

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	344
Land:	Ukraine
Kilde:	UN Office of the High Commissioner for Human Rights (OHCHR)
Titel:	Situation of human rights in Ukraine 16 August 2018 to 15 November 2018
Udgivet:	17. december 2018
Optaget på baggrundsmaterialet:	4. februar 2019

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

**Report on the human rights situation in Ukraine
16 August to 15 November 2018**

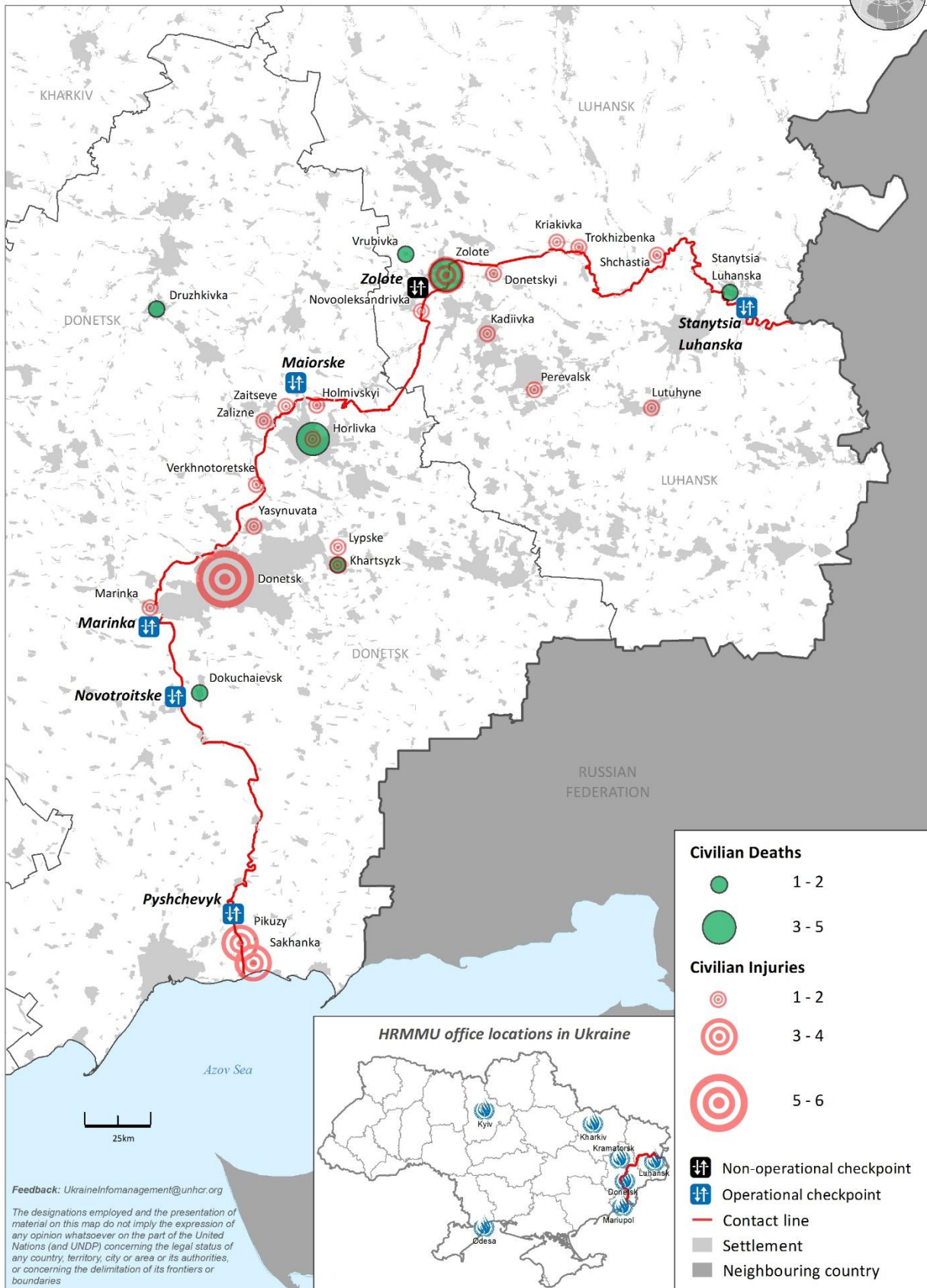


Contents

	<i>Page</i>
I. Executive summary	1
II. OHCHR methodology	3
III. Impact of hostilities	4
A. Conduct of hostilities and civilian casualties	4
B. Economic and social rights of conflict-affected persons	7
1. Remedy and reparations for conflict-affected population	7
2. Right to restitution and compensation for use or damage of private property	7
3. Right to social security and social protection	9
4. Freedom of movement, isolated communities and access to basic services	10
IV. Right to physical integrity	10
A. Access to detainees and conditions of detention	11
B. Arbitrary detention, enforced disappearance and abduction, torture and ill-treatment	11
C. Situation of pre-conflict prisoners	13
D. Missing persons	13
V. Administration of justice	14
A. Fair trial rights	14
B. Accountability for cases of violence related to riots and public disturbances	15
1. Accountability for the killings of protesters during the Maidan protests	15
2. Accountability for the 2 May 2014 violence in Odesa	16
VI. Democratic/civic space and fundamental freedoms	16
A. Freedom of opinion and expression and freedom of the media	17
B. Discrimination, hate speech, racially motivated violence and manifestations of intolerance	18
1. Incidents of violence and intimidation	18
2. Draft law on state language	19
C. Freedoms of peaceful assembly and association	19
D. Freedom of religion or belief	20
E. Voting rights	21
VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol	22
A. Freedoms of opinion and expression	22
B. Deprivation of liberty	23
C. Right to maintain one's identity, culture and tradition and freedom of association	23
D. Property rights and equal access to public service	24
VIII. Technical cooperation and capacity-building	24
IX. Conclusions and recommendations	25



Ukraine: Civilian casualties along the contact line, 16 August - 15 November 2018



I. Executive summary

1. This twenty-fourth report on the situation of human rights in Ukraine by the Office of the United Nations High Commissioner for Human Rights (OHCHR) is based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU),¹ and covers the period from 16 August to 15 November 2018.

2. OHCHR documented 242 violations during the reporting period. This represents an increase of the violations OHCHR documented compared with those documented in the previous report, covering the period from 16 May to 15 August.² Among the violations documented during this reporting period, 35 violations occurred previously. Such delayed reporting is commonly caused by the fact that it often takes time for survivors of sexual violence, ill-treatment and torture to be located, or for them to speak about their experiences.

3. The Government of Ukraine was responsible for 147 violations of those recorded, armed groups for 28 of those recorded, and the Government of the Russian Federation (as the occupying power³ in the Autonomous Republic of Crimea and city of Sevastopol⁴) for 32 of those recorded.⁵

4. Throughout the reporting period, operations in territory controlled by the self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic' have been restricted.⁶ Ongoing discussions through regular meetings with representatives of both 'Donetsk people's republic' and 'Luhansk people's republic' have yet to secure the resumption of OHCHR operations in the territory they control, as well as unimpeded confidential access to detainees in this territory.

5. The Russian Federation, the occupying power in Crimea, has still not granted OHCHR access to the peninsula in line with UN General Assembly resolutions 68/262, 71/205 and 72/190. Given those conditions, OHCHR continued remotely monitoring the situation of human rights under the temporary occupation of the Russian Federation, through interviews with victims and their families, lawyers, and missions to the Administrative Boundary Line with Crimea.

6. Civilian casualties continued declining in keeping with the established trend in 2018. During the reporting period, this was furthered with the two consecutive recommitments⁷ to the ceasefire agreed by the Trilateral Contact Group in Minsk. Between 16 August and 15 November, OHCHR recorded 50 civilian casualties (14 deaths and 36 injuries), which constituted a 52.4 per cent decrease compared with the previous reporting period.

7. Nevertheless, clashes and localized exchanges of fire contributed to enduring insecurity. Government forces and armed groups continued the practice of positioning themselves and advancing within populated areas, thus dividing villages, subjecting civilian residents to heightened risk and disrupting their ways and means of coping with the effects of the conflict on their lives. Approximately 36 per cent of civilian casualties during the reporting period were caused by shelling or light weapons, the majority recorded in armed group-controlled territory and are attributable to the Government.

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 paras. 7-8 of the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

² Between 16 May and 15 August 2018, OHCHR documented 162 human rights violations. Of those, 85 human rights violations occurred in the course of that reporting period.

³ See United Nations General Assembly resolution 71/205 of 19 December 2016 referring to Crimea as occupied by the Russian Federation; and resolution 72/190 of 19 December 2017 urging the Russian Federation to comply with its obligations as an occupying power in Crimea.

⁴ Hereinafter Crimea.

⁵ These numbers do not include civilian casualties caused by the armed conflict.

⁶ Hereinafter 'Donetsk people's republic' and 'Luhansk people's republic'.

⁷ The "harvest ceasefire" as of 1 July and the "school year ceasefire" as of 1 September.

8. Large segments of population, including vulnerable groups, such as older persons, children and persons with disabilities, suffer from the socio-economic barriers created by the armed conflict. Disproportionate restrictions of freedom of movement along and across the contact line continue to disrupt people's access to social entitlements (such as pensions and social benefits). This also inhibits access to basic services, including water, sanitation, heating, and health care. Given the lack of reparations and compensation for death, injury and damage or destruction of property, the social and economic condition of the conflict-affected population, including internally displaced persons (IDPs) continued to deteriorate.

9. During the period under review, there were a number of improvements to the framework governing the ability of internally displaced persons to exercise their right to social security and protection. The Government of Ukraine must now effectively implement these measures to make a difference in people's lives. Ensuring the exercise and effective protection of social and economic rights is a vehicle for social cohesion and can contribute to fostering peace and stability.

10. OHCHR continued documenting violations of the right to a fair trial of individuals charged with conflict-related criminal cases, in particular those related to forced confessions and violation of presumption of innocence. Physical attacks against lawyers dealing with such cases remain a concern. OHCHR observed positive developments in identification of an internal troops sniper suspected of killing a protester on 20 February 2014 in the context of mass assemblies at Maidan. No essential progress has been observed in prosecution of killings on 2 May 2014 in Odesa.

11. OHCHR also continued documenting cases of increasingly violent attacks against journalists and media professionals, civil society activists, affiliates of political parties and defence lawyers in conflict-related cases perpetrated by members of extreme right-wing groups, narrowing democratic and civic space in Ukraine. Such attacks have become increasingly visible, fuelling intolerance and discrimination, stifling freedom of expression and risk compromising the rule of law essential to ensuring the integrity of the forthcoming presidential and parliamentary elections in 2019. Despite evidence available, including the public claiming of responsibility by members of extreme right-wing groups on social media, law enforcement often fails to bring perpetrators of such violent attacks to account. OHCHR documented 59 violations of the fundamental freedoms of opinion and expression, peaceful assembly and association, religion or belief, as well as the right to non-discrimination and equal protection under the law, during the reporting period, which is a 31 per cent rise in documented attacks compared to the previous reporting period of 16 May to 15 August 2018.

12. OHCHR noted increased tensions among Orthodox communities and churches in Ukraine in the context of developments regarding granting of autocephaly to an Orthodox church in the country. On 11 October 2018, the Holy and Sacred Synod of the Ecumenical Patriarchate decided to proceed with granting autocephaly to an Orthodox Church of Ukraine.⁸ Given the heightened tensions between Orthodox communities, OHCHR urges all interested groups and individuals to take all necessary actions to prevent any potential outbreak of violence.

13. OHCHR is also following the progress of draft legislation setting out a new State language policy and encourages its review to ensure a fair correlation between the preservation of the State language as a tool for integration within society, and the protection of the rights of minorities, noting that the development of such legislation must be coordinated.

14. In the absence of any sign of improvement in the overall human rights situation in Crimea, the Russian Federation continued imposing and applying its legal system on the peninsula in contravention of its obligations as an occupying power under the Fourth Geneva Convention.⁹ OHCHR documented 44 human rights violations in Crimea. These violations include arbitrary application by Russian Federation authorities of anti-extremism legislation

⁸ The full text of the announcement of the Ecumenical Patriarchate of 11 of October 2018 is available from: <https://www.patriarchate.org/-/communiq-1>

⁹ United Nations General Assembly resolutions on the situation of human rights in the Autonomous Republic of Crimea and city of Sevastopol A/71/205 (2016) and A/72/190 (2017).

in Crimea, which has stifled dissent, instilled fear and denied individuals their freedoms of expression and association.

15. OHCHR carried out 300 specific follow-up activities to facilitate the protection of human rights connected with the cases documented, including trial monitoring, detention visits, referrals to State institutions, humanitarian organizations and non-governmental organizations (NGOs), and cooperation with United Nations human rights mechanisms,¹⁰ as well as representatives of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’.

16. Based on the information documented, OHCHR dedicated increased resources to technical cooperation and capacity-building activities. OHCHR conducted two training sessions on prevention of arbitrary detention, torture and conflict-related sexual violence, as well as on the protection of freedom of movement and housing, land and property rights, provided analysis and recommendations concerning the draft law on the State language policy, and provided support to the recently established Civilian Casualty Mitigation Team (CCMT) within the Joint Forces Operation (JFO) of the Armed Forces of Ukraine.

II. OHCHR methodology

17. This report is based on 119 in-depth interviews with victims and eyewitnesses. Findings are included in the report where the “reasonable grounds” standard of proof is met. The standard is met when a sufficient and reliable body of primary information collected through interviews (with victims, witnesses, relatives of victims and lawyers), site visits, meetings with Government representatives, civil society and other interlocutors, and trial monitoring is consistent with secondary information assessed as credible and reliable, such as reviews of court documents, official records, open-source material, and other relevant materials. OHCHR applies the same due diligence and standard of proof when documenting conflict-related civilian casualties.¹¹ Consent is sought from sources on the use of information, ensuring confidentiality as appropriate. Specific attention was paid to the protection of victims and witnesses, assessing the risk of reprisals.

18. In the reporting period, OHCHR was not operational in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’; as a consequence OHCHR had to step up its remote monitoring of the human rights situation.

19. While OHCHR cannot provide an exhaustive account of all human rights violations committed throughout Ukraine, it is able to document patterns of human rights violations and abuses based on individual cases.

¹⁰ United Nations Human Rights Council Special Procedures mandate holders, Human Rights Treaty Bodies, and Universal Periodic Review (UPR).

¹¹ OHCHR documents civilian casualties by consulting a broad range of sources and types of information that are evaluated based on credibility and reliability. In analyzing each incident, OHCHR exercises due diligence to corroborate information from as wide a range of sources as possible, including OSCE public reports, victim and witness accounts, military actors, community leaders, medical professionals and other interlocutors. In some instances, documentation may take weeks or months before conclusions can be drawn, meaning that numbers on civilian casualties may be revised as more information becomes available. OHCHR attributes a civilian casualty to a particular party based on the geographic location where it occurred, the direction of fire, and the overall context surrounding the incident.

III. Impact of hostilities

They liberated us is a bit too strong of a saying to be honest. We were exposed to shelling before this liberation and we are exposed to shelling after it. So I do not see the point.

- A local resident of Zolote-4, a settlement divided by the line of contact

20. On 4 October, the Parliament of Ukraine prolonged the law “On the Special Order of Local Self-Governance in Certain Areas of Donetsk and Luhansk Regions” until the end of 2019.¹² The law provides for expanded local self-rule in the areas of eastern Ukraine not controlled by the Government; its application, however, remains stalled in the absence of the implementation of reciprocal security provisions under the Minsk agreements.¹³

A. Conduct of hostilities and civilian casualties¹⁴

21. Despite the two consecutive ceasefires agreed by the Trilateral Contact Group in Minsk¹⁵, civilians remained at risk due to isolated clashes, localized exchanges of fire and minor shifts of the contact line. Clashes were particularly frequent around the disputed town of Zolote¹⁶ in the west of Luhansk region. In Government-controlled territory and armed group-controlled territory, OHCHR observed a disregard for the principles of distinction and precaution, resulting in civilian casualties and damage to civilian infrastructure. Mines and explosive remnants of war (ERW) continued to pose imminent threat to civilian residents of the conflict zone.

22. During the reporting period, from 16 August to 15 November 2018, OHCHR recorded 50 conflict-related civilian casualties: 14 killed (eight men, three boys, two women and one girl) and 36 injured (22 men, ten women, three boys and one girl).¹⁷ This is a 52.4 per cent decrease compared with the previous reporting period, from 16 May to 15 August (105

¹² Adoption of the Law of Ukraine ‘On amendments to Article 1 of the Law of Ukraine ‘On the Special Order of Local Self Governance in Certain Areas of Donetsk and Luhansk Regions’ no. 2588-VIII of 4 October 2018. The law entered into force on 5 October 2018.

¹³ According to Article 10 of the Law ‘On the Special Order of Local Self Government in Certain Areas of the Donetsk and Luhansk regions’, the allowances for expanded self-rule are conditional upon the implementation of a set of requirements for safe and democratic elections set forth in the law, including the withdrawal of weapons and all illegal military formations.

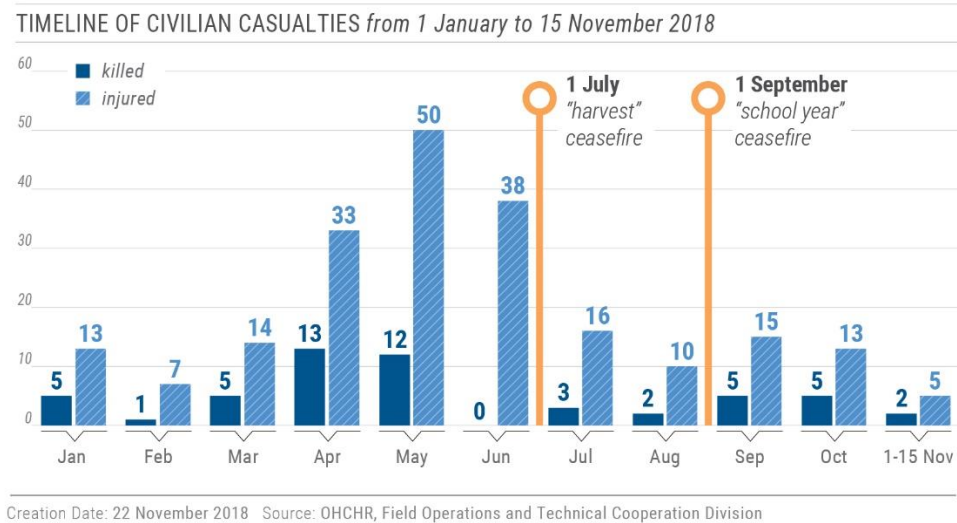
¹⁴ OHCHR does not claim that the statistics presented in this update are complete. Civilian casualties may be underreported given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods. In total, during the entire conflict period, from 14 April 2014 to 15 November 2018, OHCHR recorded 3,020 civilian deaths (1,791 men, 1,045 women, 98 boys, 49 girls and 37 adults whose sex is unknown. With the 298 deaths on board of Malaysian Airlines MH17 flight on 17 July 2014, the total death toll of the conflict on civilians has been at least 3,318. The number of injured civilians is estimated at 7,000 to 9,000 as of November 2018.

¹⁵ The “harvest ceasefire” that commenced on 1 July and the “school year ceasefire” that commenced on 1 September.

¹⁶ The town of Zolote includes five settlement blocks: Zolote-1, -2, -3, -4 and -5. The first three are under the control of the Government, while Zolote-5 is under the control of the armed groups and Zolote-4 is divided by the UAF and armed groups. Accordingly, OHCHR may refer to specific area within the respective administrative unit in order to specify the place of incident and human rights concerns.

¹⁷ 31 civilian casualties in Donetsk region (24 in territory controlled by armed groups and 7 in Government-controlled territory), and 19 in Luhansk region (11 in territory controlled by armed groups, 5 in Government-controlled territory and 3 in ‘no man’s land’).

civilian casualties¹⁸), and a 43.8 per cent decrease compared with the same period of 2017 (89 civilian casualties¹⁹). These figures demonstrate that it is feasible to reduce civilian casualties resulting from the conduct of hostilities, especially those resulting from the use of explosive weapons with a wide impact area.²⁰



23. During the reporting period, shelling and light weapons fire caused 18 civilian casualties: six killed (four men, one woman and one girl) and 12 injured (six men, four women, one boy and one girl), amounting to 36 per cent of the total. Of them, 16 (five killed and eleven injured) were recorded in territory controlled by armed groups (including three killed and three injured in Zolote-5), and are attributable to the Government, and two (one killed and one injured) were recorded in Government-controlled territory and are attributable to armed groups.

24. Most civilian casualties caused by indirect explosive weapons occurred in locations where military positions were close to, or embedded in, residential areas, which could amount to a violation of international humanitarian law.²¹ On 24 August, a man was killed by a howitzer shell in Government-controlled Vrubivka (Luhansk region). On 26 September, two women and one man were injured by light weapons fire in armed group-controlled Pikuzy, formerly Kominternove (Donetsk region). The deadliest shelling incident occurred on 13 October, when a woman and a girl (mother and daughter) were killed by a mortar shell in armed group-controlled Zolote-5. On 14 October, a male inmate was killed by shelling in the correctional colony No. 57 in armed group-controlled Horlivka (Donetsk region). This is the first time since August 2016 that a detainee was killed or injured by shelling.²²

¹⁸ 12 killed and 93 injured.

¹⁹ 17 killed and 72 injured.

²⁰ Weapons with a wide impact area include: a) munitions with a large destructive radius, such as large bombs or missiles; b) weapons that tend to have an inaccurate delivery system, such as unguided indirect fire weapons, including artillery and mortars; and c) weapons designed to deliver munitions over a wide area, such as multi-launch rocket systems and cluster munitions.

²¹ Article 13(1) of Additional Protocol II to the Geneva Conventions stipulates, “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.

²² Nine previous shelling incidents, in which inmates and/or penitentiary personnel were killed or injured in the conflict zone (11 killed and 19 injured in total), occurred between July 2014 and August 2016.

- *Why did you go there?*
- *To look for adventures.*

- Injured boy who survived a mine incident in a forest near 'no man's land' in which three other boys were killed

25. During the reporting period, mine-related incidents²³ accounted for 34 per cent of civilian casualties: 17, among them six killed (three boys, two men and one woman) and 11 injured (eight men, two boys and one woman). Most mine-related incidents occurred in the proximity of the contact line. On 10 September, a man was killed by a mine or ERW near the Government-controlled railway station Kindrashivka-Nova (Luhansk region). His body was found several hundred meters from the 'no man's land'. On 30 September, three boys were killed and one boy was injured in a mine or ERW explosion near 'no man's land' in armed group-controlled Horlivka (Donetsk region). On 18 October, a mine or ERW explosion killed a man and a woman who were trying to repair a broken electricity line in 'no man's land' in Zolote-4. It took six days to secure a 'window of silence' to retrieve the dead bodies and return them to their families. On 23 October, two workers were injured while driving to repair the damaged water pipeline connecting armed group-controlled Horlivka and Government-controlled Toretsk (both in Donetsk region) which supplies with clean water around 45,000 persons.²⁴ Handling of ERW,²⁵ mostly hand grenades, accounted for additional 14 per cent of civilian casualties: seven (two men killed, and three men and two women injured).

26. On 1 November, Ukraine submitted a request for extension under Article 5.3 of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.²⁶ OHCHR welcomes this step as helping to comply with Ukraine's obligations under the Convention. Another positive development was the adoption in the first reading of the draft law²⁷, which would create the legal framework for enhanced mine action activities in Ukraine.

27. Small arms fire caused six civilian casualties (four men and two women), all suffering from injuries. These comprise 12 per cent of all civilian casualties recorded during the reporting period.

²³ Incidents in which civilians were killed or injured by mines (antipersonnel or anti-vehicle) or explosive devices triggered in the same way, such as booby traps, or by explosive remnants of war that are inadvertently detonated by unsuspecting civilians.

²⁴ According to WASH Cluster, WASH incidents fell significantly in the three months from mid-August to mid-November, with only 12 incidents recorded; this is only around half the number of incidents recorded in the same period of 2017. This could be attributed to the "harvest" and "school year" ceasefires. Emergency work between Toretsk and Horlivka followed a shutdown of water supply eight days earlier due to leakage related to incidents becoming excessive, and the Window of Silence was itself delayed for days as the precise location of planned repairs was impossible to specify. Workers from both side of the line of contact continued and completed repairs in spite of the incident, thus restoring water supply.

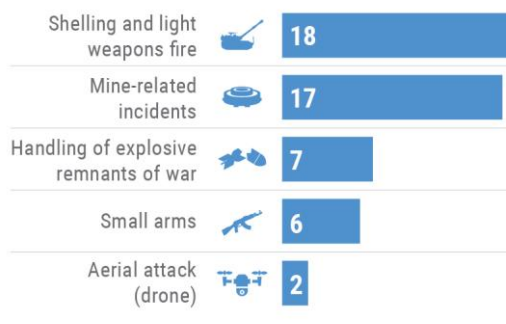
²⁵ Victims of ERW handling manipulate with an ERW for a certain period of time and take additional efforts to make it detonate (for instance, by trying to dismantle it).

²⁶ Information available from <https://www.apminebanconvention.org/status-of-the-convention/clearing-mined-areas/article-5-extensions/states-parties-requests-for-extension-deadlines/>

²⁷ Draft law "On mine action in Ukraine" no. 9080-1 of 19 September 2018. Adopted in first reading on 6 November 2018.

28. The reporting period was marked by an incident in which two civilians were injured by an explosive dropped from a self-modified commercial drone deployed over the armed group-controlled village of Sakhanka (Donetsk region). These were the first drone-caused civilian casualties recorded by OHCHR during the entire conflict period, and the first aerial attack recorded since 2014 that resulted in civilian casualties. OHCHR recalls that the use of drones is subject to the rules of international humanitarian law, such as distinction, proportionality and precautions in attack, and urges drone operators to abide strictly by these rules to spare civilian lives and objects.

CAUSES OF CIVILIAN CASUALTIES



Creation Date: 22 November 2018 Source: OHCHR, FOTCD

29. OHCHR commends the establishment of a Civilian Casualty Mitigation Team (CCMT) within the Joint Forces Operation (JFO). The CCMT will collect information on civilian casualties resulting from hostilities and provide recommendations to JFO command on civilian casualty mitigation.

B. Economic and social rights of conflict-affected persons

30. Over four million conflict-affected persons²⁸ including over 1.5 million registered internally displaced persons (IDPs) and those living in isolated communities along the contact line continue to suffer in the absence of mechanisms for remedy and reparations, from lack of adequate housing, access to services and access to water and heating. IDPs and residents of armed-group controlled territory face difficulties in accessing their pension and social benefits. Disproportionate restrictions on freedom of movement along and across the contact line persist.

1. Remedy and reparations for conflict-affected population

31. Civilians injured during the hostilities and relatives of those killed as a result of the armed conflict continued to suffer from the absence of a comprehensive state policy and mechanism for remedy and reparation. They also continued to wait for the implementation of the amendments to the law ‘On the status of war veterans and their social protection guarantees’, which expanded the scope of the law to include civilians who acquired a disability as a result of hostilities.²⁹ The implementation of the amendments has stalled due to a lack of progress on the creation of a special commission mandated to certify the admissibility of individual cases.

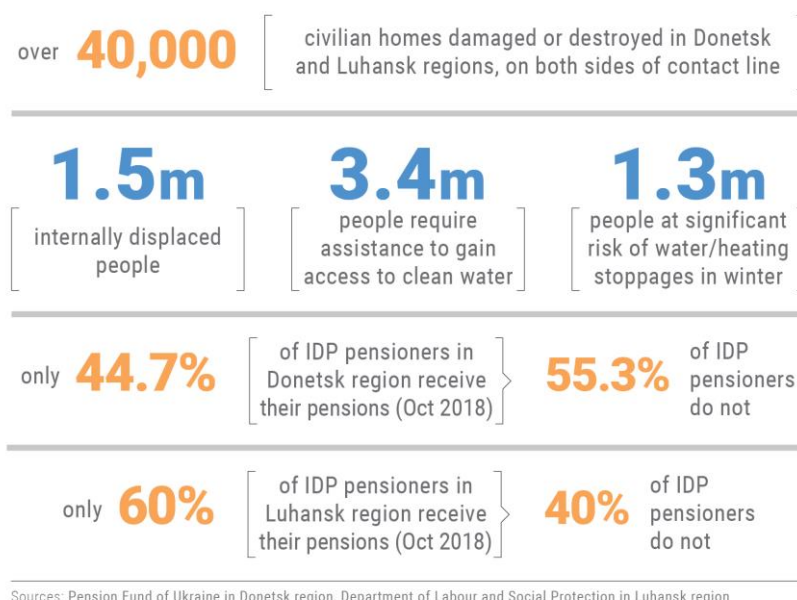
2. Right to restitution and compensation for use or damage of private property

32. Since the outbreak of hostilities in 2014, over 40,000 civilian homes in Donetsk and Luhansk regions have been damaged or destroyed as a result of hostilities, on both sides of

²⁸ See Humanitarian Response Plan (HRP) 2018 available from <https://www.humanitarianresponse.info/en/operations/ukraine/document/ukraine-2018-humanitarian-response-plan-hrp>. Please, note that the figures in the upcoming HRP, which will be launched in early 2019, may be different from HRP 2018.

²⁹ Law of Ukraine “On amendments to the Law of Ukraine ‘On the status of war veterans and their social protection guarantees’ enhancing the social protection of participants of the anti-terrorist operation, of the Revolution of Dignity and of the family members of such persons” no. 2203-VIII of 14 November 2017. Entered into force on 24 February 2018.

the contact line,³⁰ further contributing to internal displacement of 1.5 million people. The absence of adequate and secure housing remains a pressing social and humanitarian need, requiring an effective restitution and compensation mechanism for private property destroyed or damaged by the armed conflict on both sides of the contact line. Such a mechanism is essential for post-conflict rehabilitation and sustainable peace.



33. During the period under review, the Government of Ukraine amended the law on the 'social housing fund',³¹ expanding its scope to allow IDPs to apply for subsidized housing within the existing social benefits system. This is a significant development toward the satisfaction of housing rights of civilians displaced due to the armed conflict.³²

34. Further, the Cabinet of Ministers adopted amendments to the State Program of Accessible Housing. Effective implementation of this reform will allow IDPs to access housing through a government subsidy for 50 per cent of the building, purchasing and/or loan costs.³³

35. In addition to these developments, the Military-Civil Administrations in Donetsk and Luhansk have provided housing solutions for the conflict-affected population from Chyhari and Vrubivka, two towns that have recently been affected by hostilities. The Donetsk Regional Military-Civil Administration allotted funds for seven IDP families who were

³⁰ Humanitarian Response Plan 2018, available from <https://www.humanitarianresponse.info/en/operations/ukraine/document/ukraine-2018-humanitarianresponse-plan-hrp>

³¹ One of the eligibility criteria is low-level income. An average family income per person should be lower than the average price of housing rent in a particular locality and lower than the official subsistence minimum. For IDPs the calculations of average family income would not include property a) located in territory not controlled by the Government, b) in localities along the contact line and c) property destroyed due to the conflict or uninhabitable. For IDPs to apply for social housing they will have to be added to long waiting lists compiled by the local authorities (reportedly, countrywide such lists currently comprise 650,000 persons) at the place of their IDP registration. However, IDPs with disabilities (I and II group) will have a priority right for social housing. Law 'On social housing fund' No 3334-IV, with the amendments adopted on 18 September 2018 available from <http://zakon.rada.gov.ua/laws/show/3334-15>

³² While this is a positive development, the authorities are expected to additionally introduce an administrative procedure and more financial support to ensure accessibility of social housing for IDPs.

³³ The Procedure for granting the citizens with accessible housing adopted on 10 October 2018 is available from <http://zakon.rada.gov.ua/laws/show/140-2009-%D0%BF>

displaced from Chyhari, on the contact line in the Donetsk region. In the Government-controlled Luhansk region, the Luhansk Regional Military-Civil Administration ensured housing to a conflict-affected family in Vrubivka. This development is the result of active advocacy by OHCHR as well as a number of other organizations.

36. The worrying pattern persists, whereby Government forces and armed groups advance into populated areas along the contact line, which leads to division of villages, subjecting civilian residents to heightened risk, and causing use and damage of civilian property and displacement. In addition to the deteriorated security situation in Chyhari,³⁴ OHCHR documented similar human rights concerns in Zolote-4 (Luhansk region).

***Human rights situation in Vilnyi area of Zolote-4,
(Located on the contact line in Luhansk region)***

In September 2018, Ukrainian Armed Forces and armed groups advanced into Vilnyi area of Zolote-4, dividing the area.

Around 67 individuals, including a child, resided in this area before the escalation of hostilities. About 80 per cent of residents were elderly. On the night of 28 September, armed groups of the 'Luhansk people's republic' forcibly evicted 13 families from their homes. The armed groups took no measures to minimize their displacement and its adverse effects, did not provide proper accommodation to the displaced persons, and no information was provided on compensation or relocation.

On 18 October, a man and a woman were killed in an explosion of a mine or ERW while attempting to repair a power line damaged by hostilities.

3. Right to social security and social protection

37. In violation of their right to social security, IDPs as well as older persons living in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' continued to face impediments to accessing their pensions, for many their only source of income and support. In October 2018, only 44.7 per cent of IDP pensioners registered in Donetsk region and some 60 per cent of those registered in Luhansk region received their pension payments.³⁵ In a welcome development, on 4 September, the Supreme Court issued a decision restoring the pension rights of an IDP, whose pension payments had been terminated based on the verification requirements stipulated by the Cabinet of Ministers Resolution no. 365.³⁶ This may positively affect a segment of IDP pensioners, who contest the termination of pensions through courts.

38. On 20 September 2018,³⁷ the Supreme Court ruled that denial of social insurance benefits cannot be based on absence of IDP registration for persons residing in territory not controlled by the Government.

39. Despite these positive judicial developments, the Government continues to apply its policy linking access to pensions with IDP registration. This policy must be amended to

³⁴ See e.g. OHCHR Report, 16 May – 15 August 2018, case study on Chyhari.

³⁵ Speeches of the Head of the Main Office of the Pension Fund of Ukraine in Donetsk region and of the Head of Department of Labour and Social Protection in Luhansk region at the international conference "Paying Pension to Internally Displaced Persons in Ukraine: How to Exercise the Constitutional Right to Pension?", Kyiv, 15 November 2018.

³⁶ The Grand Chamber of the Supreme Court upheld the earlier Supreme Court judgment of 3 May 2018 finding the termination of pension payments to an IDP based on verification results unlawful and constituting interference into the applicant's right to property. Full text of the judgement is available from <http://www.reyestr.court.gov.ua/Review/76945461>. See also OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2018, para. 42.

³⁷ Grand Chamber of the Supreme Court, judgment of 20 September 2018. Full text available from: <http://reyestr.court.gov.ua/Review/76812061>

ensure equal access to pensions regardless of place of residence or IDP registration, both for residents in armed group-controlled territory and IDPs who wish to terminate their IDP registration.

4. Freedom of movement, isolated communities and access to basic services

40. People living in isolated communities and villages, such as Travneve and Hladosove (Donetsk region), that have been divided by the contact line and separated from basic commerce, medical and administrative facilities, are particularly affected and remain at risk. As a testament to the enduring social ties between communities in Donetsk and Luhansk, there were over one million crossings of the contact line each month through five crossing routes, one of them a dilapidated wooden footbridge that is the only crossing route in Luhansk region, further isolating residents in territory controlled by 'Luhansk people's republic'. OHCHR notes the actions undertaken by the Government and respective Military-Civil Administrations in Donetsk and Luhansk regions to expand access to shelter, sanitation and heating at Entry-Exit Checkpoints (EECPs) along these routes.

41. However, as of 15 November, the Cabinet of Ministers is yet to adopt the draft Resolution regulating the procedure for movement of persons and transfer of goods across the contact line. Moreover, on 2 November, the JFO presented an order limiting the number of crossings through the EECPs with goods to one crossing per day, reportedly in order to preclude cross-contact line trading. This may have a negative impact on access to markets and food, as well as the number of persons crossing through the EECPs. In sum, the measures taken are fundamentally insufficient to address the disproportionate restrictions on freedom of movement and the needs of individuals to access their social entitlements, pensions, visit relatives, and look after their property, further isolating residents of armed group-controlled territory and risking to antagonise them.³⁸

42. This winter, around 1.3 million people are under a significant risk of water and/or heating stoppages. Furthermore, according to official reports, 3.4 million people require assistance in getting access to clean water.³⁹ OHCHR has documented a continued lack of access to clean water in government-controlled Taramchuk (Mariinskyi district) and town of Toretsk, and in armed groups-controlled Staromarivka; at least 280 people, including some ten children, are affected. Works to repair the South Donbass Water Way (SDWW) progressed. However, areas served by the SDWW remain at risk during the winter, including in settlements of Pokrovsk, Volnovakha, Dokuchaievsk and Mariupol,⁴⁰ where centralised heating may be affected should the pipelines be further damaged by shelling. The town of Toretsk in Government-controlled territory of Donetsk region remains at risk, this winter from pipeline stoppages,⁴¹ as are Pervomaisk, Stakhanov, Brianka and Kirovsk⁴² in the territory controlled by the armed groups, served by the Karbonit system. A fourth pipeline, from the Petrivskyi water intake to the city of Luhansk, is also extremely vulnerable because of the proximity to the contact line.⁴³ In addition, electrical power issues in Luhansk region also jeopardise water supply and centralised heating on both sides of the line of contact.

IV. Right to physical integrity

43. Over the reporting period, OHCHR documented 40 human rights violations involving unlawful or arbitrary detention, torture, ill-treatment sexual violence and/or threats to physical integrity, committed on both sides of the contact line. Out of these, 25 violations are attributable to the armed groups, and 15 are attributable to the Government. Six violations

³⁸ See OHCHR Report, 16 November 2017 to 15 February 2018, para 150.i.

³⁹ WASH Cluster Alert Bulletin, 1 January – 30 June 2018 available from <https://www.humanitarianresponse.info/en/operations/ukraine/document/13-wash-cluster-alert-bulletin-01-january-30-june-2018-issue-13>

⁴⁰ Around 800,000 people could be affected.

⁴¹ Around 45,000 people could be affected.

⁴² In total, 180,000 people are under the risk of facing water shortage.

⁴³ Around 300,000 people could be affected.

affecting two victims (males) occurred during the reporting period, and can be attributable to the armed groups.

A. Access to detainees and conditions of detention

44. In Government-controlled territory, OHCHR enjoyed access to official places of detention and the ability to conduct confidential interviews with detainees in line with international standards. During the reporting period, OHCHR interviewed 67 conflict-related detainees (64 men and three women) in pre-trial detention facilities in Starobilsk, Bakhmut, Kharkiv, Mariupol, Zaporizhzhia, Vilniansk, Dnipro, Kyiv, Mykolaiv, Odesa and colony in Kharkiv.

45. During the reporting period, OHCHR received information indicating that pre-trial detention facilities in Kharkiv, Zaporizhzhia, Vilniansk, Dnipro, Mariupol, Odesa had a lack of medical personnel, scarce medical supplies, and unavailability of medical services during evening hours and weekends,⁴⁴ contributing to the deterioration in the health condition of prisoners, including conflict related detainees.⁴⁵

46. During the reporting period, OHCHR interviewed two persons released from detention facilities in Donetsk. One of those interviewed complained about limited medical assistance and extended working hours during his detention⁴⁶; this confirms previously documented allegations⁴⁷ regarding conditions of detention in territory controlled by ‘Donetsk people’s republic’, which were also made regarding conditions in territory controlled by ‘Luhansk people’s republic’.

47. During the period under review, persons living in Government-controlled territory faced difficulties maintaining contacts with their relatives detained in custody in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. This further underscores the important need for international monitors to be granted access to visit and speak in private with, all persons deprived of their liberty in order to verify the conditions of their detention and restore contacts with their families.⁴⁸

B. Arbitrary detention, enforced disappearance and abduction, torture and ill-treatment

48. During the reporting period, OHCHR documented cases when people were detained by the State Security Service (SBU) and charged with financing terrorism for owning businesses and/or paying ‘taxes’ in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’.⁴⁹ OHCHR is concerned that such practice may continue and more people can be detained under the same charges.

⁴⁴ OHCHR interviews, 30 August, 30 October and 13 November 2018. OHCHR meetings on 19 September, 30 October, 31 October, 7 November and 9 November 2018.

⁴⁵ In 2017, as part of the reform of penitentiary medicine, the Cabinet of Ministers of Ukraine established a state institution Centre for Health Protection of the State Penitentiary Service of Ukraine for ensuring the independence of medical workers from the administrations of penitentiary institutions. The procedure of transfer of property, medicines and medical equipment from penal institutions to the Centre for Health Protection as well as the process of filling of vacant positions in medical units are going on. According to the information provided by the Ministry of Justice, as of 5 December 2018, only 75% of the staff number of the Centre for Health Protection have been filled.

⁴⁶ OHCHR interview, 26 October 2018.

⁴⁷ The overall conditions of detention was described as poor, with substandard quality of food and insufficient medical care due to shortage of medical staff or the staff’s reluctance to provide medical care. For more information, see OHCHR Report of 16 November 2017 – 15 February 2018 (Annex II) and OHCHR report of 16 May – 15 August 2017 (para. 61).

⁴⁸ OHCHR interviews, 18 October 2018, 12 November, and 9 August. Pursuant to the United Nations Standard Minimum Rules for the *Treatment of Prisoners* (the Mandela Rules) prisoners “shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits”.

⁴⁹ OHCHR interview, 24 September 2018; OHCHR trial monitoring, 16 August 2018.

49. OHCHR continued to receive and verify allegations of torture, ill-treatment, abduction, which occurred prior to the period under review. OHCHR is often able to record such cases only after the victim is released from detention or willing to speak about what happened to them. On 25 July 2018, three men were abducted from the Military Civil Administration building in Avdiivka by several camouflaged men in masks who brought them to the outskirts of the city, where they were allegedly threatened and beaten. Later, they were left in the damaged houses in the area near the contact line.⁵⁰

50. At least three of the individuals transferred to territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ as part of the simultaneous release on 27 December 2017, allege experiencing ill-treatment, torture and/or incommunicado detention while in Government custody, continue having no access to justice or avenue to ensure effective investigation of the violations suffered, without the risk of being re-arrested.⁵¹

51. In ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, international observers continued to lack regular unimpeded and confidential access to detainees, a situation that prevents documentation of the human rights situation and raises serious concerns about the conditions of detention and treatment of detainees.

52. OHCHR remains concerned that in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, the practice of 30-day ‘preventive arrest’ and ‘administrative arrest’ prevails, which amounts to arbitrary *incommunicado* detention.⁵² OHCHR is aware of at least four cases of ‘preventive arrest’ that occurred in territory controlled by ‘Luhansk people’s republic’ and at least one case of alleged arbitrary arrest that occurred in territory controlled by ‘Donetsk people’s republic’ during the period under review.⁵³ On 26 August 2018, a man, who is a patient of the substitution maintenance therapy, was detained by the ‘ministry of state security’ (‘MGB’) of ‘Luhansk people’s republic’ at the checkpoint ‘Izvaryne’ on suspicion of drug smuggling.⁵⁴ On the next day, he was transferred to ‘MGB’ building in Luhansk, where he was held *incommunicado* for almost two months. In the end of October, his detention was formalized by a ‘measure of restraint’ of custodial detention by the ‘court’.⁵⁵ As of 15 November, he remained in detention in Luhansk. OHCHR emphasizes that *incommunicado* detention is incompatible with international standards and poses severe risks of torture and ill-treatment.⁵⁶

⁵⁰ Avdiivka police opened a criminal investigation into the incident under articles 146-2 (kidnapping) and 187-2 (robbery), 357-3 (illegal acquiring of a passport or any other personal document by any means) of the CCU. Pretrial investigation under the procedural oversight by the prosecutor’s office of Donetsk region is ongoing. OHCHR notes that ‘administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies’. See Human Rights Committees, General comment no. 31 [80]. The nature of the general legal obligation imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, para.18. OHCHR interview, 27 October 2018.

⁵¹ On 27 December 2017, 233 individuals were released to territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ to territory controlled by the Government of Ukraine. At least three simultaneously released persons, whose cases were not closed or dismissed, were included on a list for warrant of arrest in government-controlled territory because they did not appear before the court. Additionally, there is no investigation into allegations of torture, ill-treatment, incommunicado detention in government-controlled territory.

⁵² See also OHCHR Report 16 November 2017 to 15 February 2018, para. 33; OHCHR Report 16 February to 15 May 2018, para. 51.

⁵³ OHCHR interviews 5 September, 25 September, 8 October, 31 October, and 15 November 2018.

⁵⁴ He carried drugs for substitution maintenance therapy (buprenorphine), which he received at the hospital in Kyiv. Since May 2015, substitution maintenance therapy was terminated for patients living in ‘Luhansk people’s republic’.

⁵⁵ OHCHR interview 2 November 2018.

⁵⁶ UN doc. E/CN.4/1995/34, Report of the Special Rapporteur on torture, para. 926(d).

C. Situation of pre-conflict prisoners

53. OHCHR is concerned about the condition of approximately 9,500 pre-conflict prisoners who were convicted prior to the outbreak of the conflict⁵⁷ and who still remain in penal colonies located in territory controlled by ‘Luhansk people’s republic’ and ‘Donetsk people’s republic’.⁵⁸

54. OHCHR documented the case of two pre-conflict prisoners originally from the Autonomous Republic of Crimea, who remain in a penal colony in Donetsk and were denied a transfer to Government-controlled territory by ‘Donetsk people’s republic’ on the basis of their place of origin.⁵⁹

D. Missing persons

55. OHCHR reiterates its support for the enactment in August 2018 of the law on missing persons⁶⁰ to address the situation of individuals unaccounted for as a result of armed conflict. OHCHR notes with regret that the Commission on Missing Persons has not been established within the three-month period as foreseen by the law.⁶¹ At the same time, OHCHR is pleased to observe that following criminalization of enforced disappearances under national legislation, 17 such cases are under investigation as of 26 October.⁶²

⁵⁷ Estimation of the Penitentiary Service of Ukraine before the conflict.

⁵⁸ The category of pre-conflict detainees and prisoners includes individuals who were convicted and those who were held in pre-trial detention before the outbreak of the conflict. Among the former are individuals whose appeals were heard by Ukrainian courts and those whose appeals were not heard prior to the outbreak of the conflict and who ‘appealed’ their ‘conviction’ by the armed-group ‘courts’. Among those who were in pre-trial detention are those whose cases have been considered by the ‘courts’ of the self-proclaimed ‘republics’ and those whose cases have not been considered by the ‘courts’ of the self-proclaimed ‘republics’ and who might still remain in detention. Apart from these categories, there are also individuals who remained subject to the decisions of parallel structures of ‘administration of justice’ and were sentenced by the ‘courts’ in the territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. OHCHR underlines that there is no unified state registry of pre-conflict prisoners, which makes it difficult to estimate the number of pre-conflict detainees and prisoners in ‘republics’.

⁵⁹ OHCHR interviews, 29 August and 30 August 2018.

⁶⁰ Law of Ukraine ‘On the legal status of missing persons’ no. 2505-VIII of 12 July 2018. The law entered into force on 2 August 2018. See OHCHR Report on the human rights situation in Ukraine, 16 November 2017 May to 15 February August 2018, para. 59.

⁶¹ Paragraph 3 of Chapter IX “Final and Transitional Provisions” of the Law of Ukraine ‘On the legal status of missing persons’ required the Cabinet of Ministers to establish the Commission on Missing Persons by 2 November 2018.

⁶² Information provided by the Office of the Prosecutor General of Ukraine in a letter of 29 October 2018.

V. Administration of justice

As soon as I saw you, I felt as if I had wings on my back; now everything will be by the law.

- A lawyer in a conflict-related case, referring to OHCHR's presence in the court

56. In Government-controlled territory, OHCHR documented 32 cases of violations of the right to a fair trial of defendants in conflict-related criminal cases, and a continuing pattern of physical attacks on their lawyers.

A. Fair trial rights

57. Over the reporting period, Ukrainian courts issued 89 verdicts in criminal cases related to the armed conflict, two of them were acquitting verdicts.⁶³ Of those, 52 were based on plea bargain agreements. In 23 of such cases, no evidence was entered by the prosecution against the defendant, making it difficult to assess whether due process has been respected, or whether defendants were convicted in miscarriages of justice. In 20 cases, the convicted persons admitted their guilt. The absence of fair trial rights, particularly in criminal cases related to the armed conflict, erodes trust in Government and the rule of law.

58. OHCHR is concerned that some conflict-related detainees may have pled guilty under duress, amounting to a violation of a basic judicial guarantee – not to be compelled to testify against or incriminate oneself, including through psychological pressure.⁶⁴

59. One of the mechanisms of exerting pressure on the defendants in conflict-related criminal cases is their pre-trial detention, which is often applied automatically due to ambiguous provision of article 176.5 of the Criminal Procedure Code.⁶⁵ Over the reporting period, OHCHR documented 43 cases where defendants have been in pre-trial detention for up to two years.⁶⁶ OHCHR is concerned that prolonged pre-trial detention is abused by prosecutors to coerce defendants into pleading guilty.⁶⁷ OHCHR documented five cases where defendants who have been denying the imputed charges ultimately accepted a plea bargain seeing no other options to be released pending trial.⁶⁸ OHCHR emphasizes that pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.⁶⁹

⁶³ These include charges of crimes against national security of Ukraine and crimes against public safety. Statistics from the Unified Register of Court Decisions.

⁶⁴ ICCPR, article 14.3(g). In its General Comment no. 32 to Article 14 of the ICCPR the UN Human Rights Committee noted that this safeguard must be understood in terms of the absence of “any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt”. Human Rights Committee, General Comment No. 32. Article 14: Right to equality before courts and tribunals and to a fair trial, para. 41.

⁶⁵ Referring to the provision of article 176.5 of the Criminal Procedure Code, prosecutors in most of the cases fail to substantiate the need for applying a measure of restraint in their motions, and the courts accept these without assessing their reasonableness and necessity. The prosecution and the courts appear to interpret article 176.5 as requiring mandatory detention of all individuals charged with affiliation or links with the armed groups.

⁶⁶ Cumulative data of OHCHR court monitoring, interviews, and visits to penitentiary facilities.

⁶⁷ See 22nd OHCHR report, 16 February – 15 May 2018, para 56.

⁶⁸ General Comment No. 35, Article 9, para. 37: “Extremely prolonged pre-trial detention may also jeopardize the presumption of innocence under article 14, paragraph 2.”

⁶⁹ See concluding observations: Argentina (CCPR/CO/70/ARG, 2000), para. 10; Sri Lanka (CCPR/CO/79/LKA, 2003), para. 13.

60. In a worrying trend, OHCHR documented continued attacks on lawyers representing defendants charged with crimes against national or public security.⁷⁰ On 28 September, approximately 15 members of the extreme right-wing group⁷¹ C14 physically attacked a lawyer defending a local journalist accused of high treason for his publications and assaulted another journalist observing the trial – as observed by OHCHR in Koroliovskiy district court of Zhytomyr. Police who arrived after the incident did not apprehend the perpetrators, allowing them to stay in the courtroom when the hearing resumed after the break. OHCHR recalls that State authorities have an obligation to safeguard the security of lawyers who are threatened while discharging their functions.⁷²

61. In territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ people are subject to the ‘laws’ and structures of administration of justice imposed in violation of the Minsk agreements and the Constitution of Ukraine.

62. In September, the acting ‘head’ of ‘Donetsk people’s republic’ signed into force ‘laws’ that may reduce the current lack of independence of military ‘judges’.⁷³ Also signed in September, the ‘law’ ‘on the ministry of state security’ authorizes the ‘ministry of state security’ to create and use special pre-trial detention facilities to detain ‘defendants’ in ‘criminal cases’ as well as individuals subjected to ‘administrative arrest’. OHCHR is concerned that this provision may have been introduced for the purpose of expanding the detaining authority of the ‘ministry of state security’ and its ability to deprive individuals of their liberty without sufficient safeguards and protection.

B. Accountability for cases of violence related to riots and public disturbances

63. OHCHR continued observing progress in investigation of killing of protesters in the context of mass assemblies in Ukraine, with a police sniper charged with killing a civilian on 20 February 2014 in Kyiv. No substantial progress in the prosecution of grave human rights violations perpetrated in the context of mass assemblies on 2 May 2014 in Odesa have been observed.

1. Accountability for the killings of protesters during the Maidan protests

64. OHCHR notes that the investigation into the killing of one protester near the SBU office in Khmelnytskyi on 19 February 2014 has stalled.⁷⁴ After being deployed to the Joint Forces Operation area in eastern Ukraine, the suspect remained unreachable for the investigation and as a result on 30 July 2018, was put on a wanted list.⁷⁵ As of the date of this report, the suspect has not been apprehended despite the obligation of his military commanders to facilitate investigations.

⁷⁰ See 23rd OHCHR report, 16 May – 15 August 2018, para 65.

⁷¹ In this report, the term “extreme right-wing groups” refers to political parties, movements and groups who blame vulnerable groups for societal problems and incite intolerance and violence against them. In Ukraine, extreme right-wing groups have perpetrated attacks against Roma and other minorities, including LGBTQI. Through their actions, they bring into question the fundamental principle of non-discrimination by propagating an ideology based on racism, discrimination, xenophobia and intolerance. See Reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/35/42 of 26 April 2017 and A/HRC/18/44 of 21 July 2011).

⁷² Basic Principles on the Role of Lawyers, para 17.

⁷³ The ‘law’ ‘on judicial system’ cites the principle of independence of the ‘judiciary’ from other branches of power and abolishes a previous ‘decree’ of the ‘council of ministers’ prescribing ‘judges’ of ‘military courts’ as subordinate to the ‘head’ of ‘Donetsk people’s republic’. Other ‘laws’ include those ‘on the judicial system’, ‘on the status of judges’, ‘on investigative activities’, ‘criminal procedure code’, ‘on the ministry of state security’ and ‘on the prosecution’.

⁷⁴ See 23rd OHCHR report, 16 May – 15 August 2018, para 69.

⁷⁵ On 30 July 2018, the suspect was put on a wanted list. Information available from <https://wanted.mvs.gov.ua/searchperson/details/?id=3018220708973857>

65. OHCHR noted that, on 31 October, the Special Investigations Department of the Prosecutor General's Office charged an Internal Troops⁷⁶ sniper of killing a protester at Instytutska Street in Kyiv in the morning of 20 February 2014. On 3 November, he was placed in custody for 60 days.⁷⁷

66. Meanwhile, the trial in the case of the killing of 47 other protesters killed at Instytutska Street on the same date is ongoing. OHCHR notes that the protracted trial lasting for almost four years has not only affected the rights of the victims, but also those of the five defendants who have remained in detention, two for more than 4.5 years and three for almost four years.⁷⁸

2. Accountability for the 2 May 2014 violence in Odesa

67. OHCHR noted no substantial progress in the investigations and legal proceedings connected to the violent events of 2 May 2014 in Odesa, which led to the death of 48 people, with no one yet held accountable for any of these acts.

68. On 26 October 2018, the Kyivskiy district court of Odesa ruled to return to the prosecutor's office the indictment against three fire brigade officials accused of negligence of their duties.⁷⁹ This is the second time the indictment has been returned since the case was brought to court in 2016. In the case against the only "pro-unity" activist accused of killing, three court hearings were adjourned due to the failure of victims to appear and dismissal of the presiding judge. On 15 November 2018, the court granted the defence's motion regarding the case to be considered by the jury trial.⁸⁰

69. No progress was achieved in the appeal proceedings against the acquittal of 19 individuals accused of mass disturbances in the Odesa city centre on 2 May 2014, which resulted in the killing of six men. On 5 October 2018, the Court of Appeal for Mykolaiv region ruled to issue a writ of attachment for the seven acquitted who regularly failed to appear in the Court, ensuring their presence to avoid further delays. Only three of them appeared for the next hearing on 12 November, which was adjourned because one judge from the panel was ill.

VI. Democratic/civic space and fundamental freedoms

70. Attacks against journalists, media professionals, civil society activists, or those representing alternative social or political opinion have become increasingly visible, fuelling intolerance and discrimination in Ukraine.

71. As part of its monitoring of the exercise of fundamental freedoms, OHCHR documented 59 human rights violations during the reporting period in relation to the fundamental freedoms of opinion and expression, peaceful assembly and association, and religion or belief, as well as the right to non-discrimination and equal protection under the law. Out of these, the Ukrainian authorities were responsible for 56 human rights violations⁸¹ and armed groups were responsible for three.

⁷⁶ 'Omega' Special Forces Anti-terrorism Detachment of the Internal Troops.

⁷⁷ Ruling of Pecherskyi district court of Kyiv on 3 November 2018, available from <http://reyestr.court.gov.ua/Review/77715552>

⁷⁸ Two defendants were detained in April 2014, three others in February 2015.

⁷⁹ OHCHR trial monitoring, ruling of Kyivskiy district court of Odesa, 29 October 2018, available from: <http://reyestr.court.gov.ua/Review/77449327>

⁸⁰ The trial in the case of intentional homicide during the 2 May 2014 events will be made by jury, available from https://ml.od.court.gov.ua/sud1519/pres-centr/news_new/599757/?fbclid=IwAR0fFXnNNhf7fYr1I71tO1OttPvVeY0lGuMYxKJKJotPkPdQLvhmhggiHXc

⁸¹ In 11 cases, the attack/interference was allegedly perpetrated by Government actors, and in 45 cases, the Government failed to prevent, investigate and/or prosecute the known perpetrators of the attack.

A. Freedom of opinion and expression and freedom of the media

72. OHCHR observed a continuing trend of incidents targeting freedom of the media as well as freedom of opinion and expression, which include violent attacks and acts of intimidation. OHCHR documented 24 cases, marking an increase in the number of attacks against media professionals, civil society activists and representatives of political parties. Failure to hold to account perpetrators responsible for attacks emboldens perpetrators, leading to more violence.

73. OHCHR is concerned about the increasingly bold and visible character of attacks on journalists. Two attacks were perpetrated during live broadcasts in front of cameras. On 17 September 2018, a journalist of a well-known TV channel, which is often referred to as pro-Russian by extreme right-wing and pro-unity groups, was attacked by participants of a rally in front of the Prosecutor General's office.⁸² In another similar incident, unknown perpetrators poured unknown liquid on a journalist of the same channel on 10 October.⁸³ On 28 September, members of an extreme right-wing group violently attacked a journalist in court premises, in the presence of OHCHR. Police officers arrived later, but they failed to apprehend perpetrators who were still present on site.⁸⁴

74. On 4 October 2018, the Parliament of Ukraine decided to request the National Security and Defence Council of Ukraine to consider imposing economic sanctions and other restrictions on seven television broadcasting companies, including channels '112' and 'News One'.⁸⁵ OHCHR is concerned that such measures will interfere with the work of media, limit freedom of expression and access to information, and may trigger self-censorship.

75. On 27 August 2018, the Pecherskyi District Court of Kyiv granted to prosecution access to cellphone data of a well-known investigative journalist Natalia Sedletska.⁸⁶ A similar decision was adopted regarding another investigative journalist Khrystyna Berdynskych.⁸⁷ On 18 September, the European Court of Human Rights ruled to apply Rule 39 requesting Ukrainian authorities to abstain from accessing data of Nataliya Sedletska, further to her request.⁸⁸

VIOLATIONS AFFECTING DEMOCRATIC SPACE



These include violations of fundamental freedoms of opinion and expression, peaceful assembly and association, and religion or belief, as well as the right to non-discrimination and equal protection under the law.

This period
16 Aug – 15 Nov

59 violations

Previous period
16 May – 15 Aug

45

Period from
16 Feb – 15 May

41

Creation Date: 22 November 2018 Source: OHCHR, FOTCD

⁸² OHCHR interviews, 29 October 2018. Video available from <https://newsone.ua/news/accidents/radikaly-napali-na-zhurnalistku-newsone-v-prjamom-efire-video.html>

⁸³ OHCHR interviews, 29 October 2018.

⁸⁴ OHCHR trial monitoring, 28 September 2018. Video available from <https://www.freshnews.zt.ua/news/shok-sud-nad-vasiliem-muravitskim-draka-zhest/>

⁸⁵ Text of decision is available from <http://zakon.rada.gov.ua/laws/show/2589-viii>

⁸⁶ OHCHR interview, 27 September 2018.

⁸⁷ OHCHR interview, 27 September 2018.

⁸⁸ This was the first instance when the ECHR applied interim measures under Rule 39 of the Rules of Court to the case pertaining to freedom of expression in Ukraine.

I don't care that I got multiple punches and kicks in my neck, head and ribs from behind. I don't care that I can't take a deep breath or even worse – sneeze. But today, when I came home from the hospital my daughter saw this video and started crying. And her tears really hurt me...

- A journalist beaten by members of extreme right-wing group in the courtroom posted the same day in social networks

76. Attacks against civil society activists continued, with a persisting lack of investigation into these cases. In the most recent emblematic case, an activist, well-known for his criticism of local authorities in Odesa was shot near his house. He was severely injured and still requires intensive care.⁸⁹ On 4 November, a female senior staff of Kherson city council, known for her anti-corruption views, died in a Kyiv hospital as a result of wounds inflicted by an acid attack that caused severe burns.

77. Moreover, representatives and offices of different political parties have been attacked and harassed during this reporting period.⁹⁰ Against the backdrop of elections approaching in 2019, civil society, political parties and open democratic space need more resolute protection.

78. In territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic', civic space remained highly restricted. On 11 November, 'elections' were held outside of the Ukraine's constitutional and legal framework, and were therefore incompatible with the spirit and letter of the framework provided by the Minsk agreements.⁹¹

79. Stanislav Asieiev, a journalist reporting for several Ukrainian and international media outlets on living conditions in territory controlled by 'Donetsk people's republic', was detained on 2 June 2017. As of 15 November, he remains in custody in territory controlled by 'Donetsk people's republic' and his exact place of detention is unknown.⁹²

B. Discrimination, hate speech, racially motivated violence and manifestations of intolerance

1. Incidents of violence and intimidation

80. OHCHR documented 14 incidents of discrimination, hate speech and/or violence targeting individuals belonging to minority groups or holding alternative or minority opinions that occurred during the reporting period. Six incidents involved direct violence and three threats of violence by members of extreme right-wing groups, who often act with impunity. OHCHR notes that impunity for perpetrators establishes an overall atmosphere of insecurity and could fuel further violence, including retaliatory attacks against known members of extreme right-wing groups.⁹³

81. OHCHR is concerned about a continuing and escalating pattern of attacks against those who hold alternative opinions. On 19 August, approximately 30 unknown perpetrators attacked an anti-discrimination event in Mariupol.⁹⁴ In another even more brutal incident, three activists of a Lviv-based anarchist organization were severely beaten and stabbed by an organized group of perpetrators allegedly affiliated with extreme right-wing groups.⁹⁵

⁸⁹ OHCHR interview, 6 November 2018.

⁹⁰ OHCHR interview, 12 October 2018.

⁹¹ See Package of Measures for the Implementation of the Minsk Agreements, 12 February 2015, para 4.

⁹² OHCHR meeting on 10 September 2018.

⁹³ On 10 October, outside of Kyiv, in the nearby suburb of Boryspil, unknown perpetrators threw a hand grenade into the apartment of a leader and coordinator of C14. The National Police is investigating the incident as a case of attempted murder.

⁹⁴ Reportedly, some perpetrators in National Corps t-shirts.

⁹⁵ OHCHR interview, 27 September 2018.

82. While there is a notable overall lack of progress in investigations related to violent attacks against Roma settlements,⁹⁶ as a positive development, on 31 October, an initial court hearing was held in the case of the 23 June 2018 killing of a Roma man near Lviv.

83. OHCHR documented five attacks against members of Lesbian Gay Bisexual Transgender Queer Intersex (LGBTQI)⁹⁷ community throughout the reporting period. In the most brutal incident, on 6 September, an individual was stabbed during daylight hours on the main street of Kyiv city center following homophobic epithets hurled at him by perpetrators. OHCHR has been informed by victims of such attacks that police rarely (and exclusively at their or their legal counsel's motion) qualify such attacks as hate crimes, obscuring the motivation of perpetrators and protection needs of those at risk.⁹⁸

2. Draft law on state language

84. On 4 October 2018, a draft law aimed at strengthening the role of the official language passed an initial vote serving as the basis for a new language policy.⁹⁹ OHCHR notes that the promotion of national identity and an official language is a legitimate objective from a human rights perspective. However, some of the measures set forth in the draft law raise concerns as to their coercive character¹⁰⁰ and their compatibility with international human rights standards, in particular as regards language proficiency requirements for accessing public office, linguistic requirements in the electoral process, and in media and commercial spheres. In the absence of special legislation regulating the use of minority languages in Ukraine,¹⁰¹ the provisions outlined in the draft law do not provide solid legal guarantees to ensure Ukraine meets its obligations¹⁰² to protect minority languages. Currently, national legislation only sporadically addresses protection of minority languages in education,¹⁰³ television and radio broadcasting.¹⁰⁴ With specific regard to education, OHCHR notes the lack of progress in addressing the recommendations of the Venice Commission concerning the language of instruction in public education.¹⁰⁵

C. Freedoms of peaceful assembly and association

85. While OHCHR commends the continued progress in responsive and preventive action for crowd control to protect civic space during public demonstrations and processions,

⁹⁶ See OHCHR Report, 16 May to 15 August 2018, para. 91.

⁹⁷ In this report acronym, LGBTQI refers to lesbian, gay, bisexual, transgender, queer and intersex individuals and relevant communities. OHCHR is aware of an incompatibility of views with some of mentioned groups. This term is used as a broad description to cover as many individuals as possible who face discrimination based on sex.

⁹⁸ OHCHR interviews, 13 September and 22 August 2018.

⁹⁹ Draft law 'On ensuring the functioning of the Ukrainian language as a state one' no.5670-d of 9 June 2017, available from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61994

¹⁰⁰ According to the draft law, the State language is mostly promoted through legislative restrictions, such as language requirements for employment or the prescriptive mandatory use of the State language in various areas, and through punitive measures, such as the establishment of specialized governmental bodies responsible for monitoring the implementation of the language legislation and sanctioning those, who breach it.

¹⁰¹ Following the annulment by the Constitutional Court of the 2012 law outlining the principles of the state language policy in February 2018 there is a gap within the national legal framework. See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2018, para. 85.

¹⁰² The list of provisions of the European Charter for Regional or Minority Languages ratified by Ukraine: <http://zakon3.rada.gov.ua/laws/show/802-15>

¹⁰³ Article 7 of the Law of Ukraine 'On Education' no. 2145-VIII of 5 September 2017. See OHCHR Reports on the human rights situation in Ukraine, 16 August – 15 November 2017, paras. 155-160; 16 November 2017 to 15 February 2018, para. 136.

¹⁰⁴ Article 10 of the Law of Ukraine 'On Television and Radio Broadcasting' no. 3759-XII of 21 December 1993.

¹⁰⁵ Opinion No. 902/2017 on the Provisions of the Law on Education of 5 September 2017 which concern the use of the State language and minority and other languages in Education, adopted by the Venice Commission at its 113th Plenary Session (8-9 December 2017). See also OHCHR Report on the human rights situation in Ukraine, 16 November 2017 to 15 February 2018, para. 136.

OHCHR remains concerned about persisting acts of violence targeting freedoms of peaceful assembly and association. Failure of law enforcement to address incidents of violence and respond with proper charges and investigations is especially worrisome in the context of upcoming elections.

86. OHCHR continued documenting incidents of extreme right-wing groups disrupting peaceful assemblies. On 11 and 12 October, two consecutive LGBTQI events in Kharkiv were disrupted by members of extreme right-wing groups with physical attacks and intimidation against participants.¹⁰⁶ Participants of the first event suffered non-life threatening injuries and submitted complaints to police.

87. Holding members of these extreme right-wing groups accountable by the justice system is hindered by ineffective investigations. OHCHR documented an event organized by a centrist political party in Kyiv on 6 July 2018, which was disrupted by extreme right-wing groups, who brutally beat the leader of the moderate political party. Despite strong evidence available, the police failed to identify perpetrators during the reporting period, and opened a criminal investigation only referring to the assault incident, while disregarding the disrupted assembly.¹⁰⁷

88. OHCHR commends effective police planning and actions during Odesa Pride on 18 August.¹⁰⁸ Furthermore, on 14 October numerous events devoted to the Day of Defender of Ukraine were held throughout Ukraine without major incident.¹⁰⁹ Approximately 30,000 participants took part in the main event in Kyiv, which was supported by extreme right-wing groups. Despite several reported threats to attack churches of the Ukrainian Orthodox Church (see below under *Freedom of religion or belief*) the event took place without any major security incidents and was properly secured by police and National Guard.¹¹⁰

89. In territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, the ability of individuals to exercise freedom of peaceful assembly remains very limited. Throughout the reporting period, OHCHR was not informed about any public events except those initiated and supported by the ‘authorities’. Restrictions on public assemblies established earlier remain ‘in force’ in ‘Luhansk people’s republic’.¹¹¹

D. Freedom of religion or belief

Our task is to stop your existence completely.

- A representative of armed groups ‘law enforcement’ speaking to clergyman of an evangelical Christian denomination

90. OHCHR monitored increased tensions among Orthodox churches and communities in Ukraine in the context of developments regarding granting of autocephaly to a ‘new’ church, which would unite various Orthodox denominations in the country. On 11 October 2018, the Holy and Sacred Synod of the Istanbul-based Ecumenical Patriarchate decided to

¹⁰⁶ The organization Freicorps claimed responsibility for the 11 October incident and vowed to end any LGBTQI activities in Kharkiv. On 12 October, Freicorps and Right Sector activists came to another LGBTQI event but were cordoned off from the rally participants by the police and could only verbally insulted the LGBTQI community members.

¹⁰⁷ OHCHR interview, 12 October 2018.

¹⁰⁸ OHCHR monitoring, 18 August 2018.

¹⁰⁹ Since 2014 a new holiday to commemorate defenders of Ukraine was established. The date 14 October coincides with the date of an orthodox holiday – “Pokrova” or “The Protection of the Blessed Virgin Mary”.

¹¹⁰ OHCHR monitoring, 14 October 2018.

¹¹¹ See OHCHR Report, 16 May to 15 August, para. 100.

proceed with granting autocephaly to a ‘new’ Orthodox Church of Ukraine.¹¹² The Ukrainian Orthodox Church of Kyiv Patriarchate and the Ukrainian Orthodox Church of Moscow Patriarchate have opposing views regarding autocephaly of such a ‘new’ Orthodox Church in Ukraine.

91. This disagreement between two Patriarchates contributes to tensions among parishioners and leads to incidents of verbal and physical attacks targeting clergymen and church property. The Ukrainian Orthodox Church of Moscow Patriarchate reported one such attack targeting premises of this church in Ivano-Frankivsk. Clergymen also report threats of attacks against their churches.¹¹³ On 15 November, St. Andrew’s Church in Kyiv, which earlier had been handed over to the Istanbul-based Ecumenical Patriarchate, was reportedly targeted in an arson attack by unknown individuals. Given the heightened tensions between Orthodox communities, OHCHR urges all interested groups and individuals to take all necessary actions to prevent a further escalation of tensions.

92. OHCHR remains concerned about the further narrowing of freedom of religion or belief in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ due to the classification of evangelical Christian denominations as extremist organizations.¹¹⁴ Jehovah’s Witnesses reported that pressure in territory controlled by ‘Donetsk people’s republic’ continued, affecting their ability to worship and use their premises.¹¹⁵ On 26 September, the ‘supreme court’ of the ‘Donetsk people’s republic’ ruled to ban the religious activities of Jehovah’s Witnesses as unlawful citing it is an extremist organization.

93. As non-registered religious organizations were considered ‘illegal’ even before registration deadlines, their worship meetings were disrupted by ‘authorities’ which referred to ‘regulations’ limiting public assemblies.¹¹⁶ Such restrictions – reported both in ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ – resulted in the inability of some religious organizations to use their worship houses due to fear of possible seizure or sealing off their premises.¹¹⁷

E. Voting rights

94. OHCHR remains concerned about the voter registration system, which creates obstacles for IDPs’ full participation in parliamentary¹¹⁸ and local elections in Ukraine. The Ukrainian authorities hold that registration of place of residence for IDPs is temporary, whereas the right to participate in local elections is granted for those who have permanent registration in the respective area. This potentially affects around one million IDPs in the country.

¹¹² In its 11 October 2018 decree, the Holy and Sacred Synod decided to “renew the decision already made that the Ecumenical Patriarchate proceed to the granting of Autocephaly to the Church of Ukraine” and to “revoke the legal binding of the Synodal Letter of the year 1686, issued for the circumstances of that time, which granted the right through *oikonomia* to the Patriarch of Moscow to ordain the Metropolitan of Kyiv”. The full text of the announcement of the Ecumenical Patriarchate of 11 of October 2018 is available from <https://www.patriarchate.org/-/communiq-1>

¹¹³ On 18 September 2018, the vicar of the Kyiv-Pechersk Lavra Metropolitan of Vyshhorod and Chernobyl Pavel published a video in which he reported receiving threats that the Kyiv-Pechersk Lavra monastery would be seized, and possible provocations against other church buildings and monasteries attributed to the Ukrainian Orthodox Church of Moscow Patriarchate. Shortly after, he and several other clergymen were placed on the database of the Myrotvorets (Peacekeeper) website.

¹¹⁴ OHCHR interviews, 12 and 26 September 2018, OHCHR meeting 24 October 2018.

¹¹⁵ See also OHCHR Report, 15 November 2017 to 15 February 2018, para. 99.

¹¹⁶ OHCHR interviews, 12 and 26 September 2018.

¹¹⁷ OHCHR interview, 26 September 2018.

¹¹⁸ IDPs are unable to cast their votes for the majoritarian seats in parliament (50% of seats).

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

As long as you refuse to testify, we will deny all family visit requests of your relatives.

- An FSB investigator to a defendant in a Hizb ut-Tahrir case

95. The Russian Federation continued to apply its laws in Crimea and the city of Sevastopol in violation of its obligation under international humanitarian law to respect the legislation of the occupied territory.¹¹⁹ The implementation of Russian Federation legislation has curtailed the exercise of fundamental freedoms and has been used to stifle dissent on the peninsula.

96. OHCHR continued to record systematic human rights violations in Crimea, including unjustified restrictions on freedoms of opinion and expression, freedom of movement, violations of the right to maintain one's identity, culture and tradition, and property rights. In total, OHCHR documented 44 violations during the reporting period, and of this number 43 violations occurred within the reporting period; with the Government of the Russian Federation responsible for 32 and the Government of Ukraine for 11.¹²⁰

A. Freedoms of opinion and expression

97. Unjustified restrictions on fundamental freedoms imposed by the Russian Federation through the arbitrary and excessively broad application of its anti-extremism legislation in Crimea continued.¹²¹

98. In the period under review, at least five Crimean residents (three men and two women, all Crimean Tatars) were sentenced under extremism-related charges for possessing material or posting information on social media deemed "extremist" or "terrorist". On 4 September, three family members – a father, mother and daughter – were found guilty of extremism for posting on their social network pages a *Youtube* video featuring a public rally, which had taken place in Simferopol back in September 2013.¹²² In all three cases, the court found that the video in question contained symbols of *Hizb ut-Tahrir*, a religious organization banned in the Russian Federation as "terrorist". The father spent 10 days in administrative detention, while the court ordered the mother and the daughter to pay fines. In another emblematic case, on 20 September, a Crimean Tatar doctor from the Feodosiia city hospital was found guilty of extremism after the Russian Federation authorities discovered three Islamic books considered "extremist" in the hospital's premises.¹²³

99. The Russian Federation authorities apply anti-extremism legislation in Crimea in an arbitrary and selective manner, in order to stifle dissent, instill fear and deny a plurality of views. Amongst the citizens exposed to such persecution are those who have previously

¹¹⁹ See Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention); Article 43 of the Regulations concerning the Laws and Customs of War on Land, Annex to Convention (IV) respecting the Laws and Customs of War on Land, The Hague, 18 October 1907, Geneva Convention IV on Civilians, art. 64.

¹²⁰ The violations attributable to the Government of Ukraine did not necessarily occur in Crimea itself, but concern events in mainland Ukraine connected to the situation in Crimea. They are related to freedom of movement, access to public services, and the right to property.

¹²¹ See also OHCHR second thematic report "On the situation of human rights in the temporary occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine", 13 September 2017 to 30 June 2018, par. 46.

¹²² OHCHR interview, 2 October 2018.

¹²³ OHCHR interview, 28 September 2018.

expressed their dissenting views towards the Russian Federation authorities, publicly supported other individuals accused of terrorism, sympathized or are believed to have links with organizations banned in the Russian Federation.

100. OHCHR notes that such undue restrictions on the right to impart information and ideas gravely undermine freedom of expression guaranteed by international human rights treaties including those to which the Russian Federation is a State party.¹²⁴ Moreover, application of the Russian Federation anti-extremism legislation in Crimea constitutes a violation of its obligation, as an occupying power, to respect the penal laws of the occupied territory.¹²⁵

B. Deprivation of liberty

101. Significant developments have taken place in the case of five crewmembers from mainland Ukraine apprehended on a fishing boat “ЯМК-0041” on 4 May 2018 by the Russian Federation authorities in the Black Sea. Only one crew member was formally charged with illegal fishing and remanded in detention. Four other crew members were transferred to a military base in Balaklava where they were held without legal basis until released on 25 June. Despite the absence of administrative or criminal charges against them, Russian FSB officers have seized their passports and prohibited them from leaving the peninsula.¹²⁶ During their detention, the victims were held in a house near Sevastopol under constant FSB surveillance with limited access or contact with the outside world.¹²⁷

102. On 14 October 2018, one of the fishermen was allowed to return to mainland Ukraine in order to attend the funeral of his mother. Later, on 30 October, the Russian Federation authorities allowed three other sailors from «ЯМК-0041» fishing boat to leave the peninsula.¹²⁸ On 1 November, the vessel’s captain was released from pre-trial detention. As of 15 November, he remains in Crimea on an obligation not to abscond.

C. Right to maintain one’s identity, culture and tradition and freedom of association

103. OHCHR noted a continued narrowing of possibilities to manifest Ukrainian identity and enjoy Ukrainian culture in Crimea since the beginning of the occupation.¹²⁹

104. On 29 August 2018, law enforcement officials conducted a house search targeting an activist of the Ukrainian Cultural Centre, and warned her about forthcoming extremism-related charges during an interrogation.¹³⁰ She felt compelled to leave the Crimean peninsula, based on a well-founded fear of persecution. Since 2017, the activist had been repeatedly summoned for interrogations under the guise of “conversations” in different law enforcement bodies where she was questioned about her pro-Ukrainian views and activities of the Ukrainian Cultural Center and threatened by the FSB.

¹²⁴ See Article 19 of the ICCPR and Article 10 of the ECHR.

¹²⁵ See Article 64 of the Geneva IV Convention.

¹²⁶ OHCHR interview, 30 August 2018.

¹²⁷ OHCHR interview, 19 October 2018.

¹²⁸ On the same day, four crewmembers of another fishing boat “ЯОД – 2105” (all – from mainland Ukraine) detained in the Black Sea on 28 August 2018 were also allowed by the Russian Federation authorities in Crimea to return home. Simultaneously, seven crewmembers of the “Nord” vessel, arrested by the State Border Guard Service of Ukraine in the Azov Sea on 25 March, returned to Crimea, following several unsuccessful attempts to leave mainland Ukraine with the use of travel documents issued by the Russian Federation.

¹²⁹ Article 27 of ICCPR states that “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” See OHCHR first thematic report on Crimea “Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)” par. 182-186.

¹³⁰ OHCHR interviews, 26 September, 27 September, and 9 October 2018.

105. OHCHR recalls that another former activist of the Ukrainian Cultural Center felt compelled to leave Crimea under similar circumstances in August 2017.¹³¹ The Ukrainian Cultural Center is one of the few organizations in Crimea, which has continued to promote Ukrainian culture through public events and commemorations since the beginning of the occupation. The number of its activists has dropped significantly due to the fear of persecution and periodic “warnings” of the law enforcement not to engage in “ill-advised activities”. The narrowing civic space to promote Ukrainian culture is aggravated by the decreasing availability of Ukrainian language in education sphere in Crimea.¹³²

D. Property rights and equal access to public service

106. Despite the ongoing occupation of the Crimean peninsula by the Russian Federation, the Government of Ukraine retains obligations under international law to not interfere with the enjoyment of the right to property of current or former residents of Crimea, as well as to use all legal and diplomatic means available to ensure respect for human rights in relation to the population in Crimea.¹³³

107. OHCHR notes a persistent pattern of continuous violations of property rights of current and former Crimean residents by the state-owned bank PrivatBank.¹³⁴ Shortly after the beginning of the occupation, savings accounts of the bank’s clients in Crimea were blocked, adversely affecting the socioeconomic rights and livelihoods of Crimea residents.¹³⁵ In one case, PrivatBank denied access to the considerable savings of an elderly couple from Kerch that were needed for essential cancer treatment.¹³⁶ PrivatBank justifies its actions with reference to the Ukrainian legislation that defines the status of Crimea as an occupied territory and cancels the operation of banks in the peninsula.

VIII. Technical cooperation and capacity-building

108. OHCHR continues its technical cooperation and capacity-building activities aimed at assisting the Government and civil society to protect and promote human rights in Ukraine.

109. On 16 August and 1 November 2018, as part of the institutionalized pre-deployment programme for officers of the Civil-Military Cooperation unit (CIMIC), OHCHR delivered a session on prevention of arbitrary detention, torture and conflict-related sexual violence, as well as on the protection of freedom of movement and housing, land and property rights, to approximately 62 military officers (including seven women) to be deployed to eastern Ukraine as part of CIMIC. OHCHR has been participating in the pre-deployment programme since September 2017, and has delivered a total of seven trainings for over 212 officers. On 6 November, OHCHR contributed to a training on civilian casualty recording for 13 CIMIC officers (including two women) who are to work with the Civilian Casualty Mitigation Team established within the Joint Forces Operation.

110. OHCHR referred 24 allegations of human rights violations to specific duty-bearers; to the Government of Ukraine, 20 allegations were raised with four of them fully and six partially addressed; to the ‘ombudsperson’ of ‘Donetsk people’s republic’ four allegations were raised with one partially addressed.

¹³¹ OHCHR first thematic report on Crimea “Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)”, par. 169.

¹³² See, on the right to education in native languages, OHCHR second thematic report “On the situation of human rights in the temporary occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine”, 13 September 2017 to 30 June 2018, par. 68-71.

¹³³ HRC, Concluding Observations on Moldova (CCPR/C/MDA/CO/2(2009)); ECtHR, *Ilascu and Others v. Moldova and Russia* (8 July 2004), paragraph 331.

¹³⁴ The Government of Ukraine holds 100 per cent of the bank’s shares through the Ministry of Finance of Ukraine.

¹³⁵ The issue is aggravated by the Ukrainian legislative framework that does not recognize individuals with registered addresses in Crimea as “residents” of Ukraine for banking purposes. See on this issue, OHCHR Report on the human rights situation in Ukraine, 16 November 2017 to 15 February 2018, paragraph 130.

¹³⁶ The husband died of cancer in 2017. OHCHR interview, 4 October 2018.

111. On 9 November, OHCHR shared with the Parliament its analysis and recommendations concerning the draft law on the State language policy¹³⁷ and offered further assistance with a view to ensuring that the draft law is being brought in compliance with international standards.

IX. Conclusions and recommendations

112. The conflict in eastern Ukraine continues in its fifth year, contributing to fractures in Ukrainian society that further compromise prospects for peace and stability. OHCHR documented violations and abuses by all parties to the conflict against civilians on either side of the contact line. Overall, civilian casualties continued to decline within the reporting period – due in part to two consecutive ceasefires agreed by the Trilateral Contact Group in Minsk – as well as in 2018 as compared to previous years. However, the civilian population living in the conflict zone in eastern Ukraine continued to suffer from the cumulative effects of the conflict; policies and practices of parties to the conflict contribute to their hardship by complicating their access to pensions, hindering safe and effective movement, and exposing them to life-threatening challenges.

113. Many human rights violations documented stem from recurrent structural and systemic problems. Addressing these issues begins by ensuring accountability for violations of human rights, which would also serve to restore trust in the public institutions and the rule of law. In this context, OHCHR regrets the limited progress in the investigations and prosecutions of those responsible for the killings during Maidan protests and on 2 May 2014 in Odesa.

114. OHCHR remains concerned that systemic impunity is contributing to fuelling attacks on journalists, civil society activists, lawyers and political opponents. Such attacks, which have become increasingly visible, fuelling intolerance and discrimination, risk stifling freedom of expression and compromising rule of law protections that are essential to ensuring the integrity of the forthcoming presidential and parliamentary elections in 2019.

115. The human rights situation in Crimea remained a major concern as the Russian Federation continued applying its laws to the residents of the peninsula contrary to its obligations as an occupying power under the Fourth Geneva Convention. Other systematic human rights violations documented by OHCHR included unjustified restrictions on freedoms of opinion, expression and association, freedom of movement, violations of the right to maintain one's identity, culture and tradition, and property rights. Furthermore, the Russian Federation, the occupying power in Crimea, has not granted OHCHR access to the peninsula in line with UN General Assembly resolutions 68/262, 71/205 and 72/190.

116. Most recommendations made in the previous OHCHR reports on the human rights situation in Ukraine have not been implemented and remain valid. OHCHR further recommends the following, based on the issues identified from 16 August to 15 November 2018.

117. To the Ukrainian authorities:

Cabinet of Ministers

- a) **ensure that policies toward eastern Ukraine affirm that the Government retains the obligation to use all legal and diplomatic means available to ensure respect for human rights in relation to the population in territory that it does not control;**¹³⁸
- b) **facilitate the free and unimpeded passage of civilians across the contact line by lifting unnecessary and disproportionate restrictions, ensure freedom of movement at all checkpoints, and ensure that persons with residence registered in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' are not subjected to additional discriminatory checks;**

¹³⁷ Draft law 'On ensuring the functioning of the Ukrainian language as a state one' no.5670-d of 9 June 2017, available from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61994

¹³⁸ HRC, Concluding Observations on Moldova (CCPR/C/MDA/CO/2(2009); ECtHR, *Ilascu and Others v. Moldova and Russia* (8 July 2004), paragraph 331.

- c) ensure swift and full implementation of the law ‘On the legal status of missing persons’, in particular by providing sufficient resources for the effective realization of the mandate of the Commission on Missing Persons;
- d) adopt a comprehensive State policy and mechanism on remedy and reparation for civilians injured during the hostilities and to relatives of those killed in hostilities, in accordance with international standards;¹³⁹
- e) eliminate obstacles preventing all citizens from enjoying equal access to pensions regardless of their place of residence or IDP registration;
- f) Ministry of Justice to establish an electronic registry of convicted persons and persons who were held in pre-trial detention in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ before the outbreak of the conflict;
- g) Ministry of Defence to facilitate documentation of damages and destruction to civilian property caused by hostilities.

Parliament

- h) in consultation with all relevant stakeholders, to elaborate a balanced language policy ensuring a fair correlation between the protection of the rights of minorities, and the preservation of the State language as a tool for integration within society; to seek the opinion of the Venice Commission on any such policy draft and implement the recommendations in good faith;
- i) adopt and harmonize the legislation which would serve as a ground for developing a comprehensive mechanism for restitution and compensation for property damaged and destroyed during the conflict as well as property which is under military use;
- j) adopt legislation ensuring that IDPs have an opportunity to participate fully in all the upcoming elections;
- k) expedite the ratification of the Rome Statute of the International Criminal Court.

Courts and judges

- l) courts to apply custodial measure of restraint to persons charged with crimes against national and/or public security in accordance with the ECtHR case law in order to avoid the common practice of automatic detention under article 176.5 of the Criminal Procedure Code without thorough assessment of its reasonableness and necessity;
- m) prior to approving plea bargains in conflict-related criminal cases, examine whether they have been made without any pressure exerted on the defendants, including by lengthy pre-trial detention.

Law enforcement agencies

- n) ensure that violent attacks against groups at risk (such as journalists, civic activists, political opponents etc.) are appropriately classified, effectively and timely investigated, and that perpetrators are held accountable regardless their affiliation with extreme right-wing groups or any other entities;
- o) ensure the security of all professionals providing legal assistance to persons charged with crimes against national and/or public security and guarantee prompt and effective investigation of any case of interference into their professional activities.

¹³⁹ United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

State and local authorities

- p) **Regional Military-Civil Administrations in Donetsk and Luhansk to consistently and without discrimination provide housing solutions for the conflict-affected population from villages and towns affected by hostilities.**

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

- a) **bring an end to the conflict by strictly adhering to the ceasefire and implementing other obligations foreseen in the Minsk agreements, in particular regarding the withdrawal of prohibited weapons and disengagement of forces and hardware;**
- b) **ensure full compliance with international humanitarian law fundamental principles of distinction, proportionality and precaution, including by immediately ceasing the use of weapons with indiscriminate effect in areas populated and used by civilians, particularly weapons with a wide impact area;**
- c) **take all feasible precautions to minimize harm to the civilian population during operations, including by locating military objectives such as armed forces and weapons outside of densely populated areas, and refraining from deliberately targeting civilians or civilian objects, including objects indispensable to the survival of the civilian population, such as water infrastructure;**
- d) **clear mines and explosive remnants of war, take measures to protect civilians from the effects of these weapons, and assist the efforts of international and non-governmental organizations working in these areas;**
- e) **respect the binding rules of international humanitarian law and ensure that detainees are safeguarded against the dangers of armed conflict, that places of detention are not located close to zones of hostilities, and that detainees are evacuated should they become exposed to danger arising from the armed conflict;¹⁴⁰**
- f) **take practical steps to enable and facilitate the voluntary transfer of all pre-conflict detainees to government-controlled territory.**

119. To the self-proclaimed ‘Donetsk people’s republic’ and self-proclaimed ‘Luhansk people’s republic’:

- a) **ensure resumption of OHCHR operations;**
- b) **ensure unimpeded and confidential access by OHCHR and other international observers to detainees in territory they control;**
- c) **immediately release all persons arbitrarily deprived of their liberty, particularly those subjected to incommunicado detention and provide information on the whereabouts of detainees to their families.**

120. In the context of Crimea, to the Government of the Russian Federation as the occupying power:

- a) **implement General Assembly Resolution 72/190 of 19 December 2017, including by ensuring proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea;**
- b) **respect the laws in place in Crimea in 2014 before the beginning of the occupation, in particular by refraining from enforcing Russian Federation legislation in Crimea;**

¹⁴⁰ Articles 5 (1)(b) and (2)(c) of Additional Protocol II to the Geneva Conventions stipulate that persons deprived of their liberty be afforded safeguards against the dangers of the armed conflict; and that places of detention shall not be located close to the combat zone, detainees shall be evacuated when the places where they are detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety.

- c) **take all necessary steps to ensure that freedoms of expression, peaceful assembly, association, thought, conscience and religion can be exercised by all in Crimea, without discrimination on any grounds;**
- d) **end the practice of applying legislation on extremism, terrorism and separatism to criminalize free speech and peaceful conduct, as well as stop prosecuting Crimean residents for possession of publications or sharing of social media content that does not constitute calls for discrimination or violence;**
- e) **ensure unimpeded freedom of movement between Crimea and mainland Ukraine and put an end to the practice of apprehension of protected persons at the ABL and in the territorial waters adjacent to Crimea;**
- f) **allow free manifestation of one's traditions and cultural identity in Crimea, including the unimpeded functioning of community organizations and commemoration of important events.**

121. In the context of Crimea, to the Government of Ukraine:

- a) **respect its human rights obligations in relation to Crimean residents; use all legal and diplomatic means available to this end;**
- b) **respect the right to property, including savings held in banks and financial institutions, of all current and former Crimean residents; simplify access of current and former residents of Crimea to banking services offered in mainland Ukraine.**

122. To the international community:

- a) **continue using all diplomatic means to press all parties to immediately end hostilities and implement all obligations foreseen in the Minsk agreements, emphasizing how the active armed conflict causes suffering of civilians and hampers prospects for stability, peace and reconciliation;**
- b) **use all influence possible to ensure unimpeded access and operation of OHCHR in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic', and in Crimea.**
