**Office of the United Nations High Commissioner**

**for Human Rights**

# Report on the human rights situation in Ukraine

# 16 November 2016 to 15 February 2017

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

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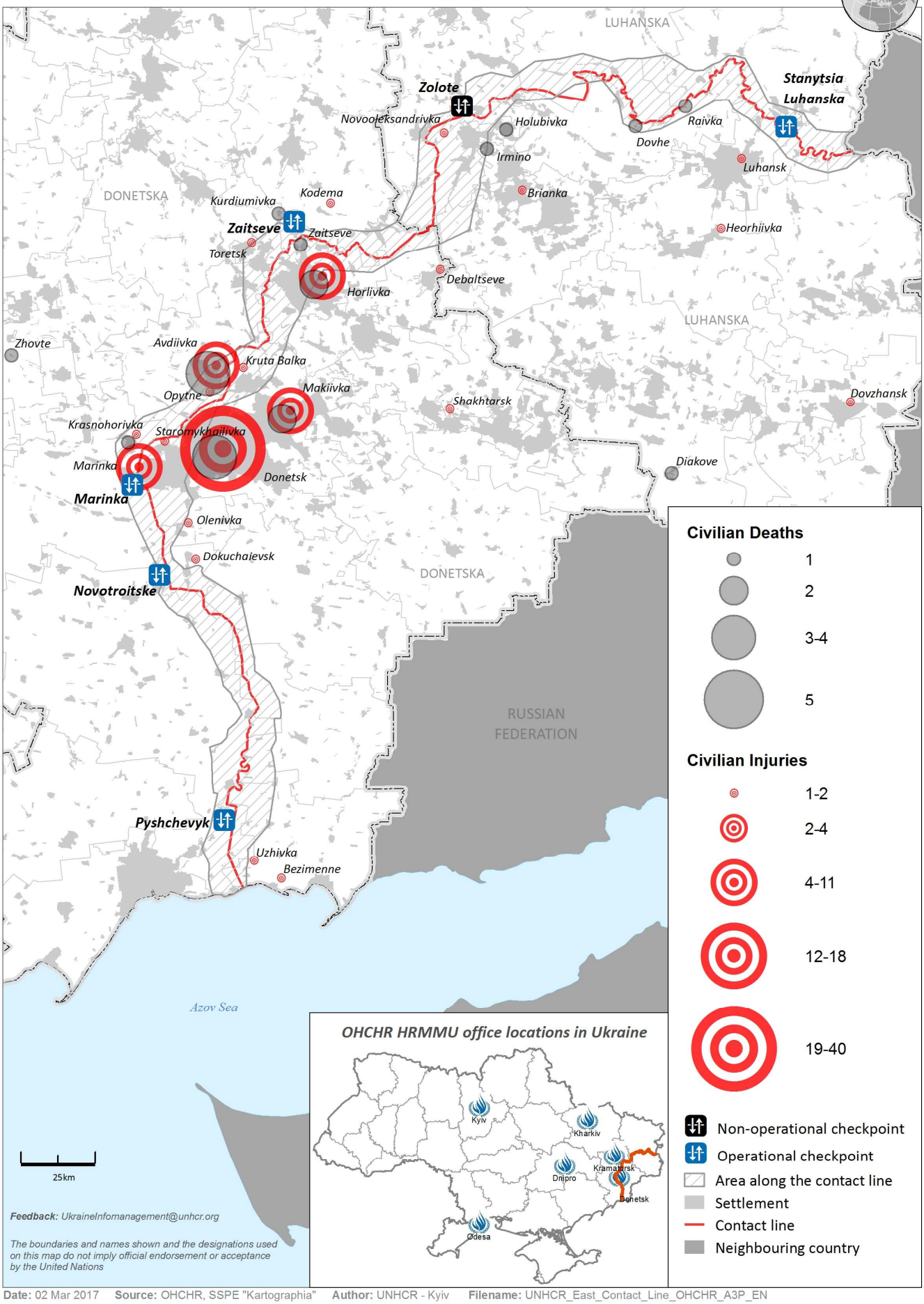
# Ukraine: Civilian casualties along the contact line, 16 November 2016 - 15 February 2017




Date: 02 Mar 2017 Source: OHCHR, SSPE "Kartographia" Author: UNHCR - Kyiv Filename: UNHCR_East_Contact_Line_OHCHR_A3P_EN

# I. Executive summary

1. Based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), this seventeenth report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the situation of human rights in Ukraine covers the period from 16 November 2016 to 15 February 2017.

2. The findings presented in the report are grounded on data collected by HRMMU through interviews conducted during the period under review with 205 witnesses and victims of human rights violations and abuses. In 85 per cent of cases documented during this time, OHCHR was able to carry out follow-up action to facilitate the protection of the individuals concerned, including through trial monitoring, detention visits, facilitating action by UN Human Rights Council Special Procedures mandate holders and/or Human Rights Treaty Bodies, and referring cases to State institutions, humanitarian organizations and NGOs for protection.

3. Since the conflict broke out in eastern Ukraine in the Donetsk and Luhansk regions in April 2014, it has been exacerbated by the inflow of foreign fighters, and supply of ammunition and heavy weaponry, reportedly from the Russian Federation.[1] From mid-April 2014 to 15 February 2017, OHCHR recorded 33,146 casualties in the conflict area in eastern Ukraine, among civilians, Ukrainian armed forces and members of the armed groups, as well as extensive damage to property and critical civilian infrastructure. Countless families have lost members, had members injured, and lost property and their livelihoods as parties to the conflict continued to disregard and violate international humanitarian law and human rights law. As the armed conflict continues, its effects are being felt throughout Ukraine, as combatants return home from the front, displacement continues for many, and relatives grieve the loss of loved ones who have died, are detained or remain missing.

4. Spikes in hostilities in November and December 2016, and the drastic escalation over a very short time span at the end of January through the beginning of February 2017 caused damage to critical civilian infrastructure, including schools and medical facilities, further endangering civilians and disrupting essential water, electricity and heating services amid freezing temperatures. The high number of ceasefire violations recorded daily by the Special Monitoring Mission of the Organization for Security and Co-operation in Europe (OSCE) suggests that weapons systems, munitions, armoured fighting vehicles and associated material continued to be present in the conflict zone, including in urban areas, fuelling the conflict and exacerbating the human rights situation.[2]

5. The impact of the ongoing conflict in eastern Ukraine on human rights illustrates the urgent need for the full implementation of the provisions of the Minsk agreements. This includes the immediate and full respect for ceasefire, the withdrawal of weaponry, the Government of Ukraine re-establishing full control over parts of the border with the Russian Federation in certain areas of Donetsk and Luhansk regions, the withdrawal of foreign fighters, and pardon and amnesty through law, in compliance with human rights principles.

6. Between 16 November 2016 and 15 February 2017, OHCHR recorded 130 conflict-related civilian casualties in Ukraine: 23 deaths (seven women, 15 men and a boy) and 107 injuries (26 women and a girl, 69 men and a boy, and eight adults and two children whose

[1] OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2015, paragraphs 2, 6; OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2015, paragraphs 2, 58-59; OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2015, paragraphs 2, 22 (see also fn. 128); OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, paragraph 2 (see also fn. 3).

[2] Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), based on information received as of 19:30, 31 January 2017 (accessible at: http://www.osce.org/ukraine-smm/296961), and Latest from the OSCE SMM, based on information received as of 19:30, 27 January 2017 (accessible at http://www.osce.org/ukraine-smm/296071).

sex is not known). This is a 20 per cent decrease compared to the previous reporting period of 16 August – 15 November 2016 when OHCHR recorded 164 civilian casualties (32 deaths and 132 injuries). In the two years that have passed since the adoption of the *Package of Measures for the Implementation of the Minsk Agreements* on 12 February 2015, OHCHR has recorded 1,493 civilian casualties: 367 deaths and 1,126 injuries. These numbers reveal that the implementation of the measures has been haphazard and limited, which has resulted in harm to thousands of civilians and their families. Yet, they also show that the adoption of the Package of Measures led to a significant decrease in civilian casualties, underscoring that the agreements continue to provide an adequate framework to de-escalate the conflict and ensure greater protection of the civilian population in eastern Ukraine, and require stricter compliance. In total, from mid-April 2014 to 15 February 2017, OHCHR recorded 33,146 casualties, among Ukrainian armed forces, civilians and members of the armed groups. This includes 9,900 people killed and 23,246 injured.[3]

7. Government forces and armed groups continued to violate and abuse the rights to life, liberty, security and physical integrity. In addition to cases that surfaced during the reporting period, OHCHR continued to document summary executions, disappearances, arbitrary deprivation of liberty, torture and ill-treatment that occurred in 2014, 2015 and earlier in 2016. The documentation of past and recent cases remains critical for the purpose of future accountability and for the memory of victims.

8. During the reporting period, OHCHR advocated with the Government to combat impunity, particularly for conflict-related sexual violence. On 16 February 2017, OHCHR published a report on conflict-related sexual violence in Ukraine including actionable recommendations toward effective investigations of cases of sexual violence committed in the context of the conflict in the east.[4]

9. Accountability is critical and depends on the functioning of an independent and robust judiciary. While some progress has been observed in the investigations and proceedings related to the violence on Maidan in 2014, OHCHR is concerned that more than two and a half years since the violence in Odesa in 2014, no one has been held accountable for the death of 48 people. OHCHR has observed low levels of trust in the judiciary, mostly resulting from frequent abuses of due process, including undue delays, and a failure to ensure proceedings that comply with fair trial guarantees, including interferences with the judicial process. These findings stem from unfettered access to Government detention facilities, where OHCHR has been able to conduct numerous confidential interviews with detainees in various detention facilities over the reporting period.

10. Armed groups of the self-proclaimed 'Donetsk people's republic'[5] and the self-proclaimed 'Luhansk people's republic'[6] continued to detain individuals. During two permitted visits to places of deprivation of liberty, OHCHR was not given the opportunity to conduct confidential interviews with detainees, despite explicit requests to do so. This heightens concerns that the conditions in which individuals are deprived of their liberty by armed groups may amount to ill-treatment and that they may be subjected to torture, including sexual and gender-based violence. OHCHR emphasizes that any future visits must be conducted in line with international standards. OHCHR has noted the persistent vulnerability of people living in territory controlled by armed groups to arbitrary and selective sanctions through an expanding system of what the armed groups refer to as 'courts', 'judges', and 'prosecutors'. With the 'all for all' exchange process stalled, it is critical that rights of all people detained in connection with the conflict and of the nearly

[3] This is a conservative OHCHR estimate based on available data. See also II. B. Casualties.
[4] Conflict-Related Sexual Violence in Ukraine, 14 March 2014 to 31 January 2017 (accessible at: http://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf).
[5] Hereinafter 'Donetsk people's republic'.
[6] Hereinafter 'Luhansk people's republic'.

9,000 pre-conflict detainees who languish in detention facilities now under the control of armed groups be respected, including their requests to be transferred to Government custody.

11. Through undermining freedom of movement, the contact line continued to isolate and divide communities in conflict-affected areas. On a daily basis, on average between 16,000 and 25,000 civilians wait for hours in degrading conditions to cross one of only five available checkpoints in freezing temperatures. Long queues in heavily mined and poorly marked areas endanger civilians. These disproportionate restrictions, which affect more than 700,000 people per month, impact the ability of families and communities to maintain links, obtain basic goods, access public services and livelihoods, and check on their property. The divisive effect of these restrictions may hamper efforts to establish lasting peace in Ukraine. Limitations on freedom of opinion and expression in territory controlled by armed groups were tightened during this reporting period and exacerbated the isolation and division.[7]

12. During the reporting period, the Government adopted legislation that could improve access to social and economic rights across Ukraine, including for internally displaced persons (IDPs). Such improvements should apply to all people throughout the country, and stand to greatly improve the human rights and humanitarian situation of IDPs who fled territory controlled by armed groups and largely continue to face insecurity of tenure and shelter, and remained subject to onerous and disproportionate obstacles to obtaining their social entitlements.

13. OHCHR welcomes the Government's adoption of the Action Plan on 11 January 2017, defining state policy towards citizens living in territory controlled by armed groups. The Plan signals the intention to ensure that they have unimpeded access to basic goods as well as administrative and social services provided by the Government. OHCHR calls for its effective implementation as a means of fostering peace-building efforts and reconciliation.

14. OHCHR continued to document serious human rights violations in Crimea. They included extracting confessions of guilt from detained persons through torture and ill-treatment; subjecting individuals of certain groups to imposed psychiatric internment; interfering in the professional activities of defense lawyers; denying access to services to Crimean residents without Russian Federation passports; and discriminating on account of political views, sexual orientation and gender identity.

15. On 19 December 2016, the United Nations General Assembly adopted resolution 71/205 on the "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol", recalling resolution 68/262 on the "Territorial integrity of Ukraine" of 27 March 2014. Resolution 71/205 calls on the Russian Federation "as an occupying power" to bring an immediate end to "all the abuses against residents of Crimea," and to ensure proper and unimpeded access to the peninsula to regional and international human rights monitoring mechanisms. The incidents and issues in Crimea documented during the reporting period are assessed in light of applicable international human rights law and international humanitarian law.

16. During the reporting period, OHCHR continued to follow the judicial reform process and various legislative developments aimed at improving access to justice. OHCHR notes that the success of judicial reform requires the independence and accountability of the judiciary so that it can fully discharge its overarching role of protecting and upholding human rights.

17. OHCHR has supported this effort through technical cooperation and capacity-building activities, notably regarding the results of the first year of implementation of the National Human Rights Action Plan, which entail improvements to the judicial system.

[7] OSCE Representative condemns continued deterioration of media freedom and safety of journalists in areas not controlled by Ukrainian government, 24 January 2017 (accessible at: http://www.osce.org/fom/295336).

OHCHR conducted trainings on the Istanbul Protocol at the National Academy of the Public Prosecutor's Office of Ukraine for around 400 newly recruited regional prosecutors. OHCHR has also conducted targeted advocacy at the policy level with Government ministries, the Parliament, through the Parliamentary Commissioner on Human Rights, and with partners in the international community and civil society. OHCHR has contributed to the protection of human rights in armed group-controlled territory through interventions and advocacy work on the need to observe international standards. OHCHR continues to support the Government in its efforts to ensure greater human rights protection across Ukraine, including through the development of a new UNDAF of Ukraine (2018-2022).

# II. Rights to life, liberty, security, and physical integrity

## A. International humanitarian law in the conduct of hostilities

> *"We sleep in our clothes and winter coats. On Wednesday or Thursday in the morning* [1 or 2 February 2017] *my dog came to the basement and started yelping. Five minutes later the shelling started. It was around 6:30 or 7am. There was smoke, ash, and the sky turned black."*
>
> - 60 year-old woman living in 'Old' Avdiivka

18. Despite diplomatic efforts to ensure compliance with the Minsk agreements, reports of daily ceasefire violations by Ukrainian Armed Forces and the armed groups of the 'Donetsk people's republic' and 'Luhansk people's republic' in numerous hotspots along the contact line in both Donetsk and Luhansk regions persisted, with spikes in mid-November, late December 2016, and a sharp escalation of hostilities between 29 January and 3 February 2017. Despite renewed calls for ceasefire, intense shelling is still a daily occurrence in many locations. The situation in Donetsk and Luhansk regions remained tense and dangerous for civilians as the parties to the conflict continued to maintain positions in close proximity to villages and towns near the contact line in violation of international humanitarian law.[8] In particular, military and armed group personnel continued to embed their hardware in civilian neighbourhoods including homes, to carry out indiscriminate shelling and to use explosive weapons with wide-area effects in populated areas. The flare-up of hostilities in the Avdiivka-Yasynuvata-Donetsk airport triangle and in areas south of Donetsk between 29 January and 3 February caused 53 civilian casualties (See: B. Casualties). Indiscriminate shelling had a serious impact on civilian infrastructure, depriving tens of thousands of people of life-saving services, including heating, water and electricity, and triggering additional humanitarian needs. While the majority of civilians, in the areas of combat, hid in their basements, up to 500 people were evacuated from affected areas on both sides of the contact line, including 125 children, 48 of whom were unaccompanied.

19. OHCHR observed the continued use of civilian property by Ukrainian Armed Forces with military positions in many residential areas along the contact line, endangering civilians in these populated areas.[9] In November 2016, OHCHR visited Lopaskyne, for the fourth time in 2016, in response to residents' concerns that exchanges of fire had increased dramatically. Despite interventions with the head of the Civil Military Administration in Trokhizbenka,

[8] Article 13(1), Additional Protocol II to the Geneva Conventions stipulates that "the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations." This includes the obligation for each party to the conflict to avoid, to the extent feasible, locating military objectives within or near densely populated areas. The location of military objectives in civilian areas runs counter to this obligation. Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 23.

[9] Mariupol, Opytne, Zaitseve, Pivdenne, Kamianka, Novoselivka Druha, Verkhnotoretske, Avdiivka, Trokhizbenka, Kriakivka, Lopaskyne, Orikhove-Donetske, Zolote, Zhovanka, and Luhanske.

OHCHR observed that Ukrainian forces remained positioned in at least three homes and were using one house as an observation point.[10]

20. OHCHR collected consistent testimonies from residents that Ukrainian Armed Forces had fired from positions inside villages and towns, often attracting return fire.[11] Such conduct put civilians in the line of fire, and runs contrary to the obligation of the Ukrainian Armed Forces to take all feasible measures to spare civilians from harm.[12]

21. In a few cases, local administrations have responded to concerns that military presence exposes civilians to danger and harm. For instance, after a serious shelling incident on 29 August 2016 in Kamianka, Ukrainian Armed Forces moved their military positions from the town to nearby fields. Residents told OHCHR during the reporting period that since then, shells no longer hit the village. A couple who had remained in Avdiivka was relocated to a dormitory by local authorities "for the duration of the security operation."[13] On 27 December 2016, in Marinka, the military removed a checkpoint located 150 meters from School No. 2, following OHCHR and other actors' interventions with the Civil Military Administration. Such actions illustrate the concrete steps which Ukrainian authorities can take toward compliance with their obligations under international humanitarian law.

22. In territory controlled by the armed groups, residents continued to express distress with shelling by armed groups from densely populated neighbourhoods of Donetsk city, inviting return fire which often harms civilian infrastructure. OHCHR expresses its deep concern that a number of positions of 'Donetsk people's republic' armed groups are located within or near densely populated areas, endangering the lives of civilians.

23. OHCHR witnessed the devastating impact of explosive weapons with wide-area effects, such as mortars and artillery, including multiple-launch rocket systems, used by both the Ukrainian Armed Forces and armed groups in residential areas. The OSCE Special Monitoring Mission, being tasked to verify their withdrawal from the contact line, continued to report that the sides do not cooperate by not providing baseline information.[14] Moreover, the OSCE Special Monitoring Mission documented the presence of the afore-mentioned weapons in areas from which they should have been withdrawn.[15]

24. During the escalation of hostilities between 29 January and 3 February, critical civilian infrastructure and facilities sustained heavy damage due to indiscriminate shelling of populated areas with explosive weapons with wide-area effects. OHCHR confirmed that two hospitals, a polyclinic, a dental clinic, and a kindergarten were damaged by shelling in Makiivka and Donetsk city. OHCHR staff in Donetsk heard explosions over five days, from 29 January through the night of 2 February, and on 2 February saw a clearly marked ambulance in Donetsk that had been damaged by shrapnel.[16]

25. Indiscriminate shelling against military targets in densely populated areas also damaged water and electrical facilities and their supply networks, with knock-on consequences to the centralized heating system. In Donetsk region, shelling in January and February 2017 cut off the power supply to four water filtration stations and damaged water pipes, depriving 1.1 million residents on both sides of the contact line of access to water for periods of between one and three days, and compromised the sustainable supply of clean water to Mariupol city. In Avdiivka, Donetsk city, Dokuchaievsk, parts of Makiivka, and

[10] HRMMU interview, 26 November 2016.
[11] HRMMU interview, 12 December 2016.
[12] Article 13(1), Additional Protocol II to the Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 22.
[13] HRMMU interview, 26 December 2016.
[14] Latest from the OSCE Special Monitoring Mission to Ukraine (SMM), based on information received as of 19:30, 14 February 2017 (accessible at http://www.osce.org/ukraine-smm/300136).
[15] Package of Measures for the Implementation of the Minsk Agreements, 12 February 2015.
[16] HRMMU interviews, 6 January 2017, 17 January 2017, 31 January 2017, 2 February 2017.

Yasynuvata, many households had no heating during a period of below freezing temperatures and hospitals had no access to water, resulting in wide ranging humanitarian consequences and impacting residents' rights to health and an adequate standard of living.

26. On 22 November 2016, damage to a water pipeline running through the 'no-man's land'[17] left 40,000 residents of the Government-controlled town of Toretsk with no access to water for 10 days. Exchange of fire between Government forces in Avdiivka and the 'Donetsk people's republic' armed groups in Yasynuvata repeatedly disrupted the services of the Donetsk Filter Station which serves 345,000 people on both sides of the contact line.[18] Also, continuous shelling has obstructed the restoration of gas supplies for about 15,000 people living in the Government-controlled Marinka and Krasnohorivka.[19] The gas supply to the two towns stopped more than two years ago due to shelling damage.

27. OHCHR is concerned that the Government forces and armed groups position themselves near water facilities in Donetsk region. During the reporting period, OHCHR documented military or armed group presence about 200 meters from Donetsk Filter Station, in the immediate proximity of the water treatment facilities in Dokuchaievsk, at the pumping station in Maiorsk, and in close proximity to the backup reservoir in Avdiivka. This heightens the risk of damage of these objects, which are indispensable for the survival of the civilian population, as they provide water to 3.5 million people on both sides of the contact line. There has also been shelling in the vicinity of five water facilities close to the contact line that store, between them, almost 350 metric tons of chlorine, posing a major threat to public safety.

## B. Casualties

28. During the reporting period, levels of conflict-related civilian casualties[20] in the conflict zone of eastern Ukraine were rather low except for the period from 29 January to 3 February 2017, when the escalation of hostilities in Avdiivka/Donetsk/Makiivka area was accompanied by massive shelling of populated areas. During those six days, OHCHR recorded 53 civilian casualties: seven deaths and 46 injuries, all but two caused by shelling. Of them: 13 (three killed and 10 injured) were recorded in the Government-controlled territory and 40 (four killed and 36 injured) – in the territories controlled by armed groups.

29. In total, between 16 November 2016 and 15 February 2017, OHCHR recorded 130 conflict-related civilian casualties: 23 deaths (seven women, 15 men and a boy) and 107 injuries (26 women and a girl, 69 men and a boy, and eight adults and two children whose sex is not known). This is a 20 per cent decrease compared to the previous reporting period of 16 August – 15 November 2016 when OHCHR recorded 164 civilian casualties (32 deaths and 132 injuries).

30. Shelling from various artillery systems, multiple-launch rocket systems (MLRS) and tanks caused 65 per cent of all civilian casualties during the reporting period: 12 killed (five

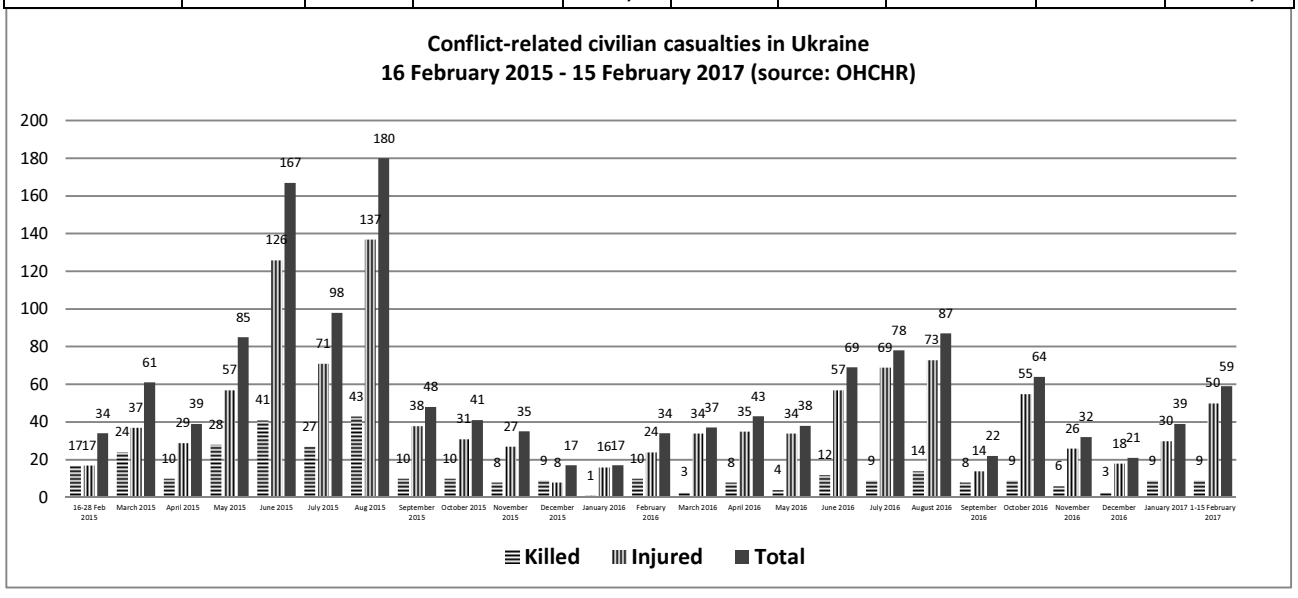
[17] The area between the Government and armed group checkpoints adjacent to the contact line, often called the 'buffer zone' or 'grey zone'.
[18] The area around Donetsk Water Filtration Station was shelled on 20 November, 1 December, 19 December, 23 December 2016, 11 January, 13 January, 29-30 January, and on 13- 15 February 2017.
[19] HRMMU interview, 12 January 2017.
[20] OHCHR investigated reports of civilian casualties by consulting a broad range of sources and types of information which are evaluated for their credibility and reliability. In undertaking documentation and analysis of each incident, OHCHR exercises due diligence to corroborate information on casualties from as wide a range of sources as possible, including OSCE public reports, accounts of witnesses, victims and other directly affected persons, military actors, community leaders, medical professionals, and other interlocutors. In some instances, investigations may take weeks or months before conclusions can be drawn. This may mean that conclusions on civilian casualties may be revised as more information becomes available. OHCHR does not claim that the statistics presented here are complete. They may be under-reporting civilian casualties given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods.

women, six men and a boy) and 73 injured (18 women and a girl, 43 men and a boy, and eight adults and two children whose sex is not known). Mines, explosive remnants of war, booby traps and improvised explosive devices caused five deaths (a woman and four men) and 23 injuries (five women and 18 men). Small arms and light weapons accounted for six deaths (a woman and five men) and 11 injuries (three women and eight men).

31. During the two years that have passed since the 12 February 2015 Package of Measures, OHCHR recorded 1,493 conflict-related civilian casualties in Ukraine: 367 deaths and 1,126 injuries. Relevant sex and age disaggregated data can be found in the tables below.

| Type of incident (weapon) | Killed | | | Injured | | | Total |
|---|---|---|---|---|---|---|---|
| | Adults | Children | Total | Adults | Children | Total | |
| Shelling (mortars, cannons, howitzers, MLRS and tanks) | 171 | 12 | 183 | 628 | 36 | 664 | **847** |
| Mines, ERW[21], booby traps and IEDs[22] | 99 | 14 | 113 | 322 | 42 | 364 | **477** |
| Small arms and light weapons | 28 | | 28 | 65 | 4 | 69 | **97** |
| Road incidents with military vehicles in the conflict zone | 8 | 1 | 9 | 4 | 2 | 6 | **15** |
| Unknown | 34 | | 34 | 23 | | 23 | **57** |
| **TOTAL** | **340** | **27** | **367** | **1,042** | **84** | **1,126** | **1,493** |

| | Adults | | | | Children | | | | Grand total |
|---|---|---|---|---|---|---|---|---|---|
| | Women | Men | Sex unknown | Total | Girls | Boys | Sex unknown | Total | |
| **Killed** | 103 | 205 | 32 | 340 | 7 | 18 | 2 | 27 | **367** |
| **Injured** | 308 | 610 | 122 | 1,042 | 26 | 52 | 6 | 84 | **1,126** |
| **Grand total** | **411** | **815** | **154** | **1,382** | **33** | **70** | **8** | **111** | **1,493** |




[21] Explosive remnants of war.
[22] Improvised explosive devices.

32. OHCHR estimates the total number of civilians killed during the whole conflict period (mid-April 2014 – 15 February 2017) to be over 2,000, with an additional 298 passengers killed as a result of the MH-17 plane crash. The number of conflict-related civilian injuries is estimated between 7,000 and 9,000.

33. In total, from mid-April 2014 to 15 February 2017, OHCHR recorded 33,146 conflict-related casualties in Ukraine, among Ukrainian Armed Forces, civilians and members of the armed groups. This includes 9,900 people killed and 23,246 injured.[23]

## C. Missing persons

34. In the absence of properly functioning coordination between Government bodies, and exchange of relevant information between the Government and armed groups, publicly available figures on the number of people missing in the conflict zone differ considerably, with some individuals possibly included on different lists, or whose disappearance may not be conflict-related. As of February 2017, the Security Service of Ukraine (SBU) reported 486 individuals (both civilians and military; 40 women and 446 men) missing in the conflict zone; the public database of the National Police of Ukraine contains the names of 1,336 missing persons (214 women and 1,122 men), although the whereabouts of many have long been established. As of February 2017, the 'Donetsk people's republic' armed groups had records on 465 missing persons, including 23 also on the list of the SBU; while the 'Luhansk people republic' reported 573 missing persons as of June 2016.

35. During the reporting period, there was some progress in the identification of human remains on both sides of the contact line. For example, among the three bodies found in a mass grave in Lutuhynskyi district (Luhansk region) in October 2016, one victim was preliminarily identified as a supporter of the armed groups reportedly detained by Ukrainian Armed Forces in August 2014. The identification of the two other bodies was pending as of January 2017.[24] The identity of a man whose decomposed body was recovered in Krasnolimanskyi district (Donetsk region) in September 2016 was established through a DNA test; he had reportedly been stopped at a checkpoint staffed by armed groups in June 2014.[25] The exact circumstances of the deaths of these individuals are not known, but available evidence indicates that they were killed.

36. The whereabouts of hundreds of other individuals, who went missing in the conflict zone, mostly in 2014, but also in 2015 and 2016, remain to be established. OHCHR has reasons to believe that the majority of those missing are dead, pending recovery and/or identification. In this regard, OHCHR welcomes the progress made in developing relevant legislation (see: VII. Legal developments and institutional reforms) and strongly urges the Government of Ukraine to speed up its adoption. OHCHR also believes that the systematic exchange of forensic data, including DNA samples, between the Government of Ukraine and armed groups would help to establish the fate of many of those missing, and would considerably decrease the uncertainty and suffering of their relatives. OHCHR notes however, that the Government of Ukraine maintains that it is not obliged to exchange

[23] This is a conservative estimate of OHCHR based on available data. These totals include: casualties among the Ukrainian Armed 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.

[24] HRMMU interview, 28 December 2016.

[25] HRMMU interview, 15 December 2016.

information with armed groups on the fate of missing persons, despite applicable customary international humanitarian law norms that prescribe that each party to a conflict must take all feasible measures to account for persons reported missing – including by an adverse party – and provide their family members any information it has on their fate.[26]

## D. Summary executions, disappearances, arbitrary detention, and torture and ill-treatment

> *"When I was held in the Odesa SIZO* [pre-trial detention facility]*, I thought that it was not possible for a human being to live in such bad conditions. When I was brought to the Kharkiv SBU, I thought – the Odesa SIZO is a good place to live. In Kharkiv, we could not talk to or complain to anyone. There was no law or order. We did not know if we would survive each night."*
>
> - Former detainee held incommunicado in the Kharkiv SBU

37. During the reporting period, OHCHR continued to receive and verify allegations of summary executions, disappearances, unlawful and arbitrary detention and torture and ill-treatment of Ukrainian soldiers, civilians and individuals associated with armed groups, committed in 2014, 2015 and 2016. These allegations referred to the armed groups and Government armed forces and law enforcement agents as perpetrators. Several victims and witnesses interviewed by OHCHR either did not want to share essential information, or did not consent to their accounts being publicly reported for fear of reprisals against their relatives or friends living on the opposite side of the contact line.

### 1. Summary executions

38. OHCHR collected compelling information indicating that armed groups and Government forces carried out killings, including summary executions of civilians and persons *hors de combat*, during the Ilovaisk battle in August 2014. Available evidence suggests that the killings, including executions, were not of massive or systematic scale. Allegations referring to such scale, including those broadly disseminated through the media, have not been supported by reliable witness accounts and/or forensic data.[27]

39. OHCHR also continued to gather information related to violations of international humanitarian law during the hostilities in Debaltseve in February 2015, such as the alleged execution of an injured *hors de combat* Ukrainian soldier by members of armed groups on 17 February 2015,[28] or the alleged execution of several *hors de combat* Ukrainian soldiers after their vehicle was ambushed on the road near the village of Lohvynove (Donetsk region) on 9 February 2015.

### 2. Enforced disappearances and abductions

40. OHCHR continued to document cases of individuals who are believed to have been disappeared[29] by Ukrainian Armed Forces or abducted by armed groups, mainly in 2014 and 2015. In May 2014, a man was detained at a checkpoint staffed by Ukrainian Armed Forces

[26] Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 117.
[27] To ensure comprehensive verification and corroboration of allegations and taking into account available resources, OHCHR will report on the findings related to the events in Ilovaisk in its future reports.
[28] HRMMU interview, 14 October 2016.
[29] According to the International Convention for the Protection of All Persons from Enforced Disappearance, an enforced disappearance is defined by three cumulative elements: (1) deprivation of liberty against the will of the person; (2) involvement of government officials, at least by acquiescence; and (3) refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person.

near the town of Pokrovsk (then Krasnoarmiisk, Donetsk region); his whereabouts have since been unknown.[30] Two men went missing in the city of Donetsk controlled by armed groups in June 2014 and were never seen again. A vehicle belonging to one of the victims was found in the possession of a former member of the armed groups.[31] Another man went missing in September 2014 while travelling to the Government-controlled city of Sloviansk (Donetsk region); he was taken by men with Right Sector insignia and has not been seen since then.[32] In October 2014, a man was deprived of his liberty in the town of Stakhanov (Luhansk region) controlled by a Cossack armed group, reportedly for a "pro-Ukrainian posting online". His fate and whereabouts are unknown.[33] OHCHR notes that investigations into such cases by Ukrainian law enforcement bodies have rarely produced any results.

41. Despite repeated assurances from various Government officials that SBU and other law enforcement agencies do not carry out enforced disappearances and secret detention, OHCHR continued to document such recent cases. On 12 December 2016, three detainees who remained in secret detention at the SBU premises in Kharkiv[34] were released near the Government-controlled town of Novoluhanske (Donetsk region). All three made their way to territory controlled by armed groups. They relayed that on 23 August 2016, they were transferred from the SBU premises in Kharkiv to another secret detention facility where they were kept until their release.[35] OHCHR notes that the Military Prosecutor's Office is carrying out an investigation into these allegations, has identified and interviewed five victims of enforced disappearance in SBU premises, and is gathering information from SBU officials.[36] OHCHR welcomes these developments and will continue to follow the investigation of these cases of unlawful detention by SBU in Kharkiv and other places, including Mariupol.[37] It is also concerned that in the context of the 'all for all' exchange (see paragraphs 57-59 below), unofficial detention facilities such as the SBU premises in Kharkiv have been, and may continue to be used to unlawfully detain people between their "legal clearance"[38] for exchange and the actual exchange.

### 3. Unlawful and arbitrary detention, torture and ill-treatment

42. In the course of prosecuting individuals for conflict-related charges[39], Ukrainian authorities continued to detain people arbitrarily. While such violations during the reporting period and through 2016 were recorded on a lesser scale and gravity compared to 2014 and 2015, OHCHR continued to document instances of individuals held for hours or days in

[30] HRMMU interviews, 1 December 2016 and 13 January 2017.
[31] HRMMU interviews, 10 and 16 January 2017.
[32] HRMMU interview, 20 January 2017.
[33] HRMMU interview, 25 November 2016.
[34] After the release of 13 people illegally detained on 25 July and 13 August 2016; see OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2016, paragraph 45.
[35] HRMMU interview, 18 December 2016.
[36] Information provided by the General Prosecutor's Office to HRMMU on 6 March 2017.
[37] On 6 March 2017, the SBU informed HRMMU in writing that the SBU in Kharkiv region is actively assisting the Military Prosecutor's Office in investigation No. 12014050380001645 dated 27.11.2014 (based on criminal offenses covered under articles 146-2 and 365-1 of the Criminal Code of Ukraine) into the allegations of unlawful detention and enforced disappearance by the SBU. Specifically, the SBU cited actions undertaken by the Military Prosecutor's Office on 24 February 2017, including investigators conducting a search of the SBU Kharkiv building.
[38] Individuals detained by the Government of Ukraine have legal procedural status under the Criminal and Criminal Procedure Codes which needs to be changed before they are exchanged. Government officials call this process "legal clearance", which in practice may include closing the investigation, sentencing to the time already spent in pre-trial custody or pardoning convicted person by the President of Ukraine.
[39] Members of armed groups or their supporters are mostly charged under the following articles of the Criminal Code of Ukraine: 109 (actions aimed at forceful change or overthrow of the constitutional order or take-over of government); 110 (trespass against territorial integrity and inviolability of Ukraine); 111 (high treason); 112 (trespass against life of a statesman or a public figure); 113 (sabotage); 114 (espionage); 115 (intentional homicide); 258 (act of terrorism); 258-1 (involvement in a terrorist act); 258-2 (public incitement to commit a terrorist act); 258-3 (creation of a terrorist group or terrorist organization); 258-4 (facilitating a terrorist act); 258-5 (financing of terrorism); and 260 (creation of unlawful paramilitary or armed formations). In some cases, articles 437 (planning, preparing and waging aggressive war or military conflict) and 438 (violation of law and customs of war) are applied.

detention without being officially arrested or charged, and without access to a lawyer. In such cases, this initial period of detention is usually the harshest, with detainees subjected to physical and psychological pain often amounting to torture or ill-treatment.

43. On 24 March 2015, SBU officers stormed a man's house in the town of Kurakhove (Donetsk region). They did not introduce themselves or show a search warrant. They threw the man into a minivan after tying his hands behind his back with plastic wire and placing a bag over his head. The man was brought to a basement in the town of Pokrovsk (then Krasnoarmiisk) where he was kept for eight days. SBU officers beat him on all parts of his body with a wooden hammer, their fists and rubber truncheons. They also threatened to torture his son-in-law and forced him to write a confession. On 31 March, the man was transferred to Mariupol SBU and placed in a basement shooting range.[40] There, he was officially informed of his arrest and interrogated without the presence of a lawyer. He was then placed at the Mariupol police temporary detention facility (ITT). On 2 or 3 April 2015, the man was transferred to the Mariupol pre-trial detention facility (SIZO) where a doctor recorded visible injuries on his body.[41] The SBU has denied these allegations, but noted that the complaints made by the victim regarding his unlawful arrest and ill-treatment have led to the initiation of an investigation by the Military Prosecutor of the Donetsk Garrison and by the Donetsk Regional Prosecutor's Office. OHCHR notes that the Military Prosecutor of the Donetsk Garrison has, however, not undertaken any concrete investigative steps and has attempted, on several occasions, to close the investigation.[42]

44. On 14 July 2016, armed officers stormed into a man's house in the town of Kostiantynivka (Donetsk region). A senior SBU investigator showed him a search warrant and the officers conducted a search in the presence of the legally required attesting witnesses. When the search was completed, the officers handcuffed and blindfolded the man and placed him in a car. On the way, the officers stopped on the side of the road and beat the victim with a wooden log to force him to confess to supporting the armed groups, which they filmed on a mobile phone. Upon arrival at the SBU premises in Kramatorsk, the man was interrogated in the absence of a lawyer. In the evening of the same day, he was taken to the hospital for medical examination and then brought to the Kramatorsk ITT. As the on-duty officer did not accept him, he was taken back to the hospital where a doctor certified that his health condition permitted his detention.[43] The SBU has denied these allegations.

*Armed groups*

45. During the reporting period, armed groups of 'Donetsk people's republic' and 'Luhansk people's republic' continued to detain individuals whom they suspected of affiliation with the Ukrainian Armed Forces or law enforcement institutions, or for having 'pro-Ukrainian' views. Current and former civil servants, including justice officials and representatives of local administrations from territory controlled by the Government, were

[40] An unofficial place of detention where many conflict-related detainees were kept; for more details, see paragraph 17 of the OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2016, and paragraph 33 of the OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2016.
[41] HRMMU interview, 29 November 2016.
[42] Krasnoarmiisk City District Court decision of 29.11.16 instructing the Military Prosecutor to take steps to investigate the victims' ill-treatment complaints available at http://reyestr.court.gov.ua/Review/63068642, and Krasnoarmiisk City District Court decision of 10.02.17 confirming that despite the Military Prosecutor failing to implement the instructions ordered by the same court on 29.11.16 concerning implementation of investigative steps requested earlier by the victims', it closed the investigation into the complaint on 27.12.2016 apparently without duly informing the victims (available at http://reyestr.court.gov.ua/Review/64703859). For further information, see: Artemivsk City District Court decision of 01.09.2016 quashing the Military Prosecutor's decision to refuse victim's status to one of the two victims (available at http://reyestr.court.gov.ua/Review/61098325); Krasnoarmiisk City District Court decision of 27.02.2017 quashing the Military Prosecutor's decision to close the investigation into the victims' ill-treatment complaints (only resulting part of the ruling is available so far at http://reyestr.court.gov.ua/Review/64996006).
[43] HRMMU interview, 29 November 2016.

often targeted. With the establishment of a database of 'pro-Ukrainian' individuals,[44] the number of individuals detained at checkpoints staffed by armed groups known to OHCHR increased during the reporting period.

46. In November 2016, a woman, the acting head of a Government-controlled village close to the contact line, was detained at a checkpoint controlled by armed groups of 'Donetsk people's republic'. She was released after being held for 30 days in temporary detention facility (ITT)[45] in Donetsk.[46] A man who used to work as a prosecutor in Luhansk before the conflict, and had moved to territory controlled by the Government to continue working as prosecutor, had recently retired and returned to Luhansk. There he informed the 'ministry of state security' of his return. When he did, in mid-November 2016, he was questioned for three hours. On 23 November, he was again called by the 'ministry' to answer additional questions, where he was detained and his family did not receive any information about his whereabouts until 18 December 2016, when he was released, but strongly 'advised' to leave territory controlled by the 'Luhansk people's republic'.[47]

47. Patterns of detention by the armed groups differ. The 'Donetsk people's republic' armed groups initially hold some individuals for 10 to 30 days in so-called 'administrative detention' in ITT and release them after finding them 'non-complicit', while others are detained for longer, often indefinite, periods of time and placed either in ITT, SIZOs, or other places of detention. The 'Luhansk people's republic' 'ministry of state security' holds individuals for an initial period, prior to transferring them to SIZOs. Several victims were subjected to intimidation and physical abuse, especially immediately after their apprehension. In the absence of effective access to places of detention in territory controlled by armed groups, OHCHR was not in a position to comprehensively monitor the situation of people detained by armed groups and had to rely on the accounts of those released. The lack of access to detainees heightens concerns that they may be subjected to torture and ill-treatment.

48. The cases of torture and ill-treatment by the armed groups documented by OHCHR during the reporting period (see below) mainly occurred in 2014 and 2015 due to delayed reporting by victims and witnesses owing to the fear of reprisals.

49. First in the summer of 2014, then in autumn 2014, in Luhansk, a man was detained by the 'Batman' and 'Leshii' armed groups. The first time, he was kept in the basement of the Engineering Institute at Zhukova Block, where he was locked in a small cell without windows, toilet or air ventilation system with some other 35 captives who were sleeping in shifts. The man witnessed an armed group member beating two detainees with a rubber sledgehammer, and another member shooting detainees with rubber bullets. The man also saw the same members of the 'Batman' armed group severely beating and calling a young man "Ukrop".[48] According to the witness, another young man was detained because he was wearing sneakers with blue and yellow (the colours of the Ukrainian flag) and was severely beaten.[49] The witness also once saw four young men and two young women who were bleeding, handcuffed, and hooded with plastic bags. He reportedly saw an ambulance car and heard paramedics stating that the victims were dead. In the autumn of 2014, in the basement of the former SBU building in Luhansk, which was controlled by 'Leshii' armed group, the man witnessed that detainees were being tortured and their tattoos were cut off with knives.

[44] HRMMU interview, 20 January 2017. Individuals detained at armed group check points and accused of being 'pro-Ukrainian' reported to OHCHR that the initial reason for their detention was that they were found in "a database" to which check point personnel had online access.
[45] A police facility used for temporary detention of individuals between their arrest and appearing before the court in order to verify legality of their detention.
[46] HRMMU interview, 18 November 2016.
[47] HRMMU interviews, 9 and 23 December 2016.
[48] Derogatory term used to refer to Ukrainians perceived to be harbouring nationalist loyalties.
[49] HRMMU interview, 28 December 2016.

50. OHCHR interviewed a Ukrainian soldier who was captured by members of an armed group during hostilities around Debaltseve in February 2015. During interrogation, he had some of his teeth knocked out. According to him, several other Ukrainian soldiers were subjected to beating, both during their capture and while in detention, and one soldier reportedly had his jaw fractured. He also reported that some soldiers were forced to ingest their insignia and any item bearing Ukrainian symbols.[50]

### 4. Access to places of detention

51. During the reporting period, OHCHR continued to advocate for full and unhindered access to places of deprivation of liberty and for opportunities for repeated confidential interviews with detainees by international monitors in accordance with international human rights law and international humanitarian law.

52. In the territory controlled by the Government, OHCHR continued to enjoy access to official places of detention[51]. During the reporting period, OHCHR thus visited SIZOs in Bakhmut, Dnipro, Kharkiv, Kyiv, Mariupol, Mykolaiv, Odesa, Poltava, Starobilsk, Vilniansk and Zaporizhzhia and interviewed in private 73 conflict-related detainees.

53. In territory controlled by armed groups, OHCHR was only allowed to visit the Seleznivka women's penal colony (Perevalskyi district, Luhansk region) and Luhansk SIZO, on 19 November 2016 and 7 February 2017 respectively. Although OHCHR was able to talk to several detainees during those visits, confidential interviews in line with international standards were not allowed. Visits to other detention facilities, requested by OHCHR, and specific requests to visit a number of conflict-related detainees were also not satisfied. Lack of access to persons detained prevents any independent oversight, and makes it impossible to assess the possible occurrence and extent of ill-treatment, acts of torture and sexual and gender-based violence in places of deprivation of liberty operated by armed groups. OHCHR emphasizes that any future visits must be conducted in line with international standards and OHCHR methodology.

### 5. Conditions of detention

54. During visits to detention facilities under the control of Ukrainian law enforcement agencies, OHCHR again noted that the general conditions of detention in some facilities did not satisfy applicable international standards. In particular, OHCHR identified systemic problems with the provision of medical care. Bureaucratic and financial impediments prevent the prompt transfer of detainees requiring medical care to city hospitals, resulting in their prolonged suffering, delayed diagnoses and treatment. Moreover, OHCHR documented seven cases suggesting that SBU officials had obstructed access to medical care for conflict-related detainees in particular.[52] In some cases, it appeared that SBU had pressured doctors to attest to the absence of any injuries requiring treatment and inquiry in order to clear a detainee for placement in custody, thereby depriving the person of medical treatment, especially for injuries caused by torture. The SBU has denied these allegations.

55. The Department of the National Preventive Mechanism (NPM) of the Ombudsperson's Office is to be commended for its systematic monitoring of detention facilities and initiation of relevant proceedings. OHCHR is concerned, however, about responsiveness of penitentiary authorities to the NPM findings. For instance, OHCHR documented a case of a conflict-related detainee who complained to the Ombudsperson's

[50] HRMMU interviews, 14 October 2016, 18 October 2016, 28 October 2016, and 2 November 2016.
[51] SIZOs, police temporary detention facilities (ITTs) and penal colonies.
[52] HRMMU interviews on 24 November 2016, 25 November 2016, 7 December 2016, three interviews on 22 December 2016, 17 January 2017.

Office about conditions at Vilniansk SIZO (Zaporizhzhia region) and was forced by SIZO management to sign a statement withdrawing his complaint.[53]

56. There is insufficient access to medical care in places of deprivation of liberty in territory controlled by armed groups. A nurse is usually on duty, but few medications are provided, making those deprived of liberty dependent on parcels occasionally allowed from their relatives. This adds to vulnerability of conflict-related detainees whose families live in Government-controlled territory. One woman deprived of her liberty in the premises of a former military unit in Donetsk allegedly died on 10 September 2016 after being tortured and denied medical care.[54] During the reporting period OHCHR received access to some places of deprivation of liberty located on the territory controlled by 'Luhansk people's republic', however, the conditions of the visit did not allow for an objective assessment of the treatment of detainees or conditions of detention.

### 6. Exchanges of individuals deprived of liberty

57. As of February 2017, the 'all for all' exchange, envisaged by paragraph 6 of the Package of Measures of 12 February 2015[55] remained stalled. The Government continued to urge the armed groups to release 109 individuals (four women and 105 men, both civilians and military), while the armed groups claimed that 47 of them were in their hands – 41 in territory controlled by the 'Donetsk people's republic' armed groups and six in territory controlled by the 'Luhansk people's republic' armed groups. It should be noted that the Government of Ukraine does not include some individuals confirmed to be held by the armed groups in its lists of individuals to be exchanged, such as those considered as deserters.[56] As of February 2017, the armed groups are seeking the exchange of 693 individuals by the Government of Ukraine.

58. On 29 December 2016, the Government of Ukraine released and transferred 15 individuals (seven women and eight men) to territory controlled by the armed groups. The armed groups also released and transferred three individuals (a man and two women) on 1 and 27 December respectively. This was done as "goodwill gestures" ahead of the 'all for all' exchange which was planned to take place at the end of the year.

59. OHCHR believes that regardless of the political and legal solutions found to implement the 'all for all' exchange, the rights of conflict-related detainees must be observed, and individual concerns taken into account. Unimpeded access of independent international monitors to all places of deprivation of liberty on both sides of the contact line is essential to assess the conditions of deprivation of liberty and identify possible cases of *incommunicado* detention as well as cases of torture and ill-treatment. OHCHR reiterates that there can be no impunity for perpetrators of war crimes in the context of 'all for all' release, especially under the amnesty foreseen under paragraph 5 of the Package of Measures.[57]

### 7. Transfers of pre-conflict detainees to the Ukrainian authorities

60. As of February 2017, OHCHR estimated the total number of pre-conflict detainees[58] in Donetsk and Luhansk regions at 9,500, with approximately 5,000 people in territory controlled by the 'Donetsk people's republic', and around 4,500 in territory controlled by the 'Luhansk people's republic' armed groups.

[53] HRMMU interview, 22 December 2016.
[54] HRMMU interviews, 18 January 2017.
[55] "The release and exchange of all hostages and illegally detained persons based on 'all for all' principle".
[56] HRMMU interview, 9 December 2016.
[57] "To ensure pardoning and amnesty by adopting a law which would prohibit prosecution and punishment in relations to the events that took place in certain districts of the Donetsk and Luhansk regions of Ukraine".
[58] Individuals who have been imprisoned since before the conflict.

61. During the reporting period, there was no transfer of pre-conflict detainees from territory controlled by the armed groups to the Ukrainian authorities.[59] Whereas in total some 130 had been transferred in the course of 2015-2016, at least hundreds of detainees who had filed requests for their transfer with the Ombudsperson's Office of Ukraine and the relevant 'authorities' of the 'Donetsk people's republic' and 'Luhansk people's republic', were awaiting for relevant arrangements to be made.

## 8. Conflict-related sexual violence

62. During the reporting period, OHCHR documented new cases of conflict-related sexual violence, which amount to torture or cruel, inhuman or degrading treatment. On 16 February 2017, OHCHR published a report on conflict-related sexual violence in Ukraine between 14 March 2014 and 31 January 2017. The report highlights the trends and patterns of sexual violence committed in the context of the conflict in the east, the ongoing impunity enjoyed by perpetrators, and the lack of a comprehensive programme to ensure that all survivors receive prompt and adequate access to an effective remedy, including gender-sensitive rehabilitation, restitution, compensation, satisfaction and guarantees of non-recurrence.[60] Cases of sexual violence are under-reported, due to stigma, trauma and the fear of retaliation. Based on the documented cases, there are no grounds to believe that sexual violence has been used for strategic or tactical ends. At the same time, some documented cases may amount to war crimes. The majority of the documented cases occurred when people, both men and women, were deprived of liberty by Government forces and armed groups. Beatings and electrocutions on the genitals, rapes, threats of rape, and forced nudity were used as methods of torture and ill-treatment to punish, humiliate, or extract confessions. Numerous checkpoints and the presence of Ukrainian Armed Forces and armed groups in populated areas have also increased the risk of sexual violence against civilians, mainly women. The deterioration of the economic situation, breakdown of community ties and displacement further contribute to the risk of sexual violence and trafficking. Due to shortcomings in national legislation and lack of capacity in law enforcement agencies and the judiciary, survivors often face inaction from the State authorities, causing them to be victimised twice. There is a significant lack of medical and psychological services available for victims, with little or no assistance available in rural areas. Access to services for survivors living in the areas controlled by armed groups is further limited due to restrictions imposed by armed groups.

[59] The most recent transfer of detainees took place in September 2016.

[60] Conflict-Related Sexual Violence in Ukraine, 14 March 2014 to 31 January 2017 (accessible at: http://www.ohchr.org/Documents/Countries/UA/ReportCRSV_EN.pdf).

# III. Accountability and administration of justice

> "*Both accused admit that they broke into the house when the victims were shot dead. One accused testified in court that he heard the other accused fire his gun and then saw the victims, dead. He also claimed that he had been ordered to go and find "separatists" by his commander. The other accused testified in court that he witnessed how the victims were shot. There were bullets from his army-issued gun all over their house. And now they are being acquitted of murder. How is that even possible?*"
>
> - Victim representative in the trial of two Ukrainian servicemen acquitted of murdering two civilian women

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

63. Accountability has yet to be achieved for the numerous human rights violations and abuses and violations of international humanitarian law committed in the context of the armed conflict in eastern Ukraine. Nevertheless, the SBU has undertaken steps to identify alleged perpetrators and interview victims of their crimes, despite lacking access to territory controlled by armed groups.

64. On 13 December 2016, the SBU reported that since the beginning of the conflict they interviewed almost 1,500 soldiers detained and released by the armed groups. According to the SBU, a majority testified to being subjected to torture and ill-treatment (including "amputation of limbs, strangling, electrocution, infliction of burning wounds, forcing under penalty of death to kill other captives, permanent beatings").[61] On 14 February 2017, the SBU reported detaining a member of the 'Donetsk people's republic' armed groups suspected of torturing Ukrainian soldiers.[62] However, such cases remain rare, with most individuals detained by the Ukrainian authorities in connection with the conflict prosecuted for their affiliation with the armed groups.

65. The Military Prosecutor's Office has also stepped up its investigations of armed group abuses, and is currently conducting an investigation into alleged killings and ill-treatment of detainees and civilians, including acts that may amount to torture, forced labour and pillage in Donetsk and Luhansk regions perpetrated by members of the 'Donetsk people's republic' and 'Luhansk people's republic' armed groups, under Ukrainian criminal law, international humanitarian law, and international criminal law. The Military Prosecutor's Office has identified over 3,000 and interviewed over 800 victims of armed group conduct in eastern Ukraine, most of whom were subject to ill-treatment in the course of detention.[63] In the course of the investigation, the Military Prosecutor's Office charged a 'Donetsk people's republic' armed group commander who has since been killed,[64] and a commander of the "All-Great Army of Don" armed group of the 'Luhansk people's republic' for issuing orders to inflict bodily injuries, torture and abuse on detainees.

[61] Briefing of the SBU Head of Office Oleksandr Tkachuk and Deputy Head of the SBU Main Investigation Department Vitalii Maiakov, 13 December 2016 (accessible at: https://ssu.gov.ua/ua/news/34/category/21/view/2435#sthash.L8AUgGVv.dpbs).

[62] According to information provided by the Prosecutor General's Office to HRMMU on 6 March 2017, on 10 February 2017, a man was arrested and charged for his role in detaining individuals in the former SBU premises in Donetsk (62 Shchorsa Street, Donetsk), a 'Donetsk people's republic' armed group place of detention.

[63] According to information provided by the Prosecutor General's Office to HRMMU on 6 March 2017, a pre-trial investigation into allegations of killings and ill-treatment of detainees and civilians, including torture, forced labour and pillage in Donetsk and Luhansk regions by members of the 'Donetsk people's republic' and 'Luhansk people's republic' armed groups has resulted in findings of violations of article 11, Additional Protocol I and article 4, Additional Protocol II to the Geneva Conventions. The information provided also indicates that the investigation is seeking to "identify all persons involved in committing the said war crimes."

[64] Commander of the 'Somali' armed group Mykhailo Tolstykh (call sign "Givi") was charged with ill-treatment and torture of captured servicemen of the Ukrainian Armed Forces. He was killed on 8 February 2017.

66. OHCHR welcomes the Government's efforts to investigate allegations of arbitrary detention and ill-treatment allegedly committed by SBU officers in Odesa and Zaporizhzhia, but notes that out of thirteen incidents of ill-treatment investigated, only one has led to an indictment.[65] OHCHR recalls that the Government bears primary responsibility to conduct full-scale investigations into human rights violations and prosecute their perpetrators, particularly when they have allegedly been committed by the security forces. Since its deployment in Ukraine in 2014, OHCHR has observed that allegations of arbitrary detention, torture and ill-treatment by SBU officials perpetrated in the course of pre-trial investigations are often disregarded by prosecutors. In one such case monitored by OHCHR, the Office of the Military Prosecutor said that there was insufficient information to launch an investigation.[66] In another case, although an investigation was launched by the Office of the Military Prosecutor, no concrete investigative steps have been taken.[67]

67. OHCHR also takes note of ongoing investigations and prosecutions of alleged abduction, torture and ill-treatment of civilians by members of the voluntary battalions, including the special police patrol company 'Tornado'[68], 24th separate storm battalion 'Aidar'[69] and 2nd special battalion 'Donbas'.[70] There are, however, serious concerns that the superiors who ordered, facilitated or otherwise contributed to the commission of the alleged crimes by the 'Aidar' and 'Donbas' battalions will continue to evade justice, while they enjoy impunity as acting Members of Parliament. OHCHR urges the Government to take all possible steps to ensure the victims' right to an effective remedy, as well as the rights of the accused to a fair trial.

68. OHCHR continued to monitor the trial of two SBU officers accused of killing Oleksandr Ahafonov on 14 August 2014.[71] Despite the involvement of police officers in the arbitrary arrest and transfer of Ahafonov to the SBU, none of the investigations conducted examined their culpability. As of 15 February 2017, both accused continued to serve as SBU officials. The case also raises concerns regarding command responsibility, as to date no charges have been brought against their superiors.

## B. Human rights impact of armed group structures

69. OHCHR continued to monitor the human rights impact of what the armed groups refer to as 'courts', 'judges', and 'prosecutors' in territory they control. OHCHR recalls that both 'Donetsk people's republic' and 'Luhansk people's republic' armed groups are bound by international humanitarian law, and *prima facie* run afoul of rules prohibiting sentencing and carrying out of executions without previous judgment pronounced by a regularly constituted court, offering essential guarantees of independence and impartiality.[72]

70. In December 2016, the 'Luhansk people's republic' announced that it was going to establish a 'supreme court' in early 2017. According to reports of the 'supreme court' of the

[65] On 12 October and 14 December 2016, the Office of the Military Prosecutor requested additional information from HRMMU on allegations of human rights violations committed by SBU elements in Odesa and Zaporizhzhia which were reflected in previous OHCHR reports. HRMMU provided the requested information. On 6 March 2017, the General Prosecutor's Office provided information to HRMMU that the Office of the Military Prosecutor in Odesa and Zaporizhzhia investigated 13 criminal cases of illegal detention, torture and ill-treatment of detainees by the SBU. Of these, 10 criminal cases were closed, in one case an indictment was submitted to court and in two cases pre-trial investigations are ongoing.
[66] Letter of the Office of the Regional Prosecutor of Poltava, 8 January 2017; HRMMU interview, 1 February 2017.
[67] HRMMU interviews, 2 December 2016 and 13 December 2016.
[68] For more information see 16th OHCHR report on human rights situation in Ukraine, para 74.
[69] For more information see 14th OHCHR report on human rights situation in Ukraine, para 56.
[70] For more information see 16th OHCHR report on human rights situation in Ukraine, para 73.
[71] For more information on the case, please see OHCHR report on Accountability for killings in Ukraine from January 2016 to May 2016, paras. 71-72.
[72] Article 3 common to the Geneva Conventions and Article 6, Additional Protocol II to the Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 100.

'Donetsk people's republic', in 2016 'courts of general jurisdiction' took up 16,919 criminal cases against 18,725 individuals (including 5,876 people deprived of their liberty) and 'decided' on 12,994 of these cases against 13,847 individuals. In 2016, each 'judge' of 'courts of general jurisdiction' of 'Donetsk people's republic' heard an average of 1,594 cases. Number of 'judges' in 'courts of general jurisdiction' has reportedly increased from 32 in 2015 to 47 in 2016.[73] In view of the limited number of 'judges' the total number of 'cases' heard raises concerns that essential guarantees and human rights standards pertaining to fair trial were not upheld.

71. Through interviews with civilians and military persons detained by the armed groups in relation to the conflict during the reporting period, OHCHR noted that legal counsel was not provided timely and on a systematic basis.[74] The office of the 'prosecutor general' of 'Donetsk people's republic' reported that they had 'convicted' three civilians[75] accused of espionage for transmitting information on the fortifications and checkpoints of the armed groups to Government forces, and 'sentenced' them to up to 12 years in prison.

72. OHCHR is concerned that 'sentences' imposed may amount to the war crime of sentencing without due process as these structures do not comply with the prohibition of sentences passed by a regularly constituted court affording all judicial guarantees.

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

> *"We decide what you should do, do you hear?"*
>
> - Member of 'Azov'-affiliated activist group to Kharkiv Regional Court of Appeal judge during hearing

73. In trials of individuals detained by Ukrainian authorities in connection with the armed conflict, OHCHR observed violations of key judicial guarantees. In particular, OHCHR documented systemic violations of the right to access a lawyer and to have adequate time and facilities for the preparation of defence.

74. Despite assurances by SBU and the Office of the Prosecutor General that their investigators would immediately inform the centre for free legal aid following every conflict-related arrest to ensure the detainee's right to access a lawyer,[76] OHCHR continued to receive credible reports that the first interrogation of detainees would often take place without the presence of a lawyer,[77] and that detainees had met their lawyer for the first time when they were brought to court for a hearing on measures of restraint.[78]

[73] "Analysis of administration of justice by 'courts of general jurisdiction' and 'specialized courts' of 'Donetsk peoples republic' in 2016" published in the webpage of the 'supreme court' of 'Donetsk people's republic' on 31 January 2017.
[74] HRMMU interviews, 18 January 2017, 18 January 2017, 18 January 2017, 20 January 2017, (UKR16/0816 – Kyiv team to add the interview date).
[75] Press releases of the 'prosecutor general's office' of 'Donetsk people's republic', 19 December 2016 (available at: http://gpdnr.ru/news/535-v-otnoshenii-grazhdanina-ukrainy-vynesen-prigovor-za-sovershenie-prestupleniya-predusmotrennogo-st-321-uk-dnr.html), 27 December 2016 (available at: http://gpdnr.ru/news/538-vynesen-prigovor-za-sovershenie-prestupleniya-predusmotrennogo-st-321-uk-dnr-shpionazh.html),) and 10 January 2017 (available at: http://gpdnr.ru/news/542-vynesen-prigovor-za-sovershenie-prestupleniya-predusmotrennogo-st-321-uk-dnr-shpionazh.html).
[76] On 6 March 2017, the SBU informed HRMMU that SBU personnel carry out detention in strict accordance with applicable legislation. In all instances, the occurrence of detention is reported to the legal aid centre and recorded as prescribed by the Criminal Procedure Code.
[77] HRMMU interviews, 17 and 18 January 2017.
[78] HRMMU interview, 1 February 2017.

75. Most conflict-related detainees cannot afford a lawyer and rely on State-provided legal counsel who often show little interest in their cases. A number of detainees complained to OHCHR that they would only see their lawyers in court[79] and that they were not adequately prepared for their defence.

76. In many of the described cases, the initial period of detention between the actual and officially-recorded apprehension is the harshest. During that time, detainees are often subjected to torture and ill-treatment and compelled to confess to acts and testify against themselves.[80] These forced confessions are subsequently used to justify their detention in the absence of a court warrant, and presented as evidence of voluntary surrender.[81]

77. In conflict-related cases, due process and fair trial violations are often compounded by delays in the trial process which heightens the risk of indefinite detention.[82] OHCHR notes that article 176[83] of the Criminal Procedure Code is frequently invoked by judges to automatically extend custodial detention for those charged with affiliation with armed groups, without assessing the justification[84] for continued detention[85] or the necessity of custodial detention.

78. OHCHR is also concerned about the failure by courts to examine the substance of plea bargain agreements reached between the prosecution and the accused in conflict-related cases. During the reporting period, OHCHR documented a case where the court accepted a guilty plea despite the manifest lack of evidence to the guilt of the accused.[86]

79. Moreover, OHCHR has observed and received reports of various civil society organizations exercising pressure on judges.[87] The Court of Appeal of Dnipropetrovsk region[88] and the State Judicial Administration of Odesa[89] informed OHCHR that some civil society organizations and activists would frequently harass and threaten judges. On 8 February, a video surfaced of activists harassing judges in a courtroom of the Court of Appeal of Kharkiv region.[90] On 21 December, OHCHR witnessed three 'pro-unity' activists verbally threatening, pushing and punching a judge of Prymorskyi District Court of Odesa after the hearing in a case of a member of 'pro-unity' groups accused of beating a police officer in a night club in Odesa on 4 August 2014. OHCHR is concerned that in the absence of proper security of courtrooms and protection of judges, such attempts to coerce the courts to take certain decisions amount to interference with the independence of the judiciary.

[79] HRMMU interviews, 12 December 2016 and 15 February 2017.
[80] HRMMU interview, 17 January 2017.
[81] According to the Criminal Procedure Code, a person may only be detained without a court warrant either when caught at the crime scene, or immediately after committing a crime, or where an eyewitness or cumulative evidence indicate that this particular person has just committed a crime.
[82] Human Rights Committee, General Comment 32, Article 14, para. 35. See, for example: United Nations Human Rights Committee, *Taright, Touadi, Remli and Yousfi v. Algeria*, Communication No. 1085/2002, UN Doc CCPR/C/86/D/1085/2002 (2006), para. 8.5; Human Rights Committee, *Rouse v. the Philippines*, Communication No. 1089/2002, UN Doc CCPR/C/84/D/1089/2002 (2005), para. 7.4; and Human Rights Committee, *Sobhraj v. Nepal*, Communication No. 1870/2009, UN Doc CCPR/C/99/D/1870/2009 (2010), para. 7.4; and European Court of Human Rights, *Deweer v. Belgium*, Application No. 6903/75 (1980), para. 42.
[83] According to article 176(5) of the Criminal Procedure Code, measures of restraint in the form of personal obligations, third party guarantee, home arrest or bail cannot be applied to individuals suspected or accused of crimes against territorial integrity (related to separatism) or inviolability of Ukraine, or against public safety (crimes related to terrorism).
[84] International Covenant on Civil and Political Rights, Article 9(3), General Comment 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, paras. 12, 36.
[85] E.g., hearing in Zaporizhzhia Regional Court of Appeal on 22 November 2016, hearing of Malynovskyi district court of Odesa of 22 November 2016, hearing in Novomoskovskyi city-district court of Dnipropetrovsk region of 8 November 2016.
[86] HRMMU interview, 19 December 2016.
[87] 16th OHCHR report on human rights situation in Ukraine, paras 86 and 91.
[88] Meeting with the President of the Court, 1 December 2016.
[89] Meeting with the Head of Administration, 13 January 2017.
[90] Video of the incident is available at: https://www.facebook.com/AndreiIlgov/posts/1357500804288948.

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

80. To date, there has been no meaningful progress in bringing to justice those responsible for the killings that occurred in the context of mass protests on Maidan in early 2014 and the events in Odesa on 2 May 2014. While the trial on the Maidan killings is protracted mainly due to large amount of evidence to be considered by the court, the 2 May violence trial is characterised by essential shortcomings of due process and fair trial guarantees.

### 1. Killings of protesters at Maidan

81. The trial of five 'Berkut' servicemen accused of killing 48 Maidan protestors on 20 February 2014, at Instytutska Street, in Kyiv, continued at Sviatoshynskyi district court, in Kyiv. The court continued collecting testimonies from victims' relatives and analyzing evidence regarding the circumstances of the deaths. On 17 January 2017, the court extended the custodial detention of the accused until 17 March 2017.

82. On 18 January, the Office of the Prosecutor General submitted to court information from the Office of the Prosecutor General of the Russian Federation, according to which 10 'Berkut' servicemen[91] (including a 'Berkut' commander[92]) charged with killing 48 protestors during the Maidan events had obtained citizenship of the Russian Federation while two others had been granted temporary asylum.

### 2. 2 May 2014 violence in Odesa

83. More than two and a half years since the violence in Odesa on 2 May 2014, nobody has been held accountable for the death of 48 people. The investigations have progressed selectively, and the ongoing trials have been subjected to undue delays and continued interference.

84. On 2 December 2016, following the replacement of one of the judges hearing the case considering the involvement of 20 'pro-federalism' supporters in mass disturbances in the city centre, the court ordered a retrial. At least five consecutive hearings on the merits[93] were postponed due to the absence of one of the accused and the civil claimants (the Odesa Russian theatre and the Odesa department of the National Police). OHCHR is concerned that the retrial will result in further delays, most negatively affecting five individuals detained since 2 May 2014.[94] According to OHCHR observations, the accused in this case are the victims of arbitrary detention, since their measure of restraint has been extended without sufficiently reasoned decision at least 17 times.[95] In parallel, 'pro-unity' activists continue interfering in the independence of judges in regards of the five 'pro-federalism' detainees. On 10 February 2017, the court postponed a hearing, while the National Guard had to evacuate the five detainees, because of mass disturbances organised by 'pro-unity' activists in the

[91] According to the Office of the Prosecutor General, 26 'Berkut' servicemen were accused of killing 48 protestors on 20 February 2014 in Kyiv. Only five of them have been located so far and placed in custody.
[92] He was arrested in early April 2014 along with two of his subordinates. However, on 19 September 2014, Pecherskyi district court of Kyiv changed the measure of restraint he was subjected to from custodial detention to house arrest. Since 4 October 2014, his whereabouts have been unknown. For more information, see 7th OHCHR report on human rights situation in Ukraine, covering the period from 17 September to 31 October 2014, para 160.
[93] Hearings of the Malynovskyi district court of Odesa, 24 and 25 November, 8, 16 and 22 December 2016.
[94] United Nations Human Rights Committee, General Comment 35 on Article 9 (Liberty and security of person), CCPR/C/GC/35, para. 37.
[95] For example, on 16 December 2016, the prosecutor filed a motion on extension of custodial detention for 60 days concerning five individuals, without proper justification of the necessity to do so. He only referred to general risks, such as escape, tampering with witnesses if released, or lack of social links.

Malynovskyi district court of Odesa.[96] Riot police stopped the disturbances; however none of the perpetrators was arrested.

85. The only individual accused of perpetrating a killing during the 2 May 2014 events is not in custody. He is a member of 'pro-unity' activist groups. Around 30-40 fellow members, sometimes in camouflage, attend all of his court hearings, exerting pressure on the defendant and victims' representative. On 5 January 2017, the court ruled to return the indictment to the prosecutor for revision, indicating unwillingness of the judges to hear this case on the merits.

86. The case concerning three officials of the State Emergency Service accused of leaving those trapped in the burning House of Trade Unions, which led to the deaths of 42 people, has also been subjected to undue delays. Only in January 2017, the prosecution finished the pre-trial investigation stage and sent the indictment to the Prymorskyi district court of Odesa, since in November 2016, the Odesa Regional Court of Appeal had returned the indictment to the prosecutor for revision.

# IV. Fundamental freedoms

> *"Every time I travel from Donetsk to a hospital in Zaporizhzhia with my disabled husband, his heart aches to see all these restrictions and injustice. He becomes weaker and weaker each time we travel through the contact line."*
>
> - Elderly woman residing in Donetsk

## A. Freedom of movement

87. According to available 2016 data, there was an almost 100 per cent increase in the number of people travelling across the contact line, with 8.5 million civilians crossing during the year compared to just over four million in 2015.[97] On average, between 16,000 and 25,000 civilians continued to face severe constraints on a daily basis. Long queues and the risk of shelling around entry-exit checkpoints (EECP) and the so=called 'zero checkpoints' which demarcate the beginning of the 'no man's land' remained a major concern. There were frequent security incidents at the checkpoints, including several that resulted in civilian casualties. People continued to spend the night in their vehicles queuing at the contact line, despite the considerable risk of shelling and mines and harsh winter conditions.

88. During the reporting period, 'Marinka' crossing point was reportedly shelled seven times in the evening[98] and once in the morning[99] when civilians were queuing to cross. The operations were halted for several hours. On 31 December 2016, a heating point established by the International Committee of the Red Cross (ICRC) for civilians near 'Luhansk people's republic' controlled check point in Stanytsia Luhanska sustained shrapnel damage. On 14 December 2016 one man was killed and two wounded as a result of a gunshot fired at the Government-controlled side of 'Maiorsk' EECP.

[96] Since November 2014, OHCHR has observed significant presence of male 'pro-unity' activists, often in paramilitary uniform, during custodial detention hearings in the 2 May violence trial on mass disturbances in the city centre. In most cases, the 'pro-unity' activists openly harass judges and the defendants, their lawyers and relatives. The police, while present, remains inactive and only separates the opposing parties.

[97] Analytical report by the NGO 'Foundation 101' released on 2 February 2017, based on data collected by the State Border Guard Service (accessible at: https://www.foundation101.org/news/20170202 )

[98] The State Border Guard Service of Ukraine reported the incidents on 15, 18 and 25 November 2016; 14 and 26 January 2017, and on 1 and 8 February 2017.

[99] State Border Guard Service report, 23 November 2016.

89. Cold temperatures exacerbated people's suffering. Severe conditions were observed at the pedestrian crossing in Stanytsia Luhanska (the only crossing in Luhansk region): 2,500 to 4,000 people per day have to wait in line for up to seven hours and then walk along a broken bridge. The slippery wooden ramps are inaccessible to the older persons, children and persons with disabilities without assistance. On 29 December 2016 and 19 January 2017, OHCHR visited the crossing and observed some improvements for the passage of civilians. On the side controlled by 'Luhansk people's republic' armed groups, a heating point was established by ICRC, an ambulance and paramedics were present, with more toilets made available. Similarly, on the Government-controlled side of the crossing route, an heating point was set up and accessible to people. At the four other operational checkpoints in Donetsk region, crossing is especially challenging for those relying on public transportation. OHCHR received complaints regarding insufficient and unpredictable buses to EECPs on the Government-controlled side. In December 2016-January 2017, people waited for buses for up to two hours in temperatures of 16 degrees Celsius below zero and exposed to possible shelling. Particular concerns were raised at the Hnutove-Pyshchevyk crossing point. In December 2016, the Ukrainian Armed Forces relocated a bus stop, making people walk for up to one kilometre along an icy road (compared to 400m before relocation).

90. The changes introduced by the Government to the Temporary Order on 28 November 2016 and 11 January 2017[100] brought little relief to up to 25,000[101] individuals crossing the contact line daily.[102] Thus, OHCHR reiterates the necessity to reconsider the restrictions of freedom of movement in line with international standards. Article 12 of 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, such restrictions must be based on clear legal grounds and meet the test of strict necessity and proportionality and be limited in time.

91. Civilians living in the vicinity of the contact line continued facing disproportionate restrictions to their freedom of movement and, consequently, access to basic necessities, including food, medical care and education. OHCHR observed particularly dire conditions in Pivdenne ('Chihari'[103]) and Opytne[104] villages. The roads around these villages are closed or mined, allowing only pedestrian movements with frequently imposed restrictions. There is no ambulance service to the villages and people must walk up to seven kilometres to buy food. In addition, residents have not been able to carry out agricultural activities due to explosive remnants of war (ERW) and mine contamination, constant risk of shelling and sniper fire. School-age children from 'Chihari' have to walk three kilometres every day to a school in Horlivka, controlled by 'Donetsk people's republic' armed groups.[105]

## B. Freedom of opinion and expression

92. While there have been attempts by the Government to improve access to information, freedom of opinion and expression on both sides of the contact line remains restricted and politically charged. OHCHR observed attempts by the Government and

[100] 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 Operational Headquarters of Management of the Anti-Terrorist Operation', and entered into force as of 21 January 2015.
[101] This is a conservative estimate of the average number of people crossing the contact line daily, based on the data provided by the State Border Guard Service.
[102] HRMMU visits to the contact line on 14, 17, 22, 23 December 2016, 11 and 17 January 2017, and 23 February 2017. HRMMU interview, 21 February 2017.
[103] 'Chihari' is the informal name of the southern part of Pivdenne settlement, which is governed by Toretsk city council but located beyond the last checkpoint of the Ukrainian Armed Forces and less than 500m from Horlivka (under the control of the 'Donetsk people's republic' armed group).
[104] Opytne straddles the contact line, lying approximately 5km south of Avdiivka and 2km north of Donetsk airport.
[105] HRMMU interview, 5 January 2017.

paramilitary groups[106] to curb anti-Ukrainian and pro-Russian rhetoric online, on television and in printed media across Ukraine. Armed groups continued to seriously limit freedom of opinion and expression and to detain and expel individuals on related grounds.[107]

93. Media professionals and some NGO representatives continued to complain about State and editorial censorship on content related to the conflict and the Russian Federation. For instance, in Kramatorsk, the local SBU convoked a journalist and a number of people "for talks" after they had organized a public flash mob, on 18 December 2016, to protest against the prohibition of broadcasting of some Russian television channels. In Odesa on 21 December 2016, a group of far right 'pro-unity' activists broke into a film studio and disrupted a teleconference between local 'pro-federalism' supporters and human rights defenders in Moscow. Thereafter SBU officers questioned its participants. The SBU maintains that such actions were lawful and that no illegal activities were taking place at the film studio. On 5 January 2017, in Chornomorsk, approximately 10 unidentified individuals in camouflage clothing broke into the office of a television operator and demanded that the latter stop airing the Russian television channel "Dozhd"[108] and switch to Ukrainian channels.

94. OHCHR welcomes the restoration of a transmission tower in Karachun, Donetsk region that had been damaged in hostilities in 2014. Its repair enabled 14 television channels and 13 radio programs to resume broadcasting in Donetsk region, including to territory controlled by armed groups. The Government has also elaborated a roadmap to broadcast Ukrainian TV channels across the whole armed-group controlled territory to ensure improved access to information for residents living beyond the contact line.

95. OHCHR will monitor the implementation of the Action Plan of the Cabinet of Ministers for "the temporarily occupied territories"[109] aimed at, among other things, increasing access to Ukrainian and international media on both sides of the contact line. The plan provides for trainings on sensitive information and coverage related to the conflict for media representatives. OHCHR has repeatedly recorded testimonies of journalists reporting on conflict-related developments regarding interference with their professional activities by the SBU, which infringe on the freedom of the media and limit objective reporting on the situation in eastern Ukraine.

*Territory controlled by armed groups*

96. Media representatives working in territory controlled by armed groups remained exposed to high levels of risk from indiscriminate fire during hostilities and some faced deliberate and targeted acts of violence perpetrated by the armed groups. They also continued to experience obstruction to their work, including denial of access to territory controlled by armed groups, censorship, unlawful detention and harassment.

97. On 25 November 2016, two male journalists working for "Dozhd"[110] were detained then expelled from territory controlled by 'Donetsk people's republic' armed groups, accused

[106] Paramilitary groups is a broad term used to designate volunteer battalions, ex-service personnel, and the so-called militant wings of political groups.
[107] "OSCE Representative condemns continued deterioration of media freedom and safety of journalists in areas not controlled by Ukrainian government," 24 January 2017.
[108] On 12 January, the National Radio and Television Council (NRTC) ordered Ukrainian broadcasters to stop airing reports by "Dozhd" within a month after the official publication of the decision. According to NRTC , "Dozhd" had infringed on Ukraine's sovereignty and territorial integrity when it aired an image showing the boundary with Crimea as the State border, suggesting that Crimea was part of the Russian Federation. On 21 January 2017, the Independent Media Council of Ukraine (IMC) confirmed the decision had been made in conformity with the three-pronged test for restricting freedom of expression. (Accessible at: http://detector.media/infospace/article/122475/2017-01-23-visnovok-nezalezhnoi-mediinoi-radi-shchodo-pravomirnosti-obmezhennya-retranslyatsii-telekanalu-dozhd-v-ukraini/).
[109] Decree of the Cabinet of Ministers of 11 January 2017, 'Action Plan for the implementation of certain principles of internal policy regarding territories temporarily not controlled by the Government of Ukraine'.
[110] Above-mentioned Russian television channel, widely regarded as independent.

of "illegal journalistic activity" and "biased and provocative" coverage of the conflict in Donetsk, "distorting the socio-economic and political situation.[111]

98. Social media is the only space where residents living in territory controlled by armed groups are able to freely exchange views on various topics. Yet, during the reporting period, two bloggers were detained by 'Luhansk people's republic' armed groups. Both were active on social media networks and regularly expressed criticism of the armed groups and of the political and socio-economic situation in Luhansk. The 'ministry of state security' of the 'Luhansk people's republic' stated that one of the bloggers was 'accused' of "inciting hatred (…)" and "espionage". OHCHR was denied access to the individuals.

## C. Freedom of association and freedom of religion or belief

99. The rights of individuals in territory controlled by armed groups to form, to join and not to join associations, including civil society, human rights, humanitarian, and religious organizations, continues to be limited. Moreover, the right of existing associations to pursue their activities has been consistently violated.[112] OHCHR continued to observe the expansion of associations in which civilians are often involuntarily included or mandated to participate by the armed groups. At the same time, independent civil society, including humanitarian organizations, remained unable to freely operate in territory controlled by armed groups. Restrictions also severely impacted the exercise of freedom of religion or belief, limiting the activities of minority Christian communities.

100. As previously reported by OHCHR, NGOs perceived by the armed groups as carrying out activities that challenge their authority or promote dissent, have faced restrictions to their activities, and have been harassed (see: V. A. Impact of restrictions on humanitarian access).[113] The head of a humanitarian organization providing assistance to people living in territory controlled by 'Donetsk people's republic' armed groups was detained for two weeks in December 2016.

101. In 'Luhansk people's republic' a recently created association ('Mir Luhanshchine', 'Peace to Luhansk') made membership mandatory for individuals based on their place of employment, thus violating the right not to be forced to join any association. This membership has put the individuals concerned in difficult situations. For instance, OHCHR interviewed a woman who expressed her fear of travelling to territory controlled by the Government because her personal data was published on the website of the 'Myrotvorets' ('Peacemaker') centre allegedly due to her membership in 'Mir Luhanshchine'.[114] OHCHR has previously raised concerns about the mandatory nature of membership in any association, as well as on data protection issues, where lists of members are published online.[115] OHCHR also noted that the armed groups have continued to establish youth organizations which have expanded in membership in the last six months, raising concerns that children and youths are also subjected to mandatory membership in armed group-affiliated associations, violating their rights to free and voluntary association.[116]

[111] Statement by the 'ministry of state security' of 'Donetsk people's republic', 25 November 2016, accessible online here: http://mgb-dnr.ru/news.php?id=20161125_00&img_num=0.
[112] See paragraph 113; Also see Human Rights Council resolution 15/21, preamble; Nowak, CCPR Commentary, 2nd revised edition, p. 499; Report of the Special Rapporteur on the situation of human rights defenders, A/64/226, para. 23.
[113] 16th OHCHR report on the human rights situation in Ukraine covering the period from 16 August to 15 November 2016, para. 116.
[114] HRMMU interview, 9 December 2016.
[115] 15th OHCHR report on the human rights situation in Ukraine covering the period from 16 May to 15 August 2016, para. 109.
[116] 'Youth for Peace' for example in Rovenky, Kirovsk, Antratsyt towns.

102. In territory controlled by armed groups, minority Christian communities continued to face restrictions to the exercise of their freedom of religion or belief, including threats.[117] In Horlivka, 'Donetsk people's republic' armed groups seized and closed a Seventh Day Adventists church on 16 November 2016 without any prior notification or justification. In September 2014, armed groups had interrupted a Seventh Day Adventist mass at the same location and had held the pastor in captivity for 20 days.[118]

103. The 'Luhansk people's republic' 'ministry of state security' publicly labelled the Baptist community a "non-traditional religious organization", and accused the church of conducting "destructive activities".[119] Such statements have raised serious concerns among the Baptist community, fuelling fears of discrimination based on religion or belief.

# V. Economic and social rights

> *"When the cold season is over, we will kick them out."*
>
> - Member of Zmiivskyi District Council, Kharkiv region referring to Roma IDP families living in Sheludkivka village

104. The reporting period featured legislative developments that should improve access to social and economic rights to countless families who have been affected by almost three years of conflict. The minimum wage doubled starting from 1 January 2017 and the State budget for 2017 envisages a significant increase in financing of life-saving medication.[120] The Cabinet of Ministers adopted two Plans of Action that are expected to have a positive impact on the situation of persons with disabilities and civilians living in territory controlled by armed groups.

105. The Action Plan on implementing recommendations of the UN Committee on the Rights of Persons with Disabilities[121] adopted on 28 December 2016 guarantees equal opportunities to all people with disabilities, including internally displaced persons. In addition to the Plan, a Special Representative of the Cabinet of Ministers on persons with disabilities was appointed.[122]

106. On 11 January 2017, the Cabinet of Ministers adopted an Action Plan addressing specific aspects relating to people living in territory controlled by armed groups.[123] Aimed at strengthening unity and trust in Ukraine, this plan foresees improvements at the contact line, including measures to prevent corruption, simplified access to State public services and education system, and unhindered access of vulnerable groups to the support provided by international humanitarian organizations, among other measures. OHCHR calls for the effective implementation of these plans as they should contribute to the elimination of discrimination, and foster reconciliation and peace-building.

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[117] 14th OHCHR report on the human rights situation in Ukraine covering the period from 16 February to 15 May 2016, paragraphs 91-96.
[118] HRMMU interview, 25 January 2017.
[119] Statement on the webpage of the 'ministry of state security' of self-proclaimed 'Donetsk people's republic' accessible at link: https://mgblnr.org/media/fdc60800-980e-4019-bcf0-e63b2c53db52.
[120] Public assessment made by the NGO "Patients of Ukraine" on 21 December 2016.
[121] The Decree of the Cabinet of Ministers 'On the Plan of Actions on the implementation of the recommendations of the UN Committee on the Rights of Persons with Disabilities', No. 1073-r, 28 December 2016 (accessible at: http://zakon3.rada.gov.ua/laws/show/1073-2016-%D1%80).
[122] Decision of the Cabinet of Ministers, 14 December 2016 (accessible at: http://www.kmu.gov.ua/control/publish/article?art_id=249587774).
[123] Decree of the Cabinet of Ministers of 11 January 2017, 'Action Plan for the implementation of certain principles of internal policy regarding territories temporarily not controlled by the Government of Ukraine', available online: http://zakon5.rada.gov.ua/laws/show/8-2017-%D1%80.

107. OHCHR welcomes steps of the Government towards greater protection of civilians injured and/or maimed due to hostilities or in acts qualified as terrorist attacks requiring norms for the proper documentation of such traumas.[124] Currently, such injuries are registered as household or work injuries. This deprives victims of recognition and exercising their rights to remedy and reparation. OHCHR reiterates the importance for civilians harmed in the conduct of hostilities to receive timely and adequate support, including necessary medical treatment, economic and social assistance for immediate rebuilding and long-term recovery. It is also important to recognize and provide redress for their losses. Regardless of which party to the conflict bears responsibility for the harm, the State must ensure that all victims have effective access to the rights to health, an adequate standard of living, and social security.

108. OHCHR is concerned that at least 160,000 pensioners residing in territory controlled by armed groups have been deprived of their pensions since November 2014.[125] OHCHR reiterates the obligation of the Government to progressively guarantee the right of everyone to social security. States must ensure that social protection is equally available to and accessible by all individuals, irrespective of where they choose to live and with particular attention afforded to persons living in areas experiencing armed conflict.[126] OHCHR recalls its repeated recommendation to the Government to de-link access to pensions from IDP registration and welcomes the efforts of the working group at the Ministry of Temporarily Occupied Territories and IDPs to elaborate a mechanism to resume payment of pensions to all eligible citizens of Ukraine.

109. The economic and social rights of people in the conflict-affected area have been further endangered by worrying developments on both sides of the contact line. In the last week of January and early February 2017, former members of the 'Aidar' and 'Donbass' volunteer battalions blocked railway lines connecting Government and armed group-controlled territories. The blockade cut off supplies crucial for the coal and metal industries, and for the energy sector. This risks affecting critical civilian infrastructure, including heating and electricity facilities, in eastern and potentially southern and central regions of Ukraine, and depriving at least 300,000 people of employment and livelihoods on both sides of the contact line.[127] OHCHR is also concerned about plans of the armed groups, announced on 10 February,[128] to impose 'external management' on private enterprises, including metal and coal companies that do not register as tax payers with the 'Donetsk people's republic' and 'Luhansk people's republic'. Such attempts endanger individuals working in hazardous and unregulated environments in the mining and steel industries in the armed group-controlled

[124] Decree of the President of Ukraine "On measures aimed at guaranteeing the rights of persons with disabilities", No. 553/2016 of 13 December 2016, para. 4 (accessible online: http://www.president.gov.ua/documents/5532016-20914).

[125] According to paragraph 2 of the Temporary Order on financing state institutions, paying of social benefits to the population and providing financial support to certain enterprises and organizations in Donetsk and Luhansk regions adopted by the Cabinet of Ministers on 7 November 2014, "in the areas of Donetsk and Luhansk regions where state authorities temporarily do not exercise their power, the allocations from State budget, budget of the Pension Fund of Ukraine, and budgets of other mandatory state social insurance funds will be made only after the state authorities regain control over these territories". Accessible online: http://zakon2.rada.gov.ua/laws/show/595-2014-%D0%BF.

[126] Committee on Economic, Social and Cultural Rights, General Comment No. 19, para 27. (accessible at: http://www.refworld.org/docid/47b17b5b39c.html).

[127] The Prime-Minister's of Ukraine opening speech at the meeting of the Cabinet of Ministers on 14 February 2017 (accessible at: http://www.kmu.gov.ua/control/publish/article?art_id=249740945).

[128] On 10 February 2017, the 'people's councils' of the self-proclaimed 'Donetsk people's republic' and the self-proclaimed 'Luhansk people's republic' adopted draft 'laws' on introducing amendments to their 'laws' "on tax system" in first readings. The draft 'laws' foresee that all business entities, 'non-residents' of 'Donetsk people's republic' and 'Luhansk people's republic' (ie. entities that are physically located in armed group-controlled territory, but not registered as 'tax payers' to the armed group budget, and which continue to pay taxes to the Government of Ukraine) shall be registered in 'DPR'/'LPR' as tax payers by 31 March 2017. Otherwise, temporary administrations would be introduced over such entities (to prepare them for further 'nationalisation') (For full statements, see: http://dnrsovet.su/v-narodnom-sovete-predlozhili-vnesti-izmeneniya-v-nalogovoe-zakonodatelstvo/ and https://glava-lnr.su/content/igor-plotnickiy-prokommentiroval-iniciativu-deputatov-narodnogo-soveta-lnr).

territory of Donetsk and Luhansk regions. OHCHR recalls that the seizure of private property in the context of armed conflict can amount to the war crime of pillage.[129]

## A. Impact of restrictions on humanitarian access[130]

110. The denial of access and adverse environment for humanitarian workers has severely limited their ability to implement humanitarian programmes, including income generating activities and protection. This has exacerbated access to livelihoods and employment in territory controlled by armed groups. According to the UN World Food Programme, up to 3.2 per cent of the population in territory controlled by armed groups have turned to high risk jobs such as illegal mining or have joined the armed groups to secure their livelihood.[131]

111. Due to restricted access for humanitarian workers to certain places and their inability to conduct demining activities, residents in the conflict-affected areas have been unable to undertake farming and agricultural activities due to unexploded ordnance (UXO) and ERW contamination and the constant risk of shelling and sniper fire. Some people have been injured while undertaking such activities.[132]

112. Those displaced and living near the contact line and in the territory controlled by armed groups have been particularly affected by restrictions on humanitarian assistance. Due to the low presence of humanitarian organizations and severely limited employment opportunities in rural areas, IDPs living in non-urban zones face substantially greater difficulties than those residing in cities.

113. Armed groups have taken steps to expel humanitarian actors and limit their activities. OHCHR is concerned that by banning the activities of a large international NGO, confiscating its property and humanitarian goods, 'Donetsk people's republic' armed groups have denied humanitarian relief to 140,000 beneficiaries. OHCHR recalls that denying[133] humanitarian access and relief operations restricts or prevents the enjoyment of relevant economic, cultural and social rights, such as the rights to food and water and to health resulting in serious human rights violations that can lead to international legal repercussions.

114. On 17 January 2017, the 'Luhansk people's republic' adopted 'regulations'[134] which introduced limitations on the transportation of goods. Unclear rules and lack of communication between the armed groups of the self-proclaimed 'republics' have already resulted in the delay of humanitarian deliveries to territory controlled by 'Luhansk people's republic' armed groups through territory controlled by 'Donetsk people's republic' armed groups. On 26 January, a humanitarian convoy of 23 trucks loaded with medicines and construction materials was denied passage at Novotroitske checkpoint for a day. Another humanitarian convoy, also of 23 trucks, could not enter the armed groups controlled territory from 3 to 14 February. OHCHR recalls the obligation by all parties to a conflict to allow and facilitate rapid and unimpeded passage of humanitarian assistance to civilians in need.[135]

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[129] Article 8(2)(e)(v), Rome Statute of the International Criminal Court.
[130] In line with OHCHR commitment No. 7 at the World Humanitarian Summit, OHCHR assesses the impact of restrictions on humanitarian access under the economic, social and cultural rights framework.
[131] Food Security and Vulnerability Analysis prepared by Food Security Cluster, February 2017 (accessible at: http://reliefweb.int/sites/reliefweb.int/files/resources/fslc_main_findings_food_security_analysis_february_2017.pd)
[132] HRMMU interview, 1 November 2016.
[133] Withholding of consent to humanitarian relief operations violates fundamental human rights as applicable in armed conflict, most notably the rights to bodily integrity (the right to life and the prohibition of torture, cruel, inhuman or degrading treatment) or prevents the satisfaction of the minimum core of relevant economic, cultural and social rights, such as the rights to an adequate standard of living, including food and water, and to health and medical services.
[134] The 'regulations' are accessible at: https://merlnr.su/docs/doc-sovmin/post_sm/post_sm_ved/1186-postanovlenie-ot-17012017-23-17.html.
[135] Article 18(2), Additional Protocol II to the Geneva Conventions; Henckaerts, Doswald-Beck, Customary international humanitarian law, Volume I, Rule 55.

## B. Social security and protection of internally displaced persons

115. As of 23 January 2017, according to the Ministry of Social Policy, there are 1.6 million registered IDPs in Ukraine.[136] The 2017 Humanitarian Response Plan for Ukraine indicates that there are between 800,000 and 1 million IDPs in Government-controlled territory, while others move frequently across the 'contact line'.

116. Within the reporting period, OHCHR noted a number of positive amendments to existing legislation to protect the rights of IDPs. For instance, access to free legal aid was extended to all those registered as IDPs.[137] In addition, the Cabinet of Ministers amended several Resolutions[138] which will ease some of the bureaucratic procedures for the registration of IDPs and allocation of social payments as well as the delivery of pensions to persons with disabilities.

117. OHCHR commends the October 2016 launch and subsequent operationalization of the Unified Information Database of IDPs.[139] This comprehensive account of the number of IDPs, with their place of residence and adequate profiling of their needs, will allow for better data-based planning to support them. OHCHR recognises that the system was launched only recently, with technical impediments, however proper training of the staff as well as adequate conditions for the functioning of the system need to be put in place.[140]

118. In November 2016, OHCHR began monitoring the manner in which the verification of social payments outsourced by the Ministry of Finance to a private company, "Delta M Ukraine", was conducted.[141] The company carried out verifications of IDPs' places of residence and had access to other confidential information such as the date of birth, registered place of residence in territory controlled by armed groups, actual place of residence, employment address and civil status.[142] It is of concern that an entity of private law received personal data of citizens from Governmental databases. While OHCHR recognizes the legitimate right of the Government to verify social payments, the process needs to be conducted in a manner compliant with international standards, including respective of personal data protection principles.

119. In parallel to these developments, OHCHR has noted that assistance projects targeting IDPs are mostly carried out in cities. At the same time, the integration of IDPs has been notably better in rural communities and some locations could serve as good examples of social cohesion projects.[143]

[136] Data available online: http://www.kmu.gov.ua/control/uk/publish/article?art_id=249675546.
[137] On 21 December 2016, Parliament adopted an amendment to the law on free legal aid. The amendments were made within draft law no. 5180, which entered into force on 5 January 2017.
[138] On 14 December, the Cabinet of Ministers of Ukraine approved amendments to its Resolutions No. 365, 505, 509 and 637 concerning the registration of IDPs, and financial and social assistance to IDPs.
[139] In December 2014, the Government initiated the transition from "paper" methodology used by the State Emergency Service to registering IDPs in an electronic system administered by the Ministry of Social Policy.
[140] According to a joint UNHCR and Right to Protection report, 85.5 per cent of social department staff did not have specific training on how to use the database, 71.1 per cent experienced difficulties due to software problems and 46.1 per cent due to old computer equipment in the departments (Full report: "Report on the results of monitoring use of the Unified Information Database of Internally Displaced Persons by Divisions of Social Protection for the Population in Dnipropetrovsk, Donetsk, Zaporizhzhia, Luhansk and Kharkiv regions, October 2016" accessible at: http://vpl.com.ua/wp-content/uploads/2016/12/Report_Unified-Information-Database-of-IDP.pdf.)
[141] 'Delta M Ukraine' was selected through a tender procedure and, according to the agreement concluded with a State enterprise operating under the Ministry of Finance, it was entrusted with carrying out verification services of place of residents of citizens by means of telephone calls.
[142] HRMMU interview, 8 December 2016.
[143] For instance, projects in rural areas in Cherkasy, Kirovohrad, Kyiv, Mykolaiv, Odesa, Sieverodonetsk and Zhytomyr regions facilitated by UNHCR and its implementing partners "Desiate Kvitnia", "CrimeaSOS", and "Nasha Hromada".

## C. Housing, land, and property rights

120. Lack of access to adequate housing[144] and compensation for damaged property remained among the most frequently cited problems affecting people living in the conflict zone. OHCHR notes that durable solutions that would ensure the integration of IDPs have not yet been developed and they continue to experience insecurity of livelihoods and tenure.

121. Lack of access to adequate housing has a direct impact on displacement patterns and returns to the conflict-affected area. According to the inter-agency vulnerability assessment report conducted in Government-controlled parts of Donetsk and Luhansk regions, issued in November 2016, 70 per cent of IDPs who permanently return to the conflict-affected area do so to protect their property and 22 per cent because they could not afford rent.[145] This illustrates the consequences of the lack of concrete steps by the Government to ensure durable housing solutions and successful integration.

122. OHCHR notes that some IDPs do not have access to State social support, such as utility subsidies, as they do not have the formal rental agreements with their landlords which are required under Ukrainian law but rarely provided as many landlords are reluctant to formalize arrangements with IDPs. Many IDPs conveyed to OHCHR that they would be forced to return to territory controlled by the armed groups due to rising utility rates, which they cannot afford due to limited access to livelihood opportunities. According to a recent study, 52 per cent of all legal requests to a humanitarian organisation from people living in conflict-affected areas related to housing subsidies and financial support for IDPs to cover utility expenses.[146] According to information from UNHCR, out of 62 per cent of IDPs renting apartments, only five to seven per cent had signed official rental agreements. Despite the fact that local councils occasionally allocate temporary accommodation to IDPs, most do not receive documents attesting their right to use the given premises.[147] This lack of secure tenure increases the risk that IDPs face forced evictions, homelessness, unsafe returns, and other human rights violations.

*Territory controlled by armed groups*

123. Armed groups have continued to carry out decisions aimed at 'regulating' property issues in territory under their control, with yet unclear consequences for people's property rights, particularly those of returnees or displaced persons. A moratorium on commercial real estate transactions continued to be applied. A 'state unitary enterprise one-stop registration centre' was established by armed groups in Luhansk in November 2016 to carry out an inventory of real estate. The so-called 'territorial offices' of the 'ministry of justice' of 'Luhansk people's republic' charge citizens for registering real estate. Moreover, a 'code of administrative offences' of 'Luhansk people's republic' came into force on 1 October 2016, allowing the 'state committee on land tenure' of 'Luhansk people's republic' to prosecute "citizens, officials and legal persons" for violations of the 'Code'.

## D. Discrimination against minorities

124. OHCHR collected information about violations of the rights to health, education, and work faced by people from Roma communities. Conduct such as segregation of Roma in

[144] ICESCR, Article 11; United Nations Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing. Adequate housing is housing that is affordable, habitable, accessible, proximate to facilities, culturally adequate, and offers security of tenure and access to essential services (including water, sanitation and energy).

[145] Inter-Agency Vulnerability Assessment report in Luhansk and Donetsk oblasts, November 2016 (accessible at https://www.humanitarianresponse.info/en/operations/ukraine/document/inter-agency-vulnerability-assessment-luhansk-and-donetsk-oblasts-reach).

[146] NRC survey from December 2016: Type of legal assistance requested by conflict-affected population.

[147] HRMMU interview, 21 December 2016.

schools and at medical facilities (e.g. specific rooms for Roma patients in hospitals in Svaliava and Mukacheve towns) is discriminatory on the basis of ethnic origin and a violation of equal protection. OHCHR has also received reports of Roma being denied adequate medical services, exposing them to physical danger and harm, which is considered a crime under Ukrainian legislation and is in contravention of international human rights law.[148] OHCHR noted absence of substantial progress in the investigation of the incident involving violent destruction of Roma houses and forced eviction of Roma families that took place in Loshchynivka village, Odesa region at the end of August 2016.[149] The police have not identified any alleged perpetrators of the destruction.

# VI. Human rights in the Autonomous Republic of Crimea

> *"It is impossible to call for help. On 25 December 2016, a person died in a cell 30 meters from me. No one provided any help. They said, "Sudden death, it happens." There are five people in a cell, with a small window near the ceiling. If it's opened, everyone freezes, but if it's shut, we can't breathe."*
>
> - Detainee held in pre-trial detention facility in Simferopol

125. On 19 December 2016, the United Nations General Assembly adopted resolution 71/205 on the "situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol". Recalling General Assembly resolution 68/262 on the "Territorial integrity of Ukraine" of 27 March 2014, resolution 71/205 refers to Crimea being under the "temporary occupation" of the Russian Federation, reaffirms the non-recognition of its "annexation", and affirms the applicability of the Geneva Conventions. It further calls on the Russian Federation "as an occupying power" to bring an immediate end to "all the abuses against residents of Crimea," and to ensure proper and unimpeded access to the peninsula. The resolution also invites the United Nations Secretary-General, through consultations with the United Nations High Commissioner for Human Rights and relevant regional organizations, "to seek ways and means" to ensure access to Crimea to regional and international human rights monitoring mechanisms. It also requests OHCHR to prepare a dedicated thematic report on the human rights situation in Crimea.

## A. Rule of law and administration of justice

126. The human rights situation in Crimea continued to be adversely affected by the imposition of Russian Federation law. OHCHR recalls that an occupying power must respect existing laws, which can only be repealed or suspended for the security of the occupying power, maintenance of law and order, or to give effect to the occupying power's obligations under international humanitarian law. This extends to the functioning of courts and tribunals, to ensure effective administration of justice. [150]

127. Russian Federation authorities in Crimea have also arbitrarily interfered with the professional activities and freedom of movement of two defense lawyers who regularly denounce human rights violations in Crimea and whose clients include people detained for their public opposition to Crimea's occupation.

[148] Conference organized by the Charity Fund 'Chirikli' and the Coalition of Roma NGOs 'Advocacy and Improvement of Roma Policy at the Local Level', 9 December 2016.
[149] 16th OHCHR report on human rights situation in Ukraine covering 16 August – 15 November 2016, para. 152.
[150] Article 43, the Hague Regulations, annexed to the 1907 Hague Convention respecting the Laws and Customs of War on Land, and article 64, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949.

128. On 25 January 2017, Russian Federation lawyer Nikolai Polozov was forcefully brought to the FSB office in Simferopol for interrogation and asked to disclose details of a case concerning his client, Mejlis deputy chairman Ilmi Umerov. Despite being pressed to cooperate, he refused doing so, invoking his duty to uphold the attorney-client privilege and was released after two and a half hours. On 26 January, Crimean Tatar lawyer Emil Kurbedinov was sentenced to 10 days of administrative arrest for disseminating extremist material. On the same day, his house and office were searched and materials seized. Mr Kurbedinov's clients include critics of Crimea's occupation and members of groups that are banned in the Russian Federation. The court found him guilty of failing to delete a 2013 social media post featuring a rally and emblem of the Hizb ut-Tahrir, a political organization which is legal in Ukraine but included in a list of terrorist organizations in the Russian Federation. Mr Kurbedinov was released on 5 February 2017 after serving his sentence, which in the opinion of OHCHR, contravenes the principle of legality by retroactively applying Russian Federation law to events preceding Crimea's occupation.[151]

129. These incidents amount to undue interference in the conduct of the professional activities of lawyers compromising the right to legal assistance. Governments must respect the confidentiality of all communications and consultations between lawyers and their clients, and ensure that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference.[152]

## B. Rights to life, physical integrity, liberty and security

130. During the reporting period, OHCHR documented new violations affecting the rights of detainees. They include extracting confessions through torture and ill-treatment and resorting to arbitrary psychiatric internment, selectively targeting specific groups. In addition, there is concern about the treatment of sick prisoners in Russian Federation penitentiary institutions after a second detainee from Crimea transferred to the Russian Federation died in three months (see paragraph 134). Cooperation between the Ombudspersons of Ukraine and the Russian Federation enabled the former to conduct a visit to Crimea in December 2016 and obtain access to three Crimean Tatar detainees, and should be further encouraged as a means to safeguarding the rights of persons in detention.

### 1. Torture and ill-treatment of detainees

131. On 20 November, two soldiers of the Russian Federation army serving in Crimea were arrested by representatives of SBU on a bridge near the administrative boundary line (ABL) between Crimea and mainland Ukraine.[153] The men face treason charges for defecting from the Ukrainian army in March 2014. OHCHR visited them in the pre-trial detention centre in Mykolaiv and spoke to their lawyers.[154] They claimed that excessive force was applied during their arrest, and that during their initial interrogation in the SBU building in Henichesk they were forced to confess under the threat of physical violence and without the presence of a lawyer.

132. Two days later, a former Ukrainian officer of the Black Sea Fleet was arrested by the Russian Federation Security Service (FSB) in Sevastopol. He was accused of providing

[151] In violation of articles 65 and 67, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949.
[152] See UN Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990, Principle 22 and 16.
[153] The circumstances of the arrests are disputed. The SBU claimed they had returned to mainland Ukraine to purchase higher-education diplomas in order to become officers in the Russian Federation military. According to a spokesman of the Russian Federation Black Sea Fleet, they were lured over to Ukrainian-controlled territory and immediately arrested by SBU.
[154] HRMMU interviews, 24 November 2016 and 16 January 2017.

classified information on the activities of the Black Sea Fleet to Ukraine's secret service and charged with treason. He is the ninth person in less than four months to have been arrested for spying or being involved in sabotage activities in Crimea. All have admitted their guilt in confessions that were filmed on video, apparently in the absence of a defence counsel. OHCHR has evidence that some of them were physically abused to make them confess, in disregard of the prohibition of self-incrimination and of torture or ill-treatment. Such conduct would also violate the presumption of innocence and make all the evidence obtained under duress inadmissible.[155]

133. Crimean courts ordered the temporary institutionalization in psychiatric hospitals of five men accused of being members of Hizb ut-Tahrir. This is the first time that such a measure is decided in relation to members of this organization, which has been singled out by the Russian Federation authorities in Crimea as posing a grave security threat. Courts reasoned their decisions by the refusal of the accused to cooperate with psychiatrists who had attempted to evaluate their mental condition in pre-trial detention. During the psychiatric assessment in pre-trial detention and at the hospital, doctors had asked questions that were not all related to a psychiatric expertise, including on their religious practice and political views. As was the case with Mejlis deputy chairman Ilmi Umerov, who was subjected to forced psychiatric internment in August 2016, the evaluations of all five men concluded that they were mentally sane and therefore accountable for their acts. OHCHR notes that in the absence of elements suggesting mental abnormality of the accused, the practice of forcible institutionalization could amount to ill-treatment.[156]

### 2. Human rights of Crimean detainees transferred to the Russian Federation

134. On 4 December, a man from Sevastopol who had been arrested in 2015 for theft died in a penitentiary institution in Tlyustenkhabl in the Republic of Adygea (Russian Federation) where he had been transferred in December 2015. Another man transferred from Crimea had died in the same penitentiary facility on 8 September 2016. According to sources in the prison, both men were suffering from serious ailments and were not provided with the necessary medical assistance, which would suggest negligent behaviour of the prison authorities amounting to a violation of the right to life and the right to health.

135. OHCHR recalls that international humanitarian law considers nationals of Ukraine held in Crimea as protected persons who, according to the Fourth Geneva Convention, "shall receive the medical attention required by their state of health".[157] In addition, transferring Crimean detainees to the Russian Federation violates international humanitarian law provisions which explicitly prohibit the forcible transfer or deportation of protected persons from occupied territory to the territory of the occupying power.[158]

### 3. Cooperation between Ukrainian and Russian Federation Ombudspersons in relation to detention issues

136. Following contacts established in 2016, the Ukrainian and Russian Federation Ombudspersons continued their cooperation to solve the issue of the transfer of Ukrainian prisoners held in Crimea to mainland Ukraine. As of 15 February 2017, they were examining the situation of seven prisoners sentenced under Ukrainian law before March 2014 who wished to serve their term in mainland Ukraine.[159]

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[155] Article 15, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
[156] Special Rapporteur on Torture, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Human Rights Council, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013), para. 70.
[157] Article 76, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949.
[158] Article 76, Geneva Convention (IV), which elaborated on the general prohibition contained in article 49, Geneva Convention (IV).
[159] HRMMU spoke to Ms Lutkovska on 13 January 2017.

137. In addition, on 26 December 2016, the Ombudsperson of Ukraine, accompanied by the Russian Federation Ombudsperson, visited three Crimean Tatars - Akhtem Chiygoz, Ali Asanov and Mustafa Degirmenci – who have been held in custody on the peninsula since 2015. Later that day, the two Ombudspersons jointly visited two Russian Federation servicemen held in Mykolaiv. The three Crimean Tatars are the only ones still in detention out of seven Crimean Tatars arrested in 2015,[160] who were accused by the Russian Federation authorities in Crimea of organizing and participating in violent protests on 26 February 2014. They did not complain to the Ukrainian Ombudsperson about their conditions of detention but claimed the charges against them were politically motivated. OHCHR has serious doubts about the impartiality of criminal proceedings initiated against them. Indeed, all the accused are pro-Ukrainian supporters belonging to the Crimean Tatar community, while the clashes involved representatives of pro-Russian groups as well, and left dozens of people injured on both sides. It must also be recalled that pursuant to the Fourth Geneva Convention, penal laws of an occupied territory should as a rule remain in force while the retroactive application of penal laws of an occupying power is prohibited.[161]

## C. Right to non-discrimination

138. New cases of discrimination linked to the 2014 decision of the Russian Federation authorities to impose automatic Russian Federation citizenship to Crimean residents[162] have emerged. The victims have either expressly rejected Russian Federation citizenship[163] or, without having done so, have refused to take up Russian Federation passports. The examples brought to the attention of OHCHR during the period under review concern cases of discrimination in relation to the right to work and access to public services on grounds of political opinion. The imposition of automatic Russian Federation citizenship to protected persons in Crimea and discrimination in access to work and to health care against those that have rejected citizenship, is analogous to compelling the residents of the occupied territory to swear "allegiance to the hostile power" which is prohibited by the Hague Regulations.[164] Other groups, such as lesbian, gay, bi-sexual and transgender (LGBT), struggle to overcome deeply entrenched prejudices, which are unrelated to the citizenship issue, but also result in differential treatment violating the right to equality before the law.

[160] The seven Crimean Tatars who were arrested in 2015 are: Akhtem Chiygoz (on 29 January 2015), Eskander Kantemirov (on 7 February 2015), Eskander Emirvaliev (on 18 February 2015), Talyat Yunusov (on 11 March 2015), Ali Asanov (on 15 April 2015), Eskender Nabiev (on 22 April 2015) and Mustafa Degirmenci (on 7 May 2015). Akhtem Chiygoz, Ali Asanov and Mustafa Degirmenci are currently in pre-trial detention. Eskander Emirvaliev is not in custody but under written commitment not to leave his place of residence. Eskander Kantemirov was bailed out on the guarantee by Eskander Bilyalov, Adviser to the so-called Plenipotentiary Representative of the President of the Russian Federation in Crimea Federal District, chairman of Sakskiy Regional *Mejlis*. On 8 May 2015, Talyat Yunusov was released on bail under the same conditions. On 18 June 2015, Eskender Nabiev was released on bail.

[161] See articles 64, 65, 67, and 70, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949.

[162] According to Russian Federation legislation, Ukrainian citizens and stateless persons with permanent residency in Crimea or in the City of Sevastopol as of 18 March 2014 were automatically considered citizens of the Russian Federation unless they notified the Russian Federation authorities in Crimea, within one month from that date, about their intention to retain their or their children's citizenship or to remain stateless. See Article 4 § 1 of the Constitutional law No. 6-ФКЗ of the Russian Federation "*On admission of the Republic of Crimea into the Russian Federation and creation of new constituent entities within the Russian Federation – the Republic of Crimea and the federal City of Sevastopol*", adopted on 21 March 2014.

[163] According to the Migration Service of the Russian Federation, 3,427 Crimean residents applied in person to reject Russian Federation citizenship. See http://tass.ru/politika/1138965.

[164] Article 45, Hague Regulations, annexed to the 1907 Hague Convention respecting the Laws and Customs of War on Land.

### 1. Discrimination in relation to the right to work

139. On 1 December 2016, OHCHR interviewed a former research scientist from the Simferopol Botanic Garden who declared he had been fired from his position due to his formal rejection of Russian Federation citizenship. He was dismissed in spite of the fact that, after renouncing Russian Federation citizenship and becoming a foreigner, the victim had received a five-year residency permit, which gave him, in accordance with Russian Federation law, the same legal status as citizens of the Russian Federation as regards labour relations, socio-economic entitlements and taxation.

140. For over a year, he had been pressed by his employer to withdraw his declaration rejecting Russian Federation citizenship, and warned that "demonstrating an anti-Russian position" would have consequences. In 2015 he was transferred to another department and denied a regular annual promotion with no explanation. On 8 June 2016, he was verbally informed that he had "no right to work" any longer in the company and was officially dismissed on 8 August 2016, together with two other colleagues - one who had also rejected Russian Federation citizenship and another who was openly expressing pro-Ukrainian views. All three were fired in formal conformity with Russian Federation legislation and decided not to challenge the decision.[165]

141. OHCHR recalls the entitlement of all people under international human rights law to equal and effective protection against discrimination on grounds of political opinion.[166]

### 2. Discrimination in relation to the right to health

142. During the reporting period, OHCHR documented a case confirming that without a Russian Federation passport, the availability and accessibility of health care in Crimea is restricted. This example is not isolated and corresponds to a pattern mentioned to OHCHR by several interlocutors and documented in two previous cases[167].

143. In September 2016, a Crimean resident was denied treatment at the Yevpatoriia city hospital for a serious eye condition. He was told that he did not have health insurance, which is contingent upon possession of a Russian Federation passport. According to Russian Federation legislation, individuals who do not have Russian Federation passports are entitled to free medical services only in emergency cases.[168] OHCHR's interlocutor had refused to get a Russian Federation passport due to his political opinions, namely his opposition to the Russian Federation presence in Crimea.[169] The refusal to provide medical assistance on account of one's origin or status, such as citizenship, constitutes a violation of the internationally protected right to the highest attainable level of physical and mental health and of non-discrimination.[170]

[165] HRMMU interview, 1 December 2016.
[166] Article 2(1), International Covenant on Civil and Political Rights entitles all individuals to the rights recognized in the Covenant, without distinction of any kind, including political or other opinion.
[167] See 13th HRMMU report on the situation of human rights in Ukraine, covering the period from 16 November 2015 to 15 February 2016, paragraph 195; and 14th HRMMU report on the situation of human rights in Ukraine, covering the period from 16 February to 15 May 2016, paragraph 202.
[168] Russian Federation Government Resolution No. 186 (6 March 2013).
[169] HRMMU interview, 4 November 2016.
[170] Article 12.2(d) of the ICESCR provides that State Parties shall take steps to "assure to all medical service and medical attention in the event of sickness". Article 27 of the Fourth Geneva Convention provides that "all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion" and that "they shall at all times be humanely treated".

### 3. Discrimination on the basis of sexual orientation and identity

144. OHCHR interviewed[171] a gay transgender man from Sevastopol who had moved to Kyiv in June 2015 after he and his partner were attacked in Sevastopol by four young men shouting homophobic slurs. The victims did not report the case to the police. According to the witness, the attack was related to the victim's pro-Ukrainian position expressed through social media rather than his sexual orientation which, according to him, was an "aggravating factor". While LGBT people do not, according to him, face targeted persecution from the Russian Federation authorities in Crimea, the police do not react to complaints of harassment from victims of abuse.

145. Negative or hostile public attitudes are compounded by the legal framework of the Russian Federation which criminalizes so-called "homosexual propaganda". The imposition of Russian Federation legislation to the occupied territory runs counter to article 43 of the Hague Regulations which requires that in its activities an occupying power must respect, unless absolutely prevented, the laws in force in the country. The situation of transgender people in Crimea is, according to the OHCHR interlocutor, even more difficult than that of homosexuals. He noted that transgender people are often treated as ill and face stigma, discrimination and denial of care based on what is perceived to be their gender identity. Mention was made of a case when an endocrinologist refused to deliver medical prescriptions for drugs used by a transgender person for hormonal therapy.

# VII. Legal developments and institutional reforms

146. On 16 January, the Government of Ukraine instituted a contentious case at the International Court of Justice (ICJ) against the Russian Federation with regard to alleged violations of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999 and the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965.[172] The Government of Ukraine also submitted an urgent request for provisional measures to prevent further aggravation or extension of the dispute between the parties pending determination of the case on its merits.[173] Public hearings on provisional measure have been scheduled for 6-9 March 2017.

## A. Judicial reform

147. Pursuant to the constitutional amendments on the judiciary of 2 June 2016, Parliament adopted a law 'On the High Council of Justice'[174] which entered into force on 5 January 2017.[175] The High Council of Justice thereby acquired the right to decide on the selection, dismissal, transfer,[176] immunity and disciplinary liability of judges. It will therefore play an essential role in upholding the professionalism and independence of judges. It will also publish yearly reports on the independence of judges, in cooperation with judicial self-government bodies and civil society organizations.

[171] HRMMU interview, 14 December 2016.
[172] International Court of Justice, "Ukraine institutes proceedings against the Russian Federation and requests the Court to indicate provisional measures," 17 January 2017 (accessible at: http://www.icj-cij.org/docket/files/166/19310.pdf).
[173] International Court of Justice, "Request for the Indication of Provisional Measures of Protection Submitted by Ukraine," 16 January 2017 (accessible at: http://www.icj-cij.org/docket/files/166/19316.pdf).
[174] Law of Ukraine 'On the High Council of Justice', No. 1798-VIII of 21 December 2016.
[175] On 12 January 2017, the High Council of Justice adopted a decision 'on the establishment of a Commission on the reorganization of the High Council of Justice'.
[176] According to the transitional provisions, the High Council of Justice will obtain the power to decide on the transfer of judges only as of 30 September 2018. Until then, the President will retain this power.

148. The new composition of the High Council of Justice reflects recommendations by the Venice Commission[177] on strengthening guarantees of its independence. Indeed, the constitutional amendments and law provide that a majority of its members should be judges elected by their peers.[178] Under the previous Constitution, the majority of Council members were elected by non-judiciary institutions, creating a risk of politicisation of this body. The composition of the Council will be fully renewed by 30 April 2019. Currently, it is functioning with 15 members, the majority of whom are judges.[179]

## B. Legislative developments

### 1. Free legal aid

149. The transitional provisions of the law 'On the High Council of Justice' introduced amendments to national legislation on 21 December 2016. The scope of the law on free legal aid[180] was widened to include new categories of beneficiaries, including IDPs and people who have applied for IDP or war veteran status.[181] The amendments also expanded the number of people eligible for free legal aid services by raising the minimum income threshold for low-income beneficiaries. OHCHR welcomes these developments which will enhance access to justice.

### 2. Draft legislation on missing persons

150. Two alternative draft laws 'On the legal status of missing persons' were registered in Parliament, on 22 November[182] and 5 December[183] 2016, to address the situation of persons unaccounted for as a result of an armed conflict, public disturbances, or natural or man-made disasters.

151. A welcome development is that both draft laws provide for the establishment of an independent body, the Commission on Missing Persons which would be responsible for coordinating and monitoring the activities of public authorities and for cooperating with various stakeholders, including local and international institutions, to clarify the fate and whereabouts of the missing. However, the 5 December 2016 draft contains important aspects, which the 22 November 2016 proposal does not include, such as explicit reference to the concept of 'enforced disappearance' and to the need for financial assistance to family members of missing persons.

152. However, both texts present shortcomings which would hamper the effective delivery of the mandate of the Commission in accordance with relevant international

[177] See CDL-AD(2013)014, Opinion on the Draft Law on Amendments to the Constitution, Strengthening the independence of Judges and on the Changes to the Constitution proposed by the Constitutional Assembly of Ukraine (14-15 June 2013), para. 35; and CDL-AD(2010)026, Joint Opinion on the Law on the Judicial System and the Status of Judges of Ukraine, by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe (Venice, 15-16 October 2010).
[178] According to the constitutional amendments, 10 members of the High Council of Justice will be appointed by the Congress of Judges of Ukraine from among the current or former judges. The other 10 members are to be appointed by the Congress of Attorneys of Ukraine, the all-Ukrainian Conference of Prosecutors, the Congress of Legal Educational and Scientific Institutions, the President and the Parliament. In addition, the Head of the Supreme Court is an *ex officio* member of the High Council of Justice.
[179] According to the law, in order for the High Council of Justice to operate, no less than 15 members must be appointed, the majority of whom must be judges or former judges. A decision to apply to the President to appoint a judge requires the approval of at least 14 members. All other decisions of the Council are adopted by a simple majority of votes with a quorum of 11 members required.
[180] Law of Ukraine 'On the free legal aid', No. 3460-VI of 2 June 2011.
[181] Law of Ukraine 'On the status of war veterans and their social protection guarantees', No. 3551-XII of 22 October 1993.
[182] Draft law 'On the legal status of missing persons', No.5435 of 22 November 2016.
[183] Draft law 'On the legal status of missing persons', No.5435-1 of 5 December 2016.

standards.[184] They do not foresee the establishment of a National Information Bureau in the event of an armed conflict or in case of occupation with a view to ascertaining the fate of missing people in territory not controlled by the Government. No mention is made of the need to involve families of missing persons in the work of the Commission. Furthermore, there are no provisions aimed at facilitating support, rehabilitation and reintegration of missing persons returning after a prolonged period of absence. Moreover, there is no reference to remedies for violations of the right of relatives to know the fate of missing persons. OHCHR recalls that when enacting national legislation on missing persons, the Government should ensure effective investigation and prosecution of enforced disappearance[185] and other serious human rights violations linked to missing persons.

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

153. During the period under review, and based on its monitoring of the situation, OHCHR continued bolstering its technical cooperation activities, assisting the Government of Ukraine in operationalizing and fulfilling its obligations toward the promotion and protection of human rights, especially in addressing torture. This assistance was extended to the Government directly and through supporting partners, particularly civil society organizations.

154. OHCHR participated in public discussions organized on 8 December 2016 by the Ministry of Justice on the results of the first year of implementation of the National Human Rights Action Plan.[186] OHCHR underscored the need to ensure implementation of activities aimed at strengthening accountability in conflict affected areas[187] and protecting the human rights of people residing in the areas not controlled by the Government. It also advocated for improvements aimed at defining concrete implementing authorities and measurable indicators for all activities foreseen by the Action Plan and recommended the establishment of a State mechanism to monitor and evaluate progress in meeting the objectives of the human rights strategy which underpin the Action Plan. In addition, OHCHR proposed to include in the Action Plan reference to the implementation of the Istanbul Protocol[188] to foster effective investigation and documentation of torture.

155. On 8 February 2017, OHCHR attended public discussions organized by the Parliamentary Committee on State-Building concerning the draft law 'On the Temporarily Occupied Territory of Ukraine', which defines a single legal regime for Crimea and parts of the Donetsk and Luhansk regions that are not controlled by the Government of Ukraine. Repeating concerns shared in September 2016 with key ministries and parliamentary committees in writing[189], OHCHR reminded the Government of its positive obligations to use all legal and diplomatic means available to guarantee the rights of persons in uncontrolled territory. It argued against abrogating the responsibility of the Government to protect the

[184] See ICRC, Guiding principles/Model law on the missing (February 2009); Human Rights Council Advisory Committee, Report on best practices in the matter of missing persons (A/HRC/16/70) of 21 February 2011.
[185] Law of Ukraine 'On accession of Ukraine to the Convention for the Protection of All Persons from Enforced Disappearance' No. 525-VIII, of 17 June 2015.
[186] According to the report of the Government on the results of the first year of implementation of the National Human Rights Action Plan, around 70 out of approximately 300 activities planned for the reporting period were fully implemented while the conduct of the other activities either remains in progress or is to be performed on an ongoing basis.
[187] The interdepartmental working group on monitoring compliance with international humanitarian and human rights law in the conflict-affected areas should have been set up in the first quarter of 2016.
[188] Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
[189] See 16th HRMMU report on the situation of human rights in Ukraine, covering the period from 16 August to 15 November 2016, paras 195-198.

rights to life, health, and property, and to ensure its social obligations to the population concerned. OHCHR also recalled that by stipulating that water and electricity supplies to the "temporarily occupied territory" should be terminated, the draft law would contravene both customary rules of international humanitarian law concerning relief, and human rights law requiring the Government to ensure minimum essential humanitarian supplies for the civilian population. Following similar interventions by the Council of Europe, UNHCR, and civil society organizations, the Committee decided not to refer this text to the Parliament but to set up a working group, which would review and amend it. OHCHR will join this multi-stakeholder platform to advocate for the document's consistency with Ukraine's human rights obligations.

156. OHCHR advocacy at such discussions is accompanied by concrete and actionable recommendations and technical assistance. For instance, in January and February 2017, OHCHR conducted training on the Istanbul Protocol and its implementation in Ukraine to around 400 newly recruited regional prosecutors. It has also provided input in the development of legislation, including advisory services on the draft legislation on missing persons in a written communication to the Parliamentary Committee on Human Rights and the Ministries of Temporarily Occupied Territories and IDPs, Justice and Foreign Affairs.

157. OHCHR also supported active engagement of the UN system in Ukraine with international human rights mechanisms monitoring Ukraine's compliance with its human rights obligations. On 29 January 2017, it convened a meeting of UN agencies in order to ensure a coordinated and joint UN submission for the third Universal Periodic Review (UPR) of Ukraine, which will take place on 15 November 2017.

158. OHCHR has continued taking part in the development of the new UNDAF of Ukraine (2018-2022), alongside other UN agencies. It has been co-leading Pillar 3 ("Democratic governance, rule of law and civic participation"), helping to formulate outcomes and indicators.

# IX. Conclusions and recommendations

159. With fighting in eastern Ukraine entering its fourth year, the conflict continues to claim civilian casualties and impact the daily lives of 3.8 million people,[190] particularly through damage to critical civilian infrastructure, restricted access to basic services and protection. The conflict is also progressively affecting the broader population of Ukraine. Individuals and communities feel its direct impact as soldiers and fighters return home from the front and families try to rebuild their lives while caring for injured relatives. Others across the country are increasingly witnessing the longer term consequences of the conflict, as many civilians continue to live the daily realities of displacement, and relatives mourn those killed or continue to wait for news of those detained or missing. This again illustrates the urgent need to fully implement the Minsk agreements, especially the implementation of a sustainable, immediate and full ceasefire, restoration of control of the border with the Russian Federation, the withdrawal of weapons, and the disengagement of forces and hardware. In the meantime, efforts must be undertaken to protect civilians affected by the conflict from further harm. The sharp escalation of hostilities during the reporting period served as stark reminder of the extent to which civilians, critical infrastructure and the basic services essential for survival, are dependent on the protection afforded to them by international humanitarian and human rights law.

160. The long queues to which 16,000 to 25,000 civilians are subjected daily when crossing the contact line have long been a feature of the conflict in Donetsk and Luhansk.

[190] 2017 Humanitarian Response Plan: Ukraine, November 2016 (accessible at: https://www.humanitarianresponse.info/system/files/documents/files/humanitarian_response_plan_2017_eng.pdf).

The disproportionate restrictions on the freedom of movement impact the ability of families and communities to maintain links, access livelihoods, check on their property, and obtain basic goods and public services. Compounded by measures imposed by the armed groups which affect residents' basic rights, freedoms and access to humanitarian aid, these restrictions further isolate and divide communities, jeopardizing future peace-building and reconciliation efforts.

161. As the security operation in eastern Ukraine continues, it is critical that individuals who are accused of and detained for alleged involvement in the armed conflict are not denied their human rights. Conflict-related cases must meet the requirements of fair trial, and those affected by human rights violations must be provided effective access to justice. Government authorities must ensure accountability for crimes involving violations and abuses of human rights and violations of international humanitarian law, and provide remedies, including gender-sensitive reparations, to victims of human rights violations and abuses.

162. OHCHR welcomes the legislative developments over the reporting period, set to increase social standards and improve access to social and economic rights across Ukraine. OHCHR reiterates the importance of these developments extending to those living in territory controlled by armed groups deprived of their pensions and access to social services due to Government policies introduced in November 2014.

163. OHCHR remains concerned by the human rights violations and violations of the protections afforded under international humanitarian law applicable to the occupation of Crimea by the Russian Federation affecting Crimeans and will continue to monitor and report on these developments.

164. OHCHR will also continue to monitor and report on the human rights situation and call on the State authorities and armed groups to comply with applicable international human rights and humanitarian law, including through interventions on individual cases requiring protection.

165. Based on its monitoring, OHCHR will continue to bolster its technical cooperation activities, assisting the Government of Ukraine in operationalizing and fulfilling its obligations toward the promotion and protection of human rights, and providing technical support to duty-bearers in addressing protection concerns. OHCHR will also continue to support the Government's efforts towards implementation of the Sustainable Development Goals.

166. Most recommendations made in the previous OHCHR reports on the human rights situation in Ukraine have not been implemented and remain valid. OHCHR further recommends:

167. **To the Ukrainian authorities:**

(a) **Government to ensure that housing and property restitution for IDPs are carried out in line with the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons ('Pinheiro Principles'), notably Principle 21 which provides that all refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process;**

(b) **Ministry of Social Policy, the Ministry of Regional Development, local State Administrations and bodies of local self-government, in line with the obligation to protect the right to adequate housing, to take all necessary measures to prevent homelessness, prohibit forced evictions, ensure security of tenure for all, guarantee that everyone's housing is adequate, while addressing discrimination and focusing on those most vulnerable and marginalized;**

(c) **Parliament of Ukraine to adopt respective legislative changes enabling persons to access justice, remedy and redress in housing, land and property matters;**

(d) **Cabinet of Ministers and the State Service of Ukraine for Geodesy, Cartography and Cadastre to establish a procedure for issuing documentation confirming lack of access to land as a result of hostilities;**

(e) **Headquarters of the Anti-Terrorism Operations to reconsider the restrictions on freedom of movement imposed by the Temporary Order ensuring they are in line with international law, particularly the legality, necessity and proportionality of the restrictions on movement of civilians and goods. Also, to collect sex and age disaggregated data on people crossing the contact line, so that the State Border Guard Service can take better measures to shorten processing time, provide necessary facilities and establish effective complaint mechanism;**

(f) **Ministry of Social Policy and the Ministry of Temporarily Occupied Territories and IDPs to elaborate a mechanism through which social entitlements including pensions are paid and accessible to all eligible persons, irrespective of where they live and with particular attention afforded to persons living in conflict-affected areas;**

(g) **Ministry of Healthcare to undertake all necessary steps enabling regional authorities to establish and make public a register of local medical institutions that provide free medical care to detainees in accordance with the amended Joint Decree of Ministry of Healthcare and Ministry of Justice No. 239/5/104 of 10 February 2012;**

(h) **Cabinet of Ministers to guarantee independence of medical personnel in pre-trial detention facilities *vis-à-vis* the management of these facilities and subordinating them to the Ministry of Healthcare;**

(i) **Security Service of Ukraine and Office of the Prosecutor General to ensure effective investigations into allegations of torture and ill-treatment, as well as all other human rights violations and abuses documented in the course of the armed conflict in eastern Ukraine;**

(j) **Ministry of Justice and Ministry of Foreign Affairs to continue and strengthen their support of the ongoing dialogue between the Ombudspersons of Ukraine and the Russian Federation to facilitate the voluntary transfer of Ukrainian prisoners held in Crimea to penitentiary institutions in mainland Ukraine;**

(k) **Judiciary and all actors within the criminal justice system to uphold due process and fair trial rights in relation to all conflict related detainees, including the two servicemen detained by the SBU near the Administrative Boundary Line on 20 November 2016;**

(l) **Local city and village councils involved in allocating temporary accommodation to IDPs to issue relevant documentation/certificates attesting to the IDP's right to use the given premises;**

(m) **Cabinet of Ministers to implement Presidential Decree No. 553/2016; to establish a unified registry and determine legal status of civilians injured as a result of hostilities to ensure their rights to remedy and recognition;**

(n) **Ministry of Social Policy to ensure the effective functioning of the Unified Information Database of IDPs and provide special training on its use for social protection departments across Ukraine on the usage;;**

(o) **Cabinet of Ministers to ensure implementation of activities aimed at strengthening accountability in conflict-affected areas and protecting the human rights of people residing in areas controlled by the armed groups, in line with the National Human Rights Action Plan;**

(p) **Cabinet of Ministers to define concrete implementing authorities and measurable indicators for all activities by the Action Plan and establish a mechanism to monitor and evaluate progress in meeting the objectives of the human rights strategy that underpins the Action Plan;**

(q) **Cabinet of Ministers to include the implementation of the Istanbul Protocol in the Action Plan to foster effective investigation and documentation of torture.**

168. **To all parties involved in the hostilities in Donetsk and Luhansk regions, including the Ukrainian Armed Forces, and 'Donetsk people's republic' and 'Luhansk people's republic' armed groups:**

a) **Adhere to the ceasefire and implement other obligations contained in the Minsk agreements, in particular regarding withdrawal of prohibited weapons and disengagement of forces and hardware;**

b) **Guarantee the facilitation of unimpeded humanitarian assistance to civilians in need without distinction;**

c) **Target only military objectives, ensure that all attacks distinguish between civilians and fighters, and that subordinates do not direct attacks against civilians;**

d) **Avoid under all circumstances carrying out any attacks that are expected to cause incidental loss of civilian life, injury to civilians and damage to civilian objects excessive to the anticipated concrete and direct military advantage;**

e) **In order to ensure greater protection of the civilian population and critical civilian infrastructure, cease the use of mortars and other indirect and imprecise weapons in civilian-populated areas, and not place soldiers, fighters or other military objectives in populated areas;**

f) **Ensure that military presence and actions are not conducted near or in places where children are present such as educational facilities;**

g) **Ensure that any evacuation or transport of children is done in their best interests, with a goal to keep families unified and to ensure, when separation is necessary, that children maintain the ability to have contact with family, as well as needed documents and plans for reunification with family as soon as safe options allow and within their best interests;**

h) **Treat all those detained in connection with the conflict, including soldiers and fighters, humanely in all circumstances;**

i) **Allow unfettered access to international independent and impartial observers to detainees, allow them to conduct confidential interviews, and keep a detailed register of every person deprived of liberty and inform their families where they are held;**

j) **Facilitate civilians' freedom of movement and transportation of goods across the contact line according to norms and principles of international humanitarian law;**

k) **While noting the progress in investigating the 14 December 2016 incident at 'Maiorsk' entry-exit checkpoint, the parties are urged to undertake comprehensive measures to protect civilians;**

l) **'Luhansk people's republic' armed groups to immediately release the two bloggers detained and refrain from actions limiting the freedom of expression including dissenting views online.**

169. **To the Government of the Russian Federation:**

(a) **End the practice of extracting confessions of guilt from persons in detention through threats, torture, or ill-treatment;**

(b) **Respect the right to legal assistance in criminal proceedings, including the right of defence counsel to perform their professional functions without intimidation, hindrance, harassment or improper interference;**

(c) **Investigate the deaths, in September and December 2016, of two prisoners transferred from Crimea to a penitentiary institution in Tlyustenkhabl (Republic of Adygea, Russian Federation);**

(d) **End the practice of transferring protected persons detained in Crimea to the Russian Federation, pursuant to international humanitarian law provisions prohibiting the forcible transfer or deportation of protected persons from occupied territory to the territory of the Occupying Power;**

(e) **Ensure equal protection of all Crimean residents and their equal access to medical and other public services, including to those without Russian Federation passports;**

(f) **Refrain from discriminatory acts or statements stigmatizing people on account of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, prohibited by the international human rights law;**

(g) **Implement UN General Assembly Resolution 71/205 of 19 December 2016, including by ensuring proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea.**

170. **To the international community:**

(a) **Ensure that humanitarian actors are guided within their programming solely by the needs of the most vulnerable categories and prioritize rural population and those living near the contact line, with a special focus on providing them with income-generating activities, access to basic services and protection;**

(b) **Use human rights indicators to ensure that donor support is applied with stricter conditionality depending on the authorities' compliance with human rights obligations and respect for fundamental freedoms;**

(c) **Render support to the Ministry of Finance in its efforts to draft the law on verification of social payments and pensions to all citizens of Ukraine through advising on best practices and international standards;**

(d) **Consider financially supporting the procurement of adequate equipment for social protection departments in eastern Ukraine to minimise existing obstacles to the effective functioning of database systems, and supporting training for social protection personnel.**