



**Joint submission to the Universal Periodic Review of Ukraine by  
ARTICLE 19, Centre for Democracy and Rule of Law, Anti-corruption Research  
and Education Centre, Human Rights Information Centre, Human Rights Platform,  
and Regional  
Press Development Institute**

*For consideration at the 28th Session of the Working Group in November 2017*

*30 March 2017*

## Executive Summary

1. The submitting organisations welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Ukraine. This submission focuses on Ukraine's compliance with its international human rights obligations, in particular in respect to the right to freedom of expression and information.
2. The submission notes positive progress in protecting these rights since Ukraine's last review, related to reforms implemented by the Poroshenko government, in power since 2014 following popular protests and the fall of the Yanukovich government.
3. It addresses the following areas of concern:
  - Attacks on journalists, media workers and activists
  - Media pluralism
  - Restrictions on freedom of expression related to national security
  - Access to public information
  - Freedom of expression in Crimea and the Donbas

### Attacks on journalists, media workers and activists

4. Ukraine accepted recommendations from Austria, Chile and France on improving protections for journalists during their last UPR. There has been progress in this regard: the Institute for Mass Information reported a decline in the number of violations of journalistic rights, encompassing physical assaults, other forms of censorship and restricting access to information, from 496 to 264 during the period 2013-2016.<sup>1</sup> This includes a significant decline in the number of assaults and beatings cases, from 97 instances in 2013 to 31 cases in 2016. This was with the exception of 2014, when there were 286 registered cases of violence against the media, primarily related to violence during the EuroMaidan protests.<sup>2</sup> There has also been a marked shift in the perpetrators of violence against journalists: while in 2013-2014 the majority of assaults against journalists were committed by law enforcement agencies and local officials, in recent years the main aggressors were usually private individuals.<sup>3</sup>
5. In 2015, the Ukrainian Parliament amended the Criminal Code to ensure better protections for journalists, including strengthening liability for threats or violence against journalists, intentional destruction or damage to journalists' property, and hostage-taking of a journalist. In 2016, the Parliament also amended Article 163 of the Criminal Code, increasing protections for the confidentiality of media correspondence. While welcome, these protections need to be strengthened: at present, they are only afforded to journalists affiliated with a journalists' union or an accredited media outlet, meaning that protections often do not include photographers or camera operators, and are not usually extended to unaffiliated journalists, in particular bloggers and online journalists, who make up an important part of Ukraine's media environment.
6. Despite improvements, journalists and media outlets continue to face physical assault and other forms of harassment, including destruction of equipment, and other obstructions, restricting their ability to report on sensitive issues. Journalists who are covering corruption, who are accused of spreading Russian "propaganda", or are covering the conflict in Eastern Ukraine, are most likely to be

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<sup>1</sup> The number of violations increased in 2014 up to 995 cases, due to the Euromaidan events. Source:

<http://imi.org.ua/news/56087-u-2016-rotsi-v-ukrajini-zafiksovano-264-porushennya-svobodi-slova-imi-onovleno.html>

<sup>2</sup> Provided figures do not include violations in Crimea and non-controlled territories of Donetsk and Lugansk regions.

<sup>3</sup> Institute for Mass Media (2016), 'Khronika Svobodi Slova 2015' (Chronicle of Free Speech 2015);

<https://drive.google.com/file/d/0B289wOojYGVWZzIUd3BjQ0ZBRmc/view> and Institute for Mass Media (2015), 'Khronika Svobodi Slova 2014' (Chronicle of Free Speech 2014) [http://imi.org.ua/docs/Hronika\\_2014\\_A4\\_11-print.pdf](http://imi.org.ua/docs/Hronika_2014_A4_11-print.pdf)

targeted. The two most serious incidences of violence perpetrated since the change of government are the murders of journalist Pavel Sheremet (July 2016) and media personality Oles Buzina (April 2015). Sheremet, a journalist working for online investigative newspapers *Ukrayinska Pravda* and *Radio Vesti*, was killed in a car explosion on 20 July 2016. The car belonged to Olena Prytula, editor at *Ukrayinska Pravda*, but she wasn't in the car at the time. Buzina, a TV presenter and former editor-in-chief of the Russian language Kyiv-based newspaper *Segodnia*, was gunned down on 16 April 2015 by an unknown gunman. Buzina was a controversial figure in Kyiv, known for his support for Russian activities in Crimea and the East of Ukraine. Other examples include:

- On 2 October 2015, journalist Mykhailo Tkach and camera operator Kyrylo Lazarevych were detained by the Ukrainian security services (SBU) in Kyiv while filming a broadcast on luxury cars owned by SBU personnel. Both were working for the anti-corruption investigation program "Skhemy: Corruption in Detail", broadcast jointly on Radio Liberty and the TV channel UA:Pershy. SBU officers used force against the journalists when detaining them, and damaged their equipment. Although one of the perpetrators was sentenced to two days military detention for illegal deprivation of liberty under the SBU's internal disciplinary statute, a parallel criminal investigation under the Criminal Code of Ukraine into the obstruction of journalists' activity was closed.
  - In September 2016, Inter TV Channel faced an attempted arson attack. The channel had previously been subject to protests for its pro-Russian sympathies and the Minister of Interior had publicly accused the channel of being "anti-Ukrainian", and transmitting Russian "propaganda".<sup>4</sup>
  - In May 2016, *Myrotvorets* (Peacemaker) website published the names and personal data of several thousand Ukrainian and international journalists accredited by the Press Centre of the self-proclaimed Donetsk People's Republic, accusing them of "cooperating with terrorists", resulting in many of those listed reporting threats and intimidation. Ukrainian prosecutors opened an investigation into the leak; however a number of prominent Ukrainian officials, including the Minister of the Interior, welcomed the website's actions.
7. Investigations by law enforcement agencies into attacks on journalists are often ineffective: the victim's status as a journalist is often not registered and perpetrators' intent to restrict freedom of expression is rarely proved. 2016 Statistics from the Prosecutor General's office show that although 141 cases of alleged crimes against journalists were reported to the police, there were only court proceedings in 31 cases, including relating to alleged crimes registered with law-enforcement in previous years.<sup>5</sup>
  8. Impunity for murders of journalists perpetrated under previous governments and the current government remains a problem. An egregious case of continuing impunity concerns the kidnapping and murder of investigative journalist Giorgi Gongadze in September 2000: although four men directly involved in the murder have been convicted, no one has been convicted for ordering the killing. There is continuing impunity for the February 2014 murder of journalist Viacheslav Veremii, who died from injuries sustained during an attack by a gang of unknown assailants while covering the EuroMaidan protests in early 2014; the investigations have also stalled.
  9. Impunity also persists for other forms of violence against journalists perpetrated under the last government, in particular during the EuroMaidan protests. Numerous journalists were attacked and had their equipment confiscated or destroyed. Although these incidences occurred under a different government, the Ukrainian authorities have thus far failed to adequately investigate or compensate for these incidences.

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<sup>4</sup> <https://www.facebook.com/arsen.avakov.1/posts/1120221481401290>

<sup>5</sup> Institute of Mass Information 'In 2016, the police submitted 31 cases of violations of journalists' rights to the court', 06/03/2017 <http://imi.org.ua/news/56672-in-2016-the-police-submitted-31-cases-of-violations-of-journalists-rights-to-the-court.html>

10. Physical attacks on activists and human rights defenders are rare; however, as in cases of violence against journalists, impunity for such attacks committed under previous governments continues to cast a chilling effect on freedom of expression. The murder of human rights defender and environmentalist Volodymyr Honcharenko, head of the NGO For the Rights of Citizens to Environmental Safety, is of particular concern. Honcharenko was attacked and beaten by a group of unknown assailants on 1 August 2012 and died in hospital a few days later. The attack came four days after Honcharenko publicly denounced the illegal transfer of 180 tons of contaminated, highly toxic metal waste through Kryvy Rih in July 2012. He had received threats related to his activism prior to this murder, and spoken prolifically on corporate negligence and government corruption. Ukrainian civil society report that there are still very few activists willing to speak out on environmental rights.

***Recommendations:***

11. Prevent and protect against threats and violence against journalists, media workers and activists, and end impunity for such crimes, including by ensuring impartial, prompt, thorough, independent and effective investigations into all alleged crimes and hold those responsible to account; including to:
- i. Expand the definition of journalist in the Criminal Code and other legislation offering increased protections to journalists and media workers, to include anyone involved in gathering and transmitting information to the public, and not be limited by membership in a professional association or employment with an accredited media outlet;
  - ii. Conduct training and awareness-raising among law enforcement officers and military personnel regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists;
  - iii. For public authorities to publicly, unequivocally and systematically condemn all violence and attacks against all journalists and other media workers, as well as against activists;
  - iv. Dedicate the resources necessary to investigate and prosecute attacks. Particular attention should be paid to investigating past murders.

**Media pluralism**

*Media ownership, concentration and public service media*

12. Ukraine has a largely pluralistic media environment; however, problems with the media landscape persist, due to delays in privatising state-owned media outlets and the concentration of ownership of major media outlets by a small number of oligarchs, who use them as tools of economic and political power.
13. Ukraine has made significant progress in transforming state-owned television and radio stations into independent public service broadcasters. In April 2014, Parliament adopted Law No. 271-VIII on Public Service Broadcasting and, on 19 January 2017, the Public Broadcasting Company of Ukraine was registered. A Supervisory Council, including a number of civil society representatives is already functioning and a management team is currently being appointed and is expected to be in place by May 2017. As the broadcaster starts to function, it will be important to ensure adequate funding and guarantees of editorial independence.
14. With regard to state-owned press, on 1 January 2016 parliament adopted Law No. 917-VIII on the reform of state-owned and communal print media. The Law provides a legislative basis for the privatisation of local press publications, currently owned and financed by municipal and national state bodies, and frequently used by political figures for advancing their political agendas. The law envisaged two stages of reform: an initial 'pilot' period, running until 31 December 2016, during which time media outlets would volunteer to enter the reform process and transfer ownership to independent companies; and a second stage, starting in 2017 when all media outlets would be obliged to undergo reforms to guarantee their independence. However, the process of reform has been slow, and by the end of the first stage no media outlet has been reformed. This is related to

delays by the government in adopting an act needed to initiate the reforms; the reluctance of local authorities to approve reform decisions; and a weak legislative basis to overcome these obstacles.

15. Issues also remain regarding media ownership and concentration. The majority of national mass media outlets are owned by a small number of wealthy individuals, with significant political and business interests in other spheres. Poroshenko continues to own the influential Channel 5. These channels are highly partisan and often used to advance political agendas: they have been involved in smear campaigns against competitors,<sup>6</sup> and are used by their owners as the tools for political campaigning.<sup>7</sup>
16. In October 2015, a Law on Media Transparency was passed. While it requires TV and radio broadcasters to publish their ownership schemes on their own websites and enables the National Broadcasting Council to establish sanctions for non-compliance, it does not include any provisions on financial transparency, undermining its effectiveness in practice. The ownership of two popular Channels, 112 and Radio Vesti, remains unclear, as is the ownership of some smaller, local channels. The Law also does not cover the print and Internet media.

#### *Libel lawsuits*

17. Officials and other public figures often bring civil libel cases against journalists in order to limit critical reporting. This is facilitated by the lack of independence of the judiciary, and susceptibility to pressure from authorities and business interests. There have been two high profile cases where members of the judiciary have themselves sued media outlets to try to prevent them from reporting on matters of public interest.
  - In March 2016, Vladislav Kutsenko, General Prosecutor of the Zaporizhia District, sued Andrei Bartyish, editor of local newspaper Gorazhanin Inform, for 100,000 UAH (3800 USD) in moral damages due to a series of articles published by the paper investigating Kutsenko's alleged involvement in a number of criminal cases, including embezzlement and land fraud.<sup>8</sup> The case was partially satisfied in Kutsenko's favour and Gorazhinin was compelled to retract most of the statements and to pay minimal non-pecuniary damages of 1000 UAH (35 USD).
  - In December 2016, Judge Oleksandr Tymoshchuk brought a case against local journalists who had investigated allegations that he was involved in a traffic incident resulting in death. The judge sought 200 000 UAH (7600 USD) of moral damages; however the case was dismissed.
18. In a positive development, in 2014, the parliament adopted Law No. 1170-VII, which eliminated Article 277 (3) of the Civic Code, which stated that defamatory statements of fact are presumed to be false, subject to proof by the defendant that the statements were true. This placed an unreasonable burden on the defendant, at least in relation to statements on matters of public concern, exerting a significant chilling effect on freedom of expression, as individuals will refrain from making statements not because they are false or believed to be false, but out of fear that they cannot be proven to be true in a court of law or because of the high cost of defending a defamation suit.

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<sup>6</sup> Media Sapiens (2014), 'Моніторинг: Опозиційність «Інтера» та «України» і продовження війни олігархів' (Monitoring: Opposition between Inter and Ukraine and the continuation of the war of the Oligarchs), 17 December [http://osvita.mediasapiens.ua/monitoring/monitoring\\_overview/monitoring\\_opozitsiynist\\_intera\\_ta\\_ukraini\\_i\\_prodozhennya\\_viyni\\_oligarxiv/](http://osvita.mediasapiens.ua/monitoring/monitoring_overview/monitoring_opozitsiynist_intera_ta_ukraini_i_prodozhennya_viyni_oligarxiv/)

<sup>7</sup> Media Sapiens (2017) 'Топ-десять найбільших порушень у теленовинах грудня за версією «Детектора медіа»' (The top ten major disturbance in TV news: December version of the Media Detector), 13 January [http://osvita.mediasapiens.ua/ethics/standards/topdesyat\\_naybilshikh\\_porushen\\_u\\_telenovinakh\\_grudnya\\_za\\_versieyu\\_detektora\\_media/](http://osvita.mediasapiens.ua/ethics/standards/topdesyat_naybilshikh_porushen_u_telenovinakh_grudnya_za_versieyu_detektora_media/)

<sup>8</sup> Ukrainiski Novini (2016), 'Прокурор Куценко судится с областной газетой и требует 100 тыс. Гривен' (Prosecutor Kutsenko is suing local paper and demands 100 thousand grivna), 29 March <http://ukranews.com/news/419109-prokuror-kucenko-sudytsya-s-oblastnoy-gazetoy-y-trebuets-100-tys-gryven>

19. On the other hand, in May 2015, amendments to legislation on court fees cancelled progressive scale charging court fees in cases of protection of honour, dignity and business. This scale established a proportionate increase in court fees where the plaintiff sought unusually high compensation for moral damages. By abolishing this system, it is much less costly for a plaintiff to request higher sums in damages, creating the possibility of abusive litigation seeking excessive damages, casting a chilling effect on freedom of expression with the potential to particularly affect those investigating and reporting on corruption.
20. A further issue is the lack of an expiration period for defamation claims: currently, the only limitation concerns retraction and response claims, which must be filed within one year from the date of publication. There is no limit on when a case claiming for financial compensation may be filed, allowing cases to be initiated long after the statements on which they are based have been disseminated and undermining the ability of those involved to present a proper defense.

***Recommendations:***

21. *Media ownership, concentration and public service media*
  - i. Amend the Law on the reform of state-owned and communal print media and the Law on public service broadcasting of Ukraine to ensure reforms of state-owned media are implemented in line with international standards, guaranteeing that the Ukrainian population have access to independent, public service print and broadcast media.
  - ii. Ensure the effective implementation of the Law on media ownership and promote the adoption of specific legislation guaranteeing media pluralism and preventing excessive concentrations of ownership. In developing policy, ensure possible conflicts of interest in media ownership are considered.
22. *Libel lawsuits*
  - i. Circumscribe the ability of public figures to bring civil libel cases against the media by requiring them to prove actual malice (i.e. that the publisher of the statement knew it was false; or acted with reckless disregard) when bringing such cases.
  - ii. Establish a clear expiration period of not more than one year for all claims relating to defamation.

**National security restrictions on freedom of expression**

*Restrictions on media*

23. Ukrainian authorities may have recourse to restricting freedom of expression where this is provided for by law and necessary and proportionate to a legitimate national security interest, which is particularly relevant in light of the ongoing conflict in the Donbass. Ukraine may also be faced with propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, which States are required to prohibit under Article 20 of the ICCPR.
24. While acknowledging the security threats faced by Ukraine, efforts by the Ukrainian authorities to tackle Russian “propaganda” may however unduly restrict freedom of expression. At present, 15 Russian TV channels are currently blocked from broadcasting on cable within Ukraine, raising concerns about censorship, in particular the necessity and proportionality of these measures.
25. Most recently, in January 2017, the National Television and Radio Broadcasting Council of Ukraine banned Dozhd, an independent Russian TV channel known for its criticism of the Russian government, from broadcasting on cable television inside Ukraine. The Council justified their decision on the grounds that the channel had (a) violated advertising regulations, which prohibit media from non-EU countries or countries that have not ratified the European Convention on Transfrontier Television from broadcasting advertisements; and (b) repeatedly identified Crimea as a part of Russia’s territory, in violation of Article 28(1) of the Law of Ukraine On Information, which prohibits

calls for violating the territorial integrity of Ukraine. Between March and May 2016, the National Broadcasting Council sent Dozhd several warnings about breach of advertising regulations, which they state that Dozhd failed to address. Further to the decision, Dozhd TV remains accessible online and on satellite channels.

26. ARTICLE 19 is concerned that the banning of Dozhd unjustifiably restricts the diversity of views available in the public sphere, and that the Council's decision may not meet the requirements of necessity, proportionality and pursuit of a legitimate aim, which must be met to warrant a restriction of freedom of expression under Article 19(3) of the ICCPR. With regard to the accusation of breach of advertising regulations, the banning of a channel seems to be a disproportionate response. Ukrainian legislation does not provide for more appropriate sanctions. With regard to the charges of calls to violate Ukraine's territorial sovereignty, ARTICLE 19 believes it difficult to see how the broadcasting of the map would exert an urgent threat to national security, which would justify a restriction.
27. In April 2015, President Poroshenko approved Law No. 159-VIII on Amending Legislative Acts Concerning Protection of Ukrainian TV and Radio Media Space, which prohibits the broadcast of films and other audio-visual content produced in an "aggressor state" after 2014; as well as content produced since August 1991 that promotes state agencies of an "aggressor state" or that promote aggression against Ukraine. Russia is the only country to have been declared an "aggressor state". By not requiring prohibitions on a production to be justified on the basis of individualised evidence of their necessity and proportionality, for example to protect national security or prevent incitement to violence, or limited in duration, these prohibitions are over broad and do not comply with international human rights law.
28. The authorities have also sought to restrict access of international journalists to Ukraine. In September 2015, President Poroshenko signed a decree banning at least 41 international journalists from entering Ukraine, in a list of 388 individuals. The decree stated that the individuals included on the list represented an "actual or potential threat to national interests, national security, sovereignty and territorial integrity of Ukraine"; however, it did not provide any detailed information or evidence of how the individuals threatened Ukraine's security. Following an international outcry, the authorities removed the majority of Western journalists from the list; and the decree was amended on 16 September 2016. Those remaining on the list are primarily Russian journalists and a few journalists from other countries who have publicly endorsed the Russian actions in Crimea and Donbass. Despite their political views, international journalists should have access to freely report on the situation in Ukraine, unless they pose a direct and immediate threat to Ukraine's national security.

*Ban on symbols related to "communist and Nazi totalitarian regimes"*

29. On 9 April 2015, the Ukrainian Parliament adopted Law no. 317-VIII "On the condemnation of the communist and national socialist (Nazi) regimes, and prohibition of propaganda of their symbols". The law prohibits the production, dissemination and public use of Communist and Nazi symbols in public spaces, providing criminal sanctions of up to five years' imprisonment (up to ten years, if committed by a person holding public office). While recognising that protecting the interests of national security and territorial integrity is a legitimate aim, the Venice Commission of the Council of Europe criticised the legislation, finding it too broad in scope, with the potential to "stifle an open and public debate in national media."<sup>9</sup>

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<sup>9</sup> CDL-AD(2015)041-e Joint Interim Opinion on the Law of Ukraine on the condemnation of the communist and national socialist (Nazi) regimes and prohibition of propaganda of their symbols [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)041-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)041-e)



30. The Venice Commission also raised concerns about the Law's potential impact on political speech, warning that the legislation might "effectively discourage people from engaging in public affairs."<sup>10</sup> In December 2015, the Law was used to ban Ukraine's Communist Party (CPU). The decision was made by the Kyiv District Administrative Court following an application from the Justice Ministry, on the grounds that the CPU had refused to remove Communist symbols from its documentation.<sup>11</sup> Although the CPU is free to re-register under a different name and without displaying communist symbols, ARTICLE 19 believes that this decision nevertheless violates the rights to freedom of expression and association and that the legislation needs to be amended.
31. The Ukrainian parliament is currently considering a draft law on amendments to the legislation to mitigate concerns around freedom of expression. Any amendments must ensure that the law does not obstruct historical or other debate, or political expression.

#### *Online content*

32. On February 2017, President Poroshenko approved an Information Security Doctrine. This identified a need to adopt legislation to enable blocking of online content that is deemed to endanger the life and safety of Ukrainian citizens, or include propaganda of war or incitement to war, national and religious hatred. The doctrine does not elaborate on what this would look like, and has drawn concerns from Ukrainian Internet experts that this may precipitate extra-judicial blocking of content, beyond what is justifiable under international law.<sup>12</sup> The adoption of a Law on Protection of cinematography on 23 March 2017, which enables the takedown of content that violates copyright without the need for review by an independent body, have accentuated concerns that these powers may be applied too broadly or extended to material deemed as a threat to national security.

#### **Recommendations:**

33. Guarantee that legislation aimed at countering Russian propaganda is not used to unjustifiably restrict the right to freedom of expression, including by ensuring that the dissemination of films and other media content are only restricted on the basis of a court decision and individualised evidence that such restrictions are necessary and proportionate to a legitimate aim.
34. Ensure that decisions to revoke broadcasting licenses, including on the grounds of protecting national security, are only taken as a measure of last resort by an independent regulatory body, in line with the requirements of legality, legitimate aim, necessity and proportionality.
35. Ensure that journalists are not denied entry to Ukraine on the basis of their political affiliation, and that decisions to deny entry are based on an individualised assessment of the necessity and proportionality of those measures to achieve a legitimate aim, such as the protection of national security.
36. Amend or repeal the Law on the condemnation of the communist and national socialist (Nazi) regimes, and prohibition of propaganda of their symbols, to ensure that it is not used to stifle debate or restrict political participation.
37. Ensure that any future mechanism aimed at blocking Internet content corresponds to the requirements of necessity and proportionality and that any such limitation shall only be enforced through court decisions.

#### **Access to Public Information**

38. There have been significant improvements in legislation regulating access to public information since Ukraine's last periodic review. On 17 April 2014, President Poroshenko signed Law 1170-VII "On

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<sup>10</sup> Ibid

<sup>11</sup> Decision №826 / 15408/15, District Administrative Court of Kyiv, 16 December 2015 [www.reyestr.court.gov.ua/Review/54392066](http://www.reyestr.court.gov.ua/Review/54392066)

<sup>12</sup> Digital Report (2017), 'Председатель ИНАУ раскритиковал Стратегию кибербезопасности Украины' (Chairman of the Ukrainian Internet Association criticises Cyber Security Doctrine of Ukraine), 21 March <https://digital.report/predsedatel-inau-raskritikoval-strategiyu-kiberbezopasnosti-ukrainyi/>



Amendments to Certain Legislative Acts of Ukraine in relation to the adoption of the Law of Ukraine "On Information" (new version) and the Law of Ukraine "On Access to Public Information". The Law sought to eliminate contradictions between various earlier legislative acts on access to information and to elaborate clearer principles and mechanisms to promote access to public information, such as requirements to government bodies to publish information online and fines for unfounded non-disclosure of information. The Law also sought to fight corruption, by requiring the disclosure of public officials' declarations of assets. In April 2015, parliament approved amendments to Law #319-VIII on Open Data. This also requires various government agencies to regularly publish information online in the machine-readable format. Currently about 12 000 data sets are available on the *Unified State Web-Portal of Open Data*.<sup>13</sup> Ukraine has also taken innovative steps in cooperation with civil society, opening up access to information and data on public procurement with the ProZorro initiative, and implementing the Open Contracting Data Standard.<sup>14</sup>

39. Despite improvements in access to information legislation, implementation remains problematic. Civil servants, even at higher levels, lack knowledge about requirements on disclosure of information and understanding of how to process requests, resulting in too many public interest requests being denied. For example, access to information on assets of officials, municipal land plots and public funds is often unlawfully restricted. Although the Law establishes a three-part harm test to establish whether a refusal is justified (Article 6), this is rarely referred to and refusals are usually ungrounded. There are at least nine cases pending before the European Court of Human Rights regarding denied access to information cases.
40. Access to judicial information is particularly important, given the low level of trust in the judicial system in Ukraine and widespread allegations of corruption among court officials. During the last UPR, Ukraine accepted recommendations from Slovakia, Spain and Poland on ensuring the transparency of the judicial system; however, courts continue to disregard access to information legislation, including with regard to court budgets and salaries of judicial personnel. The current judicial reform requires greater transparency, especially with regard to personal assets and professional activities of the individuals who are applying for a judge position.
41. The Secretariat of the Ukrainian Parliament Commissioner for Human Rights is responsible for oversight of the implementation of access to information legislation. However, due to excessively short time frames for challenging violations of the right to information before a court, the large number of complaints, lack of financial and human resources, the Ombudsman Secretariat cannot ensure full and effective implementation of access to information legislation. In a positive move, the Ombudsman has joined forces with independent civil society organisations in order to monitor implementation of access to information legislation and provide recommendations to officials on best practices.
42. Apart from addressing the violation of one's right to access information to the Ombudsperson, there is a procedure of filing appeal directly to the administrative courts. However, legal costs have been recently raised and are prohibitively high.
43. In a bid to address some of these issues, Draft Law #2913 "On amendments to certain laws of Ukraine in the sphere of access to public information regarding the improvement of some of its provisions" has been developed. It aims to strengthen oversight powers to control the sphere of access to information, and to introduce more precise wording on legitimate exemptions to access to information requests, in order close any loops holes that enable officials to refuse requests. Even though it has been approved by the Parliamentary Committee on Freedom of Speech and Informational Policy, the Draft Law still has not been considered by the full Parliament.

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<sup>13</sup> <http://data.gov.ua/>

<sup>14</sup> <http://www.open-contracting.org/why-open-contracting/showcase-projects/ukraine/>

44. Additionally, an independent institution responsible for the oversight of access to information legislation is currently under discussion and members of Ukrainian Parliament have introduced a draft bill proposing amendments to the Constitution to introduce an independent information commissioner.<sup>15</sup> If established, it will be essential to ensure the independence and sustainability of any independent body to oversee access to information legislation.

#### *Protection of Whistle-blowers*

45. Ukraine currently has limited protections for whistle-blowers who have disclosed private or classified information in the public interest. Those doing so have faced dismissal from employment and costly legal battles. For example, in 2010 Yuri Chumak, a police employee, disclosed information about a decision by the local prosecutor's office to close a case into alleged police brutality. He lost his job, and faced two lawsuits against him. As Ukraine seeks to fight corruption, a whistle-blowing law could promote transparency and help bring to light important information, while addressing Ukraine's culture of state secrecy – a legacy of the Soviet past.
46. A draft law #4038a "On Whistleblower Protection and Disclosure of Information about Harm and Threat to the Public Interest" is currently being debated in parliament. The draft law defines organisational and legal grounds for disclosures of information about harm or threat to the public interests, and the rights to, guarantee of, and mechanisms of, whistle-blower protection. It provides the three-tiered disclosure system that gives whistle-blowers the freedom to choose the path they wish to take to expose wrongdoing and also introduces the proper and effective compensation model along with the mechanisms of immediate protection of a person from the moment of disclosure.

#### **Recommendations:**

47. Ensure the proper implementation of the access to information legislation and implement policy measures to ensure transparency of the expenditure public funds, public land plots and other information of public interest.
48. Establish an independent body with responsibility for overseeing implementation of access to information legislation, with adequate financial resources; and appropriate safeguards to ensure its political independence.
49. Adopt Draft Law #4038a Law "On Whistleblower Protection and Disclosure of Information about Harm and Threat to the Public Interest".

#### **Freedom of Expression in Crimea and the Donbas**

50. Severe, systemic violations of the right to freedom of expression occur in Crimea and the Donbas. The Ukrainian authorities are unable to respond to these violations; however, they are briefly included in this submission for context. With regard to Crimea and Donbas, the submitting organisations recommend that the Ukrainian authorities simplify processes for journalists to gain access to these regions to ensure access to information about what is occurring there. Currently, Cabinet of Ministers decree No. 367 requires foreign journalists to travel to Kyiv to gain a permit to access Crimea. Applicants must submit documents in Ukrainian. This should be replaced with a system of prior notification, which can be completed from abroad in other languages.

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<sup>15</sup> Ukrainian Parliament Commissioner for Human Rights (2017), 'Ms. Iryna Kushnir: "Introduction of new institute of the Information commissioner have to be realized by amendments to the Constitution of Ukraine", 19 January <http://www.ombudsman.gov.ua/en/all-news/pr/26117-xb-ms-iryna-kushnir-introduction-of-new-institute-of-the-information-comm/>

### *Freedom of Expression in Crimea*

51. Following the annexation of Crimea by the Russian Federation in March 2014, Crimean and Russian authorities have sought to silence criticism of Russia, as well as support for Ukraine, pursuing a crackdown on independent media, opposition politicians and activists.
52. Crimean Tatars have been particularly affected by the annexation. According to the Human Rights Information Centre, 43 people – primarily Crimean Tatars – expressing dissent have been forcibly disappeared since the annexation.<sup>16</sup> In April 2016, the Supreme Court of Crimea banned the Mejlis, a Crimean Tatar elected representative body, on the grounds that it was an “extremist organisation”. The decision was upheld by the Russian Supreme Court in September 2016.<sup>17</sup> Members of the Mejlis have been subject to violence, assault and threats. Many are now in exile. In September 2016, Ilmi Umerov, deputy head of the Mejlis, was convicted under Article 208.1 of the Russian Federation (“incitement to separatism”) and forcibly placed in a psychiatric ward in September 2016.<sup>18</sup>
53. Following the annexation, media outlets operating in Crimea were required to re-register under Russian regulations. Of the over 3,000 media outlets registered under Ukrainian regulations only 232 were given permission to continue to operate.<sup>19</sup> Ukrainian channels that previously broadcast in Crimea have been blocked. Due to a change in radio frequency in February 2015, 7 radio stations were closed. From August 2016, access to a number of Ukrainian online media has been blocked, including Radio Liberty’s section on Crimea, Ukrainskaya Pravda, and the website of ATR, a Crimean Tatar media outlet now operating from Kyiv. According to Ministry of Information Policy of Ukraine, 60 Ukraine online media outlets have been blocked.<sup>20</sup>
54. Dissenting journalists are also subject to restrictive Russian legislation. Most recently, Nikolay Semena, a Radio Free Europe journalist, whose article on an energy blockade of the Peninsula by Ukrainian authorities was considered as a “call to action aimed at violating the territorial integrity of the Russian Federation.” Semena’s trial began in February 2017.
55. The *de facto* authorities in Crimea also harass human rights lawyers and those speaking out on the situation in Crimea. For example, on 25 January 2017 Nikolay Polozov, lawyer of Ilmi Umerov, was detained by the security services and released 2.5 hours later. He had just returned from the Parliamentary Assembly of the Council of Europe in Strasbourg, where he had presented human rights violations in Crimea. On 26 January Emil Kurbedinov, lawyer of the journalist Nikolay Semena, was detained by representatives of Crimea’s Centre for Counteracting Extremism. The same day he was accused of extremism and sentenced to 10 days of administrative detention.<sup>21</sup>

### *Freedom of Expression in Donbas*

56. The situation for the right to freedom of expression in the self-proclaimed People’s Republic of Donetsk (DNR) and the self-proclaimed People’s Republic of Luhansk (LNR) remains exceptionally

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<sup>16</sup> Information Centre for Human Rights (2017) ‘Правозащитники впервые представляют все случаи насильственных исчезновений в Крыму за 3 года аннексии’ (Human Rights Defenders present all incidences of enforced disappearances during 3 years of annexation), 17 March [https://humanrights.org.ua/ru/material/pravozahisniki\\_vpershe\\_predstavljat\\_vsi\\_vipadki\\_nasilnickih\\_zniknen\\_v\\_krimu\\_za\\_3\\_rocki\\_an\\_eksiji](https://humanrights.org.ua/ru/material/pravozahisniki_vpershe_predstavljat_vsi_vipadki_nasilnickih_zniknen_v_krimu_za_3_rocki_an_eksiji)

<sup>17</sup> Human Rights Watch (2016), ‘Crimean Tatar Elected Body Banned in Russia’, 29 September, <https://www.hrw.org/news/2016/09/29/crimean-tatar-elected-body-banned-russia>

<sup>18</sup> Human Rights Watch (2016), ‘Human Rights Council: Maintain scrutiny of situation in Ukraine’, 12 December <https://www.hrw.org/news/2016/12/12/human-rights-council-maintain-scrutiny-situation-ukraine>

<sup>19</sup> Freedom House, ‘Crimea Freedom of the Press 2016’, <https://freedomhouse.org/report/freedom-press/2016/crimea>

<sup>20</sup> Ministry of Information Policy (2016), ‘MIP: Ukraine presented the issues of violations of freedom of speech in Crimea and the Eastern Ukraine at the OSCE meeting in Warsaw’, 23 September <http://mip.gov.ua/en/news/1459.html>

<sup>21</sup> Human Rights Watch (2017), ‘Crimea: Defense Lawyers Harassed’, 30 January, <https://www.hrw.org/news/2017/01/30/crimea-defense-lawyers-harassed>

difficult. Since 2014 there have been several cases of harassment, torture, threats and detention of journalists perpetrated by the armed formations controlling the Donetsk and Luhansk regions, without investigations or accountability for those responsible. Cases include:

- In 2014, Serhiy Sakhadinsky, editor of Politika 2.0 news website was beaten and held for five months in the basement of the University of Luhansk.<sup>22</sup>
- In 2015, a correspondent of Novaya Gazeta, Pavel Kanygin, was detained and beaten by the “DNR authorities”. He was later released and expelled from “DNR”-controlled territory.<sup>23</sup>

57. Armed formations in both the “DNR” and “LNR” also target bloggers. For example, Eduard Nedelyaev, who frequently posted articles criticising the *de facto* authorities in the “LNR”, was forcibly detained in November 2016 and is now in detention, accused of “espionage” and “treason”.

58. People living in the “DNR” and “LNR” have very restricted access to media. At least 100 Ukrainian online media outlets have been blocked<sup>24</sup> and all Ukrainian TV channels disabled. Access is given only to local pro-governmental channels, as well as channels registered in the Russian Federation.

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<sup>22</sup> US Department of State (2015), ‘2015 Country Reports on Human Rights Practices: Ukraine), <https://www.state.gov/j/drl/rls/hrrpt/2015/eur/252911.htm>

<sup>23</sup> The Guardian (2015), ‘Russian journalist beaten and detained by Ukrainian separatists’, 15 June, <https://www.theguardian.com/media/greenslade/2015/jun/18/russian-journalist-beaten-and-detained-by-ukrainian-separatists>

<sup>24</sup> Reporters Without Borders, ‘Summary of attacks on media’, <https://rsf.org/en/news/summary-attacks-media>