

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

**Report on the human rights situation in Ukraine
16 November 2017 to 15 February 2018**



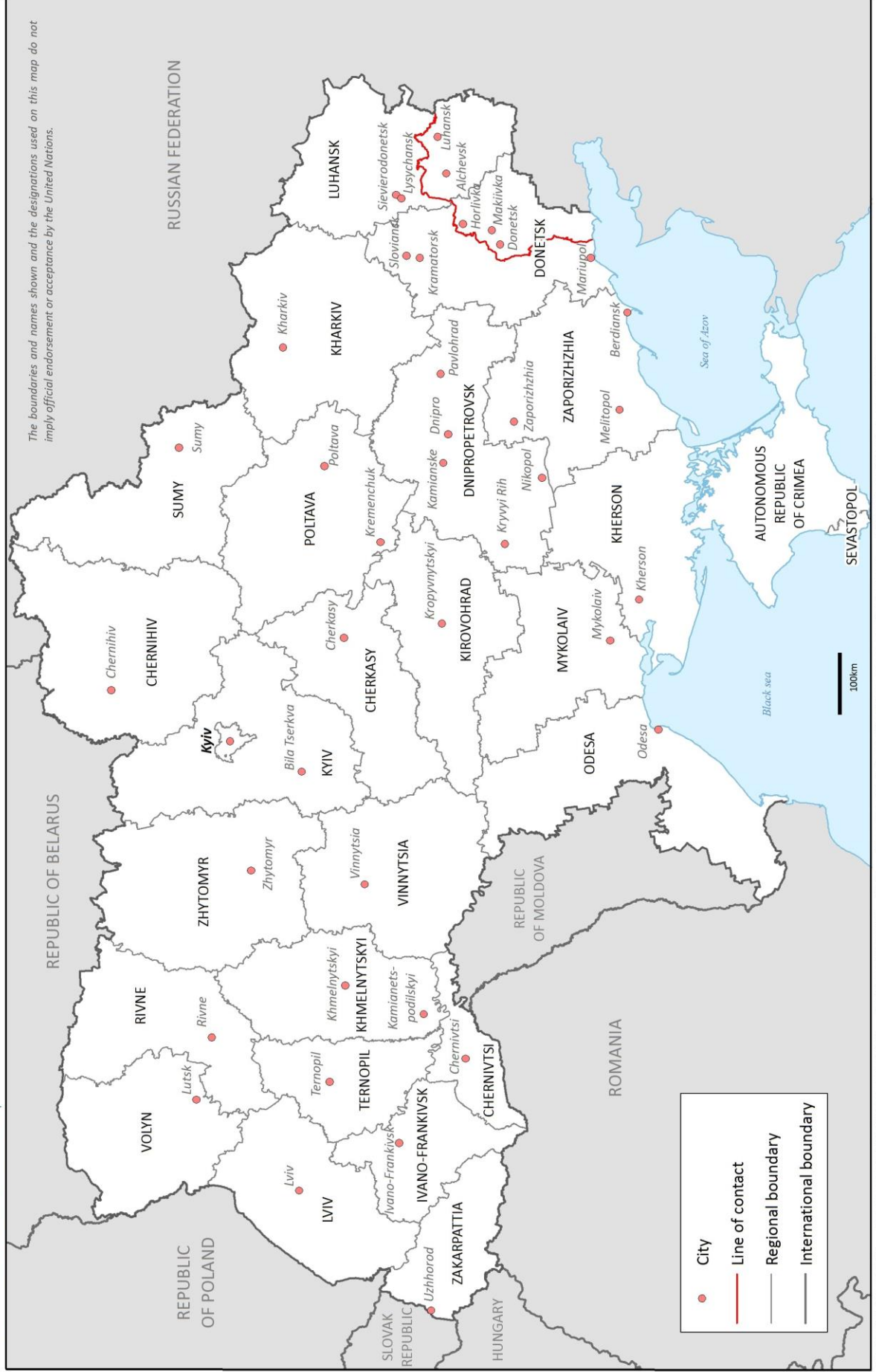
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Map of Ukraine

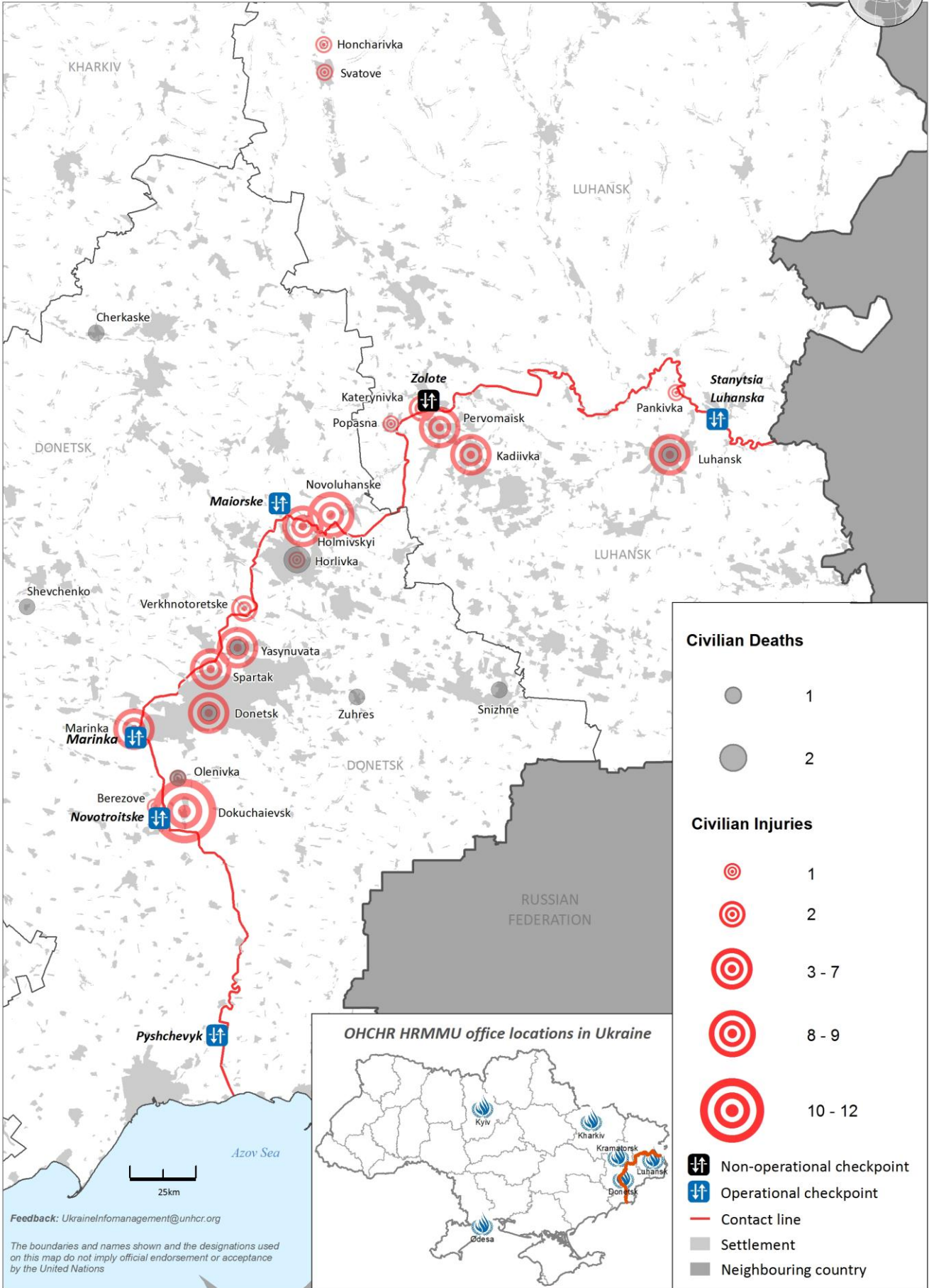
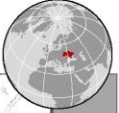


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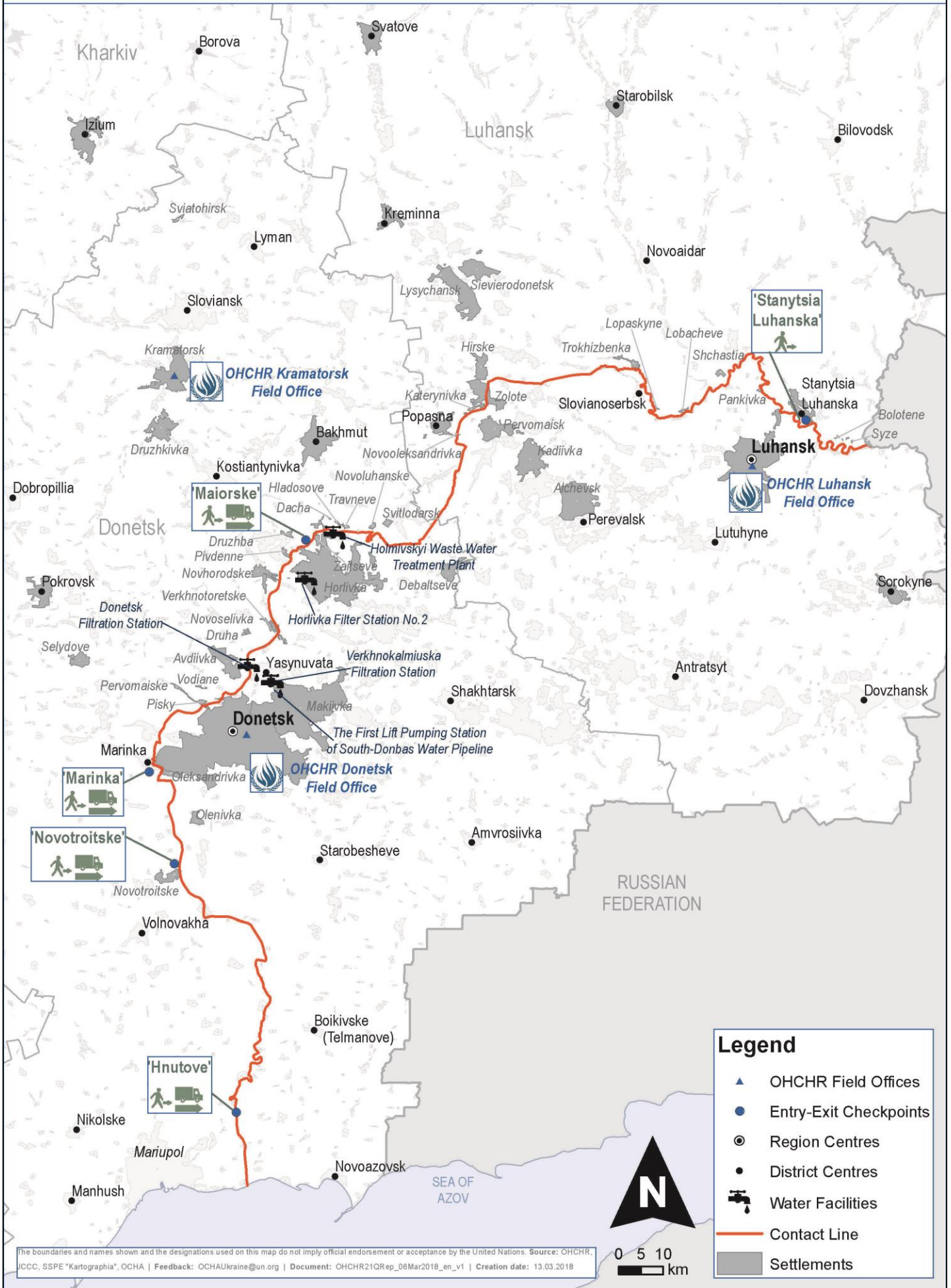




Ukraine: Civilian casualties along the contact line, 16 November 2017 - 15 February 2018



Locations in eastern Ukraine mentioned in this report



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I. Executive summary

We are human beings, not animals. We only want peace!!

- Resident of a village near the contact line.

1. This twenty-first report on the situation of human rights in Ukraine by the United Nations High Commissioner for Human Rights (OHCHR) is based on the work of the United Nations Human Rights Monitoring Mission in Ukraine¹ and covers the period from 16 November 2017 to 15 February 2018.

2. This report is based on data collected by OHCHR through 276 in-depth interviews with victims and witnesses of human rights violations and abuses, and visits in both government-controlled and armed-group-controlled territory. OHCHR also carried out 546 activities to facilitate the protection of human rights connected with the cases documented, including trial monitoring, visit of places of detention, advocacy with duty-bearers, humanitarian organizations and non-governmental organizations (NGOs), and cooperation with United Nations human rights mechanisms.²

3. During the period under review, OHCHR documented 205 cases involving violations and abuses of the right to life, deprivation of liberty, enforced disappearance, torture and ill-treatment, sexual violence, fair trial rights, fundamental freedoms, and economic and social rights. In 66 out of these 205 cases, the alleged violation or abuse occurred within the reporting period; the Government of Ukraine bore responsibility for 38 of these cases, and armed groups for 28 cases. The overall continuation of human rights violations and abuses suffered by the civilian population in the conflict area, Crimea and across Ukraine, underscores the cumulative impact and the human cost of the ongoing conflict.

4. Out of the total 205 documented cases, 121 cases involved credible allegations of torture, ill-treatment and/or sexual violence, committed in the context of unlawful or arbitrary detention. Fifteen of these cases occurred during the reporting period, on both sides of the contact line. OHCHR interviewed 113 persons held in 13 detention facilities in government-controlled territory.³ While OHCHR continued to enjoy unimpeded access to official places of detention and conflict-related detainees in government-controlled territory, it continued to be denied such access in territory controlled by the armed groups of the self-proclaimed 'Donetsk people's republic' and the self-proclaimed 'Luhansk people's republic'.⁴ This persistent denial of access raises serious concerns regarding detention conditions and possible further human rights abuses, including ill-treatment and torture. First-hand information received from a number of former detainees, including some individuals released as part of a simultaneous release on 27 December 2017, supports these concerns.

5. OHCHR also documented a total of 73 conflict-related civilian casualties, namely 12 deaths and 61 injuries. While this represents an overall decrease of 16 per cent compared with the previous reporting period, the number of civilian casualties resulting from shelling and light weapons fire increased by 66.7 per cent, indicating that the armed hostilities continued endangering the population on a daily basis. OHCHR was not able to attribute all civilian casualties to a specific party to the conflict. Yet, of the 47 civilian casualties resulting from shelling and small arms/light weapons fire, 35 (2 killed and 33 injured) were recorded in territory controlled by armed groups, and are likely attributable to the Government, and 12 (1 killed and 11 injured) were recorded in territory controlled by the Government, and are likely attributable to armed groups. Twenty-six civilian casualties could not be attributed to any party.⁵

6. OHCHR noted a lack of significant progress in achieving accountability for grave human rights violations in the killing of protestors at Maidan and the 2 May 2014 violence in

Odesa. Furthermore, in conflict-related investigations and proceedings, OHCHR observed an unwillingness, both within law enforcement institutions and politically, to effectively investigate human rights violations alleged to have been perpetrated by State actors.

7. During the reporting period, under the framework of the “all for all” simultaneous release foreseen in the Minsk agreements,⁶ the Government of Ukraine released 234 conflict-related detainees while armed groups released 75 individuals. As of 15 February 2018, OHCHR had interviewed 64 of these individuals, on both sides of the contact line. All of those interviewed described having been subjected to inhumane conditions of detention, torture or ill-treatment, sexual violence, threats of violence, and/or violations of fair trial guarantees. These violations and abuses (most of which occurred prior to the reporting period) are emblematic of systemic human rights issues which have been further exacerbated by the conflict. Furthermore, the *ad hoc* procedures applied for the simultaneous release raise concerns regarding accountability and access to justice.

8. Mindful of the approaching commencement of the campaign year ahead of 2019 parliamentary and presidential elections, OHCHR has been monitoring the situation regarding freedoms of opinion and expression, and of peaceful assembly, as well as non-discrimination, as essential foundations of any functioning democratic system. OHCHR documented nine cases involving physical attacks or use of force against journalists and media professionals, and ten attacks on individuals, peaceful assemblies and social events. These attacks were either perpetrated by State actors or members of extreme right-wing groups acting with impunity. OHCHR notes that the proliferation of intolerance threatens constitutional democracy, rule of law and inclusiveness.

9. Restrictions on freedom of movement further isolated residents in villages located close to the contact line, cut off their access to basic goods, services, such as markets, education and healthcare facilities, and humanitarian aid, which has further intensified the general hardship for the population. While conditions at the Stanytsia Luhanska crossing route improved due to ramp repairs made by the International Committee of the Red Cross (ICRC), the average 35,000 daily crossings of the contact line registered created long queues at the five official crossing routes, with people exposed to a dangerous environment due to shelling nearby the checkpoints and mine-contamination, amid freezing temperatures and with inadequate access to basic hygiene, heating and medical facilities.

10. Freedom of religion or belief continued to be infringed upon in territory controlled by armed groups, with particular targeting of Jehovah’s Witnesses. OHCHR has been monitoring the implementation of a ‘law’ adopted in territory controlled by ‘Luhansk people’s republic’ on 2 February, which bans all “religious groups” not directly linked to “traditional” religions.

11. The cumulative effects of the armed hostilities, infringements on freedom of movement and the declining socio-economic situation continued to further cement hardship, particularly for people living in conflict-affected areas close to the contact line. Villages situated in these zones remained isolated, with limited or no access to basic goods and services, including essential medical and emergency services. Furthermore, as we move towards the fifth year of the conflict, there was no progress in establishing a restitution and compensation mechanism for destroyed or damaged property remained one of the most pressing unaddressed socio-economic issues deriving from the conflict. Such a mechanism will be crucial for peace, stability and reconciliation.

12. Pensioners residing in territory controlled by armed groups continued to face restrictions in accessing their pensions due to the Government policy of linking pension payments with internally displaced persons (IDPs) and residence registration. In this respect, OHCHR welcomes recent Supreme Court decisions invalidating the termination of pension payments in individual cases, that had been based on Cabinet of Ministers resolution no. 365. OHCHR also welcomes the decision of the Kyiv Circuit Administrative Court recognizing the resolution as unlawful and

providing for its cancellation, and is hopeful that this leads to a change in policy so as to ensure equal access to pensions by all Ukrainian pensioners.

13. OHCHR continued monitoring the human rights situation in the Autonomous Republic of Crimea and the city of Sevastopol despite lack of access to the peninsula, on the basis of United Nations General Assembly resolutions noting the territorial integrity of Ukraine and Crimea being under the temporary occupation of the Russian Federation.⁷ The Russian Federation authorities in Crimea continued to restrict fundamental freedoms, disproportionately affecting the Crimean Tatar community, and to forcibly conscript male residents of Crimea into the Russian Federation armed forces. OHCHR also noted a dramatic decrease, by 97 per cent, of the number of students receiving education in Ukrainian language since the occupation of the peninsula in 2014.

14. On 18 January 2018, the Parliament of Ukraine adopted a law⁸ describing the conflict in the east as an armed aggression and providing a new legal framework to re-establish control over certain areas of Donetsk and Luhansk regions, considered to be occupied by the Russian Federation. While several key recommendations jointly made by OHCHR and the United Nations High Commissioner for Refugees (UNHCR) were integrated into the law, it retains elements that may adversely impact human rights, notably the possibility for the Government and military authorities to use “special powers” restricting fundamental freedoms in “security zones” adjacent to the “area of hostilities”.

15. Parliament also adopted legislative amendments granting stronger social protection to participants in the Maidan events who sustained injuries which did not qualify as disabilities, and to civilians who acquired disability in connection to the conflict in eastern Ukraine. While welcoming this development, OHCHR notes that this protection only extends to individuals in territory not controlled by the Government who sustained injuries before 1 December 2014.

16. As part of its human rights promotion mandate, and in addition to a range of advocacy measures undertaken to address human rights protection needs, OHCHR participated in 12 capacity-building and awareness-raising events for representatives of Government ministries, prosecution offices, the Security Service, National Police, the State Border Guards Service, the Ombudsperson’s office, military personnel and chaplains, and the Pastoral Care Council, as well as for civil society.

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

A. Conduct of hostilities and civilian casualties⁹

*Our only dream was to survive this night and sleep in our house,
not in the dark and cold basement.
- Resident of a village near the contact line.*

17. The ongoing armed conflict in eastern Ukraine continued to severely impact the lives of civilians during the reporting period. From 16 November 2017 to 15 February 2018, OHCHR documented 73 conflict-related civilian casualties (12 killed and 61 injured),¹⁰ reflecting a 16 per cent decrease compared with the previous reporting period, when it recorded 87 civilian casualties (15 killed and 72 injured).¹¹ This is due to fewer civilian deaths and injuries resulting from mine-related incidents and incautious handling of explosive remnants of war (ERW) (*see para. 22 below*). At the same time, the number of civilian casualties caused by shelling and small arms and light weapons (SALW) fire has increased (*see para. 19 below*).

18. Despite the slight reduction in civilian casualties, OHCHR remains concerned about the persistent use of heavy weapons and small arms fire by parties to the conflict, combined with the widespread presence of unexploded ordnance, mines, and booby traps. This situation continued to pose serious risk to civilians residing near or attempting to cross the 457 km contact line between Government and armed group-controlled areas.¹²

19. Most civilian casualties continued to be caused by the use of indirect and/or explosive weapons systems. OHCHR documented 40 civilian casualties (2 killed and 38 injured) caused by shelling from various weapons systems – including mortars, howitzers and multiple launch rocket systems (MLRS) – and light weapons fire.¹³ This represents a 66.7 per cent increase compared with the previous reporting period (16 August to 15 November 2017), when OHCHR recorded 24 civilian casualties caused by shelling and light weapons fire (2 killed and 22 injured). In addition, small arms fire caused seven civilian casualties (one killed and six injured).¹⁴ Of the total of 47 casualties from shelling, light weapons and small arms fire, more than two thirds – 35 (2 killed and 33 injured) occurred in territory controlled by armed groups, and are likely attributable to the Government, based on the geographic location where they occurred. Twelve civilian casualties (1 killed and 11 injured) were recorded in territory controlled by the Government, and are likely attributable to the armed groups, based on the geographic location where they occurred.

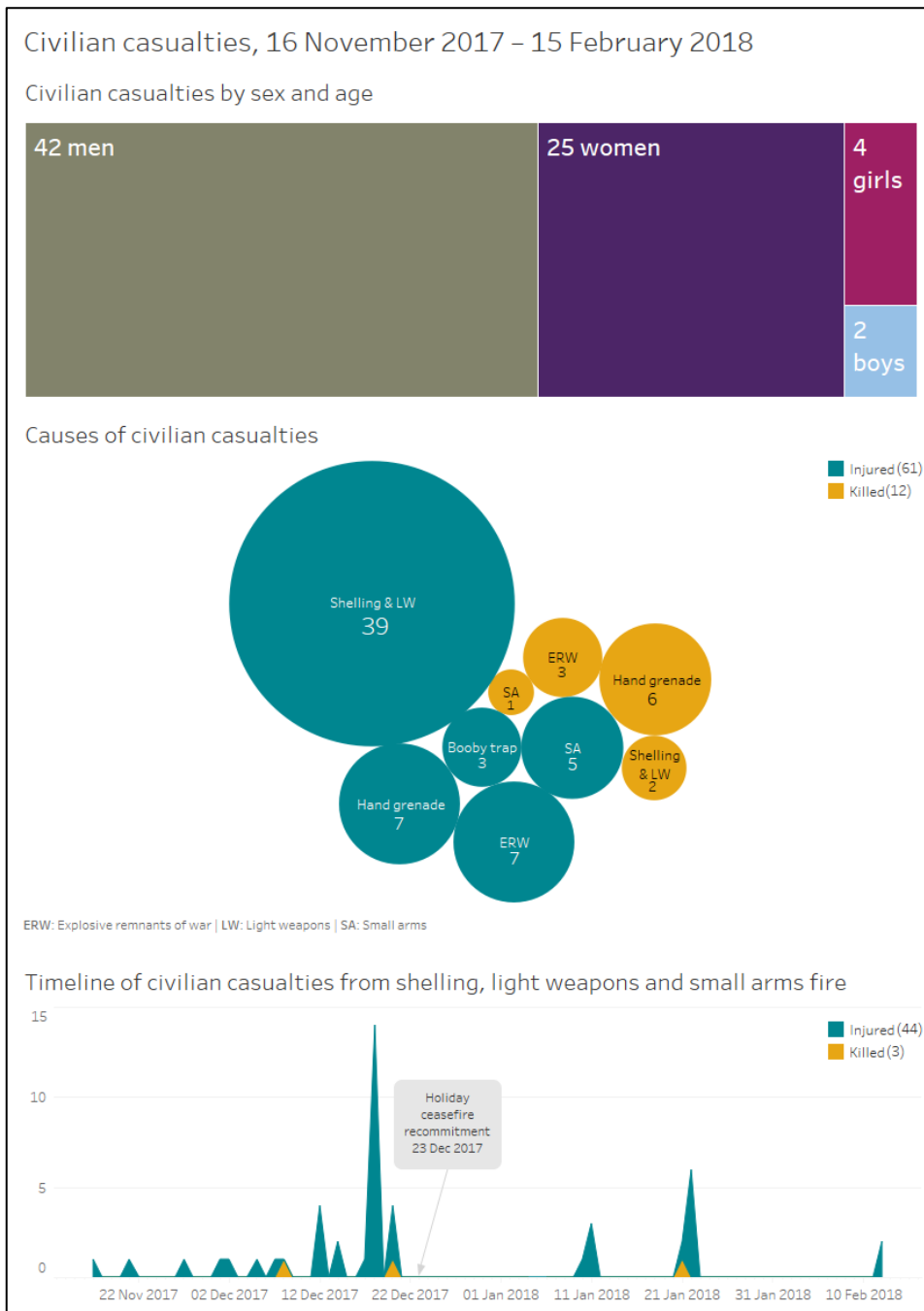
20. The parties to the conflict continued to employ indirect and/or explosive weapons with wide area effects, including MLRS, in areas populated and used by civilians.¹⁵ This may constitute a violation of international humanitarian law prohibitions on indiscriminate attacks and of the obligation to take all feasible precautions to avoid harm to the civilian population and damage to civilian objects.¹⁶ For example, on 18 December, shelling hit the central area of Novoluhanske – a town in government-controlled territory, with approximately 3,500 residents – injuring eight civilians and damaging numerous civilian homes. At least two shells landed close to a school, and a third in the school yard, while 20 children were present. Another shell hit a kindergarten which was empty at the time. Both educational facilities are situated 120 metres from a dormitory used by the Ukrainian Armed Forces, raising additional concerns about the placement of military objectives in proximity to civilian facilities (discussed below).

21. Civilians continued to be killed and injured by explosive remnants of war, with leftover devices causing more fatalities than shelling during the reporting period.¹⁷ Between 16 November 2017 and 15 February 2018, OHCHR documented 23 civilian casualties (9 killed and 14 injured) due to civilians handling ERW, mostly abandoned explosive ordnance in the form of hand grenades.¹⁸ This accounted for almost one third (31.5 per cent) of all civilian casualties during the reporting period.

22. Moreover, the detonation of booby traps injured three civilians (all men). The use of victim-activated devices – which cannot distinguish between civilians and persons taking active part in hostilities – may amount to an indiscriminate attack, in violation of international humanitarian law, particularly when placed in areas known to be used by civilians.¹⁹ In addition, these devices limit freedom of movement for civilians.²⁰ While OHCHR observed and received reports of signs warning of the presence of mines, these did not always clearly indicate where the mines may be, and were often not considered as reliable by the local population.²¹

23. Shelling and SALW fire exchanges also damaged civilian homes, schools and medical facilities.²² OHCHR observed the presence of military personnel and weapons in residential areas on both sides of the contact line, including in proximity to education and health-care facilities.²³ OHCHR emphasizes that even where military equipment or soldiers are present in areas used by civilians, attacks that do not distinguish civilians and civilian objects from military objectives or cause disproportionate civilian casualties and damage to civilian objects are prohibited and may amount to war crimes.²⁴ Further, OHCHR documented cases in which Ukrainian Armed Forces used civilian homes for lengthy periods, sometimes without the consent of the owners, and left the properties in a damaged condition.²⁵ The use of civilian homes by parties to the conflict increases the risk of being targeted in the hostilities and endangers civilian lives. It also contributes to the displacement of civilians and prevents returns.

24. Moreover, damages to key critical water and electricity infrastructure, and delays in negotiating “windows of silence” for repairs and maintenance, disrupted the supply of water and electricity to conflict-affected areas.²⁶ The Donetsk Filtration Station, in particular, was shelled on eight occasions, with potentially devastating consequences for the population and the environment given the toxic chlorine gas stored in that facility.²⁷ On 18-19 December, the Donetsk Filtration Station came under shelling and heavy machine gun fire for over 24 hours, forcing the evacuation of staff without security guarantees.²⁸ In this context, OHCHR remains concerned by the withdrawal, as of 18 December 2017, of Russian Federation representatives from the Joint Centre for Control and Coordination. It has continued to monitor the potential implications regarding the ability of parties to the conflict to negotiate “windows of silence” to enable maintenance and repairs of critical civilian infrastructure as well as the safe provision of humanitarian assistance.²⁹



B. Deprivation of liberty, enforced disappearance and abduction, torture and ill-treatment, and conflict-related sexual violence

*It is very difficult... Not just for him, but for us too...
You never know how to behave around him now.
He does not tell me anything about what happened to him there.
Maybe they beat him, maybe they did not.
I can't know for sure what exactly happened to him there,
but they surely broke my son's soul.
- Mother of torture victim.*

1. Access to places of detention

25. OHCHR continued to enjoy unimpeded access to official places of detention in government-controlled territory. It conducted 113 confidential interviews with individuals in pre-trial detention facilities (SIZOs), in Bakhmut, Kharkiv, Kherson, Kyiv, Mariupol, Mykolaiv, Odesa and Starobilsk, as well as with convicts in penal colonies in Kharkiv, Kherson and Odesa regions.

26. In both the 'Donetsk people's republic' and the 'Luhansk people's republic', OHCHR continued to be denied access to places of deprivation of liberty to meet with detainees, despite repeated requests. This persistent denial continued to raise serious concerns regarding detention conditions and possible further human rights abuses, including torture and ill-treatment. First-hand information received by OHCHR from a number of detainees, including some of those released by armed groups within "all for all" simultaneous release under the Minsk agreements (see Annex II), supports these concerns.

27. In the absence of access to places of deprivation of liberty in the areas controlled by the armed groups, this report cannot reflect the actual number of cases of deprivation of liberty, enforced disappearance and abduction, torture, ill-treatment and sexual violence.

2. Unlawful/arbitrary deprivation of liberty, enforced disappearance and abduction, torture, ill-treatment and sexual violence

28. Within the reporting period, OHCHR documented 115 cases of credible allegations of unlawful or arbitrary detention, torture, ill-treatment and/or sexual violence committed on both sides of the contact line. Fifteen of these cases involve human rights violations or abuses which were allegedly committed during the reporting period. Three cases involved the State Security Service (SBU), and twelve involved armed groups.

29. In four cases,³⁰ which occurred between September and December 2017 in government-controlled territory, the victims were allegedly abducted by a group of unidentified, masked individuals, either in civilian clothes or camouflage without insignia or emblems, in a public space, during daytime. These cases illustrate a pattern re-emerging since September 2017 (previously identified in 2014-2015)³¹ of arbitrary deprivation of liberty, torture and ill-treatment of individuals detained in government-controlled territory, in a manner which prevents victims from effectively raising complaints and thus precludes official investigations into allegations of human rights violations. One victim noted about his abductors: "I thought they were bandits – the whole scene just looked like that"³². The victims reported being blindfolded or hooded, handcuffed and transported to an unknown location (building, basement, garage) where they were allegedly subjected to beatings, violent threats (including of rape), mock execution, or rape, while being coerced into confessing to cooperating with the Federal Security Service of the Russian Federation (FSB) or armed groups. This lasted from a few hours to a few days or weeks,

during which the victim remained blindfolded or the perpetrators covered their faces.³³ The victim would then either be transferred to SBU or “released” on a public street where they would be immediately arrested by SBU. At that point, the detention would reportedly be properly registered, relatives were notified of the detention, and the detainee was notified of suspicion and interrogated. The victims, who remain in detention, did not allege being subjected to torture or ill-treatment during official detention.

30. The victims reported that once handed over to an official place of detention, they went through a medical examination, as required by law and existing regulations³⁴; however, in three cases they were not asked in detail how they received bruises or other visible injuries. In one case, the medical staff simply accepted the “explanation” that the detainee sustained injuries prior to apprehension by “falling from a tree” or “stairs”³⁵, not questioning the credibility of this statement. The failure of medical staff to inquire about injuries and probe further for explanations has been consistently documented by OHCHR, as well as detainees’ reluctance to tell medical staff the true nature of their injuries for fear of repercussions.³⁶ These cases highlight the need to develop the capacity of medical staff, particularly in detention facilities, to conduct examinations in accordance with the Istanbul Protocol standards.³⁷

Territory controlled by armed groups

31. OHCHR documented a rising number of cases of civilians arbitrarily deprived of their liberty by armed groups - a trend observed since summer 2017. OHCHR registered seven new cases³⁸ which occurred within the reporting period in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’, and 18 cases that occurred earlier.³⁹ The victims were mainly detained by the ‘ministry of state security’ (‘MGB’) or ‘department of combating organized crime’ (‘UBOP’) at checkpoints, in their home, or at their workplace. Detentions at checkpoints were often followed by house searches and seizure of property.⁴⁰

32. On 15 January 2018, ‘MGB’ of ‘Donetsk people’s republic’ recognized that in 2017 it detained 246 individuals under “suspicion of espionage and state treason”, 148 of whom were living and working in armed-group-controlled territory.⁴¹ There is no data available for territory controlled by the ‘Luhansk people’s republic’.

33. Detention by ‘MGB’ and ‘UBOP’ of ‘Donetsk people’s republic’ commonly started with a 30-day ‘administrative arrest’, during which individuals were held *incommunicado*.⁴² After the 30 days expire, access to a lawyer would then usually be granted, and relatives would more likely to be notified of the detention. However, after the initial 30-day ‘administrative arrest’, the ‘prosecutor’ would often issue an ‘order’ with new ‘grounds’ for ‘administrative arrest’ and detention.⁴³

34. Individuals detained by ‘MGB’ of ‘Luhansk people’s republic’ were also held *incommunicado* for an initial period. In most cases, despite appeals from relatives, ‘MGB’ did not confirm the detention and/or provide information about the place of detention.⁴⁴ OHCHR reiterates that such practices amount to enforced disappearance. Furthermore, in the absence of access to detainees by international organizations, *incommunicado* detention raises serious concerns that detainees may be subjected to torture or ill-treatment.⁴⁵

35. Of concern, on 2 February 2018, the ‘people’s council’ of the ‘Luhansk people’s republic’ amended the ‘martial law’⁴⁶ to introduce the notion of ‘preventive arrest’, which can be applied for up to 30 days and then extended to 60 days. It is worrisome that such ‘arrest’ can be applied on the basis of a decision of the ‘minister of state security’ or the ‘minister of the interior’, in agreement with the ‘prosecutor general’, and may be based on allegations that a person *may* have been involved in crimes against the security of the ‘republic’.

3. Situation of pre-conflict prisoners

36. OHCHR welcomes the transfer, on 7 February 2018, of 20 pre-conflict prisoners from seven penitentiary facilities located in territory controlled by ‘Donetsk people’s republic’ to government-controlled territory.⁴⁷ Since August 2015, 186 people (including four women) have

been transferred to government-controlled territory. To date, these transfers have been undertaken under the auspices of the Office of the Ombudsperson of Ukraine through a dialogue with representatives of the ‘Donetsk people’s republic’, representing an example of a human rights confidence-building measure. OHCHR is aware of at least 104 current prisoners who have requested to be transferred to government-controlled territory.

37. As pre-conflict prisoners previously transferred,⁴⁸ the recently transferred individuals reported the overall conditions of detention as poor, with insufficient food of substandard quality⁴⁹ and electricity cuts during the day. Medical care was also reported as insufficient due to shortage of medical staff or staff’s reluctance to provide medical care. Some detainees alleged that they had to receive permission from prison ‘administration’ prior to receiving treatment. Lack of medication (particularly specialized treatment for diabetes), was the biggest challenge; the only way to obtain the required medication was to find another prisoner who had a similar diagnosis and ask his/her relatives to bring additional supplies. Given these conditions, parcels from relatives were of particular significance to prisoners. The main reason that pre-conflict prisoners request to be transferred is to have easier communication and contact with relatives, including through visits. OHCHR notes that since 11 January 2018, it has become particularly challenging for pre-conflict prisoners to maintain contacts with their families as the service of the main Ukrainian mobile operator, Vodafone, became sporadic in Luhansk or absent in Donetsk (*see* “Adequate standard of living” *below*).

38. Criteria used by the armed groups to select individuals for transfer remained unclear. Transferred prisoners reported that ‘authorities’ in territory controlled by ‘Donetsk people’s republic’ continued to deny transfer requests by pre-conflict prisoners officially registered in government-controlled territory of Donetsk region or in Crimea. Several transferred prisoners reported they had been placed in solitary confinement for up to 15 days for repeatedly requesting to be transferred to government-controlled territory.

39. As of 15 February 2018, ‘Luhansk people’s republic’ had not taken practical steps to transfer pre-conflict prisoners, disregarding the appeals to the ‘authorities’ of at least 64 prisoners, as confirmed to OHCHR. This is of particular concern considering the reports about deteriorating medical care provision in the penitentiary institutions. Furthermore, crossing the contact line in Luhansk region is arduous (there are no direct vehicle crossings – only a footbridge), making family visits very challenging.⁵⁰

40. Particular attention should be given to prisoners that remain in custody in either the ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’ who, after the conflict started, were either acquitted by a court in government-controlled territory,⁵¹ have served their sentence, or have appealed the sentence of the first-instance court. Additionally, OHCHR was informed of a few pre-conflict detainees who were never sentenced but were transported to Donetsk city for forensic expertise in early 2014, before the outbreak of the conflict. They have remained trapped in SIZOs for almost four years, which amounts to an arbitrary deprivation of liberty.

41. In government-controlled territory, OHCHR continued following ongoing penitentiary reform. While it is a welcome step that all medical professionals are to be shifted from the subordination of the penitentiary administration to the Ministry of Health, it has not yet been completed.⁵² Due to uncertainty of employment contracts, medical professionals working in SIZOs have started leaving their jobs, which may negatively affect the provision of healthcare in these facilities. Furthermore, it remains difficult to provide specialized medical services to detainees/prisoners due to a lack of necessary transportation and guarded wards in general hospitals. At the same time, the procurement of medication for prisoners with HIV and multi-resistant tuberculosis has improved.

III. Accountability and administration of justice

SBU has a green light to do whatever they want.
- Law enforcement to conflict-related detainee.

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

42. There have been a few positive developments in efforts to investigate and prosecute State actors responsible for various human rights violations.⁵³ Yet, a large number of investigations remain to be undertaken into human rights violations allegedly perpetrated by military and security forces. OHCHR has observed that some cases that occurred in the earlier stages of the conflict have still not been investigated or adequately investigated.⁵⁴

B. Fair trial rights

43. Individuals standing trial on criminal charges related to the armed conflict continued to experience violations of judicial safeguards and procedural guarantees.

44. Individuals charged with affiliation or links with armed groups are remanded in custody following their arrest. Yet courts often failed to carefully examine the circumstances of arrest, including the possible use of torture.⁵⁵ OHCHR monitored some of the trials and observed a lack of equality of arms in a number of cases, with courts disregarding arguments of the defence counsel and relying solely on article 176(5) of the Criminal Procedure Code,⁵⁶ thus avoiding the requirement to assess whether pre-trial detention is reasonable and necessary, and amounting to arbitrary detention. This was also observed when courts determined extensions of pre-trial detention.

45. International human rights law requires that any detention related to criminal charges be subject to judicial control.⁵⁷ This includes appearance before a judge immediately after arrest,⁵⁸ as well as periodic judicial review of the lawfulness of continuing detention pending trial. Pre-trial detention must be based on an individualized determination of the reasonable and necessary nature of the measure. Furthermore, individuals remanded in custody must be tried as expeditiously as possible, to the extent consistent with their rights of defence, to prevent prolonged pre-trial detention, which may jeopardize the presumption of innocence.⁵⁹

46. At least 25 individuals arrested on suspicion of affiliation with, or links to, armed groups were deprived of access to a lawyer of their choice.⁶⁰ The right of an accused to defend him/herself and to have the assistance of counsel of his/her choice is one of the minimum guarantees to which every accused person is entitled.⁶¹

47. OHCHR continued to monitor conflict-related cases where undue pressure was exerted against the judiciary. The case against Nelia Shtepa, former mayor of Sloviansk, is a particularly egregious example. In its monitoring of her trial, OHCHR observed intimidation and pressure on the judges from law enforcement⁶² as well as right-wing groups. Consequently, judges in Kharkiv courts were reluctant to deal with the case, and at least 19 judges either recused themselves, were disqualified or dismissed, took sick or paternity leaves under the prosecution's pressure or quit their career entirely. This has resulted in a fourth re-trial, in violation of the right to be tried without undue delay.⁶³

48. OHCHR is concerned about attempts by law enforcement agencies to preclude the release of conflict-related detainees who have served their sentences. OHCHR documented a case of four police officers facing reprisals from the SBU for permitting Serhii Yudaiev⁶⁴ to leave

the court building following his conviction and release under amnesty.⁶⁵ The head of the convoy unit was discharged from service for failing to preclude Yudaiev's release while two other officers present in the convoy received official reprimands. In addition, an officer who escorted Yudaiev out of the courtroom was charged with "abuse of authority" and placed in pre-trial detention.

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

49. OHCHR continued monitoring developments in criminal proceedings involving human rights violations committed during the Maidan protests in Kyiv and in the context of the 2 May 2014 violence in Odesa.

1. Accountability for the killings of protesters at Maidan

50. There were few developments in the trial of five former Berkut special police officers accused of killing 48 protesters on 20 February 2014 at Independence square (Maidan), Kyiv. Two accused have been detained since April 2014, and three since February 2015. The Sviatoshynskiy district court of Kyiv continued to examine testimonies of victims and witnesses.

51. The investigations and prosecutions into grave human rights violations perpetrated overnight from 18 to 19 February 2014, at Maidan and in adjacent areas, have suffered from serious shortcomings. Despite apparent coordination between SBU,⁶⁶ 'titushky'⁶⁷ and police⁶⁸ regarding attacks on Maidan protesters, this has not been reflected in the criminal charges. A due examination of the nexus could impact the ultimate qualification of the human rights violations. In a separate case, the engagement of 'titushky' by (former) senior Government officials is evident from the distribution of Kalashnikov assault rifles from the armoury of the Ministry of Internal Affairs, and raises questions with regards to the individual criminal liability of former senior officials for crimes committed by the 'titushky'.⁶⁹

52. OHCHR is further concerned with what appears to be special treatment afforded to the 'titushky', resulting in denial of justice to victims of their crimes. For example, the Shevchenkivskiy district court of Kyiv⁷⁰ released a 'titushky' gang leader from custody into house arrest, and then released him from house arrest although he continued committing crimes, including violent acts, endangering public safety.⁷¹ Furthermore, these additional crimes were committed when he was supposedly under the protection of the State Protection Service (on 9 October 2015 and 5 May 2016). On 26 December, in a separate case, the same court released two 'titushky' under house arrest (the third defendant was already under house arrest). All are accused of the attempted murder of eight protesters.⁷²

53. On a positive note, OHCHR welcomes reported developments in the investigation of the killing of 13 law enforcement officers during Maidan protests.⁷³ Almost four years after the events, the Prosecutor General's Office reported that only one individual has been charged with shooting dead two law enforcement officers and injuring a third.⁷⁴

2. Accountability for the 2 May 2014 violence in Odesa

54. The investigation and trials related to the 2 May 2014 violence in Odesa continued to be one-sided, undermining the rights of victims and the accused. The two acquitted defendants (members of 'pro-federalism' groups) who were immediately rearrested on 18 September 2017 remained in detention pending trial for new charges.⁷⁵ At a meeting with OHCHR on 24 November 2018, the Odesa Prosecution Office confirmed that on 18 October 2017, the Court of Appeal of Odesa region ruled that the detaining authority had failed to provide one of the defendants with access to his contracted lawyer and ordered the prosecutor to launch a criminal investigation into this fact.⁷⁶ The prosecutor, however, refused to do so.⁷⁷

55. OHCHR is also concerned with the lack of progress in investigations into harassment of and pressure on judges dealing with the mass disorder cases by 'pro-unity' activists, despite the identification of some alleged perpetrators by victims or witnesses.⁷⁸

IV. Simultaneous release of detainees under the Minsk agreements

*We'll give you 8 years and then, maybe, will exchange.
Do not count on court, you are staying here as hostage.*
- Law enforcement to conflict-related detainee.

56. On 27 December 2017, a simultaneous release took place as part of the “all for all” release envisaged by the Minsk agreements⁷⁹: 233 individuals were released by the Government of Ukraine and 74 individuals were released by armed groups.

57. The Government released 157 individuals (including 15 women) to the ‘Donetsk people’s republic’ and 76 (including three women) to the ‘Luhansk people’s republic’. All the detainees had been either in the custody of law enforcement agencies (detained under suspicion of being a member of or otherwise affiliated with armed groups and tried in courts) or had already started served their sentences (mostly under article 258-3 of the Criminal Code, aiding terrorist organizations).

58. Of the 74 detainees released by armed groups,⁸⁰ 41 were civilians⁸¹ and 33 were members of the Ukrainian forces (Ukrainian Armed Forces and National Guard). The ‘Donetsk people’s republic’ released 58 individuals (including five women) and the ‘Luhansk people’s republic’ released 16 (all men).

59. On 20 January 2018, further releases occurred. The Government of Ukraine released one female civilian, while the ‘Donetsk people’s republic’ released a male member of the Ukrainian Armed Forces,⁸² bringing the total of people released under the framework of the simultaneous release to 309. (In addition to the discussion in this chapter, a more detailed description of the simultaneous release and related human rights concerns can be found in Annex II.)

A. Detention in preparation for simultaneous release

60. Before their simultaneous release, all 234 individuals in Government custody were held in various detention facilities across Ukraine, although some had already been officially released from detention on remand by court order.

61. Ahead of the planned simultaneous release, 177 individuals were transported to “Zelenyi Hai” sanatorium near Sviatohirsk (Donetsk region).⁸³ Guarded by armed SBU officers, they were not allowed to leave the premises, but could move freely inside the building and were allowed up to two hours walk a day on the premises of the sanatorium. Some detainees were not informed where and why they were being taken. Some could not inform their relatives or lawyers of their whereabouts.⁸⁴

62. Other detainees (mainly those held in western Ukraine) were first transported to Lukianivske SIZO in Kyiv, where some 30 of them were put in a cell, with only 18 beds.⁸⁵ After 10 days, they were transferred to Kharkiv SIZO where they were joined by other detainees waiting to be released. While approximately 40 of them were in one cell, some reported there was enough space.⁸⁶ On the morning of 27 December 2017, they were transported to the Zaitsevo checkpoint where they were joined by the group held in “Zelenyi Hai”.

B. Allegations of human rights violations and abuses

63. In order to protect individuals and their families through strict adherence to the principles of confidentiality and informed consent, the report presents an overall analysis of the issues rather than detailed information on individual cases.⁸⁷

64. Of the 234 individuals released by the Government, OHCHR had already been monitoring 142 cases prior to the simultaneous release, having interviewed individuals in detention facilities and observed related court hearings. After the simultaneous release, OHCHR undertook further interviews, and as of 15 February 2018, it had interviewed 64 of the released individuals, on both sides of the contact line. All of those interviewed described having been subjected to torture or ill-treatment, sexual violence, threats of violence, inhumane conditions of detention and/or violations of fair trial guarantees. These violations and abuses (most of which occurred before the reporting period) are emblematic of systemic human rights issues which have been further exacerbated by the conflict.

65. The analysis of interviews conducted before and after the simultaneous release suggests that cases of *incommunicado* detention and torture were more common in 2014 and 2015 than afterwards. During that period, “volunteer battalions” were often involved in apprehensions. Torture was most often reported by detainees held in Kharkiv SBU, particularly in 2015. Methods used included suffocation with a gas mask, dislocation of joints, electric shock and mock execution. Detainees also received death threats and threats of a sexual nature, both against themselves and their families, and were denied access to medical care. The torture would usually continue until the detainees signed self-incriminating statements.⁸⁸ Members of armed groups were reportedly usually subjected to more violence. Released detainees also told OHCHR they were subjected to excessive use of force during apprehension and not granted access to legal counsel until they “confessed”.

66. Interviews with released detainees also suggest that individuals (especially women) detained by the Government in late 2016 and 2017 were less likely than before to be subjected to physical violence.⁸⁹ At the same time, because the detainees were often blindfolded or hooded, or the perpetrators covered their faces, it was almost impossible to identify the perpetrators, which significantly restricted the possibility of successfully lodging complaints.

Territory controlled by armed groups

67. Of the 75 individuals released by armed groups, 41 were civilians: 2 had been arbitrarily detained since December 2014, 13 since 2015, 17 since 2016, and 9 since February-March 2017. OHCHR interviewed 20 of the released civilians. They had been detained either in their homes, or while at work or on the street, usually by armed men wearing no insignia. In 18 cases, they were transferred to ‘MGB’ of ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’, which reportedly ‘investigated’ the cases.⁹⁰ During the initial period of detention - at least for one month - each person was held *incommunicado*, denied access to a lawyer or communication with relatives.⁹¹ During this time, in the majority of documented cases, the detainees were kept either in the basements of ‘MGB’ buildings or in premises generally not intended for detention, and regularly brought to ‘MGB officers’ for interrogation.⁹² Detainees were often hooded or blindfolded and handcuffed and/or strapped to a chair. In all documented cases, ‘MGB officers’ threatened severe physical violence or rape against them or their relatives if they refused to “cooperate”.⁹³ Such threats were usually accompanied by blows to the head or body, making victims believe the threats were imminent and credible.

68. In 15 out of 20 documented cases, physical violence amounting to torture was used during interrogation, until the detainee “confessed” and wrote, signed and/or was videotaped providing self-incriminating testimonies. The most common methods of torture were mock executions,⁹⁴ electrocution,⁹⁵ beatings⁹⁶ and suffocation by placing a bag over the head.⁹⁷

69. During the overall time of detention in territory controlled by armed groups, each individual was held in at least two different places, including premises not intended for detention. Conditions of detention varied from normal to those amounting to inhumane and degrading treatment; facilities most commonly used are described below.

70. In territory controlled by ‘Donetsk people’s republic’, detained civilians were predominantly held in the following places: basement of the ‘MGB’ building on 26 Shevchenka Street, Donetsk city SIZO, unofficial place of detention Izoliatsiia on 3 Svitloho Shliakhu, ‘IVS’ temporary detention facility in Donetsk, penal colony No. 32 in Makiivka.

71. In territory controlled by ‘Luhansk people’s republic’, civilians reported being held in the ‘MGB’ building in Luhansk city, Luhansk SIZO, and the ‘commandant’s offices’ in Luhansk and Stakhanov. In the ‘MGB’ building, detainees were always hooded and handcuffed when interrogated.

72. Thirty-three people released by armed groups on 27 December were members of the Ukrainian forces. One had been detained since August 2014, 15 since 2015, 16 since 2016, and 1 since March 2017. OHCHR interviewed 18 of the released military personnel. Most were captured at military positions or near checkpoints. All those interviewed had been beaten upon capture. Some were interrogated and tortured.⁹⁸ Mock executions were also reported as common⁹⁹ and often repeated.¹⁰⁰ The members of the Ukrainian armed forces were held in various places and moved among two or three different facilities.¹⁰¹ Conditions of detention varied, and in most cases amounted to inhumane and degrading treatment.

C. Accountability and fair trial rights

73. OHCHR is concerned that the simultaneous release may have negative consequences on accountability for human rights violations. First, the release of individuals alleged to be perpetrators of human rights violations¹⁰² deprives victims of justice and redress.¹⁰³ Second, many conflict-related detainees who were released were subjected to human rights violations during their detention and prosecution. Some who filed complaints faced obstruction from law enforcement, which lacked willingness to duly investigate the allegations while the complainants remained in government-controlled territory.¹⁰⁴ Their release to armed-group-controlled territory may lead to closure of the cases, depriving them of access to justice.

74. OHCHR examined the legal procedures applied by the Government in preparation for the “all for all” simultaneous release on 27 December 2017.¹⁰⁵ Following the release, OHCHR interviewed 26 persons (out of the 234 detainees released by the Government) who stated that the main reason they had agreed to participate in the release was because it was their only option for liberty due to protracted court proceedings during which mandatory pre-trial detention is applied against all individuals charged with affiliation or links with the armed groups under article 176(5) of the Criminal Procedure Code.¹⁰⁶

75. OHCHR is concerned that the simultaneous release may have been used to compel conflict-related detainees, who saw no prospect of justice or fair hearing, to plead guilty, even in otherwise poorly substantiated cases, thus effectively denying them access to justice.¹⁰⁷ Between 13 and 21 December 2017, at least 39 individuals were convicted by courts prior to the simultaneous release based on *inter alia* plea bargains and retractions of appeals. Eighteen individuals interviewed by OHCHR stated they were offered plea bargains in order to be included in the release process.

76. Individuals who were released but whose trials were not completed or whose cases were not closed may risk re-arrest¹⁰⁸ should they return to government-controlled territory, or convictions following trials held *in absentia*.¹⁰⁹ At least four individuals received suspended sentences with a probation period during which they are obliged to report to law enforcement authorities. In addition, they are deprived of the possibility to pursue remedies for alleged human rights violations perpetrated against them by State actors. The ability to travel across the contact line is of importance for both those who received suspended sentences and those with pending trials. However, many individuals did not have their identity documents returned to them upon release. Others may face restrictions on their movement imposed by armed groups.¹¹⁰

Territory controlled by armed groups

77. Interviews of individuals detained by armed groups and released to government-controlled territory provided further insight into the system of ‘prosecution’ in the two ‘republics’.¹¹¹ ‘Trials’ in conflict-related cases are reportedly carried out in closed sessions, allegedly in order not to disclose ‘classified information’.¹¹²

78. Interviews with Ukrainian soldiers and civilians believed to be affiliated with Government forces¹¹³ who were detained in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ revealed that their cases were often not subject to any review. OHCHR documented 19¹¹⁴ conflict-related cases where persons were subjected to indefinite detention in breach of international human rights and international humanitarian law.¹¹⁵ Those Ukrainian soldiers and civilians detained for over two years reported no periodic review regarding the necessity or appropriateness of their continued detention, nor were ‘charges’ brought against them during this period.¹¹⁶ Ukrainian soldiers detained in Donetsk for up to over three years were approached by ‘prosecution’ in September 2017 only - a few months before the simultaneous release - when their detention was formalized by a ‘measure of restraint’ of custodial detention imposed by the ‘prosecutor general’s office’.

79. ‘Pre-trial’ detention proceedings of individuals ‘charged’ with espionage or other conflict-related crimes by ‘military tribunals’ in territory controlled by ‘Donetsk people’s republic’ appear to have followed a pro-forma basis.¹¹⁷ Furthermore, even such perfunctory review of legality of detention was delayed. Time spent in *incommunicado* detention, to which many were reportedly subjected prior to acknowledged ‘arrest’, seems not to have been taken into account by a ‘military tribunal’ when calculating the ‘sentence’.¹¹⁸ Such practice contributed to unacknowledged detention during which individuals were exposed to torture, including with a view to force self-incriminating statements which served as basis for subsequent ‘prosecution’.¹¹⁹

80. Accounts by conflict-related detainees suggest that their degree of culpability in the imputed ‘crime’ was already considered established at the time of their ‘arrest’, amounting to a presumption of guilt. Subsequent ‘investigations’ and ‘trials’ seemed to serve merely to create a veneer of legality to the ‘prosecution’ of individuals believed to be associated with Ukrainian military or security forces.¹²⁰

81. Released detainees informed OHCHR that some appointed lawyers did not make any real effort to present their case. The account of at least one victim suggests that he was intimidated by ‘MGB’ of ‘Donetsk people’s republic’ in the presence of the appointed lawyer, with no reaction from the latter.¹²¹ Some lawyers assigned to detainees advised that only ‘convicts’ were eligible for the simultaneous release under the Minsk agreements, leading at least four detainees to plead guilty even though they had never admitted to committing the charged offences. At the same time, detainees released from ‘Donetsk people’s republic’ who had been ‘prosecuted’ noted that lawyers facilitated contacts with their families.¹²²

82. Deprived of access to the Ukrainian judiciary and of effective ‘legal representation’ in proceedings before ‘courts’ in armed-group-controlled territory,¹²³ and fearing repercussions for withdrawing statements given under duress,¹²⁴ conflict-related detainees have stood ‘trials’ with no chance of presenting their defence.¹²⁵ Conflict-related ‘trials’ were heard by a ‘military tribunal’ as a chamber of the ‘supreme court’ of ‘Donetsk people’s republic’, whose ‘verdicts’ entered into force immediately, with limited opportunities to ‘appeal’.

V. Democratic/civic space and fundamental freedoms

A. Democratic/civic space

83. OHCHR noted developments relating to freedom of opinion and expression and freedom of the media, and discrimination, hate speech and manifestations of intolerance that may result in diminishing democratic/civic and political space throughout Ukraine. The lack of investigation and accountability in cases where there have been infringement of these rights is of particular concern as Ukraine is moving towards the presidential and parliamentary elections, scheduled respectively for March and October in 2019.

1. Freedom of opinion and expression, and freedom of the media

*There is little understanding that the freedom of speech is a value in itself,
and that it should be protected as the right to life or the right to health.*

- Lawyer.

84. Within the reporting period, OHCHR documented 18 cases involving infringements on freedom of opinion and expression and/or freedom of the media. Ten of these cases relate to human rights violations or abuses allegedly committed during the reporting period; in seven cases, State actors either perpetrated the violation or failed to prevent or to investigate the act, while the remaining three cases can be attributed to the armed groups.

85. OHCHR examined nine cases (six occurred within the reporting period) of physical attacks on journalists and other incidents obstructing journalistic activity and the work of media outlets. In five cases, the victims and their legal defenders complained of protracted and ineffective investigations, also noting a lack of transparency. In five of these cases, the attacks were perpetrated by members of extreme right-wing groups¹²⁶ and law enforcement was present but did not prevent or stop the unlawful actions.¹²⁷ In total, in 2017 the National Union of Journalists in Ukraine documented 90 incidents of physical violence against media professionals.¹²⁸

86. OHCHR is concerned about lack of progress in investigations into acts of violence against journalists, which fosters an atmosphere of impunity and fear. For instance, there has been no accountability for the killing of journalists Oles Buzyna (on 16 April 2015) and Pavlo Sheremet (on 20 July 2016).¹²⁹

87. The National Police reported no developments in the criminal investigation against the Myrotvorets website, opened for “obstruction of lawful professional activity of journalists” and “violation of personal privacy”.¹³⁰ The web-portal positions itself as the “centre for research of signs of crimes against the national security of Ukraine, peace, humanity and international order”. OHCHR notes that no alleged perpetrators have been identified in the criminal investigation despite public information regarding the head of the centre.¹³¹ OHCHR further notes that the project was presented in 2015 by a people’s deputy holding a position of adviser to the Ministry of Interior of Ukraine. Meanwhile, the personal data (including home addresses and passport data) of individuals, including media professionals and NGO activists, continued to be published on the Myrotvorets website, in violation of right to privacy and presumption of innocence.¹³² OHCHR notes that a State bank has reportedly refused to provide services for an individual based on information published about the person on the Myrotvorets website.¹³³

88. OHCHR cautions the Government against broad application of legislative provisions aimed at protecting Ukraine’s national security and territorial integrity.¹³⁴ Between 1 January 2017 and 14 February 2018, the State Committee on TV and Radio Broadcasting banned 30 books published in the Russian Federation, including the Russian translation of a book on ‘Stalingrad’ by British historian Antony Beevor.¹³⁵ Though the number of banned books is low compared with the number of publications allowed for import from the Russian Federation (over 10,000), OHCHR cautions the Government against disproportionate restrictions on freedom of expression.

Territory controlled by armed groups

89. The space for expressing critical opinion remained highly restricted in territory controlled by armed groups. OHCHR documented three incidents when attempts to express critical opinions were stifled by psychological pressure and threats to physical integrity.¹³⁶

90. At least five persons released by armed groups in the simultaneous release on 27 December 2017 were being detained *inter alia* for their critical publications on social media.

OHCHR remains concerned that as of 15 February, at least two bloggers remained detained by armed groups in ‘Donetsk people’s republic’.

2. Discrimination, hate speech and manifestations of intolerance

I felt threatened and afraid; I did not trust the police.

- Demonstrator detained by the police for several hours.

91. OHCHR documented 14 cases of discrimination, hate speech and/or violence targeting persons belonging to minority groups or holding alternative, minority social or political opinions. Twelve of these cases occurred within the reporting period; in two cases, law enforcement elements were involved, while in eight cases, perpetrators were members of extreme right-wing groups who appeared to act with impunity, the police being reluctant to properly classify and investigate such crimes. OHCHR notes that the proliferation of intolerance threatens constitutional democracy, rule of law and inclusiveness.

92. In December 2017, during two raids targeting several homes belonging to Roma people in Zolotonosha (Cherkasy region) and Boryslav (Lviv region), police were physically aggressive; beating people, damaging or destroying private possessions, and treating the Roma in a humiliating manner.¹³⁷ In Zolotonosha, tensions between Roma and other residents rose from 7 to 9 January, resulting in intimidation and harassment of Roma people, including incitement to violence.¹³⁸ In Lviv region, OHCHR was informed of actions by local activists including incitement to violence against Roma, labelling them as criminals.¹³⁹

93. OHCHR also documented ten acts of intolerance including violence by members of extreme right-wing groups against individuals belonging to minority social groups and/or people holding alternative, minority social or political opinions, eight of which occurred during the reporting period. OHCHR documented physical attacks on individuals,¹⁴⁰ peaceful assemblies and social events deemed to be propagating ideas and values contrary to theirs.¹⁴¹ Such attacks also may extend to those *perceived* to belong to minority social groups or to hold alternative social opinions.¹⁴² OHCHR is concerned that police did not take appropriate measures to ensure the security of those assemblies or to properly classify these attacks and conduct investigations.¹⁴³

94. On 28 January 2018, National Brigades – a paramilitary formation – held a march in the centre of Kyiv, during which they took an “oath” to “protect” the nation when the government “can’t or won’t”.¹⁴⁴ OHCHR notes with concern the extreme right-wing ideology of this group, its public proclamation to resort to violence when it deems it necessary, and its ties to the political party National Corps. OHCHR is concerned that the proliferation of extreme ideologies propagates discrimination and intolerance and threatens constitutional democracy and rule of law.

95. A “campaign” of intolerance against the Ukrainian Orthodox Church (Moscow Patriarchate) (hereinafter “UOC(MP)”), led by extreme right-wing group C14,¹⁴⁵ began during the reporting period. On 8 January 2018, several dozen members of C14 blocked the entrance and road to the Kyiv Pechersk Lavra to protest against the priests’ refusals to conduct services commemorating fallen Ukrainian soldiers and civilians who were not baptized by UOC(MP).¹⁴⁶ Members of C14 behaved aggressively, inciting violence and physically threatening those expressing opposing views. While the incident continued for over an hour, law enforcement authorities did not intervene. The same day, C14 announced on social media that this action was only the beginning of a protest campaign, and threatened to conduct further, larger “protests” in multiple locations.¹⁴⁷ Since then, C14 and other extreme right-wing groups broke into the Kyiv office of the news website of the Union of Orthodox Journalists, which publishes information on

UOC(MP),¹⁴⁸ and two arson attempts were committed against Tithes Chapel in Kyiv and St. Volodymyr church in Lviv, both belonging to UOC(MP).¹⁴⁹ OHCHR is concerned that law enforcement agencies did not take effective measures to prevent such acts, to thoroughly investigate them and to bring those responsible to justice.

96. OHCHR is concerned with expressions of intolerance voiced by some local Government authorities, such as the Ivano-Frankivsk City Council's resolution on 15 December, calling upon the Parliament of Ukraine to discriminate against the LGBT community.¹⁵⁰

97. Such statements not only contravene core obligations of States with respect to protecting the human rights of LGBT persons,¹⁵¹ but also violate anti-discrimination provisions set out in national legislation.¹⁵² OHCHR calls on all members of the Government, including local authorities, as well as on all political parties, to refrain from and sanction calls for any forms of discrimination, intolerance and hatred, and to strenuously adhere to the principle of non-discrimination in word and action.

B. Freedom of religion or belief

98. OHCHR also documented new instances of interference with freedom of religion in territory controlled by armed groups.¹⁵³ OHCHR is concerned with the adoption, on 2 February, in territory controlled by 'Luhansk people's republic', of a 'law' which bans all "religious groups" not directly linked to traditional religions, thus limiting freedom of religion.¹⁵⁴

99. In territory controlled by the armed groups, Jehovah's Witnesses continued to be targeted by various actions. OHCHR documented two new instances of "expropriation" of buildings belonging to the community, bringing the total number of expropriated Kingdom Halls to 14.¹⁵⁵ Two religious publications of Jehovah's Witnesses were declared "extremist" by the 'Donetsk people's republic',¹⁵⁶ while a 'court' in 'Luhansk people's republic' issued a 'decision' stating that actions of Jehovah's Witnesses "infringe the right to religious self-determination of others".¹⁵⁷ OHCHR is concerned that such labelling exposes Jehovah's Witnesses to possible administrative or criminal sanctions and further harassment.¹⁵⁸

C. Freedom of movement

*My husband will stay in Travneve,
I will come to Holmivskii because I am too scared to stay there.
Because of this conflict, we will end up with a contact line between us and getting divorced.
- Resident of a village near the contact line.*

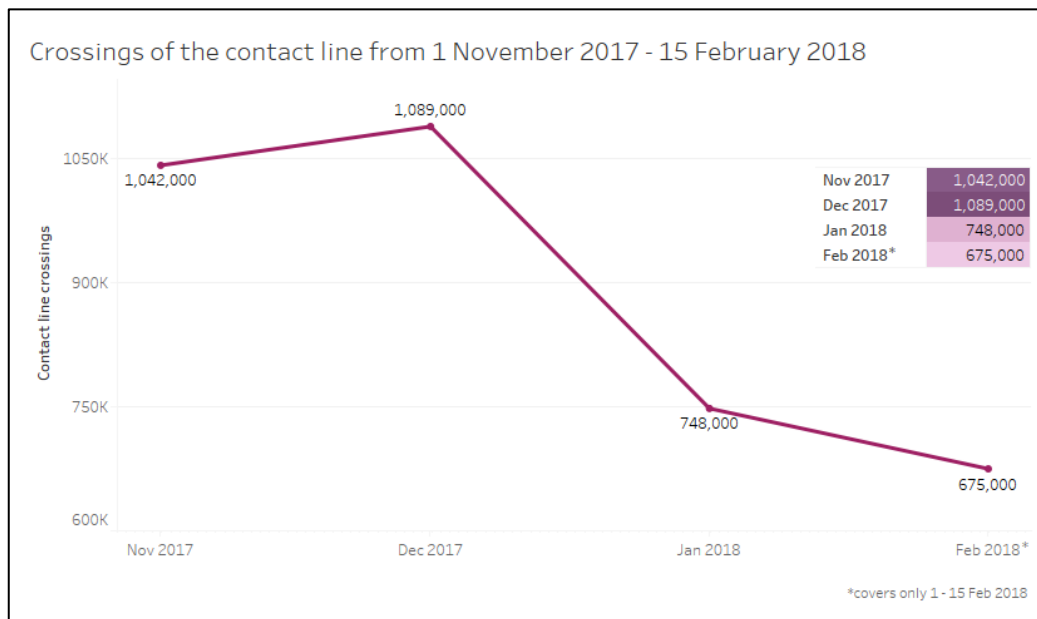
100. The number of crossings of the contact line through five official crossing points remained at the same level as in previous months. A total of 1,042,000 crossings were registered in November 2017, 1,089,000 in December 2017, and 748,000 in January 2018. As of 15 February 2018, 670,000 crossings had been registered.¹⁵⁹ The drop in the number of crossings in January may be attributed to the New Year/Orthodox Christmas holidays, as observed in prior years.¹⁶⁰

101. Basic facilities and services available at crossing routes¹⁶¹ were insufficient for the number of people crossing the contact line daily. Entry-exit checkpoints (EECPs) do not hold legal status and do not fall under the authority of any single state agency which would be responsible for maintaining an adequate level of facilities and services. At the end of October 2017, the Prime Minister of Ukraine directed the military-civil administrations in Luhansk and Donetsk regions to hand over assets to designated communal enterprises tasked with maintaining decent conditions at checkpoints. This order has not been implemented.

102. Limited availability of medical assistance at crossing routes is of particular concern.¹⁶² During the reporting period, at least two medical emergencies occurred at crossing routes, both of which resulted in deaths.¹⁶³ Furthermore, there are heightened security risks present near the contact line, due to armed hostilities as well as mine and ERW contamination. For example, on 21 January, a bus carrying civilians came under small arms fire near the Olenivka checkpoint (armed-group controlled) along the Novotroitske crossing route, killing one person and injuring another. Thus it is imperative that timely and adequate medical aid is available at crossing routes.

103. The physical challenges of crossing routes remained particularly daunting for persons with disabilities and the elderly, who generally make up a significant proportion of those crossing the contact line.¹⁶⁴ Due to the long queues, civilians must endure these conditions for long periods, sometimes for up to 10 hours, amid freezing temperatures.¹⁶⁵ Following numerous appeals from the international community, the parties to the conflict finally agreed upon conditions which enabled ICRC to repair the wooden ramps connecting the broken parts of the bridge at the Stanytsia Luhanska crossing route, on 10 December 2017.¹⁶⁶ While this is an important improvement, manoeuvring up and down the steep ramps at this sole crossing route in the entire Luhansk region remains difficult for people with disabilities, elderly people and families with children.

104. OHCHR notes that the 14 April 2017 Temporary Order¹⁶⁷ which indefinitely extended the validity of the permits to cross the contact line, remained unimplemented. Individuals must therefore apply for extensions of their electronic permits, creating an unnecessary barrier, especially for persons without access to computers or the internet.



105. On 15 December 2017, the ‘head’ of the ‘Donetsk people’s republic’ adopted a ‘decree’¹⁶⁸ prohibiting ‘civil servants’ from traveling to government-controlled territory. Despite an ‘explanatory note’¹⁶⁹ limiting its applicability, implementation of the ‘decree’ remains unclear.¹⁷⁰ OHCHR documented four cases where employees of kindergartens and social institutions were required to sign a declaration that they had read the ‘decree’ restricting the freedom of movement of ‘civil servants’.

106. OHCHR also documented two cases where ‘authorities’ of ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ ‘deported’ civilians from territory under their control.¹⁷¹ OHCHR recalls that international humanitarian law prohibits parties to the conflict from ordering

the displacement of civilians, in whole or in part, for reasons related to the conflict, unless required for the security of civilians or imperative military reasons.¹⁷²

VI. Economic and social rights

A. Right to an adequate standard of living

Please, give us a road, so we can fetch bread!
- Resident of a village near the contact line.

107. The living conditions of approximately 600,000¹⁷³ civilians (including 100,000 children) who reside close to the contact line, on both sides, worsened due to damages to key civilian infrastructure and private housing, restrictions on freedom of movement, limited access to basic services, the high level of unemployment, lack of public transportation, and a generally deteriorating economic environment.¹⁷⁴ Moreover, these conditions significantly isolated these communities.

108. Incidents of indiscriminate shelling affecting critical water and power supply systems, as well as sanitation facilities, continued to put staff of these facilities at risk, limit access to safe water, and as a knock-on effect, disrupt heating systems affecting hundreds of thousands of civilians on both sides of the contact line (*see also* paragraph 24 *above*). At least 27 incidents affecting water and sanitation facilities were recorded between November and December 2017.¹⁷⁵ The Donetsk Filtration Station, which supplies water for 345,000 people on both sides of the contact line, comes under fire more than other infrastructure, with 13 security incidents involving shelling and SALW fire occurring during the reporting period.¹⁷⁶

109. Access to basic services in isolated communities at the contact line remains a major concern. For example, in Katerynivka village, located between Popasna and Zolote (government-controlled territory, Luhansk region), restrictions on freedom of movement and lack of public transportation aggravated the humanitarian situation of the remaining 310 residents.¹⁷⁷ There is only one shop in the village, where products are overpriced, and there is no post office. Residents can only leave the village through the Zolote checkpoint.¹⁷⁸ The electricity supply is regularly disrupted due to the ongoing hostilities, yet electricians are unable to provide full services to the village for security and/or financial reasons.¹⁷⁹ Ambulances, emergency services, police and other essential services do not have full access throughout Katerynivka due to restrictions on movement imposed by the Ukrainian Armed Forces, and rarely visit.¹⁸⁰ Residents expressed feeling isolated and forgotten by local authorities who fail to respond to their numerous appeals.¹⁸¹

110. Following the escalation of hostilities in November 2017 in the vicinity of Novoluhanske village (Donetsk region), residents of the affected villages of Travneve, Dolomitne and Hladosove no longer had access to basic facilities and services, and their freedom of movement was restricted by Ukrainian Armed Forces-controlled checkpoints. Residents of Travneve and Hladosove villages lacked electricity from 16 November 2017 to 5 January 2018 due to damaged power lines in territory controlled by armed groups of the 'Donetsk people's republic'.¹⁸² There are no shops or schools in those villages, and access to basic health care is limited. Restrictions on movement hindered residents' ability to obtain goods and services elsewhere.

111. On 11 January 2018, the only Ukrainian mobile network operating in territory controlled by the armed groups stopped operating due to damages of fibre-optic communication lines.¹⁸³ The breakdown in mobile network services cut off communication between families separated by the contact line, disrupted businesses,¹⁸⁴ and further prevented access to emergency and medical

services. In order to reach mobile reception, people tend to take risks, travelling to areas close to the contact line.

B. Right to social security and social protection

Internally displaced persons

112. Out of 1,492,851 internally displaced persons (IDPs) registered in Ukraine,¹⁸⁵ 6,000 reside in 215 collective centres¹⁸⁶ located throughout the country. Living conditions in many of these centres are inadequate, with limited access to potable water, unsafe electrical wiring, and unresolved issues of legal tenure leaving IDPs at risk of eviction.¹⁸⁷ In addition, due to low income of IDPs, ownership disputes over the buildings between various state institutions, and poor communication between IDPs and local authorities, debts for utility bills accumulate and can lead to disruptions in supply. For example, during the reporting period, electricity to Teteriv sanatorium, in Zhytomyr region, was cut twice by the company supplying electricity due to debts, leaving 188 IDPs (including 88 children) without power, water and heating for up to 24 hours. OHCHR intervention led to restoration of services in both instances, but long-term solutions are needed.

113. OHCHR welcomes the amendments introduced to the Cabinet of Ministers' decree No. 1085, which expand the lists of settlements located at the contact line and those where State authorities temporarily do not exercise their functions.¹⁸⁸ This will enable over 100,000 IDPs from heavily affected areas to receive financial assistance, of which they had been deprived for almost nine months.¹⁸⁹

Payment of pensions

114. OHCHR welcomes the Supreme Court decisions issued in January and February 2018¹⁹⁰ in individual cases concerning termination of IDPs' pension payments based on the rules established by Cabinet of Ministers resolution no. 365.¹⁹¹ The Supreme Court underlined that pensions could only be terminated on the basis of an exhaustive list of grounds foreseen in the law,¹⁹² which has a higher legal force than the resolution.

115. OHCHR further welcomes the decision of the Kyiv Circuit Administrative Court on 14 December 2017 declaring resolution no. 365 as unlawful and ordering its cancellation.¹⁹³ This judgment, which requires a change of policy, has been appealed by the Cabinet of Ministers.

116. On 13 February 2018, the European Court of Human Rights issued a judgment regarding claims submitted by seven Ukrainian nationals from Donetsk whose pension payments had been suspended.¹⁹⁴ The Court held that the claimants had not been disproportionately restricted in their right of access to a court, and that they had failed to exhaust all domestic remedies available to challenge the suspension of their pensions before Ukrainian institutions. Thus, on the issue of protection of property, the Court did not assess whether the system for payment of pensions put in place by the Government ensured practical and effective access to social benefits for residents of territory not under Government control. Nevertheless, the Court indicated that the existence of such a system, prompted by an objective fact of hostilities in the region, cannot give rise to claims of unfavourable treatment when comparing the treatment of residents of territory controlled by armed groups with that of residents in government-controlled territory.

117. OHCHR reiterates that the current system, which links the right to pension with IDP registration,¹⁹⁵ has led to a significant reduction in the number of people from armed-group-controlled territory receiving pensions. While 1,278,000 pensioners were registered in this territory in August 2014, 956,000 persons were receiving pensions as of January 2016, and only 504,900 people as of November 2017.¹⁹⁶ While some pensioners residing in territory controlled by armed groups may receive financial assistance from the self-proclaimed 'republics', this does not replace their right to a pension, which is both a form of property and a type of social insurance provided exclusively by the State.

C. Housing, land and property rights

118. There has been no progress in establishing a restitution and compensation mechanism for property destroyed and/or damaged due to the armed conflict. While a few courts have recognized the right of some property owners to compensation in civil cases brought against the Government, the time prescribed to execute decisions had not yet run¹⁹⁷ and no compensation had therefore been paid as of 15 February 2018.¹⁹⁸

119. OHCHR notes that, due to the high number of houses damaged or destroyed and the costs associated with filing complaints, not all those affected will be able to bring court claims, highlighting the need for an effective and comprehensive administrative mechanism. OHCHR further notes that this need has become even more urgent due to the three-year statute of limitations for civil cases. Thus, in 2018, owners whose property was damaged or destroyed in 2014-2015 may lose one of the avenues to claim restitution or compensation.

120. Furthermore, in villages close to the contact line where there is extensive military presence,¹⁹⁹ OHCHR documented incidents of looting of private houses and ineffective and/or protracted investigations, particularly when there are reasonable grounds to believe that members of the Ukrainian Armed Forces may have been involved.²⁰⁰

Territory controlled by armed groups

121. OHCHR has previously expressed concerns over the system of ‘external management’ imposed on private enterprises and the ‘nationalization’ of 109 markets in territory controlled by ‘Donetsk people’s republic’.²⁰¹ During the reporting period, OHCHR documented the arbitrary confiscation of private property applied against one individual in ‘Donetsk people’s republic’.²⁰² OHCHR reiterates that everyone has the right to the peaceful enjoyment of one’s possessions.²⁰³

VII. Human rights in the Autonomous Republic of Crimea and the city of Sevastopol

Shut up now, you don't have any rights here!
- Police officer to journalist.

122. On 19 December 2017, the United Nations General Assembly adopted resolution 72/190 on the “Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine”.²⁰⁴ Recalling General Assembly resolution 68/262 (27 March 2014) on the territorial integrity of Ukraine, and echoing resolution 71/205 (19 December 2016), resolution 72/190 urges the Russian Federation to comply with its obligations as an occupying power in Crimea, and to ensure human rights protection and unimpeded access of human rights monitoring missions and NGOs to the peninsula.²⁰⁵ The Russian Federation continued to deny OHCHR access to Crimea, not recognizing the above-mentioned General Assembly resolutions. OHCHR therefore continued to monitor the human rights situation in Crimea from mainland Ukraine and through regular fact-finding missions to areas adjacent to Crimea, including the administrative boundary line with the peninsula.

123. During the reporting period, the Russian Federation continued to apply its laws in violation of the obligation under international humanitarian law to respect the legislation of the occupied territory.²⁰⁶ Peaceful protest actions initiated by Crimean Tatar activists were sanctioned. OHCHR observed persistent problems in the administration of justice and the enjoyment of fundamental freedoms in Crimea, and was able to document 18 cases of human rights violations.

A. Freedom of peaceful assembly

124. During the reporting period, 78 Crimean Tatar and two other Muslim men were fined²⁰⁷ for holding one-person pickets, on 14 October 2017, in protest against the arrest of other Crimean Tatar men for alleged membership in terrorist or extremist organizations.²⁰⁸ They were found guilty of violating Russian Federation law on public assemblies by holding organized actions, requiring pre-authorization for their conduct, portrayed as individual initiatives, which do not require prior authorization.²⁰⁹ OHCHR notes that the judgments offer no evidence that public actions in the form of single pickets could harm the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others, which are the only permissible grounds to restrict the exercise of the right to peaceful assembly under international human rights law.

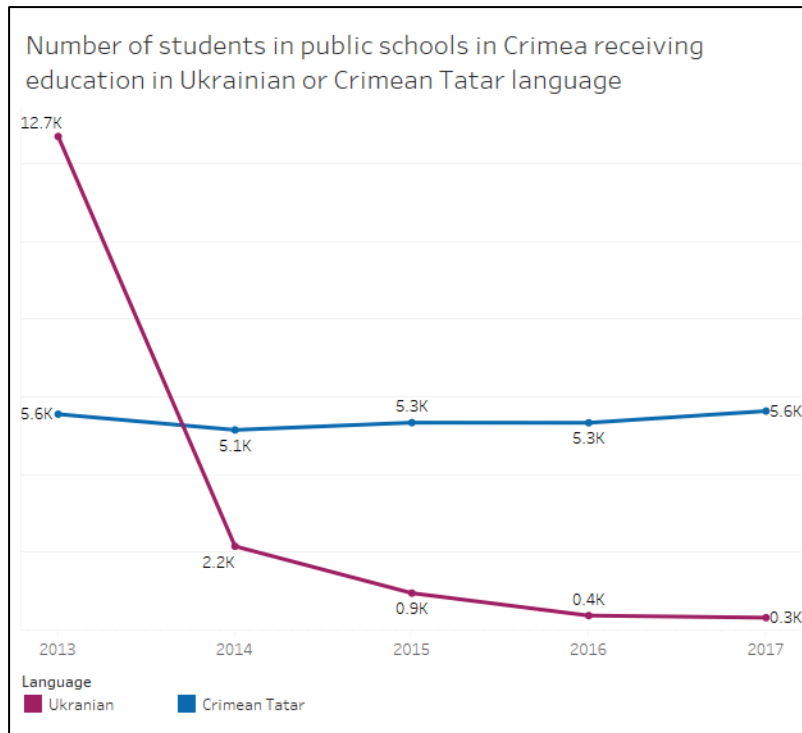
B. Freedom of opinion and expression

125. On 18 December 2017, the Supreme Court of Crimea upheld a conviction against freelance journalist Mykola Semena, charged in April 2016 for writing (under a pseudonym) an article alleged to contain calls to violate the territorial integrity of the Russian Federation.²¹⁰ The Supreme Court maintained the suspended two-and-a-half year sentence but shortened the period of time during which Mr. Semena is prohibited from working as a journalist from three to two years. OHCHR noted that parts of the article appear to encourage the use of force to return control of Crimea to Ukraine,²¹¹ and that Article 64(2) of Geneva Convention (IV) provides the Occupying Power with the right to subject the population of the occupied territory to provisions which are “essential to ensure the security of the Occupying Power”. At the same time, the verdict was based solely on a linguistic expert’s report, which was endorsed by the court without any assessment. This contravenes the due process principle that “all legal matters must be resolved exclusively by the courts”.²¹² Furthermore, an alternative linguistic expertise presented by the defence was dismissed by the court in a formalistic manner without sufficient legal justification, which may amount to a violation of fair trial guarantees.²¹³

C. Right to education in native language

126. The number of students taught in Ukrainian language in Crimea has drastically decreased, falling by 97 per cent since 2014.²¹⁴ In the current academic year, 318 students (0.2 per cent of children attending public schools in Crimea²¹⁵) are educated in Ukrainian language.²¹⁶ In addition, the number of children taught Ukrainian as a subject, a selective course, or within extracurricular activities, has sharply fallen, by approximately 50 per cent (from 12,892 in 2016-2017 to 6,400 in the current academic year).

127. About 5,600 students (3 per cent of students enrolled in public schools) receive education in Crimean Tatar - a number which has remained stable over the years.²¹⁷ Currently, 21,600 students study Crimean Tatar as a subject, a selective course, or within extracurricular activities – an increase of 12 per cent, from 19,254 students in 2016-2017.



128. On 28 December, the Russian authorities, through the Ministry of Education of Crimea, disseminated to municipalities a “Road map on the choice of language in education”.²¹⁸ This document offers a mechanism for parents to request education in native language for their children. In particular, parents must be informed by school administrations of the right to choose a language of instruction, the possibilities of learning in languages other than Russian, and the availability of appropriate teachers. OHCHR welcomes this step, which has the potential to increase access to education in one’s mother tongue, provided that the roadmap is effectively implemented in public schools.

D. Forced conscription

129. The Russian Federation continued to compel Crimean residents into its armed forces, conscripting at least 4,800 men within two campaigns in 2017, in violation of international humanitarian law.²¹⁹ In addition, courts in Crimea started to hear cases on charges of draft evasion.²²⁰ At least two guilty verdicts were passed, sentencing two Crimean residents to a criminal fine of 25,000 RUB each (approximately 430 USD).²²¹ It should be noted that the Criminal Code of the Russian Federation also prescribes the possibility of incarcerating a person for up to two years for evading the military draft²²² and does not absolve those convicted from the obligation to undergo military service.

E. Access to public services in mainland Ukraine

130. OHCHR noted a persistent pattern of restricted access to some public services in mainland Ukraine, particularly banking services, for people originating from Crimea. In November 2014, the National Bank of Ukraine decreed that people with residence in Crimea had become “non-residents” of Ukraine for the purpose of banking transactions.²²³ This restriction affects people living in Crimea - but not registered IDPs – as well as those who had left the peninsula for mainland Ukraine before the Russian Federation occupation. As a result, Ukrainian citizens who were residing in mainland Ukraine before 2014 but had a passport registration

indicating a locality in Crimea as their place of residence often felt compelled to obtain IDP status to be able to open a bank account for employment purposes.²²⁴ However, the IDP status carries more stringent civil registration requirements, often applied arbitrarily, for example to renew a national passport.²²⁵

VIII. Legal developments and institutional reforms

A. New legal framework concerning territory not controlled by the Government in certain areas of Donetsk and Luhansk regions

131. On 18 January 2018, Parliament adopted a law providing a new framework to re-establish control over certain areas of Donetsk and Luhansk regions, defining these areas as occupied by the Russian Federation.²²⁶ While outlining the structure of the military operation on countering armed aggression, the law allows the anti-terrorist operation to continue in parallel with the military-led one. It also distinguishes several geographical areas with different applicable regimes relating to the security operation, namely “area of exercise of the security and defence measures” and “area of hostilities” but does not define them. In addition, areas “adjacent” to an “area of hostilities” are defined as “security zones”, to be determined by the military commander,²²⁷ where the Government and defence authorities engaged in the security operation are vested with “special powers”.²²⁸ OHCHR invites the Government to ensure that the principle of proportionality is observed at all times during the exercise of such powers. OHCHR will carefully monitor implementation of the final text of the law.

132. Several key recommendations jointly made by OHCHR and UNHCR were taken into account during the revision.²²⁹ In particular, the law confirms that the provisions of the 2014 law²³⁰ which previously applied exclusively to Crimea, may not apply to the situation in certain areas of the Donetsk and Luhansk regions unless amendments are made. However, there is no timeframe for adopting the amendments to the 2014 law necessary to meet the legal certainty criteria for people to claim rights. As was recommended, the law clarifies that the rules on transfer of jurisdiction of courts will remain regulated by the existing legislation relating to the anti-terrorist operation.²³¹ Also, the general rule proclaiming null and void acts issued in areas of Donetsk and Luhansk regions which are not under Government control foresees an exception, in line with international jurisprudence, for birth- and death-related documents that “shall be attached to the applications for registration of birth or death”. OHCHR notes that a similar exception should be made for documents issued in Crimea. Furthermore, the law authorizes the Cabinet of Ministers - instead of the military commander - to define the procedure regulating movement of persons and goods across the contact line. It also prevents the authorities from denying individuals entry to government-controlled territory in situations threatening the life of civilians.

133. Despite some positive changes, the law still lacks clarity as to the human rights consequences of the transition from an anti-terrorist legal framework to this new one.²³²

B. Status of civilian victims

134. On 14 November 2017, Parliament amended legislation granting participants in the Maidan events who sustained injuries which did not lead to disability the status of “victims of the Revolution of Dignity” and entitling them to the same social protection guarantees as persons having former combatant status.²³³ The amendments also extend to civilians who acquired disability in connection to the conflict in eastern Ukraine the same social guarantees as those applying to war veterans with disabilities. However, these guarantees will apply to civilians in territory not controlled by the Government only if they were injured before 1 December 2014. There are no time limitations for civilians injured in government-controlled territory.

135. OHCHR welcomes the decision to provide strong social protection guarantees to civilian victims of the conflict with disabilities on both sides of the contact line. It regrets, however, that temporal restrictions were imposed on persons residing in territory not under Government control, which will result in the exclusion of hundreds of civilian victims.²³⁴ OHCHR also notes that the situation of civilians who sustained conflict-related injuries which did not lead to disability remains to be addressed, and stresses the need for a comprehensive policy to guarantee the right to remedy and reparation for all civilian victims of the conflict, regardless of the perpetrator and the location where they were injured, in accordance with United Nations Basic Principles.²³⁵

C. Law on Education

136. On 8 December 2017, following a request by the Government of Ukraine, the Council of Europe's European Commission for Democracy through Law (Venice Commission) adopted an Opinion²³⁶ on article 7 of the framework Law on Education,²³⁷ which reflects concerns previously raised by OHCHR in relation to minority language education.²³⁸ The Commission noted, in particular, that the law would "considerably reduce"²³⁹ the amount of minority language education and that article 7 treats less favourably minority languages that are not official languages of the European Union, such as Russian.²⁴⁰ The Commission recommends amending Article 7 as an "appropriate solution" to avoid "discriminatory treatment" of minority languages that are not official European Union languages.²⁴¹ The Commission further recommends that the Government ensure a sufficient proportion of education is available in minority languages when implementing the Education law, introduce an appropriate transitional period for its implementation, and exempt private schools from the new language rules.²⁴²

D. Draft legislation on missing persons

137. On 18 January, Parliament adopted in first reading a draft law²⁴³ providing for the establishment of a Commission on Missing Persons for tracing missing persons and identifying human remains. This text, as well as an alternative one, was registered in Parliament in November-December 2016²⁴⁴ to address the situation of persons unaccounted for as a result of armed conflict, public disturbances, and natural or man-made disasters. As recommended by the lead Parliamentary Committee²⁴⁵ and prompted by OHCHR and other actors' advocacy, the document will be revised in preparation for the second reading to incorporate key aspects contained in the alternative proposal,²⁴⁶ specifically the concept of "enforced disappearance" and provision of financial assistance to family members of missing persons.

138. OHCHR welcomes this significant step toward streamlining relevant national procedures. It stresses the importance of ensuring sufficient capacity for the Commission to be able to deliver its mandate effectively, in line with international standards,²⁴⁷ and to allow involvement of families of missing persons in the Commission's work. It is also essential to provide effective remedies for violations of the right of relatives to know the fate of missing persons and to guarantee support, rehabilitation and reintegration of missing persons returning after a prolonged period of absence.

IX. Technical cooperation and capacity-building

139. OHCHR continued engaging with the Government and civil society to support them in the protection and promotion of international human rights standards within Ukraine, as well as the application of international humanitarian law. OHCHR assistance focused on implementation of recommendations dealing with torture from the United Nations Subcommittee on Prevention of Torture²⁴⁸ and OHCHR past reports, development of the country strategy to prevent and

address conflict-related sexual violence, and equal access of all Ukrainian citizens to pension payments regardless of residence registration or IDP status.

140. Throughout the reporting period, OHCHR promoted the implementation of the Istanbul Protocol and strengthening measures to prevent and address torture and conflict-related sexual violence through various trainings and presentations. OHCHR participated in four workshops²⁴⁹ which were part of a series of regional workshops organized by the Office of the Prosecutor General of Ukraine to promote the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). OHCHR's presentations focused on the identification, documentation and investigation of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with international practices and standards. OHCHR also conducted training sessions on international human rights standards and ethical concerns regarding torture and ill-treatment for military personnel deployed to the "anti-terrorism operation" area as part of civil-military cooperation units,²⁵⁰ military chaplains who regularly provide pastoral care to soldiers deployed at the contact line,²⁵¹ and members of the Pastoral Care Council (advisory body to the Ministry of Justice).²⁵²

141. In November, an international expert on conflict-related sexual violence contracted by OHCHR and UN Women concluded her visit to Ukraine and presented to key stakeholders, including the Vice-Prime Minister, the preliminary draft of a national strategy to prevent and address conflict-related sexual violence.²⁵³ OHCHR, together with UN Women and the expert, are finalizing the strategy with a view to integrating it into a revised version of the National Action Plan on the Implementation of the United Nations Security Council Resolution 1325.

142. OHCHR continued to raise awareness of and provide consultations to various stakeholders on the issue of payment of pensions to Ukrainian citizens with residence registration in territory controlled by armed groups.²⁵⁴ In partnership with other United Nations agencies, and under the auspices of the United Nations Resident Coordinator's Office, OHCHR developed a briefing note providing an overview of the issue, with statistical data, reflecting the human cost of current Government policies, and highlighting the legal obligations of the Government in this area. The briefing note was shared with the Prime Minister of Ukraine, key State officials, civil society and the international community.

143. In addition, during the reporting period, OHCHR – with the help of Justice Rapid Response – continued to engage and facilitate the assistance of international forensic experts to conduct a forensic re-examination related to the deaths resulting from the fire in the House of Trade Unions in Odesa on 2 May 2014. Such assistance was solicited by the Office of the Prosecutor General.

X. Conclusions and recommendations

*These villages (on both sides of the contact line) are tied together
like a big ball of yarn.*

- Resident of a village near the contact line.

144. As Ukraine is about to enter the fifth year of armed hostilities, civilians continue to pay the costs of this conflict. Families, friends and business ties continue to be artificially divided by the contact line, adding to the hardship borne by the population. The parties involved in hostilities need to adhere to the ceasefire, to protect civilian lives and critical civilian infrastructure, to alleviate hardships caused by the conflict, and to facilitate freedom of movement across the contact line.

145. With the simultaneous release of detainees under the framework of the Minsk Agreements, more information has come to light regarding serious human rights violations and abuses perpetrated on both sides of the contact line - arbitrary deprivation of liberty, *incommunicado* detention, torture and ill-treatment. These violations and abuses cause grave suffering for victims and their families, feed division and increase the challenges which shall be faced in future peace and reconciliation efforts.

146. Violations and abuses perpetrated in conflict-related cases remain essentially unaddressed, and a systemic lack of accountability deprives victims and the society as a whole of the right to know. It also fuels a climate of impunity.

147. Such a climate is particularly worrisome as Ukraine prepares for the 2019 presidential and parliamentary elections. Ukrainian law enforcement authorities must address with resolve any manifestations of intolerance, threats and violence, including against persons belonging to minority groups and individuals holding alternative, minority social or political opinions. Respect for fundamental freedoms and protection of minorities will serve as a bulwark against extreme ideologies that threaten constitutional democracy ahead of the elections.

148. The residents of the Crimean peninsula continue to be subjected to the legal and governance framework of the Russian Federation, in violation of international humanitarian law. OHCHR recalls the United Nations General Assembly's request that the Russian Federation comply with its obligations as an occupying power in Crimea.

149. OHCHR notes that most of its past recommendations have yet to be implemented and remain valid. OHCHR therefore reiterates and further recommends:

150. **Recommendations to the Ukrainian authorities:**

a) **Government of Ukraine to investigate all potential violations of international humanitarian law, or at the minimum – and as obligated by international law – of serious violations of international humanitarian law, and ensure accountability through disciplinary or criminal proceedings, as appropriate.**

b) **Government of Ukraine to ensure that the right to remedy of victims of serious violations of international humanitarian law and gross violations and abuses of international human rights law is fulfilled through equal and effective access to justice and reparations, including restitution, compensation and rehabilitation, without discrimination.**

c) **Where military presence within civilian areas is justified due to military necessity, Government of Ukraine to take all possible steps to protect the civilian population, including making available adequate alternative accommodation, as well as compensation for the use of property and any damages.**

d) **Government of Ukraine to ensure investigations, in an effective and timely manner, and prosecute allegations of torture and ill-treatment, arbitrary and *incommunicado* detention, sexual- and gender-based violence, including those allegedly committed by State actors, persons or groups of persons acting with their authorization, support or acquiescence; and consider establishing an inter-agency group in charge of investigation of such cases, as civilian investigative bodies do not have access to many alleged places of detention or where the victims were last seen.**

e) **Government of Ukraine to ensure that individuals charged with affiliation or links with the armed groups are remanded in custody pending trial only after individual determination of reasonableness and necessity thereof.**

f) **Government of Ukraine to ensure that complaints by conflict-related detainees regarding arbitrary arrest and/or detention, torture and ill-treatment, are properly addressed by law enforcement authorities.**

- g) Government of Ukraine to ensure investigations by the National Police of all allegations of pressure on judges.**
- h) Government of Ukraine to facilitate the free and unimpeded passage of civilians across the contact line by increasing the number of crossing routes and entry-exit checkpoints; lift unnecessary and disproportionate restrictions on, and ease freedom of movement at all checkpoints, including 'internal' checkpoints; and ensure that persons with residence registered in territory controlled by armed groups are not subjected to additional discriminatory checks.**
- i) Government of Ukraine to allocate sufficient funds to designated enterprises to maintain an adequate level of services and conditions at entry-exit checkpoints with facilities that provide safe and dignified conditions, in particular for persons with disabilities, including access to adequate water, sanitation, shelter, medical services and information.**
- j) Government of Ukraine to ensure the full implementation of the Temporary Order on Control of the Movement of People along the Contact Line in Donetsk and Luhansk regions introduced on 14 April 2017 allowing for non-expiry of permits.**
- k) Ensure the Prosecutor's Office, National Police and Military Prosecutor's office conduct transparent, timely and effective investigation of attacks on media professionals and media outlets, threats to physical integrity and other criminal actions that can be qualified as preclusion of lawful professional activity of journalists.**
- l) National Police to ensure prompt, effective and unbiased investigation of alleged violations in connection with the operations of the Myrotvorets website.**
- m) Security Service of Ukraine to ensure that any restriction on freedom of expression is imposed only as a specific and individualized response to a precise threat to national security, and is both necessary and proportionate.**
- n) Ministry of Internal Affairs and National Police to ensure that law enforcement officials involved in policing of public assemblies know and apply international human rights standards, and take all appropriate measures to secure such assemblies without discrimination, including gatherings of persons belonging to minority groups.**
- o) Government of Ukraine to guarantee that residents of all villages adjacent to the contact line can access basic services and receive social payments and pensions.**
- p) Government of Ukraine to ensure that IDPs living in collective centres enjoy an adequate standard of living, including safe access to drinking water, electricity and heating, as well as appropriate access to basic services and employment opportunities.**
- q) Government of Ukraine, Parliament and other relevant State bodies to eliminate obstacles preventing all citizens from enjoying equal access to pensions regardless of their place of residence or IDP registration.**
- r) Government of Ukraine, Parliament and regional authorities to ensure that persons with disabilities residing near the contact line have equal access to quality health services, including by facilitating freedom of movement and providing accessible transportation.**
- s) Ministry of Temporarily Occupied Territories and Internally Displaced Persons, Ministry of Social Policy and other relevant state bodies to ensure that IDPs with disabilities are provided with adequate accommodation, access to in-home and other services, and means for inclusion in the community.**
- t) Government of Ukraine to establish independent, transparent and non-discriminatory procedures of documentation and verification of housing, land and property ownership; create a registry of damaged or destroyed housing and other**

property; and set up a comprehensive legal mechanism for restitution and compensation.

u) Office of the Prosecutor General and other law enforcement agencies to ensure appropriate classification, investigation and prosecution of crimes committed on the basis of religious affiliation, ethnicity, sexual orientation, gender identity, beliefs, views or opinions, including crimes perpetrated by members of extreme right-wing groups.

v) Government of Ukraine to ensure that the language provision in the Law on Education does not lead to violations of the rights of minorities or discrimination against certain minority groups.

w) Government of Ukraine to simplify access to banking services and IDs in mainland Ukraine for people originating from Crimea and territory controlled by armed groups.

x) Government of Ukraine to develop a comprehensive policy to guarantee adequate, effective, prompt and appropriate remedies, including reparation, to civilian victims of the conflict, especially those injured and the families of those killed, in accordance with United Nations Basic Principles²⁵⁵.

y) Parliament to ensure the revision of the procedure for selection and appointment of the Ombudsperson, in line with the recommendations of the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions; in particular the procedure should include requirements to publicize vacancies broadly, assess candidates on the basis of predetermined, objective and publicly available criteria, and promote broad consultation and/or participation in the screening, selection and appointment process.

z) Government of Ukraine to establish an independent and impartial centralized State authority for tracing missing persons and identifying human remains, with sufficient capacity and reach to deliver its mandate effectively, and ensure effective investigation and prosecution of enforced disappearance.

aa) Government of Ukraine to provide effective remedies for violations of the right of relatives to know the fate of missing persons; in particular, introduce guarantees responding to their material, financial and psychological needs; and ensure support, rehabilitation and reintegration of missing persons returning after a prolonged period of absence.

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

a) Bring to an end the conflict by adhering to the ceasefire and implementing other obligations foreseen in the Minsk agreements, in particular regarding withdrawal of prohibited weapons and disengagement of forces and hardware;²⁵⁶ until such implementation, agree on and fully respect "windows of silence" to allow for crucial repairs to and maintenance of civilian infrastructure in a timely manner.

b) Take all feasible precautions to minimize harm to the civilian population during operations in areas populated by civilians, including by: locating military objectives such as armed forces and weapons systems outside of densely populated areas, or when such relocation of military objects from civilian areas is not feasible due to military necessity, removing civilians – with their consent – from the vicinity of military objects to ensure their safety; immediately ceasing the use of weapons with indiscriminate effects in areas populated and used by civilians, particularly those with a wide impact area or the capacity to deliver multiple munitions over a wide area; and strictly comply with international humanitarian law, in particular, refrain from deliberately targeting civilians or civilian objects, including objects indispensable to the survival of the civilian population, such as drinking water installations and supplies.

- c) Investigate any attack that may have caused incidental loss of civilian life, injury to civilians, or damage to civilian objects; establish whether such attack was excessive in relation to any anticipated concrete and direct military advantage; and hold those responsible to account.
- d) Armed groups of the self-proclaimed 'Donetsk people's republic' and the self-proclaimed 'Luhansk people's republic' to ensure that all instructions and directives issued in relation to the conduct of hostilities are compliant with international humanitarian law, and provide training in international humanitarian law to its members.
- e) Ensure unimpeded access for OHCHR and other independent international observers to all places of deprivation of liberty, and allow private, confidential interviews with detainees; keep a detailed register of every person deprived of liberty and inform their families where they are held.
- f) Treat all persons detained, including those held in connection with the conflict and soldiers and fighters, humanely in all circumstances.
- g) Enable and facilitate the voluntary transfer of all pre-conflict detainees to government-controlled territory, regardless of their registered place of residence, in order to enable contact with their families.
- h) Armed groups of 'Donetsk people's republic' and 'Luhansk people's republic' to respect freedom of religion or belief in territory under their control, and refrain from infringement upon this right, including by lifting the existing prohibition of Jehovah's Witnesses, halting seizures of their religious buildings and the harassment of their members.

152. To the Government of the Russian Federation:

- a) Implement General Assembly Resolution 72/190 of 19 December 2017, including by ensuring proper and unimpeded access of international human rights monitoring missions and human rights non-governmental organizations to Crimea.
- b) Ensure that the right to freedom of peaceful assembly can be exercised by all Crimean residents in any form including single-person pickets, without any restrictions other than those permissible by international human rights law, and without discrimination on any grounds.
- c) Refrain from sanctioning free speech and peaceful conduct, and release all persons arrested and charged for expressing dissenting views, including regarding the status of Crimea;
- d) Comply with the international humanitarian law obligation not to compel residents of the occupied territory of Crimea to serve in the armed forces of the Russian Federation; quash all guilty verdicts in this regard and discontinue all criminal proceedings initiated against protected persons in Crimea for evading military service in the armed forces of the Russian Federation;
- e) Ensure the availability of education in Ukrainian language.

153. To the international community:

- a) Encourage the parties to the conflict to pursue all available political and practical avenues to continue simultaneous release of conflict-related detainees pursuant to the Minsk agreements.
- b) In light of the upcoming presidential and parliamentary elections, as well as attacks on journalists and other individuals documented by OHCHR, strengthen their engagement in combatting discrimination and manifestations of intolerance towards

ethnic, political, sexual and other minorities in Ukraine, linking prospects of cooperation to progress in this regard.

ANNEX I

Endnotes

¹ OHCHR was deployed on 14 March 2014 to monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address human rights concerns. For further details, *see* paras. 7–8 of the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine of 19 September 2014 (A/HRC/27/75).

² United Nations Human Rights Council Special Procedures mandate holders and Human Rights Treaty Bodies.

³ The majority of human rights violations documented by OHCHR during the reporting period involve incidents which occurred prior to the reporting period.

⁴ Hereinafter ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’.

⁵ Three civilian casualties (all injuries) were caused by booby traps, whilst 23 (9 killed and 14 injured) were caused by imprudent handling of ERW, mostly hand grenades.

⁶ “Release and exchange of all hostages and unlawfully detained persons, based on the principle “all for all” is foreseen in para 6 of the Package of Measures for the Implementation of the Minsk Agreements. English translation available at https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf. The Working Group on Humanitarian Issues reached the decision on the simultaneous release at the end of November 2017, after a year of tense discussions in Minsk.

⁷ *See* U.N. General Assembly resolution 68/262 of 27 March 2014 on the territorial integrity of Ukraine, resolution 71/205 of 19 December 2016 referring to Crimea as being occupied by the Russian Federation and resolution 72/190 of 19 December 2017 urging the Russian Federation to comply with its obligations as an occupying power in Crimea.

⁸ Law “On particular aspects of public policy aimed at safeguarding the sovereignty of Ukraine over the temporarily occupied territory of the Donetsk and Luhansk regions of Ukraine” (draft law no.1763). *See also* OHCHR Report on the human rights situation in Ukraine, 16 May to 15 August 2017 (hereinafter “OHCHR 19th Report”), paras. 148-154.

⁹ OHCHR documents civilian casualties by consulting a broad range of sources and types of information which were evaluated for credibility and reliability. In analysis of each incident, OHCHR exercises due diligence to corroborate information from as wide a range of sources as possible, including OSCE public reports, victim and witness accounts, military actors, community leaders, medical professionals, and other interlocutors. In some instances, documentation may take weeks or months before conclusions can be drawn, meaning that numbers on civilian casualties may be revised as more information becomes available. OHCHR does not claim that the statistics presented in this report are complete. Civilian casualties may be underreported given limitations inherent in the operating environment, including gaps in coverage of certain geographic areas and time periods.

¹⁰ The deaths of 11 men and 1 woman, and the injury of 31 men, 24 women, 4 girls and 2 boys.

¹¹ Between 16 August to 15 November 2017, OHCHR documented 87 civilian casualties: 15 killed (14 men and 1 boy) and 72 injured (42 men, 19 women, 10 boys and 1 girl).

¹² OHCHR recalls that the parties committed to withdraw heavy weapons under the Minsk agreements. During the reporting period, hostilities intensified between 2 to 20 December, particularly in Donetsk region. Hostilities substantially reduced between 23 December and 10 January as a result of a re-commitment to the ceasefire negotiated by the Trilateral Contact Group and other signatories to the Minsk agreements for the Christmas and New Year period. OSCE SMM recorded almost 16,000 ceasefire violations the week of 11 to 17 December and over 10,000 ceasefire violations from 18 to 24 December. This fell to approximately 2,000 ceasefire violations recorded the week of 25 to 31 December 2017 and just under 4,000 ceasefire violations from 1 to 7 January 2018. *See* OSCE daily and spot reports at <http://www.osce.org/ukraine-smm/reports/>; OSCE press statement on re-commitment at <http://www.osce.org/special-monitoring-mission-to-ukraine/364031>.

¹³ Civilian casualties due to shelling and light weapons are compiled together because a number of casualties stemmed from fragmentation injuries which could have been caused by either, specifically 1 death (a man) and 18 injuries (11 men and 7 women). In addition, OHCHR recorded 1 death (a man) and 21 injuries (11 women, 8 men and 2 girls) caused by shelling from guns, mortars, howitzers and MLRS.

¹⁴ Specifically, the death of 1 man and the injury of 4 men and 1 woman.

¹⁵ For example, actors used a Grad multiple rocket launch system to shell Novoluhanske – a town populated by approximately 3,500 civilians – on 18 December. On 29 November, SMM located in government-controlled Svitlodarsk recorded approximately 70 undetermined explosions and heavy-machine-gun and small-arms fire, all 2-5km south-east and south, and 24 explosions assessed as 122mm MLRS munitions, 4-5km to the northeast. OSCE SMM daily report at <http://www.osce.org/special-monitoring-mission-to-ukraine/360141>. Overnight on 4-5 December, SMM in armed-group-controlled Kadiivka (formerly Stakhanov) recorded approximately 200 undetermined explosions 6-18km away, and approximately 100 explosions assessed as outgoing rounds of 122mm MLRS munition 6-9km away. OSCE SMM daily report at <http://www.osce.org/special-monitoring-mission-to-ukraine/360961>. In Novoluhanske on 20 December, SMM documented a fresh crater in a field assessed as caused by a 122mm MLRS munition. The crater was located 50m from the nearest house. OSCE SMM daily report at <http://www.osce.org/special-monitoring-mission-to-ukraine/364021>.

¹⁶ ICRC, Customary International Humanitarian Law Database, Rules 11, 12, 15, 17.

¹⁷ Explosive remnants of war include both unexploded ordnance (UXO) and abandoned explosive ordnance (AXO).

¹⁸ This is a 28.1 per cent decrease compared with the previous reporting period (16 August to 15 November 2017) when OHCHR recorded 32 civilian casualties caused by ERW incautious handling: 6 killed and 26 injured. During the reporting period, most of such civilian casualties resulted from incautious handling of hand grenades or their use in interpersonal conflicts, with perpetrators often being intoxicated by alcohol, or from attempts to dismantle AXOs (shells or cartridges for small arms).

¹⁹ Protocol II (as amended on 3 May 1996) to the 1980 Convention on Certain Conventional Weapons also restricts the indiscriminate and disproportionate use of booby-trap devices (defined as any device or material which is designed, constructed or adapted to kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act) and – as in international humanitarian law – requires that all feasible precautions be taken to protect civilians from the effects of booby traps (including taking into account measures to protect civilians and the availability and feasibility of using alternatives). It further prohibits the use of booby traps attached to, or associated with, a wide range of specific items, and in any area with a concentration of civilians akin to that found in a city, town, or village where combat between ground forces is not taking place or does not appear to be imminent. Ukraine consented to be bound by Protocol II on 15 December 1999. The protocol binds all parties to the conflict in a non-international armed conflict. *See* Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 CCW Convention as amended on 3 May 1996), Articles 1,2,3,7. *See* ICRC, Customary International Humanitarian Law Database, Rules 1, 11 and 12.

²⁰ *See also* “Freedom of movement” and “Right to adequate standard of living” sections.

²¹ OHCHR interview.

²² For example, OHCHR documented shelling damage to civilian homes (houses and apartments), a school, kindergarten and medical post in government-controlled Novoluhanske on 18 December and to a kindergarten in armed-group-controlled Holmivskyi on 17-18 December. Shelling of armed-group-controlled Kadivka (formerly Stakhanov) on 19 December shattered the windows of a polyclinic and damaged civilian homes. OCHA reported an increase of reported incidents against education facilities during December. Humanitarian Snapshot (as of 23 January 2018) at <https://www.humanitarianresponse.info/en/operations/ukraine/infographic/ukraine-humanitarian-snapshot-23-january-2018>.

²³ Presence of military or armed groups and their use or occupation of civilian property was documented by OHCHR in Bolotene on 13 December, Druzhba on 6 December, Lopaskyne on 14 December, Lobacheve on 14 December, Novhorodske on 5 December, Novoluhanske on 4, 8, 21 December and 23 January, Novooleksandrivka on 17 January, Novoselivka Druha on 6 December, Pankivka on 7 December 2017), Syze on 13 December, Travneve on 23 January, Trokhizbenka on 14 December, Verkhnotoretske on 6 December and 26 January, and Zolote-4 on 17 January, Pisky, Pervomaiske and Vodiane (Yasynuvata district) on 14 February. In addition, OHCHR observed that the UAF occupied homes in Travneve in late November and marked houses in Travneve and Hladosove with civilians present with circles while empty houses were marked with crosses. In Katerynivka, OHCHR observed renewed military presence on 8 February. According to local residents, UAF returned their positions back inside the village at the end of December and occupied civilian homes.

²⁴ ICRC Customary International Humanitarian Law Study, Rules 11, 12, 14, 156. *See also* Rule 15, requiring parties to take all feasible precautions to avoid – and in any event minimize – incidental loss of civilian life, injury to civilians and damage to civilian objects during the conduct of military operations.

²⁵ OHCHR documented such examples in Bolotene (13 December), Katerynivka (8 February), Pervomaiske (14 February), Pisky (14 February), Novoselivka Druha (6 December), Syze (13 December), Verkhnotoretske (26 January) and Vodiane (14 February). *See also* “Housing, land, and property rights” section *below*.

²⁶ For example, OHCHR observed that the electricity supply to areas of Zolote-4 was cut by shelling on 18 November, denying electricity to one street and a hamlet during sub-zero temperatures. Repair teams refused to go to the area because of the inability to organize a “window of silence” as a result of the departure of Russian soldiers from the Joint Centre for Control and Coordination (formed in September 2014, provides a mechanism for monitoring the ceasefire and resolving issues linked to stabilization of the area around the contact line, including the coordination of “windows of silence”; hereinafter JCCC). The electricity supply resumed on 27 November. Similarly, the populations of Novoluhanske, Hladosove and Travneve had limited access to electricity after 16 November and 28 December due to shelling damages to infrastructure. On 19 December, one of two power lines to the First Lift Pumping Station was damaged by shelling and cannot be repaired without a window of silence. If the remaining power line is damaged, electricity supply to the pumping station will be cut. The station supplies water to five filtration stations, which in turn process water for over 1 million people on both sides of the contact line. Information provided by WASH Cluster.

²⁷ WASH Incident Reports at <https://www.humanitarianresponse.info/en/operations/ukraine/water-sanitation-and-hygiene>. OHCHR has consistently raised the risks surrounding direct or indirect damage to the Donetsk Filtration Station (DFS) (located in “no man’s land” approximately 15 km north of Donetsk city) from use of explosive weapons. *See, e.g.*, OHCHR Report on the human rights situation in Ukraine, 16 August to 15 November 2017 (hereinafter “OHCHR 20th Report”), para. 24. During the reporting period, in addition to the shelling and shooting in the vicinity of the DFS on 19 December, the facility came under fire on 1-2 December (shelling leaving behind unexploded ordnance); 3 December (shelling); 12 December (a machine-gun bullet entered a room where an employee was present) and 17-18 December (a shell landed next to a chlorine pipe). Other facilities were also impacted by the hostilities. On 26 January, the First Lift Pumping Station of the South Donbas Water Pipeline was reconnected to a reserve power line as a result of shelling and damage to a power converter. A repair brigade was unable to repair the power converter on the same day after small arms fire in the area posed a risk. On 12 December, a shell hit the grounds of Horlivka Filter Station No.2 (armed-group-controlled territory), which supplies water to 184,000 people on both sides of the contact line. On 31 December, the Holmivskyi Waste Water Treatment Plant, which provides treats water supply for 7,800 people, lost power due to shelling damage to a power cable which connected the substation to the power line. The cable was repaired a few days later.

²⁸ Projectiles landed on the grounds of the DFS, requiring evacuation of approximately 70 staff to the bomb shelter. The evacuation had to be completed without any security guarantees due to difficulties coordinating a “window of silence” following the withdrawal of the Russian Federation from the JCCC. (Source: Wash Cluster.) *See also* <http://www.osce.org/special-monitoring-mission-to-ukraine/363681?download=true>. OHCHR is unable to determine which party to the conflict fired the projectiles that landed in the vicinity of the Donetsk Filtration Station.

²⁹ Comment by the Information and Press Department of the Russian Federation Ministry of Foreign Affairs, available at http://www.mid.ru/en/web/guest/maps/ua/-/asset_publisher/ktm0ZLTvbbS3/content/id/2993360.

³⁰ OHCHR interviews, November 2017 – January 2018.

³¹ OHCHR previously reported on such pattern, which were more common in 2014-2015. Then, the authorities justified such practice by the fact that due to hostilities it was impossible to immediately deliver a detainee to an official place of detention.

³² OHCHR interview, 27 December 2017.

³³ Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32, E/CN.4/1995/34, para. 926(d) reminds “Each interrogation should be initiated with the identification of all persons present. All interrogation sessions should be recorded and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings. The practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers.”

³⁴ To improve the legal framework on medical care provision in places of deprivation of liberty, Ministry of Justice and Ministry of Health issued a joint order No. 1517/5/503 dated 10 May 2017, which amended previously existing mechanisms of identification and registration of bodily injuries of the convicted detainees, as well as those who just arrived to the detention facilities. This amended order foresees mandatory registration of bodily injuries and notification of authorities about them, medical examination of the detainees without presence of non-medical staff, free choice of a doctor and confidentiality of medical records.

³⁵ Detainees often tell OHCHR during interviews that they are compelled/threatened to provide such explanations by the law enforcement bodies that detained an individual.

³⁶ For example, see OHCHR Report on human rights situation in Ukraine, covering the period from 16 August to 15 November 2017, para 62; CAT/OP/UKR/3, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Visit to Ukraine undertaken from 19 to 25 May and from 5 to 9 September 2016: observations and recommendations addressed to the State party.

³⁷ Chapters IV, V and VI of the Istanbul Protocol detail that medical examination and psychological evaluation should be thorough, even if the victim does not have any immediate complaints and acute symptoms at the time of examination. Istanbul protocol highlights the importance of interviewing the alleged victim and recording the answers regarding how injuries were received, healing process, etc.

³⁸ Seven cases involving 12 individuals.

³⁹ In one emblematic case recorded during the reporting period, a victim was detained at an armed-group-controlled checkpoint in August 2017, hooded and handcuffed, and brought to the ‘MGB’ building in Donetsk. On the way, he was pressured to confess to being a spy and threatened. At ‘MGB’ he was interrogated for ten hours, after which he was told to sign a document stating he had not been under pressure. When he refused, an ‘MGB officer’ gave him two options: to sign the document, hand over his personal belongings including passport and leave the building, or to not sign it and end up in the basement. The victim chose the first option and was released. Following this, he was twice summoned to ‘MGB’ for interrogation. At the end November, he appealed to ‘MGB’ to return his passport, and later to the ‘general prosecutor’. On 6 December, after the victim and his lawyer filed a complaint at ‘MGB’, he was arrested on his way home. ‘MGB officers’ took him to a field, searched him, and told him to sign documents or they would take him to a minefield and he would be just another civilian casualty. He protested, but the ‘officers’ threatened him with beatings and death. The victim signed: 1) a statement confirming he received his documents back from ‘MGB’; 2) an admission of verbally ‘consenting’ to cooperate with SBU to defame the ‘Donetsk people’s republic’; and 3) a ‘notice’ of ‘deportation’ from ‘DPR’ for 5 years. He was then taken to a checkpoint, given his documents and cellphone, transferred to government-controlled territory.

⁴⁰ OHCHR documented four such cases during the reporting period. This is in line with previous recorded cases.

⁴¹ <https://dan-news.info/obschestvo/sotrudniki-mgb-dnr-v-2017-godu-zaderzhali-po-podozreniyu-v-shpionazhe-i-gosizmene-pochti-250-chelovek.html>.

⁴² See also OHCHR Report on the human rights situation in Ukraine, 16 February to 15 May 2017 (hereinafter “OHCHR 18th Report”), paras. 43-44; OHCHR 20th Report, paras. 40-44.

⁴³ In a few rare instances, the person was released shortly after the apprehension.

⁴⁴ In an emblematic case recorded during the reporting period, a couple disappeared while crossing an armed-group-controlled checkpoint on 16 October 2017. Relatives appealed to ‘MGB’, ‘police’ and the ‘general prosecutor’ without response. On 28 November, relatives found out that the couple was detained by ‘MGB’, however could not confirm their whereabouts.

⁴⁵ “Torture is most frequently practised during *incommunicado* detention. Incommunicado detention should be made illegal and persons held incommunicado should be released without delay. Legal provisions should ensure that detainees be given access to legal counsel within 24 hours of detention. Security personnel who do not honour such provisions should be punished. [...] In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours.” Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32, E/CN.4/1995/34, para. 926(d).

⁴⁶ It was introduced in 2014 and has not been lifted.

⁴⁷ All 20 prisoners were convicted before the outbreak of the conflict. They were held in the following colonies: No. 32 Makiivka, No. 52 Yenakiieve, No. 97 Makiivka, No. 28 Torez, No. 33 Kirovske, No. 124 Donetsk and No. 3 Zhdanivka for individuals with tuberculosis. OHCHR interviewed 14 out of these 20 prisoners.

⁴⁸ See, e.g., OHCHR 20th Report, paras. 63-64.

⁴⁹ Prisoners reported that food was “often rotten” and “sometimes dangerous for consumption”; if the food was of better quality, the portions were small and insufficient. The situation was particularly bad in 2014-2015 in some colonies, “amounting to starvation”.

⁵⁰ There is only one official crossing route across the contact line in Luhansk region. It is open only for pedestrians (no vehicles), who must walk across wooden ramps connecting pieces of a broken bridge. It is particularly difficult for persons with disabilities, families with children or the elderly to traverse.

⁵¹ Armed groups do not acknowledge court decisions by the Ukrainian judiciary, resulting in arbitrary and prolonged detention.

⁵² Instead the Ministry of Justice created the “Medical center of the State Correctional Service of Ukraine”.

⁵³ For example, the Military Prosecutor’s offices of Kharkiv and Mariupol garrisons are conducting investigations into allegations of illegal arrest and detention and use of unlawful methods of interrogation by SBU officers; four UAF soldiers are currently standing trial in Svativskiyi district court of Luhansk region on charges of abduction and killing a civilian in June 2014 in Kreminna district, Luhansk region; five members of former ‘Donbas’ volunteer battalion, three members of ‘Dnipro-1’ battalion and three members of ‘Right Sector’ are on trial before Krasnoarmiisk town-district court of Donetsk region for crimes perpetrated against civilians in 2014-2015 and early 2016; an SBU officer accused of beating to death a resident of Avdiivka in March 2017 is on trial before Druzkivskiyi town court of Donetsk region; the trial against 2 SBU officers, accused of causing a death of a civilian arrested at a checkpoint by torturing him and failing to enable his immediate access to medical aid in November 2014 is nearing completion in Iziium town-district court of Kharkiv region.

⁵⁴ See, e.g., the case of Dmytro Shabratskiy (see OHCHR thematic report on Accountability for killings, Annex I, paras 117-118). Despite a forensic report finding that he died of a gunshot wound to the head and mine-blast trauma, police classified the death as suicide and closed the case. The victim’s family had to obtain a court order to reopen the case, however even then there was no proper investigation into his death. For example, ballistic tests of a rifle found next to the body were not conducted. In the case of Roman Postolenko, a civilian killed by the State Border Guard Service patrol (see OHCHR thematic report on Accountability for killings, Annex I, paras 11-14), all the alleged perpetrators were granted witness status, leaving the victim’s family without access to compensation or redress, as according to the investigation, the soldiers acted within their functions when they opened fire. OHCHR notes that during investigation, the case was closed twice by the Prosecutor and ordered re-opened by the court, showing a reluctance to investigate the killing as a crime perpetrated by state actors.

⁵⁵ OHCHR has consistently documented and reported on the use of torture to illicit “confessions”. See, e.g., paras. 29, 65 and 68 above, OHCHR 20th Report, paras. 47-50. OHCHR 19th Report, paras. 52-55.

⁵⁶ Article 176(5) envisages custodial detention as the only possible measure of restraint for individuals accused *inter alia* of affiliation or links with armed groups.

⁵⁷ ICCPR, art. 9 and 14.

⁵⁸ “The physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody... It thus serves as a safeguard for the right to security of person and the prohibition against torture and cruel, inhuman or degrading treatment”. General Comment no. 35 Article 9 (Liberty and security of person), para. 34.

⁵⁹ Human Rights Committee, General Comment no. 35 Article 9 (Liberty and security of person), para. 37.

⁶⁰ OHCHR consistently receives allegations that detainees are prohibited from contact with a lawyer during the initial period of arrest and detention.

⁶¹ International Covenant on Civil and Political Rights, art. 14; European Convention on Human Rights, art. 6.

⁶² See, e.g., OHCHR 20th Report, paras. 71 and 77.

⁶³ In January 2018, the trial of Nelia Shtepa came to a halt after a number of Leninskyi district court of Kharkiv judges recused themselves from the case. The case was then transferred to Zhovtnevyi district court of Kharkiv for the fourth re-trial, raising serious concerns about violation of the right to trial without undue delay.

⁶⁴ Serhii Yudaiev was charged with rioting and hooliganism in connection with alleged participation in the takeover of the Kharkiv regional state administration on 6-7 April 2014. Despite the minor gravity of the charges, he was detained for 3.5 years, since May 2014.

⁶⁵ Verdict, Kyivskiyi district court of Kharkiv, 6 November 2017, at <http://reyestr.court.gov.ua/Review/70066827>. The SBU reportedly presented the convict with new charges that would allow them to demand continuation of his custodial detention.

⁶⁶ The former SBU Head of Kyiv city and region is currently tried before the Shevchenkivskiyi district court of Kyiv on charges of organizing the killing of 10 persons in a manner endangering others and organizing the infliction of bodily injuries by a group in a manner causing special suffering, resulting in the death of one person and a total of 22 victims.

⁶⁷ Armed civilians, sometimes wearing camouflage and masks, often with criminal records, who were engaged by law enforcement to attack protesters.

⁶⁸ The timing of the gathering of ‘titushky’ at Sofiiska square in Kyiv coincides with the beginning of the ‘anti-terrorist operation’ in the city centre. Similarly, they left the scene approximately at the time when the active phase of the ‘operation’ was over; video footage from security cameras at the scene shows that ‘titushky’ left the crossroads at 3:00 hrs, after the active phase of the ‘anti-terrorist operation’ at Maidan had ended for five hours (see reconstruction of events at http://talo.org/en/events/vasiltsov_and_veremiy). The place of their deployment is also hardly accidental – Sofiiska square is just a few blocks from Maidan in the direct path of protesters retreating from Maidan after their anticipated dispersal by police and security forces in the course of the ‘anti-terrorist operation’. Interestingly, attacks on unarmed protesters have been perpetrated right in the immediate vicinity of Kyiv regional police, with no interventions from their side. The purpose of the deployment of ‘titushky’ was also similar to that of the ‘anti-terrorist operation’. As a result two individuals have been shot dead (Vitalii Vasylytsov and Viacheslav Veremii) and at least six others have sustained gunshot wounds. Many more have been physically abused.

⁶⁹ The investigation found that senior officials of the Ministry of Internal Affairs (MoIA) organized the illegal transfer of automatic firearms and ammunition to ‘titushky’ on 20 February 2014 for use against the protests, and identified 12 suspects including the former Minister of Internal Affairs, former head of MoIA supplies department and former Head of Kyiv police (<http://rrg.gp.gov.ua/reestr-kriminalnih-provadzhen/golovne-slidche-upravlinnja-generalnoi-prokuraturi-ukraini/postachannya-ta-zastosuvannya-spetszaso/>). A former member of the MoIA special unit combatting organized crime carried the firearms to ‘titushky’ from the armoury.

⁷⁰ On 22 December 2017, the Shevchenkivskiyi district court of Kyiv sentenced the gang leader to a four-year suspended sentence with a two-year probation period (verdict available at <http://reyestr.court.gov.ua/Review/71189809>) and released him. The court established that he was paid USD 20,000 to organize 200-300 young, athletically-built men to “protect public order”, and they were provided with bats (by an unknown individual) prior to their deployment at Sofiiska square (few blocks from Maidan Independence Square). When they noticed journalist Viacheslav Veremii videotaping them from a taxi, the accused together with other ‘titushky’ dragged him out and severely beat him with bats. When he tried to escape, one shot him in the back, causing his death. Despite these facts, the court accepted the defence’s arguments that the accused ordered others not to touch the victim and the shooter acted on his own initiative, thus accepting the qualification of the crime as “hooliganism”.

⁷¹ The gang leader was arrested on 29 March 2014 and remanded in custody on charges of killing Viacheslav Veremii, however, on 27 May 2014, due to threats he allegedly received while in detention, he was placed under house arrest as well as provided with protection by the State Protection Service. Shortly after, the prosecutor changed the qualification of crime from murder to hooliganism. On 22 August 2014, the accused was released from house arrest under personal recognizance. On 19 October 2014, the Shevchenkivskiyi district court of Kharkiv granted the prosecutor’s motion to hold the trial in closed sessions (video of hearing available at <https://www.youtube.com/watch?v=JA4OCzQCX0A>). Pending trial, he committed two other crimes. On 17 March 2016, the Kyievo-Sviatoshynskiyi district court of Kyiv region convicted him of illegal possession of weapons and imposed a three-year suspended sentence (court decision at <http://reyestr.court.gov.ua/Review/56651650>). A second trial on hooliganism charges stemming from a raid on a gas station during which a few people were beaten and one was shot with a “traumatic pistol” is ongoing before the Solomianskiy district court of Kyiv (criminal proceeding no. 760/4865/17-к). The above did not persuade the Shevchenkivskiyi district court of Kyiv dealing with the case of the killing of Viacheslav Veremii to change the measure of restraint for Yurii Krysin.

⁷² Court decision available at <http://reyestr.court.gov.ua/Review/71231699>. The three ‘titushky’ are accused of attempting to murder six protesters using firearms, attacking and intimidating protesters using bats and sticks, and carrying out a “joint criminal intention aimed at counteracting peaceful protests” together with unidentified individuals between 22:30 hrs on 18 February to 2:30 hrs on 19 February 2014.

⁷³ See OHCHR thematic report on accountability for killings in Ukraine from January 2014 to May 2016, Annex I, table 1.

⁷⁴ Briefing of the Prosecutor General’s Office, 12 February 2018. See also briefing of the Head of the Special Investigations Department of the Prosecutor General’s Office, 20 February 2018 at: https://www.youtube.com/watch?v=yVsd_zkA0Rc.

⁷⁵ See OHCHR 20th Report, para. 90.

⁷⁶ Ruling dated 18 October 2017, available at: <http://reyestr.court.gov.ua/Review/69748019>.

⁷⁷ OHCHR meeting, 21 December 2017.

⁷⁸ On 9 January 2018, OHCHR received a response (dated 26 December 2017) from the Malynovskiyi district police department stating that criminal investigations into pressure on a panel of judges of the Malynovskiyi district court of Odesa on 30 November 2015 and attacks on a defence lawyer on 18 July 2016 and 12 May 2017 have been ongoing, and the criminal investigation into pressure on judges of the Court of appeal of Odesa region on 7 June 2016 was closed on 16 December 2016 due to absence of *corpus delicti*. See OHCHR Report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016 (hereinafter “OHCHR 13th Report”), para. 100; OHCHR report on the human rights situation in Ukraine, 16 May to 15 August 2016 (hereinafter “OHCHR 15th Report”), paras. 87-89.

⁷⁹ “Release and exchange of all hostages and unlawfully detained persons, based on the principle “all for all” is foreseen in para 6 of the Package of measures for the Implementation of the Minsk agreements. English translation available at https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf. The Working Group on Humanitarian Issues reached the decision on the simultaneous release at the end of November 2017, after a year of tense discussions in Minsk.

⁸⁰ One woman decided to stay in Donetsk for family reasons.

⁸¹ Some civilians had previously been members of volunteer battalions but were not taking part in hostilities at the time of their apprehension.

⁸² Thus, in total, during the reporting period, the Government of Ukraine released 234 individuals (including 19 women), while armed groups released 75 (including 5 women) within the framework of the simultaneous release.

⁸³ Some were brought to “Zelenyi Hai” as early as 15 December 2017, while others were transferred to this facility even a few days before the release on 27 December.

⁸⁴ OHCHR interviews, November-January 2018. Government informed OHCHR that these restrictive measures were taken to ensure the safety of the detainees.

⁸⁵ Transitory cells in SIZOs across Ukraine generally have poor conditions.

⁸⁶ OHCHR interview, 6 February 2018.

⁸⁷ Many released detainees have credible fears of retaliation, and some individuals or their families have received threats. Additionally, OHCHR strives to maintain the highest protection of victims through strict adherence to the principles of confidentiality and informed consent.

⁸⁸ “OHCHR documented the cases of eight individuals detained and tortured by SBU in Kharkiv in 2015. For example, three of these individuals were arrested separately in May 2015, handcuffed and had bags placed over their heads. They were taken to the Kharkiv SBU building, where they were interrogated and tortured separately for hours by methods

including suffocation with a gas mask, dislocation of joints, electric shock, and mock execution. The detainees also received death threats and threats of a sexual nature against their families. SBU officers forced these men to sign self-incriminating statements and refused them access to a lawyer. They were transferred to a hospital where a doctor refused to document visible injuries. In another example, also in May 2015, a man was arrested by SBU. On the way to the Kharkiv SBU building, the perpetrators stopped the vehicle and tortured him with electric current. Upon reaching the SBU building, the victim was further tortured until he “confessed” to planning terrorist acts. As of 15 August 2017, all four of these victims remained in pre-trial detention. The Military Prosecutor’s Office has launched an investigation into these allegations.” OHCHR 19th Report, para 58.

⁸⁹ OHCHR interviews, 26 August 2016, 13 April 2017, 20, 27 September 2017, 2 and 3 February 2018.

⁹⁰ In two cases, victims (former members of battalions) could not identify the affiliation of ‘investigators’.

⁹¹ So-called ‘administrative arrest’.

⁹² The interrogation, often with torture, was conducted in ‘MGB’ buildings in Donetsk and Luhansk and in ‘MGB’ and Izoliatsiia detention facility in Donetsk.

⁹³ Some threats recanted by interviewed victims were: “we will put you inside a basin with chlorine”, “I will cut your leg and will leave you forever in MGB basement”, “send you to the frontline”, “you don’t want to be disabled, do you?”, “I will go pick up a drill and drill through your legs”, “we have three main directions: to threaten, frighten, prevent access”, “we will put you back in the cell and deal with your wife”, “everything that was until now – were just flowers. You will be placed into the cell with faggots and get raped [the word used in Russian ‘tebia opustiat’ is a prison jargon that means someone will be beaten, raped and urinated on]”, “they threatened to bring my wife, torture her on the table [with electric shock], put her in the next cell, rape her and make me listen to how she screams”.

⁹⁴ Mock execution was very common and often used repeatedly. Some examples from victims’ interviews include: “I was facing the wall and the guards shot above my head. I was scared to death”; “Somebody leaned in and said ‘You must remember this sound for the rest of your life. Then I heard the bolt reload and two people talking: ‘Wait... what if the cartridge is real?’ - ‘I am not sure if it is real or blank’. Then the gun was fired into my direction”; “I was taken outside with a plastic bag over my head and told to pray. Then I heard someone loading a gun. Then they told me they changed their mind. On another day, I was put in a coffin and told to get ready to die, then I heard someone nailing it. After approximately an hour, I dared to open it, and was beaten for that.”

⁹⁵ Electric shocks were administered on the neck, ears, feet, legs, arms and genitals. For example, a female detainee described one of her evenings in Izoliatsiia detention facility: “One evening a number of men came to the room. They put a bag on my head and forced me into a different room. There I was put on a metal table face down and tied with duct tape. My socks were taken off and someone connected wires to my toes and turned on electricity. It was extremely painful through my whole body. They demanded I confess to cooperating with some people from the government-controlled side. I was electrocuted twice”. Another detainee in Izoliatsiia stated “On many occasions my cellmates were taken out somewhere, tortured with electricity and returned with burns on their ears, fingers and genitals”. A detainee from Luhansk said “they would attach one wire to the handcuffs, and another wire to parts of the body - a nose, ears, genitals”.

⁹⁶ Detainees were beaten both by hand and with objects, on all body parts, for example, hits to the head with a book, hits on the soles of feet, stepping on bare toes, and blows to the chest causing difficulty breathing.

⁹⁷ Suffocation was done almost to the point of unconsciousness or triggering seizures. For example, a detainee held in Luhansk witnessed “a person would be forced to wear a gas mask, and an air hole would be closed, causing a person to suffocate.”

⁹⁸ For example: “They started asking about military positions, then twisted my arms and led me downstairs, intentionally pushing me against the walls, so I would hit my head. Then they slammed my head against the boiler. Then six or seven men brought me to a room, forced me to undress and made me kneel facing the wall. Then they hit me a few times, racked the slide and put a machine gun to my head saying I can make my last wish. Then someone entered the room and I heard a dialog: ‘Oh, don’t do it, his blood will be everywhere’ – ‘No worries, I will clean the floor’. Then I heard click of a slide and was ordered to get dressed. They twisted my hands and led me upstairs. Again, they were slamming me against the walls and the boiler.”

⁹⁹ The majority of individuals interviewed mentioned being subjected to mock execution, in many cases repeatedly.

¹⁰⁰ An example provided by an interviewee: “We were brought inside a building of a former club or school. For the next two days, the captors took turns beating us repeatedly. They encouraged others to participate in the beatings, saying ‘Hey, who wants to see a live *ukrop* [derogatory name used for Ukrainians]?’ As a result of beating, I lost most of my teeth.”

¹⁰¹ In Donetsk and its vicinity, members of Ukrainian forces were predominantly held in basements of the former SBU building on 62 Shchorsa Street, the ‘MGB’ building on Shevchenka Street, buildings at 7 Artema Street and 14 Molodizhna Street, and the Cossack’s base at 25 Maiskaia Street. Most were then moved to Makiivka penal colony No. 97. In Luhansk region, they were held in the basement of the ‘MGB’ building in Luhansk, SIZO No.1, and the ‘commandant’s office’ in Luhansk. Interviewees could not specifically identify other places where they were held for short periods of time, such as a basement in Pervomaisk.

¹⁰² At least 10 individuals transferred to armed-group-controlled territory who were charged with or convicted of crimes against life and liberty of individuals or against their property. At least seven others were facing similar charges in addition to those related to their affiliation or links with armed groups. A person convicted for killing two Ukrainian soldiers was pardoned by the President and transferred to armed-group-controlled territory on 20 January 2018.

¹⁰³ For example, on 6 July 2017, a former police officer in Druzhkivka was found guilty of robbery, brigandism and unlawful expropriation of a vehicle as part of an armed group of the ‘Donetsk people’s republic’ that abducted a local businessman and tortured him together with others in the basement of the building of the so-called ‘Druzhkivka NKVD’ or ‘Komendatura’ in June-July 2014. He was the only member of the armed group who stood trial for crimes perpetrated against civilians when Druzhkivka was under the armed group’s control. He was initially charged and tried only under art. 260 of the Criminal Code (membership in illegal armed formation), however due to victims’ appeals, the charges were requalified and the perpetrator was convicted and sentenced to 12 years in prison by Druzhkivka City Court of Donetsk

region. On 5 February, local authorities informed the victims they should not expect to receive compensation for damages awarded by the court since the perpetrator was released under the simultaneous release framework.

¹⁰⁴ OHCHR is aware of at least ten individuals transferred to armed-group-controlled territory under the simultaneous release framework, who complained of human rights violations in relation to their detention and subsequent prosecution and confirmed their intention to pursue cases against the perpetrators.

¹⁰⁵ The “release and exchange of all hostages and unlawfully detained persons”, Package of Measures for the Implementation of the Minsk Agreements, para 6, English translation available at https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf.

¹⁰⁶ Through trial monitoring, OHCHR documented that some detainees spent years in detention awaiting trial under art. 176(5) of the Criminal Procedure Code of Ukraine, despite the failure of prosecution to establish the necessity of imposing detention on remand on conflict-related detainees. Further, OHCHR noted that in some cases, detainees who agreed to be released and transferred to armed-group-controlled territory had no family in or links to that territory.

¹⁰⁷ Courts do not examine the merits of a case when parties agree to a plea bargain, but suspend the trial once the defendant pleads guilty. The court practice is to only examine the “voluntariness” of the plea bargain agreement and grounds its decision on the statements (“confession”) of the defendant. However, according to criminal procedure law, the court cannot ground its decision exclusively on the statements (confession) of the defendant.

¹⁰⁸ At least three individuals who were released from custody by court order for the purpose of being exchanged were then re-arrested upon being excluded from the exchange. OHCHR interviews, 12 and 17 January 2018.

¹⁰⁹ OHCHR notes that the existing procedure of trials *in absentia* does not correspond to ECtHR case law, in particular due to the lack of provision for a full retrial with the defendant’s present. OHCHR further notes that courts issued rulings on compelled appearance (“*pryvid*”) in relation to at least 20 released individuals and at least five other individuals have been put on a wanted list.

¹¹⁰ OHCHR is concerned with reports that some individuals transferred to armed-groups-controlled territory in the framework of the simultaneous release were re-arrested. For example, the mother of released detainee Serhii Babych, who is facing trial in Krasnoarmiisk City District Court of Donetsk Region and was transferred to armed-groups-controlled territory on 27 December without legal clearance, and lost contact with her son on 6 January 2018. The man was reportedly ‘arrested’ by ‘MGB’ in Donetsk. Following his conditional release on 26 January, he was reportedly banned from travelling to territory controlled by the Government, thus preventing him from attending court.

¹¹¹ OHCHR continued to have limited access to monitor ‘trials’ of individuals ‘accused’ of conflict-related offences in ‘courts’ in Donetsk. The ‘trials’ were held behind closed doors and OHCHR was excluded from them.

¹¹² OHCHR interview, 21 November 2017. OHCHR notes that “publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large” (HRC General comment no. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, para 28).

¹¹³ They are mostly ‘charged’ with espionage under art. 321 of the ‘criminal code’ of ‘Donetsk people’s republic’.

¹¹⁴ At least two civilians detained by the armed groups of ‘Donetsk people’s republic’ stated that they have been detained without being formally ‘charged’. At least 17 interviewed Ukrainian soldiers detained in both ‘republics’ have also been detained without any ‘charges’ brought against them.

¹¹⁵ Initial interviews, 28 December 2017, 11 and 14 January 2018.

¹¹⁶ The armed groups of ‘Donetsk people’s republic’ formally initiated ‘investigation’ against at least 10 Ukrainian soldiers interviewed by OHCHR under article 230 (‘aiding and abetting terrorism’) of their ‘criminal code’ only in September 2017. One interviewee told OHCHR that ‘investigation’ against captured Ukrainian soldiers was merely a formality that would enable their release. The armed groups of ‘Luhansk people’s republic’ have not charged or tried none of six captured soldiers interviewed by OHCHR irrespective of the duration of their detention.

¹¹⁷ For example, on 27 November 2017, the ‘military tribunal’ of ‘Donetsk people’s republic’ ‘ruled’ to extend detention pending ‘trial’ of a defendant with the substantiation going beyond the ‘prosecutor’s’ arguments. The ‘judge’ noted that since the ‘hearings on the merits’ had not started, it was difficult to assess to what extent the ‘accused’ facilitated the ‘investigation’ and therefore, there were no grounds to change his ‘measure of restraint’. OHCHR trial monitoring, 27 November 2017.

¹¹⁸ OHCHR interviews, 4 and 5 January 2018.

¹¹⁹ Torture is prohibited under both IHL and IHRL. Article 14.3(g), ICCPR; Articles 75.4(f), Protocols I and art. 6.2(f), Protocol II Additional to the Geneva Conventions of 12 August 1949.

¹²⁰ Accounts of at least 18 civilians interviewed by OHCHR after their release on 27 December 2017 suggest that they have been detained due to alleged links with Ukrainian military and/or security forces.

¹²¹ OHCHR interview, 16 January 2018.

¹²² In territory controlled by ‘Donetsk people’s republic’, those who were detained without a view towards ‘prosecution’ were not provided with lawyers.

¹²³ Of the 18 conflict-related detainees interviewed by OHCHR, none were provided with a lawyer immediately upon being detained. One detainee told OHCHR that he never had a confidential meeting with his assigned lawyer, who only signed documents and was inactive during the ‘trial’ (OHCHR interview, 11 January 2018). In some cases, assigned lawyers witnessed intimidation of their client (conflict-related detainee), however, did nothing (OHCHR interview, 15 January 2018). Lawyers of conflict-related detainees refrain from challenging legality of detention of their client during ‘pre-trial’ and ‘trial’ stages (OHCHR trial monitoring, 27 November 2017). OHCHR is concerned that lawyers from government-controlled territory are not allowed to participate in the ‘proceedings’.

¹²⁴ At least seven individuals reportedly tried to present their case but then changed their mind fearing repercussions from the ‘MGB’. Others accepted the ‘charges’ being promised to be included in the simultaneous release.

¹²⁵ These conclusions are based on interviews of ‘convicted’ detainees released on 27 December 2017, due to OHCHR’s lack of access to ‘court hearings’.

¹²⁶ “Extreme right-wing groups” is an umbrella term encompassing political parties, movements and groups who blame vulnerable groups for societal problems and incite intolerance and violence against them. Extreme right-wing groups bring into question fundamental principle of non-discrimination by propagating an ideology based on racism, racial discrimination, xenophobia and related intolerance. The same groups are also involved in attacks against individuals based on their gender identity and sexual orientation. See Reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/35/42 of 26 April 2017 and A/HRC/18/44 of 21 July 2011).

¹²⁷ The cases are as follows. 1) In 2015, SBU officers reportedly attacked a journalist and cameraman for Radio Liberty attempting to film near the SBU building in Kyiv. The Military Prosecutor opened a criminal investigation under art. 171 (“preclusion of professional and legal activity of journalists”), but closed it four times. Each time, a court ruled to reopen it. 2) On 15 September 2017, a Radio Liberty TV crew was attacked in Kyiv, allegedly by a state guard officer while filming near the venue of the wedding of the General Prosecutor’s son. A criminal case was opened under art. 345-1 (“threats or violence towards a journalist”). 3) On 24 October 2017, one journalist was beaten and two others attacked and apprehended by police while reporting on a trial in Sviatoshynskiy district court in Kyiv. A criminal case was opened under art. 171. 4) On 3 December, activists of a right-wing group (Bratstvo Korchinskoho) blocked a business centre in Kyiv in which ‘News One’ TV channel is located. For up to seven hours, the building was completely blocked with sand bags, barbed wire and barrels. Police present on the ground did not intervene. A criminal case was opened under art. 356 (“unauthorized actions”), but was closed on 1 February 2018. 5) On 12 December 2017, a journalist of ‘News One’ TV channel was hit while polling members of the public on a Kyiv street. An alleged perpetrator, who was a member of a right-wing organization (Right Sector), posted about the attack on Facebook. 6) On 25 January 2018, around 50 members of an extreme right-wing groups stormed in the office of the Union of Orthodox Journalists affiliated with Moscow Patriarchate, insulted members of the Union and searched their computers. Police at the scene did not intervene. C-14 posted video of its members storming the office on Facebook. 7) On 3 February 2018, a female reporter was blocked, interrogated and threatened by members of extreme right-wing group C-14. The police present did not intervene. 8) On 8 February 2018, the (rented) office of media holding ‘Vesti’ was blocked and occupied by the “state agency on the search and management of the assets”, under the pretext of an ownership dispute regarding the office. Reportedly, the holding received no prior notifications, all their equipment remained in the office as well as the personal belongings of media professionals. 9) On 13 February members of a right-wing organization (Rights Sector) physically forced a journalist from a court room in Odesa, calling him a ‘separatist’. The police present did not intervene. A criminal investigation was opened under art. 171.

¹²⁸ In 14 cases, the alleged perpetrators were civil servants, state officials or members of Parliament and eight cases allegedly involved police officers or state guards. The majority of incidents (29) took place in Kyiv region. Female media professionals were subjected to physical violence in 24 cases. Data obtained during the country-wide monitoring by the National Union of Journalists of Ukraine, available in its official journal ‘A Journalist of Ukraine’, No. 1-2, 2018.

¹²⁹ In the case of Oles Buzyna, although one investigation was completed and the case transferred to a court, another investigation was launched on 24 June 2017 to identify additional suspects. In the case of Pavlo Sheremet, no suspects have been identified.

¹³⁰ Since August 2014, the website has been publicly posting the personal data of thousands of people, including media professionals, NGO activists, labelling them as supporters of armed groups and ‘terrorism’. Criminal cases regarding Myrotvorets are investigated under arts. 171 and 182 of the Criminal Code.

¹³¹ The head of Myrotvorets is named on the website itself and is widely quoted in media.

¹³² OHCHR interviews, 8 February 2018.

¹³³ Ukrainian media published a letter from a state bank which says that “negative information” was found about a client on Myrotvorets website. Notably, the letter asserts that “SBU, Headquarters of the Ukrainian Armed Forces, State Border Guard Service, Ministry of Internal Affairs and State Penitentiary Service of Ukraine” are “partners” of Myrotvorets. Copy of letter available at <https://ubr.ua/finances/banking-sector/ukraintsam-aktivno-blokirujut-scheta-iz-za-sajta-mirotvorets-3864782>.

¹³⁴ In particular, the law ‘On amending certain laws of Ukraine on restriction of access to Ukrainian market of foreign print materials of anti-Ukrainian content’ available at <http://zakon0.rada.gov.ua/laws/show/1780-19>.

¹³⁵ State Committee on TV and Radio Broadcasting of Ukraine decisions available at http://comin.kmu.gov.ua/control/uk/publish/article?art_id=142069&cat_id=140366 and <https://www.radiosvoboda.org/a/28981382.html>.

¹³⁶ OHCHR interviews, 28 December 2017, 16 January 2018, 14 February 2018.

¹³⁷ OHCHR was informed that on 7 December in Zolotonosha, police officers wearing balaclavas without any official insignia forcefully broke into the houses of Roma families, without presenting any procedural documents authorizing such actions. They treated the Roma in a humiliating manner, beat people and damaged or destroyed property. Three Roma men were subsequently detained on the basis of drug-trafficking allegations. OHCHR interview, 13 December 2017. See also Letter by Coalition of Roma Civil Society Organizations to Minister of Internal Affairs of 12 December 2017 and Letter by Cherkassy Regional Civil Society Organization “Romani Rota” of 11 December 2017 at <http://legalspace.org/ua/napryamki-posilennya-romskikh-gromad/item/10616-dii-politsii-u-zolotonoshi-ta-boryslavi-shchodo-romiv-ie-porushenniam-prav-liudyny-pravozakhsnyky>). On 11 December in Boryslav, in another raid, police broke into the homes of Roma, forced the women to kneel and detained some of the men. The police refused to present identification documents or procedural documents authorizing the searches. During interrogations - conducted without allowing access to lawyers - police collected fingerprints and photographed each man. In the aftermath, police announced that the raids part of an investigation of a double murder. OHCHR interview, 14 December 2017.

¹³⁸ A local Roma activist reported that from on 7 January, a conflict occurred between local residents, one of whom belong to the Roma community (see statement at <https://www.facebook.com/radiochiriklo/posts/1209393582526717>). On 8 January, a statement calling upon local residents to assemble and discuss the possibility to evict Roma was disseminated

in the city, and on 9 January around 200 residents gathered in the city centre shouting anti-Roma slogans and inciting violence against them. Later that same day, around twenty cars of people gathered at the activist's residence and began throwing stones at it, however police arrived and calmed the situation. Afterwards, a working group was established under the auspices of local administration to settle disputes involving Roma in the city. The Roma community in Zolotonosha is worried that further tensions and discriminatory acts may lead to violence and/or forced eviction. Further OHCHR was informed that an anti-Roma information campaign has been launched in local media, which heats up already fragile situation. OHCHR interview, 2 February 2018.

¹³⁹ OHCHR interview, 22 January 2017. OHCHR also observed open calls to join formations to fight "Roma muggers" disseminated via social media. *See, e.g.*, Facebook group "L.O.V.C.I." (J.I.O.B.I.I.) created to form a group of volunteers to patrol the city streets and fight "Roma muggers" at <https://www.facebook.com/groups/2092767147613075/?pnref=story>.

¹⁴⁰ OHCHR interviewed Stanislav Serhiienko, a left-wing activist, who was physically attacked for his political views on 20 April 2017 by members of extreme right-wing groups. Shortly after, a video of the attack was posted on YouTube in which it was mentioned *inter alia* that the people "like him" will not be tolerated. Police were reluctant to properly investigate the case, including by postponing the forensic examination of the victim, showing reluctance to accept evidence from the victim and twice changing the investigator in the case. Further, on 19 January 2018, the leader of C14 posted a video on Facebook in which he acknowledged that his group was involved in the attack. OHCHR interview, 13 February 2018. On 7 February, a group of people attacked two members of the Communist Party of Ukraine and of the Anti-Fascist Committee of Ukraine to rob them of political material (stickers calling to "resist the Nazi occupation" and commemorating a young victim of violence in Odesa on 2 May 2014). The attack resulted in bodily injuries, including a concussion. The victims also received death threats. Approximately two hours after the attack, the head of the Kyiv cell of National Corps posted a video of the attack on Facebook, acknowledging involvement of National Corps in the attack (available at <https://www.facebook.com/serhiifilimonov/posts/953784998121729?pnref=story>). As of 15 February, the victims had no information whether a criminal investigation had been launched or an investigator appointed, and forensic expertise was not appointed despite the victims' requests. Allegedly, the police unofficially urged the victim to refrain from any events by Anti-Fascist Committee of Ukraine. OHCHR interview, 21 February 2018.

¹⁴¹ On 22 December, a session of the Gender Club organized by students of the National Pedagogical University was disrupted by a group of people wearing balaclavas who attacked participants with pepper spray, causing chemical burns to three victims. OHCHR was informed that police did not launch an investigation into the attack due to the minor injuries of victims and the University administration is reluctant to take any measures to ensure security of participants of the Gender Club or to create a safe learning environment where all students feel respected and comfortable expressing their opinions and belief. OHCHR interview, 18 January 2018. Previous sessions of the Gender Club were disrupted by members of extreme right-wing groups such as Tradition and Order. *See* OHCHR 20th Report, para 131. On 19 January, a commemoration for slain human rights activists Stanislav Markelov and Anastasiya Baburova was disrupted by members of C14, Sokil, and Tradition and Order. Police did not take appropriate measures to ensure the security of participants, despite a specific request from the Ombudsperson, and ignored requests by the organizers to separate them from the aggressive protestors. Statement of Centre for Civilian Liberties at <http://ccl.org.ua/statements/zvernennya-tsentru-hromadyanskyh-svobod/>; letter of the Ombudsperson to Head of National Police concerning the State's positive obligations to ensure security of participants of the commemoration at <http://www.ombudsman.gov.ua/ua/all-news/pr/18118-ve-upovnovazhenij-privernula-uvagu-kerivnitstva-natspolitsiii-do-vazhlivo/>. Furthermore, police detained participants of the commemoration without justification, whereas none of the counter-demonstrators were detained.

¹⁴² During the attack on the commemoration for the human rights activities (*see* footnote above), a British tourist on a nearby street was attacked and sustained serious facial and head injuries. He believes he was targeted by extremists due to his "nonstandard appearance". <https://www.facebook.com/LiamAnthonyTong/posts/2235174779833442>; <https://www.rferl.org/a/ukraine-british-tourist-beaten-attacked-kyiv/28986994.html>.

¹⁴³ For example, OHCHR is monitoring a case involving multiple attacks on a member of the LGBTI community in October 2017 in Kyiv and Vinnitsa by members of the Radical Party. Despite the victim's persistence in filing complaints with police and demanding action, his injuries were not documented and there has been no investigation. In November, he complained to prosecution about the failure to investigate, yet his complaint was transferred to the same police against whom he complained.

¹⁴⁴ *See* <https://www.facebook.com/ndrugua/>.

¹⁴⁵ Extreme right-wing group propagating nationalism and intolerance to individuals holding alternative, minority social or political opinions.

¹⁴⁶ They had been baptized by the priests of Ukrainian Orthodox Church of the Kyiv Patriarchate.

¹⁴⁷ <https://www.facebook.com/c14news/>.

¹⁴⁸ On 25 January, C14 forcefully entered the office in Kyiv. Video posted on C14's Facebook page shows its members searching the premises for "anti-Ukrainian documents" while insulting and threatening the journalists. They left after police arrived, reportedly taking private property, yet no one was arrested. *See* Statement of the Union of Orthodox Journalists at <http://uoj.org.ua/en/novosti/sobytiya/uoj-statement-regarding-the-assault-on-editorial-office>. Within the comments provided on this report by the Government of Ukraine, the Ministry of Culture referred to the Union of Orthodox Journalists as "a provocative structure, continuously working to create disorder and spread hate rhetoric". OHCHR is not aware of incidents where affiliated journalists have been spreading hate rhetoric. Regardless, OHCHR notes that such assessment shall not justify lack of actions by law enforcement agencies regarding attacks against media professionals and restrictions on freedom of opinion and expression.

¹⁴⁹ In Kyiv, on 25 January, two individuals were arrested by police for the arson attack against the Tithes chapel, and on 3 February, C14 and other extreme right-wing groups held a demonstration to support the accused and demand demolition of the chapel. In Lviv, on 28 January, members of Svoboda Party attempted to disrupt religious services in the St.

Volodymyr Church, and on 3 February, the church was significantly damaged in an arson attack. OHCHR interview, 8 February 2018.

¹⁵⁰ See statement at <http://www.namvk.if.ua/dt/188112/>. A similar statement calling for discrimination was adopted by the Poltava City Council on 19 September 2017. See OHCHR 20th Report, para. 131

¹⁵¹ See, e.g., art. 7, Universal Declaration of Human Rights and art. 26, International Covenant on Civil and Political Rights.

¹⁵² Art. 12, Law of Ukraine “On the Principles of Prevention and Countering Discrimination in Ukraine”, No. 5207-VI of 6 September 2012 (entry into force on 4 October 2012).

¹⁵³ OHCHR previously documented harassment of Jehovah’s Witnesses, seizure of religious materials, and arbitrary searches and seizures of religious buildings. Jehovah’s Witnesses remain un-registered in territory controlled by ‘Donetsk people’s republic’ due to the lack of registration procedure, leaving them vulnerable for further actions infringing upon their right to exercise freedom of religion. See OHCHR 20th Report, para. 110; OHCHR 19th Report, para. 105-106.

¹⁵⁴ The law prohibits “religious groups” of five or more persons which do not fall under one of the “traditional” religions. See <https://mklnr.su/religiya/novosti-religiya/1858-zakon-lnr-o-svobode-sovesti-i-religioznyh-obedineniyah-zapretit-deyatelnost-religioznyh-grupp-v-respublike.html>.

¹⁵⁵ On 22 November, the Jehovah’s Witnesses’ Kingdom Hall in Debaltseve (territory controlled by armed groups of the ‘Donetsk people’s republic’) was sealed and expropriated as “abandoned” property, and on 25 November, the Kingdom Hall in Krasnodon (territory controlled by armed groups of the ‘Luhansk people’s republic’) was sealed and ‘expropriated’ based on lack of ‘registration’ and the minister was ‘fined’ for violating the procedure for organizing or holding public events. OHCHR also notes that an appeal by the Jehovah’s Witnesses community against the expropriation of their Kingdom Hall in Horlivka has not been addressed and the premises remained sealed. OHCHR interview, 1 December 2017.

¹⁵⁶ See list of extremist publications ‘adopted’ by the ‘ministry of justice’ of ‘Donetsk people’s republic’ at <http://www.minjust-dnr.ru/wp-content/uploads/2016/08/SPISOK-EKSTR.-MATERIALOV-na-sajt-po-sostoyaniyu-na-21.12.2017.pdf>.

¹⁵⁷ In November, a parishioner previously arrested during a joint worship was found guilty of organising an unauthorised public gathering and ‘fined’ 5,000 RUB. The victim ‘appealed’ the decision, however it was upheld. OHCHR interview, 26 January 2018.

¹⁵⁸ Article 7 of the “law on counteracting extremist activities” of ‘Donetsk people’s republic’ declares that “persons responsible for the preparation, dissemination or illegal storage of extremist material with the purpose of subsequent dissemination, are punished under administrative or criminal law,” at <http://dnrsovet.su/zakon-donetskoj-narodnoj-respubliki-o-protivodejstvii-ekstremistskoj-deyatelnosti/>.

¹⁵⁹ Information provided by State Border Guard Service of Ukraine on 16 February 2018.

¹⁶⁰ See, e.g., OCHA Humanitarian Snapshot as of 15 February 2018 at <https://www.humanitarianresponse.info/en/node/160154>.

¹⁶¹ Such as toilets facilities, drinking water, shelter and medical services.

¹⁶² For example, an ambulance is present at the government-controlled checkpoint at Stanytsia Luhanska EECP from 9 a.m. to 4 p.m. while civilians begin queuing as early as 4 a.m. Moreover, it is not always present at the Stanytsia Luhanska EECP during working hours due to lack of funding.

¹⁶³ On 15 November 2017, an elderly man died in the early morning at an armed-group-controlled checkpoint at the Stanytsia Luhanska crossing route. Since it happened before 9:00 hrs, there were no medical personnel to provide assistance which could possibly have saved his life. On 14 January 2018, a man (aged 65) from Alchevsk was found dead (due to heart attack) on a bus while it was stopped at an armed-group-controlled checkpoint along the Maiorsk crossing route. OSCE SMM Daily report, 16 January 2018.

¹⁶⁴ At Stanytsia Luhanska EECP, for example, OHCHR observed that wheelchairs were only available on the government-controlled side of the crossing route. Even there, their number of was insufficient and they were not serviced beyond the so-called “0” checkpoint. Persons with disabilities had to find physical assistance from other persons in order to get to and cross the ramps between the “0” checkpoints, a distance of approximately 500 meters. OHCHR observed persons with disabilities paying to be transported on luggage trolleys. At the crossing routes in Donetsk region, on the other hand, persons crossing the contact line are not permitted to walk between the “0” checkpoints. There are buses available; however, they are not equipped for wheelchairs. Therefore, persons with disabilities must pay extra for carriers and taxis to take them across.

¹⁶⁵ OHCHR interviews at Maiorsk crossing route, 1 November 2017, and Stanytsia Luhanska crossing route, 13 December 2017.

¹⁶⁶ See also OHCHR 20th Report, para. 95.

¹⁶⁷ Anti-terrorist Centre of the Security Service of Ukraine, Decree “On approving the temporary order on the control of movement of people across the contact line in the Donetsk and Luhansk regions” no.222or of 14 April 2017.

¹⁶⁸ The ban (available at http://www.mgbdnr.ru/news.php?id=20180115_00&img_num=0) was reportedly initiated by ‘MGB’ to protect residents of ‘Donetsk people’s republic’ from the risk of being arrested in territory controlled by the Government.

¹⁶⁹ An explanatory note published on 18 January 2018 stated that the ban applied to ‘senior officials’, ‘ministers’ and their deputies, employees of ‘ministries’ and ‘administrations’ (except for technical staff), managers and their deputies at ‘state’ and ‘municipal’ enterprises, heads of hospitals and hospital departments, and principals of universities, schools and kindergartens. Available at <https://dnr-online.ru/poyasnenie-k-ukazu-glavy-dnr-aleksandra-zaxarchenko-363/>.

¹⁷⁰ The ‘decree’ states it applies to all ‘state officials’, ‘officials’ of ‘local self-government’ and employees of enterprises, institutions, and organizations of ‘state’ and ‘municipal’ property (including teachers, doctors, librarians, postal carriers, etc.).

¹⁷¹ In one case, a conflict-related detainee who was transferred to armed-group-controlled territory under the framework of the simultaneous release was afterwards reportedly ‘expelled’ by ‘authorities’ of ‘Luhansk people’s republic’ back to government-controlled territory with a 10-year ‘entry ban’ under the pre-text that he had previously agreed to cooperate with SBU. While two such cases were documented, OHCHR believes that the number of expulsions may be higher.

¹⁷² Additional Protocol II, art. 17; ICRC Customary International Humanitarian Law Study, Rule 129. In Resolution No. 2675 (XXV) adopted in 1970 on basic principles for the protection of civilian populations in armed conflicts, the United Nations General Assembly affirmed that “civilian populations, or individual members thereof, should not be the object of ... forcible transfers...”.

¹⁷³ 2018 Humanitarian Needs Overview, available at https://www.humanitarianresponse.info/system/files/documents/files/ukraine_humanitarian_needs_overview_2018_en_1.pdf.

¹⁷⁴ See also OHCHR 20th Report, paras. 111-117.

¹⁷⁵ WASH Cluster Ukraine Alert Bulletin, Issue 12, at https://www.humanitarianresponse.info/system/files/documents/files/12._wash_cluster_alert_bulletin_issue_12.pdf.

¹⁷⁶ WASH Incident Reports at <https://www.humanitarianresponse.info/en/operations/ukraine/water-sanitation-and-hygiene>.

¹⁷⁷ The number is approximate since there is no local authority to maintain the population record. It is based on information provided to OHCHR by local community activists.

¹⁷⁸ The other road running from western Katerynivka to Popasna (three km away) is blocked by UAF. Residents must travel to and cross the Zolote checkpoint in order to take a bus to Sievierodonetsk, Lysychansk or the nearest district centre – Popasna, where they can access basic services and receive social payments and pensions. During winter, however, buses depart before the Zolote checkpoint opens, therefore Katerynivka residents cannot use them.

¹⁷⁹ OHCHR notes that when electricity disruptions occur, repair brigades of the Luhansk Energy Union refuse to come to the village, claiming that they have no petrol. In such cases, locals either hired a taxi or drove members of the repair brigade in their own cars from Hirske or Popasna.

¹⁸⁰ Similar situation was observed by OHCHR in Hladosove (23 January 2018), Novoluhanske (23 January 2018), Novooleksandrivka (17 January 2018), Pisky (14 February 2018), Travneve (23 January 2018), Verkhnotoetske (27 January 2017) and Zolote-4 (17 January 2018). OHCHR also received information of such conditions in Chihari and Dacha.

¹⁸¹ OHCHR notes that the Government attempted to mitigate this situation by facilitating visits of representatives of the postal service and allowing an ambulance to attend to patients in the village (there is only one ambulance car located in Hirske servicing Katerynivka and therefore it does not arrive timely to the village). However, Koshanivka (an isolated part of Katerynivka) is not accessed by these services. Also, on 13 December 2017 the Cabinet of Ministers adopted the state targeted program on recovery and peacebuilding in the east. Its aim is to restore infrastructure and services in many areas of eastern Ukraine that have been negatively impacted by the conflict (<https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-derzhavnoi-cilov>).

¹⁸² Some electricity was provided through generators, however it was not regularly available. Other settlements experienced similar issues, for example, from 18 to 27 November 2017, the electricity supply to parts of Zolote-4 was cut due to damaged power lines. Without electricity, many homes do not have heating, which is dangerous for families with children and the elderly due to freezing winter temperatures.

¹⁸³ While another local mobile provider is available, it cannot provide full, reliable coverage, including to government-controlled territory, and is facing difficulties due to the sudden volume of customers and calls.

¹⁸⁴ For example, shopkeepers in Oleksandrivka (20km southwest of Donetsk) could not arrange delivery of supplies including bread due to lack of mobile service. OSCE SMM Daily Report of 14 January 2018, available at <http://www.osce.org/special-monitoring-mission-to-ukraine/366516>.

¹⁸⁵ Ministry of Social Policy of Ukraine, 22 January 2018, available at <http://www.msp.gov.ua/news/14678.html>.

¹⁸⁶ Information provided by Shelter Cluster, at https://www.sheltercluster.org/sites/default/files/docs/annual_report_approvedforpublication.pdf.

¹⁸⁷ OHCHR interviews.

¹⁸⁸ Decree No.1085, available at <http://zakon5.rada.gov.ua/laws/show/1085-2014-%D1%80>.

¹⁸⁹ According to Cabinet of Ministers Resolution No. 505, IDPs from the settlements determined in its Decree No. 1085 are eligible for targeted assistance. Resolution available at <http://zakon0.rada.gov.ua/laws/show/505-2014-%D0%BF>. In addition, on 15 November 2017, the Cabinet of Ministers, by its Resolution No. 909-p, adopted the Strategy for integration of IDPs and implementation of durable solutions relating to internal displacement. Its aim is to create a background for the integration of IDPs into the hosting communities and ensuring State support to these category of people. The document is available at <http://zakon3.rada.gov.ua/laws/show/909-2017-%D1%80>.

¹⁹⁰ OHCHR is aware of 10 Supreme Court decisions. See, e.g., <http://reyestr.court.gov.ua/Review/71911075>; <http://reyestr.court.gov.ua/Review/71911456>; <http://reyestr.court.gov.ua/Review/72028721>.

¹⁹¹ Resolution no. 365 of 8 June 2016 introduced the verification and identification procedure for IDP-pensioners.

¹⁹² Law of Ukraine ‘On Mandatory State Pension Insurance’ no.1058-IV of 9 July 2003.

¹⁹³ Decision available at <http://reyestr.court.gov.ua/Review/7108322>.

¹⁹⁴ *Tsezar and Others v. Ukraine* (Applications nos. 73590/14, 73593/14, 73820/14, 4635/15, 5200/15, 5206/15 and 7289/15), ECtHR, 13 February 2018. The applicants had brought their claims based on inability to access court in region no longer controlled by the Government (right to access courts, Article 6-1), the suspension of pensions (protection of property, Article 1 of Protocol No. 1), and discrimination based on the place of residence (prohibition of discrimination, Article 14 in conjunction with Article 6 and Article 1 of Protocol No. 1).

¹⁹⁵ See, e.g., OHCHR Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, para. 108; OHCHR 18th Report, paras. 117-119; OHCHR 19th Report, para 118.

¹⁹⁶ Pension Fund of Ukraine, at http://www.pfu.gov.ua/pfu/control/uk/publish/article?art_id=304887&cat_id=94750.

¹⁹⁷ The allowed term for executive proceedings is 2-6 months. Law of Ukraine “On executive proceedings”, art. 25.

¹⁹⁸ The NGO “Right to Protection” provided legal assistance in several civil cases where courts awarded compensation, before the Dzerzhynsk city court of Donetsk region on 14 December 2017 (<http://reyestr.court.gov.ua/Review/71062112>), Selidove court of Donetsk region on 10 November 2017 (<http://reyestr.court.gov.ua/Review/70222046>) and 28 November 2017 (<http://reyestr.court.gov.ua/Review/66201646>), and the Appeal court of Donetsk region on 29 November 2017 (<http://www.reyestr.court.gov.ua/Review/70573400>) and 13 December 2017 (<http://reyestr.court.gov.ua/Review/70989960>).

¹⁹⁹ See also “Conduct of Hostilities and Civilian Casualties” section.

²⁰⁰ During the reporting period, OHCHR documented cases of ineffective investigations into complaints of looting against UAF servicemen regarding civilian homes in Hirske, Kriakivka, Pervomaiske, Pisky, Zhovanka. Allegations of looting were also received regarding homes in Novoselivka Druha, Syze and Verkhnotoretske (OHCHR interview, 6 December 2017). While the majority of cases of theft and damage to civilian homes documented by OHCHR occurred in territory controlled by Government, it is likely that similar acts are being carried out in armed-group-controlled territory but are under-reported due to safety concerns of victims.

²⁰¹ See OHCHR 20th Report, para. 129; 19th OHCHR Report, para. 124.

²⁰² https://old.dnr-online.ru/wp-content/uploads/2017/12/Ukaz_N343_06122017.pdf.

²⁰³ “Everyone has the rights to own property alone as well as in association with others, and no one shall be arbitrary deprived of his or her property.” Art 17, Universal Declaration of Human Rights. “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.” Art. 1, Protocol 1 to the European Convention on Human Rights.

²⁰⁴ A/RES/72/190 at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/190.

²⁰⁵ The resolution also requests OHCHR to prepare a second dedicated thematic report on the situation of human rights in Crimea and to update the Human Rights Council on the issue.

²⁰⁶ Article 43 of the Regulations concerning the Laws and Customs of War on Land, Annex to Convention (IV) respecting the Laws and Customs of War on Land The Hague, 18 October 1907 and Article 64, Geneva Convention IV of 1949.

²⁰⁷ Administrative fines of 10,000-15,000 RUB (165-250 USD) each. Two of the verdicts were reversed on appeal.

²⁰⁸ See OHCHR 20th Report, paras. 144-145.

²⁰⁹ According to Russian Federation legislation applied in Crimea, one-person pickets do not require pre-authorization, however the Constitutional Court of the Russian Federation has ruled that when several one-person pickets are held simultaneously and are similar to one another with “sufficient obviousness” in respect of the items used, common goals, slogans and timing, such pickets may be considered as one single public picket carried out by a group of individuals, to which pre-authorization requirements for their conduct will apply. (Judgment of the Constitutional Court of the Russian Federation, 14 February 2013 No. 4-II, par. 2.5; <https://rg.ru/2013/02/27/mitingi-dok.html>).

²¹⁰ The article can be found at <https://ru.krymr.com/a/27240750.html>. See also OHCHR 20th Report, paras. 140-141.

²¹¹ The article *inter alia* states: “The blockade must be the first step, a signal for the liberation; it must be a strictly military operation. [«Блокада должна быть первым шагом, предвестием освобождения, это должна быть четкая боевая операция»]. In an earlier version, which was later edited, the article mentioned that the blockade should be conducted through all necessary means, including “the neutralization and destruction of the Russian ferry through the Kerch Strait, [...], the occupiers’ telecommunications, the neutralization of the military command’s fighting ability” and that “The war should be carried out by military means and decisively”. [Блокада [...] должна сопровождаться всеми нужными мероприятиями, в том числе и операцией по нейтрализации и выводу из строя российской переправы через Керченский пролив, коммуникаций оккупантов, нейтрализации боеспособности их штабов. Война должна вестись военными средствами и решительно].

²¹² See *Dmitriyevskiy v. Russia*, no. 42168/06, ECtHR, 3 October 2017, para. 113.

²¹³ “The obligation to provide reasons for a decision is an essential procedural safeguard under Article 6 § 1 of the Convention, as it demonstrates to the parties that their arguments have been heard, affords them the possibility of objecting to or appealing against the decision, and also serves to justify the reasons for a judicial decision to the public.” *Cumhuriyet Vakfi and Others v. Turkey*, no. 28255/07, ECtHR, 8 October 2013, para. 67.

²¹⁴ Before Crimea’s unrecognized accession to the Russian Federation, there were 7 Ukrainian-language schools, 875 Ukrainian-language classes, and a total of 12,694 students receiving education in Ukrainian language. (Note: This and further statistics on education do not include information regarding schools in Sevastopol, a separate administrative unit from the Autonomous Republic of Crimea.) OHCHR considers the main reasons for this decrease to be a dominant Russian cultural environment and the departure of thousands of pro-Ukrainian Crimean residents, as well as pressure from some teaching staff and school administrations to discontinue teaching in Ukrainian language. See OHCHR Report on the “Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)”, paras. 197-198.

²¹⁵ 196,500 students are currently enrolled in public schools in Crimea.

²¹⁶ The 318 students receive education in 9 classes available in a single Ukrainian-language school and 7 Russian-language schools with 13 classes with instruction in Ukrainian. In the 2016/2017 academic year, in addition to nine classes in the same single Ukrainian language school, 19 classes with Ukrainian as the language of instruction were available in 12 Russian-language schools.

²¹⁷ 5,146 students received education in Crimean Tatar in the 2014-2015 academic year, 5,334 in 2015-2016, and 5,330 in 2016-2017. The number of classes available has also remained stable. Fifteen public schools currently use Crimean Tatar as the language of instruction in 202 of their classes, and an additional 133 Crimean Tatar classes function in 31 Russian-language schools. In 2016-2017, there were 201 classes in 15 Crimean Tatar schools and 137 Crimean Tatar classes in 37

Russian-language schools. *See also* OHCHR report “Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)”, para. 201.

²¹⁸ Letter of the Ministry of Education, Science, and Youth of the Republic of Crimea on the Roadmap on the Choice of the Language of Instruction (Learning) in educational institutions of the Republic of Crimea of 28 December 2017, available at <http://monm.rk.gov.ru/file/scan01275220171228104654.pdf>.

²¹⁹ This constitutes a violation of art. 51 of the IV Geneva Convention prohibiting an occupying power from compelling protected persons into its armed or auxiliary forces.

²²⁰ There have been at least seven accused in 2017 whose cases have been heard by courts in Crimea on charges under art. 328 of the Criminal Code of the Russian Federation (military draft evasion).

²²¹ Judgment with a guilty verdict of Gagarinskyi district court in Sevastopol, 31 October 2017; Judgement with a guilty verdict of Simferopol district court, 16 October 2017, upheld by the Supreme Court of Crimea on 28 November 2017.

²²² Article 328 of the Criminal Code of the Russian Federation.

²²³ Decree 699 of 3 November 2014, available at <http://zakon0.rada.gov.ua/laws/show/v0699500-14>, which refers back to the Law of Ukraine “On Creation of the Free Economic Zone ‘Crimea’ and the Particularities of the Conduct of Business Activity on the Temporarily Occupied Territory of Ukraine” of 12 August 2014, available at <http://zakon2.rada.gov.ua/laws/show/1636-18?info=1>. The decree has been regularly challenged in Ukrainian courts. In its most recent decision on the matter, the High Administrative Court of Ukraine upheld the decree on 8 November 2017 (decision available at <http://reyestr.court.gov.ua/Review/70163446>). According to art. 1 of Decree 699, former Crimean residents are exempt from the restrictions of the decree if they have a valid IDP certificate and proof of residence in mainland Ukraine.

²²⁴ In one case, a woman registered in Crimea who left Simferopol for Kyiv in 2008, lived in Germany from 2013 to 2015 and returned to Ukraine in 2015, had no choice but to register as an IDP to be able to open a bank account in Kyiv. OHCHR interview, 12 January 2018. Another person from Crimea who moved to Kyiv in 2009 had to register as an IDP to open a bank account in 2014. OHCHR interview, 22 December 2017.

²²⁵ OHCHR interviews, 27 November and 22 December 2017. For example, in 2016, a former Crimean resident who relocated to mainland Ukraine in 2009 was denied the possibility to complete a routine procedure for mandatory replacement of a passport photo upon reaching the age of 25 both in her current place of residence (Kyiv) or former place of registration, Irpin (also in mainland Ukraine) because her passport still indicated registration in Crimea. She had to challenge the refusal, but was only able to apply for the photo replacement in Irpin (and not Kyiv), and only upon verification of her IDP status and the submission of additional documents which are not normally required for such procedure.

²²⁶ Draft Law no. 7163 “On Particular Aspects of Public Policy Aimed at Safeguarding the Sovereignty of Ukraine over the Temporarily Occupied Territory of the Donetsk and Luhansk regions of Ukraine”, adopted 18 January 2018, signed by the President 20 February, and entered into force 24 February. *See also* OHCHR 20th Report, paras. 149-154.

²²⁷ Article 8 states that geographical limits of the ‘security zones’ are to be defined by the Head of the General Staff of the Armed Forces of Ukraine on the submission of the Commander of the joint forces.

²²⁸ Article 12(6) provides an exhaustive list of “special powers”: use of weapons, authority to stop and check persons, to conduct searches, to detain persons, to limit movement in the streets, to access private property, including houses, and to use private vehicles and means of communication.

²²⁹ Advocacy letter by OHCHR and UNHCR dated 19 October 2017.

²³⁰ Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” no.1207-VII of 15 April 2014.

²³¹ Law of Ukraine ‘On administration of justice and criminal proceedings in connection to the conduct of the anti-terrorist operation’, No.1632-VII of 12 August 2014.

²³² *See* OHCHR 20th Report, para. 154.

²³³ Law “On the status of war veterans and their social protection guarantees” no.3551-XII, 22 October 1993.

²³⁴ OHCHR estimates based on its regular recording of civilian casualties.

²³⁵ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

²³⁶ Opinion No. 902/2017 of the European Commission for Democracy through Law (Venice Commission) - Ukraine - Opinion on the Provisions of the Law on Education of 5 September 2017 which concern the use of the State language and minority and other languages in Education, adopted by the Venice Commission at its 113th Plenary Session (8-9 December 2017), hereinafter “Venice Commission Opinion”.

²³⁷ The law on Education was adopted on 5 September 2017 and entered into force on 28 September 2017. Article 7 drew criticism from representatives of various national minorities for reducing the scope of education in minority languages at the secondary level. *See* OHCHR 20th Report, para. 160.

²³⁸ OHCHR 20th Report, paras. 155-160.

²³⁹ Venice Commission Opinion, para. 87.

²⁴⁰ “Paragraph 4 of Article 7 provides no solution for languages which are not official languages of the EU, in particular the Russian language, as the most widely used language apart from the state language. The less favourable treatment of these languages is difficult to justify and therefore raises issues of discrimination”; Venice Commission Opinion, para. 124.

²⁴¹ *Ibid.*, para. 125.

²⁴² *Ibid.*, para. 126.

²⁴³ Draft law ‘On the legal status of missing persons’, No.5435 of 22 November 2016.

²⁴⁴ *See* OHCHR Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017, paras.150-152.

²⁴⁵ The Parliamentary Committee on human rights, national minorities and inter-ethnic relations.

²⁴⁶ Draft law ‘On the legal status of missing persons’, No.5435-1 of 5 December 2016.

²⁴⁷ 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)*, 21 February 2011.

²⁴⁸ Contained in its 2017 report on its visit to Ukraine in 2016.

²⁴⁹ OHCHR participated in workshops in Sievierodonetsk (23 November), Odesa (27 November), Ivano-Frankivsk (15 December, via Skype) and Kharkiv (15 December) conducted for the benefit of representatives of various prosecution officers, penitentiary institutions, National Police, the regional forensic bureau and the Ministry of Justice.

²⁵⁰ On 22 November in Kyiv, OHCHR delivered a session *inter alia* on prevention of arbitrary and unlawful detention, torture and conflict-related sexual violence. The session laid the foundation for further strengthening of OHCHR cooperation with the civil-military units in the field through its office in Kramatorsk.

²⁵¹ On 11 December in Kyiv, OHCHR delivered a presentation on torture prevention for approximately 50 military chaplains of the Ukrainian Greek Catholic Church who regularly go to the contact line as volunteers or staff of the security and defence structures to provide pastoral care to the soldiers.

²⁵² On 28 November in Kyiv, OHCHR participated in a seminar organized by the Ministry of Justice and the Office of the Ombudsperson with a view to develop guidance for chaplains confronted with torture in prisons.

²⁵³ The consultant was retained to provide strategic advice to the Government, civil society and the United Nations system on preventing and addressing conflict-related sexual violence in Ukraine.

²⁵⁴ See “Right to social security and social protection” *above*.

²⁵⁵ The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

²⁵⁶ The Package of Measures for the Implementation of the Minsk Agreements calls for: an immediate and comprehensive ceasefire; withdrawal of all heavy weapons from the contact line by both sides; commencement of a dialogue on modalities of local elections; legislation establishing pardon and amnesty in connection with events in certain areas of Donetsk and Luhansk regions; release and exchange of all hostages and unlawfully detained persons; safe access, delivery, storage, and distribution of humanitarian assistance on the basis of an international mechanism; defining of modalities for full resumption of socioeconomic ties; reinstatement of full control of the state border by the Government of Ukraine throughout the conflict area; withdrawal of all foreign armed groups, military equipment, and mercenaries from Ukraine; constitutional reforms providing for decentralization as a key element; and local elections in certain areas of Donetsk and Luhansk regions. United Nations Security Council Resolution 2202 (2015), available at <http://www.un.org/press/en/2015/sc11785.doc.htm>. See also Protocol on the Results of the Consultations of the Trilateral Contact Group regarding Joint Measures Aimed at the Implementation of the Peace Plan of the President of Ukraine P. Poroshenko and Initiatives of the President of the Russian Federation V Putin, available at <http://www.osce.org/home/123257>; Memorandum on the Implementation of the Protocol on the Results of the Consultations of the Trilateral Contact Group regarding Joint Measures Aimed at the Implementation of the Peace Plan of the President of Ukraine P. Poroshenko and Initiatives of the President of the Russian Federation V. Putin, available at <http://www.osce.org/home/123806>.

ANNEX II

Simultaneous release of detainees under the Minsk agreements

1. On 27 December 2017, a simultaneous release took place as part of the “all for all” release envisaged by the Minsk agreements¹: 233 individuals were released by the Government of Ukraine and 74 individuals were released by armed groups. The simultaneous release took place on the transport corridor Horlivka-Artemivsk, between armed-group controlled Horlivka and Government-controlled entry-exit checkpoint Zaitseve.
2. Of the 233 individuals released by the Government, 157 individuals (including 15 women) were released to the ‘Donetsk people’s republic’ and 76 individuals (including 3 women) to the ‘Luhansk people’s republic’. All the detainees had been either in the custody of law-enforcement agencies (detained under suspicion of being a member of or otherwise affiliated with armed groups and tried in court), or had already served their sentences (mostly under article 258-3 of the criminal code, aiding terrorist organisations).
3. ‘Donetsk people’s republic’ released 58 individuals (53 men and 5 women), and ‘Luhansk people’s republic’ released 16 individuals (all men). Of the 74 detainees released by armed groups², 41 were civilians³ and 33 were members of the Ukrainian forces (Ukrainian Armed Forces and National Guard).
4. On 20 January 2018, further releases occurred. The Government of Ukraine released one female civilian, while the ‘Donetsk people’s republic’ released a male member of the Ukrainian Armed Forces. Thus, during the reporting period, a total of 309 persons were released under the simultaneous release framework: 234 released by the Government (including 19 women) and 75 by armed groups (including 5 women).

A. Detention in preparation for simultaneous release

5. Prior to the simultaneous release, all 234 individuals in Government custody were held in various detention facilities across Ukraine, although some had already been officially released from detention on remand by court order.
6. Ahead of the planned simultaneous release, most individuals were transported to “Zelenyi Hai” sanatorium near Sviatohirsk (Donetsk region).⁴ Guarded by armed SBU officers, they were not allowed to leave the premises, but could move freely inside the building and were allowed up to two hours walk a day on the territory of the sanatorium. Some detainees told OHCHR they were not informed where and why they were being taken. Some could not inform their relatives or lawyers of their whereabouts.⁵
7. Other detainees (mainly those held in western Ukraine) were first transported to Lukianivske SIZO in Kyiv, where some 30 of them were put in a cell, with only 18 beds.⁶ After ten days, they were transferred to Kharkiv SIZO, where they were joined by other detainees waiting to be released. While approximately 40 of them were in one cell, some reported that

¹ “Release and exchange of all hostages and unlawfully detained persons, based on the principle “all for all” is foreseen in para. 6 of the Package of measures for the Implementation of the Minsk agreements. English translation available at https://peacemaker.un.org/sites/peacemaker.un.org/files/UA_150212_MinskAgreement_en.pdf. The Working Group on Humanitarian Issues reached the decision on the simultaneous release at the end of November 2017, after a year of tense discussions in Minsk.

² One woman decided to stay in the territory controlled by armed groups for family reasons.

³ Some civilians had previously been members of volunteer battalions but were not taking part in hostilities at the time of their apprehension.

⁴ Some were brought to “Zelenyi Hai” as early as 15 December 2017, while others were transferred to this facility even a few days before the release on 27 December.

⁵ OHCHR interviews, November-January 2018. The Government informed OHCHR that these restrictive measures were taken to ensure the safety of the detainees.

⁶ Transitory cells in SIZOs across Ukraine generally have poor conditions.

there was enough space.⁷ On the morning of 27 December 2017, they were transported to the Zaitsevo checkpoint, where they were joined by the group held in “Zelenyi Hai”.

8. In the territory controlled by armed groups, between 25-26 December 2017, the ‘administration’ of the detention facilities called each detainee who was to be included in the release and instructed each to write a statement that they have no complaints about the conditions of detention and a request to be pardoned by the ‘head of republic’.⁸ The administration informed the detainees that it was the only way to be released on 27 December 2017.

B. Allegations of human rights violations

9. In order to protect individuals and their families through strict adherence to the principles of confidentiality and informed consent, much of the documented information is presented in the form of an overall analysis rather than detailed information in individual cases.⁹

10. Of the 234 individuals released by the Government, OHCHR had already been monitoring 142 cases prior to the simultaneous release, having interviewed individuals while in detention facilities in government-controlled territory and observed related court hearings.¹⁰ After the simultaneous release, OHCHR undertook further interviews, and as of 15 February 2018, it had interviewed 64 of the released individuals, on both sides of the contact line. All described having been subjected to torture or ill-treatment, sexual violence, threats of violence, inhumane conditions of detention and/or violations of fair trial guarantees. These violations and abuses (most of which occurred prior to the reporting period) are emblematic of systemic human rights issues which have been further exacerbated by the conflict.

11. Analysis of interviews conducted both before and after the simultaneous release suggests that cases of *incommunicado* detention and torture were more common in 2014 and 2015 in government-controlled territory than afterwards. During that period, “volunteer battalions” were often involved in apprehensions. For example, in November 2014, four masked, armed Aidar battalion members stormed into a hospital where the victim was receiving treatment, placed a bag over his head and took him to the basement of the former police school in Shchastia, where he was held *incommunicado* with 16 other men. After four days, he was finally admitted to the SIZO in Starobilsk, where he had access to a lawyer.¹¹

12. Torture was most often reported by detainees held in Kharkiv SBU, particularly in 2015. Methods used included suffocation with a gas mask, dislocation of joints, electric shock and mock execution. Detainees also received death threats and threats of a sexual nature, both against themselves and their families, and were denied access to medical care. The torture would usually continue until the detainees signed self-incriminating statements.¹² For example, a woman was detained in Kramatorsk in January 2015 by a group of masked men wearing camouflage without insignia. Blindfolded, she was brought to the basement of the Kramatorsk SBU building, and forced to write a “confession” which was dictated. She was threatened that her minor daughter

⁷ OHCHR interview, 6 February 2018.

⁸ The exact wording of the appeal was “please demonstrate an act of mercy towards me”.

⁹ Many released detainees have credible fears of retaliation, and some individuals or their families have received threats. Additionally, OHCHR strives to maintain the highest protection of victims through strict adherence to the principles of confidentiality and informed consent.

¹⁰ OHCHR had also previously submitted advocacy letters outlining human rights concerns on individual cases to the Government.

¹¹ OHCHR interviews, 24 March 2016 and 8 February 2018.

¹² “OHCHR documented the cases of eight individuals detained and tortured by SBU in Kharkiv in 2015. For example, three of these individuals were arrested separately in May 2015, handcuffed and had bags placed over their heads. They were taken to the Kharkiv SBU building, where they were interrogated and tortured separately for hours by methods including suffocation with a gas mask, dislocation of joints, electric shock, and mock execution. The detainees also received death threats and threats of a sexual nature against their families. SBU officers forced these men to sign self-incriminating statements and refused them access to a lawyer. They were transferred to a hospital where a doctor refused to document visible injuries. In another example, also in May 2015, a man was arrested by SBU. On the way to the Kharkiv SBU building, the perpetrators stopped the vehicle and tortured him with electric current. Upon reaching the SBU building, the victim was further tortured until he “confessed” to planning terrorist acts. As of 15 August 2017, all four of these victims remained in pre-trial detention. The Military Prosecutor’s Office has launched an investigation into these allegations.” OHCHR 19th Report, para. 58.

would be subjected to sexual violence¹³ and punched in the face. She was then handcuffed to a pipe overnight, during which she heard a male detainee screaming in a neighbouring room. Over the next 24 hours, she was subjected to electric shock, raped and burned on the leg.¹⁴ She was forced to “confess” on video of being member of armed groups in ‘Donetsk people’s republic’.¹⁵

13. Members of armed groups were reportedly usually subjected to more violence. For example, in May 2015, four to six masked, armed persons attacked a former member of an armed group of ‘Luhansk people’s republic’. They hooded and handcuffed him, and kicked him while interrogating him and demanding he confess to committing crimes and hiding weapons. As a result, the victim was heavily bleeding from his head, arms and legs. While transporting him to Kyiv SBU, the perpetrators cut him with a knife and threatened to kill him if he did not cooperate. At the SBU office, he was forced to make a video “confession” in Ukrainian and Russian languages. Then he was transferred to Kharkiv SBU, where he was granted access to a lawyer. He was then taken to Kharkiv SIZO where despite being examined by a doctor, no medical care was provided for about a week.¹⁶

14. Released detainees also told OHCHR they were subjected to excessive use of force during apprehension and not granted access to legal counsel until they “confessed”. For example, in November 2015, a man was arrested in Mykolaiv by five masked people during which he was hit in the chest, pushed face down on the street and handcuffed. During some five hours of interrogation by SBU in absence of a lawyer, the detainee was called “terrorist” and threatened: “*your relatives will never know where you are. We bury such people like you*”. Then he was forced to read a “confession” on camera. He was only given access to a lawyer after four days.¹⁷

15. Interviews with released detainees also suggest that individuals (especially women) detained by the Government in late 2016 and 2017 were less likely than before to be subjected to physical violence.¹⁸ At the same time, because the detainees were blindfolded or hooded, or the perpetrators covered their faces, it was almost impossible to identify the perpetrators, which significantly restricts the possibility of successful lodging complaints about these human rights violations.

16. Conditions in SIZOs were often reported as poor. For example, in Odesa SIZO the cell walls were covered in mould and the drain was often clogged; detainees were fed three times a day, with food which was often rotten.¹⁹ In Starobilsk SIZO, while the overall conditions were reported as “tolerable”, the food was described as “inedible”.²⁰ Detainees in Bakhmut SIZO complained about poor sanitary conditions and bedbugs.²¹ Detainees held in Kharkiv SIZO reported that parts of the building were poorly heated and cells were infested with cockroaches and had poor sanitary conditions.²² Another detainee reported she was transferred between Kharkiv SIZO and penal colony No. 54 without evident reason; while in the colony, she was placed in solitary confinement for over five months.²³ Detainees also complained of non-provision of adequate medical care with regard to all facilities.

Territory controlled by armed groups

17. Of the 75 individuals released by armed groups, 41 were civilians: 2 had been arbitrarily detained since December 2014, 13 since 2015, 17 since 2016 and 9 since February-March 2017.

¹³ The perpetrators stated, “We will now bring your daughter here and amuse ourselves with her as a woman until you give us the testimony we need!” and “We will bring your children to the military airport and give them to servicemen for amusement!”

¹⁴ The victim still had the scar at the time of the interview.

¹⁵ OHCHR interviews, 13 June 2016, 6 July 2017.

¹⁶ OHCHR interviews, 18 November 2016, 8 February 2018.

¹⁷ OHCHR interviews, 12 April 2017, 5 February 2018.

¹⁸ OHCHR interviews, 26 August 2016, 13 April 2017, 20, 27 September 2017, 2 and 3 February 2018.

¹⁹ OHCHR interviews, 8 February 2018.

²⁰ OHCHR interviews, 5 December 2016, 9 August 2017, 8 February 2018.

²¹ OHCHR interviews, 13 June 2017, 5 July 2017.

²² OHCHR interview, 6 February 2018.

²³ She was held in solitary confinement from November 2016 to April 2017. OHCHR interview, 25 May 2017.

OHCHR interviewed 20 of the released civilians. They had been detained either in their homes, or while at work or on the street, usually by armed men wearing no insignia. In 18 cases, they were transferred to ‘MGB’ of ‘Donetsk people’s republic’ or ‘Luhansk people’s republic’, which ‘investigated’ the cases.²⁴ During the initial period of detention - at least for one month - each person was held *incommunicado*, denied access to a lawyer or communication with relatives.²⁵ During this time, in the majority of documented cases, the detained civilians were kept either in the basements of the ‘MGB’ buildings or in premises generally not intended for detention, and regularly brought to ‘MGB officers’ for interrogation.²⁶ Detainees were often hooded or blindfolded and handcuffed and/or strapped to a chair. In all documented cases, ‘MGB officers’ threatened severe physical violence or rape against the detainees or their relatives if they refused to “cooperate”.²⁷ Such threats were usually accompanied by hits or kicks into the head, chest or legs, making victims believe the threats were imminent and credible.

18. In 15 out of 20 documented cases, physical violence amounting to torture was used during interrogation, until the detainee “confessed” and wrote, signed and/or was videotaped providing self-incriminating testimonies. The most common methods of torture used were mock executions,²⁸ electrocution,²⁹ beatings³⁰ and suffocation by placing a bag over the head.³¹ These testimonies were corroborated by initial medical examinations of 73 detainees (both civilians and military) released by armed groups, according to which 7 individuals had closed craniocerebral trauma, over 50 had problems with teeth (including knocked out teeth), and 8 had physiological dysfunctions or disability linked to torture.

19. During the overall time of detention in territory controlled by armed groups, each individual was held in at least two different detention places, including premises not intended for detention. Conditions of detention varied from normal to those amounting to inhumane and degrading treatment; facilities most commonly used are described below.

20. In territory controlled by ‘Donetsk people’s republic’, detained civilians were predominantly held in the following places: basement of the ‘MGB’ building on 26 Shevchenka Street, Donetsk city SIZO, Izoliatsiia on 3 Svitloho Shliakhu, ‘IVS’ temporary detention facility in Donetsk, and penal colony No. 32 in Makiivka.

²⁴ In two cases, victims (former members of battalions) could not identify the affiliation of ‘investigators’.

²⁵ So-called ‘administrative arrest’.

²⁶ The interrogation, often with torture, was conducted in ‘MGB’ buildings in Donetsk and Luhansk and in Izoliatsiia detention facility in Donetsk.

²⁷ Some threats recanted by interviewed victims were: “we will put you inside a basin with chlorine”, “I will cut your leg and will leave you forever in MGB basement”, “send you to the frontline”, “you don’t want to be disabled, do you?”, “I will go pick up a drill and drill through your legs”, “we have three main directions: to threaten, frighten, prevent access”, “we will put you back in the cell and deal with your wife”, “everything that was until now – were just flowers. You will be placed into the cell with faggots and get raped [the word used in Russian ‘tebia opustiat’ is a prison jargon that means someone will be beaten, raped and urinated on]”, “they threatened to bring my wife, torture her on the table [with electric shock], put her in the next cell, rape her and make me listen to how she screams”.

²⁸ Mock execution was very common and often used repeatedly. Some examples from victims’ interviews include: “I was facing the wall and the guards shot above my head. I was scared to death”; “Somebody leaned in and said ‘You must remember this sound for the rest of your life. Then I heard the bolt reload and two people talking: ‘Wait... what if the cartridge is real?’ - ‘I am not sure if it is real or blank’. Then the gun was fired into my direction”; “I was taken outside with a plastic bag over my head and told to pray. Then I heard someone loading a gun. Then they told me they changed their mind. On another day, I was put in a coffin and told to get ready to die, then I heard someone nailing it. After approximately an hour, I dared to open it, and was beaten for that.”

²⁹ Electric shocks were administered on the neck, ears, feet, legs, arms and genitals. For example, a female detainee described one of her evenings in Izoliatsiia detention facility: “One evening a number of men came to the room. They put a bag on my head and forced me into a different room. There I was put on a metal table face down and tied with duct tape. My socks were taken off and someone connected wires to my toes and turned on electricity. It was extremely painful through my whole body. They demanded I confess to cooperating with some people from the government-controlled side. I was electrocuted twice”. Another detainee in Izoliatsiia stated “On many occasions my cellmates were taken out somewhere, tortured with electricity and returned with burns on their ears, fingers and genitals”. A detainee from Luhansk said “they would attach one wire to the handcuffs, and another wire to parts of the body - a nose, ears, genitals”.

³⁰ Detainees were beaten both by hand and with objects, on all body parts, for example, hits to the head with a book, hits on the soles of feet, stepping on bare toes, and blows to the chest causing difficulty breathing.

³¹ Suffocation was done almost to the point of unconsciousness or triggering seizures. For example, a detainee held in Luhansk witnessed that “a person would be forced to wear a gas mask, and an air hole would be closed, causing a person to suffocate.”

21. In the ‘MGB’ basement, detainees were fed three times per day, but food was often spoiled; however at some point civilian detainees were allowed to receive packages from relatives once a month. They were convoyed to the toilet twice a day, and showers were permitted once every fortnight. The cells were cold (around 10 degrees Celsius during cold season), damp and lacked fresh air. It was forbidden to do physical exercises in the cells. Medical care was not provided.

22. Conditions in the IVS in Donetsk were reportedly satisfactory: the cells were renovated before 2012³² and well-heated, detainees were served food from a nearby canteen (fish, potatoes, meat, bread), given water and had access to medical care.³³

23. Conditions in Izoliatsiia were poor.³⁴ Detainees were held in the basement and ground floor. Most rooms lacked toilets or running water, and detainees were only allowed to use such facilities once a day for a few minutes; alternatively they could relieve themselves in a plastic bottle in the cell. Food was provided twice a day. Detainees were forced to work³⁵: women were forced to cook and clean and men to move heavy objects, including ammunition, and clean cars in the yard. In the room, the light was continuously on and detainees were not allowed to switch it off. Walks were not allowed. There was a doctor in the facility, but available medication was mostly expired. A few detainees described hearing the screams of others being tortured.³⁶

24. Conditions were reported as poor in Donetsk SIZO. Detainees were held in the 6th or 10th block, which had been previously used for convicts with life sentences.³⁷ The cells were small (2 x 4 metres or 1.3 x 3.5 metres), with bunk beds. Often cells were overcrowded (12 people for 8 places), cold with broken windows, humid with mould on the walls, and infested with cockroaches, bedbugs and rats. The toilets in the cells would often clog. Food was insufficient in quantity and of poor quality. Detainees could receive parcels from relatives³⁸, inform them of their whereabouts and be visited by families. After ‘sentencing’, six interviewed detainees were moved to Makiivka colony No. 32 near Donetsk, where conditions were overall satisfactory; however the walls were with mould and cold. During the time in detention, some detainees experienced prison inspection (which prisoners/detainees refer to as “masks”). During one of such inspections, detainees were forced to undress and do squats. Under the pretext of cells’ search they dragged every detainee out and beat them with their bats.

25. In territory controlled by ‘Luhansk people’s republic’, civilians reported being held in the ‘MGB’ building in Luhansk city, Luhansk SIZO, and the ‘commandant’s offices’ in Luhansk and Stakhanov.

26. In the ‘MGB’ building, detainees were always hooded and handcuffed when interrogated. Detainees were forced to rise at 6:00 hrs, often to the ‘anthem of the republic’, and fed twice a day with porridge, a piece of bread and hot water. Sometimes at night, ‘officers’ took a detainee from a cell and the person would be missing for several days.

³² This detention facility was renovated by the Government of Ukraine ahead of the European Football Championship in 2012.

³³ One interviewee described IVS as “heaven in comparison with MGB”.

³⁴ Prior to the conflict, Izoliatsiia was an industrial facility which was turned into a cultural centre in Donetsk city. In May 2014, it was seized by armed groups and used as a detention facility. OHCHR documented and previously reported on various human rights violations including torture which occurred at Izoliatsiia. Since 2015, this detention facility is reported to be controlled by ‘MGB’. According to interviewed detainees, the number of detainees in Izoliatsiia at different times varied from 13 to 55. Some detainees were civilians, others were members of the armed groups. Member of the armed groups were brutally beaten. In spring 2017, all rooms holding detainees were kept were renovated, all detainees received bedclothes and a washing machine was installed.

³⁵ Some detainees reported that they volunteered to work in the kitchen, as it also allowed them to get access to better food.

³⁶ For example, one detainee told OHCHR: “While being held in Izoliatsiia, I heard other detainees being tortured in the adjacent compartments. One day I heard a man from the Caucasus being tortured; he was offering them ransom, but they did not stop. The following day I was told to clean that room – I saw blood and some haired skin on the floor” ... “We could often hear screams of others at night”.

³⁷ Usually in SIZOs, blocks used for life sentences detainees are in the worst condition.

³⁸ Here and throughout the text of this annex, it was easier to receive parcels for those who had relatives in the territory controlled by armed groups. Due to absence of postal services between territory controlled by armed groups and government-controlled territory, it was much more difficult to send parcels to those detainees who did not have family links in the territory controlled by armed groups.

27. Conditions in the Luhansk SIZO were reported as overall satisfactory, improving in early 2017. Detainees were fed three times a day, with better food on weekends, and had regular access to hot water. Sometimes detainees could call relatives. Cells were inspected once every fortnight, sometimes resulting in beatings of detainees.

28. In the ‘Commandant’s office’ of Zhovtnevyi district in Luhansk city, detainees were held in a big cell in the basement containing five-plank beds and no lights. They were convoyed to the toilet twice a day. Detainees received satisfactory nutrition and were treated well by the guards. Occasionally, short walks in the yard were allowed. Detainees reported being interrogated by ‘MGB officers’, often with use of torture (mostly with use of electric currents).

29. In the ‘Commandant’s office’ in Stakhanov town, detainees were held for short periods of time in basement cells. Interrogations took place in the same building.

30. The remaining 33 persons released by armed groups were members of the Ukrainian forces. One had been detained by armed groups since August 2014, 15 since 2015, 16 since 2016 and 1 since March 2017. OHCHR interviewed 18 of the released military personnel. Most were captured at military positions or near checkpoints. All those interviewed had been beaten upon capture. Some soldiers were interrogated and tortured.³⁹ Mock executions were reported common⁴⁰ and often repeated.⁴¹ Further treatment of the soldiers varied greatly depending on which unit captured them and their own role within the Ukrainian military. For example, those few who were intelligence officers or served in special battalions were beaten and tortured more frequently and severely than others.⁴² Some soldiers were forced to videotape self-incriminating “confessions” or give false statements to the media for use as propaganda.

31. Member of the Ukrainian forces were held in various places and moved among two or three different facilities.⁴³ Conditions of detention varied, and in most cases amounted to inhumane and degrading treatment.

32. In territory controlled by ‘Donetsk people’s republic’, some soldiers captured in 2014 and 2015 were initially held in the seized building on 25 Maiska Street in Donetsk under the control of ‘Don Cossacks’.⁴⁴ Detainees there (military and some civilians – both men and women) were constantly subjected to torture and ill-treatment during interrogation.⁴⁵ All detainees were held in one small cell (3×5 metres) lacking windows, with poor ventilation and no toilets.

33. In the detention facility on 14 Molodizhna Street, detainees were held in second floor rooms with barred windows, with approximately 18 detainees sharing one cell. Detainees used metal racks as beds, and were escorted once a day to bathroom facilities (and otherwise used a

³⁹ For example: “They started asking about military positions, then twisted my arms and led me downstairs, intentionally pushing me against the walls, so I would hit my head. Then they slammed my head against the boiler. Then six or seven men brought me to a room, forced to undress and made me kneel facing the wall. Then they hit me a few times, racked the slide and put a machine gun to my head saying I can make my last wish. Then someone entered the room and I heard a dialog: ‘Oh, don’t do it, his blood will be everywhere’ – ‘No worries, I will clean the floor’. Then I heard click of a slide and was ordered to get dressed. They twisted my hands and led me upstairs. Again, they were slamming me against the walls and the boiler.”

⁴⁰ The majority of individuals interviewed mentioned being subjected to mock execution, in many cases repeatedly.

⁴¹ An example provided by an interviewee: “We were brought inside a building of a former club or school. For the next two days, the captors took turns beating us repeatedly. They encouraged others to participate in the beatings, saying ‘Hey, who wants to see a live *ukrop* [derogatory name used for Ukrainians]?’ As a result of beating, I lost most of my teeth.”

⁴² “They did not consider us as human beings and treated as beasts. We had no official status and, thus, no rights.”

⁴³ In Donetsk and its vicinity, members of Ukrainian forces were predominantly held in basements of the former SBU building on 62 Shchorsa Street, the ‘MGB’ building on Shevchenka Street, buildings at 7 Artema Street and 14 Molodizhna Street, and the Cossack’s base at 25 Maiskaia Street. Most were then moved to Makiivka penal colony No. 97. In Luhansk region, they were held in the basement of the ‘MGB’ building in Luhansk, SIZO No.1, and the ‘commandant’s office’ in Luhansk. Interviewees could not specifically identify other places where they were held for short periods of time, such as a basement in Pervomaisk.

⁴⁴ This detention facility run by Cossacks existed until 30 April 2015 when it was taken over by ‘MGB’. Then all detainees were transferred to the basement of the former SBU building at 62 Shchorsa Street.

⁴⁵ The Cossacks randomly beat detainees in the cells with their rifle butts. One interviewee stated: “Cossacks interrogated me about my military unit and combat tasks. I was beaten with arms and legs. They also pierced me several times using a knife.” “One night a few Cossacks, who seemed to be drunk, entered the cell, ordered the detainees to lay on the floor and started firing above the detainees’ heads”.

plastic bottle in the cell). They were fed twice daily, however those subjected to forced labour⁴⁶ received one additional meal per day. Approximately once per week, detainees were allowed to contact their families. Civilians were also held in this facility. OHCHR received credible reports of a civilian woman dying in that facility on 10 September 2016, after being subjected to torture, including beatings and electrocution.

34. From February to May 2016, some Ukrainian soldiers were held in the basement of the building at 7 Artema Street⁴⁷ which was controlled by ‘republican guards’ of the ‘Donetsk people’s republic’. Some 35 detainees were held in three windowless cells measuring 2 by 6 meters each. They were given access to toilets and running water once per day.

35. Most Ukrainian soldiers captured near Donetsk reported being detained for various periods of time in the seized SBU building at 62 Shchorsa Street. Before interrogation, some soldiers were put in solitary confinement in complete darkness in a small cell called the “Yama” (pit).⁴⁸ All detainees were held in basement rooms (a former archive), which was too small for the number of persons (up to 50 men), resulting in overcrowding. There were no windows or fresh air, and plastic bottles were used instead of toilets. Food was insufficient – a 10 litre bucket of food (soup or porridge) and several loaves of bread were provided for all detainees to share.

36. In July 2016, most Ukrainian Armed Forces detained in territory controlled by ‘Donetsk people’s republic’ were transferred to Makiivka colony No. 97 (maximum security prison) where they were separated from pre-conflict prisoners and placed two to three detainees per cell. They were prohibited from contacting relatives.⁴⁹ Detention conditions in the colony were worse than in other premises; the cells were cold and damp, detainees received three meals per day but of very poor quality.⁵⁰ Medical treatment was rarely provided.⁵¹ The detainees were subjected to daily searches of their cells.

37. In territory controlled by ‘Luhansk people’s republic’, Ukrainian Armed Forces were held in the same places of detention as civilians. In Luhansk SIZO, Ukrainian soldiers were held on the fifth floor and treated differently than civilians. The food was poor and insufficient (some bread and rarely a bit of porridge), and reportedly there were cases when the guards did not feed detainees for two days. Detainees did not have hot water for at least five months. No medical treatment was available; walks outside and contacts with relatives were not permitted.

38. Released Ukrainian soldiers also reported being detained in the ‘Commandant’s office’ of Artemivskiyi district in Luhansk, where they were held in six spacious cells in the basement and fed three times a day with food cooked for the guards.

C. Accountability for human rights violations and fair trial rights

39. OHCHR is concerned that the simultaneous release of detainees may have negative consequences on accountability for human rights violations. First, the release of individuals alleged to be perpetrators of human rights violations⁵² deprives victims of justice and redress.⁵³

⁴⁶ Cleaning barrels with gasoline, cleaning industrial waste, digging trenches and other hard labour.

⁴⁷ The building previously belonged to a railway company.

⁴⁸ This was utility space under stairs with heat pipelines, 1.3 x 2 metres, with no light. Usually they were kept there for one to two days.

⁴⁹ In protest, two members of UAF announced a hunger strike and were severely beaten by guards. As described by one interviewee: “Two guards held me while the third was beating my stomach asking whether I still refuse to eat. We agreed to stop the strike, but we were still punished. I was held in solitary confinement until 15 April 2017” [10 months].

⁵⁰ One person stated: “I have not seen a blue sky for 1.5 years.”

⁵¹ “A local doctor always underlined that she does not want to treat captured Ukrainian soldiers – ‘you are enemies!’ ”

⁵² OHCHR is aware of at least 10 individuals transferred to armed-group-controlled territory who were charged with or convicted of crimes against life and liberty of individuals or against their property. At least seven others were facing similar charges in addition to those related to their affiliation or links with armed groups. A person convicted for killing two Ukrainian soldiers was pardoned by the President and transferred to armed-group-controlled territory on 20 January 2018.

⁵³ For example, on 6 July 2017, a former police officer in Druzhkivka was found guilty of robbery, brigandism and unlawful expropriation of a vehicle as part of an armed group of the ‘Donetsk people’s republic’ that abducted a local businessman and tortured him together with others in the basement of the building of the so-called ‘Druzhkivka NKVD’ or ‘Komendatura’ in June-July 2014. He was the only member of the armed group who stood trial for crimes perpetrated

Second, many conflict-related detainees who were released were subjected to human rights violations during the course of their detention and prosecution. Some who filed complaints faced obstruction from law enforcement, which lacked willingness to duly investigate the allegations while the complainants remained in government-controlled territory.⁵⁴ Their release to armed-group-controlled territory may lead to closure of the cases, depriving them of access to justice.

40. OHCHR examined the legal procedures applied by the Government in preparation for the simultaneous release on 27 December 2017.⁵⁵ Following the release, OHCHR interviewed 26 individuals (out of the 234 detainees released by the Government) who stated that the main reason they had agreed to participate in the release was because it was their only option for liberty due to protracted court proceedings during which mandatory pre-trial detention is applied against all individuals charged with affiliation or links with armed groups under article 176(5) of the Criminal Procedure Code.⁵⁶

41. OHCHR is concerned that the simultaneous release may have been used to compel conflict-related detainees, who saw no prospect of justice or fair hearing, to plead guilty, even in otherwise poorly substantiated cases, thus effectively denying them access to justice.⁵⁷ Between 13 and 21 December 2017, at least 39 individuals were convicted by courts based on *inter alia* plea bargains and retractions of appeals. OHCHR noted a spike in plea bargains shortly before the simultaneous release took place.⁵⁸ Eighteen individuals interviewed by OHCHR stated they were offered plea bargains in exchange for being included in the simultaneous release process.

42. At least twenty six individuals who had been on trial for over a year were promptly convicted within two weeks prior to the release. If their conviction was a precondition for inclusion in the simultaneous release, this would raise concern that they have been effectively denied access to justice.

43. In 58 cases of individuals, courts lifted the custodial measures days before the simultaneous release, despite the practice of mandatory pre-trial detention of conflict-related detainees under article 176(5) and the increased risk of flight (since they were meant to be transferred to armed-group-controlled territory). This creates the appearance that courts were influenced by prosecutors and the SBU (which was in charge of the simultaneous release).

44. Individuals who were released but whose trials were not completed or whose cases were not closed⁵⁹ may risk re-arrest should they return to government-controlled territory, or they may be tried and convicted *in absentia*.⁶⁰ At least four individuals received suspended sentences with

against civilians when Druzhkivka was under the armed group's control. He was initially charged and tried only under art. 260 of the Criminal Code (membership in illegal armed formation), however due to victims' appeals, the charges were requalified and the perpetrator was convicted and sentenced to 12 years in prison by Druzhkivka City Court of Donetsk region. On 5 February, local authorities informed the victims they should not expect to receive compensation for damages awarded by the court since the perpetrator was released under the simultaneous release framework.

⁵⁴ OHCHR is aware of at least ten individuals transferred to armed-group-controlled territory under the simultaneous release framework, who complained of human rights violations in relation to their detention and subsequent prosecution and confirmed their intention to pursue cases against the perpetrators.

⁵⁵ Through trial monitoring, OHCHR documented that some detainees spend years in detention awaiting trial under art. 176, despite the failure of prosecution to establish the necessity of imposing detention on remand on conflict-related detainees. Further, OHCHR noted that in some cases, detainees who agreed to be released and transferred to armed-group-controlled territory had no family in or links to that territory.

⁵⁶ Through trial monitoring, OHCHR documented that some detainees spent years in detention awaiting trial under art. 176, despite the failure of prosecution to establish the necessity of imposing detention on remand on conflict-related detainees. Further, OHCHR noted that in some cases, detainees who agreed to be released and transferred to armed-group-controlled territory had no family in or links to that territory.

⁵⁷ Courts do not examine the merits of a case when parties agree to a plea bargain, but suspend the trial once the defendant pleads guilty. The court practice is to only examine the "voluntariness" of the plea bargain agreement and grounds its decision on the statements ("confession") of the defendant. However, according to criminal procedure law, the court cannot ground its decision exclusively on the statements (confession) of the defendant.

⁵⁸ At least 13 individuals pled guilty and were convicted to prison terms which coincided or exceeded duration of their pre-trial detention.

⁵⁹ OHCHR has identified at least 58 persons who were released from pre-trial detention however whose trials continue to be pending.

⁶⁰ OHCHR notes that the existing procedure of trials *in absentia* does not correspond to ECtHR case law, in particular due to the lack of provision for a full retrial with the defendant's present. OHCHR further notes that courts issued rulings on

a probation period during which they are obliged to report to law enforcement. In addition, they are deprived of the possibility to pursue remedies for alleged human rights violations perpetrated against them by state actors. The ability to travel across the contact line is of importance for both those who received suspended sentence and those with pending trials. However, many individuals did not have their identity documents returned to them upon release.⁶¹ Others may face restrictions on their movement imposed by armed groups.

Territory controlled by armed groups

45. Interviews of individuals detained by armed groups and released to government-controlled territory provided further insight into the system of ‘prosecution’ in the two ‘republics’.⁶² ‘Trials’ in conflict-related cases are reportedly carried out in closed sessions, allegedly in order not to disclose ‘classified information’.⁶³

46. Interviews with Ukrainian soldiers and civilians believed to be affiliated with Government forces,⁶⁴ who were detained in territory controlled by ‘Donetsk people’s republic’ and ‘Luhansk people’s republic’ that their cases were often not subject to any review. OHCHR documented 19 conflict-related cases where persons were subjected to indefinite detention⁶⁵ in breach of international human rights and international humanitarian law.⁶⁶ Those Ukrainian soldiers and civilians detained for over two years reported no periodic review regarding the necessity or appropriateness of their continued detention, nor were ‘charges’ brought against them during this period.⁶⁷ Ukrainian soldiers, detained in Donetsk for a period of up to three years were approached by ‘prosecution’ in September 2017 only - a few months before the simultaneous release - when their detention was formalized by a ‘measure of restraint’ of custodial detention imposed by the ‘prosecutor general’s office’.

47. Pre-trial detention proceedings of individuals ‘charged’ with espionage or other conflict-related crimes by ‘military tribunals’ in territory controlled by ‘Donetsk people’s republic’ appear to have followed a pro-forma basis.⁶⁸ Furthermore, even such perfunctory review of legality of detention was delayed. Time spent in *incommunicado* detention, to which many were reportedly subjected prior to acknowledged ‘arrest’, seems not to have been taken into account by a ‘military tribunal’ when calculating the ‘sentence’.⁶⁹ Such practice contributed to unacknowledged detention during which individuals were exposed to torture, including with a view to force self-incriminating statements which served as basis for their subsequent

compelled appearance (привід) in relation to at least 20 released individuals and at least five other individuals have been put on a wanted list.

⁶¹ Out of 160 individuals released and transferred to ‘Donetsk people’s republic’, 62 did not have their passports, 25 had no documents at all, and 101 did not receive certificates of release which raises concerns that the legal proceedings against them have not been closed. OHCHR does not have information regarding persons transferred to ‘Luhansk people’s republic’.

⁶² OHCHR continued to have limited access to monitor ‘trials’ of individuals ‘accused’ of conflict-related offences in ‘courts’ in Donetsk. The ‘trials’ were held behind closed doors and OHCHR was excluded from all but the first and last ‘hearings’.

⁶³ OHCHR interview, 21 November 2017. OHCHR notes that “publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large” (HRC General comment no. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, para. 28).

⁶⁴ They are mostly ‘charged’ with espionage under art. 321 of the ‘criminal code’ of ‘Donetsk people’s republic’.

⁶⁵ At least two civilians detained by the armed groups of ‘Donetsk people’s republic’ stated that they have been detained without being formally ‘charged’. At least 17 interviewed Ukrainian soldiers detained in both ‘republics’ have also been detained without any ‘charges’ brought against them.

⁶⁶ Initial interviews, 28 December 2017, 11 and 14 January 2018.

⁶⁷ The armed groups of ‘Donetsk people’s republic’ formally initiated ‘investigation’ against at least 10 Ukrainian soldiers interviewed by OHCHR under article 230 (‘aiding and abetting terrorism’) of their ‘criminal code’ only in September 2017. One interviewee told OHCHR that ‘investigation’ against captured Ukrainian soldiers was merely a formality that would enable their release. The armed groups of ‘Luhansk people’s republic’ have not charged or tried none of six captured soldiers interviewed by OHCHR irrespective of the duration of their detention.

⁶⁸ For example, on 27 November 2017, the ‘military tribunal’ of ‘Donetsk people’s republic’ ‘ruled’ to extend detention pending ‘trial’ of a defendant with the substantiation going beyond the ‘prosecutor’s’ arguments. The ‘judge’ noted that since the ‘hearings on the merits’ had not started, it was difficult to assess to what extent the ‘accused’ facilitated the ‘investigation’ and therefore, there were no grounds to change his ‘measure of restraint’. OHCHR trial monitoring, 27 November 2017.

⁶⁹ OHCHR interviews, 4 and 5 January 2017.

‘prosecution’.⁷⁰ In at least two cases, ‘courts’ disregarded detainees’ complaints regarding such human rights violations they had suffered.⁷¹

48. Accounts by conflict-related detainees suggest that their degree of culpability in the imputed ‘crime’ was already considered established at the time of their ‘arrest’, amounting to a presumption of guilt. Subsequent ‘investigations’ and ‘trials’ seem to serve merely to create a veneer of legality to the ‘prosecution’ of individuals believed to be associated with Ukrainian military or security forces.⁷²

49. Released detainees informed OHCHR that some appointed lawyers did not make any real effort to present their case. The account of at least one victim suggests that he was intimidated by ‘MGB’ of ‘Donetsk people’s republic’ in the presence of the appointed lawyer, with no reaction from the latter.⁷³ Some lawyers assigned to detainees advised that only ‘convicts’ were eligible for the simultaneous release under the Minsk agreements, leading many detainees to plead guilty even though they had never admitted to committing the charged offences. At the same time, detainees released from ‘Donetsk people’s republic’ who had been ‘prosecuted’ noted that lawyers facilitated contacts with their families.

50. Deprived of access to the Ukrainian judiciary and of effective ‘legal representation’ in proceedings before ‘courts’ in armed-group-controlled territory,⁷⁴ and fearing repercussions for withdrawing statements given under duress,⁷⁵ conflict-related detainees have stood ‘trials’ with no chance of presenting their defence.⁷⁶ Conflict-related ‘trials’ were heard by a ‘military tribunal’ as a chamber of the ‘supreme court’ of ‘Donetsk people’s republic’, whose ‘verdicts’ entered into force immediately with limited opportunities to ‘appeal’.

⁷⁰ Torture is prohibited under both IHL and IHRL. Article 14.3(g), ICCPR; Articles 75.4(f), Protocols I and art. 6.2(f), Protocol II Additional to the Geneva Conventions of 12 August 1949.

⁷¹ HRMMU interviews 4-5 January 2018 and 18 January 2018.

⁷² Accounts of at least 18 civilians interviewed by OHCHR after their release on 27 December 2017 suggest that they have been detained due to alleged links with Ukrainian military and/or security forces.

⁷³ OHCHR interview, 16 January 2018.

⁷⁴ Of the 18 conflict-related detainees interviewed by OHCHR, none were provided with a lawyer immediately upon being detained. One detainee told OHCHR that he never had a confidential meeting with his assigned lawyer, who only signed documents and was inactive during the ‘trial’ (OHCHR interview, 11 January 2018). In some cases, assigned lawyers witnessed intimidation of their client (conflict-related detainee), however, did nothing (OHCHR interview, 15 January 2018). Lawyers of conflict-related detainees refrain from challenging legality of detention of their client during ‘pre-trial’ and ‘trial’ stages (OHCHR trial monitoring, 27 November 2017). OHCHR is concerned that lawyers from government-controlled territory are not allowed to participate in the ‘proceedings’.

⁷⁵ At least seven individuals reportedly tried to present their case but then changed their mind fearing repercussions from the ‘MGB’. Others accepted the ‘charges’ being promised to be included in the simultaneous release.

⁷⁶ These conclusions are based on interviews of ‘convicted’ detainees released on 27 December 2017, due to OHCHR’s lack of access to ‘court hearings’.