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Office of the United Nations High Commissioner

for Human Rights

Report on the human rights situation in Ukraine

16 February to 15 May 2017

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100km
Printing date:29 Feb 2016
Sources:UNHCR
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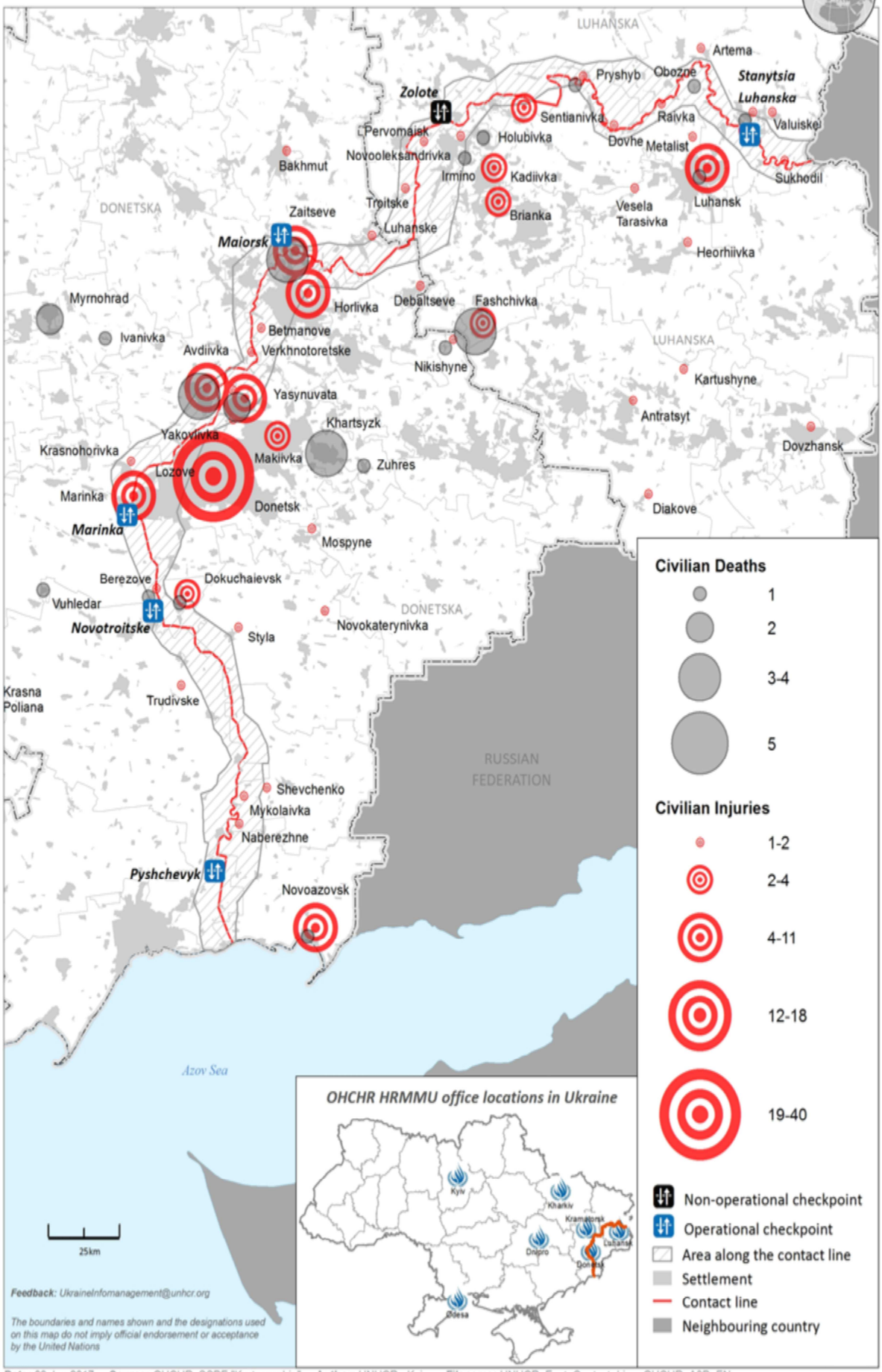
Ukraine: Civilian casualties along the contact line, 16 February - 15 May 2017



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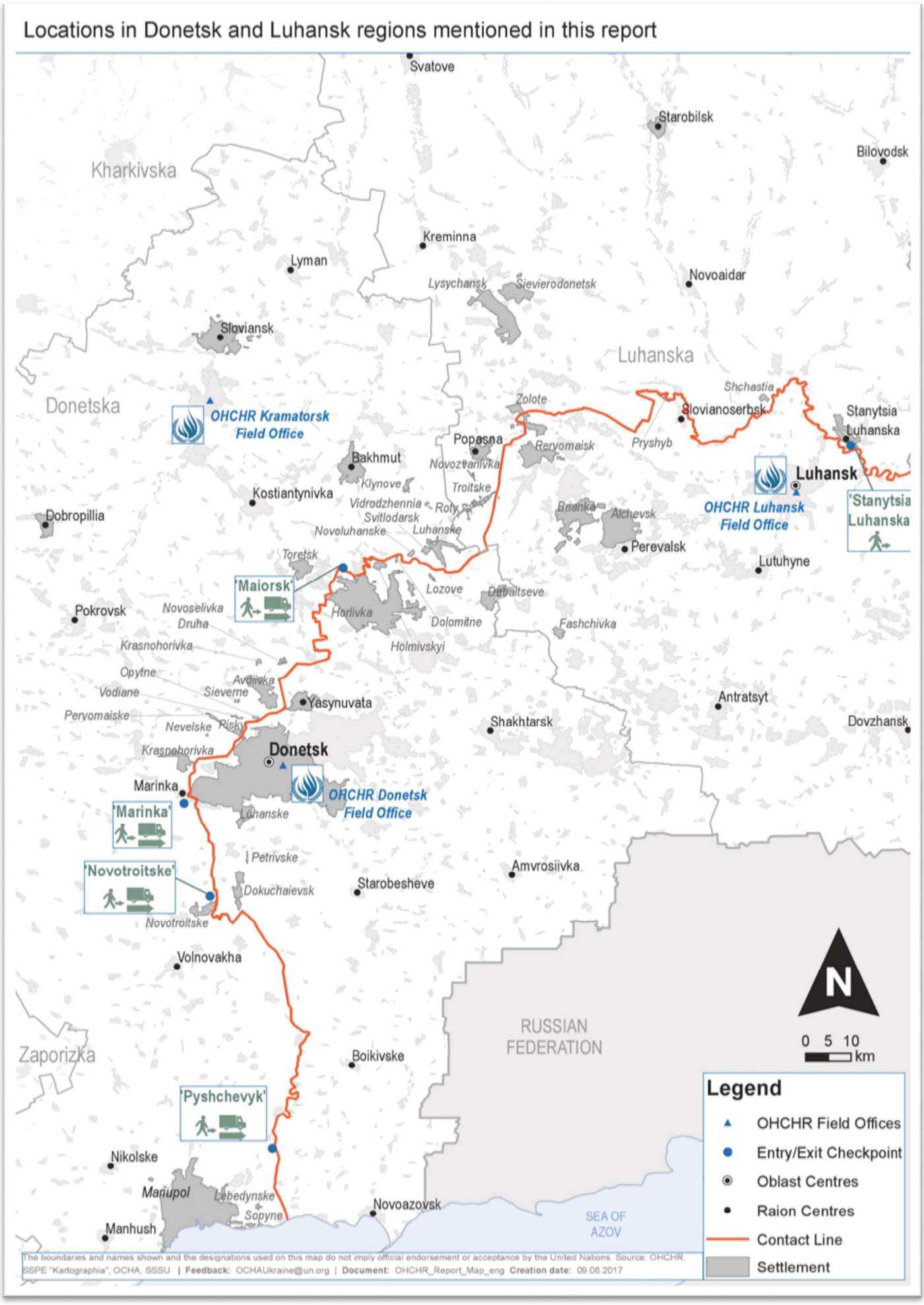
Locations in Donetsk and Luhansk regions mentioned in this report
Svatove
Starobilsk
Bilovodsk
Kharkivska
Kreminna
Lyman
Lysychansk
Sievierodonetsk
Novoaidar
Sloviansk
Luhanska
Donetska
Shchastia
Zolote
Slovianoserbsk
Stanytsia Luhanska
OHCHR Kramatorsk Field Office
Popasna
Rubizhne
Pryshyb
Bakhmut
Novozvanivka
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'Stanytsia Luhanska'
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Nikolske
Mariupol
Lebedynske
Sopyne
Novoazovsk
SEA OF AZOV
Manhush
Legend
OHCHR Field Offices
Entry/Exit Checkpoint
Oblast Centres
Raion Centres
Contact Line
Settlement
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I. Executive summary

1. Based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), this eighteenth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the human rights situation in Ukraine covers the period from 16 February to 15 May 2017.

2. HRMMU is mandated to monitor, document and publicly report on the human rights situation in Ukraine. The findings presented in this report are grounded in data collected by HRMMU through in-depth interviews conducted with 252 witnesses and victims of human rights violations and abuses, as well as site visits in both Government-controlled and armed groups-controlled territory. HRMMU also carries out follow-up activities to facilitate the protection of individuals concerned in the cases it documents, including through trial monitoring, detention visits, referrals to State institutions, humanitarian organizations and non-governmental organizations, and cooperation with United Nations Human Rights Council Special Procedures mandate holders and Human Rights Treaty Bodies.

3. During the reporting period, the conflict entered its fourth year and the risk of a significant escalation remains high. Since it broke out in the Donetsk and Luhansk regions of eastern Ukraine in April 2014, the conflict has been exacerbated by the inflow of foreign fighters, and supply of ammunition and heavy weaponry, reportedly from the Russian Federation.[1] Daily ceasefire violations recorded by the Special Monitoring Mission of the Organization for Security and Co-operation in Europe (OSCE)[2] demonstrated the routine use of heavy weaponry, and that indiscriminate shelling continued to take a heavy toll on civilian lives, property and critical infrastructure, including those supplying water, electricity and gas, and health and educational facilities. Despite efforts to peacefully resolve the conflict, the parties continued to fail to implement their commitments made under the Minsk agreements,[3] notably a full and immediate ceasefire, and the withdrawal of heavy weapons from the contact line.

4. Between 16 February and 15 May 2017, OHCHR recorded 193 conflict-related civilian casualties: 36 deaths and 157 injuries, 42 per cent of which were caused by shelling. This is a 48 per cent increase compared with the previous reporting period of 16 November 2016 to 15 February 2017, when OHCHR recorded 130 civilian casualties (23 deaths and 107 injuries; 65 per cent caused by shelling). In total, from 14 April 2014 to 15 May 2017,

[1] OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2015, paragraphs 2, 6; OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2015, paragraphs 2, 58-59; OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2015, paragraphs 2, 22 (see also fn. 128); OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, paragraph 2 (see also fn. 3).

[2] OSCE daily reports on ceasefire violations, available at http://www.osce.org/ukraine-smm/reports/.

[3] The Package of Measures for the Implementation of the Minsk Agreements calls for: an immediate and comprehensive ceasefire; withdrawal of all heavy weapons from the contact line by both sides; commencement of a dialogue on modalities of local elections; legislation establishing pardon and amnesty in connection with events in certain areas of Donetsk and Luhansk regions; release and exchange of all hostages and unlawfully detained persons; safe access, delivery, storage, and distribution of humanitarian assistance on the basis of an international mechanism; defining of modalities for full resumption of socioeconomic ties; reinstatement of full control of the state border by the Government of Ukraine throughout the conflict area; withdrawal of all foreign armed groups, military equipment, and mercenaries from Ukraine; constitutional reforms providing for decentralization as a key element; and local elections in certain areas of Donetsk and Luhansk regions. United Nations Security Council Resolution 2202 (2015), available at http://www.un.org/press/en/2015/sc11785.doc.htm. *See also* Protocol on the Results of the Consultations of the Trilateral Contact Group regarding Joint Measures Aimed at the Implementation of the Peace Plan of the President of Ukraine P. Poroshenko and Initiatives of the President of the Russian Federation V. Putin, available at http://www.osce.org/home/123257; Memorandum on the Implementation of the Protocol on the Results of the Consultations of the Trilateral Contact Group regarding Joint Measures Aimed at the Implementation of the Peace Plan of the President of Ukraine P. Poroshenko and Initiatives of the President of the Russian Federation V. Putin, available at http://www.osce.org/home/123806.

OHCHR recorded 34,056 casualties among civilians, the Ukrainian military and members of armed groups. This includes 10,090 people killed, including 2,777 civilians, and 23,966 injured.[4]

5. With no end to the conflict in sight, there is heightened concern for the protection of civilians as the summer months approach, when hostilities may spike (as witnessed in previous years). It is crucial to ensure that residential areas and critical civilian infrastructure is not targeted, and that uninterrupted operation of water and power supply, among other life-saving infrastructures, can be maintained.

6. Lack of progress or tangible results in investigations and legal proceedings connected to conflict-related cases, including those which are high profile, contribute to the sense of stagnation of the conflict. Three years after the violence at Maidan in Kyiv and Odesa, which together claimed the lives of at least 169 people, no one has been held accountable for these deaths.

7. OHCHR recorded new accounts of summary executions, arbitrary deprivation of liberty, and torture/ill-treatment committed on both sides of the contact line, most of which occurred prior to the reporting period, but were only recently documented.[5] In conflict-related cases, detention on remand was often utilized as the only measure of restraint by the judiciary, despite international standards pertaining to the right to liberty and security of person and the presumption of innocence, which call for consideration of alternative measures. Previously identified patterns of torture and ill-treatment by Ukrainian forces of individuals accused of conflict-related charges persisted throughout this reporting period, although at a lesser gravity and frequency compared with previous years of the conflict. OHCHR is deeply troubled by allegations indicating the systematic use of torture and ill-treatment by the Security Service of Ukraine (SBU) against conflict-related detainees in order to extract confessions. The lack of effective investigation into complaints of torture and ill-treatment fuels a sense of impunity surrounding such actions. Conflict-related sexual violence also persisted, most often in the context of deprivation of liberty, at a similar level as recorded in the previous reporting period.

8. Restrictions on the freedom of movement at the contact line had a wider impact on the population due to a sharp rise in the number of people crossing it in March. The increase was caused by a new Government requirement that internally displaced persons (IDPs) entitled to pensions and social payments renew their bank registration at locations in Government-controlled territory. Long queues at entry-exit checkpoints exposed civilians, particularly the most vulnerable, such as pensioners, persons with disabilities and women, to degrading conditions for protracted periods and to the risk of injury or death from shelling. Restrictions on freedom of movement in some villages located near the contact line impeded the enjoyment of social and economic rights, including the rights to social protection, to the highest attainable standard of physical and mental health, and to housing, land and property. Access to some of these villages was so restrictive that IDPs who had fled them earlier due to the conflict were unable to return, reunite with families, check on their property, or farm their land. Those who have remained in such villages are isolated and fully dependent on either the Ukrainian military or armed groups to deliver essentials such as water, bread and fuel.

9. OHCHR observed the ongoing deterioration of freedom of expression in conflict-affected areas, particularly in territory controlled by armed groups. Access to information,

[4] This is a conservative estimate based on available data. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and to overall under-reporting, especially of military casualties. Injuries have been particularly under reported.

[5] Not all new cases are reflected in this report, as OHCHR strives to maintain the highest protection of individuals through strict adherence to the principles of confidentiality and informed consent. Several victims and witnesses interviewed by OHCHR either did not want to share essential information, or did not consent to their accounts being publicly reported, for fear of reprisals.

freedom of the media and plurality of opinion remained severely limited and journalists exposed to intimidation and threats. Impunity continued to prevail for those obstructing journalists' activities, with only 7.1 per cent of related criminal complaints reaching courts.

10. The space for civil society and humanitarian activities shrank significantly during the reporting period, impacting vulnerable groups and persons with scarce economic resources. Notably, in territory controlled by armed groups of the self-proclaimed 'Donetsk people's republic', a major private organization providing humanitarian assistance to 500,000 individuals was forced by armed groups to halt operations. Access to persons in need by humanitarian organizations in territory controlled by armed groups has been seriously hindered by an 'accreditation' system imposed by these groups. Humanitarian and human rights activists operating in Government-controlled territory also faced impediments at checkpoints.

11. The fragile socio-economic situation of people living on both sides of the contact line fell to a new low, hampered by economic stagnation with limited employment prospects and means to carve out a livelihood. Demobilised soldiers and former members of volunteer battalions in Government-controlled territory continued to block the transportation of cargo over the contact line. Armed groups of the self-proclaimed 'Donetsk people's republic' and 'Luhansk people's republic'[6] seized control of approximately 54 enterprises located in areas under their control and introduced a form of "temporary external management". The Government endorsed the blockade as an official policy. The accumulated impact of these actions on the people living on both sides of the contact line has yet to be seen.

12. In the absence of access to Crimea, OHCHR continued to monitor the human rights situation from its offices in mainland Ukraine, guided by United Nations General Assembly resolutions 68/262 and 71/205. In that context, it observed that several court decisions were issued against members of the Crimean Tatar community, in apparent disregard for fair trial guarantees. Gross violations of the right to physical and mental integrity were also documented on the basis of interviews conducted with 12 convicts formerly detained in Crimea and the Russian Federation. On 1 April, the 2017 campaign for military conscription in the Russian Federation army started which, in the case of Crimean residents, violates the international prohibition to compel them to military service in the armed forces of the Occupying Power.[7] OHCHR also analyzed recent decisions affecting property rights in Crimea and noted with concern the diminishing space for Ukrainian as a language of instruction in education.

13. On 19 April, the International Court of Justice delivered its Order on provisional measures in proceedings brought by Ukraine, concluding that the Russian Federation must refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis, and ensure the availability of education in the Ukrainian language.[8] The Order also asserts that the Russian Federation and Ukraine should work towards full implementation of the "Package of Measures" in order to achieve a peaceful settlement of the conflict in eastern Ukraine.

14. Ukraine continued to implement judicial reform measures on the basis of constitutional amendments adopted in June 2016. Several codes and legal acts were amended, introducing notably e-governance, subject-matter jurisdiction rules, and the use of mediation as a means of dispute resolution. In the area of criminal justice, Parliament

[6] Hereinafter 'Donetsk people's republic' and 'Luhansk people's republic'.
[7] Article 51, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War.
[8] The court also found that the conditions required for the indication of provisional measures with regard to Ukraine's claims against the Russian Federation based on the International Convention for the Suppression of the Financing of Terrorism were not met. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (*Ukraine v. Russian Federation*), Order on Request for the Indication of Provisional Measures, 19 April 2017, available at http://www.icj-cij.org/docket/files/166/19394.pdf.

expanded the list of crimes in relation to which proceedings may be pursued *in absentia*. It also extended the application of a lower threshold for such proceedings, which was introduced in May 2016 as a temporary measure. OHCHR reiterates its position that this risks violating due process and fair trial rights.[9]

15. OHCHR continued to engage in technical cooperation and capacity-building activities with the Government of Ukraine and civil society in order to strengthen the protection and promotion of human rights.

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

A. International humanitarian law in the conduct of hostilities

> *"We have been expecting response fire for a while. It is wrong when they shoot from the village and hide behind our houses. They should shoot from [the fields] instead."*
>
> - Resident of a village near the contact line

16. On 14 April, hostilities in eastern Ukraine entered their fourth year. Amidst continuing diplomatic efforts to ensure compliance with the Minsk agreements, the situation remained tense and dangerous for civilians, with spikes in late February and early and late March, and recurrent fighting in several hotspots[10] along the contact line, as in previous reporting periods.

17. Decisions by the Trilateral Contact Group in Minsk re-committing the sides to adhere to the ceasefire from 1 April, and again from 13 April, did not take hold, with the OSCE Special Monitoring Mission (SMM) recording brief respites followed by upsurges of ceasefire violations. The main ingredients for the escalation of hostilities – presence and use of heavy weapons near the contact line and in proximity of opposing positions – were not removed, despite the parties' commitment to the withdrawal of heavy weapons, with devastating impact on civilian lives, property and infrastructure. The use of artillery, including multiple-launch rocket systems, continued in Donetsk and Luhansk regions throughout the reporting period.[11]

18. Indiscriminate shelling and the presence of Ukrainian Armed Forces and armed groups near water facilities in Donetsk region continued to have a detrimental impact on the supply of water on both sides of the contact line. The Donetsk Filtration Station, which serves 345,000 people[12] in Avdiivka, Yasynuvata and parts of Donetsk, stopped operations six times during the reporting period due to renewed shelling and resulting damage.[13] Each such incident resulted in water supply interruptions on both sides of the contact line and threatened the life and physical integrity of employees. Mariupol, where nearly 450,000 people currently

[9] *See* OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, para. 173.
[10] Avdiivka-Yasynuvata-Donetsk airport, areas east of Mariupol, the western outskirts of Horlivka, and the areas south of Svitlodarsk, all in Donetsk region; and the Popasna-Troitske-Pervomaisk area in Luhansk region.
[11] *See* SMM daily reports, e.g. of 1 May 2017, available at http://www.osce.org/special-monitoring-mission-to-ukraine/314691, and 4 May 2017, available at http://www.osce.org/special-monitoring-mission-to-ukraine/315686.
[12] Figures provided to the WASH Cluster by water supply company 'Voda Donbasa' as of December 2016.
[13] According to WASH Cluster reports, DFS was non-operational on 18 February and from 24 February to 4 March, 5 to 8 March, 11 to 17 March, 29 March to 5 April, and 2 to 7 May 2017.

reside, has been receiving insufficient water and relying on a natural back-up reservoir since January 2017 due to damage to the South Donbas water pipeline. Another concern is shelling in the vicinity of the First Lift Pumping Station of the South Donbas water pipeline.[14] This facility is an essential part of water infrastructure as it supplies raw water to five filtration stations which, in turn, process water for over one million people living on both sides of the contact line, from Mariupol in the south to the northwestern border of Donetsk region.

19. OHCHR is particularly concerned that chlorine warehouses at the Donetsk Filtration Station were hit by shelling several times during the reporting period, as was a wastewater treatment plant in Yasynuvata. While leakage of chlorine was reportedly prevented, OHCHR recalls that five water facilities located close to the contact line, on both sides, which store in total almost 350 metric tons of chlorine, are exposed to shelling, which would pose a major risk to public safety and the environment.

20. The presence of a large number of mines and unexploded ordnance in areas close to the contact line in Donetsk and Luhansk regions continued to pose a serious threat to civilians. In violation of their commitments under the Minsk agreements, all sides continued laying new mines rather than systematically clearing or marking mines and other hazards, or fencing them off.[15] On 23 April, a vehicle of an OSCE SMM patrol was destroyed in an explosion, most likely caused by a land mine, on a regularly used road in Pryshyb village (controlled by armed groups) of Luhansk region, killing one and injuring two patrol members.[16] The following day, in Fashchivka village (armed-group-controlled), also in Luhansk region, a tractor came into contact with a land mine, which caused the death of three civilians.[17]

21. During the reporting period, OHCHR continued to witness the positioning of Ukrainian Armed Forces and armed groups in or nearby residential areas, without taking necessary precautions, in violation of international humanitarian law.[18] According to residents, the occupation and use of residential neighbourhoods by Ukrainian Armed Forces have often been followed by shelling of the areas.[19]

22. In Government-controlled territory, OHCHR recorded the military use of residential civilian property by Ukrainian Armed Forces in numerous towns and villages.[20] In Novoluhanske, the military occupied a multi-story house close to a school, and in Toretsk, a military base was located in a communal property building close to the city hospital. In Novotroitske, OHCHR observed that a former boarding school in the immediate proximity of

[14] The 1st Lift Pumping Station was shelled on 27 and 28 February; 11, 27 and 31 March; and 1, 27, 28 and 29 April 2017.
[15] *See* Minsk Memorandum of 19 September 2014 and TCG decision on mine action of 3 March 2016. In early May, the SMM noted anti-tank mines for the first time both in territory controlled by the Government and territory controlled by armed groups, see the Mission's daily reports, e.g. of 8 May 2017, available at http://www.osce.org/special-monitoring-mission-to-ukraine/315996. For Ukraine, this is also a violation of its obligations under the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.
[16] The event claimed the first fatality since the Mission's establishment in March 2014. *See* http://www.osce.org/special-monitoring-mission-to-ukraine/312971.
[17] *See* SMM daily report of 30 April 2017 available at http://www.osce.org/special-monitoring-mission-to-ukraine/314571.
[18] Article 13(1), Additional Protocol II to the Geneva Conventions stipulates that "the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations." This includes the obligation for each party to the conflict to avoid, to the extent feasible, locating military objectives within or near densely populated areas. The location of military objectives in civilian areas runs counter to this obligation. Henckaerts, Doswald-Beck, Customary International Humanitarian Law, Volume I, Rule 23.
[19] E.g. in Luhanske, HRMMU interview, 30 March 2017; Vidrodzhennia, HRMMU field visit and interviews, 6 April 2017; Nevelske, HRMMU interview, 29 March 2017; Kamianka, HRMMU interviews, 23 March 2017; and Krasnohorivka of Yasynuvata district, HRMMU interviews, 23 March 2017.
[20] During the reporting period, OHCHR observed military occupation of civilian property in Pisky, a Government-controlled part of Zaitseve, Novoselivka Druha, Avdiivka, Zolote-4, Klynove, Roty, Novozvanivka, Vidrodzhennia, Troitske, Novoluhanske, Toretsk, Luhanske, Shchastia, and Pervomaiske in Yasynuvatskyi district.

a functioning kindergarten, as well as a vacant building of a local hospital were occupied by the Ukrainian military.[21]

23. OHCHR has received numerous reports of, and observed signs of looting of private houses temporarily abandoned by owners displaced from villages along the contact line.[22] There are indications that elements of the Ukrainian Armed Forces may be implicated in some such incidents. Some civilians informed OHCHR that they had opted to remain in their homes to protect their property after witnessing the looting of neighbouring homes,[23] which exposes them to the dangers of active hostilities, including shelling. OHCHR recalls that pillage is prohibited under customary international law applicable in both international and non-international armed conflicts, as well as explicitly by the Fourth Geneva Convention.[24]

24. In territory controlled by armed groups, OHCHR observed a similar pattern of armed formations using residential areas for firing positions and occupying residential property. OHCHR was informed that three houses in Lozove[25] were at the time occupied by members of armed groups. On 10 April, in Dolomitne, where OHCHR observed the presence of armed groups close to residential houses, the home of an elderly couple was hit by a projectile and burned down. When visiting shelled areas in territory controlled by armed groups, OHCHR often noted fresh traces of heavy vehicles, indicating the recent presence of armed formations.[26]

25. OHCHR reiterates that presence in or use of civilian housing, by Ukrainian Armed Forces and armed groups puts civilians at risk, and violates the obligation of parties to a conflict to take all feasible measures to spare civilians from harm,[27] besides violating the rights to adequate housing and property.

26. As in the previous reporting period, OHCHR noted examples where the Ukrainian Armed Forces vacated their quarters in residential neighbourhoods in Vidrodzhennia[28] and Nevelske[29], which led to a reduction in shelling in such areas. OHCHR commends the Government of Ukraine for taking such action, which demonstrates that measures to protect civilians during armed conflict are both feasible and effective towards compliance with obligations under international humanitarian law.

B. Civilian casualties

27. Between 16 February and 15 May 2017, OHCHR recorded 193 conflict-related civilian casualties[30]: 36 deaths (21 men, 11 women, three boys, and an adult whose sex is unknown)

[21] HRMMU field visits, 11 April, 3 May 2017.
[22] Villages of Pisky, Nevelske, Klynove, and Novoselivka Druha.
[23] HRMMU interview, 27 April 2017.
[24] Article 4(2)(g), Additional Protocol II to the Geneva Conventions.
[25] HRMMU interview, 27 March 2017.
[26] A pattern also regularly reported by the OSCE SMM, *see*, e.g., http://www.osce.org/special-monitoring-mission-to-ukraine/304526. Although OHCHR regularly observes the presence of armed groups in villages close to the contact line, civilians are reluctant to speak of or complain about the use of their neighbourhoods by armed groups for firing positions.
[27] Article 13(1), Additional Protocol II to the Geneva Conventions; Henckaerts, Doswald-Beck, Customary International Humanitarian Law, Volume I, Rules 22 and 23.
[28] HRMMU field visit and interviews, 6 April 2017.
[29] HRMMU interview, 29 March 2017.
[30] OHCHR investigated reports of civilian casualties by consulting a broad range of sources and types of information which are evaluated for credibility and reliability. In undertaking documentation and analysis of each incident, OHCHR exercises due diligence to corroborate information on casualties from as wide a range of sources as possible, including OSCE public reports, accounts of witnesses, victims and other directly affected persons, military actors, community leaders, medical professionals, and other interlocutors. In some instances, investigations may take weeks or months before conclusions can be drawn. This may mean that conclusions on civilian casualties may be revised at a later date as more information becomes available. OHCHR does not claim that the statistics presented here are complete. Civilian casualties may be under-reported given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods. The increase in the number of casualties

and 157 injuries (90 men, 55 women, nine boys, a girl and two adults whose sex is unknown). This is a 48 per cent increase compared with the previous reporting period of 16 November 2016 to 15 February 2017, during which OHCHR recorded 130 civilian casualties (23 deaths and 107 injuries).

	Adults			Children			Total
	Women	Men	Sex unkn.	Girls	Boys	Sex unkn.	
Killed	11	21	1		3		36
Injured	55	90	2	1	9		157
Total	66	111	3	1	12		193

Type of incident/weapon	Killed		Injured		Total
	Adults	Children	Adults	Children	
Mines, ERW, booby traps, IEDs and explosions of ammunition depots	19	3	60	4	86
Shelling (mortars, guns, howitzers, MLRS and tanks)	11		66	5	82
Small arms and light weapons	2		21	1	24
Other conflict-related incidents	1				1
TOTAL	33	3	147	10	193

28. During the whole conflict period, from 14 April 2014 to 15 May 2017, at least 2,479 civilians were killed: 1,367 men, 826 women, 90 boys and 47 girls, and 149 adults whose sex is unknown.[31] An additional 298 civilians, including 80 children, were killed as a result of the MH17 plane crash on 17 July 2014. The number of conflict-related civilian injuries is estimated at 7,000-9000.

between the different reporting dates does not necessarily mean that these casualties happened between these dates. They could have happened earlier, but were recorded by a certain reporting date.

[31] Numbers may change as new information emerges over time.

29. In total, from 14 April 2014 to 15 May 2017, OHCHR recorded 34,056 conflict-related casualties in Ukraine, among civilians, Ukrainian military and members of the armed groups. This includes 10,090 people killed and 23,966 injured.[32]

C. Missing persons

30. The exact number of individuals missing as a result of the conflict remains undetermined.[33] The lack of coordination among the governmental bodies concerned and the absence of exchange of forensic information between the Government of Ukraine and relevant actors of 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic' persisted. OHCHR encourages the Government of Ukraine and armed groups to exchange DNA material and anthropometric data to facilitate the process of identification of bodies.[34] OHCHR is of the view that the whereabouts of a considerable number of those missing could be established, and the uncertainty and despair borne by their relatives relieved, if a proper search mechanism was put in place. OHCHR regrets that the adoption of legislation 'On the legal status of missing persons', which foresees the establishment of a commission for missing persons, was still pending as of 15 May 2017.[35]

31. During the reporting period, OHCHR documented additional cases of persons who have been missing since 2014 and 2015. During individual interviews, victims' relatives complained that they could not access information about the fate or whereabouts of their loved ones.[36]

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

32. In territory controlled by the Government of Ukraine, OHCHR continued to enjoy effective access to official places of detention, and interviewed conflict-related detainees in pre-trial detention facilities (SIZOs) in Bakhmut, Dnipro, Kharkiv, Kherson, Kyiv, Mariupol, Mykolaiv, Odesa, Poltava, Starobilsk, Vilniansk, Zaporizhzhia and Zhytomyr. In territory controlled by armed groups, OHCHR continued to lack full and unfettered access to places of deprivation of liberty. Access to persons detained was granted only on an *ad hoc* basis, and on such occasions, interviews could not be conducted confidentially.

[32] This is a conservative estimate based on available data. These totals include: casualties among the Ukrainian military, as reported by the Ukrainian authorities; 298 people from flight MH17; civilian casualties on the territory controlled by the Government, as reported by local authorities and the regional departments of internal affairs of Donetsk and Luhansk regions; and casualties among civilians and members of the armed groups on the territory controlled by the self-proclaimed 'Donetsk people's republic' and the self-proclaimed 'Luhansk people's republic', as reported by the armed groups, the so-called 'local authorities' and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, as well as overall under-reporting, especially of military casualties. Injuries have been particularly under-reported.

[33] The open database of individuals who went missing in the context of the conflict maintained by the National Police of Ukraine listed 1,335 persons as of 20 April 2017. The Security Service of Ukraine considered 416 individuals as missing as such as of 21 March 2017. The 'ombudsperson's office' of the 'Donetsk people's republic' recorded 450 missing persons as of 19 April 2017.

[34] OHCHR recalls the obligation of parties to a conflict to take all feasible measures to account for persons reported missing as a result of armed conflict and provide family members with any information it has on their fate. Henckaerts, Doswald-Beck, Customary International Humanitarian Law, Volume I, Rule 117.

[35] *See* OHCHR report on the human rights situation in Ukraine covering 16 November 2016 to 15 February 2017, para. 150-152.

[36] HRMMU interviews, 24 and 27 March 2017.

1. Summary executions

> *"There are many sick people walking around with guns these days. No UN or OSCE can protect us. If they want to kill us, they will just come. Who can protect us from this?"*
>
> - Resident of a village near the contact line

33. During this reporting period, OHCHR documented cases of summary executions and wilful killings that occurred since 2014 until now. Some illustrative cases are presented below.

34. OHCHR welcomes the efforts of the Government to investigate recent cases of extrajudicial executions and other killings. Investigative actions have become timelier; suspects were identified and detained shortly after the incidents. It is of concern, however, that superiors who may have ordered or concealed crimes have not brought to justice. For example, in the ongoing trials regarding the torture of Oleksandr Agafonov[37] whilst in SBU custody and his subsequent death in Izium police station in 2014, as well as the case of two members of the Ukrainian Armed Forces[38] suspected of killing two women in Luhanske on 14 June 2015,[39] the actions of the commanders were not examined.

35. OHCHR has been following two recent cases of extrajudicial executions and other killings allegedly committed by Ukrainian forces. On 10 March, the body of a man who went missing in Avdiivka on 3 March 2017 was found near Krasnohorivka. An SBU officer suspected of committing the crime was taken into custody in March, but released on bail. The pre-trial investigation is ongoing, with concerns for the safety of relatives and witnesses.[40] In another case, a man discovered on 23 September 2016 that his house in Pishchane had been looted and set on fire, and that his relative who had been living there was missing. Police discovered the relative's body buried in a nearby forest, with traces of four bullet wounds. Out of 11 members of the Ukrainian Armed Forces suspected of involvement in this crime, only five are on trial, and only one has been charged with committing murder.[41]

Armed groups

36. OHCHR is also following the case of two residents of Horlivka who went missing in October 2016. Their bodies were reportedly found on 20 March 2017 buried in Horlivka, but their relatives were not able to see and identify the bodies. The victims were allegedly shot dead by members of armed groups in October 2016. Their relatives were informed that the alleged perpetrators were being detained and the 'investigation' ongoing.[42]

[37] For further details, *see* OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2015 (para. 114) and covering the period from 16 November 2015 to 15 February 2016 (para. 71).
[38] The defendants were acquitted on 3 February 2017 despite strong evidence presented in court. Relatives of the victims and the prosecutor filed an appeal. The verdict was quashed on 11 April 2017 and the case sent back to the first instance court.
[39] HRMMU interviews, 6 March, 11 April 2017.
[40] HRMMU interviews, 16, 21, 22 and 24 March, 21 April 2017.
[41] HRMMU interviews, 23 February, 21 March 2017.
[42] HRMMU interview, 21 March 2017.

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

37. OHCHR continued to document cases of individuals unlawfully or arbitrarily deprived of their liberty or subjected to enforced disappearances and abductions. While some of these cases occurred in 2014 or 2015, OHCHR continued to receive recent testimonies indicating that such practices were persisting, particularly in territory controlled by armed groups. In a number of cases, the victims' families did not have access to those detained and had no information on their whereabouts, which may amount to enforced disappearance.

38. In April 2017, two men were detained by police in Bakhmut, taken to an unknown location outside town, where one was kept for three days and the other for one day *incommunicado*. They were each tortured while being questioned about their participation in armed groups in 2014. Both were severely beaten and one was subjected to electric shocks in the genitals. Both victims were transferred to the pre-trial detention facility and charged with participation in an armed group.[43]

39. On 19 November 2016, a former member of an armed group was detained at the border while crossing into the Russian Federation, and was interrogated by Ukrainian border guards.[44] The following day, he was taken by police investigators to Sloviansk, with his hands tied with duct tape. He was detained in the Sloviansk police building for two weeks, repeatedly interrogated, constantly moved from one room to another, and signing in and out of the logbook every four hours "in order to comply with the law".[45] He could not inform his relatives about his whereabouts and had no access to a lawyer. On 9 December 2016, the Sloviansk city district court remanded him to pre-trial detention. He only met his free legal aid lawyer in court and, as of 15 May 2017, remained in detention.

40. OHCHR also continued to observe that in conflict-related cases[46], detention is often used as the only preventive measure.[47] Under international human rights standards pertaining to the right to liberty and security of a person, individuals awaiting trial shall not be detained as a general rule.[48] Rather, pre-trial detention must be demonstrated as necessary in the specific case, "to prevent flight, interference with evidence, or the recurrence of crime"[49] and "should be an exception and as short as possible."[50]

Armed groups

41. During the reporting period, OHCHR continued to document cases of armed groups of 'Donetsk people's republic' and 'Luhansk people's republic' detaining individuals suspected of affiliation with the Ukrainian Armed Forces or for having 'pro-Ukrainian' views. For example, in January 2017, a 16-year-old girl was detained at a checkpoint with her

[43] HRMMU interview, 4 May 2017.
[44] HRMMU interview, 15 February 2017.
[45] HRMMU previously documented the case indicating same practice of arbitrary detention.
[46] These individuals are mostly detained on the following charges: actions aimed at forceful change or overthrow of the constitutional order or takeover of Government (article 109 of the Criminal Code of Ukraine); trespass against territorial integrity and inviolability of Ukraine (article 110); high treason (article 111); trespass against life of a statesman or a public figure (article 112); sabotage (article 113); espionage (article 114); intentional homicide (article 115); act of terrorism (article 258); involvement in a terrorist act (article 258-1); public incitement to commit a terrorist act (article 258-2); creation of a terrorist group or organization (article 258-3); facilitating a terrorist act (article 258-4); financing of terrorism (article 258-5); and creation of unlawful paramilitary or armed formations (article 260). In rare cases, articles 437 (planning, preparing and waging aggressive war or military conflict) and 438 (violation of law and customs of war) have been applied.
[47] Pursuant to changes in the Criminal Procedure Code since 7 October 2014, all forms of preventive measures other than detention cannot be applied in conflict-related cases, while they are allowed for all other crimes. *See also* "Due process, fair trial rights, and interference with judiciary" *below*.
[48] ICCPR, article 9 (3).
[49] Communications No. 305/1988, *Van Alphen v. Netherlands*, Views adopted by the Human Rights Committee on 23 July 1990, para. 5.8; Communication No. 248/1987, *Campbell v. Jamaica*, Views adopted by the Human Rights Committee on 30 March 1992, para. 6.3. *See also* European Convention on Human Rights art. 5(1)(c).
[50] Human Rights Committee, general comment No. 8, para. 3.

father. She was interrogated for seven hours by 'ministry of state security' ('MGB') representatives without the presence of her parents or a lawyer. She was searched by a man, although she insisted on a woman conducting the body search. She was released on the same day.[51]

42. OHCHR is following the cases of two individuals detained by 'MGB' of 'Luhansk people's republic'. A blogger who lived in Luhansk and published information about daily life there was detained in November 2016. He was 'charged' with "espionage" against the 'Luhansk people's republic' on behalf of the Ukrainian authorities and "inciting inter-ethnic hatred". Apart from a few videos of his "confession" which were published by 'MGB', there is no information about his whereabouts or fate. Vitalii Rudenko, a judge at the Luhansk regional court of appeal, was detained at the Stanytsia Luhanska crossing point in October 2016. As of 15 May 2017, he remained detained in Luhansk and OHCHR was denied access to him.[52] In addition, OHCHR remains concerned about the fate of five adolescents from Yasynuvata who have been detained by 'MGB' in Donetsk since the end of August 2016[53] and calls for their immediate release.

43. Armed groups continued the practice of 30-day 'administrative arrest', during which victims are not allowed to see lawyers or relatives, and which is often prolonged. OHCHR documented the cases of two men detained by 'MGB' in Donetsk city in February 2017.[54] In one case, armed men wearing camouflage and balaclavas broke into a man's house in Donetsk and arrested him in front of his family, including his child.[55] The following day, 'MGB' confirmed the man was under 30-day 'administrative arrest'. In March, 'MGB' informed his family that the detention was prolonged for another 30 days, without providing any information on his whereabouts. The victim was only allowed to call his wife twice[56], and during the first call, she understood by his voice that he was in physical pain. In April, the family was informed that the victim had been charged with "espionage". As of 15 May, his place of detention remained unknown and his lawyer did not have unimpeded access to him.[57]

44. In November 2016, armed men in camouflage and balaclavas entered a woman's house in Donetsk, conducted a 'search', and took her to an unknown direction. Her relatives were later informed by 'MGB' that she was under 30-day 'administrative arrest' but with no indication as to the reasons for this or her whereabouts. In February 2017, the family was informed that the victim was transferred to the 'pre-trial detention facility' ('SIZO') in Donetsk city where she remained as of 15 May.[58]

45. OHCHR documented cases of detention of civilians by the 'police department for fighting organised crime' ('UBOP') in Donetsk city. For example, in December 2016, a man was apprehended by unknown armed men in his home in Donetsk. A 'search' was conducted and some of his personal belongings were 'confiscated'. Allegedly, the victim was detained by 'UBOP', severely beaten, and required medical care at a hospital before being admitted to the 'SIZO' in Donetsk.[59]

[51] HRMMU interview, 11 April 2017.
[52] HRMMU interview, 24 April 2017.
[53] HRMMU interview, 28 April 2017.
[54] HRMMU interview, 19 April 2017.
[55] HRMMU interview, 10 March 2017.
[56] On 6 and 27 February 2017.
[57] The lawyer does not have regular access to his client, and when he is able to speak with him, there are restriction placed. HRMMU interview, 24 April 2017.
[58] HRMMU interview, 24 April 2017.
[59] HRMMU interview, 22 February 2017.

3. Torture and ill-treatment

> *"Thinking about my finger being cut off was too much for me, so I told them what they wanted to hear."*
>
> – Victim of torture

46. OHCHR documented new cases of individuals accused of conflict-related charges being subjected to torture and ill-treatment on both sides of the contact line, a pattern which has been previously identified by OHCHR.[60] While the gravity and frequency of such cases has reduced compared to the previous years of conflict, the practice has persisted. Victims of torture who remained in detention continued to have limited access to healthcare, which often aggravated their condition.[61]

47. OHCHR recorded new accounts from victims and witnesses suggesting the systematic use of torture and ill-treatment of conflict-related detainees by SBU officals in order to extract confessions.

48. During the reporting period, OHCHR documented five cases involving nine individuals who were tortured at the Kharkiv SBU premises in 2015-2016,[62] some of which are described below. On 29 April 2015, an anti-Maidan activist was detained by 15 unidentified armed men, who took him to the Kharkiv SBU building, where he was beaten with a baseball bat and subjected to waterboarding. The perpetrators also removed his pants and burned his buttocks with a lighter, while demanding he confess to storing weapons. The victim consequently suffers from a permanent limp.[63] Another victim was detained and beaten in his apartment by SBU Alfa squad on the night of 30 May 2015, before being taken to the Kharkiv SBU building, where he was thrown on the floor, kicked and punched by officers while handcuffed. During interrogation, the victim was subjected to the "swallow" torture method: while standing on his back, the perpetrators raised the victim's arms behind his back, causing great pain to joints.[64] Another victim was brought to the Kharkiv SBU building on 29 May 2015, after being detained at a checkpoint. Officers beat and punched him, demanding he confess to terrorist activities.[65] All three victims were transferred to the pre-trial detention center in Kharkiv, where they remained as of 15 May 2017.

49. OHCHR also documented new cases of torture and ill-treatment of former members of armed groups. On 8 October 2016, a member of an armed group was captured by Ukrainian forces near Vodiane village. Although he had been shot, he was not provided with medical aid. He was taken to the Mariupol SBU building, where he was interrogated about the armed groups' military positions. He was kicked until he fell to the ground, and a plastic bag was fixed over his head with duct tape, causing suffocation. The perpetrators threatened to hurt his family and to send him to clear a minefield. The victim remained in detention as of 15 May.[66] Similarly, a member of the armed groups was detained in April 2015 and brought to the SBU building in Mariupol. He was kept for a five-day interrogation, during which he was beaten all over the body, electrocuted, waterboarded and threatened with execution. The

[60] *See* OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 42-50.
[61] HRMMU interview, 6 April 2017.
[62] HRMMU interviews, 28 February, 7, 10, 15 and 29 March, 12 April 2017; Trial monitoring, 14 and 26 April 2017.
[63] HRMMU interview, 7 March 2017.
[64] HRMMU interview, 10 March 2017.
[65] HRMMU interview, 29 March 2017.
[66] HRMMU interview, 15 February 2017.

detainee was then transferred to the pre-trial detention centre in Starobilsk, where he remained as of 15 May.[67]

50. In December 2016, a former member of an armed group was detained in Zolote-4. He was shot in the leg, then his hands were duct-taped and his head was covered. While he was lying on the ground, the officers hit his face with the butt of a gun, breaking his lip. He was then put in a vehicle, where he was beaten and kicked while being interrogated. After a few hours, he was brought to the Sievierodonetsk SBU, where he was further interrogated. The investigator presented him his 'testimony', forcing him to sign it without reading. He was subsequently allowed to see a lawyer and taken to a hospital. As of 15 May, the victim remained in pre-trial detention centre in Starobilsk.[68]

51. On 24 June 2016, members of the Ukrainian Armed Forces detained a member of an armed group in Luhansk region, after wounding him. He was transferred to SBU in Starobilsk where he was interrogated and beaten by three SBU officers for four hours until he signed a "confession" written by one of the officers. He was then taken to a hospital and tied to a bed. One of the officers who guarded him directed a lamp into his eyes and left it on for two days. After he was released from hospital, the victim was transferred to Sievierodonetsk SBU, where he had access to a lawyer for the first time. As of 15 May, he remained in pre-trial detention centre in Starobilsk.[69]

52. OHCHR is concerned about ineffective investigations into allegations of torture and ill-treatment brought by victims to law enforcement officers or raised in court. According to the SBU, the incidents in June and December 2016 described above were reviewed, however neither the investigating judge nor regional SBU office found grounds to request an official investigation. Three investigations and 14 audits of possible human rights violations in SBU facilities in Luhansk region were also carried out, however no unlawful acts were found., Furthermore, there have been no developments in the investigations led by the Military Prosecution of allegations of arbitrary detention and ill-treatment in 13 incidents allegedly involving SBU officers in Odesa and Zaporizhzhia. The victims have not yet been interviewed by the prosecutor.[70]

53. OHCHR also followed at least 12 individual cases where victims raised allegations of torture and ill-treatment before court. In these cases, undue delays occurred in entering the allegations in the unified registry and in taking investigative steps. OHCHR recalls that the Government bears primary responsibility to conduct full-scale, prompt, impartial and effective investigations into human rights violations and to prosecute perpetrators, whether they are elements of Government forces or members of armed groups. The Government must also establish effective complaint mechanisms, prompt and effective ex officio investigation into cases of torture and ensure that any person who has been subjected to torture has access to an effective remedy.

Armed groups

54. OHCHR continued documenting cases of torture on territory controlled by armed groups. Due to limited access to places of deprivation of liberty, OHCHR is often able to document such cases only after the release of individuals, when they move to Government-controlled territory and are able to speak more freely about their experiences.

55. In October 2016, a man was detained at a checkpoint controlled by armed groups in Donetsk region and brought to a 'police unit' in Donetsk. He was interrogated on three occasions, and severely kicked and beaten with fists and a truncheon while handcuffed. Three

[67] HRMMU interview, 13 April 2017.
[68] HRMMU interview, 21 February 2017.
[69] HRMMU interview, 21 February 2017.
[70] *See* OHCHR report OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 66.

or four times, a plastic bag was put over his head, causing him to suffocate. One of the interrogators threatened to cut off one of his fingers, and made him believe this act was imminent. Another perpetrator threatened him with a gun, saying his body would be found in the river. The victim was also subjected to electric shocks on his back, head and the flank of his body. He was released in December 2016.[71]

56. OHCHR also documented the case of a man who was detained at a checkpoint run by an armed group in March 2015, and brought to Dokuchaievsk. He was tortured by armed men in uniforms of 'Donetsk people's republic', beaten with truncheons until they broke, subjected to electric shocks, and smashed in the head. He was brought to a hospital and then transferred to the seized former SBU building in Donetsk city, where he was tortured again in the same manner. Later, the victim was tied to a chair, interrogated, and beaten with a plastic pipe. One of the perpetrators fastened a belt around his neck and tightened it until the victim lost consciousness. Electric shocks were used repeatedly. The perpetrators also threatened that he would be forced to blow himself up. The victim was released in April 2016.[72]

57. OHCHR obtained more details on the case of 13 Ukrainian soldiers captured by armed groups near Debaltseve in February 2015.[73] The victims were struck in the head with rifle butts, forced to remove their jackets despite the very low temperatures, and ordered to kneel for four hours in the snow, causing their legs to go numb. Some members of the armed groups put knives to their faces and threatened: "What do you want me to cut off, an eye or an ear?" All the victims were subsequently transferred to a building in Luhansk, allegedly housing the 'separate commandant's regiment of the 2nd army corps of 'Luhansk people's republic army'. During interrogations, the soldiers were severely beaten. One soldier was held in a cell with a civilian whose body was completely blue, ostensibly as a result of severe beatings. The civilian stated that he was accused by armed groups of being a spotter and was tortured until he 'confessed'. The soldiers were later released while the fate of the civilian remained unknown.

58. OHCHR also documented the case of three Ukrainian soldiers who were captured by armed groups of 'Prizrak' (phantom) battalion in Luhansk region in August 2014. They were beaten all over their body by several armed men every evening. One perpetrator with the call sign "Leshyi" stabbed the victim in the palm, cut his finger and broke his arm with the butt of a machine gun. Requests for medical aid were denied and food was not provided. The victims were also subjected to mock executions. One victim was transferred to another building, where he was kept in solitary confinement and regularly beaten. The perpetrators also poured icy water on his head, broke his arm and shot him in the foot. He was taken to the toilet and severely hit with riffle butts. When he was lying on the floor, bleeding, a fake grenade was thrown into the toilet. After that, the wife of one of the commanders urinated on him. He was released towards the end of the 2014.[74]

4. Exchanges of individuals deprived of liberty

59. No releases within the "all for all" exchange foreseen in the Minsk agreements took place during the reporting period, despite ongoing discussions of the Working Group on Humanitarian Issues of the Trilateral Contact Group in Minsk, and the attestation of the willingness of individuals in Government custody to be relocated to territory controlled by armed groups upon their release which was carried out from 28 April to 12 May.

60. The Government continued to urge for the release of 121 individuals who are believed to be held in captivity by the armed groups, while the armed groups acknowledged holding only

[71] HRMMU interview, 22 February 2017.
[72] HRMMU interview, 16 February 2017.
[73] HRMMU interviews, 23 February 2017. *See also* OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 50.
[74] HRMMU interview, 14 April 2017.

47 of them.[75] The armed groups were seeking the release of 771 individuals who they believed were held or residing in Government-controlled territory.

61. OHCHR considers it essential that individuals who are exchanged are not relocated to the other side of the contact line against their will. OHCHR also reiterates that no impunity should be granted to perpetrators of war crimes in the context of the pardoning or amnesty envisaged in the Minsk agreements.

5. Transfers of pre-conflict prisoners to Government-controlled territory

62. The total number of pre-conflict prisoners in territory controlled by armed groups is estimated at approximately 9,500.[76] On 11 April, 14 pre-conflict prisoners from several penal colonies controlled by the 'Donetsk people's republic' were transferred to Mariupol SIZO. According to the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson's Office of Ukraine), since 2015, 147 prisoners were transferred from territory controlled by armed groups of the 'Donetsk people's republic'. As of May 2017, at least 735 prisoners had filed requests to the Ombudsperson's Office of Ukraine and supposedly to the relevant 'authorities' of the 'Donetsk people's republic' and 'Luhansk people's republic' indicating their wish to be transferred to Government-controlled territory.

6. Conflict-related sexual violence

63. During the reporting period, OHCHR continued to document cases of conflict-related sexual violence. Most of the cases reflected in the report took place in 2015-2016. Similarly as for torture, these cases are often reported only after a certain time has passed following the violation. As described in previous report of HRMMU,[77] sexual violence has most often been perpetrated in the context of deprivation of liberty, against both men and women and may, in some instances, amount to torture.

64. The presence of armed actors in residential areas remained one of the highest risk factors for sexual and gender-based violence, especially against women. When victims have reported these crimes, effective investigations have been rare due to shortcomings in legislation and lack of will and capacity of law enforcement. Victims living in territory controlled by armed groups have been particularly hesitant to report the incidents, including due to fear and absence of access to justice. The identification and documentation of sexual violence cases has also been impeded by the lack of regular access to places of deprivation of liberty in territory controlled by armed groups.

65. OHCHR continued to verify allegations of torture with elements of sexual violence perpetrated by SBU officers against conflict-related detainees with a view to extracting confessions.[78] For example, OHCHR interviewed two men detained by SBU in April 2015 on conflict-related charges.[79] One was stopped on the road by unidentified armed men, handcuffed and hooded, and brought to the Kharkiv SBU building. He was interrogated and ordered to confess to being a member of "Kharkiv partisans". He was kicked in the stomach and hit on the head. One of the SBU officers grabbed and twisted the victim's genitals. During this ordeal, which lasted for about an hour, officers continuously threatened his family.[80] In another case, a man was detained by SBU at his friend's house, where he was beaten in the groin before being interrogated. The SBU officers put a gas mask over his head

[75] Forty-two held in territory controlled by 'Donetsk people's republic' armed groups and five in territory controlled by 'Luhansk people's republic' armed groups.
[76] Based on data of the Penitentiary Service of Ukraine from before the conflict.
[77] *See* OHCHR report on Conflict-Related Sexual Violence in Ukraine covering the period from 14 March 2014 to 31 January 2017, available at http://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf.
[78] HRMMU interviews, 11 and 12 April 2017.
[79] Articles 258(2)-(3) (1), (terrorism) 263(1) (unlawful handling of weapons), 110(2) (trespass against territorial integrity and inviolability of Ukraine), 201(2) (smuggling) with article 28(2) qualification (group commission).
[80] HRMMU interview, 15 March 2017.

and closed the inhale/exhale tube to cause suffocation, threatening him with additional physical violence. When the SBU officers threatened to give his girlfriend's address to the Right Sector[81], saying they would *"do anything"* to her, the victim agreed to 'cooperate' and sign everything.[82] Both victims remained in detention as of 15 May 2017. Similarly, a man arrested in his home in January 2015 was brought to Volnovakha SBU, where he was tied to a radiator, beaten and kicked on his body and head, causing him to lose consciousness several times. The perpetrators forced him to sign a 'confession', threatening that they would rape his wife, cut her to pieces and force him to eat them.[83]

66. OHCHR also documented three cases of sexual and gender-based violence perpetrated against women by members of Ukrainian Armed Forces positioned in residential areas. In October 2016, in Marinka, a woman was alone in her house when two drunk soldiers broke in.[84] They started touching her and one tried to pull her skirt down. She screamed and struggled, and one of the perpetrators hit her in the face with a metal bowl, injuring her nose and lip. She managed to escape to another room and call the owner of the house who contacted the police and the commander of the military unit. A complaint was filed with the police department, but when the police questioned her, they told her the incident was her fault. Later the police investigator told her the case had been closed due to lack of evidence.

Armed groups

67. On 5 May, in Petrivske, a member of the armed groups equipped with an assault rifle intimidated an unarmed female patrol member of the OSCE SMM by making comments of a sexual nature and threatened to stop the patrol from moving further until his demands were met. The OSCE monitors left the area via a different road.[85]

68. On 28 June 2014, in a village controlled by armed groups in Luhansk region, a woman and her four-year-old daughter were outside their house when six armed men drove up and ordered her to open the garage.[86] When she refused, one of the men threatened to rape her with his machine gun. He poked at her daughter's buttocks with the gun, threatening to rape her together with her daughter. He shot several times into the ground near the woman's legs, injuring her toe. On the same day, the victim's husband reported the case to the commander of the armed group. A month later, he was detained by the same armed group and severely beaten for six days. The family left the territory controlled by armed groups immediately after his release.

[81] The Right Sector defines itself as a national liberation movement, which consists of a political party founded in November 2013, a battalion called Ukrainian Volunteer Corps formed in April 2014 and a youth wing called "Right Youth". It is considered by many a far-right political and military group, and has been implicated in several human rights violations.
[82] HRMMU interview, 17 March 2017.
[83] HRMMU interview, 12 April 2017. According to the SBU, none of the seven persons of Volnovakha region or surrounding areas who were detained in January 2015 raised a claim of torture or ill-treatment.
[84] HRMMU interview, 20 March 2017.
[85] Latest from the OSCE SMM, based on information received as of 19:30, 5 May 2017, available at http://www.osce.org/special-monitoring-mission-to-ukraine/315761 and statement of 8 May 2017, available at http://www.osce.org/special-monitoring-mission-to-ukraine/315891.
[86] HRMMU interview, 9 March 2017.

III. Accountability and administration of justice

> *"The investigator said in the presence of my lawyer, 'but these were our guys. Why would we collect evidence against them?' - explaining why he did not take finger prints at the site of looting in my house."*
>
> - Resident of a village near the contact line

69. The reporting period covers the third anniversary of the killings of protesters at Maidan in Kyiv, launch of the security operation in eastern Ukraine and 2 May 2014 violence in Odesa, events which had significant detrimental impact on the human rights situation in the country. Three years after these events, victims continue to seek accountability for killings and other human rights violations. Investigations and prosecutions against perpetrators of violence during the demonstrations in Kyiv and Odesa appear to be selective and lacking examination of possible responsibility of senior officials. Human rights violations and abuses perpetrated in the context of over three years of armed conflict remain largely uninvestigated, preventing accountability for such violations. The resulting environment of impunity for such actions may lead to further violations and abuses.

70. When judicial proceedings do move forward in conflict-related cases, there are indications of possible bias against individuals prosecuted for alleged affiliation with armed groups, resulting in violations of the right to a fair trial. In territory controlled by armed groups, OHCHR continued to observe the development of parallel structures to replace the judiciary, law enforcement, and security forces in certain parts of Donetsk and Luhansk regions. The operation of these structures contradicts the Constitution of Ukraine and Minsk agreements and they do not comply with basic principles and standards of fair trial and the right to liberty and security of person.

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

71. Three years after the killing of protestors and law enforcement officers at Maidan, Kyiv, and the violence in Odesa, OHCHR is concerned that efforts to bring perpetrators to account have still not produced tangible results.

1. Accountability for the killing of protestors at Maidan

72. Despite efforts of the Office of the Prosecutor General to bring those responsible for the killing of protestors and others during the Maidan events in Kyiv, no former senior official has been held accountable.[87] As of 15 May, the Office of the Prosecutor General had identified the individuals responsible for the killing of 65 protestors, and brought charges against a number of them,[88] while investigations into the deaths of 13 other protestors were ongoing.

[87] *See* OHCHR report on accountability for killings in Ukraine from January 2014 to May 2016, Annex I, Table 1.
[88] Three Berkut servicemen are charged with killing three and injuring 33 protesters on 18 February 2014; one protestor is on trial for killing another protestor on 18 February 2014; six Berkut servicemen and former SBU senior officials are charged with killing ten and other intended actions that led to deaths of two protesters as a result of 'anti-terrorist operation' launched in central Kyiv into the night of 19 February 2014; three individuals (the so-called 'titushky' hired by officials to attack protestors in order to legitimize police intervention dispersing protests under the guise of ensuring public order) are charged with killing journalist Viacheslav Veremii on 19 February 2014 (the pre-trial investigation against two suspects is ongoing, while the third suspect was put on a wanted list) and 32 Berkut servicemen accused of killing 48 and attempted killing of 80 protestors on 20 February 2014 (five remain in custody pending trial while the others have escaped jurisdiction).

73. OHCHR welcomes the completion of the pre-trial investigation into the killings of three protestors and attempted killing of 33 protestors at Kriposnyi Lane on 18 February 2014.[89] However, OHCHR notes the failure of the authorities to prevent the accused, a Berkut serviceman, from fleeing justice shortly after his release from pre-trial detention,[90] along with two other Berkut servicemen accused of torturing Maidan protesters.[91]

74. While noting that the measure of pre-trial detention should be applied only where necessary, OHCHR recalls that the release of accused persons "may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement".[92] Given that at least 12 Berkut servicemen suspected of killing protestors at Maidan had already fled to the Russian Federation,[93] OHCHR is concerned whether the judiciary took adequate precautions to ensure the appearance at the trial of the recent absconder. This is especially troublesome considered together with the propensity of courts to impose pre-trial detention in conflict-related cases (*see* Due process, fair trial rights, and interference with the judiciary *below*).

75. OHCHR reiterates its concern with lack of progress in the investigation into the killings of 13 police officers on 18-20 February 2014,[94] due to legal provisions prescribing that individuals who participated in mass gatherings and are suspected or accused of crimes during the Maidan protests, including violence against a law enforcement officer, shall be exempted from criminal responsibility.[95] The authorities have thus failed in their obligation to ensure an effective remedy for relatives of the killed police officers.

76. The trial *in absentia* of former President Viktor Yanukovych on charges of high treason, facilitating infringement of territorial integrity of Ukraine, and facilitating waging aggressive war against Ukraine, commenced on 4 May. He is also suspected, along with other former senior officials, of abuse of authority or office in relation to the forceful dispersal of protesters on 30 November 2013 that marked the beginning of the Maidan protests. According to the Office of the Prosecutor General, the investigation into the role of the former president in the Maidan events is on hold due to his escape. Thus, OHCHR is concerned that the most senior officials may escape accountability for the human right violations committed during the Maidan events.

2. Accountability for the 2 May 2014 violence in Odesa

77. No progress was observed in bringing to account those responsible for the death of 48 people in Odesa on 2 May 2014.[96] Actions taken thus far appear selective and suggest possible bias.

78. On 15 May, in the trial of 20 members of 'pro-federalism' groups, which has lasted for over two years, the Malynovskyi district court of Odesa disqualified the presiding judge

[89] On 27 March, the Office of the Prosecutor General reported the submission of an indictment against two Berkut servicemen on charges of killing three protesters on 18 February 2014 at Kriposnyi Lane.
[90] On 14 April 2017, the accused, along with three other Berkut servicemen (two accused of torturing a Maidan protester in January 2014 and the third accused of attacking journalists at a checkpoint in Kharkiv region) uploaded a video on YouTube stating they had fled to the Russian Federation as they had no faith in a fair trial by Ukrainian courts. The Head of the Special Investigations Department of the Office of the Prosecutor General confirmed that they had absconded.
[91] On 6 April 2017, the court of appeal of Kyiv changed the measure of restraint for the accused from remand in custody to personal commitment to appear in court for trial.
[92] International Covenant on Civil and Political Rights, Article 9.3.
[93] *See* OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 82.
[94] *See* OHCHR report on Accountability for killings in Ukraine covering the period from January 2014 to May 2016, Annex I, Table 2.
[95] Law "On prevention of persecution and punishment of individuals in respect of events which have taken place during peaceful assemblies and recognizing the repeal of certain laws of Ukraine". The law also calls for the destruction of case files.
[96] *See* OHCHR report on Accountability for killings in Ukraine covering the period from January 2014 to May 2016, Annex I, Table 3.

and two of the three judges on the bench.[97] The case will now need to be retried from the beginning. On the same day, the Malynovskyi district court submitted an appeal requesting to transfer the case to another court as it is unable to form a new panel in compliance with the Criminal Procedure Code.[98] OHCHR is concerned that the protracted proceedings may result in prolonged detention of five of the defendants who have been remanded in custody since May 2014.

79. By contrast, the trial of one member of 'pro-unity' activist groups, who is the only individual charged with killing, has not yet commenced, and he enjoys full freedom, without any measure of restraint. Three officials of the Odesa regional department of the State Emergency Service accused of failing to assist persons trapped in the burning House of Trade Unions, which resulted in 42 deaths, are also free pending trial.

80. To address public distrust in the investigation of 2 May 2014 violence, the Office of the Prosecutor General is seeking independent foreign experts to assist in defining the precise cause of death of 34 people who perished in the Trade Union building.

3. Accountability for the 31 August 2015 violence in Kyiv

81. The investigation into the violence which occurred in front of the Parliament in Kyiv on 31 August 2015[99] was divided into two categories: mass disturbances and terrorist act.[100] Both investigations have been completed, resulting in the indictment of 15 individuals, including four former members of Parliament from the 'Svoboda' political party and two former participants in the security operation in the east. The first case, before the Podilskyi district court of Kyiv,[101] has been characterized by delays and regular rescheduling of hearings, particularly due to non-appearance of the parties, victims or witnesses. Preparatory hearings for the trial in the second case,[102] before the Shevchenkivskyi district court of Kyiv, have not yet begun due to the failure of the court to compose the jury panel.

82. In a separate proceeding, on 17 March 2017, the Bratskyi district court of Mykolaiv region issued the first judgement on this incident, convicting one of the participants and sentencing him to six years in prison.[103] The decision has not yet entered into force pending an appeal.

[97] The court disqualified the presiding judge and two panel members, referring to Article 76(2) of the Criminal Procedure Code (Inadmissibility for a judge to re-participate in criminal proceedings) as well as an official response from the Supreme Court of Ukraine to the court of appeal for Odesa region.
[98] Because one of the accused was a minor at the time of the incident, the presiding judge must be authorized to conduct criminal proceedings involving juveniles. Article 31(10), Criminal Procedure Code.
[99] *See* OHCHR report on Accountability for killings in Ukraine covering the period from January 2014 to May 2016, Annex I, para. 5.
[100] According to the Ministry of Internal Affairs, mass clashes between protesters and police officers, and the explosion of a hand grenade claimed the lives of four National Guard servicemen and left 144 law enforcement personnel injured.
[101] On 28 July 2016, the Office of the Prosecutor General reported completion of the investigation into mass disturbances near the Parliament and submission of an indictment against 15 individuals to Pecherskyi district court of Kyiv.
[102] On 7 July 2016, the Office of the Prosecutor General reported completion of the investigation into the terrorist act near the Parliament against two individuals.
[103] The court admitted this individual case from the 31 August event after the accused perpetrated another crime in Mykolaiv region.

B. Accountability for human rights violations and abuses in the east

> *"You need to be a kamikaze if you register your injuries. If they learn about it, they will make you disabled and will deal with your family."*
>
> - Conflict-related detainee, subjected to torture

83. After three years of hostilities, victims continue their quest for accountability and redress for conflict-related human rights violations. Accounts, for example, of those detained on charges of membership in armed groups reveal widespread practices of enforced disappearance, arbitrary detention, torture and ill-treatment, carried out by or at the behest of Government authorities.[104] These techniques are used for the purposes of compelling victims to testify against themselves with a view to prosecuting them.

84. At the same time, Ukrainian law enforcement and security forces often refute detainees' complaints of human rights violations as a defence tactic, which may contribute to the systemic failure to adequately investigate such allegations. Such an attitude has, to a large extent, contributed to victims' mistrust in national redress mechanisms, leading them to refrain from filing complaints.[105] The conditions of people subjected to torture and ill-treatment often deteriorated due to the failure of the medical personnel of penitentiary facilities to properly document the injuries of victims upon their arrival.[106] OHCHR recalls that the Government bears the responsibility to investigate allegations of grave human rights violations including torture, ill-treatment and arbitrary detention. OHCHR stresses that victims of abuse of power are entitled to access to justice and to prompt redress, as provided for in national legislation, for the harm that they have suffered.[107]

85. OHCHR welcomes the completion of the trial against 12 former members of the 'Tornado' special police regiment charged with grave human rights violations including arbitrary detention, abduction, torture, and violent "unnatural gratification of sexual desire" during the security operation in the east.[108] On 7 April, after a year-long closed trial, the Obolonskyi district court of Kyiv convicted all defendants, sentencing eight of them to various prison terms and releasing four on probation. OHCHR is concerned that despite strong evidence of the killing of at least one individual,[109] none of the perpetrators was held accountable for this act. OHCHR continues to follow cases involving other battalions, including the 24th separate storm battalion 'Aidar'[110] and 'Donbas' special battalion of the

[104] Over the reporting period, OHCHR documented at least seven cases (HRMMU interviews, 21 and 22 February 2017) of individuals arbitrarily detained and ill-treated by armed men near the Government-controlled city of Mariupol. After a period of time, the individuals were handed over to law enforcement agencies and prosecuted on charges of membership in the terrorist organization 'Donetsk people's republic'. This raises concerns that the perpetrators acted with the consent or acquiescence of the Security Service of Ukraine.
[105] HRMMU interview, 21 February 2017: The victim stated that three days after being arrested by Ukrainian soldiers, he was brought before the SBU investigator and then first met his lawyer. Despite clear bodily signs of physical abuse, neither of the investigator nor the lawyer reacted. Pressured by torture and death threats, the victim signed a paper containing self-incriminating statements.
[106] HRMMU interviews, 21 February, 12 and 13 April 2017.
[107] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985, 96th plenary meeting.
[108] Eight defendants, including the commander of the battalion and his deputy, were sentenced to terms of imprisonment ranging from eight to 11 years. Four others were released on probation. Both the prosecution and defence counsel expressed intention to appeal the verdict.
[109] *See* OHCHR report on Accountability for killings in Ukraine covering the period from January 2014 to May 2016, Annex I, para. 106-108.
[110] *See* OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, para. 56.

National Guard,[111] whose members, according to victims' accounts, have perpetrated grave human rights violations while taking part in the security operation.

86. OHCHR continued to follow the ongoing investigation conducted by the Office of the Prosecutor General into arbitrary detention and enforced disappearances[112] at the premises of the Kharkiv Regional Department of SBU[113] but is not aware of any developments in this regard. OHCHR further notes a lack of progress in ensuring accountability for the killings of Oleh Kalashnikov[114] and Oles Buzyna,[115] on 15 and 16 April 2015, respectively.

87. Despite continued lack of access to territory controlled by armed groups, which negatively affects the ability of Ukrainian law enforcement to conduct full investigations, the Office of the Prosecutor General and SBU continued investigating human rights abuses perpetrated by the armed groups.[116] On 13 May, SBU charged *in absentia* "nine leaders of the so-called 'penal corrections department of the ministry of internal affairs of Luhansk people's republic'" with membership in a terrorist organization, but did not address evidence suggesting that they perpetrated grave human rights violations.[117] The Office of the Prosecutor General informed OHCHR that since the beginning of the security operation on 14 April 2014, the National Police have opened 2,845 pre-trial investigations for illegal detention, abduction of persons and hostage-taking in Donetsk and Luhansk region, which resulted in 79 indictments.

88. OHCHR notes that none of the members of the armed groups has been brought to account for such human rights abuses as torture, ill-treatment or arbitrary deprivation of life. Instead, the majority are prosecuted for their mere armed group membership. OHCHR further notes that, for the first time, charges of violation of rules and customs of war have been brought against seven members of armed groups with regard to the arbitrary execution, illegal detention, torture and ill-treatment of Ukrainian soldiers and civilians.[118]

[111] Five members of the battalion are currently on trial in Krasnoarmiiskyi district court (Donetsk region) facing numerous charges including abduction, armed robbery, extortion, banditry, and hooliganism. For more details, *see* OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2016, para. 73.

[112] HRMMU interviews, 24 and 26 February, 7 March 2017.

[113] *See* OHCHR reports on the human rights situation in Ukraine covering the periods from 16 November 2016 to 15 February 2017 (para. 41), 16 August to 15 November 2016 (para. 35) and 16 May to 15 August 2016 (para. 45).

[114] *See* OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, para. 70.

[115] Ibid.; OHCHR report on Accountability for killings in Ukraine covering the period from January 2014 to May 2016, Annex I, para. 79-82.

[116] For more details *see* 17th OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 63-65.

[117] On 15 May, SBU released a video of a former prisoner released from Alchevsk penitentiary facility no. 13 (facility dedicated for prisoners with tuberculosis, located in the territory controlled by armed groups) stating that the prisoners were subjected to physical suffering and deprived of medical treatment and protection. Prisoners who refused to obtain a 'passport' of the 'Luhansk people's republic' reportedly suffered the most. Moreover, during active hostilities, for instance in Debaltseve, prisoners were forcefully recruited into the armed groups. If they refused, they were subjected to solitary confinement and deprived of food. After they were handed over to the armed groups, their documents were destroyed and they never returned. *See* SBU press release, 15 May 2017, available at https://ssu.gov.ua/ua/news/4/category/21/view/3340#sthash.I1BfhtGM.gcbeTIzy.dpbs.

[118] The suspects include the 'commander' of the 'Somali' battalion of 'Donetsk people's republic', 'commander' of the 'All-great army of Don' of 'Luhansk people's republic', 'commander' of the 'investigators' of the 'separate commandant's regiment of the 2nd army corps' of 'Luhansk people's republic', Major General of the Armed Forces of the Russian Federation holding the position of the 'deputy minister' of the 'ministry of state security' of 'Luhansk people's republic', First Deputy Head of the General Staff of the Armed Forces of the Russian Federation, and Ukrainian members of armed groups of 'Donetsk people's republic'.

C. Due process, fair trial rights, and interference with the judiciary

> *"Why I changed my testimony and plead guilty now? I just want this trial to end."*
>
> - Defendant in conflict-related case, detained since October 2015, seated in metal cage during the hearing and breaking into tears

89. OHCHR continued monitoring of trials of individuals charged with affiliation with armed groups, and other high-profile cases, noting systematic violations of the right to a fair trial and other related human rights standards. In particular, OHCHR observed that courts continued to apply custodial detention to suspects accused of affiliation with armed groups without assessing its necessity.[119] This approach also entails the practice of automatic extension of pre-trial detention,[120] and undermines the process of judicial review of lawfulness of detention. OHCHR recalls that pre-trial detention should not be mandatory for all defendants charged with a particular crime, but should be based on an individualized determination that it is reasonable and necessary, taking into account all circumstances of the individual case.[121]

90. OHCHR also noted repeated delays in trials[122] which, coupled with the above-mentioned practice, inevitably lead to prolonged pre-trial detention and may therefore jeopardize the presumption of innocence.[123] OHCHR recalls that individuals subjected to remand custody pending trial must be tried as expeditiously as possible, and that when delays become unavoidable, the court must reconsider alternatives to pre-trial detention.[124]

91. In the course of trial monitoring and interviewing of defendants in conflict-related criminal cases,[125] OHCHR received credible accounts of the SBU obtaining evidence by torture, including witness 'testimony' and 'confessions'. Such evidence has subsequently been admitted by courts,[126] sometimes despite victims' complaints to the court regarding their nature. For example, on 20 March, Dobropillia city district court of Donetsk region issued a guilty verdict against the defendant despite an ongoing investigation into his complaint of ill-treatment and arbitrary detention.[127]

92. OHCHR continued to witness attempts by various actors to interfere with the judiciary. During trial monitoring, it observed intimidation and physical abuse of judges by organized groups of individuals claiming to be 'patriots'.[128] Tolerance of such behaviour by

[119] Article 176(5) of the Criminal Procedure Code of Ukraine prohibits the use of any measure of restraint other than detention on remand for individuals suspected or accused of, *inter alia*, membership in terrorist organizations or unlawful armed formations, which are the charges most often lodged against conflict-related detainees.
[120] HRMMU trial monitoring of Zhovtnevyi district court of Dnipro, 15 and 16 March 2017; HRMMU trial monitoring of court of appeal of Zaporizhzhia Region, 6 April 2017; HRMMU trial monitoring of Zhovtnevyi district court of Zaporizhzhia, 16 March 2017.
[121] Human Rights Committee, General Comment No. 35 Article 9 (Liberty and Security of Person), para. 38.
[122] HRMMU monitors trials in conflict-related cases as well as a few emblematic criminal cases and noted that courts often cannot proceed with the hearing of the case due to failure of parties or witnesses to appear, or failure to transfer defendants from the pre-trial detention facility, yet they regularly extend defendants' remand in custody (e.g. case of Anastasiia Kovalenko, in pre-trial detention since December 2014, and case of former mayor of Sloviansk, in detention since July 2014 and awaiting fourth retrial).
[123] Human Rights Committee, General Comment No. 35 Article 9 (Liberty and Security of Person), para. 37.
[124] Ibid.
[125] HRMMU trial monitoring of Dzerzhynskyi city court of Donetsk Region, 26 March 2017; HRMMU trial monitoring of Slovianskyi city district court, 4 April 2017; HRMMU trial monitoring of Starobilskyi district court of Luhansk Region, 13 March 2017; HRMMU trial monitoring of Lysychanskyi city court of Luhansk Region, 5 April 2017.
[126] HRMMU interviews, 13 March, 5 April 2017.
[127] HRMMU interview, 6 April 2017; Court decision of Dobropilskyi city district court of Donetsk region, 20 March 2017, available at: http://reyestr.court.gov.ua/Review/65401324.
[128] HRMMU trial monitoring at the Malynovskyi district court of Odesa, 13 April 2017.

law enforcement, through insufficient police presence or refusal to act to secure the courtroom, remains concerning.

D. Human rights impact of armed group structures

> *"I cannot summon Zakharchenko's soldiers for questioning."*
>
> - Father of victim of summary execution by members of 'Oplot' armed group in Donetsk, quoting an 'investigator' on the case

93. OHCHR continued to monitor the impact of parallel structures of 'Donetsk people's republic' and 'Luhansk people's republic' on the human rights of people residing in territory controlled by armed groups. OHCHR reiterates that armed groups are bound by international humanitarian law which *inter alia* prohibits sentencing and executions without prior judgment by a regularly constituted court that offers essential guarantees of independence and impartiality.[129]

94. On 20 April, OHCHR met with the 'deputy chair' of the 'supreme court' of 'Donetsk people's republic' and was informed that 'courts' of 'Donetsk people's republic' continue application of procedural laws of Ukraine so far as they are not in contradiction with the 'constitution' of 'Donetsk people's republic'.

95. OHCHR was also informed that in 2015, the 'courts' of 'Donetsk people's republic' took up 5,247 pre-conflict criminal cases against 6,003 individuals, including 777 detainees, which had been interrupted by the conflict and the evacuation of courts to Government-controlled territory. Reportedly, 4,763 cases against 5,439 defendants were examined by the 'courts' as of April 2017.[130] OHCHR was not able to verify whether the detainees concerned had been granted any procedural rights and safeguards. OHCHR is aware of a case involving a pre-conflict detainee whose trial began in 2014.[131] In 2015, a 'court' of 'Donetsk people's republic' convicted and sentenced the defendant to four years and six months imprisonment. One year later, a 'court of appeal' returned the case for a new 'trial' due to the fact that the 'investigation' was carried out under Ukrainian law which did not comply with 'legislation' of 'Donetsk people's republic'. The defendant has spent a total of five years in detention and the 'retrial' has not yet commenced.

96. As of 15 May, a prominent religious scholar, Ihor Kozlovskyi, remained in 'detention' in Donetsk.[132] He was deprived of his liberty on 27 January 2016 and held *incommunicado* until 29 January 2016, when his wife was informed that the 'MGB' was detaining him. HRMMU was able to monitor the "hearings" in his case before a 'military tribunal', and on 3 May observed the pronouncement of the 'judgment' and 'sentence' of two years and eight months in a high-security prison on conviction of illegal possession of weapons. Notably, that 'court' imposed maximum penalty in his case - imprisonment in a penal colony, although the 'prosecutor' requested to send him to a colony-settlement (lesser security and control, where prisoners are allowed to go outside of the settlement and visit their families etc.).

97. Parallel structures reportedly also conducted 'investigations' into human rights abuses. On 17 March, the 'chair' of the 'supreme court' of 'Donetsk people's republic' reported a 'sentence' imposed against a Ukrainian police officer for torturing supporters of

[129] Article 3 common to the Geneva Conventions; Article 6, Additional Protocol II to the Geneva Conventions; Henckaerts, Doswald-Beck, Customary International Humanitarian Law, Volume I, Rule 100.
[130] HRMMU meeting, 20 April 2017.
[131] HRMMU interview, 3 March 2017.
[132] HRMMU interview, 6 April 2017.

armed groups.[133] On 20 April, the 'deputy chair' of the 'supreme court' informed OHCHR about 46 'criminal cases' against 82 'officials' of 'law enforcement bodies' for alleged human rights abuses which had been or were being examined by 'courts' of 'Donetsk people's republic'. She also indicated that 24 such 'officials' had been 'sentenced' in nine 'criminal cases'. On 3 March, the 'prosecutor general's office' of 'Luhansk people's republic' placed a former member of the 'ministry of state security' on a 'wanted list' in relation to charges of abduction, arbitrary detention, and death threats.[134]

98. OHCHR collected credible accounts demonstrating a lack of effective remedy for victims of human rights abuses through parallel structures. An illustrative case is that of a local businessman killed on 8 November 2014 in Donetsk, allegedly by members of 'Oplot' battalion. The 'office of the military prosecutor' of 'Donetsk people's republic' started an investigation, which reportedly identified three witnesses – members of the 'Oplot' battalion. Progress, however, seems to have stalled due to reluctance of investigators to summon members of the battalion for interrogation.[135]

IV. Fundamental freedoms

A. Freedom of movement

> *"We had to stay overnight in the queue of cars that wasn't moving at all. You can hear the shooting there. I don't care who started it all! I just want to see my daughter!"*
>
> - Elderly resident of a village near Donetsk airport

99. This reporting period saw a sharp increase in the number of people crossing the contact line, with a daily average of 29,000 crossings and a peak of 45,200 in March[136] – which was substantially higher than in previous months.[137] In the second half of March, OHCHR observed alarming situations at all five crossing routes in Donetsk and Luhansk regions. In 'Marinka' corridor, where the road is the narrowest, hundreds of cars were queuing in four lines. People complained of corruption on both sides of the contact line, and about long waiting hours in degrading conditions (for example, without shelter, exposed to extreme temperatures, with limited access to potable water and toilets, sometimes carrying cumbersome luggage) including at night, when the risk of shelling is high.[138] This increase of movement was caused by the new requirement for IDPs entitled to pensions and social payments to renew their bank registration. The current regulations demand that pensioners registered in territory controlled by armed groups register as IDPs and undergo a number of verification processes in order to realize their constitutional right to social protection (*see* Situation of internally displaced persons *below*).

[133] https://dan-news.info/ukraine/sud-dnr-vpervye-zaochno-prigovoril-sotrudnika-mvd-ukrainy-k-14-godam-lisheniya-svobody.html.
[134] Website of the 'prosecutor general's office' of 'Luhansk people's republic' (available at http://gplnr.su/vnimanie-rozysk/2186-denisov-boris-aleksandrovich.html).
[135] HRMMU interview, 28 February 2017.
[136] Daily numbers provided by the State Border Guard Service, available at http://dpsu.gov.ua/ua/news/1490249414-situaciya-v-kontrolnih-punktah-vizdu-viizdu-na-linii-rozmezhuvannya/.
[137] *See* OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017. During that period, between 16,000 and 25,000 civilians crossed the contact line daily.
[138] HRMMU visits, 13, 17, 20, 23 and 24 March 2017.

100. Movement across the contact line has also been affected by a number of legislative changes regulating the transfer of goods,[139] as well as amendments introduced on 14 April to the Temporary Order which regulates movement of people.[140] The major positive outcome of the amendments is that permits for crossing the contact line will no longer expire. It is, however, important to ensure that previously-issued permits will also be recognized as indefinitely valid. Another welcome development is that residents of settlements adjacent to the contact line on the Government-controlled side will no longer need a permit to cross (as previously required). This is not, however, foreseen for those living close to the contact line on armed-group controlled territory.

101. On the other hand, other recent changes to the Temporary Order related to invalidation of a permit and to the refusal to allow a person to cross the contact line into Government-controlled territory are of concern. The clause which invalidates a permit if there is information that its holder facilitated an offence or another person's evasion of responsibility[141] is vague and does not indicate how the holder would be notified regarding such information. Also of concern is that the State Border Guard Service can deny entry to a person leaving armed-group controlled territory who "fails to prove the purpose of entering the Government-controlled territory".[142] Finally, OHCHR noted with regret that public passenger transportation across the contact line remained prohibited.

102. Recognizing that, in exceptional circumstances, the necessity to protect national security and public order may justify certain restrictions on freedom of movement, OHCHR notes that some measures may still be assessed as unnecessary and disproportionate. This is the case with the prohibition of travel in certain types of vehicles and the strict limitations on type and quantity of personal belongings allowed to be transferred which are set by the Ministry of Temporarily Occupied Territories. Such restrictions also create space for undue discretion and broad interpretation, providing grounds for corruption. This is at odds with the Government's Action Plan defining State policy towards citizens living in territory controlled by armed groups, which prioritizes fighting corruption at the contact line and improvements of crossing procedures.[143]

103. Restrictions on freedom of movement have a severe impact on the realization of social and economic rights, as described below in Chapter V. For example, for security reasons, residents of Pisky[144] who fled the area due to hostilities in 2014 are denied access to the village and cannot reunite with their families, check on their property, or farm their lands. The few who remained in the village are isolated and fully dependent on Ukrainian military personnel for delivery of potable water, bread, gas cylinders and electricity supplied from generators. Dolomitne village (controlled by armed groups) has become isolated since the Ukrainian Armed Forces closed the road to the neighbouring village of Novoluhanske (Government-controlled) on 1 January 2017. The village has no grocery store, pharmacy, clinic, or public transportation, and the mobile phone connection is poor.

[139] Resolution No. 99 of Cabinet of Ministers 'On establishing the order of transferring goods to or out of the anti-terrorist operation area', 1 March 2017, available at http://www.kmu.gov.ua/control/uk/cardnpd?docid=249790429; Order No. 39 of the Ministry of Temporarily Occupied Territories and IDPs 'On defining the list and amount of goods allowed for transferring to/from humanitarian-logistics centres and across the contact line', 24 March 2017, available at http://zakon3.rada.gov.ua/laws/show/z0417-17.

[140] Temporary Order on the control of movement of people across the contact line in Donetsk and Luhansk regions (entered into force as of 21 January 2015), available with latest changes approved by the 'Centre of the Anti-Terrorist Operation at the Security Service of Ukraine', available at https://ssu.gov.ua/ua/pages/32.

[141] Ibid, para. 7.9, point 3.

[142] Ibid, para. 5.9.

[143] The Cabinet of Ministers Action Plan aimed at implementing some principles of internal policy in specific areas of Donetsk and Luhansk regions where public authorities temporarily do not exercise their powers, as of 11 January 2017.

[144] A Government-controlled settlement in Donetsk region, in the immediate proximity to the contact line, 13 kilometres from Donetsk airport.

B. Freedom of opinion and expression

> *"Many people do not understand how we can work on both sides of the contact line. People say that we have to choose one side and report from there."*
>
> - Journalist working in Donetsk region

104. OHCHR notes an ongoing deterioration of freedom of opinion and expression in conflict-affected parts of Ukraine, particularly in territory controlled by armed groups who continued to block Ukrainian broadcasting, including through a ban of over 350 websites,[145] and to restrict access to printed Ukrainian media. On both sides of the contact line, OHCHR observed intimidation of, and attacks on media representatives and outlets, as well as self-censorship among journalists and bloggers.

105. According to the Office of the Prosecutor General, 645 criminal proceedings were registered regarding the obstruction of journalist activities during 2013-2016 across the country. Half of these cases were terminated during the pre-trial investigation phase. Only 7.1 per cent (46 cases) have been transferred to courts so far. OHCHR reiterates that effective investigation of violations against journalists would provide a more secure media environment and improve public trust in the judiciary.

106. OHCHR observed worrying signs in the domain of access to public information and open data for the general population, and particularly for investigative journalists in Ukraine. On 23 March, the apartments in Kyiv of the Chief Executive Officer of "Youcontrol" company, which monitors open data financial reports, were searched by SBU.[146] "Youcontrol" is used by many anti-corruption non-governmental organizations (NGOs) and investigative journalists.[147] In light of amendments to the law on anti-corruption adopted on 23 March (*see paragraph 112 below*), OHCHR recalls that transparent information flow should be ensured, and organizations providing access to information and promoting accountability should be shielded from political interference or intimidation.

Territory controlled by armed groups

107. Hennadiy Benytskyi, a blogger detained by 'MGB' of 'Luhansk people's republic' in December 2016, was reportedly released on 14 March. Journalists who have been granted 'accreditation' must still inform the 'press department' of the 'ministry of foreign affairs' if they plan to visit areas close to the contact line.

108. Even 'accredited' journalists were not always permitted access to all areas they wished to visit. When crossing checkpoints, journalists have been exposed to arbitrary demands, such as being required to show their footage, questioned about the purpose of their mission, or subjected to searches of personal belongings. A foreign media representative informed OHCHR that he had realized he should not report about "provocative" issues in order to be allowed to enter again, and that he avoids filming in certain locations or covering certain topics such as the seizure of commercial property by armed groups.

109. Access to information and Ukrainian internet services remained restricted. After armed groups in 'Donetsk people's republic' seized control of the provider Ukrtelekom on 1 March, customers had intermittent or no internet access. On 21 April, the 'minister of communications' of 'Luhansk people's republic' announced that the ability to call emergency

[145] Statement of OSCE Representative on Freedom of the Media, Dunja Mijatović, available at http://www.osce.org/fom/295336.
[146] The investigation is based on the Shevchenkivskyi district court of Kyiv decision on 3 March 2017 that "YouControl" illegally used an open state register in violation of the criminal code.
[147] HRMMU interview, 30 March 2017.

services (ambulance, police, fire-fighters) on short numbers (101, 102, 103, 104) was no longer available for customers using mobile operator "MTS-Ukraine" on territory controlled by 'Luhansk people's republic' armed groups.[148] Although envisaged in the Government Action Plan[149], access to Ukrainian and international information material in territory controlled by armed groups and at checkpoints remained limited.

C. Freedom of association, peaceful assembly, and religion or belief

110. OHCHR noted an improvement in the policing and security provided for various anniversary and commemorative events throughout Ukraine. The Maidan commemorations, at the end of February, were held peacefully, with isolated disturbances. OHCHR also observed improved law enforcement measures at the 2 May commemoration in Odesa, which prevented clashes. While the commemoration events of 9 May, which attracted approximately 600,000 participants around Ukraine, were generally peaceful, some were marred by minor skirmishes in several big cities, including Dnipro, Kharkiv, Kyiv, Odesa and Zaporizhzhia, resulting in bodily injuries of 32 people, the detention of 89 people and the initiation of 19 criminal proceedings.

111. Over the reporting period, OHCHR noted a worrisome development in the regulation of activities of NGOs in Ukraine. On 23 March, the Parliament voted for amendments to the Law 'On prevention of corruption', which extend financial disclosure requirements, normally applicable to civil servants, to anti-corruption NGOs.[150] The amendments include several ambiguous provisions and definitions, which may be subject to broad interpretation or abuse. The amendments could have a chilling effect on civic anti-corruption activity, as a very broad range of entities may fall within its scope.[151] OHCHR is concerned that the amendments are discriminatory in nature, targeting anti-corruption NGOs, and may violate the right to privacy of their staff.[152]

Territory controlled by armed groups

112. In territory controlled by armed groups, the space for civil society, media, and religious and humanitarian organizations remained considerably restricted. 'Authorities' of 'Luhansk people's republic' reminded religious organizations to provide documents to reconfirm their registration and legal status by 18 May 2017. While no sanction for violation of the deadline was announced, OHCHR is concerned about the possible forceful expulsion of those operating without 'confirmation'.

113. Freedom of peaceful assembly in territory controlled by armed groups has also steadily deteriorated. Since the armed groups seized control, no pro-Ukrainian demonstrations or open protests against the armed groups have taken place. For assemblies which do occur in Donetsk, participants are transported in buses in an organized manner, indicating that some attendance, for example by students and employees of 'state' enterprises, may not be fully voluntary.

[148] *See* http://lug-info.com/news/one/abonenty-mts-ukraina-bolshe-ne-mogut-zvonit-na-korotkie-nomera-ekstrennykh-sluzhb-lnr-23646.
[149] Cabinet of Ministers Action Plan aimed at implementing some principles of internal policy in specific areas of Donetsk and Luhansk regions where public authorities temporarily do not exercise their powers.
[150] Draft law No. 6172 'On amendments to article 3 of the law on prevention of corruption'.
[151] Not only do staff members and experts of anti-corruption NGOs and donor and implementing organizations fall under the new provisions, but so do their contractors and service-providers.
[152] The required e-declarations require automatic disclosure of a significant amount of personal data.

D. Discrimination against persons belonging to minorities

114. Various sources, including human rights defenders and civil society activists, reported about the forced displacement of a Roma community in Kyiv in early April.[153] Violent threats and searches conducted by unknown individuals wearing balaclavas occurred in a Roma camp located in Berezniaky district on 30 March. Fearing persecution, the Roma left the camp, which was then completely destroyed by fire on 6 April. As a result, approximately 150 members of the Roma community have been displaced. Authorities were not able to provide information on the cause of the fire, and no investigation[154] into the incident was being conducted. OHCHR urges local authorities in Kyiv to prevent forced displacement, conduct proper investigations into this incident, and ensure the victims the right to an effective remedy, including access to compensation. OHCHR is further concerned about the lack of investigation in the case concerning the forced eviction of Roma families in the Loshchynivka case in Odesa region.[155]

V. Economic and social rights

115. The conflict in eastern Ukraine has not only induced humanitarian needs among affected communities, but also aggravated a number of pre-existing systemic issues which worsened human suffering in general, and the situation of the most vulnerable in particular. Certain Government-imposed restrictions further aggravated the distress of some three million people living in territory controlled by armed groups and these unnecessary impediments may be perceived as punishment for not fleeing these areas.

116. Access to and quality of water in armed-group controlled territory of Luhansk region is of great concern. A functioning mechanism for payment for water supplied by a public utility on Government-controlled territory to territory controlled by armed groups has not been effectively implemented,[156] and the water supply company continues operating while accumulating large debts for electricity use. On 25 April, a private power-supply enterprise, "Luhansk Energy Union", cut off electricity supply to armed-group controlled territory. In addition, on 4 May, due to a broken pipe, a water company stopped supplying safe drinking water to some 460,000 in Luhansk region, 410,000 of whom reside in territory controlled by armed groups. The 'Luhansk people's republic' immediately began using alternative sources of water and power supply, including electricity from the Russian Federation. Those sources, however, are considered not sustainable, and the quality of the water is questionable. This is especially worrisome for the summer season, when lack of quantity or quality of water can lead to spread of infectious diseases. This is of concern also for Donetsk region where people on both sides of the contact line suffer from irregular water supply due to frequent damages of water infrastructure (*see* International humanitarian law in the conduct of hostilities *above*).

[153] *See* appeal concerning the events, referring to its character as "ethnic cleansing", available at http://www.irf.ua/allevents/news/zayava_schodo_podiy_u_kievi_yaki_nosyat_kharakter_etnichnikh_chistok/".
[154] According to the Advisor to the Minister of Internal Affairs, there is no investigation because no one filed a complaint with the police and there are no applicants or victims.
[155] OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 124; OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2016, para. 152.
[156] A mechanism was established on 25 August 2016 by the economic sub-group of the Trilateral Contact Group in Minsk but has not functioned consistently. According to agreement No. 16-15, Limited Liability Company 'Dzherelo Novoho Zhyttia' transfers payments for water from armed-group controlled territory to the public utility company 'Popasnianskyi Vodokanal' on Government-controlled territory. As of 1 April 2017, the debt of 'Dzherelo Novoho Zhyttia' to 'Popasnianskyi Vodokanal' was 28,521,634 UAH.

A. Right to social protection

117. Despite numerous consultations at various levels, the Government has not yet addressed the issue of payment of pensions to all eligible citizens of Ukraine. At least 160,000 pensioners residing in territory controlled by armed groups did not receive their pensions between December 2014 and December 2016[157] because they were not registered as IDPs, as required by Government resolutions adopted in November 2014.[158] Those who did register as IDPs were subjected to a cumbersome verification procedure[159] which, in 2016, resulted in the discontinuance of pension payments for 43 per cent of eligible IDPs (over 400,000 people). In its 2016 annual report, the Pension Fund of Ukraine presented this result as "a cost-saving achievement".[160]

118. OHCHR reiterates that linking pension payments with IDP registration, as well as suspending them as a result of consecutive verification procedures, contradicts Ukrainian national legislation, its international obligations, and certain decisions of domestic courts[161] as well as the case law of the European Court of Human Rights.[162]

119. OHCHR welcomes the recommendation for a mechanism of payment of pensions by the working group of the Ministry of Temporarily Occupied Territories and IDPsThe mechanism would allow pensioners residing in territory controlled by armed groups to apply for their pension in any office of the Pension Fund (on Government-controlled territory), with no requirement to be registered as IDPs. For pensioners with mobility constraints, the recommendation is to reserve funds to cover their pension payments while working with international organizations to design an acceptable payment mechanism. A procedure of physical verification of pensioners is also envisaged in the proposal.

120. On 15 March, the blockade of cargo across the contact line initiated by former members of the 'Aidar' and 'Donbas' volunteer battalions during the previous reporting period[163] was legitimized by the Government.[164] On 1 March, armed groups of 'Donetsk people's republic' and 'Luhansk people's republic' seized control of, and introduced 'temporary external management' of approximately 54 enterprises in territory under their control, including several private and commercial metallurgic factories and coal mines, hotels, a stadium, the offices of a humanitarian organization, as well as railways. These actions left thousands of people with uncertainty about their employment and livelihood. A number of enterprises on both sides of the contact line, including power thermal plants, have

[157] As of August 2014, 1,278,200 pensioners were registered in armed-group controlled territory of Donetsk and Luhansk regions. From that time until December 2016, 1,118,200 pensioners residing in these areas applied for pension in the Government-controlled territory, which implies that at least 160,000 eligible pensioners have not applied for their pension since August 2014.

[158] Resolution of the Cabinet of Ministers No. 595 on 'Certain issues of financing state institutions, paying of social benefits to the population, and providing financial support to certain enterprises and organizations in Donetsk and Luhansk regions' as of 7 November 2014, available at http://www.kmu.gov.ua/control/uk/cardnpd?docid=247734847, and Resolution of the Cabinet of Ministers No. 637 'On making social payments to internally displaced persons' as of 5 November 2014, available at http://zakon2.rada.gov.ua/laws/show/637-2014-%D0%BF.

[159] *See* Situation of internally displaced persons *below*.

[160] Financial and statistical indicators of the Pension Fund in 2016, available at http://www.pfu.gov.ua/pfu/doccatalog/document;jsessionid=951F213D2DA7A695E0FC97EBBF1FAEB7.app2?id=277122.

[161] Decision of High Administrative Court of Ukraine, 2015, available at http://document.ua/pro-viznannja-protipravnoyu-ta-skasuvannja-postanovi-kabinet-doc248223.html; Two decisions of Pavlohrad city district court of Dnipropetrovsk region, 2017, available at http://reyestr.court.gov.ua/Review/64542884 and http://reyestr.court.gov.ua/Review/64542918; Decision of Donetsk Appellate Administrative Court, 2017, available at http://www.reyestr.court.gov.ua/Review/65383449; Decision of Dnipropetrovsk Appellate Administrative Court, 2017, available at http://www.reyestr.court.gov.ua/Review/65383315.

[162] *Pichkur v. Ukraine* (2013), App. 10441/06.

[163] OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2016, para. 109.

[164] Decision of the National Security and Defence Council of Ukraine "On urgent additional measures to counter hybrid threats to the national security of Ukraine", available at http://www.rnbo.gov.ua/documents/441.html.

reduced or stopped operations, lacking access to sales markets, or coal, or required raw materials from beyond the contact line.[165] According to available information, workers in territory controlled by armed groups receive irregular pay. For many on both sides of the contact line, salary has been significantly cut since the Government prohibited all cargo movement across the contact line and the armed groups took control over the enterprises.

121. Furthermore, some 22,000 Ukrainian railway employees in armed-group-controlled territory in Donetsk and Luhansk regions have not received a salary since March 2017.[166] Their employer, the Ukrainian public railway company 'Ukrazaliznytsia', has neither dismissed them nor notified them of the termination of payments. They continued working to support infrastructure and maintain operation of railway connections within territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' armed groups. OHCHR encourages the Government to undertake all necessary measures to prevent the increase of unemployment and ensure social guarantees for workers.

B. Situation of internally displaced persons

> *"The IDP pensioners got a text message that on 3 April all their money will turn into pumpkin."*
>
> - NGO worker from Kramatorsk, commenting on the identification procedure

122. Many IDPs continued to face bureaucratic impediments and discrimination due to various legislative acts adopted since the beginning of the conflict. Being deprived of political rights, subjected to regular checks by authorities, and facing disproportionate hardship in accessing basic public services, IDPs are at risk of becoming marginalized in society, further deepening their dependence on external aid. After three years of the displacement crisis, the Government is still struggling to elaborate a comprehensive and durable strategy for IDPs, including for their socio-economic integration, especially as the conflict lingers without a foreseeable end. Yet, according to a recent study, 88 per cent of IDPs said they are partially or fully integrated into the local community.[167]

123. In March 2017, OHCHR observed long queues at Oshchadbank branches, the only bank where IDP pensioners are entitled to receive their payments. This was largely due to a compulsory, Government-imposed identification process for IDP pensioners at the bank.[168] IDPs reportedly received text messages from the bank informing them that their payments would be suspended unless they complete 'identification' at the relevant bank branches in Government-controlled territory by 3 April 2017. Consequently, long queues at checkpoints registered a record in March, with over 960,000 crossings compared with 550,000 in February (*see* Freedom of movement *above*). Some people travelling from territory controlled by armed groups needed up to three days to complete the identification, and were forced to stay overnight in Government-controlled territory at their own expense.[169]

124. On 22 March, the Cabinet of Ministers of Ukraine postponed the deadline for completion of the identification process to 1 May 2017, and Oshchadbank took some positive

[165] HRMMU interviews across the country on 4 April, 15-16 May 2017, field visits on 17 and 19 May 2017.
[166] HRMMU interview, 26 April 2017.
[167] IOM National Monitoring System Report "On the Situation of Internally Displaced Persons" covering the period of February-March 2017.
[168] Cabinet of Ministers Resolution No 167, 14 March 2016.
[169] OCHA humanitarian snapshot from 3 April 2017, available at https://www.humanitarianresponse.info/en/operations/ukraine/infographic/ukraine-humanitarian-snapshot-03-april-2017.

steps to ease the process.[170] Yet, OHCHR maintains that the requirement to undergo identification, applied only to IDP pensioners, is discriminatory and creates unreasonable additional barriers for accessing pensions, besides causing hardship for hundreds of thousands Ukrainians having to cross the contact line.

125. Further hardship is expected due to the potential suspension of payment of pensions and social allowances to IDPs following the issuance of new lists by SBU. OHCHR received information that in March 2017, local departments of the Ministry of Social Policy received lists[171] of people registered as IDPs in their area who allegedly stayed outside of Government-controlled territory for over 60 days with instructions to these departments to suspend payment of their pensions and benefits pending "verification". OHCHR recalls the negative impact of the previous IDP verification initiated by the Government in February 2016, and warns of hardships that the continuation of such practice would bring, including forced returns. According to a recent survey, 58 per cent of IDPs stated they did not visit territory controlled by armed groups after displacement, and only one per cent voiced their intention to return to their place of origin in the near future.[172]

126. IDPs, along with internal labour migrants,[173] continued to be deprived of their political right to influence self-governance bodies by exercising their voting rights. Although eligible to vote in national elections, their participation in local elections is limited.[174] Under Ukrainian law[175] a citizen's voting address is his/her registered permanent place of residence. Thus, people whose permanent residence is in territory controlled by armed groups cannot exercise their voting rights. Recalling that it is vital to create favourable conditions for equal participation of IDPs in matters of national and local importance,[176] OHCHR welcomes legislative initiatives aimed at ensuring voting rights of IDPs and other internal migrants, specifically the newly registered draft law prepared by representatives of civil society and international organizations which would enable citizens to establish their temporary current residence as their voting address.[177]

[170] Oshchadbank opened a mobile office near entry-exit points in Kurakhove and Volnovakha and arranged buses to transport people from the central department to other offices.
[171] The lists are based on data provided by the State Border Guard Service which registers IDPs crossing the contact line and the state borders of Ukraine.
[172] The main reason for this was the perception that it was "dangerous for life". IOM National Monitoring System Report "On the Situation of Internally Displaced Persons" covering the period of February-March 2017.
[173] According to a study conducted by IOM, in 2014-2015 the number of internal labour migrants in Ukraine exceeded 1.6 million or nine per cent of the economically active population of the country, while internal migration demonstrated a stable tendency of increase. More information available at http://iom.org.ua/sites/default/files/ff_ukr_21_10_press.pdf.
[174] Law No. 1706-VII adopted by Parliament in June 2015 requires that IDPs establish permanent residence in the oblast in which they are based. However many are understandably reluctant to do so for fear of losing their property in territory controlled by armed groups.
[175] Article 8 of the Law of Ukraine "On State Register of voters."
[176] United Nations Guiding principles on internal displacement, principle 22(1)(d) states "Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right."
[177] Draft law No. 6240 "On voting rights of internally displaced persons and other mobile citizens inside the country" registered on 27 March in Parliament.

C. Housing, land, and property rights

> *"'People live here' is written on many gates. It is just to make sure that you don't find some soldiers living in your house when you come back from shopping."*
>
> - Resident of a village near the contact line

127. Housing needs of the affected population are becoming increasingly acute as prolonged displacement outlasts individual savings and available assistance. While housing support for IDPs provides assistance in covering utility bills, Government authorities did little to protect IDPs against forced evictions from collective centres and often did not offer reasonable alternatives.

128. The lack of a compensation mechanism for damaged or destroyed property compounded the situation, and remains one of the biggest concerns among the conflict-affected population. OHCHR supports the current work of the Ministry of Temporarily Occupied Territories and IDPs on the elaboration of a long-term restitution concept and reiterates that this should be embedded in a comprehensive national housing strategy.

129. On 23 March, Parliament adopted amendments to the law on IDPs,[178] according to which IDPs residing in collective centres[179] will be charged for utilities at standard rates applied to the population and not the higher rates applicable to legal entities, as was often the practice before (since collective centres operate as legal entities).

130. While OHCHR welcomes these positive steps in the domain of IDP housing, negative trends in the administration of collective centres across Ukraine, and related violations of the right to adequate housing of IDPs, such as security of tenure, remain. In Kyiv, OHCHR observed negative implications for the security of tenure and adequate living standards due to attempts by owners to evict IDPs, as well as the local authorities' inability to offer IDPs adequate housing opportunities. On 20 March, six unknown people dressed as construction workers entered the collective centre "Dzherelo" (Kyiv region) in an attempt to evict IDPs. The men, allegedly paid by the owner of the collective centre, damaged electricity lines, broke windows and doors in the IDPs' rooms, and harassed the IDPs.[180]

131. Right to adequate housing and property rights continued to be tightly connected to the displacement patterns in Ukraine. According to a recent study, 78 per cent of returnees mentioned ownership of private property and the absence of rent payment as the main reasons for their return.[181] Among IDPs, housing remains the most needed type of support.[182]

D. Humanitarian situation

132. Provision of humanitarian assistance remained challenging in territory controlled by armed groups in the eastern regions. Humanitarian access to persons in need continued to be seriously hampered by the 'accreditation' system imposed by armed groups. The termination of operations of both an international and national humanitarian organization in armed group-controlled territory of Donetsk region negatively impacted vulnerable groups and persons with scarce economic resources.

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[178] Law of Ukraine 'On amendments to the Law of Ukraine 'On ensuring the rights and freedoms of IDPs' concerning the right of IDPs to receive utility services', draft law No. 2481 of 27 March 2015.
[179] Such as modular houses, camps, dormitories, sanatoriums, hotels, etc.
[180] HRMMU interview, 28 April 2017.
[181] IOM National Monitoring System Report "On the Situation of Internally Displaced Persons" covering the period of February-March 2017.
[182] According to 84 per cent of key informants. IOM National Monitoring System Report "On the Situation of Internally Displaced Persons" covering the period February-March 2017.

133. The space for humanitarian actors to operate shrank particularly when a major humanitarian organization providing assistance for people living in territory controlled by armed groups of 'Donetsk people's republic' was forced to halt operations. On 28 February, armed groups entered the main Donetsk office and warehouses of "Pomozhem" humanitarian centre[183] of Rinat Akhmetov's Foundation and blocked its operations throughout the territory under its control. Staff and volunteers no longer had access to the premises, humanitarian aid or stocks.[184] In a number of interviews, people residing in these areas stated they depend on this assistance for survival. According to the Centre, 500,000 individuals were affected by the disruption of its work. According to the latest Food Security and Vulnerability Analysis, an estimated 620,000 people in the Donbas are food insecure, nearly 38,000 are IDPs.[185]

134. Of particular concern are the increasing large-scale humanitarian and human rights consequences of hostilities in Avdiivka (Government-controlled) and Donetsk city (armed-group-controlled). Interruptions and cuts to power supply, and consequently to water and heating, endanger the right to an adequate standard of living of hundreds of thousands civilians on both sides of the contact line, threatening in particular the lives and health of the most vulnerable individuals, such as those living in social protection institutions.

135. Humanitarian and human rights activists operating in Government-controlled territory also described impediments created by police and servicemen at checkpoints, such as demands for permits and other documents not legally/officially required, which may exacerbate the humanitarian situation in the conflict zone.

E. Right to the highest attainable standard of physical and mental health

136. OHCHR welcomes steps undertaken to reform the health care system and commends the launch of the State programme 'Affordable medications'[186] which enables patients with heart diseases, diabetes and asthma to obtain medication without payment. OHCHR encourages the Government to take further targeted steps to improve the right to health, and in particular, to consider the draft law "On state financial guarantees for providing medical services" and to adopt the national targeted programme to fight tuberculosis. OHCHR also commends measures instituted to subordinate medical personnel in detention facilities to the Ministry of Healthcare.[187]

137. At the same time, OHCHR observed that essential elements of the right to health, such as availability, accessibility (to everyone without any discrimination) and quality of health care, were not always granted in the vicinity of the contact line. Villages on both sides remain isolated, with disproportionate restrictions of freedom of movement (*see* Freedom of movement *above*). In some areas, one medical practitioner served several hundred[188] to several thousand[189] people, with the nearest emergency room located 20 to 30 kilometres away from the settlement. In villages such as Dolomitne, Nevelske, Novooleksandrivka, Opytne, Pisky, Roty, and Vidrodzhennia, medical care is inaccessible: there is no doctor or paramedic, and ambulances are either not allowed to enter by Ukrainian Armed Forces or armed groups, or would not come in the evening or at night due to the security situation. In Vidrodzhennia, a woman told OHCHR she had had to pay to fill the gas tank of an ambulance

[183] The Humanitarian Center was the main distributor of humanitarian aid in non-Government-controlled areas since the beginning of the conflict. It provided about 11,700,000 food parcels to vulnerable categories of people, assisting up to 1 million beneficiaries.
[184] http://www.fdu.org.ua/news/26105.
[185] http://reliefweb.int/report/ukraine/food-security-and-vulnerability-analysis-february-2017.
[186] Resolution of the Cabinet of Ministers No. 152 'On the provision of availability of medical means as of 17 March 2017, available at http://zakon2.rada.gov.ua/laws/show/152-2017-%D0%BF.
[187] OHCHR report on the human right situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 167(h).
[188] Such as Sopyne and Lebedynske. HRMMU field visit, 23 February 2017.
[189] Such as Holmivskyi, Horlivskyi district. HRMMU field visit, 9 March 2017.

in order to be transported to a medical facility.[190] In areas which ambulances are not allowed to access or where public transportation is not available, civilians must rely on military personnel or members of armed groups to be transported to hospital.

138. The armed conflict also affected the right to healthy natural and workplace environments.[191] Water treatment facilities in territory controlled by armed groups are in critical shortage of personal protection equipment (PPE) for hazardous materials incidents. The equipment, which is supplied from Dnipro, has not been approved for transport across the contact line as humanitarian delivery due to its potential "dual use".

139. The ban on cargo movement across the contact line also complicated supply of PPE for coal miners from Donetsk to Government-controlled territory. Coupled with the failure to evacuate the mine rescue equipment back in 2014, it resulted in a critical lack of PPE and rescue equipment in coal mines in western Ukraine. OHCHR was informed that the 'Stepova' coal mine in Lviv region has a 60 per cent shortage of PPE.[192] On 2 March, an accident at this mine resulted in 31 casualties. An investigative commission of the Cabinet of Ministers concluded that the main reason for the accident was substandard equipment.[193]

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

140. OHCHR deplores the lack of access to Crimea. It nevertheless continued to record violations of human rights and international humanitarian law affecting people residing in the peninsula, including non-respect of fair trial guarantees, retroactive application of criminal law, forced transfers of protected persons from Crimea to the Russian Federation, death in detention, torture, cruel, inhuman or degrading treatment or punishment, and the absence of access to mechanisms for effective remedy. Concerns also exist regarding protection of the right to property and education in native language.

A. Administration of justice and fair trial rights

> *"Everyone can get into trouble there, especially Crimean Tatars."*
>
> - Crimean Tatar IDP residing in Odesa

141. Crimean courts discontinued all judicial proceedings under Ukrainian law and retroactively applied criminal legislation of the Russian Federation during the re-examination

[190] HRMMU interview, 6 April 2017.
[191] In line with article 12 of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14 of the Committee on Economic, Social and Cultural Rights calls on States to adopt "… preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. Furthermore, industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment…", available at http://www.refworld.org/pdfid/4538838d0.pdf.
[192] HRMMU interview, 4 April 2017.
[193] Preliminary results of the Cabinet of Ministers' inspection, available at http://www.kmu.gov.ua/control/uk/publish/article?art_id=249831971&cat_id=244276429.

of individual cases, which contravenes the international humanitarian law principle to continue using the penal laws in place before occupation.[194]

142. During the reporting period, several court decisions were issued in apparent disregard for fair trial guarantees in relation to members of the Crimean Tatar community and one defense lawyer.

143. On 21 February, a Crimean Tatar man from Kamenka was sentenced by a Crimean court to 11 days of administrative detention for posting on a social media network, in 2013, material featuring an organization prohibited in the Russian Federation.[195] In a similar case, a Crimean Tatar man from Bakhchysarai was sentenced to 12 days of administrative detention for having uploaded on a social media network in 2011-2012 material featuring an organization prohibited in the Russian Federation and four folk songs of a Chechen singer containing anti-Russian rhetoric.[196] In both cases the judges found the defendants guilty of promoting extremism and disregarded the fact that the alleged violations took place before the implementation of Russian Federation laws in Crimea. OHCHR recalls that the retroactive application of penal law violates international humanitarian and international human rights law.[197]

144. Mass arrests were conducted by police in Crimean Tatar neighbourhoods. On 21 February, 10 Crimean Tatars who were filming the police search of a home belonging to a Crimean Tatar man suspected of extremism were arrested. They were found guilty of breaching public order and impeding the movement of civilians, and sentenced to five days of administrative arrest. The judgments were passed in separate trials in one day and, at least for some, in violation of fair trial standards: no representatives of the prosecution were present; two men were convicted in the absence of lawyers; and in at least one proceeding the judge ignored the public retraction of a witness statement supporting the claim that the individuals were breaching public order and freedom of movement.[198] On 13 April, the police carried out a raid in Bakhchysarai and arrested two Crimean Tatars for posting "extremist materials" on a social network. Five other Crimean Tatars who had gathered on the street watching the police raid were arrested and charged with "unauthorized public gathering". All seven men were sentenced, six to administrative detention (from two to ten days) and one to a monetary fine. During the court hearings, several of the individuals were denied the right to legal representation and told that they had no right to a lawyer.[199]

145. On 14 February, the supreme court of Crimea dismissed the appeal of Russian Federation lawyer Nikolay Polozov against the decision of a first instance court[200] in Simferopol allowing an FSB investigator to interrogate him as a witness in a criminal case concerning one of his clients, Ilmi Umerov, the Deputy Chairman of Mejlis. On the basis of this initial court decision, Nikolay Polozov had forcefully been taken by security officials from his hotel in Simferopol to the FSB Crimea headquarters on 25 January and questioned by the FSB investigator in Ilmi Umerov's case.[201] The supreme court decision argued that the

[194] Article 64, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, according to which, penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.

[195] HRMMU interview, 23 February 2017.

[196] To justify the conviction, the judge referred to the "personal evaluation report" drawn up by the head of Bakhchysarai police, in which the defendant was described as "displaying hatred towards the Russian-speaking population and supporting anti-Russian propaganda". HRMMU interview, 5 April 2017.

[197] Articles 65 and 67, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949; Article 15, ICCPR.

[198] HRMMU interview, 5 April 2017.

[199] HRMMU interview, 21 April 2017.

[200] At the request of the FSB, the Kyivskyi district court in Simferopol ruled on 13 December 2016 that Nikolay Polozov should be compelled to testify as a witness in Ilmi Umerov's case, despite being his lawyer.

[201] *See* OHCHR report on the human rights situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 128.

interrogation of Nikolay Polozov as a witness did not interfere with his rights as a defence lawyer because it allegedly concerned facts which had happened prior to the moment when he assumed the defence of his client. OHCHR is gravely concerned by this decision, which not only undermines the confidentiality of communications between lawyers and their clients, but also the ability of lawyers to perform their professional functions without intimidation, hindrance, harassment or improper interference.[202]

B. Conditions of detention

146. OHCHR documented several cases of grave ill-treatment of people in detention.

147. On 26 April, a Crimean resident from Kerch who was convicted and began serving his sentence in Crimea before its temporary occupation by the Russian Federation, cut his wrists and throat in protest against his planned transfer from a detention facility in Simferopol to one located in the Republic of Mordovia (Russian Federation). After being hospitalized, and contrary to medical recommendations, he was transferred on 2 May to the Russian Federation where he started a hunger strike. OHCHR recalls that the forcible transfer of Ukrainian detainees to penal colonies and pre-trial detention facilities in the Russian Federation involves protected persons and therefore constitutes a violation of international humanitarian law.[203]

148. On 17 March, the Russian Federation transferred to Ukraine 12 pre-conflict convicts (11 men and one woman) who were all serving their sentences in Crimea when Russian Federation authorities took control of the peninsula, and had been subsequently transferred to various penitentiary institutions in the Russian Federation. Their return to Ukraine is the result of lengthy negotiations between the Ombudspersons of Ukraine and the Russian Federation, during which they had agreed to focus efforts on securing the transfer of Ukrainian citizens who had been sentenced by courts in mainland Ukraine or Crimea before 2014 and wanted to be transferred to mainland Ukraine.

149. OHCHR interviewed all 12 convicts in the pre-trial detention centre in Kharkiv, from where they will be transferred to penal institutions throughout Ukraine to serve the remainder of their sentences. They provided accounts of serious human rights violations, including threats, inhumane conditions of detention, torture, prohibited forms of punishment including unjustified strips, detention in solitary confinement, harassment and abuse on ethnic grounds.

150. Following the March 2014 referendum in Crimea, correspondence with mainland Ukraine was blocked and family visits were denied for weeks. In addition, significant pressure was placed on detainees by the penitentiary administration to become Russian Federation citizens. When they refused, they were intimidated, placed in solitary confinement, and sometimes beaten. The female detainee said personnel of the Simferopol pre-trial detention centre warned her that she could be killed for her refusal to become a Russian Federation citizen.[204] Compelling the inhabitants of an occupied territory to adopt the citizenship of the Occupying Power is tantamount to obliging them "to swear allegiance" to the latter, which is forbidden under international humanitarian law.[205]

151. OHCHR interlocutors complained about ill-treatment, threats of sexual violence, and denial of confidential meetings with Ukrainian consuls. Some detainees claimed they

[202] *See* UN Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990, Principles 16 and 22.
[203] Articles 49 and 76, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. *See also* OHCHR report on the human right situation in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 134-135.
[204] HRMMU interview, 21 March 2017.
[205] Article 45, Hague Regulations.

were ill-treated by prison guards based on their Ukrainian origin. One of them reported that upon arrival to colony no. 7 in the settlement of Pakino (Vladimir region), he was forced daily by local prison guards to strip down to his underwear in sub-zero temperatures, after which they beat him with their fists, legs and batons while using derogatory language.[206]

152. Both in Crimea and the Russian Federation, medical assistance was reportedly inadequate. One prisoner was allegedly denied medical treatment in penal colony no. 102 in Simferopol because he did not have a Russian Federation health insurance.[207] OHCHR has first-hand information that a Crimean inmate, Andrii Levin, died on 6 March 2017 in a penal colony of the Russian Federation (Tlyustenkhabl, Adygea region) where he had been transferred from Crimea on 1 November 2015. He was suffering from HIV, tuberculosis, chronic pancreatitis and chronic paranephritis, and had applied on 16 February 2017 to the Prosecutor of Adygea complaining that no medical treatment was provided to him. Two other inmates suffering from serious ailments and transferred from Crimea to the same penal colony had died in 2016, also due to a reported lack of medical treatment: Valeryi Kerimov on 8 September 2016, and Dmytro Serpik on 4 December 2016. Under international humanitarian law provisions, the Occupying Power must provide detainees with medical attention required by their state of health.[208] Failure to provide medical assistance and healthcare to detainees violates the right to health and may amount to a violation of the right to life.

C. Military conscription

153. A campaign on the conscription of Crimean residents into the ranks of the Russian Federation Armed Forces began on 1 April. It is expected that up to 2,400 men will be conscripted. Since 2014, conscripted Crimean residents have been serving in military units of the Russian Federation on the territory of the Crimean peninsula. In 2017, for the first time, they will also be sent to military units in the Russian Federation.[209] During a press conference on 12 April, the Military Commissioner of the Russian Federation in Crimea declared that a criminal case had been opened against a resident of Crimea who refused to serve in the Russian Federation army. OHCHR wishes to stress that under the Fourth Geneva Convention (Article 51), an Occupying Power may not compel civilians in the occupied territory to serve in its armed or auxiliary forces.

D. Housing, land and property rights

154. The question of housing, land and property in Crimea is sensitive, particularly for Crimean Tatars who returned from exile starting in the late 1980s. The unmanaged return process and the perceived injustices in land allocation have led to Crimean Tatars settling on unoccupied or public land.[210] After taking control of the peninsula, the Russian Federation authorities in Crimea pledged to legalize the unauthorized appropriation of land or allocate alternative land plots to Crimean Tatars.[211]

[206] HRMMU interview, 21 March 2017.
[207] HRMMU interview, 21 March 2017.
[208] Article 76, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War.
[209] According to Article 7 of the Treaty of Accession between the Republic of Crimea and the Russian Federation of 18 March 2014, Crimean residents who are called to serve in the Russian Federation Armed Forces will undertake their military service on the territory of the Republic of Crimea and the city of Sevastopol until 31 December 2016.
[210] *See* August 2013 Needs Assessment of the OSCE HCNM: "The Integration of Formerly Deported People in Crimea, Ukraine", pp. 9-15.
[211] On 10 May 2014, the Russian Federation Minister of Crimean Affairs stated at a press conference that the Russian authorities would deal with cases of unauthorized acquisition of land in Crimea "with full responsibility and caution"; *See* OHCHR report on the human rights situation in Ukraine, 15 June 2014, para. 320.

155. Nevertheless, this issue has not been addressed, and concerns have arisen after legal steps have been taken by the Russian Federation authorities in Crimea to allow the demolition of buildings constructed without necessary permits. The most recent decision applied to Crimea's capital, Simferopol.[212] It envisages that buildings constructed on land plots located in areas of restricted use, such as public areas and areas near utility facilities, will be torn down. Similar decisions have been adopted after Crimea's occupation in other parts of the peninsula.

156. The demolition of such buildings, ordered by local administrations and special "demolition commissions", could result in evictions disproportionately affecting the Crimean Tatars who, upon their return from deportation, constructed their houses on land plots they did not own. According to case law of the European Court of Human Rights, any person risking the loss of his/her home should be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8 of the ECHR.[213] OHCHR considers that neither the "commissions on demolition" nor the local administrations can be regarded as independent tribunals. In the absence of legal safeguards conforming to international human rights standards, forced evictions constitute a gross violation of a broad range of human rights, in particular the right to adequate housing and freedom from arbitrary interference with home and privacy.[214] OHCHR recalls the importance of eliminating forced evictions by *inter alia* repealing legislation which allows for such practice and taking measures to ensure the right to security of tenure for all residents.[215]

157. The confiscation of public and private property, referred to as "nationalization" under the Russian Federation legislation, which began in Crimea after the referendum in March 2014[216] continued. As of 12 May 2017, 4,575 public and private real estate assets had been "nationalized".

158. The Russian Federation authorities took steps to compensate owners of property "nationalized" since March 2014 by adopting special legislation[217] on 28 December 2016. However, the compensation is limited and does not offer a fair remedy to those affected. Indeed, the scheme is only applicable to private property[218] and excludes individuals accused of "extremism". The latter limitation raises particular concerns in view of the arbitrary application of anti-extremism legislation by the Russian Federation authorities in Crimea. The amount of compensation will be determined by reference to the market value of the object on 21 February 2014, a date which precedes the application of Russian Federation legislation in Crimea and the "nationalization". Moreover, payment of compensation can be postponed for 10 years.

159. OHCHR recalls that, according to international humanitarian law, private property, as well as the property of municipalities and institutions dedicated to religion, charity and education, the arts and science may not be confiscated,[219] and that immovable public property

[212] Resolution No. 2206 "On the demolition of illegally constructed buildings in the municipal district of Simferopol" adopted on 23 September 2016.
[213] ECHR Judgment, *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, 21 April 2016, § 53.
[214] ICESCR, Article 11(1); ICCPR, Article 17(1).
[215] Resolution 1993/77 of the United Nations Commission on Human Rights; Resolution 2004/28 of the United Nations Commission on Human Rights.
[216] The first legal act which initiated the process of property nationalization in Crimea was the Resolution of the 'State Council of the Republic of Crimea' "*On property nationalization of agricultural companies, institutions and organizations in the Republic of Crimea*" No. 1836-6/14 (adopted 26 March 2014).
[217] The Law of the Republic of Crimea "On special aspects of regulation of some of the property relations in the Republic of Crimea" No. 345-3PK/2016 came into force on 14 January 2017.
[218] The law applies to private property included in the list of nationalized property according to Resolution No. 2085-6/14 of the 'State Council of the Republic of Crimea' (30 April 2014).
[219] Hague Regulations, Articles 46 and 56.

must be administered according to the rule of usufruct.[220] Destruction of property may only be justified if required by imperative military or public order necessity.[221]

E. Right to education

160. Statistics released by Crimea's Ministry of Education in March 2017 show the continuing decline of Ukrainian as a language of education in schools across the peninsula.[222] The number of children following their education in Ukrainian decreased from 12,694 in 2013 to 371 in the 2016/2017 academic year. There were seven Ukrainian language schools and 875 classes in Crimea in 2013. As of March 2017, there remained only one school - in Feodosiia - attended by 132 children from grades 1 to 9. The other 239 children were in Russian-language schools which have a few classes delivered in Ukrainian. In total, education in Ukrainian language is offered in 28 classes across the peninsula.

161. The reasons for this dramatic decrease include a dominant Russian cultural environment, the departure of thousands of pro-Ukrainian Crimean residents to mainland Ukraine, claims of pressure from some teaching staff and school administrations to discontinue teaching in this language, and negative media reporting in Crimea and the Russian Federation about developments in Ukraine, which may have led to reluctance or fear to be branded 'anti-Russian' through the choice of Ukrainian as the language of instruction.

162. According to the information of Crimea's Ministry of Education, the Crimean Tatar language was used at the beginning of the 2016/2017 academic year by 5,330 children, a figure comparable to the situation prevailing in 2013.[223] Fifteen schools continued to provide education exclusively in the Crimean Tatar language, a number that has not changed in three years.

VII. Legal developments and institutional reforms

International Court of Justice

163. On 19 April, the International Court of Justice delivered its Order regarding the request for provisional measures submitted by Ukraine on 17 January 2017[224] in the case concerning "Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination" (*Ukraine v. Russian Federation*).

164. With regard to the situation in Crimea, the Court concluded that, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, the Russian Federation must refrain from "maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis", and must ensure the availability of education in the Ukrainian language. With regard to Ukraine's claims against the Russian Federation based on the International Convention for the Suppression of the Financing of Terrorism, the Court found that the conditions required for the indication of provisional measures were not met. The Court also instructed that Ukraine and the Russian Federation refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve, and expressed its expectation that both Parties work towards full implementation of

[220] Hague Regulations, Article 55.
[221] Hague Regulations, Article 23(g).
[222] Available at http://monm.rk.gov.ru/rus/index.htm/news/355733.htm.
[223] 5,551 children were taught in the Crimean Tatar language in 2013.
[224] Available at http://www.icj-cij.org/docket/files/166/19394.pdf. *See* OHCHR report on the situation of human rights in Ukraine covering the period from 16 November 2016 to 15 February 2017, para. 146.

the "Package of Measures" in the Minsk agreements in order to achieve a peaceful settlement of the conflict in eastern Ukraine.

165. The International Court of Justice Order on the request for provisional measures does not prejudge the future ruling on merits.

A. Legislative developments

Draft Law on Temporarily Occupied Territory of Ukraine

166. On 12 April, the Parliamentary Committee on State Building, Regional Policy and Local Self-Government recommended that the Parliament reject the draft law 'On Temporarily Occupied Territory of Ukraine' (No.3593-d), which was registered on 19 July 2016.[225] The draft law had been criticized by civil society groups, the Council of Europe and the UN system (OHCHR, UNHCR and IOM), which advocated *inter alia* against abrogating the responsibility of the Government to guarantee the social rights of residents of territory not controlled by the Government, and prohibiting the delivery of minimum essential humanitarian supplies to them. A revised draft text was developed by a working group of the same parliamentary committee and registered in Parliament on 20 April.[226] While it narrowed the scope of the initial document and removed some controversial provisions, including on discontinuation of essential water and electricity supplies, other problematic provisions of the first draft law were kept, including the prohibition to pay pensions to residents of non-Government controlled territory and the blanket non-recognition of documents issued in such territory, contrary to international jurisprudence.[227]

167. Solutions addressing some of the most controversial issues remaining in the draft law were proposed in alternative legislative initiatives introduced to Parliament on 10 May.[228] One proposal would enable residents of territory not controlled by the Government to receive their pensions in Government-controlled territory through a mechanism to be developed by the Cabinet of Ministers of Ukraine. The other draft law introduces a distinction by offering a similar mechanism for residents of eastern regions that are not under control of the Government, and yet prohibiting the payment of pensions to residents of Crimea. Positively, both alternative draft laws provide for an administrative procedure for the establishment of the facts of birth and death occurring in non-Government controlled territory instead of the current judicial review.[229]

B. Criminal justice reform

168. On 16 March, the Parliament adopted amendments to the Criminal Procedure Code of Ukraine, which entered into force on 13 April. They are intended to address practical

[225] *See* OHCHR report on the situation of human rights in Ukraine covering the period from 16 August to 15 November 2016, para. 195-198.
[226] Draft Law 'On temporarily occupied by the Russian Federation territory of Ukraine' No.6400 of 20 April 2017.
[227] ICJ Advisory Opinion of 21 June 1971 – *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276* (1970), para. 125; *Loizidou v. Turkey* (Merits), Judgement of 18 December 1996, ECHR (1996), para. 45; *Cyprus v. Turkey* (Merits), Judgment of 10 May 2001, ECHR (2001), para. 90 and "MRT" (*See Ilascu and Others v. Moldova and Russian Federation*, Application n. 48787/59, Judgment of 8 July 2004, para. 458-461).
[228] Draft Law 'On temporarily occupied by the Russian Federation territory of Ukraine' No.6400-2 of 10 May 2017; and Draft Law 'On the territory of Ukraine temporarily occupied by the Russian Federation and the territory not controlled by the Government as a result of an armed conflict with the involvement of terrorist groups receiving external support', No. 6400-1 of 10 May 2017.
[229] Addressing the issue of non-recognition of documents issued by 'authorities' in territory not controlled by the Government, one of the alternative draft laws explicitly permits using such documents as evidence in the process of establishing births and deaths. The provisions of the other alternative document concerning this issue appear to be contradictory.

problems concerning criminal proceedings *in absentia* against the former president Viktor Yanukovych and other ex-officials who have absconded.[230]

169. The amendments, in particular, expanded the list of crimes in relation to which proceedings can be pursued *in absentia* to also cover the creation of a criminal organization, assisting members of such organizations or covering up their criminal activity, and gangsterism. They also extended the application of a lower threshold for proceedings *in absentia* which was introduced in May 2016 as a temporary measure.[231] For instance, an individual staying in the area of the "anti-terrorist operation", which includes localities controlled by the Government, may be subjected to proceedings *in absentia*, having no knowledge about criminal charges against him/her.

170. The temporary rules, which were previously assessed by OHCHR as creating a risk of violations of due process and fair trial rights[232], will continue to apply until the State Bureau of Investigation starts operating, which must be no later than 19 November 2017. Positively, some of the most problematic provisions, such as those extending the term of pre-trial investigation and detention in custody from 12 to 18 months and mandating the publication of summons to proceedings in print media, were removed from the text of the law before its final adoption.

C. Judicial reform

171. The establishment of the new supreme court is one of the large-scale initiatives within the framework of the judicial reform which started with the June 2016 constitutional amendments.[233] Ukraine took into account recommendations of the Venice Commission to transfer from a four-tier to three-tier judicial system. Thus, a single supreme court is being formed instead of three high specialized courts and the current functioning supreme court.

172. The recruitment of 120 judges to the supreme court began in November 2016, and was organized around four specialization tracks: civil, criminal, administrative and commercial law. On 21 April 2017, the process reached the stage where applicants who successfully passed the anonymous testing and practical assignment competitions started being interviewed. All interviews are public and may be observed through an on-line stream. Of the 382 candidates remaining, 73 per cent are judges, 10 per cent are attorneys, 10 per cent are academics and 7 per cent have mixed background. The deadline for the process to be completed, 31 March 2017, was not met. No new deadline has been set.

173. To enable the supreme court to operate in line with the judicial reform, the President submitted to the Parliament on 23 March a draft Law "On Introducing Changes to Commercial Code, Civil Procedure Code, Code of Administrative Court Procedure and Other Legislative Acts".[234] The draft law was developed by working groups within the Council on Judicial Reform, which is an advisory body to the President of Ukraine. It entails relevant changes, which OHCHR views positively, concerning introduction of e-governance, simplification of the court process, subject-matter jurisdiction rules, and the use of mediation as a means of dispute resolution.

[230] Law of Ukraine 'On amendments to the Criminal Procedural Code of Ukraine (on strengthening the mechanisms for meeting the objectives of the criminal proceedings)', No. 1950-VIII of 16 March 2017.
[231] *See* OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, para. 173.
[232] Ibid.
[233] *See* OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2016, para. 18-22.
[234] Draft law 'On amendments to the Commercial Procedural Code of Ukraine, Civil Procedural Code of Ukraine, the Code of Administrative Judicial Procedure and other legislative documents', No. 6232 of 23 March 2017.

D. National Human Rights Institution

174. On 27 April, the five-year term of tenure of the current Ukrainian Parliament Commissioner for Human Rights (Ombudsperson's Office of Ukraine) expired. According to the law, the current Parliament Commissioner continues to exercise her functions until the appointment of a new one.[235] In line with the procedure, no less than one fourth of deputies or the Speaker of the Parliament can nominate candidates for the post by 17 May.[236] OHCHR recalls that, according to the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions, the existing procedure for selection and appointment of the Parliament Commissioner must be revised to ensure its compliance with the Paris Principles.[237] The process shall promote transparent, merit based and participatory selection in order to ensure the independence of, and public confidence in, the national human rights institution. Particularly, the selection and appointment procedure should require advertisement of the vacancy, establish clear and uniform criteria to assess the merit of applicants, an promote broad consultation and participation.

VIII. Technical cooperation and capacity-building

175. OHCHR regularly engages in technical cooperation and capacity-building activities in order to assist the Government in meeting its international obligations to protect and promote human rights.

176. On 23 March, OHCHR submitted the joint contribution of United Nations agencies in Ukraine to the Universal Periodic Review (UPR) assessing Ukraine's compliance with its international human rights obligations. It also attended a presentation of alternative reports submitted by over a dozen Ukrainian civil society organizations and coalitions to the UPR, organized by the United Nations Development Programme and the Ombudsperson's office on 19 April. During this event, OHCHR encouraged the Government and non-states actors to engage in a consultation process ahead of the submission of Ukraine's national report, due by 12 August 2017, to ensure proper inclusion of the perspectives and human rights concerns of broads segments of society, in addition to the activities and obligations of the Government.

177. OHCHR notes positive response of the Government of Ukraine to the OHCHR thematic report on conflict-related sexual violence in Ukraine released on 16 February. On 24 February, the Office of the Prosecutor General sent a letter to HRMMU showing interest in the report and informing about a dedicated investigator who will look into the cases included in the report.

178. Over the course of the reporting period, OHCHR participated in seven events held by partner organizations at local, national and international levels, during which it presented its thematic report on conflict-related sexual violence. More than 300 actors from international organizations, State agencies, and civil society have been briefed on key findings of the report, including actionable recommendations to all parties of the conflict.

179. OHCHR remains committed to supporting implementation of the Istanbul Protocol on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[238] In March 2017, OHCHR concluded training sessions on the Istanbul Protocol which had commenced in January for approximately 400 newly

[235] Law of Ukraine 'On the Ukrainian Parliament Commissioner for Human Rights' No. 776/97-BP of 23 December 1997, Article 9.
[236] Ibid, Article 6.
[237] ICC Sub-Committee on Accreditation Report, October 2014, pages 35-36.
[238] Available at http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf.

recruited regional prosecutors. OHCHR also began collaborating with UNDP on development of a joint project to provide technical assistance to combat the use of torture.

IX. Conclusions and recommendations

180. Little evidence suggests any serious intention for the implementation of the Minsk agreements in the near future. Renewed "commitments" to the ceasefire, repeated before and during the reporting period, consistently prove to be superficial and short-lived with the routine employment of heavy weaponry by all sides. Meanwhile, the civilian population on both sides of the contact line continues to suffer the brunt of the consequences. While they remain resilient, they express a rising sense of despair and a diminishing hope of a return to normalcy.

181. The three-year anniversaries of the violence at Maidan and Odesa passed without any significant security incidents, reflecting an improvement in the policing and securing of commemorative events. Nonetheless, there was no notable progress in the investigations and prosecutions to hold perpetrators of the violence and killings accountable. Coupled with new accounts of human rights violations and abuses, committed on both sides of the contact line, these factors contribute to a sense of impunity surrounding such actions.

182. Disproportionate restrictions on the freedom of movement continued to have a wide impact on the population, with greater effect in March due to a surge in the number of civilians, especially pensioners, who needed to cross the contact line in order to secure their social and economic benefits. The growing isolation of some villages located near the contact line, where movement is most greatly restricted, poses a great threat to the health, safety, and livelihood of residents. The ongoing deterioration of freedom of opinion and expression has had a profound effect on public access to information and plurality of opinion.

183. These trends, together with the shrinking space for humanitarian organizations, particularly in territory controlled by armed groups, which provide essential assistance to vulnerable sections of the population, paint a bleak picture for future reconciliation and development. OHCHR stresses that the only durable pathway to a peaceful resolution of the conflict and for the future development of Ukraine is the full and resolute implementation of the Minsk agreements.

184. OHCHR remains concerned by human rights violations and violations of international humanitarian law applicable to the occupation of Crimea by the Russian Federation, and particularly by the impact on the Crimean Tatar population. OHCHR will continue to monitor and report on the human rights situation in Crimea, including with regard to compliance with provisional measures issued by the International Court of Justice.

185. Most recommendations made in the previous OHCHR reports on the human rights situation in Ukraine have not been implemented and remain valid. OHCHR further recommends:

186. **To the Ukrainian authorities:**

a) **Cabinet of Ministers to establish a mechanism for investigation of cases of looting, seizure and military occupation of civilian property;**

b) **Security Service and other law enforcement agencies to ensure detainees' access to a lawyer immediately after their detention and to refrain from carrying out any investigative actions in absence of the latter;**

c) **Cabinet of Ministers to include the implementation of the Istanbul Protocol in the Human Rights Action Plan to foster effective investigation and documentation of torture;**

d) **Prosecutor General's Office to investigate all allegations of arbitrary detention and/or torture and ill-treatment of conflict-related detainees by the Security Service elements or persons or groups of persons acting with their authorization, support or acquiescence and ensure accountability notwithstanding that the violations could have been committed by persons acting in official capacity;**

e) **Courts to adequately review confessions submitted as evidence and exclude those obtained by torture or coercion;**

f) **Courts to ensure that trials of individuals on charges of affiliation with armed groups are carried out without undue delay and in full respect of all fair trial guarantees;**

g) **Courts to refrain from automatic extension of measure of restraint of custodial detention for conflict-related detainees charged with affiliation with the armed groups;**

h) **Headquarters of the Anti-Terrorism Operation, Cabinet of Ministers and Ministry of Temporarily Occupied Territories and IDPs to lift unnecessary and disproportionate restrictions on freedom of movement, and ensure that 1) civilians may cross the contact line by all types of vehicles, including public transportation; 2) civilians may transfer personal belongings necessary for their adequate standard of living; 3) permits for crossing the contact line can only be invalidated on proved legal grounds, with proper notification and an established appeal procedure;**

i) **State Border Guard Service to collect sex- and age-disaggregated data on people crossing the contact line in order to provide adequate facilities for men, women and children, thus mitigating restrictions on freedom of movement;**

j) **Headquarters of the Anti-Terrorism Operation, State Border Guard Service of Ukraine, State Fiscal Service of Ukraine to establish and ensure effective functioning of a complaint procedure for victims of human rights violations at checkpoints;**

k) **Headquarters of the Anti-Terrorism Operation to entrust one state entity with overall responsibility for maintenance of checkpoints, including administrative, sanitary and security measures, and to ensure its financial capacity;**

l) **Presidential administration to develop amendments to the Law "On Corruption Prevention" and create favourable conditions for anti-corruption organizations to operate in Ukraine;**

m) **Government of Ukraine to guarantee that residents of all villages in immediate proximity to the contact line can exercise their social and economic rights and enjoy their fundamental freedoms. In particular, either by establishing a new local administration or by extending powers**

of the existing ones, to ensure that executive authorities effectively operate in the villages of Pisky, Vodiane, Sieverne, and Opytne in Donetsk region;

n) **Cabinet of Ministers and Ministry of Social Policy to guarantee all eligible citizens of Ukraine the right to receive their entitlements, including pension and social payments, regardless of IDP registration or place of residence;**

o) **Cabinet of Ministers to adequately address the housing and accommodation situation of IDPs living in collective centres;**

p) **Parliament of Ukraine to adopt proposed legislative amendment which would allow IDPs and other internal migrants to fully exercise their voting rights;**

q) **Cabinet of Ministers to establish independent, transparent, and non-discriminatory procedures of documentation and verification of housing, land, and property ownership, and to establish a specific registry of destroyed or damaged housing and other property and a comprehensive legal mechanism for compensation, including for people residing in territory controlled by armed groups;**

r) **Parliament of Ukraine to revise the procedure for selection and appointment of the Ombudsperson in line with the recommendations made by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions and include requirements to: publicize vacancies broadly, assess candidates on the basis of pre-determined, objective and publicly available criteria, and promote broad consultation and/or participation in the screening, selection and appointment process.**

187. **To all parties involved in the hostilities in Donetsk and Luhansk regions, including the Ukrainian Armed Forces, and armed groups of the self-proclaimed 'Donetsk people's republic' and 'Luhansk people's republic':**

a) **Adhere to the ceasefire and implement other obligations committed to in the Minsk agreements, in particular regarding withdrawal of prohibited weapons and disengagement of forces and hardware;**

b) **Refrain from indiscriminate shelling of populated areas and locating military objectives within or near densely populated areas, medical facilities, and schools, in line with precautionary measures called for under international humanitarian law;**

c) **Terminate all military activity around civilian infrastructure and objects indispensable to the survival of the civilian population, especially near power lines and water facilities. Guarantee immediate, secure and unimpeded access to repair teams fixing damages to such infrastructure;**

d) **Allow regular and unhindered access to external monitors to all places of deprivation of liberty and guarantee that interviews can be conducted in confidentiality;**

e) **Undertake comprehensive measures to protect civilians travelling across the contact line, ensuring that crossing routes and entry-exit checkpoints**

are a no-fire area and enhancing protection against sexual- or gender-based violence;

f) **Facilitate free and unimpeded passage by civilians across the contact line by increasing the number of crossing routes and entry-exit checkpoints, especially in Luhansk region;**

g) **Guarantee security and freedom of movement for residents of villages in the 'no man's land' and in the immediate vicinity to the contact line, and facilitate (including by providing regular transportation) access to their rights to health, education, and social security.**

188. **To the Government of the Russian Federation:**

a) **End the practice of retroactive application of penal laws to acts committed prior to the implementation of Russian Federation laws in Crimea;**

b) **Ensure adequate medical assistance to all individuals detained in penitentiary institutions in Crimea irrespective of their citizenship, nationality or origin;**

c) **Return to Crimea all protected persons transferred to the Russian Federation, pursuant to international humanitarian law provisions prohibiting the forcible transfer or deportation of protected persons from occupied territory to the territory of the Occupying Power;**

d) **End the practice of compelling Crimean residents to serve in the armed forces of the Russian Federation;**

e) **Repeal legislation which allows for forced evictions and confiscation of private property in Crimea.**

f) **Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis;**

g) **Ensure the availability of education in the Ukrainian language.**

189. **To the international community:**

a) **Use all diplomatic channels to press all parties involved to end hostilities, by emphasizing the suffering of civilians and the human rights situation caused by the conflict; in particular, call for the parties to adhere to their commitments to cease fire, withdraw weapons and engage in mine action;**

b) **Remind all parties involved in the hostilities to strictly abide by international human rights law and international humanitarian law in ensuring the protection of civilians;**

c) **Urge the parties involved in the hostilities to guarantee secure and unimpeded access of repair teams to damaged civilian infrastructure.**