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

**Report on the human rights situation in Ukraine
16 August to 15 November 2016**



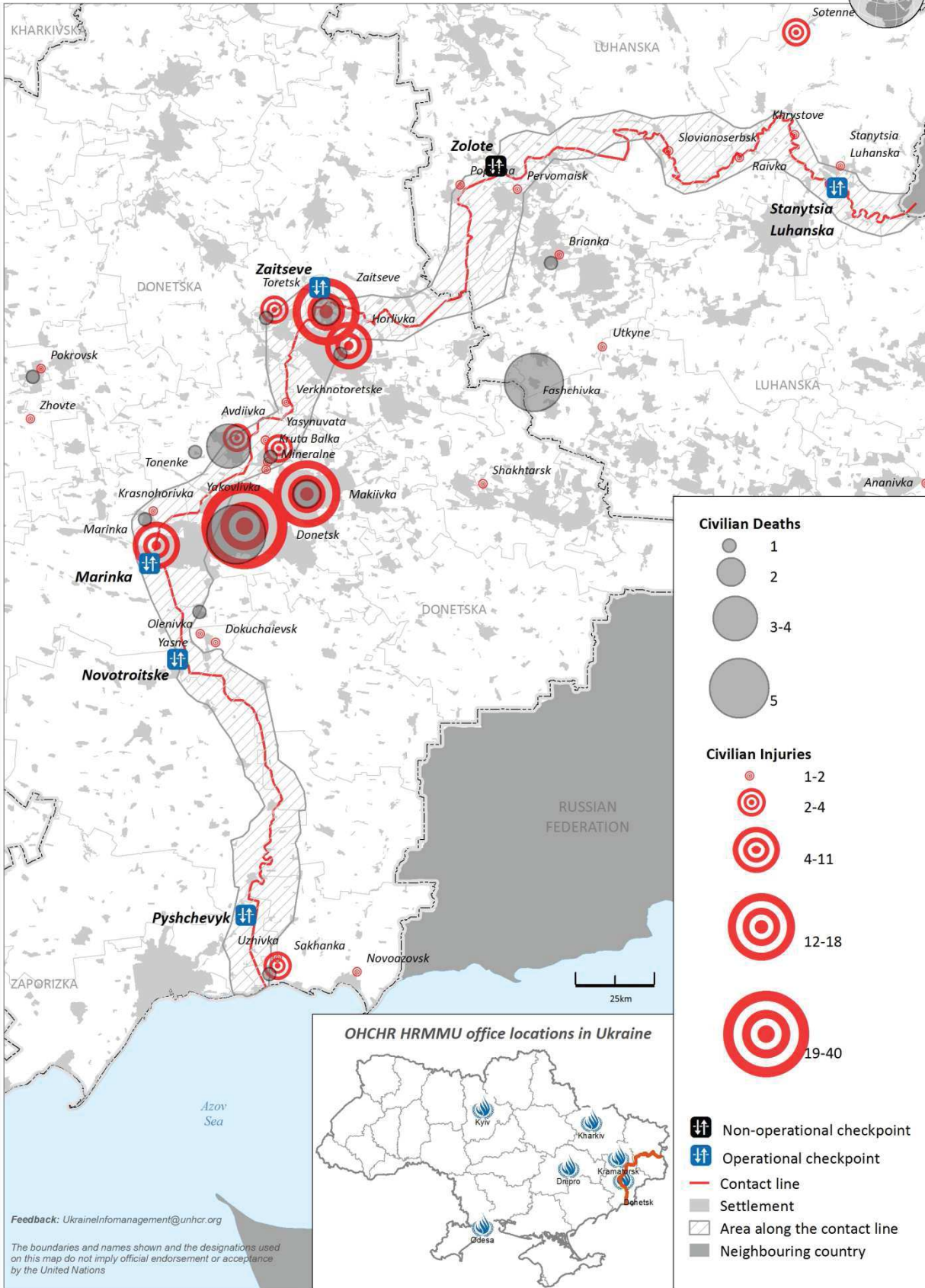
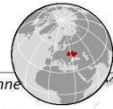
Contents	Paragraphs	Page
I. Executive Summary	1–16	5
II. Right to life, liberty, security and physical integrity	17–65	8
A. International humanitarian law in the conduct of hostilities	17–20	8
B. Casualties	21–26	9
C. Missing persons and recovery of mortal remains	27–29	11
D. Summary executions, disappearances, deprivation of liberty, and torture and ill-treatment	30–57	12
E. Sexual and gender-based violence	58–65	18
III. Accountability and administration of justice	66–94	20
A. Accountability for human rights violations and abuses in the east	66–74	20
<i>Accountability for abuses committed by the armed groups</i>	66–68	20
<i>Accountability for violations committed by the Ukrainian military or security forces</i>	69–74	21
B. Human rights impact of armed group structures	75–81	22
C. Due process and fair trial rights, interference with independence of judiciary	82–86	23
D. High-profile cases of violence related to riots and public disturbances	87–94	24
<i>Accountability for the killings of protesters at Maidan</i>	87–89	24
<i>Accountability for the 2 May 2014 violence in Odesa</i>	90–91	25
<i>Accountability for the 31 August 2015 violence in Kyiv</i>	92–94	25
IV. Fundamental freedoms	95–124	26
A. Freedom of movement	95–101	26
B. Freedom of opinion and expression	102–112	28
C. Freedom of association	113–116	30
D. Freedom of peaceful assembly	117–124	31
V. Economic and social rights	125–154	32
A. Civil documentation and access to public services	125–128	32
B. Right to social security	129–136	33
C. Housing, land, and property rights	137–145	35
D. Situation of internally displaced persons living in collective centres	146–151	37
E. Rights of minorities and discrimination	152–154	38
VI. Human Rights in the Autonomous Republic of Crimea	155–181	40
A. Arbitrary detention, due process and fair trial rights	157–166	40
<i>Arbitrary detention of persons accused of ‘separatism’</i>	158–159	40
<i>The case of the ‘Ukrainian sabotage group’</i>	160–163	41
<i>Hizb-ut-Tahrir cases</i>	164–166	42
B. Rights of minorities and indigenous peoples	167–169	42
C. Freedom of movement	170–171	43
D. Rights of detainees	172–176	44
E. Political rights	177–178	45
F. Right to education	179–181	46
VII. Legal developments and institutional reforms	182–198	46
A. Judicial reform	182–192	46
B. Criminal justice reform	193–194	48
C. Draft law “On the Temporarily Occupied Territory of Ukraine”	195–198	49
VIII. Technical cooperation and capacity-building toward the promotion and protection of human rights in Ukraine	199–206	50
IX. Conclusions and recommendations	207–225	52

UKRAINE





Ukraine: Civilian Casualties along the contact line, 16 August 2016 - 15 November 2016



I. Executive Summary

1. Based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), the sixteenth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine¹ covers the period from 16 August to 15 November 2016.

2. The findings in this report are grounded in data from in-depth interviews with 176 witnesses and victims of human rights violations and abuses during the period under review. OHCHR continues to document and report violations and abuses that occurred in 2014 and 2015 for purposes of accountability. In 75 per cent of cases documented, OHCHR carried out individual response follow-up actions to facilitate human rights protection.

3. The impact the conflict in eastern Ukraine has on the human rights situation illustrates the need for the full implementation of the provisions of the Minsk Agreements, especially the return of the full control by the Government of Ukraine over parts of the border with the Russian Federation in certain areas of Donetsk and Luhansk regions, the withdrawal of foreign fighters, pull-out of all heavy weaponry, pardon and amnesty through law and with due regard for human rights. During the reporting period, the conflict in eastern Ukraine has been marked by a surge in diplomatic efforts to de-escalate hostilities. The 21 September Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware initially limited fighting around selected areas. However, Ukrainian Armed Forces and armed groups controlling certain areas of the Donetsk region (self-proclaimed ‘Donetsk people’s republic’²) continued to exchange fire around Avdiivka and Yasynuvata, as well as north and east of Mariupol, and other places along the contact line³, resulting in a notable rise in hostilities by mid-November.⁴ While Luhansk region has seen fewer hostilities between Government forces and armed groups of the self-proclaimed ‘Luhansk people’s republic’⁵, the situation remains tense and dangerous for civilians. In both regions, weapons prohibited under the Minsk Package of Measures remain in areas from which they should be withdrawn, and continue to be used.

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 Hereinafter ‘Donetsk people’s republic’.

³ The contact line is a *de facto* line between last positions in government-controlled territories and armed group-controlled territories in Donetsk and Luhansk regions. Minsk documents referring to the line are not publicly available.

⁴ OSCE Special Monitoring Mission briefing, 18 November 2016, Kyiv, Ukraine. On 11 November 2016, the OSCE Special Monitoring Mission noted that “the overall level of explosions remained high with over 800 and 200 in both [Donetsk and Luhansk] regions, respectively.” Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30, 10 November 2016 (Accessible at: <http://www.osce.org/ukraine-smm/281081>).

⁵ Hereinafter ‘Luhansk people’s republic’.

4. Between 16 August and 15 November 2016, OHCHR recorded 164 conflict-related civilian casualties in Ukraine. Due to the renewed commitment to the ceasefire on 1 September, there was a 13 per cent decrease compared to the previous reporting period. In October, OHCHR recorded eight times more civilian casualties in armed group-controlled territories than in Government-controlled areas of the conflict zone, indicating that civilians in territories controlled by the armed groups continue to be particularly at risk of injury and death. OHCHR interviews with families of killed and injured civilians reveal the devastation and harm caused by the ongoing armed conflict in Donetsk and Luhansk region. The reported continued flow of weapons and ammunition to the conflict area, which results in serious human rights violations and abuses and violations of international humanitarian law, compounds their suffering. In total, from mid-April 2014 to 15 November 2016, OHCHR recorded 32,453 casualties, among Ukrainian armed forces, civilians and members of the armed groups. This includes 9,733 people killed and 22,720 injured.⁶

5. Over two years since fighting broke out in Donetsk and Luhansk regions, causing people to flee their homes, internally displaced persons (IDPs) lack security of tenure, shelter and are subject to onerous and disproportionate obstacles to obtaining their social entitlements.

6. Disproportionate restrictions on freedom of movement across the contact line severely affect an average of 25,000 people per day (800,000 per month). As families and communities in Donetsk and Luhansk regions struggle to remain connected, their movements are sharply constrained as they can only cross through five entry-exit points and are subject to arbitrary and long delays across mined and poorly marked areas. The wooden ramp for pedestrians connecting parts of a destroyed bridge at Stanytsia Luhanska remains the sole crossing for civilians in Luhansk region. OHCHR has documented cases of sexual and gender-based violence at checkpoints.

7. The exact number of individuals who are missing as a result of the conflict is not known. The families of missing persons continue to search for their relatives, suffering from a lack of coordination between Government agencies and cooperation between the Government and armed groups in facilitating the identification of mortal remains.

8. Delays in simultaneous releases of detainees and surrounding negotiations have caused uncertainty and suffering to their families, who see them being treated as human currency between the warring parties. OHCHR has continued to document summary execution, *incommunicado* detention, enforced disappearance, arbitrary deprivation of liberty, torture and ill-treatment against persons perceived to be affiliated with the parties to the conflict.

9. The ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ armed groups continue to deprive of liberty an unknown number of people. During the reporting period, despite

⁶ This is a conservative estimate of OHCHR based on available data.

repeated requests, armed groups continued to deny OHCHR unfettered access to places of deprivation of liberty. OHCHR has identified 26 penal and pre-trial detention facilities where pre-conflict detainees are held, and at least eight places of deprivation of liberty in Donetsk and three in Luhansk region, where the armed groups hold individuals captured in connection with the armed conflict. The lack of access to persons deprived of their liberty raises concerns that they may be subject to torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment), including sexual and gender-based violence. OHCHR monitoring has highlighted the vulnerability of persons living in armed group-controlled territories to arbitrary and selective sanctions from what the armed groups refer to as ‘courts’, ‘judges’, and ‘prosecutors’.

10. The human rights situation in ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ has been marked by continuing restrictions on fundamental freedoms, exacerbating the isolation of persons living in these regions and their access to information. These restrictions and a prevailing feeling of fear among residents, particularly pronounced in Luhansk region, pose obstacles for OHCHR to obtain meaningful information on the exercise and enjoyment of fundamental freedoms in armed group-controlled territories, despite repeated efforts.

11. OHCHR has noted some progress in investigations and prosecutions carried out by the Prosecutor General’s Office against sergeant and major rank perpetrators of human rights violations in the context of the violence in Maidan and the armed conflict. Proceedings into the 2 May 2014 violence in Odesa continue to be characterized by unjustified delays inconsistent with the intent to bring those responsible to justice and interference with the independence of the judiciary. The Prosecutor General’s Office has also reported progress in investigating human rights violations and abuses attributable to commanders of armed groups of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. However, incidents of large-scale violations and abuses, such as the August 2014 battle for Ilovaisk, remain largely uninvestigated.

12. OHCHR welcomes the Constitutional amendments regarding the judiciary introduced on 30 September, setting out a clear path of reform toward the restoration of public trust in the judiciary.⁷

13. At the same time, OHCHR notes with concern that a draft law ‘On the Temporarily Occupied Territory of Ukraine’, contains provisions that undermine human rights and are contrary to Ukraine’s international obligations. The provisions, which, if adopted, would violate *inter alia* the right to equal protection without discrimination, and in terminating water and electricity supplies to armed group-controlled territories and the Autonomous Republic of Crimea, would contravene both customary rules of international humanitarian law concerning relief and human rights law requiring the Government to ensure

⁷ See VII. Legal developments and institutional reforms.

minimum essential humanitarian supplies for the civilian population.⁸

14. Ukraine's June 2016 decision to derogate from certain human rights obligations under United Nations and Council of Europe conventions was discussed on 19 September during a round table organized by the parliamentary committees on foreign affairs and human rights. Following broad agreement on the need to clarify *inter alia* the duration and territorial application of the derogation, the heads of the parliamentary committees committed to establish a working group. OHCHR supports this initiative and expresses readiness to take part in working group discussions.

15. OHCHR continued to actively monitor the human rights situation in Crimea, utilizing a network of contacts and conducting monitoring visits to the administrative boundary line. OHCHR documented several cases of abuses in detention and ongoing sanctions against members of the Mejlis. The continued prosecution of Crimean Hizb-ut-Tahrir members in Russian courts, and transfer of detainees from Crimea to penitentiary facilities in the Russian Federation raise serious concerns and further illustrates the human rights impact of the ongoing violation of General Assembly resolution 68/262 on the territorial integrity of Ukraine.

16. Throughout the reporting period, OHCHR bolstered its technical cooperation and capacity building activities, assisting partners, including the Government of Ukraine in operationalizing and fulfilling its obligations toward the promotion and protection of human rights.⁹

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

A. International humanitarian law in the conduct of hostilities

"We just want to know when will this infernal war end."

- Woman living in an IDP centre in Donetsk

17. In this reporting period, renewed commitments to the ceasefire and concerted efforts to withdraw forces and weapons from the contact line, including in civilian and populated areas under the Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware of 21 September 2016,¹⁰ led to an initial de-escalation of hostilities in the areas covered by the Decision. However, a lack of full compliance by the warring parties – the Ukrainian Armed Forces and 'Donetsk people's republic' and 'Luhansk people's

⁸ See VII. Legal developments and institutional reforms, C. Draft law "On the Temporarily Occupied Territory of Ukraine".

⁹ See VIII. Technical cooperation and capacity-building toward the promotion and protection of human rights in Ukraine.

¹⁰ Organization for Security and Co-operation in Europe, "Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware," 21 September 2016 (accessible at: <http://www.osce.org/cio/266266>).

republic’ armed groups – has continued to endanger civilians and led to intensified hostilities in October. Civilians living in areas close to the contact line continue to face daily risks due to the presence of armed forces and groups in their homes, on the streets, and suffer long-lasting effects of military damage to vital public infrastructure. Regular daytime shelling was noted as presenting particular risks for civilians, including one case on 21 September 2016 that interrupted the delivery of humanitarian aid.

18. OHCHR recalls that attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, as well as civilian objects, is prohibited under international humanitarian law.¹¹ In the Government-controlled village of Stepne, residents have had no access to water since the near-by power station in Dokuchaievsk was damaged in shelling on 15 April 2016. Water pipes across territory controlled by the ‘Luhansk people’ republic’ have been severely damaged due to shelling, limiting access to water for the population. In Makiivka, a town under ‘Donetsk people’s republic’- control, critical electrical equipment was damaged on 14 September and 5 October. Also on 14 September, a water filtration station located between Avdiivka and Yasynuvata was shelled. In Zhovanka neighbourhood of Zaitseve, residents have had no electricity since June 2016.

19. Schools and educational facilities in the conflict zone continue to be damaged in shelling and exchanges of fire. Between 13 and 14 September, two schools in territory under ‘Donetsk people’s republic’-control were hit; School No. 44 in Makiivka was shelled, and bullets from small arms hit School No. 3 in Dokuchaievsk during the school day. On 4 October, School No. 2 in Government-controlled Marinka was shelled. The following day, on 5 October, schools No. 77, and kindergarten No. 154 suffered damage from a nearby explosion.

20. OHCHR recalls that parties to the conflict have the obligation to take all feasible measures to protect the population under their control from the effects of hostilities. Residents told OHCHR that they fear that the presence of Ukrainian military positioned near their homes¹² endangers them and puts them at risk of attack. OHCHR has also documented a worrying case of punitive damage to property in Donetsk by members of the armed groups targeting the house of a member of the Government-affiliated ‘Dnipro-1’ battalion.¹³

B. Casualties

21. During the reporting period, the intensity of hostilities in the conflict zone of eastern Ukraine and levels of civilian casualties varied. The second half of August was marked by an escalation of clashes in a number of hotspots in Donetsk region and rise in deaths and injuries among civilians. In September, following the renewed commitment to a ceasefire, the number of civilian

¹¹ Article 14, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

¹² HRMMU interview, 2 September 2016; site visit 26 September 2016.

¹³ HRMMU interview, 9 September 2016.

casualties substantially decreased. In October, they once again scaled up, mirroring the new upsurge in fighting along the contact line. In the first half of November, hostilities somewhat de-escalated, and the number of civilian casualties decreased.

22. Between 16 August and 15 November 2016, OHCHR recorded 164 conflict-related civilian casualties¹⁴: 32 deaths (ten women, 21 men and a boy) and 132 injuries (44 women and two girls, 77 men and five boys, and four adults whose sex is not known). This is a 13 per cent decrease compared to the previous reporting period of 16 May – 15 August 2016 when OHCHR recorded 188 civilian casualties (28 deaths and 160 injuries).

23. Shelling from various artillery systems caused over 60 per cent of all civilian casualties: 13 killed (three women and ten men) and 88 injured (37 women and a girl, 48 men and a boy, and an adult whose sex is not known). 20 per cent of these casualties (three killed and 18 injured) were recorded in the Government-controlled territories, while 80 per cent (10 killed and 70 injured) were recorded in the territories controlled by the armed groups.

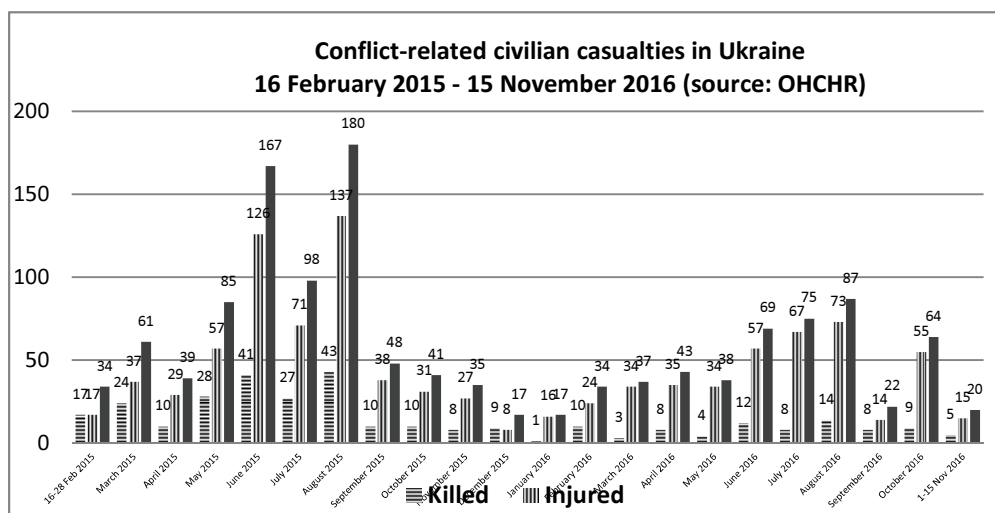
24. Mines, explosive remnants of war, booby traps and improvised explosive devices caused 10 deaths (two women and eight men) and 25 injuries (two women and a girl, 15 men and four boys, and three adults whose sex is unknown). Small arms and light weapons accounted for 21 casualties: five killed (three women, a man and a boy) and 16 injured (four women and 12 men). Two deaths (a woman and a man) and two injuries (a woman and a man) were caused by road incidents with military vehicles in the conflict zone. A man was injured from unspecified firearms. One woman and one man died of heart attacks at checkpoints, unable to obtain adequate medical care.

25. OHCHR estimates the total number of civilians killed during the whole conflict period (mid-April 2014 – 15 November 2016) to be over 2,000, with an additional 298 passengers killed as a result of the MH-17 plane crash. The number of conflict-related civilian injuries is estimated at 6,000-7,000.

26. In total, from mid-April 2014 to 15 November 2016, OHCHR recorded 32,453 conflict-related casualties in Ukraine, among Ukrainian armed forces, civilians and members of the armed groups. This includes 9,733 people killed and 22,720 injured.¹⁵

¹⁴ OHCHR investigated reports of civilian casualties by consulting a broad range of sources and types of information that are evaluated for their credibility and reliability. In undertaking documentation and analysis of each incident, OHCHR exercises due diligence to corroborate information on casualties from as wide range of sources as possible, including OSCE public reports, accounts of witnesses, victims and other directly affected persons, military actors, community leaders, medical professionals, and other interlocutors. In some instances, investigations may take weeks or months before conclusions can be drawn. This may mean that conclusions on civilian casualties may be revised as more information becomes available. OHCHR does not claim that the statistics presented here are complete. It may be under-reporting civilian casualties given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods.

¹⁵ This is a conservative estimate of OHCHR based on available data. These totals include: casualties among the Ukrainian forces, as reported by the Ukrainian authorities; 298 people from flight MH-17; civilian casualties on the territories



C. Missing persons and recovery of mortal remains

27. The exact number of individuals who are missing as a result of the conflict is not known. Documentation of the missing was disrupted by the conflict in 2014 and subsequently resumed separately in Government-controlled and armed group-controlled territories. Moreover, the lack of coordination between various government bodies has resulted in different accounts of the number of missing in the conflict zone, varying from 488 to 1,376.¹⁶

28. Some individuals considered missing by the Government may be held *incommunicado* in the territories controlled by the armed groups or vice versa. Hundreds of bodies remain unidentified (in morgues or buried) in the territories controlled by the Government and in the territories controlled by the armed groups. The recovery of mortal remains from areas that saw heavy fighting is ongoing. Since autumn 2014, the Government of Ukraine has carried out systematic DNA profiling of unidentified bodies and the relatives of the missing leading to the identification of hundreds of mortal remains. In the territories controlled by the armed groups, however, there is no capacity to

controlled by the Government of Ukraine, as reported by local authorities and the regional departments of internal affairs of Donetsk and Luhansk regions; and casualties among civilians and members of the armed groups on the territories controlled by the 'Donetsk people's republic' and the 'Luhansk people's republic', as reported by the armed groups, the so-called 'local authorities' and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and due to overall under-reporting, especially of military casualties. The number of casualties between the different reporting dates does not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date.

¹⁶ According to the Main Department of the National Police in Donetsk region, from the beginning of the Government 'security operation' until 26 October 2016, 865 individuals are missing in Donetsk region. The Main Department of the National Police in Luhansk region reported 572 missing persons as of 10 October. The list of missing persons maintained by the SBU contained 495 names as of 26 October 2016. The 'Donetsk people's republic' recorded 488 missing persons as of 21 October 2016. Moreover, the National Police of Ukraine maintains an open – but outdated – database that lists 1,376 individuals (Accessible at: <https://www.npu.gov.ua/uk/publish/article/1141400>).

conduct DNA sampling, and there is no exchange of forensic data between the Government of Ukraine and the armed groups.

29. In a positive development, draft legislation ‘On the legal status of missing persons’, developed under the auspices of the Ministry of Temporarily Occupied Territories and IDPs foresees the establishment of a commission for missing persons, which is crucial for the fulfillment of Ukraine’s obligation under international humanitarian law to take all feasible measures to account for persons reported missing and to provide their family members with information on their fate.

D. Summary executions, disappearances, deprivation of liberty, and torture and ill-treatment

“We’ve got a thousand methods to make you talk. You have already managed to hold out for more than a day, it is almost a record here!”

– Government official to a victim of *incommunicado* detention in Pokrovsk

Summary executions

30. During the reporting period, OHCHR continued to verify allegations of summary executions and wilful killings of Ukrainian servicemen, civilians and individuals associated with armed groups in the conflict zone in 2014 and 2015, namely in Ilovaisk in August 2014 and Debaltseve in February 2015. OHCHR will present its findings in its 17th report on the human rights situation in Ukraine.

31. OHCHR also documented an account that suggests that ‘Donetsk people’s republic’ members beat a man to death in October 2014. A former member of the ‘Donbas’ volunteer battalion affiliated with the Ukrainian Armed Forces, while deprived of his liberty by ‘Donetsk people’s republic’ members in the former SBU premises at 62 Shchorsa Street witnessed the severe beating of a person deprived of liberty and heard a paramedic refusing to render the victim medical assistance. He never saw the victim again and was later told that the man “kicked the bucket”.¹⁷

Enforced disappearances and abductions

32. OHCHR is concerned that the Security Service of Ukraine (SBU) continues to perpetrate enforced disappearances, holding individuals *incommunicado* and undertaking steps to conceal their fate and whereabouts. Abductions by armed groups have continued to cause suffering and uncertainty to relatives of victims.

Ukrainian Armed Forces and law enforcement

33. OHCHR interviewed a man who was allegedly detained *incommunicado* and subjected to enforced disappearance by the SBU for six months. After spending over 15 months in pre-trial detention, on 15 April 2016 a court in Berdiansk released him in

¹⁷ HRMMU interview, 4 November 2016.

the courtroom for time served. While leaving the courthouse, he was apprehended by the SBU once again and transferred to Mariupol SBU. There, he was held *incommunicado* in an indoor shooting range and an arms room. According to the Prosecutor General's Office, on 30 August 2016 the Donetsk Regional Prosecution initiated a criminal investigation into his unlawful detention by law enforcement personnel.¹⁸ Between 4 and 11 September 2016, he was relocated to a private apartment in Mariupol. He was released on 14 October 2016. The SBU denies ever having apprehended or held the victim in their custody.¹⁹

34. OHCHR is also aware of two other disappeared detainees. They were detained *incommunicado* in Mariupol SBU. In September 2016, they were temporarily moved to a private apartment.²⁰ OHCHR notes that the transfer of the above-mentioned three detainees from the Mariupol SBU to private apartments coincided with the visit of the UN Subcommittee on the Prevention of Torture (SPT) to Mariupol SBU on 7 September 2016.

35. At least five individuals held in Kharkiv SBU continued to be forcibly disappeared. One man held in Kharkiv had been abducted by the SBU after the Starobilsk district court released him from pre-trial detention on 21 April 2016.²¹ The SBU continues to deny apprehending or holding any individuals in the Kharkiv SBU building.²²

Armed groups

36. On 24 August 2014, three men aged 21, 22 and 35 were taken from their houses by Cossack armed group members. The members of armed groups handcuffed the three individuals, covered their eyes and put them in cars. Reportedly, they were taken to the Stakhanov 'komendatura' but disappeared after a few days. Since then, the relatives of the three individuals have not heard anything about their fate or whereabouts.²³ On 17 September 2014, a businessman was taken from his office by two armed 'Cossacks', and two hours later the same men came to the victim's office, searched it and seized his belongings. His whereabouts have been unknown since.²⁴ All three cases of abductions occurred in 2014 in Stakhanov, Luhansk region when the area was under the control of Cossack armed groups.

Unlawful and arbitrary detention, torture and ill-treatment

Ukrainian Armed Forces and law enforcement

37. During the reporting period, OHCHR also documented a number of cases demonstrating that the pattern of intimidation and coercion during the initial stages of detention has not significantly improved since 2014 and 2015.²⁵ OHCHR has

¹⁸ Under article 365-2 of the Ukrainian Criminal Code, according to information provided by the Prosecutor General's Office to HRMMU, 5 December 2016.

¹⁹ Security Service of Ukraine, information provided to HRMMU, 5 December 2016.

²⁰ HRMMU interviews, 23 September, 15 and 19 October 2016.

²¹ HRMMU interview, 26 September 2016.

²² Security Service of Ukraine, information provided to HRMMU, 5 December 2016.

²³ HRMMU interview, 1 September 2016.

²⁴ HRMMU interview, 1 September 2016.

²⁵ HRMMU interview, 23 August 2016.

sufficient verified information to believe that individuals detained in connection with the armed conflict are often kept in illegal and *incommunicado* detention. Upon apprehension, formal registration of their arrest is often delayed, depriving them of access to legal assistance, medical care, and the outside world.²⁶ During this period of unregistered deprivation of liberty, detainees are kept in unofficial places of detention before being transferred to police and remand facilities, such as temporary police detention centres (ITT) and pre-trial detention centres administered by the Ministry of Justice (SIZO).

38. During the reporting period, OHCHR continued to enjoy effective access to Government-administered official places of detention.²⁷ Between 5 and 9 September, the SPT visited Ukraine to complete its visit from May 2016. During the visit, the SPT was provided with full and unimpeded access, including to a number of administrative premises of the SBU.²⁸

39. As of October 2016, OHCHR estimates that 150-250 individuals are either under investigation by the Government and in remand detention or on trial for conflict-related charges,²⁹ with a further estimated 200-300 individuals sentenced for conflict-related conduct in 2014-2016 and serving their sentences. In September 2016, the Donetsk Regional Department of the National Police reported on the detention of 220 individuals “associated with illegal armed formations”³⁰ during the first nine months of 2016. Of them, 37 were placed in remand custody.

40. On 27 June 2016, Ukrainian Armed Forces captured eight ‘Donetsk people’s republic’ members near the Government-controlled village of Shyrokyne, Donetsk region. Several of the detainees claimed that they were hooded for three days and beaten. On the fourth day of detention, they all were brought to the basement of the Mariupol SBU, where they spent the night, and then delivered to Mariupol ITT (police temporary detention facility). On 1 July 2016, all eight detainees were placed to Mariupol SIZO.³¹ On 9 October 2016, one of the detainees was brought from Mariupol SIZO to a hospital, where he underwent

²⁶ In one case a man was held for 10 days without his detention formally registered. HRMMU interview, 2 March 2016.

²⁷ SIZOs (pre-trial detention centres), penal colonies and ITTs (temporary police detention centres), as well as the only official detention facility of the Security Service of Ukraine (SBU) – SBU SIZO in Kyiv (all other SBU detainees shall be held in general SIZOs).

²⁸ Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, “*UN torture prevention body concludes Ukraine visit*”, 13 September 2016 (Accessible at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20475&LangID=E>).

²⁹ Charged under articles 109 (actions aimed at forceful change or overthrow of the constitutional order or take-over of government), 110 (trespass against territorial integrity and inviolability of Ukraine); 111 (high treason), 112 (trespass against life of a statesman or a public figure, 113 (sabotage), 114 (espionage), 258 (act of terrorism), 258-1 (involvement in a terrorist act), 258-2 (public incitement to commit a terrorist act), 258-3 (creation of a terrorist group or terrorist organization), 258-4 (facilitating a terrorist act), 258-5 (financing of terrorism) and 260 (creation of unlawful paramilitary or armed formations) of the Criminal Code.

³⁰ Charged under articles 260, 256, 294 and 258-3 of the Criminal Code of Ukraine.

³¹ HRMMU interview, 7 July 2016.

urgent surgery. The detainee told OHCHR that he “stumbled and fell” in his cell.³²

41. On 28 February 2015, a member of the armed groups was detained at a checkpoint staffed by Ukrainian soldiers. There he was beaten, handcuffed and blindfolded with duct tape, and then brought to a basement of an unknown building. For two days, men in camouflage “poked him with a knife”. He was then transferred to the Mariupol SBU, where he was placed in one of the rooms in the basement and then moved to a shooting range in the building. He saw 15 other detainees, some of whom were bruised and injured.³³

42. In March 2015, a detainee was taken by camouflaged men to a police precinct in Bakhmut, Donetsk region, where he was forced to kneel, and then kicked and beaten with truncheons. At some point one of the perpetrators drew a target sketch on a piece of paper and pinned it to the victim’s back. He was beaten for several hours until he agreed to give self-incriminating statements.³⁴

43. In May 2015, a man detained by the SBU in a private apartment, was handcuffed, kicked on his legs and torso. Then an SBU officer in balaclava stepped on his chest and stood there until the victim began to suffocate. The victim’s family members were also threatened, after which he agreed to cooperate and sign a confession. Later, he complained about his treatment, but no official investigation was launched.³⁵

44. OHCHR is concerned that medical personnel of SIZOs at times neglect their obligation to document detainee injuries such as bruises, fractures, concussions, and internal traumas. For instance, during the visit to Starobilsk SIZO on 23 August 2016, OHCHR found that the documentation of injuries was not undertaken in cases when police or SBU provided an explanation of the injuries. Medical personnel of the SIZO systematically failed to provide detainees with copies of medical certificates attesting to their injuries despite a legal obligation to do so. A similar pattern was observed in Bakhmut SIZO.

45. OHCHR also continued to document human rights violations committed by members of Ukrainian voluntary battalions in 2014, as well as continuing cases in early 2016. On 20 January, a group of ‘Dnipro-1’ battalion members raided a house in Avdiivka, severely beating a man, subjecting him to asphyxiation with a plastic bag and mock execution.³⁶

46. In three separate cases between August and November 2014, members of the ‘Donbas’ battalion took a total of seven civilians hostage, tortured and ill-treated them at their base in Pokrovsk (formerly Krasnoarmiisk), and extracted large ransoms. One victim said, “the pain was so unbearable that I wanted to die... I really asked them to kill me, I could not stand it.”³⁷

³² HRMMU interview, 21 October 2016.

³³ HRMMU interview, 6 September 2016.

³⁴ HRMMU interview, 6 September 2016.

³⁵ HRMMU interview, 23 August 2016.

³⁶ HRMMU interview, 10 November 2016.

³⁷ HRMMU interview, 31 August 2016.

Armed groups

47. New allegations documented by OHCHR support a previously established pattern of armed groups routinely subjecting persons deprived of their liberty to torture and ill-treatment. Victims were often afraid or reluctant to speak about the treatment they suffered.

48. On 18 September 2016, a man was detained at the Uspenka checkpoint between 'Donetsk people's republic' territory and the Russian Federation. Between 1 and 11 October, his fate and whereabouts were unknown while his family repeatedly inquired about his fate and whereabouts to the authorities of the Russian Federation and 'Donetsk people's republic'. By 18 October, he was transferred from a police detention facility in Taganrog, Russian Federation to the 'Donetsk people's republic' 'ministry of state security' to a 'pre-trial detention facility' in Donetsk, where he was charged with espionage. OHCHR is concerned about his detention outside of the protection of the law and his treatment during a period of 10 days when his whereabouts were unknown. OHCHR further notes that the facts suggest that the authorities of the Russian Federation transferred the man into the custody of the 'ministry of state security' of the 'Donetsk people's republic'.

49. On 14 September 2016, OHCHR was able to visit four children deprived of their liberty in Donetsk city. OHCHR understands that the children were detained on 30 or 31 August 2016 and held in separate cells in the premises of the 'ministry of state security' on Shevchenko Street 26 in Donetsk city. OHCHR is concerned that the juvenile detainees had no contact with their families for a period of at least two weeks.³⁸ OHCHR was later informed that the children were transferred to 'SIZO' ('pre-trial detention facility') in Donetsk on 24 October 2016.

50. In June 2016, two men were abducted by armed members of the 'Luhansk people's republic' and were beaten, kicked, and tortured by men wearing camouflage, who accused them of espionage. One man died.³⁹

51. In August 2014, a resident of the city of Donetsk (controlled by the armed groups) suspected of being a gun-spotter for Ukrainian forces, was deprived of liberty in his apartment and taken to a former police academy building. There he was taken to the basement and beaten with truncheons and five litre plastic bottles filled with water all over his body. One of the perpetrators burnt his shoulder, hand and back with a cigarette.⁴⁰

52. The exact number of individuals deprived of their liberty by 'Donetsk people's republic' and 'Luhansk people's republic' armed groups is unknown. The majority of them are pre-conflict convicts kept in correctional colonies and centres (there are 14 in territories controlled by 'Donetsk people's republic' and 12 in territories controlled by 'Luhansk people's republic' armed groups) and individuals who were in pre-trial detention when the conflict erupted and whose cases had not yet been heard in courts (pre-trial detainees are kept in Donetsk and Luhansk SIZOs). As of November 2016, OHCHR estimates their total number at 9,500

³⁸ HRMMU interview, 14 September 2016.

³⁹ HRMMU interview, 20 October 2016.

⁴⁰ HRMMU interview, 28 October 2016.

(approximately 5,000 in ‘Donetsk people’s republic’ territory, and approximately 4,500 in ‘Luhansk people’s republic’ territory). In 2015-2016, at least 131 such persons deprived of liberty were transferred from armed group-controlled territories to Government control.

53. Another category of persons deprived of liberty comprise individuals who have been either under ‘investigation’, or already have been ‘sentenced’ by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ ‘courts’.⁴¹ Their exact number is not known. According to the ‘chair’ of the ‘Donetsk people’s republic’ ‘supreme court’, as of 18 October 2016, a ‘martial court’ was considering 61 cases in regard to 72 individuals of whom 42 were in custody; 32 cases in regard to 39 individuals were already heard with 17 accused in custody. ‘Courts of general jurisdiction’ were considering 14,404 criminal cases in regard to 15,555 individuals of whom 5,013 were in custody.⁴² They are civilians and members of the armed groups charged with criminal offences and disloyalty. A distinct group of persons deprived of liberty comprise Ukrainian soldiers and civilians suspected of supporting the Government (including ‘subversive activities’ or ‘spying’). Their exact number is not known. For instance, the ‘ministry of state security’ of the ‘Luhansk people’s republic’ reported “during nine months of 2016, they detected, proved and stopped the intelligence activity of 70 agents and trusted persons of special services of Ukraine”; their fate is not known.

54. According to the SBU, as of 26 October 2016, there were 100 such persons deprived of liberty whose release is sought by the Government. The ‘Donetsk people’s republic’ maintains that it has only 42 of these detainees. There are other conflict-related detainees whose release is not being sought by the Government.⁴³

55. OHCHR is aware of a number of places where different categories of persons deprived of liberty are likely held. In Donetsk, these places include: SIZO at 4 Kobozeva Street; a ‘military unit’ known as “5 Molodizhna Street” at 11 Panfilova Street⁴⁴; former SBU building at 62 Shchorsa Street⁴⁵; premises of the ‘ministry of state security’ at 26 Shevchenko Street⁴⁶; ‘department on fighting organized crime’⁴⁷ and IVS (isolator of temporary detention)⁴⁸. In Horlivka, the ‘military commandant’s office’⁴⁹; and in Makiivka – colony No. 97. In the territories controlled by the ‘Luhansk people’s republic’ these places include Luhansk SIZO at 4 24th Liniia Street and ‘department on fighting organized crime’ in Stakhanov⁵⁰. The list of the places of deprivation of liberty is not comprehensive; for instance, on 7 August 2015 two men were detained in Donetsk, allegedly in relation to their business activities. They were kept in a base of

⁴¹ See paragraphs 75-81.

⁴² These 5,013 individuals reportedly include both pre-conflict detainees and those detained since mid-April 2014.

⁴³ HRMMU interview, 14 September 2016.

⁴⁴ HRMMU interview, 20 September 2016.

⁴⁵ HRMMU interview, 20 September 2016.

⁴⁶ HRMMU interview, 14 September 2016.

⁴⁷ HRMMU interview, 20 September 2016.

⁴⁸ HRMMU interviews, 20 September, 7 November 2016.

⁴⁹ HRMMU interview, 20 September 2016.

⁵⁰ HRMMU interview, 7 October 2016.

the armed groups near Abakumova mine, not far from Staromykhailivka village⁵¹.

56. During the reporting period, despite repeated requests, OHCHR continued to be denied unfettered access to places of deprivation of liberty on the territories controlled by the armed groups. Accordingly, OHCHR was not able to comprehensively assess the condition of detention in the territories controlled by the armed groups, and continued to have concerns that persons deprived of their liberty may be subject to torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment), including sexual and gender-based violence. According to former inmates, relatives of current inmates and other sources⁵², these conditions vary from facility to facility: in some nutrition is described as sufficiently adequate, while in one facility inmates receive mainly “barley porridge and soup without or very little meat” and bread; in some colonies, heating is inadequate and inmates suffer from low temperatures; in some colonies access to medical care and treatment remain inadequate. A standard disciplinary measure used across places of deprivation of liberty is up to 15 days solitary confinement.

57. During the reporting period, a number of individuals were deprived of their liberty on the territories controlled by the armed groups for being “Ukrainian spies and subversives”. Several young men were deprived of their liberty in October and November in Luhansk; their video “confessions” were made public by the ‘ministry of state security’ of ‘Luhansk people’s republic’ in early November. A judge from Luhansk, who moved to Government-controlled Sievierodonetsk in 2014, was deprived of liberty on 15 October 2016 while travelling to the town of Krasnodon (controlled by the armed groups) to attend the funeral of his father. He is allegedly “accused” of “state treason” by ‘Luhansk people’s republic’ armed groups. OHCHR is concerned with the conditions of detention and treatment of these detainees and has requested access to those deprived of their liberty. OHCHR has so far been denied access.

E. Sexual and gender-based violence

“If you are going to rape me, then I would prefer that you shoot me on the spot.”

– A woman detained at a checkpoint

58. OHCHR continued to document cases of conflict-related sexual violence. In addition to a continuing pattern of sexual violence occurring in conflict-related detention, OHCHR documented cases that indicate the sexual violence and harassment of young women at Government-controlled entry-exit checkpoints along the contact line.

59. On 12 September 2016, a woman was travelling via one of the transport corridors in Donetsk region. At a Government checkpoint she was told that there is a problem with her permit and was referred to a coordination centre at the checkpoint. An

⁵¹ HRMMU interview, 9 September 2016.

⁵² HRMMU interview, 21 October 2016.

officer put her passport aside, asked her to enter the container, closed the window and locked the door. He told the victim that he noticed her a month ago and intentionally made an error while renewing her permit. He then said that she should go with him to a hotel; otherwise, she would be kidnapped and buried alive. Then, the perpetrator forcefully made her sit on his lap and touched her body. She told OHCHR that she was crying and begging him to let her go. After 1.5 hours, he agreed to release her on the condition that she would return to the checkpoint, threatening her with blackmail and physical violence. The victim agreed to come back because she wanted to be set free. OHCHR assisted the victim in filing a complaint to the police.⁵³

60. In March 2016, three women⁵⁴ drove to Toretsk to receive humanitarian aid. They were stopped at a checkpoint controlled by the 'Aidar' battalion. The commander refused to let the car pass claiming that the husband of one of the women was on a SBU wanted list. Her passport and phone were seized. The 'Aidar' battalion commander then got into the car, put his hand on the victim's lap and said that the issue could be easily resolved. When the victim refused, the commander called armed men in camouflage without insignia, who drove the women to the nearest police station. There, the women were questioned and their phones were checked. When the victim asked police officers to present proof that her husband is on the wanted list, they failed to do so. Several hours later, following numerous appeals of the victim and the two other women, they were released.

61. OHCHR also documented additional cases that illustrate a previously identified pattern of sexual violence perpetrated in detention against those perceived to be a part of or affiliated to armed groups or their relatives in order to punish or humiliate, or extort a confession.⁵⁵

62. A woman⁵⁶ was detained in her home in June 2015 by ten armed unidentified men and taken to the basement of the Mariupol SBU. There she was tortured, interrogated, stripped naked and humiliated. When the victim was forced to confess on camera, it was visible that she was not wearing all of her clothing. As of 15 November 2016, she remained in detention. Despite the victim testifying in court regarding her torture, the SBU informed OHCHR that there was no conclusive forensic evidence to support her allegations.⁵⁷ OHCHR notes that in cases of gender-based and sexual violence, evidence other than forensic findings can be considered probative.⁵⁸

63. A man and his wife,⁵⁹ allegedly associated with the armed groups were detained in August 2014 by unidentified armed men

⁵³ HRMMU interview, 16 September 2016.

⁵⁴ HRMMU interview, 16 September 2016.

⁵⁵ HRMMU interviews, 26 August 2016, 27 September 2016.

⁵⁶ HRMMU interview, 26 August 2016.

⁵⁷ Security Service of Ukraine, information provided to HRMMU, 5 December 2016.

⁵⁸ International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (accessible at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf).

⁵⁹ HRMMU interview, 27 September 2016.

and transferred into the custody of local police. There the man was interrogated, tortured and threatened with execution. Meanwhile his wife was interrogated separately; beaten and threatened with rape. Later that day both of them were released.⁶⁰

Armed groups

64. It remains difficult to obtain first-hand accounts of conflict-related sexual violence in territories controlled by armed groups. Due to overall impunity, absence of services for survivors of sexual violence, access to justice and fear of reprisals, victims and their families are hesitant to report incidents of conflict-related sexual violence. This is aggravated by a lack of access to persons deprived of their liberty by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, which prevents any independent oversight, raising concerns that the worst may be expected, including that they may be subject to sexual and gender-based violence.

65. OHCHR recorded allegations and attempted to conduct inquiries into the killing of a 20-year-old woman found on 16 April 2016 in Alchevsk, Luhansk region. According to local sources, she was raped and strangled. Allegedly, her body was found not far from a ‘Luhansk people’s republic’ position. Relatives refused to speak to OHCHR.

III. Accountability and the administration of justice

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

“It was war time. We did not ask many questions. It meant that it had to be that way.”

- SBU officer testifying in court regarding the ill-treatment of Oleksandr Ahafonov

Accountability for abuses committed by the armed groups

66. During the reporting period, the Prosecutor General’s Office reported progress in investigating crimes committed by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ armed group commanders.

67. On 31 August, Podilskyi District Court of Kyiv ruled in favour of a *trial in absentia* for the ‘Luhansk people’s republic’ ‘head’ for the abduction of Nadiia Savchenko. According to the Prosecutor General’s Office, 17 persons are expected to testify in the course of the trial.

68. On 14 September, the Office of the Chief Military Prosecutor reported that a preliminary investigation against the commander of the ‘Somali’ battalion of the ‘Donetsk people’s republic’ had been completed, finding grounds to charge him with abduction, unlawful deprivation of liberty, and violations of

⁶⁰ Under article 258-3 of the Criminal Code of Ukraine.

the laws of warfare.⁶¹ He is accused of ill-treating captured Ukrainian soldiers, including Ihor Branovytskyi,⁶² who according to witnesses was executed on 21 January 2015 by a citizen of the Russian Federation, the commander of the ‘Sparta’ battalion of the ‘Donetsk people’s republic’.

Accountability for violations committed by the Ukrainian military or security forces

69. OHCHR has followed a number of emblematic prosecutions of members of the Ukrainian armed and security forces. Despite prosecutions being carried out against a number of SBU officials on various charges, OHCHR continued to monitor cases where SBU officials enjoy impunity, particularly for human rights violations committed in the course of their duties.

70. A certain number of Ukrainian soldiers and law enforcement officials have been detained on charges related to the conflict, such as torture, excess of power and state treason, with some held in solitary confinement, in one case lasting for more than seven months.⁶³

71. The ongoing trial of two SBU officers charged with torturing Oleksandr Ahafonov illustrates the systemic obstacles to holding state officials accountable for crimes perpetrated in connection with the armed conflict. Only two SBU officials have been put on trial, despite the involvement of two other officials from the SBU in Izium in Ahafonov’s transfer and detention. OHCHR is moreover concerned that the heads of the Izium police and SBU orally condoned the practice of police transferring detainees into SBU custody, but have not been charged for their involvement.

72. Most members of voluntary battalions who committed human rights violations in the early stages of the conflict in Donetsk and Luhansk have not been brought to justice. Despite victims’ and witnesses’ accounts of such violations,⁶⁴ it appears that investigations into these incidents often face political interference and obstruction designed to shield perpetrators.

73. Five members of the ‘Donbas’ battalion have been accused of a number of crimes against civilians including abduction, armed robbery, extortion, banditry, hooliganism, and illegal possession of weapons. Four members of parliament including a former commander of the ‘Donbas’ battalion attended one of their preliminary hearings on 30 August. They requested the court to release the defendants on their personal guarantees. The members of parliament overtly exerted pressure on the judges, threatening to initiate corruption proceedings. They also verbally insulted the victims, accusing them of separatism. Ultimately, the defendants were released on the personal guarantees of the parliamentarians.

⁶¹ Also charged under article 146 (illegal abduction or confinement of a person), 258 (terrorist act), 253 (creation of a terrorist group or terrorist organisation), 437 (planning, preparation and waging aggressive war) and 438 (violation of the rules of warfare) of the Criminal Code of Ukraine.

⁶² OHCHR Thematic report: Violations and abuses of the right to life in Ukraine from January 2014 to May 2016, Annex I, para. 25.

⁶³ HRMMU interview, 4 October 2016.

⁶⁴ HRMMU interview, 31 August 2016.

74. Twelve members of the ‘Tornado’ special police patrol battalion remain in custody pending trial accused of grave human rights violations including arbitrary detention, abduction and torture. According to the General Prosecutor’s Office, the accused are responsible for the unlawful deprivation of liberty and torture of over 10 individuals, only eight of whom have been identified. The whereabouts of two other victims are unknown.⁶⁵

B. Human rights impact of armed group structures

75. OHCHR continued to monitor the human rights impact of what the armed groups refer to as ‘courts’, ‘judges’, and ‘prosecutors’. These structures do not comply with the right “to a fair and public hearing by a competent, independent and impartial tribunal established by law” as enshrined in article 14 of the ICCPR. OHCHR notes that both international human rights and humanitarian law incorporate a series of judicial guarantees, such as trial by an independent, impartial and regularly constituted court. These structures in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, *prima facie*, do not meet these requirements.

76. OHCHR attempted to monitor a ‘court hearing’ on 4 October 2016 held by the ‘Donetsk people’s republic’ to verify the fate and whereabouts of the accused but was denied access as the ‘hearing’ was closed to the public.

77. The enforcement of decisions issued by such structures raises further concerns. In November 2016, a ‘court’ in the ‘Donetsk people’s republic’ ruled on a pre-conflict civil claim ordering an asset seizure. The defendant was subsequently prevented from leaving the territory of the ‘Donetsk people’s republic’ by the ‘ministry of state security’, raising serious concerns about the legality of the sanction, resulting arbitrary restrictions on movement, and the conduct of the ‘ministry of state security’ in carrying out the decisions of ‘Donetsk people’s republic’ ‘courts’.⁶⁶

78. On 18 August, OHCHR held a meeting with the ‘Donetsk people’s republic’ ‘supreme court’. OHCHR was informed that not all ‘courts’ are operational, and some of them are understaffed. There are 73 ‘judges’ currently working in 13 ‘courts’ (24 in the ‘supreme court’ and 49 in ‘courts of general jurisdiction’). In two years, these ‘courts’ have heard 57,119 cases⁶⁷. If accurate, tens of thousands of people living in the ‘Donetsk people’s republic’ have been subject to what appears to be summary decisions without access to legal remedy.

79. OHCHR is concerned that these structures decide on the fate of individuals detained prior to the conflict. As of 15 November, 16 pre-conflict detainees have cases pending before the ‘supreme court’ of ‘Donetsk people’s republic’. These detainees are deeply concerned about the legality of the proceedings.

⁶⁵ General Prosecutor’s Office, information provided to HRMMU, 5 December 2016.

⁶⁶ HRMMU interview, 9 November 2016.

⁶⁷ HRMMU meeting, 18 August 2016.

80. OHCHR was informed that Ukrainian soldiers captured in the course of hostilities are also ‘prosecuted’ in ‘Donetsk people’s republic’ ‘courts’. As of 15 November, nine conflict-related ‘criminal cases’ are pending in front of the ‘supreme court’. On 31 October, the ‘supreme court’ of the ‘Donetsk people’s republic’ reportedly sentenced the alleged organizer of an assassination attempt against the head of the ‘republic’ to 14 years of deprivation of liberty. The ‘ministry of state security’ of the ‘Donetsk people’s republic’ released the name of the accused and alleged that he served with the SBU. OHCHR recalls that the sentencing of an individual by the ‘Donetsk people’s republic’ without due process or basic judicial guarantees including trial by an independent, impartial and regularly constituted court, may amount to a war crime⁶⁸ and violations of international human rights law.

81. According to the ‘ministry of justice’, as of 13 September 150 lawyers have been admitted to the ‘Donetsk people’s republic’ bar. On 10 November and 15 November, the Prosecutor General’s Office reported that 45 ‘judges’ and 53 ‘prosecutors’ of the ‘Donetsk people’s republic’ were charged with “facilitation of the activities of a terrorist group or terrorist organization”.⁶⁹ Reportedly, some were Government civil servants that joined the ‘Donetsk people’s republic’ after the onset of the armed conflict.

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

“Everybody knows that I am innocent but no one wants to admit that they made a mistake because they do not want to be held responsible.”

- A man from Avdiivka currently on trial for conflict-related offenses

82. Through trial monitoring and interviews with individuals accused of affiliation with armed groups, OHCHR has documented persistent and systematic violations of due process and fair trial rights in Ukraine. OHCHR has observed a consistent and ongoing pattern of violations during the initial stages of detention where a person is arbitrarily detained and his detention not recorded.⁷⁰ OHCHR has gathered sufficient verified information to conclude that torture and ill-treatment allegedly perpetrated by law enforcement and security forces are closely linked to the administration of justice in conflict-related cases.

⁶⁸ Rome Statute of the International Criminal Court, Article 8.2.c.(iv).

⁶⁹ Office of the Prosecutor General, Prosecutor’s Office of Donetsk region jointly with the Donetsk regional office of the SBU charged 53 prosecutors of the terrorist organization ‘DPR’, 15 November 2016 (accessible at: http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=196302); Office of the Prosecutor General, “Prosecutor’s Office of Donetsk region charged 45 judges of the terrorist organisation ‘DPR’” (accessible at: http://www.gp.gov.ua/ua/news.html?_m=publications&_t=rec&id=195991&fp=30 - on ‘judges’, 10 November).

⁷⁰ Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Ukraine, CAT/OP/UKR/1, 2011, para. 50.

83. Interviewees subjected to arbitrary detention complained about violations of a number of their due process and fair trial rights, including access to legal counsel, instruction on rights,⁷¹ and right not to be compelled to testify against oneself or confess guilt.

84. OHCHR has noted that a lack of trust in law enforcement organs and the judiciary prevents victims from complaining about torture and ill-treatment to the prosecution or judges. Some interlocutors also complained that the lawyers provided by the Free Legal Aid Centres fail to take any steps to file their torture claims with the relevant authorities.

85. While many interviewees complained to OHCHR about the alleged lack of impartiality of judges, none filed formal complaints with the High Qualification Commission of Judges, which until 29 September 2016 had the mandate to carry out disciplinary proceedings against judges.

86. Interference with the independence of the judiciary remains of critical concern. OHCHR has noted patterns of political interference in the investigation and prosecution of Ukrainian military and security personnel for human rights violations committed in the context of the conflict⁷². Such patterns have been systematically observed in Odesa region, where members of the judiciary have openly complained about attempts by politicians and “patriotic” organizations to exercise pressure to influence the outcome of judicial decisions. Even though such pressure often takes the form of explicit threats in the courtroom during proceedings, law enforcement habitually fail to respond. OHCHR recalls that the Government of Ukraine is obligated to ensure independence of the judiciary from any interference, as it could undermine the right to fair trial and basic judicial guarantees, eroding trust in the judiciary and amounting to violation of human rights.

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

Accountability for the killings of protesters at Maidan

87. OHCHR continued to follow the prosecution of former Berkut special police regiment servicemen accused of killing protestors during the Maidan protests in Kyiv, noting some progress in bringing low and mid-level sergeants and majors to account.

88. Over the reporting period, Sviatoshynskyi district court in Kyiv held a number of hearings in the case of five former Berkut servicemen accused of killing 48 and inflicting bodily injuries to 80 protestors on 20 February 2014 at Maidan. The five accused remain in custody while the victims testify in court. As of 4 October only the relatives of 20 out of the 48 victims have testified.

89. In a different case, four Berkut servicemen are accused of inflicting bodily injuries while forcefully dispersing protestors

⁷¹ Principle 13, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

⁷² 15th OHCHR report on the human rights situation in Ukraine, para 70.

on 18 February 2014. After spending some 18 months in custody, the former commander of the Kharkiv Berkut unit confessed in court to failing to take any measures to prevent his subordinates from using force against protesters. He named a group of his fellow servicemen who received shotguns and shotgun shells instead of rubber bullets. He also testified to seeing them firing at the protesters. According to the Prosecutor General's Office, 110 protesters sustained bodily injuries of various levels of severity on 18 February 2014.

Accountability for the 2 May 2014 violence in Odesa

90. OHCHR continued to monitor the trials concerning the 2 May 2014 events in Odesa, noting that over two and a half years after the events that resulted in the death of 48 people, investigations and prosecutions have been markedly slanted in one direction against members of the 'pro-federalist' movement. OHCHR has observed that despite authorities' long-standing knowledge of the crimes committed in the course of the events, the overall investigative steps taken and evidence presented appears manifestly inadequate in light of evidence and steps available. The proceedings have also been characterized by unjustified delays inconsistent with the intent to bring those responsible to justice.

91. For over two years, the five men accused of mass disorder in the Odesa city centre have remained in pre-trial custody. Since 27 November 2014, all court hearings assessing the renewal of their detention order have been attended by a group of male 'pro-unity' activists supporting the prosecution and demanding the continued detention of the accused. OHCHR has observed instances of the group exercising pressure on the judiciary, most recently during hearings on 25 and 27 October.⁷³ Such pressure has caused delays in the proceedings.

Accountability for the 31 August 2015 violence in Kyiv

92. OHCHR continued to follow developments of related to the 31 August 2015 incident of violence in front of parliament when four National Guard servicemen were killed and 152 other persons injured by a hand grenade explosion and subsequent clashes, observing violations of due process and fair trial rights in the efforts of the authorities to bring those responsible to account.

93. After almost a yearlong investigation, the case has been transmitted to Pecherskyi District Court of Kyiv for review of the merits. In parallel, a local court is examining the merits of a case against 15 individuals involved in the subsequent riots and clashes.

94. OHCHR interviewed the two accused, currently held in SIZO.⁷⁴ Both were held in police custody at odds with Ukrainian legislation⁷⁵. One of them claimed to be beaten at the moment of arrest and subjected to numerous threats at the police department on the day of detention. The administration of the facility and the investigators disregarded his requests for legal assistance and

⁷³ 15th OHCHR report on the human rights situation in Ukraine, paras 88-90.

⁷⁴ HRMMU interview, 20 October 2016; HRMMU interview, 19 February 2016.

⁷⁵ Article 2, Internal Rules of Conduct in Temporary Detention Facilities of the Ministry of Internal Affairs.

informally questioned him several times a week without the presence of his lawyer. The defendant believes that his ill-treatment by law-enforcement was triggered by statements to the media of the Minister of Internal Affairs⁷⁶. The custodial detention of both suspects was routinely prolonged for more than one year without adequate justification and review.⁷⁷

IV. Fundamental freedoms

A. Freedom of movement

“I do not know how high my pension should be to make me go through all the humiliation associated with crossing the contact line again.”

– A man in a wheel chair travelling across Zaitseve entry-exit checkpoint

95. Limitations of freedom of movement continue to cause disproportionate suffering to the civilian population in the conflict-affected area. Between August and November, approximately 25,000 civilians⁷⁸ crossed the contact line daily through five designated crossing points, including a wooden ramp for pedestrians connecting parts of a destroyed bridge. The number of people crossing decreased compared to the previous reporting period as the operating hours of the checkpoints were reduced and OHCHR continued to regularly observe long queues at all entry-exit checkpoints. Armed groups sometimes arbitrarily close checkpoints, adversely impacting civilian freedom of movement.⁷⁹

96. The relocation of entry-exit checkpoints and a shrinking of the “no man’s land”⁸⁰ has also continued. On 21 October, the State Border Service of Ukraine relocated Zaitseve entry-exit checkpoint to Maiorsk checkpoint,⁸¹ closer to the contact line.⁸² On 1 November, OHCHR visited the checkpoints in Maiorsk and in the “no man’s land” between Ukrainian Armed Forces and ‘Donetsk people’s republic’-controlled checkpoints, observing long queues of civilian and cars. Several individuals, who regularly cross the checkpoints told OHCHR that the relocation did not ease civilian passage through the checkpoints. They also complained that the processing time was still long and there was lack of necessary facilities.

⁷⁶ “Avakov named responsible for the terrorist act the Parliament on 31 August”, Forbes Ukraine, 17 September 2015 (accessible at: <http://forbes.net.ua/news/1402128-avakov-nazval-vinovnyh-v-terakte-pod-radoj-31-avgusta>).

⁷⁷ 15th OHCHR report on the human rights situation in Ukraine, D. Arbitrary detention in conflict-related cases.

⁷⁸ According to the State Border Guard Service of Ukraine.

⁷⁹ Between 10 and 12 November, the ‘Donetsk people’s republic’ closed the checkpoint between Novoazovsk and Mariupol.

⁸⁰ 15th OHCHR report on the human rights situation in Ukraine, para. 99.

⁸¹ Horlivka – Artemivsk transport corridor.

⁸² As a result of relocation of entrance/exit crossing point, such towns and villages as Zaitseve, Maiorsk, Kurdiumivka, Odradivka, Mykolaivka and Kodyma will no longer be in the so-called “grey zone” or “no man’s land” and its residents will not need to pass entry-exit checkpoints on the way to other Government-controlled territories.

97. The proximity of checkpoints to the contact line increases security risks for civilians. On 27 October, the Maiorsk checkpoint was closed due to ongoing mortar shelling and exchanges of fire and in the evening another entry-exit checkpoint in Marinka was targeted by small arms fire and automatic grenade launcher. The same checkpoint was shelled on the night 8 November, while civilians were queuing nearby. No casualties were reported.

98. During the reporting period, many civilians faced technical difficulties renewing the electronic permit required for crossing the contact line. Electronic permits were introduced in July 2015 and expired after one year. Some civilians were trapped at the entry-exit checkpoint with expired permits. Many of those affected were elderly persons who required assistance renewing the permit. Bio-metric passport holders⁸³ were unable to apply for a permit online. Limited information about the renewal procedures created distress for civilians crossing the contact line.

99. Checkpoint personnel retain the ability to deny entry or exit to any person perceived to be a “threat to national security”. Without clear criteria, civilians may be arbitrarily denied movement across the contact line.

100. As temperatures fall and checkpoints operate for fewer hours, crossing the contact line for civilians who do not have personal transportation becomes more arduous.⁸⁴ Buses cannot go through the “no man’s land” between checkpoints, so civilians have to walk across the contact line by foot for approximately 3 kilometres. This disproportionately affects older persons and families with children. Persons with disabilities face even more difficulties while crossing the contact line. There are no toilets accessible for wheelchair users. Although railway transport corridors were initially foreseen for civilian movement across the contact line, none are functional, while freight trains cross the contact line daily.

101. Civilians living in the vicinity of the contact line, and especially those who live in the area between Government and armed group checkpoints, face disproportionate restrictions in their freedom of movement. They have to queue at official entry-exit checkpoints, or take roundabout paths that are dangerous due to the presence of mines and explosive remnants of war (ERWs). A number of villages in this “no man’s land” have no public transportation, restricting residents’ mobility. Residents of Novooleksandrivka⁸⁵, which is located between Government-controlled Popasna and armed-group-controlled Pervomaiske, reported that they can only get in and out of their village by foot or bicycle as only two cars are allowed to enter or exit the village per month. Residents have to pass through checkpoints to get to the nearest shop, hospital and pharmacy located ten kilometres away.

⁸³ Introduced on 12 January 2015.

⁸⁴ In June 2015, official public transportation via the contact line was prohibited for “security reasons” following amendments to the Temporary Order – para 1.6.

⁸⁵ HRMMU visit, 5 September 2016.

B. Freedom of opinion and expression

"I am afraid to talk. I don't know who to trust."

- A woman living in armed group-controlled territories

102. During the reporting period, there was a rise in inflammatory language and hate speech by public officials, which may contribute to discrimination against vulnerable groups including IDPs, and runs counter to the spirit of article 20 of the ICCPR.

103. On 23 September, in an official statement⁸⁶, the Minister of Internal Affairs attributed an increase in the crime rate to an inflow of IDPs. On 26 September, a number of NGOs expressed⁸⁷ their outrage and called upon the Minister to either present supporting evidence or revoke his statement. No action followed. On 8 October⁸⁸, the Deputy Head of the National Police of Ukraine highlighted that the number of thefts has grown in the regions with the highest numbers of IDPs, instigating a negative attitude towards IDPs. OHCHR addressed these issues with representatives from the Ministry of Information and Ministry on Temporarily Occupied Territories and IDPs, raising concerns about discrimination, hate speech and that such rhetoric is not conducive to future reconciliation.

104. OHCHR also noted a rise in hate speech on social networks and incitement to violence against Roma after the incident in Loshchynivka (See Rights of minorities and discrimination, paragraph 152). OHCHR identified more than 40 reports⁸⁹ in regional and national media outlets containing hate speech and inflammatory language, using offensive and stereotypical terms as 'gypsies'. Many reports referred to Roma as "murderers" and "criminals", contributing to further escalation of tensions and discriminatory attitude towards them. One Roma family that was forced to leave Loshchynivka has been treated as criminals and denied residence in other villages, impacting children and their access to education, and the rights of the family to adequate housing and secure tenure.

105. OHCHR remains seriously concerned about the lack of genuine investigations into high-profile killings, assaults

⁸⁶ Particularly, the minister stated: "during the years of war approximately a million refugee-migrants from the Donbas territory came into Kyiv. Across the country two to three million people also create certain problems". The statement was published on the official website of the Ministry of Internal Affairs (Accessible at: http://www.mvs.gov.ua/ua/news/2974_Arsen_Avakov_zaklikav_Radu_pidtrimati_zakonoproekt_pro_kriminalni_prostupki_FOTO_VIDEO.htm).

⁸⁷ 'Public position of civil society organisations with regards to the statement of the Minister of Interior of Ukraine concerning IDPs' published 26 September 2016 (Accessible at: http://vostok-sos.org/avakov_hate_speech/#twitter).

⁸⁸ Troian, Vadym, *Zerkalo Nedeli*, "War at the Criminal Forefront", 8 October, (Accessible at: http://gazeta.dt.ua/internal/viyna-na-kriminalnomu-fronti-_html).

⁸⁹ Some of the examples may be found here: Newspaper Economic News, "Gypsy raped and killed 9-year-old girl in Odesa region, people destroy the community", 28 August 2016 (accessible at: http://news.eizvestia.com/news_incidents/full/463-cygan-iznasiloval-i-ubil-9-letnyuyu-devochku-v-odesskoj-oblasti-lyudi-gromyat-obshhinu-fotovideo); TV channel ICTV, "In Odesa region a Gypsy raped and killed 9-year old child, unrest in the village (PHOTOS, VIDEO)", 28 August 2016 (accessible at: <http://fakty.ictv.ua/ua/index/read-news/id/1593001>).

and violations of the rights of journalists. Little progress has been made in identifying those responsible for the killing of Oles Buzyna on 16 April 2015 in Kyiv. The killing of Pavel Sheremet on 20 July in a car bomb explosion is under investigation by the Main Investigation Department of the National Police together with an inter-agency operational group, comprised of the National Police, the SBU and officers from the U.S. Federal Bureau of Investigation (FBI).

106. According to the Main Investigation Department of the National Police of Ukraine, 159 criminal proceedings have been launched in 2016 into attacks against journalists.⁹⁰ While this marks a 29 per cent increase from 2015, OHCHR is concerned that criminal proceedings into such cases rarely yield results. In 2016, only seven suspects have been identified in 95 investigations into the obstruction of journalist activities.

Territories under the control of armed groups

107. Freedom of opinion and expression continues to be curtailed by the armed groups. Such limitations are particularly pronounced in territories under ‘Luhansk people’s republic’-control, where residents are more reluctant to speak to external monitors.

108. The registration and accreditation of foreign journalists by armed groups continues to be largely arbitrary. OHCHR interlocutors report that ‘loyal’ journalists benefit from certain privileges such as extended accreditation. One media professional relayed how the armed groups exerted pressure by sending ‘Donetsk people’s republic’ ‘police’ to the hotel where his crew was staying while preparing a report on a sensitive topic. The same media professional mentioned being apprehended not far from the Donetsk airport with a colleague, taken to a military base and questioned for 1.5 hours by members of the armed groups in March 2015⁹¹ and forced to erase all their recorded material.

109. On 16 August, the ‘central city district court’ of Makiivka ‘sentenced’ a blogger⁹² and civil society activist from Kyiv to two years of imprisonment for the ‘illegal possession of weapons’. On 24 October, his case was heard in the ‘court of appeal’ of the ‘Donetsk people’s republic’ and was sent for an additional investigation to the ‘district prosecutor’s office’ in Makiivka.

110. OHCHR observed that people living in the territories controlled by armed groups continued to have limited access to information. Ukrainian television channels are not broadcast on cable television, however they are accessible online and on satellite television. A number of websites have been blocked, hindering the free flow of and access to information.⁹³

⁹⁰ Under articles 345-1, 347-1, 348-1, 349-1 and 171 of the Criminal Code of Ukraine.

⁹¹ HRMMU interview, 31 August 2016.

⁹² 15th OHCHR report on the human rights situation in Ukraine, para. 119.

⁹³ UN General Assembly (110(II), 290 (IV), 380 (V)) addressed incitement and propaganda as containing “measures tending to isolate the peoples from any contact with the outside world, by preventing the Press, radio and other media of

111. Considering the above-mentioned findings, OHCHR commends the endeavour of the Government of Ukraine to enlarge the broadcasting capacity of existing television towers and rebuild damaged or destroyed ones, so that people on both sides of the contact line have broader access to information.⁹⁴

112. Hate speech against certain groups remains visible both in the media as well as among the general public. During the ‘simultaneous release’ of conflict-related detainees on 17 September, a foreign journalist used derogatory and offensive language towards Ukrainian journalists and detainees in a publicly available video. OHCHR recalls the limitations of article 20 of the ICCPR, which prohibit “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”

C. Freedom of association

113. OHCHR continued to monitor the prosecution of Communist Party members, noting that targeted legal action continues to impact freedom of association.⁹⁵

114. On 13 October, OHCHR monitored a hearing in the case of the 68-year-old head of the Kharkiv branch of the Communist Party charged with trespassing against the territorial integrity of Ukraine.⁹⁶ The Court of Appeals of Kharkiv region ruled to transfer her from pre-trial detention to house arrest referring to a life-threatening health condition and substantiating the decision by citing international standards. Even if international human rights law establishes that pre-trial should be the exception, OHCHR notes that national legislation does not provide alternatives for custodial detention in terrorism-related cases.⁹⁷

Territories under the control of armed groups

115. Civil society and NGOs continued to face restrictions in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, impacting their work, members, and beneficiaries.⁹⁸

116. OHCHR received information that NGO premises were searched and their staff questioned by the ‘ministry of state security’ and ‘military police’ of the ‘Donetsk people’s republic’. According to local interlocutors, the ‘Donetsk peoples republic’ target NGOs they consider “uncomfortable”, and stifle any civil society or humanitarian organization that does not have close links with them. This adversely impacts people relying on assistance provided by such organisations. Civil society organisations are reluctant to report incidents of interference by the armed groups in their activities fearing retribution and persecution. OHCHR has also observed the continued rapid

communication from reporting international events, and thus hindering mutual comprehension and understanding between peoples.

⁹⁴ Statement of Deputy Minister Artem Bidenko, 10 November 2016.

⁹⁵ 15th OHCHR report on the human rights situation in Ukraine, para. 106.

⁹⁶ She was charged with trespassing against the territorial integrity of Ukraine and giving a bribe (under articles 110 and 369 of the Criminal Code of Ukraine).

⁹⁷ 15th OHCHR report on the human rights situation in Ukraine, para. 82.

⁹⁸ 15th OHCHR report on the human rights situation in Ukraine, para. 109.

development of the association ‘Mir Luganshchine’ (‘Peace to Luhansk’) created by the armed groups; it now claims a membership of 77,800 persons, compared to 72,500 during previous reporting period. OHCHR is concerned that participants are being forced and coerced to partake in the organization and its activities.

D. Freedom of peaceful assembly

117. Since the Maidan events of 2014⁹⁹, the number of bans of peaceful assemblies across Ukraine has steadily decreased. However, OHCHR notes that such restrictions are still used.

118. In Odesa, weekly gatherings of ‘pro-federalism’ supporters continued to face restrictions imposed by law-enforcement grounded on alleged bomb threats, despite the manifest lack of credible risk.

119. The absence of legislation protecting and regulating peaceful assembly has allowed local councils and courts to arbitrarily limit the freedom of assembly.¹⁰⁰ A decision adopted by the Constitutional Court of Ukraine¹⁰¹ on 13 September was an important development, upholding that legal provisions requiring prior permission from authorities for religious gatherings are not compliant with the Constitution of Ukraine. The court also affirmed that any notification to the authorities is not an authorization procedure.

120. However, Ukrainian courts continue to apply arbitrary limitations on assemblies to allegedly mitigate risk to public order. Law-enforcement regularly cites the anticipated ‘polarity of views’ of participants as grounds for limiting assemblies and is selectively enforced.¹⁰²

121. On 20 September, OHCHR observed assemblies organised near Russian Federation consulates in Kyiv and Odesa in response to the Russian Federation elections that were held in Crimea by the de-facto authorities in violation of General Assembly Resolution 68/262. One person who came to vote at the Russian Federation consulate in Kyiv was beaten. Those involved in the violence were taken to nearby police precincts for questioning, and subsequently released. Some of them were charged with hooliganism and resisting arrest.

⁹⁹ Demonstrations which turned violent in November 2013 - February 2014 and led to a change of government in Ukraine.

¹⁰⁰ These include: the organisation/preparation of a peaceful assembly; cooperation with the police during a peaceful assembly; the terms of notification for a peaceful assembly; the appeal procedure when an assembly is rule to be prohibited.

¹⁰¹ Decision of the Constitutional Court in case of Constitutional submission made of the Ombudsperson Office regarding compliance with the Constitution of Ukraine (constitutionality) of provisions article 21 of the Law ‘On Freedom of Conscience and Religious Organizations’ (case on advance notifications on holding of public worship, religious rites, ceremonies and processions) No. 6-pp/2016 as 8 September.

¹⁰² Decision of District Administrative Court of Lviv region adopted on 5 November 2016.

122. OHCHR monitored two peaceful demonstrations in Kyiv demanding the release of Roman Sushchenko, a Ukrainian journalist who was detained in Moscow on 30 September.¹⁰³

Territories under the control of armed groups

123. OHCHR monitoring found that employees of public ‘budget-funded’ institutions, as well as students and school graduates are obliged to participate in demonstrations that take place in the ‘Luhansk people’s republic’. Similar conduct has been observed in territories under control of ‘Donetsk people’s republic’ armed groups.

124. On 10 October, a rally took place in Luhansk against the deployment of an armed OSCE monitoring mission, the latest in a pattern of armed group-organized assemblies.¹⁰⁴ As reported by local media¹⁰⁵, the protest gathered 17,000 people. Notably, ‘Luhansk people’s republic’ media emphasized that it was a ‘improvised rally’ with ‘hand-made posters’ to underline the voluntary nature of the protest. The accounts collected by OHCHR suggest that the participants had to sign a paper obliging them to participate in the rally, while ‘student trade unions’ were responsible for ensuring student participation.

V. Economic and social rights

A. Civil documentation and access to public services

125. People living in the territories controlled by armed groups continue to face difficulties with restoring or obtaining civil registration documents, which impedes their access to other public services.

126. In order to restore, receive or apply for civil documentation, people have to travel to Government-controlled territories at least twice for several days¹⁰⁶. Despite the simplified procedure introduced by the Ministry of Justice of Ukraine in February 2016 for persons living in armed group-controlled territories to obtain civil documentation, it remains cumbersome and lengthy. Interviewees in several cases confirmed that the procedure takes up to two weeks,¹⁰⁷ often requires the engagement of legal representation,¹⁰⁸ and report instances of corruption.

127. The ongoing reform process has presented additional difficulties for the conflict-affected population.

¹⁰³ On 30 September, Roman Sushchenko, the correspondent of Ukrainian National News Agency Ukrinform was detained in Moscow.

¹⁰⁴ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 39.

¹⁰⁵ Donpress, “Luhansk: LPR stated that 17.000 persons attended demonstration,” published on 10 October 2016 (accessible at link: <https://donpress.com/news/10-10-2016-lugansk-v-lnr-zayavili-chto-na-miting-prishli-17-tysyach-chelovek>).

¹⁰⁶ HRMMU interview, 6 October 2016.

¹⁰⁷ As regulated by relevant amendments to the Civil Procedure Code of Ukraine introduced on 4 February 2016.

¹⁰⁸ HRMMU interview, 6 October 2016.

According to new procedures¹⁰⁹ effective 1 June 2016, children have to obtain a new ID card at age 14 instead of a passport at 16. Both children living in territories controlled by armed groups and those internally displaced will be unable to obtain ID cards, as one of the requirements is to have an official place of residence registered in Government-controlled territories.

128. Pre-conflict detainees, who were released after serving sentences in armed group-controlled territory, whose documents were lost or expired, face additional challenges, as they must also confirm the legality of their release, which is virtually impossible due to the absence of unified register or database of prisoners. Conflict-related detainees, who were “simultaneously released” without their passport or whose passport photos have to be renewed, do not have any valid documentation and cannot travel to Government-controlled territories to renew their passports.

B. Right to social security

Social security of internally displaced persons

129. The suspension of social and pension payments to IDPs until verification of their residential address takes place is an ongoing concern.¹¹⁰ This continues to have a negative impact on IDPs’ access to social entitlements. Social protection departments in the eastern regions of Ukraine face serious challenges when conducting the verification due to understaffing and lack of financial and technical resources.

130. IDPs in Berdiansk have to wait around a month to undergo the verification procedure, leading to delays in the resumption of payments. An audit conducted by the State Financial Inspection upon instruction of the Ministry of Finance concluded that 25.9 per cent of IDP housing subsidy allocations were erroneous.¹¹¹

131. Many IDPs, especially those who rely on state financial support as their prime source of income, indicate that they would be forced to return to territories controlled by the armed groups due to suspension of benefits and increased utility prices in 2016. According to the Ministry of Social Policy, 88 per cent of IDP renewal claims have been processed.¹¹² However, IDPs have complained to OHCHR that the social payment resumption and verification mechanism lacks transparency and presents excessive bureaucratic obstacles.

132. While OHCHR recognises the legitimate right of the Government to combat fraud and control social payment allocation, the process should be conducted in a transparent

¹⁰⁹ In line with the Law of Ukraine Nr. 3224 “On amending some laws of Ukraine regarding documents that confirm citizenship of Ukraine, identify a person or their special status, aimed at visa liberalisation with the European Union”, which entered into force on 1 June 2016.

¹¹⁰ 15th OHCHR report on the human rights situation in Ukraine, paras. 129-131.

¹¹¹ Data was presented by the State Financial inspection during the parliamentary hearings on the results of verification organised by the parliamentary committee on social policy, employment and pensions. HRMMU attended the hearings on 19 October 2016.

¹¹² Ministry of Social Policy, information provided to HRMMU, 30 November 2016.

manner, delinking pensions and social entitlements from residence registration and IDP certification. A comprehensive national legislative framework regulating such procedures should be developed, paying special attention to data protection. OHCHR welcomes the launch in October of the unified database of IDPs, administered by the Ministry of Social Policy, marking a positive step toward more systematic information management.

Social protection of demobilized soldiers and injured civilians

133. During a parliamentary hearing,¹¹³ various actors highlighted that demobilized soldiers continue to face systemic hurdles in exercising their rights due to inadequate mechanisms for implementing legislative provisions that foresee certain entitlements and services. Despite the existence of a State Agency on Veterans and Participants of the ‘Anti-Terrorist Operation’ Affairs¹¹⁴ and a number of State programs, such as on housing, psychological rehabilitation and career counseling, former soldiers do not always have sufficient information on available social services. Furthermore, high-quality services are available in cities, with little or no assistance available in smaller towns and rural areas.¹¹⁵

134. Mobilized soldiers have fewer social guarantees than those serving under contract. For example, mobilised soldiers have to pay for HIV and hepatitis screening, unlike Army personnel serving under contract. As a result, a very low number of soldiers undergo such examinations, aggravated by low levels of awareness about communicable diseases. Interviews also indicate that members of volunteer battalions do not have access to free treatment in military hospitals.

135. As previously noted by OHCHR,¹¹⁶ Ukraine lacks a comprehensive State rehabilitation programme for demobilized soldiers and members of volunteer battalions, to facilitate reintegration into communities. Most programs include short-term stays in sanatoriums for soldiers and their families. OHCHR welcomes the plans of the Ministry of Social Policy to develop a comprehensive model of assistance for soldiers with post-traumatic stress disorder. After returning from the conflict area, soldiers face unemployment, lack of job opportunities and few opportunities for requalification training. Allocation of agricultural land to demobilized soldiers, envisioned as the part of a reintegration program, remains mired in procedural hurdles.

136. Ukraine lacks a unified registry of civilians who suffered physical injuries as a result of hostilities in Donetsk and Luhansk regions. Furthermore the Government has not determined their legal status, nor allocated any entitlements to victims of the conflict. As a result, civilians injured in hostilities – often due to indiscriminate shelling – suffer both the effects of their physical injuries, and denial of social and legal protection.

¹¹³ 19 October 2016, Parliamentary hearings on ‘State Guarantees for Social Protection of ATO and Revolution of Dignity Participants and Their Family Members: Current Situation and Perspectives’.

¹¹⁴ Resolution of the Cabinet of Ministers No. 326, 11 August 2014.

¹¹⁵ Ministry of Social Policy, information provided to HRMMU, 30 November 2016.

¹¹⁶ 15th OHCHR report on the human rights situation in Ukraine, para. 123.

C. Housing, land and property rights

137. OHCHR continues to observe the negative impact of military presence on access to housing, property and livelihoods in the conflict-affected area. During monitoring visits along the contact line, OHCHR observed military use of and shrapnel damage to houses in Government-controlled Avdiivka, Lopaskyne, Novozvanivka, Opytne and Tonenke. In Novozvanivka – a village of 77 residents – OHCHR noted significant presence of Ukrainian Armed Forces in residential areas. Several private houses were used by military personnel. OHCHR received allegations¹¹⁷ that the military fired weapons from yards of civilian homes. This frequently attracted return fire, endangering the civilian population.

138. During a meeting with OHCHR, a deputy-commander of the ‘Anti-Terrorism Operation’ in Kramatorsk confirmed the military use of residential property in the conflict zone, stating that utilized homes belong to “separatists who escaped to the other side”¹¹⁸. The ‘Anti-Terrorism Operation’ command has advised individuals and families who have been affected by the military use of their homes to complain to local police, local authorities or military commanders. OHCHR notes that few victims file formal complaints, either due to fear of reprisals by the military or absence of effective remedial avenues through the judiciary for such cases.

139. In Avdiivka, individuals and families whose homes are used for military purposes by Ukrainian Armed Forces complained about high utility bills incurred by soldiers. According to the families affected, the utility company has refused several of their requests to cut off the electricity supply to their houses and continues to bill them for electricity used by soldiers.

140. One resident of Novooleksandrivka told OHCHR he was concerned about tensions with Ukrainian soldiers and military positions close to areas where civilians graze their livestock.¹¹⁹ Agricultural land used for military purposes and contaminated by mines and ERWs has a detrimental impact on people’s access to livelihoods. A man from the village Pryovrazhne in Donetsk region expressed his despair at losing his land in 2014 when Ukrainian Armed Forces seized agricultural lands to build trenches and other fortifications, rendering the lands unsuitable for future agricultural use. Apart from the fact that residents of the village do not have access to their sole source of income, they are required to pay land taxes and rental charges.¹²⁰ Residents of Mykolaivka village, Donetsk region complained that 60 per cent of the land previously used for agriculture can no longer be used due to mine contamination or because the land is used for military purposes.¹²¹

¹¹⁷ HRMMU interview, 5 September 2016.

¹¹⁸ HRMMU interview, 7 September 2016.

¹¹⁹ HRMMU interview, 5 September 2016.

¹²⁰ The case was presented on 7 September 2016 during a round-table on “Access to Justice” organised by the Danish Refugee Council. HRMMU carried out follow-up action on 19 October 2016.

¹²¹ HRMMU site visit, 7 November 2016.

141. The lack of compensation mechanisms for destroyed, damaged and militarily utilized property remains one of the most prevalent problems faced by the conflict-affected population. Those who lost their property receive free legal aid and submit complaints to courts but with little success. When rejecting such claims, Ukrainian courts continue to find that they do not meet the minimum threshold to establish liability, either due to absence of evidence connecting destruction of property to the armed conflict or inability to establish responsibility.

Territories under the control of the armed groups

142. OHCHR received reports¹²² that ‘Luhansk people’s republic’ armed groups continue to loot apartments in Luhansk city. Allegedly, in a consistent pattern of conduct, persons in camouflage or in civilian clothes enter residential buildings and seize private property after breaking into individual apartments. Armed group members cite ‘legal’ grounds related to ‘searches’ and collecting evidence for ‘criminal investigations’. According to OHCHR interlocutors, armed groups actively monitor and target apartments whose owners have left Luhansk.

143. Similar concerns arise due to the conduct of ‘Donetsk people’s republic’ armed groups. IDPs often express their fears that their property was occupied by members of armed groups or was ‘nationalized’ by the armed groups (in particular for non-payment of utilities). OHCHR observes that people take personal safety risks and travel to areas with ongoing hostilities to check on their property. According to a public statement of the representative of ‘Donetsk city authorities’, the property of ‘enemies’ who have left the territories under the control of ‘Donetsk people’s republic’ armed groups will be confiscated and made communal.¹²³

144. OHCHR continues to document violations and abuses of housing and property rights that occurred in 2014 and 2015.¹²⁴ In August 2015, the ‘ministry of state security’ in Donetsk abducted a businessman¹²⁵ from Novoazovsk, subjected him to torture and ill-treatment, and looted his home and property. An IDP from Luhansk told OHCHR¹²⁶ how armed groups looted her son’s apartment in February 2015 because he participated in combat operations against the armed groups and had pro-Government views.

145. Armed groups have also targeted the property of IDPs who left armed group-controlled territories. One IDP was threatened by individuals claiming to represent a ‘bank’ of the ‘Donetsk people’s republic’ to confiscate her property if she did not pay her mortgage and fees to them.

¹²² HRMMU interview, 28 September 2016.

¹²³ Statement of Igor Martynov of the ‘Donetsk city administration’, 18 October 2016 (Accessible at: <http://www.62.ua/news/1408979>).

¹²⁴ HRMMU interview, 13 October 2016.

¹²⁵ HRMMU interview, 30 August 2016.

¹²⁶ HRMMU interview, 28 August 2016.

D. Situation of internally displaced people living in collective centres

“No one listens to us. To get any help we need to go through all the circles of hell.”

- Woman living in an IDP centre in Donetsk city

146. According to a recent study¹²⁷ conducted by UNHCR in Ukraine, at least 637 IDPs across Ukraine are facing threats of eviction, including in Odesa (Kuialnyk and Senetatia collective centres), in Kyiv (Kustanaiska Street, Soty and Dzherelo collective centres) in Zhytomyr and other cities. According to data¹²⁸ from 46 surveyed collective centres, 35 per cent saw cases of IDP evictions. 79 per cent of collective centres are not equipped to accommodate people with disabilities. 43 per cent of IDPs indicated that their health condition deteriorated since they settled in collective centres.

147. The situation in two collective centres in Odesa region – Kuialnyk and Senetatia – that have been hosting IDPs with disabilities, including mental disabilities, from the onset of the conflict until the end of September 2016 is of particular concern. Due to inhuman and degrading conditions imposed on IDPs in the collective centres – electricity and water supply cuts and no access to elevators – IDPs were forced to return to Donetsk region, including to territories controlled by the armed groups.¹²⁹ It is of concern that State and regional authorities did not intervene and did not provide any durable housing solutions and humanitarian assistance forcing 139 IDPs to leave their place of living. Such treatment of IDPs violates their right to equal protection and prevents their enjoyment and exercise of human rights without discrimination on account of their displacement.

148. A similar situation has been observed in a collective centre¹³⁰ in Kyiv where the administration of the building has cut electricity, heating and other utilities endangering the health of the IDPs, including children, older persons and persons with disabilities. Due to the absence of contracts with the owners of the premises, IDPs are often required to pay higher utility rates under the threat of eviction.¹³¹

149. OHCHR notes that much of the documented suffering of IDPs stems from the absence of a systemic approach to durable housing and comprehensive legal framework protecting the most vulnerable IDPs residing in collective centres, despite housing identified as a priority in the

¹²⁷ UNHCR monitoring report on the threat of eviction of IDPs in Ukraine, presented on 12 October 2016.

¹²⁸ NGO “Right to Protection”, Results of Monitoring of collective centres of IDPs in Dnipropetrovsk, Donetsk, Zaporizhzhia, Luhansk and Kharkiv region, 2016 (Accessible at: <http://vpl.com.ua/uk/materials/zvit-za-rezultatamy-monitorynhu-mkp/>).

¹²⁹ HRMMU interviews, 18 October, 27 October and 27 October 2016.

¹³⁰ Kustanaiska Str 6, Kyiv.

¹³¹ HRMMU interviews, 4 October and 11 November 2016.

comprehensive state program for IDPs.¹³² The Government has the obligation to identify and recommend free accommodation to IDPs providing the latter pay for utilities. In practice, however, only regional authorities are able to do so but often refer to a lack of available accommodation. As a result, IDPs are not offered accommodation or are evicted. Jointly with other international agencies, OHCHR has advocated with the Government of Ukraine for the maintenance of appropriate living conditions in collective centres in accordance with international standards¹³³ and development of sustainable solutions to satisfy the right to adequate housing. Despite engaging the issue, the Government of Ukraine has not taken any measures to safeguard the rights of IDPs with disabilities.

Territories under the control of the armed groups

150. Conditions in collective centres in territories controlled by armed groups of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ raise serious concerns. Such centres host many older persons, persons with disabilities and hundreds of children, and do not satisfy adequate standards of living and housing.¹³⁴ OHCHR noted that the population in collective centres is often mixed (civilian IDPs, former combatants, current members of armed groups), which raises certain protection concerns. According to available data, there are 8,160 persons ‘registered’ as IDPs in the ‘Donetsk people’s republic’; while most live in private houses or apartments, 3,024 reside in collective centres.¹³⁵

151. Living conditions in collective centres vary. In one of the centres to which OHCHR was granted access, living conditions, including hygiene standards, were manifestly inadequate: the elevator was not functional, the only showers in the multi-storey building were on the ground floor, with unhygienic rooms and sanitation facilities.

E. Rights of minorities and discrimination

152. Incidents of discrimination against minority groups on the basis of ethnic or sexual identity over the reporting period have highlighted the ongoing need for measures to reinforce and build confidence that minority rights are protected by law and in practice. An incident involving violent destruction of Roma houses and forced eviction of Roma families took place in Loshchynivka village, Odesa region after local police disclosed

¹³² Cabinet of Ministers Resolution No. 1094 “On the approval of the Comprehensive state programme of support, social adaptation and reintegration of citizens of Ukraine who moved from the temporarily occupied territory of Ukraine and the areas of anti-terrorist operation in other regions of Ukraine for the period till 2017”, 16 December 2015.

¹³³ Principle 18 of the UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2; Convention on the Rights of Persons with Disabilities, article 2.

¹³⁴ Principle 8, “The Pinheiro Principles,” United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons.

¹³⁵ The socio-humanitarian overview of the situation in the self-proclaimed ‘Donetsk people’s republic’ for the period from 29 October to 4 November 2016, 7 November (Accessible at: <http://ombudsmandnr.ru/obzor-sotsialno-gumanitarnoy-situatsii-slozhivsheysya-na-territorii-donetskoy-narodnoy-respubliki-vsledstvie-voennyih-deystviy-c-29-oktyabrya-po-4-noyabrya-2016-goda/>).

the name and ethnicity of a man suspected of killing and raping an eight-year-old local girl on 27 August 2016. On 29 August, the local council decided to evict 24 Roma (including 15 children) without providing them alternative accommodation or any other guarantees, including ensuring continued education of children. OHCHR observed negligence by police at the scene, a lack of accountability for those who attacked and destroyed Roma homes,¹³⁶ and use of hate speech and false information in national and local media. OHCHR and human rights NGOs have facilitated a dialogue between the Roma community and local authorities and advocated against the eviction of people outside the protections of the law. A complaint regarding police misconduct during the incident was submitted to the Odesa regional prosecution office, and a criminal investigation was initiated on 22 September.¹³⁷ OHCHR is concerned that the tacit consent of the forced eviction and absence of measures taken by police or local authorities to protect Roma in Loshchynivka village may amount to collective punishment.

153. On 5 October, the Parliamentary Committee on Human Rights, National Minorities and Interethnic Relations, concluded that the Government has inadequately implemented the Strategy for the Protection and Integration of the Roma National Minority and its Action Plan, echoing the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) released on 26 August 2016.¹³⁸ Roma community representatives and civil society provided examples to OHCHR of difficulties that they continue to face in accessing healthcare and other basic public services. For example, in September 2016 two persons did not receive proper medical services, and authorities withheld a woman's passport upon her release from custody on the basis of her Roma ethnicity. It was also reported that Roma children still experience bullying in public schools or segregation in education.¹³⁹ The rates of illiteracy among Roma are persistently high.¹⁴⁰

154. OHCHR also notes that during the reporting period people belonging to or sympathizing with the LGBTI community experienced aggressive behaviour and threats from radical groups such as 'Azov' civil corps and 'Right Sector'.¹⁴¹ For example, members of the 'Azov' civil corps and 'Right Sector' disrupted a film screening on LGBTI issues on 18 October in Chernivtsi and on 4 November in Kremenchuk city. Law-enforcement did not intervene to protect the event from disruption.

¹³⁶ Police launched investigation under article 194-2 (intentional damage to property of citizens) of the Criminal Code of Ukraine.

¹³⁷ Investigation initiated under article 367 (negligence of official duty) of the Criminal Code of Ukraine.

¹³⁸ CERD Concluding Observations, CERD/C/UKR/CO/22-23, 26 August 2016.

¹³⁹ There are still at least four segregated schools in Zakarpattia region. UN Committee on Economic, Social and Cultural Rights, Concluding Observations E/C.12/UKR/CO/6, 13 June 2014, p. 8.

¹⁴⁰ European Roma Rights Centre, International Charitable Organisation "Roma Women Fund "Chirikli", Written comments on Ukraine for Review by the Committee on the Elimination of all Forms of Discrimination Against Women, 20 September 2016.

¹⁴¹ HRMMU meeting, 1 November 2016.

VI. Human rights in the Autonomous Republic of Crimea¹⁴²

155. On 15 November, the UN General Assembly Third Committee approved a draft resolution presented by Ukraine on the “Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)”. The resolution refers to Crimea being under the “temporary occupation” of the Russian Federation and reaffirms the non-recognition of its “annexation”. It calls on the Russian Federation “as an occupying power” to bring an immediate end to “all the abuses against residents of Crimea,” and to ensure proper and unimpeded access to the peninsula. The UN Secretary General is invited, through consultations with the UN High Commissioner, “to seek ways and means” to ensure access to Crimea to regional and international human rights monitoring mechanisms, and OHCHR is requested to prepare a thematic report on the situation of human rights in Crimea before the 72nd UN General Assembly session.

156. On 14 November, the Office of the Prosecutor of the International Criminal Court released its annual report on preliminary examination activities. In its report, the Office of the Prosecutor found the Crimean peninsula to be under the occupation of the Russian Federation. Accordingly, the prosecutor will apply an international armed conflict legal framework to her analysis of facts and alleged crimes perpetrated in Crimea.¹⁴³

A. Arbitrary detention, due process and fair trial rights

157. HRMMU continued to follow the situation of people whose arrest and detention could amount to an arbitrary deprivation of liberty. Human rights concerns include abusively resorting to anti-extremism and anti-terrorism legislation to criminalize the expression of non-violent views, opinions and beliefs; cruel, inhumane or degrading treatment or punishment; and violations of due process, including the right to unimpeded access to legal counsel.

Arbitrary detention of persons accused of ‘separatism’

158. OHCHR documented several cases of abuses and ongoing sanctions against members of the Mejlis, amounting to

¹⁴² The Autonomous Republic of Crimea technically known as the Autonomous Republic of Crimea and the City of Sevastopol, in line with United Nations General Assembly Resolution 68/262 on the territorial integrity of Ukraine. OHCHR has not been granted access to Crimea and has no *in situ* presence there. It has been able to follow the human rights situation through contacts with Crimean residents on the peninsula and mainland Ukraine, and relying on a variety of interlocutors, including representatives of political, religious, civil society organizations, victims, relatives and witnesses of alleged human rights violations, members of the legal profession, journalists, entrepreneurs, teachers, doctors, social workers, human rights activists and other categories, including individuals with no specific affiliations. OHCHR has continued to seek access to Crimea.

¹⁴³ Office of the Prosecutor, International Criminal Court, “Report on Preliminary Examination Activities 2016,” 14 November 2016, paras. 155-158 (Accessible at: https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf).

arbitrary detention. On 7 September 2016, Mejlis Deputy Chairman Ilmi Umerov was released from the psychiatric hospital where he was placed against his will on 18 August, following a Crimean ‘court’ decision. Umerov is accused of calls to violate the territorial integrity of the Russian Federation and risks being sentenced to a prison term of up to 5 years. OHCHR considers that his forced institutionalization in a psychiatric hospital for three weeks may have amounted to ill-treatment. Umerov is currently free but is prohibited from leaving the Crimean peninsula. On 7 November, Umerov’s Russian Federation lawyer, Nikolay Polozov, told a Ukrainian media outlet that he was “under pressure” from the Russian Federation Security Service (FSB) to drop Umerov’s case.

159. On 11 October, Suleyman Kadyrov, a member of the regional Mejlis in Feodosiia, was arrested and charged with publicly calling for actions aimed at violating the territorial integrity of the Russian Federation. As of 15 November, he is still in detention. On 29 March 2016, he had publicly stated “Crimea is Ukraine”.

The case of the ‘Ukrainian sabotage group’

160. Yevhen Panov is one of the suspects arrested by the FSB in Crimea for his alleged participation in a Ukrainian sabotage group.¹⁴⁴ His lawyer told OHCHR that his client had not been kidnapped in mainland Ukraine, as had long been speculated, but arrested on 7 August 2016 after entering Crimea. His lawyer told OHCHR he was held *incommunicado* for days, tortured, forced to confess to preparing a series of terrorist acts targeting vital infrastructure on the peninsula, and officially charged on 10 August.

161. On 10 October, a Crimean ‘court’ extended the pre-trial detention of Yevhen Panov and Andrii Zakhtei, another arrested suspect, until 10 December. Earlier, in August, the European Court of Human Rights had refused to order the extradition of Yevhen Panov to Ukraine, as requested by his family who invoked the Court’s Rule 39 and the risk of torture in detention. Instead, the European Court accepted the position of the Russian Federation that the Russian authorities will review the complaints of the accused and investigate the conditions under which he sustained injuries.

162. On 10 November, the FSB said it prevented a new sabotage attack plotted by Ukrainian military intelligence operatives in Crimea intended to target military facilities and critical civilian infrastructure in Sevastopol. The infiltrators allegedly had high-power explosive devices, firearms and ammunition, secure communications equipment, as well as maps of the targets. The Ukrainian Ministry of Defence released a statement rejecting the accusations. Three suspects were arrested on 9 November and placed in pre-trial detention for two months, and on 15 November, two other residents from Sevastopol were arrested.

163. OHCHR has information about various forms of violations of the right to defence and the presumption of

¹⁴⁴ 15th OHCHR report on the human rights situation in Ukraine, para. 153.

innocence in relation to members of the group. The accused do not enjoy regular access to their lawyers, they are pressured by the investigators to renounce their right to legal counsel, and in some cases, defence lawyers have advised their clients to confess and ‘cooperate’ with the prosecution.

Hizb-ut-Tahrir cases

164. The continued prosecution of Crimean Hizb-ut-Tahrir members in Russian courts raise serious concerns about the human rights impact of the ongoing violation of General Assembly resolution 68/262 on the territorial integrity of Ukraine. On 7 September, a military court in Rostov-on-Don (Russian Federation) found four Crimean Tatars arrested by the FSB in 2015 guilty of planning and participating in the activities of an illegal organization. All were recognized by the court as members of Hizb-ut Tahrir, a religious group labelled and banned as extremist in the Russian Federation, but not in Ukraine. Their defence lawyers portrayed their clients as Muslim believers and argued for their rights to freely practice their religion. Three men were sentenced to 5 years of imprisonment while the alleged organizer of a Hizb-ut-Tahrir cell received a 7-year sentence. These are the first verdicts involving alleged Hizb-ut-Tahrir members from Crimea.

165. On 12 October, the FSB forcefully broke into six Crimean Tatar houses, conducting searches in the presence of children and women, and confiscating religious literature prohibited in the Russian Federation. Five Crimean Tatar men known by their neighbours for being practising Muslims were arrested on suspicion of being members of Hizb-ut-Tahrir. All five were placed in pre-trial detention until 11 December 2016. So far, in 2016, 15 Crimean Tatars and Muslims have been detained by the *de facto* authorities in Crimea on suspicion of membership in Hizb-ut-Tahrir.

166. On 3 November, the Crimean *de facto* authorities mandated a psychological evaluation of six of the Crimean Tatars accused of membership in Hizb-ut-Tahrir.

B. Rights of minorities and indigenous peoples

167. In April 2016, the ‘supreme court of Crimea’ declared the Mejlis an extremist organization and banned all its activities. On 29 September, the Supreme Court of the Russian Federation rejected an appeal against the Crimean court ‘decision’ and upheld the ban.

168. Eight members¹⁴⁵ of the Mejlis were fined by Crimean ‘courts’ for holding a meeting on 28 September. They were gathering in the house of Ilmi Umerov, one of three deputy chairmen of the Mejlis, to discuss internal issues and suspend the membership of three Mejlis members who collaborated with the *de facto* authorities.¹⁴⁶ All eight Mejlis members were found guilty of committing the administrative offense of taking part in

¹⁴⁵ The eight Mejlis members who were fined are: Ilmi Umerov, Ali Khamzin, Sadikh Tabakh, Shevket Kaibullaiev, Bekir Mamutov, Emine Avamileva, Mustafa Maushev and Diliaver Akiiev.

¹⁴⁶ The three Mejlis members whose membership was suspended are: Emirali Abilaiev, Aider Adzhymambetov and Ruslan Yakubov.

an “illegal meeting” and ordered to pay fines ranging from RUB 750 (USD 12) to RUB 1,000 (USD 15).

169. The Mejlis is viewed by many Crimean Tatars as a traditional organ of an indigenous people: its members, forming an executive body, were elected by the Kurultai, the Crimean Tatars’ assembly. In addition to the national Mejlis - which has 33 members - there are about 2,500 regional and local Mejlis members in Crimea. While approximately 30 Crimean Tatar NGOs are currently registered in Crimea, none can be considered to have the same degree of representativeness and legitimacy as the Mejlis and Kurultai.

C. Freedom of movement

170. On 24-25 October, OHCHR monitored the freedom of movement at the Chonhar, Kalanchak and Chaplynka crossing points on the administrative boundary line with Crimea. During this monitoring visit, OHCHR heard repeated complaints – both from people from mainland Ukraine and Crimea – about the difficulties of transporting personal belongings to and from Crimea. They claim that disproportionate legal and administrative barriers imposed by Ukraine feed corruption and unduly restrict freedom of movement. This issue became particularly acute following the adoption of Government Resolution No. 1035 in December 2015 prohibiting transportation of goods¹⁴⁷.

171. Article 370 of the Customs Code of Ukraine contains a list of personal belongings that people can transport across the administrative boundary line. Even though Odesa district administrative court ruled on 26 September that the list was not exhaustive, people travelling between mainland Ukraine and the Crimean peninsula are often restricted in the items that they can carry when these are not listed. One Crimean resident stated that she moved from Crimea to Mykolaiv in mainland Ukraine, but was not allowed by the Ukrainian Customs Service to transport any furniture to her new place of residence due to Resolution 1035. Another Crimean resident said that he sold his apartment in Sevastopol but was not permitted to transport the proceeds from the sale because the sum exceeded UAH 10,000 (approximately USD 385), the maximum amount allowed under Ukrainian law due to limitations imposed by the Law “On the establishment of the Free Economic Zone “Crimea””.¹⁴⁸ OHCHR has also recorded reports of corruption at the Kalanchak crossing point.

¹⁴⁷ On 9 November, a Kyiv court of appeal confirmed a first instance administrative court decision rejecting the request of a Crimean IDP to recognize Resolution No 1035 as illegal.

¹⁴⁸ See Article 12.8 (3) of the Law of Ukraine “On Establishment of the Free Economic Zone “Crimea” and Peculiarities of Providing Economic Activity on the Temporarily Occupied Territory of Ukraine” No. 1636-VII of 12 August 2014.

D. Rights of detainees

"If you are sick, you are treated as if you are not even a person anymore. You can be destroyed. I want justice and to improve my health."

- Prisoner in pre-trial detention centre No. 1, Simferopol

172. OHCHR continued gathering information about the rights of detainees and prison conditions in Crimea. Due to a lack of specialized penitentiary facilities, many detainees could not be held on the peninsula. This situation has led to the transfer, since 2014, of a sizeable number of the prison population from Crimea to the Russian Federation into specialized penitentiary facilities. The transfers have included juvenile delinquents, convicted women, people sentenced to life imprisonment, and prisoners suffering from serious physical and mental illnesses. The transfer of detainees from Crimea to penitentiary facilities in the Russian Federation further illustrates the human rights impact of the ongoing violation of General Assembly resolution 68/262 on the territorial integrity of Ukraine.

173. According to one Ukrainian NGO representative, at least 600 women from Crimea and mainland Ukraine are currently held in mixed or female colonies in the Russian Federation. The penitentiary service of the Russian Federation has reported that 240 female prisoners were transferred from Crimea to the Russian Federation between 18 March 2014 and 15 June 2016. An unknown number of transfers have also involved prisoners and individuals held in custody who did not belong to any of the above groups.

174. Persons detained in Crimea or transferred to the Russian Federation are often denied proper medical treatment and hospitalization, in violation of their right to health. A woman from Sevastopol was sentenced on 22 May 2013 to three years of imprisonment in accordance with the Criminal Code of Ukraine, and on 18 December 2015 to two years of imprisonment in accordance with the Criminal Code of the Russian Federation. She is currently in custody in Sevastopol and is not given medical treatment despite suffering from hepatitis 'C' and HIV. A man from Mykolaiv, Ukraine, was sentenced in June 2015 by a Crimean 'court' and transferred to Penal Colony No. 1 of the Republic of Adygea (Russian Federation). He suffers from hypertension and health complications that developed as a result of head and spine injuries. He is being denied medical care. A man from Feodosiia, Crimea, was sentenced by a Crimean 'court' on 24 March 2015 and transferred to serve his sentence in Penal Colony No. 2 of the city of Rostov-on-Don, Russian Federation. He suffers from a third stage HIV infection, hepatitis 'B', tuberculosis and psoriasis. Despite complaining to the prison administration, he has not received any treatment nor been hospitalized.¹⁴⁹

¹⁴⁹ HRMMU interviews, 4 October 2016, 1 and 2 November 2016.

175. OHCHR is aware of one case of a death in custody involving a detainee from Sevastopol transferred to the Russian Federation. On 8 September, Valerii Ispendiarovych Kerimov died in a prison facility in Tlyustenkhabl, a settlement in the Teuchezhsky district, Republic of Adygea, Russian Federation. Kerimov was a Ukrainian citizen residing in Sevastopol. On 2 December 2014, he was arrested in Sevastopol for theft and, on 17 July 2015, sentenced by a ‘court’ in the same city to 6 years and 1 month in prison. At the moment of his arrest, Kerimov was said to suffer from hepatitis ‘B’, ‘C’ and tuberculosis. During his time in custody and prison, he did not receive adequate treatment, and in early 2016, was transferred to a prison colony in Tlyustenkhabl, Russian Federation. However, his condition only worsened. The prison administration did not provide Kerimov’s lawyer with any documents concerning his client’s state of health and medical treatment. The Kyiv-based Regional Centre for Human Rights (RCHR) and the Ukrainian Helsinki Human Rights Union (UHHRU) sent requests to the Ministry of Foreign Affairs of Ukraine and the Consul of Ukraine in Rostov-on-Don to visit Kerimov, but the visit was not carried out. On 29 August, the UHHRU invoked Rule 39 of the European Court of Human Rights on interim measures, which resulted in the Court requesting the Russian Federation to inform it of Kerimov’s health condition and his medical treatment. The legal procedure was interrupted on 8 September, when Kerimov died.

176. On 7 October 2016, Russian authorities rejected Ukraine’s extradition request for Oleh Sentsov, who was arrested in Crimea and transferred to the Russian Federation in 2014 for trial and detention. The extradition request was rejected on the grounds that Sentsov is a citizen of the Russian Federation, despite confirmation of his Ukrainian citizenship in April 2016 by the Russian Federation Commissioner for Human Rights.

E. Political rights

177. On 18 September, the Russian Federation held parliamentary and local elections. For the first time, voting for national elections also took place on the Crimean peninsula, in violation of UN GA Resolution 68/262 on the territorial integrity of Ukraine. Seven candidates from the ‘republic of Crimea’ and the city of Sevastopol were elected to the Russian Federation Parliament.¹⁵⁰

178. Even though the election campaign and voting appear to have proceeded without incident, it is of note that no international observers were present. Nonetheless, OHCHR received credible information that employees of state and public sector institutions in Crimea were instructed to vote and threatened with reprisals, including dismissal, if they failed to turn up. In addition, before the vote, there were reports of

¹⁵⁰ Mikhail Sheremet (Vice Prime Minister), Ruslan Balbek (Vice Prime Minister) and Natalia Poklonskaya (Prosecutor General) were elected under the proportional system; Konstantin Bakharev (First Vice Speaker of the Parliament), Andrey Kozenko (Vice Speaker of the Parliament), Svetlana Savchenko (Head of the State Committee for Culture and Protection of Cultural Heritage) and Dmitry Belik (deputy director of the ‘BIG-CRIMEA’ company) were elected under the majoritarian system.

pressure and house searches conducted by the ‘police’ against Crimean Tatar activists and Mejlis members who were advocating for a boycott of the elections. Earlier, the head of the Mejlis, Refat Chubarov, had called on Crimean residents not to vote so as not to legitimize the ‘occupation’ of the peninsula.

F. Right to education

179. The start of the 2016-2017 school year in Crimea and the city of Sevastopol confirmed the continuous decline of Ukrainian as a language of instruction, a phenomenon observed since Ukraine’s loss of *de facto* sovereignty over the peninsula in March 2014, while an increasing number of Crimean Tatar parents appear to be making use of the possibility of educating their children in the Crimean Tatar language.

180. There are 533 schools in Crimea. Of the seven Ukrainian language education institutions that existed until 2014, the Simferopol Gymnasium School is the only one remaining. This year, however, it ceased instruction in Ukrainian in the first and second grade. The spokesperson of the Crimean ‘ministry of education’ attributed this to a supposed lack of interest among parents for continuing Ukrainian-language instruction.

181. Instruction in the Crimean Tatar language is provided in 14 national schools, which is one more than in 2014. Another 19 schools have classes in the Crimean Tatar language: six of them have two languages of instruction: Russian and Crimean Tatar; and 13 schools use Russian as a language of instruction but have classes in Crimean Tatar. According to the head of the Crimean Tatar NGO ‘Maarifchi’, Safure Kadzhametova, out of approximately 20,000 first-grade children, 825 are educated in Crimean Tatar language.

VII. Legal developments and institutional reforms

A. Judicial reform

182. On 30 September, Constitutional amendments¹⁵¹ on the judiciary and the law ‘On the judicial system and the status of judges’¹⁵² entered into force, launching the process of reforming the judiciary. A central feature of the reform is the intention to cleanse the judicial branch in order to restore public trust in an institution that has, for decades, been perceived as corrupt and lacking independence.

183. All judges appointed prior to the entry into force of the constitutional amendments will undergo an assessment of their compatibility,¹⁵³ which could result in dismissals.¹⁵⁴ This will primarily affect 1,232 judges who were appointed for an initial period of five years and whose tenure will be

¹⁵¹ Law of Ukraine “On amendments to the Constitution of Ukraine (regarding the judiciary)”, No. 1401-VII of 2 June 2016.

¹⁵² Law of Ukraine “On the judicial system and the status of judges”, No.1402-VIII of 2 June 2016.

¹⁵³ The assessment will concern competence, professional ethics and integrity.

¹⁵⁴ The starting date and order for the compatibility assessment of judges, to be determined by the High Qualification Commission of Judges, is not known.

automatically terminated at the end of their terms unless they pass such assessment.

184. The restructuring of the Supreme Court of Ukraine will lead to a reduction in the number of positions of judges in high judicial instances from the current 365 to 200. It is not clear whether current judges of the Supreme Court who fail to be re-appointed will be dismissed or transferred to lower instance courts, thus creating uncertainty and opposition to the reform.

185. Ukraine has 765 courts whose proper functioning requires the presence of 9,071 judges.¹⁵⁵ As of 15 November, 6,614 judges were employed. Six courts¹⁵⁶ have no judges and cannot operate while almost 25 per cent of courts are understaffed by up to 50 per cent.

186. On 8 and 22 September 2016, Parliament approved the resignation of approximately 1,000 judges, a majority of whom served for over 20 years. According to the head of the High Qualification Commission of Judges, courts could lose between 35 and 40 per cent of judges by the end of 2016 due to such resignations.¹⁵⁷

187. A small number of judges have been dismissed under the lustration procedures established in the post-Maidan period. A temporary special commission found 46 judges guilty of having delivered politically motivated judgments in relation to the Maidan protesters.¹⁵⁸ The High Council of Justice upheld these findings for 29 judges, recommending their dismissal.¹⁵⁹ Allegations of violations committed by judges during Maidan were also addressed to the High Qualification Commission of Judges, which found seven judges guilty of disciplinary violations and recommended their dismissal.¹⁶⁰ To date, Parliament and the President have dismissed 31 judges.

188. Since December 2014, the High Qualification Commission of Judges recommended dismissal of 340 judges, in the majority of cases due to their collaboration with the *de facto* authorities of the Autonomous Republic of Crimea and the city

¹⁵⁵ Interview of the Head of the Supreme Court of Ukraine, Yaroslav Romaniuk, published in the official newspaper of the Parliament of Ukraine 'Holos Ukrainy' - 2016.10.27. – № 204 (available at: <http://www.golos.com.ua/article/277914>).

¹⁵⁵ Information provided by the High Qualification Commission of Judges in a letter to HRMMU of 11 November 2016.

¹⁵⁶ Three courts do not operate due to the absence of hired judges: Mahdalynivskyi district court (Dnipropetrovsk region), Karlivskyi district court (Poltava region) and Shpolianskyi district court (Cherkasy region). Another three courts do not operate because the judges are awaiting the approval of their indefinite appointment upon termination of their five-year appointment: Yaremchanskyi city court (Ivano-Frankivsk region); Lokhvytskyi district courts (Poltava region); and Radyvylivskyi district court (Rivne region).

¹⁵⁷ HRMMU meeting with the Head of the High Qualification Commission of Judges on 3 October 2016.

¹⁵⁸ 7th OHCHR report on the human rights situation in Ukraine, paras. 184 - 185.

¹⁵⁹ The remaining complaints involving 305 judges, which have not been considered by the now defunct temporary special commission, are being reviewed by the High Council of Justice. As of mid-September 2016, the HCJ opened disciplinary proceedings against 46 judges, three of which have been completed. As a result two judges have been recommended for dismissal.

¹⁶⁰ In connection to the Maidan events the HQCJ received 149 complaints against judges and opened 98 disciplinary proceedings resulting in eight judges being brought to account with seven recommendations for dismissal on the grounds of violation of the oath. Other proceedings were closed as unsubstantiated (57) or due to an application of a statute of limitations (31).

of Sevastopol (295 judges) or with the armed groups in the Donetsk (20) and Luhansk (1) regions.¹⁶¹ As of 15 November, 299 judges have been dismissed.

189. Judges were also vetted under a lustration procedure launched pursuant to the Law “On the Cleansing of Government”,¹⁶² resulting in the dismissal of eight judges.¹⁶³

190. While the situation with understaffing precedes the current reform¹⁶⁴, the high rate of resignations poses serious challenges to the rule of law and administration of justice. Effective selection and appointment procedures will therefore be required to make up for the resignations and dismissals and sustain proper operation of the court system.

191. The High Qualification Commission of Judges, which is in charge of the selection of judges, is considering the introduction of a simplified recruitment process for former candidates. This would reportedly allow around 400 positions to be filled.

192. In the context of the judicial reform, a draft law ‘On the High Council of Justice’ was developed and passed the first reading in Parliament on 3 November. Its adoption will give effect to the new powers of this body regarding the appointment, transfer, dismissal and disciplinary liability of judges. The new composition of this body, which aims to eliminate excessive influence of the executive, shall however only be effective by 30 April 2019 and therefore significantly delayed.

B. Criminal justice reform

193. On 7 September, Parliament adopted a set of amendments¹⁶⁵ elaborated by the Ministry of Justice and the State Penitentiary Service facilitating the realisation of the right to pension by convicted persons, lifting some of the limitations on the use of personal money by such persons and allowing them to access the Internet. The amendments also grant convicts, including those sentenced to life imprisonment, the right to receive extended visits. They harmonise existing legal acts with the law ‘On probation’ adopted in February 2015 and provide for further humanisation of criminal legislation by prohibiting the imposition of a life sentence for the preparation of crimes and attempted crimes, with the exception of crimes against national security (articles 109-114-1) and crimes against peace (articles 437-439, 442(2), and 443). The amendments also enable the transfer of persons from one correctional centre to another, if

¹⁶¹ Another 24 recommendations for dismissal issued by the HQCJ were based on other general grounds and concerned judges from other regions.

¹⁶² Law of Ukraine ‘On the cleansing of government’, No.1682-VII of 16 September 2014.

¹⁶³ According to the law on Government cleansing, the judges are subjected to the general lustration process in the country. For the two years of its application, the Ministry of Justice have submitted to the HCJ the information on about 70 judges providing grounds for their lustration, eight judges were dismissed according to the lustration criteria.

¹⁶⁴ On 1 January 2013, with a similar number of courts, 8,215 judges were employed.

¹⁶⁵ Law of Ukraine ‘On amendments to certain legislative acts of Ukraine concerning the enforcement of verdicts and realisation of the rights of convicts’, No. 1491-VIII of 7 September 2016 (entered into force on 8 October 2016).

there are valid reasons for the placement of a convict closer to the place of residence of his/her relatives.

194. Also on 7 September, Parliament adopted legislative amendments¹⁶⁶ enhancing access to justice for persons held in pre-trial detention and imprisoned convicts. The amendments clarify that the appeals against decisions of the prison administration authorities and pre-trial detention institutions are to be reviewed by administrative courts. They also exempt convicts from the payment of court fees following the execution of a sentence provided they do not have enough money on their personal accounts. The amendments also provide for an urgent review - within 24 hours - of complaints concerning the disciplinary transfer of individuals to an isolation facility and complaints concerning forced feeding.

C. Draft law “On the Temporarily Occupied Territory of Ukraine”

195. On 19 July, 29 members of parliament registered a draft law No. 3593-d ‘On the Temporarily Occupied Territory of Ukraine’ defining a single legal regime for Crimea and parts of the Donetsk and Luhansk regions that are not controlled by the Government. OHCHR has actively engaged with the Government and provided comments outlining the human rights impact of the draft law, if adopted in its current form.¹⁶⁷

196. OHCHR is of the view that this draft law, which is mainly driven by security considerations, if adopted as it currently stands harms human rights, contravenes Ukraine’s international obligations and is likely unconstitutional. The fact that the draft law abrogates the responsibility of the Government to protect the life, health, property rights and ensure social obligations runs counter to the principle of territorial jurisdiction whereby the Government has positive obligations to use all legal and diplomatic means available to guarantee the rights of persons in uncontrolled territory. In addition, the blanket non-recognition of documents issued in the territories not controlled by the Government is not in line with international standards, supported by international jurisprudence, which imply the recognition of certain acts, such as civil registration documents (e.g. birth, death and marriage certificates), issued by *de facto* authorities. Differential treatment of residents of “temporarily occupied territory” with regard to sale, transfer, alienation and inheritance of property as well as moratorium of fines and penalties would violate the right to equal protection of the law without discrimination contained in article 26 of the ICCPR and article 14 of the ECHR. Terminating water and electricity supplies to the “temporarily occupied territory” would contravene both customary rules of international humanitarian law concerning relief, and human rights law requiring the Government to ensure minimum essential humanitarian supplies for the civilian population.

¹⁶⁶ Law of Ukraine ‘On amendments to certain legislative acts of Ukraine (on enhancing the access to justice for persons held in pre-trial detention or prison facilities)’, No. 1492-VIII of 7 September 2016 (entered into force on 8 October).

¹⁶⁷ See paragraph 201 for further information.

197. It is also questionable whether the wide restrictions to be applied – after the ‘liberation’ of the so-called ‘temporarily occupied territories’ – to the exercise of civil and political rights¹⁶⁸ as well as the freedom of movement, assembly and the media, conform to the principle of proportionality. In human rights law, restrictive measures must not only serve permissible purposes, they must also be necessary to protect them and constitute the “least intrusive instruments amongst those, which might achieve the desired result.”¹⁶⁹

198. Also noteworthy is that the draft law, if adopted in its present form, would supersede existing legislation,¹⁷⁰ including the law ‘On interim self-government order in certain areas of the Donetsk and Luhansk regions’. The draft law would run counter to UN Security Council Resolution 2202(2015), which endorses the “Package of measures for the Implementation of the Minsk Agreements” adopted on 12 February 2015.

VIII. Technical cooperation and capacity-building toward the promotion and protection of human rights in Ukraine

199. Throughout the period under review, OHCHR continued to develop its technical cooperation and capacity-building activities in Ukraine, guided by its mandate and further to its work within Human Rights Up Front to boost early warning throughout the UN system and its response to the ongoing crisis in Ukraine.

200. As a result of its findings, OHCHR has prioritized providing targeted technical cooperation on torture prevention. On 8-9 September, OHCHR organized a consultative workshop on the documentation and investigation of torture in Ukraine under the Istanbul Protocol, in partnership with the Ombudsperson’s institution, and carried out a range of follow-up activities with medical experts, government officials, and civil society to support Government efforts in fighting impunity and strengthen accountability for human rights violations. The results of the workshop will guide, in particular, OHCHR technical

¹⁶⁸ According to the draft law, following the lifting of martial law, local elections are prohibited for a period of 2 to 6 years, depending on the administrative unit level, and voting for national elections is prohibited for 6 years.

¹⁶⁹ See General Comment No. 27, 1999, CCPR/C/21/Rev.1/Add.9, paras 11-16.

¹⁷⁰ The draft law would supersede the Law of Ukraine ‘On ensuring civil rights and freedoms and the legal regime on temporarily occupied territory of Ukraine’, No. 1207-VII, of 15 April 2014; Law of Ukraine ‘On creation of the “Crimea” free economic zone and on specifics of economic activity on the temporarily occupied territory of Ukraine’, No. 1636-VII, of 12 August 2014; Law of Ukraine ‘On temporary measures introduced for the period of anti-terrorist operation’, No. 1669-VII, of 2 September 2014. In addition, while not mentioned in the draft law, it would also replace legal acts governing the procedure of movement to and from non-Government-controlled territory: the ‘Temporary Order for monitoring of movement of persons, vehicles and goods along the contact line within Donetsk and Luhansk regions’ approved by a Decree of the First Deputy Head of the Anti-terrorist Centre within the State Security Service of Ukraine No.27 of 22 January 2015; and the ‘Order of entry to the temporarily occupied territory of Ukraine and exit from it’ approved by a Decree of the Cabinet of Ministers of Ukraine No. 367 of 4 June 2015 (applicable to Crimea only).

cooperation and capacity building efforts with partners in Ukraine in the area of torture prevention for the remainder of 2016 and into 2017.

201. Following the workshop, OHCHR took part, on 23 September in a round table discussion on forensic services organized by the Parliamentary Committee for Healthcare and attended by parliamentarians, forensic experts, medical practitioners, lawyers, NGOs and ICRC. OHCHR presented its views on key parameters for an effective forensic service based on the recommendations of the Special Rapporteur on Torture contained in his 2014 report. Since, the General Prosecutor's Office has requested assistance in identifying international forensic expertise, which OHCHR will facilitate. Upon invitation, OHCHR joined a working group that will draft a law "On the National Forensic Bureau of Ukraine". Through such activities, OHCHR contributes to the reform and strengthening of the forensic service of Ukraine, an essential step toward improving documentation and investigation of torture and ill-treatment, and advancing the administration of justice in general.

202. OHCHR supported the start of the preparation of a new five-year compact between the UN system in Ukraine and the Government, known as the United Nations Development Action Framework (UNDAF), which will cover the period of 2018-2022. OHCHR strengthened the capacities of UN agencies to use a human rights-based approach to develop the UNDAF by organizing a dedicated learning and training session for UN system agencies and by integrating international human rights norms and standards assisting at identifying discriminatory practices that impede development into the Country Analysis.

203. OHCHR has also supported Ukraine in its engagement with UN human rights mechanisms. From 1 to 9 September, OHCHR in conjunction with UNHCR, supported the visit of the Special Rapporteur on the human rights of IDPs, Chaloka Beyani, to follow up on the recommendations made in his 2014 report to the Human Rights Council.¹⁷¹ During the same period, the United Nations Subcommittee on Prevention of Torture (SPT) concluded its visit to Ukraine that had been suspended in May 2016 after being unable to access some places under the authority of the SBU. In advance of the mission, OHCHR facilitated the visit of one member of the SPT Secretariat to Kyiv in August, who led a joint OHCHR-Council of Europe-UNDP workshop on torture prevention which helped to raise awareness of the activities and mandate of the SPT among duty-bearers. This visit, combined with further advocacy and relationship building with relevant authorities, allowed the experts to return to Ukraine from 5 to 9 September to resume their mission, noting that Ukraine has made progress in improving conditions of detention in the country, in particular

¹⁷¹ "Ukraine: UN expert calls for comprehensive strategy to address IDPs' plight as winter closes in" 9 September 2016, Office of the High Commissioner for Human Rights (Accessible at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20472&LangID=E>).

through reducing overcrowding in pre-trial detention centres.¹⁷² In 2017, OHCHR will lead the joint UN submission to the Universal Periodic Review (UPR) assessing Ukraine's compliance with its international human rights obligations.

204. OHCHR has also supported the Government of Ukraine in ensuring that its policies comply with international human rights standards. OHCHR participated in expert discussions organized by the Ministry of Justice on amendments to the National Human Rights Action Plan (NHRAP). OHCHR successfully advocated for improvements aimed at defining concrete implementing authorities (ministries), and for the newly created Ministry on Temporarily Occupied Territories and IDPs to be included in activities relating to the protection of IDP rights and activities toward the protection of the rights of persons residing in Crimea and the territories controlled by the armed groups in eastern Ukraine. On 20-21 September, OHCHR contributed to a workshop aimed at better developing relevant indicators to measure the implementation of the NHRAP by sharing OHCHR-developed human rights indicators. In areas where Government policy raises human rights concerns, OHCHR has undertaken constructive engagement.

205. On 19 September, OHCHR participated in a round table discussion on Ukraine's derogation from human rights treaties, organized by the Parliamentary Committee on Foreign Affairs and the Committee on Human Rights. During the discussion, representatives of the Ministry of Justice, the Ministry of Foreign Affairs and the Prosecutor General's Office supported some of the recommendations made by OHCHR and the Council of Europe and acknowledged that some clarification of the duration and territorial application of the derogation was needed. The heads of the parliamentary committees on human rights and foreign affairs concluded by committing to establish a working group tasked to amend the May 2015 parliamentary Resolution on derogation.

206. OHCHR has also actively engaged with the Government on the draft law on temporarily occupied territory, conveying concerns in a written advisory communication to two parliamentary committees and the Ministries of Temporarily Occupied Territories and IDPs, Justice and Foreign Affairs.

IX. Conclusions and recommendations

207. The apparent unwillingness of the parties to the conflict to implement their obligations stemming from Minsk Agreements has endangered civilians by continuing a pattern of hostilities in densely populated towns and neighbourhoods. Civilians living close to the contact line frequently appeal to OHCHR to bear witness and heed the destruction and damage that the ongoing conflict causes to their lives, while weapons prohibited by the Minsk Agreements remain in areas from which they should be withdrawn, and continue to be used.

¹⁷² Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment debriefing with the Government of Ukraine, 13 September 2016.

208. The 13 per cent decrease in civilian casualties between 16 August and 15 November 2015 is testament to the importance of the full and effective implementation of the Minsk Package of Measures. The restoration of full control by the Government of Ukraine over parts of the border with the Russian Federation in certain areas of Donetsk and Luhansk regions, the withdrawal of foreign fighters, pull-out of all heavy weaponry, pardon and amnesty through law, in line with international law and with due regard for human rights is critical to ensure human rights protection for all those living in the conflict-affected area and the establishment of the rule of law in Ukraine.

209. The consistent presence and operations of OHCHR on either side of the contact line allow for early and responsive monitoring of the human rights situation in the conflict-affected area. Information gathered during the reporting period confirms that the local population suffers from insecurity, military engagement near their homes, the threat of mines and unexploded ordnance, and severe and disproportionate restrictions on their freedom of movement. The reported continued flow of weapons and ammunition to the conflict area, which results in serious human rights violations and abuses and violations of international humanitarian law, compounds their suffering.

210. Civilians living in close proximity to the contact line have limited or no access to water and electricity as a direct result of ongoing hostilities. It is of deep concern that Government forces and armed groups operating in civilian areas do not take all feasible precautions against the effects of fighting, resulting in damage to schools, kindergartens, and medical facilities. Ukrainian military forces and armed groups continued to be positioned in civilian homes and buildings in villages and towns adjacent to the contact line.

211. The lack of protection for the civilian population is exacerbated by the armed groups' undue restrictions preventing civil society and humanitarian actors from carrying out humanitarian activities including protection on territories controlled by the armed groups.

212. The derogation of the Government from the International Covenant on Civil and Political Rights in June 2016 toward people living in the territories controlled by the armed groups broadens the protection gap. The registered draft law 'On the Temporarily Occupied Territory of Ukraine' risks undermining human rights and contravening Ukraine's international obligations, violating the right to equal protection and customary rules of international humanitarian law concerning relief, and human rights law requiring the Government to ensure minimum essential humanitarian supplies for the civilian population.

213. IDPs have faced eviction as the Government has shown disregard for their rights and particular needs. During his visit to Ukraine, the Special Rapporteur on the human rights of internally displaced persons found that IDPs in Ukraine face a number of problems when accessing their rights, ranging from

freedom of movement to social protection and housing, land and property issues.¹⁷³

214. Ukraine still lacks a comprehensive policy regarding national minorities. The most recent case of Roma forced eviction from Loshchynivka village, Odesa region, was a stark reminder of the need for a human rights-based approach at all levels of government.

215. Judges and lawyers have an essential role to play in protecting persons against discrimination, particularly women, children and minorities, and ensure that existing laws and regulations prohibiting discrimination are respected in legal practice. Such protections apply equally to IDPs, Roma and survivors of conflict-related human rights violations and abuses. To play this role in providing equal protection to all Ukrainians, judges and lawyers must be protected from politicized assaults on their independence. Repeated interference with the independence of the judiciary in the cases relating to the 2 May 2014 violence in Odesa have aggravated the slanted nature of investigations and resulted in unjustified delays. Deficit in good governance and widespread corruption continue to contribute to a lack of trust in Government institutions and instability.

216. The majority of individual cases documented by OHCHR in Ukraine concern violations and abuses of human rights in detention and places of deprivation of liberty. While armed groups continued to deny external independent monitors access to persons deprived of their liberty, OHCHR was able to record and verified allegations of torture and ill-treatment in armed group custody. However, without unfettered access to all those deprived of their liberty by the armed groups, OHCHR has serious concerns that they may be subject to torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment), including sexual and gender-based violence. OHCHR also continued to record cases of *incommunicado* detention by the SBU, and noted that Ukrainian courts regularly enforce mandatory detention of suspects in conflict-related cases, raising concerns of arbitrary detention and highlighting the need to bring the Code of Criminal Procedure in line with international standards.

217. While there has been some progress in investigations into the killings at Maidan in January and February 2014, OHCHR notes that perpetrators of human rights abuses and violations enjoy a persistent and broad climate of impunity. This jeopardizes accountability and the right of victims to remedy. Throughout its work and engagement with the Government of Ukraine, OHCHR has emphasized the need for accountability to promote reconciliation, the rule of law in accordance with international human rights law, and restore confidence in the institutions of the State.

¹⁷³ "Ukraine: UN expert calls for comprehensive strategy to address IDPs' plight as winter closes in" 9 September 2016, Office of the High Commissioner for Human Rights (Accessible at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20472&LangID=E>).

218. The significant rise in cases of killings and attacks on journalists appear related to their professional activities and intended to threaten and stifle their reporting. Such attacks take place against a backdrop of political figures using damaging rhetoric that encourages a lack of respect for the life and work of journalists. Greater protection for journalists is critical for ensuring society's access to information and for government accountability, across the country.

219. To ensure accountability and curtail impunity, it is critical for Ukraine to have a robust and independent judiciary. The Constitutional amendments regarding the judiciary introduced on 30 September set out a clear path of reform. An independent – and fully staffed and resourced – judiciary is critical for ensuring accountability for human rights and international humanitarian law violations, and providing an impartial and objective foundation upon which to ensure that all Ukrainians enjoy equal protection under the rule of law.

220. The human rights situation in Crimea continued to raise serious concerns. The arbitrary detention of individuals on grounds of their political opinion and expression continues to be worrying. The 18 September Russian Federation parliamentary and local elections held on the Crimean peninsula were held in violation of UN General Assembly Resolution 68/262 on the territorial integrity of Ukraine, and were marked by intimidation and violations targeting Crimean Tatars and members of the Mejlis, contributing to the climate of repression against dissenting voices.

221. OHCHR has been progressively integrating support to humanitarian, development, technical assistance and capacity-building dimensions in its work, including through targeted cooperation with key Government institutions and ministries. OHCHR has also engaged on the protection of human rights with the armed groups of 'Donetsk people's republic' and 'Luhansk people's republic'.

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

223. **To the Government of Ukraine:**

- a) **Judiciary to enforce the principle that laws and policies of the Government of Ukraine are bound to respect human rights standards, including the right to equal treatment and the principle of non-discrimination; and ensuring broad application of such equal protection to minorities, persons affected by the armed conflict, IDPs, older persons and persons with disabilities;**
- b) **Cabinet of Ministers to take measures to facilitate freedom of movement to and from Crimea, including by reconsidering restrictions on the transportation of personal belongings stemming from Resolution 1035 of 16 December 2015;**
- c) **Headquarters of the 'Anti-Terrorism Operation' to reconsider the restrictions on freedom of movement**

imposed by the Temporary Order *vis-à-vis* international law, particularly the legality, necessity and proportionality of the restrictions on movement of civilians and goods, while the State Border Service take measures to shorten processing time, provide necessary facilities and establish effective complaint mechanisms;

- d) Penitentiary Service to ensure that medical personnel in pre-trial detention facilities (SIZO) provide medical certificates to detainees and register any recorded injuries with specific attention to the situation of female detainees;
- e) Security Service of Ukraine (SBU) to immediately release all persons held *incommunicado* in unrecognized places of detention, including the five remaining individuals held in the Kharkiv SBU and three individuals held in Mariupol SBU;
- f) National police to ensure the protection of courtrooms, including judges, lawyers, accused, victims and witnesses through adequate and effective presence during trials, with adequate support and resources allocation by the Government;
- g) Ombudsperson's office to pursue its challenge of the constitutionality of article 176(5) of the Code of Criminal Procedure as it leads to arbitrary detention;
- h) Main Investigation Department of the National Police together with the inter-agency operational group, to promptly proceed with the investigation into Pavel Sheremet's death on 20 July 2016 to ensure accountability; Ministry of Internal Affairs to ensure effective investigation into the killing of Oles Buzyna on 15 April 2015;
- i) Cabinet of Ministers to set up a register of civilians who suffered physical injuries as a result of hostilities in eastern Ukraine, determine their legal status and consider extending social entitlements to this category of persons;
- j) Ministry of Social Policy to ensure the availability of specialised psycho-social support and counselling to relatives of missing persons;
- k) Cabinet of Ministers, particularly the Ministry of Social Policy, to act on the observations made by the Special Rapporteur on the human rights of internally displaced persons during his visit to Ukraine in September 2016, to urgently delink pensions and social benefits from registration, as this has affected around 500,000 IDPs, whose situation is further aggravated by the onset of winter;
- l) Cabinet of Ministers, particularly the Ministry of Social Policy and the Ministry of Temporarily Occupied Territories and IDPs, in a coordinated manner, to prioritise durable housing for IDPs, many of whom are elderly and have disabilities, together with access to livelihood opportunities;

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- m) Government to develop a comprehensive legal framework including a fact-finding and assessment mechanism for damaged and destroyed property, and enable the affected population to access effective remedy, noting that many IDPs left property behind in armed group-controlled and conflict-affected areas;
 - n) Government to strengthen accountability and protection services to ensure survivors' rights to seek redress and reparation for sexual and gender-based violence.

224. To all parties involved in the hostilities in Donetsk and Luhansk regions, including the armed groups of 'Donetsk people's republic' and 'Luhansk people's republic':

- a) Adhere to the ceasefire and implement other obligations contained in Minsk Agreements, in particular regarding withdrawal of prohibited weapons;
- b) Comply with the 21 September Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware;
- c) Guarantee the facilitation of unimpeded humanitarian assistance to civilians in need without distinction;
- d) Target only military objectives in line with binding legal obligations, prohibit indiscriminate attacks – which do not distinguish between civilians and fighters, and ensure that subordinates do not direct attacks against civilians;
- e) Avoid under all circumstances carrying out any attacks that are expected to cause incidental loss of civilian life, injury to civilians and damage to civilian objects excessive to the anticipated concrete and direct military advantage;
- f) In order to ensure greater protection of the civilian population and essential infrastructure, cease the use of mortars and other indirect and imprecise weapons in civilian-populated areas, and not place soldiers, fighters or other military objectives in populated areas;
- g) Treat all those detained in connection with the conflict including soldiers and fighters humanely in all circumstances;
- h) Allow unfettered access to international independent and impartial observers to persons deprived of their liberty, keep a detailed register of every person deprived of liberty and inform families of detainees where they are held; and ensure that the detention of juveniles comply with the Convention on the Rights of the Child, the Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;
- i) Facilitate civilians' freedom of movement and transportation of goods across the contact line according

to norms and principles of international humanitarian law.

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

- a) Guarantee the human rights of all inhabitants of Crimea, without discrimination;
- b) Bring an end to the displacement from the territory of Crimea to the Russian Federation of persons who have no Russian citizenship, including those sentenced to imprisonment;
- c) Respect and ensure the right to health, including sexual and reproductive health rights of all persons detained in Crimea or transferred to the Russian Federation following such detention, including proper medical treatment and hospitalization, when necessary;
- d) Ensure adequate medical care and treatment to detainees in pre-trial detention facilities and prisons;
- e) Refrain from practices such as forcible psychiatric hospitalization, which may amount to ill-treatment;
- f) Uphold freedom of opinion and release all persons who have been arrested and charged for expressing their views on the status of Crimea;
- g) Allow Crimean Tatars to choose their own self-governing institutions;
- h) Allow unimpeded access to Crimea for all regional and international human rights bodies in order to enable them to monitor the human rights situation in accordance with their mandates.