

Office of the United Nations  
High Commissioner for Human Rights

Report on the human rights situation in  
Ukraine

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Annex I: Concept Note for the deployment of the UN human rights monitoring mission in Ukraine

## I. EXECUTIVE SUMMARY

1. During March 2014 ASG Ivan Šimonović visited Ukraine twice, and travelled to Bakhchisaray, Kyiv, Kharkiv, Lviv, Sevastopol and Simferopol, where he met with national and local authorities, Ombudspersons, civil society and other representatives, and victims of alleged human rights abuses. This report is based on his findings, also drawing on the work of the newly established United Nations Human Rights Monitoring Mission in Ukraine (HRMMU).

2. Underlying human rights violations, including lack of accountability for past human rights violations committed by security forces, the lack of independence of the judiciary and a perceived denial of equal rights and protection, including through mismanagement of resources and through corruption, lack of a system of checks and balances and the lack of free elections, were among the root causes of the popular protests that took place throughout Ukraine, and in particular on Independence Square (Maidan) from November 2013 to February 2014. While the protests were initially triggered by the Yanukovich Government's refusal to sign an Association Agreement with the European Union, the excessive use of force by the Berkut special police and other security forces at the end of November initially against largely peaceful protestors on the Maidan led to a significant radicalisation of the protest movement. The violence on 30 November transformed the protests, from demonstrations in favour of signing the EU Association Agreement, to include demands to reform the system of authority and punish those responsible. Serious human rights violations were committed including during the Maidan protests, which resulted in the death of 121 individuals (this number includes 101 Maidan protesters, 17 officers of the internal affairs/police, 2 were members of NGO "Oplot" that attacked the Maidan in Kharkiv and a Crimean Tatar found dead). There have been also numerous reports of torture and ill-treatment of protesters. The Maidan protest movement<sup>1</sup> also revealed historical, but still relevant divisions within Ukrainian society and long-standing grievances with respect to the lack of good governance and the rule of law of previous Governments.

3. Since the Government took power at the end of February 2014, tensions have decreased, along with the allegations of human rights violations. However, some developments could have a detrimental impact if not promptly addressed, especially in light of the presidential elections scheduled for 25 May.

4. For instance, the advocacy of national, racial or religious hatred by some political parties, groups and individuals, that constitutes incitement to discrimination, hostility or violence and nationalistic rhetoric witnessed during the Maidan protests may have an adverse impact on the situation in Ukraine. An attempt by the new ruling coalition in Parliament on 23 February 2014, to repeal the Law on the Principles of State Language Policy, and thus make Ukrainian the sole State language at all levels, was seen as a hostile move against the Russian-speaking minority. Acting President Turchynov however declined to sign and approve the Parliament's decision to repeal the law, on 2 March 2014. The drafting of new language legislation must not be hurried and must include the active involvement of representatives of minorities at the very outset.

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<sup>1</sup> The Maidan protest movement refers to the various groups that participated in demonstrations and centred on Independence (Maidan) square in the centre of the Kyiv. This initially included persons demonstrating for Ukraine to enter the Association Agreement with the European Union, hence the fact that there is often a reference made to "Euro-Maidan". However, over time the movement included a number of other elements, including anti-Government, anti-corruption, far right wing groups and others, some of whom did not necessarily share the same pro-European aspirations.

5. Similarly, in a bid to break away from the past, the Parliament has taken initial steps to adopt legislation regarding a lustration policy that would apply to some public officials affiliated to the previous Government. There are concerns that this law, if adopted, could be used to vet out large numbers of officials. It is essential that any new legislation and policies be adopted through an approach based on the rule of law and human rights, without any spirit of revenge. It is crucial to ensure that human rights violations are not dealt with any form of human rights violations.

6. In Crimea, a number of concerns relating to human rights could be observed before and during the 16 March referendum. On 27 March, the General Assembly in paragraph 5 of resolution 68/262 concluded that the referendum “had no validity”. In addition to this, the presence of paramilitary and so called self-defence groups as well as soldiers in uniform without insignia, widely believed to be from the Russian Federation, was not conducive to an environment in which voters could freely exercise their right to hold opinions and the right to freedom of expression. There have also been credible allegations of harassment, arbitrary arrest, and torture targeting activists and journalists who did not support the referendum. Furthermore, seven persons were reported as missing; the HRMMU is verifying their whereabouts. The situation of the Tatar community is also one that remains somewhat ambiguous following the referendum. While the Tatar community was promised numerous concessions, including Government positions as well as the recognized status as indigenous peoples, the majority of the members of the community chose to boycott the referendum.<sup>2</sup> Statements from authorities in Crimea and officials in the Russian Federation indicate plans to relocate or resettle within Crimea some of those Crimean Tatars who in protest against the slow progress of the restitution of land lost following forced relocation of their land, have occupied land illegally in recent years.

7. In eastern Ukraine, where a large ethnic Russian minority resides, the situation remains particularly tense with ethnic Russians fearing that the central Government does not represent their interests. Although there were some attacks against the ethnic Russian community, these were neither systematic nor widespread. There are also numerous allegations that some participants in the protests and in the clashes of the politically opposing groups, which have already taken at least four lives, are not from the region and that some have come from the Russian Federation.

8. Irrespective of the fact that systemic shortcomings may be only remedied in the longer-term, it will be important to immediately take initial measures to build confidence between the Government and the people, and among the various communities, and reassure all people throughout Ukraine that their main concerns will be addressed.

9. In addition to combatting speech that advocates national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and introducing impartial reporting on the on-going human rights situation, it will be critical to counter the deepening divide in the country by ensuring inclusivity and equal participation of all in public affairs, including political life. In this respect, legislation on minorities, in particular on linguistic rights, should be adopted following full consultation with all those concerned and according to relevant international and regional human rights standards.

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<sup>2</sup> OHCHR was informed by representatives of Crimean Tatars that no more than 1000, out of a population of 290,000-300,000, participated in the 16 March referendum.

10. While the situation requires attention in particular in eastern Ukraine and in Crimea, there are positive changes underway or under reflection. There are, for example, indications of a willingness to ensure a break with past injustices and to elaborate a new vision for Ukraine's future. Strengthening the rule of law, democracy and human rights will be key to any lasting change. Legislative and institutional reforms should be carried out in a comprehensive, transparent and consultative way, and therefore not be rushed. Furthermore, they should be sustained through consistent and accountable implementation.

11. The international community, including the United Nations, can play a role in supporting an environment where the human rights of all, including minorities and indigenous peoples, may be best promoted and protected. In particular, it will be important to ensure that the 25 May elections take place in an environment conducive to free and fair elections. Without an independent, objective and impartial establishment of the facts and circumstances surrounding alleged human rights violations, there is a serious risk of competing narratives being manipulated for political ends, leading to divisiveness and incitement to hatred.

12. Among other means to address these challenges and at the request of the Government of Ukraine, OHCHR established the UN Human Rights Monitoring Mission in Ukraine (HRMMU). This mission became operational on 15 March and will consist of 34 staff, including national staff, deployed in Lviv, Kharkiv, Odesa and Donetsk, and seeks also the presence of a sub-office in Simferopol. In the meantime, HRMMU continues to monitor the situation in Crimea, in accordance with the General Assembly resolution 68/262 of 27 March on the Territorial Integrity of Ukraine.

13. In addition to monitoring the human rights situation, the Office of the United Nations High Commissioner for Human Rights stands ready to provide technical assistance for legislative and other reforms.

## II. INTRODUCTION

### A. Context

14. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has been closely following the human rights situation in Ukraine since November 2013, when mass protests started in Kyiv further to the Government's announcement that it would not sign the Association Agreement with the European Union (EU). These protests subsequently spread to other parts of the country, and by mid-February had escalated into violent clashes between riot police and other security forces and protesters.

15. The excessive use of force by the Berkut special police and other security forces was met with impunity and led to a significant radicalisation of the protest movement. Over time, protest called for the resignation of President Yanukovich and his government, and for overall change. Violence escalated after 16 January 2014, following the adoption of a set of more stringent anti-protest laws. Anti-government demonstrators occupied several government buildings, including the Justice Ministry and the Kyiv City Hall, and demonstrations spread across the western and central parts of Ukraine. The violent clashes that occurred between security forces and protesters from 18 to 20 February, including the actions of snipers, resulted in the death of 121, mostly protesters, but also law enforcement officials. Hundreds of people were injured and had to be hospitalised, and some of them remain in critical condition. According to the General Prosecutor's Office of Ukraine, more than 100 persons remain unaccounted for as at 2 April.

16. On 21 February, President Yanukovich and opposition leaders signed a compromise agreement setting out elections by the end of the year and a return to the 2004 Constitution. On the same day, the Ukrainian Parliament reinstated the 2004 Constitution. After President Yanukovich's departure from Kyiv, on 22 February, the Parliament decided that he had "withdrawn from performing constitutional authorities" and decided to hold presidential elections on 25 May<sup>3</sup>. In the meantime, Parliament elected Mr Oleksandr Turchynov as Speaker and thus acting President of Ukraine. A new Government was formed on 26 February.

17. While a number of domestic and international initiatives were undertaken during the Maidan events, they did not manage to prevent conflict escalation and bloodshed. The departure of former President Yanukovich put an end to the deadly confrontations, but daunting new challenges emerged.

### **Events in Crimea**

18. Following the dismissal of President Yanukovich at the end of February, unidentified armed men began taking over strategic infrastructures in Crimea. Ukrainian Authorities alleged that the armed men were Russian armed forces and/or allied local paramilitary groups.

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<sup>3</sup> After long discussions mediated by EU foreign representatives, President Yanukovich stated on 21 February that he had reached a deal with the opposition which would "settle the crisis". On 22 February 2014, 328 of 447 members of the Ukrainian parliament (MPs) voted to "remove Viktor Yanukovich from the post of president of Ukraine" on the grounds that he was unable to fulfill his duties<sup>1</sup> and to hold early presidential elections on 25 May. The vote came an hour after Mr. Yanukovich stated in a televised address that he would not resign. He subsequently declared himself as "the legitimate head of the Ukrainian state elected through a free vote by Ukrainian citizens. However, later that day he fled the capital for Kharkiv, then travelled to Crimea, and eventually to southern Russia.

The Russian Government insisted that the forces did not include Russian troops, but only local self-defence groups. As Russia refused to recognize the new Government of Ukraine, but instead recognized the legitimacy of former President Victor Yanukovich, his request for intervention was taken into consideration by the Russian authorities.

19. On 27 February 2014, in a contested situation including the presence of armed persons around its building, the Parliament of the Autonomous Republic of Crimea dismissed the former local government and appointed Mr Sergey Aksyonov as “prime minister”. The same day, it also decided to hold a referendum on 25 May 2014, on the future status of Crimea. The Ukrainian Central Electoral Committee declared this decision as contrary to the Ukrainian Constitution. On 14 March the Constitutional Court of Ukraine ruled that the decision to hold a referendum was unconstitutional. On 15 March the Ukrainian Parliament terminated the powers of the Verkhovna Rada. The date of the referendum was brought forward first to 30 March, and finally to 16 March. At the referendum, voters were asked to choose between two options: firstly, “Do you support the reunification of Crimea with Russia with all the rights of the subject of the Russian Federation?”; or, secondly, “Do you support the restoration of the 1992 Constitution of the Republic of Crimea and the status of the Crimea as part of Ukraine?”. On 11 March, the Supreme Council of Crimea voted to secede from Ukraine.

20. On 1 March, the Federation Council of the Russian Federation (upper chamber of the Russian Parliament) approved a request from President Vladimir Putin permitting the usage of Russian armed forces to protect the Russian speaking population. According to reports, the Russian Federation also started boosting its military presence in Crimea. Unidentified armed men, without military insignias, took control of the administrative border between Crimea and the rest of Ukraine and blocked several Ukrainian military bases. Ukrainian Authorities alleged that the armed men were Russian armed forces and/or allied local paramilitary groups. The Russian Government justified its involvement to be in response to the will of the local population and as an effort to protect ethnic Russians and Russian-speakers in the region.

21. On 5 March 2014, the Shevchenko district court of Kyiv issued arrest warrants for Mr. Sergey Aksyonov and the Chair of the Supreme Council (Crimean Parliament), Vladimir Konstantinov. The Security Service of Ukraine was requested to bring them to court. Ukraine’s new Government also warned the Crimean Parliament that it faced dissolution unless it cancelled the referendum. In response, the authorities in Crimea stated that the new Government in Kyiv came to power illegitimately through a coup d’état. On 11 March, they also closed the airspace over Crimea for flights from the rest of Ukraine. On 15 March, the Ukrainian Parliament took the decision to dissolve the Supreme Council of Crimea.

22. On 16 March, the Supreme Council of Crimea voted to secede from Ukraine, and held a referendum on whether Crimea should join the Russian Federation or remain part of Ukraine with the degree of autonomy it had in 1992. The referendum resulted in a reported turnout of over 81%, where based on reports over 96% of voters supported Crimea joining the Russian Federation. However, the OHCHR delegation received many reports of vote rigging. Ukraine refused to recognize the results of the Crimean referendum, claiming that it was in violation of its Constitution.

23. On 27 March, the UN General Assembly adopted resolution 68/262 upholding the territorial integrity of Ukraine and underscored that the referendum held on 16 March 2014 had no validity. In addition, the resolution’s operative paragraph 4 welcomed the UN and OSCE assistance to Ukraine in protecting the rights of all persons, including minorities.

## **B. Universal and regional human rights instruments ratified by Ukraine**

24. Ukraine is a party to most core international human rights instruments, including: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

25. Ukraine is a party to a number of regional European treaties, including: the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); Protocol No. 6 to the ECHR concerning the abolition of the death penalty in times of peace; Protocol No. 12 to the ECHR concerning the general prohibition of discrimination; Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances; Framework Convention on the Protection of National Minorities; the European Charter for Regional and Minority Languages; the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment; the Council of Europe Convention on Action against Trafficking in Human Beings.

26. It has not yet become a party to the following instruments: the International Convention for the Protection of All Persons from Enforced Disappearance; the international Convention on the Protection of the Rights of All Migrant Workers and Members of their families; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the third optional Protocol to the Convention on the Rights of the Child; the Rome Statute of the International Criminal Court; the 1954 Convention relating to the Status of Stateless Persons; and the 1961 Convention on the Reduction of Statelessness.

27. Ukraine has not availed itself of the right of derogation under article 4 of the International Covenant on Civil and Political Rights, and therefore the rights contained therein are fully applicable.

## **C. UN human rights response**

28. In light of the deteriorating situation, it was assessed that the UN can play an important role in deescalating tensions, including through human rights monitoring. Assistant Secretary-General (ASG) Ivan Šimonović, planned to undertake a mission to Ukraine in March, which was requested by the Secretary-General to be moved forward due to the rapid deterioration of the situation. Several high-level UN visits took place from mid-February to mid-March, including respectively, Senior Adviser Robert Serry; Deputy Secretary-General, Jan Eliasson; and Under-Secretary-General for Political Affairs Jeffrey Feltman and the Secretary-General, Ban Ki-Moon. The latter two visits took place at the same time as that of ASG Šimonović.

29. The UN offers a neutral platform and professional expertise which can add significant value to the efforts to ensure that human rights are respected and protected in Ukraine. Independent monitoring and analysis of the human rights situation will outline technical, legal or other assistance needs, which will complement recommendations received by Ukraine from UN human rights mechanisms, and may contribute to addressing the root causes of the violence. These endeavours can and should be undertaken in cooperation with regional organizations, including the OSCE and the Council of Europe.

30. ASG Šimonović mission to Ukraine had the following overall objectives: to assess the human rights situation; to raise the issue of accountability and bring visibility to human rights violations and concerns; to make strong calls for the protection of human rights (including those of minorities); and to place human rights promotion and protection as a critical factor in deterring pre-electoral, electoral and post-electoral violence and possible further violations.

31. ASG Šimonović arrived in Kyiv on 6 March and left on 18 March. The delegation led by the ASG visited Kyiv, Kharkiv, and Lviv. It sought access to Crimea, but was not able to go, as the authorities informed the delegation that they would neither receive the mission nor ensure its security. On 14 March, a second request for access to Crimea was sent to the authorities. They then confirmed their readiness to meet with ASG Šimonović, with a view to discussing measures for human rights protection, which could lead to the de-escalation of tension. In all locations, the ASG and his delegation met with stakeholders from across the cultural, ethnic, linguistic and political spectrum - high-level officials, the Ombudsperson, civil society organizations representing various communities, representatives of regional organizations and the diplomatic community. Information from these meetings as well as documents gathered form the basis for this report. The delegation met and heard accounts from victims of human rights violations committed during the demonstrations in Kyiv and elsewhere. The delegation also met with the UN Country Team (UNCT). On Friday 14 March, ASG Šimonović held a press conference in Kyiv and another through VTC in New York. The same day, he also briefed representatives of the Kyiv diplomatic community on the preliminary findings of his mission. On 19 March 2014, ASG Šimonović briefed the Security Council on his mission.

32. ASG Šimonović undertook a second mission to visit Crimea from 21 to 22 March.

33. In the meantime, OHCHR deployed a Human Rights Monitoring Mission in Ukraine (HRMMU) as of 14 March, upon the invitation of the Government of Ukraine. The objectives of the HRMMU are to: monitor the human rights situation in the country and provide regular, accurate and public reports by the High Commissioner on the human rights situation and emerging concerns and risks; recommend concrete follow-up actions to relevant authorities, the UN and the international community on action to address the human rights concerns, prevent human rights violations and mitigate emerging risks; establish facts and circumstances and conduct a mapping of alleged human rights violations committed in the course of the demonstrations and ensuing violence between November 2013 and February 2014 and to establish facts and circumstances related to potential violations of human rights committed during the course of the deployment.

34. Mr. Armen Harutyunyan was appointed to lead the mission. Nine international staff members are deployed in Ukraine as of early April 2014. The entire team, once fully operational will comprise 34 staff, including national professional staff and 12 drivers. HRMMU is currently deployed in Lviv, Kharkiv, Odesa and Donetsk and it seeks also the presence of a sub-office in Simferopol. In the meantime, HRMMU continues to monitor the situation in Crimea, in a manner consistent with the General Assembly resolution 68/262 of 27 March 2014, on the Territorial Integrity of Ukraine.

#### **D. Methodology**

35. The present report contains preliminary findings on the human rights situation in Ukraine up to 2 April 2014. It is based on the two missions of ASG Ivan Šimonović to Ukraine (from 6 to 18 March and from 21 to 22 March to Crimea) and on the first weeks of

operation of HRMMU. Although information continues to be gathered and verified, the present report with its preliminary findings is being publicly released already now with a view to contributing towards establishing the facts and defusing tensions. Impartial reporting on the human rights situation can help not only to trigger accountability for human rights violations, but it also aims at the prevention of manipulation of information, which serves to create a climate of fear and insecurity and may fuel violence. This is especially important with regard to eastern Ukraine.

**36.** In accordance with its objectives, HRMMU is gathering and verifying information with regards to particular cases of human rights violations and, more broadly, the overall human rights situation. Information is then assessed and analysed, thus contributing to accountability and reinforcing State responsibility to protect human rights. HRMMU is providing reports on the basis of information verified as credible and from reliable sources, and is advocating for measures to be taken by respective state institutions with a view to providing appropriate remedies. HRMMU is also undertaken in line with the Secretary-General's Rights Up Front Plan of Action, to ensure that the UN is aware of the human rights context and that OHCHR regularly provides analysis of main human rights concerns and risks of violations, and that a UN strategy is developed as necessary to address the situation at country, regional and global levels. The present report, in line with the UN General Assembly resolution on the "Territorial Integrity of Ukraine", underscores also the obligation of authorities in Crimea to ensure the protection of all the rights to which individuals there are entitled within the context of Ukraine's ratified universal and regional human rights instruments.

### **III. UNDERLYING HUMAN RIGHTS VIOLATIONS**

#### **A. Corruption and violations of economic and social rights**

**37.** Corruption remains one of the most serious problems in Ukraine and has affected all human rights, whether civil, political, economic or social, exacerbated inequalities, eroded public trust in state institutions including the justice system, led to impunity and undermined the rule of law. It may be noted that in 2013, Transparency International ranked Ukraine 144<sup>th</sup> out of 176 countries (the country being ranked first is considered the least corrupt).

**38.** There has been only patchy implementation of international commitments to tackle corruption made under the UN Convention against Corruption, which entered into force in December 2005 and was ratified by Ukraine four years later. A National Anti-Corruption Strategy for 2012 – 2015 was adopted by presidential decree in October 2011, but there is currently no comprehensive anti-corruption law in Ukraine. The Ministry of Justice informed the OHCHR delegation that a draft law containing provisions applicable to corruption in both the public and private sectors would be presented by the end of March.

**39.** Corruption has disproportionately affected the poor and the most vulnerable. It impacts negatively on the enjoyment by all of economic and social rights, including the right to health services. Health service allocations make up 3.5% of the country's GDP, which falls well short of the minimum recommended by the WHO (7%). The poorest segment of the population cannot afford costly treatment in a situation where the country has no medical insurance system.

**40.** The Ministry of Health supports reform of management of medical services to move away from a centralized medical system and enable greater medical self-governance.

Insufficient salaries for employees in the health service have led to emigration of qualified staff. It has also affected professional competency and fed corruption practices, thus leading to inequalities in access to health care.

41. More generally, the socio-economic situation in Ukraine is of concern and constitutes one of the causes of recent events. In its 2008 review of the implementation of the International Covenant on Economic, Social and Cultural Rights in Ukraine, the Committee on Economic, Social and Cultural Rights expressed a number of concerns. In particular, it referred to a finding that 28 per cent of the population reportedly lived below the official poverty line, that the minimum wage does not provide an adequate standard of living, and that unemployment benefits amount to 50 per cent of the minimum subsistence level. It also expressed concern at the inadequate level of social assistance, and that several hundreds of thousands of children below the age of 15 were working in the informal and illegal economy and several thousands of children living in the street.

42. These concerns should constitute priorities for any new Government in Ukraine in the coming months and years. The Ukrainian Authorities must, as a matter of priority, put in place measures to eradicate corruption, while ensuring good governance and the rule of law. In addition, efforts should be made to redress disparities in standards of living and ensure equal access to, and quality of, health, education, employment and social support structures for all, including marginalised communities throughout the country.

#### **B. Lack of accountability for human rights violations and rule of law institutions**

43. The justice system in Ukraine has traditionally been marred by systemic deficiencies, including corruption, lack of independence and a lack of equality of arms between prosecution and defence in criminal proceedings. Other major concerns relate to the excessive use and length of pre-trial detention, numerous reports of cases of torture and ill-treatment, a significant reliance on suspects' confessions during criminal proceedings, insufficient or inadequate legal reasoning in indictments and overall underfunding of the justice system.

44. A new Code of Criminal Procedure (CCP) entered into force in November 2012. The new code responds to some of the major concerns expressed by UN human rights mechanisms (e.g. the UN Human Rights Council, Universal Periodic Review, or the UN Human Rights Committee). It introduces an adversarial system; supports the presumption of innocence, including the need to specify the circumstances suggesting reasonable suspicion that would justify a deprivation of liberty; and provides increased safeguards for timely access of detainees to a lawyer and a doctor. Alternative measures to deprivation of liberty are also provided.

45. A round-table discussion organized in November 2013 by the Ombudsperson's office on the occasion of the first anniversary of the entry into force of the new CCP identified the substantial decrease in the number of pre-trial detentions as a clear achievement since the entry into force of the new code. However, dozens of people who participated in the Maidan demonstrations were arrested and held in police custody and lengthy pre-trial detention, subjected to torture and ill-treatment, and deprived of their right to a fair trial and due process, in violations of the new CCP.

46. Other challenges remain. The provisions of the new CCP are not applied to all cases. Those opened before November 2012 are still processed under the former Code. The lack of

effective implementation of the new CCP provisions and examples of political interference in legal proceedings (“new provisions, old instructions”) also constitute a challenge.

47. According to the current provisions of the Constitution, judges are appointed for an initial period of five years by the President, upon recommendation of the High Council of Justice, based on a proposal from the High Qualifications Commission for Justice. After this five-year probation period, they become eligible for life tenure by Parliament, upon proposal of the High Qualifications Commission. This system opens the possibility for undue influence on the decision-making of judges during their probation period. The role and composition of the High Council of Justice and High Qualifications Commission as currently provided for in the Constitution are also a cause for concern. The Minister of Justice is represented on the High Qualifications Commission and can exercise considerable influence on the appointment of, as well as on disciplinary procedures against, judges. The High Council of Justice is composed of 20 members, the majority of whom have institutional links to the executive branch.

48. It should be noted that the CCP in place until 2012, conferred considerable discretion to the Prosecutor throughout criminal proceedings, including with regard to decisions on pre-trial detention. In addition, the public prosecutor’s multiplicity of roles is also a cause of concern raised by many international human rights mechanisms. Aside from his responsibility to conduct criminal investigations and prosecute persons formally accused, s/he oversees the legality and human rights compliance of those investigations.

49. Complaints and allegations of torture or ill-treatment are examined by the Public Prosecutor’s office which is reluctant to pursue complaints and, through its work on criminal investigations, has very close links with police forces. Article 216 of the new CCP provides for the creation within five years (as of 2012) of a State Bureau of Investigation to investigate allegations of human rights violations committed by judges, law enforcement officers and high-ranking officials. However, no progress has yet been made towards its creation.

50. In March 2014, the Ukrainian Parliament prioritized the adoption of legislation related to prosecution, anti-corruption and law enforcement reform.

51. The prevalence of impunity for human rights violations perpetrated by law enforcement forces has been an issue for a long time in Ukraine. An overall reform of the security sector needs to be undertaken. In this context, law enforcement officers should receive adequate training with regard to international human rights norms and standards. All acts of torture or ill-treatment should be investigated while also condemned firmly and publicly by the Ukrainian Authorities.

52. There has been a culture of effective impunity in Ukraine for the high level of criminal misconduct, including torture and extortion, often committed by the police in the course of their work. Structural shortcomings, widespread corruption, close functional and other links between prosecutors and police, non-existent or flawed investigations into criminal acts committed by the police, harassment and intimidation of complainants, and the subsequent low level of prosecutions all fuel this lack of accountability for human rights violations. There is a large number of detentions, many of which are not registered. Allegations of torture may not be investigated effectively and promptly and complaints of such violations were generally ignored or dismissed for alleged lack of evidence.

## **IV. HUMAN RIGHTS VIOLATIONS RELATED TO THE MAIDAN PROTESTS**

### **A. Violations of the right to freedom of assembly**

53. There have been notable failures to respect the right to freedom of peaceful assembly in line with international human rights standards since protests started in November 2013. In some cases, local authorities sought to ban or restrict public gatherings through court decisions. On 22 November, the Kyiv district administrative court banned the use of “temporary structures such as tents, kiosks and barriers” from 22 November to 7 January. Local authorities in Odesa applied to a court to ban a demonstration that had attracted several hundred people on 23 November. On 24 November, the court endorsed the ban and the remaining demonstrators were violently dispersed by the police.

54. The Ukrainian Authorities attempted to disperse the demonstration in Kyiv twice, on 30 November and on 11 December, respectively. On 30 November, the Authorities justified the decision to disperse the demonstration by claiming that a New Year tree needed to be erected in the square. On 11 December, the Minister of Interior stated that the decision to remove barricades from the roads surrounding the Maidan was in response to citizens’ complaints that the demonstration was blocking traffic. There have also been reports of individuals having been prevented from attending demonstrations or who were harassed for having done so.

55. While article 39 of the Ukrainian Constitution guarantees freedom of assembly, no post-independence laws regulate it. In the absence of such a law, courts have referred to local authority regulations or to the Decree of the Presidium of the Supreme Soviet of the USSR of 28 July 1988 on the procedure for organizing and holding meetings, rallies, street marches and demonstrations in the USSR.

### **B. Excessive use of force, killings, disappearances, torture and ill-treatment**

56. The first instance of excessive use of force against demonstrators took place in the early hours of 30 November 2013, when 290 riot police officers (known as ‘Berkut’) dispersed Maidan protesters, mainly students and youths. Witness testimony and footage of the incident shows that the riot police used excessive force to clear demonstrators, forced assessed as both indiscriminate and disproportionate, including through chasing and beating demonstrators who ran away. The violence escalated on 1 and 2 December and there were serious clashes in nearby streets between demonstrators and riot police, and an attempt to storm the presidential administration building. At least 50 riot police and hundreds of protestors were injured, and twelve persons detained on charges of “organizing mass disorder”. A third instance of excessive use of force and violent clashes occurred on 10 and 11 December 2013, when the riot police attempted to remove barricades, and left 36 persons hospitalized, including 13 policemen. Violent clashes resumed on 19 January 2014, following the adoption of controversial new laws on 16 January limiting the ability to conduct unsanctioned public demonstrations. Demonstrators, many of whom were linked to the far right wing “Right sector” group, attacked governmental buildings, throwing stones, firecrackers and Molotov cocktails at the police. The response of the police included the use of water cannons, in sub-zero temperatures and live fire, as a result of which five demonstrators were killed.

57. The violence in Kyiv reached its peak between 18 and 20 February 2014, when mass violent clashes took place mainly on Institutskaya Street. During these three days around 90 people were killed, mostly from sniper shots allegedly from rooftops. The new Minister of

Health, Mr. Oleg Musii, indicated to OHCHR that, as chief of the medical services on Maidan, he saw law enforcement officers removing the bodies of individuals who are still unaccounted for. He noted that snipers were aiming to kill (targeting the head and vital organs of the victims) and also depicted cases of police brutality, including beatings of medical staff and preventing medical personnel from attending the wounded. According to information gathered so far, in the period from December 2013 to February 2014, in total 121 people were killed, either as a result of severe beating or gunshots. This number includes 101 Maidan protesters, 17 officers of the internal affairs/police, 2 members of NGO “Oplot” that attacked Maidan in Kharkiv and a Crimean Tatar found dead.

58. Most acts of severe beatings, torture, and other cruel, inhuman or degrading treatment were attributed to the ‘Berkut’ riot police. For example, one demonstrator was stripped naked, roughly pushed around and forced to stand still on the snow in freezing temperatures while a police officer filmed him with a mobile phone. At the same time, there were a number of examples of members of the broad Maidan protest movement around the country taking control of local state administrations and forcing regional governors to sign their applications for resignation letters, while in parallel protesters took over Regional Administration buildings. One example of such actions was from the Right Sector activist Alexander Muzychko, who filmed himself intimidating and physically assaulting the prosecutor of Rivne district on 27 February 2014.<sup>4</sup>

### **C. Accountability and national investigations**

59. The Ukrainian Authorities have committed to shedding light on all cases of excessive use of force and arbitrary killings, including from unidentified snipers, torture, disappearances and other human rights violations that occurred during the Maidan events. There were also cases of abductions by unidentified individuals in or outside hospitals, and persons were later found dead.

60. The newly appointed Prosecutor-General launched investigations into the killings of protesters, including regarding the responsibility of high-ranking officials. An investigation by the Interior Ministry is looking into the fate of persons who disappeared during the protests and cases of abuse of power by law enforcement officials. The OHCHR delegation was informed that a group of 75 victims are included in one single criminal investigation targeting responsibility of former senior officials, including the former President, former Interior Minister and several other officials, while there are also 65 separate cases filed against police for the abuse of power and brutality.

61. While OHCHR was provided with general information about the cases launched by the Office of the Prosecutor-General, it also heard from civil society representatives that some of the victims have not yet been contacted by relevant authorities for investigation purposes. According to NGO sources, there are also concerns regarding the collection and preservation of evidence and forensic examinations which may not have been systematically carried out regarding cases of those killed during recent events. Such examinations would have been essential to help determine criminal responsibility, including with regard to the so-called snipers whose identity and affiliation remains to be clarified. Involvement of international experts can be helpful both in terms of capacity as well as impartiality and credibility. Concerns have been raised by local interlocutors in relation to the fact that the investigation is

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<sup>4</sup> Mr Muzychko died in a police raid in Rivne on 24 March. The exact circumstances will require further investigation.

concentrating exclusively on the issue of persons killed by snipers on 20 February, and that it is not looking into issues related to responsibility for excessive force used on other occasions during the course of demonstrations between November 2013 and January 2014.

## **V. CURRENT OVERALL HUMAN RIGHTS CHALLENGES**

### **A. Protection of minority rights**

62. According to the 2001 census, ethnic Ukrainians constitute about 78 per cent of Ukraine's population, ethnic Russians constitute around 17 per cent, and around 5 per cent belongs to other ethnic groups. While 67 per cent of the population declared Ukrainian as their native language, well over one-third of the population (including many ethnic Ukrainians) speaks Russian in their daily life. Russian is the predominant language of communication in eastern and southern regions of the country, as well as in central Ukraine, including capital Kyiv. As a result, Ukraine is largely a bilingual society, as was confirmed by stakeholders met by the delegation throughout Ukraine. Consequently, nationalistic rhetoric and hate speech may turn the ethno-linguistic diversity into a divide and may have the potential for human rights violations.

63. The diversity of Ukrainian society – as in any society is enriching – and needs to be promoted and protected as a positive factor rather than a divisive one. According to a law adopted in August 2012, any local language spoken by at least a 10% minority could be declared official within the relevant area (oblast, rayon or municipality). Russian was within weeks declared an official language in several southern and eastern oblasts and cities. The 2012 Law also recognised 17 other languages as regional languages.

64. As already noted, Ukraine is a party to the Council of Europe's Framework Convention for the Protection of National Minorities and to the European Charter for Regional or Minority Languages. Both the Advisory Committee on the Framework Convention and the Committee of Experts on the European Charter, while acknowledging progress, have found that there was great scope for improvement regarding the protection of the rights of minorities in Ukraine.

65. In its third opinion released in 2012, for example, the Advisory Committee on the Framework Convention recalled its previous observations on the need to remove legal obstacles to wider representation of national minorities and more effective participation of persons belonging to national minorities in elected bodies. It regretted that the numerous recommendations made by 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, had not been taken into account.

66. The OHCHR delegation met with some interlocutors who conveyed a perception that the right of minorities to participate in political life is not fully taken into account. While the *Batkivshchyna* and *Svoboda* parties, currently part of the new majority coalition, are largely affiliated with western Ukraine, the Party of Regions is seen as prevalently being supported by the population of eastern regions. The composition of the current Cabinet is perceived by some people in eastern and southern Ukraine as not being inclusive, as most of its members come from western Ukraine. According to various reports, a number of high level officials – governors, mayors, and senior police officers – have been replaced by supporters of the new coalition parties, many coming from western Ukraine.

67. A motion of the new ruling coalition in Parliament on 23 February 2014, attempted to repeal the Law on the Principles of State Language Policy, adopted on 3 July 2012, and make Ukrainian the sole State language at all levels. On 2 March, Oleksandr Turchynov, acting President and Chair of the Parliament, declined to sign and approve the Parliament's decision to repeal the law. The 2012 law continues to apply for the time being, but a new law is being prepared. The motion, though never enacted, raised concerns among Russian speakers and other minorities in Ukraine, and was largely considered a mistake. Despite deepening divides between some social groups, there are also civil society actions against it, emphasising the need for tolerance, mutual respect and solidarity. In Lviv, the delegation was heartened by its meeting with Mr. Volodimir Beglov, who had launched a campaign for people across Ukraine to speak Russian for a day in protest against the repeal of the Law on Languages, and in solidarity with Ukraine's Russian-speaking minorities. This individual initiative shows that there is a way forward and that transcending ethnic and linguistic differences is possible in Ukraine.

## **B. The right to freedom of expression, peaceful assembly and the right to information**

68. Demonstrations have continued to take place since early March, in particular in eastern Ukraine. At least four persons were killed as a result of violence that broke out between anti-government protestors and supporters of the Government, who allegedly travelled to Donetsk and Kharkiv from western and central regions of Ukraine. The OHCHR delegation was told by several interlocutors about allegations according to which people were brought in buses and paid to take part in protests and conduct them according to specific scenarios, including causing violent incidents. Some protestors allegedly come from the Russian Federation, according to information received from local authorities and confirmed by the central authorities.

69. Reports have been made of arrests during demonstrations that have taken place during the week starting on 10 March in Donetsk and in Kharkiv<sup>5</sup>. Police moved to clear protests sites and arrested the leader of protests in Donetsk<sup>6</sup>. Since the start of the Maidan protests, and particularly after the beginning of the Crimea crisis, the human right to information needs to be carefully monitored. While the distorted anti-Maidan discourse of the media controlled by the supporters of former President Viktor Yanukovich ended with the latter's dismissal in the end of February, new concerns emerged whereby pro-Maidan politicians or activists would exert pressure on the media to air or voice 'patriotic' discourse. For example, on 18 March 2014, the representative of Svoboda political party MP Igor Myroshnichenko and other Svoboda party members arrived to the National Television Company of Ukraine and intimidated and assaulted its Head Mr Olexander Panteleimonov, forcing him to sign a resignation letter. The Acting Prosecutor General committed to investigating the attack, which was also condemned by the Authorities.

70. The OHCHR delegation was provided with various accounts of events that have been perceived by some interlocutors as indicating attempts to limit freedom of expression. While cases under previous Governments were numerous, recent ones include:

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<sup>5</sup> <http://rus.ozodi.org/archive/news/20140201/11266/11266.html?id=25287436>

<sup>6</sup> [http://obs.in.ua/index.php?option=com\\_content&view=article&id=4859:ukr-world&catid=3:reg-news&Itemid=11](http://obs.in.ua/index.php?option=com_content&view=article&id=4859:ukr-world&catid=3:reg-news&Itemid=11)

- On 13 March, the Pechorski District Court of Kiev placed Mr. Hennady Kernes, Mayor of Kharkiv, under house arrest under three articles of the Criminal Code. However, Mr. Kernes believes that he is a victim of selective justice due to his political views;

- On 10 March, the police arrested Mr. Mikhail Dobkin, former Governor of Kharkiv, allegedly on suspicion of a crime under article 110 (2) of the Criminal Code of Ukraine (“Offence against the territorial integrity and the inviolability of borders of Ukraine, committed by an individual in his capacity as a State official”).

71. The delegation was unable to obtain further clarification on the aforementioned cases, although Mr. M. Dobkin was eventually released. Irrespective of the actual facts of these specific examples, it will be important, in particular in the preparation of the 25 May elections, to ensure free communication of information and ideas about public and political issues between citizens, candidates and elected representatives. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.

72. New restrictions on free access to information came with the beginning of the Crimea crisis. Media monitors indicated a significant raise of propaganda on the television of the Russian Federation, which was building up in parallel to developments in and around Crimea. Cases of hate propaganda were also reported. Dmitri Kiselev, Russian journalist and recently-appointed Deputy General Director of the Russian State Television and Radio Broadcasting Company, while leading news on the TV Channel “Rossiya” has portrayed Ukraine as a “country overrun by violent fascists”, disguising information about Kyiv events, claimed that the Russians in Ukraine are seriously threatened and put in physical danger, thus justifying Crimea's “return” to the Russian Federation. On 6 March, analogue broadcasts of Ukrainian television channels (notably Ukraine's First National Channel, Inter, 1+1, Channel Five etc.) were shut off in Crimea, and the vacated frequencies started broadcasting Russian TV channels. On 12 March, Ukrainian broadcasters blocked three leading television channels – the 1 Channel, NTV and Rossia TV - in Kyiv and other locations in Ukraine. As a result, there are serious concerns that people – both in Russia and Ukraine and especially in Crimea – may be subject to propaganda and misinformation, through widespread misuse of the media, leading to a distortion of the facts. OHCHR shall analyse the recent decision of the Kyiv District Administrative Court to suspend broadcasting by First Channel, Worldwide Network, RTR Planeta, Rossiya 24 and NTV Mir, in line with applicable provisions against advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. During the month of March 2014, in several regions, the authorities have reacted to anti-Government protests and attempts to forcefully take over administrative buildings by detaining perpetrators. In some cases, persons were charged under the Criminal Code article sanctioning offences against the territorial integrity and inviolability of the borders of Ukraine (articles 110). There is concern that this article may sometimes have been used to restrict freedom of speech. On 22 March the local police in Donetsk arrested Mikhail Chumachenko, described as the leader of the “Popular Militia of the Donbas”. Material is reported to have been seized demonstrating Chumachenko’s intention to take over the regional administration building and proclaim himself the ‘people’s governor’. In addition to being charged for attempting to forcefully overthrow the authorities and/or the constitutional order (article 109 of the Criminal Code), he was also charged under article 110.

### **C. Incitement to hatred, discrimination or violence**

73. During its mission, the OHCHR delegation was informed that there had been some cases where members of the Russian minority have been harassed or even attacked, such as in the case of the attack against a member of Parliament. While it seems that these violations are neither widespread nor systemic, the delegation endeavoured to collect information on cases of incitement to intolerance or hatred and related violence against all minorities. It noted the following instances:

- Ukrainian businessman and politician who on 4 March was reportedly detained and beaten by the Crimean police and who allegedly called on the crowds in Independence Square, to “shoot at the heads of Russian citizens who are in Crimea... using snipers”;

- On 10 March, in Luhansk, Mr Oleh Lyashko, Leader of the Radical Party of Ukraine and a member of the Ukrainian Parliament, who is supportive of the new coalition Government, together with a group of armed men, allegedly detained Mr Arsen Klinchayev, member of the Luhansk Regional Council and activist of the Young Guard believed to be a pro-Russian organization. The detention was allegedly accompanied with violence and threats<sup>7</sup>;

- In another alleged incident in early March, Mr. Dmytro Yarosh, leader of the Right Sector<sup>8</sup>, who declared his intention to run for presidency during the upcoming elections on 25 May, posted a call on a Russian-language social network vkontakte.com. He allegedly wrote: “Ukrainians have always supported the liberation struggle of the Chechen and other Caucasian peoples. Now it’s the time for you to support Ukraine... As the Right Sector leader, I urge you to step up the fight. Russia is not as strong as it seems”. The Right Sector later denied that its leader made such statements, explaining that his website had been hacked. According to other reports, Mr. Yarosh also allegedly stated that “non-Ukrainians” should be treated according to principles set forth by Ukrainian nationalist leader Stepan Bandera, although such statements were publicly refuted by Mr Yarosh himself.

74. Only isolated anti-Semitic incidents have been reported before and after the recent period of unrest. In February 2014, a Molotov cocktail was thrown at the synagogue in Zaporizhzhya (central Ukraine)<sup>9</sup>. On 13 March, a Jewish rabbi was attacked by two unidentified young men in the Podol neighbourhood of Kyiv<sup>10</sup>. Another attack was reported in the same neighbourhood in Kyiv on the following day against a Jewish couple<sup>11</sup>. However, when interviewed by an impartial and reliable source representative of the various Jewish communities in Ukraine, it appears that these communities do not feel threatened, as confirmed also by the Association of Jewish Organisations and Communities of Ukraine, publicly in a letter to the President of the Russian Federation on 5 March 2014.

75. On 1 March, OHCHR received information about alleged attacks against Roma in the Kyiv Oblast. On 27 February, a young Roma was beaten up in Pereslav-Khmelnytsk. His attackers accused him of being ‘apolitical and indifferent to the country’s political life’. According to reports, around 15 masked and armed persons raided Roma houses in Korostena,

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<sup>7</sup> <http://news.meta.ua/cluster:35037395-Liashko-v-Luganske-zaderzhal-lidera-prorossiiskoi-organizatsii/>

<sup>8</sup> Right Sector (Ukrainian: Pravyi Sektor) is a Ukrainian nationalist paramilitary collective of several organizations, described as having far right views. The group's membership has been growing and has been estimated to be about 5,000. The group first emerged at the end of November 2013 at the Euromaidan protests in Kiev, as an alliance of far-right Ukrainian nationalist groups.

<sup>9</sup> <http://www.vaadua.org/news/neizvestnyy-kinul-kokteyl-molotova-v-zdanie-sinagogi-v-zaporozhe#sthash.45DHAlqx.dpuf>

<sup>10</sup> <http://112.ua/kriminal/v-podolskom-rayone-kieva-napali-na-ravvina-34122.html>

<sup>11</sup> <http://112.ua/obshchestvo/v-kieve-soversheno-esche-odno-napadenie-na-evreev-34609.html>

on 28 February, allegedly with the same motivation. Roma victims stated that they had called the police for protection, to no avail. Several Roma families have reportedly left town after receiving threats.

76. Recent developments in the eastern part of Ukraine and in Crimea are likely to have an impact on radical groups with possible signs of nationalistic sentiments and rhetoric and therefore need to be closely monitored. The OHCHR delegation heard from various sides about concerns with regard to the “Right Sector”, a right-wing group that expresses paramilitary ambitions and is known for statements which could be considered extremist. Their active participation in the defence of Maidan and suggested increasing popularity are causing concerns for the Russian-speaking minority. While there has been no confirmed evidence of attacks by the “Right Sector”, including any physical harassment, against minorities, there were numerous reports of their violent acts against political opponents, representatives of the former ruling party and their elected officials. The role of the group during the Maidan protests was prominent; they were often in the first line of defence or allegedly leading the attacks against the law enforcement units. Their alleged involvement in violence and killings of some of the law enforcement members should be also investigated. However, according to all accounts heard by the OHCHR delegation, the fear against the “Right Sector” is disproportionate, although parallels have been drawn by some between this group and past right wing nationalistic movements at the time of the Second World War. On 1 April, the Ukrainian Parliament adopted a decision by which all armed groups, including the Right Sector, must disarm.

#### **D. Lustration, judicial and security sector reforms**

77. In a bid to break away from the past, the new Government has taken initial steps to implement a lustration policy that would apply to all public officials. A lustration committee under the Cabinet of Ministers was established in February 2014 but is not yet functioning. The committee in its current form is composed of representatives of civil society and lawyers. The head of the Committee, Mr. Yegor Sobolev, emphasized that a “special act” on the judiciary would be prepared as a priority, with the assistance of Council of Europe experts. The draft law should determine the status of the lustration committee and include provisions to ensure its effective functioning.

78. During discussions with the Vice-Speaker of the Verkhovna Rada, Mr. Ruslan Koshulinskii, he expressed the view that the draft lustration law may also refer to other senior officials, including officials who worked closely with the administration of Mr. Yanukovich, held senior positions in the former Soviet Union and its former Communist Party, and former KGB officials. The Deputy Minister of Justice mentioned during a meeting that the notion of lustration was “too generic” and that specific language would be used to address vetting needs for different categories of state services.

79. All reforms and new policy measures must be taken through an approach based on the rule of law and human rights, without any spirit of revenge. It is crucial to ensure that human rights violations are not addressed with any form of human rights violations. In particular, any lustration measure must be taken fully respecting human rights. This should include: an individualized review process, and that employees subject to a review should be granted a fair hearing, with the burden of proof falling on the reviewing body to establish that a public employee is not suitable to hold office.

## VI. SPECIFIC HUMAN RIGHTS CHALLENGES IN CRIMEA

80. ASG Šimonović visited Crimea on 21 and 22 March and travelled to Bakhchisaray, Sevastopol and Simferopol. The main objectives of the visit, were to: discuss the presence and operation of the UN Human Rights Monitoring Mission's sub-office in Simferopol and, in this context, present Mr. Harutyunyan as the Head of the UNHRMM in Ukraine who will be based in Kyiv; discuss the human rights concerns and allegations collected so far, and inquire about actions undertaken by the authorities to address them; and finally, to discuss measures pertaining to human rights which would contribute to addressing urgent protection concerns and thus also alleviating tensions and leading to the de-escalation of situation in and around Crimea.

81. ASG Šimonović collected first-hand information through meetings with the authorities in Crimea, leaders and members of the Crimean Tatar community, other representatives of civil society and journalists, and Ukrainian military officers and officers without insignia. Additional information has been gathered from a variety of reliable sources, including some through extensive telephone and Skype discussions.

82. The political aspects of recent developments in Crimea are beyond the scope of the assessment of this report. At the same time, however, these developments have a direct impact on the enjoyment of human rights by all people in Crimea. The delegation met with sources, who claimed that there had been alleged cases of non-Ukrainian citizens participating in the referendum, as well as individuals voting numerous times in different locations.

83. Preliminary findings, based on publicly available information as well as reports from civil society representatives in Crimea, suggest that the referendum of 16 March raised a number of concerns in terms of respect for human rights standards. Such concerns relate to the free communication of information and ideas about public and political issues. This implies a free press and other media are able to comment on public issues without censorship or restraint and to inform public opinion. A local Ukrainian journalist reportedly received threats through posters, which were disseminated near his place of residence. According to other reports, people in Crimea had limited access to information during the week prior to the referendum. According to some reports, Ukrainian TV channels were blocked since 10 March.

84. For the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights, it is necessary to ensure, *inter alia*, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign and to advertise political ideas. Bloggers and local civil society representatives reported cases of human rights violations regarding journalists and civil society representatives who were perceived to be against the referendum.

85. Reports included a number of cases of abduction, unlawful arrest and detention by unidentified armed groups, harassment, and violence against peaceful demonstrators. Some activists and journalists were arbitrarily detained or disappeared. According to information provided by civil society groups, seven persons were known to have gone missing. Some previously considered missing were later released but found to have been subjected to torture or other ill-treatment. Some victims were kept in the Military Drafting Center (Voenkomat) in Simferopol. For example, on 9 March, two persons – Mr. Andrei Schekun and Mr. Kovalski – were allegedly kidnapped and later released on the administrative border with Kherson Oblast – with signs of ill-treatment or torture. However, the media reported soon after the referendum about the disappearance of a Crimean Tatar, Mr Reshat Ametov, who had been

missing for several days. Reportedly, he was taken away by uniformed men. Mr. Ametov's body was found on 16 March in the village of Zemlyanichne, in the Belogoski district of Crimea, with alleged signs of torture, hand-cuffed and with adhesive tape over his mouth. The HRMMU is verifying the whereabouts of all those who went missing.

86. The presence of paramilitary and so called self-defence groups as well as soldiers without insignia, widely believed to be from the Russian Federation, was also not conducive to an environment in which the will of the voters could be exercised freely. According to reports, some individuals had their documents/ passports taken away before the poll by unidentified militias, and searches and identity checks were conducted by unauthorised or unidentified people, in the presence of regular police forces<sup>12</sup>.

87. The ASG was assured that the authorities in Crimea will conduct thorough investigations of all human rights violations. These investigations should also cover crimes and human rights abuses allegedly committed by members of self-defence units. All cases of abductions and forced disappearances, arbitrary detentions, torture and ill-treatment, reportedly by so-called self-defense militia and disbanded Berkut, should be fully and impartially investigated and the results of these investigations made public. The authorities in Crimea should react promptly to any similar violations that may occur in future and decisively condemn them.

88. The protection of the rights of Crimean Tatars regarding restitution of property, including land or compensation for its loss related to their deportation from Crimea during times of USSR has been a concern since their return after the independence of Ukraine. Recent events have led to a renewed sense of uncertainty among Tatar representatives. According to Mr. Refat Chubarov, chairman of the Mejlis of Crimean Tatars, and other civil society actors in Crimea, there are reports of unidentified uniformed men claiming rights on properties and land. Several statements from the authorities in Crimea and officials in the Russian Federation, indicate plans to relocate or resettle within Crimea some of those Crimean Tatars who have occupied land illegally in recent years while waiting for their land to be returned. The authorities in Crimea have assured the Crimean Tatars that their rights would be protected, including through positive measures such as quotas in the executive and legislative organs. However, Crimean Tatar representatives have expressed reservations regarding the reality of these assurances. In addition to land squatting issues, concerns were also raised with regard to recent statements by some authorities that certain land segments will be alienated for public purposes.

89. It is widely assessed that Russian-speakers have not been subject to threats in Crimea. Concerns regarding discrimination and violence were expressed by some ethnic Ukrainians members of minorities, and especially Tatars, as indigenous peoples. In a meeting with authorities in Crimea these concerns regarding inter-ethnic tensions were dismissed, assuring that ethnic Russians, ethnic Ukrainians and Crimean Tatars and other minorities receive sufficient protection, with their three languages recognized as official languages. Despite this, Tatars largely boycotted the referendum and remain very concerned about their future treatment and prospects. Although there was no evidence of harassment or attacks on ethnic Russians ahead of the referendum, there was widespread fear for their physical security. Photographs of the Maidan protests, greatly exaggerated stories of harassment of ethnic Russians by Ukrainian nationalist extremists, and misinformed reports of them coming armed

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<sup>12</sup> There are numerous reports about the searches by the self-defense groups (sometimes in the presence of uniformed police) of the personal belongings of people arriving by train to Simferopol or by car travelling from the mainland.

to persecute ethnic Russians in Crimea, were systematically used to create a climate of fear and insecurity that reflected on support to integration of Crimea into the Russian Federation.

90. During the ASG's visit to Crimea, the situation of the remaining Ukrainian military personnel in Sevastopol and Bakhchisaray was discussed. The authorities in Crimea confirmed that although there were some complaints of the previous period, the blocked garrisons had sufficient food and access to healthcare, though some experienced shortages in drinking water. The reported pressure on them and their families had allegedly decreased. Some officers and soldiers with whom the delegation was able to meet stressed their fear of being accused of defection or desertion and being criminally prosecuted upon return to mainland Ukraine.

91. Notwithstanding the adoption of General Assembly resolution 68/262 on the Territorial Integrity of Ukraine, there are a number of measures taken in Crimea that are deeply concerning in terms of human rights. For example, measures such as the introduction of Russian citizenship, making it difficult for those who opt to maintain their Ukrainian citizenship to stay in Crimea, give rise to issues of legal residency and loss of related social and economic rights, including the right to work. The current situation also raises concerns with regard to land and property ownership, wages and pensions, health service, labour rights, education and access to justice. In particular, civil society representatives have drawn attention to the difficulties arising from the location of the central property register in Kyiv and the severing of communication between the local administration and the administration based in Kyiv. The authorities in Crimea indicated during discussions that human rights will be fully respected, including those pertaining to citizenship and property rights.

92. The overall climate of uncertainty, including human rights and protection concerns, has led some people, predominantly Tatars and ethnic Ukrainians, to leave Crimea. For example, in the Lviv region alone, the local authorities and private citizens have already accommodated some 639 Crimeans, among them a majority being Crimean Tatars who have left and gone to the Lviv region; others have left for Turkey. The number of Crimean Tatars currently displaced is estimated to have reached 3000.

## **VII. CONCLUSIONS AND RECOMMENDATIONS**

### **A. Conclusions**

93. There is an urgent need to ensure full respect for the rule of law and human rights in Ukraine in order to guarantee the enjoyment of human rights for all, including minorities, while also contributing to de-escalate tensions in eastern Ukraine and Crimea. In doing so, it is proposed that immediate recommendations on overcoming human rights challenges be implemented as a matter of priority. However, underlying human rights violations that are among the root causes of the protests and continue to negatively impact on the situation must also be addressed in the long-term. It is important that the Government demonstrates commitment and pursues a public and inclusive debate on necessary legal and policy reforms, and where possible, takes concrete steps towards the implementation of some of the long-term recommendations, as outlined in this report.

94. As a matter of priority for the Government during this crucial period, is to immediately address possible instances of speech that advocates national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence in order to de-escalate tensions and ensure an environment that is conducive to the holding of free and fair elections. Political leaders should be encouraged to send messages of inclusiveness and counter hate speech and

other manifestations of extremism. That will play an important role in promoting a culture of tolerance and respect. Any public statements that incite national, racial or religious hatred should be unequivocally condemned, promptly investigated and adequately sanctioned, to ensure that such discourse is not condoned in society.

95. During this sensitive period for the country, the protection of minority rights is clearly both a human rights imperative and key to conflict prevention. In the current context, the adoption of measures to reassure all members of minorities regarding respect for their right to equal participation in public affairs and public life is urgently needed. The conduct of public affairs covers all aspects of public administration, as well as the formulation and implementation of policy at international, national, regional and local levels. Therefore, a mechanism should be put in place to ensure full consultation of minorities, including numerically smaller minorities, in decision-making processes at the central, regional, and local levels,

96. Violations related to the Maidan protests should be investigated and addressed in order to ensure accountability of perpetrators. In light of numerous attacks against journalists during the Maidan demonstrations, and ahead of the referendum in Crimea, measures should be taken to ensure that their right to security of the person, as well as freedom of expression are protected and promoted. The Government should send out a strong public message in this regard. It should clearly inform that all acts of aggression, threats and intimidation against journalists and other media professionals, as well as human rights defenders, will be immediately investigated, prosecuted and punished. Journalists and human rights defenders, who are victims of such acts, should be provided with adequate remedies.

97. With respect to Crimea, it will be important for the authorities in Crimea to both publicly condemn all attacks or harassment against human rights defenders, journalists or any members of the political opposition; and ensure full accountability for such acts, including arbitrary arrests and detentions, killings, torture and ill-treatment, through prompt, impartial and effective investigations and prosecutions. It is crucial that the cases of missing persons are resolved, and that access to places of detention is granted, including the Military Drafting Center (Voenkomat) in Simferopol, to all international organisations requesting it. The protection of the rights of all minorities and indigenous peoples in Crimea, in particular Crimean Tatars, must be assured.

98. The actions carried out by members of paramilitary groups in Crimea, raise serious concerns. The rule of law should be urgently restored in Crimea and security of all individuals and public order ensured. Permitting unregulated forces to carry out abusive security operations violates that obligation and basic respect for human rights. The authorities in Crimea should immediately disarm and disband all paramilitary units operating outside of the law, protect people from their illegal actions, and ensure that all law enforcement activities are carried out by the police. The authorities should ensure that any self-defence units that are created operate in accordance with the law and that the public is aware of the units' chain of command structure and accountability mechanisms. The authorities in Crimea confirmed their intention to disarm and disband all armed groups (including self-defense groups).

99. Independent and impartial monitoring and reporting of the human rights situation in Crimea would deter violations, stimulate accountability and prevent the spreading of rumours and political manipulations. Mr. Rustam Timirgaliev was informed on the structure and the mandate of the envisaged UN Human Rights Monitoring presence and had promised to revert. However, in the meantime, the Russian Federation communicated through diplomatic

channels that any UN human rights presence should be discussed with it and that it does not support the deployment of human rights monitors in Crimea. Nonetheless, UN HRMMU will continue to seek the presence of a sub-office in Crimea, in consultation with the Government of Ukraine and various interlocutors in Crimea, and continue to monitor the human rights situation from outside the Autonomous Republic of Crimea.

100. There is also serious concern about violations of the civil and political rights of the inhabitants of Crimea, in particular with regard to those who oppose recent events. Recent events also create major concerns of effective statelessness, as well as concerns of the loss of rights of those who wish to be considered citizens of Ukraine.

101. Underlying human rights violations by previous Governments were among the root causes of the popular demonstrations that took place throughout Ukraine and in particular in the centre of Kyiv on Maidan from November 2013 to February 2014. There are now clear indications of a willingness by the present Government to ensure a break with past injustices and to elaborate a new vision for Ukraine's future. Strengthening the rule of law, democracy and human rights will be key to any lasting change and to avoid any spirit of revenge. Legislative and institutional reforms should be carried out in a comprehensive, transparent and consultative way, and therefore not be rushed. Furthermore, they should be sustained through consistent and accountable implementation.

102. A number of priority human rights concerns and corresponding reforms need to be addressed in the short, medium and long term. Irrespective of the fact that systemic shortcomings may be only remedied in the medium and long-term, it will be important to pave the way immediately through a series of initial measures that will build confidence and reassure all people, including minorities, that their concerns will be addressed.

103. The international community and the UN in particular, can and should play a role in supporting an environment where the human rights of all, including minorities and indigenous peoples, can be best promoted and protected. Without an independent and objective establishment of the facts and circumstances surrounding alleged human rights violations, there is a serious risk of competing narratives being manipulated for political ends and leading to divisiveness and incitement to hatred.

104. In this context, OHCHR engagement and provision of information and analysis of the human rights situation through the UN Human Rights Monitoring Mission on the ground will allow the UN to undertake further steps to respond to the situation in Ukraine in line with the Secretary-General's Rights Up Front approach. In providing an impartial and authoritative human rights assessments, it can contribute to establishing the facts, de-escalating tensions, and paving the way for an environment that is conducive to the holding of free and fair elections. OHCHR is ready to assist in the implementation of the recommendations contained in this report.

## **B. Recommendations**

### **To the Government of Ukraine:**

#### **(i) Recommendations for immediate action**

##### Accountability and the rule of law

1. Ensure accountability for all human rights violations committed during the period of unrest, through securing of evidence and thorough, independent, effective and impartial investigations, prosecutions and adequate sanctions of all those responsible for these violations; ensure remedies and adequate reparations for victims.
2. Ensure that any lustration initiatives are pursued in full compliance with fundamental human rights of persons concerned, including right to individual review and right of appeal.

##### Inclusivity, equal political participation and rights of minorities

3. Ensure inclusivity and equal participation of all in public affairs and political life, including members of all minorities and indigenous peoples and establish a mechanism to facilitate their participation.
4. Ensure that legislation on minorities, in particular on linguistic rights, is adopted following full consultation of all minorities concerned and according to relevant international and regional human rights standards.

##### Freedom of expression and peaceful assembly

5. Ensure the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights. A conducive environment to the forthcoming elections will also require the Freedom of expression, assembly and association, which are essential conditions for the effective exercise of the right to vote and must be fully protected. This includes: freedom to engage in political activity individually or through political parties and other organizations; freedom to debate public affairs; to hold peaceful demonstrations and meetings; to criticize and oppose; to publish political material; to campaign for election; and to advertise political ideas.
6. Ensure freedom of expression for all and take all measures that will ensure the safety of journalists, media professionals and human rights defenders so that they are able to play their full role in the run-up to elections, in shaping the future of their country.
7. Adopt legislation and other measures needed to ensure the right to peaceful assembly in compliance with the requirements of article 21 of the International Covenant on Civil and Political Rights. In particular, ensure that the principles of necessity, proportionality, non-discrimination and accountability underpin any use of force for the management of peaceful assemblies.
8. Prevent media manipulation by ensuring the dissemination of timely and accurate information. Take action against deliberate manipulation of information, in compliance

with international standards of freedom of expression and in full respect of due process guarantees.

#### Combatting hate speech

9. Combat intolerance and extremism and take all measures needed to prevent advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and punish such incitement or acts of violence, which is of fundamental importance. A careful balancing act must however be maintained, with fully respecting the right to freedom of expression.
10. Take resolute steps to prevent negative stereotyping of minority communities in the media, while fully respecting the freedom of the press. Efforts to train media professionals must be increased, including by further promoting the visibility and effectiveness of the work of the national union of journalists in this regard.

#### Corruption

11. Put in place, as a matter of priority, all legislative and policy measures needed to effectively eradicate corruption.

#### Cooperation with HRMMU

12. Closely cooperate with the HRMMU and act upon its recommendations and steps needed to provide protection for persons at risk.

#### To the authorities in Crimea:

13. Publicly condemn all attacks or harassment against human rights defenders, journalists or any members of the political opposition; and ensure full accountability for such acts, including arbitrary arrests and detentions, killings, torture and ill-treatment, through prompt, impartial and effective investigations and prosecutions.
14. Actively resolve cases of missing persons, and grant access to places of detention, including the military facilities and offices in Simferopol and Sevastopol, to all international organisations requesting it.
15. Act to re-establish the rule of law, including by the effective disbandment of any and all 'self-defence forces' and/or para-military groups.
16. Take all measures to ensure that the human rights of Ukrainian soldiers based in Crimea are also fully respected.
17. Take all needed measures to protect the rights of persons affected by the changing institutional and legal framework, including on issues related to access to citizenship, right of residence, labour rights, property and land rights, access to health and education.

18. Investigate all allegations of hate speech and media manipulation, and take appropriate measures to prevent them and take appropriate sanctions while fully ensuring and strengthening freedom of expression.
19. Ensure the protection of the rights of all minorities and indigenous peoples in Crimea, in particular Crimean Tatars.
20. Grant access to independent and impartial human rights monitors, including by OHCHR.

**(ii) Long-term recommendations:**

Engagement with the international human rights system

- 21.. Enhance cooperation with the UN human rights system, including collaboration with OHCHR, in particular through the recently deployed United Nations HRMMU.
22. Ratify international human rights instruments to which Ukraine is not yet party. These include, the International Convention for the Protection of All Persons from Enforced Disappearance; the international Convention on the Protection of the Rights of All Migrant Workers and Members of their families; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the third optional Protocol to the Convention on the Rights of the Child; the Rome Statute of the International Criminal Court; the 1954 Convention relating to the Status of Stateless Persons; and the 1961 Convention on the Reduction of Statelessness.
23. Implement recommendations of international human rights mechanisms. The recommendations and concerns expressed in the past few years by several human rights mechanisms continue to be of relevance and should be taken into account by the authorities when considering various reforms that will greatly impact on the protection of human rights for all people in Ukraine:
  - a. In particular, the UN Human Rights Committee issued several important recommendations in July 2013 when it considered the latest periodic report of Ukraine on the implementation of the International Covenant on Civil and Political Rights;
  - b. The recommendations adopted by the UN Human Rights Council following the Universal Periodic Review of the human rights situation in Ukraine in October 2012 should also be taken into consideration.
  - c. The report of the UN Sub-Committee on the Prevention of Torture following its visit to Ukraine in 2011 should be made public immediately and taken into consideration by the authorities when considering issues related to torture, ill-treatment, and detention related matters.
  - d. Ukraine has issued a standing invitation to special procedures. It should accommodate requests for such visits.
  - e. Encourage the development of a national human rights action plan, with clear timelines and benchmarks, addressing every recommendation resulting from the international and regional HR systems to be implemented within a certain time-frame - with the support of the international community, regional and bilateral actors, and the UN system.

Legislative and policy reforms:

24. Reform the administration of justice system so that it functions independently, impartially and effectively; reform the security sector so as to ensure that it functions in full respect of international norms and standards; provide for full accountability for human rights violations.
25. Strengthen rule of law institutions so that they fully comply with relevant international and regional human rights norms and recommendations of human rights mechanisms.
26. Review legislation and policies applicable to the management of peaceful assemblies, and if necessary, modify them to ensure their compliance with human rights standards. In particular, these should specify that the principles of necessity, proportionality, non-discrimination and accountability underpin any use of force for the management. In this regard, particular attention should be paid to the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
27. Ensure that such policies, practices and instructions are observed through rigorous training for the personnel involved. In particular, effective internal oversight mechanisms must be put in place in order to review all incidents of injury or loss of life resulting from the use of force by law enforcement personnel as well as all cases of use of firearms during duty.
28. Ensure the institutional independence of the State Bureau of Investigation, under Article 216 of the new CCP, which provides for its creation within five years (as of 2012) to enable it to investigate allegations of human rights violations committed by judges, law enforcement officers and high-ranking officials. It will be very important to ensure that this new body is independent from the Prosecutor's Office. Public accountability and sufficient resourcing is essential to enable it to function effectively, promptly, independently and impartially.

Economic and social rights:

29. Take concrete steps to redress disparities in standards of living and equal access to and quality of health, education, employment, and social support structures for all, including marginalised communities throughout the country.

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