet* editor was given an official warning by the FSB for 'actions that might incite extremist activities'. A day earlier, the paper's offices in Simferopol were searched and on 18 September the FSB forced all tenants, including *Avdet*'s staff, to vacate the premises. In June and July, the editor had received written and oral 'warnings' related to the newspaper's reporting. *Avdet* continues to regularly publish but from different premises. The

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<sup>77</sup> This article punishes the "mass distribution" of items on the Federal List, as well as their "production or possession for the purposes of mass distribution".

<sup>78</sup> The Council of Europe's Commissioner for Human Rights visited Crimea on 10-11 September and heard complaints from many Muslims about raids. He reported to local officials that he regarded these raids as "disproportionate and excessive".

editor in chief of the Crimean Tatar ATR television channel informed the HRMMU that a letter from a Russian Federation media supervisory body to the Russian MoIA claimed that ATR was disseminating false rumours about repression on an ethnic and religious basis and promoting extremism. ATR was subsequently instructed by the police to show all documentation and a list of employees. Like *Avdet*, ATR continues operating, but with the understanding that the channel could be subject to legal or administrative actions should the content of its programmes be deemed by the *de facto* ‘authorities’ to question that Crimea is part of the Russian Federation.

227. In an apparent attempt to limit freedom of expression, Nadir Bekirov, the head of the Fund for Research and Support of the Indigenous Peoples of Crimea, was attacked in Crimea on 19 September. He was travelling to New York to take part in the UN General Assembly World Conference on Indigenous Peoples. On his way to catch a train to Kyiv, a minivan blocked the road and four masked men pulled him out of the car. He was beaten up and his passport and mobile phone stolen. The Crimean police are investigating the incident.

228. On 30 September, the Crimean ‘vice-minister of internal policy, information and communications’ informed that starting from 1 January 2015, the Russian Federation Service for Supervision in the Sphere of Communications, Information Technology and Mass Media will apply sanctions to any of the Crimean mass media which conducts a ‘provocative policy’. An example given was the Crimean on-line news agency Crimean Events, which publishes pro-Ukrainian articles.

229. On 1 October, six editors and journalists of Crimean Tatar programmes on the Crimean State TV and Radio Company Krym were dismissed from their posts due to ‘restructuring’. According to the former chief editor, the authorities in Crimea appointed a new editor, who announced the enrolment of new staff in order to change the content of the Crimean Tatar programs.

#### *Freedom of movement*

230. The HRMMU travelled to Chongar, a crossing point on the administrative boundary line between the region of Kherson and the Autonomous Republic of Crimea, and spoke to representatives of the State Border Service of Ukraine. According to the information obtained on the rules governing the entry of vehicles and passengers from Crimea into mainland Ukraine, holders of Russian passports issued in Crimea and cars with Crimea-issued Russian license plates are not allowed to cross the boundary line. Additionally a foreigner will not be allowed to enter mainland Ukraine from Crimea because access to Ukraine can only be from a recognized State border crossing.

231. An average of 300 vehicles circulate daily between Crimea and mainland Ukraine on both sides and about three to five persons per day are denied entry into mainland Ukraine due to one of the reasons cited above. However, the HRMMU learned from reliable sources that there were also instances of Ukrainian nationals prevented from entering mainland Ukraine from Crimea. This is in violation of the law “On Guaranteeing the rights and freedoms of citizens and on the legal regime on the temporarily occupied territory of Ukraine”, which provides that ‘Citizens of Ukraine have the right to free and unimpeded access to the temporarily occupied territory and exit from it through the control points of entry and exit upon presentation of a document confirming the identity and citizenship of Ukraine’<sup>79</sup>. This may also constitute a violation of the right to enter one’s own country, as provided for in article 12(4) of the International Covenant on Civil and Political Rights.

#### *IDPs*

232. According to the State Emergency Service of Ukraine, 19,056 IDPs (including 5328 children) from Crimea and Sevastopol were registered in mainland Ukraine on 31 October.

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<sup>79</sup> See Article 10 of the law.

233. The HRMMU met with Natalia Popovych, the Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea. Her office informs IDPs and Crimean residents about their rights and entitlements and provides advice and support in legal, civil or administrative matters as required. As of 1 October, Ms. Popovych's office had received 312 requests, mostly on employment issues and the issuing of identification documents, including passports. Other claims include education, property, pensions, banking deposits, and various social benefits and entitlements. The Permanent Representative initiated the establishment of a consultative council, made up of representatives of 13 civil society organizations, mainly from Kherson region to discuss IDP issues and agree on joint solutions.

*Persons deprived of their liberty*

234. As of 10 September there were 2,671 inmates from the Autonomous Republic of Crimea serving sentences in various institutions throughout Ukraine. Of that number, 287 have expressed the wish to return to Crimea after having served their prison term, but 56 did not have identification documents enabling them to travel. A penitentiary institution in Kherson claims it assists inmates with obtaining Ukrainian passports. However, an NGO in the region which assists former prisoners maintained that they often leave prison with nothing but a document confirming their discharge. They have no place to go to and, for those wishing to return to Crimea, no possibility to travel. In this situation, they often become homeless.

**B. Economic and social rights**

*Property rights*

235. Using various pretexts, the self-proclaimed local authorities in Crimea and Sevastopol continued to conduct actions amounting to forcible seizure of private property from individuals or companies maintaining links to Ukraine. On 25 September, the public company *Ukrtelecom JSC* informed that unknown persons had seized its premises and equipment. Employees' access was restricted, while the director was handed over a decree from the Sevastopol authorities announcing that he was discharged from office.

236. Between 18 September and 9 October, the 'state council' of Crimea nationalized over 20 facilities, including health resorts, pensions and hotels, owned by the entrepreneur and Governor of Dnipropetrovsk, Ihor Kolomoiskyi.

237. On 23 October, the Minister of Justice of Ukraine announced that Ukrainian investigatory authorities had initiated criminal cases against judges, law enforcements officials and Crimean executive service employees who had violated Ukrainian citizens' rights in Crimea and were involved in expropriations. A law adopted by the Crimean 'Parliament' on 31 July 2014 regulating property and land relations bans Ukrainian citizens, including those Crimean residents who rejected Russian citizenship from using agricultural land which they own. They are required to sell their land plots to Russian citizens only or to Russian legal entities. According to Russian legislation, agricultural land includes horticultural, market-gardening and dacha (cottage) cooperatives, as well as lands of former collective farms which were divided between village residents and former workers of the collective farms.

*Right to education*

238. According to information obtained on 21 October from Ms. Natalya Popovich, the Permanent Representative of the Ukrainian President in the Autonomous Republic of Crimea, out of the 600 secondary schools in the peninsula, only 20 teach Ukrainian language and literature three hours per week. Teachers of Ukrainian language and literature have been forced either to retrain on their own account or to resign. In the last six months, the number of high schools teaching Ukrainian has dropped from 96 to 12. According to Ms. Popovich, this would be explained by a cessation of funding to schools that refused to join the newly created Crimean

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

239. The HRMMU travelled to Novooleksiivka (Kherson region), a town of 10,000 inhabitants of whom almost 4,000 are ethnic Crimean Tatars. The head of the regional Mejlis in Kherson, Asan Aliev, explained that the greatest danger faced by the Crimean Tatar community on the mainland was assimilation. Over 90% of the Crimean Tatars allegedly do not speak their native language and communicate in Russian. There are two schools where the Crimean Tatar language is taught, but only for two hours per week.

240. Several Crimean Tatars mentioned to the HRMMU that they considered themselves to be an indigenous nation, entitled to recognition by law and to specific rights, such as the right to have its own self-government institutions. They noted that the law on national minorities adopted in 1992 did not provide for such recognition and that Ukraine did not have a law on indigenous peoples. They expressed the hope that the new parliament elected on 26 October would be more open to the adoption of legal measures confirming the status of the Crimean Tatars as an indigenous people, which is a category recognized by the Constitution of Ukraine.

## **XI. CONCLUSIONS AND RECOMMENDATIONS**

241. A peaceful solution must be found to end the fighting and violence in the eastern regions, to save lives and to prevent further hardship for those people living in the conflict affected area and in the neighbouring regions. With the tenuous respect for the ceasefire and the Minsk Protocols, people continue to be killed, and violations of international human rights law and international humanitarian law persist. The situation in the conflict affected area is becoming increasingly entrenched, with the total breakdown of law and order and the emergence of parallel governance systems in the territories under the control of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’. The continuing presence of a large amount of sophisticated weaponry, as well as foreign fighters that include servicemen from the Russian Federation, directly affects the human rights situation in the east of Ukraine. Guaranteeing the protection of those who live within the conflict affected area must be of the highest priority, so too the control and respect of the Ukrainian borders with the Russian Federation.

242. The impact of the hostilities on the whole of Ukraine, the economic downturn and the potential energy crisis require timely and dedicated attention, to heal divisions within families and communities, and to ensure that all human rights concerns are addressed. Accountability and an end to impunity are at the core of ensuring peace, reconciliation and long term recovery. Violations and abuses of international human rights law and violations of international humanitarian law must be investigated and, where there is evidence of crimes, the perpetrators brought to justice.

243. The situation for those living in Crimea, the status of which is prescribed by General Assembly resolution 68/262, remains of particular concern with increasing violations occurring for vulnerable and minority groups, including intrusive searches of mainly Crimean Tatar properties. New cases of enforced disappearances are a matter of great concern and could further fuel mistrust and increase tensions.

244. The root causes of the Maidan protests were the systematic and structural curtailment of human rights and widespread corruption. As peace is pursued, Ukraine should be commended for the steps already undertaken as outlined in this report, yet it must continue to meaningfully

reform its governance and legislative system to effectively enable the change that will promote and guarantee human rights protection.

245. Recommendations made in the OHCHR reports published since April 2014 that have not yet been acted upon or implemented remain valid and are reiterated. In addition, OHCHR calls upon all parties to implement the following recommendations:

**To all parties involved in the hostilities in the eastern regions of Donetsk and Luhansk**

- a) Immediately release all persons illegally or arbitrarily deprived of their liberty.
- b) Guarantee transparency regarding the release of detainees, and prevention of abductions, enforced disappearances, trafficking in persons and other human rights violations and abuses.
- c) Ensure the treatment with due respect and dignity of the bodies and remains of people killed as a result of hostilities. Free and safe access to the areas where such bodies and remains can be found must be provided to collect them and ensure their identification and a dignified and decent burial, and return them to their families.
- d) Increase efforts to search for missing people, ensure unfettered access by independent experts and preserve evidence of possible mass graves.

**To the Government of Ukraine**

- e) Investigate promptly and systematically allegations of summary, extra-judicial or arbitrary executions in the conflict zone, and take all measures to ensure the preservation of evidence.
- f) All allegations of sexual and gender-based violence must be promptly investigated, perpetrators held accountable and victims provided with an effective remedy, as well as the required help and support.
- g) Close all secret and ad hoc detention facilities and ensure that detainees are kept only in officially recognised and supervised places of detention, and that all their rights are fully respected.
- h) Guarantee that all detainees can communicate with and be visited by their families, have access to doctors and legal counsels. Lawyers must have access to the information concerning: 1) the authority that ordered the detention; 2) the date, time and place where the person was arrested and admitted to the detention place; 3) the authority responsible for supervising the detention place; 4) the whereabouts of the detainee, including, in the event of a transfer to another detention place, the destination and the authority responsible for the transfer; 5) the date, time and place of release; and 6) elements relating to the state of health of the detainee.
- i) Urge the expedient signature and implementation of the law on IDPs.
- j) Initiate wide public consultations to ensure that the law on lustration fully complies with the relevant international norms and standards and provides adequate guarantees against human rights violations affecting those concerned by this procedure.
- k) Urge that the draft law ‘on the prevention or punishment of participants in events on the territory of Donetsk and Luhansk regions’ is further amended in line with international norms and standards, and to clearly prevent acts of torture and ill-treatment committed by armed groups from being subject to amnesty, before being signed into law.
- l) Call on all the authorities to support the drafting of a national human rights strategy for Ukraine by 1 January 2015.

**To the self-proclaimed authorities of Crimea and the de facto governing authority of the Russian Federation**

- m) Urge the ‘contact group’ to make progress on investigations of cases of disappearances and deaths and ensure that perpetrators of crimes are held to account.
- n) Reconsider the legislative initiative to grant amnesty to the ‘Crimean self-defence’ group and reiterate that all allegations of gross human rights violations and abuses must be investigated, their perpetrators identified and punished and their victims duly compensated.
- o) Put an end to selective searches of facilities and the confiscation of property belonging mostly to Crimean Tatars.
- p) Promote inter-ethnic harmony, and put an end to intimidation and persecution.
- q) Promote and protect freedom of expression, guaranteeing full and non-discriminatory access to information for all.