



The Hague/Warsaw, 9 May 2014

H.E. Andrii Deshchytsia  
Minister for Foreign Affairs of Ukraine  
Kyiv

Excellency,

In response to the invitation issued on 3 March 2014 on behalf of the Government of Ukraine to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE High Commissioner on National Minorities (HCNM) concerning a Human Rights Assessment Mission (HRAM) to Ukraine, we are pleased to inform you that the HRAM has concluded its work with the enclosed Report on the Human Rights and Minority Rights Situation. The Report has assessed the human rights and minority rights situation in Ukraine against the backdrop of the developments at the time.

The HRAM conducted by ODIHR established that a number of serious human rights violations occurred during the reporting period. As a rule, these violations did not precede but rather accompanied and followed the emergence of various armed groups, first and foremost in Crimea and eastern and southern Ukraine. The targets were primarily pro-Maidan activists and journalists.

The HCNM HRAM found that the situation concerning minority rights has not changed significantly in recent months, although underlying shortcomings regarding both the legal framework for rights of persons belonging to national minorities and implementation of its provisions remain. These long-standing issues have gained greater urgency, as immediate concerns of security, stability and predictability have emerged. The most dramatic changes in the situation of minorities and their enjoyment of human, including minority, rights have occurred in Crimea, particularly affecting ethnic Ukrainians and Crimean Tatars, who find themselves in a very precarious situation.

The enclosed report includes a number of recommendations to the Ukrainian authorities and others. The ODIHR and HCNM stand ready to engage with the Ukrainian authorities, and others, in the implementation of these recommendations.

The report will be publicly released on Monday 12 May 2014.

Looking forward to our continued co-operation on this important matter, we remain

Yours sincerely,

Handwritten signature of Astrid Thors in blue ink.

Astrid Thors  
High Commissioner on National Minorities

Handwritten signature of Janez Lenarčič in blue ink.

Janez Lenarčič  
Director ODIHR

Cc:  
H.E. Amb. Ihor Prokopchuk, Permanent Representative of Ukraine to the OSCE



# **HUMAN RIGHTS ASSESSMENT MISSION IN UKRAINE**

## **HUMAN RIGHTS AND MINORITY RIGHTS SITUATION**

**ODIHR HRAM: 6 March – 1 April 2014**

**HCNM HRAM: 8 March – 17 April 2014**

The Hague/Warsaw

12 May 2014

This report was prepared at the request of the Government of Ukraine. On 3 March 2014, ODIHR and the HCNM received an invitation from the Acting Minister for Foreign Affairs of Ukraine, Andrii Deshchychsia, to send a Human Rights Assessment Mission (HRAM) to Ukraine, including to Crimea. On 4 March 2014, ODIHR and the HCNM responded positively, indicating readiness to undertake such an HRAM in accordance with their respective institutional mandates. The two institutions outlined their task to be an assessment of the compliance of the human rights and minority rights situation in the country with OSCE human dimension commitments and other applicable human rights standards. In accordance with their respective institutional mandates, ODIHR and the HCNM have carried out their fieldwork independently in line with their established methodologies. This is also reflected in this report as the presentation of facts, assessments, findings and recommendations is contained within two separate sections of this document, by ODIHR and the HCNM respectively.

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# **SECTION I: ODIHR ON THE HUMAN RIGHTS SITUATION IN UKRAINE**

## **I. EXECUTIVE SUMMARY AND KEY FINDINGS**

1. This report was prepared following a request by the Government of Ukraine on 3 March 2014. The information it contains was gathered by a Human Rights Assessment Mission (HRAM) deployed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Office of the OSCE High Commissioner on National Minorities (HCNM). Information from other reliable sources was also included or taken into consideration while preparing the report.
2. This section of the report presents the findings and recommendations of ODIHR concerning the human rights situation in Ukraine. It is based on the ODIHR HRAM fieldwork from 6 March – 1 April 2014, which took place against the backdrop of events in Kyiv from November 2013 to February 2014. At the time the HRAM concluded its fieldwork, an escalation of tensions, including violent conflicts, had taken place in the eastern and southern parts of Ukraine. It must, therefore, be stressed that the assessment of Maidan events in Kyiv up to February 2014, and the subsequent and ongoing developments and events in Ukraine after 1 April 2014, remain beyond the scope of this report.
3. ODIHR's assessment of the situation in the regions of Ukraine visited by the HRAM found a significant number of serious violations of human rights. These include murder and physical assaults, as well as cases of intimidation and enforced disappearances. The victims were primarily pro-Maidan activists and journalists, and those in Crimea also included Ukrainian military personnel and members of the Tatar community.

4. A pattern of violent, simultaneous assemblies organized by pro- and anti-Maidan groups has emerged since late February 2014. Most often these were located in central squares near regional state administration buildings. Sporadic instances of violence were followed by more intense clashes in which several people were killed and many more injured. With varying degrees of seriousness and frequency, these have taken place in all locations visited by the HRAM, but particularly in Donetsk, Luhansk, Mykolayiv, Odessa, Sevastopol, Simferopol and Yalta. The methods used by the perpetrators of these violent acts have included, but have not been limited to, arson attacks on cars, threats over online social networks, intimidation via the posting online of personal data, the stigmatization of individuals in leaflets posted at their private addresses (depicting them as criminals), aggressive media campaigns, blackmail and police investigations into victims rather than alleged perpetrators.
  
5. In the assemblies where the most violent clashes occurred, violence often erupted at the instigation of individuals known either as “*titushky*” (mercenary support agents of various groups), or members of so-called “self-defence” groups, or both. The “self-defence” groups describe themselves as volunteers who, faced with the alleged inability of the police to discharge their duties, perform law-enforcement functions during assemblies, often including the use of violence. As of late February, in cities such as Donetsk, Kharkiv and Luhansk, this phenomenon reportedly became both more widespread and more systematic in its use, in particular by anti-Maidan groups. Organized groups started arriving in buses or private vehicles, some of which had either no license plates or Russian Federation license plates. There were allegations that anti-Maidan demonstrations included individuals who were paid for their participation. According to credible sources, many of these individuals came from neighbouring small cities or from across the border with the Russian Federation. They benefited from logistical arrangements and funding that enabled them to travel and to disrupt pro-Maidan assemblies.

6. Most regions visited by the HRAM were characterized by a volatile and polarized environment. This environment has brought to the forefront entrenched structural deficiencies existing before the recent events. In the reporting period, the HRAM received credible allegations of enforced disappearances. In Crimea, the targeted individuals primarily included pro-Maidan activists, journalists and members of the Armed Forces of Ukraine. In a number of these cases, victims were reportedly subjected to torture and other ill-treatment while in custody. Any steps taken by law enforcement and prosecutorial bodies to investigate enforced disappearances and related acts appear to have been ineffective. Throughout the HRAM deployment period, and in all the regions covered by the HRAM, the police have shown bias against pro-Maidan groups on the one hand, and a complacent, if not permissive, attitude towards members of opposing groups, on the other.
  
7. Journalists, in particular, have been targeted, with a view to preventing them from reporting on assemblies and other events. In Crimea, as in other regions visited by the HRAM, notably Kharkiv, Luhansk and Odessa, journalists have reportedly been subjected to physical attacks, as well as other forms of harassment, threats and intimidation, which have contributed to an atmosphere detrimental to the freedom of the media. Alleged victims have included both local and international journalists. The perpetrators were usually described as unidentified men, in some cases wearing a uniform but without insignia or any other identification. Attacks have often involved damage to or the destruction of equipment used by journalists. In fear of reprisals, not all victims have filed complaints. Serious incidents also involved the storming of television stations. These include a station in Luhansk by anti-Maidan groups, and one in Kyiv by members of the Svoboda party, including deputies of the Verkhovna Rada. In both cases employees were reportedly intimidated and threatened. These were not isolated incidents. Reports point to the passivity of police officers in several instances, and to their alleged inability to protect the victims and effectively investigate these incidents. The resulting atmosphere of intimidation, where alternative views could not be heard or aired in public, has had a chilling effect on the work of journalists and has made the challenge of upholding the



freedom of the media and a pluralistic media landscape in Ukraine even more acute.

8. Manifestations of intolerance have increased against the backdrop of amplified polarization within Ukrainian society, serious infringements on the freedom of the media and the intensification of biased information, disinformation and propaganda. In this context, instances of hate speech towards ethnic and religious groups have been widespread. In eastern and southern Ukraine, in particular, there has been a trend of conflating political orientation (pro- or anti-Maidan) with ethnicity. Ukrainian symbols have been targeted on a number of occasions, as have vehicles carrying Ukrainian flags and other national symbols. Pro-Maidan activists have often been labelled “*banderovtsy*”, “Nazis” and “fascists”. Supporting the territorial integrity and unity of Ukraine has been depicted as a sign of intolerance and nationalism. Instances of hate speech towards ethnic and religious groups have been widespread also in Crimea, where Crimean Tatars form a sizeable community. While they had perceived the attitude towards them as tolerant, there were reports during the HRAM deployment pointing to a growing anti-Tatar sentiment. This translated occasionally into instances of intimidation, such as putting up signs to mark households as belonging to Crimean Tatars, the sending of threatening, anonymous text messages, and of verbal harassment of Crimean Tatar schoolchildren. No increase in anti-Semitic hate speech was identified within the reporting period. The same holds true for the Roma community, who, rather, continue to face entrenched discrimination. No increase in the manifestation of intolerance or escalation of violence against the Russian-speaking population was observed in the regions covered by the HRAM during its deployment.
9. As of 1 April, around 3,000 people, mainly women and children, had fled Crimea after its annexation by the Russian Federation, out of fear for their own safety and future status. Eighty percent of these were Crimean Tatars. The remainder were primarily the families of Ukrainian military and service personnel. Reassignment of service members to bases on the territory controlled by the Ukrainian government has also proved to be a difficult

process, entailing personal risks for families. A number of local religious leaders also left Crimea, including priests from the Ukrainian Orthodox Church (Kyivan Patriarchate) and the Ukrainian Greek Catholic Church, although some reportedly returned subsequently to Crimea.

10. Freedom of movement has seen significant restrictions in Crimea, with checkpoints set up and identity checks conducted also outside these. Reports point to numerous checks by “self-defence” groups on a daily basis. The identity of the groups involved in these acts remains unclear, however, with the individuals involved reported as wearing a variety of uniforms and acting as members of “self-defence” groups or the “Crimean Army”, as Cossacks, or as members of other groups. Acting outside the law, these groups appear to have enjoyed the acquiescence and, in some cases, the active complicity of the authorities exercising *de facto* control, including their law-enforcement bodies. Those they held as suspects were allegedly taken from their vehicles and not permitted to travel further. The Ukrainian Border Guard Service has reported that some individuals attempting to leave Crimea were not allowed to cross into Ukrainian-controlled territory. As regards entry into Crimea, the checkpoint at Armyansk was reportedly being operated by “self-defence” forces and former Berkut troops. Journalists, in particular, were turned back at checkpoints when trying to enter Crimea. The Ukrainian military units stationed in Crimea have faced a particular restriction on their freedom of movement, as they have found themselves under siege.
11. The situation of legal uncertainty that arose from the change in the authorities exercising *de facto* control over Crimea carries with it a number of risks, including potential infringements of the rule of law and human rights. Specific concerns exist with respect to citizenship and residency status, employment and the right to work, and land and property rights, as well as with respect to the situation of particularly vulnerable groups. There is a reported lack of clarity on the future residency status of those choosing not to take Russian citizenship and to retain their Ukrainian citizenship instead. Many representatives of the Crimean Tatar community expressed concerns that they could lose the land they have held in Crimea. In general,

there is a fear that the change in the authorities exercising de facto control over Crimea could have a regressive effect on the enjoyment of human rights in these and other areas.

12. ODIHR wishes to thank all who facilitated the preparation of this report. The report would not have been possible without the co-operation of the Government of Ukraine and a broad range of authorities at the local level. The office of the OSCE Project Co-ordinator in Ukraine provided invaluable insights, as well as logistical support and office space enabling smooth operation of the HRAM. ODIHR is particularly grateful to the many individuals who provided personal accounts of their experiences, as well as to non-governmental organizations that shared their information with the HRAM.

## II. RECOMMENDATIONS

*For parties to the 17 April 2014 Geneva Accords on Ukraine:*

- To implement the commitments under the Accords in good faith;
- To refrain from imparting public messages that can directly or indirectly contribute to the escalation of tensions and conflict;
- To call for all illegal armed groups to be disarmed; all illegally seized building to be returned to legitimate owners; and all illegally occupied streets, squares and public places in Ukrainian cities and towns to be vacated.

*For the Ukrainian authorities:*

### General recommendations:

- To ensure effective, prompt, thorough and impartial investigation into allegations of actions by state and non-state actors resulting in human rights violations and to ensure that those responsible are identified and prosecuted, as well as to ensure access to effective remedies for the victims;
- To conduct prompt, thorough, independent, effective and impartial investigations into all allegations of torture or ill-treatment and to ensure that those responsible are identified and prosecuted;
- To co-operate with international human rights monitoring and judicial bodies in matters related to allegations of human rights violations and criminal responsibility;
- To strengthen the independence of democratic institutions, with particular emphasis on the judiciary, as well as enhance the capacity and integrity of law enforcement;
- To promote participatory, transparent and inclusive public decision-making, with a special emphasis on the involvement of civil society groups and National Human Rights Institutions;
- To undertake an overall reform of the security sector and to ensure that, in this context, law-enforcement officers receive adequate training with regard to international human rights norms and standards, including the *UN Code of*

*Conduct for Law Enforcement Officials;*

- To promote an enabling environment for freedom of expression and of the media, with special attention to ensuring independence, pluralism and diversity in the media;
- To promote a conducive environment that enables and empowers civil society activists to pursue their activities freely and without undue limitations, in particular ensuring that they are able to exercise their freedom of expression without undue impediment;
- To promote diversity and human rights in formal and non-formal educational setting, and to develop and implement education campaigns promoting an open, tolerant and inclusive society and raising awareness of human rights and of the need to combat discrimination and intolerance.

Attacks on journalists and activists:

- To ensure that the appropriate mechanisms and procedures are put in place to protect journalists and activists from attacks, threats, harassment and intimidation;
- To ensure that journalists are provided full access to all forms of public assembly, including the possibility to report on policing operations;
- To ensure that any attacks, enforced disappearances, harassment, threats or intimidation targeting journalists and activists are effectively, promptly, thoroughly and impartially investigated with a view to bringing those responsible to justice and preventing a further recurrence;
- To ensure that all journalists and activists can obtain full reparations, including compensation, for any attacks, threats, harassment and intimidation they have encountered;
- To ensure a policy of zero tolerance for any attacks, threats, harassment and intimidation against journalists and activists, or the involvement therein, by public officials.

### Freedom of peaceful assembly:

- To comply with the applicable international standards and constitutional guarantees on freedom of peaceful assembly. ODIHR and the Venice Commission's *Guidelines on Freedom of Peaceful Assembly* provide a framework to facilitate the implementation of the freedom of peaceful assembly;
- To develop and adopt a law governing the exercise of the right to freedom of peaceful assembly ensuring clarity on issues such as time limits for advance notification of assemblies, long-term notification and a human rights approach to the policing of assemblies, including simultaneous assemblies and any counter-demonstrations; the law should be developed through broad consultations involving judges, law-enforcement personnel and civil society actors; to request ODIHR to review the draft law for compliance with applicable OSCE commitments and other international human rights standards;
- To ensure the uniform application of the law by the courts and to provide training for judges and other stakeholders, including law-enforcement personnel, on the conduct of risk assessments and on the criteria to be used when testing the validity of arguments put forward in support of restrictions upon the freedom of assembly;
- To ensure that the police are adequately trained and equipped to facilitate assemblies, including simultaneous assemblies and any related counter-demonstrations;
- To ensure that law-enforcement officials protect participants of peaceful assemblies as well as journalists reporting on and independent observers monitoring assemblies, from any state or non-state actors, including *agents provocateurs* and counter-demonstrators, that attempt to disrupt or inhibit the assembly in any way, enabling participants to take part without fearing physical violence;
- To ensure that adequate assistance and medical aid are rendered to any person injured or otherwise in need of such assistance at the earliest possible

moment and that his/her family or another person of choice is notified as soon as possible;

- To ensure that policing of public assemblies is performed by the law enforcement and that under no circumstances is this function to be assigned or delegated to the civilian population or the military;
- To ensure that law-enforcement officials maintain strict neutrality in the course of policing assemblies, which includes refraining from political or content-based bias at all times while in official capacity;
- To conduct prompt, thorough, independent, effective and impartial investigations into all allegations of criminal misconduct by state or non-state actors perpetrated in the course of public assemblies.

#### Freedom of the media:

- To ensure that coverage perceived as biased is countered through self-regulation and the creation of a truly pluralistic environment where all media outlets would be able to fully exercise their freedom of expression.

#### Manifestations of intolerance:

- To train relevant state actors, in particular the police, on tolerance, non-discrimination and hate crimes;
- To take steps publicly to condemn hate speech and other manifestations of intolerance;
- To combat social exclusion of minority groups, with a special focus on the Roma;
- To make efforts to improve relations between law-enforcement agencies and communities, with a view to improving trust and confidence in law enforcement, to encourage victims to report hate crimes and witnesses to contribute to solving and prosecuting hate crimes;

- To develop and implement education campaigns promoting an open, tolerant and inclusive society and raising awareness of human rights and of the need to combat discrimination and intolerance.

#### Freedom of movement and IDPs:

- To ensure the co-ordination of services rendered at the central and local level, including by setting up a centralized IDP registration system and ensuring that adequate funding is provided;
- To facilitate the voluntary return of IDPs;
- To identify, as appropriate, durable solutions for IDPs that may provide long-term safety, security and freedom of movement, an adequate standard of living, including, at a minimum, access to adequate housing, health care and basic education, and access to employment, with due consideration of the specific needs of men and women, and with particular attention to the most vulnerable groups, such as children, the elderly, and people with special needs;
- To endorse a humanitarian and non-punitive approach to IDPs in particular by refraining from taking measures that could have a negative impact on their residency and citizenship status, as well as their enjoyment of human rights, including social and economic rights;
- To draw upon the UNHCR's extensive experience in dealing with and resolving issues relating to IDPs.

#### **Human Rights Situation in Crimea**

*For the authorities exercising de facto control in Crimea:*

#### General recommendations:

- To promptly disband "self-defence" groups and any other groups *de facto* exercising the functions of law-enforcement agents;
- To apply the principle that the change in the authorities exercising effective control over Crimea should not have regressive effects on the enjoyment of human rights by all individuals with particular attention to ensuring that, in



this process, the rights of indigenous peoples, and minorities, including ethnic, linguistic and religious minorities, are fully respected.

Attacks against Journalists and Activists:

- To ensure that journalists and activists are protected from attacks, threats, harassment and intimidation so that they can carry out their activities freely and without fear;
- To ensure that any attacks, harassment, threats or intimidation targeting journalists and activists are effectively, promptly, thoroughly and impartially investigated with a view to bringing those responsible to justice.

Enforced Disappearances, Torture and Other Ill-treatment in Custody:

- To ensure that all individuals are protected from abductions and enforced disappearances by state or non-state actors;
- To ensure that individuals are only deprived of their liberty by competent agents of the state, acting strictly in accordance with the law, and are afforded full human rights protection;
- To ensure that individuals deprived of their liberty are allowed, promptly after their arrest, to notify members of their family or other appropriate people of their detention and the place where they are being kept in custody; communication with the outside world, and in particular with their family and lawyer, should not be denied;
- To ensure that all individuals deprived of their liberty are treated humanely, and are not subjected to torture or any other cruel, inhuman or degrading treatment or punishment;
- To ensure that law-enforcement agents act promptly and exercise due diligence in preventing and impeding any abductions by state or non-state actors;
- To ensure that any allegations of abductions or enforced disappearances, including allegations of complicity by agents of the state in abductions by non-state actors, and any allegations of causing death, torture and other ill-treatment in custody, are effectively, promptly, thoroughly and impartially

investigated with a view to clarifying the fate and whereabouts of the disappeared and bringing those responsible to justice;

- To ensure that all victims of enforced disappearances obtain full reparations, including compensation.

#### Freedom of Peaceful Assembly:

- To ensure that law-enforcement agents effectively protect participants of public assemblies, including journalists and activists, from attacks, harassment or intimidation by state or non-state actors.

#### Manifestations of Intolerance:

- To promote diversity and human rights in formal and non-formal educational settings, and to develop and implement education campaigns promoting an open, more tolerant and inclusive society and raising awareness of human rights and of the need to combat discrimination and intolerance;
- To make efforts to improve relations between law-enforcement agencies and minority communities, with a view to improving trust and confidence in law enforcement, to encourage victims to report hate crimes and witnesses to contribute to solving and prosecuting hate crimes;
- To train relevant actors, in particular the police, on tolerance, non-discrimination and hate crimes;
- To promote media self-regulation and self-regulatory enforcement of ethical norms, with a particular emphasis on tolerance and impartiality in reporting.

#### Rights of Military Personnel and their Families:

- To ensure effective, prompt, thorough and impartial investigation of allegations of harassment and violence towards Ukrainian military personnel and/or their family members.

Other issues:

- To secure appropriate education and training, including requalification training courses, for those who may need them to be able to continue to be employed in the public administration, should additional requirements be introduced;
- To ensure that all individuals permanently resident in Crimea, including both Russian and Ukrainian citizens, retain all their rights, including permanent residency status, employment rights, property and land rights, without discrimination. Those employed in the public sector should continue to perform their duties whenever possible or should be offered alternative positions commensurate with their skills and experience, without loss of salary.

*For the Ukrainian authorities:*

Rights of Military Personnel and their Families:

- To ensure that Ukrainian service members who did not change allegiance and do not wish to continue military service can be honourably discharged, without negatively affecting their rights and entitlements.

### **III. BACKGROUND TO THE REPORT**

#### **Methodology**

1. The fact-finding for the ODIHR HRAM took place from 6 March to 1 April 2014. A total of 19 experts from ODIHR participated in various stages of the HRAM, working in teams of two to collect information. Most of the information in this report is based on individual accounts gathered from interviews and direct observation by HRAM experts. The report also includes information collected in meetings with government officials at all levels, elected representatives, the national human rights institution, community representatives, national and international non-governmental organizations (NGOs) and international organizations.
2. Special attention was devoted to assessing the disparities in the impact of the events on groups at risk, such as displaced persons, indigenous peoples and minority communities.
3. The HRAM focused on the following rights and freedoms during its assessment:
  - a. Freedom from arbitrary arrest and detention;
  - b. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment;
  - c. Freedom of peaceful assembly;
  - d. Freedom of expression, freedom of the media;
  - e. Attacks against journalists and activists;
  - f. Freedom of movement and internally displaced persons (IDPs);
  - g. Manifestations of intolerance.
4. The ODIHR advance team deployed on 6 March to Kyiv and subsequently to Donetsk and Luhansk. The full deployment of HRAM monitors unfolded as follows:
  - a. 18-25 March in Crimea: Bakhchisaray, Feodosia, Kerch, Sevastopol, Simferopol, and Yalta (three teams);

- b. 18-25 March in Donetsk, Kharkiv, and Luhansk (four teams);
  - c. 25 March-1 April in the vicinity of Chervonohrad and Lyubovichi, as well as in Kherson, Kyiv, Lviv, Mykolayiv, and Odessa (three teams). Two HRAM teams visited locations near Ukraine's border with the Transdnistria region of Moldova and at the Armyansk checkpoint on the newly established demarcation line with Crimea.
5. The teams conducted a total of 187 interviews with individuals in the above locations. Besides individual interviews, teams also conducted group interviews. The HRAM guaranteed full confidentiality for the identity of the interviewees, with the exception of public officials interviewed in their official capacity. A code was attributed to each interview report to protect the confidentiality of those interviewed. References to HRAM interview reports are provided in the footnotes to this report (e.g., 14-03-27-T8-LV-01-01). First-hand accounts, whether by interviewees or the HRAM experts themselves, were, when possible, cross-checked with information from other individuals and other sources. The fact finding on the ground was complemented by desk research and analysis of secondary sources such as video recordings, photographic images, and text documents, including media reports and other materials available online.

### **Focus of the Human Rights Assessment**

6. The focus of this report is on the human rights situation in Ukraine within the timeframe of the HRAM's work. The information it contains relates primarily to events and incidents in the locations where the HRAM teams were deployed.
7. This report is not intended to provide a comprehensive compilation of human rights issues in Ukraine or to identify perpetrators for individual acts that may invoke criminal responsibility. Nonetheless, the report does provide a compendium of information from personal accounts and other information that point to a number of serious human rights violations that occurred for the duration of the HRAM. References to alleged human rights violations that

occurred before 6 March may, however, be found in several parts of the report as background information.

### **Human Rights Standards**

8. The primary human rights and minority standards employed for the HRAM and in the preparation of this report are the human dimension commitments of the OSCE, all of which Ukraine has committed to as an OSCE participating State. Ukraine is also bound by its international obligations under such human rights treaties as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESC), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).
9. Ensuring the protection of human rights is the responsibility of governments. However, they bear responsibility for the protection of human rights only in areas where they exercise effective control. The recommendations included in this report are mostly addressed to the government of Ukraine. Other recommendations are addressed to the authorities exercising *de facto* control in Crimea.
10. A brief reminder of the relevant international standards is inserted in each section of Chapter IV.

### **Structure of the Report**

11. The report is structured thematically, with a separate section on the human rights situation in Crimea in recognition of the fact that this particular region presents specific risks and challenges given the developments that led up to its annexation by the Russian Federation.
12. The report includes a list of recommendations for the Ukrainian authorities and others.

### **Background to the events leading to the invitation of the HRAM**

13. Mass protests started in November 2013 in Kyiv and other cities in Ukraine as a reaction to the decision of the then Ukrainian leadership, on 21

November 2013, not to sign an Association Agreement with the European Union. The protests were initially peaceful in nature.

14. With assemblies gathering pace already on 24<sup>th</sup> November 2013, the turning point for the situation in the country was 30 November as the authorities attempted to forcefully disperse the protesters from the Independence Square in Kyiv, deploying Berkut riot police forces. Clashes between participants in the assembly and police then continued sporadically such as on 11 December with a repeated attempt by authorities to clear the Independence Square. Tensions further escalated on 16 January 2014 following the adoption by the Parliament of a package of laws placing severe restrictions on freedoms of assembly, expression and association, among others.<sup>1</sup> These events were accompanied by reports of attacks on activists and journalists, cases of enforced disappearance and ill treatment of the participants of assemblies. The situation worsened on January 22, 2014 when the unrest turned deadly for the first time as two people died from gunshot wounds after clashes with police and one Maidan<sup>2</sup> activist was found dead with signs of torture near Kyiv. The events had a spill-over effect into other regions of Ukraine, where protests became more numerous and clashes with police became more severe.
15. Violence peaked from 18-21 February 2014 resulting in a high number of casualties due to the excessive use of police force and the engagement of snipers, whose identity was unclear at the time. More than 100 protesters and emergency medical personnel were killed and 17 police officers. A number of individuals remain unaccounted for.
16. On 20 February, President Yanukovich met with the Foreign Ministers of France, Germany and Poland. On 21 February, the Agreement on the Settlement of Crisis in Ukraine was signed by President Yanukovich and the representatives of the parliamentary opposition, and witnessed by the foreign

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<sup>1</sup> For details, see “Opinion on Amendments to Certain Laws of Ukraine passed on 16 January 2014”, OSCE/ODIHR, Warsaw, 10 February 2014, <<http://www.osce.org/odihr/111370?download=true>>.

<sup>2</sup> Originally termed Euromaidan activists because of their support for Ukraine’s association agreement with the European Union and because the protests began on the Independent Square (Maidan Nezalezhnosti) in Kyiv, as their demands broadened to include combating corruption and end of violence associated with the previous regime, they came to be referred as pro-Maidan activists. By contrast, anti-Maidan activists came to denote the supporters of the previous regime. At the same time, the pro- and anti-Maidan groups came to be recognized as pro-Ukrainian and pro-Russian, respectively.

ministers of Poland, Germany, and France, as well as the special envoy of the Russian Federation. The agreement provided for the restoration of the 2004 Constitution, the creation of a government of national unity, the calling of presidential elections in the course of the year, the investigation into recent acts of violence and the refraining from the use of violence.

17. Yet on the same day, 21 February 2014, President Yanukovich fled Kyiv. On 22 February, the Parliament elected Oleksandr Turchynov as the new Speaker of the Parliament. On 23 February the Parliament voted to appoint Oleksandr Turchynov as acting President until presidential elections are held on 25 May. On 27 February, uniformed armed men without insignia seized key government buildings in Crimea. Around the same time also the so-called “little green men” started guarding military bases and other important facilities throughout the peninsula. These disciplined military units without insignia were later acknowledged by the Russian President Putin to be Russian Army personnel.<sup>3</sup>
18. The events that took place from November 2013 to February 2014 in Ukraine, principally in connection to protests on the Independence Square in Kyiv, give rise to serious concerns about human rights violations. In essence, they principally concern the right to life, the prohibition of torture and ill-treatment, freedom of peaceful assembly and freedom of expression. These violations have already been well documented by several sources.<sup>4</sup> What has yet to take place is a credible investigation into the events that will identify individual criminal responsibility for the deaths and ill-treatment that have taken place. While the effects of the Maidan events have reverberated

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<sup>3</sup> Direct Line with Vladimir Putin, 17 April 2014, <http://eng.kremlin.ru/news/7034>.

<sup>4</sup> Ukrainian Parliament Commissioner for Human Rights, Special Report, “Infringement of human rights and freedoms in Ukraine. The events of November 2013-February 2014” Kyiv, 2014, <[http://www.ombudsman.gov.ua/en/images/stories/special%20report%20of%20ukrainian%20ombudsman\\_nov\\_2013\\_feb\\_2014.pdf](http://www.ombudsman.gov.ua/en/images/stories/special%20report%20of%20ukrainian%20ombudsman_nov_2013_feb_2014.pdf)>; Office of the United Nations High Commissioner for Human Rights, “Report on the human rights situation in Ukraine”, Geneva, 15 April 2014, <<http://reliefweb.int/report/ukraine/report-human-rights-situation-ukraine-15-april-2014>>; “Recent developments in Ukraine: threats to the functioning of democratic institutions”, Council of Europe Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), 08 April 2014, <<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20712&lang=en>>; “Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Ukraine from 4 to 10 February 2014”, Council of Europe, CommDH(2014)7, Strasbourg, 4 March 2014, <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2489569&SecMode=1&DocId=2124234&Usage=2>>.



strongly in the developments in Ukraine, as such they remain beyond the scope of this report.

#### IV. HUMAN RIGHTS ASSESSMENT

##### **Attacks against Journalists and Activists**

19. OSCE participating States are committed to abiding by the rule of law<sup>5</sup> and to taking necessary measures to ensure that law-enforcement personnel act in the public interest.<sup>6</sup> The ICCPR<sup>7</sup> and the ECHR<sup>8</sup> each protect the right of everyone to physical integrity, which encompasses the right to be free from torture and other ill-treatment. Freedom of expression and, in particular, the right of the media to collect, report and disseminate information are guaranteed in OSCE commitments<sup>9</sup> and in other international human rights standards.<sup>10</sup> OSCE participating States condemn all attacks on, and harassment of, journalists and are committed to endeavouring to hold those directly responsible for such attacks and harassment accountable.<sup>11</sup>
20. HRAM experts received credible information from various interviewees about attacks on, threats against, and intimidation of journalists and pro-Maidan activists perpetrated in the context of assemblies across the country. These included verbal and physical assaults by anti-Maidan protesters and violent groups. In addition, it was also reported that some individuals have experienced intimidation and pressure, including at their workplaces, to prevent them from attending pro-Maidan meetings in their cities, and that activists have encountered threats and harassment for their involvement in pro-Maidan activities. Police reportedly often failed to provide appropriate protection against such abuses or to effectively investigate them.

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<sup>5</sup> “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE”, Copenhagen, 29 June 1990, <<http://www.osce.org/odihr/elections/14304>> (Copenhagen Document).

<sup>6</sup> “Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE”, Moscow, 4 October 1991, <<http://www.osce.org/odihr/elections/14310>> (Moscow Document).

<sup>7</sup> International Covenant of Civil and Political Rights (ICCPR), Article 7.

<sup>8</sup> European Convention on Human Rights (ECHR), Article 3.

<sup>9</sup> For example, Moscow Document, *op. cit.*, note [2].

<sup>10</sup> Article 19, ICCPR; Article 10, ECHR.

<sup>11</sup> “Towards a Genuine Partnership in a New Era”, Budapest, 6 December 1994, <<http://www.osce.org/mc/39554>> (Budapest Document).

### *Findings*

21. HRAM received allegations of threats, harassment and intimidation of journalists reporting from pro-Maidan assemblies, which resulted in some being increasingly afraid to go to rallies due to the risk of being assaulted.<sup>12</sup> Moreover, journalists from certain media outlets allegedly chose not to report from anti-Maidan assemblies out of fear for their safety.<sup>13</sup>
22. Data compiled by the Independent Media Trade Union of Ukraine included about 300 cases of human rights violations against journalists in connection with the exercise of their profession, including attacks on individual journalists and journalists' offices, between the beginning of the Maidan events in November 2013 and the end of March 2014 (including in Crimea).<sup>14</sup> Interviewees alleged that many journalists and other media workers who were victims of attacks did not report the incidents to the police because of their low level of trust in the law-enforcement system and because they did not expect any redress or compensation for damages incurred. Of the few cases reported to the police, most were not investigated because, as the police allegedly explained to the complainants, there were no suspects due to the fact that the victims could not identify the perpetrators.
23. As reported by the Prosecutor-General's Office to the HRAM, up to 70 cases were investigated, including under Article 171 of the Criminal Code (intentional obstruction of the lawful professional activities of journalists, punishable by a fine or imprisonment). According to information provided to the HRAM, about 40 cases remained open as of the end of March.<sup>15</sup>
24. HRAM experts received reports of incidents during which attackers specifically targeted journalists and damaged their equipment. For example,

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<sup>12</sup> HRAM individual interview 14-03-28-T7-MY-04-01.

<sup>13</sup> HRAM individual interview 14-03-24-T5-DO-03-01.

<sup>14</sup> HRAM individual interview 14-03-26-T2-KY-03-03. According to the interviewee, two other institutions – the Institute of Mass Information and Telekritika – regularly monitor attacks and threats against journalists. Between 23 November 2013 and 24 February 2014, the Institute of Mass Information recorded 206 cases in Kyiv and other cities in which media workers were injured or had their equipment damaged. See “Evromaidan: spysok postrazhdalikh zhurnalistiv – 206 vypadkiv” (“Euromaidan: list of the injured journalists”), Institute of Mass Information website, Kyiv, 07 March 2014, <<http://imi.org.ua/analytics/42295-spisok-postrajdalih-jurnalistiv-30-vipadkiv-onovlyuetsya.html>>. Telekritika recorded around 170 cases over the same period. See “Maizhe za try misyatsi v Ukraini postrazhdaly 170 zhurnalistiv, dvoe z nikh zagynuly” (“170 journalists were injured and two of them died during almost three months of protests in Ukraine”), *Telekritika News* website, 25 February 2014, <<http://www.telekritika.ua/profesija/2014-02-25/90766>>.

<sup>15</sup> HRAM individual interview 14-03-26-T2-KY-03-03.

anti-Maidan demonstrators were reported as damaging the equipment of journalist in Donetsk.<sup>16</sup> Moreover, according to information provided to HRAM experts, four journalists were injured during violent attacks on a pro-Maidan demonstration in Luhansk on 9 March 2014.<sup>17</sup> Allegedly, there were only two journalists present who were not attacked at that demonstration: those from the two Oblast-owned media, LOT Television and Radio and the newspaper *XXI vek*.<sup>18</sup>

25. The HRAM also obtained information on attacks by anti-Maidan protesters against a TV crew at a rally held on 23 March in Kharkiv. Reportedly, the crew was asked by the anti-Maidan protesters to show their ID cards and to identify which outlet they reported for, and were subsequently assaulted. In this case, the police intervened and protected the journalists from further attacks.<sup>19</sup>
26. Following the violence at demonstrations in Luhansk on 9 March 2014, it was reported that the private TV station IRTA TV was stormed on the next day by anti-Maidan groups. Apparently the attack was linked to IRTA journalists having recorded and later broadcast footage of participants in the pro-Maidan assembly being attacked by anti-Maidan protesters.<sup>20</sup> According to the Head of the Luhansk Regional Police Department, around 20 people entered the IRTA building,<sup>21</sup> while another 30 individuals remained outside. IRTA staff present were reportedly threatened and verbally abused. Moreover, personal items belonging to IRTA staff and money were reportedly stolen during the incident. Attackers reportedly demanded that an apology be broadcast for the station's perceived pro-Maidan policy. The attackers stayed in the building for about 2.5 hours and threatened to return.<sup>22</sup>
27. According to information provided to HRAM experts, the police arrived at the scene but did not intervene at the moment of the attack.<sup>23</sup> It was also alleged that the subsequent investigation into the incident did not start until a

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<sup>16</sup> HRAM individual interview 14-03-24-T5-DO-03-01

<sup>17</sup> HRAM individual interview 14-03-23-T6-LU-02-01.

<sup>18</sup> Ibid.

<sup>19</sup> HRAM report 14-03-23-T7-KH-field visit.

<sup>20</sup> HRAM individual interview 14-03-20-T6-LU-01-02.

<sup>21</sup> HRAM meeting with General Vladimir Stanislavovich Guslavskiy, Head of the Luhansk Oblast Police (GUMVD) HRAM interview 14-03-24-T6-LU-03-01.

<sup>22</sup> HRAM individual interviews 14-03-20-T6-LU-01-02 and 14-03-19-T6-LU-01-04.

<sup>23</sup> HRAM individual interviews 14-03-20-T6-LU-01-02 and 14-03-19-T6-LU-02-04.

later stage and was focused on minor hooliganism.<sup>24</sup> Subsequently, the police identified some of the alleged perpetrators; reportedly, three individuals were detained while investigations were being carried out.<sup>25</sup> On 14 March 2014, the Ukrainian Ministry of Internal Affairs confirmed that two leaders of the group alleged to be responsible for the attack were charged under Article 294 (Riots) of the Criminal Code and remained under house arrest on the basis of a court decision.<sup>26</sup>

28. In other reported cases, for instance, in Kyiv on 19 March 2014, a group of members of the political party Svoboda, including some members of the Verkhovna Rada, stormed the office of the acting President of the National Television Company of Ukraine (NTU) because of the airing of what they perceived as anti-Ukrainian content and forced him to sign a resignation letter. On 17 March, a group of individuals stormed the office of the state television network in the Chernigov region and forced its director to resign.<sup>27</sup>
29. The HRAM received numerous allegations of attacks, threats and intimidation targeting pro-Maidan activists. Methods that were reportedly used by anti-Maidan groups and local authorities to intimidate pro-Maidan activists in some parts of Ukraine included arson attacks on cars,<sup>28</sup> display of abusive and threatening posters and leaflets close to the homes of activists, stigmatizing media campaigns,<sup>29</sup> questioning by the police of activists' neighbours,<sup>30</sup> as well as police investigations against victims of abuses for filing complaints rather than investigations to identify the perpetrators.<sup>31</sup>

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<sup>24</sup> HRAM individual interview 14-03-20-T6-LU-01-02.

<sup>25</sup> HRAM meeting with General Vladimir Stanislavovich Guslavskiy, Head of the Luhansk Regional Police Department (GUMVD) HRAM interview 14-03-24-T6-LU-03-01); HRAM meeting with Irina Kostyantynivna Verigina, Deputy Head of the Luhansk Regional Administration HRAM interviews 14-03-21-T6-LU-04-01 and 14-03-24-T6-LU-04-01.

<sup>26</sup> See statement by Minister of Internal Affairs, "Po faktu zahvata Luhanskoi telecompanii podezrevaemyi vziaty pod domashnii arest" ("Suspects of capture of Luhansk TV station are placed under house arrest"), 14 March 2014, <<http://mvs.gov.ua/mvs/control/main/ru/publish/article/1000161>>.

<sup>27</sup> See the press release by the OSCE Representative on Freedom of the Media, "OSCE media freedom representative outraged by attacks against managers of Ukrainian National TV", 19 March 2014, <<http://www.osce.org/fom/116599>>.

<sup>28</sup> For example, HRAM individual interviews 14-03-23-T6-LU-02-01 and 14-03-27-T6-OD-01-05.

<sup>29</sup> HRAM individual interview 14-03-23-T6-LU-02-01.

<sup>30</sup> HRAM individual interview 14-03-23-T6-LU-01-01.

<sup>31</sup> HRAM individual interview 14-03-23-T6-LU-02-01.

Some activists described the threats and harassment they faced as “psychological warfare”.<sup>32</sup>

30. According to a number of interviewees, some of these practices have stopped since the change of power at the end of February, but others have continued or even intensified. For example, an interviewee in Donetsk observed that it had generally become dangerous to carry Ukrainian national symbols for fear of attacks.<sup>33</sup> Interviewees from Odessa reported that pro-Maidan activists have continued to experience threats through social media on a daily basis, which have increased since the beginning of March.<sup>34</sup> Lists with names and addresses of pro-Maidan activists have reportedly been published online, which has endangered their safety.<sup>35</sup>
31. Similarly, activists in Luhansk have reported receiving threats on social networks. In addition to a list of addresses and telephone numbers of activists appearing on social media, films and pictures of an abusive nature were allegedly posted online by members of anti-Maidan groups. Furthermore, they reported that leaflets and stickers with derogatory content have appeared near the homes of activists, depicting them as criminals and drugs users, and alleging their actual or perceived sexual orientation. In addition, they reported an incident in late March, in which unknown individuals sprayed abusive graffiti on walls next to the office of their organization.<sup>36</sup> Reportedly, several activists found posters affixed to the doors of their homes that called them “terrorists”, “agents of the US State Department”, and revealed sensitive private information. According to the interviewees, reports to the police about these incidents did not result in any investigations.<sup>37</sup>

#### *Assessment*

32. The incidents described above point to a pattern of systematic intimidation of journalists and pro-Maidan activists, often with the complicity or acquiescence of local authorities, in particular law enforcement bodies. This

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<sup>32</sup> HRAM individual interviews 14-03-22-T4-DO-02-04 and 14-03-24-T6-LU-05-02.

<sup>33</sup> HRAM individual interview 14-03-24-T5-DO-03-01.

<sup>34</sup> HRAM individual interview 14-03-27-T6-OD-01-05.

<sup>35</sup> HRAM individual interview 14-03-14-AT-DO-03-01.

<sup>36</sup> HRAM individual interview 14-03-24-T6-LU-05-02 and Annex to HRAM individual interview 14-03-24-T6-LU-05-02. Copies of the leaflets and pictures of the graffiti are on file with ODIHR.

<sup>37</sup> HRAM individual interviews 14-03-21-T5-DO-01-01 and 14-03-24-T5-DO-03-01.

gives rise to concerns about the failure of the competent authorities to safeguard freedom of expression and freedom of the media, including by exercising due diligence in protecting journalists carrying out their work.

33. Moreover, concerns about freedom of expression arise from the failure of the competent authorities to protect activists from physical violence, stigmatization, invasion of privacy and related abuses. In this respect, it is of particular concern that local police authorities appeared to have been directly participating in the intimidation of pro-Maidan activists. Furthermore, it is worrying that in some cases, law enforcement and prosecutorial bodies reportedly failed to adequately investigate these incidents with a view to bringing to justice the perpetrators.

### **Freedom of Peaceful Assembly**

34. Article 11 of the ECHR, Article 21 of the ICCPR and para. 9.2 of the Copenhagen Document protect the freedom of peaceful assembly. According to Article 11(2) of the ECHR, any restrictions to this right should be prescribed by law and be necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of the rights and freedoms of others.
35. According to the OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law (Venice Commission) Guidelines on Freedom of Peaceful Assembly,<sup>38</sup> the policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and must adhere to applicable human rights standards. The state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Law-enforcement officials must also protect the participants of a peaceful assembly from any person or group (including agents provocateurs and counter-demonstrators) that attempts to disrupt or inhibit the assembly in any way.

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<sup>38</sup> *Guidelines on Freedom of Peaceful Assembly* (Warsaw: OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law, 2010), para. 5.3.

36. At the time of the HRAM, pro-Maidan assemblies gathering hundreds of people took place almost every day in all regions of Ukraine, including in the south and the east. These gatherings were marked by sporadic violent incidents, including intimidation, verbal threats and physical attacks of participants. In particular, pro-Maidan assembly participants faced attacks by anti-Maidan opponents, which were reportedly met by inadequate police response. Pro-Maidan groups were often outnumbered by anti-Maidan demonstrators in the eastern and southern parts of the country also because the latter were reportedly bussed in and remunerated for their participation in the protests. Challenges in facilitating peaceful assemblies were reportedly exacerbated by the lack of a clear legal framework regulating this matter.

### *Findings*

37. Assemblies in Ukraine are regulated by Article 39 of the Ukrainian Constitution, in the absence of a specific law on assemblies. According to the acting Chair of the Donetsk Administrative Court of Appeals, in the absence of a law, it is difficult for the courts to make the “right decisions”.<sup>39</sup> This seems to point to the lack of criteria for judges to determine whether a particular assembly is imposing unreasonable burdens such as risks of public disorder, incitement to lawless action or infringements on the rights and freedoms of others.
38. The only requirement is that the organizers of assemblies inform the executive or local self-government authorities in advance, that is, within a reasonable time prior to the date of the planned event, but what is considered a “reasonable time” is not defined anywhere.<sup>40</sup> Representatives of local authorities met by the HRAM were concerned that too short a notice might make it impossible for law-enforcement authorities to make all the necessary arrangements to facilitate freedom of assembly and protect public order,

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<sup>39</sup> HRAM interview 14-03-21-T5-DO-04-02.

<sup>40</sup> Decision of the Constitutional Court of Ukraine of April 19, 2001, No. 4-rp/2001 which provided official interpretation of Article 39, para. 1 of the Constitution of Republic of Ukraine, <<http://zakon4.rada.gov.ua/laws/show/v004p710-01>>.

public safety, and the rights and freedoms of others.<sup>41</sup> Such concerns were raised also in relation to some of the incidents of clashes between opposing groups and attacks on peaceful assemblies described below.

39. Interviewees from both pro-Maidan and anti-Maidan groups agreed that violence often occurred as a result of holding simultaneous assemblies. The holding of simultaneous assemblies is not regulated in the existing legal framework.
40. The overwhelming majority of testimonies collected by HRAM monitors pointed to police inaction and passivity at the assemblies in Donetsk, Luhansk and Kharkiv where violence erupted. Both anti-Maidan and pro-Maidan groups complained that the police were unable to perform their duties and in particular to ensure the safety of participants in assemblies.<sup>42</sup> According to several interviewees, the inability of the police to perform their duties was also the reason that pro-Maidan activists and other related groups initially set up so-called “self-defence” groups to protect participants at their assemblies, particularly the most vulnerable of them (such as children and elderly).<sup>43</sup>
41. Violence was reported to have occurred on 9 March 2014 in Luhansk,<sup>44</sup> when anti-Maidan counter-demonstrators allegedly disrupted a peaceful assembly and attacked pro-Maidan participants. One of the interviewees observed that the anti-Maidan activists were brought to Luhansk from other regions in buses and that they significantly outnumbered the pro-Maidan activists.<sup>45</sup> As a result of the attack, some of the participants sustained minor

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<sup>41</sup> The UN Human Rights Committee has held that a requirement to give notice, while a *de facto* restriction on freedom of assembly, is compatible with the permitted limitation laid down in Article 21 of the ICCPR. See UN Human Rights Committee, *Kivenmaa v. Finland* (1994). Similarly, the European Commission on Human Rights, in *Rassemblement Jurassien* (1979), stated that: “Such a procedure is in keeping with the requirements of Article 11(1), if only in order that the authorities may be in a position to ensure the peaceful nature of the meeting, and accordingly does not as such constitute interference with the exercise of the right.”

<sup>42</sup> HRAM individual interviews 14-03-20-T4-DO-03-01, 14-03-20-T5-DO-03-01, 14-03-21-T6-LU-01-01, 14-03-21/23-T5-DO-01-01, 14-03-22-DO-T5-01-01, 14-03-23-T4-DO-01-01, 14-03-23-T6-LU-01-01, 14-03-23-T7-KH-02-02.

<sup>43</sup> HRAM individual interviews 14-03-20-T4-DO-03-01, 14-03-21/23-T5-DO-01-01, 14-03-23-T4-DO-01-01.

<sup>44</sup> For example, HRAM individual interviews 14-03-17-AT-LU-01-01, 14-03-19-T6-LU-01-04, 14-03-19-T6-LU-02-04, 14-03-20-T6-LU-02-04, 14-03-21-T6-LU-02-01, 14-03-21-T6-LU-03-01, 14-03-21-T6-LU-04-01, 14-03-23-T6-LU-01-01, 14-03-23-T6-LU-02-01, 14-03-23-T6-LU-04-05, 14-03-24-T6-LU-03-01.

<sup>45</sup> HRAM individual interview 14-03-23-T6-LU-01-01.



injuries.<sup>46</sup> The interviewees asserted that the police failed to provide adequate protection.<sup>47</sup> Children in attendance needed to be protected from the attack and were placed behind the Shevchenko monument.<sup>48</sup> The Chief of the Luhansk Police Department, confirmed that an investigation had been opened into the incident.<sup>49</sup> It was further reported that, following the attack, anti-Maidan protesters stormed the Local Administration building, while the police stood by.<sup>50</sup> The attackers allegedly threatened the Head of the Regional Administration, forcing him to resign,<sup>51</sup> and placed a Russian flag atop the building.<sup>52</sup>

42. Clashes in the context of assemblies were observed on several occasions in Donetsk. In particular, interlocutors indicated that there were sporadic instances of violence on 4, 5 and 9 March.<sup>53</sup> However, the violence reached its peak on 13 March 2014.<sup>54</sup> On that day, assemblies in Donetsk were marred by violent incidents when anti-Maidan protesters broke through a police cordon and started physically assaulting<sup>55</sup> the participants of the significantly smaller<sup>56</sup> pro-Maidan assembly. These incidents took place at the end of the assembly, when no more than 50 police officers were reportedly present.<sup>57</sup>
43. Interviewees described how a group of around 30 protesters were forced to seek shelter in a police bus that was surrounded by attackers. The bus windows were smashed, and irritant gas was dispersed inside, forcing the group to exit the bus, where they were then subjected to beatings and verbal

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<sup>46</sup> HRAM individual interviews 14-03-17-AT-LU-01-01 and 14-03-23-T6-LU-02-01.

<sup>47</sup> HRAM individual interview 14-03-23-T6-LU-01-01.

<sup>48</sup> HRAM individual interview 14-03-23-T6-LU-02-01.

<sup>49</sup> HRAM individual interview 14-03-24-T6-LU-03-01.

<sup>50</sup> HRAM individual interview 14-03-23-T6-LU-01-01.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> HRAM individual interviews 14-03-22-T4-DO-02-04 and 2014-03-23-T4-DO-01-01.

<sup>54</sup> For example, HRAM individual interviews 14-03-14-AT-DO-02-07, 14-03-14-AT-DO-04-01, 14-03-14-AT-DO-05-01, 14-03-15-AT-DO-02-01, 14-03-17-AT-DO-02-01, 14-03-19-T4-DO-01-01, 14-03-19-T5-DO-03-01, 14-03-20-T4-DO-02-01, 14-03-20-T5-DO-01-01, 14-03-20-T5-DO-03-01, 14-03-21-T4-DO-03-01, 14-03-22-T4-DO-02-04, 14-03-22-T5-DO-01-01, 14-03-23-T4-DO-01-01, 14-03-24-T4-DO-01-01, 14-03-24-T4-DO-02-01, 14-03-24-T4-DO-03-02.

<sup>55</sup> HRAM individual interview 14-03-20-T5-DO-03-01.

<sup>56</sup> HRAM individual interviews 14-03-14-AT-DO-02-07, 14-03-17-AT-DO-02-01, 14-03-20-T5-DO-01-01, 14-03-22-T5-DO-01-01.

<sup>57</sup> Twenty people according to HRAM individual interview 2014-03-21-T4-DO-03-01; “far fewer than initially”, according to HRAM individual interview 14-03-19-T5-DO-03-01; 10 to 20 according to HRAM individual interview 14-03-20-T5-DO-03-01. Also, HRAM individual interview 14-03-22-T5-DO-01-01.

abuse.<sup>58</sup> One individual described being hit in the face with a stone and having his hand broken from multiple hits.<sup>59</sup> Another interviewee described being hit in the back of the head and losing consciousness.<sup>60</sup> Another person was reported to have sustained a brain injury.<sup>61</sup> Moreover, it was reported that one person – a member of the Svoboda party – was stabbed to death during the incident.<sup>62</sup>

44. Witness accounts of the event, as well as video footage examined by ODIHR,<sup>63</sup> point to a deliberate failure by police forces to take adequate measure to protect the pro-Maidan assembly.<sup>64</sup> For example, some interviewees witnessed metal sticks and other weaponry being handed out to anti-Maidan protesters without any police intervention.<sup>65</sup> Others observed that anti-Maidan groups, widely believed to come from neighbouring towns, were transported in cars and buses without license plates.<sup>66</sup> Some stated that the police could be observed treating the anti-Maidan protesters in a favourable manner.<sup>67</sup> According to some witnesses, some police officers were not properly equipped for discharging their duties in the context of violent assemblies (no truncheons, handcuffs or shields).<sup>68</sup>
45. According to reports, approximately 29 people sustained injuries as a result of the clashes.<sup>69</sup> The HRAM also gathered information suggesting that medical assistance was not provided in a timely manner.<sup>70</sup> Some interviewees

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<sup>58</sup> HRAM individual interview 14-03-20-T5-DO-01-01.

<sup>59</sup> HRAM individual interview 14-03-21-T4-DO-03-01.

<sup>60</sup> HRAM individual interview 14-03-19-T5-DO-03-01.

<sup>61</sup> HRAM individual interview 14-03-24-T4-DO-01-01.

<sup>62</sup> HRAM individual interview 14-03-20-T4-DO-02-01.

<sup>63</sup> “Російський МЗС набрехав про Донецьк, і погрожує взяти його під захист” (“Russian MFA has lied about Donetsk and is threatening to take it under its [Russian] protection”), *Ukrainskaya Pravda News* website, <<http://www.pravda.com.ua/news/2014/03/14/7018762/>>; Radio Svoboda, “Sutycky v Donetsku” (“Clashes in Donetsk”). Online video clip. *Radio Svoboda*. Web. Radio Svoboda, 13 March 2014, <<http://www.radiosvoboda.org/media/video/25296762.html>>.

<sup>64</sup> HRAM individual interview 14-03-19-T5-DO-03-01, according to which this witness allegedly overheard the head of the police saying: “Let them kill one another!” Also HRAM individual interview 14-03-20-T5-DO-01-01.

<sup>65</sup> HRAM individual interviews 14-03-15-AT-DO-02-01 and 14-03-19-T5-DO-03-01.

<sup>66</sup> HRAM individual interview 14-03-23-T4-DO-01-01.

<sup>67</sup> HRAM individual interview 14-03-14-AT-DO-05-01.

<sup>68</sup> HRAM individual interview 14-03-20-T5-DO-01-01.

<sup>69</sup> HRAM individual interview 14-03-15-AT-DO-02-01.

<sup>70</sup> HRAM individual interview 14-03-21-T4-DO-03-01.

ascertained that several of those injured did not seek medical assistance, as they were afraid of further assaults and retaliation at hospitals.<sup>71</sup>

46. In the aftermath of the assembly, prosecutors opened an investigation into police negligence.<sup>72</sup> Some interviewees explained that, following the events on 13 March, residents of Donetsk made a decision to forego the organization of any further peaceful pro-Maidan assemblies out of fear for their safety.<sup>73</sup>
47. Another reported incident involved a standoff between Ukrainian far-right activists and anti-Maidan demonstrators that allegedly took place on 14 March 2014 on Rymarska Street in Kharkiv.<sup>74</sup> It was alleged that initially a minivan with members of the right-wing group Right Sector drove to the site of an anti-Maidan assembly and a confrontation ensued. Subsequently, the van drove off to Rymarska Street, where the office of the Prosvita organization is located. The anti-Maidan activists allegedly followed the vehicle and subsequently stormed the building. It is further alleged that, as a result of the confrontations, two people were shot dead and at least five were injured.<sup>75</sup>
48. Moreover, some pro-Maidan supporters asserted that the anti-Maidan protesters captured around 50 people and took them to the square in the centre of Kharkiv. Those captured were forced onto a stage, where they had

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<sup>71</sup> HRAM individual interview 14-03-16-AT-DO-01-01.

<sup>72</sup> “Prokuraturuju donetskoj oblasti rozpochato rozsliduvannia dij pratsivnykiv militsii pid chas masovykh zavorushen (Prosecution of Donetsk oblast started investigation of police action during mass disorder), 14 March, 2014.

[http://www.don.gp.gov.ua/ua/news.html?\\_m=publications&t=rec&id=135467&fp=60](http://www.don.gp.gov.ua/ua/news.html?_m=publications&t=rec&id=135467&fp=60).

<sup>73</sup> For example, HRAM individual interview 14-03-20-T5-DO-01-01.

<sup>74</sup> HRAM individual interviews 14-03-20-T7-KH-03-01, 14-03-21-T7-KH-04-01, 2014-03-22-T7-KH-01-03; furthermore, the incident was reported in the media. See, for example,

“V Khar’kove strel’ba u ofisa “Prosvity”, 2 pogibshih, 5 ranenykh” (“Two people are dead and five are wounded during the shooting near ‘Prosvita’ office in Kharkiv”(video is available), *Donbass News* website, 14 March 2014, <http://novosti.dn.ua/details/220240/>; “Prorossiskie aktivisty obstrelivaiut ofis v ktorom zabarrikadirovalis chleny “Pravogo sektora” (“Pro-Russian activists are shooting at the office which members of ‘Right sector’ have barricaded in”). *Ukrainska Pravda News* website, 15 March 2014, <http://www.pravda.com.ua/rus/news/2014/03/15/7018848/>; “Nochnaya perestrelka v Khar’kove: Ubity dvoe, zaderzhany okolo 30” (“Night gun fight in Kharkiv: two people are dead, 30 more people are detained”), *Podrobnosti News* website 15 March 2014, <http://podrobnosti.ua/criminal/2014/03/15/964695.html>; Zakharenkova, Elena, “MVD Ukrainy: Posle stolknovenii na Rymarskoj zaderzhanu 38 cheloveka” (“Ministry of Interior of Ukraine reports 38 people were detained after the clashed on Rymarska Street”), Media group Objective, 15 March 2014, <http://www.objectiv.tv/150314/94437.html>.

<sup>75</sup> HRAM individual interview 14-03-21-T7-KH-04-01.

to kneel down and had their faces covered with green liquid.<sup>76</sup> They were also verbally abused. It was also reported that the police were present during the incident but did not react to the situation.<sup>77</sup> Certain interviewees described their reluctance to seek medical attention in the aftermath of the violence out of fear of further assaults at hospitals.<sup>78</sup> As a result of the violence, more than 100 people were injured.<sup>79</sup>

49. There have been credible allegations that anti-Maidan groups and assemblies had in their ranks individuals who instigated or escalated the violence that erupted at some assemblies, particularly in Donetsk, Kharkiv and Luhansk. There are corroborating testimonies that these individuals benefited from logistical arrangements to travel to the centre of the cities where the assemblies took place from neighbouring small cities in Ukraine or from across the border with the Russian Federation.<sup>80</sup> These individuals came in buses or private vehicles, some of which had either Russian plates or no plates at all.<sup>81</sup> Some of them carried metal sticks.<sup>82</sup> Several sources pointed to their Russian accent or pronunciation.<sup>83</sup> The information collected by the HRAM suggests that funding was made available to bring these individuals to the locations of the assemblies and to remunerate them. Two sources alleged that there was a well-established salary scale for these activists, with greater remuneration for a small group of people directly involved in committing beatings.<sup>84</sup> Reportedly, the individuals involved in the violence were not activists, and their intention was not to counter-demonstrate and express any views but to disrupt the assemblies of their opponents and inhibit the exercise of their right to demonstrate. Local residents with genuine anti-

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<sup>76</sup>“1 marta 2014 izvinenie boitsov “Pravogo sectora” (banderovtsev) pered khar’kovchanami” or “Members of “Right sector” (*banderovtsy*) apologies to Kharkovites on 1 March, 2014”). Online video clip. *YouTube*. YouTube, 1 March 2014. Web. 16 April 2014, <<https://www.youtube.com/watch?v=aa63IjsaWIk>>.

<sup>77</sup> HRAM individual interview 14-03-23-T7-KH-01-02.

<sup>78</sup> HRAM individual interview 14-03-22-T7-KH-02-02.

<sup>79</sup> HRAM individual interview 14-03-20-T7-KH-04-01.

<sup>80</sup> For example, HRAM individual interviews 14-03-21-T6-LU-01-01 and 14-03-20-T6-LU-01-02.

<sup>81</sup> HRAM individual interviews 14-03-19-T5-DO-03-01, 14-03-20-T5-DO-01-01, 14-03-22-T5-DO-01-01, 14-03-23-T4-DO-01-01.

<sup>82</sup> HRAM individual interview 14-03-22-T5-DO-01-01.

<sup>83</sup> HRAM individual interview 14-03-19-T5-DO-01-02.

<sup>84</sup> HRAM individual interviews 14-03-20-T4-DO-01-01 and 14-03-20-T5-DO-01-01.

Maidan views who joined the assemblies were often outnumbered by the individuals who came from elsewhere.<sup>85</sup>

50. Some of these individuals are known as *titushky*, which can be broadly defined as mercenary support agents of various groups, often posing as street hooligans, and ready to use violence for money. They typically operate in civilian clothes, without identifiable insignia and from behind the lines of rallies. They are often known to the police, and have a criminal background. Many are unemployed and make a living out of their activities as *titushky*.<sup>86</sup>
51. Pro-Maidan groups have also been reported as having in their ranks individuals who, while acting primarily as volunteers to ensure the safety of participants in the assemblies (“self-defence”), have occasionally been involved in violence at some assemblies.<sup>87</sup>
52. In the vast majority of cases, no proper or effective investigation was allegedly conducted into the violent incidents that marred some assemblies. While interviewees were generally able to register complaints, there were corroborating testimonies highlighting the incapacity or unwillingness of the police to open investigations.<sup>88</sup> Assembly participants who were victims or witnesses of human rights violations in the course of an assembly expressed a great deal of scepticism, if not distrust, as to the ability and willingness of the police to conduct effective investigations. At times, police officers themselves were dismissive of the possibility that such complaints “may achieve anything”.<sup>89</sup> However, high-ranking law-enforcement officials indicated that investigations were ongoing, for instance, in incidents that occurred in Luhansk on 9 March.<sup>90</sup> Furthermore, proceedings have reportedly been initiated against those who committed violent acts at the 13 March assemblies in Donetsk.<sup>91</sup>

### *Assessment*

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<sup>85</sup> HRAM individual interview 14-03-20-T5-DO-01-01.

<sup>86</sup> HRAM individual interview 14-03-19-T5-DO-01-02.

<sup>87</sup> HRAM individual interview 14-03-20-T5-DO-01-01. For instance, in escalating the violence in Donetsk on 5 March.

<sup>88</sup> For example, HRAM individual interview 14-03-22-T5-DO-01-01.

<sup>89</sup> *Ibid.*

<sup>90</sup> HRAM individual interview 14-03-24-T6-LU-03-01.

<sup>91</sup> HRAM individual interview 14-03-21-T4-DO-01-03.

53. The incidents reported above indicate a disturbing pattern of failure by law enforcement agents to protect the freedom of peaceful assembly. In this regard, it should be noted that the state has a positive duty to protect peaceful assemblies, which also extends to simultaneous demonstrations and counter-demonstrations. Security and safety should be provided entirely by the public authorities and under no circumstances should this duty be assigned or delegated to the organizer of an assembly or any other groups. Consequently, the public or any formally or informally delegated group should not be responsible for or involved in ensuring the safety of the participants of an assembly. It is a matter of concern that physical attacks against participants in peaceful assemblies, and in particular pro-Maidan activists gathering in the east and the south of the country, resulted in loss of life and serious injuries and were reportedly often met by inadequate police response.
54. The state has an obligation to effectively investigate attacks against participants in peaceful assemblies, as well as any allegation of serious police misconduct resulting in its failure to protect and facilitate assemblies. It is therefore paramount that investigations of the incidents described above be opened and/or, carried out effectively. Failure to do so would result in a violation of the right to life, the prohibition of cruel, inhuman or degrading treatment, the right to effective remedies, as well as freedom of peaceful assembly.
55. Freedom of peaceful assembly does not protect violent assemblies, nor does it protect the activities of *agents provocateurs*, including individuals paid to participate in protests to disrupt peaceful assemblies and foment violence. It is therefore noted with particular concern that freedom of peaceful assembly appears to have been instrumentalized, in particular by anti-Maidan groups, to stifle the freedoms of assembly and expression and to disrupt public order.
56. A lack of clarity in the legal framework regulating assemblies may compound these problems and have a detrimental effect on the enjoyment of human rights. Consequently, it is important to ensure that legal provisions, meeting international human rights standards are adopted and fully implemented.

## Freedom of the Media

57. OSCE participating States have committed to promoting and protecting freedom of expression, free media and information.<sup>92</sup> In particular, participating States have acknowledged the key role of independent and pluralistic media in a free and open society.<sup>93</sup> Participating States have also highlighted that fomenting ethnic tension through the media can serve as an early warning of conflict.<sup>94</sup> Freedom of expression is enshrined by international and regional treaties binding on Ukraine.<sup>95</sup> Freedom of expression is understood to subsume the freedom to receive and impart information without interference by public authorities.<sup>96</sup>
58. The HRAM received information of interference with media freedoms by the authorities, and of the manipulation of media by a foreign government and powerful pressure groups. This resulted in a deterioration of media freedom and, allegedly, biased reporting on unfolding events.

## Findings

59. The majority of those interviewed by the HRAM perceived the coverage of the current events in Ukraine as biased.<sup>97</sup> In particular, a number of interviewees indicated that they had suspicions that the Russian media broadcasting also on the territory of Ukraine were intentionally distorting facts to manipulate public opinion.<sup>98</sup> Interviewees also cited allegations of distortion of facts by some Ukrainian media outlets (especially broadcast media).<sup>99</sup> The HRAM also encountered examples of biased reporting<sup>100</sup> of

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<sup>92</sup> See, for example, “Conference on Security and Co-operation in Europe Final Act”, Helsinki, 1 August 1975, <http://www.osce.org/mc/39501> (Helsinki Final Act); Vienna Document 1989, *op. cit.*, note 39; “Concluding Document of the Madrid Meeting 1980 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-up to the Conference”, Madrid, 9 September 1983, <<http://www.osce.org/mc/40871>> (Madrid Concluding Document).

<sup>93</sup> Budapest Document, *op. cit.*, note [7], para. 36.

<sup>94</sup> *Ibid.*

<sup>95</sup> ICCPR, Article 19; ECHR, Article 10.

<sup>96</sup> ECHR, Article 10; also see ICCPR, Article 19.

<sup>97</sup> Additional information concerning allegations of biased coverage was obtained through monitoring Ukrainian websites such as [www.stopfake.org](http://www.stopfake.org) (last visited on 14 April 2014).

<sup>98</sup> For example, HRAM individual interviews 14-03-10-AT-KY-02-01, 14-03-16-AT-DO-02-01, 14-03-24-T5-DO-03-01, 14-03-26-T2-KY-01-02.

<sup>99</sup> HRAM individual interview 14-03-26-T2-KY-01-02.

events in Donetsk on 13 March that were observed directly by the HRAM, and as discussed above. Moreover, the HRAM received indications that the alleged conflation of political office and control over media outlets resulted in state interference with news content.<sup>101</sup>

60. For example, some interviewees alleged that there was a degree of arbitrariness in terms of granting journalists access to newsworthy events (specifically, a claim that a city mayor restricted access to City Hall meetings to loyal journalists),<sup>102</sup> as well as in the journalist accreditation system.<sup>103</sup> With regard to the latter, it was mentioned that editorial boards enjoy full discretion over whom to issue press credentials to, and that the practice of selling press credentials to individuals who are not in fact journalists or issuing such credentials under pressure from sponsors is allegedly widespread.<sup>104</sup>
61. On 11 March, the National Television and Radio Broadcasting Council of Ukraine, with reference to relevant Ukrainian legislation, called on Ukrainian cable operators to stop broadcasts of the Russian television channels Rossiya 24, ORT, RTR Planeta and NTV-Mir. National Security and Defence Council Deputy Secretary explained this decision by what she referred to as a “media war” with an ensuing “threat to national security”.<sup>105</sup> On 25 March, the Kyiv District Administrative Court reviewed the National Television and Radio Broadcasting Council's lawsuit against one of the companies rebroadcasting the above-listed channels, and ruled in favour of suspending broadcasts of these Russian television channels on the territory of Ukraine.<sup>106</sup>

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<sup>100</sup> “Ukraina Rossiya 22 SROCHNO! Sobytiya na Ukraine 13 – 15 marta” (“Ukraine Russia URGENT! Event in Ukraine 13 – 15 March”). Online video clip. YouTube. YouTube, 15 March 2014. Web. 16 April 2014, <<https://www.youtube.com/watch?v=ubbtMSBpS2s>>.

<sup>101</sup> For example, HRAM individual interviews 14-03-21-T6-LU-01-01, 14-03-21/23-T5-DO-01-01, 14-03-24-T6-LU-01-01, 14-03-24-T5-DO-03-01.

<sup>102</sup> HRAM individual interview 14-03-21-T6-LU-01-01.

<sup>103</sup> HRAM individual interview 14-03-26-T2-KY-03-03.

<sup>104</sup> Ibid.

<sup>105</sup> “Ukraine's National Security and Defence Council calls for review of Russian TV broadcast licensing conditions”, *Kyiv Post News* website, 7 March 2014 <<http://www.kyivpost.com/content/ukraine/ukraines-national-security-and-defense-council-calls-for-review-of-russian-tv-broadcast-licensing-conditions-338704.html>>.

<sup>106</sup> Kyiv District Administrative Court. Decree on implementation of administrative claim № 826/3456/14 as of 25 March 2014, Kyiv District Administrative Court, Kyiv, <<http://reyestr.court.gov.ua/Review/37822378>>.



62. The access of Russian speakers to media in their native language was assessed as adequate overall with one interviewee pointing out that the majority of media outlets in the Donetsk region use Russian as the language of communication.<sup>107</sup>

#### *Assessment*

63. It is noted with great concern that the existence of propaganda and biased reporting of events and developments covered by the HRAM contributed to a deterioration in the security situation, including in the enjoyment of human rights. The OSCE Representative on Freedom of the Media cautioned against the noxious effects of propaganda in times of conflict and its contribution to the escalation thereof.<sup>108</sup> Attacks against journalists, as described in the relevant section above, as well as other forms of political interference and other forms of pressure on the media, have fuelled tension and violence, as exemplified by attacks on peaceful assemblies described above.
64. The imposition of restrictions on Russian television channels was justified on grounds of national security, one of the permissible grounds for restrictions on freedom of expression. However, it should be noted that a vaguely applied notion of propaganda cannot be used to justify bans apparently affecting the availability of all broadcasts by a number of Russian media outlets. It is a matter of concern that attempts to counter propaganda have resulted in the imposition of restrictions on broadcast media, which may be tantamount to a violation of the freedom of expression, rather than placing emphasis on increased media pluralism as an antidote to propaganda.
65. The allegations the HRAM received of political interference on media outlets provide worrying evidence of the negative effects on media freedom of pressure exerted by power structures at the local and national level. Political pressure further compounded problems arising from an already deteriorating media freedom at a time of crisis.

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<sup>107</sup> HRAM individual interview 14-03-19-T4-DO-02-01.

<sup>108</sup> See the “Statement by the OSCE Representative on Freedom of the Media on propaganda in times of conflict”, 15 April 2014, <<http://www.osce.org/fom/117701>>.

## Manifestations of Intolerance

66. OSCE participating States have undertaken to combat intolerance and discrimination in general,<sup>109</sup> as well as against specific groups, such as Roma and Sinti.<sup>110</sup> In particular, participating States have recognized the importance of combating hate crimes.<sup>111</sup> A number of international human rights instruments and other standards prohibit discrimination,<sup>112</sup> including racial discrimination,<sup>113</sup> as well as condemn intolerance and negative stereotyping on the basis of religion or belief.<sup>114</sup>
67. HRAM experts received allegations of manifestations of intolerance, including hate speech, towards ethnic and religious groups. Such instances did not appear to be of a systemic nature and, in particular, the HRAM did not observe an escalation of violence against the Russian speaking population in the east and south of Ukraine.

## Findings

68. As a number of reports suggest, there has been a considerable trend that has seen political orientation conflated with ethnic background. This has been an issue in particular in eastern and southern Ukraine, where Ukrainian identity and symbols have been targeted for hate speech.<sup>115</sup>
69. Pro-Maidan activists in the east of the country have frequently been labelled “*banderovtsy*”<sup>116</sup> (“the Bandera followers”), “Nazis”<sup>117</sup> and “fascists”.<sup>118</sup> It

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<sup>109</sup> See, for example, Helsinki Final Act, *op. cit.*, note 174; Vienna Document 1989, *op. cit.*, note 39; OSCE Ministerial Council, Decision No. 4/03, “Tolerance and Non-discrimination”, Maastricht 2 December 2003, <<http://www.osce.org/mc/19382>>, (Maastricht Ministerial Council Decision No. 4/03 on Tolerance and Non-discrimination).

<sup>110</sup> See, for example, OSCE Ministerial Council, Decision No. 3/03, “Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area”, Maastricht, 27 November 2003, <<http://www.osce.org/odihr/17554>>.

<sup>111</sup> Maastricht Ministerial Council Decision No. 4/03 on Tolerance and Non-discrimination, *op. cit.*, note 206.

<sup>112</sup> ICCPR, Articles 2 and 26; International Covenant on Economic, Social and Cultural Rights, Article 2(2); Convention on the Rights of the Child, Article 2; Convention on the Elimination of All Forms of Discrimination against Women, Article 2.

<sup>113</sup> Convention on the Elimination of Racial Discrimination.

<sup>114</sup> UN Human Rights Council, Resolution 22/31 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief.

<sup>115</sup> For example, HRAM individual interviews 14-03-22-T7-KH-03-01, 14-03-20-T4-DO-02-01, 14-03-28-T7-MY-01-01. HRAM report 14-03-23-T7-KH-field visit.

<sup>116</sup> For example, HRAM individual interviews 14-03-26-T7-MY-01-04 and 14-03-28-T7-MY-01-01.

should be noted that the word *banderovtsy*, in particular, carries connotations of militant Ukrainian nationalism and as such perpetuates the harmful stereotype of ethnic Ukrainians as intolerant and nationalistic. Local Party of Regions politicians<sup>119</sup> and the media affiliated with them have allegedly used this rhetoric.<sup>120</sup> On a number of occasions, vehicles carrying Ukrainian flags and other national symbols have been reportedly vandalized.<sup>121</sup>

70. The HRAM also received a limited number of reports of ethnic intolerance against the Russian minority in the west of Ukraine. A representative of the Russian minority described how current events in Ukraine have impacted on the Russian community in the Lviv region. Ethnic Russians are at times perceived as opposing the Maidan movement and, as such, experience implicit or explicit disapproval and at times provocations. For example, ethnic slurs against Russians were reported as having been used at pro-Maidan assemblies.<sup>122</sup>
71. Representatives of the Jewish community did not report an increase in anti-Semitic hate speech during the HRAM.<sup>123</sup> In fact, allegations of a growth in anti-Semitism have been publicly rejected by leading Jewish public figures in Ukraine.<sup>124</sup>
72. The attitude of the Roma is allegedly perceived as apolitical. Incidents of harassment and intimidation targeting members of the Roma communities were reported to the HRAM in this connection. On one occasion, this perception reportedly led to a mob attack in the Kyiv region against a Roma man, whose assailants publicly accused all Roma people of not supporting any party and of not supporting the Maidan in particular.<sup>125</sup>

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<sup>117</sup> For example, HRAM individual interview 14-03-28-T7-MY-01-01.

<sup>118</sup> For example, HRAM individual interview 14-03-22-DO-T5-01-01.

<sup>119</sup> For example, HRAM individual interviews 14-03-22-T7-KH-02-02 and 14-03-28-T7-MY-01-01.

<sup>120</sup> For example, HRAM individual interview 14-03-28-T7-MY-01-01.

<sup>121</sup> For example, HRAM individual interviews 14-03-20-T4-DO-02-01 and 14-03-22-T7-KH-02-02.

<sup>122</sup> For example, HRAM individual interview 14-03-31-T8-LV-02-01.

<sup>123</sup> For example, HRAM individual interview 14-03-24-T5-DO-02-01.

<sup>124</sup> See “Open letter of Ukrainian Jews to Russian Federation President Vladimir Putin”, *International New York Times*, 27 March 2014, p. 9.

<sup>125</sup> *Ibid.*

### *Assessment*

73. Manifestations of intolerance reported to the HRAM have remained fairly isolated, although, in the context of increasing tensions in the country, it is paramount for the authorities to address them in an effective and timely fashion in order to prevent discrimination and hate crimes and promote tolerance. It is crucial, moreover, that unsubstantiated allegations of manifestations of intolerance, extremism and hatred not be divulged by actors outside Ukraine as these may contribute to the escalation of tensions and deterioration of the security situation.

### **Freedom of Movement and IDPs**

74. OSCE participating States have committed themselves to removing all legal and other restrictions with respect to travel within their territories and with respect to residence for those entitled to permanent residence within their territories.<sup>126</sup> They have further committed to facilitating the voluntary return, in safety and dignity, of internally displaced persons in accordance with international standards, recognizing also that the reintegration of people in their places of origin must be pursued without discrimination.<sup>127</sup> International human rights law guarantees everyone the right to freedom of movement within the borders of the state where they are located, and the right to leave and enter their own country.<sup>128</sup> The OSCE recognizes the UN Guiding Principles on Internal Displacement as the relevant framework.<sup>129</sup>
75. The situation in Crimea, particularly in the aftermath of the events of 27-28 February, forced an estimated 3,000 people to leave the region becoming internally displaced persons (IDPs) on the territory controlled by the Ukrainian government. They include mostly Crimean Tatars, but also the families of Ukrainian military personnel originally stationed in Crimea.

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<sup>126</sup> Moscow Document, *op. cit.*, note [2], para. 33.

<sup>127</sup> "Lisbon Document 1996", Lisbon, 3 December 1996, <<http://www.osce.org/mc/39539>>, para. 10.

<sup>128</sup> Universal Declaration of Human Rights, Article 13; ICCPR, Article 12; ECHR, Article 2 of Protocol 4.

<sup>129</sup> Maastricht Ministerial Council Decision No. 4/03 on Tolerance and Non-discrimination, *op. cit.*, note 206, para. 13.

Following the annexation of Crimea by the Russian Federation, issues have also arisen affecting the freedom of movement to and from the peninsula.

### *Findings*

76. Western Ukraine saw the first IDPs arrive from Crimea on 4 March 2014.<sup>130</sup> As of 21 March, the estimated number of displaced persons in western Ukraine was reported to be around 2,000 (80 per cent of them being Crimean Tatars).<sup>131</sup> The number of IDPs increased to an estimated 3,000 mostly women and children by 1 April. They were accommodated predominantly in Lviv, Kyiv, Vinnytsia, and to a lesser degree in Ivano-Frankivsk.<sup>132</sup>
77. The IDPs and authorities interviewed by the HRAM cited a climate of fear, uncertainty and intimidation as primary causes for their departure.<sup>133</sup> As one Crimean Tatar family pointed out, people decided to leave out of fear of war.<sup>134</sup> Another Crimean Tatar interlocutor reported that Tatars are especially afraid of Russian and pro-Russian forces. They reportedly cited the conflict in South Ossetia and Abkhazia, as well as the deportations of Tatar people in 1944 as the main reasons for their fear.<sup>135</sup> They expressed concerns about the property they left behind, as they were not certain what would happen to it.<sup>136</sup>
78. In regions closer to Crimea, the families of Ukrainian soldiers formed a sizeable portion of the IDPs. For example, as of 30 March 2014, Mykolayiv hosted from 63 to 68 such individuals, according to various accounts, with 50 more families expected to arrive.<sup>137</sup> Odessa reportedly accommodated 65 members of the families of officers of the Border Guard Service with more

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<sup>130</sup> HRAM individual interview 14-03-26-T8-LV-01-03.

<sup>131</sup> "Ukraine Humanitarian Situation Report #4", UNICEF, 21 March 2014, <[http://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF\\_Ukraine\\_SitRep4\\_21March2014.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF_Ukraine_SitRep4_21March2014.pdf)>.

<sup>132</sup> "Ukraine Humanitarian Situation Report #6", *op. cit.*, note 248. For instance, according to the Lviv Regional State Administration, as of 27 March, Lviv alone was hosting 1,276 IDPs, mostly Crimean Tatars, [HRAM individual interview 14-03-27-T8-LV-03-10].

<sup>133</sup> HRAM individual interviews 14-03-26-T8-LV-01-03, 14-03-29-T8-LV-01-01 and 14-03-30-T8-LV-01-02.

<sup>134</sup> HRAM individual interview 14-03-27-T8-LV-05-01.

<sup>135</sup> HRAM individual interview 14-03-28-T8-LV-04-01.

<sup>136</sup> HRAM individual interview 14-03-26-T6-OD-01-03.

<sup>137</sup> HRAM individual interview 14-03-30-T7-MY-01-01.

- expected to arrive.<sup>138</sup> Most IDPs were reported to be interested in relocation further afield rather than staying in Mykolayiv, Kherson or Odessa.<sup>139</sup>
79. HRAM received information that given the absence of a central IDP registration system,<sup>140</sup> efforts were underway to set up a registration system on the regional level.<sup>141</sup> Moreover, the main responsibility for providing care to IDPs was placed on self-governments at the regional level that had no or very limited experience in handling such cases<sup>142</sup> and were without financial support from the central authorities.<sup>143</sup> Regional authorities in Kherson, Mykolayiv and Lviv thus set up regional co-ordination centres for the reception, housing and provision of basic services to IDPs<sup>144</sup> while in Kherson, the regional authorities set up migration points and camps for those leaving Crimea.<sup>145</sup> IDPs were also accommodated in private housing.<sup>146</sup>
80. Although the range of services that IDPs have had access to has varied across the regions,<sup>147</sup> it was noted that the solutions provided were temporary.<sup>148</sup> In particular, the HRAM received reports of specific concerns affecting military personnel such as the location of their residence and concerns over service members' personal files which may affect their contractual relationship with the army.<sup>149</sup>
81. Concerns were raised over the freedom of movement of IDPs wishing to return to Crimea and their ability to enter Crimea from the territory controlled by the Ukrainian government.<sup>150</sup> Reportedly, difficulties have

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<sup>138</sup> HRAM individual interviews 14-03-26-T6-OD-01-03 and 14-03-27-OD-T6-02-04.

<sup>139</sup> HRAM individual interview 14-03-26-T7-MY-01-04.

<sup>140</sup> "Ukraine Humanitarian Situation Report #6", UNICEF, 5 April 2014, <<http://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Ukraine%20SitRep%20No.%206,%2005%20April%202014.pdf>>.

<sup>141</sup> HRAM individual interviews 14-03-26-T6-OD-01-03 and 14-03-26-T8-LV-01-03.

<sup>142</sup> HRAM individual interview 14-03-27-T8-LV-03-10.

<sup>143</sup> HRAM individual interviews 14-03-27-T8-LV-03-10 and 14-03-28-T8-LV-02-02.

<sup>144</sup> HRAM individual interviews 14-03-26-T8-LV-01-03, 14-03-27-T7-KS-01-10, 14-03-27-T7-MY-01-05.

<sup>145</sup> HRAM individual interview 14-03-27-T7-KS-01-10 and HRAM report 14-03-30-T7-KS-04-field visit.

<sup>146</sup> HRAM individual interviews 14-03-26-T8-LV-01-03 and 14-03-27-T8-LV-01-01.

<sup>147</sup> HRAM individual interviews 14-03-30-T7-MY-11-01 and 14-03-28-T8-LV-04-01.

<sup>148</sup> HRAM individual interviews 14-03-27-T8-LV-01-01, 14-03-28-T8-LV-02-02 and 14-03-28-T8-LV-04-01.

<sup>149</sup> HRAM individual interviews 14-03-30-T7-MY-01-01 and 14-03-28-T8-LV-03-03.

<sup>150</sup> HRAM individual interview 14-03-28-T8-LV-01-03.

been experienced both when leaving Crimea and leaving the territory controlled by the Ukrainian government.<sup>151</sup>

82. While the HRAM was in Ukraine, a number of legislative initiatives were under consideration, which, if adopted would affect freedom of movement in Ukraine.<sup>152</sup> In its opinion on these drafts, the UNHCR recommended that a humanitarian and non-punitive approach to ordinary citizens affected by the crisis be adopted and expressed concern that this legislation “may exacerbate the risk of displacement from Crimea, and may undermine the rights of internally displaced persons as economic, property transaction and freedom of movement restrictions included in the draft legislation are not in line with international legal standards”.<sup>153</sup> Since then, the latest draft of the law on guaranteeing the rights and freedoms of citizens on the temporarily occupied territory of Ukraine<sup>154</sup> has been amended to address the key concern raised by the UNHCR by lifting restrictions on movement between Crimea and the rest of Ukraine for those whose place of residence is registered in Crimea.

#### *Assessment*

83. The presence of military personnel without insignia in Crimea has given rise to a climate of fear and intimidation which has resulted in an outflow of IDPs to the territory under the control of the Ukrainian government. The Crimean Tatar community has been disproportionately affected by these developments as have the families of the service members of the Armed Forces of Ukraine.

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<sup>151</sup> HRAM individual interview 14-03-24-T3-CR-01-01.

<sup>152</sup> Draft law on guarantee of rights and freedoms of citizens of temporarily occupied territory of Ukraine No. 4473-1, registered as of 19 March 2014, <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50320](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50320)>; Draft Law on legal status of temporarily occupied territory, No. 4497-1 registered as of 20 March 2014, <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50324](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50324)>; Draft of Resolution on urgent measures in order to ensure the rights and freedoms of citizens of Ukraine, due to the occupation of the territory of the Russian Federation, Ukraine” No. 4497-1 registered as of 20 March 2014, <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50325](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50325)>; Draft of Resolution on taking immediate action to protect the rights and freedoms of citizens of Ukraine and stateless persons in connection with the situation in the Autonomous Republic of Crimea, No. 4499, registered as of 20 March 2014, <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50322](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50322)>.

<sup>153</sup> “UNHCR’s preliminary comments on draft legislation regarding the rights and obligations of citizens on the territory of the Autonomous Republic of Crimea”, UNHCR Regional Representation for Belarus, Moldova and Ukraine, 23 March 2014, <<http://unhcr.org.ua/en/2011-08-26-06-58-56/news-archive/1242-unhcr-concerned-by-ukrainian-draft-legislation-affecting-the-rights-of-displaced-persons-from-crimea>> (accessed on 10 April 2014).

<sup>154</sup> Draft Law of guarantee of rights and freedoms to citizens on the temporarily occupied territory of Ukraine, No. 4473-1, registered as of 19 March 2014, <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50320](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50320)>.

The authorities exercising *de facto* control in Crimea are obliged to facilitate the voluntary return of the displaced persons in safety and dignity, and their reintegration into places of origin without discrimination and with due regard for their right to land and property. For those preferring not to return, it is paramount that effective durable solutions be found, in line with the UN Guiding Principles on Internal Displacement and applicable OSCE commitments and international human rights law.



## **Human Rights Situation in Crimea**

### ***Background***

84. The mass demonstrations in Kyiv and in other Ukrainian cities that began in November 2013 have had a powerful impact on the political situation in Crimea, resulting in the organization of anti-Maidan demonstrations and generally small pro-Maidan protests being organized since December 2013.
85. Protests, including large anti-Maidan meetings, intensified at the end of February 2014 following the change of government in Kyiv. On 23 February a large pro-Russian demonstration took place in Sevastopol, and a “people’s mayor” was appointed.<sup>155</sup> On 26 February, protesters at anti-Maidan and pro-Maidan demonstrations (the latter including a significant number of members of the Crimean Tatar community) clashed in Simferopol, the administrative capital of the Autonomous Republic of Crimea, near the building of the Supreme Council, the local legislative body. The confrontation resulted in the reported death of two individuals. During the protest, a number of pro-Maidan protesters temporarily occupied the building of the Supreme Council (also see below).
86. In the early hours of 27 February, armed individuals seized government buildings in Crimea, including the Supreme Council and the local Council of Ministers. With the buildings reportedly in the control of armed individuals, the Supreme Council held an emergency session, during which Mr. Sergey Aksyonov, a representative of the Russian Unity party, was appointed as the new Prime Minister of Crimea. The Supreme Council also voted to hold a referendum on the status of Crimea.<sup>156</sup> While the central authorities in Kyiv refused to recognize the new leadership in Crimea, Mr. Aksyonov, on 1 March, appealed to the Russian Federation to help maintain peace in Crimea.
87. Also starting from around the end of February, disciplined military units in uniform without insignia appeared in the streets of Crimean towns guarding important facilities, particularly those serving military and administrative

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<sup>155</sup> HRAM individual interview 14-03-23-T3-CR-01-01.

<sup>156</sup> The referendum was initially planned to take place on 25 May 2014. It was subsequently moved to an earlier date, 16 March 2014.

functions. The military units were later confirmed by the Russian President to be Russian military personnel<sup>157</sup>

88. In the following days, unidentified armed individuals, some of whom declared that they were part of “self-defence” groups, gradually took control of key infrastructure in Crimea, established roadblocks, and also surrounded, and in some cases gained control over, military facilities and bases belonging to the Ukrainian Armed Forces. Members of “self-defence” groups were also reported as being involved in effectively exercising some law-enforcement functions, e.g., during public demonstrations, including by reportedly using force and otherwise imposing restrictions on the activities of peaceful protesters and journalists. A number of individuals were reportedly detained by members of “self-defence” forces (see below).
89. On 16 March, a referendum was held in Crimea during which, allegedly, over 96 per cent of the voters voted in favour of Crimea joining the Russian Federation. Following the referendum, Crimea authorities exercising *de facto* control over this territory officially requested to join the Russian Federation. The Ukrainian authorities refused to recognize the legality of the referendum and its outcome on constitutional grounds, an opinion shared also by the Council of Europe’s Venice Commission<sup>158</sup>. In conjunction with the ratification of a treaty between the Crimean authorities exercising *de facto* control and the Russian Federation on the accession of Crimea to the Russian Federation, on 21 March the *Constitutional Law on Admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol* was signed by the Russian President and entered into force.
90. Subsequent steps have been taken in the following period to adopt legislation in the Russian Federation to regulate a variety of issues in the transitional period, while the Crimean authorities continued to consolidate their *de facto* control over the territory. Meanwhile, Ukrainian troops still stationed in Crimea began to withdraw from the territory.

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<sup>157</sup> Direct Line with Vladimir Putin, 17 April 2014, <http://eng.kremlin.ru/news/7034>

<sup>158</sup> See: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)002-e)

91. An analysis of the legality of the events that led to a change in the authorities exercising *de facto* control over Crimea falls beyond the scope of this report. In particular, this report does not address the legality of the referendum held on 16 March or its adherence to OSCE and other international standards relating to the holding of democratic elections. In providing an assessment of the human rights situation in Crimea, it takes into account the effects of these events on the enjoyment of human rights, as enshrined in OSCE human dimension commitments and in other applicable human rights instruments.
92. In the course of the assessment, a number of concerns emerged in relation to the presence and activities of individuals identified as members of “self-defence” groups. In interviews with several people, the members of these “self-defence” groups have been described as wearing various types of not clearly identifiable uniforms.<sup>159</sup> These have included uniforms very similar to those used by armed forces personnel (without insignia) and Cossack uniforms. Although not all members of “self-defence” groups have been visibly armed, the HRAM received numerous allegations suggesting that many of them have been heavily armed, including with automatic firearms.
93. As noted above, “self-defence” groups have been *de facto* involved in carrying out functions that are normally within the competencies of law-enforcement bodies. The commander of a local “self-defence” group acknowledged that “self-defence” forces were effectively carrying out the functions of the local police, who were described as “demoralized”.<sup>160</sup>
94. The HRAM was unable to clarify the chain of command or the legal framework regulating the activities of the “self-defence” groups. It was reported that these groups were operating in accordance with the Ukrainian Law on the Participation of Citizens in the Protection of Public Order and State Borders, which provides for the creation of groups of citizens assisting in the maintenance of public order. However, this law provides, *inter alia*, that members of these groups should receive forms of identification from the

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<sup>159</sup> HRAM individual interviews 14-03-20-T3-CR-03-01, 14-03-20-T3-CR-01-03, 14-03-24-T3-CR-01-01, 14-03-20-T2-CR-04-03, 14-03-20-T1-CR-01-01, 14-03-20-T1-CR-02-01, 14-03-21-T1-CR-03-01bis

<sup>160</sup> HRAM individual interview 14-03-24-T1-CR-04-01.

competent authorities, be recognizable by using armbands,<sup>161</sup> and should not use weapons in their activities.<sup>162</sup>

95. These forces were described by their commander as groups organized “from below” and operating in co-ordination with local law-enforcement bodies.<sup>163</sup> In a number of testimonies collected by the HRAM, however, members of the local police were reported as acting in such a way so as to demonstrate that they had little or no control over the action of “self-defence” formations. In fact, “self-defence” forces have been described by a number of credible sources as armed groups effectively acting outside a clearly defined legal framework, with the acquiescence and complicity of the local authorities exercising *de facto* control, including law-enforcement agencies.<sup>164</sup>
96. It should be noted that the very existence and operation of such groups raises concerns as to the adherence by the local authorities exercising *de facto* control to the rule of law and human rights principles that should be at the core of the activities of any bodies carrying out law-enforcement functions. In particular, the lack of clarity with regard to the identity and affiliation of “self-defence” groups, their chain of command, as well as the legal framework in which they have been operating, has a negative impact on their accountability for any human rights violations for which they may have been responsible. Specific allegations of human rights violations believed to have been committed by members of “self-defence” groups will be discussed in greater detail in the following sections.
97. In addition to those people connected with the operation of “self-defence” forces, the situation of legal uncertainty arising from the change in the authorities exercising *de facto* control over Crimea raises a number of other potential concerns. It should be noted that the court system in Crimea had, at least in a number of cases, reportedly suspended its work during the reporting period pending clarification of the applicable legal framework.<sup>165</sup> This led to concerns about the rule of law and human rights protection.

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<sup>161</sup> Law of Ukraine “On the Participations of Citizens in the Protection of Public Order and State Borders”, No. 1835-14, of 01 August 2003, Article 12.

<sup>162</sup> Ibid, Article 14.

<sup>163</sup> HRAM individual interview 14-03-24-T1-CR-04-01

<sup>164</sup> HRAM individual interview 14-03-19-T1-CR-02-02.

<sup>165</sup> HRAM individual interview 14-03-24-T1-CR-03-01.

98. Specific concerns exist regarding citizenship and residency status, employment and the right to work, land and property rights, as well as the situation of particularly vulnerable groups. It should be noted that the HRAM did not receive allegations of occurred human rights violations in connection with the above-mentioned issues. However, many individuals expressed concern about their future enjoyment of rights during and after the transition period.
99. According to new Russian Federation legislation, all permanent residents on the territory of Crimea, unless they explicitly denounce Russian citizenship, will become citizens of the Russian Federation one month after the date on which, according to the Russian Federation, Crimea was incorporated into its territory.<sup>166</sup> A lack of clarity was noted concerning the future residency status of those choosing not to take Russian citizenship and retaining their Ukrainian citizenship.
100. It is important to ensure that efforts to regulate the citizenship status of individuals resident in Crimea do not result in any individual being made stateless or arbitrarily stripped of their existing citizenship. Moreover, procedures should be established that should not be unduly burdensome, allowing those individuals with a permanent residency status to retain their status regardless of whether they choose to become Russians citizens or not. The acquisition of full citizenship rights for those considered as remaining in Crimea as foreigners should be facilitated to the extent possible, including beyond the currently envisaged deadline. For example, their residency status before the change in the authority exercising *de facto* control over Crimea should be taken fully into account for the purpose of granting citizenship at a subsequent time.
101. Citizenship and residency status are closely connected to employment status and the right to work. A number of people interviewed by the HRAM expressed concern at the potential effects of developments in Crimea on their ability to continue to work.<sup>167</sup> This is the case in particular for those planning

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<sup>166</sup> Russian Federation Constitutional Law on “On admitting to the Russian Federation the Republic of Crimea and establishing within the Russian Federation the new constituent entities of the Republic of Crimea and the city of federal level Sevastopol”, Article 4, 21 March 2014, <<http://kremlin.ru/news/20625>>.

<sup>167</sup> For example, HRAM individual interview 14-03-23-T1-CR-01-10.

not to acquire Russian citizenship. Additional specific concerns were raised by those employed in the public sector, including in educational institutions offering education in Ukrainian, as well as by those in the legal profession.

102. It will be critical to ensure that all individuals permanently resident in Crimea, including both Russian and Ukrainian citizens, retain their employment rights in Crimea. Those employed in the public sector should continue to perform their duties, whenever possible. Should this not be feasible, they should be offered alternative positions commensurate with their skills and experience, without loss of salary. Moreover, appropriate training and requalification courses should be offered to those who may need them to be able to continue to be employed in the public administration, should additional requirements be introduced. It is important that vigorous measures are taken to ensure that discrimination in employment in the public or private sector, including on the grounds of ethnicity, language or religion, is not tolerated and is actively combated.
103. Concerns have also been raised in connection with land and property rights during and after the transition period.<sup>168</sup> A number of interlocutors, in particular members and representatives of the Crimean Tatar community, are worried that they may lose their land. This is a particular concern in a reportedly significant number of cases where members of Crimean Tatar communities have not regularized their presence on such land by acquiring documents officially recognizing their property rights for the land and for any buildings erected thereon. Such concerns have been compounded by statements in the media, calling on Crimean Tatars to vacate part of their land, required for “social needs”, in exchange for other plots of land whose property is to be regularized.<sup>169</sup> More generally, the HRAM found a high degree of uncertainty among many interviewees on how they will be able to have their property rights recognized under the new system. This may become a significant problem for those who may have lost, or otherwise may not be in possession of, documents recognizing their title to real estate, or who may have been in the process of acquiring property before the recent

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<sup>168</sup> For example, HRAM individual interview 14-03-24-T2-CR-04-01.

<sup>169</sup> See, for example, “Crimean Tatars Asked to Vacate Land, Regional Official Says”, *The Moscow Times*, 20 March 2014.

events. During the reporting period, access to the Ukrainian electronic real estate registry in Crimea was reported as being blocked by the Ukrainian authorities, making it impossible to sell or buy property.

104. In the transition period and beyond, the property and land rights of all sectors of the population, and in particular of indigenous peoples, minorities and other vulnerable groups, need to be respected. To this end, it will be crucial to ensure the highest possible degree of continuity between the old and new system of real estate registration. Moreover, those occupying land or property in informal settlements, or otherwise lacking documents recognizing their title to real property, should be afforded security of tenure, with a view to fully regularizing their situation. No forced evictions should be carried out, including in furtherance of reported plans to reallocate land currently held by Crimean Tatars.
105. In general, the current situation of legal uncertainty in Crimea has the potential to have a particularly negative impact on the human rights of vulnerable groups. Concerns have been raised, for example, about individuals under any form of detention or imprisonment, or those requiring long-term medical care or special forms of care. There should be regressive effects on the enjoyment of human rights by all individuals. Particular attention must be paid to ensuring that, in this process, the rights of indigenous peoples and minorities, including ethnic, linguistic and religious minorities, are fully respected.

#### ***Enforced Disappearances, Torture and Other Ill-treatment in Custody***

106. OSCE commitments prohibit arbitrary arrest or detention,<sup>170</sup> as do the ICCPR,<sup>171</sup> the ECHR<sup>172</sup> and other instruments. OSCE participating States have adopted numerous commitments prohibiting torture or other ill-treatment.<sup>173</sup> In addition, legal obligations on the prevention of torture and

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<sup>170</sup> See, for example, Vienna Document 1989, *op. cit.*, note 39; Moscow Document, *op. cit.*, note [2].

<sup>171</sup> ICCPR, Article 9.

<sup>172</sup> ECHR, Article 5.

<sup>173</sup> See, for example, Vienna Document 1989, *op. cit.*, note 39.

ill-treatment stem from provisions of the ICCPR,<sup>174</sup> the Convention against Torture, the ECHR<sup>175</sup> and other instruments.

107. In the reporting period, the HRAM received credible allegations of enforced disappearances.<sup>176</sup> In a number of cases, victims were reportedly subjected to torture and other ill-treatment while in custody. In one case, a victim of an enforced disappearance was subsequently found dead. Individuals targeted primarily included pro-Maidan activists, as well as Ukrainian military personnel.

### *Findings*

108. Reshat Ametov, a Crimean Tatar, reportedly left home in Simferopol at approximately 7:30 a.m. on 3 March 2014. He reportedly went to Lenin Square in Simferopol and stood in front of the building of the Council of Ministers, where a number of unidentified men in uniform were stationed, guarding the building. He was filmed at that location by the local television channel ART. Beginning at 9 a.m., he was seen, and filmed, standing in front of the building for more than one hour, apparently conducting a one-man protest. Ametov disappeared, reportedly after having been taken away by a small group of uniformed individuals at approximately 10:09 a.m. ART video footage examined by the HRAM is consistent with these reports.<sup>177</sup>
109. On the following day, the victim's family reported him as missing to the local police and disseminated information about his disappearance through social networks. Reportedly, the family did not receive any detailed information about the victim's fate or whereabouts from their police contact, who alleged that Ametov had been briefly detained by "self-defence" groups and subsequently released. Reportedly, a local representative of the "self-

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<sup>174</sup> ICCPR, Article 7.

<sup>175</sup> ECHR, Article 3.

<sup>176</sup> For the purpose of this report, an enforced disappearance is defined as the "arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law" (Article 1, International Convention for the Protection of All Persons from Enforced Disappearance).

<sup>177</sup> „Kak v Simferopole pokhishali zamuchennogo krymskogo tatarina" (How the tortured Crimean Tatar was abducted), 27 March 2014, <<http://www.ua-ru.info/news/8857-kak-v-simferopole-pohischali-zamuchennogo-krymskogo-tatarina.html>>.



defence” groups informed the family that he was only taken away from the square but was not subsequently held in custody by “self-defence” forces.<sup>178</sup>

110. Ametov’s body was reportedly found on 15 March, and he was identified by his family on 17 March. He reportedly died as a result of a deep piercing wound in the region of one of his eyes. Other wounds also found on his body are reportedly consistent with ill-treatment.<sup>179</sup> The HRAM was unable to obtain information from law-enforcement or prosecutorial bodies in Crimea on the steps undertaken to ensure that Ametov’s reported enforced disappearance and subsequent death were investigated.<sup>180</sup>
111. Reported victims of abductions or enforced disappearances in Crimea have mainly included pro-Maidan activists and, in some cases, journalists. In one case, two pro-Maidan activists were reportedly abducted on 9 March by individuals believed to be part of “self-defence” groups at the train station in Simferopol, as they were receiving a parcel with Ukrainian flags and other materials to be used at a planned demonstration.<sup>181</sup> They were reportedly initially taken to a police station near the train station, and were shortly thereafter transferred to another location by car, with their heads covered. Already in the police station, one of them was reportedly punched as he tried to resist. According to one person’s testimony received by the HRAM, police officers initially acknowledged that the men were transferred into the custody of members of the Russian Unity party.<sup>182</sup>
112. While in custody, one of the men was reportedly severely beaten and injured with a knife. Moreover, electricity was used to inflict pain on him, in what has been described as an “electric chair” in testimonies collected by the HRAM. Finally, he claimed that he was repeatedly and deliberately shot with a pneumatic gun.<sup>183</sup> The other man did not report having been physically tortured or ill-treated, apparently also as a result of his older age and a pre-

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<sup>178</sup> HRAM individual interview 14-03-20-T1-CR-02-01.

<sup>179</sup> HRAM individual interviews 14-03-20-T1-CR-01-01 and 14-03-20-T1-CR-02-01.

<sup>180</sup> HRAM individual interviews 14-03-20-T1-CR-01-01 and 14-03-20-T1-CR-01-03.

<sup>181</sup> HRAM individual interview 14-03-27-T2-KY-02-02.

<sup>182</sup> HRAM individual interview 14-03-12-AT-KY-01-01.

<sup>183</sup> ODIHR monitors were able to examine the wounds on the victim’s legs, and there were reports that one of his arms had signs of injuries consistent with the use of a pneumatic weapon.

existing health condition. However, both men were allegedly subjected to significant psychological pressure while in custody.<sup>184</sup>

113. The captors reportedly identified themselves as members of the “Crimean Army.” One of the captors was reportedly recognized as a member of the disbanded Ukrainian special police unit Berkut. Others were believed by the victims to be members of “self-defence” militias. The fate and whereabouts of the two men remained unknown until 19 March, when they were released jointly with seven other activists and one Ukrainian military officer who had all previously disappeared. Notably, on 10 March, the Prime Minister of Crimea had been reported in the media as stating that one of the activists was “alive and well”, and had been detained by the Crimean special services reportedly to prevent him from carrying out his activities in advance of the referendum on 16 March.<sup>185</sup>
114. In another case, a pro-Ukrainian activist was reportedly abducted by unidentified men wearing the ribbon of St. George (a symbol associated with pro-Russian groups) on 11 March, after he took part in a pro-Ukrainian protest. His fate and whereabouts remained unknown until 19 March, when he was released. One of his captors allegedly identified himself as a member of a “self-defence” group.<sup>186</sup> While in custody, he was reportedly wounded with a knife by one of his captors, subjected to beatings, denied food and water, and held in inhuman conditions in an unheated room. While being held, the victim allegedly witnessed the torture and ill-treatment of other individuals in the custody of the group, and in particular the torture of two individuals believed to be Ukrainian military officers (also see below), who were reportedly severely beaten and shot with pneumatic guns.<sup>187</sup>
115. The HRAM received reports<sup>188</sup> that one individual, a religious activist,<sup>189</sup> disappeared on 17 March in Simferopol. Police officers in Simferopol, to whom the disappearance was reported, were unable to provide information

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<sup>184</sup> HRAM individual interview 14-03-27-T2-KY-02-02.

<sup>185</sup> “Aksionov: Shchekun zhiv i zdorov, no dejatel'nost' provokatorov budet ogranichena” (Aksionov: Shchekun is alive and healthy, but the activity of provocators will be limited), 10 March 2014., <<http://rosukrinform.com/categ-news/item/12624-shchekun-giv-i-zdorov>>.

<sup>186</sup> HRAM individual interview 14-03-26-T2-KY-02-01.

<sup>187</sup> Ibid.

<sup>188</sup> HRAM individual interview 14-03-24-T3-CR-01-01.

<sup>189</sup> The activist was involved in the translation and promotion of the Quran.

about his fate and whereabouts, although, according to unofficial information, it was believed that the man was being held at a police pre-trial detention facility in Simferopol. On 21 March, the HRAM monitors witnessed how the lawyers of the alleged victim were prevented from having access to the facility where the man was reportedly being detained. Neither his lawyer nor his family were able to receive information on his fate and whereabouts until 31 March, when he was reportedly released.<sup>190</sup>

116. The HRAM collected other testimonies and reports about the enforced disappearances of individuals who were detained by unidentified forces, usually in uniform, and subjected to treatment amounting to torture, including severe beatings with rifle butts and the use of pneumatic weapons to deliberately inflict pain and injuries.<sup>191</sup> In one case, one individual reported having had a portion of his ear cut off by one of his captors. Two women, an activist and a journalist, abducted at a checkpoint in Armyansk on 9 March and released on 11 March, were reported as having been physically attacked by their captors, who reportedly included military men in uniform without insignia and men reported as wearing Cossack uniforms.<sup>192</sup> Moreover, they were allegedly threatened, harassed and intimidated by those holding them. In another case, two journalists were reportedly abducted on 16 March at one of the polling stations where the referendum was being administered. The alleged perpetrators included members of “self-defence” groups. The men were reportedly released on 22 March and subsequently described how they were ill-treated during their detention.<sup>193</sup>
117. During the reporting period, the HRAM received allegations of enforced disappearances targeting members of the Armed Forces of Ukraine stationed in Crimea. In one case, a military officer disappeared in the early afternoon of 11 March. According to some reports, he was detained by armed

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<sup>190</sup> HRAM report 14-04-01-T3-CR-correspondence.

<sup>191</sup> HRAM individual interviews 14-03-26-T2-KY-02-01 and 14-03-29-T2-KY-01-01. Reports of torture in custody received by ODIHR are consistent with what has been reported by a variety of other sources, including civil society human rights monitoring organizations and the media.

<sup>192</sup> HRAM individual interviews 14-03-27-T2-KY-03-02 and 14-03-29-T2-KY-02-01.

<sup>193</sup> “Operator Vavilon-13 rasskazal, kak krymchane bili ego truboj iz-za otsa-deputata” (Operator of Vavilon -13 told how he was beating with a pipe because of his father – deputy), 22 March 2014, <<http://ru.tsn.ua/ukrayina/operator-vavilon-13-rasskazal-kak-krymchane-bili-ego-truboy-iz-za-otca-deputata-356431.html> >.

individuals at his flat in Simferopol.<sup>194</sup> The abduction reportedly took place in the presence of local police officers stationed nearby, who witnessed the event but did not intervene. According to testimonies collected by the HRAM, police officers acknowledged having witnessed the abduction but stated that they were “powerless” to intervene. Despite attempts by his family to trace him, his fate and whereabouts remained unknown until 27 March, when he was reported as having been released. Local and international media reported about similar occurrences of abductions and enforced disappearances targeting Ukrainian military officers.<sup>195</sup>

118. The HRAM was unable to obtain information from law-enforcement or prosecutorial bodies in Crimea on their investigation of enforced disappearances and related acts, both during the disappearance as well as subsequently, also with a view to ensuring full accountability for any crimes committed in the context of enforced disappearances in Crimea. According to information it received from other sources, including the victims and their families, any such steps appear to have been ineffective so far.
119. In interviewing individuals reported as having disappeared and, in a significant number of instances, having been tortured while in custody, the HRAM received reports pointing to the detention of more individuals in the same location. In such situations, individuals could describe to the HRAM their treatment, as well as that of other individuals detained there.<sup>196</sup> In particular, ODIHR received reports that some of the disappeared were held and tortured in a military conscription centre in Simferopol, allegedly controlled by “self-defence” groups.

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<sup>194</sup> HRAM individual interview 14-03-21-T3-CR-01-01.

<sup>195</sup> “V Krymu osvobozhdeny zakhvachennyje v plen ukrainskije ofitsery” (Ukrainian military officers held captive in Crimea, released), 27 March 2014, <<http://www.svoboda.org/content/article/25311041.html>>, “Acknowledging defeat, Ukraine pulls troops from Crimea”, 24 March 2014, <<http://www.reuters.com/article/2014/03/24/us-ukraine-crisis-crimea-base-idUSBREA2N09J20140324>>, “What has happened to Ukraine's Colonel Nyet? Defiant fighter pilot missing since Russians took him in for a 'meeting'”, 24 March 2014, <<http://www.dailymail.co.uk/news/article-2587895/Ukrainian-fighter-pilot-colonel-Yuli-Mamchur-missing-taken-meeting-Russian-officers.html>>.

<sup>196</sup> In some cases, interviewed individuals described how they could hear the screams of others being tortured.

### *Assessment*

120. The incidents described above reveal a disturbing pattern of violations entailing enforced disappearances and allegations of torture and other ill-treatment primarily targeting pro-Maidan activists and Ukrainian military officers. These violations appear to have been perpetrated by individuals reported as wearing a variety of uniforms and acting as members of “self-defence” groups, Cossacks, “Crimean Army,” etc. Although acting outside the law, the groups responsible for such acts appear to have enjoyed the acquiescence and, in some cases, the active complicity of the authorities exercising *de facto* control, including their law-enforcement bodies. The complicity of the law enforcement who either participated in carrying out enforced disappearances or may have been aware of unlawful acts by armed groups but did not take action to prevent them, gives rise to particular concern.
121. In relation to enforced disappearances, a matter of particular concern has been the treatment to which the victims were reportedly subjected and which may give rise to the violation of the right to life, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and of the freedom from arbitrary arrest or detention.
122. Given that authorities exercising *de facto* control have reportedly been ineffective in investigating the incidents and holding the perpetrators to account, this gives rise to significant concerns over the violation of the right to effective remedies.

### ***Attacks against Journalists and Activists***

123. OSCE participating States are committed to abiding by the rule of law<sup>197</sup> and to taking the necessary measures to ensure that law-enforcement personnel act in the public interest.<sup>198</sup> The ICCPR<sup>199</sup> and the ECHR<sup>200</sup> each protect the right of everyone to physical integrity, which encompasses the right to be free from torture and other ill-treatment. Freedom of expression and, in

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<sup>197</sup> See, for example, Copenhagen Document, *op. cit.*, note [1].

<sup>198</sup> See, for example, Moscow Document, *op. cit.*, note [2].

<sup>199</sup> ICCPR, Article 7.

<sup>200</sup> ECHR, Article 3.

particular, the right of the media to collect, report and disseminate information are guaranteed in OSCE human dimension commitments<sup>201</sup> and in other international human rights instruments.<sup>202</sup> OSCE participating States have condemned all attacks on, and harassment of, journalists and have committed to endeavouring to hold those directly responsible for such attacks and harassment accountable.<sup>203</sup>

124. The HRAM received a number of credible allegations of physical attacks, primarily targeting journalists and pro-Maidan activists that took place in Crimea during the reporting period.

### *Findings*

125. A Ukrainian journalist reported to the HRAM that she was attacked with her colleagues on 7 March in Sevastopol as she was reporting on the storming of a Ukrainian military base by unidentified forces.<sup>204</sup> The first attack took place when a group of unidentified men dressed in sportswear allegedly began attacking and beating the journalists.<sup>205</sup> Following this assault, she and her colleagues allegedly ran to their car and attempted to leave the scene. However, they were reportedly blocked by three other cars, from which unidentified masked individuals armed with guns and bats exited and proceeded to severely beat the male journalists, reportedly including a Greek reporter. As a result, two reporters and two cameramen suffered injuries, reportedly including fractures, a concussion and a punctured lung. Their driver was also reportedly beaten, and all the journalists' equipment was allegedly taken away from them and destroyed. Following the assault, two of the journalists were reportedly locked in the trunk of the journalists' car by their assailants, who then left the scene.<sup>206</sup>
126. Local journalists in Crimea reported having been attacked, harassed and threatened by unidentified individuals, including members of "self-defence"

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<sup>201</sup> See, for example, Moscow Document, *op. cit.*, note [2].

<sup>202</sup> ICCPR, Article 19; ECHR, Article 10.

<sup>203</sup> Budapest Document, *op. cit.*, note [7].

<sup>204</sup> HRAM individual interview 14-03-29-T2-KY-03-01.

<sup>205</sup> The same incident was also witnessed by a Russian journalist, who was reportedly attacked while he was reporting on events in Sevastopol on 7 March. Following the incident, he sought medical assistance in Simferopol, and the police received a report of the attack.

<sup>206</sup> HRAM individual interview 14-03-29-T2-KY-03-01.

groups. A Yalta-based journalist reported a number of incidents of harassment and threats.<sup>207</sup> On 5 March, while she was reporting on a pro-Russian assembly, unidentified men attempted to forcibly take away her camera, as a result of which she was injured. Reportedly, this incident took place in the presence of police officers, who did not intervene. Subsequently, on 6 March, as she was reporting on developments at a military checkpoint, she was allegedly forced to call her office and report information as dictated to her by unidentified men, who stated they were there to protect the checkpoint from Ukrainian nationalists. Following these incidents, she received threats by mail and e-mail and, reportedly, was informed that a photograph of her had been placed on the tent of pro-Russian protesters in Yalta calling her a Ukrainian radical and provocateur.<sup>208</sup>

127. A Sevastopol-based journalist reported that she was assaulted on 3 March, allegedly by members of “self-defence” groups, as she was reporting on the situation near a Ukrainian military base in Sevastopol.<sup>209</sup> She claimed that she was hit on the head and her camera taken away. She also claimed that, subsequently, on 10 March, her office, where she was working, was searched by individuals identifying themselves as members of a local “self-defence” group and as an official of the Security Service. She reported that the stated objective was to search for explosives. She also claimed that, during the search, numerous personal and work-related documents were checked and photographed.<sup>210</sup>
128. Staff from a local Crimean Tatar television channel also reported that they have been subjected to significant pressure, constraining their ability to carry out their work.<sup>211</sup> The HRAM received reports of abusive leaflets and posters (also see below) targeting the chief editor of a local Ukrainian newspaper.<sup>212</sup> A number of journalists interviewed by the HRAM described how this series of attacks had the worrying consequence of creating a chilling effect, making it extremely difficult for the media to operate freely. Media outlets have

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<sup>207</sup> HRAM individual interview 14-03-23-T1-CR-02-01.

<sup>208</sup> Ibid.

<sup>209</sup> HRAM individual interview 14-03-26-T2-KY-04-01.

<sup>210</sup> Ibid.

<sup>211</sup> HRAM individual interview 14-03-20-T2-CR-04-03.

<sup>212</sup> HRAM individual interview 14-03-21-T2-CR-04-08.

experienced difficulties, for example, in hiring camera operators willing to work in Crimea.<sup>213</sup>

129. Pro-Maidan activists in Crimea have reportedly been subjected to enforced disappearances (see above) and attacks and other undue restrictions to their freedom of peaceful assembly in the context of public events (see below). In addition, the HRAM received reports of other forms of attacks, threats and intimidation targeting them. In some cases, local pro-Maidan activists were briefly detained by unidentified individuals believed to be members of “self-defence” groups, and, on occasion, ill-treated.<sup>214</sup> Other reports alleged that activists’ flats in Sevastopol were broken into and searched by unidentified men, allegedly looking for pro-Ukrainian or nationalist propaganda. Such incidents were reported as being particularly frequent in advance of the referendum on 16 March.<sup>215</sup>
130. A lawyer at a Crimean NGO and a pro-Maidan activist<sup>216</sup> reported that she was targeted through the dissemination in the local community of leaflets bearing her name, photograph and home address. The leaflets, which the HRAM was able to examine, describe her as a “traitor to Crimea” and a supporter of the “criminal Maidan”, with “the blood of murdered people on her conscience”. HRAM experts received reports of similar leaflets aimed at other activists, posters with abusive and threatening messages hung in the neighbourhood where they lived, on local buses, and in other public spaces.<sup>217</sup>
131. While in some cases the victims of these attacks chose not to report them to the police, including for fear of reprisals, in other cases criminal complaints were filed or the police became aware of the incidents in another manner. The HRAM was unable to obtain information from local law-enforcement and prosecutorial bodies on any investigation into these acts with a view to bringing those responsible to justice. According to information it received

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<sup>213</sup> HRAM individual interview 14-03-29-T2-KY-03-01.

<sup>214</sup> HRAM individual interview 14-03-20-T3-CR-04-01.

<sup>215</sup> HRAM individual interview 14-03-19-T1T2T3-CR-03-02.

<sup>216</sup> HRAM individual interview 14-03-12-AT-KY-01-01.

<sup>217</sup> HRAM individual interview 14-03-21-T2-CR-04-08.



from other sources, including the victims, any such steps appear to have been inadequate so far.<sup>218</sup>

### *Assessment*

132. The incidents described above indicate a disturbing pattern of physical attacks, harassment, threats and intimidation of journalists and pro-Maidan activists taking place in the reporting period in Crimea. The alleged perpetrators were usually described as unidentified men who were, in some cases, wearing a uniform and are reportedly associated with “self-defence” groups. This gives rise to concerns over violation of freedom of expression and the freedom of the media. Of particular concern is the apparent failure of the police to exercise due diligence in protecting activists and journalists in carrying out their work.
133. Given their targets and frequency, many of these attacks appear to have been aimed at restricting freedom of the media by undermining the safety of journalists when they attempted to report on the events as they unfolded.
134. Attacks, threats and intimidation directed at pro-Maidan activists appear to have had a similar goal, i.e., to create an atmosphere of intimidation and a climate where alternative views could not be heard or aired in public, thus giving rise to violation of freedom of expression.
135. Disturbingly, police officers present at the scene were reported as not intervening to prevent or stop such acts, apparently failing in their duty to exercise due diligence in protecting individuals, giving rise to concerns over violations of the right to effective remedies.

### *Manifestations of Intolerance*

136. OSCE participating States have undertaken to combat intolerance and discrimination in general,<sup>219</sup> as well as against specific groups, such as Roma

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<sup>218</sup> HRAM individual interviews 14-03-12-AT-KY-01-01, 14-03-20-T2-CR-04-03 and 14-03-29-T2-KY-03-01.

<sup>219</sup> See, for example, Helsinki Final Act, *op. cit.*, note 174; Vienna Document 1989, *op. cit.*, note 39; OSCE Ministerial Council, Decision No. 4/03, “Tolerance and Non-discrimination”, Maastricht 2 December 2003, <<http://www.osce.org/mc/19382>>, (Maastricht Ministerial Council Decision No. 4/03 on Tolerance and Non-discrimination).

and Sinti.<sup>220</sup> In particular, participating States have recognized the importance of combating hate crimes.<sup>221</sup> A number of international human rights instruments and other standards prohibit discrimination,<sup>222</sup> including racial discrimination,<sup>223</sup> as well as condemn intolerance and negative stereotyping on the basis of religion or belief.<sup>224</sup>

137. The HRAM received reports of public harassment and manifestations of intolerance targeting primarily Ukrainian speakers and also members of Crimean Tatar community as part of an overall increase in violence in Crimea since the arrival of uniformed troops without insignia to the region.

### *Findings*

138. For example, the HRAM has received reports of public harassment of individuals on grounds of their speaking Ukrainian in public places.<sup>225</sup> Some interlocutors reported incidents of bullying of Ukrainian-speaking students by their Russian-speaking peers.<sup>226</sup> One case of harassment of a Ukrainian-language teacher by students and other teachers for allegedly preferring to always speak Ukrainian was conveyed to the HRAM.<sup>227</sup>
139. Identifying as Ukrainian and supporting Ukrainian unity is allegedly perceived negatively by a significant proportion of the population in Crimea.<sup>228</sup> Interlocutors reported a growing portrayal of pro-Ukrainian sentiment as an expression of ultranationalist right-wing views.<sup>229</sup> In

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<sup>220</sup> See, for example, OSCE Ministerial Council, Decision No. 3/03, “Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area”, Maastricht, 27 November 2003, <<http://www.osce.org/odihr/17554>>.

<sup>221</sup> Maastricht Ministerial Council Decision No. 4/03 on Tolerance and Non-discrimination, *op. cit.*, note 206.

<sup>222</sup> ICCPR, Articles 2 and 26; International Covenant on Economic, Social and Cultural Rights, Article 2(2); Convention on the Rights of the Child, Article 2; Convention on the Elimination of All Forms of Discrimination against Women, Article 2.

<sup>223</sup> Convention on the Elimination of Racial Discrimination.

<sup>224</sup> UN Human Rights Council, Resolution 22/31 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief.

<sup>225</sup> HRAM individual interview 14-03-19-T2-CR-03-06.

<sup>226</sup> HRAM individual interview 14-03-19-T2-CR-03-06.

<sup>227</sup> HRAM individual interview 14-03-21-T2-CR-04-08.

<sup>228</sup> HRAM individual interviews 14-03-21-T2-CR-04-08, 14-03-23-T2-CR-01-01, 14-03-23-T2-CR-04-01.

<sup>229</sup> *Ibid.*

particular, incidents of referring to supporters of Ukrainian unity as “*banderovtsy*” and “fascists”, including in the media, were reported.<sup>230</sup> On one occasion, a pro-Ukrainian schoolteacher of the Ukrainian language allegedly had a swastika painted on her door.<sup>231</sup> One interlocutor reported that even the Ukrainian flag is allegedly seen by some as fascist, adding that his city had seen three “anti-fascist committees” spring up in recent months.<sup>232</sup>

140. While, overall, Crimean Tatars had perceived the attitude towards them as tolerant, the interviewees belonging to the Crimean Tatar community reported growing anti-Tatar sentiments due to the general opposition of the Crimean Tatars to the separation of Crimea.<sup>233</sup> They also reported instances of intimidation of Crimean Tatars. These allegedly included putting up signs to identify marked households as Crimean Tatar,<sup>234</sup> as well as sending anonymous text messages threatening Tatar individuals<sup>235</sup> and verbal harassment of Crimean Tatar schoolchildren by their peers.<sup>236</sup> It was reported that, in most of these cases, the alleged victims did not report the incidents to the police because of the alleged lack of trust in law enforcement agencies.<sup>237</sup>
141. Moreover, since a number of Crimean Tatars reportedly own and operate successful businesses in the region, there is a fear, buttressed by recent incidents where a Tatar-owned hotel and restaurant were burned down, that Crimean Tatars may face higher risks of their property being destroyed or illegally taken away.<sup>238</sup>

### *Assessment*

142. The situation described above points to a failure by the authorities exercising *de facto* control in Crimea to promote tolerance towards all communities in

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<sup>230</sup> HRAM individual interviews 14-03-23-T2-CR-01-01 and 14-03-23-T2-CR-04-01.

<sup>231</sup> HRAM individual interview 14-03-21-T2-CR-04-08.

<sup>232</sup> HRAM individual interview 14-03-23-T2-CR-03-01.

<sup>233</sup> HRAM individual interviews 14-03-20-T2-CR-02-02 and 14-03-24-T2-CR-04-01.

<sup>234</sup> HRAM individual interview 14-03-20-T2-CR-02-02.

<sup>235</sup> HRAM individual interview 14-03-24-T2-CR-04-01.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

<sup>238</sup> HRAM individual interview 14-03-20-T2-CR-02-02.

the region and to ensure that their members do not experience discrimination on an ethnic or linguistic basis. Of particular concern is the situation of the Crimean Tatar community as well as of the Ukrainian community. Both groups appear to have been targeted in incidents of ethnically motivated harassment and intimidation which were met by an inadequate response by the authorities exercising *de facto* control.

### ***Rights of Military Personnel and their Families***

143. OSCE participating States have committed to “[ensuring] that military, paramilitary and security forces personnel will be able to enjoy and exercise their human rights and fundamental freedoms as reflected in [O]SCE documents and international law”.<sup>239</sup> They have also undertaken to “reflect in their laws or other relevant documents the rights and duties of armed forces personnel”.<sup>240</sup>
144. The HRAM team has received a number of allegations concerning restrictions of access by Ukrainian military personnel to basic amenities, including electricity<sup>241</sup> and food.<sup>242</sup>

### ***Findings***

145. This situation was reportedly caused by the blocking of military bases by “self-defence” forces and other uniformed armed men without insignia.<sup>243</sup> Moreover, some interviewees reported that military personnel and their families experienced problems withdrawing cash or making payments either due to unspecified banking problems or specifically because their accounts had been blocked.<sup>244</sup>

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<sup>239</sup> Budapest Document, *op. cit.*, note [7], Decisions: IV. Code of Conduct on Politico-Military Aspects of Security, para. 32.

<sup>240</sup> *Ibid.*, para. 28.

<sup>241</sup> HRAM individual interviews 14-03-06-AT-KY-01-02 and 14-03-30-T6-OD-02-01.

<sup>242</sup> HRAM individual interview 14-03-21-T3-CR-03-01.

<sup>243</sup> HRAM individual interviews 14-03-06-AT-KY-01-02; 14-03-08-AT-KY-01-03, 14-03-21-T3-CR-03-01, 14-03-30-T6-OD-02-01.

<sup>244</sup> HRAM individual interviews 14-03-10-AT-KY-03-01 and 14-03-30-T2-KY-01-01.

146. There have also been reports of varying degrees of harassment of the families of military personnel.<sup>245</sup> In at least one instance, pressure was allegedly applied to force the families of Ukrainian border guards to move out and abandon their housing.<sup>246</sup> It should be noted, however, that while physical assaults<sup>247</sup> on, and abductions<sup>248</sup> of, military personnel have been reported, the alleged pressure on their families has largely been of a psychological nature.<sup>249</sup>
147. Influence has also allegedly been applied to service members themselves in order to induce them to change allegiance.<sup>250</sup> It reportedly varied from offers of money<sup>251</sup> to orders and proposals transmitted by high-ranking officers down the chain of command.<sup>252</sup> Reportedly, reassignment of service members to bases in the territory controlled by the Ukrainian government has not been a straightforward process, and with ensuring that redeploying military personnel have adequate access to housing and social services.<sup>253</sup> Some reports indicate that families have been left to make removal arrangements by themselves<sup>254</sup> and at their own expense.<sup>255</sup> This situation was allegedly exacerbated by the above-mentioned difficulties in withdrawing cash<sup>256</sup> and also, allegedly, exposed the families to additional risks, resulting in a group of families travelling together being robbed at a checkpoint.<sup>257</sup>
148. One person expressed concern that the service members who hail from Crimea and would rather retire and stay in Crimea but not change allegiance

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<sup>245</sup> HRAM individual interviews 14-03-06-AT-KY-01-02, 2014-03-07-AT-KY-04-08, 14-03-11-AT-KY-01-01, 14-03-21-T1-CR-03-01, 14-03-21-T2-CR-04-08; 14-03-24-T2-CR-02-01, 14-03-30-T2-KY-01-01.

<sup>246</sup> HRAM individual interview 14-03-21-T2-CR-04-08.

<sup>247</sup> HRAM individual interviews 14-03-11-AT-KY-01-01 and 14-03-21-T3-CR-03-01.

<sup>248</sup> HRAM individual interview 14-03-10-AT-KY-03-01.

<sup>249</sup> HRAM individual interview 14-03-21-T1-CR-03-01.

<sup>250</sup> HRAM individual interviews 14-03-07-AT-KY-04-08, 14-03-19-T2/T3-CR-01-02, 14-03-23-T2-CR-02-01.

<sup>251</sup> HRAM individual interview 14-03-07-AT-KY-04-08.

<sup>252</sup> HRAM individual interviews 14-03-19-T2/T3-CR-01-02 and 14-03-23-T2-CR-02-01.

<sup>253</sup> HRAM individual interview 14-03-23-T2-CR-02-01.

<sup>254</sup> HRAM individual interviews 14-03-23-T2-CR-02-01 and 14-03-30-T2-KY-01-01.

<sup>255</sup> HRAM individual interview 14-03-30-T2-KY-01-01.

<sup>256</sup> Ibid.

<sup>257</sup> Ibid.

risk being dishonourably discharged, which would result in the loss of their military pensions.<sup>258</sup>

#### *Assessment*

149. Information relayed to the HRAM points to a pattern of harassment to which the military personnel of the Armed Forces of Ukraine have been subjected, and which has negatively affected their rights and entitlements. These acts have allegedly been perpetrated largely by “self-defence” groups. The situation of Ukrainian military personnel who did not change allegiance will require due attention in order to prevent future violations.

#### ***Freedom of Movement and Displacement of Population***

150. OSCE participating States are committed to removing all legal and other restrictions with respect to travel within their territories and with respect to residence for those entitled to permanent residence within their territories.<sup>259</sup> They are further committed to facilitating the voluntary return in safety and dignity of internally displaced persons, in accordance with international standards, recognizing also that the reintegration of people in their places of origin must be pursued without discrimination.<sup>260</sup> International human rights law guarantees everyone the right to freedom of movement within the borders of the state where they are located, and the right to leave and enter their own country.<sup>261</sup> The OSCE recognizes the UN Guiding Principles on Internal Displacement as the relevant framework.<sup>262</sup>
151. As of 1 April, some 3,000 people, mainly women and children, had left Crimea to seek temporary refuge in, mostly, Lviv, Kyiv, and Vinnytsia, as

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<sup>258</sup> HRAM individual interview 14-03-23-T2-CR-02-01.

<sup>259</sup> Moscow Document, *op. cit.*, note [2], para. 33.

<sup>260</sup> Lisbon Document, *op. cit.*, note 240, para. 10.

<sup>261</sup> Universal Declaration of Human Rights, Article 13; ICCPR, Article 12; ECHR, Article 2 of Protocol 4.

<sup>262</sup> Maastricht Ministerial Council Decision No. 4/03 on Tolerance and Non-discrimination, *op. cit.*, note 206, para. 13.

well as Ivano-Frankivsk.<sup>263</sup> Eighty per cent of the IDPs were reportedly Crimean Tatars.<sup>264</sup> In addition to civilians, service members of the Ukrainian military and border guards, as well as their families, had to withdraw from Crimea (mostly to regions closer to Crimea, such as Mykolayiv and Odessa).

### *Findings*

152. While the conditions and issues faced by these IDPs are discussed in more detail above, the current section looks specifically at the situation in Crimea, including the root causes for displacement. In this context, it also addresses restrictions on freedom of movement.
153. The HRAM interviewed a number of people, including Crimean residents who had already left Crimea as IDPs (including the families of Ukrainian military personnel and communities such as Crimean Tatars and Roma). According to the Ukrainian Border Guard Service, the people who have been leaving Crimea have, to a large extent, not identified themselves as IDPs since they are planning to return to Crimea at some point.<sup>265</sup>
154. The representatives of the religious communities interviewed pointed out that a number of local religious leaders had left, including priests from the Ukrainian Orthodox Church (Kyivan Patriarchate) and the Ukrainian Greek Catholic Church.<sup>266</sup> In some other cases, those priests who had left at the outset of the events in Crimea returned again later.<sup>267</sup>
155. The representatives of the Roma community in Crimea conveyed to the HRAM a general feeling of fear and uncertainty among the Roma about the status of their passports and access to social benefits, one representative pointing out that, while the numbers of Romani IDPs so far were not particularly high, many Romani individuals were considering leaving.<sup>268</sup> According to one interviewee, a number of Roma families had sold their

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<sup>263</sup> "Ukraine Humanitarian Situation Report #6", *op. cit.*, note 248. According to Lviv Regional State Administration, for instance, as of 27 March, Lviv alone was hosting 1,276 IDPs, mostly Crimean Tatars. [HRAM interview 14-03-27-T8-LV-03-10].

<sup>264</sup> "Ukraine Humanitarian Situation Report #4", UNICEF, 21 March 2014, <[http://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF\\_Ukraine\\_SitRep4\\_21March2014.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF_Ukraine_SitRep4_21March2014.pdf)>.

<sup>265</sup> HRAM individual interview 14-03-28-T6-OD-01-01.

<sup>266</sup> HRAM individual interviews 14-03-23-T2-CR-01-01 and 14-03-24-T2-CR-02-01.

<sup>267</sup> HRAM individual interview 14-03-24-T2-CR-02-01.

<sup>268</sup> HRAM individual interview 14-03-21-T2-CR-02-02.

property in Crimea and were preparing to leave or had already left for the Russian Federation (explaining that the Roma who came to Ukraine after the collapse of the Soviet Union had strong family ties in the Russian Federation).<sup>269</sup>

156. The HRAM received allegations of significant restrictions on freedom of movement in Crimea. In particular, some interviewees reported that checkpoints had been set up and that identity checks were being conducted outside checkpoints as well. Following the referendum in Crimea, for example, one interlocutor noted that there was a checkpoint on the road to Sevastopol that was controlled by former Berkut members and “self-defence” forces.<sup>270</sup> In Bakhchysaray, temporary checkpoints were reportedly installed three or four days before the referendum in settlements populated by Crimean Tatars.<sup>271</sup>
157. According to another interviewee who claimed to have researched the public transportation situation in Crimea at the time of the HRAM, numerous checks by “self-defence” groups occurred on a daily basis, both at checkpoints and elsewhere on transportation routes.<sup>272</sup> Transportation companies reportedly had roughly 30 per cent lower turnover due to people being afraid to travel. At the same time, a plunge in demand and a spike in fuel prices (by some 15-20 per cent) allegedly resulted in fewer buses being dispatched. The interlocutor relayed that the “self-defence” groups can stop any vehicle or train and conduct ID checks, as well as baggage searches. Those people who are considered suspicious by the “self-defence” groups are allegedly taken off the vehicles they are travelling in and not permitted further travel. Bus stations have allegedly put up announcements recommending that all passengers carry their travel identification documents even for travel within Crimea.<sup>273</sup>
158. The Ukrainian Border Guard Service has likewise stated that some individuals wishing to leave Crimea have not been allowed to cross into the

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<sup>269</sup> HRAM individual interview 14-03-29-T6-OD-03-06.

<sup>270</sup> HRAM individual interview 14-03-19-T2T3-CR-01-02.

<sup>271</sup> HRAM individual interview 14-03-20-T2-CR-01-01.

<sup>272</sup> HRAM individual interview 14-03-20-T2-CR-04-03.

<sup>273</sup> HRAM individual interview 14-03-20-T2-CR-04-03.



territory controlled by the Ukrainian government,<sup>274</sup> the main reason allegedly cited being either that their stated aim of travelling to Ukraine was suspicious or that they lacked the proper documentation.<sup>275</sup>

159. Another interlocutor reported that he had witnessed people in green uniforms and helmets checking everyone at checkpoints.<sup>276</sup> At least one checkpoint (near Voinskiy) was reportedly manned by individuals in civilian clothes.
160. As regards entry into Crimea, the route through Armyansk has been described as particularly difficult. The checkpoint there was reportedly operated by “self-defence” forces and former Berkut troops. In addition, masked individuals in green uniforms were reportedly positioned at the Jankoy train station at 10-metre intervals.<sup>277</sup> An interviewee also alleged that paramilitary formations were conducting searches of passengers’ baggage upon the arrival of trains in Simferopol.<sup>278</sup> It was conveyed to the HRAM that some people, in particular journalists, had been turned back at checkpoints.<sup>279</sup> It is unclear if these latter cases involved “self-defence” groups or other paramilitary formations.<sup>280</sup> Reportedly, Crimean residents, regardless of their ethnic background, were scared to move around the peninsula because of the alleged random nature and unpredictability of such checks.<sup>281</sup> At the same time, from the Ukrainian authorities’ perspective, border guards would only turn people crossing into Crimea back in the event that they did not have proper documentation or had a criminal record.<sup>282</sup>
161. The Ukrainian military units stationed in Crimea faced a particular restriction on their freedom of movement where they found themselves under siege. This was the case with the Belbek airbase and the Evpatoria naval base.<sup>283</sup> One family member of a Ukrainian naval serviceperson stationed in

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<sup>274</sup> HRAM individual interview 14-03-28-T6-OD-01-01.

<sup>275</sup> HRAM report 14-03-30-T7-KS-04-field visit. This was also confirmed by the border guards manning the post near Armyansk,

<sup>276</sup> Ibid.

<sup>277</sup> Ibid.

<sup>278</sup> HRAM individual interview 14-03-24-T2-CR-04-01.

<sup>279</sup> HRAM individual interviews 14-03-12-AT-KY-01-01 and 14-03-24-T2-CR-04-01.

<sup>280</sup> HRAM individual interviews 14-03-10-AT-KY-03-01 and 14-03-12-AT-KY-01-01.

Around that time there were also allegations that identification documents were sometimes destroyed during such checks, HRAM individual interview 14-03-10-AT-KY-04-NA.

<sup>281</sup> HRAM individual interview 14-03-20-T2-CR-04-03.

<sup>282</sup> HRAM individual interview 14-03-28-T6-OD-01-01.

<sup>283</sup> HRAM individual interview 14-03-19-T2T3-CR-01-02.

Sevastopol reported that service members were allowed by gunmen to leave but not to return. This situation lasted for over a month.<sup>284</sup>

### *Assessment*

162. The presence of military personnel in uniforms without insignia gave rise to a climate of fear and lawlessness that has resulted in a number of persons leaving their homes in Crimea and becoming IDPs, primarily on the territory controlled by the Ukrainian authorities. The Crimean Tatar community has been disproportionately affected. The climate of fear and uncertainty may induce more people to leave in the future.
163. Significant limitations to freedom of movement have also been observed primarily due to the existence of checkpoints operated by “self-defence” groups throughout the peninsula. The arbitrary nature of the checks and the illegality thereof have given rise to a climate of fear that reportedly has made residents less willing to travel. Journalists have reportedly been targeted at checkpoints and denied entry into Crimea. Denial of entry into the territory under control by the Ukrainian authorities has also been noted.

### *Freedom of Peaceful Assembly*

57. Article 11 of the ECHR, Article 21 of the ICCPR and para. 9.2 of the Copenhagen Document protect the freedom of peaceful assembly. According to Article 11(2) of the ECHR, any restrictions to this right should be prescribed by law and be necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of the rights and freedoms of others.
58. According to the OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law (Venice Commission) Guidelines on Freedom of Peaceful Assembly,<sup>285</sup> the policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-

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<sup>284</sup> HRAM individual interview 14-03-30-T6-OD-02-01.

<sup>285</sup> *Guidelines on Freedom of Peaceful Assembly* (Warsaw: OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law, 2010), para. 5.3.

discrimination and must adhere to applicable human rights standards. The state has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Law-enforcement officials must also protect the participants of a peaceful assembly from any person or group (including agents provocateurs and counter-demonstrators) that attempts to disrupt or inhibit the assembly in any way.

164. As in other parts of the south and east of Ukraine, assemblies in Crimea have taken place in the context of a massive campaign against pro-Maidan activists. Violent groups have frequently been aggressive towards assemblies held in Crimea by pro-Maidan groups, forcing them to disperse.<sup>286</sup> Such incidents were generally accompanied by little or no reaction from police officers present at the scene.

### *Findings*

165. In addition to the harassment of journalists at assemblies, as discussed above, the HRAM received reports of serious disruptions of peaceful assemblies organized by pro-Maidan groups. For example, in Sevastopol, demonstrators at an assembly organized on 9 March in support of the territorial integrity of Ukraine were allegedly assaulted by unidentified individuals near the assembly. Some of the participants of the assembly were injured.<sup>287</sup>
166. Similarly, on 13 March, a gathering in Yalta of around 70 supporters of the territorial integrity of Ukraine, primarily students, women and children. The event was disrupted by a pro-Russian “self-defence” group of 70 people, which eventually grew in size to reach a total of 200 participants. Reportedly, this was not a counter-demonstration but an attempt to forcefully disperse the original assembly by using intimidation and verbal threats. The confrontation resulted in minor violent incidents.<sup>288</sup> There were allegedly no more than six police officers present, and they were passive.<sup>289</sup> There was a perception

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<sup>286</sup> HRAM individual interview 14-03-21-T1-CR-03-01.

<sup>287</sup> HRAM individual interview 14-03-12- AT-KY- 02-01. Also see HRAM individual interview and 14-03-22-T1-CR-02-02.

<sup>288</sup> Ibid.

<sup>289</sup> HRAM individual interviews 14-03-23-T1-CR-02-01 and 14-03-23-T1-CR-01-10.

that the police were not neutral, and that they supported the pro-Russian groups.<sup>290</sup>

*Assessment*

167. The incidents reported above point to the failure by law enforcement agents to protect the freedom of peaceful assembly in the face of attacks by “self-defence” and other groups. Authorities exercising de facto control in Crimea have an obligation to effectively investigate attacks against participants in peaceful assemblies, as well as any allegations of serious police misconduct resulting in the failure to protect and facilitate assemblies. It must be noted that these concerns are compounded by the presence of and active participation by “self-defence” groups in incidents at assemblies, giving rise to concerns over serious violations of the freedom of peaceful assembly.

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<sup>290</sup> HRAM individual interview 14-03-23-T1-CR-01-10.

## **SECTION II: HCNM ON THE MINORITY RIGHTS SITUATION IN UKRAINE**

### **I. EXECUTIVE SUMMARY**

This report was prepared at the request of the Government of Ukraine. It represents one section of the report of the Human Rights Assessment Mission (HRAM) conducted by the Organization for Security and Co-operation in Europe (OSCE) High Commissioner on National Minorities (HCNM) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Information collected during the mission has been complemented with data and information from other reliable sources, including the reports and findings of OSCE structures, such as the Representative on Freedom of the Media (RFoM) and the Special Monitoring Mission, as well as other international bodies, in order to provide context for the findings of this report.

This section of the HRAM report presents findings and recommendations concerning the minority rights situation in Ukraine. It has been prepared by the HCNM based on several fact-finding missions undertaken by the HCNM and her staff (HCNM delegations) between 8 March and 17 April 2014 to various regions of Ukraine, including Crimea. The findings and recommendations on the human rights situation prepared by ODIHR are presented in the first section of this report. The HCNM and the ODIHR have different mandates and had a different focus in the preparation of this report, which is therefore presented in two sections. The two sections together provide an overview of the recent situation concerning human rights, minority rights in Ukraine, including Crimea.

This report first establishes the context to the emerging challenges concerning minority rights in Ukraine by providing an overview of relevant political developments and international and domestic legal standards

pertaining to minority rights protection. The assessment provides key conclusions regarding the framework for minority rights protection. It focuses on the most relevant areas of minority rights, such as the use of languages; education rights; the participation of persons belonging to national minorities in public affairs and in cultural, social and economic life; and anti-discrimination. The report features a separate section that analyses the specific situation in Crimea.

The report acknowledges the high level of inter-ethnic tolerance that has traditionally characterized Ukrainian society, as well as the support that the Ukrainian authorities have provided for minority-language education and the cultural activities of national minorities over the years. The report also notes, however, that the underlying internal divisions within Ukrainian society have not been effectively addressed by the successive authorities. In fact, issues related to identity have been instrumentalized on several occasions by various political forces. The politicization of minority rights can lead to the polarization of society. It also diverts attention from the needs of smaller minorities, who are thus more vulnerable.

Ukraine's legal framework to protect and promote minority rights is fragmented, outdated, and occasionally unclear and contradictory. Efforts to implement the relevant laws have been inconsistent, due in part to institutional weakness and underfunding. As a result, there is considerable legal and practical uncertainty on particular aspects of minority rights protection. The ongoing crisis has contributed to this uncertainty. It is therefore important that the authorities start to address these issues through a concerted, considered and participatory legal reform process. Although this issue is urgent, the authorities should avoid taking any hasty steps, especially in the current context.

This report outlines a number of concerns that pre-date the crisis, but which have become more acute or urgent in light of the ongoing crisis. In addition, new concerns have emerged. Rising inter-ethnic tensions are reflected in various incidents and the political and media discourse when it is discussing language and identity issues. This is contributing to minorities' perceptions of their own vulnerability. The authorities need to make a concerted effort to

not only stabilize the situation in all regions of the country and reinstate the rule of law, but also to ensure effective minority rights protection in law and in fact.

The situation of national minorities in Crimea has suffered the most dramatic changes over the past couple of months. Ethnic Ukrainians, especially those who speak Ukrainian rather than Russian, have come to fear potential violence and harassment based on their ethnic affiliation, as they are often collectively viewed as staunch supporters of the “Maidan” movement and of the territorial integrity of Ukraine. They are also increasingly concerned by rumours of policy changes, such as the possible closure of Ukrainian-language schools. Crimean Tatars have also found themselves in an increasingly precarious situation since they openly supported Ukraine’s territorial integrity and many boycotted the so-called “referendum” on the status of Crimea. Following a string of reported incidents, which have included intimidation, verbal threats and physical attacks, Crimean Tatars are now deeply concerned for the safety and security of their community, their future representation in the elected bodies and executive structures in Crimea, their socio-economic inclusion and, more generally, for the observance of their rights, including to housing, land and property, as well as freedom of religion. Ethnic Ukrainians and Crimean Tatars who espouse pro-Ukrainian views on the status of Crimea or manifest a will to uphold their identity, especially their religious, cultural or linguistic rights, appear increasingly vulnerable, and are in urgent need of protection – an obligation borne first and foremost by the authorities exercising *de facto* control in Crimea. The HCNM did not find violations of the rights of Russians in Crimea during her visits or the visits of her delegations.<sup>291</sup>

To assist the Ukrainian authorities in their efforts to identify key concerns regarding the rights of persons belonging to national minorities in Ukraine, including Crimea, and to improve the level of minority rights protection, the HCNM has prepared a set of recommendations for immediate and medium term action. These include general recommendations on minority rights,

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<sup>291</sup> In her press release issued on 6 March, following her visit to Crimea, the High Commissioner stated that she found no evidence of violations or threats to the rights of Russian speakers in Crimea, <http://www.osce.org/hcnm/116180>.

measures that need to be taken at the institutional level and legal reforms, as well as specific policy recommendations on language, education, participation and anti-discrimination. The report also provides recommendations addressed to the authorities exercising *de facto* control in Crimea. All these recommendations should be read and implemented in conjunction with those put forward by the ODIHR in the first section of this report.

The HCNM expresses her appreciation to the Ukrainian national and regional authorities for their logistical and administrative assistance in arranging the relevant meetings throughout the country. Her thanks also go to the representatives of minority communities and civil society organizations who agreed to meet with her and her advisers, often at short notice and sometimes in difficult circumstances. The HCNM remains at the disposal of the Ukrainian authorities for further assistance on matters related to national minorities.



## **II. BACKGROUND TO THE REPORT**

### **Methodology and Focus of the Minority Rights Assessment**

Based on the request addressed to the ODIHR and the HCNM by Ukraine's acting Minister of Foreign Affairs in his letter dated 3 March 2014 (see Annex I), the HCNM has undertaken the necessary steps, in accordance with her mandate, to prepare this report on the situation regarding the rights of persons belonging to national minorities, as part of the Human Rights Assessment Mission (HRAM) conducted in co-operation with the ODIHR.

Although the request was initially limited to the effect that the presence of armed units in Crimea was having on the rights of persons of various ethnic origins, the situation evolved in March and April, which affected the scope and focus of the report. While the report focuses on developments in Ukraine in the last few months, it also considers the wider context. Before the present crisis unfolded, minorities faced issues with aspects of the legal framework and specific policies relevant to them, such as those related to the education system. Since the successive High Commissioners have been actively engaged in Ukraine since the early 1990s, this report takes relevant long-term observations into account.

The report is based on the findings of the HCNM delegations, which participated in the HRAM between 8 March and 17 April 2014. It also draws upon information gathered from the HCNM's regular activities, including contact with relevant stakeholders, and other reliable sources. Members of the HCNM delegations visited Kyiv, Simferopol, Bakhchisaray, Donetsk, Lugansk, Odessa, Lviv, Uzhgorod, Berehovo, Tyachiv, Nizhnaia Apsha and Chernivtsi. They also met interlocutors from locations they could not visit themselves, particularly Crimea. In some cases, security threats hampered access to certain locations or the collection of additional information.

The methodology employed involved conducting interviews with representatives of national, regional and local authorities; civil society, including community-based organizations and other civil society organizations; international and local experts; and international

organizations. The HCNM delegations held over 75 meetings in the different locations in Ukraine with more than 250 interlocutors.

### **Demographic and Political Context**

Approximately 78 per cent of Ukraine's population considers itself to be ethnically Ukrainian, according to the 2001 census, the most recent data available. Russians represent the largest minority, at 17 per cent. The remaining five per cent is officially composed of the 130 "nationalities" listed in the census, of which the largest groups, ranging from nine per cent to 0.1 per cent of the population, are: Belarusians, Moldovans, Crimean Tatars, Bulgarians, Hungarians, Romanians, Poles, Jews, Armenians, Greeks, Tatars, Roma, Azerbaijanis, Georgians, Germans and Gagauz.

Although Ukrainian, as the State language, and Russian are the two most commonly used languages, the linguistic situation does not coincide with the ethnic one, as 29.5 per cent of the population reports that Russian is their native language – a much higher proportion than that of ethnic Russians in the country – compared to 67.5 per cent who described their native language as Ukrainian.<sup>292</sup> The percentage of native Russian speakers is highest in the country's eastern and southern regions (Kharkiv, Donetsk, Lugansk, Zaporizhya, Crimea and Odessa) but the language is also widely used in other parts of the country. Some other minorities as well as some ethnic Ukrainians also consider Russian their primary language, and many citizens are bilingual, adding complexity to the linguistic picture.

The population census planned for 2011 has been postponed to 2016, and the outdated nature of the 2001 census data should be kept in mind when considering Ukraine's ethnic and linguistic composition.

The underlying internal divisions of Ukraine's society began to surface in the mid-1990s and have been brought into sharper focus by the "Orange Revolution" and again by the events that have been taking place since November 2013. Every election since 2004 has demonstrated the deep split in society, in which political, geographic, ethno-linguistic and cultural lines

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<sup>292</sup> [http://2001.ukrcensus.gov.ua/d/mono\\_eng.pdf](http://2001.ukrcensus.gov.ua/d/mono_eng.pdf).

largely coincide. Ukraine inherited the division between its mainly Ukrainian-speaking northwest and Russian-speaking southeast. Although ethnicity certainly plays into the divide, along with language, culture and political attitudes, Ukraine has never experienced clear-cut ethnic tensions that would pit ethnic Ukrainians against ethnic Russians.

Against this background, and taking the legacy of Soviet policies into account, the issue of language – in particular, the relative positions of the Ukrainian and Russian languages – has been prone to politicization. This politicization has exacerbated polarization amid broader debates about the country's national identity and geopolitical orientation. Policies adopted to promote the Ukrainian language under the administration of President Viktor Yushchenko (2005–2010) were reversed by his successor, Viktor Yanukovich, in the run-up to the 2012 parliamentary elections, culminating in the hasty and controversial adoption of a new Law on the Principles of State Language Policy (Language Law) in July 2012. Then-President Yanukovich's Party of Regions, which derived its strength from the country's east, had promised in its electoral campaign to instate Russian as a second official language. Certain aspects of the Language Law led the HCNM and the Council of Europe Venice Commission to give it a negative assessment.<sup>293</sup>

The Language Law provided that a language spoken by at least ten per cent of the local population may be adopted as an official regional language. Following the Language Law's adoption, a number of oblasts and cities declared Russian as an official regional language. Several communities in western Ukraine declared Hungarian, Romanian or Bulgarian as official languages.

On 23 February 2014, following the ouster of the Yanukovich regime, the Verkhovna Rada voted to repeal the 2012 Language Law, sparking protests in a number of cities in the south and east. The HCNM warned that repealing the Language Law could lead to further unrest and called on the authorities to consult widely in the development of a balanced and inclusive approach to

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<sup>293</sup> See: <http://www.osce.org/node/92418> and [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)047-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)047-e).

language policy.<sup>294</sup> On 27 February, acting President Oleksandr Turchynov announced his decision to veto the Verkhovna Rada's repeal until a new language law was passed, thereby keeping the 2012 Language Law in force, and to create a Special Temporary Commission on Language Legislation to urgently draft a new language law. Despite the veto, the Verkhovna Rada's decision to repeal the Language Law had already provoked anxieties among minority communities and led to calls by some minority representatives for stronger protection for minority languages. Prime Minister Arseniy Yatseniuk reiterated on 18 March that the Government would keep the 2012 Language Law in force and that the right to use the Russian language freely would not be affected.

In eastern Ukraine, rallies against the acting authorities in Kyiv began in late February. Protesters voiced concerns about the exclusion of the Russian-speaking population from the governance process at the national level and called for the Russian language to receive the status of a second official language. The situation escalated in April as protesters seized Government buildings in Donetsk, Luhansk, Kharkiv and other cities, calling for a referendum on independence. The Ukrainian authorities struggled to regain control of the security situation in the east, which remained extremely tense as of 17 April, the end date of the period of this assessment.

### *Crimea*

The situation on the Crimean peninsula, where ethnic Russians are the largest ethnic group at 58 per cent and Ukrainians make up 24 per cent, is particularly complex in terms of the situation of national minorities and inter-ethnic relations. The return to Crimea in the late 1980s of approximately 266,000 Crimean Tatars and other minorities (including Armenians, Bulgarians, Germans and Greeks) who had been deported during the Soviet regime in the 1940s has posed significant integration challenges to the regional and national authorities, which the HCNM commented on in a

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<sup>294</sup> See: <http://www.osce.org/hcnm/115643>.

needs assessment.<sup>295</sup> Access to land and housing, the status of the Crimean Tatar language, and questions of self-governance are among the issues that have contributed to inter-ethnic tensions. Crimean Tatars have their own, elected representative organ, known as the Mejlis, although it has no legal status under Ukrainian legislation.

Clashes between pro-Russian demonstrators protesting against the acting authorities in Kyiv and Crimean Tatars broke out in Simferopol in late February. Amid preparations for a contentious 16 March “referendum” on the status of Crimea, ethnic Ukrainians and Crimean Tatars on the peninsula were in a particularly vulnerable position. The Mejlis publicly called for Crimean Tatars to boycott the “referendum”, and incidents of harassment of Crimean Tatars were reported in the days following the “referendum”.

An analysis of the legality of the events that led to a change in the authorities in effective control over Crimea falls beyond the scope of this report. In particular, this report does not address the legality of the “referendum” held on 16 March or its adherence to OSCE and other international standards relating to the holding of democratic elections.<sup>296</sup> In providing an assessment of the human, including minority, rights situation in Crimea, this report limits itself to the effects of these events on the enjoyment of such rights, as enshrined in OSCE human dimension commitments and in other applicable human rights instruments.

On 21 March, in spite of the objections raised by Ukraine and the international community, Russia’s President Vladimir Putin signed laws on admitting the Republic of Crimea and the city of Sevastopol into the Russian Federation. The Mejlis rejected the new “constitution” of Crimea, which declared Crimea a part of the Russian Federation, adopted on 11 April by the State Council of Crimea.

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<sup>295</sup> *The integration of formerly deported people in Crimea, Ukraine: Needs assessment*, <http://www.osce.org/hcnm/104309>.

<sup>296</sup> The European Commission for Democracy through Law (the Venice Commission) disputes the legality of the referendum. See its Opinion on “whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea’s 1992 constitution is compatible with constitutional principles” adopted by the Venice Commission at its 98th Plenary Session (Venice, 21–22 March 2014), CDL-AD(2014)002-e. No ODIHR election observers were present in Crimea before or during the referendum.

## Minority Rights Standards

### A) OSCE Commitments

Ukraine, as a participating State of the OSCE, undertook to respect the OSCE commitments that, though not legally binding, represent the minimum standards that the participating States of the OSCE agreed to adhere to and implement in practice.

Ukraine has pledged to implement a wide range of human dimension commitments, including those related to the protection of minority rights. First and foremost, such commitments related to protection of minority rights can be found in the 1975 CSCE Helsinki Final Act.<sup>297</sup> Protection of minorities is also enshrined in the 1983 Concluding Document of Madrid<sup>298</sup> and 1989 Concluding Document of Vienna,<sup>299</sup> the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE,<sup>300</sup> in the Report of the CSCE 1991 Meeting of Experts on National Minorities,<sup>301</sup> the 1991 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE<sup>302</sup> and the 1992 Concluding Document of Helsinki, which, *inter alia*, established the post of the OSCE HCNM.<sup>303</sup> The protection of national minorities is a recurrent issue in many subsequent OSCE commitments and decisions.<sup>304</sup>

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<sup>297</sup> The 1975 CSCE Helsinki Final Act, Questions Relating to Security in Europe: 1(a) Declaration on Principles Guiding Relations between Participating States – Principle VII), Co-operation in Humanitarian and Other Fields.

<sup>298</sup> Concluding Document of Madrid – The Second Follow-up Meeting, Madrid, 6 September 1983 (Questions Relating to Security in Europe: Principles; Co-operation in Humanitarian and Other Fields, pp. 31, 45, 59 and 68).

<sup>299</sup> Concluding Document of Vienna — The Third Follow-up Meeting, Vienna, 15 January 1989.

<sup>300</sup> The 1990 CSCE Document of the Copenhagen Meeting on the Human Dimension, paragraphs 30–39.

<sup>301</sup> The 1991 Geneva CSCE Expert Meeting on National Minorities, Geneva, 19 July 1991, parts II–VII.

<sup>302</sup> The Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, paragraph 37.

<sup>303</sup> The Fourth Follow-up Meeting, Helsinki, 10 July 1992 (Decisions: II. CSCE High Commissioner on National Minorities), (Decisions: VI. The Human Dimension, especially paragraphs 23–28).

<sup>304</sup> See OSCE Human Dimension Commitments, Volume 1, Thematic Compilation Third Edition. OSCE/ODIHR at 149-163 (National Minorities): <http://www.osce.org/odihhr/76894?download=true>.

Important contributions to the understanding of how these standards can be implemented have been made by the successive HCNMs in their Recommendations and Guidelines.<sup>305</sup>

#### *B) Regional Instruments*

Ukraine is a member state of the Council of Europe and has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>306</sup> Ukraine also signed and ratified Protocol No. 12 to the ECHR concerning the general prohibition of discrimination.<sup>307</sup>

Ukraine has ratified the Framework Convention for the Protection of National Minorities (FCNM),<sup>308</sup> which is the key binding European instrument in this area. Ukraine is also a party to the European Charter for Regional or Minority Languages (ECRML).<sup>309</sup>

#### *C) United Nations Instruments*

Ukraine has signed and ratified an array of fundamental UN human rights treaties.<sup>310</sup> The rights guaranteed in UN human rights conventions apply equally to members of minority groups. Among them are two treaties that include provisions that specifically cover minority rights. These are the International Covenant on Civil and Political Rights (Article 27) and the Convention on the Rights of the Child (Article 30).

Ukraine is a party to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).<sup>311</sup> In 1992, Ukraine recognized the individual complaints procedure under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>312</sup>

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<sup>305</sup> *The Hague Recommendations Regarding the Education Rights of National Minorities* (1996), *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities* (1998), *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999), *Guidelines on the use of Minority Languages in the Broadcast Media* (2003), *Recommendations on Policing in Multi-Ethnic Societies* (2006), *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* (2008), *The Ljubljana Guidelines on Integration of Diverse Societies* (2012). See: <http://www.osce.org/hcnm/66209>.

<sup>306</sup> Signed 9 November 1995, ratified 11 September 1997.

<sup>307</sup> Signed 4 November 2000, ratified 2 March 2006.

<sup>308</sup> Signed 15 September 1995, ratified 26 January 1998.

<sup>309</sup> Signed 2 May 1996, ratified 19 September 2005.

<sup>310</sup> [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=183&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=183&Lang=EN).

<sup>311</sup> Signed 7 March 1966, ratified 7 March 1969.

<sup>312</sup> Accepted 28 July 1992.

Ukraine is also a party to the non-binding Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.<sup>313</sup>

### **National Legal Framework**

Ukraine's national legal framework regulating the rights of persons belonging to national minorities includes, in particular, the 1996 Constitution, the 1992 Law on National Minorities and the 2012 Language Law. In addition, specific aspects of the rights of persons belonging to national minorities are further regulated in other laws of Ukraine, such as the laws on Association of Citizens, on Education, on Culture, on Citizenship, on Printed Mass Media (Press), in the Fundamentals of Ukrainian Legislation on Culture, on Freedom of Conscience and Religious Organizations, on Local Self-Government in Ukraine, on Refugees, on Immigration, and on Freedom of Movement and Free Choice of Place of Residence in Ukraine, as well as in the criminal and civil codes.

The Constitution of Ukraine (of 28 June 1996, with subsequent amendments) provides that "The State shall promote the consolidation and development of the Ukrainian nation, its historical consciousness, traditions, and culture, *as well as the development of [the] ethnic, cultural, linguistic, and religious identity of all indigenous peoples and national minorities of Ukraine.*"<sup>314</sup> It also provides that the State language is Ukrainian, and that the State shall ensure its comprehensive development and functioning in all spheres of social life throughout the entire territory of Ukraine.<sup>315</sup> At the same time, the Constitution guarantees the "free development, use, and protection of Russian and [the] other languages of [the] national minorities of Ukraine."<sup>316</sup>

The Constitution contains a general equality clause which provides that all citizens have equal constitutional rights and freedoms, and are equal before

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<sup>313</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 18 December 1992, A/RES/47/135.

<sup>314</sup> Constitution of Ukraine, Article 11 (emphasis added).

<sup>315</sup> Constitution of Ukraine, Article 10.

<sup>316</sup> *Ibid.*



the law.<sup>317</sup> The same provision enshrines the principle of non-discrimination on the grounds of race, colour of skin, religious and other beliefs as well as ethnic and linguistic characteristics. Although the Ukrainian authorities have reported that the term “citizens” in this context is employed as a generic term that includes foreigners and stateless persons as well,<sup>318</sup> the provision remains ambiguous regarding its application to non-citizens. The Constitution also guarantees that citizens belonging to national minorities have “the right to education in their native language, or to study their native language at the state and communal educational establishments or through national cultural societies”.<sup>319</sup> Of note, the Constitution also provides that ratified international treaties become part of the national legislation of Ukraine,<sup>320</sup> thereby incorporating them into the domestic legal framework.

The 1992 Law on National Minorities guarantees to all citizens, regardless of their national origin, equal political, social, economic and cultural rights and freedoms, and supports the development of national self-awareness and self-expression. This Law also provides that all citizens of Ukraine shall enjoy equal protection of the State. Article 3 specifies that: “To national minorities belong groups of Ukrainian citizens, who are not of Ukrainian nationality, but show feeling of national self-awareness and affinity.” National minorities are guaranteed basic human rights as well as the right to “national-cultural autonomy”. That said, the 1992 Law on National Minorities is widely regarded as outdated and not fully in line with Ukraine’s subsequently assumed international obligations. Despite repeated public and expert discussions over the past years about the need to amend or revise this Law, such initiatives have yet to coalesce into a draft legislative text that would enjoy sufficient parliamentary support.

The use of languages in Ukraine is regulated by the 2012 Language Law (see section on Language Rights below), which replaced the Soviet-era Law on Languages of 1989. In brief, the 2012 Language Law introduced a new arrangement for the protection of minority languages through a system of

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<sup>317</sup> Constitution of Ukraine, Article 24.

<sup>318</sup> ECRI 2012 Report on Ukraine (fourth monitoring cycle), page 11 paragraph 4.

<sup>319</sup> Constitution of Ukraine, Article 53.

<sup>320</sup> Constitution of Ukraine, Article 9.

recognition and protection of “regional or minority languages” in specific geographic/administrative areas. In areas where the number of people speaking a minority language reaches the threshold of ten per cent, the use of the regional or minority language is guaranteed and protected by law in a wide range of domains, including public administration, the education system, the judiciary, culture, and the media and advertising. The 2012 Language Law, while generally acknowledged as a significant step forward compared to the 1989 Law on Languages, was nonetheless criticized by various competent international bodies, including the HCNM and the European Commission for Democracy Through Law (Venice Commission) for failing to strike an adequate balance between the promotion and use of the State (Ukrainian) language as a unifying factor in society and the promotion and protection of minority languages, including less widely used languages. In February 2014, shortly after the fall of the Yanukovich Government, the new authorities of Ukraine sought to repeal the 2012 Language Law; however, the acting President vetoed the bill, and as a result the 2012 Language Law remains in effect. In the meantime, a Special Temporary Commission on Language Legislation was set up to draft a new language law.

### III. MINORITY RIGHTS ASSESSMENT

#### *General and Underlying Minority Rights Concerns*

Inter-ethnic tolerance in Ukraine, including between Ukrainian speakers and Russian speakers, has generally been high since the country gained independence in 1991. As in most societies, there were isolated cases of interpersonal conflicts or hate crimes on ethnic or related grounds. The Government has been providing support for national minorities' cultural activities and significant funding and institutional support for minority-language education at various levels.

Since the crisis began, national minorities have been facing new challenges stemming directly from the recent events in addition to the underlying minority rights concerns that predate the crisis. The continued inability or unwillingness of the authorities to effectively address widespread corruption also affects the human rights of all, including persons belonging to national minorities.<sup>321</sup>

The general population is concerned about the prevailing atmosphere of uncertainty related to the country's stability and integrity; the safety of person and property in light of actual or threatened violence by various, at times unidentified, actors; the political leadership; and policies and legislation. These factors are even more destabilizing for vulnerable groups, including minorities, as well as ethnic Ukrainians in areas where they are a *de facto* minority. This sense of insecurity is exacerbated by domestic and international media reports of violations and even violent acts or plans to perpetrate such acts, even when these are unsubstantiated. Some political actors are also implicated in the spread of alarmist reports. This is creating a climate of fear and poses serious and urgent risks to inter-ethnic relations. In addition to the problems of misrepresentation or partial reporting, the general lack of transparency and immediate and concrete actions to investigate

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<sup>321</sup> "Ukraine was ranked 144th out of 176 countries investigated in the 2012 Corruption Perceptions Index of Transparency International, a leading anti-corruption watchdog agency (<http://www.transparency.org/country#UKR>)."

reported violations of human rights, including physical violence and harassment, is further fuelling misperceptions and insecurities.

The far right nationalist organizations, including those co-ordinating their activities through the Right Sector movement, became more vocal and organized during the protests leading to the ouster of President Yanukovich and in the following period. The Russian-speaking population in eastern Ukraine is particularly concerned about the rise in the far right movement and its prominence in spearheading the “Maidan” protests, including its participation in violent clashes with security forces and its takeover of administrative buildings. Many members of the Russian-speaking population expressed fear of ultra nationalist ideology, anti-Russian rhetoric, paramilitary organizations and threats of violence.

In addition, the current crisis is exacerbating underlying issues, including through irresponsible, subjective and at times propagandistic reporting by domestic and international media. It is important to keep in mind that any immediate measures to address the most urgent concerns should not detract from the long-standing need to address the root causes of tensions in a structured and systemic manner.

Relevant regional and international actors have been expressing their concerns regarding respect for the rights of persons belonging to national minorities in Ukraine since long before the crisis emerged. These concerns still need to be addressed, in line with Ukraine’s obligations and as a matter of good governance.<sup>322</sup> The recent developments have added new concerns, increasing the vulnerability of minorities. Due to the crisis, it has become more urgent that the authorities reach out convincingly with reassuring messages and tangible measures to ensure the protection of minority rights in law and in fact.

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<sup>322</sup> See the First (1 March 2002), Second (30 May 2008) and Third (22 March 2012) Opinions of the Advisory Committee on the FCNM (ACFC), available at [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp#Ukraine](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Ukraine). Also see the relevant reports, recommendations and findings of other Council of Europe monitoring bodies, such as the Commissioner for Human Rights, the ECRI and the Committee of Experts on the ECRML. Also see the concluding observations of the relevant United Nations human rights treaty instruments.

The issues previously raised by the HCNM, the Advisory Committee on the FCNM and relevant UN bodies and mechanisms include, *inter alia*:

- 1) Ukraine still lacks comprehensive and consistent legislation for the protection of the rights of persons belonging to national minorities.<sup>323</sup> The 1992 Law on National Minorities is outdated. Although various minority rights appear in a number of laws, including those on language and education, there is a lack of coherence and clarity among these various provisions. Moreover, the dispersal of these rights across several documents may create uncertainties and a lack of awareness, and thus inadequacies in protection. International interlocutors have regularly raised this concern, but it so far remains unaddressed.
- 2) The institutional framework for designing and implementing policies for the protection of the rights of persons belonging to national minorities remains weak.<sup>324</sup> The abolition of the State Committee on Nationalities and Religion at the end of 2010 was not adequately compensated for by the addition of functions to the Ministry of Culture. Representatives of national minorities have expressed their concerns, as noted also by the Advisory Committee on the FCNM, and voice fears that the institutional change from a separate body to a department within a ministry signals reduced priority attached to the issues. The department of the Ministry of Culture that is responsible for minority policies has insufficient human and financial resources to function adequately at present. A well-designed institutional structure with an executive body responsible for policies and an independent institution to handle complaints and violations of rights is vital for the proper functioning of a comprehensive minority rights system. Such a structure would also provide minorities with clear mechanisms and institutions to address their concerns and promote their rights, combatting the current perception that their needs are a low priority. These institutional shortcomings not only hamper the implementation

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<sup>323</sup> See the Third Opinion on Ukraine of the ACFC, adopted on 22 March 2012, paragraph 11.

<sup>324</sup> *Ibid.* Also see the Statement of the Special Rapporteur on Minority Issues, Rita Izsák, following her official visit to Ukraine, 7 to 14 April 2014.

of consistent policies, they become critical at a time of crisis when reassuring signals of inclusiveness are needed.

- 3) Minority representatives and international monitoring bodies have consistently highlighted the lack of transparency in decisions affecting minority rights in general or the interests of specific minorities, including those that relate to funding opportunities.<sup>325</sup> This concern remains to be adequately addressed systemically. Likewise, the lack of effective consultation mechanisms has been pointed out repeatedly, but remains unaddressed. While initiatives to consult with representatives and organizations of national minorities, including under the auspices of several ministries, are laudable, the procedures for including minority representatives are unclear. Some minority representatives have questioned the effectiveness of these initiatives, which also lack transparency and co-ordination. There have previously been recommendations to improve the functioning of the Council of Representatives of All-Ukrainian Minority Associations. These recommendations include ensuring that meetings are held regularly and conducting a thorough review in order to strengthen or (re-)establish consultative mechanisms that are set in law, providing balanced and pluralistic composition, ensuring inclusive minority representation and defining clear functions and competencies. These recommendations have not been followed.
- 4) Despite a general climate of tolerance, several monitoring mechanisms, including the Advisory Committee on the FCNM and the ECRI, have been reporting worrying signs of rising intolerance in recent years.<sup>326</sup> This has been reflected in incidents, political discourse and, in some cases, the lack of responsiveness, and even sometimes misconduct, in law-enforcement structures. The Advisory Committee on the FCNM<sup>327</sup>

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<sup>325</sup> See the Third Opinion on Ukraine, ACFC, adopted on 22 March 2012, paragraph 17.

<sup>326</sup> See the Third Opinion on Ukraine of the Advisory Committee, ACFC, adopted on 22 March 2012, paragraph 66. Also see the ECRI Report on Ukraine (Fourth Monitoring Cycle), adopted on 8 December 2011.

<sup>327</sup> Third Opinion, ACFC, ACFC/OP/III(2012)002, 28 March 2013.

and the HCNM<sup>328</sup> have also voiced concerns about the politicization of language issues and minority rights, which can lead to the polarization of society and diverts attention from the needs of smaller minorities, who are increasingly vulnerable as a result. These bodies have recommended various measures that the Ukrainian authorities could employ to combat rising inter-ethnic intolerance and the misuse of minority issues in politics.

### ***Specific Minority Rights Concerns***

#### **Human Rights Concerns for Minorities**

The current climate in Ukraine is characterized by widespread uncertainty, including regarding the situation and rights of minorities. Open conflict and violence, reports of harassment, forced disappearances and deaths have deeply shocked a previously calm and peaceful society. As the initial conflict, based on political differences, has spilled over into regional and linguistic identity divisions, these grave human rights violations also have a direct and harmful effect on inter-ethnic relations and increase the sense of insecurity experienced by vulnerable groups, including national minorities.

In addition, there is a high degree of legal uncertainty in a situation that remains fluid and where laws are abolished, amended or enacted at a rapid pace. For minorities specifically, it is clear that the proposed abolition of the Language Law triggered anxieties concerning future minority rights – concerns that were shared by Russian speakers and speakers of less widely used languages. Discussions regarding a new Constitution likewise raise a series of concerns specific to minorities, beyond the general legitimate interests of all citizens.

The uncertainty regarding political and, at times, institutional stability, also in the context of the upcoming elections, is accompanied by concerns about freedom of movement, freedom of expression and effective rights to participation in public affairs as a matter of democratic governance.

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<sup>328</sup> HCNM statement of 26 July 2012 on the adoption of the 2012 language law, see <http://www.osce.org/node/92418>.

Opportunities for the democratic participation by all in governance have to be guaranteed, the withdrawal of some political forces from Parliament following the dissolution of the Party of Regions notwithstanding. For all residents of Ukraine, particularly minorities, there is a clear need for reassurance that the Government and regional authorities can and will ensure inclusiveness and stability for all groups in the country.

## **Language Rights**

### *Legislative Framework*

Until 2012, the regulation of the use of languages in a wide range of areas, such as public life, contact with the authorities, the media and education, was fragmented and contradictory. The Law on the Principles of the State Language Policy (Language Law) was adopted by the Verkhovna Rada in the summer of 2012. The Party of Regions took the lead in drafting the Language Law, although the electoral promise to make Russian a second State language was softened due to political realities and strong objections by a substantial opposition in Parliament and significant parts of Ukrainian society.

The Language Law aims to protect minority languages by recognizing and protecting “regional or minority languages” in specific geographic/administrative areas.<sup>329</sup> These areas vary from the level of region to districts, cities, towns and even villages. In geographic/administrative areas where at least ten per cent of people speak a minority or regional language, the use of this language is guaranteed and protected by the law in a wide range of domains, including public administration, the education system, the judiciary, culture, and the media and advertising. The Language Law further foresees removing all restrictions on the use of minority languages in the media, cinema and advertising, and abolishing virtually all restrictions on the use of minority languages in the education system.

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<sup>329</sup> In order to provide coherence, a potential revision of the ratification instrument of the European Charter for Regional or Minority Languages has also been linked to the amendments of the language legislation.



The HCNM<sup>330</sup> and the Venice Commission<sup>331</sup> criticized successive drafts of the 2012 Language Law. In a press release just before the adoption of the Language Law, the HCNM noted that the Language Law was likely to lead to further polarization of society and called on all parties “to engage in a substantive dialogue on the issues raised by the law with a view to finding a suitable compromise.”<sup>332</sup> This was not heeded.

On 23 February 2014, immediately after the ouster of the Yanukovich regime which led to a change of the power balance in Parliament, a new majority in the Verkhovna Rada voted to abrogate the 2012 Language Law. This was done on the initiative of the Svoboda Party and the bill repealing the Language Law was voted in by 232 deputies out of 450. After strong domestic reactions and international pressure, acting President of Ukraine and Speaker of the Parliament Oleksandr Turchynov vetoed the 23 February 2014 decision abrogating the 2012 Language Law. Therefore, the 2012 Language Law currently remains in force in Ukraine.

On 27 February 2014, Turchynov created a Special Temporary Commission on Language Legislation in the Verkhovna Rada to develop a new draft law by 31 March 2014. The Commission agreed to work on the basis of the 2013 draft developed by a group of experts under Ukraine’s first President Leonid Kravchuk, including accepting Ukrainian as the sole State language. However, given fundamental disagreements, primarily on the status of the Russian language, the Commission failed to agree on amendments that would consolidate a draft law within the set timeframe.

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<sup>330</sup> For example, the HCNM’s assessment in December 2010 concluded that the draft language law was *likely to increase rather than decrease tensions* between groups of speakers of different languages and to reinforce existing divisions in society, thus making the draft law counter-productive to the stability of Ukrainian society. The HCNM therefore recommended that the Ukrainian authorities refrain from considering the draft language law in its current format. The HCNM recommended that the authorities pursue a *comprehensive reform* of Ukraine’s outdated legislative framework concerning minority rights and language issues to bring it in line with the applicable international instruments that Ukraine had signed in the preceding 15 years. The HCNM recommended that this reform should include a broad and transparent *consultation process* involving representatives of national minorities, the different linguistic communities, and civil society at large, in order to facilitate finding a reasonable societal compromise and to ensure that State interests as well as those of all communities are upheld and respected.

<sup>331</sup> Venice Commission Opinion, 30 March 2011.

<sup>332</sup> HCNM press release, 26 July 2012, <http://www.osce.org/hcnm/92418>.

### *Issues of Concern*

All national minority representatives interviewed by the HCNM delegations cited the language issue as a primary concern. Virtually all the HCNM's interlocutors characterized the cancellation of the 2012 Language Law as a factor that further aggravated the already tense situation throughout the country, which was made worse by the haste, timing and lack of consultations. It not only generated a perception of linguistic revanchism among minorities, it also contributed to anxieties about the exclusive and nationalistic character of the new authorities, anxieties that have been fed by distorted public information and rumours, particularly in Crimea and the predominantly Russian-speaking regions of the country.

The actions relating to the language legislation reignited the public debate reflecting the insecurities and polarized positions on the issue. In combination with the unrest in the regions, this led to a skewed reflection in public discourse and even more entrenched demands from some parts of the opposition for Russian to be instated as a second State language.

Many of the HCNM's interlocutors, in addition to questioning the timing and pace of these decisions, did not believe the Commission would be capable of producing a balanced and agreed draft language law. Minority representatives were also sceptical about the composition of the Commission, which was not seen as inclusive. In interviews, representatives of the Romanian and Hungarian minorities said they opposed the drafting of a new language law. They were content with the status quo created by the 2012 Language Law because they feared that in the present situation any changes could only lead to a decreased level of protection for minority languages used regionally, including Russian, which is also widely used by minorities of other ethnic communities.

However, implementation of the Language Law has been reported as very diverse and contextual. In the field of public administration, several local councils in regions with significant minority representation (predominately concerning Hungarians and Romanians, and some Bulgarians) adopted their language as an official regional language. However, this mainly reflected

local practices that already existed. No additional funds were allocated for supporting activities, such as translation and training. Cities and regions with a majority Russian-speaking population also formalized existing practices and officially switched to Russian as a “regional language”, reflecting existing realities and everyday practices on the ground. It should be noted that this does not imply that all public institutions in the regions completely switched to Russian, as the practice is quite heterogeneous. No decision was taken to grant Russian the status of a regional language in Crimea, even though the Verkhovna Rada of the Autonomous Republic of Crimea had campaigned strongly for the 2012 Language Law.

The HCNM’s interlocutors expressed divergent views on how well the Language Law protected minority languages in the education sector. Ukrainian speakers expressed concerns that the Ukrainian language would not be sufficiently strengthened and promoted, and they saw the reversal of the requirement to pass a unified exam in Ukrainian as a condition for university entrance as a weakening of the role of Ukrainian. They also opined that the 2012 Language Law created conditions that lessened the need to know, and therefore study, Ukrainian, especially in regions with a majority of Russian speakers. Speakers of minority languages, including Russian speakers, reported that despite the formal provisions safeguarding teaching in and of minority languages, the opportunities to realize these rights have never been properly implemented (see section on Education Rights below). At the same time, minority representatives were anxious that any amendments to language legislation at present would entail a regression of rights in the education area.

The 2012 Language Law lifted limitations on the use of languages in the media, such as prescribed quotas on languages used in broadcasting and advertising. The previous administrative regulation of language use in the media, including in private media outlets, is questionable, as it may not be necessary in a democratic society or proportional to legitimate aims, such as promoting the official language. According to some HCNM interlocutors, this lifting of limitations on the use of languages in the media was far-reaching, unbalanced and endangered the presence of the official language in

the media. They argue that the 2012 Language law, while respecting the right to freedom of expression, ran counter the aim of promoting the role of Ukrainian as a shared language for all linguistic communities.

Although the changes, which also encompass cinema and advertising, have not been as dramatic as some expected, consumer demand has reportedly led to the Russian language becoming more prominent in the media, while Ukrainian-language media, especially in the southeast, struggles to compete for a sizeable media audience. The Russian-speaking communities across Ukraine viewed this change as a positive and long-awaited development, while the Ukrainian-speakers perceived it as an encroachment on the presence of the official language in the media. No efforts were made to introduce positive incentives for promotion of the official language or to establish a public TV and radio broadcasting network at the national and regional levels to respond to the legitimate aim of promoting the official language while also serving all linguistic communities in Ukraine.

The representatives of smaller minorities told the HCNM that the 2012 Language Law did not improve their access to media and that public broadcasting in minority languages remains very limited. They also informed the HCNM delegations that without sufficient support from the authorities, those minority communities that can do so currently rely on the support of their “kin States” to run media outlets in their languages. The absence of locally produced media leaves minorities no option but to turn to foreign media in their languages to satisfy their information needs and cultural aspirations.

In conclusion, in addition to specific issues, in particular concerning language use in education and the media, the HCNM’s interlocutors, representing various minorities, expressed three overarching concerns: the need to officially recognize the special role of the Russian language in legislation, which would reflect its actual position in Ukraine in general and in some regions in particular; the need to ensure that no new legislation or policy regresses from the established status quo, especially taking care to safeguard the rights and interests of speakers of the languages of numerically

smaller minorities and, finally, the need to build trust and legislative stability over time by ensuring constitutional guarantees for these rights.

## **Education Rights**

### *Legislative Framework*

Article 53 of Ukraine's Constitution guarantees the right to citizens belonging to national minorities to receive instruction in their native language or to study their native language in State and communal educational establishments and through national cultural societies. The 2012 Language Law states that "citizens have the right to receive education in the State language and regional languages or the languages of national minorities" (Article 20, paragraph 2). The Language Law says the need for a particular language of instruction shall be determined based on requests submitted by students or, in the case of minors, by parents or guardians.

### *Issues of Concern*

Ukraine has a well-established network of schools with instruction in and of minority languages, including Russian, Romanian, Hungarian, Moldovan, Polish and Crimean Tatar. More than two-thirds of schools with minority-language education are Russian-language schools. Opportunities for mother-tongue instruction in smaller minority languages tend to be limited or unavailable.

Despite the strong legal guarantees of minority education rights, international monitoring bodies have noted a number of problems concerning the implementation of these rights in practice.<sup>333</sup> Decisions on provision of instruction in or of minority languages are delegated to local authorities, resulting in divergent regional practices. In the absence of clear guidance from national authorities or a clearly established threshold for forming

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<sup>333</sup> Third Opinion on Ukraine, ACFC, 22 March 2012, [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_OP\\_Ukraine\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Ukraine_en.pdf), and Report of the Committee of Experts of the ECRML, 15 January 2014, [http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UkraineECRML2\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UkraineECRML2_en.pdf).

minority-language classes, local authorities are often hesitant to open or maintain such classes, sometimes “outsourcing” the teaching of minority languages to elective Sunday schools. Minority representatives have noted a persistent decline in the number of minority-language schools and in the quality of education offered. Other problems include the availability of updated quality textbooks in minority languages and the training and supply of teachers to teach Ukrainian in minority schools and to teach in some minority languages. Russian minority representatives have expressed concern that the number of Russian schools does not correspond to the proportion of Russians in the local population.<sup>334</sup>

The HCNM’s interlocutors in western Ukraine noted problems with a lack of pre-school education in minority languages and a tendency for Ukrainian language classes to be opened in minority schools. Some minority representatives reported that parents faced pressure to apply for the opening of Ukrainian-language classes in Romanian-language schools. Concerns were also expressed about the quality of instruction of Ukrainian as a second language to minority students. Moreover, the Language Law reduced incentives to learn Ukrainian, particularly in regions where minority languages have gained recognition as regional languages.<sup>335</sup> In the longer term, this could create additional obstacles to the integration of society, as those minority school graduates who have had insufficient exposure to Ukrainian may experience obstacles in effectively participating in all aspects of life in the country.

External independent examinations for university admission, with the exception of the tests on Ukrainian language and literature and foreign languages, may be taken in the language of instruction, although problems have been reported concerning the quality of translation into minority languages. Higher-education institutions also provide instruction in the Russian, Hungarian and Romanian languages.<sup>336</sup> Minority representatives in

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<sup>334</sup> Statement of the Special Rapporteur on minority issues, Rita Izsák, following her official visit to Ukraine – 7 to 14 April 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14518&LangID=E>.

<sup>335</sup> ACFC Ad hoc report on the situation of national minorities in Ukraine, 1 April 2014.

<sup>336</sup> Third report submitted by Ukraine on the FCNM, 2009, [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_SR\\_Ukraine\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Ukraine_en.pdf).

western Ukraine told the HCNM of their concerns about a draft law on higher education that has been registered in the Verkhovna Rada, which reportedly specifies that Ukrainian should be the only language of instruction in both public and private higher-education institutions.

International bodies have joined civil society representatives in expressing particular concerns about the educational situation of Roma, including instances of segregation, either in separate classrooms or in different schools, and difficulties in accessing education for Roma children whose parents lack identity papers.<sup>337</sup>

## **Effective Participation in Public Affairs**

### *Legislative Framework*

There are legal guarantees that prohibit discrimination against national minorities regarding participation in public affairs, but these do not envisage any obligations to promote the adequate participation of minorities. In accordance with Article 9 of the Law on National Minorities in Ukraine, “citizens of Ukraine belonging to national minorities have the right, accordingly, to be elected or nominated on an equal footing for any posts to bodies of legislative, executive and judicial power, local and regional self-government, in the army, at enterprises, in institutions and organisations.” Article 18 states: “Any direct or indirect limitation of the rights and freedoms of citizens based on national characteristic is prohibited and punished by the law.”

Note should be taken of a recent reform to the election system that has adversely affected minority representatives. As the Advisory Committee on the FCNM noted in its Third Opinion on Ukraine, recommendations by a number of international bodies for the introduction of a regional proportional system based on open lists and multiple regional constituencies to allow for stronger regional, including minority, representation have not been taken into account in the amendments to the Law on Parliamentary Elections, adopted

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<sup>337</sup> ECRI, fourth report on Ukraine, 2012, <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/ukraine/UKR-CbC-IV-2012-006-ENG.pdf>.

in November 2011.<sup>338</sup> The increase of the threshold from three to five per cent, as well as the banning of electoral blocs, limits the chances for smaller or new political parties to enter the Verkhovna Rada. Moreover, the 2002 Law on Political Parties requires that all political parties should be active nationwide and register in a minimum of 17 (of a total of 27) regions of the country, a requirement that is practically impossible for smaller and regional national minority parties to meet. In addition, there is still no obligation for the Central Election Commission to take the composition of the population into account when establishing electoral boundaries, despite the long standing demand of minority representatives, who feel that current constituency boundaries split their electorates over different districts.

### *Issues of Concern*

The level of public participation and representation of national minorities is deemed insufficient by most of the HCNM's interlocutors. National minority representatives frequently pointed out that they do not feel that their community or their interests are well represented in public bodies and processes. Although there are some possibilities for members of minority communities to sit on local councils, they feel that minority groups are not very well or not at all represented in the composition of the Verkhovna Rada, despite the fact that several members of the Verkhovna Rada have a minority background. In addition, even though there are some minority representatives in the decision-making structures of parliamentary groups, their communities often consider them to be a token gesture to showcase the Government's willingness to deal with minority issues but without any practical effect.

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<sup>338</sup> See: Opinion of the Venice Commission on the Law on Elections of People's Deputies of Ukraine, adopted on 16 and 17 December 2005, paragraph 23; Opinion of the Venice Commission on the draft law on Election of People's Deputies of Ukraine, adopted on 12 and 13 December 2003, paragraphs 6, 7 and 42; and Recommendations of the ODIHR/Venice Commission International Conference, "The European Democratic Heritage and the Development of Electoral Legislation in Ukraine", item 1. The Parliamentary Assembly urged the Ukrainian authorities to address these problems as soon as possible given that "a fully proportional system with closed party lists and with all of Ukraine being treated as one single constituency [...] does not guarantee the election of a parliament representing Ukrainian society in all its diversity." See: PACE Resolution 1549(2007) on the Functioning of Democratic Institutions in Ukraine, paragraphs 12 and 15.4.



This situation is exacerbated by the fact that there has been no institution capable of representing and dealing with national minority issues since the State Committee on Nationalities and Religion was closed at the end of 2010 (see the section on General and Underlying Minority Rights Concerns above).<sup>339</sup>

In the southern and eastern parts of the country, where the population is predominantly Russian-speaking, this perception of not being adequately represented in executive and legislative structures – whether substantiated by facts or not – is a particular problem in the current climate. This heightened concern is linked to three main factors. First, the weakening of the position of the Party of Regions, which is mainly supported by the population in eastern Ukraine, has undermined the Russian-speaking community's opportunities for effective representation in political decision making. Second, some of the HCNM delegations' interlocutors consider the current Government to not be inclusive, as it is dominated by members of the *Batkivshchyna* and *Svoboda* parties, who are perceived as mainly representing the views of western Ukraine. Many Russian speakers in the east expressed fears that their interests are currently not represented correctly or at all in the *Verkhovna Rada* and in central Government structures. Third, many of the HCNM's interlocutors referred to the new authorities' decisions to replace a number of high-level officials in the regions – such as governors, mayors and senior police officers – with supporters of the new coalition parties, many coming from western Ukraine. They feel that this has further undermined their role in decision-making processes.

While biased media reporting sometimes reinforces unfounded fears of exclusion or pressure to assimilate, the HCNM delegations did receive credible reports from elected representatives of the Russian-speaking community of pressure or intimidation being exerted on them or their families. In some cases, this included the destruction of property, such as cars and houses. The HCNM delegations also took note of reports that the political representatives of minority communities had been harassed at public

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<sup>339</sup> See, among others: ACFC Third Opinion on Ukraine adopted on 22 March 2012, ACFC/OP/III(2012)002, paragraphs 24 to 25.

meetings, sometimes with threatened or actual physical violence. Such incidents should be recorded and promptly and impartially investigated by competent authorities to ensure the safety of all persons and their property. In a climate where trust in the authorities has been eroded, an effective response to such incidents is directly linked to the maintenance of legitimacy.

A recurrent concern expressed by the interlocutors was that even though national minorities are – at least to some extent – represented in elected bodies, there are significantly fewer representatives in the executive and judiciary. Some minority representatives expressed a desire to have a system of (near) proportional representation in executive bodies or at least to have positive measures to promote adequate representation. Practical obstacles can also limit the representation of minorities in the civil service or other parts of executive bodies. Several interlocutors noted the cumbersome procedures to recognize foreign diplomas, which negatively affects persons belonging to the Hungarian and Romanian minorities who graduate from universities in their “kin” States but wish to pursue a career in the public sector in Ukraine.

Persons belonging to national minorities reportedly may face linguistic barriers in their interaction with local authorities. Even in areas densely inhabited by national minorities, the local authorities and executive bodies are rarely able to interact with minorities in their languages.

A specific concern emerging in the period covered by the report is ensuring opportunities for full participation in upcoming elections, including by residents of Crimea who are eligible to vote.

## **Equality and Non-discrimination**

### *Legislative Framework*

Ukraine has consistently held that its existing legislative framework to prevent and combat discrimination is sufficient.<sup>340</sup> However, Ukraine does not have comprehensive legislation on discrimination. Legal provisions against discrimination are primarily confined to the Constitution and the

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<sup>340</sup> See reports submitted by Ukraine pursuant to Article 25, paragraph 2 of the FCNM.

Criminal Code. Article 24 of the Constitution provides that citizens of Ukraine shall have equal constitutional rights and freedoms; it guarantees their equality before the law and prohibits discrimination based on the grounds of race, skin colour, religious and other beliefs, ethnic and social origin, and linguistic or other characteristics. Article 37 prohibits the establishment and activities of political parties or public organizations whose programmatic objectives or actions are aimed at inflaming inter-ethnic, racial or religious enmity, or at impinging upon human rights and freedoms.

Article 161 of Ukraine's Criminal Code lays down responsibility for inciting inter-ethnic enmity or hatred; for disparaging national honour or dignity; and for limiting citizens' rights, or the institution of privileges in respect of their rights, on the basis of ethnic origin or linguistic or other characteristics.<sup>341</sup> Some provisions are included in normative acts pertaining to specific areas of law, including the Labour Code,<sup>342</sup> the Civil Procedural Code,<sup>343</sup> the Code of Administrative Justice<sup>344</sup> and others.

Apart from these general and declaratory anti-discrimination provisions in the Constitution and various codes, there are no detailed and comprehensive civil or administrative provisions related to discrimination in specific fields.<sup>345</sup> The current legal framework fails to provide a definition of

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<sup>341</sup> Law on Introducing Amendments to the Criminal Code of Ukraine as to Crimes on the Grounds of Race, National or Religious Intolerance, 5 November 2009.

<sup>342</sup> All citizens have equal rights to work, regardless of their ethnic origin (Article 2(1)); any direct or indirect limitation of the rights or the introduction of any direct or indirect privileges upon the preparation, change or termination of the work agreement on the basis of one's ethnic or racial belonging, language, religious views, etc. is prohibited (Article 22). Upon the signature of the work agreement, it is prohibited to inquire about person's ethnic belonging (Article 25(1)).

<sup>343</sup> According to Article 5 of the Civil Procedural Code, the Court shall respect the honour and dignity of all participants of the civil procedure and pursue justice on the principles of equality before the law and justice regardless of race, colour of skin, religious and other beliefs, ethnic origin, language and other characteristics. Article 6 of the Civil Procedural Code of Ukraine guarantees foreigners, stateless persons and foreign juridical entities in Ukraine the same right to judicial protection as the citizens and juridical entities of Ukraine.

<sup>344</sup> In compliance with Article 10 of the Code of Administrative Justice, all participants of the administrative process are equal before the law and justice and there can be no privileges or restrictions of the rights of the participants of the administrative process based on race, colour, religion, ethnic, linguistic or other grounds.

<sup>345</sup> See, for example: the assessment of the European Court of Human Rights concerning the practical effectiveness of Constitutional guarantees related to human rights and freedoms and the lack of their implementation in Ukraine's legal system in *Pronina v Ukraine* (No. 63566/00, judgment of 18 July 2006). Also see: ACFC Second Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, paragraph 14. See also: European Roma Rights Centre, "Written Comments of the European Roma Rights Centre Concerning Ukraine for Consideration by the United Nations Committee on the

discrimination that fully meets international and regional human rights standards. The legal framework lacks clarity on its scope and there are questions regarding how the principle of equality is interpreted in Ukraine.<sup>346</sup>

### *Issues of Concern*

The HCNM delegations spoke with interlocutors from different minorities and did not find evidence of systematic discrimination against minorities. However, there have been reports of potentially discriminatory actions, such as arbitrary inspections of identity documents on the street targeting certain minority groups, higher exposure to incidents of police violence or other forms of misconduct by some vulnerable ethnic groups, as well as alleged cases of discrimination on grounds of ethnicity in education and at work. There have also been reports of racist attacks, hate speech, threats and violence targeting national minorities, including Crimean Tatars and Roma, as well as asylum seekers, refugees, immigrants, foreign students and others.<sup>347</sup>

As has been noted by several monitoring mechanisms, awareness of discrimination issues tends to be low among representatives of the authorities and the public at large and statistical data on cases are not kept. In addition, effective registration, investigation and prosecution of incidents of hate crime remain a challenge, despite previous efforts to address these issues.<sup>348</sup>

The HCNM delegations heard several reports of alleged discrimination or hate crimes targeting national minorities, including Russians, in areas

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Elimination of Racial Discrimination at its 69th Session, July 31–August 18, 2006”, 19 June 2006, pp. 7–8 (<http://www2.ohchr.org/english/bodies/cerd/cerds69.htm>).

<sup>346</sup> *Ibid.*

<sup>347</sup> ACFC Second Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, paragraph 18, ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, paragraph 43. See also: detailed description of some instances reported in the Statement of the Special Rapporteur on minority issues, Rita Izsák, following her official visit to Ukraine – 7 to 14 April 2014.

<sup>348</sup> ACFC Second Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, paragraph 14, ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, paragraph 28. Also see examples in ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, paragraphs 49–50.

generally characterized by a climate of inter-ethnic tolerance, such as western Ukraine.

Although reported incidents of hate crime remain isolated and sporadic at present, there is a risk that with increasing tensions they could become more widespread. National minorities throughout Ukraine are following the developments in Crimea and the eastern regions with concern. Many express worries about rising intolerance in a context where they consider that the legal/institutional framework and law enforcement structures are unable to protect them.

## ***Crimea***

### **General Situation**

The political crisis in Ukraine rapidly led to polarization within Crimea's multi-ethnic society. This became evident during 26 and 27 February 2014, when Crimean Tatars supporting Ukrainian unity met pro-Russian demonstrators in the centre of Simferopol. The stand-off between the two groups resulted in a stampede, killing two people. The risk of an ethnic conflict became acute in the days leading up to the so-called "referendum on the status of Crimea" on 16 March 2014, which Crimean Tatars boycotted *en masse*.

Most HCNM interlocutors said that while the controversial decision to revoke the 2012 Language Law (although vetoed by the acting President) and discussions about a lustration law might not have been decisive factors in fomenting instability in Crimea, they contributed to the mobilization of a significant number of ethnic Russians against the new authorities in Kyiv. Actual fears of revanchist policies directed against the Russian minority were stoked by rumours and one-sided media reporting, further encouraged by radical statements devoid of factual evidence made by some politicians.

Although the immediate risk of ethnic strife seemed to diminish, at least temporarily, over the reporting period, the underlying tensions have not subsided and could flare up at any moment. The new political and regulatory

framework imposed on minorities following the annexation of Crimea by the Russian Federation has affected their legal status, rights as minorities and daily life, which is increasingly characterized by an atmosphere of intolerance and prejudice.

The Crimean Tatars find themselves in a particularly precarious situation because they openly supported Ukrainian Statehood and territorial integrity, and boycotted the so-called “referendum on the status of Crimea”. The Crimean Tatars’ political position regarding the “referendum” was channelled through the Mejlis, a self-governing body that claims to represent all Crimean Tatars. As a result, the Mejlis is under increasing pressure from the authorities exercising *de facto* control in Crimea.

The Crimean Tatars are concerned about the security of their community and uncertain of their legal status, especially as the majority of them reportedly plan to retain Ukrainian citizenship. They are worried about their representation in *de facto* elected bodies and executive structures of Crimea and about guarantees for the preservation of their identity, as they view themselves as an indigenous people of Crimea.

The Crimean Tatars’ situation reflects years of marginalization in the economic life and public affairs of the peninsula. The community was disturbed when Rustam Temirgaliev, *de facto* first deputy prime minister of Crimea, announced that the authorities in *de facto* control would request that Crimean Tatars vacate some disputed lands.<sup>349</sup> The issue of land ownership has been a bone of contention for the community since they started returning to Crimea in the late 1980s. For many Crimean Tatars, safeguarding their land in Crimea is tantamount to preserving their identity.<sup>350</sup>

Many Crimean Tatars believe that if they opt out of Russian citizenship, they might encounter problems accessing education, employment and healthcare or restrictions to their land and property rights.

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<sup>349</sup> See: [http://www.gazeta.ru/politics/news/2014/03/18/n\\_6020613.shtml](http://www.gazeta.ru/politics/news/2014/03/18/n_6020613.shtml).

<sup>350</sup> See more on land conflicts involving Crimean Tatars in: HCNM, *Integration of formerly deported people in Crimea, Ukraine, Needs Assessment*, August 2013. pp. 9–15.

Some Crimean Tatars are also worried about potential persecution on religious grounds, as they belong to organized religious communities that are legal in Ukraine, but illegal in the Russian Federation.

The ethnic Ukrainian community has also become vulnerable in the current context, especially if they are Ukrainian speakers and support the territorial integrity of Ukraine. Many ethnic Ukrainians fear persecution on ethnic grounds, as they believe that ethnic Russians view the entire community as staunch supporters of the “Maidan” movement and the territorial integrity of Ukraine.

### **Lack of Human Security**

Against the backdrop of growing instability in Ukraine, especially in the run up to the 16 March “referendum on the status of Crimea”, deeply entrenched inter-ethnic divisions re-emerged in Crimea. As the events unfolded, the various ethnic communities communicated less, and fear and intimidation started to rise. In particular, the Crimean Tatars and the Ukrainian-speaking community became more vulnerable. The presence of unidentified armed forces, the emergence of “people’s self-defence” units and the precarious situation surrounding Ukrainian military and law-enforcement units contributed to an increasingly dangerous situation.

Since two groups of protesters engaged in a standoff in front of the Supreme Soviet building in Simferopol on 26 February, mutual mistrust and fear between the ethnic Russian and Crimean Tatar communities has increased. Reports of intimidation against Crimean Tatars, especially by so-called “people’s self-defence” forces and unidentified men in military fatigues, have been recorded regularly. Such public harassment has contributed to a sense of heightened vulnerability, anxiety and uncertainty among members of the Crimean Tatar community. The Crimean Tatars have organized patrols to protect areas densely populated by their community.

In the days following the so-called “referendum on the status of Crimea”, a number of incidents indicated mounting pressure on the Crimean Tatar community. In Bakhchisarai, a number of Crimean Tatar homes were

reportedly marked as belonging to Crimean Tatars. The community viewed this as an act of intimidation and a threat of a pogrom.

The murder in March of Reshat Ametov, a Crimean Tatar, was seen by the community as an act of terror and intimidation against the whole community. On 3 March, Reshat Ametov staged a one-man protest near the building of the Council of Ministers by standing in front of “people’s self-defence” forces guarding the building. The same day he disappeared. His mutilated body was found two weeks later; he appeared to have been tortured.<sup>351</sup>

Crimean Tatars interviewed by the HCNM before and after annexation expressed their fear of possible reprisals for their position on the so-called “referendum on the status of Crimea”. An overwhelming majority of Crimean Tatars heeded the Mejlis’ call to boycott the “referendum” but believed that this decision could backfire on the community. They also reported experiencing intimidation and fears of attacks by so-called “people’s self-defence” groups and formations of Cossacks as a result of their strong support for Ukrainian unity. The community is apprehensive about the authorities’ in *de facto* control of Crimea and “people’s self-defence” groups’ future plans towards them, especially related to property issues.

The Crimean Tatar leaders reported the lack of consultations during the process to adopt the *de facto* “constitution of Crimea”, which thus, according to them, failed to reflect the political and cultural aspirations of the Crimean Tatar community.<sup>352</sup> In the first half of March, Crimean Tatar leaders announced their intention to use their right to self-determination in the form of territorial or national-cultural autonomy in Crimea. The HCNM’s interlocutors believe that this confrontation led to further tensions between

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<sup>351</sup> See: <http://rus.azattyq.org/content/crimea-tatar-ukraine-russia-annexation-minority/25302057.html>.

<sup>352</sup> It should be noted that on 11 March 2014, the Crimean Supreme Council of Crimea adopted a Resolution On Guarantees of Restoration of Rights of Crimean Tatar People, which promised upon adoption of “the new Constitution of Crimea” the provision of guarantees for the official status of the Crimean Tatar language on a par with Russian and Ukrainian; a 20 per cent quota for Crimean Tatars in official positions in executive bodies and their guaranteed representation in district and city councils and other bodies; recognition of the status of the Kurultai as a self-governing body of Crimean Tatars and all its structures; facilitation of use of historic geographic names on a par with the existing ones, as other measures to support the Crimean Tatar people in the cultural, educational and social and economic spheres. The so-called “constitution of Crimea”, adopted on 11 April, incorporates only one of the “guarantees”, namely giving the Crimean Tatar language an official status.



Crimean Tatars and the *de facto* authorities of Crimea. Some members of the community believe that the Mejlis' stance may encourage violence against the Crimean Tatars; others blame the Mejlis for giving up moral ground in exchange for temporary security guarantees.

The HCNM's interlocutors believe that diverging opinions within the Crimean Tatar leadership could render the community even more vulnerable. Meanwhile, the community is beset by practical questions about citizenship, land registration, property ownership, bank accounts and education, and is concerned about possible conscription into military service.

The ethnic Ukrainian community is also vulnerable in the current context. In a climate of escalating pressure before and after the so-called "referendum on the status of Crimea" and the subsequent annexation of Crimea to Russia, many active community members have felt compelled to leave Crimea or move their families off the peninsula out of concern for their safety.

Ethnic Ukrainians increasingly express concerns about retaining their identity in Crimea, especially their language and education rights. Reports of intimidation of Ukrainian-language teachers and rumours that the authorities exercising *de facto* control of Crimea plan to close Ukrainian schools fuel perceptions of threats to their identity. There were also incidents in the two weeks leading up to the referendum in which pro-Ukrainian journalists and activists were specifically targeted; 15 were abducted by unknown assailants. All were released after the so-called "referendum on the status of Crimea", but most said they had been ill-treated or even tortured.<sup>353</sup>

Several ethnic Russians told the HCNM that they were concerned about the rising tensions between the ethnic Russian and Crimean Tatar communities, which they feared could develop into an inter-ethnic conflict.

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<sup>353</sup> Information from HCNM interviews in Crimea.

## **Issues of Concern**

### *Internally Displaced Persons*

According to official numbers, some 3,000 people have registered as Internally Displaced Persons (IDPs) and are accommodated in official or privately provided facilities on the Ukrainian mainland. The real number of IDPs may be up to three times higher, as people often stay with friends or family members. Ukrainian civil servants and members of the Ukrainian military and their family members who were previously stationed in Crimea did not register as IDPs.

Crimean Tatars, who are overrepresented among the IDPs, have temporarily settled mostly in Lviv and the surrounding areas. Although initially welcomed, this is already creating tensions with the local population on issues connected to long-term presence, such as facilities for worship. Once local support initiatives dry up, regional and central authorities may be unprepared to handle longer or larger-scale IDP movements from Crimea. Reportedly, many IDPs who initially fled Crimea did so out of a fear of persecution on religious grounds, as they belong to organized religious communities that are illegal in Russia.

As the majority of Crimean Tatars do not recognize the results of the so-called “referendum on the status of Crimea” and Crimea’s subsequent annexation to the Russian Federation, they view regulations for crossing the Ukrainian–Crimea border as an infringement of their freedom of movement within their country of residence. Members of the Crimean Tatar community also cited concerns about restrictions on movement within Crimea. They referred to roadblocks and extensive checks of identity documents, especially targeting Crimean Tatars, raising concerns of ethnic profiling.

### *Access to Information/Minority Media*

The annexation of Crimea by the Russian Federation led to an erosion of media freedoms. Ukrainian television stations, irrespective of language, are no longer available in Crimea. The terrestrial signals of Ukrainian TV channels *Inter*, *Briz*, *1+1* and *5 channel*, and of local independent channel

*Chernomorskaya TV*, have been taken off air and replaced with Russian channels.

The Crimean Tatar *ATR* channel has remained on air. However, it is reportedly under pressure from the authorities exercising *de facto* control, particularly concerning how the activities of Crimean Tatar leaders are reported. According to the HCNM's interlocutors, the *ATR* website was attacked and temporarily shut down at the beginning of March.

### *Language and Education*

Although the so-called "constitution of Crimea", which was adopted by the authorities exercising *de facto* control, introduces three State languages – Russian, Crimean Tatar and Ukrainian – the Crimean Tatar and ethnic Ukrainian communities do not see indications that these provisions will be implemented in earnest.

Ethnic Ukrainians are particularly fearful about the future status of the Ukrainian language. Due to the strong anti-Ukrainian sentiment prevailing among the ethnic Russian population, several of the HCNM's interlocutors reported feeling unsafe speaking Ukrainian in public places. The Crimean Tatars are concerned about whether they will be allowed to use their language with public administration bodies.

Minority communities are also concerned about whether they will be able to retain their minority education rights. On the Crimean peninsula, 15 schools provide instruction in Crimean Tatar (in primary grades only) and seven schools provide instruction in the Ukrainian language, a number that is regarded as low in relation to the needs of the population.<sup>354</sup>

Ethnic Ukrainians are worried that the authorities exercising *de facto* control soon will take a decision to cancel the teaching of the Ukrainian language in Russian-language secondary schools. They fear that the seven Ukrainian-language schools in Crimea will be closed or transferred to teaching in the Russian language. One school and the only department of

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<sup>354</sup> Third Opinion on Ukraine, ACFC, 22 March 2012.

Ukrainian philology in Crimea, at the Vernandsky Tavrida University, are perceived to be at risk of closure. Attempts to dismiss the director of a Ukrainian gymnasium in Simferopol, instances of public harassment of Ukrainian teaching staff in other schools and reports of parents being pressured to take their children out of Ukrainian-language schools, are further fuelling fears.

The Crimean Tatars are worried about whether schools with instruction in Crimean Tatar will be able to continue operating, especially considering that some of them have already started to introduce teaching in the Latin script, a practice that may contravene the statutory requirements of the Russian Federation.

The HCNM's interlocutors in Crimea were also concerned that persons belonging to national minorities who opt not to take Russian citizenship may face problems with access to education.

#### *Participation and Representation*

The Crimean Tatar community appears to be divided on the question of participation in public affairs. Some are seeking ways to work with the authorities exercising *de facto* control; others are wary that those authorities are trying to divide their community. The HCNM's interlocutors anticipate that the participation of Crimean Tatars in the social and political life of Crimea will rapidly dwindle.

The Mejlis, which claims to act as a representative body of all Crimean Tatars and not as a non-governmental organization (NGO), hopes to maintain a status within the Russian Federation. Although the Ukrainian authorities until very recently did not officially recognize its status, they tolerated its activities and the Mejlis was often regarded, despite occasional attempts to dispute this, as the legitimate representative body of the Crimean Tatars.<sup>355</sup>

However, the Mejlis may not be able to maintain this status, whether

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<sup>355</sup> On 20 March 2014, the Verhovna Rada adopted a resolution that includes the point that "Ukraine recognizes the Mejlis of the Crimean Tatar people, the executive body of the Kurultay, and the Kurultay as the highest representative body of Crimean Tatars."

registered or not, under the authorities exercising *de facto* control of Crimea or even within the Crimean Tatar community. It should be noted that there are also fears that all NGOs, including ethnic associations, will have to re-register and that organizations that are not perceived as loyal to Moscow will not be approved. Legislation and policies governing NGOs in the Russian Federation are more restrictive than in Ukraine.

The Mejlis decided to nominate representatives for positions in the *de facto* Crimean government. The authorities exercising *de facto* control in Crimea have accepted these nominations but have refused to regard the Mejlis as a body representing the entire Crimean Tatar community. A number of posts in the *de facto* executive structures were also offered to Crimean Tatars representing groups that are more pro-Russian, such as Milli Firqa. So far, the authorities exercising *de facto* control have not taken into considerations specific concerns of Crimean Tatars in the development of a *de facto* legislative framework for Crimea (apart from mentioning the Crimean Tatar language as an official language in the *de facto* “constitution” of Crimea).

Many Crimean Tatars view the policies of the authorities’ exercising *de facto* control as an attempt to stoke divisions within their community. Some Crimean Tatars strongly oppose the Mejlis’ decision to participate in the *de facto* Crimean government, perceiving it as a formal recognition that Crimea is part of Russia and a strategy to protect businesses owned by prominent Crimean Tatar leaders.

### *Citizenship*

Under Article 5 of the Russian “treaty” on incorporating Crimea into the Russian Federation, Ukrainian nationals permanently living in Crimea and Sevastopol are to be considered Russian nationals as of the date when the treaty enters in force, which under Article 1 is the date of the signature of the treaty, effectively 18 March 2014.<sup>356</sup> The same Article gives the residents of Crimea and Sevastopol one month to “choose” between Russian and other citizenships. This “choice” appears to reflect the “right of optation”

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<sup>356</sup> <http://www.kremlin.ru/news/20605>.

enshrined in Article 17 of the Russian Citizenship Law, which provides that: “When a change occurs in the State Border of the Russian Federation under an international treaty of the Russian Federation, the persons residing in the territory which switched its state shall have a right to choose citizenship (right of optation) in the manner and within the term established by a relevant international treaty of the Russian Federation.”

Article 4 of the Russian Law of 23 March 2014 on the “Acceptance of the Republic of Crimea into the Russian Federation and the Creation of New Federal Subjects – the Republic of Crimea and the City of Federal Significance Sevastopol” reiterates the provision of Article 5 of the Russian “treaty” on incorporating Crimea into the Russian Federation and complements it with the requirement that after one month, holders of other citizenship or people with a permanent residency abroad are banned from occupying government and municipal jobs in Crimea.<sup>357</sup>

As stated by the HCNM’s interlocutors, filing a statement to retain Ukrainian citizenship and surrender Russian citizenship was in practice possible only from 1 April 2014. Initially, there was only one place in Simferopol where such statements could be filed and two in the rest of Crimea, in Belogorsk and Bachchisarai. When the deadline for receiving such statements passed, there were reception points in just eight territorial units (Yalta, Evpatoriya, Saki, Feodosiaya, Jankoi, Simferopol, Sevastopol and Bachchisarai). According to the personal accounts of people who filed such statements, the limited number of reception points meant that many residents of Crimea were not able to exercise their right to choose their citizenship.<sup>358</sup>

Individuals who do not want to become Russian citizens or do not want to lose their Ukrainian citizenship may experience problems related to this decision. In many cases, such individuals are not even aware of the full consequences of their decision. If they are treated as foreign citizens under the Law on the Status of Foreign Citizens in the Russian Federation, they will have to leave the Russian Federation after 90 days, and are barred from

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<sup>357</sup> See: <http://www.rg.ru/2014/03/22/krym-dok.html>.

<sup>358</sup> By 18 March, according to the Head of Federal Migration Service of the Russian Federation, around 3,000 residents of Crimea had rejected Russian citizenship. See: <http://www.regnum.ru/news/1793226.html>.

staying more than 90 days in any 180 given calendar days. According to the Code of Administrative Offences of the Russian Federation, breaching these rules may result in fines and deportation, as stipulated by part 1 of Article 18.8. These rules, if applied to residents of Crimea who opt out from Russian citizenship, may create serious obstacles to their enjoyment of their property and other rights on the territory of Crimea.

The HCNM delegations' interlocutors also predicted that many employees of State-funded organizations would be threatened with dismissal if they retain Ukrainian citizenship. However, it should be noted that Russian legislation only applies citizenship or permanent residency status restrictions to official positions in the civil or municipal services. Under Russian law, persons holding official posts cannot have dual nationality; they must have only Russian citizenship.<sup>359</sup>

In addition, draft laws currently being tabled in Ukraine as well as Russia seem to suggest that both countries are contemplating further restricting their laws and regulations on dual nationality and introducing sanctions for violation of these rules. Such developments might negatively affect those residents who decide to keep their Ukrainian passports while also obtaining Russian citizenship.

Reportedly, residents of Crimea who refuse Russian citizenship will not be eligible for Russian pensions, salaries and social benefits.<sup>360</sup> Article 7 of Ukraine's draft law on guaranteeing rights and freedoms of citizens and the legal regime on the temporarily occupied territory of Ukraine provides that Ukrainian citizens that reside on the temporarily occupied territory of Ukraine would be entitled to Ukrainian Government social benefits and pensions, unless they get them from the competent bodies of the Russian Federation. The procedure is to be determined by the Cabinet of Ministers of Ukraine.<sup>361</sup> According to the HCNM's interlocutors, the Cabinet of Ministers of Ukraine has not yet established this procedure. These interlocutors also

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<sup>359</sup> See: <http://www.interfax.ru/world/365252>.

<sup>360</sup> See: <http://pravo.gov.ru/laws/acts/29/505554.html>.

<sup>361</sup> The draft law was adopted by Verkhovna Rada of Ukraine on 15 April and is pending the signature of the acting President as of the date of writing of this report. See: <http://zakon2.rada.gov.ua/laws/show/1207-18/page>.

opined that to get Ukrainian pensions and social benefits, citizens of Ukraine residing in Crimea would probably have to travel to mainland Ukraine to collect them, which may be problematic in the current context.

It should be noted that regulations and practices on citizenship matters in Crimea are in a fluid state and conflicting commentaries come from the *de facto* officials in Crimea and the authorities in Kyiv. The legal uncertainty of the status of many residents of Crimea, especially Crimean Tatars and ethnic Ukrainians, may seriously impact the exercise of their rights and the scope of social benefits and pension coverage.

In practice, residents of Crimea have very little effective choice in deciding on citizenship matters; unless they take Russian citizenship, and possibly also surrender their Ukrainian citizenship, they are at risk of losing access to certain rights.

Many Crimean Tatars may have no option but to take Russian citizenship to maintain their right to use land for agricultural purposes, as according to Russian legislation, such rights can only be held by citizens of the Russian Federation. Further complicating the situation, many Crimean Tatars cannot prove their residence on the peninsula because they do not have valid residence registration, as they do not officially hold property rights.

In addition to concerns at the individual level, there are also considerations at the inter-State level and questions of conformity with international norms. Generally speaking, international law affords States broad latitude to confer nationality. At the same time, a State's ascription of nationality under internal law, in accordance with Article 1 of The Hague Convention of 1930 on Certain Questions relating to the Conflict of Nationality Laws, "shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality".<sup>362</sup> Contemporary developments concerning citizenship do, however, increasingly set limits to sovereign

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<sup>362</sup> Convention on Certain Questions relating to the Conflict of Nationality Laws, the Hague, 12 April 1930. Available at: <http://eudo-citizenship.eu/InternationalDB/docs/Convention%20on%20certain%20questions%20relating%20to%20the%20conflict%20of%20nationality%20laws%20FULL%20TEXT.pdf>.



States' freedom of action, including the general recognition that conferral of citizenship should be neither arbitrary nor discriminatory.<sup>363</sup>

It should also be noted that the *en masse* recognition of all residents of Crimea as citizens of Russia renders inapplicable the provision from Article 19 of the Ukrainian Law on Citizenship stating that Ukrainian citizens lose their nationality if they voluntarily acquire another one. In this context, it is commendable that part 4 of Article 3 of the Ukrainian draft law on guaranteeing rights and freedoms of citizens and the legal regime on the temporarily occupied territory of Ukraine provides that the forced automatic acquisition of Russian citizenship by the Ukrainians living in Crimea shall not be legally accepted by Ukraine as a ground for withdrawing Ukrainian citizenship. From an international law perspective, the acquisition of Russian citizenship by Crimean residents under the conditions described above would hardly qualify as “voluntary”.<sup>364</sup>

Although Crimean Tatars are especially vulnerable with regard to the citizenship question, for a number of ethnic Ukrainians, the pressure to acquire Russian citizenship if remaining on the territory of the peninsula was the decisive factor in their decision to leave Crimea.

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<sup>363</sup> In addition, *en masse* conferral of passports is manifestly at odds with paragraph 11 of The Bolzano/Bozen Recommendations on National Minorities in Inter State Relations, as it undermines territorial integrity and sovereignty, and goes against the fundamental principle of good neighbourly relations.

<sup>364</sup> The European Convention on Nationality, ratified by Ukraine in 2006, states that an acquisition of another nationality is to be considered “voluntary” – and thus may serve as a valid ground for the loss of another nationality – where the “acquisition [is] a result of a person’s own free will and not an automatic one (*ex lege*)”.

## IV. RECOMMENDATIONS

*To the Ukrainian authorities:*

### **Immediate Steps**

- Assign high priority to the protection of human, including minority, rights in practice and ensure prompt, effective and impartial investigation, in co-operation with relevant international actors as needed, of all credible or validated reports of violence, harassment and intimidation, in particular relating to ethnic, linguistic, cultural or religious background or political opinion.
- Ensure that all regular armed forces are under democratic control and are accountable. Any special military or police units should operate strictly under a firmly established legislative framework, in full respect of human rights and the rule of law. All irregular armed groups should be disarmed and their activities should be fairly and thoroughly investigated by competent authorities; if they are found to be involved in intimidation, violence or other criminal behaviour, their activities should be ended.
- Ensure that any new or amended legislation is given due consideration and is based on nationwide and inclusive consultations rather than being hastily adopted and that it does not regress from the existing level of human rights, including minority rights, protection.

### **General Recommendations**

- Implement all recommendations on minority rights stemming from various international review procedures and mechanisms, including those of the United Nations; the OSCE, including the HCNM and the ODIHR; and the Council of Europe, including the Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional or Minority Languages (ECRML).
- To ensure the above, co-operate in a continuous, full and effective manner with relevant international organizations, and address minority rights as a matter of priority.

- Ensure that the process to revise the legal framework providing for effective minority rights protection – including the Constitution, the Law on the Principles of the State Language Policy and the Law on National Minorities in Ukraine – is participatory by carrying out nationwide and inclusive consultations, drawing on international expertise as needed.
- Adopt and implement a long term nationwide integration strategy and policy, coupled with action plans setting specific targets and deadlines with follow up monitoring provided at regular intervals.
- Develop a systemic approach that ensures transparency, inclusiveness and the participation of relevant stakeholders in all legislative, policy and institutional developments that are relevant to minority rights.

### **Institutional**

- Re-establish a dedicated institution or co-ordination point for national minority rights and the integration of society at the institutional level. The reforms to this effect announced by the Government should be adopted and implemented.
- Establish effective mechanisms to facilitate consultations with minority representatives and to discuss and solve minority rights concerns, and ensure that these mechanisms can function regularly and properly. In addition to a national consultative body, consider establishing subsidiary regional ones, as appropriate, in order to ensure inclusiveness and encourage effective participation by all relevant minorities in Ukraine.
- Ensure that the Ombudsperson has sufficient competencies and resources to act as an effective and independent protector of human, including minority, rights, including by reaching out, handling complaints and addressing violations and shortcomings at the national and regional levels.

### **Legal Reform**

- Review and revise legislation with the aim of developing comprehensive minority rights protection that is fully in line with international and regional obligations.
- Engage in effective consultations with an inclusive spectrum of national minorities to ensure they have adequate opportunities to play a meaningful role in the legal

reform process, especially on matters of direct relevance to them. Other relevant civil society actors should also be given the opportunity to participate in consultations on a regular basis.

### **Specific Policy Areas**

- On **language** use: revise the relevant legal framework only when the situation in Ukraine has stabilized. Efforts to revise the legal framework should take place through an inclusive, participatory and de-politicized process; care should be taken that legislation on language is consistent and provides for coherent implementation; the new language law should strike a balance between ensuring that the State language functions as an effective a tool of cohesion for society and fully respecting the rights of persons belonging to national minorities. While maintaining Ukrainian as the State language, the specific role of the Russian language in Ukraine should be clearly recognized in the legal framework, while the rights and interests of speakers of smaller minority languages should also be protected. Constitutional guarantees would help re-establish predictability and stability.
- On **education**: promote appropriate education models, including multilingual education, as a means of supporting the development of proficiency in both the language of the minority concerned and the State language and ensure implementation; institute clear procedures and criteria for establishing classes or schools with instruction of or in a minority language, including at the pre-school level, where there is sufficient demand; pay particular attention to inter-cultural education.
- On **participation**: elaborate measures and mechanisms to ensure the full and effective participation of persons belonging to national minorities in public affairs, as well as in the socio economic and cultural life of Ukraine and review the effectiveness of such procedures on a regular basis.
- On **anti-discrimination**: revise the existing legislation to promote the full and effective equality of all, including persons belonging to national minorities. Introduce special and targeted measures for disadvantaged minorities, such as Crimean Tatars and the Roma, particularly regarding access to education, housing, healthcare and public services; in close consultation with civil society, develop

comprehensive strategies and implementable action plans to achieve these aims; provide additional capacity building for law enforcement and judiciary to handle cases and situations of inter-ethnic concern, including manifestations of prejudice and intolerance.

*To the authorities exercising de facto control of Crimea:*

- Assign the highest priority to the protection of human, including minority, rights in practice and ensure prompt, effective and impartial investigation, in co-operation with relevant international actors as needed, of all credible or validated reports of violence, harassment and intimidation, in particular relating to ethnic, linguistic, cultural or religious background or political opinion.
- Take immediate measures to promote the safety and reduce the insecurities of all ethnic communities in Crimea, especially the most vulnerable groups, including the Crimean Tatars and ethnic Ukrainians.
- Facilitate inter-personal contact, especially between family members who are now separated, between those in Crimea and those in the rest of Ukraine. Those who relinquish their conferred right to Russian citizenship should not be restricted in their residence on the territory of Crimea and in the exercise of their rights in comparison to other residents of Crimea who opted for Russian citizenship.
- Guarantee the right of residence on the territory for all residents of Crimea, including foreign citizens and stateless persons, who hold relevant permits according to the legislation of Ukraine.
- Ensure citizenship issues do not negatively affect access to social benefits and pensions for all current residents of Crimea.
- Provide objective and easily accessible information regarding the status and rights of different categories of residents on the territory of Crimea.
- Ensure that no discrimination arises out the different legal status of residents of Crimea. All residents of Crimea should have access to their rights and entitlements based on presenting valid identity documentation, including Ukraine passports.
- The authorities exercising *de facto* control of Crimea should ensure that domestic and international observers gain unimpeded access to monitor the human and minority rights situation on the peninsula.

## V. ANNEXES

### ANNEX I Letter from the Ukrainian Minister of Foreign Affairs



Permanent Mission of  
Ukraine  
to the International  
Organizations in Vienna

416

Vienna, 03 March 2014

Your Excellencies,

Please find enclosed herewith the letter of Acting Minister for Foreign Affairs of Ukraine Andrii Deshchychia extending the invitation on behalf of the Government of Ukraine to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE High Commissioner on National Minorities (HCNM) to send a Human Rights Assessment Mission (HRAM) to Ukraine in order to establish the facts and circumstances regarding the presence of foreign armed units on the Ukrainian territories, which effectively limits the extent to which the human right can be exercised by Ukrainian citizens of various ethnic origins in the affected territories.

I hope that both Institutions will be able to positively respond to this invitation in a speedy manner.

Please accept, Excellencies, the assurances of my highest consideration.

Enclosure: as stated, on 1 page.

Sincerely yours,

Ihor Prokopchuk  
Ambassador,  
Permanent Representative of Ukraine to the  
International Organizations in Vienna

H.E. Mr. Janez Lenarčič  
Ambassador, Director of the OSCE Office for  
Democratic Institutions and Human Rights  
Warsaw

H.E. Ms. Astrid Thors  
OSCE High Commissioner on National Minorities  
The Hague

Permanent Mission of Ukraine to the International Organizations in Vienna  
Operrring 3-5, 3<sup>rd</sup> Floor, 1010 Vienna, Austria  
tel +43 (0)1 5910470 e-mail: ukraine@oib.at

**MINISTER FOR FOREIGN AFFAIRS OF UKRAINE**

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“ 3 ” March 2014

Kyiv

**Excellency,**

I have the honor to extend an invitation on behalf of the Government of Ukraine to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE High Commissioner on National Minorities (HCNM) to send a Human Rights Assessment Mission (HRAM) to Ukraine in order to establish the facts and circumstances regarding the presence of foreign armed units on the Ukrainian territories that effectively limits the extent to which the human rights can be exercised by Ukrainian citizens of various ethnic origins (Ukrainian, Russian, Crimean Tatar and others) in the affected territories.

This assessment is necessary to provide true information about the state of implementation by OSCE participating states, including those involved in the current crisis situation, particularly in Crimea, of its OSCE commitments.

We stand ready to provide all possible assistance to the work of the Human Rights Assessment Mission in Ukraine and call other states to facilitate the work of the Mission.

Availing myself of this opportunity, I would like to reiterate the assurances of my highest consideration.

**Sincerely,**



**Andrii DESHCHYTSIA**

**His Excellency  
Ambassador Janez LENARČIČ  
Director of the OSCE ODIHR**

**Warsaw**

**Her Excellency  
Ms. Astrid THORS  
the OSCE High Commissioner on National Minorities**

**The Hague**

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## **ANNEX II List of official ODIHR/HRAM interlocutors**

### **Autonomous Republic of Crimea**

1. Assistant to the Chief Commander of the Ukrainian Naval Forces, Marina Kaneluk.
2. Assistant to the Chief Commander on legal work, Head of the Legal Department of the Naval Forces of Ukraine, Leonid Zalubovski.
3. Assistant to the Representative of Ukrainian Parliament Commissioner for Human Rights (Ombudsperson) in Crimea, Natalia Sergeevna
4. Deputy Chairman of the Supreme Council of Crimea and at the same time First Deputy Chairman of the Party “Russian Unity”, Sergei Tsekov.
5. Deputy Representative of the Ministry of Foreign Affairs of Ukraine in Crimea, Sergiy Tatartsev.
6. Head of Bakhchisarai Regional State Administration, Ilmi Umerov
7. Head of the Mejlis of the Crimean Tatars, Refat Chuburov.
8. Mayor of Bakhchisaray city, Konstantyn Rubanenko
9. Press Secretary of the Mejlis of the Crimean Tatars, Lilia Muslimova.
10. Representative of the Ombudsman of Ukraine in Crimea, Natalia Sharova

### **Donetsk**

1. Acting Chair of Administrative Court of Appeals in Donetsk, Raissa Khanova.
2. Acting Chair of District Administrative Court of Donetsk, Oleg Konichenko.
3. Councillor of Deputy of the Head of Regional State Administration, Sergey Zavialov.
4. Deputy of the Head of Regional State Administration, Oleksandr Fomenko,
5. First Deputy of Regional Police Department, Valeriy Stanchenko.



6. Former Head of Regional State Administration of Donetsk, Mr Shishatskiy.
7. Head of Regional State Administration of Donetsk, Sergey Taruta.
8. Secretary of Donetsk City Council, Serghei Bogachev.

### **Kharkiv**

1. Acting Deputy Head of the Kharkiv Regional State Administration, Igor Rainin.
2. Deputy Head of Department of Foreign Economic Liaison and International Relations in Kharkiv Regional State Administration, Denis Tkachev.
3. Deputy Head of Kharkiv Regional State Council, Ludmila Davidova.
4. Member of the Kharkiv Regional Parliament and member of the Permanent Commission of Human Rights, Freedom of Speech and Information, Vladimir Alekseev.
5. Regional representative of Ukrainian Parliament Commissioner for Human Rights (Ombudsperson) in Kharkiv, Natalia Zurab.
6. Deputy Head of Mayor of city Kharkiv, Igor Terekhov.

### **Kherson**

1. Head of Kherson Regional State Administration, Yuriy Odarchenko.

### **Kyiv**

1. First deputy of Secretary of National Security and Defense Council of Ukraine Viktor Chumak.
2. Member of Ukrainian Parliament, Parliamentary Committee on Human Rights, Ethnic Minorities and Interethnic Relations, Mustafa Dzhemilev.
3. Members of Ukrainian Parliament Defence Committee members headed by MP Volodymyr Lytvyn.
4. Ukrainian Parliament Commissioner for Human Rights (Ombudsperson), Valeria Lutkovska.

## **Mykolaiv**

1. Adviser on International Relations in Regional State Administration, Igor Meisner
2. Deputy Head of Mykolaiv Regional State Administration, Volodymyr Lusta.
3. Head of the Department of Social Protection of Mykolaiv Regional State Administration, Olga Syvoplyas.
4. Member of the Mykolaiv Regional State Council, Oksana Janiszewski.
5. Specialist in the Department for National Minorities and Religions in Mykolaiv Regional State Administration, Viktor Chebatarov.

## **Luhansk**

1. Deputy Head of Department for External Relations in Luhansk Regional State Administration, Svetlana Bondar.
2. Deputy Mayor of the city Luhansk, Zaza Zukhbaya.
3. First Deputy Head of Luhansk Regional State Administration, Irina Verigina.
4. Head of Department of Internal and Information Policy of Luhansk City State Administration, Oksana Tereshchenko.
5. Head of Economic Department, Luhansk City State Administration Svetlana Drobotenko.
6. Head of Main Section of the Regional Police under Ministry of Internal Affairs of Ukraine in Luhansk Oblast, general Vladimir Guslavskiy.
7. Member of Luhansk Regional State Administration Council, Maksim Chelenko.
8. Member of Luhansk Regional State Administration Council, Yurii Khovolov.
9. Mayor of the city Luhansk, Serhii Kravchenko.
10. Regional coordinator for the contact with citizens of the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson), Valeriy Arkhipov.

## Lviv

1. Chief of Halitsky District Police Department, based in Lviv, Ivan Ivanochko.
2. Deputy of Mayor of city Lviv, Oleh Berezuyk
3. Deputy of Head of Lviv Regional State Council, Andriy Holyavka.
4. Deputy Head of the Department of Social Protection of Lviv Regional State Administration, Oksana Yakovets.
5. Head of Office of Western Regional Border Guard Service of Ukraine, Igor Andrusik.
6. Head of the Department of Culture, Nationalities and Religions of Lviv Regional State Administration, Natalia Gamkalo.
7. Head of the Department of International Relations in Lviv Regional State Administration, Pavlo Hobzey
8. Head of the Department of Legal and Human Rights of Lviv Regional State Council, Oleg Risniy.
9. Head of the Department of Social Protection of Lviv Regional State Administration, Vasil Martynyak.
10. Head of Lviv Regional State Administration, Irina Sekh.
11. Head of Lviv Regional State Council, Petro Kolodii.
12. Member of border control unit, Western Regional Border Guard Service of Ukraine, Gennadiy Torop.
13. Member of Department of Nationalities and Religions of Lviv Regional State Administration, Vera Otich.
14. Representative of Department of International Relations, Western Regional Border Guard Service of Ukraine, Mikhail Slobodynuk.
15. Responsible for work with foreigners in Western Regional Border Guard Service of Ukraine, Igor Kaval.
16. Representative of the Ministry of Foreign Affairs of Ukraine in Lviv, Irina Sagay.

## Odessa

1. Deputy Head of Department of Foreign Economic Activity and European Integration in Odessa Regional State Administration, Anastasia Andronova.
2. Deputy Head of Department of Culture and Tourism, Nationalities and Religions and Head of Sub-Department of Nationalities and Religions in Odessa Regional State Administration, Elena Petrova.
3. Deputy Head of Odessa Regional State Administration, Serhiy Kalinchuk.
4. First Deputy of Regional Police Department, Valeriy Stanchenko.
5. Head of Odessa Regional State Administration, Volodymyr Nemyrovskiy.
6. Representative of Ministry of Foreign Affairs Regional office in Odessa (AoR: Kherson, Kirovograd, Mykolaiv, Odessa, Vinnytsya regions), Anna Goncharova.
7. Representative of State Border Guard Service of Ukraine, Southern Regional District, International Cooperation and Border Representation Activity Sector, Fedir Belinskyi.