

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

**Report on the human rights situation in Ukraine  
16 August to 15 November 2015**

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## I. EXECUTIVE SUMMARY

1. This is the twelfth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine, based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU)<sup>1</sup>. It covers the period from 16 August to 15 November 2015<sup>2</sup>.

2. During the reporting period, despite a reduction in hostilities, the armed conflict in eastern Ukraine continued to significantly affect people residing in the conflict zone and all their human rights. The absence of effective control<sup>3</sup> of the Government of Ukraine over considerable parts of the border with the Russian Federation (in certain areas of Donetsk and Luhansk regions) continued to facilitate an inflow of ammunition, weaponry and fighters from the Russian Federation to the territories controlled by the armed groups, which carries latent risks of a resurgence of hostilities.

3. The ‘ceasefire within the ceasefire’<sup>4</sup> agreed upon in Minsk on 26 August 2015 led to a considerable decrease in the hostilities, especially in September and October. The withdrawal of certain heavy weapons by the Ukrainian military and the armed groups contributed to a significant reduction of civilian casualties. In the first half of November, however, increasing skirmishes occurred along the contact line, including with the use of artillery systems. Alarming reports of the gradual re-escalation of hostilities in some particular flashpoints, especially around the city of Donetsk, have raised fears that there could be a resumption of indiscriminate shelling of populated areas, which previously plagued the conflict zone.

4. The number of civilian casualties recorded by HRMMU between 16 August and 15 November was 178 (47 deaths and 131 injured). This is a 232 per cent decrease compared to the previous reporting period (16 May – 15 August) when 413 civilian casualties (105 killed and 308 injured) were recorded. Explosive remnants of war and improvised explosive devices caused 52 per cent of all civilian casualties during the reporting period, underscoring the urgent need for extensive mine clearance and mine awareness actions on both sides of the contact line. In total, from mid-April 2014 to 15 November 2015, HRMMU recorded at least 29,830 casualties (Ukrainian armed forces, civilians and members of the armed groups) in the armed conflict area of eastern Ukraine, including at least 9,098 killed and at least 20,732 injured<sup>5</sup>.

5. Serious human rights abuses against the population residing in the territories controlled by the self-proclaimed ‘Donetsk people’s republic’<sup>6</sup> and the self-proclaimed ‘Luhansk people’s republic’<sup>7</sup> continued to be reported, with new allegations of killings, torture and ill-treatment, illegal detention and forced labour received by HRMMU. Local residents continued to remain without any effective protection of their rights. Places of detention maintained by the armed groups remained virtually inaccessible for independent oversight, and international organizations, including HRMMU, did not have access to detainees.

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

<sup>2</sup> The report also provides an update of recent developments on cases that occurred during previous reporting periods.

<sup>3</sup> The Russian Federation has continued to send white-truck convoys without the full consent or inspection of Ukraine, and their exact destination and content could not be verified.

<sup>4</sup> For the first time, the ceasefire was agreed upon on 5 September 2014; in December 2014, because of continued hostilities, the agreement on a ‘silence regime’ was reached; and after the new escalation of hostilities in January-February 2015, a new ceasefire was agreed upon on 12 February 2015. The agreement of 29 August was also preceded by the escalating hostilities in June – August 2015.

<sup>5</sup> An HRMMU conservative estimate based on available data. For more details, see footnote 32.

<sup>6</sup> Henceforth referred to as the ‘Donetsk people’s republic’.

<sup>7</sup> Henceforth referred to as the ‘Luhansk people’s republic’.

At times, it was not possible for HRMMU to access areas, where violations or abuses of human rights have reportedly been taking place, for security reasons.

6. HRMMU observed the further strengthening of parallel ‘governance structures’ of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’, with their own legislative frameworks, including parallel systems of law enforcement and administration of justice (‘police’, ‘prosecutors’ and ‘courts’), in violation of the Constitution of Ukraine and in contravention of the spirit of the Minsk Agreements. HRMMU reiterates that the ‘officials’ of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’ are responsible and shall be held accountable for human rights abuses committed on territories under their control. This particularly applies to people bearing direct command responsibility for the actions of perpetrators.

7. Efforts of the Government of Ukraine to safeguard the territorial integrity of Ukraine and restore law and order in the conflict zone continued to be accompanied by allegations of enforced disappearances, arbitrary and *incommunicado* detention as well as torture and ill-treatment of people suspected of trespassing against territorial integrity or terrorism or believed to be supporters of the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. Elements of the Security Service of Ukraine appear to enjoy a high degree of impunity, with rare investigations into allegations involving them.

8. HRMMU reiterates that a proper and prompt investigation of every single reported case of a violation of international human rights law and international humanitarian law by Ukrainian military and law enforcement elements should be carried out, perpetrators brought to justice, and victims receive compensation. Without this, impunity will remain widespread. The independence of the judiciary in the face of such cases is often challenged by pressures and threats of political activists who consider those indicted as patriots.

9. Imposed in January 2015, restrictions on movement across the contact line remained one of the major challenges for people living in the conflict area, leading to their isolation, impeding their access to medical care and social benefits, and disrupting family links, with no clear benefits in terms of security. With only four transport corridors being operational in the Donetsk region, and just one recently opened corridor for pedestrians in Luhansk region, movement back and forth and around the contact line has been very limited, congested and time-consuming. People often spend hours and even nights waiting in queues to pass checkpoints, with limited access to water and sanitation facilities. The presence of mines alongside the official transport corridors is a security risk, and constitutes a particular threat along other roads crossing the contact line. Approaching winter poses additional hardship to people waiting to cross the contact line.

10. An estimated 2.9 million people living in the conflict area<sup>8</sup> continued to face difficulties in exercising their economic and social rights, in particular access to quality medical care, accommodation, social services and benefits, as well as compensatory mechanisms for damaged, seized or looted property. Many people continued to rely on humanitarian assistance, which has been further restricted. An earlier prohibition of cargo travelling from Government-controlled territory to the territories controlled by the armed groups initially affected the flow of goods. The more recent registration requirement introduced by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ for organizations delivering humanitarian assistance has resulted in a decrease in the number of humanitarian organisations operating in the territories under the control of the armed groups. The hardship already faced by many residents, including those in state institutions, is further aggravated

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<sup>8</sup> 2.7 million living in the territories controlled by the armed groups, including 600,000 along the contact line, and 200,000 residents of the Government-controlled territories along the contact line (Humanitarian Country Team).

with the onset of winter and a shrinking humanitarian space. The situation for an estimated 800,000 people living along both sides of the contact line has been particularly difficult.

11. Media professionals working in the territories controlled by the armed groups have reported that self-censorship for personal security reasons was widespread among local journalists. The procedure for accreditation of foreign journalists by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ has become more complicated, with some being refused accreditation on the grounds that they were “propagandists”. At the same time, the list of foreigners, including media professionals, banned by the Government from entering Ukraine for alleged promotion of terrorist activities or undermining territorial integrity, continued to expand.

12. Rallies to challenge the policies of the ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’ have been extremely rare because people are afraid to assemble and speak out. In the Government-controlled territories, the conduct of police during ‘pro-unity’ counter-demonstrations has been of concern, as illustrated on 2 November 2015 in Odesa, when no action was taken to prevent ‘pro-unity’ activists from attacking ‘pro-federalism’ supporters commemorating victims of the 2 May 2014 violence.

13. Accountability has yet to be achieved for the killing of protestors and other human rights violations committed during the Maidan events in Kyiv, from November 2013 to February 2014. Although the involvement of senior officials in the killing of protestors has been confirmed, no one has been brought to justice so far. Similarly, there has been no progress in ensuring accountability for the death of 48 people (six women and 42 men) during the violence of 2 May 2014 in Odesa.

14. A decision by the Supreme Administrative Court of Ukraine, in October, ordering the Government of Ukraine to resume the payment of pensions and benefits for people living in the areas controlled by the armed groups, has remained unimplemented.

15. In the Autonomous Republic of Crimea,<sup>9</sup> the status of which is determined by General Assembly resolution 68/262<sup>10</sup>, residents of the peninsula continued to be affected by broad curtailment of their rights due to the application of a restrictive legal framework imposed upon them by the Russian Federation. Their right to citizenship has been violated. Although they may keep their Ukrainian passports and will not be sanctioned for not disclosing this fact, Crimean residents were granted Russian Federation citizenship by default and given no choice but to take up Russian Federation passports or lose their employment and social entitlements. HRMMU documented new cases reflecting the lack of fair trial guarantees, effective investigations into human rights violations and human rights protection for persons in detention. These cases concern mostly Crimean Tatars and people supporting Crimea as an integral part of Ukrainian State.

16. On 20 September, upon the initiative of the Crimean Tatar leadership, a trade blockade of Crimea from mainland Ukraine started, to call international attention to human rights violations in Crimea and to request an international monitoring presence in the peninsula. From its observations at the three checkpoints on the administrative boundary line in mid-November, HRMMU noted actions to enforce the blockade by Ukrainian activists in uniforms illegally performing law enforcement functions. The activists reportedly have an unofficial list of “traitors”, which serve as a basis to illegally arrest and detain people. The law enforcement officers present at the checkpoints were often or generally passive, merely observing the situation.

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<sup>9</sup> Henceforth referred to as Crimea.

<sup>10</sup> <http://www.un.org/ru/documents/ods.asp?m=A/RES/68/262>.

17. On 25 August, the President of Ukraine adopted the first National Human Rights Strategy of Ukraine. In order to move ahead with its implementation, work has been underway to develop a Human Rights Action Plan. Since November 2014, the Government, civil society groups, the Ombudsperson and international organizations have been cooperating to design a five-year roadmap to address systemic human rights challenges and conflict-related issues.

18. On 8 September, Ukraine accepted the jurisdiction of the International Criminal Court with respect to alleged crimes committed on its territory after 20 February 2014. This was the second declaration lodged by Ukraine following its acceptance, in April 2014, of the Court's jurisdiction over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014, during the Maidan events.

19. The Parliament adopted several laws required under the European Union visa liberalization action plan, including anti-corruption laws and the explicit prohibition of discrimination on the grounds of sexual orientation and gender identity in employment relations. It also adopted a law establishing a State Bureau of Investigations tasked to investigate serious crimes and human rights violations committed by law enforcement, military and Government officials. There was also some progress in reforming the Constitution after the adoption by Parliament on the first reading of the constitutional amendments on decentralization.

## **II. RIGHTS TO LIFE, LIBERTY, SECURITY AND PHYSICAL INTEGRITY**

### **A. Alleged violations of international humanitarian law**

20. The reporting period was marked by a sharp de-escalation of hostilities in the conflict zone of eastern Ukraine, following the revamped agreement on the ceasefire agreed upon in Minsk, which started to be implemented on 1 September<sup>11</sup>. While frequent in August, exchanges of fire from artillery and light weapons almost ceased in September and October.

21. The withdrawal of heavy weapons by the Ukrainian military and armed groups from the contact line, which took place before the reporting period, as well as the removal of weapons with calibre below 100mm, which began in September under the oversight by the Organization for Security and Cooperation in Europe (OSCE), contributed to a considerable decrease in civilian casualties. Indeed, during the previous reporting periods, most casualties were caused by shelling.

22. The absence of effective control of the Government of Ukraine over considerable parts of the border with the Russian Federation (in certain areas of Donetsk and Luhansk regions) continued to facilitate an inflow of ammunition, weaponry and fighters to the territories controlled by the armed groups. Robust military presence on both sides of the contact line carried persistent risks of resurgence of hostilities. Despite the general observance of the ceasefire, the presence of military equipment near civilian facilities continued to threaten the security of the local population.

23. During the first half of November, increasing skirmishes occurred along the contact line, including with the use of artillery systems. Alarming reports about the gradual re-escalation of hostilities, especially around the city of Donetsk, raised fears of a resumption of large-scale indiscriminate shelling of populated areas.

24. There is an urgent need to raise people's awareness to the dangers posed by explosive remnants of war (ERW) and improvised explosive devices (IEDs) in the conflict zone. Mapping of the minefields is so far incomplete and inaccurate, and signs posting is urgently required to warn the population about their presence. Rapid interventions are also required as the snow will

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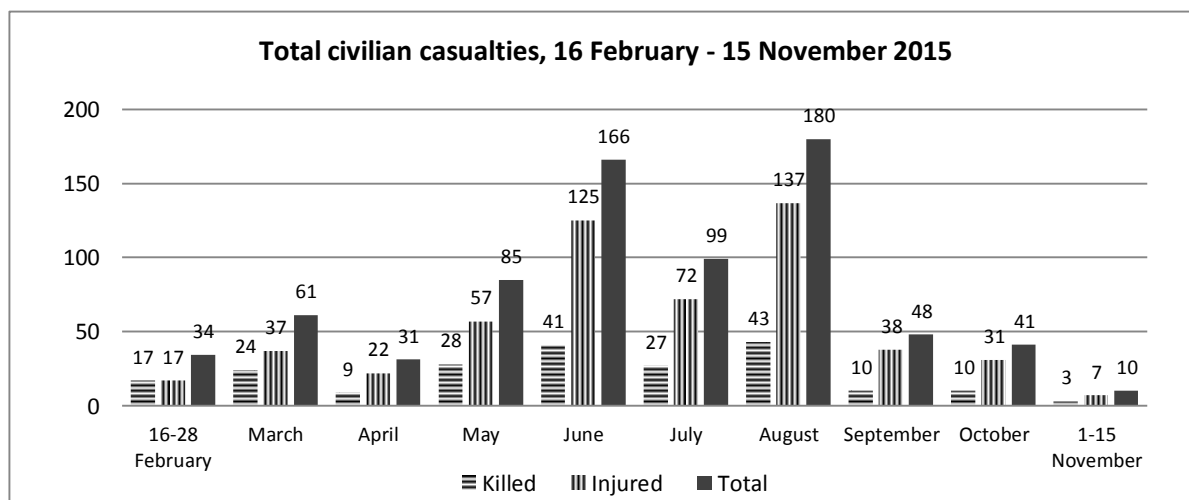
<sup>11</sup> For the first time, the ceasefire was agreed upon on 5 September 2014; in December 2014, because of continued hostilities, the agreement on a 'silence regime' was reached; and after the new escalation of hostilities in January-February 2015, a new ceasefire was agreed upon on 12 February 2015. The agreement of 26 August was also preceded by the escalating hostilities in June – August 2015.

cover and displace booby-traps. There is a lack of equipment for mine clearance on both sides of the contact line, as well as insufficient safety trainings for the staff of emergency services.

25. Ukraine is party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, which categorically prohibits the use of anti-personnel mines “under any circumstances”. It is therefore important that the Government fulfils its obligations under the Convention.

#### *Civilian casualties*<sup>12</sup>

26. Between 16 August and 15 November 2015, HRMMU recorded at least 178 civilian casualties in the armed conflict zone of eastern Ukraine: 47 killed<sup>13</sup> and 131 injured<sup>14</sup>. This represents a 232 per cent decrease in the total number of casualties (223 per cent decrease in killed and 235 per cent decrease in injured), compared to the previous reporting period of 16 May – 15 August 2015 with 413 civilian casualties recorded (105 killed and 308 injured).



27. On the Government-controlled territories, 87 civilian casualties (24 deaths and 63 injured) were recorded. The 24 fatalities included 22 adults<sup>15</sup> and two children<sup>16</sup>. Of 63 injured: 57 were adults<sup>17</sup> and six were children<sup>18</sup>.

28. In the territories controlled by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, 91 civilian casualties (23 deaths and 68 injured) were recorded. Of 23 killed: 22 were adults<sup>19</sup> and one was a child<sup>20</sup>. Of 68 injured: 64 were adults<sup>21</sup> and four were children<sup>22</sup>.

<sup>12</sup> For this report, HRMMU investigated reports of civilian casualties by consulting a broad range of sources and types of information that are evaluated for their credibility and reliability. In undertaking documentation and analysis of each incident, HRMMU exercises due diligence to corroborate information on casualties from as wide range of sources as possible, including OSCE public reports, accounts of witnesses, victims and other directly affected persons, military actors, community leaders, medical professionals, and other interlocutors. In some instances, investigations may take weeks or months before conclusions can be drawn. This may mean that conclusions on civilian casualties may be revised as more information becomes available. HRMMU does not claim that the statistics presented in this report are complete. It may be under-reporting civilian casualties given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods. HRMMU is not in a position at this time to attribute specific civilian casualties recorded to the armed groups, Ukrainian armed forces or other parties.

<sup>13</sup> 44 adults (14 women, 27 men and three adults whose gender is unknown) and three children (two girls and a boy).

<sup>14</sup> 121 adults (25 women, 60 men and 36 adults whose gender is unknown) and ten children (a girl, eight boys and a child whose gender is unknown).

<sup>15</sup> Seven women, 14 men and an adult whose gender is unknown.

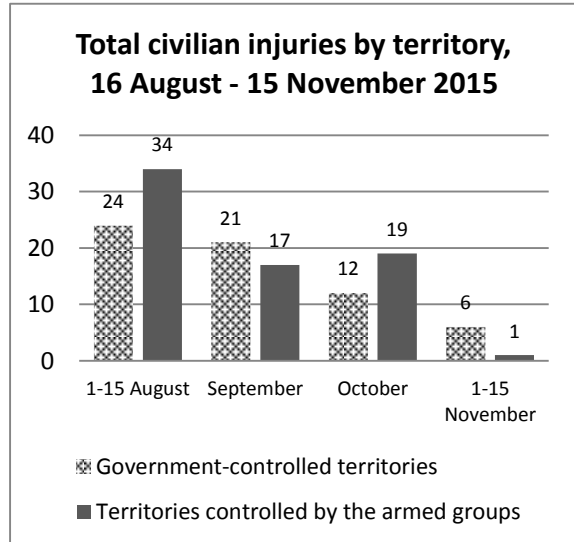
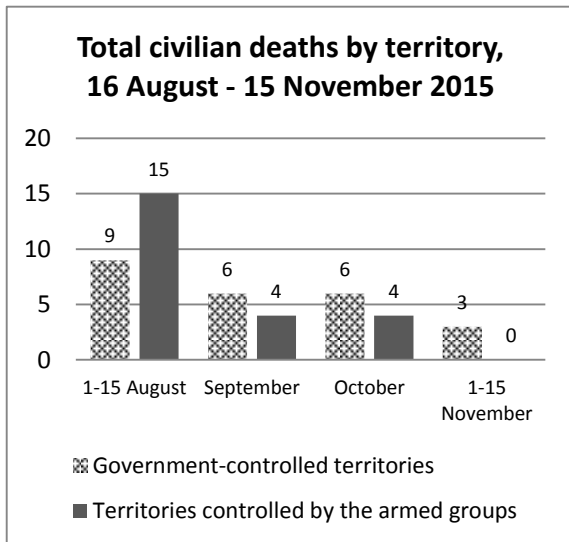
<sup>16</sup> A girl and a boy.

<sup>17</sup> 15 women, 38 men and four adults whose gender is unknown.

<sup>18</sup> A girl, four boys and a child whose gender is unknown.

<sup>19</sup> Seven women, 13 men and two adults whose gender is unknown.

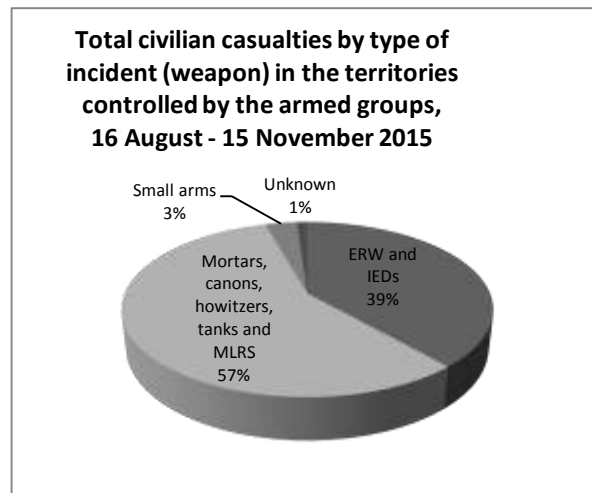
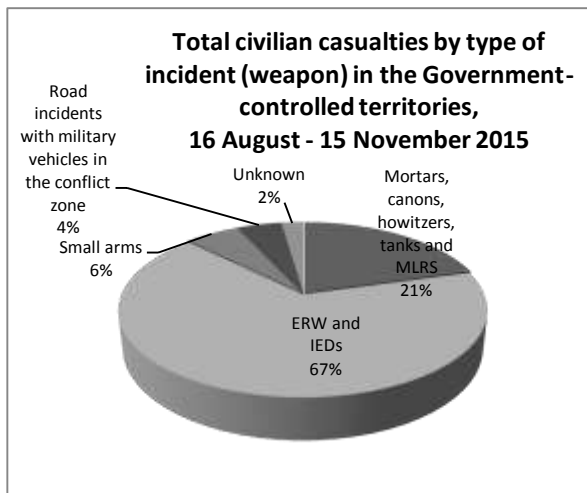
<sup>20</sup> A girl.



29. The majority of civilian casualties on 16 August – 15 November were caused by ERW and IEDs: 93 (17 deaths and 76 injuries). Of 17 killed: 15 were adults<sup>23</sup> and two were children<sup>24</sup>. Of 76 injured: 68 were adults<sup>25</sup> and eight were children<sup>26</sup>.

30. During the reporting period, 70 casualties (22 killed and 48 injured) resulted from shelling<sup>27</sup>. Of 22 killed: 21 were adults<sup>28</sup> and one was a child<sup>29</sup>. Of 48 injured: 47 were adults<sup>30</sup> and one was a child<sup>31</sup>.

31. Besides, six people were killed and two were injured from small arms in the conflict zone. Other conflict-related casualties included two people killed and two injured in road incidents with military vehicles in the conflict zone; and the exact causes of conflict-related injuries of three people are unknown.



<sup>21</sup> Ten women, 22 men and 32 adults whose gender is unknown.

<sup>22</sup> All boys.

<sup>23</sup> Six women and nine men.

<sup>24</sup> A girl and a boy.

<sup>25</sup> 19 women, 40 men and nine adults whose gender is unknown.

<sup>26</sup> All boys.

<sup>27</sup> From mortars, canons, howitzers, tanks and multiple launch rocket systems.

<sup>28</sup> Six women, 12 men and three adults whose gender is not known.

<sup>29</sup> A girl.

<sup>30</sup> Four were women, 16 were men and 27 adults whose gender is unknown.

<sup>31</sup> A girl.



32. During his visit to Ukraine from 20 to 25 September, the United Nations Assistant Secretary-General for Human Rights urged the Government and the armed groups to investigate incidents, which have led to civilian casualties, in particular those from an exchange of fire. He also encouraged the Government and the armed groups to establish civilian casualty mitigation cells within their competent bodies to prevent violations of international humanitarian law leading to civilian casualties.

#### *Total casualties*

33. In total, from mid-April 2014 to 15 November 2015, HRMMU recorded at least 29,830 casualties (Ukrainian armed forces, civilians and members of the armed groups) that include at least 9,098 people killed and at least 20,732 injured in the conflict area of eastern Ukraine<sup>32</sup>. HRMMU estimated the total number of civilians killed during the conflict period to be up to 2,000<sup>33</sup>, with an additional 298 passengers killed as a result of the MH-17 plane crash.

#### **B. Summary executions, enforced disappearances, unlawful and arbitrary detention, and torture and ill-treatment<sup>34</sup>**

##### *By the armed groups*

34. During reporting period, HRMMU received new allegations of killings, torture and ill-treatment, illegal detention and forced labour perpetrated by members of the armed groups.

35. HRMMU received information concerning the alleged killings or attempted killings of captured Ukrainian soldiers. In one case dating back to the beginning of the conflict (May 2014), an injured Ukrainian soldier was stabbed to death after surrendering, despite a pledge that his safety would be guaranteed<sup>35</sup>. In another case, in May 2015, a Ukrainian soldier was stabbed after being captured and survived thanks to the medical personnel of a hospital, having been taken to its morgue<sup>36</sup>. On 20 October, HRMMU received additional details concerning the alleged summary execution of three members of Ukrainian volunteer battalions in the yard of the former premises of the Security Service of Ukraine (SBU) in Donetsk, in mid-September 2014<sup>37</sup>.

36. Some allegations received by HRMMU concern beatings to death or the execution of armed group members by other armed group members. A former detainee at the SBU premises in Donetsk alleged that in mid-September 2014, a detained member of the armed groups was beaten to death by guards for not fulfilling their orders<sup>38</sup>. Another allegation

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<sup>32</sup> This is a conservative estimate of HRMMU based on available data. These totals include: casualties among the Ukrainian forces, as reported by the Ukrainian authorities; 298 people from flight MH-17; civilian casualties on the territories controlled by the Government of Ukraine, as reported by local authorities and the regional departments of internal affairs of Donetsk and Luhansk regions; and casualties among civilians and members of the armed groups on the territories controlled by the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’, as reported by the armed groups, the so-called ‘local authorities’ and local medical establishments. This data is incomplete due to gaps in coverage of certain geographic areas and time periods, and due to overall under reporting, especially of military casualties. The increase in the number of casualties between the different reporting dates does not necessarily mean that these casualties happened between these dates: they could have happened earlier, but were recorded by a certain reporting date.

<sup>33</sup> This estimate is based on the number of civilian casualties recorded by HRMMU during the period of 16 February – 15 November 2015, and on the estimated share of civilian casualties among the casualties reported by medical establishments of Donetsk and Luhansk regions between mid-April 2014 and 15 February 2015 (their reports did not distinguish between military and civilian casualties). HRMMU continues to work to produce a more exact estimate of civilian casualties caused by the conflict in eastern Ukraine.

<sup>34</sup> During the reporting period, a number of victims and witnesses reported allegations of human rights violations and abuses that had taken place in 2014 and during the first half of 2015. These highlight how the human rights situation deteriorated in Ukraine, particularly in the eastern territories.

<sup>35</sup> HRMMU interview, 23 October 2015.

<sup>36</sup> HRMMU interview, 12 November 2015.

<sup>37</sup> HRMMU interview, 20 October 2015.

<sup>38</sup> HRMMU interview, 15 October 2015.

received by HRMMU concerns the execution of members of Cossack units who were kept in the premises of the former ‘Izolyatsia’ art centre in Donetsk, in April and May 2014<sup>39</sup>.

37. HRMMU also received allegations of enforced disappearances on the territories controlled by the armed groups. One case concerns a former member of the ‘Vostok’ battalion who disappeared in May 2015, allegedly after witnessing the killing of three Ukrainian soldiers in January 2015. Threatened by his commander that he would be accused of the killings if he spoke, he deserted in January 2015 and went into hiding in Donetsk. After his disappearance, his mother learnt he was detained by the ‘Vostok’ battalion, but she was never formally informed of his whereabouts<sup>40</sup>. Another case concerns the disappearance of a member of an armed group who was last seen on 5 December 2014 being taken away from a party by an armed group commander from Horlivka (Donetsk region). In spring 2015, his mother was informed that the commander had been detained by the ‘general prosecutor’s office’ of the ‘Donetsk people’s republic’ and charged with enforced disappearances, kidnapping and killings, and that her son’s disappearance was included in charges against him<sup>41</sup>. One more case concerns two men who travelled from Donetsk to the Government-controlled territories and went missing on 8 September 2015. According to relatives, they have not crossed the contact line, and their last known whereabouts were in the Telmanivskiy district (Donetsk region, controlled by the armed groups)<sup>42</sup>.

38. Places of detention maintained by the armed groups remained virtually inaccessible for independent oversight, and international organizations, including HRMMU, did not have access to detainees. During the reporting period, HRMMU was only able to visit the Donetsk pre-trial detention centre (SIZO) but did not have access to detainees. Given the considerable number of cases of torture and ill-treatment of detainees documented by HRMMU since the beginning of the conflict, including in 2015, and poor detention conditions, there is an urgent need for independent monitoring of detention facilities in the territories controlled by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’.

39. A man, who spent a year in the armed groups’ captivity, described in detail the conditions in the former SBU premises in Donetsk – namely overcrowding, insufficient nutrition and lack of adequate medical treatment – as well as ill-treatment, torture and forced labour. He described the conditions as particularly bad in 2014 and noted some improvement in 2015. He also reported numerous incidents when he and other detainees, including women, were tortured: mock executions, beatings and electrocution<sup>43</sup>. Another former detainee reported poor nutrition and lack of medical aid in a detention facility of one of the ‘military units’ in Donetsk in the summer of 2015<sup>44</sup>. A man released from penal colony No 97 in Makiivka (Donetsk region) reported about a room called by inmates the “tram” because it looks like a very small and narrow metal tram carriage, with a metal tube in it. When an inmate was considered to have misbehaved, he would be hung to the tube, wrapped in a sticky tape, sometimes for three to five hours, but often for a whole night. The witness also described cases of repeated negligence in providing medical assistance to inmates, and reported that in January 2015, one inmate died as a result of not receiving timely medical assistance<sup>45</sup>.

40. On 25 September, HRMMU interviewed the mother of a man with mental disability who had been in detention since 26 February 2015. Before being placed in the Donetsk SIZO, he had spent some time in a temporary detention centre where he was reportedly beaten for

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<sup>39</sup> HRMMU interview, 16 October 2015.

<sup>40</sup> HRMMU interview, 30 September 2015.

<sup>41</sup> HRMMU interview, 5 October 2015.

<sup>42</sup> HRMMU interview, 26 September 2015.

<sup>43</sup> HRMMU interview, 15 October 2015,

<sup>44</sup> HRMMU interview, 6 October 2015.

<sup>45</sup> HRMMU interview, 18 September 2015.

three days. He was allegedly forced to sign a paper stating he had hit himself against the wall. His parents reported that in SIZO, while his health deteriorated, he did not receive any adequate medical treatment<sup>46</sup>.

41. On 19 October, HRMMU interviewed the mother of a man who was abducted on 12 July 2014 near his home, in the city of Donetsk. On 16 July 2014, he was found in another district of the city, handcuffed, with gunshot wounds and blunt force trauma wounds on his head. His mother first saw him at the hospital on 16 July. The victim stated that armed men in camouflage had stopped him on the road, forced him into their car and then held him in a dark space where he was beaten and accused of being a spy due to his skin colour (he is half-Congolese). After three days, during the night, he was taken outside to a cornfield where he was fired at. In July 2014, police refused to record his statement and closed the investigation into the earlier case that had been opened on his disappearance. On 16 April 2015, his mother received a notice from the Leninskyi district 'police department' of the city of Donetsk which stated that the investigation was focusing on perpetrators from a "Ukrainian subversive armed group"<sup>47</sup>.

*By Ukrainian law enforcement and security entities*

42. HRMMU remains concerned that the Government's efforts to safeguard the territorial integrity of Ukraine and restore law and order in the conflict zone continued to be undermined by allegations of enforced disappearances, arbitrary and *incommunicado* detention and torture and ill-treatment of people suspected of trespassing against territorial integrity or terrorism or believed to be supporters of the 'Donetsk people's republic' and 'Luhansk people's republic'.

43. HRMMU consistently documents reports throughout the country of recurrent allegations of ill-treatment during arrest and the first hour interrogations that are led by SBU. A man, detained by SBU on suspicion of preparing a terrorist act in Zaporizhzhia, claimed to have been repeatedly and heavily beaten, including in the SBU building<sup>48</sup>. A woman who was detained by SBU on suspicion of preparing a terrorist act claims that during her interrogation, she was hung by her hands handcuffed in the back until her elbow joints were torn apart. About 20 times, a gas mask was reportedly put on her head, with the inhaler closed<sup>49</sup>.

44. A man who, as of 15 November was tried under articles 113 (sabotage), 258-3 (creation of a terrorist group) and 263 (illegal possession of weapons) of the Criminal Code, claimed that after his apprehension on 9 July 2014, he was delivered to the Zaporizhzhia SBU Regional Department. There, he was reportedly beaten with sticks on his heels, subjected to waterboarding and tortured with electric shocks by two electric wires connected to his genitals and to his mouth. As a result, one of his teeth was knocked out, and his ribs and a little finger were broken. He was coerced into confessing to committing the crimes for which he was charged. He was constantly threatened by the SBU officers that if he did not plead guilty in court, he would be killed. He was so frightened by these threats, that for one year he feared complaining of the torture and ill-treatment he had been subjected to, including to his lawyer. It was only on 1 July 2015 that he reported to a judge about the torture and ill-treatment he was subjected to<sup>50</sup>.

45. HRMMU notes that SBU officers appear to enjoy a high degree of impunity, systematically escaping from investigations into alleged violations. In one case, dating from September 2014, a man was apprehended by armed men in the city of Mariupol in the

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<sup>46</sup> HRMMU interview, 25 September 2015.

<sup>47</sup> HRMMU interview, 19 October 2015.

<sup>48</sup> HRMMU interview, 3 September 2015.

<sup>49</sup> HRMMU interview, 3 September 2015.

<sup>50</sup> HRMMU interview, 11 November 2015.

presence of witnesses. The following day, his body, bearing signs of violence, was found dead on the outskirts of the city. According to witnesses, one of the armed men had introduced himself to the victim as an SBU officer, showing his ID. During the investigation into this case the police requested SBU whether they had a staff member with such a name or a similar one serving in Donetsk region, and whether SBU had detained the victim. SBU responded that they had neither detained the victim nor initiated any investigation regarding the victim, and refused to answer any questions concerning the name of the alleged perpetrator. The investigation was reportedly transferred to the Military Prosecutor of the Southern region, with no progress as of November 2015.

46. The conduct of those elements of Ukrainian law enforcement which are under the Ministry of Internal Affairs is also of concern. Three men detained by police in Donetsk region claimed that for more than eight hours after their detention they were subjected to beatings, death threats, and mock executions during which they were forced to dig their own graves. In a city police department they were tortured with a gas mask (so-called ‘elephant torture’) and forced to sign a confession to incriminate themselves. Two of them claimed that they had been electrocuted with an electric wire connected to their genitals<sup>51</sup>. A man detained by Azov regiment (then battalion) of the National Guard, claimed that his legs were pierced with a bayonet knife, he was hit in the face and his ribs were broken. He also reported being threatened with rape and subjected to a mock execution<sup>52</sup>.

47. During his visit to Ukraine in September 2015, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions recommended that a system of independent overview of the conduct of all those who perform law enforcement functions be established. He added that it should have a particular focus on allegations of ill-treatment by SBU, and that it should be “empowered to conduct investigations into suspected informal detention facilities, including comprehensive power of search within military or SBU facilities”<sup>53</sup>.

48. Continued reports of detainees being held in unofficial places of detention remain of high concern, with more acute risks of torture and ill-treatment, and no indication that this practice has been decreasing. These places are clearly not accessible to Ukraine’s National Preventive Mechanism and international organizations. HRMMU received reports that in November 2015, 27 detainees were being kept in the SBU premises in Kharkiv, with allegations that some were subjected to torture and ill-treatment<sup>54</sup>. One of the detainees was allegedly repeatedly detained after having been sentenced to a conditional sentence<sup>55</sup> by a court in Pavlohrad. HRMMU interviewed a member of an armed group who, as he was seeking to leave Mariupol in June 2014, was arrested at a checkpoint operated by the Azov battalion. He reported having been taken to the Mariupol airport, where he was allegedly tortured and ill-treated for a month and a half<sup>56</sup>. In September, the United Nations Special Rapporteur on summary executions was denied access to the military base in Mariupol airport where, according to reports received by HRMMU, detainees have been kept and ill-treated since summer 2014.

49. HRMMU continued to receive reports of *incommunicado* detention. For instance, in Lysychansk (Luhansk region), on 19 July 2014, the Ukrainian army detained a man. On 20 July 2014, photographs of his identification documents (passport and military documents) were published on non-governmental websites supporting the security operation, with a

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<sup>51</sup> HRMMU interview, 25 September 2015.

<sup>52</sup> HRMMU interview, 28 August 2015.

<sup>53</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16460&LangID=E#sthash.OIrAXYnl.dpuf>

<sup>54</sup> HRMMU interview, 2 November 2015.

<sup>55</sup> Conditional sentence implies the release from custody.

<sup>56</sup> HRMMU interview, 22 October 2015.

caption stating that he had been captured and was being detained as a terrorist. Inquiries by his family as to his whereabouts with various law enforcement bodies produced no results<sup>57</sup>.

50. A former member of a Ukrainian volunteer battalion was detained by police in Dnipropetrovsk and transferred to Mariupol. According to his former spouse, the victim witnessed a deal involving illegal property confiscations in the Government-controlled territories of Donetsk region, after which he was subjected to persecution for refusing to be involved. He was reportedly beaten, forced to lie and was not granted access to a lawyer for two weeks. Although he suffers from an ulcer and other health problems, he was allegedly denied medical assistance. Defense witnesses in his case have reportedly received anonymous threats and have therefore been afraid to testify<sup>58</sup>.

51. HRMMU also continued to receive alarming reports of poor detention conditions and ill-treatment of pre-trial detainees. For instance, on 5 October 2015, a man died in the Mariupol SIZO. He had been detained since February 2015 on suspicion of spying for the armed groups. During his nine months in custody, he was allegedly sent several times to an isolation cell and was repeatedly beaten. His health condition dramatically deteriorated several days before his death, and he was transferred to the hospital. According to the official report, he died of pancreatic cancer. His daughter was not allowed into the morgue to see his body; when the body was returned to the family for burial, his relatives saw his ears bruised and stitches on his head<sup>59</sup>.

### **III. FUNDAMENTAL FREEDOMS**

#### **A. Freedom of movement**

52. Although revised, the Temporary Order of 21 January 2015<sup>60</sup> continued to limit the freedom of movement of civilians across the contact line. Originally introduced with reference to national security concerns, the Temporary Order and its implementation through a permit system to cross the contact line and pass through the Government controlled check points, has been one of the major challenges for people living in the conflict-affected areas of Donetsk and Luhansk regions, leading to an increased sense of isolation for many people, impeding their access to medical care and social benefits, as well as disrupting family and communal links. The International Covenant on Civil and Political Rights recognises that in exceptional circumstances, the necessity to protect national security and public order may justify some restrictions of freedom of movement. However, as stated by the United Nations Human Rights Committee, such restrictions may be authorized only by law using precise criteria, be limited in time, consistent with other human rights and fundamental principles of equality and non-discrimination, meet the test of necessity and the requirements of proportionality<sup>61</sup>.

53. With the ceasefire and approaching winter, the movement of civilians across the contact line increased as people travelled to areas controlled by armed groups to visit relatives, check on their property or collect warm clothes. Those living in the areas controlled

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<sup>57</sup> HRMMU interview, 23 October 2015.

<sup>58</sup> HRMMU interviews, 25 August and 10 September 2015.

<sup>59</sup> HRMMU interview, 15 October 2015.

<sup>60</sup> The Temporary Order on the control of movement of people, transport vehicles and cargoes along the contact line in the Donetsk and Luhansk regions was developed and approved by the joint entity 'the Operational Headquarters of Management of the Anti-Terrorist Operation'. For more information, see OHCHR reports on the human rights situation in Ukraine covering periods from 1 December 2014 to 15 February 2015 (paragraphs 42-43), from 16 February to 15 May 2015 (paragraphs 58-64), and from 16 May to 15 August 2015 (paragraphs 61-68). For more information, see OHCHR reports on the human rights situation in Ukraine covering periods from 1 December 2014 to 15 February 2015 (paragraphs 42-43), from 16 February to 15 May 2015 (paragraphs 58-64), and from 16 May to 15 August 2015 (paragraphs 61-68).

<sup>61</sup> United Nations Human Rights Committee, General Comment No 27, CCPR/C/21/Rev.1/Add.9 (1999).

by armed groups regularly travelled to the Government-controlled territories to purchase food, medicine, withdraw cash, obtain documents or renew lost ones, access social benefits, and receive medical care.

54. Compared to the previous reporting period, in addition to three operational transport corridors in Donetsk region, two more were reopened; including one in Luhansk region (Stanychno Luhanske), allowing only pedestrians and no private or public vehicles. Nevertheless, with increased movement, the capacity of the checkpoints remained insufficient especially as working hours were reduced due to the shortened daylight period. Long queues of up to three kilometres at the contact line, in both directions, were registered at all checkpoints. In October, reports of people having to spend nights in cars became more frequent. With the temperature below zero at night, lack of water and sanitation facilities in between the checkpoints and the absence of medical services, the waiting time was particularly difficult for people with disabilities, the elderly, pregnant women and children.

55. Upon the President's instruction<sup>62</sup>, authorities of Donetsk and Luhansk regions opened three "logistic centres" near the contact line where civilians living in the areas controlled by armed groups can buy food, medicine and withdraw cash. However, civilians still could not reach them easily, as the requirement to have a permit to reach the centres was not waived. Furthermore, the centres are located between the contact line and the first Government-controlled checkpoint, in the area where shelling used to be the heaviest, and where the risk for exposure to ERW and IED is the highest. While visiting two logistical centres in Donetsk region, HRMMU noted lack of appropriate protection for civilians in case of shelling.

56. The situation of people residing in the area between the contact line and the first checkpoints in the area controlled by the Government remains unduly complicated. They have to apply for permits required to cross the contact line, or prove that their village belongs to the areas controlled by the Government. Entry/exit through checkpoints often depends on the familiarity of the soldiers with the area; for example, whether they know which side of the contact line a particular village belongs to, sometimes even whether the street of the official registration belongs to the area controlled by the Government<sup>63</sup>. Rotation of personnel at checkpoints has often resulted in increased delays. Due to the lack of infrastructure in these localities, such as stores, pharmacies or health facilities, people have to cross Ukrainian checkpoints on a regular basis and spend long periods in queues. This was further aggravated by the absence of public transport in these areas.

## **B. Freedom of expression**

### *Territories controlled by the armed groups*

57. Media professionals interviewed by HRMMU continued to report restrictions on their work. A Donetsk-based media professional stated to HRMMU that there was no freedom of speech in the 'Donetsk people's republic', as "no one from local media would even think to express a critical opinion"<sup>64</sup>. To ensure their safety, journalists working in the areas controlled by armed groups reportedly have increasingly resorted to self-censorship.

58. Foreign journalists must be accredited at the 'Donetsk people's republic' press centre. According to them, the procedure became more complicated over the summer of 2015 with the creation of the 'special analytical department', responsible for monitoring all the reporting of journalists working in the 'Donetsk people's republic'. For example, in September, two foreign journalists were refused accreditation and invited for an 'interview' at the analytical department. One of the reporters was accused of being 'a propagandist' and

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<sup>62</sup> The decision was announced on 6 August.

<sup>63</sup> Some settlements are spilt by the contact line.

<sup>64</sup> HRMMU interview, 21 October 2015.

ordered to leave Donetsk city. Other nine media outlets informed HRMMU of having difficulties with ‘accreditation’.

59. Ukrainian freelance journalist Maria Varfolomieieva has been held by armed groups of the ‘Luhansk people’s republic’ since 9 January 2015, accused of ‘espionage’ for taking pictures of the administrative buildings in Luhansk city, which were allegedly subsequently shelled.

60. Overall, reports indicate that people trying to express alternative views are facing a non-conducive environment. Preclusion of professional activities of independent media professionals was followed by the suspension of the operations of most international humanitarian organizations.

#### *Territories controlled by the Government*

61. On 16 September, the President of Ukraine signed an order enacting a decision of the National Security and Defence Council (NSDC) of 2 September 2015, which added 41 foreign journalists and bloggers (mainly Russian) to a list<sup>65</sup> of 388 other persons (media professionals, artists, politicians) banned from entering Ukraine for one year. The authorities claimed that “their activity or public statements promoted terrorist manifestations on the territory of Ukraine and misinformed the international community about the situation at the occupied territory, or who illegally crossed the Ukrainian border to access the occupied territory”. On 17 September, NSDC removed six foreign journalists from BBC and European media outlets from the list, following statements made by the media outlets and public opinion.

62. While recognizing the Government’s right to protect national security, HRMMU is concerned that such unjustified broad restrictions are applied without clear procedures and criteria.

63. HRMMU continued to follow the case of blogger Ruslan Kotsaba, charged by SBU with high treason for publishing an anti-mobilisation video on 17 January<sup>66</sup>. On 1 October, Ivano-Frankivsk City Court prolonged the term of his custodial detention, which was to end on 16 October, until 29 November. The defence lawyers noted an unreasonable protraction of the court hearings. For example, on 27 October, the Court adjourned the planned hearing to 13 November, stating that law enforcement officials could not transport the defendant to the court, as all of them were busy ensuring public order during the local elections.

### **C. Freedom of peaceful assembly**

#### *Territories controlled by the armed groups*

64. Freedom of peaceful assembly continued to be significantly infringed in the territories controlled by the armed groups. Rallies to challenge the policies of the ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’ were extremely rare because people have been reportedly afraid to assemble for fear of reprisals. On 5 September, approximately 70 people (including media representatives) gathered in Donetsk to protest against the dismissal of the ‘speaker of the parliament’ of the ‘Donetsk people’s republic’. When the protestors tried to block the road, the rally was dispersed by men in camouflage.

#### *Territories controlled by the Government*

65. HRMMU continued to follow up the case related to the prohibition of the LGBT Equality March in Odesa, in August. As of 15 November, the LGBT Community Centre was still waiting for the decision of the Supreme Administrative Court of Ukraine on the complaint challenging the legality of the prohibition. The Odesa Regional Prosecutor’s

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<sup>65</sup> See paragraph 50 of the 6<sup>th</sup> OHCHR report on the human rights situation covering the period from 18 August to 16 September 2014.

<sup>66</sup> See paragraph 71 of the 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015.

Office informed HRMMU that eight ‘Svoboda’ activists were fined for attacking the Centre on 15 August 2015.

66. On 31 August, while the Parliament was voting on the draft constitutional amendments related to decentralization, a crowd of an estimated 3,000 people gathered outside the Parliament. They objected to a constitutional provision foreseeing that “special order of self-governance for certain areas of Donetsk and Luhansk regions” would be determined by law, arguing this would provide “special status” to the areas controlled by the armed groups and constitute a betrayal of national interests. After the amendments were adopted, protestors started to burn tires and wood in front of the main entrance of the Parliament and to confront the police cordons. One of the protestors launched a combat grenade which killed four police officers. In total, 187 people (mostly policemen) were injured during the clashes. Police forces failed to adequately protect demonstrators and themselves. The incident illustrates the challenges in securing the physical security and right to life or participants of mass gatherings, which is of particular concern given the unregulated outflow of small arms and explosive weapons from the conflict area.

67. HRMMU also witnessed cases of police failure to ensure public order and safety during counter-demonstrations. For instance, on 2 November, in Odesa, ‘pro-unity’ activists conducted a non-notified counter-demonstration at the same time and place as the 2 May notified commemoration organized by ‘pro-federalism’ supporters and victims’ families. Despite previous provocations from ‘pro-unity’ supporters, police intervened and formed a cordon between the two groups only after ‘pro-unity’ activists attacked their opponents and burned a banner with the names and photos of victims of the 2 May violence. No one was arrested during or following the incident.

#### **D. Freedom of association**

##### *Conflict-affected area*

68. In the areas controlled by armed groups, key civil society actors, especially human rights organizations, had been targeted at the onset of the conflict and forced to leave. Those few local NGOs which remained have been carrying out predominantly humanitarian activities as human rights protection and promotion may put them at risk.

69. In addition to restrictions imposed by armed groups, local staff and activists of the NGOs operating in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ also faced persecution from Ukrainian authorities and groups affiliated with them. During the reporting period, HRMMU learnt that the names and personal data of at least 34 civil society activists operating in the areas controlled by armed groups were publicized on the ‘Myrotvorets’ (‘Peace-maker’) website, allegedly due to the fact that they have been collaborating and communicating with the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’. Some of these NGOs had been founded before the conflict to provide services to HIV positive people, orphans and other vulnerable groups. Officially, the website is presented as a centre to track signs of crimes against the national security of Ukraine, peace, humanity, and the international law. However, the website is known in the public as a database of alleged ‘separatists’ and ‘terrorists’<sup>67</sup>. In the absence of a court decision, such labels have a defamatory character, violate the presumption of innocence, and expose people listed to threats. In addition, people included into the list cannot cross the contact line, and are detained under charges of terrorism.

#### **E. Freedom of religion or belief**

70. During the reporting period, HRMMU documented a number of violations of freedom of religion or belief. In territories controlled by armed groups, minority Christian denominations

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<sup>67</sup> In April 2015, the Ombudsperson of Ukraine demanded to close the website. However, no reaction followed.



continued to be targeted. In other parts of Ukraine, a series of violations against the Jewish community were committed, with a failure of police to investigate the majority of cases.

*Territories controlled by the armed groups*

71. HRMMU continued to receive reports about the persecution of Jehovah Witnesses in the territories controlled by armed groups. On 25 August, in the city of Luhansk, four local members of the community (all men) were interrogated for six hours at the office of the “ministry of state security”, and forced to state that they were connected to foreign intelligence services. The interrogators forbade them to distribute religious literature and to publicly practice their religion. On 21 September, in the town of Vuhlehirsk (Donetsk region), two representatives of the local ‘military police’ ordered the community of Jehovah’s Witnesses in the region to stop religious services and distribution of religious literature until a law on religion was passed, threatening that members would otherwise be sanctioned by arrests or high fines. On 29 September, in the town of Shakhtarsk (Donetsk region) a group of people came to the Kingdom Hall to protest against the activity of the religious community and put up signs on the facade that read: “Away with the Sect!” and “No place for sects!” The local ‘police chief’ was present during the protest, but did not intervene.

*Territories controlled by the Government*

72. HRMMU is concerned about the incidents across Ukraine which targeted the Jewish community. On 5 September, approximately 30 men attacked a camp of Hassidic Jews in Uman (Cherkasy region), a few days before the beginning of the Rosh Hashannah pilgrimage. The attack took place on Shabbat, when the Jewish community could not defend themselves. The police reportedly observed the attackers dismantling the fence around the camp but did not intervene. On 6 September, investigation into the incident was initiated under article 356 (unauthorized action) of the Criminal Code with no progress achieved as of 15 November 2015.

73. Also, the HRMMU became aware of five other attacks on Jewish cemeteries or Holocaust memorials, occurring across Ukraine in the period from 27 August to 19 September 2015. In all of the incidents the criminal investigation was launched; however with no progress as of 15 November.

#### **IV. ECONOMIC AND SOCIAL RIGHTS**

74. The situation of estimated 2.9 million people living in the conflict area<sup>68</sup> remained particularly difficult. Absence of the rule of law and legitimate civil authorities, coupled with intense military presence, continued to create tension and uncertainty for the population. Despite the ceasefire, civilians still largely relied on humanitarian assistance while their needs remain very high. Housing, land and property issues, including damaged and looted houses, were one of the most often reported problems.

75. Humanitarian assistance for those people who have been directly affected by the armed conflict in territories under the control of the armed groups remains limited. The prohibition of cargo travelling from the Government-controlled territory to the territories controlled by the armed groups impedes the general movement flow. The registration requirement introduced in June by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ for organizations delivering humanitarian assistance on the territories controlled by the armed groups has limited the number of humanitarian organizations providing assistance – medicine, food, shelter and other items. The impact of such restrictive access to healthcare and daily needs for many living in both the urban and rural areas should not be under

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<sup>68</sup> 2.7 million living in the territories controlled by the armed groups, including 600,000 along the contact line, and 200,000 residents of the Government-controlled territories along the contact line (Humanitarian Country Team).

estimated, particularly with the onset of winter. HRMMU considers that both the Government and the armed groups need to ensure the critical needs of the most affected population are met to prevent any decline in their health and welfare<sup>69</sup>.

76. As of 15 November, the Ministry of Social Policy of Ukraine had registered 1,578,925 internally displaced persons (IDPs) throughout Ukraine. A number of registered IDPs permanently live in the Government-controlled areas, others regularly move across the contact line; however many of them continue to face precarious economic and social conditions, with particularly limited access to quality medical care, social services and benefits and long-term accommodation.

77. Demobilized soldiers still faced difficulties in obtaining official status as security operating participants allowed to access social aid, medical and psychological services free of charge. This particularly affects those requiring expensive treatment and rehabilitation. For example, on 13 November, HRMMU interviewed the mother of a mobilized soldier who had been in hospital in critical condition for five months after sustaining multiple injuries, including while being in captivity of armed groups. Although all necessary documents had been submitted in August, they had not yet been processed as of 15 November. Thus, the family had so far received no State social support and required medications have been purchased by volunteers.

78. HRMMU is concerned that no attention and support have been given so far to the needs of victims of torture, especially civilians, due to the absence of relevant legislative provisions, and lack of knowledge and skills in dealing with the survivors. HRMMU interviewed victims of torture who could not undergo proper forensic examination, receive medical care, rehabilitation, psychological and social services in State institutions. While soldiers may receive treatment and some rehabilitation services at military hospitals, civilian victims rely on the help from NGOs and private donors.

#### **A. Right to an adequate standard of living**

79. On the Government-controlled side, as of 15 November, an estimated 200,000 people were living along the contact line<sup>70</sup>, mostly in rural settlements. In many of these areas, local authorities have not returned and public services remained unavailable. Local residents had to manage on their own to restore the supply of water, gas and electricity.

80. In addition, access to these areas remained a major challenge, including due to the presence of IEDs and ERWs, and continued limitations of freedom of movement imposed by the Temporary Order. Public transport was also limited or unavailable, complicating access to medical, social and educational services. For example, before the conflict, residents of Lopaskyne settlement were receiving such services in Slovianoserbsk (now controlled by armed groups), which was only two kilometres away, while they now have to travel for at least 15 kilometres to access basic services.

81. Compared to previous months, the choice and quality of available basic commodities and food improved in the areas controlled by armed groups. However, the prices on average were 40 per cent higher than at the national level, and unaffordable to many. Furthermore, the suspension of the operations of organizations delivering humanitarian aid in the areas controlled by armed groups for more than four months significantly affected the estimated 2.7 million people residing in these territories, including 600,000 living along the contact line. Residents of Donetsk city whose houses were damaged or destroyed, as well as IDPs from other towns and villages, suffer from poverty, lack of warm clothes and heating, and from limited access to humanitarian aid.

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<sup>69</sup> Rule 55 of the Customary International Humanitarian Law invokes the obligations to the parties to the conflict to allow and facilitate the rapid and unimpeded humanitarian access, subject to their right of control.

### *Rights to housing, land and property*

82. Damaged, seized or looted property and lack of any justice and compensation mechanisms remained one of the major concerns for civilians living in the conflict area and for IDPs wishing to return.

83. On 12 October, HRMMU interviewed three residents of the Pisky village, whose property had been allegedly looted and used for military purposes. Although the owners reported their case to the Ministry of Defence of Ukraine, the Military Prosecutor's office and the Prime Minister of Ukraine, there has been no follow-up. In addition, the Ukrainian armed forces did not allow people to go to Pisky to visit their property and take their belongings, presumably because the settlement was still on the contact line.

84. The absence of housing programmes and job opportunities necessary for the sustainable integration of IDPs in the host communities remained a major concern in the Government-controlled territories.

85. HRMMU also noted a general absence of accessibility for persons with disability in collective centres. For example, in the Sergiivka and Kuyalnik sanatoria of the Odesa region, living conditions were not suitable due to the lack of access ramps for people in wheelchairs, and no access to toilets and bathrooms. In addition, the Odesa Regional Administration has not secured budget funds to cover accommodation fees, and IDPs could consequently be evicted in January 2016.

### **B. Right to social security and protection**

#### *For people from the territories controlled by armed groups*

86. Payment of pensions to people living in the areas controlled by armed groups remained suspended despite a decision of the Supreme Administrative Court of Ukraine, on 16 October, repealing Resolution No 595 of the Cabinet of Ministers, and obliging the Government to resume the payments<sup>71</sup>. The International Covenant on Economic, Social and Cultural Rights requires States to ensure progressive realization of all envisaged rights. Retrogressive measures cannot be justified solely on the basis of the existence of an armed conflict or other emergency<sup>72</sup>. The States must ensure that their policies and actions are not discriminatory<sup>73</sup> and do not reduce access to social security benefits<sup>74</sup>, including based on the place of residence or origin of its citizens.

87. In order to receive their social benefits, people still had to be registered and reside in the Government-controlled areas, which has been especially difficult for the elderly and people with disabilities. Furthermore, the Migration Service of Ukraine continued conducting unannounced checks to verify IDPs' places of residence. Those not found at their registration addresses were notified of the need to confirm residence to the State Migration Service within 10 days. The names of those who did not meet the requirement were submitted to a social security department for discontinuation of social payments, which was the sole source of income for some. During the reporting period, HRMMU learnt that such checks had led to suspension of financial assistance to 3,247 registered IDPs in Dnipropetrovsk region.

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<sup>71</sup> The Court heard the cassation appeal filed by the Cabinet of Ministers of Ukraine to the April 2015 court decision, which acknowledged the suspension of pensions illegal and ordered the Cabinet of Ministers to resume the payments. See paragraph 100 of the 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period of 16 May to 15 August 2015.

<sup>72</sup> See paragraph 26 of the Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2015/59.

<sup>73</sup> Committee on Economic, Social and Cultural Rights, General Comment No 20, 2 July 2009.

<sup>74</sup> See paragraph 41 of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2013/82.

Previously, HRMMU reported of more than the pensions of 230,000 people had been suspended on the same grounds<sup>75</sup>.

88. Civil registration documents issued on the territories controlled by the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ – birth, death, marriage, divorce and medical certificates – are considered invalid by Ukrainian authorities. This precludes people from accessing basic social and medical services. For example, on 3 November, HRMMU interviewed a woman who was refused to be paid for maternity leave, because she had given birth in a hospital in the town of Sverdlovsk (Luhansk region, controlled by armed groups) – although she worked for a company registered on Government-controlled territory.

89. IDPs continued to face difficulties in proving their work experience, affecting their possibility to receive special pension or unemployment benefits and to find new employment. An official electronic database of employment records has been functioning in Ukraine only since 2002, and any prior employment records exist only in hard copy. Many IDPs did not take such documents with them while fleeing the conflict area. Documents bearing the ‘stamps’ of the ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’ are considered invalid.

90. The Presidential Decree of 14 November 2014 ordering State institutions and enterprises to relocate to the Government-controlled area continued to affect economic and social rights. Due to the impossibility of implementing the Decree, enterprises re-registered in the Government-controlled territories, but continued to function in the areas controlled by armed groups, hindering their employees’ rights to social guarantees and favourable conditions of work, especially in case of work-related injury.

91. For example, 16 injured coalminers and the relatives of 34 coalminers who died during an explosion which occurred on 4 March 2015 in Zasiadko mine, Donetsk, reported to HRMMU that they could not receive any social benefits or compensation. They were informed that no payments will be made by the ‘Donetsk people’s republic’, as the company was not ‘registered’ there and did not pay ‘taxes’ or contribute to the ‘republican social security fund’. The Ukrainian Fund of Social Insurance covering accidents at work informed the Zasiadko mine management that the conclusions about the accident made by the commission of the ‘Donetsk people’s republic’ would not be recognized by Ukraine and that compensation would therefore not be made. They also stated that, the injured coalminers were not eligible for the status of persons with disabilities and would not receive benefits linked to this status.

#### *Situation in social care institutions*

92. HRMMU visits to social care institutions in Donetsk and Luhansk regions controlled by armed groups revealed that a number of their patients had not been able to receive their social entitlements since June 2014. Due to their physical condition, some of the elderly patients or persons with disabilities simply could not travel to the Government-controlled territories to re-register and receive their benefits. Guardians or custodians of legally incapacitated patients or minors could not perform actions on their behalf and obtain social benefits as the notarial services have been discontinued in the areas controlled by armed groups.

93. It was also brought to the attention of HRMMU that under the Ukrainian social welfare system, 25 per cent of financial allocations spent by the Government to support an individual in a social care institution was transferred to their individual bank accounts and could be used for personal needs. In addition to the fact that social care institutions in the areas controlled by armed groups have not received any financial support from the Government of Ukraine since November 2014, its patients also have had no access to their personal savings.

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<sup>75</sup> See paragraph 100 of the 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2015.

### **C. Right to the highest attainable standard of physical and mental health**

#### *Territories controlled by the armed groups*

94. The suspension of the operation of organizations delivering humanitarian aid in the areas controlled by the armed groups, as well as continuous restrictions of the Temporary Order to move cargo across the contact line, has had a negative impact on access to medicines, consumables, expert medical services, including psycho-social support.

95. On 25 September and 12 October, *Médecins Sans Frontières* (MSF) was ordered to stop all its activities in the territories controlled by the ‘Luhansk people’s republic’ and ‘Donetsk people’s republic’ respectively. These decisions threaten the lives of many residents who face chronic and serious health problems. In the territory controlled by the ‘Donetsk people’s republic’, MSF was providing 77 per cent of the insulin needed for adult living with diabetes and 90 per cent of supplies required for haemodialysis treatment vital for patients suffering from kidney failure. 146 patients with drug-resistant tuberculosis in penitentiary institutions will no longer receive treatment provided to these institutions since 2011. Coupled with the lack of food and poor detention conditions, this could lead to an eventual deterioration of their health. Interruption of TB treatment is particularly worrying in Donetsk region, which had one of the highest rates of TB prevalence countrywide before the conflict, and raises a broader public health concern. The physician of one of the detention facilities stated to HRMMU that local NGOs had less experience and could not make up for the capacities of international relief agencies. Finally, since the termination of MSF activities, more than a hundred medical facilities no longer receive supplied from MSF for treating emergencies resulting from the conflict, chronic conditions, and mental illnesses.

96. In the areas controlled by armed groups, 7,665 people living with HIV, including 209 children, were on anti-retroviral therapy. As of 15 November, required medicines were included in humanitarian deliveries, coordinated by the World Health Organisation, but the supplies are low and given the difficulties to operate, the risk of interrupted treatment is high.

97. The situation in social care and specialized medical institutions remained critical, especially in the areas controlled by the ‘Luhansk people’s republic’. HRMMU visited several institutions, including one in Rovenky (Luhansk region; controlled by the armed groups) hosting 192 persons with disabilities, including 23 children. The institution was in urgent need of psychotropic medicine, particularly for 39 patients suffering from epilepsy. HRMMU has referred the needs to international organizations whose operations were then stopped for an undetermined period of time.

98. HRMMU interlocutors in the ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ claimed hospitals and medical staff faced frequent harassment and threats by fighters, who openly carry weapons in medical facilities. Although reportedly ‘the ministry of defence’ took some steps to address this situation, during one of its recent visits to a hospital, HRMMU witnessed a car with four armed group members at the hospital entrance, heavily armed, harassing female medical staff. Such a conduct endangers medical personnel and patients.

#### *Territories controlled by the Government*

99. Lack of financial allocations from the State budget to cover healthcare expenses for IDPs remained one of the biggest challenges in ensuring their access to healthcare. Regions with a high influx of IDPs could not meet the existing needs, especially for vaccination or specialised medical care.

100. There are still few possibilities for IDPs, especially persons with disabilities, to receive psychological support, and they are at high risk of psychological distress due to poor living conditions, disability, destroyed family links, and lack of funds to cover basic needs. One NGO reported that alcohol addiction among IDPs was high, especially those staying in

collective centres. There was also reportedly a high rate of domestic violence among IDPs, as well as families of demobilised soldiers due to psychological stress and lack of social support.

101. In addition, IDPs with mental impairments who require special care in psychiatric or social care institutions, are sometimes placed in sanatoria, where staff was not capable or addressing their special needs. Reportedly, funds for their treatment are often insufficient, which leads to a deterioration of their condition.

## V. ACCOUNTABILITY AND ADMINISTRATION OF JUSTICE

102. The lack of protection and justice for victims and the impunity of perpetrators continued to prevail. Accountability for human rights violations committed during the Maidan protests of November 2013 – February 2014 and during the violence of 2 May 2014 in Odesa was pending at the end of November 2015. No perpetrators had been brought to justice, and investigations remained slow. Accountability for human rights violations and abuses in the conflict zone has been progressing with a number of perpetrators being tried or sentenced. However, impunity overall remains widespread, as mentioned in various sections of the present report.

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

#### *Investigations into human rights abuses committed by the armed groups*

103. As previously articulated by the Ukrainian law enforcement<sup>76</sup>, the lack of access to the territories controlled by the armed groups remained the major impediment to investigate human rights abuses committed there. It has been challenging for the Ukrainian authorities to identify and locate perpetrators and weapons given lack of access to the crime scene, and limited opportunity to question witnesses and victims in the course of an investigation.

104. Members of the armed groups who have been detained by Ukrainian law enforcement (SBU or the national police) are usually charged under articles 258-3 (participation in a terrorist group or terrorist organization)<sup>77</sup> or 260 (creation of or participation in unlawful paramilitary or armed formations) of the Criminal Code of Ukraine. It is largely at the discretion of prosecution to decide which of these two categories of charges applies. Recent court decisions suggest that those who resorted to plea bargain were charged under article 260 and sentenced to deprivation of liberty with a probation period<sup>78</sup>, while those who did not<sup>79</sup> were sentenced to imprisonment under article 258-3 of the Criminal Code. The court decisions in such matters so far are largely based on confessions of the accused. HRMMU is not aware of any progress in cases of killings, torture, ill-treatment or other crimes against liberty and physical integrity of a person committed by the armed groups.

105. Many detained members of the armed groups are charged under article 263 (unlawful handling of weapons, ammunition or explosives) of the Criminal Code. In one case, a person was accused of illegal storage of up to 30 cartridges for Kalashnikov assault rifle<sup>80</sup>. In the other

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<sup>76</sup> See paragraphs 115 and 116 of the 11<sup>th</sup> OHCHR report on human rights situation in Ukraine covering period from 15 May to 15 August 2015.

<sup>77</sup> The ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ are publicly referred to by Ukrainian law enforcement as terrorist organizations, despite the fact that no court or administrative decision has formally recognized them as such, as there is no clear procedure for doing so. The security situation in the east has been officially called “anti-terrorist operation”.

<sup>78</sup> See the decision of Dzerzhynskiy District Court of Donetsk region of 21 October 2015 and decision of Slovianskyi District Court of Donetsk region of 21 October 2015.

<sup>79</sup> See the decision of the Kramatorsk City Court of Donetsk region of 12 October 2015 and decision of Volnovaskiy District Court of Donetsk region of 13 October.

<sup>80</sup> See the decision of Slovianskyi District Court of Donetsk region dated 30 October 2015 and decision of Druzhkivskiy District Court of Donetsk region of 15 October 2015.

two cases, the suspects' bags were seized and only after found containing a hand grenade and an IED. HRMMU is concerned that cartridges or hand grenades can easily be planted and used as a tool to secure 'confessions' of persons on their affiliation with the armed groups.

106. HRMMU also notes limited efforts of investigative bodies to establish command responsibility for crimes committed by the armed groups. 'Senior officials' of the 'Donetsk people's republic' and 'Luhansk people's republic' have rarely been mentioned in the investigations into grave human rights abuses, although in some cases there appeared to be enough evidence to initiate an investigation<sup>81</sup>. On 11 November, MoIA reported putting on a wanted list a former commander of an armed group which controlled the city of Horlivka (Donetsk region) in 2014. On suspicion of killing a serviceman of 'Artemivsk' special police patrol battalion on 14 July 2014, he has been charged under article 115 (intentional homicide in collusion by a group of people) in addition to previous charges under article 258 (act of terrorism) of the Criminal Code. The victim's father collected testimonies of witnesses as MoIA had appeared reluctant to open an investigation into the incident. Along with the case of Ihor Branovytskyi<sup>82</sup>, this is one of few cases in which the alleged perpetrator has been identified.

107. Investigations into human rights abuses committed by the armed groups have particular significance in the context of renewed discussions of the Trilateral Contact Group on the 'all for all' mutual release of detainees. The armed groups insist that this issue will be discussed only after the Government of Ukraine honours its obligation to "provide pardon and amnesty by way of enacting a law that forbids prosecution and punishment of persons in relation to events that took place in certain areas of Donetsk and Luhansk regions of Ukraine"<sup>83</sup>. HRMMU reiterates that amnesty cannot be provided for individuals responsible for war crimes, crimes against humanity and grave human rights violations, including summary executions, torture or similar cruel inhuman or degrading treatment, and enforced disappearances.

*Investigations into human rights violations by the Ukrainian military and law enforcement*

108. According to MoIA, 1,448 claims for violations of rights, including 298 for bodily injuries due to excessive use of force and ill-treatment of detained individuals, were submitted to the MoIA departments of internal security between early January and late August 2015. MoIA reported that 80 criminal investigations had been opened into these allegations. In general, as of 28 September, MoIA had opened 141 criminal proceedings into human rights violations by police officers, including 98 for infliction of bodily injuries, 13 concerning arbitrary detention and seizure of property, and six for torture. 29 police officers were notified of being suspected of involvement in human rights violations.

109. On 22 October, the Military Prosecutor for the Southern region (covering, *inter alia*, Donetsk and Luhansk regions) reported to HRMMU that 460 criminal proceedings had been opened since early 2015 into crimes committed by the Ukrainian military. 300 cases concerned desertion and 63 cases relate to crimes against civilians. Only 14 of these cases have been completed and submitted to courts.

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<sup>81</sup> For instance, according to a witness, in January 2015, a high level 'official' of the 'Donetsk people's republic' "pointed out to three Ukrainian captives – ..., ... and Ihor Branovytskyi, and said, to put it mildly, that he will make them 'girls'. Then he ordered to take them to the cemetery to dig graves for themselves". According to other witness, "three of us (Branovytskyi, myself and ...) were pointed out by [the name of the high level 'official' of the 'Donetsk people's republic'] and ordered to take us on a long circuit. We three were taken in a bus with our faces down on the floor to the cemetery to be shot, to dig graves for ourselves. At the cemetery we were lined up and fired shots by or above our heads".

<sup>82</sup> See paragraph 31 of the 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 February to 15 May 2015.

<sup>83</sup> Paragraph 5 of the Package of Measures for the Implementation of the Minsk Agreements of 12 February 2015.

110. HRMMU is concerned that despite the concluding observations of the Committee against Torture (Ukraine, December 2014)<sup>84</sup>, many cases of alleged ill-treatment or torture continue to be qualified as mere “abuse of power”.

111. HRMMU takes note of the establishment of two units within the structure of the Office of the Prosecutor General in mid-August: the Office of the Military Prosecutor for the ATO Forces and the Department on investigation of crimes against, peace, security and humanity. With the focus of investigation of crimes committed in the security operation area committed by the Ukrainian military and of the “military invasion of the Russian Federation on the territory of Ukraine and facilitation of activities of the armed groups”, it is expected that more efforts will be dedicated to documenting grave human rights violations abuses on both sides of the contact line. HRMMU also believes that re-enabling of the Office of the Military Prosecutor to exercise general oversight over the military and law enforcement would further strengthen accountability mechanisms<sup>85</sup>.

112. On 30 September, the Office of the Military Prosecutor reported the completion of pre-trial investigation into crimes committed by members of the special police patrol battalion “Tornado”. Eight of them are accused of creating a criminal gang, abuse of power, abduction and illegal confinement of a person, torture, violent unnatural gratification of sexual desire, resistance to law enforcement officers and unlawful appropriation of a vehicle<sup>86</sup>. The case is to be submitted to court once all suspects have reviewed the case files.

113. HRMMU is concerned over the approach taken by the prosecution in some cases of killings allegedly committed by the Ukrainian military, with investigations appearing to focus on more minor offences. The case of Volodymyr Kulmatytskyi, former deputy mayor of Sloviansk, illustrates this pattern. He and his driver were abducted by armed men in the Government-controlled town of Sloviansk (Donetsk region) on 28 January 2015. On 31 January, they were found dead in Kharkiv region with gunshot wounds on their heads. On 21 September, after a one-day court hearing, three out of the four alleged participants in the murder (all servicemen of Dnipro-1 battalion) were sentenced for kidnapping and illegal handling of weapons to four years of imprisonment, with a three-year probation period, and were released from custody. The fourth suspect – the only suspect in the murder – was killed (or killed himself) during the attempt of the police to apprehend him.

114. Very limited progress was achieved in the investigation into death of Oleksandr Agafonov who was beaten to death in November 2014<sup>87</sup>. The lawyer of the victim’s family’s informed HRMMU that two officers of the Central SBU Office in Kyiv had been notified of suspicion under articles 146 (kidnapping) and 365 (abuse of authority) of the Criminal Code. On 28 October, Dzerzhynskyi District court of Kharkiv released both of them on a bail of UAH 91,000 (approximately USD 3,800) for each. Allegedly, the suspects have not been suspended from their work. HRMMU notes that it took almost a year for the investigation to establish the identity of the suspects. An additional concern is that the suspects face charges that may not lead to the accountability for the death of the victim.

#### **B. Accountability for human rights violations committed during the Maidan protests**

115. While most of the human rights violations committed during the Maidan protests have been investigated and alleged perpetrators identified, accountability continued to be sought

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<sup>84</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=5](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=5).

<sup>85</sup> See paragraphs 117 and 118 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015.

<sup>86</sup> See paragraph 123 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015.

<sup>87</sup> See paragraph 121 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015.



for the killing of protestors on 18-20 February 2014. Indeed, only few perpetrators located and are being prosecuted as the majority have fled Ukraine. None of the former senior officials found responsible have been brought to account for organizing the killing of protestors in January-February 2014.

*General overview of Maidan investigations*

116. On 17 October, the Prosecutor General of Ukraine reported that his office had established the chronology of all events that had taken place during the Maidan protests, and identified all individuals involved in the organization of unlawful counteraction to protests that resulted in the death of protestors<sup>88</sup>. However, none of these individuals has been brought to account as they all allegedly fled Ukraine on 20 February 2014 or shortly afterwards. Moreover, most of the material evidence has been destroyed, especially in central Kyiv.

117. On 10 November, the Chief Military Prosecutor reported that 20 Berkut servicemen had fled Ukraine immediately before the launch of a special operation to arrest them at the beginning of August 2014, assuming that they had either received an order or were warned. No progress has been observed to locate Berkut commander Dmytro Sadovnyk who fled Ukraine after the authorities changed the measure of restraint against him from custodial detention to house arrest on 6 October 2014. It would be important to investigate the destruction of evidence of killings around the Maidan events, as well as the escape of people involved in these incidents.

118. The Office of the Prosecutor General investigated 14 different episodes of the crimes committed during the Maidan protests<sup>89</sup>. HRMMU is concerned that the dispersal of investigative efforts among various criminal proceedings may undermine the investigation as all the incidents and individuals involved were closely linked.

*Ongoing trial of Berkut servicemen (killing of protestors)*

119. The investigation into the killing of 39 protestors (all men) on 20 February 2014, at Instytutska Street, Kyiv, has not progressed since the previous HRMMU report<sup>90</sup>. Zinchenko and Abroskin remained the only two Berkut servicemen whose case had been submitted to court. Two other servicemen have remained in detention since 23 February 2015, when they were detained under the same charges (killing of 39 protestors). 18 other Berkut servicemen have been put on a wanted list for killing the 39 protestors. Investigations were ongoing into the alleged involvement of three Berkut servicemen in killing three protestors and injuring 69 on 18 February, in Kyiv<sup>91</sup>. Two former SBU officials have been detained in February and

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<sup>88</sup> The following individuals were reportedly notified by the office of the Prosecutor General of Ukraine: the former President of Ukraine Viktor Yanukovich, former Prosecutor General Viktor Pshonka, former Prime Minister Mykola Azarov, former Minister of Internal Affairs Vitalii Zakharchenko, former SBU Head Oleksandr Yakymenko, former Deputy Minister of Internal Affairs Viktor Ratushniak, former Commander of the Internal Troops of the Ministry of Internal Affairs Stanislav Shuliak, former First Deputy Head of the SBU Volodymyr Totskyi, former Head of Public Security Militia in Kyiv Petro Fedchuk and former commander of special police unit 'Berkut' Serhii Kusiuk. The Prosecutor General deemed them suspects for organizing unlawful counteraction to the protest actions.

<sup>89</sup> Dispersal of Maidan protest on 30 November 2013; confrontation on 1 December 2013 at Bankova street; dispersal of Maidan protest into the night of 11 December 2013; mass killings of protestors in January-February 2014; counteraction to protest actions of 'tityshky'; adoption of 'dictatorship' laws on 16 January 2014; supplies and enhanced use of riot control weapons; persecution for participation in the protests; travesty of justice; upholding unjust court decisions; non-enforcement of court decisions; prosecution of members of the 'AutoMaidan' movement; killings and infliction of bodily injuries to law enforcement during the protests; illegal resistance to the investigation of crimes committed during the Maidan protests.

<sup>90</sup> See paragraph 127 of 11<sup>th</sup> OHCHR report on human rights situation in Ukraine covering period from 15 May to 15 August 2015.

<sup>91</sup> See paragraph 129 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015.

April 2015 under suspicion of running an anti-terrorist operation on 18 February in Kyiv, which led to the death of protestors.

120. The legality of the composition of the jury panel hearing the case of Zinchenko and Abroskin has been challenged before court. Claiming that Zinchenko and Abroskin have not committed the crimes they are accused of, their lawyers stated to HRMMU that in the course of the investigation, the Office of the Prosecutor General had not examined the legality of the use of force by the Berkut servicemen should it be established that they had killed any of the 39 victims. The lawyers maintained that as three law enforcement were shot dead or injured in the morning of 20 February 2014, the use of force by Berkut' may have been justified.

121. HRMMU also reiterates earlier concerns<sup>92</sup> about the lack of progress in the investigations into the killing of 13 law enforcement officers on 18-20 February 2014, with no alleged perpetrators identified thus far.

### **C. Accountability for the violence of 2 May 2014 in Odesa**

122. More than 18 months after the violence of 2 May 2014 in Odesa, which resulted in the death of 48 people (including six women who died during the fire at the House of Trade Unions) due to clashes between supporters of federalisation of Ukraine ('pro-federalism') and supporters of unitary Ukraine ('pro-unity'), no progress has been observed in the investigations. Only 'pro-federalism' supporters were accused of mass disorder, and one 'pro-unity' activist was accused of a murder in the city centre (in total, six people were killed there). The investigation into the gravest episode – the fire at the House of Trade Unions which claimed lives of 42 people – is ongoing.

123. On 4 November, the Council of Europe International Advisory Panel on Ukraine<sup>93</sup> presented its report on the investigations of the events of 2 May 2014 in Odesa. The Panel noted a worrying decrease in the staffing of the investigating teams, underlining the detrimental effect on the progress, quality and effectiveness of investigations. It also expressed serious concern about the decisions to terminate the proceedings against two suspects for lack of evidence. The Panel concluded that "[t]he challenges confronting those responsible for the investigations into the events in Odesa on 2 May 2014 have been significant and their impact on the investigations cannot be under-estimated. However, these challenges cannot excuse any failings which did not inevitably flow from them"<sup>94</sup>. HRMMU fully shares these concerns.

124. The investigation into the 2 May violence has been dispersed between the Office of the Prosecutor General and MoIA, raising concerns of protracted investigation due to lack of communication among these entities. The MoIA Investigation Unit on the 2 May events, created on 6 May 2014, and comprising a dozen high-ranking investigators from Kyiv and other cities, has practically stopped functioning.

#### *Investigations by the Office of the Prosecutor General*

125. No progress has been reported concerning the investigation into the case of the former head of Odesa Regional Department of Internal Affairs<sup>95</sup> charged with neglect of official duty for failure to ensure public order in the city.

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<sup>92</sup> See paragraphs 83-85 of 6<sup>th</sup> OHCHR report on human rights situation in Ukraine covering period from 18 August to 16 September 2014, and paragraph 162 of 7<sup>th</sup> OHCHR report on human rights situation in Ukraine covering period from 17 September to 31 October 2014.

<sup>93</sup> The Panel was established in April 2014, to oversee that the investigations of the violent incidents which had taken place in Ukraine from 30 November 2013 onwards met all the requirements of the European Convention on Human Rights and the case-law of the European Court of Human Rights.

<sup>94</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048851>

<sup>95</sup> On 13 May 2015, the Pecherskyi district Court of Kyiv placed the former head of the Odesa Regional Department of MoIA under house arrest for 60 days. On 28 August, the investigative judge of the Pecherskyi district Court of Kyiv refused to extend the duration of the house arrest. Currently, the former head of the Odesa Regional Department of MoIA is under no measure of restraint.

### *Investigations by the Ministry of Internal Affairs*

126. No suspects have been identified in the criminal case opened by MoIA into the slow response and inaction of the fire brigade, which contributed to cause the death of 42 people. Allegedly, the former head of the Odesa Region Fire Brigade Department left Ukraine in February 2015.

127. 23 ‘pro-federalism’ supporters have been accused for mass disorder in the city centre in a trial that has been ongoing for 11 months. Numerous procedural violations observed in this case, non-attendance of lawyers, poor quality of case files, failure to provide interpreter, have significantly delayed the process. While consideration on the merits started on 2 July 2015, as of 15 November, the court continued announcing the indictment.

128. The only ‘pro-unity’ activist accused of killing of a protestor and injuring a police officer and a journalist has not been subjected to any sanction since his indictment in November 2014. HRMMU notes essential pressure that ‘pro-unity’ supporters exert on the court. Due to their obstructive behaviour, the court hearings in this case, which started on 23 June 2015, were several times disrupted. This resulted in the transfer of the case to another court in Odesa, in August 2015, but hearings have not yet started. Following threats by ‘pro-unity’ activists and a member of Parliament<sup>96</sup>, a judge (relocated from Donetsk to Odesa in 2014) decided to return to Donetsk, fearing for his life.

#### **D. Administration of justice**

##### *Parallel ‘administration of justice’ systems in the territories controlled by the armed groups*

129. During the reporting period, HRMMU observed the further strengthening of parallel ‘governance structures’ of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’, with their own legislative frameworks, including parallel systems of law enforcement and administration of justice (‘police’, ‘prosecutors’ and ‘courts’), in violation of the Constitution of Ukraine, and in contravention with the spirit of the Minsk Agreements. HRMMU reiterates that the ‘officials’ of the ‘Donetsk people’s republic’ and the ‘Luhansk people’s republic’ are responsible and shall be held accountable for human rights abuses committed on territories under their control. This particularly applies to people bearing direct command responsibility for the actions of perpetrators.

##### *Pre-trial detainees in the territories controlled by the armed groups*

130. Pre-trial detainees who find themselves trapped in the territories controlled by the armed groups since the outbreak of the armed conflict in April 2014 remain in legal limbo, without recourse to justice and with their right to a trial within a reasonable time or release being violated, resulting in their arbitrary detention.

##### *Deprivation of documents of detainees released by the Government*

131. HRMMU is concerned about the situation of 22 former detainees from Dnipropetrovsk who were handed over to the ‘Donetsk people’s republic’ in the context of ‘simultaneous releases’ in December 2014, and whose passports remain with SBU. In October 2015, HRMMU received an official reply from SBU stating that their passports were held by SBU investigators (except for one individual whose mother applied to obtain the passport) pending investigations.

##### *Investigation into 31 August violence near the Parliament*

132. MoIA identified 27 people suspected of being involved in violent actions on 31 August 2015, in front of the Parliament, in Kyiv, including one person suspected of throwing a combat grenade at the police. All suspects are charged under articles 258 (act of terrorism), 263 (unlawful handling of weapons, ammunitions or explosives), 293 (group violation of

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<sup>96</sup> See paragraph 140 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015

public order), 294 (riots) and 345 (violence against a law enforcement officer) of the Criminal Code. Lawyers representing 10 of the suspects informed HRMMU that their clients were still held in the temporary holding facility of MoIA, while they should have been relocated to the SIZO under the Penitentiary Service. They also claimed lack of access of their clients to legal and medical aid and ill-treatment. The Ombudsperson's Office visited the suspects and sent an official letter to MoIA concerning the alleged violations of their rights.

#### *Case of Nelia Shtepa*

133. HRMMU continued to follow the case of former mayor of Sloviansk (Donetsk region) Nelia Shtepa, who has remained in detention since 9 July 2014, charged under articles 110 (trespass against territorial integrity) and 258-3 (creation of a terrorist group or terrorist organisation) of the Criminal Code<sup>97</sup>. As of 15 November, the court was cross-examining witnesses in the case.

134. HRMMU is concerned that following the killing of Shtepa's former deputy Kulmatytskyi – who was the main defence witness – and the release of three men involved in his and his driver's murder, witnesses would be reluctant to testify. On 22 September, the victim's lawyer informed HRMMU that Kulmatytskyi had been questioned by the prosecutors, who told them at length about Shtepa's attempts to draw the attention of the then head of Donetsk Regional State Administration about the need to prevent capture of the city by the armed groups, as well as about her abduction.

135. On 6 October, the High Council of Justice (HCJ) of Ukraine found that the presiding judge in the case of Shtepa had violated the oath when he ruled on the arrest of Maidan activists in Kharkiv in February 2014. HCJ approved a petition for the dismissal of the judge. Should the President of Ukraine dismiss the judge, trial in the case will start from the beginning.

#### *Case of Hennadii Korban*

136. On 31 October, the leader of 'UKROP' party, and former candidate for mayor of Kyiv Hennadii Korban was apprehended by SBU at his home in Dnipropetrovsk, and taken to the Office of the Prosecutor General in Kyiv for interrogation, facing charges of misappropriation of property, creation of a criminal organization, unlawful appropriation of a vehicle and hostage taking of a representative of public authorities. On 3 November, upon elapse of the maximum term of detention (72 hours), he was released and immediately taken by SBU to the Office of the Prosecutor General for interrogation under new charge of preclusion of the right to vote. HRMMU notes that the practice of "repeated arrest"<sup>98</sup> constitutes a violation of article 5(4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>99</sup>. Korban's lawyers allege violations of "the right to lawful arrest"<sup>100</sup>, failure to inform the relatives about his arrest, absence of timely information on charges, delayed access to a lawyer. On 3 November, after visiting Korban at the SBU pre-trial detention centre, the Ombudsperson stated that the violations alleged in the case reflected systemic violations of human rights in criminal proceedings in Ukraine.

#### *Prosecution of Ukrainian citizens in the Russian Federation*

137. HRMMU continued to follow the cases of 11 Ukrainian citizens<sup>101</sup> who are held in detention and prosecuted in the Russian Federation, including the case of Nadiia Savchenko,

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<sup>97</sup> See paragraph 149 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 1 May to 15 August 2015.

<sup>98</sup> Particularly, when a person has been detained immediately after the court ruled on his release.

<sup>99</sup> See *Feldman v. Ukraine* (application 42921/09) judgment 14 April 2012.

<sup>100</sup> According to his lawyers, Korban was arrested without any court order, which is only permissible for individuals arrested at the crime scene immediately after committing a crime or in the course of a hot pursuit.

<sup>101</sup> Nadiia Savchenko, Oleh Sientsov, Oleksandr Kolchenko, Oleksii Chyryni, Hennadii Afanasiev, Yurii Yatsenko, Serhii Lytvynov, Mykola Karpiuk, Stanislav Klykh, Yurii Soloshenko and Valentyn Vyhovskyi.

who has been in detention in the Russian Federation since July 2014, facing charges of killing two Russian journalists<sup>102</sup>. On 22 September, the Donetsk District Court of Rostov region (the Russian Federation) commenced hearing the case on the merits and extended Savchenko's pre-trial detention until January 2016.

## VI. RIGHTS TO VOTE AND TO BE ELECTED

138. On 25 October, local elections were held in most of the territory of Ukraine. Over 350,000 candidates competed for 168,450 positions of mayors of cities, villages and settlements and for councillors of villages, settlements, cities, city districts, districts (*rayon*) and regional councils. According to the Central Election Commission of Ukraine (CEC), the turnout was 46.62 per cent. A second round took place on 15 November to elect the mayors of cities of more than 90,000 voters where no candidate obtained more than 50 per cent of the votes in the first round.

139. The election law established three electoral systems and introduced a requirement of at least 30 per cent representation of each gender on a party list, without providing for any sanction for failure to comply. According to CEC, women comprised about 35 per cent of all registered candidates for the proportional races and 13 per cent in mayoral races. Based on these figures, and while the final election results were not yet known when this report was being finalized, they are likely to confirm a significant under-representation of women.

140. The electoral process was monitored by local and international observation missions, including the International Election Observation Mission (IEOM), which assessed the elections as competitive, well organized and respectful of the democratic process. However, it noted the influence of powerful economic groups over the electoral process, the fact that the legal framework fell short of international commitments and standards, and some problems with the printing and distribution of ballots which prevented or led to the cancelling of elections in several Government-controlled districts of eastern Ukraine<sup>103</sup>.

141. HRMMU is also concerned that millions of Ukrainian citizens could not exercise their right to vote. Indeed, local elections were not conducted in the Autonomous Republic of Crimea, the city of Sevastopol and in certain areas of the Luhansk and Donetsk regions controlled by the armed groups. CEC declared that for security reasons, holding elections was not possible in some territories of the Donetsk and Luhansk regions controlled by the Government<sup>104</sup>. In addition, the law on local elections of 14 July 2015 did not foresee the possibility for IDPs<sup>105</sup> to vote<sup>106</sup>.

142. The '*Opposition Bloc*' branch in Kharkiv was prevented from registering for the local elections. HRMMU learned from the leadership of the party and their lawyer that the Regional Department of the Ministry of Justice had actively obstructed and prevented the members of the party to hand over registration documents. The Regional Department of Ministry of Justice also refused to implement a decision of the Regional Administrative Court

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<sup>102</sup> For more information, see paragraph 60 of 11<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 May to 15 August 2015, and paragraph 54 of the 10<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 16 February to 15 May 2015.

<sup>103</sup> See Statement of Preliminary Findings and Conclusions of the International Election Observation Mission (IEOM), Ukraine – Local Elections, 25 October 2015.

<sup>104</sup> CEC resolutions 207 and 208 declared that it was not possible to organize elections in 91 local councils in the Donetsk region and 31 local councils in the Luhansk region. These decisions were based on the information provided by the military/civil administrations and affected 525,588 voters.

<sup>105</sup> UN Guiding Principles on Internal Displacement<sup>105</sup> and Recommendation Rec(2006)6 of the Committee of Ministers of the Council of Europe to Member states on internally displaced persons

<sup>106</sup> See paragraph 167 of the 11<sup>th</sup> HRMMU report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2015.

in Kyiv. The ‘Opposition Bloc’ was prevented from conducting its electoral campaign and its candidates were only partially able to take part in the local elections.

## VII. HUMAN RIGHTS IN THE AUTONOMOUS REPUBLIC OF CRIMEA<sup>107</sup>

143. A trade blockade of Crimea, initiated by the Crimean Tatar leadership and enforced by ‘pro-unity’ activists, including Crimean Tatars and former member of voluntary battalions, has been in place since 20 September. HRMMU is concerned about the legality of this action and human rights abuses that have accompanied it, including illegal identity checks, vehicle searches, confiscation of goods, and arrests. Other important developments related to Crimea have included the sentencing of Ukrainian film-maker Oleh Sientsov by a Russian Federation military court, the issuing of the first verdict by a court in Crimea in relation to the violent protests on 26 February 2014 involving pro-Ukrainian and pro-Russian groups, and the Ukrainian parliament resolution of 12 November recognizing the 1944 deportation of the Crimean Tatars as an act of genocide.

### A. The blockade of Crimea

144. Since 20 September, hundreds of Ukrainian activists, including Crimean Tatars and members of nationalist battalions, have been blocking the flow of goods between mainland Ukraine and Crimea in both directions. The trade blockade was initiated by the former and current heads of the Crimean Tatar Mejlis, Mustafa Dzhemiliev and Refat Chubarov, and has been conducted simultaneously at all three crossing points on the Ukrainian-controlled side of the administrative boundary line (ABL): in Chaplynka, Chongar and Kalanchak. The objective of this action was to call international attention to human rights violations in Crimea – including the alleged persecution of Crimean Tatars – and to request an international monitoring presence in the peninsula. The organizers also demand that the Ukrainian authorities repeal an August 2014 law<sup>108</sup> which regulates trade between Ukraine and the peninsula, and demanded that the next step should be to halt energy supplies to Crimea.

145. HRMMU travelled to the area of the blockade on 12-13 November. It noted that the blockade was designed to prevent the movement of commercial cargo transported by trucks without hindering the movement of people and private vehicles. However, the volunteers enforcing the blockade – uniformed men sometimes wearing masks and balaclavas – have been systematically stopping private vehicles. They reportedly have lists of people considered to be ‘traitors’ due to their alleged support to the *de facto* authorities in Crimea or to the armed groups in the east. In one case, two people were arrested for allegedly carrying drugs and explosives and kept in illegal detention for hours before being handed over to the police. In another incident, a Crimean resident with a Russian passport issued in Crimea was beaten up. The activists have also established improvised roadblocks at the crossing points. Their behavior has in some cases been threatening when drivers refuse to show their identification documents or allow their vehicles to be searched. HRMMU is aware of the case of a driver who had his windows smashed for refusing to unload vegetables.

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<sup>107</sup> HRMMU has not been granted access to Crimea and has no *in situ* presence. However, it has been able to monitor the human rights situation by establishing and maintaining contacts with Crimean residents on the peninsula and mainland Ukraine and relying on a variety of interlocutors of different ages and genders including representatives of political, religious, civil society organizations, victims, relatives and witnesses of alleged human rights violations, members of the legal profession, journalists, entrepreneurs, teachers, doctors, social workers, human rights activists and other categories, including individuals with no specific affiliations. HRMMU continues to seek access to Crimea.

<sup>108</sup> The law “On the Establishment of the Free Economic Zone ‘Crimea’ and Peculiarities of Providing Economic Activity on the Temporary Occupied Territory of Ukraine” (12 August 2014).

146. The activists have been enforcing the blockade in the presence of the police and border guards who observed the situation without intervening. HRMMU is concerned about instances of human rights abuses near the ABL. It is also worried that activists enforcing the blockade have been illegally performing law enforcement functions, such as identity checks and vehicle searches, with the apparent acquiescence of the Ukrainian authorities.

### **B. Citizenship**

147. On 30 October, the Federal Migration Service (FMS) of the Russian Federation issued a statement indicating that the legal requirement to inform FMS about a second citizenship, in addition to Russian citizenship, did not apply to Crimean residents. This requirement derived from amendments to the law “On citizenship of the Russian Federation”<sup>109</sup>, which obliged Crimean residents to disclose a second citizenship before 1 January 2016.

148. HRMMU notes that FMS did not refer to any legal act or official policy supporting its statement. This development would be welcome as it would mean that Crimean residents who chose not to disclose their Ukrainian citizenship will not be sanctioned.<sup>110</sup> However, HRMMU also recalls that Russian citizenship has been imposed upon all Crimean residents following the unrecognized ‘referendum’ of March 2014, and that such automatic attribution has led to human rights violations, including claims that people were dismissed or threatened to be dismissed from their posts for refusing to take up Russian Federation passports<sup>111</sup>.

### **C. Rights to life, liberty, security and physical integrity**

149. Another case, involving a Crimean Tatar disappearing in circumstances reminiscent of abduction, has been reported. On 27 August, a witness claimed he saw two men in uniform forcing Muhtar Arislanov into a minivan, after which he went missing. On 3 September, the Investigative Committee of the Russian Federation in Crimea opened a criminal case under the qualification of murder. HRMMU notes that other Crimean Tatars, including Islyam Dzhepparov and Dzhevdet Islyamov<sup>112</sup>, were also seen by witnesses to be kidnapped by uniformed men and that none of them has been found to this day.

### **D. Due process and fair trial rights**

150. Crimean residents continued to be subjected to Russian Federation laws and in some cases they were transferred to the Russian Federation to undergo trial. This was the case with Ukrainian film-maker Oleh Sientsov who on 25 August, was sentenced by a Russian Federation military court in the city of Rostov-on-Don to 20 years of prison for setting up a terrorist group and involvement in two attempted arson attacks in Crimea. HRMMU notes that the process was marred by violations of fair trial standards and of the presumption of innocence. The court dismissed allegations of torture and ill-treatment which Sientsov experienced during pre-trial detention, and delivered a guilty verdict despite the fact that the main prosecution witness recanted in the courtroom, stating his testimony had been extorted under torture. Oleksandr Kolchenko, who was being tried with Sientsov and also denied the charges against him, received a 10-year prison sentence for participation in the ‘terrorist plot’ organized by Sientsov. Both verdicts were appealed and will be examined by the Supreme Court of the Russian Federation on 24 November 2015.

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<sup>109</sup> See Federal Law of the Russian Federation No 142-FZ “On Amendments to Articles 6 and 30 of the Federal Law ‘On Citizenship of the Russian Federation’ and certain legislative acts of the Russian Federation” (4 June 2014, entered into force 4 August 2014).

<sup>110</sup> In all other cases, concealing a second citizenship will expose to a fine of up to RUB 200,000 (USD 5,700) or compulsory community service of up to 400 hours.

<sup>111</sup> For more information, see paragraph 295 of the 3<sup>rd</sup> OHCHR report on the human rights situation in Ukraine covering period from 7 May to 7 June 2014.

<sup>112</sup> For more information, see paragraph 216 of the 7<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 17 September to 31 October 2014.

151. On 12 October, a ‘court’ in Simferopol sentenced Eskender Nebiyev, a cameraman of the Crimean Tatar TV channel ‘ATR,’ to two years and six months of prison for “participation in mass riots” The sentence was immediately commuted by court to a suspended sentence as Nebiyev had allegedly cooperated with the investigation and admitted his guilt. Nebiyev was arrested by the Crimean “police” on 22 April 2015, and accused of participating in a violent demonstration organized by the Crimean Tatar Mejlis in front of the Crimean parliament building, on 26 February 2014. This was the first verdict issued in relation to these events, during which two ethnic Russians died and over 40 people were injured. Five other Crimean Tatars, including the deputy head of the Mejlis, Akhtem Chiigoz, were arrested in 2015<sup>113</sup> for organizing or participating in the February 2014 clashes between supporters and opponents of Ukraine’s territorial integrity and await trial. HRMMU notes that the arrests have only concerned ethnic Crimean Tatars, which raises questions about the impartiality of the criminal proceedings under way.

#### **E. Freedom of expression**

152. Crimean residents continued to be pressured, intimidated and sanctioned for expressing views challenging Crimea’s status as a part of the Russian Federation or expressing attachment to Ukraine publicly or via social media networks.

153. On 23 September, a ‘court’ in Crimea prolonged for two months the pre-trial detention of a pro-Ukrainian activist, Yurii Ilchenko, for having published on a social network an article condemning the “annexation” of Crimea and calling for an “end to the war allegedly waged by the Russian Federation against Ukraine”. Ilchenko was arrested on 2 July 2015 in Sevastopol, and accused of “inciting national, racial or religious enmity”.

154. On 14 October, the ‘police’ in Crimea prevented the head of the unregistered Ukrainian cultural centre in Simferopol and two other residents from paying tribute to Bogdan Khmelnytsky, a 17<sup>th</sup> century ruler of Ukraine. Before the men could lay flowers at the monument in Simferopol, they were approached by ‘police officers’ and men in civilian clothes who asked to check their documents and took them to the ‘police centre for countering extremism’. They were questioned for two hours, allegedly for holding an unauthorized rally, told that the Ukrainian cultural centre was considered to be an extremist organization, and released without being charged with any offense. HRMMU observes that the actions of the ‘police’ seemed to be designed to intimidate and discourage what amounted to a peaceful public display of attachment to a national identity.

155. On 29 October, the head of the Mejlis and Ukrainian deputy Refat Chubarov, received a notification from a court in Simferopol informing him that the court had granted a request of the ‘prosecutor’ of Crimea to remand him in custody. The notification mentions that Chubarov was charged for “public calls for action aimed at violating the territorial integrity of the Russian Federation”, and applies to any statements made on the Internet. The ‘prosecutor’ of Crimea stated that Chubarov had been placed on a wanted list and could be immediately arrested should he appear on the territory of Crimea. He also declared that a five-year entry ban that applied to Chubarov since 5 July 2014 had been lifted, without providing further information.

#### **F. Right to education in native language**

156. 1 September marked the beginning of the new school year in Crimea where the education curriculum of the Russian Federation has continued to be applied. Information from the Crimean ‘ministry of education’ concerning the language of education confirms the

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<sup>113</sup> Akhtem Chiigoz was arrested on 29 January 2015, Eskender Kantemirov on 7 February 2015, Eskender Emirgaliyev on 18 February 2015, Talyat Yunusov on 11 March 2015, and Ali Asanov – on 15 April 2015.



trend already noticed last year that the overwhelming majority of children (96.4 per cent) use Russian language in their school curriculum.

157. Education in Ukrainian language dropped significantly in the past two years. In 2013, when the curriculum of Ukraine was last used, the number of children educated in Ukrainian was 12,694; in 2014, it was 2,154; and in 2015, it is 949. Twenty-two schools across the peninsula are currently providing teaching in Ukrainian but only two schools – in Alushta and Feodosiya – offer full primary and secondary education (grades 1 to 9) in that language. The number of children educated in Crimean Tatar language has remained relatively stable. In 2015, Crimean Tatar is the language of education of 5,334 children. In 2014 the figure was 5,146, and in 2013, it was 5,551. Currently, teaching is done exclusively in Crimean Tatar language in 15 Crimean schools.

158. Some Ukrainian and Crimean Tatar parents told HRMMU that the *de facto* authorities were discouraging the use of minority languages, notably by preventing the grouping of children by language preference and placing them in classes with Russian language education. This claim is disputed by the *de facto* authorities. The ‘minister of education, science and youth’ of Crimea stated in September that separate classes were opened for minority language education if at least seven parents would request it.

#### **G. Access to services**

159. On 1 September, the Kyiv administrative court of appeal revoked Item 1 of Resolution No 699 adopted by the National Bank of Ukraine (NBU) on 3 November 2014, which identified Crimeans as “non-residents” from the point of view of Ukrainian law. A practical implication of the non-resident status was that Crimeans could not open foreign currency accounts and purchase foreign currency.

160. On 18 December 2014, following criticism by civil society, NBU issued another Resolution (No 810) allowing Crimeans registered as IDPs to retain resident status. However, this resolution did not change the situation of Crimeans not registered as IDPs. A September 2015 decision of the Kyiv administrative court of appeal remedied this by recognizing the right of all Crimean residents, without distinction, to equal treatment in accessing banking services. Despite this decision, many banks continued in September and October to deny Crimean residents not having the IDP status the right to purchase foreign currency and open foreign currency accounts. On 30 October, NBU sent an official note to all banks informing them that all prior restrictions applying to Crimean residents were lifted. HRMMU will monitor whether access to banking services is afforded to Crimean residents without discrimination.

### **VIII. LEGAL DEVELOPMENTS AND INSTITUTIONAL REFORMS**

#### **A. Constitutional reform**

161. Constitutional amendments on decentralization were adopted on first reading by the Parliament on 31 August 2015. They enshrine the principle of subsidiarity, simplify the territorial structure of the State and separate the functions of the State and those of local self-governments, which are all positive aspects. They also refer to a law, which was adopted in 2014 but never implemented, providing for the transfer of some competencies to the territories of the Donetsk and Luhansk regions controlled by the armed groups. This specific aspect triggered a violent reaction from supporters of far right groups who clashed with the police outside the parliament building, leading to the death of four members of the National Guards and over 100 people being injured. The final adoption of the law requires a constitutional majority of deputies (at least 300).

162. As of 15 November, constitutional amendments related to the judiciary had not been registered at the Parliament of Ukraine. The current version of the amendments removes some constitutional obstacles to an independent judiciary, notably by requiring that the institution in charge of appointing and removing judges be made up of a majority of representatives of the judicial branch. The amendments also remove the broad powers of the public prosecutor, which have often been abused, to oversee the implementation of the law.

163. In November 2015, the amendments to the human rights chapter of the Constitution were still under development by a working group of the constitutional commission in charge of constitutional reform. One of the major novelties envisaged in the current draft is to enable citizens to initiate a constitutional review of laws.

#### **B. Adoption of a National Human Rights Strategy**

164. On 25 August, President Poroshenko approved the first National Human Rights Strategy of Ukraine. This document was developed through collaborative efforts that have involved, since November 2014, the Government, civil society groups, the institution of the Ombudsperson and international organizations, including HRMMU. The document describes 24 priority areas<sup>114</sup> and provides a five-year roadmap to address systemic human rights challenges and more recent issues related to the conflict. The Government was tasked by the President to elaborate an Action Plan to implement it. HRMMU supports the development of the Action Plan.

#### **C. Cooperation with the International Criminal Court**

165. On 8 September 2015, the Registrar of the International Criminal Court received a declaration lodged by Ukraine accepting the Court's jurisdiction with respect to alleged crimes committed in its territory since 20 February 2014. The declaration was lodged under article 12(3) of the Rome Statute, which enables a State not party to the Statute to accept the exercise of jurisdiction of the Court. This is Ukraine's second declaration under article 12(3) of the Statute. On 17 April 2014, it accepted the Court's jurisdiction over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014. Based on the latest declaration, the Court may exercise jurisdiction over crimes that were committed after the Maidan events, on the entire territory of Ukraine. HRMMU views this development as a significant contribution towards the establishment of accountability for human rights violations and justice for victims and their relatives.

#### **D. Visa liberalization package**

166. From 10 to 12 November, the parliament of Ukraine adopted several laws and measures bringing positive changes, and which were requested under the European Union visa-liberalization Action Plan. They include anti-corruption measures, such as the establishment of a national Asset Recovery Office and guarantees against corruption risks when property is seized or confiscated. Legislative amendments were passed to limit the pre-trial investigative functions of SBU to crimes against national security. In the area of migration management, amendments adopted on first reading provide for an immediate judicial review of decisions to expel or detain foreigners and stateless persons. The issue of the reintegration of migrant workers was regulated by a law on external labour migration.

167. The most divisive topic was the requirement under the visa liberalization action plan to explicitly prohibit discrimination on the grounds of gender identity and sexual orientation in labour relations. It took several rounds of votes for deputies to adopt this amendment to the labour legislation.

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<sup>114</sup> The 24 priority areas include, among other issues, torture and ill-treatment, impunity, fair trial rights, fighting discrimination, national minority rights, gender equality, fundamental freedoms, the right to health, IDP rights and those of the population living in the territories not controlled by Ukraine.

## **E. Labour Code**

168. Amendments to the Labour Code were passed on first reading on 5 November. Guarantees were introduced to strengthen the protection of workers, such as the obligation to conclude an employment contract in writing, the prohibition to change working conditions unilaterally, a higher salary for night work, a two-month notice and a higher compensation package in case of dismissal.

169. Nonetheless, some provisions seem to contravene the principle of equality before the law. For example, the transitional provisions foresee the right for legal entities in the area of the security operation to regulate employment issues pertaining to working hours, resting time and salaries, without taking into consideration the provisions of the Labour Code. HRMMU recalls that, pursuant to article 7 of the International Covenant on Economic, Social and Cultural Rights, State Parties must “recognize the right of everyone to the enjoyment of just and favorable conditions of work”. HRMMU also notes that the adoption, on 12 November, of labour legislation prohibiting discrimination on the grounds of sexual orientation needs to be reflected in the Labour Code.

## **F. Criminal justice reform**

170. On 12 November, the Parliament adopted a law<sup>115</sup> creating a State Bureau of Investigation (SBI) defined as a central executive body with special status and law enforcement functions. SBI is mentioned in the Criminal Procedure Code of Ukraine as an instrument to improve the independence and effectiveness of pre-trial criminal investigations. It is mandated to investigate organized crime, excess of authority, torture, inhuman, degrading or other cruel treatment or punishment committed by members of the law enforcement and the military; crimes which may give rise to a life imprisonment sentence; war crimes; crimes committed by high-ranking officials, prosecutors and judges<sup>116</sup>, members of the National Anti-Corruption Bureau and the Special Anti-Corruption Office of the General Prosecution<sup>117</sup>. The law stipulates that SBI will have seven regional offices<sup>118</sup>. SBI will issue annual activity reports which will be subjected to review by a public oversight council consisting of 15 members of the public. HRMMU views the adoption of the law as an important step in the creation of an independent criminal justice system. However, it notes with concern that the law gives the executive authority the main prerogative in the selection of the Bureau director and the two deputies<sup>119</sup>.

## **G. Protection of internally displaced persons**

171. Two Government resolutions (Nos 615 and 636) adopted in August 2015 could affect IDPs’ rights and limit their ability to obtain IDP status. A new rule obliges people seeking to be recognized as IDPs to sign a declaration of non-participation in the commission of criminal activity. Another one provides that IDP registration may be denied if the circumstances that led to the displacement “are absent” or have significantly changed. HRMMU is of the view that the unclear meaning and consequences of such provisions increase the risk of arbitrary decisions regarding the attribution or removal of IDP status. Another provision, subject to different interpretations, specifies that unaccompanied children may be registered as IDPs in case of non-performance of parental obligations. In addition to creating legal uncertainty, this may lead to the deprivation of parental rights.

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<sup>115</sup> Draft Law No 2114 ‘On the State Bureau of Investigation’.

<sup>116</sup> Except for cases falling under the jurisdiction of the National Anti-Corruption Bureau.

<sup>117</sup> Except for cases falling under the jurisdiction of an internal oversight mechanism of the National Anti-Corruption Bureau.

<sup>118</sup> In Lviv, Khmelnytskyi, Mykolaiv, Poltava, Melitopol, Kramatorsk and Kyiv.

<sup>119</sup> The law provides that the Government appoints the Director of the Bureau and its two Deputies upon a submission of the Prime Minister based on the proposal of a Selection Commission consisting of nine persons: three persons chosen by the government, three by the president and three by the parliament.

172. Progress was made to ensure the legal protection of IDPs. HRMMU observes that the amendments to the law on IDPs<sup>120</sup>, adopted on 3 November, reflect key provisions of the United Nations Guiding Principles on Internal Displacement. Accordingly, the amendments extend the scope of the law to heretofore excluded categories, such as internally displaced foreign nationals and stateless persons who legally reside on the territory of Ukraine and are eligible for permanent residence in Ukraine. The amendments also stipulate that the Government should support the integration of IDPs in new communities, as well as their voluntary return to their previous place of residence. They also recognize the rights of IDPs to family reunification and to information about the fate and whereabouts of missing relatives. Furthermore, the amendments simplify the procedures for IDP registration and revocation of labour relations prior to displacement.

#### H. Civil documents

173. On 5 November, the Parliament adopted on first reading Draft Law No 3171<sup>121</sup>, which is to regulate the recognition by Ukraine of facts of birth and death occurring on the territories controlled by the armed groups in the east, as well as in Crimea, by amending the Civil Procedure Code. Indeed, under the current legislation, all acts issued by *de facto* authorities are considered to be invalid by Ukrainian authorities<sup>122</sup>. This situation has prevented people from the territories concerned from enjoying the same rights as other citizens of Ukraine.

174. The draft law creates a simplified procedure of court review pertaining to the registration of civil acts. In particular, it waives the principle of territorial jurisdiction by allowing any Ukrainian court to examine a request for recognition. Birth and death certificates will be issued by the civil registration body upon receipt of a copy of the judgment authorizing it.

175. HRMMU notes that the draft law covers some but not all civil documents. Furthermore, in the absence of postal services between the territories controlled by the armed groups (and Crimea) and the rest of Ukraine, a claimant would need to be physically present on Government-controlled territory to file for recognition or to empower a representative to do so.

176. The International Court of Justice (ICJ) in its Namibia Advisory Opinion<sup>123</sup> provided that while official acts performed by *de facto* authorities “are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the [t]erritory”. This exception was upheld by the European Court of Human Rights in its case law regarding the “TRNC”<sup>124</sup> and “MRT”<sup>125</sup>. Thus, it would appear that the solution proposed by the draft law falls short of the standards supported by international

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<sup>120</sup> Law of Ukraine ‘On Ensuring the Rights and Freedoms of Internally Displaced Persons’, No 1706-VII of 20 October 2014.

<sup>121</sup> Law of Ukraine ‘On amendments to the Civil Procedural Code of Ukraine concerning the establishment of the fact of birth or death on the temporary occupied territory’, No. 3171 of 22 September 2015.

<sup>122</sup> On 16 October 2015, Ukraine informed the United Nations Secretary-General as the depository of international treaties that “documents or requests made or issued by the occupying authorities of the Russian Federation, its officials at any level in the Autonomous Republic of Crimea and the city of Sevastopol and by the illegal authorities in certain districts of the Donetsk and Luhansk oblasts of Ukraine, which are temporarily not under control of Ukraine, are null and void and have no legal effect regardless of whether they are presented directly or indirectly through the authorities of the Russian Federation”. See note of the Ministry of Foreign Affairs of Ukraine №72/22-612-2486 of 12 October 2015).

<sup>123</sup> ICJ Advisory Opinion of 21 June 1971 – *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, paragraph 125.

<sup>124</sup> *Loizidou v. Turkey (Merits)*, Judgment of 18 December 1996, ECHR (1996), para. 45; *Cyprus v. Turkey (Merits)*, Judgment of 10 May 2001, ECHR (2001), para. 90.

<sup>125</sup> *Ilascu and Others v. Moldova and Russian Federation*, Application n. 48787/99, Judgment of 8 July 2004, para. 458-461.

jurisprudence, which imply direct recognition by Ukraine's institutions of the registration of births, deaths and marriages performed by *de facto* authorities.

### **I. Freedom of movement**

177. On 16 September, the Government of Ukraine amended<sup>126</sup> decree No 367 of 4 June 2015 concerning the procedure of entry into and exit from Crimea for foreigners and stateless persons. The amended decree widens the category of people who can move across the ABL if they are in possession of special permits. In addition to the categories mentioned under the previous decree<sup>127</sup>, the new one includes journalists, human rights defenders, representatives of international NGOs, religious officials and persons taking part in the activities of the Mejlis.

178. The procedure, however, to obtain a permit remains cumbersome and requires the approval of a relevant Ukrainian Ministry. In addition, the request for a permit cannot be filed from abroad but only on the Ukrainian territory. It should be noted that the amended decree maintains provisions regarding restrictions of freedom of movement for Ukrainian children below 16, who are required to travel with an international passport and to obtain the notarized authorization of the second parent when traveling with only one.

## **XI. CONCLUSIONS AND RECOMMENDATIONS**

179. All measures need to be taken to prevent the resumption of hostilities in the eastern regions of Ukraine, to save lives and to prevent further hardship for those people living in the conflict-affected area. With the tenuous respect for the ceasefire agreed upon on 29 August, people still continue to be killed and injured.

180. OHCHR reiterates that the full implementation of the Minsk Agreements remains the only viable strategy for achieving a peaceful solution in Donbas, which would pave the way for fuller respect of the rights of people, both in the conflict area and elsewhere in Ukraine. Continuing presence of foreign fighters, with some having been established by a Ukrainian court or identified by the Government of Ukraine as servicemen from the Russian Federation, as well as the reported influx of heavy and sophisticated weaponry from the Russian Federation and the lack of effective control by the Government of Ukraine of the state border with the Russian Federation remain the major impediments to this solution<sup>128</sup>.

181. The impact of the conflict on economic and social rights for people residing in the conflict areas of Donetsk and Luhansk regions remains significant. The interruption of access to basic services is life-threatening and can have a life-long impact on the affected population, hindering the post-conflict recovery. It is especially worrying with the onset of winter. In this regard, unimpeded access to humanitarian assistance for those people who have been directly affected by the armed conflict in territories controlled by the armed groups remains vital. HRMMU considers that both the Government and the armed groups have the obligation to ensure the critical needs of the affected population are met to prevent the decline

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<sup>126</sup> Decree No 722.

<sup>127</sup> People who could obtain a permit included those with relatives living or buried in Crimea, having property on the peninsula, participating "in the defence of national interests of Ukraine", performing diplomatic or consular functions and railway system employees.

<sup>128</sup> On 25 September, Dzerzhynskiy District Court of Donetsk region sentenced a citizen of the Russian Federation, who confessed to being an acting officer of the Armed Forces of the Russian Federation, to 14 years of imprisonment, under article 437 (planning, preparation and waging of an aggressive war) of the Criminal Code. The man was apprehended by the State Border Guard Service of Ukraine on 25 July 2015, as the truck he was driving approached the check-point of 'Berezove' (Donetsk region) carrying boxes with grenades, cartridges and rocket-propelled grenades. For more information on his case and on the case of two other citizens of the Russian Federation alleged to be acting servicemen of the Armed Forces of the Russian Federation, see paragraphs 58-59 and 188 of the 11<sup>th</sup> HRMMU report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2015.

in their health and welfare, including through the provision of humanitarian assistance, in line with obligations under international humanitarian law.

182. Accountability and an end to impunity should remain at the core of efforts to ensuring peace, reconciliation and long-term recovery throughout Ukraine. All violations and abuses of human rights must be investigated and the perpetrators, whoever they are, should be brought to justice. This concerns events dating back to 2014 and the first half of 2015, and the new cases. Investigations into allegations of killings, summary executions, torture and ill-treatment, and enforced disappearance and illegal detention shall become a priority.

183. The human rights situation in Crimea continues to be of great concern due to persistent allegations of violations of the rights to life, liberty, security and physical integrity, and non-respect of due process, fair trial rights and the rights to freedoms of expression and peaceful assembly. The trade blockade of Crimea has human rights implications and affects more acutely some vulnerable groups. The lack of HRMMU access to Crimea continues to be an impediment for OHCHR to effectively fulfil its mandate in Ukraine. OHCHR also reiterates that an environment conducive to the promotion and protection of human rights in Ukraine depends on respect for General Assembly resolution 68/262 on the sovereignty and territorial integrity of Ukraine.

184. OHCHR has noted progress made by the Government of Ukraine in the implementation of some recommendations contained in previous HRMMU reports, including their declaration to extend the jurisdiction of the International Criminal Court beyond the Maidan events, the adoption of the country's first human rights strategy, and of various laws, including legislation mentioning gender identity and sexual orientation as prohibited grounds of discrimination in employment relations.

185. Recommendations made in OHCHR previous reports on the human rights situation in Ukraine published since April 2014, that have not yet been acted upon or implemented, remain valid. OHCHR calls upon all parties to implement the following recommendations:

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

- a) Guarantee efforts to abide by and implement the Minsk Agreements to end the conflict in the Donbas region and bring an end to the fighting in all localities.
- b) Ensure the protection of civilians in conflict affected areas in full conformity with international human rights and humanitarian law, including complete avoidance of indiscriminate shelling of populated areas.
- c) Report on, and investigate all cases and incidents of civilian casualties caused by military action.
- d) Establish civilian casualty mitigation cells within their competent bodies to prevent violations of international humanitarian law leading to civilian casualties.
- e) Prioritize demining activities and conduct mine risk awareness outreach to children and communities.
- f) Release all those unlawfully or arbitrarily detained without delay and in conditions of safety.
- g) Treat all detainees, civilian or military, humanely and according to international human rights and humanitarian law standards.
- h) Investigate and prosecute any person found to be responsible for serious human rights violations or abuses, including torture and other cruel, degrading or inhumane treatment or punishment, summary or arbitrary executions, or enforced or involuntary disappearances, including those with command responsibility.
- i) Ensure freedom of the media and the liberty, security and rights of journalists to freely conduct their legitimate professional activities.

- j) Facilitate the work of humanitarian actors, both individuals and institutions, to ensure that the population has access to relief aid, particularly those delivering medication, providing medical care and basic services.
- k) Provide additional security guarantees for humanitarians, both individuals and institutions, accessing settlements divided by the contact line.

**To the Government of Ukraine**

- a) Enable the Office of the Military Prosecutor to exercise general oversight over the military and law enforcement.
- b) Ensure prompt and effective investigations of all crimes motivated by ethnic or religious hatred.
- c) Reconsider restrictions of freedom of movement imposed by the Temporary Order vis-à-vis ICCPR provisions, particularly legality and proportionality of the restrictions. Meanwhile, facilitate the movement of civilians across the contact line by increasing the number of transport corridors, especially in Luhansk region, restore public transportation between the checkpoints and nearest towns, equip all checkpoints with medical services, water, sanitation and heating facilities to create favorable conditions for crossing, including during winter.
- d) Facilitate and ensure access of the victims of torture, especially civilians, to medical, rehabilitation, social and employment services.
- e) Develop legal mechanism for civilians whose property has been damaged, looted or seized for military purposes to seek and receive compensation.
- f) Seek ways to ensure progressive realization of economic and social rights, especially right to social security and protection for the people living in the conflict areas, including by ensuring continuity in public social services.
- g) Exclude from the draft Labour Code discriminatory provisions allowing waiving in the security operation area the application of certain rules regulating employment relations.
- h) In line with the jurisprudence of the International Court of Justice and the European Court of Human Rights, recognize civil registration documents (birth, death and marriage certificates) issued in territories controlled by the armed groups.
- i) Ensure the rule of law on the territory of the Kherson region adjacent to the three crossing points between mainland Ukraine and the Crimean peninsula.
- j) Take steps to remove the illegal roadblocks, guarantee the safety of passengers and pedestrians, and prevent unauthorized people from carrying out law enforcement functions in the areas adjacent to the crossing points between mainland Ukraine and the Crimean peninsula.

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

- k) Permit HRMMU to access Crimea in order to ensure effective fulfilment of its mandate;
- l) Stop using law enforcement bodies and the justice system as instruments of political pressure, blackmail and intimidation of opponents.
- m) Guarantee impartial investigations and fair trial conditions for Crimean Tatars undergoing criminal proceedings in relation to the protests of 26 February 2014.
- n) Investigate the killing of Crimean Tatar Reshat Ametov and enforced disappearances of Crimean civil society and human rights activists Timur Shaimardanov and Seiran Zinedinov<sup>129</sup> and Vasyl Chernysh<sup>130</sup>, and bring perpetrators to justice.

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<sup>129</sup> See paragraph 214 of the 7<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 17 September to 31 October 2014.

<sup>130</sup> See paragraph 80 of the 8<sup>th</sup> OHCHR report on the human rights situation in Ukraine covering period from 1 to 30 November 2014.

- o) Release Ukrainian citizens Oleh Sientsov and Oleksandr Kolchenko who were sentenced by a Russian Federation court in denial of due process and fair trial proceedings.
- p) Allow unimpeded exercise of the freedoms of peaceful assembly, expression and religion by all Crimean residents and to accept and protect all non-violent forms of expression.
- q) Ensure the continued availability of education in the Ukrainian language.