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Report of the Office of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine*

(16 November 2015 to 15 February 2016)

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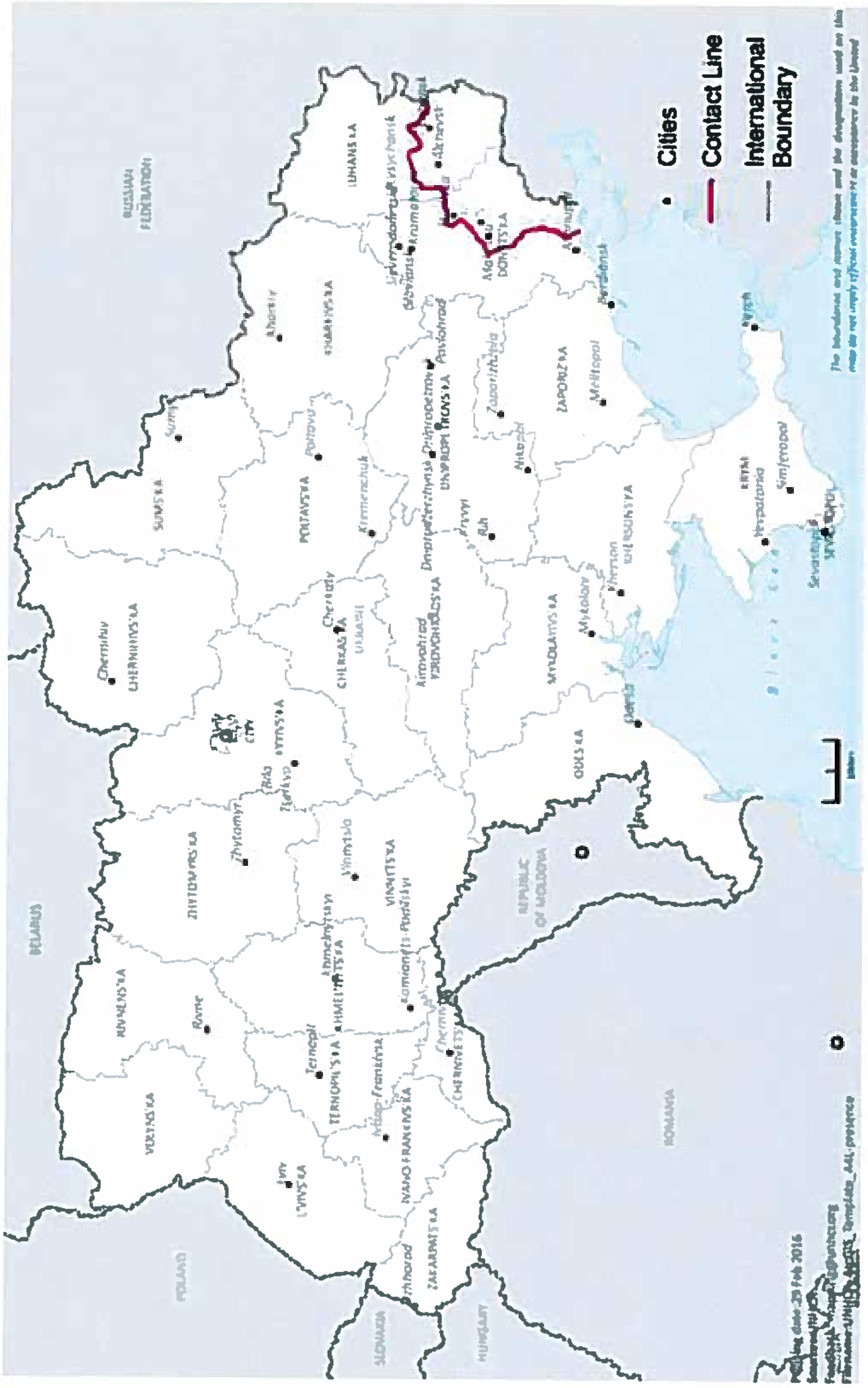
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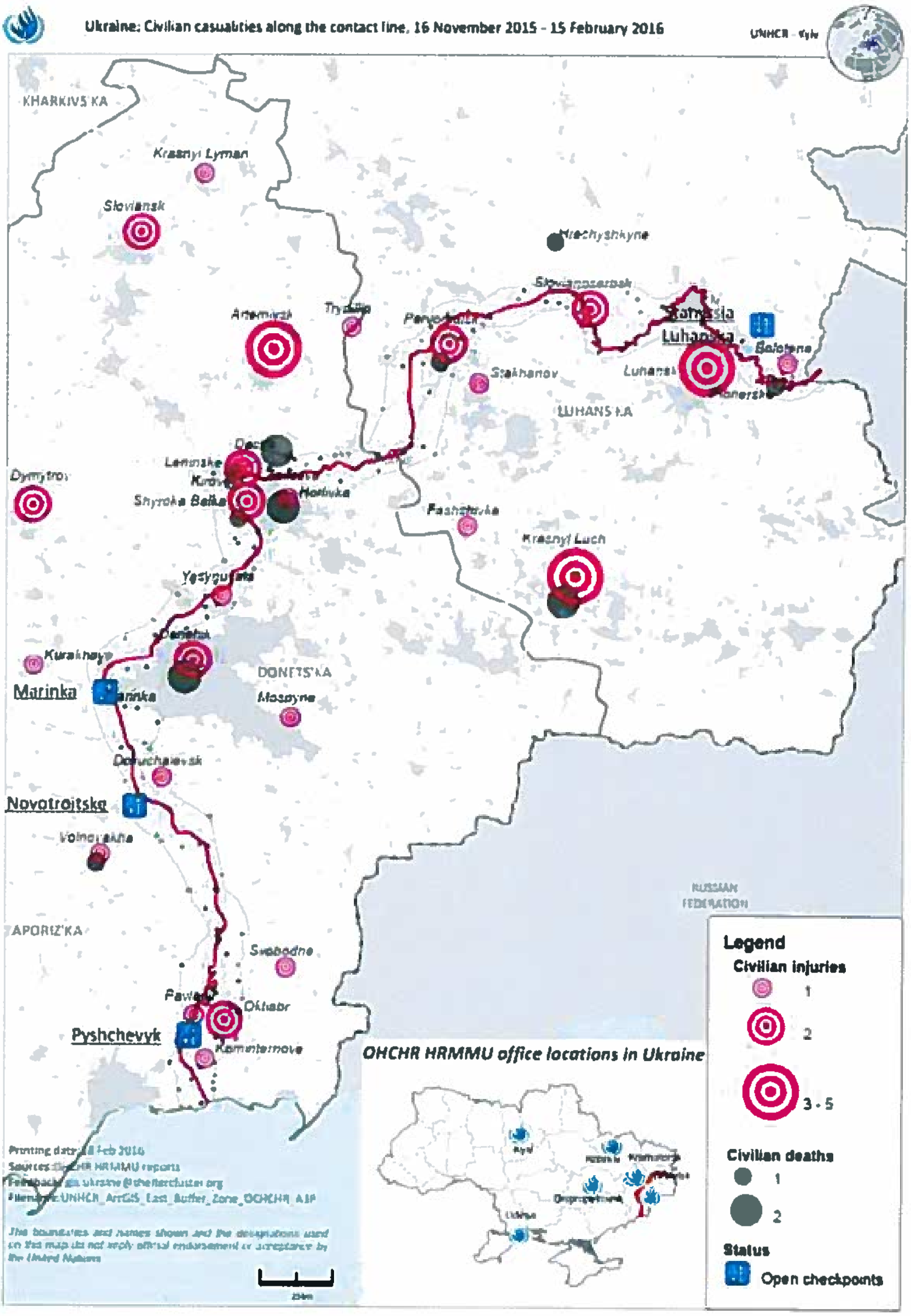
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I. Executive Summary

1. This is the thirteenth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine, based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)[1]. It covers the period from 16 November 2015 to 15 February 2016[2].

2. During the reporting period, despite a reduction in hostilities, the armed conflict in eastern Ukraine continued to significantly affect people residing in the conflict zone and all their human rights. The Government of Ukraine continued to not have effective control over considerable parts of the border with the Russian Federation (in certain districts of Donetsk and Luhansk regions). Reportedly, this facilitated an inflow of ammunition, weaponry and fighters from the Russian Federation to the territories controlled by the armed groups.

3. The ceasefire in certain districts of Donetsk and Luhansk regions in eastern Ukraine agreed upon during the previous reporting period was further strengthened by the "regime of complete silence" introduced on 23 December 2015. However, in January and February, the Special Monitoring Mission of the Organization for Security and Cooperation in Europe (OSCE) observed systematic violations of the ceasefire. During the same period, clashes and exchanges of fire have escalated in several flashpoints, predominantly near the cities of Donetsk and Horlivka (both controlled by the armed groups), and in small villages and towns located on the contact line, such as Kominternove (controlled by armed groups) and Shyrokyne and Zaitseve (divided between Ukrainian armed forces and armed groups).

4. While small arms and light weapons were most frequently employed during these incidents, the OSCE Special Monitoring Mission continued to report the presence of heavy weapons, tanks and artillery systems under 100mm calibre on either side of the contact line. Even if sporadic, the continued occurrences of indiscriminate shelling and the presence of anti-personnel mines and remnants of war exposed civilians to a constant threat of death or injury. During the reporting period, explosive remnants of war (ERW) and improvised explosive devices (IED) remained the main cause of civilian casualties in the conflict zone.

5. In addition, Ukrainian armed forces continue to position themselves near towns and villages while armed groups have embedded deeper into residential areas, further endangering the local population. The risk of re-escalation of hostilities therefore remained high.

6. The conflict continued to cause civilian casualties. Between 16 November 2015 and 15 February 2016, OHCHR recorded 78 conflict-related civilian casualties in eastern Ukraine: 21 killed (13 men and eight women), and 57 injured (41 men, eight women, six boys and two girls) – compared with 178 civilian casualties recorded (47 killed and 131 injured) during the previous reporting period of 16 August – 15 November 2015. Overall, the average monthly number of civilian casualties during the reporting period was among the lowest since the beginning of the conflict. In total, from the beginning of the conflict in mid-April 2014 to 15 February 2016, OHCHR recorded 30,211 casualties in eastern

[1] HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address human rights concerns. For more details, see paragraphs 7–8 of the report of the UN High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

[2] The report also provides an update of recent developments on cases that occurred during previous reporting periods.

Ukraine, among civilians, Ukrainian armed forces, and members of armed groups – including 9,167 people killed and 21,044 injured.[3]

7. In the absence of massive artillery shelling of populated areas, ERW and IEDs remained the main cause of civilian casualties in the conflict zone during the reporting period. Given the threat that is presented by such weapons, there is an urgent need for extensive mine action activities, including the establishment of appropriate coordination mechanisms, mapping, mine risk education and awareness, on either side of the contact line.

8. People living in the conflict-affected area shared with OHCHR that they feel abandoned, particularly in villages located in the 'grey' or 'buffer' zone (See Map of Ukraine: Civilian casualties along the contact line, 16 November 2015 – 15 February 2016)[4]. Often trapped between Government and armed group checkpoints, some of these areas, such as Kominternove, have been deprived of any effective administration for prolonged periods of time. Others are divided by opposing armed forces (such as Shyrokyne and Zaitseve), while some towns are located near frontline hotspots (such as Debaltseve and Horlivka). The contact line has physically, politically, socially and economically isolated civilians, impacting all of their human rights and complicating the prospect for peace and reconciliation. Over three million people live in the areas directly affected by the conflict[5] and urgent attention must be paid to protect and support them. Their incremental isolation emboldens those who promote enmity and violence, and undermines the prospect for peace.

9. Some assistance to territories under armed group control is being provided by local humanitarian partners, bilateral donors, and reportedly the Russian Federation, which delivers convoys, without the full consent or inspection of Ukraine. However, this aid is insufficient to respond to all the needs of 2.7 million civilians living in territories under the control of armed groups, and particularly those 800,000 living close to the contact line, who are particularly vulnerable.

10. The Government has registered 1.6 million internally displaced persons (IDPs), who have fled their homes as a result of the conflict. Between 800,000 and 1 million IDPs are living in territories controlled by the Government, where some continue to face discrimination in accessing public services. OHCHR has observed that some IDPs are returning to their homes, while others are unable to do so due to the destruction or military use of their property. According to government sources in neighbouring and European Union countries, over 1 million Ukrainians are seeking asylum or protection abroad, with the majority going to the Russian Federation and Belarus[6].

11. According to the State Border Service, some 8,000 to 15,000 civilians cross the contact line on a daily basis, passing through six checkpoints in each transport corridor: three checkpoints operated by the Government, and three by the self-proclaimed 'Donetsk people's republic'[7], with a stretch of no-man's land in between. OHCHR has regularly observed up to 300-400 vehicles – cars, minivans and buses – waiting in rows on either side of the road. Passengers spend the night in freezing temperatures and without access to water

[3] This is a conservative estimate of OHCHR based on available data.

[4] The 2016 UN Humanitarian Response Plan for Ukraine identifies the 0.8 million people living in areas along the contact line (200,000 in areas under Government control and 600,000 in areas under the control of the armed groups) as being in particular need of humanitarian assistance and protection.

[5] This comprises 2.7 million in areas under the control of the armed groups and 200,000 near the contact line in areas under government control.

[6] UNHCR, Ukraine Operational Update, 20 January – 9 February 2016.

[7] Hereinafter 'Donetsk people's republic'.

and sanitation. As a result of recent passport checks introduced by the self-proclaimed 'Donetsk people's republic', freedom of movement has been further restricted, aggravating the isolation of those living in the conflict-affected areas. Policy decisions by the Government of Ukraine have further reinforced the existing contact line barrier. Moreover, there remains an almost total absence of information regarding procedures at checkpoints, subjecting civilians to uncertainty and arbitrariness.

12. Residents of territories under the armed groups' control are particularly vulnerable to human rights abuses, which are exacerbated by the absence of the rule of law and any real protection. OHCHR continued to receive and verify allegations of killings, arbitrary and incommunicado detention, torture and ill-treatment in the 'Donetsk people's republic' and 'Luhansk people's republic'[8]. In these territories, armed groups have established parallel 'administrative structures' and have imposed a growing framework of 'legislation' which violate international law, as well as the Minsk Agreements.

13. The 'Donetsk people's republic' and 'Luhansk people's republic' continued to deny OHCHR access to places of detention. OHCHR is concerned about the situation of individuals deprived of their liberty in the territories controlled by armed groups, due to the complete absence of due process and redress mechanisms. Of particular concern are those currently held in the former Security Service building in Donetsk and in the buildings currently occupied by the 'ministries of state security' of the 'Donetsk people's republic' and 'Luhansk people's republic'.

14. OHCHR is also increasingly concerned about the lack of space for civil society actors to operate and for people to exercise their rights to freedoms of expression, religion, peaceful assembly and association in the territories controlled by armed groups. In January 2016, the 'ministry of state security' carried out a wave of arrests and detention of civil society actors in the 'Donetsk people's republic'.

15. OHCHR documented allegations of enforced disappearances, arbitrary and incommunicado detention, and torture and ill-treatment, perpetrated with impunity by Ukrainian law enforcement officials, mainly by elements of the Security Service of Ukraine (SBU). OHCHR urges the Ukrainian authorities to ensure prompt and impartial investigation into each reported case of human rights violations, as well as the prosecution of perpetrators. Accountability is critical to bring justice for victims, curtail impunity, and foster long-lasting peace.

16. OHCHR was granted access to official pre-trial detention facilities throughout areas under Government control[9] and, following some of its interventions, noted some improvements in conditions of detention and access to medical care for some detainees in pre-trial detention in Odesa, Kharkiv, Mariupol, Artemivsk and Zaporizhzhia. In some cases, OHCHR intervention also led to due attention being afforded to allegations of ill-treatment and to law enforcement investigations into violations of other human rights in custody. These improvements confirm the importance for OHCHR to enjoy unfettered access to all places of detention.

17. OHCHR is concerned about the lack of action toward clarifying the fate of missing persons and preventing persons from going missing as a result of the armed conflict in

[8] Hereinafter 'Luhansk people's republic'.

[9] In particular, in December 2015 and January 2016, HRMMU was granted unimpeded access to Mariupol SIZO and Artemivsk Penal Institution No. 6 of the State Penitentiary Service of Ukraine, where it could conduct confidential interviews with detainees. The administration and personnel of SIZO and the Penal Institution were transparent and constructive during these visits. The heads and medical personnel expressed commitment to improve medical care for detainees.

eastern Ukraine. There should be a clear commitment at the highest levels of the Government of Ukraine and by the 'Donetsk people's republic' and 'Luhansk people's republic' to fully cooperate on missing persons cases. Mechanisms to clarify the fate of missing persons need to be effective, impartial and transparent, and the victims and their families should always be at the centre of any action.

18. OHCHR continued to monitor the investigations and proceedings into the killings that occurred during the 2014 Maidan events, the 2 May 2014 Odesa violence, the 9 May 2014 Mariupol incidents and the 31 August 2015 Kyiv violence. The lack of progress in these cases undermines public confidence in the criminal justice system. It is essential that they be promptly addressed with absolute impartiality as their mishandling can jeopardize the peaceful resolution of disputes and fuel instability.

19. During the reporting period, the Government of Ukraine took steps towards ensuring greater independence of the judiciary, adopted a plan of action for the implementation of the National Human Rights Strategy, and improved its legislation on internally displaced persons (IDPs). However, some critical measures remain to be adopted, including the much-awaited parliamentary vote on decentralization, which has been postponed and should take place by 22 July 2016. Envisioned as part of the Minsk Process, this vote is to be the precursor to a series of steps toward peace. Decentralization was conceived as part of a package of confidence-building measures. These measures included the immediate and full ceasefire; pull-out of all heavy weaponry by either side of the contact line; dialogue on the modalities of conducting local elections in accordance with Ukrainian legislation; pardon and amnesty through law; release and exchange of all hostages and illegally-held persons; safe access and delivery of humanitarian aid; modalities for the full restoration of social and economic connections; restoration of control of the state border by the Ukrainian government in the whole conflict zone; pull-out of all foreign armed formations, military equipment, and mercenaries; constitutional reform containing the element of decentralization and approval of the special status of particular districts of Donetsk and Luhansk regions[10].

20. The Government of Ukraine extended the territorial scope of its intended derogation from certain provisions of the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) to territories it does not effectively control, as well as to areas it partially or fully controls in Donetsk and Luhansk regions. This may further undermine human rights protection for those affected.

21. Despite being denied access to the peninsula, OHCHR continued to closely follow the situation in the Autonomous Republic of Crimea ("Crimea")[11], primarily relying on first-hand accounts. OHCHR, guided by the United Nations General Assembly resolution 68/262 on the territorial integrity of Ukraine remains concerned about violations taking place in Crimea, which is under the effective control of the Russian Federation. The imposition of the citizenship and the legislative framework of the Russian Federation, including penal laws, and the resulting administration of justice, has affected human rights in Crimea, especially for ethnic Ukrainians, minority groups, and indigenous peoples, such as Crimean Tatars. During the reporting period, OHCHR documented a continuing trend of criminal prosecution of Crimean Tatar demonstrators as well as arrests of Crimean Tatars for their alleged membership in 'terrorist' organizations. In a significant and worrying

[10] Package of Measures for the Implementation of the Minsk Agreements, Organization for Security and Co-operation in Europe, 12 February 2015.

[11] The Autonomous Republic of Crimea technically known as the Autonomous Republic of Crimea and the City of Sevastopol.

development, on 15 February, the prosecutor of Crimea filed a request with the supreme court of Crimea to recognize the Mejlis, the self-governing body of the Crimean Tatars, as an extremist organization and to ban its activities. Some decisions by the Government of Ukraine also affected the human rights of Crimeans, including those limiting their access to banking services in mainland Ukraine. The 'civil blockade' which Crimean Tatar and Ukrainian activists imposed as of 20 September 2015 – and which led to some human rights abuses – was lifted on 17 January 2016.

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

> *"The scariest moments of this war were when mortars were flying above our heads, whistling. The shooting is starting and we have to hide my sick mother in the basement. We are dragging her, she is screaming and urinates on herself".*
>
> - A woman living in Donetsk city

A. Alleged violations of international humanitarian law

22. Despite the background of the overall de-escalation of hostilities as a result of the ceasefire in eastern Ukraine, whichhas generally held for over a year[12] –isolated clashes, localized exchanges of fire, and minor shifts in the contact line have continued. The 1 September 2015 ceasefire was strengthened by an agreement reached by the Trilateral Contact Group in Minsk to introduce the "regime of complete silence", which entered into force on 23 December 2015. The implementation of these agreements have led to an improvement in security on either side of the contact line.

23. Nevertheless, the armed conflict in eastern Ukraine has continued. The armed groups exercise control over certain districts of Donetsk and Luhansk regions and carry out sustained and concerted military operations against Ukrainian armed forces. In recent months, most clashes occurred in hotspots along the 'contact line' in or close to populated civilian areas. Furthermore, civilians perceived to be affiliated with the armed groups or supporting Ukrainian armed forces were arrested, detained, and subjected to ill-treatment, in violation of the basic and binding protections of common article 3 of the Geneva Conventions. In both Government and armed-group controlled areas of Donetsk and Luhansk regions, OHCHR continued to observe a disregard for the principle of distinction between civilians and those taking active part in hostilities.

24. According to the OSCE, men and women in military-style clothing have continued to daily cross the border between Donetsk and the Russian Federation[13]. The Government of Ukraine did not have effective control over considerable parts of the border with the Russian Federation (in certain districts of Donetsk and Luhansk regions). Reportedly, this allowed for transfers of arms and ammunition. The continued occurrences of indiscriminate shelling and presence of anti-personnel mines that cause civilian casualties in the conflict-affected area raise concerns about the inflow of weapons. OHCHR recalls that arms should

[12] For the first time, the ceasefire was agreed upon on 5 September 2014; in December 2014, because of continued hostilities, the agreement on a 'silence regime' was reached; and after the new escalation of hostilities in January-February 2015, a new ceasefire was agreed upon on 12 February 2015. The agreement of 29 August was also preceded by the escalating hostilities in June – August 2015.

[13] Weekly Update from the OSCE Observer Mission at Russian Checkpoints Gukovo and Donetsk based on information as of 2 February 2016, available at http://www.osce.org/om/220211.

not be transferred in situations where there is a substantial risk that they will be used in serious violations or abuses of international human rights or humanitarian law.

25. Ukrainian armed forces and armed groups maintained their positions and further embedded their weapons and forces in populated areas, in violation of their obligations under international humanitarian law[14]. In Shyrokyne, a key location in the 'grey zone' between the Government-controlled city of Mariupol and the town of Novoazovsk controlled by the armed groups, OHCHR documented extensive use of civilian buildings and locations by the Ukrainian military and the Azov regiment, and looting of civilian property, leading to displacement[15]. *Prima facie* civilian buildings in Donetsk city, such as residential buildings, a shelter for homeless people[16], and a former art gallery[17], continued to be used by armed groups, thereby endangering civilians. In the village of Kominternove, Donetsk region, residents reported that members of the armed groups of the 'Donetsk people's republic' took over abandoned houses[18]. In January and February 2016, hostilities between the armed groups stationed in Kominternove and Ukrainian armed forces stationed in the nearby village of Vodiane[19] have endangered the local population[20].

26. Armed groups and Ukrainian armed forces also continued to position military forces in or near hospitals. In Telmanove, armed members of the 'Donetsk people's republic' have occupied part of the general hospital building[21], which is adjacent to a maternity hospital and sustained damage from shelling. In Volnovakha, Ukrainian armed forces were stationed in close proximity to a local hospital. OHCHR recalls that hospitals are specifically protected under article 11 of Additional Protocol II to the Geneva Conventions, which are binding on the warring parties.

27. Clashes along the contact line were particularly frequent around disputed villages such as Kominternove in the south of Donetsk region, around Donetsk Airport, and Zaitseve in the north. Civilian movement out of Kominternove, Oktiabr, Pavlopil, Zhovanka and Zaitseve, across Government and 'Donetsk people's republic' checkpoints, has been severely constrained, raising concerns that remaining civilians have been trapped and exposed to the effects of hostilities. Following the closure of the Zaitseve crossing, residents of Zhovanka, a village divided by the contact line, had no access to food and other basic goods. The damage caused to nearby power lines in the course of hostilities deprived local residents of electricity and water[22].

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[14] Article 13(1) of Additional Protocol II of 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. Locating military objectives in civilian areas runs counter to this obligation. Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 23.

[15] Interview with a representative of an NGO uniting IDPs from Shyrokyne, December 2015.

[16] A shelter for homeless people in Petrovskiy district of Donetsk is occupied by armed groups of the 'Donetsk people's republic'. There is a school and church adjacent to the shelter.

[17] The former territory of 'Izolyatsia' Platform for Cultural Initiatives, verified on 18 December 2015 by HRMMU that armed groups of the 'Donetsk people's republic' continue to be based in the facility and surrounding territory

[18] Daily Report, Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30hrs, 6 January 2016.

[19] Ibid., 3 February 2016.

[20] Ibid., 18 January 2016.

[21] Ibid., 17 January 2016.

[22] As reported by OSCE SMM monitors on 1-3 February 2016.

28. OHCHR was able to access several locations that had been shelled in Donetsk region. In January 2016, it visited the area around Donetsk Airport and Kyivskyi district, observing extensive destruction and weapons contamination. In Debaltseve, Horlivka, and Shakhtarsk, OHCHR assessed the damage caused by attacks on residential neighbourhoods. Between 8 and 10 June 2015, several high-rise residential apartment buildings in Horlivka were shelled. Residents who still live in their heavily damaged apartments described how they ran down collapsing staircases as their neighbours were being killed and injured by rubble[23]. A water canal that serves all of Horlivka and many of the densely populated urban areas of Donetsk region was hit repeatedly in December 2014 and January 2015, and a water filtration station was damaged in July 2014, depriving people of potable water for period of time. OHCHR notes that the cumulative effects of a protracted conflict in urban areas can be devastating as essential civilian infrastructure is damaged, depriving people of their right to water, sanitation, food, and adequate housing.

29. OHCHR has interviewed numerous victims of the hostilities in 2014 and 2015 that continue to suffer the effects of indiscriminate and disproportionate attacks. A woman living in Kyivskyi district of Donetsk city described how her neighbourhood was frequently and heavily shelled in 2014. On 2 October 2014, her husband was wounded by shrapnel near their home, paralyzing him. Over one year and a half later, her family continues to suffer the daily effects of his shrapnel injury[24]. Many of those injured have difficulty gaining access to adequate medical assistance and physical rehabilitation in armed group-controlled areas.

30. During the reporting period, clashes continued and in February 2016 intensified around the vicinity of Donetsk and Horlivka, both controlled by the armed groups. Exchanges of fire from artillery systems were rare while small arms and light weapons were employed frequently. Due to the limited range of such weapons, soldiers of the Ukrainian armed forces and members of the armed groups comprised the majority of casualties recorded by OHCHR during the reporting period. The OSCE Special Monitoring Mission continued to note the presence of heavy weapons, tanks and artillery systems under 100mm calibre, in violation of the Minsk Agreements.

31. Furthermore, ERW and IEDs pose imminent threats to the population, as demonstrated by the high number of casualties caused by such devices. There is an urgent need for extensive mine action activities, including the establishment of appropriate coordination mechanisms, mapping, and mine risk education and awareness on either side of the contact line.

B. Casualties

Civilian casualties[25]

[23] HRMMU Interview, 10 December 2015.

[24] HRMMU Interview, 21 January 2016.

[25] For this report, OHCHR investigated reports of civilian casualties by consulting a broad range of sources and types of information that are evaluated for their credibility and reliability. In undertaking documentation and analysis of each incident, OHCHR exercises due diligence to corroborate information on casualties from as wide range of sources as possible, including OSCE public reports, accounts of witnesses, victims and other directly affected persons, military actors, community leaders, medical professionals, and other interlocutors. In some instances, investigations may take weeks or months before conclusions can be drawn. This may mean that conclusions on civilian casualties may be revised as more information becomes available. OHCHR does not claim that the statistics presented in this report are complete. It may be under-reporting civilian casualties given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and

32. The number of civilian casualties caused by armed conflict continued to decrease. Between 16 November 2015 and 15 February 2016, OHCHR recorded 78 conflict-related civilian casualties in the conflict-affected areas of eastern Ukraine: 21 killed (13 men and eight women), and 57 injured (41 men, eight women, six boys and two girls) - compared to 178 civilian casualties recorded (47 killed and 131 injured) during the previous reporting period of 16 August – 15 November 2015. Overall, the average number of monthly civilian casualties during the reporting period was among the lowest since the beginning of the conflict.

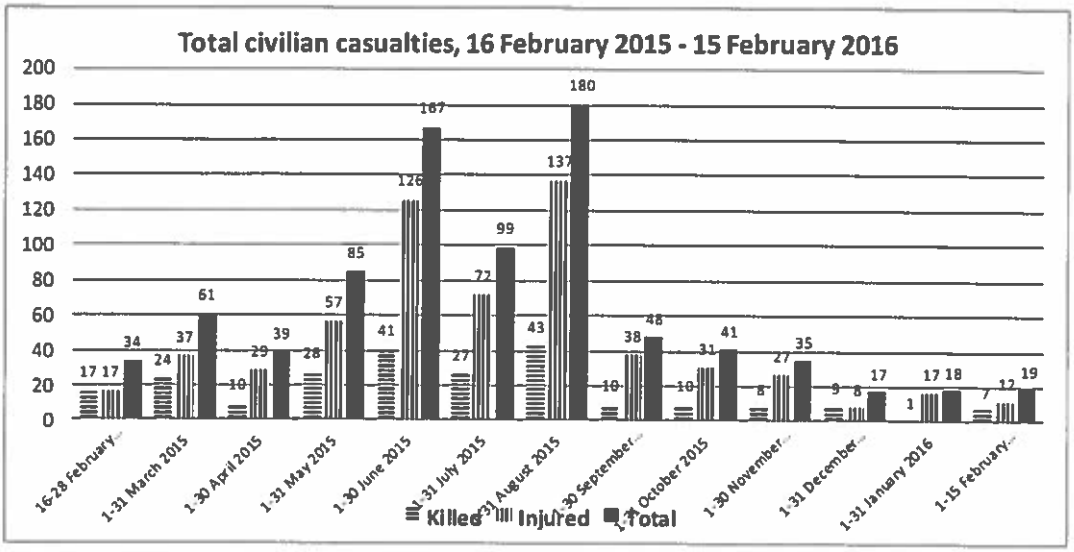
33. The number of civilian casualties recorded by OHCHR since the Minsk ceasefire agreement entered into force on 15 February 2015 reached 843: 235 killed (125 men, 61 women, 10 boys and six girls, and 30 adults and three children whose sex is unknown) and 608 injured (299 men, 164 women, 31 boys, 12 girls, and 101 adults and one child whose sex is unknown).

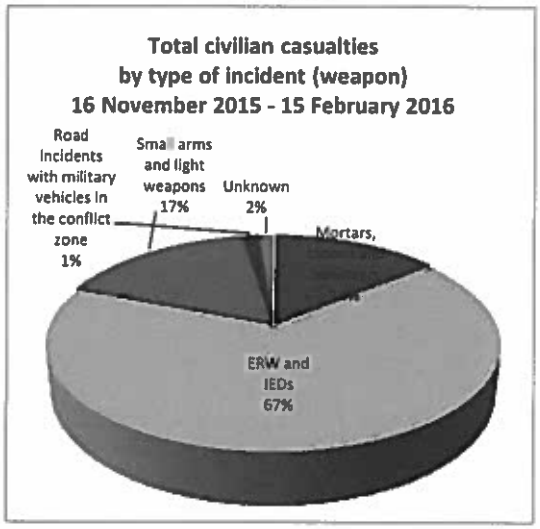
34. The majority of civilian casualties (during the reporting period – 52 - were caused by ERW and IEDs: 11 deaths (eight men and three women) and 41 injuries (31 men, six boys and four women).

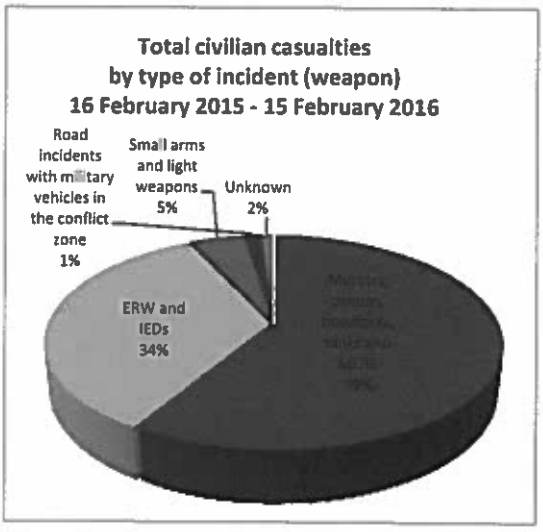
35. Eleven civilian casualties resulted from shelling: five killed (three men and two women) and six injured (four men, a woman and a girl). Small arms and light weapons accounted for 13 casualties: three killed (all women) and 10 injured (six men, three women and a girl). In addition, one man was killed in a road incident with a military vehicle, and the cause of death of one man is unknown.

36. This pattern of civilian casualties results from the continued relative lull in shelling of densely populated areas, the February increase in clashes with small arms and light weapons in smaller settlements (such as Kominternove and Zaitseve), and the prevalence of ERWs and IEDs.

time periods. OHCHR is not in a position at this time to attribute specific civilian casualties recorded to the armed groups, Ukrainian armed forces or other parties.







Total casualties since the beginning of the conflict

37. In total, from mid-April 2014 to 15 February 2016, OHCHR recorded 30,211 casualties in the conflict area in eastern Ukraine, among Ukrainian armed forces, civilians and members of the armed groups. This includes 9,167 people killed and 21,044 injured[26].

[26] This is a conservative estimate of OHCHR based on available data. These totals include: casualties among the Ukrainian forces, as reported by the Ukrainian authorities; 298 people from flight MH-17; civilian casualties on the territories controlled by the Government of Ukraine, as reported by local authorities and the regional departments of internal affairs of Donetsk and Luhansk regions; and casualties among civilians and members of the armed groups on the territories controlled by the 'Donetsk people's republic' and the 'Luhansk people's republic', as reported by the armed groups, the so-called 'local authorities' and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and due to overall under reporting, especially of military casualties. The increase in the number of casualties between the different reporting dates does not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date.

There was a total of 381 casualties during the reporting period: 69 killed, including 21 civilians, and 312 injured, including 57 civilians[27].

C. Missing persons

38. The problem of missing persons in the conflict zone remains acute. Relatives and friends of those missing suffer the anguish and stress caused by the continuing uncertainty concerning the fate and whereabouts of their loved ones. The United Nations Human Rights Committee considers such anguish and stress to amount to ill-treatment[28]. Under international humanitarian law, which is binding on Government forces and armed groups, all feasible measures must be taken to account for persons reported missing as a result of armed conflict, and to provide their family members with any information on their fate[29].

39. The National Police and SBU have respectively reported 741 and 774 persons missing in connection with the conflict[30]. In December 2015, Ukraine's representative to the humanitarian working group of the Trilateral Contact Group stated that a list of 762 missing persons had been handed over to the International Committee of the Red Cross (ICRC), which led to the determination of the whereabouts of 63 people. This variation in numbers indicates that there may be duplication or that certain entities may not have up-to-date lists. The actual number of missing persons is difficult to ascertain. The 'ombudsperson' of the 'Donetsk people's republic' claimed to have registered 420 missing persons as of 12 February 2016. Further, it is not clear whether the data held by the Government has been cross-referenced with that of the armed groups.

40. Some of those considered missing could be dead, their remains unidentified, for instance taking into account the fact that the identification of up to 1,000 bodies held in morgues in Government-controlled territory is pending. Other unidentified bodies have been stored in morgues in the territories controlled by the armed groups. Furthermore, recovering mortal remains in areas where hostilities took place, especially in Luhansk region, continued to be difficult.

41. OHCHR believes that some people recorded as missing may be alive, either on the territories controlled by the armed groups, where they may be held in 'official' or in unrecognized places of detention; or in territory under the Government's control, held in secret or incommunicado detention (See D. Summary executions, enforced disappearances, unlawful and arbitrary detention, and torture and ill-treatment at p. 15).

42. OHCHR has observed a high degree of inaction by law enforcement agencies in investigating cases of individuals alleged to be missing in the conflict-affected area. The search for missing persons requires strong coordination among relevant governmental bodies, particularly the Ministry of Internal Affairs, SBU, and the Ministry of Defence, as well as a dedicated mechanism to receive allegations from relatives of missing persons, and to facilitate communication between the Government and armed groups.

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[27] OHCHR notes that casualties among Ukrainian forces and armed groups continued to be under reported; therefore their real share in total casualties is bigger.

[28] See, for instance, Human Rights Committee, Quinteros v. Uruguay, para. 14.

[29] Article 8, Additional Protocol II to the four Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 115.

[30] The list of missing persons posted to the website of the National Police of Ukraine contains 741 names (as of 13 January 2016). The Security Service of Ukraine reported about 774 missing persons (information released during the round table "Lost victims of the armed conflict: creation of the nation-wide system for the search and identification of missing military and civilians in the east of Ukraine" organized by the Centre for Civil Liberties in Kyiv on 17 November 2015).

43. It is also important for the Government to engage civil society initiatives in such work. Coordination with relevant actors, including independent organizations such as ICRC on the territories controlled by the armed groups is essential, especially in relation to the recovery and identification of mortal remains, and exchange of DNA and other identifying data.

44. The lack of transparent information about the fate and whereabouts of missing or disappeared persons, and the failure to systematically address the issue compromises reconciliation efforts. The clarification of the fate of the missing should be at the centre of any peace negotiations.

D. Summary executions, enforced disappearances, unlawful and arbitrary detention, and torture and ill-treatment

Ukrainian law enforcement and security forces

45. Throughout the country, OHCHR continued to receive allegations of enforced disappearances, arbitrary and incommunicado detention, and torture and ill-treatment of people accused by the Ukrainian authorities of 'trespassing territorial integrity', 'terrorism' or related offenses, or of individuals suspected of being members of, or affiliated with, the armed groups.

46. A former member of an armed group informed OHCHR about his ill-treatment by Ukrainian forces (allegedly SBU) in September 2014, in the town of Sloviansk, Donetsk region. After his arrest, he was reportedly kept in the basement of the local college and regularly beaten. He was later transferred to the town of Izium, where he was kept in a basement, together with 12 other detainees. He claimed having witnessed a summary execution while there[31].

47. OHCHR documented the case of a man who was reportedly arrested on 12 August 2014, at a military checkpoint in Novoazovsk, while on the way to his brother's funeral. Following inquiries by his family, the deputy commander of Shakhtarsk battalion confirmed that his soldiers had arrested the man on 12 August and offered to release him for a large amount of money on the condition that his relatives would not tell anyone about the incident. Other soldiers stationed near the checkpoint confirmed seeing the man prior to his disappearance. On 17 August 2014, the same deputy commander threatened the victim's relatives and told them that the man had escaped. Since then, the family has had no information regarding the victim's whereabouts. While a criminal case was launched into the presumed homicide, and the deputy commander was detained in May 2015 on different charges, no investigative steps have apparently been taken by law enforcement agencies regarding this disappearance[32].

48. OHCHR remains highly concerned about consistent allegations of detainees being held in unofficial places of detention by SBU. These places are not accessible to the National Preventive Mechanism and international organizations. Reliable accounts from victims and their relatives indicate a widespread pattern of conduct across several SBU departments. Since the outbreak of the conflict, a network of unofficial places of detention, often located in the basement of regional SBU buildings, have been identified from a large number of

[31] HRMMU Interview, 15 December 2015.
[32] HRMMU Interview, 13 January 2016.

reliable accounts from victims and their relatives. OHCHR recalls that the prohibition of unacknowledged detention is not subject to derogation[33].

49. For instance, OHCHR has received alarming allegations that in Odesa, detainees are held for up to five days incommunicado at the SBU building following their arrest, without any contact with their family or access to a lawyer[34]. Information recorded by OHCHR indicates that, as of February 2016, 20 to 30 people were detained illegally and incommunicado at the Kharkiv regional SBU building[35]. When asked about their fate and whereabouts, SBU officials have systematically denied any involvement. According to information gathered by OHCHR, the vast majority of those held in the Kharkiv SBU were not arrested in accordance with legal procedures and have not been charged, despite being held because of their presumed affiliation with the armed groups. These detainees are held in such circumstances until surrendered to armed groups in simultaneous releases of detainees (See Releases of detainees and captives at p. 20).

50. During the reporting period, OHCHR documented a pattern of cases of SBU detaining and allegedly torturing the female relatives of men suspected of membership or affiliation with the armed groups. In addition to being a violation of the prohibition of torture, these cases raise concerns of arbitrary deprivation of liberty and gender-based violence. On 8 December 2015, in Shchurove village, Donetsk region, SBU officers arrested a 74-year-old woman at her house while they were looking for her son. She was detained at the SBU building in Mariupol, charged with 'terrorism', and beaten. OHCHR visited her in the Mariupol pre-trial detention facility (SIZO)[36]. After OHCHR communicated this case to the Office of the Military Prosecutor, a criminal investigation was initiated into her allegations of ill-treatment. On 27 January 2016, the woman was relocated to the SBU SIZO in Kyiv. OHCHR believes she is at risk of further abuse. The SBU informed OHCHR that she and her son are suspected of being informants for the 'ministry of state security' for the 'Donetsk people's republic'. OHCHR also documented the case of three women, who were detained in May 2015, in a town under Government control in Donetsk region. The victims included the wife of an armed group commander and her daughter. The latter was allegedly severely tortured, and both were allegedly threatened with sexual violence[37].

51. In another case, a 'pro-federalism' activist from Odesa, charged of acts of terrorism was pressured to sign a confession after being tortured at the Odesa SBU. During his interrogation, he was reportedly suffocated with a plastic bag covering his head and was beaten on the face, head and body. The SBU officers then allegedly took him to the lobby of the SBU building where he was shown his son whom they had also arrested. His son was taken to a separate room and the father could hear his harrowing screams[38]. Also at the Odesa SBU, a pregnant woman who had been apprehended with her husband at a checkpoint while crossing the contact line in Donetsk region, in October 2015, was threatened. She subsequently lost her baby which, she claims, was the result of the ill-treatment she suffered in detention[39].

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[33] United Nations Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, para. 13(b).

[34] HRMMU Interview, 22 January 2016.

[35] HRMMU has recorded the names of 25 individuals detained incommunicado at the Kharkiv SBU as of 15 February 2016. The SBU denies any knowledge of their fate or whereabouts.

[36] HRMMU Interview, 24-25 December 2015.

[37] HRMMU Interview, 23 December 2015.

[38] HRMMU Interview, 25 November 2015.

[39] HRMMU Interview, 8 December 2015.

52. OHCHR received alarming reports on poor detention conditions and ill-treatment of pre-trial detainees throughout Ukraine. On 11 November 2015, during a routine inspection of cells in Dnipropetrovsk SIZO, guards allegedly started insulting detainees and damaged their personal belongings. As the detainees fought back, they were beaten with sticks and sprayed with gas. 25 detainees sustained bodily harm and were provided with medical treatment following the incident. The police initiated a criminal investigation into the disturbance caused by the detainees[40], and the Prosecutor's Office into the alleged abuse of power by SIZO officials. Repeated beatings of detainees at SIZO have been reportedly been taking place since October 2015. Some detainees also complained of malnutrition and lack of medical assistance, which leads to chronic diseases and other illnesses[41]. According to the State Penitentiary Service, 103 deaths in custody were reported in the Government-controlled territories in 2015.

53. OHCHR remains concerned about the lack of systematic investigations into allegations of torture committed by Ukrainian security forces and law enforcement. During its visits to Artemivsk and Mariupol SIZOs, OHCHR came across several detainees who had filed complaints of torture, with no notable progress in investigations into their allegations[42]. In 2015, the Office of the Prosecutor General launched 1,925 criminal investigations into allegations of torture and ill-treatment by police and penitentiary officials. In 1,450 cases, the investigation found that the requisite elements of crime had not been met. Courts subsequently overturned the prosecution's findings in 119 cases, compelling investigations to proceed. In total, 49 police and penitentiary officials were indicted for alleged acts of torture and ill-treatment. OHCHR is also deeply concerned that despite its repeated interventions, it continues to receive allegations of SBU violating basic procedural guarantees, denying detainees the right to counsel, and subjecting them to torture and ill-treatment.

54. The failure to investigate allegations of torture is of particular concern. OHCHR has observed that the authorities are unwilling to investigate allegations of torture particularly when the victims are persons detained on grounds related to national security or are viewed as being 'pro-federalist'. Torture can only be prevented if detainees are brought before a judge promptly. Complaints and investigations into allegations are more likely to be effective if they are initiated promptly, and remedies need to be timely for victims to rebuild their lives. In the vast majority of cases documented by OHCHR, police and prosecutors close investigations citing lack of evidence. For instance, at the end of 2015, the Odesa Regional Prosecutor's Office closed two criminal investigations into allegations of torture due to "lack of evidence"[43]. While monitoring trials, OHCHR observed that prosecutors and judges rarely record or act upon defendant's allegations of torture. This contravenes Ukrainian legislation, which penalises torture and obliges public prosecutors to launch criminal investigations within 24 hours of receiving such allegations[44]. It also violates Ukraine's obligation as a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to its Optional Protocol to take all possible measures to prevent torture[45]. Delays in collecting evidence of torture often

[40] The investigation was initiated under Article 392 (actions disorganizing the work of a penitentiary institution) of the Criminal Code.
[41] HRMMU interviews, 12 and 19 November 2015, 4 February 2016.
[42] HRMMU Interviews, 23 December 2015 and 15 January 2016.
[43] HRMMU Interviews, 20 January 2016 and 1 February 2016.
[44] Article 214 of the Criminal Procedure Code of Ukraine.
[45] The Optional Protocol to the Conventional against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by Ukraine on 19 September 2006.

lead to the loss of crucial evidence. Systemic inaction or delays also inhibit justice and perpetuate impunity.

55. OHCHR is also very concerned about the use of statements extracted through torture as evidence in court proceedings. On 26 January 2016, three men were convicted of 'terrorism', allegedly on the basis of confessions they were forced to sign after being subjected to severe torture in the Regional SBU in Zaporizhzhia in 2014[46]. The SBU informed OHCHR that officers resorted to 'proportionate' and 'justified' force when detaining the men, but did not address allegations of their torture while in SBU detention[47]. OHCHR recalls that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings[48]. A man who is currently on trial in Zaporizhzhia for 'terrorism' was told by SBU interrogators that his wife and children would be at risk if he were to complain about the torture and ill-treatment he was subjected to by SBU. As a result, he has refrained from challenging the admissibility of incriminating statements that were extracted through torture[49]. The SBU has challenged this account, stating that a medical examination found no injuries or marks that could have been caused by torture, and confirmed to OHCHR that the man has not filed any complaints about his treatment while in SBU custody[50]. OHCHR urges the Ukrainian authorities to take steps to ensure that complainants and their relatives are protected from reprisals as a consequence of complaints of torture and ill-treatment[51].

Armed groups

56. OHCHR recorded new allegations of killings, abductions, illegal detention, torture and ill-treatment perpetrated by members of the armed groups. The accounts most often referred to incidents that took place outside the reporting period, as some victims delayed reporting until they left the areas under the control of the armed groups, while the relatives of those in detention requested that their cases remain confidential for fear of retribution. The armed groups use State detention facilities that existed before the conflict (SIZOs and penal colonies) as well as *ad hoc* places.

57. During the reporting period, OHCHR documented several cases of summary executions committed by members of the armed groups in 2014 and 2015. In August 2014, a member of the "special committee" of the Vostok battalion of the 'Donetsk people's republic' disappeared after being detained by his battalion at the "Izolyatsia" Platform for Cultural Initiatives in Donetsk. In May 2015, his body was found decapitated in a reservoir in Donetsk[52]. In another case, between 1 and 15 April 2015, in the town of Dokuchaivsk, Donetsk region, members of the 'Donetsk people's republic' allegedly summarily executed a man whom they accused of attacking one of their checkpoints. The victim's wife identified his body and noted signs of torture[53].

[46] HRMMU Interview, 26 January 2016.
[47] Letter from the Security Service of Ukraine to the UN Human Rights Monitoring Mission in Ukraine, 5 February 2016.
[48] Article 15, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
[49] HRMMU Interview, 11 December 2015.
[50] Letter from the Security Service of Ukraine to the UN Human Rights Monitoring Mission in Ukraine, 5 February 2016
[51] Article 13, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
[52] HRMMU Interview, 18 December 2015.
[53] HRMMU Interview, 28 December 2015.

58. OHCHR is also concerned about conditions of detention and cases of ill-treatment in 'penitentiary institutions' in the territories controlled by the armed groups. In January 2016, OHCHR separately and confidentially interviewed two men who had been convicted prior to the conflict but had served time in penal colonies under the control of armed groups. Both complained about the poor living and medical conditions in detention. The prison was reportedly deprived of hot water and, in January and February 2015, of electricity. Prisoners were reportedly allowed to have a cold shower once a month and had to pay for food, or would get a piece of bread and porridge. Access to medical assistance was reportedly denied, and inmates with tuberculosis were kept with others. One prisoner complained about the frequent use of physical abuse as a disciplinary measure. The prison facility was shelled twice in August 2014, killing one prisoner[54].

59. In territory controlled by the armed groups, a family was subjected to harassment, threats and a mock execution because their son was a soldier in the Ukrainian army. On 2 February 2015, some 20 armed people surrounded their house, burst in and put a gun to the forehead of the father. The family was forced outdoors and told they would be shot dead. An armed man loaded the gun several times, shouting at the family and insulting them with derogatory names. The adults were taken to a commandant's base but released soon afterwards. The victims informed OHCHR that another family was forced to leave the village for openly expressing views supporting Ukrainian unity and rejecting the authority of the armed groups[55].

60. In April 2015, armed groups captured a citizen of the Russian Federation who had come to Luhansk upon invitation by the 'Luhansk people's republic' as a volunteer with the Ministry of Defense of Ukraine working on issues related to detainees' release and humanitarian assistance. He was captured on the street in front of the former Luhansk regional state administration building. He believes that he was taken to the 'ministry of state security' building basement, where he was blindfolded and forced to sit handcuffed with his legs tightened around a pipe. He was beaten in the head and groin and subjected to three mock executions. He was poorly fed and allowed to go to the toilet only once a day. After one month, he was taken out and left on the street, blindfolded, handcuffed, and with his legs tied tight. Shortly thereafter, he was abducted by other armed group members and taken to the Lenin factory. There, over a period of a month, he was subjected to psychological pressure and subjected to mock executions. After a month, he was taken to the 'ministry of state security', where he was accused of being a Maidan protestor who came to the 'Luhansk people's republic' to overthrow the armed groups. During the last five months of his illegal detention, he was malnourished and allowed to use the toilet only once every few days. He was provided medical care on one occasion. He was released at the end of December 2015[56].

61. Ukrainian servicemen captured by the 'Donetsk people's republic' continued to be detained in poor conditions and subjected to ill-treatment. One soldier, who was visited by a relative, had dark spots on his skin, possibly due to beatings and burning. Another soldier, a member of the Azov regiment who was captured in Shyrokyne in February 2015 was subjected to electric shock and his teeth were pulled out[57]. OHCHR is concerned about allegations that captured soldiers have been detained in crowded cells with up to 22 people and subjected to physical violence in the former SBU building on Shchorsa Street, as well as in the building currently used by the 'ministry of state security' at 26 Shevchenko

[54] HRMMU Interview, 15 January 2016.
[55] HRMMU Interview, 22 November 2015.
[56] HRMMU Interview, 9 February 2016.
[57] HRMMU Interview, 15 February 2016.

Boulevard in Donetsk city[58]. During the reporting period OHCHR has been denied access to detention facilities in Donetsk.

Releases of detainees

62. During the reporting period, there has been no progress regarding the release of "all hostages and illegally-held persons" under the 'all for all' principle foreseen by the Minsk Agreements, although a number of simultaneous releases took place, such as a 'one for one exchange' of two people on 1 December 2015. OHCHR continues to advocate for the 'all for all' release of detainees at the highest levels with representatives of the armed groups, Government and facilitators.

63. The criteria and scope for the release of detainees under the Minsk framework continues to be discussed within the humanitarian working group of the Trilateral Contact Group. According to the 'ombudsperson's office' of the 'Donetsk people's republic', as of 12 February some 1,110 persons were detained by the Government of Ukraine, including 363 members of the armed groups. This includes 577 people arrested for "their political views" and 170 civilians "who have nothing to do with the conflict". On 8 February 2016, the SBU provided OHCHR with a list of 136 people who may be in the custody of the armed groups, although no information was available about many of their exact whereabouts.

64. Detainees identified for simultaneous release by Government authorities and armed groups are left outside the protection of the law. In the lead-up to simultaneous releases, and upon direct instructions from SBU, courts grant individuals charged with 'terrorism' or 'separatism' conditional interim release from pre-trial detention. These individuals are then systematically re-arrested and detained in incommunicado detention, usually in SBU premises. According to cases documented by OHCHR, this period of secret, unacknowledged detention can last from a few days up to one year, pending negotiations. When the negotiation is finalized, detainees are generally brought to the contact line by 'negotiators' and released to the armed groups, who simultaneously release detainees to Ukrainian authorities.

65. This process has serious consequences. Once detainees are in SBU custody or released into armed group-controlled territory, they are prevented from appearing before court and thereby violate the terms of their conditional interim release. When negotiations fail, detainees are held in incommunicado detention for long periods of time, while SBU systematically denies their whereabouts. The Ukrainian authorities often do not return their identity documents to those they release. For instance, in December 2014, a group of 22 detainees were released from Dnepropetrovsk to the 'Donetsk people's republic'. OHCHR learned that their passports have remained with the SBU. OHCHR has observed that this places former detainees in a precarious situation once they are transferred to areas controlled by the armed groups. Without any proof of identity, livelihood or support network, they are vulnerable to exploitation by the armed groups.

66. Documented cases suggest that some individuals are arbitrarily arrested and detained by the Ukrainian authorities as bargaining chips to negotiate simultaneous releases. OHCHR is concerned that the manner in which such simultaneous releases unfold may amount to arbitrary detention and hostage-taking.

[58] HRMMU Interview, 2 February 2016.

III. Accountability and the administration of justice

> *"It is so very difficult to forget this person who pressed the trigger; a mortar was launched and turned my husband into a bed-ridden puppet".*
>
> - A woman living in Donetsk city

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

67. Civilians living directly on either side of the contact line are deprived of access to justice. Both Ukrainian authorities and the 'parallel structures' in the territories controlled by the armed groups systematically fail to investigate grave human rights abuses committed in the areas under their control.

68. OHCHR is concerned that in Government-controlled territories of Donetsk and Luhansk regions, the Ukrainian authorities prioritizes national security over human rights, as evidenced by the derogation from provisions of ICCPR, particularly regarding fair trial (See Legal developments and institutional reforms at p. 40).

69. OHCHR is also concerned about the 'parallel structures' established under the auspices of 'Donetsk people's republic' and 'Luhansk people's republic', as they violate Ukraine's legislative framework and the Minsk Agreements.

Ukrainian law enforcement and security forces

70. As mentioned above, OHCHR continued to document consistent and credible allegations of torture, ill-treatment, incommunicado detention and enforced disappearances by SBU elements in Kharkiv, Mariupol, and Zaporizhzhia.

71. OHCHR is concerned about SBU officials' systematic denial of these allegations, which suggests their resistance to any investigations. The SBU leadership continues to fail to take all necessary and reasonable measures within their authority to prevent or sanction the commission of human rights violations by their subordinates. The case of Oleksandr Agafonov[59] is emblematic in this regard. Agafonov was severely tortured in Izium, Kharkiv district and died of related injuries in November 2014. OHCHR has reasonable grounds to believe that the superior commanders of the perpetrators were 'hiding' those responsible. Two SBU officers from Kyiv have only been charged with exceeding authority in connection with Agafonov's death but remained in their positions, pending investigation. On 15 December 2015, OHCHR was informed that the case was being transferred from Kharkiv to Kramatorsk. Despite the official justification provided, OHCHR is concerned that this transfer may lead to pressure on the due process of law and prevent a fair trial, due to the significant presence of Ukrainian military and SBU officers in Kramatorsk, which hosts the headquarters of the SBU Anti-Terrorist Centre. The trial is set to begin in March 2016.

72. During 2015, the Office of the Military Prosecutor for anti-terrorist operation forces launched 34 criminal investigations into allegations of ill-treatment, torture, and unofficial detention. Investigations into 19 cases remain pending, while 15 cases have been dismissed in the course of the preliminary investigation for lack of evidence. OHCHR is concerned

[59] See 12th OHCHR public report on the human rights situation in Ukraine, covering 16 August to 15 November 2015 (paragraph 114).

that the Office of the Military Prosecutor, which has exclusive jurisdiction to investigate and prosecute military and security forces personnel, has not taken all possible steps to investigate and prosecute serious human rights and international humanitarian law violations allegedly perpetrated by such forces in the course of hostilities. The Military Prosecutor denies the possibility of indiscriminate shelling of residential areas by the Ukrainian military. Such a posture precludes efforts to verify and investigate allegations. In one case documented by OHCHR, the Military Prosecutor attempted to dismiss an investigation into the ill-treatment of a woman who was detained on for allegedly planning a 'terrorist' act in Kyiv[60].

73. OHCHR has followed cases of residents of Government-controlled Donetsk and Luhansk regions who have been charged and tried for their alleged membership in and support of the armed groups, simply for being in contact with people (usually their relatives) living in territories controlled by these groups[61] or for working for a civilian water supply company operating in the 'Luhansk people's republic'[62].

74. In December 2015, SBU carried out two operations in Donetsk region that resulted in mass arrests, raising serious concerns about the protection of human rights under counter-terrorism legislation. On 14 December, some 600 Ukrainian military, National Guards and SBU servicemen conducted a raid in the Government-controlled town of Krasnohorivka, where they arrested 85 residents for their alleged affiliation with the armed groups. On 20 December, a similar raid was undertaken in the Government-controlled town of Avdiivka, where up to 100 residents were arrested on the same grounds. In both instances during house raids, hundreds of people were forced to surrender their phones for examination, and were detained for several hours for questioning. Most were subsequently released.

75. The raids were conducted under the Law on Combating Terrorism, which applies to the entire territory of Donetsk and Luhansk regions where the 'anti-terrorist operation' was declared on 14 April 2014 and grants powers to SBU, the National Guard and Armed Forces to undertake such operations with no guarantees regarding human rights.[63] The overbroad formulation of certain provisions of this law and a lower standard of proof than in the Criminal Procedural Code can lead to violations, including arbitrary arrests and detention. In the abovementioned case and in several other instances, OHCHR has noted that basic human rights principles and procedural guarantees are often neglected during such operations.

76. OHCHR reminds the Government of Ukraine that despite its notification of derogation from certain provisions of ICCPR, including article 14 on fair trial rights, certain elements of the right to a fair trial are explicitly guaranteed under article 6 of Additional Protocol II to the Geneva Conventions during armed conflict and that the principles of legality and the rule of law that fundamental requirements of fair trial must be respected at all times (See Legal developments and institutional reforms at p. 40)[64].

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[60] HRMMU Interview, 27 January 2016.
[61] HRMMU Interview, 8 February 2016.
[62] HRMMU Interview, 4 January 2016.
[63] Article 15(6) of Law on Combating Terrorism authorizes relevant forces to "enter residential and other premises, land plots belonging to citizens, intercepting an act of terrorism and in pursuit of people suspected to have committed such acts, on the territory and on the premises of enterprises, institutions and organizations, to check transport vehicles, that pose a substantiated threat to the life or health of persons."
[64] United Nations Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, para. 16.

77. OHCHR has observed a worrying trend in criminal proceedings of people charged with "trespassing against the territorial integrity or inviolability of Ukraine." Courts regularly and repeatedly extend the initial period of detention for individuals held on national security grounds for 60 days without providing sufficient and relevant reasons to justify detention[65]. Grounds for continued detention are almost never provided, and conditional or interim release is rarely – if ever – granted. Many defendants are detained for long periods of time, up to 20 months, and eventually charged with minor offenses, such as "hooliganism". This has been noted as a serious trend in Kharkiv and Odesa.

78. This trend extends to high-profile cases, such as that of Spartak Holovachov. For instance, one of the leaders of the anti-Maidan movement in Kharkiv Mr. Holovachov was accused of participating in riots. After the conclusion of his trial, on 19 November 2015, the prosecution requested the introduction of additional evidence and new witnesses. As of February 2016, none of the summoned witnesses had appeared before court. Mr. Holovachov has been in solitary confinement in the 100th Penal Colony, a high security detention facility, since 1 May 2014. The General Prosecutor attests that Mr. Holovachov is held separately because he is the only detainee in his category. OHCHR recalls that the separation of detainees cannot be used as a disciplinary sanction, prolonged investigations or trials cannot justify indefinite solitary confinement, and that the use of prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment[66].

Armed groups

79. Parallel structures continued being developed in the 'Donetsk people's republic' and 'Luhansk people's republic'. OHCHR is concerned that these parallel structures are established as a vehicle to impose the authority of armed groups over the population living on the territories under their control. These structures are also used to formalize the conduct of the armed groups that violates human rights, such as the deprivation of liberty without adequate protection or judicial guarantees. OHCHR notes that members of the armed groups seem to enjoy a high level of impunity for a wide range of human rights violations targeting local residents and Ukrainian servicemen, including illegal detention, torture and ill-treatment[67].

80. In the 'Donetsk people's republic', a parallel 'judicial system' has been operational since 2014, largely composed of people with no relevant competence. Most professional judges left the territories controlled by the armed groups after the Government relocated all courts, prosecution offices and notary services to territory under its control in November 2014[68].

81. In addition, a parallel 'legislative framework' has been developed, mixing Ukrainian legislation and decrees issued by the 'Donetsk people's republic' or 'Luhansk people's republic'. In December 2015, the OSCE Special Monitoring Mission to Ukraine issued a

[65] These cases concern individuals charged with offenses linked to their participation in pro-Russian demonstrations, posting pro-Russian or pro-armed group statements on social networks, associating with or supporting the 'Donetsk people's republic' or 'Luhansk people's republic'.

[66] Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment interim report to the General Assembly of 5 August 2011 (A/66/268).

[67] Brianka SSSR battalion.

[68] The Decision of the National Security and Defence Council of 4 November On Immediate Measures Aimed at the Stabilization of Socio-Economic Situation in Donetsk and Luhansk Regions, enacted by the Decree of the President of Ukraine No. 875/2014 on 14 November 2014, as well as the consequent resolution of the Cabinet of Ministers of Ukraine No. 595 as of 7 November 2014, On the Issues of Financing of State Institutions, Payment of Social Benefits to Citizens and Provision of Financial Support for Some enterprises and Organizations of Donetsk and Luhansk regions.

report on "Access to Justice and the Conflict in Ukraine" describing the parallel structures as relying on an uncertain, *ad hoc* and non-transparent legal framework, subject to constant change, shortages of professional staff, and in certain instances, lack of operational capacity. OSCE found that the removal of Government services, combined with the deficiencies in the parallel 'systems', directly impacts people throughout territories under the armed groups' control[69].

82. In early February 2016, a 'court' of the 'Donetsk people's republic' 'sentenced' Ukrainian serviceman Yevhen Chudnetsov to 30 years of deprivation of liberty for "attempting to violently change the constitutional order". OHCHR calls for his release and that of other captives 'sentenced' by parallel, illegal bodies or all other captives of the armed groups.

83. OHCHR reiterates that parallel 'justice' structures of the 'Donetsk people's republic' and the 'Luhansk people's republic' are illegal, and violate the Constitution of Ukraine and the Minsk Agreements. As a result, OHCHR considers that armed groups lack the legitimacy to sentence or deprive anyone of liberty. People suspected of crimes involving gross international human rights or humanitarian law abuses or violations must be handed over to the Ukrainian judicial authorities.

84. Individuals who were detained prior to the conflict and remain in custody in institutions located on the territories controlled by the armed groups continue to be a priority for the Ukrainian authorities. While some case files have been transferred from the territories controlled by the armed groups, the vast majority of individuals held in penitentiary institutions have not been evacuated.

85. There are also cases of individuals detained in Government-controlled territories whose cases cannot be addressed by the Ukrainian judicial authorities because their files remained in the territories controlled by the armed groups, or were lost or destroyed in the conflict. In order to protect people against continued arbitrary detention and facilitate their access to justice, case materials must be transferred to the Ukrainian authorities. There have been efforts by the Ombudsperson of Ukraine and 'Donetsk people's republic' toward facilitating handovers of case materials from the territories controlled by the armed groups to relevant Ukrainian authorities, which OHCHR welcomes.

B. Individual cases

86. During the reporting period, the trial of Kharkiv mayor Hennadii Kernes[70] continued in the Kyivskyi District Court of Poltava but has been protracted. As of February 2016, the court was still hearing the testimonies of two alleged victims of the mayor. OHCHR is concerned that this trial has not been conducted in line with the principles of fair trial. Some political leaders as well as members of the Government issued strong comments on the process, including the Minister of Internal Affairs, who wrote on social media that the court "demonstrates its impotence," "is directed by the defendant", and referred to allegations of "Kernes' collusion with judges." A large group of activists and politicians continued to attend all court hearings, pressuring the judge to convict Mr. Kernes. On 4 September, the

[69] "Access to Justice and the Conflict in Ukraine," p. 4-5, Organization for Security and Co-operation in Europe Special Monitoring Mission to Ukraine, December 2015.

[70] See paragraph 150 of the 11th OHCHR public report on the human rights situation in Ukraine, covering 16 May to 15 August 2015.

Poltava District Prosecutor's Office opened a criminal investigation into their conduct following complaints received from the judges and Mr. Kernes's lawyers[71].

87. No progress has been observed in the case of Nelia Shtepa, former mayor of Sloviansk, Donetsk region, who remains in detention for alleged facilitation of seizure of Sloviansk by armed groups[72]. As of February 2016, the testimony of defense witnesses was being heard and hearings were to resume in late February. OHCHR remains concerned about continued breaches of due process and fair trial rights in this case. At the time of writing, the court and the prosecutors continued to disregard exonerating evidence. OHCHR is concerned about the deteriorating conditions of Ms. Shtepa's detention in the Kharkiv SIZO, where she has been held for over 19 months. She alleged that for one month in December 2015, she was held in a cell with 13 other people, with an average temperature of 3 degrees centigrade in the cell. She complained about a heart pain but has been denied medical assistance. The General Prosecutor has stressed that while Ms. Shtepa was moved between cells, her conditions of detention did not vary. OHCHR finds that such conditions of detention could amount to ill-treatment. When OHCHR visited and interviewed Ms. Shtepa on 20 January 2016, she had been returned to her previous cell.

88. HRMMU continued to follow the case of Nadiia Savchenko, who has been in detention in the Russian Federation since July 2014, after being allegedly apprehended and transferred from Ukraine by armed groups. She is accused of killing two Russian journalists[73]. Without access to the territory of the Russian Federation, OHCHR relies on the official statements of the prosecution and Ms. Savchenko's defense lawyers. On 17 December 2015, Ms. Savchenko announced that she would go on hunger strike to protest her continued detention. After six weeks, her defense lawyers stated that her health had significantly deteriorated. According to her lawyers, the verdict in her case may be expected in early March 2016. OHCHR remains concerned about reported breaches of due process and fair trial rights in this case. OHCHR is also monitoring the case of two citizens of the Russian Federation, detained by the Ukrainian military in clashes near the town of Shchastia, Luhansk region, in which a Ukrainian serviceman was killed[74]. They are accused of being acting servicemen of the Armed Forces of the Russian Federation, transporting arms and ammunition to the territories controlled by the armed groups and have been charged with 'terrorism'-related offenses. The accused have claimed in court that their confession of being acting servicemen of the Russian Federation was extracted through torture. The defense will begin its case shortly.

89. OHCHR is highly concerned about the continued detention and trial of Ukrainians transferred from Crimea to the Russian Federation. On 24 November 2015, the Supreme Court of the Russian Federation rejected the appeal of Oleh Sentsov and Oleksandr Kolchenko, against their conviction by a Russian Federation military court on 25 August. OHCHR recalls that Sentsov was arrested by the Security Service of the Russian Federation (FSB) in Simferopol on 11 May 2014 on suspicion of "plotting terrorist acts." On 23 May 2014, he was transferred to the Russian Federation and detained in Moscow at Lefortovo

[71] Article 376 (interference with activities of judicial authorities) of the Criminal Code of Ukraine and under article 296 (hooliganism) of the Criminal Code of Ukraine.

[72] See 12th OHCHR public report on the human rights situation in Ukraine, covering 16 August to 15 November 2015 (paragraph 113).

[73] For more information, see paragraph 137 of the 12th OHCHR report on the human rights situation in Ukraine covering period from 16 September to 15 November 2015, paragraph 60 of 11th OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015, and paragraph 54 of the 10th OHCHR report on the human rights situation in Ukraine covering period from 16 February to 15 May 2015.

[74] For more information, see paragraph 58 of the 11th OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015.

prison. Later, he was taken to Rostov-on-Don and placed in remand detention. His trial began on 21 July 2015, after over a year in pre-trial detention. Just over a month later, on 25 August 2015, he was sentenced to 20 years in a high security penal colony. According to a statement made by his lawyer on 8 February 2016, Sentsov was transferred to the Siberian region of Yakutia to serve his sentence after losing his appeal. Kolchenko was accused of collaborating with Sentsov and received a 10-year prison sentence. OHCHR recalls its position[75] that the process was marred by violations of fair trial guarantees and of the presumption of innocence, which should have led to the release of the accused.

90. On 15 December 2015, the Moscow Regional Court sentenced a Ukrainian citizen, Valentyn Vyhovskyi, to 11 years in a maximum security prison on spying charges. The trial was held behind closed doors, with a State-appointed lawyer defending Vyhovskyi. Vyhovskyi was arrested at the railway station in Simferopol, on 18 September 2014, and transferred to Moscow, where he was held in the Lefortovo remand prison (SIZO) for more than a year.

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

91. OHCHR continued to follow emblematic cases, including in relation to the grave human right violations that occurred during the Maidan protests, the 2 May 2014 violence in Odesa, the seizure of the police department in Mariupol on 9 May 2014, and the violence at the Parliament in Kyiv on 31 August 2015. In all these cases, there has been a lack of progress in ensuring accountability, raising questions as to both the willingness and ability of the authoritiesto investigate and prosecute those most responsible for these incidents of violence.

Maidan

92. At the time of writing, only five Berkut special police unit servicemen had been brought to trial for the violent crackdown on the Maidan protests. The Office of the Prosecutor General indicted two servicemen on 16 January 2015 for the killing of 39 protestors and, on 9 February 2016, it filed an indictment against the deputy commander of the Berkut regiment and two other servicemen for the killing of 48 protestors and injury of 80 others on 20 February 2014. So far, arrest warrants have been issued for 20 out of the 25 Berkut servicemen whose involvement in the killing of protesters was established by investigators[76]. Although the involvement of commanders was established in the course of the pre-trial investigation, no senior officials have been indicted. The Office of the Prosecutor General has identified 134 suspects: 32 senior officials (including the former President, Prime Minister, and head of the SBU), 72 police servicemen, 23 civilians, five prosecutors and two judges. The investigation to establish their responsibility is ongoing but has been hindered by the destruction and loss of material evidence and suspects fleeing to the Russian Federation.

93. OHCHR notes progress in the case against the former head of the SBU Department for the city of Kyiv and Kyiv region. He is charged with the murder of two or more people in collusion with an organized group and abuse of power for running an "anti-terrorist operation" aimed at dispersing the protests in Kyiv on 18 and 19 February 2014, leading to the deaths of 16 people. According to the Office of the Prosecutor General, his trial was to begin by the end of February 2016.

[75] See 12th HRMMU Report of 16 August - 15 November 2015, p. 30.

[76] Commander of Berkut company who escaped from house arrest in October 2014 (see paragraphs 159-160 of the 7th OHCHR public report on the Human Rights situation in Ukraine), commander and deputy commander of Berkut regiment.

94. In a significant development in the investigation into the killings of protesters in Maidan, the SBU announced that it had collected the fragments of 23 Kalashnikov assault rifles and a hunting rifle that were allegedly used to kill protesters. The weapons had been "intentionally damaged" with "all serial numbers... destroyed". The serial numbers were restored and reportedly, 12 weapons were entered into evidence in February 2016.

95. The Maidan events were also marked by mass arrests and prosecutions of protesters. Since the change in Government, these arrests and prosecutions have been found "unlawful" by the Office of the Prosecutor General. As of 17 November 2015, investigations into violations of the Criminal Procedural Code when bringing individuals to criminal responsibility for participating in Maidan protests were pending against 200 police officers, 80 prosecutors and 100 judges. Seven prosecutors, four judges and nine police officers were indicted. The investigation has also been verifying the lawfulness of detaining approximately 500 members of the AutoMaidan movement administratively liable for their participation in the Maidan protests. 38 police officers and two judges have been indicted for acts which, according to the Head of Department for Special Investigators of the Office of the Prosecutor General, were part of "systematic and coordinated conduct of the former leadership of the State"[77]. However, judicial immunity, which under Ukrainian law protects judges from liability resulting from their judicial actions has hindered investigations into the mass arrests and convictions of protesters.The failure of the authorities to secure and preserve material evidence, and to prevent key actors in the events from fleeing Ukraine after the escape of former President Yanukovych, on 22 February 2014, raises serious concerns about the ability of the Government of Ukraine to bring to justice those responsible for the killing of protestors and law enforcement elements.

96. OHCHR welcomes the first conviction of the so-called 'titushky', hired civilians who coordinated with and provided support to law enforcement in the crackdown on protesters at Maidan[78]. On 7 December 2015, Obolonskyi District Court of Kyiv sentenced two Kharkiv residents to four years of imprisonment and three years of probation for attacking protestors and the abduction of a person on 21 January 2014, in Kyiv. According to the investigation, former senior officials of the Ministry of Internal Affairs, including the former Minister, arranged the distribution of 408 automatic firearms and almost 90,000 ammunitions to 'titushky' from the Ministry's storage warehouses on 20 February 2014[79].

2 May 2014 violence in Odesa

97. No progress has been observed in ensuring accountability for the 2 May 2014 violence in Odesa, which resulted in the death of 48 people. State actors have failed to take appropriate measures to ensure effective investigations of the events and to protect the independence of the judiciary. The investigations into the events have been, at various stages, characterized by general institutional deficiencies, procedural irregularities indicating a lack of willingness to genuinely investigate or prosecute those responsible, and both direct and indirect political interference suggesting deliberate obstruction and delay of judicial proceedings.

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[77] Office of the Prosecutor General, MoIA and SBU about results of investigation into counteraction to peaceful protest actions: dispersal of students' Maidan and other protest actions in December 2013; criminal and administrative prosecution of activists, 17 November 2015 (available at: http://www.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=165591).

[78] See paragraph 76 of the 9th OHCHR public report on the human rights situation in Ukraine covering the period of 1 December 2014 – 15 February 2015.

[79] Office of the Prosecutor General, MoIA and SBU about results of investigation into counteraction to peaceful protest actions: adoption of the 'dictatorship laws'; use of 'titushky'; abduction and torture of activists, 18 November 2015, (available at: http://www.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=165654).

98. OHCHR is deeply concerned that the process of police reform interrupted the investigations into the 2 May 2014 clashes in Odesa, the burning of the Trade Union Building, and the negligence of the Fire Brigade in responding to the fire. Investigations have been suspended since 7 November 2015, when the investigation team dedicated to the 2 May 2014 violence was disbanded due to the restructuring of the police into the new 'national police'. In January 2016, a new investigation team was constituted under the Odesa regional department of national police and investigations reportedly resumed. OHCHR notes that continuing delays in investigating the 2 May 2014 events appear unjustified and inconsistent with an intent to bring those responsible to justice.

99. On 25 December 2015, the Office of General Prosecutor reported that the pre-trial investigation into the role of the former Head of the Odesa regional police department in the 2 May violence had been completed. The materials were given to the accused and his lawyer for examination.

100. OHCHR is concerned about the ongoing trial of 'pro-federalism' individuals involved in mass disorder in the city centre on 2 May 2014, which has been characterized by partiality, procedural violations and pressure on the judiciary by 'pro-unity' activists. On 27 November, the Malynovskyi District Court of Odesa granted conditional interim release on bail to five 'pro-federalism' detainees. 'Pro-unity' activists then pressured the prosecution to appeal this decision, in violation of the Criminal Procedural Code. Approximately 50 'pro-unity' activists then blocked the judge of the Court of Appeals of Odesa Region in his office, urging him to grant the appeal. The same day, after the activists met with a panel of judges of the Malynovskyi District Court, the latter signed letters of resignation. Subsequently, the 'pro-unity' activists went to the pre-trial detention facility and blocked the main entrance, searching all vehicles in order to block the possible release of the 'pro-federalism' detainees on bail. On 4 December 2015, as a result of this aggressive pressure on the judiciary, the Malynovskyi District Court of Odesa reconsidered its previous ruling and cancelled the conditional interim release on bail for all five detainees, in violation of procedural law. The judges also sent letters to the Judicial Council asking to accept their resignation. The prosecutor's office of Odesa has opened an investigation into this instance of judicial interference.

101. The failure of State actors to uphold or protect judicial independence has also led to delays in prosecuting the only 'pro-unity' activist charged in relation to the 2 May 2014 events, for killing a person and injuring a police officer. Since August 2015, the Malynovskyi District Court of Odesa has sent three petitions to the Court of Appeal, requesting a change of venue for the trial due to continued political pressure from 'pro-unity' activists. On 27 January 2016, the case was eventually transferred to the Suvorovskiy District Court of Odesa, but as at February 2016, the trial had not commenced, in violation of national legislation[80].

9 May 2014 violence in Mariupol

102. OHCHR continued to follow the case related to clashes between Ukrainian military elements and armed groups on 9 May 2014, in Mariupol, during which the latter seized the building of the city police department. According to the findings of the 'Temporary Parliamentary Investigative Commission on Issues related to the Investigation of Deaths of Residents in Odesa, Mariupol and other cities in Donetsk and Luhansk regions of Ukraine', the clashes claimed the lives of 25 people (including six law enforcement officers, five attackers, five civilians who allegedly attempted to attack the military, seven police officers

[80] Such delays violate Article 314 of the Criminal Procedure Code.

and two fire-fighters who died of asphyxiation), and wounded 46 people (including five Ukrainian military officers).

103. On 23 December, OHCHR met with four detainees held in Mariupol SIZO for their alleged involvement in the 9 May events. They complained that they had been ill-treated by SBU officials and members of the Azov regiment in Mariupol, detained incommunicado for some time in September 2014, and that evidence extracted through torture was being used in their trial. They added that they had been denied medical assistance for the injuries sustained through torture, and had ineffective legal representation. Of grave concern is the allegation that the accused suffered reprisals in the form of threats, intimidation and ill-treatment by the SBU after they challenged the admissibility of evidence in court.

104. On 10 February, the Office of the Prosecutor for Donetsk region informed OHCHR that they had visited the accused in SIZO and, based on their complaints and other information received, had opened a criminal investigation into the role of SBU officials in the torture and ill-treatment of the four detainees. OHCHR remains concerned that, at the time of writing, the accused had not been provided medical assistance.

105. OHCHR is concerned that the cases related to the Odesa and Mariupol events have been characterized by serious violations of fair trial and due process rights, resulting in unreasonably prolonged criminal trials and detention, and hampering the rights of the victims' families to seek justice. More broadly, this situation further erodes public confidence in the justice system.

31 August 2015 violence

106. OHCHR continued to follow the developments of the case of violence near the Parliament that occurred on 31 August 2015 when four police officers were killed and around 187 people injured due to the explosion of a hand grenade and subsequent clashes. The legal proceedings that followed have been marred by irregularities, including the holding of suspects in a temporary detention facility under the Ministry of Internal Affairs, in violation of Ukrainian legislation[81].

107. This case is emblematic of the systemic resort to pre-trial detention and widespread disregard for non-custodial measures, resulting in excessive and at times arbitrary detention. Neither the prosecution nor the judges have addressed the grounds for continued detention[82]. According to the lawyer of the accused, his client was subjected to psychological pressure and threats of physical violence from other detainees. OHCHR was informed about excessive use of force during the arrest and detention of one of the accused, whose hand was reportedly broken by police officers, and who was the handcuffed for up to nine hours with a swollen hand, and remained for approximately 11 hours without medical care. Later on, he was held overnight in a prisoner truck, deprived of food, water and proper clothing. As a result, he has lost full function of his wrist. Another lawyer presented photos of three other accused allegedly depicting grazes and bruises following detention. The General Prosecutor is investigating the allegations and has identified the law enforcement officials suspected of bearing responsibility. OHCHR has been repeatedly denied access to the detainees by the Ministry of Internal Affairs.

[81] Article 2, Internal Rules of Conduct in Temporary Detention Facilities of the Ministry of Internal Affairs

[82] Kharchenko v. Ukraine, p. 80

IV. Fundamental freedoms

> *"With the 'passport control' established by 'Donetsk people's republic', traveling has become even more complicated. Now we are stuck in this grey area for several hours, without toilets, water or food. It is not possible to leave the paved road even if you really need to, because everything around you is mined."*
>
> - A woman travelling from Mariupol to Donetsk

A. Violations of the right to freedom of movement

108. According to the State Border Service of Ukraine, 8,000 to 15,000 civilians cross the contact line each day. They are forced to wait for long periods of time – often overnight – in their cars, as they pass controls at three Ukrainian and three 'Donetsk people's republic' checkpoints separated by a stretch of heavily mined no-man's land. OHCHR has frequently observed 200 to 300 vehicles per day, idling in rows on either side of the road, waiting to cross the contact line.

109. Over the winter period, passengers often spend the night in freezing temperatures. Water, sanitation facilities and medical care are not available in the vicinity of the checkpoints. During the reporting period, two elderly people (a man and a woman) died while queuing at the checkpoints due to lack of timely medical care[83]. In addition, checkpoints remain unsafe due to the significant military presence, exposing civilians to potential shelling, or explosion of ERW and mines.

110. The Temporary Order[84] – demanding that civilians apply for special permits to cross the contact line and use only designated transport corridors – has consistently been identified as a core grievance of people residing the conflict-affected area and IDPs, as it severely impedes their freedom of movement. The Temporary Order has resulted in the isolation of areas under the control of armed groups. Freedom of movement was further constrained on 3 February 2016 when the Government closed the Zaitseve transport corridor due to the resumption of shelling invoking increased security risks.

111. In addition to extending waiting at other checkpoints, this closure negatively impacted civilians living adjacent to the contact line, trapping those in villages under Government control in the 'grey zone' area near Zaitseve. People have reportedly been trying to find alternative routes, often through fields contaminated with ERW and IEDs. On 10 February 2016, a minibus hit a mine on the side of the road near Mariinka checkpoint southwest of Donetsk city, one of the busiest crossings. One passenger and two bystanders were killed in this incident.

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[83] On 20 November, a 64-year-old man died of a heart attack while spending the night at the Mayorsk/Zaitseve checkpoint, after one day waiting to cross. He was travelling with his wife from Donetsk to Kramarosk. When he started feeling unwell at the checkpoint, there was no possibility to access medical aid. On 17 December 2015, a 74-year-old woman died at the Hnutovo checkpoint, on her way to the territory of the 'Donetsk people's republic'.

[84] The Temporary Order on the control of movement of people, transport vehicles and cargoes along the contact line in the Donetsk and Luhansk regions was developed and approved by 'the Operational Headquarters of Management of the Anti-Terrorist Operation', and entered into force as of 21 January 2015. For more information, see 12th OHCHR report on the human rights situation in Ukraine, covering 16 August to 16 November 2015 (paragraphs 52-56).

112. The freedom of movement of civilians in Luhansk is particularly restricted. As of 15 February, only four transport corridors between the areas controlled by the Government and those controlled by the armed groups remained operational. The three crossings that allow vehicles are located in Donetsk region. Residents of Luhansk region can only access Government-controlled territory through Stanytsia Luhanska, a pedestrian crossing, via a broken bridge with steep stairs, thereby also limiting what civilians can carry. Consequently residents of Luhansk region wishing to cross the line with goods or using transport have to travel through Donetsk region or the Russian Federation along routes which are also subject to restrictions and various challenges.

113. Since August 2015, entry-exit checkpoints to areas under Government control have been increasingly operated by Ukraine's State Border Service, with the imposition of the rules and procedures that apply for crossing the State border. Information about the procedures and regulations are not widely or easily available to civilians crossing the contact line. Reportedly, civilians are allowed to enter the Government-controlled areas without documents while more restrictive regulations are applied for those wishing to return to the areas controlled by armed groups. For example, a father or mother travelling with children should have a notarized letter of consent from the child's other parent. If one parent is the sole custodian, a copy of the relevant court document is required. This is not always possible if, for instance, the custodian cannot reach the other parent. On 23 December 2015, OHCHR interviewed a single woman with two children who wanted to return to the areas controlled by the armed groups, but was not let through as she did not have the required documentation.

114. As of 19 January, movement across the contact line was further restricted, following the imposition of "passport control checkpoints" by the self-proclaimed 'Donetsk people's republic'. The procedure entails the registration of passport data into a 'database' for all people exiting and entering the five corridors controlled by the armed groups[85]. International humanitarian law requires that civilians – individually and collectively - shall enjoy general protection against the dangers arising from military operations[86]. This includes the possibility to voluntarily and rapidly leave areas affected by violence in order to protect their lives and to access basic assistance.

115. OHCHR is concerned about the situation of people residing in the territory controlled by the armed groups whose national passports are missing or expired as they cannot cross the contact line, nor travel abroad. In the absence of any consular or administrative services in these areas, these individuals are trapped, with no prospect of proper assistance.

116. Corruption around the contact line continues to be reported as an enduring problem. Bribes by Government personnel and armed groups are often demanded for expediting passage or allowing cargo (according to the Temporary Order civilians are allowed to transport only 50 kilograms of food). On 17 January 2016, the Chief Military Prosecutor of Ukraine announced that eight members of the 28th Brigade[87] of the Armed Forces of Ukraine had been tried and found guilty under article 368 of the Criminal Code for taking bribes to allow the movement of cargo across the contact line. Three additional cases are at trial. Civilians frequently complain about the rude attitude and derogatory language used by personnel administering the checkpoints. Women in particular are often subjected to degrading and abusive behaviour when crossing. Existing mechanisms, such as hotlines,

[85] HRMMU Interview, 12 February 2016.
[86] Article 13(1), Additional Protocol II to the four Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 22.
[87] The commander of the brigade was arrested on 21 September 2015.

designed to address violations are ineffective and people are not aware of their existence or are afraid that complaints will be met with retaliation.

117. Limitations of freedom of movement imposed by the Government of Ukraine and the armed groups disproportionately affected people living in the vicinity of the checkpoints. Even civilians who live in areas under Government control but behind Ukrainian checkpoints (i.e.. in the 'grey zone') are required to apply for permits and/or queue for prolonged periods of time to cross short distances to and from their settlements.

118. Many of these settlements are in rural areas with few basic services, and limitations of freedom of movement therefore severely restrict local residents' access to medical and social services. For example, OHCHR was informed about several cases of women in labour who could not quickly reach maternity hospitals due to the checkpoints on the way. The Temporary Order therefore has a significant impact on the right to health, and violates the obligations, binding on all parties under article 7 of Additional Protocol II to the Geneva Conventions as well as customary international humanitarian law to ensure medical assistance.[88] The "logistic centres"[89] established by the Government with the aim of simplifying access of civilians to food, medicine and cash have not led to any improvement.

B. Violations of the right to freedom of religion or belief

Territory controlled by the Government of Ukraine

119. OHCHR followed the tensions between local communities, identifying themselves with the Ukrainian Orthodox Church (UOC)[90] and the Ukrainian Orthodox Church of Kyiv Patriarchate (UOC KP). From 28 January to 1 February 2016, OHCHR visited the western regions of Ternopil and Rivne, where such tensions occurred. In rural areas, where some people want to join UOC KP, others wish to remain with UOC, which triggers tensions, especially in villages, where there is usually only one church. Some parishioners and members of the clergy of both denominations reported to OHCHR their concerns about discrimination and use of derogatory and inflammatory language directed toward them on the basis of their affiliation to either UOC or UOC KP. Threats of physical violence, or coercion to force them to change their allegiance have also been reported. The latter constitutes a violation of the unconditionally protected *forum internum* of freedom of religion or belief.

120. According to local residents, police and authorities have focused on preventing or intervening in physical clashes while not addressing other forms of altercation, intimidation and discrimination[91]. It is of concern that in several villages, residents and external actors have precluded communities of both denominations from accessing their preferred place of worship and from holding religious services, including baptisms and weddings, for several weeks. In general, investigations into such incidents are either not initiated or not effective.

121. In line with its international human rights obligations[92], the Government of Ukraine should not only ensure the right, either individually or in community with others, to manifest one's religion or belief in worship, observance, practice and teaching, but must

[88] Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 22.
[89] See 12th OHCHR report on the human rights situation in Ukraine, covering 16 August to 15 November 2015, paragraph 55.
[90] Often referred to as the Ukrainian Orthodox Church – Moscow Patriarchate.
[91] HRMMU Interviews, 28 January – 1 February 2016.
[92] Article 18 of the International Covenant on Civil and Political Rights

also take effective measures to ensure that no one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or belief.

Territory controlled by armed groups

122. During the reporting period, the situation of persons belonging to minority Christian denominations remained difficult. In particular, the persecution of Jehovah Witnesses – accused of 'extremism' by armed groups – persisted.

123. On 6 January 2016, a group of armed men headed by a Cossack known as "Ivanych", detained two male Jehovah Witnesses at the Maiorsk checkpoint (controlled by the self-proclaimed 'Donetsk people's republic'). Before being released, the two men were threatened that next time they would have their legs "shot-through"[93]. On 17 January 2016, three unidentified armed men in camouflage and balaclavas entered the Jehovah Witness house of worship in Horlivka, and abducted three parishioners. After reporting the abduction to local 'police', the parents of the victims were informed that all three were taken to the building of the 'counter organized crime unit' in Donetsk. On 18 January, the unit informed the families that the three men were "detained" for "participating in an extremist organization, "banned" by a decree of the 'head of the republic'[94].

124. On 29 January, in Donetsk, OHCHR monitored a demonstration, near a Greek Catholic Church, by activists of the "Young Republic", an organization associated with the 'Donetsk people's republic'. Demonstrators held posters with the following message: "No to sects in the 'DPR!'" and "Greek-Catholic church conducts 'anti-republican' activities!" Protesters told OHCHR that they were speaking out against the Greek Catholic Church because it "promotes the idea of a united Ukraine." OHCHR observed that protesters left the site in an organized manner in buses provided beforehand.

125. OHCHR reiterates its concerns about statements issued by representatives of the 'Donetsk people's republic' declaring their intention to "combat the sects", as indicative of a policy of religious persecution of persons belonging to denominations other than Orthodox Christianity, Catholicism, Islam and Judaism.

126. Under international customary law and article 4 of Additional Protocol II to the Geneva Conventions[95], the right to freedom of religion or belief and the right not to be subjected to discrimination on any grounds, including religious affiliation, and should be respected by all parties to a conflict, including armed groups.

C. Violations of the right to freedom of peaceful assembly

127. The Constitution of Ukraine guarantees the right to freedom of peaceful assembly in general terms, with no specific protection. The absence of any specific law on peaceful assembly has allowed local councils to arbitrarily limit freedom of assembly, while some local courts have invoked outdated legislation from the former USSR to justify restrictions. On 7 December 2015, the Parliament of Ukraine registered a draft law 'On Guarantees for Peaceful Assemblies'. While it generally complies with international standards, it requires

[93] HRMMU interview, 18 January 2016.
[94] HRMMU interview, 18 January 2016.
[95] See reports of the Special Rapporteur on Freedom of Religion or Belief on the missions to Cyprus (A/HRC/22/51/Add.1(2012, paragraphs 81-87); the Republic of Moldova (A/HRC/19/60/Add.2(2012, paragraphs 87); and Sri Lanka (E/CN.4/2006/5/Add.3(2006), paragraph 93); and allegation letter on the situation of Jehovah's Witnesses in Nagorno-Karabakh (A/HRC/16/53/Add.1(2011), paragraphs 6-24 and A/HRC/22/51(2012), paragraph 43, footnote 16); Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 88.

notification two days prior to assembly. Furthermore, the draft foresees judicial discretion in prohibiting rallies that threaten "public order and safety"[96]. These two requirements can lead to arbitrary prohibition or limitation of peaceful assemblies by discouraging legitimate protest activity and allowing for broad judicial authority to restrict lawful protests[97].

128. During the reporting period, people were largely able to exercise their right to assemble peacefully and articulate their concerns and demands regarding different issues throughout Ukraine. Most large assemblies were held in Kyiv, such as the December 2015 rallies demanding the Prime Minister's resignation, or protests against the adoption of the tax amendments.

129. OHCHR observed some restrictions in Odesa, in the territories controlled by the armed groups, and Crimea (See Human Rights in the Autonomous Republic of Crimea at p. 44).

130. For instance, following the municipal election run-off in Kryvyi Rih, on 15 November, there were large demonstrations alleging voter fraud, which were marked by skirmishes with the police, bomb threats to the local Electoral Commission, and physical confrontations among public officials. OHCHR notes that law enforcement must facilitate and protect public assemblies and de-escalate violent situations.

131. In Odesa, OHCHR monitored most of the rallies organized every Sunday to commemorate the 2 May 2014 violence. It was thus able to observe the inconsistent engagement of law enforcement in ensuring peaceful assemblies initiated by the 'pro-federalism' movement or its supporters. Generally, 'pro-unity' activists prevented 'pro-federalism' activists from exercising their right to freely and peacefully assemble, regardless of the motivation for the rally. For instance, on 22 January 2016, 'pro-unity' activists harassed and chased 20 'pro-federalists', mostly older women protesting against high utility prices. Although 'pro-unity' activists had announced their plans to disturb the event in advance, the police did not prevent them from doing so.

132. OHCHR continued to observe and receive information about the absence of assemblies in territories controlled by armed groups, which further demonstrates the lack of space for the population to showcase diverse views, articulate critical perspectives or exchange on socioeconomic issues.

D. Violations of the right to freedom of association

Territory controlled by the Government of Ukraine

133. On 16 December, the Administrative District Court in Kyiv issued a decision prohibiting the Communist Party, in the second such suit brought by the Ministry of Justice. OHCHR learned that the lawyer representing the Communist Party was prevented from participating in the hearings of the Commission established by the Ministry of Justice on violations of the "de-communization" law. Subsequent court proceedings were characterized by procedural irregularities. According to witnesses, the court proceedings were truncated and only written submissions were heard.

134. In its opinion issued on 21 December 2015, the Council of Europe's advisory body on constitutional law, the Venice Commission, concluded that the "de-communization" law

[96] OSCE Guidelines on Freedom of Peaceful Assembly; Stankov and the United Macedonian Organisation Ilinden v. Bulgaria (2001), para. 97.

[97] UN Human Rights Committee: Concluding Observations: Morocco, 1999; CCPR/C/79/Add.113; para 24.

should be amended because it violates freedom of expression, speech, association and electoral rights[98].

135. OHCHR continued to monitor the case of the leader of 'UKROP' party and former candidate for mayor of Kyiv, Hennadii Korban, who has been in custody since 28 December 2015 and whose health has seriously deteriorated. Although he underwent heart surgery, between 24 and 27 December, he was forced to undergo several procedural checks and was eventually forcefully transferred to court for a trial that lasted for more than 24 hours and was marked by numerous violations of due process rights. OHCHR is concerned about the treatment of Mr. Korban and the role of the judiciary in sanctioning such treatment.

Territory controlled by armed groups

136. OHCHR remains concerned about the lack of space for civil society actors to operate in the territories controlled by armed groups, including to conduct vital humanitarian assistance.

137. In January 2016, several public figures were detained in the 'Donetsk people's republic'. On 29 January 2016, the female co-founder of the humanitarian organization "Responsible Citizens" was taken from her home by individuals believed to be members of the 'ministry of state security.' Her whereabouts are unknown. Four members of the NGO were called to visit the 'ministry of state security', where they were held for several hours. Three of them were told that they were to be "deported". They were then taken under armed escort to the contact line and informed they would not be able to return. The organization has had to halt all humanitarian activities.

138. The detention and expulsion of "Responsible Citizens" members followed the illegal deprivation of liberty and incommunicado detention of a blogger on 4 January, three Jehovah Witnesses on 17 January, and a religious scholar on 27 January 2016[99]. OHCHR has reason to believe that these individuals are being held by the 'ministry of state security' and urge the 'Donetsk people's republic' to allow OHCHR access to these and other individuals deprived of their liberty. The targeting of civil society is of grave concern.

139. During the period under review, humanitarian organizations, including United Nations entities, and international and locally-based NGOs, were still not permitted to carry out protection-related activities in the 'Donetsk people's republic' or in the 'Luhansk people's republic'. OHCHR received reports that, in addition to international organizations, several local NGOs have been requested by the authorities of 'Donetsk people's republic' to obtain accreditation in order to be able to continue their humanitarian activities. OHCHR recalls the obligation by all parties to a conflict, under international humanitarian law, to allow and facilitate rapid and unimpeded passage of humanitarian assistance to civilians in need[100].

E. Violations of the right to freedom of opinion and expression

Territory controlled by the Government of Ukraine

[98] On 24 July the Minister of Justice adopted a resolution that precluded the Communist Party of Ukraine, the Communist Party of Ukraine (renewed) and the Communist party of Workers and Peasants to stand in the 2015 local elections, based on the decision of the special commission.

[99] HRMMU Interviews, 4 and 10 February 2016.

[100] Article 18(2), Additional Protocol II to the Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 55.

140. OHCHR has noted that the political climate in Ukraine, especially with regard to the conflict in the east, continues to affect adversely the freedom of opinion and expression.

141. The Ivano-Frankivsk City Court prolonged the detention of journalist Ruslan Kotsaba (from 17 January to 22 February 2016), who was charged with high treason for publishing an anti-mobilisation video. OHCHR noted two similar cases of Ukrainian journalists who were arrested by SBU on 24 November 2015, accused of creating a 'terrorist' organization.

142. A draft law providing for the criminalization of public denials of the temporary occupation of Ukraine's territories has been submitted to the Parliament of Ukraine. The foreseen offenses are not clearly defined, increasing the risk of arbitrary application.

Territory controlled by armed groups

143. Freedom of expression and the work of media professionals in the territories controlled by the armed groups continued to be arbitrarily hindered and subjected to strict control.

144. In order to receive permission to enter and work in the 'Donetsk people's republic' and 'Luhansk people's republic', foreign journalists have to apply for 'accreditation', a process that involves close scrutiny of their prior reporting and publications. Certain foreign journalists who had been working in the 'Donetsk people's republic' and 'Luhansk people's republic' following the outbreak of hostilities were recently refused 'accreditation' or were required to apply for re-registration.

145. In Luhansk, on 11 November 2015, the 'ministry of information, press and mass communication' issued a 'decree' requiring the registration of international media and journalists and cancelled the 'accreditation' of one foreign journalist as he allegedly violated accreditation rules and applicable media 'legislation'. Another foreign journalist, who applied for accreditation under procedures imposed by the 'ministry of foreign affairs' of the 'Donetsk people's republic', was denied "accreditation" without any explanation. OHCHR understands that journalists, who do receive accreditation and work in areas under the control of armed groups, are cautious in what they report and may self-censor.

146. On 4 January 2016, a blogger and civil society activist residing in Kyiv was illegally detained in Makiivka by the 'ministry of state security' of the 'Donetsk people's republic' while visiting his parents. His colleagues assume that this is linked to his civil and journalistic activities. OHCHR understands that Ukrainian and European Union flags were confiscated from his parent's apartment when the activist was taken away[101].

147. Freelance journalist Maria Varfolomieieva – who was abducted by armed groups of the 'Luhansk people's republic' on 9 January 2015 – remains illegally detained, incommunicado in the 'ministry of state security' in the 'Luhansk people's republic'. OHCHR interviewed a person who spent almost five months in a cell adjacent to Ms. Varfolomieieva's. According to this witness, she had been subjected to prolonged malnourishment, unhygienic conditions of detention and permanent psychological pressure, including verbal abuses. He noted that Ms. Varfolomieieva was subjected to particularly harsh treatment relative to other detainees[102].

[101] HRMMU Interview, 14 January 2016.
[102] HRMMU Interview, 9 February 2016.

V. Economic and social rights

> *"We lost everything. I spent my whole life building this house for my family. One day we heard shooting and explosions. We ran, taking only our documents. When we returned a few weeks later, all of our belongings were gone. The windows were shattered. There were muddy footprints all over the house. They took everything we had."*
>
> - A man from Shyrokyne

148. Civilians living in the territories controlled by armed groups continued to suffer violations of their economic and social rights, including their right to the highest attainable standard of physical and mental health and housing, land and property rights. Civilians living under Government control in conflict-affected areas, IDPs and demobilized soldiers faced particular obstacles to the exercise of their economic and social rights. OHCHR is concerned about continuing reports of discrimination preventing these groups from accessing quality healthcare, social services, employment and housing. Government programmes or initiatives to assist the integration of IDPs who fled from the conflict-affected area remain scarce. This is of concern, as some IDPs seem to be losing hope to return home, as OHCHR observed in Kharkiv. The Government has registered 1.6 million IDPs, with 800,000 to 1 million living in territories controlled by the Government.

149. IDPs from conflict-affected areas residing in Government-controlled territories continued to face discrimination on the basis of their status, although the full extent of the problem could not be ascertained. For example, OHCHR received reports that some employers in Zaporizhzhia are biased against IDPs and frequently refuse to give them jobs because of their place of origin. Difficulties in finding employment force IDPs to accept low-paid jobs or precarious contracts, with limited or no labour rights. Similarly, there have been reports of discrimination against demobilized soldiers, who often face negative attitudes for taking part in the war, or because some employers consider them as "psychologically and emotionally unstable".

150. The Government of Ukraine does not recognize birth and death certificates issued by the 'Donetsk people's republic' and 'Luhansk people's republic'. As a result, children born in areas controlled by the armed groups do not have documents that are recognized in Ukraine. This causes legal and practical hardships, notably to access social, medical or employment services in Government-controlled territory. On 4 February, Parliament adopted the Law No. 3171[103] concerning the establishment of the facts of birth or death occurring on the temporary occupied territory of Ukraine – the Autonomous Republic of Crimea and certain districts of Donetsk and Luhansk regions. The Law, if signed by the President, will simplify the existing general procedure of judicial establishment of legal facts[104] for cases concerning birth and/or death that took place in the areas controlled by armed groups; however people will still need to obtain a court decision validating such documents. In line with the jurisprudence of the International Court of Justice and the European Court of Human Rights[105], civil registration documents issued in territories

[103] 'On amendments to the Civil Procedure Code of Ukraine concerning the establishment of the fact of birth or death in the temporary occupied territory', No. 3171, of 22 September 2015.

[104] Such procedure is normally resorted to in absence of any valid official documents certifying a certain fact or status. A judicial establishment of this fact further entitles a person to obtain the necessary documents.

[105] ICJ Advisory Opinion of 21 June 1971 – Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), paragraph 125.

controlled by armed groups should be recognized through administrative procedure rather than court review. The current procedure results in discrimination on the basis of origin.

151. The Government of Ukraine retains significant residual obligations toward people living in areas controlled by the armed groups and the conflict-affected areas. While it may not always be able to ensure the progressive realisation of economic and social rights for its citizens living outside their control, it cannot impede or impose obstacles to their exercise. In particular, Government policy must correct any forms of discrimination against people living in areas controlled by the armed groups.

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

Territory controlled by the Government of Ukraine

152. IDPs have often faced obstacles to access needed medical care and basic services, often as a result of discriminatory grounds related to their status. On 6 and 21 January, OHCHR interviewed female IDPs from Donetsk region who were denied medical assistance in Zaporizhzhia city hospital and in Dnipropetrovsk on the grounds that they did not have an IDP registration certificate, which is required to access any public services.

153. Demobilized and injured Ukrainian soldiers have faced difficulties accessing physical and psychological rehabilitation services due to bureaucratic delays in recognizing their veteran status, as well as a lack of allocated resources. OHCHR recalls that rehabilitation is an integral element of any 'Disarmament, Demobilization, and Reintegration' effort of ex-combatants[106].

154. Across Ukraine, OHCHR has collected worrying information about increasing domestic violence by demobilized soldiers. Their families struggle with a lack of support services. The Government has due diligence obligations to effectively respond to domestic violence, ensure accountability for perpetrators, provide meaningful reparations and protect victims.

155. Despite the growing need for medical services caused by the conflict and its consequences, healthcare system expenditures were cut by 10.8 per cent (almost six billion UAH) in the State Budget for 2016, which is likely to further constrict the availability, affordability and accessibility of quality healthcare for the population at large.

Territory controlled by armed groups

156. Access to the highest attainable standard of physical health remains severely impeded in the territories controlled by the armed groups due to continued shortages of necessary medical equipment and specialized and affordable medication. Medication prices are high and unaffordable for many, while medical services are of poor quality. The situation is most dire in rural areas. There is a lack of medical professionals as many have left due to the conflict. People often have no choice but to travel to the Government-controlled areas to purchase required medicines, something that is made increasingly difficult due to the restrictions imposed on movement across the contact line.

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. Ilascu and Others v. Moldova and Russian Federation, Application n. 48787/59, Judgment of 8 July 2004, para. 458-461.

[106] Integrated Disarmament, Demobilization and Reintegration Standards, UN DDR Resource Centre, 1 August 2006, http://unddr.org/uploads/documents/IDDRS%202.10%20The%20UN%20Approach%20to%20DDR.pdf.

157. In the summer of 2015, both self-proclaimed republics restricted access to international organizations to the territories under their control. In the territories controlled by the 'Luhansk people's republic', United Nations entities have been granted permission to operate, which, for example enabled them to deliver anti-retroviral treatment for HIV-positive individuals. Over the reporting period, Russian Federation authorities reportedly delivered over 3,200 tonnes of humanitarian assistance to the areas controlled by the armed groups in three convoys of 39 to 45 vehicles each, without the full consent or inspection of Ukraine[107]. Their exact destination and contents could not be verified. There are reports of ongoing shortages, particularly in the 'Donetsk people's republic', where specialized treatment (such as chemotherapy, anti-retroviral and anti-tuberculosis therapy) used to be supplied by international actors. The depletion of stocks is extremely worrisome given the grave consequences for those experiencing interruptions in their treatment.

158. The situation of people in prisons and institutional care remained precarious. In January 2016, OHCHR was informed that a man suffering from an acute bleeding stomach ulcer was denied medical assistance at the Donetsk SIZO. On 1-2 February 2016, OHCHR was contacted by the families of pre-conflict inmates detained in penal colony No. 72 in Yenakiieve, requesting the transfer of their relatives to the Government-controlled area. They invoked the rapidly deteriorating conditions at the penal colony, particularly regarding access to healthcare. Two prisoners are HIV-positive and, according to their parents, do not receive proper treatment. One person suffering from diabetes has allegedly not received insulin for months. OHCHR is concerned that the situation is worsening in the 'Donetsk people's republic', where armed groups continued to block or excessively control access to the territories under their control to humanitarian assistance, preventing proper monitoring of places of detention, and impeding the delivery of assistance that can relieve people from illness or even death, hunger and suffering.

B. Housing, land and property rights

159. In a trend observed since September 2015, IDPs have gradually continued returning to their homes in areas controlled by the armed groups. While no comprehensive data is available on the number of returnees to date, OHCHR has observed a notable increase in the number of residents in urban areas in Donetsk and Luhansk regions.

160. However, housing, land and property issues, particularly the damage, seizure or looting of property, and lack of justice and compensation mechanisms, remained one of the major concerns for civilians living in the conflict zonesand for IDPs from these areas. Continued fighting and the destruction of or damage to property are obviously major impediments to return.

161. Another major concern is the ongoing presence of military forces in civilian areas and indiscriminate shelling continue to be the main factors endangering civilians, and affects their ability to access housing, land and property. During the reporting period, OHCHR collected detailed information about the conduct of hostilities by Ukrainian armed forces and the Azov regiment in and around Shyrokyne (31km east of Mariupol), from the summer of 2014 to date. Mass looting of civilian homes was documented, as well as targeting of civilian areas between September 2014 and February 2015. Residents displaced to Mariupol have received little assistance and information about the status of their homes.

[107] The 45th convoy arrived on 26 November, consisting of 45 vehicles; the 46th on 17 December, consisting of 39 vehicles; and the 47th on 24 December 2015 of 44 vehicles, as reported by OSCE monitors.

Unable to return but for short periods of time to examine the damage, IDPs from Shyrokyne exchange video footage and photographs to try to track the condition of their homes.

162. In areas controlled by the armed groups, OHCHR has documented military use of unoccupied houses. For instance, in Donetsk, between December 2015 and January 2016, armed groups twice occupied and burglarized an empty private house. Military vehicles and equipment were brought to the courtyard, damaging the property and endangering the residential area. Armed group members eventually left the house upon persistent requests by a guard hired by the owner of the house. On 27 January, the guard reported the occupation of property to the 'military police' of the 'Donetsk people's republic.' At the time of writing, in Kominternove, 'Donetsk people's republic', armed group members were occupying several abandoned houses.

163. The information received by OHCHR reveals a systemic problem due to a lack of effective remedy for the destruction, looting or occupation of property in areas affected by the conflict. In practice a Ukrainian citizen on either side of the contact line who discovers that her or his property has been damaged from hostilities, looted or occupied, cannot pursue redress. While recognizing efforts to address this gap,[108] OHCHR urges the Ukrainian authorities to work effectively to ensure that the displaced population can be compensated for property destroyed during the conflict.

164. The housing rights of IDPs living in Government-controlled areas are also at risk. For instance, in Odesa, OHCHR received information that the situation of IDPs with disabilities may further deteriorate due to planned budget cuts for accommodation. Local authorities have assured OHCHR that they will find ways to ensure that all IDPs receive adequate support and housing. IDPs in Odesa region are frequently housed in unoccupied or abandoned homes, putting them under constant threat of eviction. According to UNHCR, many IDPs continue to live in poor quality housing, with the most vulnerable often living in collective centres, which, as at February 2016, were sheltering approximately 14,000 people.

165. The high risk of eviction for IDPs and their families living in rental accommodation, Government-funded housing, or squatting in abandoned homes and buildings, added to serious barriers to return, including looting, damage and military occupation of homes that have been abandoned by IDPs, call for urgent measures to ensure that IDPs are able to access their homes or are compensated for property damaged or destroyed in the course of the conflict.

VI. Legal developments and institutional reforms

A. Notification on derogation from the International Covenant on Civil and Political Rights

166. On 27 November 2015, in a notification addressed to the United Nations Secretary-General, the Government of Ukraine clarified the geographic scope of its intended derogation from certain provisions of ICCPR[109], which raises serious concerns[110]. It

[108] Draft Law 'On amendments to the Law of Ukraine 'On ensuring the rights and freedoms of internally displaced persons' concerning compensation for damaged property', No. 2167, of 18 February 2015; and Draft Law 'On amendments to the Law of Ukraine 'On combating terrorism' concerning compensation for damage to property inflicted in the course of ATO', No. 3434, of 9 November 2015.

[109] In June 2015, the Government of Ukraine wrote to the United Nations Secretary-General that the Russian Federation had committed an armed aggression against Ukraine and was "fully responsible"

specified that the derogation applied to localities under its total or partial control, including large towns and cities under its effective control – such as Kramatorsk, Krasny Lyman, Sloviansk and Mariupol (Donetsk region) and Lysychansk, Rubizhne, and Severodonetsk (Luhansk region).

167. OHCHR notes that the validity of a derogation under article 4 of ICCPR depends on the fulfilment by the State concerned of a number of conditions, as further outlined in General Comment No. 29 of the United Nations Human Rights Committee[111]. It requires the official proclamation of the existence of a public emergency threatening the life of the nation, and that derogation measures be proportionate and non-discriminatory. It also provides that their duration, geographic and material scope must be limited to the extent strictly required by the exigencies of the situation. The derogation must not be inconsistent with other obligations under international law, including applicable rules of international humanitarian law[112].

B. Notification in relation to 16 United Nations treaties

168. On 20 October, the Government of Ukraine addressed notifications to the United Nations Secretary-General on "the specifics of the territorial application and implementation" of 16 United Nations treaties[113], including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The notifications state that the application and implementation by Ukraine of its obligations under the 16 treaties *"is limited and is not guaranteed"* on territories deemed to be occupied and uncontrolled, and that this situation will continue to apply until the complete restoration of

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for ensuring respect of human rights and humanitarian law in Crimea and the areas of eastern Ukraine under the control of the armed groups.

110 In June 2015, the Government of Ukraine submitted a communication to the United Nations Secretary- General, notifying him of its derogation from the following rights under ICCPR: Effective remedy (paragraph 3, Article 2); freedom from arbitrary arrest and detention and related procedural rights (article 9); liberty of movement and freedom to choose one's residence (article 12); fair trial (article 14); privacy of personal life (article 17). See HRMMU report of 16 May - 15 August 2015, para. 159-161.

111 United Nations Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11.

112 See Rules of international humanitarian law (1949 Geneva Conventions and Additional Protocol II) ; Convention on the Rights of the Child; Convention on the Status of Refugees ; and ILO basic human rights conventions on forced labour, freedom of association, equality in employment, and trade union and workers' rights.

113 International Convention for the Suppression of Acts of Nuclear Terrorism, 2005; International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, 1989; International Convention Against the Taking of Hostages, 1979; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, 1984; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950; International Convention for the Suppression of Terrorist Bombings, 1997; International Convention for the Suppression of the Financing of Terrorism, 1999; Agreement of the Privileges and Immunities of the International Criminal Court, 2002; Convention on the Recovery Abroad of Maintenance, 1956; United Nations Convention against Corruption, 2003; United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988; Convention for the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, 1973; Convention Against Transnational Organized Crime, 2000; Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000; Protocol to Prevent, Supress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000; Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

Ukraine's sovereignty over its territory. The notification refers to treaty provisions concerning "direct communication or interaction". It is not clear which treaty provisions are affected, but this raises concerns that either judicial cooperation or treaty individual complaints procedures may not be considered as applicable to Crimea and the areas controlled by the armed groups in the east. In addition, the notification invokes some treaty provisions, such as those prohibiting torture, which remainbinding on States as part of customary international law.

169. OHCHR urges the Government of Ukraine to take all possible measures to enhance protection for the population,of Donetsk and Luhansk regions, including in areas under the control of the armed groups as well as for those people living in Crimea. OHCHR notes that the Government's claim that Ukraine's obligations are "limited" and "non-guaranteed" creates legal uncertainty and may undermine human rights protection. According to the interpretation of the United Nations treaty bodies and the European Court of Human Rights[114], despite lacking effective control over certain part of its territory, Ukraine, as a State party to ICCPR and ECHR, maintains residual obligations toward people living in areas controlled by armed group[115]. Accordingly, Ukraine must use all legal means available to it to guarantee the rights of all people on the territory of concern. In particular, the Committee against Torture has drawn the Government's attention to its obligation to document and investigate allegations of torture, ensure that perpetrators are duly prosecuted, and provide redress to victims.

C. Constitutional reform

170. On 28 January 2016, the Ukrainian parliament amended its internal regulations so as to postpone the final vote on the constitutional amendments on decentralization, which was supposed to take place by early February. Observers believe the second and final vote was postponed because the Government would not have been able to obtain the required qualified majority to pass the amendments.[116] According to the revised parliamentary regulations, a vote will be required by 22 July 2016. OHCHR views the decentralization issue as a key component of a peaceful resolution of the conflict in eastern Ukraine.

171. On 2 February 2016, the Parliament adopted on first reading a revised draft law (No. 3524) amending the Constitution in relation to the justice system. In OHCHR's view, the amendments in their current form would remove long-standing constitutional obstacles to the independence of the judiciary such as removing the role of the executive branch in judicial appointments.

D. Implementation of the Human Rights Action Plan

172. On 23 November 2015, the Government adopted the Human Rights Action Plan of Ukraine identifying actions to implement the 26 priority areas outlined in the Human Rights Strategy of 25 August 2015. The Action Plan was elaborated in close cooperation with civil society, the Ombudsperson's Office and international and regional organizations (the

[114] CAT/C/UKR/CO/6, para. 11; See also CCPR/C/21/Rev.1/Add.8/Rev.1, para. 4; CCPR/C/MDA/CO/2, para. 5; and Ilaşcu and others v. Moldova and Russia, Judgment of 8 July 2004, ECHR (2004), pp. 331-333, and Catan and others v. Moldova and Russia, Judgment of 19 October 2012, ECHR (2012), pp. 109-110.

[115] CCPR/C/21/Rev.1/Add.8/Rev.1(1997), para. 4.

[116] On 31 August 2015, the decentralization amendments had been adopted on first reading, leading to street violence and casualties.

United Nations, the Council of Europe, OSCE, and the European Union), and foresees activities aimed at addressing systemic issues as well as conflict-related challenges.

173. OHCHR intends to provide technical support for the implementation of selected parts of the Action Plan, specifically around the issue of accountability for human rights violations. OHCHR advocates for the Action Plan to be used as a platform to channel support to the Government's efforts to meet its human rights obligations.

E. Adoption of the law on internally displaced persons

174. On 24 December 2015, the Parliament adopted amendments[117] to the law on IDPs[118] which came into effect on 13 January 2016. In OHCHR view, they largely comply with the United Nations Guiding Principles on Internal Displacement. They simplify registration procedures and enable foreigners legally residing in Ukraine and stateless persons to be recognized as IDPs.

175. In addition, on 16 December 2015, the Cabinet of Ministers adopted the "Comprehensive State Programme for Support, Social Adaptation and Reintegration of citizens of Ukraine, who moved from temporarily occupied territories of Ukraine and ATO regions to other regions of Ukraine for the period till 2017". The programme invites civil society actors to take part in the implementation of the plan and addresses certain human rights protection issues.

F. Draft law on temporarily occupied territory

176. On 8 December, Draft Law No. 3593[119] "On the Temporarily Occupied Territory of Ukraine" was registered in Parliament. If adopted, it would create a single regulatory framework for all areas considered as "temporarily occupied", covering Crimea and the areas controlled by the armed groups. The draft relinquishes all responsibility for protecting human rights in these territories to the Russian Federation as the "occupant State."

177. Although the draft may still be revised, at this stage OHCHR is particularly concerned by provisions of the draft law that would prohibit the supply of water and electricity to these areas, leading to the de facto deprivation of these areas of basic and indispensable necessities in violation of social and economic rights, article 14 of Additional Protocol II of the Geneva Conventions, and customary international humanitarian law[120]. If adopted, this could have devastating consequences for people living in areas controlled by the armed groups.

178. Despite the protracted conflict and the consequent increasing isolation of the territories under the control of armed groups, the populations residing in Donetsk and Luhansk regions remain entirely dependent on Ukraine's essential infrastructure for water and electricity supply. Consequently, Ukraine retains control and therefore residual obligations to the populations living in these areas. Water and electricity supply – which are essential for sustenance, basic hygiene, health, and the operation of core public services – should not be used as a tool of political pressure.

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[117] Draft Law 'On amendments to certain legal acts concerning enhancement of human rights guarantees for internally displaced persons', No. 2166, of 18 February 2015.

[118] Law of Ukraine 'On Ensuring the Rights and Freedoms of Internally Displaced Persons', No 1706-VII, of 20 October 2014.

[119] Draft Law 'On Temporary Occupied Territory of Ukraine', No. 3593, of 8 December 2015.

[120] Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 54.

G. Amendments to the criminal law

179. On 26 November, Parliament passed amendments[121] to provisions in the Criminal Code, allowing for the conditional release of prisoners sentenced to life after 20 years of imprisonment and for the commutation of life sentences to 25 years of imprisonment. However, the amendments were vetoed by the President of Ukraine on the grounds that they "violate the principle of the proportionality of the punishment to the gravity of a crime"[122]. This reasoning appears to interpret the principle of proportionality of penalty and crime to the detriment of individual rights. As recognized by the Council of Europe's Committee on the Prevention of Torture (CPT)[123] and the European Court of Human Rights' jurisprudence[124], the prohibition of torture and inhuman or degrading treatment or punishment, requires a mechanism or the possibility for review life sentences on a periodic basis.

H. Reform of the civil service

180. On 10 December 2015, Parliament adopted a law 'On the Civil Service' (No. 2490) aimed at reforming the civil service system. OHCHR is concerned that the law affects the Ombudsperson's Office by authorizing a special commission to nominate the Chief of Staff of the Office of the Ombudsperson and entitling that person to appoint other staff members of the institution This is inconsistent with the provisions of the Paris Principles relating to the autonomy and independence of national human rights institutions[125].

I. Civil registration

181. On 4 February 2016, parliament adopted Draft Law No. 3171, which regulates the recognition by Ukraine of facts of birth and death occurring on the territories controlled by the armed groups in the east, as well as in Crimea, by amending the Civil Procedure Code. As previously mentioned, under current legislation, all acts issued by *de facto* authorities are considered to be invalid.

182. The Draft Law, which is yet to be signed by the President, does not provide for recognition of birth and death certificates issued by *de facto* authorities or the armed groups. Instead, it creates a simplified procedure of court review waiving the principle of territorial jurisdiction by allowing courts to examine a request for recognition. It also mentions that cases pertaining to the registration of civil acts must be heard "without delay". As previously mentioned[126], this falls short of the standards supported by international jurisprudence, which imply direct recognition by State institutions of the registration of births, deaths and marriages performed by *de facto* authorities or armed groups.

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[121] Draft Law 'On amendments to certain legal acts concerning replacement of life sentence with a milder punishment' No. 2292, of 3 March 2015.

[122] Suggestions of the President to the Law of Ukraine 'On amendments to certain legal acts concerning replacement of life sentence with a milder punishment', of 17 December 2015.

[123] Memorandum 'Actual/real life sentences', CPT (2007) 55.

[124] Vinter v. the UK (no. 66069/09, 130/10 та 3896/10); Kafkaris v. Cyprus (Grand Chamber, no. 21906/04); Léger v. France (19324/02).

[125] "Composition and guarantees of independence and pluralism," Principles relating to the status of national institutions (the Paris Principles), approved by the General Assembly in 1993, annexed to General Assembly resolution. 48/134.

[126] See HRMMU report of 16 August - 15 November 2015, paras. 173-176.

VII. Human rights in the Autonomous Republic of Crimea[127]

183. OHCHR monitoring of the human rights situation in Crimea continued to be hindered by a lack of access. In line with standard practices of human rights fact-finding relying primarily on first-hand accounts, OHCHR documented a continuing trend of criminal prosecution of Crimean Tatar demonstrators for their participation in the February 2014 events. Other incidents of serious concern were also recorded, including four Crimean Tatars going missing, and a raid appearing intended to intimidate local Crimean Tatars with pro-Ukrainian sympathies. On 15 February, the prosecutor of Crimea filed a request with the supreme court of Crimea to recognize the Mejlis, the self-governing body of the Crimean Tatars, to be an extremist organization and to ban its activities on the territory of the Russian Federation.

184. As noted in previous reports, OHCHR guided by United Nations General Assembly resolution 68/262 on the territorial integrity of Ukraine, is concerned that the imposition of the citizenship and legislative framework of the Russian Federation, including penal laws, and the resulting administration of justice in accordance with this framework, has affected human rights in Crimea.

185. The human rights of Crimeans also continued to be adversely impacted by some decisions of the Government of Ukraine, including with regard to their access to banking services in mainland Ukraine. Actions by pro-Ukrainian activists in mainland Ukraine, such as attacks on electricity supply, affected vulnerable segments of the population in Crimea.

A. Due process and fair trial rights

186. During the reporting period, two court cases took place in the Russian Federation in relation to Ukrainian citizens arrested in Crimea (See: III. Accountability and administration of justice, B. Individual cases at p. 24). According to the Government, eight individuals have been apprehended in Crimea and transferred to Russia for trial. OHCHR recalls that the arrest of Ukrainian citizens in Crimea by representatives of the Russian Federation authorities and their transfer to the Russian Federation breach United Nations General Assembly Resolution 68/262 on the territorial integrity of Ukraine.

187. On 28 December, a Crimean Tatar was convicted by a Crimean Court[128] in relation to a demonstration that had led to clashes in front of the Crimean Parliament building on 26 February 2014. The Simferopol City Court handed down a verdict of three and a half years of suspended sentence against Talat Yusunov for his alleged participation in the violence. During the riots between pro-Russian and pro-Ukrainian supporters, two ethnic Russians were killed and 79 demonstrators from both camps were injured. OHCHR notes that this is the second suspended sentence applied to a Crimean Tatar demonstrator having participated in the February 2014 events. Several interlocutors claimed that those arrested were

[127] The Autonomous Republic of Crimea technically known as the Autonomous Republic Republic of Crimea and the City of Sevastopol. HRMMU has not been granted access to Crimea and has no in situ presence. However, it has been able to monitor the human rights situation by establishing and maintaining contacts with Crimean residents on the peninsula and mainland Ukraine and relying on a variety of interlocutors of different ages and genders including representatives of political, religious, civil society organizations, victims, relatives and witnesses of alleged human rights violations, members of the legal profession, journalists, entrepreneurs, teachers, doctors, social workers, human rights activists and other categories, including individuals with no specific affiliations. HRMMU continues to seek access to Crimea.

[128] Eskender Nebiyev received a suspended sentence of two years and six months of imprisonment on 12 October 2015.

promised lenient sentences should they cooperate with the prosecution in establishing the criminal responsibility of the Deputy Head of the Mejlis, Akhtem Chiihoz, who was also arrested in 2015 for his alleged role in organizing the protests[129].

188. OHCHR has followed the legal proceedings in relation to four followers of the Hizb ut-Tahrir religious organization, who have been detained since February 2015, accused under 'terrorism' charges[130]. On 14 and 15 January 2016, a Crimean Court extended their detention until 22 March 2016. The Supreme Court of the Russian Federation listed Hizb ut-Tahrir as a 'terrorist organization', while it is legal in Ukraine.

189. On 11 and 12 February 2016, three Crimean Tatar men – including a human rights activist – and one ethnic Ukrainian man were arrested for their involvement in the Hizb ut-Tahrir religious organization and charged with 'terrorism'. They were arrested by FSB officers during house raids in Yalta, Alushta and Bakhchisaray districts. The raids took place in the presence of women and children, as armed masked officers stormed the houses, breaking windows and doors. All four men were placed in 'pre-trial detention' until 8 April 2016.

190. On 21 January, a court in Simferopol issued an arrest warrant for Mustafa Dzhemilev, the leader of the Crimean Tatars, and placed him on a list of wanted individuals. The court stated that three investigations had been launched into his activities but did not specify the charges. In April 2014, Russian Federation authorities barred Dzhemilev from entering the territory of the Russian Federation for five years.

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

191. Two Crimean Tatar men went missing on 15 December, near Kerch. The 'police' started an investigation and stated that they may have gone to the Middle East. OHCHR received information from relatives that they may have been abducted. A third Crimean Tatar man went missing in Simferopol, in January 2016.

C. Violations of the right to freedom of opinion and expression

192. OHCHR recorded serious allegations of discrimination and harassment against members of minorities and indigenous people, in particular Crimean Tatars, violating their freedom of expression. On 28 December, FSB officers and about 25 Crimean Cossacks entered the village of Dolynka after it was found that a Ukrainian flag had been painted at a nearby bus station. Although the village has an ethnically mixed population, only Crimean Tatar residents were interrogated about the incident. All houses with Crimean Tatar flags were photographed. Residents who had taken part in the May 2015 commemoration of the deportation of Crimean Tatars were systematically sought out for interrogation. The leader of the Cossack group told local journalists he had come to the village to "protect" Russians, Ukrainians and Crimean Tatars from "manifestations of extremism." While no houses were raided nor any arrests made, the intervention, triggered by the alleged display of a national symbol by an anonymous person, appeared to be illegitimate and unnecessary. The raid of Dolynka appears to have been intended to intimidate local Crimean Tatars who take pride in their national identity and are keen to publicly demonstrate it.

[129] Eskender Emervaliyev, Eskender Kantemirov, Ali Asanov and Mustafa Degermendzhy.
[130] See 9th HRMMU public report, covering 1 December 2014 to 15 February 2015, p.24.

D. Violations of the right to freedom of religion or belief

193. 1 January 2016 marked the deadline for all religious communities to re-register under Russian Federation law. Based on information from the Ministry of Justice of the Russian Federation, 365 religious communities operating in Crimea were re-registered on that date while over 1,000 religious communities that were recognized under Ukrainian law have not been re-registered, and therefore do not have a legal status. OHCHR considers that stringent legal requirements[131] under Russian legislation have either prevented or discouraged re-registration of many religious communities. OHCHR recalls that it is essential to ensure that all procedures for registration are accessible, inclusive, non-discriminatory and not unduly burdensome, as freedom of religion or belief has a status prior to and independent from any administrative recognition procedures. Religious minorities should be respected in their freedom of religion or belief even without registration[132].

194. The Ukraine Orthodox Church of the Kyiv Patriarchate (UOC-KP) features among the unregistered religious communities. The church chose not to follow registration procedures deriving from Russian Federation law and therefore has no legal status. UOC-KP has been under pressure to cooperate with the *de facto* authorities and its refusal to do so has led to the seizure and closure of at least five churches[133] throughout the peninsula since March 2014. The Cathedral of St. Vladimir and Olga in Simferopol, the only place of worship of UOC-KP in this city, may be forced to close after the Crimean 'ministry of land and property relations' informed the Crimean Diocese of the UOC-KP in May 2015 that the rental agreement for the church premises had been cancelled. On 16 January 2016, a Crimean arbitration court ruled in favour of the Ministry, ordering UOC-KP to leave the Cathedral within 10 days and sentencing it to a fine of almost 600,000 RUB (about 7,900 USD) for unpaid rent arrears.

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

195. OHCHR has received information about some people living in Crimea facing difficulties in accessing health services and social protection because they do not have Russian citizenship. Indeed, since March 2014, residents can automatically get Russian Federation citizenship which, in turn, is a pre-condition to obtain certain rights, including access to free State health insurance. For instance, a woman who had been living in Alushta, Crimea, for the last 10 years, but was registered in Kharkiv, died in December 2015 after the public hospital refused to treat her because she did not have any health insurance. She was eventually evacuated with the help of relatives to mainland Ukraine where she died in hospital after a few days. The refusal to hospitalize anyone with a serious health condition – including due to his or her origin or status, such as citizenship - constitutes a grave violation of the internationally protected right to the highest attainable level of physical and mental health.

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[131] Religious communities requesting re-registration need to submit the statutes of the organization, two records of community meetings, a list of all the community members, and information on the "basis of the religious belief". See HRMMU report of 16 February – 15 May 2015, para. 168.

[132] Thematic report of the Independent Expert on Minority Issues, A/68/268, para. 61

[133] On 1 June 2014 the church in Perevalnoe was seized by so-called "cossacks". Originally the church was closed to visitors but later priests of the Moscow patriarchate started conducting services there. The church of the apostles Peter and Paul and holy prelate Nicholas, which is located on the territory formerly belonging to the naval training center of the armed forces of Ukraine in Sevastopol was seized. UOC-KP parishes in Krasnoperekopsk, Kerch and Saki were also closed.

F. Discrimination in access to services

196. On 25 December 2015, the High Administrative Court of Ukraine reversed a decision of a Kyiv court that recognized the right of all Crimean residents, without distinction, to equal treatment in accessing bank services. This decision followed a challenge by a group of Ukrainian NGOs to the National Bank of Ukraine Resolution No. 699 that declared all Crimean residents to be "non-residents" of Ukraine. The denial of the status of residents bars people from opening foreign currency bank accounts and purchasing foreign currency. OHCHR views this decision as discriminatory and as violating IDPs rights.

G. The 'civil blockade' of Crimea

197. On 17 January, the organizers of the 'civil blockade' of Crimea[134], initiated on 20 September, announced that they had stopped enforcing their embargo on trade to and from the peninsula, which was intended to draw international attention to the situation in Crimea. The 'civil blockade' was operated by activists who illegally performed law enforcement functions, and was marked by some human rights abuses[135]. The decision to lift the 'civil blockade' followed the entry into force of a Government Decree of 18 December 2015, imposing strict restrictions on the delivery of goods, services, food and personal belongings to and from Crimea. As witnessed by OHCHR, which visited Kherson region on 1-4 February 2016, the participants in the 'civil blockade' were still present at improvised roadblocks but were not interfering in the traffic of vehicles. This new form of civic action now seems to be limited to observation, and appears to be complying with the law.

198. In February 2016, OHCHR observed persistent tensions between local residents and blockade supporters. Local residents have set up 'self-defense' groups in response to numerous attacks against physical persons and property allegedly committed by blockade activists[136] and inaction of law enforcement. On 1 February 2016, the Crimean 'police' raided the Simferopol headquarters of a company owned by the father of Lenur Islyamov, who coordinate the actions of blockade activists. On 7 February 2016, a grenade was thrown at the Kherson office of the Mejlis of the Crimean Tatar People, perceived to be linked to the blockade activists, causing material damage but no casualties.

199. Prior to the lifting of the 'civil blockade, on 21-22 November 2015, unknown perpetrators damaged four transmission towers located in the region of Kherson, which supply electricity to Crimea. It is widely believed that pro-Ukrainian activists and Crimean Tatars who had been enforcing the 'civil blockade' were behind this act of sabotage. To date, no perpetrators have been identified or apprehended. Electricity supplies to Crimea partly resumed by mid-December after the first two legs of an energy bridge linking mainland Russia to the peninsula were completed and one of the four destroyed power lines in the Kherson region was repaired. Yet, as of February 2016, there was no energy supply from Ukraine as the contract between Ukraine's energy company and the Crimean *de facto* authorities, which expired on 1 January 2016, was not renewed.

200. Although overall limited, the impact of the trade embargo and the halt of electricity supplies on the population of Crimea have had harsh consequences for some people. For about three weeks, the interruption of energy deliveries to Crimea caused widespread

[134] See 12th HRMMU report, covering 16 August to 15 December 2015, pp.29-30.
[135] Ibid.
[136] HRMMU has information that 301 incident reports were submitted to the police in Kherson since 20 September 2015.

disruptions, affecting daily life on the peninsula, notably food conservation, public transportation and economic activity. The Crimean *de facto* authorities redirected available energy resources to the most critical social infrastructure, such as hospitals and schools. The human rights impact of the power outage has been the most acute for people with limited mobility and low income.

VIII. Conclusions and recommendations

201. **A number of steps were taken by the Government of Ukraine to advance and strengthen human rights promotion and protection through policy documents and legal acts. For example, llegislative amendments have broadened the category of displaced people benefiting from rights under the IDP law to include stateless persons and foreigners legally residing in Ukraine. Some other legal acts adopted either fall short of international standards or seek to restrict human rights guarantees. A law on civil registration fails to provide for direct recognition of civil acts issued by non-state authorities, as required by international jurisprudence. A law on civil service compromises the independence of the institution of the Ombudsperson. The Government of Ukraine adopted a national human rights action plan to support realization of a human rights strategy approved in August 2015. The Government of Ukraine, however, has restricted, without any justification, its obligations under the ICCPR toward the population of several localities of the regions of Donetsk and Luhansk under its control.**

202. **The situation in Crimea continued be characterized by human rights violations, including intimidation and persecution of people holding dissenting views. OHCHR recorded serious allegations of discrimination and harassment of members of minorities and indigenous people, in particular Crimean Tatars, violating their human rights, including freedom of expression. Ukrainian citizens were sentenced by Russian Federation Courts after being arrested in Crimea and transferred to the Russian Federation. The selective prosecution of Crimean Tatars having taken part in a pro-Ukraine rally on 26 February 2014 continued. The only Ukrainian Orthodox Church of the Kyiv Patriarchate in Simferopol could be closed. Crimean residents refusing to accept imposed Russian Federation citizenship continued facing discrimination. Their rights were also affected by restrictive Russian Federation legislation. OHCHR reiterates that an environment conducive to the promotion and protection of human rights in Ukraine depends on the respect for the General Assembly resolution 68/262 on the territorial integrity of Ukraine.**

203. **In the east, the 1 September 2015 ceasefire and 23 December 2015 introduction of a "regime of complete silence" ushered in a sense of optimism around the possibility of ending the conflict in eastern Ukraine. For civilians on the ground, however, there are many reasons to remain cautious. Local residents of Donetsk and Luhansk regions need a guarantee on civilian protection and their human rights. There is increased concern about the diminishing space for civil society, and the limitations for those wishing to raise their voice and exercise their fundamental freedoms.**

204. **For civilians on the ground, an end to the war would mean an end to the nightly sound of shelling and an end to standing in queues for prolonged periods of time waiting to cross the 'contact line'. A guarantee on civilian protection is critical to ending the conflict. Continued indiscriminate shelling and restrictions on freedom of movement will only imperil the political process. There are various steps that the Government of Ukraine and the 'Donetsk people's republic' and 'Luhansk people's republic' can take toward civilian protection. The recommendations below draw from OHCHR's interviews with civilians living on either side of the contact line - in**

Government controlled areas and territory under the control of armed groups, who are reporting allegations of violations and abuses of international human rights and humanitarian law. Individuals include IDPs, family members of missing, disappeared or deceased soldiers, detainees and their relatives. This cross-section of Ukrainian society has core demands, common on either side of the contact line.

205. **Guaranteeing the free and safe movement of civilians across the contact line is critical. The closure of checkpoints, even if temporary has an immediate impact on civilians, directly increasing hardship and negatively affecting their access to fundamental human rights. If hostilities continue, civilians may be trapped in unsafe areas, vulnerable to violence, mines and unexploded munitions. Prior and upon the closure of certain transport corridors, all alternative options must be explored, including the establishment of new safe corridors or the negotiation of 'windows of silence' to ensure safe passage of civilians. The obligation to ensure that civilians can move freely, especially from the area of heightened hostilities, holds even when there are security concerns. Any limitation to freedom of movement must be proportionate.**

206. **Ensuring that Ukrainians living on either side of the contact line have access to their full range of human rights and exercise their right to equal protection under the law is crucial. The socio economic situation for the population of Ukraine in conflict affected areas and elsewhere in the country continued to further deteriorate. Ukrainians, regardless of their place of residence, must be able to benefit from their social and economic rights and have access to remedies for abuses of their civil and political rights. This will alleviate their isolation, remove a core driver of grievances against the Government, and counter the narrative of those who promote violence.**

207. **Bringing a meaningful end to hostilities in the eastern regions of Ukraine and fully complying with the provisions of the Minsk Agreements will save lives and prevent further hardship. OHCHR reiterates that the full implementation of the Minsk Agreements (as detailed in paragraph 19) remains the only viable strategy for achieving a peaceful solution. Crucially, the restoration of the full effective control by the Government of Ukraine over parts of the border with the Russian Federation (in certain districts of Donetsk and Luhansk regions) would be the key to ending any possible inflow of ammunition, weaponry and fighters from the Russian Federation. Combined with all other aspects of the Minsk Agreements, this will also pave the way for respect for the rights of people both in the conflict area and elsewhere in Ukraine.**

208. **Implementing civilian casualty mitigation mechanisms will demonstrate a commitment to protecting civilians. Removing military objects from populated residential areas will eliminate unnecessary and serious threats to civilian lives and property. There is an urgent need for extensive mine action activities, including the establishment of appropriate coordination mechanisms, mapping and mine risk education and awareness on either side of the contact line.**

209. **Under international humanitarian law binding on the parties to the conflict in Ukraine, all feasible measures must be taken to account for persons reported missing as a result of the armed conflict and provide their family members with any information on their fate. OHCHR has observed that the denial of access to information about the fate and whereabouts of missing or disappeared persons and the failure to systematically address the issue of the missing may compromise future reconciliation efforts. The documentation of missing persons, free access to all places of detention, identification of mortal remains, and communication between the Government and armed groups on the matter is critical. The clarification of the fate of the missing should be at the centre of any peace negotiations ending the conflict.**

210. Information collected since 2014 indicates that human rights violations have been systematically perpetrated against persons detained in connection with the conflict. Torture can only be prevented if oversight mechanisms and international organizations, such as the ICRC, are granted unfettered access to all places of detention and detainees are brought before a judge promptly. Strengthening the independence of the judiciary from interference by the security services and political pressure is paramount in order to end impunity for torture. Complaints and investigations into allegations are more likely to be effective if they are commenced without delay and when perpetrators are punished. Remedies are only effective in rebuilding the lives of victims if they are timely.

211. Civilian protection and accountability for violations and abuses of human rights and international humanitarian law need to be meaningfully discussed during the Minsk Talks. There is clear and compelling evidence of serious violations of international humanitarian law committed during the course of the conflict in eastern Ukraine. Indiscriminate shelling, summary executions, systematic ill-treatment and torture have been documented by OHCHR, international and Ukrainian human rights organizations. As a first step toward ensuring genuine accountability, the Minsk process must guarantee justice for the victims of these serious violations. While the broadest possible amnesty must be granted to persons who participated in the armed conflict or those deprived of their liberty to reasons related to the armed conflict, no amnesty can be given to those persons suspected of, accused of, or sentenced to war crimes, crimes against humanity or gross violations of human rights, including gender-specific violations[137]. Further, amnesties are impermissible if they interfere with victims' right to an effective remedy, including reparation, or restrict victims' and societies' right to know the truth about violations of human rights and humanitarian law. The inclusion of persons responsible for serious violations in any positions of authority will only serve to undermine the credibility of all the parties to the conflict and the legitimate needs of Ukrainians.

212. Most rrecommendations made in the previous OHCHR reports on the human rights situation in Ukraine have not been implemented, and remain valid. OHCHR calls upon all parties to implement the following recommendations:

213. To the Government of Ukraine:

a) Bring an end to the practice of secret and incommunicado detention;

b) Ensure immediate access of a lawyer to individuals detained in relation to the conflict in the east or for their affiliation or suspected affiliation with the armed groups;

c) Interview all individuals released from the captivity by the armed groups in order to document all the details necessary for the eventual prosecution of perpetrators;

d) Amend all relevant legislation regulating the authority to conduct searches, recovery and exhumation activities on the territories which are not controlled by the Government to reflect the role of civil society organizations; and amend rules regulating the delivery and registration of mortal remains, including the collection of identifying information to empower state authorities to accept relevant information from the civil society organizations and groups carrying out such activities;

[137] Article 6(5), Additional Protocol II of the Geneva Conventions, 1977.

e) The Office of the Military Prosecutor to investigate all allegations of arbitrary detention and enforced disappearances by Ukrainian military and security forces and in the course of investigations, undertake visits to alleged illegal places of detention on the Government-controlled territories;

f) The Office of the Military Prosecutor to take more pro-active attitude towards investigation of allegations of human rights violations, such as arbitrary detention, torture and ill-treatment;

g) Ensure no amnesty is granted to those suspected of, accused of, or sentenced for war crimes, crimes against humanity or gross violations of human rights;

h) Develop an administrative procedure allowing for direct recognition of civil registration documents (birth, death and marriage certificates) issued by de facto authorities in Crimea and the armed groups in the east of Ukraine, as an exception to the general rule of non-recognition of acts taken by non-state actors, in line with the jurisprudence of International Court of Justice and the European Court of Human Rights;

i) Develop a comprehensive and effective legal mechanism for civilians whose property has been damaged, looted or seized for military purposes to seek and receive restitution and compensation;

j) Establish a mechanism for periodic independent review by the Parliament of the necessity of derogation measures and lift the derogation as soon as it is no longer strictly required.; ensure full compliance of Ukrainian legislation with ICCPR provisions, particularly articles 2(3), 9, 12, 14 and 17;

k) Following the adoption of the National Human Rights Action Plan in December 2015, allocate adequate resources to ensure its meaningful implementation;

l) Prevent the provision of water or electricity from being used to impose economic or political pressure on the territory controlled by armed groups. Humanitarian assistance should be provided in accordance with internationally recognized humanitarian and human rights principles, including the principle of non-discrimination;

m) Amend the law 'On the Civil Service' (No. 2490) to prevent any interference in the independence of the Institution of the Ombudsperson, in accordance with the 'Paris Principles';

n) Investigate all claims of human rights abuses committed during the 'civil blockade' on the administrative boundary line between mainland Ukraine and Crimea, and arrest perpetrators. Ensure public safety and the rule of law in the southern districts of the Kherson region.

214. **To all parties involved in the hostilities in Donetsk and Luhansk regions:**

a) Exercise all possible efforts to put an end to fighting and violence in the conflict zone, including by continuing to seek full implementation of the Package of Measures for Implementation of the Minsk Agreements of 12 February 2015, and by fully observing the regime of "complete silence" along the contact line;

b) Respect international humanitarian law, particularly the principles of distinction, proportionality and precaution; in any situation, refraining from indiscriminate shelling of populated areas, and from locating military objectives within or near densely populated areas; also refrain from damaging objects

indispensable to the survival of civilians (i.e. water facilities), and medical facilities, personnel and ambulances;

c) Investigate, prosecute or hand over to a competent authority any person found to be responsible for serious violations or abuses of international human rights and humanitarian law, including torture and other cruel, inhumane or degrading treatment or punishment, summary or arbitrary executions, or enforced or involuntary disappearances, including those with command responsibility;

d) Release all those unlawfully or arbitrarily detained without delay and in conditions of safety;

e) Ensure unimpeded access of OHCHR and other international monitors to the places of detention in the conflict zone, including unofficial ones;

f) Exchange information and otherwise cooperate to establish the whereabouts of people who went missing in the conflict zone, and provide unimpeded access of relatives of missing persons to the information related to the whereabouts and condition of their relatives;

g) Ensure treatment with due respect and dignity of the bodies and remains of individuals killed as a result of hostilities; provide free and safe access to the areas where bodies and remains can be found; facilitate their identification, and a dignified and decent return to their family;

h) Ensure that civilians enjoy general protection from the dangers arising from military operations, including the possibility to voluntarily and rapidly leave areas affected by violence; to this end, facilitate movement across the contact line and remove any obstacles to the free and safe passage of civilians and humanitarian assistance;

i) Implement demining activities along major transport routes to checkpoints to remove explosive remnants of war and improvised explosive devices from roadsides; clearly and properly mark territories which have not been demined; cease the practice of planting booby traps;

j) Ensure safe and unhindered passage of civilians across the contact line, especially from areas of heightened hostilities. Refrain from imposing undue obstacles to free passage, such as additional checks and restrictions. If certain transport corridors are closed for security reasons, all alternative options must be explored and new safe corridors established;

k) Commit to not pass 'sentences' or carry out executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees recognized as indispensable, recalling that such acts violate the binding provisions of Common Article 3 of the Geneva Conventions, and incur individual criminal responsibility under international criminal law;

l) Commit to an 'all for all' release of detainees and persons deprived of their liberty, with full regard for their human rights and safety.

215. **To the *de facto* authorities of Crimea and to the Russian Federation:**

a) Permit OHCHR and other international organizations to access Crimea in order to ensure the effective fulfilment of its mandate;

b) Reject the request to ban the Mejlis and stop persecution of its members;

c) End the practice of transferring Ukrainian citizens arrested in Crimea to the territory of the Russian Federation, as this violates General Assembly resolution 68/262;

d) Put an end to police actions targeting members of the Crimean Tatar community in a discriminatory manner;

e) Ensure due process and fair trial rights for Crimean Tatars detained in relation to the February 2014 demonstration;

f) Ensure credible investigations into the disappearance of Crimean Tatars;

g) Ensure respect for freedom of religion or belief and ensure that all procedures for registration are accessible, inclusive, non-discriminatory and not unduly burdensome.