

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

**Report on the human rights situation in Ukraine
16 May to 15 August 2019**



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UN Human Rights Monitoring Mission in Ukraine
as of 13 June 2019

June 2019



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Created: 13 June 2019 Source: HRMMU, OHCHR Contact: IMsupport@ohchr.org ohchr.org standup4humanrights.org

I. Executive summary

1. This twenty-seventh report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the human rights situation in Ukraine covers the period of 16 May to 15 August 2019. It is based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU).¹
2. The report is based on 81 visits to settlements along the contact line, 30 visits to places of detention, 98 trial hearings monitored, 15 assemblies monitored, and 205 in-depth interviews, including with victims and witnesses of human rights violations and abuses, as well as relatives of victims and their lawyers, Government representatives, civil society and other interlocutors. It also draws upon primary and secondary sources such as court documents, official records, open sources and other relevant material.
3. The ongoing conflict in eastern Ukraine continued to affect the lives and wellbeing of the civilian population residing close to the contact line, including through damage to critical civilian infrastructure and schools. During the reporting period, OHCHR recorded 68 civilian casualties (35 men, 24 women, six girls and three boys), eight of whom were killed and 60 injured, representing a 51.1 per cent increase in comparison to the previous reporting period. Of them, 56 were caused by combat activities²: 33 were recorded in territory controlled by self-proclaimed ‘Donetsk people’s republic’³, and 13 in territory controlled by self-proclaimed ‘Luhansk people’s republic’⁴, all attributable to the Government of Ukraine. Nine were recorded in Government-controlled territory and one in ‘no man’s land’, all attributable to armed groups of ‘Donetsk people’s republic’. Mines and explosive remnants of war killed three civilians and injured nine. The total civilian death toll of the conflict reached at least 3,339 as of 15 August 2019.
4. More broadly, lack of access to quality basic services and discriminatory Government policies, legislation and practices continued to affect the rights of the conflict-affected population, in particular, freedom of movement and access to pension and social benefits, with internally displaced persons (IDPs) particularly affected. The introduction of a mechanism to provide compensation for homes destroyed due to the conflict, following advocacy by multiple actors including OHCHR, is welcomed, but its contents also raise concerns, such as discrimination of conflict-affected civilians on the basis of their place of residence, and lack of clarity on the method of calculation of the amount of compensation to be provided.
5. Freedom of movement across the contact line in eastern Ukraine remains a major issue affecting millions of people. OHCHR noted some positive developments at the entry-exit checkpoint (EECP) at Stanytsia Luhanska, such as planned repair of the bridge, and the introduction of free public transport for civilians with limited mobility on the Government-controlled side. OHCHR welcomes the Cabinet of Minister’s adoption of new regulation on the movement of individuals and the transfer of goods across the contact line, following advocacy by multiple actors, including OHCHR. However, an increase in the number of EECPs, especially in Luhansk region, and further improvement of crossing conditions including from territory controlled by armed groups, is needed to ease the crossing of civilians.
6. Violations of the right to liberty and security of person continued in the reporting period. OHCHR received reports that the Security Service of Ukraine (SBU) was responsible for arbitrary arrests, torture and intimidation of individuals that alleged had links to armed groups. During the reporting period, OHCHR documented cases of arbitrary detention in the

¹ HRMMU was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine, with particular attention to the Autonomous Republic of Crimea, Eastern and Southern regions of Ukraine, and to propose recommendations to the Government and other actors to address human rights concerns. For more details, *see* 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), paras. 7-8, available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-75_en.pdf.

² This refers to those killed or injured due to shelling and small arms and light weapons fire, contrary to those affected by mines and unexploded remnants of war.

³ Hereinafter ‘Donetsk people’s republic’.

⁴ Hereinafter ‘Luhansk people’s republic’.

context of conscription into the Ukrainian armed forces in Kharkiv. OHCHR reiterates its concerns regarding the ongoing practice of 30-day ‘administrative arrest’ and ‘preventive arrest’ which prevails in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. This practice constitutes arbitrary and incommunicado detention.

7. OHCHR welcomes the transfer of 124 pre-conflict prisoners from territory controlled by ‘Luhansk people’s republic’ to Government-controlled territory during the reporting period, and urges the continuation of this practice. OHCHR is concerned, however, at reports of forced labour, lack of medical care and discriminatory detention practices in penal colonies in territory controlled by ‘Luhansk people’s republic’.

8. OHCHR further welcomes the Constitutional Court’s finding of the unconstitutionality of article 176.5 of the Criminal Procedure Code, which made pre-trial detention compulsory in conflict-related cases. OHCHR continued to document violations of the right to a fair trial in conflict-related criminal cases. The Government failed to conduct effective investigations and prosecutions of members of Ukrainian forces alleged to have perpetrated grave human rights violations, undermining the victims’ right to effective remedy. Accountability for killings and violent deaths during the Maidan protests and in Odesa on 2 May 2014 also remains outstanding, more than five years after the events.

9. Peaceful, competitive and largely inclusive extraordinary parliamentary elections were held in Ukraine on 21 July 2019. OHCHR documented four attacks against political parties throughout the country prior to the elections, for which investigations are ongoing.

10. The KyivPride Equality March was celebrated without major security incidents, with police professionally securing the assembly and its participants. However, smaller events organised by the LGBTI community in the regions were still frequently disrupted by extreme right-wing groups who act with impunity.

11. Freedom of expression continued to be limited, and affected by violence against journalists, as well as lack of accountability for previous attacks. On 20 June 2019, Vadym Komarov, a well-known investigative journalist, passed away after spending a month and a half in a coma due to a brutal beating in Cherkasy. Nor have the perpetrators been brought to account for the killing of well-known journalist Pavel Sheremet, three years after the fact.

12. OHCHR continued to document violations of international humanitarian law and human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation⁵ (hereinafter Crimea). The Russian Federation, as the occupying Power in Crimea, has still not granted OHCHR access to the peninsula in line with the UN General Assembly resolution on the territorial integrity of Ukraine 68/262 and UN GA resolutions 71/205, 72/190 and 73/263. The Government of Ukraine has failed to facilitate equal access to social security including pensions and social benefits to the population of Crimea.

13. OHCHR observed positive legislative developments in the reporting period, including the adoption, in the first reading, of a draft law on the harmonisation of Ukrainian legislation with the Rome Statute. Concerns remain, however, with the entry into force of a law on State language which may jeopardise the rights of minorities, notably due to the lack of relevant minority-related legislation.

14. OHCHR operations in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ have been substantively restricted for more than a year despite ongoing discussions through regular meetings with representatives of both self-proclaimed ‘republics’.⁶ Of particular concern is the continued denial of access, despite repeated requests, to detention facilities, and the inability of OHCHR to monitor treatment of detainees and detention conditions in the context of strong allegations of human rights abuses. OHCHR therefore reiterates its call for independent international observers, including OHCHR, to have unimpeded, confidential access to places of detention and detainees, in accordance with international standards.

⁵ General Assembly resolution 73/263, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, A/RES/73/263 (22 December 2018), para. 11.

⁶ With the exception of field visits to document civilian casualties and conflict-related damage to civilian property in territory controlled by ‘Donetsk people’s republic’ which resumed in spring 2019.

II. OHCHR methodology

15. This report is based on 205 in-depth interviews with individuals, including victims and witnesses. Information was also obtained from relatives of victims and their lawyers, site visits, Government representatives, civil society and other interlocutors, trial monitoring, as well as court documents, official records, open sources and other relevant material. Findings are based on verified information collected from primary and secondary sources that are assessed as credible and reliable. Findings are included in the report where the “reasonable grounds” standard of proof is met, namely where, based on a body of verified information, an ordinarily prudent observer would have reasonable grounds to believe that the facts took place as described and, where legal conclusions are drawn, that these facts meet all the elements of a violation. While OHCHR cannot provide an exhaustive account of all human rights violations committed throughout Ukraine, it obtains and verifies information through a variety of means in line with its methodology, and bases its conclusions on verified individual cases.

16. OHCHR applies the same standard of proof when documenting conflict-related civilian casualties.⁷ In some instances, documenting occurrences may take time before conclusions can be drawn, meaning that numbers on civilian casualties are revised as more information becomes available. OHCHR applies the “reasonable grounds” standard in attributing a civilian casualty to a particular party based on the geographic location where it occurred, the direction of fire, and the overall context surrounding the incident.

17. In line with the “do no harm” principle, OHCHR seeks informed consent from sources on the use of information, ensuring confidentiality as appropriate.

18. In Government-controlled territory, OHCHR has freedom of movement and full, unimpeded access to all locations and individuals. In contrast, OHCHR operations in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ have been substantively restricted for more than a year despite ongoing discussions through regular meetings with representatives of both self-proclaimed ‘republics’.

⁷ For more information, *see* OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2019, para. 20, available at www.ohchr.org/Documents/Countries/UA/ReportUkraine16Feb-15May2019_EN.pdf.

III. Impact of hostilities

19. During the reporting period, hostilities continued to affect the civilian population residing in the conflict zone of eastern Ukraine. Regular exchanges of fire across the contact line threatened the lives and health of residents in the area. Civilian objects, including educational facilities and private property, continued to be damaged. The recommitment to the ‘unlimited’ ceasefire from 21 July 2019, agreed by the Trilateral Contact Group in Minsk, resulted in a decrease of hostilities and substantial reduction in civilian casualties.

20. The reporting period marked four years since the Government of Ukraine’s decision⁸ to derogate from certain human rights guarantees under the International Covenant on Civil and Political Rights and the European Convention on Human Rights in light of the security situation in the conflict area. OHCHR notes with regret that the Government last reviewed the scope and territorial application of its derogation more than two years ago, in January 2017.⁹ OHCHR reiterates its call to the Government to regularly review the necessity and proportionality of its derogation measures.¹⁰

A. Conduct of hostilities and civilian casualties

“I don’t have the will to live, but I’m scared of dying. Nobody cares about me.”
- An older man living in close vicinity to a heavy military presence

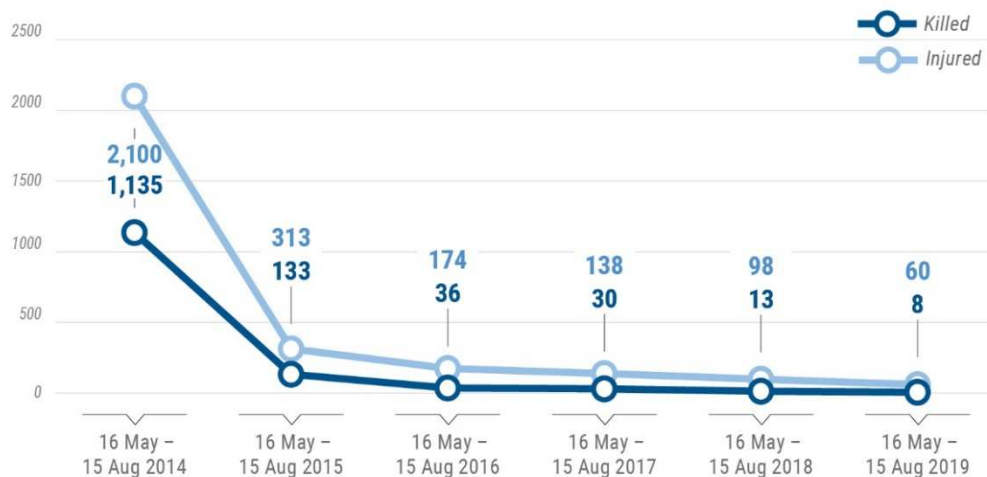
21. Between 16 May and 15 August 2019, OHCHR recorded 68 conflict-related civilian casualties: eight killed (four men and four women) and 60 injured (Thirty-one men, 20 women, six girls and three boys), a 51.1 per cent increase compared with the previous reporting period of 16 February to 15 May 2019 when 45 civilian casualties (10 killed and 35 injured) were recorded. Despite this increase, the reporting period was marked by the lowest number of civilian casualties compared with the same calendar period (mid-May to mid-August) from 2014 to 2018. Out of 56 casualties resulting from shelling and small arms and light weapons (SALW) fire during the reporting period, 55 occurred prior to the 21 July recommitment to the ceasefire agreed in Minsk and one after. One more casualty that occurred after the ceasefire was caused by a mine.

⁸ Parliament of Ukraine, Resolution ‘On the declaration of the Parliament of Ukraine on the derogation from certain obligations under the International Covenant on Civil and Political Rights (ICCPR) and the Convention for the Protection of Human Rights and Fundamental Freedoms’ of 21 May 2015. See OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2016, paras. 15-17, available at www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf.

⁹ Eighth periodic report submitted by Ukraine under article 40 of the ICCPR, submitted 25 July 2018, para. 57, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUKR%2f8&Lang=en.

¹⁰ OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017, para. 160, available at www.ohchr.org/Documents/Countries/UA/UARreport19th_EN.pdf. See also Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, para. 55, (Annex, UN Doc E/CN.4/1984/4 (1984) I).

CIVILIAN CASUALTIES DURING REPORTING PERIOD, COMPARED WITH THE SAME PERIODS IN PREVIOUS YEARS (16 May - 15 August)



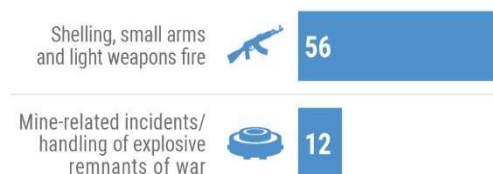
Creation Date: 10 September 2019 Source: OHCHR HRMMU

22. During the reporting period, shelling and SALW fire killed five civilians (three men and two women) and injured 51 (25 men, 19 women, six girls and one boy). This is a 180 per cent increase compared with the previous reporting period (two killed and 18 injured). Of the 56 civilian casualties caused by shelling and SALW fire, 33 (two killed and 31 injured) were recorded in territory controlled by ‘Donetsk people’s republic’ and 13 (one killed and 12 injured) were recorded in territory controlled by ‘Luhansk people’s republic’, all of which are attributable to the Government. Nine civilian casualties (two killed and seven injured) were recorded in Government-controlled territory, and one was recorded in ‘no man’s land’, all attributable to armed groups of ‘Donetsk people’s republic’.

23. For example, on 14 June 2019, five civilians were injured, including a nine-year-old girl, as a result of shelling in Government-controlled Marinka (Donetsk region). On 11 July, a man was severely injured by shelling near his house in Government-controlled Chermalyk (Donetsk region) and later died in hospital. On 20 July, one woman was killed and three men, three women and two girls injured during the shelling of armed group-controlled Pervomaisk (Luhansk region).

24. During the reporting period, mine-related incidents and the handling of explosive remnants of war (ERW) resulted in 12 civilian casualties (three killed¹¹ and nine injured¹²). Of these, five (one killed and four injured) were recorded in Government-controlled territory, five (two killed and three injured) – in territory controlled by ‘Donetsk people’s republic’, and two injured – in territory controlled by ‘Luhansk people’s republic’.

CAUSES OF CIVILIAN CASUALTIES FROM 16 MAY TO 15 AUGUST 2019

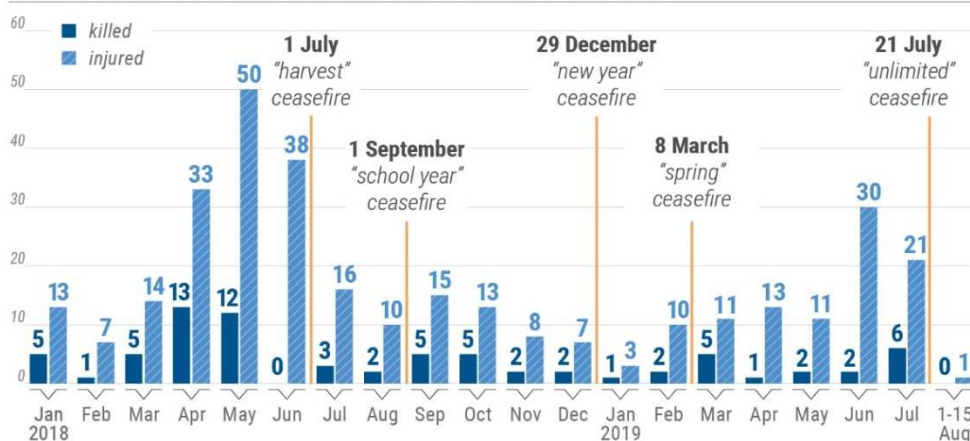


Creation Date: 10 September 2019 Source: OHCHR HRMMU

¹¹ All men.

¹² Five men, two women and two boys.

TIMELINE OF CIVILIAN CASUALTIES from 1 January 2018 to 15 August 2019

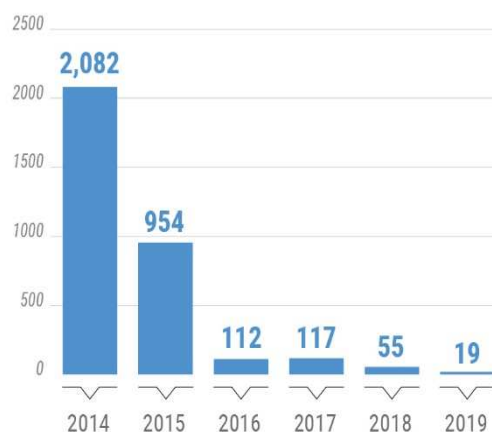


Creation Date: 10 September 2019 Source: OHCHR HRMMU

25. During the entire conflict period, from 14 April 2014 to 15 August 2019, OHCHR recorded in total 3,041 conflict-related civilian deaths (1,804 men, 1,053 women, 98 boys, 49 girls and 37 adults whose sex is unknown). Taking into account the 298 deaths on board of Malaysian Airlines flight MH17 on 17 July 2014, the total civilian death toll of the conflict has reached at least 3,339. The number of injured civilians is estimated to exceed 7,000.

26. OHCHR welcomes the progress with the development of the national strategy for the protection of civilians in armed conflict, and calls for its prompt adoption followed by the development of a relevant action plan and the allocation of a budget.

CONFLICT-RELATED CIVILIAN DEATHS from 2014 to 2019



Creation Date: 10 September 2019 Source: OHCHR HRMMU

1. Attacks on objects protected by international humanitarian law

27. OHCHR recalls that international humanitarian law protects civilian objects from attacks, including water supply and educational facilities.¹³ OHCHR welcomes repeated pledges by the Government to sign the Safe Schools Declaration, which may contribute to preventing attacks on education facilities in the conflict zone and ensure that children receive

¹³ International humanitarian law (IHL) customary Rule 38 states that each party to the conflict must respect cultural property. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives, and property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity. Henckaerts, Doswald-Beck, *Customary international humanitarian law*, Volume I. IHL customary Rule 40 sets out that each party to the conflict must protect cultural property. All seizure of or destruction or wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited, and any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited. Henckaerts, Doswald-Beck, *Customary international humanitarian law*, Volume I.

education safely and without undue interruptions,¹⁴ and urges for signature of the Declaration in view of the beginning of the new school year in September.

28. During the reporting period, OHCHR continued to document damage to educational facilities as a result of the ongoing hostilities. While it was school holidays during the reporting period and no one was killed or injured, the walls and windows of several schools located on both sides of the contact line were damaged by shrapnel or gunfire.

29. For instance, on 7 July 2019, school No. 30 in armed group-controlled Horlivka (Donetsk region) sustained damage to one of the classroom windows, allegedly by heavy machine gun fire.¹⁵ The school building received further damage on 12 August 2019.¹⁶ On 8 July 2019, a school in armed group-controlled Khreshchatytske (Donetsk region) was hit during overnight shelling, damaging its windows.¹⁷ On 11 July 2019, a school and a maintenance building in armed group-controlled Lukove (Donetsk region) were damaged by shelling.¹⁸

30. During the reporting period, the Water, Sanitation and Hygiene (WASH) cluster¹⁹ recorded 21 incidents when water and sanitation facilities came under fire. In one instance, from 13 to 14 July, the Donetsk Filter Station, supplying water to some 380,000 people, came under fire on three separate occasions, forcing the water workers on site to take cover in bomb shelters.

B. Economic and social rights of conflict-affected persons and freedom of movement

31. As it entered its sixth year, the conflict continued to affect the enjoyment of social and economic rights by millions of civilians, including children, older persons and persons with disabilities.

1. Remedy and reparation for the conflict-affected population

32. During the reporting period, Ukrainian courts issued at least four decisions to provide reparations to families of civilians killed due to the conflict, granting the families the amount requested in their claims.²⁰ While OHCHR welcomes such positive development, it is concerning that the Government does not implement these judgements, appealing them instead. Additionally, obtaining such judgements is a long, complex process and the right to remedy and reparation would be better upheld through the introduction of an administrative procedure for reparations claims.

2. Housing, land and property rights

33. During the reporting period, OHCHR continued to document human rights violations to the right to housing, land and property. The military use of civilian property without compensation remains a major concern. Neither national nor local authorities provided adequate housing solutions or compensation for those relocated due to the military use of their property or in proximity to military positions.

¹⁴ In March 2019, the Minister of Education announced that the Ministry was preparing documents to sign the Declaration for consideration by the Cabinet of Ministers. Later, at the Third International Safe Schools Declaration Conference in Spain on 27-29 May 2019, the Deputy Minister of Education stated that Ukraine's plans to sign the Declaration were "almost final."

¹⁵ HRMMU visit, 11 July 2019.

¹⁶ HRMMU visit, 22 August 2019.

¹⁷ HRMMU visit, 15 July 2019.

¹⁸ OSCE Special Monitoring Mission to Ukraine, Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), based on information received as of 19:30, 14 July 2019, 15 July 2019, available at www.osce.org/special-monitoring-mission-to-ukraine/425717.

¹⁹ Clusters are groups of humanitarian organisations, both UN and non-UN, in each of the main sectors of humanitarian action, e.g. water, health and logistics. They are designated by the Inter-Agency Standing Committee (IASC) and have clear responsibilities for coordination of their thematic area of work. See www.humanitarianresponse.info/clusters for more information on the cluster system.

²⁰ All four cases have been supported in the courts by the NGO Right to Protection. One of the judgements is available at <http://reyestr.court.gov.ua/Review/83385759?fbclid=IwAR31txVfcUBWgvIFdJ9yIXfTSlgx4Qz69-T1EZNTxs6K-VUShAM5L0ZAMIo>.

34. In line with its responsibility to protect and fulfil housing rights, the Government, for the first time since the outbreak of the conflict, issued a legislative act establishing a mechanism to provide compensation for homes destroyed due to the conflict.²¹ However, contrary to international standards,²² the resolution adopted by the Cabinet of Ministers applies only to civilians who remain in the settlement where their property was destroyed. It does not apply to IDPs or others who have relocated to another settlement, nor would it apply to persons residing in armed group-controlled territory.

35. Compensation is capped at UAH 300,000 (approximately US\$ 12,000), the equivalent of approximately 24–26m² of property in the areas impacted by the conflict, insufficient for families of more than one person. Additionally, OHCHR is concerned that there is no budget allocation for this mechanism in the current budget, and the Government may be unable to include a funding request in next year’s budget, pushing compensation to after 2020. The text of the resolution is also vague about its retroactive applicability which may not be applicable to the entire duration of the armed conflict, referring instead to an “emergency situation[s] of military character”.

36. The resolution also includes provisions on the mandate of the commissions which are to be created to document the causes and impact of destruction. In this regard, OHCHR welcomes the work undertaken jointly by national and international organisations, and the Ukrainian Parliament Commissioner for Human Rights (hereinafter Ombudsperson) to develop the draft regulation on the procedure to document damages to civilian property and the mandate of the commissions designated to assess the damage. This draft could serve as a basis for further work on implementation of the resolution.

37. OHCHR again documented cases where the military used civilian housing, failed to pay utility bills they generated, caused property damage and pillaged. For example, in Government-controlled Verkhniotoretske (Donetsk region), an older couple received an electricity bill of almost UAH 30,000 (approximately US\$ 1,175) after an annex to their house had been used by the military for close to four years. During this time, the roof of their house was damaged by shelling and could not be repaired due to the military presence. In addition, the family’s machinery and electric equipment was stolen or damaged. Similar cases were documented in Government-controlled Avdiivka, Novhorodske and Starohnativka (Donetsk region).

“We had been waiting for this home for 35 years, lived there for three months, and now we are homeless.”

- A civilian who had to leave her home due to military use

²¹ See Cabinet of Ministers Resolution from 10 July 2019 No. 623 which amended previous Resolution No. 947 of 18 December 2013, available at <https://zakon.rada.gov.ua/laws/show/947-2013-rr>.

²² UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (‘Pinheiro Principles’), 28 June 2005, E/CN.4/Sub.2/2005/17.

Military use of homes in Avdiivka, Donetsk region

Since February 2015, residents at 15 Vorobiova Street in Avdiivka, in Government-controlled Donetsk region, were forced to leave their apartments due to safety and security concerns stemming from the presence of Ukrainian Armed Forces and other law-enforcement personnel. Tenants of the apartments reported that since 2014, the Ukrainian military and law-enforcement forces have taken over empty apartments and asked the remaining tenants to vacate their apartments. Those who remained suffered from serious shelling. Displaced tenants who returned to check on their property reported that furniture, electronic appliances, and personal belongings had been looted or damaged by military personnel.

Eighteen tenants have submitted complaints about the stealing and intentional destruction of property to the local police since 2014. None has been effectively investigated. Reportedly, one of the reasons for the ineffective investigations cited by police is their lack of access to the apartments due to the military presence in, and in close proximity to, the building.

Authorities did not provide adequate alternative housing options for residents forced to leave their apartments, nor did they provide any compensation for damage to property, or other losses caused by the military, including outstanding utility bills. As a result, 24 households, including families with children, persons with disabilities, and older persons, have been forced to find and pay for safe homes on their own.

38. OHCHR notes the information that the authorities in Donetsk and Luhansk regions have provided temporary housing solutions to 12 conflict-affected civilian families in Toretsk and Zolote-4.²³ However, while the housing provided to eight of the families in Toretsk was adequate, OHCHR is concerned by the inadequate conditions of the homes provided to the four families in Luhansk region, which lacked acceptable sanitation and heating.²⁴ Additionally, security of tenure is a concern, since the housing is provided as a temporary measure, in many cases, for one year only, without any guarantee of a longer-term solution in case the families are unable to return to their homes due to the conflict. The provision of temporary housing cannot substitute the right of the civilian population to restitution and compensation for the loss of their homes.

39. OHCHR is concerned that a civilian family (including a child) that has been forcibly evicted from their apartment in territory controlled by 'Donetsk People's Republic' may face expropriation of their property by the 'ministry of state security'. The family has not been provided any alternative housing solution.

3. Right to social security and social protection

40. OHCHR regrets the Government's continued discriminatory policy and actions regarding payment of pensions, which requires pensioners living in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' to register as IDPs to receive pension payments.²⁵ As a result, hundreds of thousands of pensioners have lost their pensions payments.²⁶ While OHCHR notes the suggestion of the President of Ukraine to extend the term during which pension arrears can be accumulated, it calls on the new Government to

²³ See OHCHR Report on the human rights situation in Ukraine, 16 August to 15 November 2018, case study on Zolote-4, available at https://ohchr.org/Documents/Countries/UA/24thReportUkraineAugust_November2018_EN.pdf.

²⁴ See Committee on Economic, Social and Cultural Rights General Comment on Right to Adequate Housing, available at www.escr-net.org/resources/general-comment-7.

²⁵ The linking of payment of pensions with IDP registration creates an obstacle to access to social security. See United Nations Briefing Note on Pensions for IDPs and persons living in the areas not controlled by the Government in the east of Ukraine, available at www.humanitarianresponse.info/en/operations/ukraine/document/briefing-note-pensions-united-nations-ukraine-february-2019.

²⁶ Ibid at p. 2.

take a more comprehensive approach to finding a solution to the situation, including by delinking access to a pension from the need to register as an IDP.

4. Freedom of movement

41. Following the disengagement agreement,²⁷ the parties to the conflict agreed to repair the damaged bridge at EECP Stanytsia Luhanska (Luhansk region). This would significantly decrease the hardship of the civilian population crossing this pedestrian checkpoint, the only EECP in Luhansk region. OHCHR notes this positive development and sees it as a step towards ensuring that crossing conditions are safe and respectful of human dignity on both sides of the contact line.²⁸

42. OHCHR welcomes the Cabinet of Ministers' adoption of a resolution which establishes a procedure for movements across the contact line.²⁹ The new regulation includes a provision obliging the respective authority to develop a list of goods prohibited for transfer across the contact line. This would replace the current list of goods allowed for transfer, and comes following long-standing advocacy by OHCHR, human rights and humanitarian organisations. The document provides details as to the crossing procedure for both adults and children, Ukrainian citizens, foreigners and stateless persons. In addition, the resolution establishes the responsibility of the authorities of Donetsk and Luhansk regions for the maintenance of the EECPs.

43. OHCHR also welcomes steps taken by the Military-Civilian Administrations of Donetsk and Luhansk region to alleviate the difficulties of crossing the EECP. OHCHR in particular commends the efforts of the authorities in Luhansk region to provide free transportation from the Government-controlled checkpoint to the bridge for the most vulnerable civilians (such as older persons, persons with disabilities and low-mobility, pregnant women and children).³⁰

IV. Right to liberty and security of persons

A. Access to places of detention

44. During the reporting period, OHCHR continued to have access to official places of detention. OHCHR was also able to conduct confidential interviews with detainees in Government-controlled territory in line with international standards, with the exception of access to a detainee held by the SBU in Kyiv. OHCHR interviewed 91 conflict-related detainees and prisoners (78 men and 13 women) in pre-trial detention facilities (SIZOs) in Bakhmut, Dnipro, Kharkiv, Kherson, Mariupol, Mykolaiv, Odesa, Starobilsk, Vilniansk and Zaporizhzhia and in penal colonies in Kharkiv, Poltava and Dnipropetrovsk regions.

45. In territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic', OHCHR continued to be denied access to places of detention, despite repeated requests, and remains gravely concerned about the treatment of detainees and detention conditions in the absence of international oversight. OHCHR was able, however, to receive information about detention conditions in penal colonies in territory controlled by 'Luhansk people's republic' from interviews with transferred pre-conflict prisoners.³¹

²⁷ Agreement reached during Trilateral Contact Group on Ukraine meeting held on 5 July 2019.

²⁸ During the reporting period, at least three civilians (all men) died due to medical emergencies while crossing or waiting to cross the EECPs.

²⁹ The resolution establishing the regulation of movements of individuals and transfer of goods across the contact line is available at www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-poryadku-vyizd-815.

³⁰ The bridge over the river was damaged in 2014, and never repaired due to hostilities, forcing those crossing to use a steep wooden footpath.

³¹ See Situation of pre-conflict prisoners below. For details on categories of pre-conflict detainees, see OHCHR Report on the human rights situation in Ukraine 16 August to 15 November 2018, footnote 58, available at www.ohchr.org/Documents/Countries/UA/24thReportUkraineAugust_November2018_EN.pdf.

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

"It is better not to say you were beaten by the SBU. Say you fell down at home."
- A doctor speaking to a detainee

46. In Government-controlled territory, OHCHR continued to document cases of arbitrary arrest and detention by SBU officers of individuals allegedly linked to armed groups.³²

47. For example, OHCHR documented a case where the SBU arbitrarily detained a man in unofficial places of detention from 7 to 12 August 2019 without officially arresting him. On 7 August 2019, the man was detained at a Petropavlivka checkpoint by national police because he was named on the *Myrotvorets* website.³³ The police took him to police stations in Petropavlivka and Sieverodonetsk where he was registered as a visitor, questioned without a lawyer, forced to take a polygraph test and filmed making a forced confession to participating in armed groups. On 8 August, at night, two SBU officers took him to an unknown location and questioned him again without a lawyer. In the morning, they drove him to Sieverodonetsk, where he was questioned again and detained overnight in a rented flat. On 9 August, the man was taken to the prosecutor's office where he met his free legal aid lawyer for the first time and received a notice of suspicion under article 258.3 (creation of a terrorist group or a terrorist organisation) of the Criminal Code of Ukraine. The same day, a judge of the Sieverodonetsk City Court scheduled a court hearing for 12 August without ordering his detention. Nevertheless, after the hearing, when his lawyer had left, SBU officers continued to arbitrarily detain him, holding the man in a rented flat in Sieverodonetsk for two nights. On 12 August, he was brought to Lysychansk City Court and the court ordered he be put in custody for 60 days.³⁴

48. OHCHR continued to document cases which occurred in previous reporting periods that exemplify a pattern previously identified by OHCHR that the SBU have tortured and ill-treated detainees. On 14 April 2016, SBU officers detained a man in Kharkiv region. The officials handcuffed him, put him in a minivan, and drove in an unknown direction. In a forest, five or six men in balaclavas beat, kicked and jumped on him while he was lying on the ground. The men forced him to kneel and a gun was pointed at his head. During the beating, the man was asked about his alleged cooperation with, and financing received from, the Russian Federation. Afterwards, SBU officers searched his house and brought him again to the forest, where he was again beaten and electrocuted, and then taken to the Kharkiv SBU with a bag over his head. There, he was forced to sign papers he could not read before being released. Following his release, he was hospitalised for ten days, with a concussion and injuries to his back, head and arms.³⁵

49. During the reporting period, OHCHR documented cases of arbitrary detention in Kharkiv in the context of conscription into the Ukrainian armed forces, which did not follow the standard conscription procedure by representatives of the military commissariat who do not have the right to apprehend individuals.³⁶ For example, on 28 May 2019, a man was taken

³² See OHCHR Report on the human rights situation in Ukraine 16 November 2015 to 15 February 2016, paras. 48-49 available at www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf; see also OHCHR Report on the human rights situation in Ukraine 16 February to 15 May 2016, available at www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf.

³³ The *Myrotvorets* ("Peacemaker") website publishes the personal data of individuals allegedly linked to armed groups and/or labelled as "terrorists". This violates the presumption of innocence, and the rights to privacy and personal data protection. It is often used as the sole reason to arrest individuals.

³⁴ The criminal case under article 258-3 of the Criminal Code of Ukraine was registered in the Unified Register of Pre-trial Investigations on 8 August 2019. Information on his arrest and his video confession were published by the National Police in Luhansk region and SBU on 9 and 12 August 2019 respectively.

³⁵ OHCHR interview, 26 June 2019. He was charged under part 1 article 110 (trespassing against the territorial integrity and inviolability of Ukraine) of the Criminal Code of Ukraine.

³⁶ OHCHR is aware of at least 11 individuals who were arbitrarily detained in the scope of the spring conscription into the Ukrainian armed forces. OHCHR interviews, 28 May, 4 June, 13 June, 24 June 2019.

by approximately eight men working at a military commissariat as he was returning home. They put him in a car and brought him to the district conscription office, where he was detained overnight. The next morning, they brought him to the pre-assignment unit. He was threatened with 20 years of imprisonment if he attempted to refuse military service.³⁷ On 30 May, he was released after he posted his story on a popular website, which went viral. As he was leaving, the officers there threatened: “You should look back when you walk around town”.³⁸

50. OHCHR continued to document cases of arbitrary detention on territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ which occurred both prior to³⁹ and during the reporting period.⁴⁰

51. In territory controlled by ‘Donetsk people’s republic’, detention usually started with a 30-day ‘administrative arrest’⁴¹ during which individuals were held incommunicado. Detainees were held at the ‘police department for fighting organised crime’ or at the Donetsk IVS (temporary detention facility). After 30 days, some individuals were released while others were transferred to the Donetsk SIZO.⁴²

52. OHCHR also documented a case of ‘preventive arrest’⁴³ in territory controlled by ‘Luhansk people’s republic’. On 16 May 2019, a man was detained by ‘police’ in Lutuhyne. The next day, approximately eight men in civilian clothes searched his house, seizing a number of items, including mobile phones, and an e-book. When the victim’s wife requested information about his whereabouts from the ‘police’, they responded that he had been ‘arrested’ by ‘law enforcement bodies’ of ‘Luhansk people’s republic’, and he would be detained without access to the outside world for 30 days. On 16 July 2019, a ‘police’ representative informed the victim’s wife that he had been ‘arrested’ on suspicion of possession of explosive devices and held in the premises of the ‘police department’ in Lutuhyne. On 17 July 2019, a ‘court’ reportedly formalised his ‘detention’.⁴⁴

C. Situation of pre-conflict prisoners

53. OHCHR welcomes the transfer of 124 pre-conflict prisoners which took place in May and July 2019 from penal colonies on territory controlled by ‘Luhansk people’s republic’ to Government-controlled territory. As of 15 August 2019, a total of 319 pre-conflict prisoners (including 11 women) have been transferred from territory controlled by ‘Luhansk people’s republic’ to Government-controlled territory.

54. Based on interviews with recently transferred prisoners, OHCHR is concerned that forced labour⁴⁵ continues to be used in Sukhodilsk penal colony No 36.⁴⁶ Those who refused to work were punished through beatings or solitary confinement. Furthermore, prisoners

³⁷ The Criminal Code of Ukraine sets out that avoidance of conscription for active military service is punishable by up to three years of imprisonment (art. 335), while avoidance of military registration by a person bound to military service after being notified of his obligation to serve by a military commissariat is punishable by a fine or correctional labor for a term up to two years, or detention for a term up to six months (art. 337).

³⁸ OHCHR interview, 4 June 2019.

³⁹ OHCHR interviews, 26 July 2019.

⁴⁰ OHCHR interviews, 3 July, 1 July, 1 August, 10 July 2019.

⁴¹ See Report on the human rights situation in Ukraine 16 August to 15 November 2017, para. 40 available at www.ohchr.org/Documents/Countries/UA/UARreport20th_EN.pdf.

⁴² OHCHR interview, 26 July 2019.

⁴³ See Report on the human rights situation in Ukraine 16 November 2017 to 15 February 2018, para. 35, available at www.ohchr.org/Documents/Countries/UA/ReportUkraineNov2017-Feb2018_EN.pdf.

⁴⁴ OHCHR interviews, 3 and 18 July 2019.

⁴⁵ Article 8 of the ICCPR sets out that “No one shall be required to perform forced or compulsory labour”, with the exception of labour imposed as part of a judicial sentence, which is not the case in the Criminal code of Ukraine. Article 8 also allows for labour “normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention” (e.g. performing routine work in a prison, such as cleaning or cooking). However, here the work was in industrial facilities, presumably for commercial purposes (e.g. making train parts).

⁴⁶ OHCHR interviews, 23 May and 13 June 2019.

often did not receive adequate health care due to the absence of necessary medicine and qualified medical staff at the colonies, despite this care being available in the community.⁴⁷

“If they want you to work, you are going to work for sure.”

- A pre-conflict prisoner speaking about forced labour

55. Transferred prisoners also described discrimination based on individuals' places of residence and political views in penal colonies in territory controlled by 'Luhansk people's republic'. Prisoners said that the prison staff's attitude was worse towards prisoners registered on Government-controlled territory, that they threatened to isolate them, and called them derogative names such as 'ukrop', or 'bandera'.⁴⁸ OHCHR documented a case where a prisoner from western Ukraine who openly expressed pro-Ukrainian views was kept in solitary confinement from April 2014 to March 2018.

56. OHCHR interviewed several transferred prisoners with disabilities who, along with other prisoners, reported that penal colonies in territory controlled by 'Luhansk people's republic' lack the infrastructure needed to ensure that they could access essential facilities and services without undue hardship. Heavy doors, high porches, and the lack of elevators made it difficult or impossible for prisoners with physical disabilities to reach facilities such as toilets, showers or prison canteens, and thus to access proper hygiene and nutrition. Such prisoners were forced to seek help from other prisoners due to a complete lack of assistance from prison staff.

57. OHCHR is further concerned about the absence of a legal framework and the resulting lack of procedure within the Ukrainian justice system to consider periods of detention served in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' or to conduct criminal proceedings involving pre-conflict prisoners. This not only affects their access to legal remedy upon their transfer to Government-controlled territory, but also leads to what may amount to arbitrary detention.

58. In one case documented by OHCHR, Ukrainian courts refused to reconsider the criminal case of an individual detained since 2011⁴⁹ and transferred to Government-controlled territory in April 2019. The basis of the refusal was the Court's unwillingness to open the envelope containing his case files transferred from the so-called 'supreme court' of 'Luhansk people's republic'. The court considered the case only after a special ad-hoc commission had decided on the validity of the case files. As a result of the delay, the detainee was imprisoned for an additional seven months over his final sentence.⁵⁰ OHCHR welcomes these efforts, but notes that they were only taken after numerous petitions by the victim and intervention by OHCHR.

⁴⁷ United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 24 stipulates that prisoners should enjoy the same standard of health care as that available in the community.

⁴⁸ Derogatory terms used to refer to Ukrainians perceived to harbour nationalist loyalties.

⁴⁹ In November 2011, the man was charged with domestic homicide and detained. In 2014, a court in Luhansk region found him guilty and sentenced him to six years and six months imprisonment. On four occasions, the Luhansk Court of Appeal quashed the verdicts and returned the case for retrial. The case had been sent to Svativskiyi district court for a fifth retrial, but could not be referred back to the local court due to the outbreak of armed conflict in eastern Ukraine in 2014. He was detained in territory controlled by 'Luhansk people's republic' for five years with no progress in the case.

⁵⁰ On 5 July 2019, a Svativskiyi district court convicted the man and sentenced him to seven years of imprisonment. He was immediately released, having served a total of seven years and seven months.

V. Administration of justice and accountability

A. Administration of justice in conflict-related cases

“To sum up, there is no court process. I would like to shoot them myself as the court does not work and time is passing.”

- The father of a victim speaking about the court’s failure to prosecute his son’s abusers

59. OHCHR documented violations of fair trial rights in conflict-related criminal cases,⁵¹ notably to the rights to a trial without undue delay, to a hearing by an impartial tribunal and to legal counsel. In addition, victims of human rights violations suffered from the absence of effective remedy due to the failure of the Ukrainian government to effectively investigate and prosecute perpetrators.

60. Ukrainian courts of first instance passed 95 verdicts concerning 99 individuals in conflict-related criminal cases between 16 May and 15 August 2019.⁵² In these cases, three defendants were acquitted, 96 were found guilty, including six in absentia and 85 who admitted their guilt or accepted plea bargains.⁵³

61. OHCHR is concerned by persistent allegations that during pre-trial investigations in conflict-related criminal cases, ammunition or other incriminating evidence was planted in suspects’ homes in order to strengthen otherwise weak cases and to allow for the apprehension of suspects without a court order.⁵⁴ During the reporting period, OHCHR received credible allegations of planting of evidence in five cases.⁵⁵

1. Constitutional Court annulment of article 176.5 of the Criminal Procedure Code

62. OHCHR welcomes the decision of the Constitutional Court of Ukraine finding unconstitutional article 176.5 of the Criminal Procedure Code, which made pre-trial detention compulsory in conflict-related criminal cases.⁵⁶ The Constitutional Court found that the article contradicted the right to liberty under the Constitution of Ukraine and the European Convention on Human Rights.⁵⁷ Following the decision, in 19 conflict-related cases, courts have replaced pre-trial detention with house arrest or allowed defendants to be released on bail.

⁵¹ The crimes defined in articles 109-114¹, 258-258⁵, 260 and 261 of the Criminal Code of Ukraine constitute “conflict-related crimes”.

⁵² See infographic, p. 16 for more information.

⁵³ According to information from the Unified Court Register, available at <http://reyestr.court.gov.ua>.

⁵⁴ Article 208 of the Criminal Procedure Code allows for apprehension without the order of a court only if a person is caught *in flagrante delicto* i.e. while committing a criminal offence or attempting to commit it, or immediately after the commission of crime, or if an eye-witness, including the victim accuses the person of the offense, or if there are obvious signs on the perpetrator’s body or clothes, or if the scene indicates that this individual has just committed a crime.

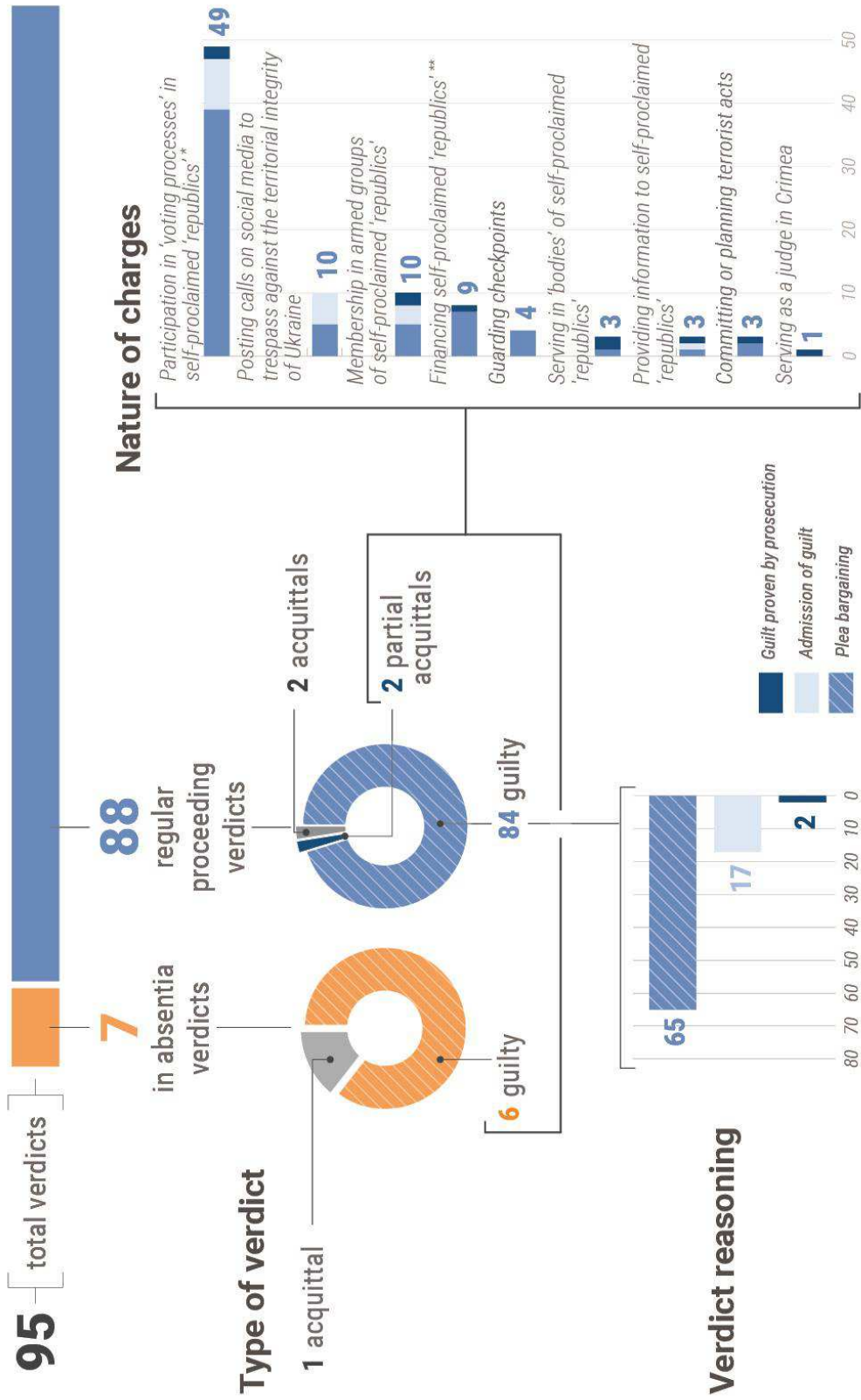
⁵⁵ In two cases, where the defendants were charged with terrorism and possession of ammunition, the courts acquitted them of the terrorism charges but found them guilty of unlawful possession of ammunition. The defendants alleged that the ammunition had been planted during their apprehension. In both cases, the defendants had spent more than a year in detention based on the terrorism charges which incur mandatory pre-trial detention.

⁵⁶ Decision of the Constitutional Court of Ukraine, Complaints of Kovtun, Savchenko, Kostohlodov, and Chornobuk No. 7-p/2019 of 25 June 2019, available at www.ccu.gov.ua/sites/default/files/docs/7-r_19.pdf.

⁵⁷ Article 29 of the Constitution of Ukraine and article 5.1 of the European Convention on Human Rights. Since 2016, OHCHR has regularly reported on the problematic nature of article 176.5 and advocated for its annulment.

VERDICTS OF TRIAL COURTS IN CONFLICT-RELATED CRIMINAL CASES

from 16 May to 15 August 2019



Creation Date: 10 September 2019 Source: OHCHR HRMMU

* Working in so-called 'election commissions' or calling for participation in so-called 'referendums' or 'elections'
 ** Transferring goods through the contact line, doing business or paying 'taxes' in territory controlled by self-proclaimed 'republics'

2. Failure to effectively investigate and prosecute

63. OHCHR is concerned about the Ukrainian government's failure to effectively investigate and prosecute members of the Ukrainian military forces alleged to have committed grave human rights violations, jeopardizing the victims' right to an effective remedy, including by preventing them from being able to seek compensation through civil proceedings.

64. During the reporting period, OHCHR documented three cases in which the police failed to properly investigate criminal cases following complaints that Ukrainian law enforcement and military committed arbitrary detention and torture.⁵⁸ In these cases, the police deliberately changed the procedural status of victims to that of witnesses in order to prevent them from challenging the closure of criminal proceedings in court.

65. On 22 May 2019, the Supreme Court overturned a lower court decision granting compensation to a victim due to a lack of evidence of the alleged involvement of members of Government forces.⁵⁹ This case illustrates the difficulties that victims face in obtaining redress given the failure to effectively prosecute Government forces through criminal proceedings, as well as the absence of a mechanism in civil proceedings to provide for compensation from the State rather than individual perpetrators who are acting on behalf of the State.⁶⁰

B. Accountability for human rights violations

66. More than five years on, victims and their families are still awaiting justice for grave human rights violations, including killings and violent deaths that occurred during the 2013-2014 Maidan protests and in Odesa on 2 May 2014.

1. Accountability for killings and violent deaths during the Maidan protests

67. OHCHR welcomes the completion of the pre-trial investigation and the filing on 24 June 2019 of the indictment against the former head of Khmelnytskyi regional SBU, accused of ordering the use of lethal force against protestors, which resulted in the killing of a 72-year-old woman on 19 February 2014 and injuries to three men. Unfortunately, the preparatory hearing scheduled for 6 August 2019 at the Khmelnytskyi city-district court was adjourned due to the non-appearance of a lawyer of one of the victims. Another Khmelnytskyi SBU officer, accused of firing the shot which killed the woman, is still under investigation.

68. The reporting period was marked by the release under house arrest of a suspect and two defendants in three separate criminal proceedings related to the killings of protestors in February 2014.

69. On 5 June 2019, the Kyiv court of appeal substituted pre-trial detention with house arrest for a former Internal Troops sniper suspected of shooting dead a protestor on 20 February 2014.⁶¹ The court determined that the prosecution had failed to prove risks which would necessitate the extension of his remand in custody.

70. On 26 June 2019, another court replaced the former head of the Kyiv SBU's pre-trial detention with house arrest. He is accused of the unlawful launch of the 'anti-terrorist operation' in central Kyiv on the evening of 18 February 2014, which resulted in the deaths

⁵⁸ According to article 303 of the Criminal Procedure Code of Ukraine, witnesses are not entitled to challenge the closure of criminal proceedings in court.

⁵⁹ See Decision of the Supreme Court, available at <http://reyestr.court.gov.ua/Review/82635843>. The Supreme Court quashed the lower courts' decisions granting the victim's claim for compensation of pecuniary and non-pecuniary damages caused by abduction, torture and intimidation, allegedly by members of the "Aidar" battalion. The Supreme Court emphasised that the case files did not contain sufficient evidence proving the involvement of members of the "Aidar" battalion. OHCHR notes that the investigation into the crime did not result in the establishment of the perpetrators' identity.

⁶⁰ Even though a different standard of proof applies in civil proceedings than in criminal proceedings, Ukrainian law uses prosecution of a defendant as sufficient evidence to establish the causal link between the damaging act and actions of the defendant party in civil proceedings.

⁶¹ See ruling of Kyiv court of appeal of 5 June 2019, available at <http://reyestr.court.gov.ua/Review/82313749>.

of 17 people.⁶² Similarly, on 16 July 2019, Sviatoshynskiy district court of Kyiv replaced pre-trial detention with house arrest of a former ‘Berkut’ special police company officer accused of killing protestors in the morning of 20 February 2014.⁶³ The court stated that despite evidence that he was at the crime scene, there was no evidence that the defendant had used his weapon against the protestors.⁶⁴ In both cases, the courts noted that the prosecution failed to prove the necessity of extending the pre-trial detention, which in light of the Constitutional Court decision issued on 25 June,⁶⁵ allowed the court to choose a more appropriate restraint measure.

71. OHCHR is concerned with the Prosecutor General’s decision of 8 August 2019 to dissolve two units within the Special Investigations Department which are responsible for the majority of investigations into crimes committed during Maidan protests. Recalling the reorganisation of the Department which separated the investigators from the prosecutors supervising the investigations, the Head of the Department stated that this decision is yet another step towards the gradual destruction of investigations into Maidan-related criminal cases.⁶⁶

2. Accountability for killings and violent deaths in Odesa on 2 May 2014

72. The Prymorskyi district court of Odesa increased the frequency of court hearings in the ongoing trial against the former Head of Odesa regional police, accused of negligence and failure of his duty to protect which resulted in the killing of six and the violent death of 42 people in the fire in the House of Trade Unions.

73. In the case against the only ‘pro-unity’ activist accused of killing, nine months after receiving the indictment, the Malynovskyi district court of Odesa finally started consideration of the case and completed the preparatory stage.⁶⁷ On 18 July 2019, the Court refused to grant the status of victim to relatives of three men shot dead during the mass disorder in the city centre, without providing a valid explanation, therefore denying their right to remedy.

74. OHCHR did not note any significant progress in the trials against three high-ranking Odesa police officers, and two former deputy heads and two mid-level officers of the Odesa regional department of the State Emergency Service, each accused of negligence and/or failure of their duty to protect the 42 people who died in the fire in the House of Trade Unions. As of 15 August 2019, the courts had yet to start their substantial consideration of these cases.

3. International criminal law

75. OHCHR welcomes the adoption by the Parliament of Ukraine, during its first reading on 6 June 2019, of a draft law on the harmonisation of national criminal legislation with international criminal law.⁶⁸

76. The draft law defines the crimes of genocide, crimes against humanity, war crimes and aggression as enshrined in the Rome Statute of the International Criminal Court and in general principles of international criminal law. It establishes universal jurisdiction and the

⁶² See ruling of Shevchenkivskiy district court of Kyiv of 29 June 2019, available at <http://reyestr.court.gov.ua/Review/82666801>.

⁶³ According to the Prosecutor General’s Office, 48 protestors were shot and killed and 80 more sustained gunshot injuries due to the actions of 27 members and officers of ‘Berkut’ special police company. Only five of them are on trial, while others managed to abscond before or during the investigation. These killings are not attributed to each of the members; all casualties are attributed to them as a group linked by the same criminal intent – to commit a terrorist act by using lethal force against the protestors who did not pose a threat to them.

⁶⁴ Ruling of Sviatoshynskiy district court of Kyiv of 16 July 2019, available at <http://reyestr.court.gov.ua/Review/83053714>.

⁶⁵ See paragraph 62 above.

⁶⁶ Briefing of the Head of the Special Investigations Department (SID) of the Prosecutor General’s Office and the Head of the Unit for Procedural Supervision of the SID, 15 August 2019, available at www.facebook.com/usrgpu/videos/2281380035507894/?permPage=1.

⁶⁷ For more information see HRMMU Briefing note Accountability for Killings and Violent Deaths on 2 May 2014 in Odesa, available at http://www.un.org.ua/images/documents/4671/Accountability%20for%20Killings%20and%20Violent%20Deaths%20on%202%20May%202014%20in%20Odesa_1.pdf.

⁶⁸ Draft Law of Ukraine on amendments to certain legislative acts of Ukraine as to ensuring the harmonisation of criminal law with provisions of international law, No. 9438 of 6 June 2019.

modes of criminal liability for these crimes. At the same time, the draft law lacks legal certainty as it provides for modification of verdicts issued before its entry into force without setting appropriate safeguards. OHCHR also notes that constitutional amendments, which took effect on 30 June 2019, opened the way for ratification by Ukraine of the Rome Statute.⁶⁹

VI. Civic space and fundamental freedoms

77. Largely inclusive, peaceful and competitive parliamentary elections were held in Ukraine on 21 July 2019.⁷⁰ Tensions between supporters of competing parties, observed during the presidential campaign earlier this year, were less visible due to the diversity of participating political parties and less polarisation between their supporters. However, OHCHR documented a number of violent attacks throughout the election process, targeting individuals participating in electoral processes, the investigation of which must be effective and timely.

A. Right to vote

78. OHCHR noted a low number of persons crossing the contact line on election day. One crossing point was closed due to the discovery of explosives, preventing some citizens from entering Government-controlled territory in order to cast their votes. Following OHCHR advocacy, increased accessibility for persons with disabilities or limited mobility to polling stations and related offices was observed.⁷¹

79. Ahead of the parliamentary elections, OHCHR documented four attacks against various political party premises and figures throughout Ukraine. In one incident, on 27 June 2019 in Kharkiv, the office of a political party was vandalised. The outside walls, windows and doors were smashed and stained with bright green dye. Following the attack, a local extreme right-wing group posted videos on social media highlighting their role in the attack. Three days after the first attack, unknown perpetrators poured red paint over the entrance of the same office.

80. OHCHR notes the adoption of the Electoral Code of Ukraine on 11 July 2019⁷² forming a key element of electoral reform which will take effect on 1 December 2023. Its adoption, however, does not alleviate the urgent need for legislative amendments to enfranchise IDPs and labour migrants in the 2020 local elections.

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

81. OHCHR documented six physical attacks against media professionals during the reporting period. Lack of accountability for past attacks committed against media professionals continued to fuel this violence.

82. OHCHR is disturbed by the death of Vadym Komarov on 20 June 2019 resulting from a brutal attack. The investigative journalist was severely beaten on 4 May 2019 in Cherkassy,⁷³ and passed away in the hospital after one and a half months in a coma.

83. On 7 June 2019, another journalist was beaten in Kharkiv by individuals allegedly affiliated with extreme right-wing groups. On 2 July 2019, participants of an election-related assembly on *Maidan Nezalezhnosti* (Independence Square) in Kyiv, reportedly beat a third journalist.⁷⁴ On 30 July, a press conference on vote counting was disrupted by members of

⁶⁹ Law of Ukraine ‘On amendments to the Constitution of Ukraine (regarding the judiciary)’ No. 1401-VIII of 2 June 2016.

⁷⁰ Election were carried out in the territory where Government exercises effective control. Thus, this paragraph does not refer to the territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ and the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation.

⁷¹ As a result of OHCHR advocacy, one local state administration implemented a set of measures in the region to increase accessibility of voting locations. For instance, in certain locations polling stations were moved from the first floor to the ground floor, which is accessible for people with disabilities and groups with limited mobility.

⁷² Draft Electoral Code of Ukraine No. 3112-1 of 11 July 2019. As of 15 August 2019, the new Electoral Code had not been signed by the Speaker of the Parliament and the President.

⁷³ OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2019, para 76.

⁷⁴ OHCHR interview, 19 August 2019.

an extreme right-wing group. At least three journalists were physically attacked, placing one of them in hospital.⁷⁵

84. While three years have passed since the lethal attack against well-known journalist Pavel Sheremet on 20 July 2016, no perpetrators have yet been brought to account. Similarly, there is no visible progress in the legal proceedings against the suspects of the killing of journalist Oles Buzina, which has been considered by different courts since 2017. The recusal of another judge⁷⁶ on the panel on 11 July 2019 might further delay this trial.

85. In territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, the right to freedom of expression remains severely limited. OHCHR observed that there is still no space for public displays of critical views, for example through media, in either ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’.

C. Freedom of peaceful assembly and freedom of association

86. On 23 June 2019, OHCHR monitored the KyivPride Equality March, which was attended by up to 8,000 people.⁷⁷ OHCHR commends the professional conduct of police in addressing security challenges and in securing participation of both demonstrators and counter-demonstrators. However, counter-demonstrators threw eggs, hitting one participant in the eye. Furthermore, after the march, two KyivPride volunteers were attacked by individuals allegedly affiliated with extreme right-wing groups. OHCHR calls on the police to investigate this incident in an effective and timely manner.

87. While the police have successfully secured major LGBTI assemblies in big cities, extreme right-wing groups acting with impunity frequently disrupted smaller events organised by minority groups, such as LGBTI and Roma. During the reporting period, three events organised by minority groups in Kyiv, Kharkiv and Kryvyi Rih were disrupted by extreme right-wing groups. The police were present at each of these events, but did not prevent the disruption. An LGBTI march in Kryvyi Rih was cancelled after the police stated that it would not be able to provide security for the participants.

88. OHCHR welcomes the decision of the Constitutional Court finding the e-declaration requirements for anti-corruption activists unconstitutional on 6 June 2019.⁷⁸ The requirement for anti-corruption activists to submit annual declarations on all their income and registered property had been widely criticized as discriminatory, and as exerting excessive pressure on civil society activists.⁷⁹

89. In territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, OHCHR assessed that space for free and peaceful assemblies where critical opinions are expressed is absent. Such a restrictive environment, where dissenting opinions may trigger retaliation, has a long-lasting chilling effect on the population.

D. Freedom of religion or belief

90. The process of transition of churches and religious communities from the Ukrainian Orthodox Church⁸⁰ to the newly-established Orthodox Church of Ukraine,⁸¹ which led in many cases to incidents of violence, slowed following presidential and parliamentary elections. Reportedly, there have also been cases of communities returning to the Ukrainian Orthodox Church.

⁷⁵ OHCHR interview, 2 August 2019.

⁷⁶ The presiding judge in the case recused himself on 6 May 2019.

⁷⁷ In 2018, the KyivPride equality march was attended by up to 5,000 people.

⁷⁸ Constitutional Court of Ukraine, 6 June 2019. www.ccu.gov.ua/sites/default/files/docs/3_p_2019.pdf.

⁷⁹ See OHCHR report on Civic space and fundamental freedoms ahead of the presidential, parliamentary and local elections in Ukraine in 2019-2020, para. 26, available at www.ohchr.org/Documents/Countries/UA/CivicSpaceFundamentalFreedoms2019-2020.pdf.

⁸⁰ Often referred to as the Ukrainian Orthodox Church of Moscow Patriarchate to differentiate it from the Ukrainian Orthodox Church of Kyiv Patriarchate. According to the official registration, the Ukrainian Orthodox Church of Moscow Patriarchate is named the Ukrainian Orthodox Church and will be referred to as such throughout this report.

⁸¹ Made up of Ukrainian Orthodox Church of Kyiv Patriarchate, Ukrainian Autocephalous Orthodox Church and some elements of the Ukrainian Orthodox Church.

91. OHCHR is concerned by the lack of progress in investigating previous incidents of church-related violence.⁸² Despite an overall trend of declining tensions between religious communities, several violent incidents related to transitions occurred during the reporting period. On 20 June 2019, three supporters of the Ukrainian Orthodox Church were injured in one such incident.⁸³

92. OHCHR noted for the first time an incident which may have been in retribution for previous violence committed by supporters of the transition of a church to the Orthodox Church of Ukraine, when on 1 June 2019, supporters of the Orthodox Church of Ukraine were violently pushed out from a venue where they had planned a gathering.

93. According to OHCHR's assessment, the ability to enjoy freedom of religion or belief in territory controlled by 'Donetsk people's republic' and 'Luhansk people's republic' remains limited without any visible improvement since the last reporting period.

E. Discrimination, racially-motivated violence and manifestations of intolerance against minorities

94. Compared with the previous reporting period, OHCHR documented fewer incidents of discrimination, racially motivated violence and manifestation of intolerance targeting individuals belonging to minority groups. The increase of attacks against Roma settlements documented during the same period in 2018 did not occur this year. However, accountability for past attacks is still lacking, for example in the cases of a 2018 attack of a lawyer, who was representing victims of a 2017 attack on a Roma settlement in Vilshany which left one person dead and others injured.

95. OHCHR welcomes the police's increased consideration of hate motives when classifying attacks based on victims' identities.⁸⁴ However, it is important to see progress in the prosecution of such cases in order to achieve accountability.

96. On 19 June 2019 in central Kyiv, three members of extreme right-wing groups attacked seven members of the LGBTI community who were walking home from a KyivPride event held prior to the KyivPride Equality March. One victim was beaten and four were sprayed with tear gas, leading to one person being hospitalised. The police opened a criminal investigation but the perpetrators have not been identified yet. The National Police classified the incident as hooliganism instead of a hate crime, despite evidence suggesting the persons targeted were attacked because of their identity.

97. OHCHR welcomes the participation and support of representatives of the State Office for Public Health of the Ministry of Healthcare, the Deputy Minister of Economic Development and military officers at the KyivPride Equality March. However, it notes with concern that on 22 July 2019, the deputy mayor of Sumy posted on social media that he would like to see all participants of the Pride March in concentration camps.⁸⁵ OHCHR notes that it is a violation of international human rights law if a public authority promotes or incites discrimination, hostility or violence on any prohibited grounds for discrimination.⁸⁶

⁸² See OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2019, paras. 86-87.

⁸³ OHCHR interview, 27 June 2019.

⁸⁴ In 2018, according to the police, 27 cases were opened under article 161 of the Criminal Code of Ukraine (violating equality of citizens based on their race, national and religious affiliation). In the first five months of 2019 alone, police qualified actions under article 161 in 43 cases.

⁸⁵ The original post was deleted, but screenshots of the post are available at <https://hromadske.radio/news/2019/06/23/prokuratura-vidkryla-provazhennya-cherez-dopys-zastupnyka-miskogo-golovy-sum-pro-te-shcho-uchasnyky-lgbt-praydu-povynni-butu-u-konctabarah>.

⁸⁶ Article 20, ICCPR; article 4, International Convention on the Elimination of All Forms of Racial Discrimination; article 7, Universal Declaration of Human Rights.

F. Language rights

98. The law strengthening the role of Ukrainian as the official language entered into force on 16 July 2019.⁸⁷ OHCHR is concerned that, despite a flexible transition period,⁸⁸ some provisions which may jeopardize the rights of minorities have immediate effect. This particularly relates to the rules on the use of the State language in governance and public services, including at local levels. While the law foresees some exceptions, leaving space for the use of minority languages, they cannot be effectively applied until the relevant special legislation on minority languages is in place.

99. OHCHR notes with regret that, despite recommendations made by the international community,⁸⁹ State language and minority-related legislation were not developed in parallel in order to secure a balanced language policy from the outset. OHCHR calls on the Government to adopt a law on the realisation of the rights of indigenous peoples and national minorities of Ukraine as a matter of priority.

100. OHCHR also notes that a number of recommendations of the Venice Commission concerning the language of instruction in public education remain to be addressed by the Government.⁹⁰ While noting the Constitutional Court judgment of 16 July 2019, which found the current law on education⁹¹ to be in compliance with the Constitution of Ukraine,⁹² OHCHR encourages the Government to pay specific attention to the issue of non-discrimination, raised by the Venice Commission,⁹³ which, was not addressed by the Constitutional Court.

VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation

101. OHCHR continued to document international humanitarian and international human rights law violations committed in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation (hereinafter Crimea).⁹⁴

102. For its part, the Government of Ukraine has failed to facilitate access to pensions and other social benefits for current and former residents of Crimea. In addition, those residents who are forced to leave Crimea at short notice and who need emergency housing in mainland Ukraine have been left in a precarious position.

⁸⁷ Law of Ukraine ‘On ensuring the functioning of the Ukrainian as the State language’ No. 2704-VIII of 25 April 2019. On 22 May 2019, the Venice Commission received a request from the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe to analyse this law. On 21 June 2019, a group of 51 members of Parliament filed a complaint with the Constitutional Court challenging the constitutionality of the law.

⁸⁸ The law establishes transitional periods, ranging from six months to up to ten years, for a number of provisions, such as those relating to the use of language in education, print media, publishing, advertisement and the provision of services.

⁸⁹ See OHCHR Report on the human rights situation in Ukraine, 16 August to 15 November 2018, paras. 13 and 84; Letter of the Organization for Security and Co-operation in Europe High Commissioner on National Minorities, Lamberto Zannier, to the Speaker of the Verhovna Rada of Ukraine, Adrii Parubii, October 2018; visit of the Organization for Security and Co-operation in Europe High Commissioner on National Minorities, Lamberto Zannier, to Ukraine, May 2019; Statement by the Council of Europe High Commissioner for Human Rights, Dunja Mijatovic, of 12 March 2019.

⁹⁰ See Opinion on the Provisions of the Law on Education of 5 September 2017 which concern the use of the State Language and Minority and Other Languages in Education No. 902/2017, adopted by the Venice Commission at its 113th Plenary Session (8-9 December 2017), available at [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)030-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)030-e). See also OHCHR Report on the human rights situation in Ukraine, 16 November 2017 to 15 February 2018, para. 136.

⁹¹ Law of Ukraine ‘On education’ No. 2145-VIII of 5 September 2017.

⁹² Constitutional Court of Ukraine, Judgment No. 10-p/2019 of 16 July 2019.

⁹³ In its Opinion No. 902/2017 the Venice Commission highlighted the differential treatment between, on the one hand, national minorities speaking an official language of the EU, and, on the other hand, national minorities, whose languages are not official languages of the EU, and recommended amending the law to address this issue.

⁹⁴ General Assembly resolution 73/263 (supra note 5), para. 11.

A. Situation of detainees transferred from Crimea to the Russian Federation

103. OHCHR recalls that international humanitarian law prohibits “individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power”.⁹⁵

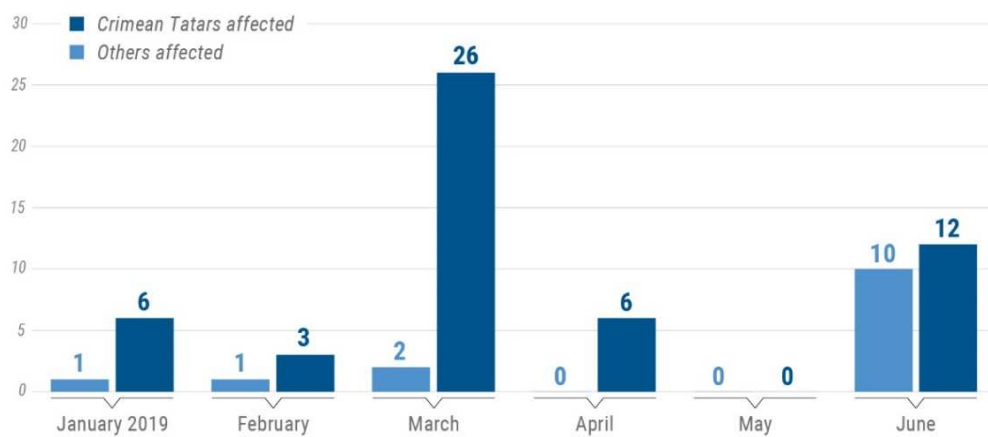
104. The first transfer of prisoners from Crimea to the Russian Federation documented by OHCHR took place on 20 June 2014.⁹⁶ Some transfers have involved multiple stops at different penal colonies and SIZOs across the Russian Federation and lasted up to six weeks, during which time relatives were not informed of the detainees’ whereabouts. In one documented case, between 2016 and 2017, Russian Federation authorities transferred a married couple from Crimea to two different penal colonies located in remote areas of Krasnodar and Stavropol Krai, some 500 kilometres away from each other and almost 1,000 kilometres away from their two minor children who remained in Simferopol.⁹⁷ Neither of them is expected to be released until late 2026.⁹⁸

105. In most documented cases, detainees and their families complained of a lack of proper medical care in detention facilities in the Russian Federation, difficulties in maintaining family contacts due to the detainees’ placement in remote prisons, discrimination based on national origin and arbitrary use of solitary confinement. Family visits were either impractical, due to high cost and long distances, or required special permission from colony administrations, which may take up to three weeks to issue.⁹⁹ In addition, prisoners considered by the Russian Federation as Russian citizens were denied Ukrainian consular visits, and some are being held in the Russian Federation without Ukrainian passports, or their passports have been lost or expired, further weakening the detainees’ links with their State of origin. Despite repeated calls by OHCHR, the Russian Federation has failed to disclose the overall number of Ukrainian citizens transferred to its territory.

B. House searches and raids

106. OHCHR has previously reported that Crimean Tatars are disproportionately subjected to raids by the Federal Security Service of the Russian Federation and police of their private homes, businesses and meeting places in Crimea.¹⁰⁰ During the reporting period, this pattern intensified.

HOUSE SEARCHES DOCUMENTED IN CRIMEA BY OHCHR from January to June 2019



Creation Date: 10 September 2019 Source: OHCHR HRMMU

⁹⁵ Article 49, Geneva Convention IV, subject to the exception provided therein.

⁹⁶ OHCHR interview, 7 June 2019.

⁹⁷ Such a transfer resulting in a substantial distance separation between a detainee and his or her family runs counter to Rule 59 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules and Rule 4 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

⁹⁸ OHCHR interview, 5 July 2019.

⁹⁹ OHCHR interview, 27 June 2019.

¹⁰⁰ OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2018, para. 114, available at www.ohchr.org/Documents/Countries/UA/ReportUkraineMay-August2018_EN.pdf.

107. Within the first six months of 2019, OHCHR documented 67 searches and raids carried out by Russian Federation law enforcement officers in Crimea. At least 53 (nearly 79 per cent) impacted Crimean Tatars. OHCHR notes that the number of raids against Crimean Tatars almost doubled compared to the same period last year, and nearly quintupled in comparison to the first six months of 2017. In total, since 1 January 2017, OHCHR has confirmed 186 searches in Crimea, at least 140 (nearly 75 per cent), targeted Crimean Tatars.

108. The vast majority of searches documented within the reporting period were justified by authorities by the need to seize materials, including handwritten notes or information on electronic devices, linking suspects to groups which are banned in the Russian Federation. All of these banned groups, however, are lawful in Ukraine. OHCHR recalls that, according to international human rights law, no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.¹⁰¹ As a general rule, such interferences must be in accordance with the law, pursuant to one or more legitimate aims and be necessary in a democratic society.

C. Freedom of expression

109. Russian Federation authorities continued to suppress freedom of expression on social media in Crimea by imposing administrative sanctions under extremism charges. In some cases, Russian anti-extremism legislation was applied to content posted on social media prior to the application of Russian Federation law in Crimea, contrary to its obligations under international humanitarian law as the occupying Power in Crimea.¹⁰²

110. On 2 July 2019, a city court in Sudak fined a Crimean Tatar man for a video he had posted on his social network page six years ago. He was convicted of “distribution of extremist materials” on the basis of judgements delivered in 2014 by the Yamalo-Nenetskiy and Tatarstan district courts of the Russian Federation, which found the video in question extremist and included it on the Federal List of Extremist Materials.¹⁰³ On 31 May 2019, a district court in Simferopol handed down similar convictions against two Crimean Tatar women, who in 2013 had allegedly re-posted on their social networks a video considered extremist.¹⁰⁴ In all three documented cases, the social media posts concerned a religious organisation, *Hizb ut-Tahrir*, banned in the Russian Federation but operating legally in Ukraine.

D. Forced conscription

111. The reporting period was marked by the ninth conscription campaign of male Crimean residents into the Russian Federation Armed Forces since the occupation began. During this campaign, which ended in June 2019, at least 3,300 men from Crimea were enlisted, the largest number for a single campaign in Crimea since forced conscription began in 2015.¹⁰⁵ This brings the overall number of Crimean conscripts to at least 18,000 men.¹⁰⁶ A portion of the conscripts from the spring 2019 campaign, as in the previous four drafts since 2017, were sent to military bases in the Russian Federation.¹⁰⁷

112. OHCHR has identified 29 guilty verdicts issued against Crimean residents for draft evasion, punishable under Russian Federation criminal law by up to two years imprisonment: four verdicts were delivered in the first six months of 2019, 22 in 2018, and three in 2017.¹⁰⁸

¹⁰¹ Article 17, ICCPR; article 8, European Convention on Human Rights.

¹⁰² Article 70 (1), Geneva Convention IV.

¹⁰³ Judgment of the Sudak city court, 2 July 2019, case No. 5-51/2019.

¹⁰⁴ Judgment of the Kyivskiy district court of Simferopol, 31 May 2019, case No. 5-395/2019; Judgments of the Supreme court of Crimea, 20 June and 11 July 2019, cases No. No. 12-293/2019 and 12-304/2019.

¹⁰⁵ This is nearly a sevenfold increase since the first conscription campaign in 2015, when 500 men were enlisted.

¹⁰⁶ All figures are approximate and are primarily based on the periodic announcements of the Ministry of Defense of the Russian Federation. See for previously reported figures, OHCHR report on the human rights situation in Ukraine, 16 November 2018 to 15 February 2019, para. 114, available at www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019.pdf.

¹⁰⁷ Forcible allocation to bases in the Russian Federation violates article 49 of Geneva Convention IV.

¹⁰⁸ These are the verdicts verifiable through the Russian court registry. The registry overall lists 51 cases of draft evasion charges in Crimea but does not make verdicts publicly available in all cases. Given

Except for one verdict imposing a suspended prison sentence, the defendants received criminal fines ranging from 5,000 to 60,000 Russian rubles (US\$80 to US\$902). Under Russian Federation legislation, a conviction for draft evasion does not absolve the obligation to serve in the military. In one case, a Sevastopol resident was convicted for failing to present himself to the military draft commission after being summoned. The man pled that he believed he ineligible because of a medical condition affecting his spine. The court in Sevastopol rejected his argument, ruling that all men summoned are presumed to be eligible for conscription until the special commission at the military draft office decides otherwise.

113. As an occupying Power, the Russian Federation must comply with international humanitarian law prohibiting the compulsion of protected persons to serve in its armed or auxiliary forces. No pressure or propaganda aimed at securing voluntary enlistment is permitted.¹⁰⁹ Forced enlistment also adversely affects the enjoyment of human rights of potential conscripts, restricting their free movement and access to education and employment.¹¹⁰

E. Access to social security and IDP rights in mainland Ukraine

114. Despite the ongoing occupation of Crimea by the Russian Federation, the Government of Ukraine retains obligations under international law to not interfere with the enjoyment of the right to property¹¹¹ of current or former residents of Crimea, as well as to use all legal and diplomatic means available to ensure respect for human rights of the population of Crimea.¹¹² Article 9 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to social security, including social insurance.

115. Current and former Crimean residents face obstacles in accessing retirement pensions and other social benefits in mainland Ukraine. Access to pensions for residents of Crimea is linked to their IDP registration in mainland Ukraine, effectively denying access to those who continue to reside in Crimea. Furthermore, pensioners from Crimea registered as IDPs were denied pension payments by the Pension Fund of Ukraine due to the lack of access to their paper files, located in Crimea.

116. In one case, a female pensioner from Crimea with a secondary disability had no access to a Russian pension because she had refused Russian Federation citizenship.¹¹³ After registering as an IDP upon her arrival in Kyiv, the Pension Fund of Ukraine refused to pay her pension without seeing the paper files, which remain in Crimea.¹¹⁴ In another case, an artist with a disability left the Crimean peninsula for Kyiv because of fear for his safety due to his pro-Ukrainian position and his criticism of the occupation. Despite registering as an IDP, he was denied pension payments due to the absence of the paper files, and was forced to live in a derelict basement without financial support from the State.¹¹⁵

117. OHCHR is also concerned about problems with the timely provision of temporary housing in emergency situations for Crimean residents who felt compelled to urgently leave the peninsula and have no financial means to rent accommodation in mainland Ukraine. In one case, a female IDP from Armiansk spent at least two days at a bus station in Kherson

that the court registry does not list every criminal proceeding, it is possible that the actual figure of convictions is higher.

¹⁰⁹ Article 51, Geneva Convention IV.

¹¹⁰ See OHCHR report on the human rights situation in Ukraine, 16 November 2018 to 15 February 2019, para. 115.

¹¹¹ Retirement pensions payable in Ukraine was recognized as falling under the scope of the right to property by the ECtHR. *Pichkur v. Ukraine* (7 November 2013), paras. 41-43.

¹¹² HRC, Concluding Observations on Moldova (CCPR/C/MDA/CO/2(2009), para. 5; ECtHR, *Ilascu and Others v. Moldova and Russia* (8 July 2004), para. 331.

¹¹³ In March 2014, the Russian Federation automatically imposed Russian Federation citizenship on all Ukrainian citizens and stateless persons who resided in Crimea on a permanent basis. See OHCHR report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), issued pursuant to General Assembly resolution 71/205, covering the period from 22 February 2014 to 12 September 2017, available at www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf, paras. 55-72.

¹¹⁴ OHCHR interview, 23 June 2019.

¹¹⁵ OHCHR interview, 8 July 2019.

with her 14 year-old son following her arrival to mainland Ukraine from Crimea in June 2019.¹¹⁶

118. According to Ukrainian Government statistics, 39,511 registered IDPs from Crimea resided in mainland Ukraine as of 1 July 2019, including 3,684 pensioners and 728 persons with disabilities.

F. Incident near the Kerch Strait

119. On 25 May 2019, the International Tribunal for the Law of the Sea (ITLOS) prescribed provisional measures¹¹⁷ in the case between Ukraine and the Russian Federation, ordering the Russian Federation to immediately return three Ukrainian naval vessels and release the 24 detained Ukrainian crew members seized during the 25 November 2018 incident near the Kerch Strait.¹¹⁸ In addition, both Ukraine and the Russian Federation were ordered to refrain from taking any action which might aggravate the matter. As of 15 August 2019, the 24 crew members remained in detention in Moscow.

VIII. Technical cooperation and capacity-building

120. OHCHR regularly engages in technical cooperation and capacity-building activities to assist the Government of Ukraine and other stakeholders who have a role in the promotion and protection of human rights in Ukraine, including civil society organisations.

121. During the reporting period, OHCHR provided six training sessions and presentations to some 106 people (including 22 women), such as Government officials, military personnel and Ministry of Defence's Civil-Military Cooperation Unit (CIMIC) officers, lawyers and civil society actors. For example, presentations were made on the prevention of arbitrarily detention, torture and conflict-related sexual violence to CIMIC officers who were to be deployed to the conflict zone.

IX. Conclusions and recommendations

122. The establishment of a new Government following recent presidential and parliamentary elections presents an opportunity for Ukraine to advance in the full respect, protection, and fulfilment of the human rights of the Ukrainian population without discrimination.

123. The ongoing decline in conflict-related civilian casualties is welcomed, but a spike in casualties in June demonstrates that efforts to reduce the impact of hostilities on civilians are still needed.

124. The conflict, now entering its sixth year, affects a wide variety of human rights, notably the right to life and economic and social rights of the population living close to the contact line. More must be done to overcome the impact of the hostilities, including through inclusive Government policies which prevent the widening of social divisions, and measures to ensure a respectful and non-violent approach to social diversity.

125. Adherence to the rule of law and a well-functioning judiciary are vital to assuring the complete spectrum of human rights. In this regard, ensuring accountability is key, including for serious human rights violations committed in the past, such as attacks on journalists, activists and minorities.

126. The recent inclusive elections and the peaceful holding of high profile assemblies, as well as the reduction in attacks on Roma are indicative of positive trends. Addressing incidents of hate speech would send a strong message about Ukraine's desire to progress on the path toward an open and inclusive society.

127. A number of positive legal developments occurred this reporting period, further engraining human rights in law and practice. However, more work is needed to align

¹¹⁶ OHCHR interview, 24-30 June 2019. As a result of advocacy, temporary housing was granted on 2 August 2019.

¹¹⁷ Available at www.itlos.org/fileadmin/itlos/documents/cases/case_no_26/C26_Order_25.05.pdf.

¹¹⁸ OHCHR Report on the human rights situation in Ukraine, 16 November 2018 to 15 February 2019, paras. 99-103.

Ukraine's legislation with international standards, and should be a key focus for the new Parliament. OHCHR stands ready to assist in this endeavour.

128. In Crimea, the Russian Federation continued to commit violations of international humanitarian and human rights law, contrary to its obligation as an occupying Power. OHCHR should be provided unimpeded access to the peninsula in line with relevant United Nations General Assembly resolutions as a means of monitoring the human rights situation there.

129. OHCHR urges the implementation of all recommendations made in its past reports, many of which remain outstanding and would significantly contribute to improving the human rights situation in Ukraine. On the basis of its findings from the current reporting period, it recommends the following:

130. To the Parliament and the Cabinet of Ministers:

- a) **adopt a comprehensive State policy and mechanism on remedy and reparation for civilians injured during the hostilities and to relatives of those killed in hostilities, in accordance with international standards¹¹⁹;**
- b) **sign the Safe Schools Declaration;**
- c) **adopt legislation in order to ensure equal access to pensions for all citizens of Ukraine, regardless of their place of residence or IDP registration, including pension arrears;**
- d) **adopt non-discriminatory and comprehensive legislation in line with international standards and in cooperation with international and national organisations, laying the ground for the development of a comprehensive mechanism for restitution and compensation for property damaged and destroyed during the armed conflict in eastern Ukraine, as well as property used by the military;**
- e) **allocate financial and technical support to local authorities in order to provide adequate housing for the conflict-affected population, those from Crimea and IDPs;**
- f) **adopt legislation ensuring that IDPs have an opportunity to participate fully in all upcoming elections;**
- g) **address the gap in national legislation on language policy to ensure effective protection and realisation of rights of national minorities and indigenous peoples;**
- h) **expedite the ratification of the Rome Statute of the International Criminal Court;**
- i) **develop and adopt a procedure for determining the legal status of individuals 'prosecuted' or 'convicted' by 'Donetsk people's republic' or 'Luhansk people's republic' upon their transfer to Government-controlled territory;**
- j) **encourage dialogue between the Ombudspersons of Ukraine and Russian Federation authorities to facilitate the voluntary transfer of Ukrainian pre-conflict detainees held in Crimea and the Russian Federation to penitentiary institutions in mainland Ukraine.**

To the Ukrainian authorities:

- k) **continue taking measures to ensure adequate and effective security for all peaceful assemblies and individuals participating therein; facilitate the exercise of freedom of peaceful assembly without discrimination;**
- l) **prevent, stop, and condemn all acts of violence and promptly, impartially and effectively investigate and prosecute all acts of violence, including attacks against peaceful demonstrators, media professionals,**

¹¹⁹ See United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

civic and political activists, human rights defenders, members of minority groups, political parties, and defence lawyers;

- m) ensure that the definition of hate crimes as set out in article 161 of the Criminal Code is interpreted to protect, *inter alia*, the LGBTI community; and that motives of perpetrators and aggravating circumstances should be considered during the initial criminal classifications, investigations and prosecutions of all acts of violence.**

To the Inter-agency commission on the derogation of the Government of Ukraine from the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms:

- n) carry out regular periodic reviews of the necessity and proportionality of the Government's derogation measures, make public the results of such reviews, and lift the derogation as soon as possible.**

To the Ministry of Defence

- o) take measures to ensure that military commissariats cease the practice of arbitrary arrest and ill-treatment in the context of conscription into the Ukrainian armed forces during upcoming conscription campaigns.**

To the Command of the Joint Forces Operations:

- p) ensure that representatives of military formations conclude lease agreements with the civilian population when using their property, which cover the payment of utility bills and compensate owners and tenants for any damages caused by military personnel, in line with Order No. 380 of the Ministry of Defence;**
- q) protect civilian property in military use from arbitrary destruction and pillage by military personnel.**

To the Prosecutor General's Office, State Bureau of Investigation, military prosecutor's office and law enforcement agencies:

- r) ensure effective and transparent investigations into allegations of unlawful military use of housing, as well as pillage and stealing committed by military or law enforcement personnel;**
- s) investigate all cases of arbitrary detention in the context of conscription into the Ukrainian armed forces;**
- t) ensure prompt, impartial and effective investigation of all alleged grave human rights violations, such as arbitrary detention, torture, ill-treatment and enforced disappearance, including those allegedly committed by State actors or individuals acting with State authorisation, support or acquiescence, in line with international standards, including the Istanbul Protocol;**
- u) ensure continuity of the investigation and prosecution of all grave human rights violations which took place during the Maidan protests, by securing the institutional memory of the investigations through, for example, utilising the experience and expertise of officers in the Prosecutor General's office who had worked on these investigations to supervise the ongoing investigations by the State Bureau of Investigation.**

To the Security Service of Ukraine (SBU):

- v) immediately cease arbitrary arrests and detentions, and torture and ill-treatment;**
- w) grant immediate, unrestricted, and confidential access for human rights monitors, including OHCHR to conflict-related detainees in line with international standards.**

To the Military-Civilian administrations of Donetsk and Luhansk regions:

- x) **ensure adequate alternative housing to civilians who cannot enjoy their housing rights due to the conflict, including because of military use.**

131. To self-proclaimed 'Donetsk people's republic' and self-proclaimed 'Luhansk people's republic':

- a) **provide confidential and unimpeded access to OHCHR and other international organisations to all places of deprivation of liberty and allow confidential interviews with detainees in line with international standards;**
- b) **cease the practice of 'preventive arrest' and 'administrative arrest';**
- c) **immediately after apprehension provide information on the whereabouts of detainees to their families;**
- d) **treat all detained persons humanely in all circumstances and ensure conditions of detention in accordance with international standards;**
- e) **continue or resume the voluntary transfer of all pre-conflict detainees to Government-controlled territory, regardless of their registered place of residence.**

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

- a) **strictly adhere to the ceasefire and disengagement provisions of the Minsk agreements;**
- b) **ensure full compliance with international humanitarian law rules of distinction, proportionality and precaution, including by immediately ceasing the use of weapons with indiscriminate effect in populated areas, particularly weapons with wide impact areas;**
- c) **take all possible measures to minimize harm to the civilian population, including by positioning military objects outside of densely populated areas, and refraining from deliberately targeting civilians or civilian infrastructure, such as educational and water facilities, and power lines;**
- d) **create conditions for safe and adequate crossing of the contact line by civilians, including improved access to medical aid;**
- e) **facilitate the opening of additional EECPs and repair of the bridge at the EECP in Stanytsia Luhanska;**
- f) **take all feasible measures to protect civilian property from damage and destruction, and to refrain from pillage: provide for the housing needs of the conflict affected population, and ensure compensation for military use of such property.**

133. In the context of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation,¹²⁰ to the Government of the Russian Federation:

- a) **uphold its obligations as a duty bearer under international human rights law in Crimea and respect obligations that apply to an occupying Power pursuant to international humanitarian law; refrain from enforcing Russian Federation legislation in Crimea;**
- b) **ensure proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organisations to Crimea, pursuant to General Assembly resolutions 71/205, 72/190, and 73/263;**

¹²⁰ Referred to as Crimea.

- c) **conduct effective investigations into all allegations of ill-treatment, torture and arbitrary arrests and detentions;**
- d) **end forced conscription of protected persons into Russian Federation armed forces; stop prosecution of protected persons on military draft evasion charges;**
- e) **report the number of individuals transferred from Crimea to the Russian Federation to serve criminal sentences and take immediate actions to return such individuals to Crimea or mainland Ukraine; ensure unimpeded family and Ukrainian consular visits to such detainees;**
- f) **refrain from arbitrary and discriminatory searches and raids of private properties belonging to Crimean Tatars;**
- g) **stop prosecuting Crimean residents for social media posts made before the occupation that do not contain calls to violence.**

134. To the international community:

- a) **continue using all diplomatic means to press all parties to immediately end hostilities and implement the ceasefire and disengagement provisions of the Minsk agreements, emphasizing how the active armed conflict causes suffering of civilians and hampers prospects for stability, peace and reconciliation;**
- b) **remind the Russian Federation, at each and every opportunity, of its obligations as a duty bearer under international human rights law and as an occupying Power under international humanitarian law;**
- c) **encourage the Russian Federation to grant international and regional human rights monitoring mechanisms unimpeded access to Crimea.**