

TRANSITIONAL JUSTICE AND THE ARMED CONFLICT IN UKRAINE:

PROBLEMS OF HOLDING PERPETRATORS ACCOUNTABLE AND HELPING VICTIMS

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The content of publications contains the opinion of the authors and does not necessarily reflect the position of individual member organizations or experts of the CivilM+ Platform

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LIST OF ABBREVIATIONS

AFU	Armed Forces of Ukraine
ATC	Amalgamated Territorial Communities
ATO	Anti-Terrorist Operation
CC	Criminal Code
CPC	Criminal Procedure Code
DIA	Department of the Internal Affairs
DPR / LPR	the so-called «Donetsk People’s Republic» and «Luhansk People’s Republic»
ECHR	European Court of Human Rights
EECP	entry-exit checkpoint
EU	European Union
IAG	illegal armed groups
ICC	International Criminal Court
IDP	Internally Displaced Person
IHL	international humanitarian law
KhHRG	NGO «Kharkiv Human Rights Group»
LAG	legal armed groups
MB	NGO «Myrnyi Bereh»
Media	mass media
MIA	Ministry of the Internal Affairs
NPO	non-profit organizations
NPU	National Police of Ukraine
OHCHR	Office of the United Nations High Commissioner for Human Rights
PF	penitentiary facility
PGU	Prosecutor General’s Office of Ukraine
RF	Russian Federation
RS	Rome Statute
RSA	Regional State Administration
SDDL	separate districts of Donetsk and Luhansk regions
SSU	Security Service of Ukraine
UHHRU	Ukrainian Helsinki Human Rights Union
UNHCR	Office of the United Nations High Commissioner for Refugees
UNHRMM	UN Human Rights Monitoring Mission
VR of Ukraine	Verkhovna Rada of Ukraine
WHO	World Health Organization

Introduction

According to a preliminary assessment of the Office of the Prosecutor of the International Criminal Court, in the context of current armed conflicts of an international and non-international nature, the following war crimes were committed in Ukraine (at the very least): deliberate attacks on civilians, civilian facilities and facilities under protection, intentional murder, torture and inhuman or cruel treatment, rape and other forms of sexual violence. Experts from non-governmental organizations have also documented evidence of crimes such as enforced disappearances, the use of protected persons as human shields, persecution of an identified group (Roma, members of the LGBT community, religious believers), and crimes against prisoners detained in facilities on the territory under government control.

The presence of these negative factors makes it necessary to study the experience gained by post-conflict states within existing approaches to addressing the consequences of armed conflicts: Transitional Justice, Disarmament, Demobilization and Reintegration (DDR), and Peacebuilding.

At the same time, the needs of the current situation in eastern Ukraine require an analysis of national and international mechanisms to objectively assess the actions of persons involved in an armed conflict; to restore rights, ensure social protection and restore the rights of victims of the conflict, and to develop state programs to compensate for damage to the population. Considering the prospects of criminal prosecution of war criminals at the same time as analyzing the problems of conflict victims can help to develop effective approaches to overcoming the consequences of armed conflict, addressing social reconciliation issues, and also contribute to building public policies that make it impossible for similar social upheavals to be repeated in the future.

Study Objectives:

1) Analysis of the collected information on human rights violations that resulted in the death and injury of civilians and members of armed groups, torture and ill-treatment of detainees, enforced disappearances, illegal de-

tention, torture and ill-treatment of persons in custody, gender-based violence, slave labor, looting, destruction of residential buildings and infrastructure; 2) Legal classifications of crimes committed during the armed conflict.

Target Groups:

- ◆ Victims of human rights violations as a result of armed conflict (military personnel, members of armed groups, civilians who were captured and illegally deprived of their liberty, were illegally detained in inhumane conditions, used for slave labor; victims of various types of torture; relatives of those who died as a result of armed conflict; relatives of missing persons; victims of looting, residents of settlements along the demarcation line),
- ◆ Human rights and other public associations in Ukraine and other countries; the expert community; lawyers; journalists;
- ◆ Staff of the investigative bodies of the National Police of Ukraine (NPU), the prosecutor's office, the Security Service of Ukraine (SSU), members of parliament of Ukraine and other countries;
- ◆ Staff of executive authorities and local self-government bodies in settlements affected by the military conflict;
- ◆ Ukrainian society as a whole and societies of other countries;
- ◆ International human rights organizations;
- ◆ International intergovernmental organizations (OSCE, EU, Council of Europe, European Committee for the Prevention of Torture, UN Committees Against Torture, on Enforced Disappearances, UN High Commissioner for Human Rights, etc.)

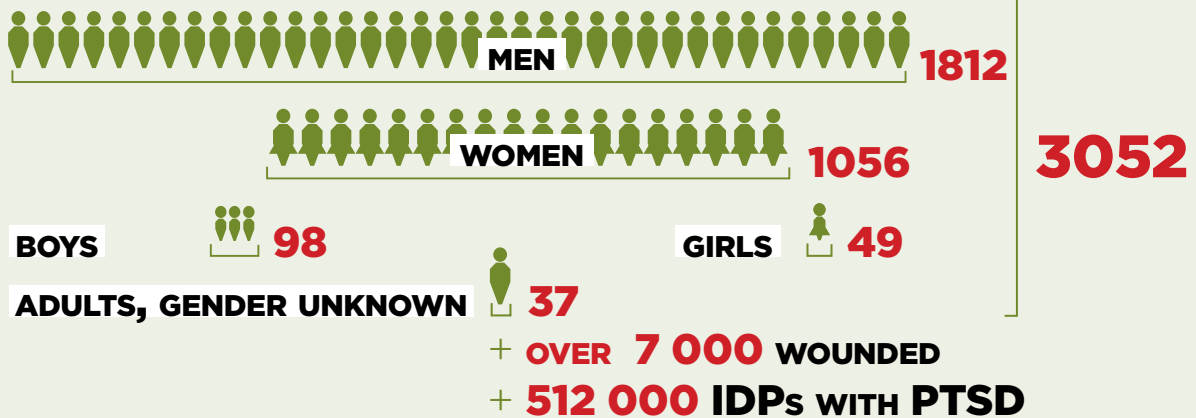


Information Sources:

- ◆ Daily official reports on the situation in the combat zone, on casualties, destruction, etc., reports from other information resources, including local ones, on the consequences of military operations; data from the Unified State Register of Court Decisions (Ukraine), the official website of the Judicial Department under the Supreme Court of the Russian Federation;

CONSEQUENCES OF ARMED CONFLICT IN EASTERN UKRAINE (2014-2020)

Civilians



Combatants

(on all sides)



AFU



- ◆ Daily reports of the OSCE Special Monitoring Mission, reports of the Monitoring Mission of the Office of the United Nations High Commissioner for Human Rights (UNHRMM), reports of international and national human rights organizations - Amnesty International, Human Rights Watch, Memorial Human Rights Center (Moscow), Ukrainian Helsinki Human Rights Union, Kharkiv Human Rights Group, Luhansk Regional Human Rights Center «Alternatyva» and other human rights organizations in Ukraine;
- ◆ Responses to information requests sent in accordance with the Law of Ukraine “On Access to Public Information” to local authorities and authorities in the territory controlled by the government of Ukraine;
- ◆ Results of monitoring trips to the settlements of Donetsk and Luhansk regions in the territory controlled by the government in order to verify and clarify the data received in response to inquiries, interviewing victims of human rights violations and other eyewitnesses, taking videos and photographs;
- ◆ Information resources that regularly publish information on events in the zone of armed conflict;
- ◆ Information from informants residing in the territory not controlled by the government;
- ◆ Materials from proceedings initiated by the KhHRG and UHHRU Strategic Centers on evidence of human rights violations in the conflict zone;
- ◆ Databases of non-governmental organizations.

Study Methodology

The study was based on the analysis and classification of victims of the armed conflict in eastern Ukraine, assessing the number of victims of each type. At the same time, an analysis of crimes committed in connection with the armed conflict was carried out, with a focus on war crimes and crimes against humanity. Special attention was paid to the particularities of the legislative framework and law enforcement practice of Ukraine and the Russian Federation which complicate the criminal prosecution of persons who violated international humanitarian law.

Desk study was combined with field trips to the east of Ukraine to obtain empirical data. The objectivity of the preliminary results was ensured through verification and the adjustment of the information received, its expert discussion during working meetings and international forums. Extensive study of the legal framework, the practice of the International Criminal Court and the ECHR, as well as national mechanisms for redressing victims in post-conflict countries

made it possible to develop recommendations for improving the mechanisms for protecting human rights in situations of armed conflict, and for engaging civil society in different countries in overcoming the conflict in Ukraine and its consequences.

Electronic Version

See the full version of this report in Russian and Ukrainian, as well as an abridged version in Russian, Ukrainian and English at <https://civilmplus.org>.

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SCALE OF DAMAGE:



Involvement in the activities of illegal armed groups of at least **45,000** citizens of Ukraine, as well as in the activities of self-proclaimed formations of the so-called “state structures of the DPR/LPR”, paramilitary groups, occupying authorities of more than **346 thousand** citizens of Ukraine;



Displacement of about **2.7 million** citizens within and outside of Ukraine, including **460 thousand** Ukrainians in the Russian Federation. Of all displaced persons, approximately **60%** are pensioners, **60%** are women, **13%** are children and **4%** are persons with disabilities;



Extremely vulnerable situation of about **800 thousand** people living in the conflict area, as well as **45-47 thousand** people who cross the demarcation line in Donetsk, Luhansk Regions and the administrative border with the Autonomous Republic of Crimea on a daily basis;



Causing various kinds of damage to more than **5 million** residents of certain areas of Donetsk and Luhansk Regions;



About 3.8 million citizens of Ukraine, **2.8 million** of whom are living in territories not controlled by the government, are in need of state assistance as a result of the conflict;



About 200 thousand children in need of psychological and rehabilitation assistance as the victims of armed conflict.

1 TRANSITIONAL JUSTICE IN THE CONTEXT OF THE ARMED CONFLICT IN EASTERN UKRAINE

Transitional justice is defined in UN and EU documents as “... the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”, both judicial and non-judicial mechanisms “... with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof”.¹

The experience of more than 40 post-conflict countries has formed the understanding that any way out of the crisis should include four areas:

1. Criminal prosecution - effective prosecution of those guilty of war crimes and gross violations of human rights; legal protection of victims of armed conflict; improvement of legislation, judicial and investigative practice.
2. Reparations - creation of national mechanisms for redressing victims, paying them compensation for physical and mental harm, compensation for losses, restoring the violated rights of victims of the conflict, providing them with medical and psychological assistance, as well as legal and social services.
3. Truth-telling - objective and impartial documentary reconstruction of events; declassification of archives and the formation of a national archive of photo and video documents of events from the conflict; investigation into the cases of persons who disappeared or missing persons.
4. Institutional reforms - examination of civil servants or candidates for positions in order to determine whether they were involved in human rights violations during the conflict; reforms of the security sector, law enforcement agencies, the judiciary, education and the media.²

¹ Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies. UN Doc. S/2004/616. URL: <https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/>

² «What is Transitional Justice?». International Center for Transitional Justice. URL: <https://www.ictj.org/about/transitional-justice>

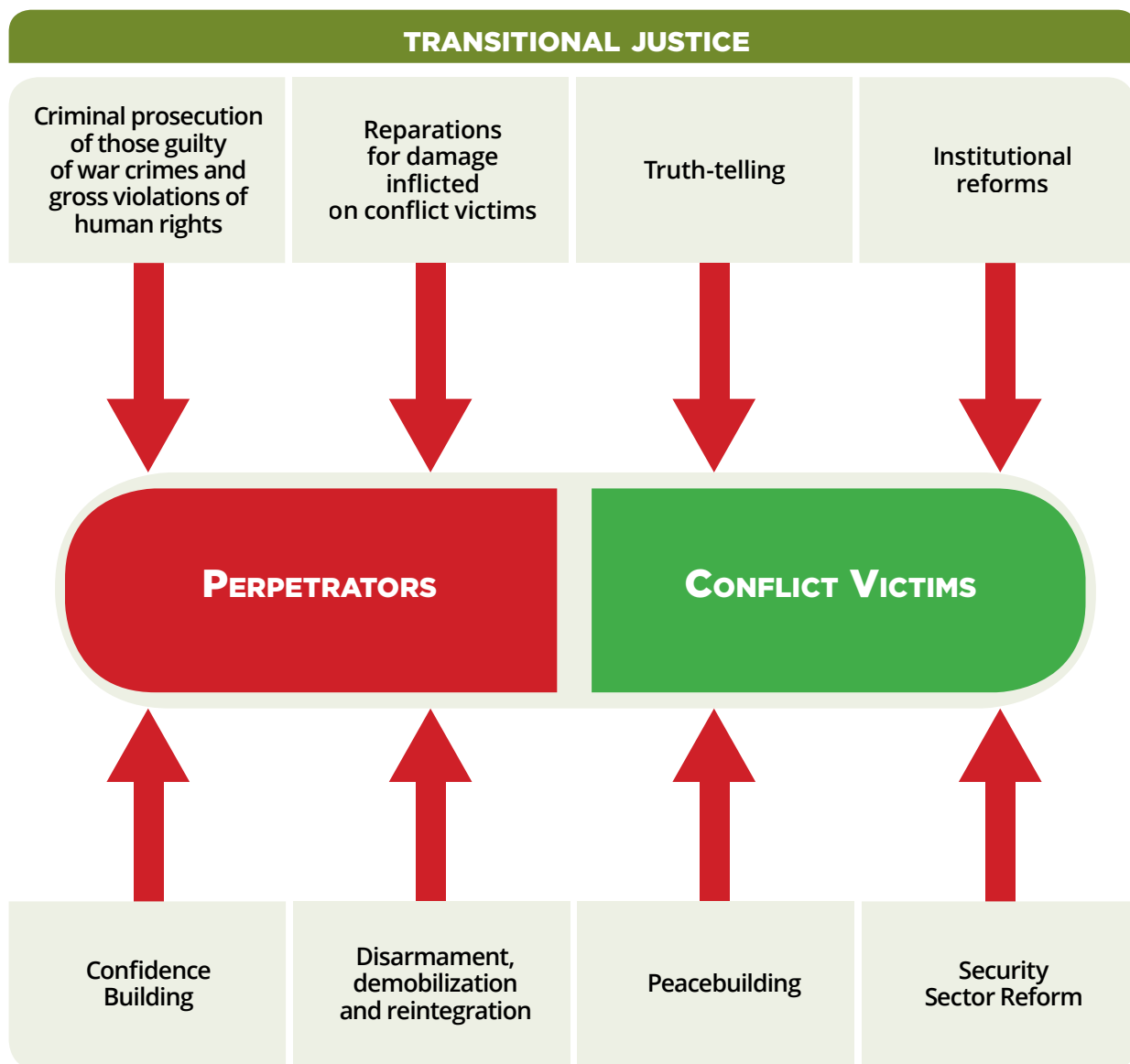
Usually, the national model of transitional justice begins to be formed after the conflict in the country is over. However, Ukraine is in a situation where two types of conflict are simultaneously requiring resolution. The first one is the social conflict of transition from an authoritarian post-Soviet regime to a democratic one (events of the Revolution of Dignity). The second one is the armed conflict in the Autonomous Republic of Crimea and in eastern Ukraine as a result of the external aggression of the Russian Federation. In this context, it has proved to be relevant to prepare for the implementation of the main mechanisms of transitional justice now, during this stage of so-called «hot conflict». For example, Ukraine can implement institutional reforms, develop a legal framework for the prosecution of war criminals, and enshrine legislative mechanisms to compensate for damage caused to victims of the conflict.

At the same time, transitional justice has great synergistic potential in applying other approaches to overcoming the consequences of armed conflicts: the development of Confidence-Building Measures, Disarmament, Demobilization and Reintegration (DDR), Peacebuilding, and Security Sector Reform (SSR).

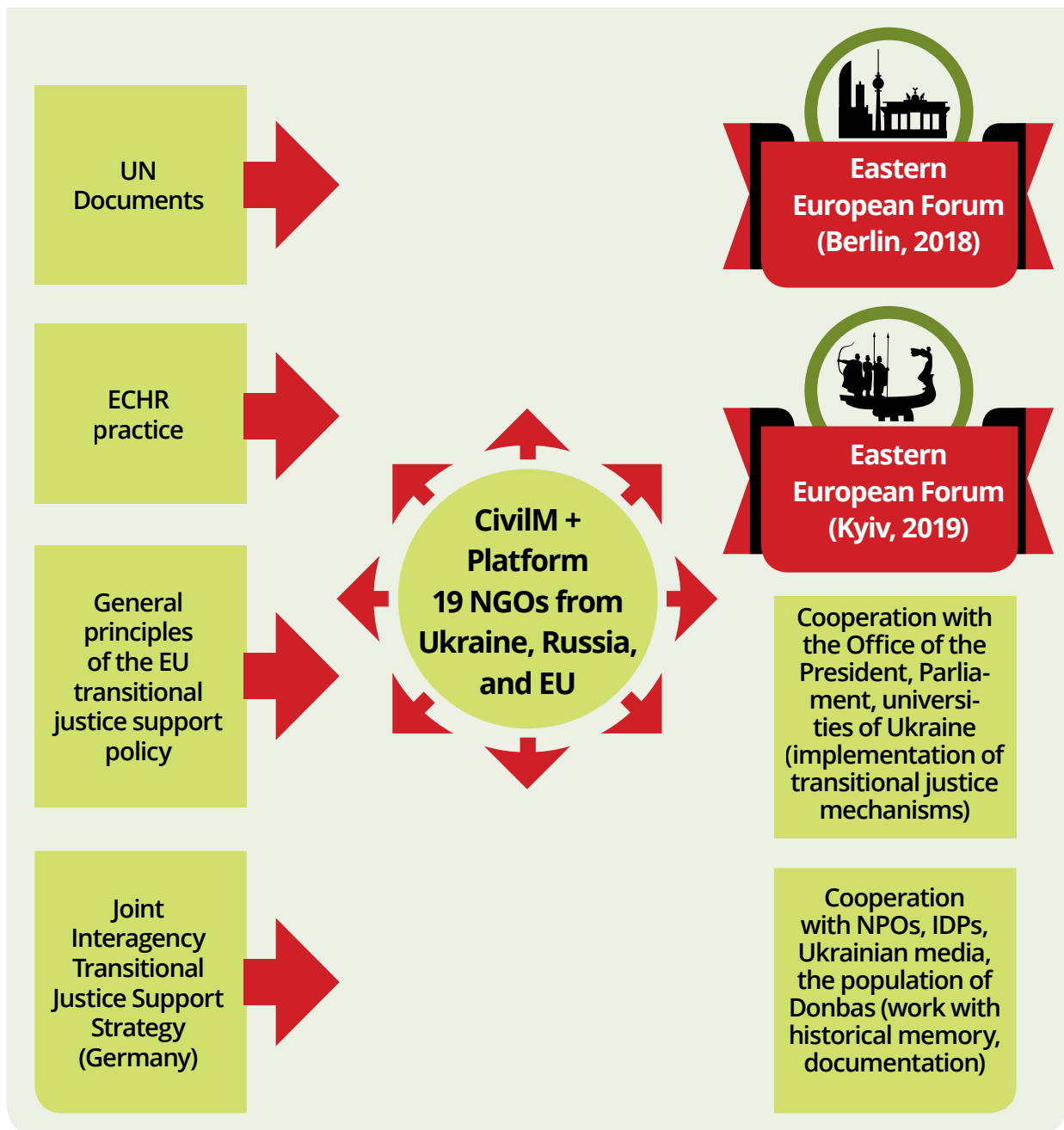
Transitional justice in Ukraine: the start of the process

The implementation of transitional justice and work with the past turned out to be quite a sensitive area for all target groups of Ukraine: victims of the conflict, authorities, the population of the occupied territories, politicians and public opinion leaders. The introduction of the approaches and mechanisms of transitional justice into the public discourse took four years and took place thanks to the following key developments.

- ◆ Foundation of the Center for Post-Conflict Resolution (Institute of International Relations, Taras Shevchenko KNU, 2016);
- ◆ Documentation of war crimes, violations of international humanitarian law (UHH-RU Documentation Center, KhHRG, Myrnyi Bereh, Justice for Peace in Donbas Coalition, 2016);



- ◆ The first national monograph “Baseline Study on the Application of Transitional Justice in Ukraine” (UHHRU, 2017);
- ◆ International academic conference “Post-Conflict Justice in Ukraine” (UHHRU, European Society of International Law, Ukrainian Association of International Law, 2017);
- ◆ Development of the draft law “On the basics of the state policy for protecting human rights in the context of overcoming the consequences of armed conflict” (UHHRU, Secretariat of the Ukrainian Parliament Commissioner for Human Rights, MPs, NGOs, 2017);
- ◆ Creation of the Coordinating Council on the development of legislative proposals for the implementation of transitional justice at the Secretariat of the Ukrainian Parliament Commissioner for Human Rights (2018);
- ◆ Expert discussion “Implementation of the foundations of transitional justice as a condition for preparing a state policy for the post-conflict period, de-occupation of territories and reintegration of the population” (UHHRU, parliamentary committee, 2019);
- ◆ Development of a methodology for the expert evaluation of Ukrainian legislation, draft regulatory legal acts for compliance with IHL and the principles of transitional justice in terms of ensuring the rights of persons affected by armed aggression (UHHRU, 2019);
- ◆ Creation of a “road map” for the implementation of transitional justice in Ukraine (UHHRU, 2019);
- ◆ Creation of a “road map” for the implementation of transitional justice in Ukraine (UHHRU, 2019);



The role of the CivilM+ Platform in the development of transitional justice in Ukraine

Created in 2017, the international CivilM+ Platform has identified the documentation of war crimes and human rights violations, protection of victims of conflict, and assistance in holding those responsible for violations accountable as one of the objectives of its activities. A natural continuation of activities in this direction was the support of transitional justice initiatives. The holding of two Eastern European Forums (2018, 2019) by CivilM+, where transitional justice

was the focus of discussion, made it possible for Ukraine to expand the range of experts willing to help overcome the consequences of the conflict.

It is no secret that in 2014-2019 Ukraine was offered various approaches to resolve the armed conflict. At different times, these were proposals regarding a “broad amnesty”, use of the so-called “Croatian Scenario” for reintegration, implementation of the “Sajdik Plan” and the “Steinmeier Formula”, and the creation of a model of safe reintegration. However, to date, none of the proposals has achieved positive results, since from a legal



Side event HDIM (Human Dimension Implementation Meeting, Warsaw), 2018. UHHRU archive

point of view they were multidimensional and multilevel elements of existing models for resolving armed conflicts.

Thanks to the CivilM+ Platform, Ukrainian society was able to get to know the Joint Interagency Strategy for the Support of Transitional Justice, developed in 2019 by the Government of Germany.³ For modern Ukraine, this document is of particular importance. The strategy reveals all the advantages of transitional justice as an integrated approach to overcoming armed conflicts that harmoniously combines the criminal prosecution of war criminals with peacekeeping

mechanisms, working with historical memory, processes of building trust and restoring relations.

The Platform's support for civil society initiatives made this study possible. By bringing together experts from several countries, the study focused on two of the most relevant areas. The first one is dedicated to the issues of qualifying crimes committed during the conflict in eastern Ukraine and the problems of their criminal prosecution from the point of view of the legislation of Ukraine and the Russian Federation. The second area covers aspects of the classification of all target populations affected by the conflict, as well as the provision of essential assistance by the state.

³ Interministerial Strategy to Support "Dealing with the Past and Reconciliation (Transitional Justice)" in the Context of Preventing Crises, Resolving Conflicts and Building Peace. <https://www.auswaertiges-amt.de/blob/2248206/633d49372b71cb6fafd36c1f064c102c/190917-vergangenheitsarbeit-und-versoehnung-data.pdf>

2 CRIMINAL PROSECUTION IN UKRAINE FOR WAR CRIMES AND CRIMES AGAINST HUMANITY DURING THE INTERNATIONAL ARMED CONFLICT

Difficulties in criminal prosecution

During the period of active hostilities (2014-2015), crimes against civilians with the signs of war crimes and crimes against humanity were committed in the conflict zone. The crimes were large-scale and systemic in nature and were committed on both sides of the demarcation line. In the territory controlled by the Ukrainian authorities, it was possible to stop this phenomenon by integrating and bringing volunteer units under state control, but the issue of bringing perpetrators to criminal responsibility remains relevant.

The authors of this study state that criminal prosecution for war crimes and crimes against humanity is fraught with a number of difficulties and objective obstacles.

1. Ukrainian legislation, law enforcement and judicial systems were not prepared to work under the conditions of aggression and annexation of part of the territory of Ukraine.

As of April 2020, the Criminal Code of Ukraine contains a mere 4 elements of war crimes that comply with international humanitarian law. They do not cover the full range of war crimes. In addition, the Criminal Code of Ukraine does not provide for liability for crimes against humanity and for war crimes that constitute a violation of customary international law rather than humanitarian law. Draft Law No. 9438, which provides for a new section of the Criminal Code “Crimes against the Foundations of International Law”, registered in the Verkhovna Rada of Ukraine on 12/20/2018, has not yet been adopted.

2. Law enforcement and judicial officials lacked the experience and knowledge necessary for a legal assessment of aggression and related crimes. The system of courts of general jurisdiction, as well as law enforcement agencies, is not able to ensure prompt investigation and hearing of war crime cases. This is due both to the general high workload on staff and to procedural difficulties (exam-

ining a crime scene, interviewing witnesses of victims and suspects, conducting expert evaluations, detaining suspects), and the inability to conduct physical investigative actions in the temporarily occupied territory.

3. Most war crime cases and cases on crimes against humanity are to be covered by the courts of Donetsk and Luhansk Regions. A lot of judges of the Donetsk and Luhansk regions have close relatives and family members in uncontrolled territory, some of the judges are internally displaced persons. This circumstance makes the administration of justice unsafe for the judges themselves, which affects the independence and objectivity of the judges⁴.

These factors have become one of the reasons for the following negative phenomena:

- ◆ In 2014-2018, the armed conflict was classified as terrorism, and many crimes committed in the context of the armed conflict in eastern Ukraine were incorrectly classified as terrorist crimes under Art. 258 of the Criminal Code of Ukraine (Terrorist Act). A significant increase in criminal proceedings under Art. 258 of the Criminal Code of Ukraine was recorded: from 4 in 2013 to 1,499 (2014), 1,257 (2015), 1,865 (2016) and 1,385 (2017).⁵ As of March 1, 2020, some 700 guilty verdicts were passed in which crimes committed in an armed conflict zone are classified as terrorism. Of these, about 530 entered into force;
- ◆ Of more than 1800 verdicts for crimes committed in the zone of armed conflict (2014-2019), a mere 17 sentences in the Donetsk and Luhansk regions were defined as aggression. In the remaining sentences, crimes committed in the ATO zone are classified as terrorism or general criminal;

⁴ https://docs.wixstatic.com/ugd/ed94bc_0f8b70203e8b46d391c802c10a31e0c9.pdf

⁵ “Statistical Information / Official Website of the Prosecutor General’s Office of Ukraine”, <https://www.gp.gov.ua/ua/statinfo.html>.



Svatove (Luhansk region, Ukraine), 2015. UHHRU archive

- ◆ In 2014 in Ukraine, a mere 54 criminal proceedings were instituted under Article 127 of the Criminal Code of Ukraine (“Torture”) and 73 were instituted in 2015⁶. The figures are clearly disproportionate to the number of reports of cases of torture and ill-treatment in the context of the armed conflict in eastern Ukraine.
- ◆ The Chief Military Prosecutor’s Office recorded 3,500 cases of torture of prisoners (including 1,700 civilians), interviewed 2,500 of them, but initiated only 21 proceedings under Art. 438 of the Criminal Code of Ukraine (“Violation of the laws and customs of war), of which 15 remained, and only one ended in a verdict (2017). There are almost no criminal proceedings regarding the cruel treatment of prisoners of war (Article 433 of the CC) nor violence against the civilian population during the conflict (Article 434 of the CC).

Investigative and judicial practice

In the conflict zone, although rare, there are still some cases initiated for crimes against the life and health of civilians. However, according to the Rome Statute, they cannot be classified as crimes against humanity, due to the lack of a key feature provided for in Art. 7 RS - large-scale and systematic attacks. As for war crimes, today in the territory controlled by the government of Ukraine, there are no crimes “within a plan or policy or large-scale”, which is also stipulated as a mandatory sign of war crimes in accordance with Art. 8 of the Rome Statute. It means that today, in the conflict zone, in the territory controlled by the government, isolated cases of crimes against civilians are recorded, which cannot be classified as “crimes against humanity” and “war crimes” in the context of the ICC jurisdiction. The official statistics of national law enforcement agencies are as follows.

⁶ “Statistical Information / Official Website of the Prosecutor General’s Office of Ukraine”, <https://www.gp.gov.ua/ua/statinfo.html>.

Table 1

DATA ON THE NUMBER OF CRIMINAL PROCEEDINGS FOR WAR CRIMES
registered and submitted to court
(website of the General Prosecutor's Office of Ukraine)

Type of Crime	2014		2015		2016		2017		2018		2019	
	1	2	1	2	1	2	1	2	1	2	1	2
Art.432 Looting	1	0	0	0	0	0	0	0	0	0	0	0
Art.433 Violence against the population in the war zone	4	0	5	0	0	0	0	0	0	0	0	0
Art.434 Maltreatment of prisoners of war	0	0	0	0	1	0	0	0	0	0	0	0
Art.438 Violation of the laws and customs of war	1	0	4	0	6	0	5	0	5	0	12	0
total	6	0	9	0	7	0	5	0	5	0	12	0

"1" - the number of recorded crimes,

"2" - the number of proceedings the investigation of which is completed and the materials have been submitted to court.

The small number of registered cases does not relieve the judiciary of the search for ways to effectively prosecute people whose actions bear the signs of war crimes and crimes against humanity. One example of how Ukrainian courts can consider such cases under imperfect legislation is the high-profile case of crimes committed by a company of the Tornado Special Tasks Patrol Service (Ministry of Internal Affairs of Ukraine).

Crimes were committed on the territory of the Luhansk region from December 2014 to June 2015 during the armed conflict. According to the Military Prosecutor's Office, Tornado fighters committed murders, torture, and rape against civilians. The militants of the battalion filmed their bullying and crimes, in particular those of a sexual nature; the video was later obtained by the investigation.

Tornado fighters were accused of creating a criminal organization and committing grave and especially grave crimes on the territory of the Luhansk region in the combat zone, from December 2014 to June 2015. The atrocities committed by them were systematic and large-scale and, in many ways, could be recognized as war crimes and crimes against humanity. However,

their actions were classified under the following articles: Part 1 Art. 255 (creation of a criminal organization), Part 2 Art. 365 (abuse of authority or official authority by an employee of a law enforcement agency), Part 3 Art. 146 (illegal imprisonment or kidnapping), Part 2 Art. 127 (torture), Part 2 Art. 153 (forcible sodomy), Part 2 Art. 342 (obstruction of a representative of the authorities, an employee of a law enforcement agency, a state executive, a member of a public formation for the protection of public order and the state border, or a member of the military), Part 3 Art. 289 (theft of a vehicle) of the Criminal Code of Ukraine.

On April 7, 2017, the Obolonskyi District Court of Kyiv issued a guilty verdict against 12 soldiers of the disbanded Tornado battalion. Former company commander Ruslan Onyshchenko was sentenced to 11 years in prison, his deputy Mykola Tsukur - to 9 years. Another six accused persons were sentenced to 8 to 10 years in prison, four Tornado members received a 5 year suspended sentence - three of them with the sentence suspended for 2 years and one with the sentence suspended for 3 years. 7,750 UAH of legal fees were collected from each of the convicts, all of them were stripped of their police ranks.

The line between ordinary crimes committed by people in military uniforms, war crimes and crimes against humanity is rather fine. As a rule, all three of the above types of crimes are committed in the combat zone. They can be distinguished from each other using the Rome Statute, which contains indicators that distinguish war crimes and crimes against humanity from ordinary crimes committed by combatants.

The case of the Donbas battalion fighters can serve as an example of an investigation in which 28 episodes of exclusively ordinary crimes were proved.

Crimes were committed in July 2014, when 6 residents of the Zaporizhia, Dnipropetrovsk, Odesa, Sumy and Ivano-Frankivsk regions aged 30 to 45 years old came to the east of Ukraine and joined a volunteer battalion. But, unlike the majority, who went there to defend their country, these went to make money on the war. From August to November 2014, a criminal group terrorized the residents of Dobropillia, Selydovo, Gorniak, Ukrainsk and Krasnoarmeisk. While their sworn brothers were dying on the front lines, here, in the rear, away from the hostilities, 'Bars' and 5 of his associates were involved in abducting families, attacking parents in front of their children, abusing them and demanding a ransom. At the same time, they referred to it as "assistance to the army".

In this situation, the actions of some fighters of the Donbas battalion were qualified as criminal, but containing no signs of war crimes or crimes against humanity (large-scale, systematic, committed within a plan or policy of a state or organization, etc.).

More complex in terms of investigation and qualifications are the large-scale illegal actions of the Aidar battalion against civilians (2014-2015).

On August 21, 2014, the OSCE Special Monitoring Mission to Ukraine reported receiving evidence of violations of the rights of citizens by the Aidar battalion deployed to the north of Luhansk. The OHCHR report "Conflict-Related Sexual Violence in Ukraine" also noted indicative cases of abuse and sexual violence by the Aidar battalion fighters.⁷

The Head of the Luhansk Regional State Administration (2014-2015), H. Moskal, argued that, as a rule, these crimes were committed by the so-called volunteers who received unregistered weapons from the Aidar commander, wore Aidar battalion patches, but were not listed as battalion members in the documents. In May 2015, the Head of the Luhansk Region DIA, A. Naumenko, stated that as of May 2015, about 50 people were arrested in cases of the so-called "black" Aidar members, in particular for murders, robberies, armed hold-ups. Back then, police were aware of 150 crimes committed by people related to Aidar.⁸ On June 25, 2015, 110 criminal cases were opened on the crimes of the Aidar battalion (including kidnapping, unlawful arrests, thefts, extortion and ill-treatment).

Both the Aidar fighters and its former commander S. Melnychuk, who was elected as an MP in 2014, were under investigation. In October 2015, the PGU completed a pre-trial investigation of the criminal case on Melnychuk and another 5 people and submitted the case to the court. In 2016, the SSU initiated further criminal proceedings against S. Melnychuk related to the 2014 events. Despite the fact that the Parliament removed immunity from Melnychuk, and in 2019 his term as an MP ended, Melnychuk was not convicted, and there is no public information about the fate of the criminal proceedings in court.

⁷ <https://www.slideshare.net/DonbassFullAccess/14-2014-31-2017>

⁸ <https://112.ua/statji/spisok-prestupleniy-aydara-chto-delat-s-obviniyami-moskalya-235441.html>

Investigation of war crimes committed by the representatives of illegal armed groups fighting for the so-called «LPR» and «DPR»

Until January 1, 2020, the Chief Military Prosecutor's Office (as a structural unit of the PGU), which was liquidated during the reform of the prosecutor's office, dealt with the collection of evidence of large-scale and global violations of international humanitarian law, war crimes and crimes against humanity during the armed conflict in eastern Ukraine. In October 2019, the Department for Oversight over Criminal Proceedings in relation to Crimes Committed under the Conditions of Armed Conflict was established as part of the PGU. It assumed the above functions of the Military Prosecutor's Office and became the central analytical and coordinating center for all high-profile and serious crimes committed in the temporarily occupied territories of the Autonomous Republic of Crimea and Donbas.

More than 200 criminal cases had to be handed over to the new Department. In particular, we are talking about the Ilovaisk and Debaltseve tragedies, the downing of MH-17, the annexation of the Autonomous Republic of Crimea, the "case of the sailors", as well as the events of the outbreak and conduct of armed aggression by Russia, and the systemic torture and murders of captured Ukrainian military personnel and civilians.

Currently, a strategy is being developed to document war crimes and crimes against humanity, which will serve as an algorithm of actions for the law enforcement agencies to act under the conditions of military operations and the lack of control over part of the territory.

The Departments for Oversight over Criminal Proceedings in relation to Crimes Committed under the Conditions of Armed Conflict were established at the prosecutor's offices of the Donetsk and Luhansk regions. These departments include 60 prosecutors.

As of June 1, 2020, the Luhansk Region Prosecutor's Office identified about 600 people who were tortured by Russia-backed militants in eastern Ukraine. These data are entered in the register of victims of crimes committed in the context of Russia's armed ag-

gression against Ukraine. Now the department is considering more than six thousand crimes committed by illegal armed groups, and the register of pre-trial investigations includes information on more than 4,200 people affected by crimes related to the armed aggression of Russia against Ukraine.⁹

Approaches to in absentia proceedings in Ukraine

In 2014, a criminal procedure was introduced in Ukraine in the absence of a suspect / accused ("in absentia"). According to Art. 297-1 of the CPC, a special pre-trial investigation can be applied if the suspect: a) is hiding from the investigating authorities and the court to evade criminal responsibility and b) is put on an interstate and / or international wanted list. However, the in absentia prosecution of perpetrators was blocked in connection with Article 3 of the Interpol Charter, which flatly prohibits any intervention or action in cases of a political, military, religious or racial nature.

In May 2016, the CPC was supplemented by clause 20-1 in Section XI "Transitional Provisions", which provided for some simplification of the procedures for special pre-trial investigation. Thus, "in absentia" proceedings could be applied to a suspect / accused person who, in particular, has been hiding from the investigating authorities and the court for more than six months in order to evade criminal liability and/or in relation to whom there is evidence that the person is outside of Ukraine, in the temporarily occupied territory of Ukraine or in the area of the Anti-Terrorist Operation. Thus, the grounds for the application of in absentia were expanded, and putting suspected persons on the international wanted list was no longer a prerequisite.

However, in 2018, this clause of the CPC lost its force as one of the transitional provisions. As of June 1, 2020, the corresponding draft law from the Office of the Prosecutor General, which would provide for the necessary amendments to the CPC of Ukraine, was not registered in the Verkhovna Rada, and the mechanism of in absentia conviction was actually blocked.

⁹ Crimes in Donbas: How Will Ukraine Punish Russia? | Radio Donbas Realities <https://www.youtube.com/watch?v=LglxEKuLPg&feature=youtu.be&t=1080>

3 **CRIMINAL JUSTICE OF THE RUSSIAN FEDERATION: THE PRACTICE OF HOLDING PERPETRATORS ACCOUNTABLE FOR PARTICIPATION IN THE ARMED CONFLICT IN EASTERN UKRAINE**

The Criminal Code of the Russian Federation has a separate Chapter 34 providing for liability for crimes against the peace and security of mankind. It contains several elements that can be classified as war crimes and crimes against humanity: “Production or Distribution of Weapons of Mass Destruction” (Article 355 of the Criminal Code of the Russian Federation), “Use of Prohibited Means and Methods of Warfare” (Article 356 of the Criminal Code of the Russian Federation), as well as the rarely used “Genocide” (Article 357 of the Criminal Code of the Russian Federation).

War crimes provided for in the Geneva Convention are partially covered by the aforementioned Article 356 of the Criminal Code of the Russian Federation. Thus, article sanctions provide for the punishment of ill-treatment of non-combatants, deportation of civilians, looting of national property in an occupied territory, use of means and methods, weapons of mass destruction prohibited by the international treaty of the Russian Federation in an armed conflict.

The practice of applying the articles of the Criminal Code of the Russian Federation relating to war crimes and crimes against humanity shows that their elements are essentially “sleeping” or “dormant”. According to the statistics from the Judicial Department under the Supreme Court of the Russian Federation for the period from 2014 to the present, no one was convicted of war crimes or crimes against humanity.¹⁰

The criminal cases that were instituted by the Investigative Committee of Russia on the events in Ukraine were instituted under ordinary criminal articles - “Murder”, “Terrorism”, etc. This can be attributed to the difficulty of proving the special elements of crime, which

for war crimes are directly related to an armed conflict of international or non-international nature, and for crimes against humanity - (1) large-scale or (1) systematic attack on any (2) civilians, if such an attack is committed (3) knowingly.

The only effective article of Chapter 34 of the Criminal Code of the Russian Federation is “Mercenary” (Article 359 of the Criminal Code of the Russian Federation), however, from the point of view of international law, it does not apply to war crimes or crimes against humanity.

For the above reasons, as the analysis of open information sources shows, Russian criminal justice most often persecutes participants in hostilities in foreign countries or persons who have joined prohibited and (or) illegal formations (organizations) under Articles 208 (Organization of Illegal Armed Formation or Participation Therein) and 359 (Mercenary) of the Criminal Code of RF.

An illegal armed formation referred to in Article 208 of the Criminal Code of the Russian Federation should be understood as an association, detachment, squad, or other armed group not provided for by the federal law that was created to fulfill certain goals (for example, to commit terrorist acts, forcibly change the foundations of the constitutional order or violate the integrity of the Russian Federation).

Article 208 of the Criminal Code of the Russian Federation includes two parts that establish liability for (1) the creation of an armed formation and (or) the management of such a formation or its financing¹¹ and (2) participation in an armed formation not provided for by federal law, as well as participation in an armed formation in a foreign territory not provided for by the legis-

¹⁰ The data of judicial statistics of the Judicial Department under the Supreme Court of the Russian Federation // <http://www.cdep.ru/index.php?id=79>, last accessed on April 5, 2020.

¹¹ Liability in the form of imprisonment for a term of ten to twenty years with a restriction of freedom for a term of one to two years



Svatove (Luhansk region, Ukraine), 2015. UHHRU archive

lation of that state, for purposes contrary to the interests of the Russian Federation.¹² In turn, Article 359 of the Criminal Code of the Russian Federation includes three different elements of crime: (1) recruitment, training, financing or other financial support of a mercenary, as well as their use in armed conflict or military operations¹³; (2) commission of the same acts using an official position or in relation to a minor¹⁴, as well as (3) participation of a mercenary in an armed conflict or hostilities.¹⁵

In accordance with the note to Article 359 of the Criminal Code of the Russian Federation, a mercenary is a person who acts for the purpose of receiving financial compensation and

who is not a citizen of the state participating in an armed conflict or military operations, who does not reside permanently in its territory, and who is not a person sent to execute official duties.

In 2014, under Article 208 of the Criminal Code, 236 people were convicted, of which 10 were sentenced under part 1 (creation of an armed formation not provided for by the federal law), and 226 people under part 2 (participation in an armed formation not provided for by the federal law, and also participation in the territory of a foreign state in an armed formation not provided for by the legislation of that state, for purposes contrary to the interests of the Russian Federation).

In 2015-2017, the dynamics in these categories of cases continued, but in 2018 the number of convictions decreased significantly.

The first sentence under Article 359 of the Criminal Code of the Russian Federation was pronounced in 2015 - four people were convicted of mercenarism, who fraudulently sent the former Russian military personnel to the war in the Syrian Arab Republic.¹⁶

¹² Punishment in the form of imprisonment for a term of eight to fifteen years with a restriction of freedom for a term of one to two years

¹³ Liability in the form of imprisonment for a term of four to eight years with a restriction of freedom for a term of up to two years or without any restriction;

¹⁴ Punishment in the form of imprisonment for a term of seven to fifteen years with a fine in the amount of up to five hundred thousand rubles or in the amount of the wage or other income of the convicted person for a period of up to three years or without any restriction and with the restriction of freedom for a term of one year to two years or without any restriction

¹⁵ is punishable by the deprivation of liberty for a term of three to seven years, with or without restriction of liberty for a term of up to one year.

¹⁶ <https://www.rbc.ru/rbcfreenews/54b63a8c9a7947cd46bd3fc0>

Table 2

CRIME STATISTICS ACCORDING TO THE INFORMATION POSTED
on the official website of the Judicial Department under the
Supreme Court of the Russian Federation:

	2014	2015	2016	2017	2018	Total
Article 208 of the CC RF	236	241	254	251	126	1108
part 1	10	11	8	14	6	49
part 2	226	230	246	237	120	1059
Article 359 of the CC RF	0	8	3	3	2	16
part 1	0	4	0	0	0	4
part 2	0	0	0	0	0	0
part 3	0	4	2	3	2	11

In total, over the past five years, 16 people were found guilty of mercenarism in Russia, of which 11 were accused of participating in hostilities.

As for the situation regarding the armed conflict in eastern Ukraine, it should be noted that according to the estimates of the Ukrainian Helsinki Human Rights Union, these were the mercenaries that committed most of the violations of conventional and international humanitarian law during the 2014-2019 hostilities. Russians make up more than 10% of all the members of armed groups, information on which is available at the UHHRU Documentation Center. In addition to citizens of the Russian Federation, the Center has information about the citizens of Belarus (44 people), Kazakhstan (38 people), Serbia (28 people), Moldova (20 people), Germany (19 people), Uzbekistan (15 people), Slovakia (12 people), France (12 people). There are also data on residents of Italy, Israel, Armenia, Georgia, the Czech Republic, Latvia, Spain, Colombia, Lithuania, Macedonia, Poland, Bulgaria, Azerbaijan, Estonia, Kyrgyzstan, Turkmenistan, who participated in the armed conflict in eastern Ukraine or were part of paramilitary units – a total of over 250 foreigners, excluding the Russians.¹⁷

It is virtually impossible to identify crimes related to the participation of Russian citizens in illegal armed groups (Article 208 of the CC RF) on the territory of foreign states. Information published in public sources, as a rule, indicates that the persons involved in criminal cases under Article 208 of the CC RF

are those who either tried to join or joined illegal (including those banned in Russia) armed groups.

The study found only mention of the sentence in public sources – the sentence for participation in an illegal armed group regarding the sentence of a Crimean convicted of participation in the Asker battalion operating in the border regions of the Kherson Region of Ukraine¹⁸.

In 2016, the **Moscow District Military Court** sentenced schoolboy Kirill Benetskiy to 6 years and 6 months in a standard regime penal colony (the Supreme Court of the Russian Federation, after reviewing the sentence, commuted it to 6 years and 4 months)¹⁹. The young man was found guilty of crimes under Articles 280 (public calls for extremist activities) and 208 (participation in an illegal armed group) for being a member of the Right Sector (Pravyi Sektor)²⁰ organization. The court found that the student was involved in an organization of subversive physical and ideological training, after which he joined the ranks of an illegal armed group”.

As for Article 359 of the Criminal Code of the Russian Federation (“Mercenary”), the first criminal case in the history of modern Russia was initiated at the end of 2014 against nationalist Roman Zheleznyov, who was suspected of participating in military operations

¹⁷ <https://helsinki.org.ua/wp-content/uploads/2017/07/Bro.pdf>

¹⁸ <https://www.novayagazeta.ru/news/2019/01/25/148679-zhitelya-kryma-prigovorili-k-10-5-godam-kolonii-za-uchastie-v-deyatelnosti-ukrainskogo-natsbatalona>

¹⁹ http://www.rapsinews.ru/judicial_news/20161222/277423491.html

²⁰ organization which activities in the Russian Federation are prohibited



Seizure of Sloviansk (Donetsk region, Ukraine) by illegal armed groups, 2014. Photo by AFP

as part of the Azov battalion²¹. On March 29, 2018, the Babushkinskiy District Court of Moscow sentenced Zheleznov in absentia to four years in a maximum security colony²².

In September 2015, the **Moscow City Court** sentenced blogger Aleksandr Razumov to seven years in prison, who, according to the prosecution, tried to recruit police officers he knew to the Right Sector²³ to then send them to the conflict zone.²⁴ In 2015, a resident of Ivanovo region received a suspended sentence for two years of imprisonment - during correspondence with a recruiter, the young man agreed to take part in the hostilities in Ukraine as part of the Right Sector as a mercenary. He tried to leave the territory of Russia twice, but was detained by border guards²⁵.

A criminal case was also initiated against a resident of Stavropol Sergey Bukreyev on suspicion of mercenarism in connection with joining the Azov battalion²⁶.

In 2016, the **Kirov Regional Court** sentenced a 24-year-old local resident to imprisonment for 2 years and 6 months with a restriction of freedom for 1 year for commit-

ting a crime under Part 3 of Article 359 of the Criminal Code of the Russian Federation²⁷. The court found that from February 2015 to January 2016 the young man served in the Ukrainian battalion Azov and participated in hostilities receiving financial compensation of at least 21 thousand UAH.

In 2017, the **Sovetsky District Court of Samara** convicted Artyom Shirobokov in absentia for mercenarism for participating in the armed conflict in Ukraine as part of Azov and sentenced him to five years in prison²⁸.

The Kopeysk City Court of Chelyabinsk Region convicted a Russian citizen because in 2014 he took part in hostilities in Ukraine as part of the Azov battalion and sentenced him to three years and three months in prison²⁹.

In the same year, the **Investigative Committee of the Russian Federation** initiated a criminal case under Article 282.2 of the Criminal Code (managing and participating in an extremist organization) against Igor Chudinov, Gennady Khamraev, Georgy Stotsky, Roman Strigunkov and Aleksandr Valov for participating in the activities of the Right Sector organization³⁰. According to the investigators, the accused went to the territory of Ukraine

²¹ <https://www.gazeta.ru/social/2016/06/10/8298287.shtml>

²² <https://www.mk.ru/politics/2018/03/29/neonacist-roman-zheleznov-poluchil-zaochnyy-srok-v-35-goda-za-naemnichestvo.html>

²³ organization which activities in the Russian Federation are prohibited

²⁴ <https://mhg.ru/news/rossijskih-naemnikov-v-inostrannyh-vooruzhennyh-konfliktah-nakazyvayut-izbiratelno>

²⁵ <https://ivday.ru/gorod/v-ivanovskoi-oblasti-osuzhden-naemnik-kotoryi-khotel-voevat-v-sostave-pravogo-sekt.html>

²⁶ <https://www.kommersant.ru/doc/2800403>

²⁷ <https://www.sova-center.ru/racism-xenophobia/news/counteraction/2016/08/d35300/>

²⁸ <https://www.kommersant.ru/doc/3319725>

²⁹ <https://tass.ru/proisshestiya/4692342>

³⁰ <https://www.sova-center.ru/racism-xenophobia/news/counteraction/2017/01/d36227/>

where they joined the ranks of the Right Sector. At the same time, Chudinov and Khamraev, as part of one of the combat units, took part in military operations, and Stotsky, Strigunkov and Valov participated in rallies, marches and other events, as well as campaigned online. They were arrested in absentia and put on the international wanted list³¹.

In May 2017, a criminal case was initiated in **Murmansk region** against a local resident suspected of a crime under Part 3 of Article 359 of the Criminal Code of the Russian Federation. According to the investigation, in 2014, the young man joined the ranks of the Azov battalion, where «he received remuneration, was supplied with communications, ammunition, firearms and armament that he used to conduct military operations»³². In a press release, the Investigative Committee indicated that «in consideration for participating in armed conflicts, he constantly received financial rewards in foreign currency (US dollars), which in total amounted to more than 920 thousand rubles».

In 2018, **the Supreme Court of the Chuvash Republic** sentenced a resident of Stavropol Sergey Ilyin to three and a half years in a standard regime penal colony, who was found guilty of participating in the armed conflict in Ukraine as a mercenary in the ranks of the Organization of Ukrainian Nationalists (OUN)³³.

In addition, in 2018 the **Investigative Committee of Russia** brought in an indictment against the citizen of the Russian Federation Anton Korolev in absentia. He is charged with crimes under Part 3 of Article 359 of the Criminal Code of the Russian Federation (participation of a mercenary in an armed conflict), Part 1 of Article 280, Part 1 of Article 282 of the Criminal Code of the Russian Federation (public calls for extremist activities and incitement to hatred and enmity, as well as humiliation of human dignity). According to the investigation, in the autumn of 2014, Korolev left for Ukraine; in March 2015, he voluntarily joined the Ukrainian nationalist battalion Azov and “takes part in the hostilities in the south-east of Ukraine against the militia forces

of the self-proclaimed Donetsk and Luhansk People’s Republics»³⁴.

Based on the analysis of public sources, it can be concluded that Russian law enforcement agencies initiate criminal proceedings against persons participating in hostilities in Ukraine exclusively on the side of the Ukrainian authorities.

At the same time, the Investigative Committee of the Russian Federation also regularly reports the initiation of criminal cases not only against Russian citizens, but also against Ukrainian military personnel³⁵. So, the Russian law enforcement agencies were pursuing or are currently pursuing criminal cases both on the facts of the use of weapons by the armed forces and law enforcement agencies of Ukraine, and criminal cases on crimes against the peace and security of mankind, in particular, against 20 high-ranking officials of the Ministry of Defense Ukraine³⁶. The investigation sees signs of crimes in their actions as provided for in Articles 356, 357 of the Criminal Code of the Russian Federation (the use of prohibited means and methods of warfare, genocide).

In turn, the only reference in public sources to information on the actions of Russian law enforcement agencies against persons suspected of mercenarism as part of formations fighting on the side of the self-proclaimed Donetsk and Luhansk People’s Republics concerns the detention of Ruslan Babazhanov, who is not a citizen of Russia. In September 2018, the man was detained at the airport of Nizhny Novgorod for extradition to Uzbekistan at the request of Interpol³⁷.

Moreover, in the verdict in the criminal case No. 1-56/2015 of November 26, 2015 by the magistrate of the magistracy No. 4 of the **Dimitrovgrad Judicial District of the Ulyanovsk Region** “participation in the militia in the DPR” was found to mitigate the punishment - according to the court judgment, the person convicted of driving while intoxicated Suleymanov was in Ukraine from February to May 2015³⁸.

³¹ <https://news.rambler.ru/other/38791059-sud-v-moskve-zaochno-arestoval-dvuh-uchastnikov-pravogo-sektora/>

³² <https://www.sova-center.ru/racism-xenophobia/news/counteraction/2017/05/d37197/>

³³ <https://tass.ru/proisshestiya/5838836>

³⁴ <https://sledcom.ru/news/item/1246435/>

³⁵ <https://sledcom.ru/cases/item/1168/>

³⁶ <https://sledcom.ru/news/item/1162812/>

³⁷ <https://www.spb.kp.ru/daily/26888.5/3932505/>

³⁸ http://4dmitrovgrad.uln.msudrf.ru/modules.php?name=sud_delo&op=sd&number=6359344&delo_id=1540006

4 INTERNATIONAL CRIMINAL COURT: PROSPECTS FOR PROSECUTION OF WAR CRIMES AND CRIMES AGAINST HUMANITY COMMITTED IN UKRAINE

The concurrent international and non-international armed conflicts in eastern Ukraine have not yet received its unambiguous legal recognition from international institutions. Although the International Criminal Court indicated that «the increased intensity of hostilities [in Ilovaisk in August 2014 and in Debaltseve from January to February 2015] in 2019 is due to the alleged influx of troops, vehicles and weapons from the Russian Federation to strengthen the position of armed groups»³⁹.

This point is important for the competent qualification of serious violations of international humanitarian law (war crimes) committed during the conflict. Some of the criminal acts can be qualified as war crimes regardless of the type of armed conflict. These include, for example, the following: murders, torture, encroachment on the human dignity of persons who are not actively involved in hostilities; deliberate attack on civilian objects, the civilian population, facilities intended for religious practice and culture purposes; rape; destruction and seizure of enemy property not dictated by urgent military necessity, etc.

At the same time, it should be remembered that the most complete and generally recognized catalog of war crimes is enshrined in Art. 8 of the Rome Statute:

- a) Grave breaches of the Geneva Conventions of 1949;
- b) Other serious violations of the laws and customs;
- c) Serious violations of Article 3 common to the four Geneva Conventions of 1949;
- d) Other serious violations of the laws and customs applicable in armed conflicts not of an international character

The first two groups (a, b) combine war crimes committed during the international armed conflict. War crimes in the framework

of a non-international armed conflict are cataloged in groups three and four (c, d).

Grounds for the application of the jurisdiction of the Court.

According to a preliminary assessment of the Office of the Prosecutor of the International Criminal Court, the following war crimes were committed in eastern Ukraine (at the very least): deliberate attacks on civilians, civilian facilities and facilities under protection, intentional murder, torture and inhuman or cruel treatment, rape and other forms of sexual violence. Experts from non-governmental organizations have also documented evidence of crimes such as enforced disappearances, the use of protected persons as human shields, persecution of an identified group (Roma, members of the LGBT community, religious believers), and crimes against prisoners detained in facilities in the territory under government control.

The materials of our study give reason to believe that during the military conflict in eastern Ukraine in 2014-2020, the following crimes against humanity and war crimes classified under under Articles 7 and 8 of the Rome Statute were committed:

- ♦ Murders (extrajudicial executions, tortured to death, civilians murdered as a result of single shots), Articles 7 (1) (a), 8 (2) (a) (i), 8 (2) (c) (i) of the Statute;
- ♦ Death of civilians and destruction of civilian objects (deliberate shelling, indiscriminate shelling, persons murdered as a result of explosions - mines, tripwire mines, etc., destruction and damage to residential buildings and infrastructure), Article 8 (2) (b) (i), (ii), (iv), (v), (ix), 8 (2) (e) (i), (ii), (iv) of the Statute;
- ♦ Use of protected persons as “human shields”, Article 8 (2) (b) (xxiii) of the Statute;

³⁹ ICC, Report on Preliminary Examination Activities 2017, 4 December 2017, para 92, 95 // https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf, latest access on May 15, 2019.

- ◆ Detention (imprisonment) or other cruel deprivation of physical freedom in illegal places of detention, Article 7 (1) (e) of the Statute;
- ◆ Torture and ill-treatment, Articles 7 (1) (f), 8 (2) (c) (i) of the Statute;
- ◆ Sexual and gender-based violence, Articles 7 (1) (g), 8 (2) (b) (xxii), (e) (vi) of the Statute;
- ◆ Enforced disappearances, Article 7 (1) (i) of the Statute;
- ◆ Encroachment on human dignity (parades of prisoners, forcing prisoners to eat insignia, forcing prisoners to rebury corpses that have decomposed, etc.), Article 8 (2) (b) (xxi), (c) (ii) of the Statute;
- ◆ Persecution of an identified group (Roma, members of the LGBT community, congregation of the a church that is not recognized by the Moscow Patriarchate), Article 7 (1) (h) of the Statute;
- ◆ Crimes against prisoners held in institutions in a territory not controlled by the government, Article 8 (2) (a) (i), (ii), (vi), (b) (iv), (xxiii), (c) (i), (ii), (iv) Statute.

The crimes cited in this study fall under the subject-matter (*ratione materiae*) of the ICC jurisdiction and were committed on the territory of Ukraine by citizens of Ukraine and Russia. Parties involved in the commission of crimes include: members of IAGs who often acted with the support or direct participation of the Russian Armed Forces; LAG members, including units of the AFU, MIA, volunteer battalions and SSU; members of the Armed Forces of Russia or Special Forces of Russia.

The results of the study claim that there are all the prerequisites for initiating an investigation into the situation in Ukraine in accordance with Article 53 (1) (a) - (c) of the Rome Statute of the International Criminal Court. The study also confirms that there are no factors that would make the potential cases arising from the situation in eastern Ukraine unacceptable to the ICC.

In particular, the Ukrainian authorities clearly demonstrate their unwillingness to investigate and prosecute crimes committed by the LAG, as well as to recognize victims of vio-

lence caused by LAG members. The same lack of activity is demonstrated by law enforcement agencies of Ukraine in relation to the investigation of crimes committed by IAG members.

The legal basis for ICC investigations is the special jurisdiction of the ICC adopted by Ukraine regarding Maidan events (Declaration I)⁴⁰ and alleged crimes committed in eastern Ukraine and the Crimea (Declaration II).⁴¹ On September 29, 2015, on the basis of the second declaration of Ukraine, the ICC Prosecutor announced, in accordance with Article 12 (3), the continuation of the preliminary investigation into the situation in Ukraine with the inclusion of alleged crimes that were committed after 2014 in the Crimea and eastern Ukraine.⁴²

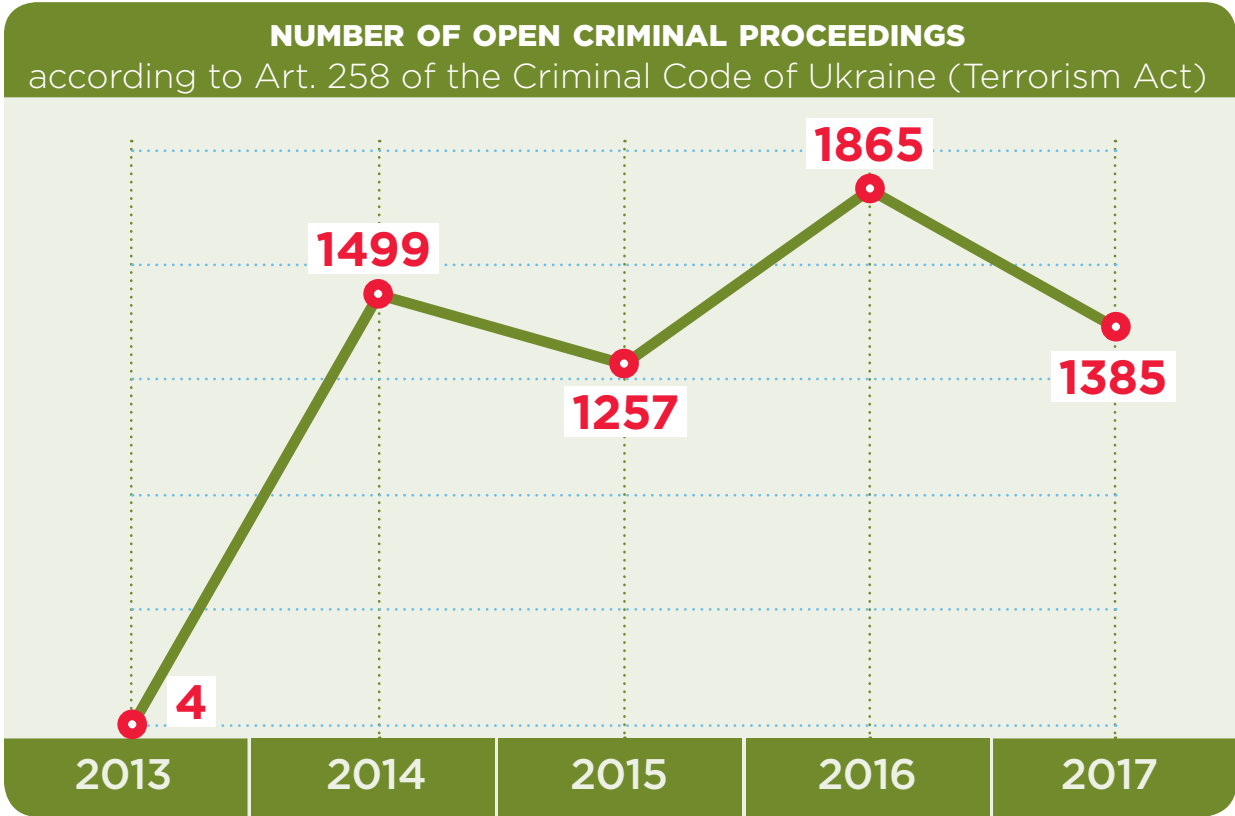
Now, 5 years after the Verkhovna Rada of Ukraine had adopted the decision to recognize the jurisdiction of the ICC, the Office of the Prosecutor is at the second of four stages of a preliminary study of the situation in Ukraine. At this stage, the Office is examining the existence of war crime elements in those acts on which it has information. After passing through two more stages (checking whether similar cases are being investigated in Ukraine and assessing the interests of justice), the Prosecutor will be able to decide on initiating a full-fledged investigation into the situation in Ukraine. After such an investigation, hearings may begin in a specially created chamber of the International Criminal Court.

⁴⁰ The Declaration of the Verkhovna Rada of Ukraine to the ICC regarding the recognition by Ukraine of the ICC jurisdiction regarding crimes against humanity committed by senior government officials, which led to extremely grave consequences and the massacre of Ukrainian citizens during peaceful protests between November 21, 2013 and February 22, 2014, was signed by the Chairman of the Verkhovna Rada of Ukraine Oleksandr Turchynov, ICC, February 25, 2014, <<https://www.icc-cpi.int/itemsDocuments/997/declaration-VerkhovnaRadaEng.pdf>>.

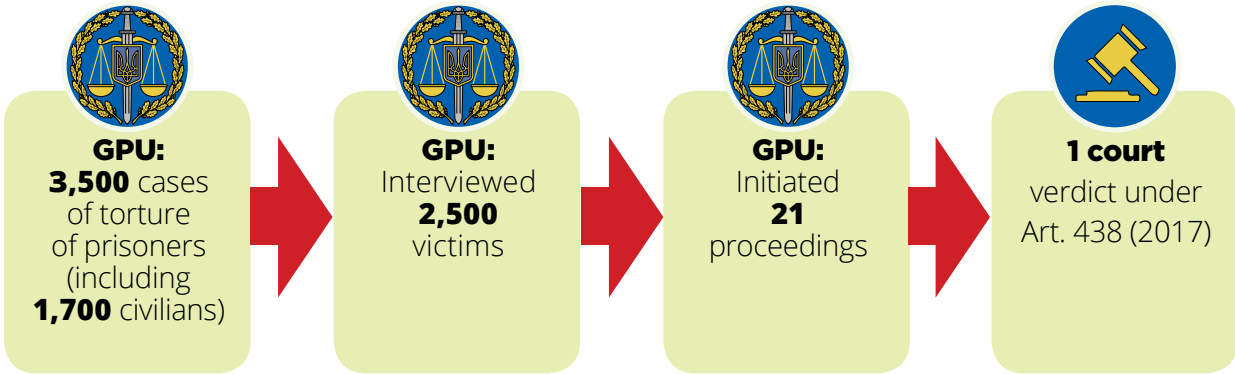
⁴¹ The Declaration of the Verkhovna Rada of Ukraine to the ICC regarding Ukraine's recognition of the jurisdiction of the ICC regarding crimes against humanity and war crimes committed by senior officials of the Russian Federation and the heads of terrorist organizations "DPR" and "LPR", which led to extremely grave consequences and the massacre of Ukrainian citizens, was signed the Chairman of the Verkhovna Rada of Ukraine V. Hroisman, ICC, February 4, 2015, <https://www.icc-cpi.int/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf>.

⁴² "The ICC prosecutor continues the preliminary review of the situation in Ukraine after the second declaration regarding Article 12 (3)", ICC press release, September 29, 2015, <<https://www.icc-cpi.int/Pages/item.aspx?name=pr1156>>.

UKRAINE:



CRIMINAL PROSECUTION
according to Article 438 of the Criminal Code of Ukraine
(Violation of the laws and customs of war) in 2014-2017



SSU PRACTICE





Prospect of a universal jurisdiction mechanism.

Given the whole range of problems regarding judicial forms of prosecution of perpetrators of war crimes and crimes against humanity, this report focuses on the universal jurisdiction mechanism as such, which opens up wide opportunities, along with other mechanisms of the ICC and the ECHR.

Universal jurisdiction is the application of national criminal law to international crimes in under any circumstances, no matter where, by whom or in relation to whom the relevant acts were committed. This is how universal jurisdiction is interpreted, for example, the German Code of Crimes against International Law, which establishes its applicability to all crimes listed therein, even if they were “committed abroad and are not connected with Germany”⁴³.

The 1949 Geneva Conventions provide for the obligations of member states to search for individuals suspected of serious violations - which are war crimes - regardless of their nationality and where the alleged crime was committed, and to either try them in their own courts or submit them for trial to some other member state. Additional Protocol I to the Geneva Conventions extends this obligation to serious violations defined therein.

⁴³ Verle G. Principles of International Criminal Law: Textbook. Odesa: Feniks, 2011. P. 181.

According to TRIAL, to date, in practice, prosecution under universal jurisdiction in practice is carried out by 16 countries and 11 people are involved as defendants. 207 people remain suspects.⁴⁴

Moreover, the existing problem of limited resources against the background of a large number of poten-

tial suspects does not negate the possibility of European countries initiating criminal investigations before a suspect arrives in a particular country. Practical expediency undoubtedly dictates the initiation of such investigations at the location that has the most evidence, witnesses and victims.

Experts recognize that universal jurisdiction will be effective if (1) the state administering the jurisdiction has comprehensive legislation, (2) a well-functioning specialized unit for war crimes is in place, (3) there is previous experience in this kind of work, (4) there is access to necessary evidence, including witnesses and victims, (5) and on condition of the presence or expected presence of the suspect in the country.⁴⁵

In most countries, the discretion of the prosecutor, who can either refuse to initiate an investigation or terminate it at later stages, plays a critical role.⁴⁶ Countries investigating cases under universal jurisdiction as of 2020 include Argentina, Austria, Belgium, Finland, France, Germany, Ghana, Hungary, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, the UK and the USA.⁴⁷

⁴⁴ TRIAL. Universal Jurisdiction Annual Review 2020, c. 13.

⁴⁵ Florian JEBBERGER. Towards a ‘complementary preparedness’ approach to universal jurisdiction – recent trends and best practices in the European Union. P. 9.

⁴⁶ HRW. Universal Jurisdiction in Europe. The State of the Art. Volume 18, No. 5(D). June 2006, c. 33.

⁴⁷ TRIAL. See Universal Jurisdiction Annual Review 2020.

5 VICTIMS OF ARMED CONFLICT IN EASTERN UKRAINE

Over the entire period of the armed conflict in eastern Ukraine (2014–2020), the OHCHR recorded 3,052 deaths of civilians (1,812 men, 1,056 women, 98 boys, 49 girls and 37 adults whose gender is unknown) and more than 7 thousand people injured in the conflict. At the same time, among the combatants on all sides, there are about 9.8 thousand dead and 22-24 thousand wounded.

4,734 combatants from the Armed Forces of Ukraine were registered as persons with disabilities, the number of civilians who became persons with disabilities as a result of armed conflict is not fully known. On the Ukrainian side, post-traumatic stress disorder is estimated to affect 60-70 thousand combatants and 512 thousand IDPs.

The extent of the damage can also be estimated by the following indicators:

- ◆ At least 45,000 Ukrainian citizens have been involved in the activities of illegal armed groups of at least 45,000 citizens of Ukraine, as well as in the activities of self-proclaimed formations of the so-called “state structures of the DPR/LPR”, paramilitary groups, and occupying authorities of more than 346 thousand citizens of Ukraine;
- ◆ About 2.7 million citizens within and outside of Ukraine have been displaced, including 460 thousand Ukrainians in the Russian Federation. Of all displaced persons, approximately 60% are pensioners, 60% are women, 13% are children and 4% are persons with disabilities;
- ◆ About 800 thousand people living in the conflict area are in an extremely vulnerable situation, as well as 45-47 thousand people who cross the demarcation line in Donetsk, Luhansk regions and the administrative border with the Autonomous Republic of Crimea on a daily basis;
- ◆ Causing various kinds of damage to more than 5 million residents of certain areas of Donetsk and Luhansk Regions;
- ◆ More than 5 million residents of certain areas of the Donetsk and Luhansk regions have experienced various kinds of damage;- About 3.8 million citizens of Ukraine, 2.8 million of whom are living in territories not controlled by the government, are in need of state assistance as a result of the conflict;

- ◆ About 200 thousand children need psychological rehabilitation and assistance as victims of the armed conflict.

CLASSIFICATION OF ARMED CONFLICT VICTIMS



The armed conflict victims include the below categories listed below:

1. **Dead**, military personnel and civilians, as well as members of their families;
2. **Wounded**, military personnel and civilians, as well as members of their families;
3. **Missing persons**, military personnel and civilians, including victims of enforced disappearances, as well as members of their families;
4. **Those illegally** deprived of liberty and illegally detained, as well as members of their families;
5. **Victims** of torture and ill-treatment;
6. **Victims** of sexual and gender-based violence;
7. **Victims** of violation of human dignity, military and civilians;
8. **Prisoners** in penitentiary facilities in government-uncontrolled territory;
9. **Victims of persecution** of identifiable groups based on group affiliation in government-uncontrolled territories:
 - Roma;
 - Members of the LGBTI community;
 - Congregation of the a church that is not recognized by the Moscow Patriarchate;
10. **People who** have lost housing and other property in connection with hostilities.



VICTIMS OF ARMED CONFLICT in the east of Ukraine 2014-2020

MURDERED, WOUNDED

Myrnyi Bereh NGO and KhHRG NGO documented **108** cases of murder



50 civilians



58 prisoners of war

83% – in uncontrolled territory
17% – in controlled territory

78 – extrajudicial executions



50% civilian, **50%** military



24 – tortured to death



11 civilian



13 military

19 – in uncontrolled territory
5 – in controlled territory

6 – died from single shots

The dead, the wounded.

The real death toll is difficult to establish today. In contrast to the above statistics from the OHCHR, the KhHRG database contains personal data of 3,144 dead and 3,350 wounded civilians⁴⁸, and 9,294 dead in the MB database. The authors of the study documented 108 murders in connection with the military conflict, including the murders of 50 civilians and 58 prisoners of war. 83% of the murders were committed in the territory not controlled by the government, 17% in the territory controlled by the government. 78 cases are related to extrajudicial executions (50% military personnel and 50% civilian), 24 people were tortured to death (13 members of the military and 11 civilians, 19 cases in uncontrolled territory, 5 in controlled territory), 6 people died from single shots.

The missing.

The lack of a unified methodology for identifying missing persons and coordination between various state bodies has led to conflicting estimates of the number of persons missing

in the military conflict zone - from several hundred to several thousand people.

According to the NPU, during the entire period of the conflict, more than 7,400 Ukrainians went missing, by the end of 2017 more than 1,800 people were missing.

According to the information from the Directorate of the NPU of the Donetsk region, from April 2014 until early 2017, 2,727 people were missing on the controlled territory in the Donetsk region, the fate of 1,053 of them is unknown. According to the Luhansk Regional Civil-Military Administration, since the beginning of the ATO, 1,205 people have been wanted in the region in the controlled territory, 633 people have been found, the fate of 572 people remains unknown.

SSU (2017) reported a smaller number of missing persons since the beginning of the military conflict - 403 people, including 123 military personnel, members of volunteer battalions and security forces.⁴⁹

In the Myrnyi Bereh database, at the end of May 2018, there were 1,148 missing people including 150 members of the military, 998

⁴⁸ Report the loss of civilian population, the destruction of housing and infrastructure as a result of the armed conflict in eastern Ukraine, p.25, <http://khpg.org/en/index.php?id=1538471203>

⁴⁹ https://www.dialog.ua/ukraine/139595_1513348177



VICTIMS OF ARMED CONFLICT in the east of Ukraine 2014-2020

MISSING PERSONS

Official data

Ministry of Internal Affairs
(February 15, 2015): **1,331**

NPU Office in Donetsk Region
(April 2014 - early 2017): in the controlled territory of Donetsk Region - **2,727**, the fate of **1,053** of them is unknown

Luhansk Regional Civil-Military Administration
(since the beginning of the ATO) in the controlled territory of Luhansk Region: **1,205** are missing, **633** have been found, the fate of **572** is unknown

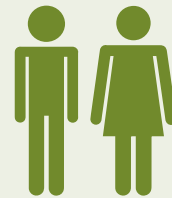
Head of the SSU V. Hrytsak
(beginning of the military conflict – end of December 2017): **403**, including **123** military personnel, members of volunteer battalions and security forces

In the database of Myrnyi Bereh NGO

2,878 – for the entire duration of the conflict



1,425
military personnel



1,453
civilians



including
56 children

1,148 – at the end of May 2018



150
military personnel



998
civilians



including
36 children



152
unknown

civilians, including 33 children. John Doe/ Jane Doe - 152.⁵⁰

As of September 1, 2019, KhHRG has documented 4,656 cases of disappearances, with 3,982 people being included in the database, in particular 659 women, including 239 children (there is not enough information to determine the gender of 15 missing people). Of all the documented cases of disappearance, 3,505 people were found, including 210 children.⁵¹

People illegally deprived of liberty and illegally detained

Illegal imprisonment by IAGs.

The Chief Military Prosecutor's Office (2018) identified more than 3,500 people who were held by illegal armed groups in 120 places of illegal detention in the territories of the Donetsk and Luhansk Regions not controlled by the government. Of these, about 1.7 thousand are civilians, the rest are military personnel.⁵²

The prisoners were held in unsuitable premises, were deprived of food, water, physiological needs and necessary medical care. Members of the illegal armed groups tortured almost all of those illegally deprived of their liberty, several hundred prisoners were killed.

The MB database records 204 illegal places of detention, including 116 places in Donetsk region and 88 in Luhansk region, which housed 2,082 civilians and 1,654 military personnel⁵³.

Illegal imprisonment by LAGs.

The study experts were able to document eight instances of illegal detention in the territory controlled by the Ukrainian government. Unlawful detentions of a total of about 40 people were committed by the representatives of volunteer battalions and the National Guard of Ukraine. The reasons for detention included «suspicions of sympathy for the Russian separatist forces»; «journalists and volunteers suspected of espionage»; «kidnapping for ransom».

⁵⁰ <http://khp.org/index.php?id=1528705847>

⁵¹ Ibid, p. 30-31.

⁵² See the data submitted by NPU and CMP at <https://www.radiosvoboda.org/a/news/29378209.html>

⁵³ Violent Crimes Committed During the Armed Conflict in Eastern Ukraine between 2014–2018, <http://khp.org/en/index.php?id=1543997604>



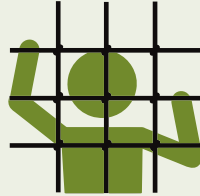
VICTIMS OF ARMED CONFLICT in the east of Ukraine 2014-2020

ILLEGALLY DEPRIVED OF LIBERTY

Data of the Chief Military Prosecutor's Office

as of July 20, 2018:

in the territories of Donetsk and Luhansk Regions, illegal armed groups are keeping more than **3.5 thousand** people captive, with about **1.7 thousand** of them being civilians



ALMOST ALL PEOPLE ILLEGALLY DEPRIVED OF FREEDOM WERE SUBJECTED TO TORTURE

in 2014-2018, illegal armed groups created **120 places for the illegal detention of prisoners** – Ukrainian military, civilians, including journalists and volunteers

In the database of Myrnyi Bereh NGO

204 – illegal places of detention

Donetsk Region – **116**
Luhansk Region – **88**

3,736 prisoners



1,654
military personnel



2,082
civilians



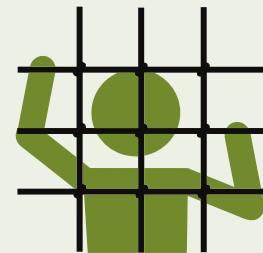
VICTIMS OF ARMED CONFLICT in the east of Ukraine 2014-2020

ILLEGALLY DEPRIVED OF LIBERTY

In the database of Myrnyi Bereh NGO

PLACES OF DETENTION WITH THE LARGEST NUMBER OF PRISONERS:

- SSU Office building (Donetsk) - more than **225**
- former military unit No. 3037 (Donetsk) - more than **190**
- Izoliatsiia plant (Donetsk) - more than **190**
- temporary detention facility near the Pivdenna Bus Station (Donetsk) - more than **400**
- temporary detention facility City Regional Department of the Department of the Ministry of Internal Affairs of Ukraine (Snizhne, Donetsk Region) - more than **190**
- SSU Office building (Luhansk) - more than **200**





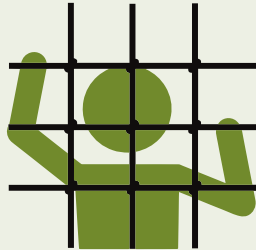
VICTIMS OF ARMED CONFLICT in the east of Ukraine 2014-2020

TORTURE AND ILL-TREATMENT VICTIMS

In the database of Myrnyi Bereh NGO

more than **3,000** cases of torture of prisoners (military and civilians) by illegal armed groups

more than **6,000** people went through the places of detention of the IAGs which conditions can be compared to torture and ill-treatment



Luhansk Region Prosecutor's Office, 2020: about **600** people who were victims of torture by illegal armed groups were identified. More than six thousand crimes committed by illegal armed groups are being considered now, and the register of pre-trial investigations includes information on more than **4,200** people affected by crimes related to the armed aggression of Russia against Ukraine.

Data from UHHRU, Truth Hounds NGO, KhHRG NGO

23 documented cases of people being detained by **Ukrainian security** forces. **19** of them were victims of torture and ill-treatment, only **3** had participated in violent actions aimed at overthrowing the Ukrainian government, the **others** were participants in non-violent rallies or civilians who had nothing to do with political events



Some persons were held in custody by LAGs for up to 14 days, during which the detainees were subjected to ill-treatment and were released only with the mandatory signing of a document that they have no complaints against those who detained them.

The most large-scale violations were noted in Stanytsia Luhanska (Luhansk region, 2015), where representatives of the volunteer battalions Chernihiv and Tornado illegally detained local residents.⁵⁴ Despite the fact that during the “clearance operation” and “struggle against separatists” almost every resident of the village had to go through the illegal places of imprisonment run by Tornado members⁵⁵, many residents refused to give testimony for the experts’ records fearing for their safety.⁵⁶

The prevalence of this practice is indicated by the cases of illegal detention of another

23 people, as documented by various NPOs (UHHRU, Truth Hounds, KhHRG).⁵⁷ Moreover, 19 of these detainees were victims of torture and ill-treatment.⁵⁸ After 2015, most cases of unlawful detention, as well as detention without communication with the outside world in unofficial places of detention, were associated with the practice of the SSU practice, as reflected in the UNHRMM reports.⁵⁹

Victims of torture and ill-treatment

The data on the number of persons who have been tortured on both sides (IAG, LAG) vary widely. However, all observers agree that torture in the SDDLr was widespread, with its peak occurring in April 2014 – late 2015 due to the acute phase of the conflict.

⁵⁴ Report about the violations of human rights in the area of the armed conflict in Luhansk Oblast. Stanitsa Luhanska Sector / Yuriy Aseev, Yana Smelyanska, Anastasia Yegorova, Fedir Daniilchenko. – Kharkiv, Human Rights Publisher, 2018. – 90 p.

⁵⁵ *Old Stomping Grounds of the Tornado Battalion. Photoreport.* <http://khpg.org/index.php?id=1480948008>.

⁵⁶ Donbas Basements Grim Truth about Captivity. Those Who Survived Hell: Testimony of Victims of Imprisonment in Donbas, <http://khpg.org/index.php?id=1481630335>, c. 22.

⁵⁷ Unlawful detention and torture by the Ukrainian side in the armed conflict zone in eastern Ukraine, 2017, <http://khpg.org/index.php?id=1496406846>.

⁵⁸ «Illegal arrests and torture committed by the Ukrainian side in the zone of the armed conflict in the East of Ukraine: Information report of the Ukrainian Helsinki Human Rights Union, the Kharkiv Human Rights Protection Group and a non-governmental organization Truth Hounds», UHHRU (online), https://helsinki.org.ua/wp-content/uploads/2017/06/ZVIT-engl_New1.pdf.

⁵⁹ Human Rights Report in Ukraine from February 16, 2016 to May 15, 2016, https://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report_UKRANIAN.pdf, nap.31.



VICTIMS OF ARMED CONFLICT in the east of Ukraine 2014-2020

VICTIMS OF ENCROACHMENT ON THE HUMAN DIGNITY

- marches of prisoners, accompanied by insults from the crowd
- detention in rooms with inappropriate conditions
- coercion to exposure or dressing men in women's clothing
- hard (unpaid) work, including the development of military structures
- coercion to observe torture or rape of others
- coercion to illegal actions with state symbols and signs of military affiliation, such as burning, eating
- coercion to collect the bodies of dead people (civilian, military) and their dismemberment



IN ALL CASES, COERCION WAS UNDER THE THREAT OF USING WEAPONS OR PHYSICAL VIOLENCE

According to representatives of the Ukrainian authorities (2018), each of the 3,224 released persons was tortured by illegal armed groups⁶⁰. The database of the authors of the study also contains more than 3,000 documented cases of torture of prisoners (military personnel and civilians) by illegal armed groups. At the same time, non-governmental organizations and the UNHRMM⁶¹ share the position that the conditions of illegal detention in illegal armed groups can be equated with torture and ill-treatment. The number of victims of torture can thus be expanded to 6,000 people who have experienced these conditions.

The SSU's participation in torture is not proven, however, the Subcommittee on Prevention of Torture (SPT) of the UN Committee against Torture and Ill-treatment in its report on a visit to Ukraine (2016) noted: "The SPT received

numerous and serious reports of actions that, if proven, could be classified as torture and ill-treatment. Persons interviewed by the Subcommittee in various parts of the country have recounted beatings, electrocutions, mock executions, asphyxiations, acts of intimidation and threats of sexual violence against themselves and their family members. In the light of all the work done and experience gained during the visit, the Subcommittee has no difficulty in concluding that these allegations are likely to be true. Many of the above-mentioned acts are alleged to have occurred while the persons concerned were under the control of the State Security Service or during periods of unofficial detention. Detainees ... are alleged to have been tortured in order to extract information regarding their involvement or that of their associates in "separatist" activities and to identify armed groups' military positions. The Subcommittee also understands that, in some cases, acts were committed by private individuals or volunteer battalions with the consent or acquiescence of public officials."

⁶⁰ «Tortured and raped: Herashchenko disclosed the medical diagnoses of former prisoners in Donbas». <https://fakty.ictv.ua/ua/ukraine/20180723-katuvaly-ta-qvatuvaly-gerashhenko-rozkry-la-diagnozy-eks-polonenyh-na-donbasi/>

⁶¹ The UNHRMM Report "Report on the human rights situation in Ukraine 16 February to 15 May 2016", cl. 12 - http://www.un.org.ua/images/UA_14th_OHCHR_report_on_the_human_rights_situation_in_Ukraine.pdf



Victim of torture by illegal armed groups, 2014. UHHRU archive

Victims of sexual and gender-based violence

This category includes both women who, due to economic reasons, are forced to have “sex for food”, as well as representatives of both sexes who have been victims of sexual violence by LAGs and IAGs in places of illegal imprisonment. Beatings and application of electric shock to the genital area, rape, threats of rape, forced exposure were used as a method of torture. In most cases, illegal armed groups used sexual violence to force victims to abandon their property or perform other actions as a condition of security and release.

A significant decrease in intensity after 2015 does not mean the cessation of such practices on both sides, both in relation to the detainees and the civilian population of the “gray zone”.

Victims of violation of human dignity, military and civilians

In the course of the study, the following types of abusive and degrading treatment were recorded, which qualify as an encroachment on dignity: prisoner marches, where the prisoners were subjected to insults from the crowd; detention in rooms with inappropriate conditions (lack of proper conditions and places for sleeping, eating, lack of a toilet, etc.); coercion to exposure or dressing men in women’s clothing, various kinds of hard (unpaid) labour, including the development of military structures; coercion to observe torture or rape of others; coercion to illegal actions with state symbols and signs of military affiliation, such as burning, eating or other actions against state symbols, coercion to collect the bodies of dead people (civilian, military) and to dismemberment them.



VICTIMS OF ARMED CONFLICT in the east of Ukraine 2014-2020

IDPs



About **3 million** people were forced to leave their places of permanent residence due to the risk of death

- about **0.5 million** - to Russia and other countries
- about **2 million** - registered as IDPs
- about **0.5 million** IDPs are not registered

More than **460 thousand** Ukrainians fled from the military conflict to Russia, approximately **360 thousand** of them received Russian citizenship under a simplified procedure. Of all registered IDPs, about **600 thousand** are pensioners. From **500 to 800 thousand** IDPs are currently permanently residing in the territory controlled by the government.

Today, in Ukraine, there are about 1.5 million IDPs

All cases were carried out by representatives of illegal armed groups, who threatened the use of weapons or physical violence.

Prisoners in penitentiary facilities in government-uncontrolled territory

In 2014, there were 28 penitentiary facilities on the territory not controlled by the government with 16,200 people with different legal status (convicted, accused, suspected).

In addition to the lack of access to justice, prisoners became the target of shelling for several months. At the same time, during heavy shelling, the administration of the penitentiary facilities hid, leaving prisoners locked in cells at the mercy of fate. In 2015, famine broke out in most of the penitentiary facilities. The lack of heating led to the con-

victs making fires in their cells using household items, such as wooden furniture and clothes, to at least boil water. Frost covered the walls, the water froze, and the temperature dropped to zero. There were periods when there was no light and water supply for weeks. Convicts were limited in the amount of water that they could drink. In addition, they could not maintain basic hygiene, and in the cells and sanitary facilities there was an unbearable stench from the sewer. No medical care was provided.

NPOs in Ukraine recorded reports when convicts became subject to the illegal use of physical force by the representatives of illegal armed groups. The latter could, for instance, beat a person to death, leave them without clothes in the winter outside for a whole day, or let dogs loose on them.

Victims of persecution of identifiable groups based on group affiliation in government-uncontrolled territories⁶²

Roma. About 6,000 Roma who left their places of residence in the war zone became victims of arbitrary detentions, pogroms, robberies, and beatings.

Members of the LGBTIQ community. The risk of aggression on the part of the illegal armed groups is extremely high – with the relocation *“to the basement, where we were placed for intimidation, ransom and free labor. In the basement they humiliated and insulted us”*.

Congregation of the a church that is not recognized by the Moscow Patriarchate.

The IAGs openly stated their affiliation with Orthodoxy and began to repress representatives of Protestant and Catholic churches and Orthodox believers who do not recognize the Moscow Patriarchate. Many priests were beaten up, and several priests were even killed by the IAGs.

People who have lost housing and other property in connection with the hostilities. Damage to the settlements of the Donetsk and Luhansk regions affected by the armed conflict

The IAGs' deployment of their artillery by the IAGs in private residential areas, close to hospitals, schools, kindergartens, etc., the use of human shields tactics for civilians and civilian facilities has led to the damage or destruction of more than 40 thousand residential buildings.⁶³ This figure does not include homes abandoned by IDPs and homes damaged during their military use.⁶⁴ On both sides of the contact line, as of the beginning of 2020, there are more than 50 thousand civilian homes that have been damaged during the hostilities. Of these, about

40 thousand families urgently need repairs.⁶⁵ The authors of the study documented 22,503 instances of damage to houses and infrastructure as a result of large-scale indiscriminate shelling.

The destruction of energy, transport, industrial and social infrastructure during the armed conflict in eastern Ukraine caused damage amounting to about \$50 billion.

According to the WHO, since the beginning of the conflict, 160 healthcare facilities on both sides of the contact line have come under fire. 130 of them either stopped operating in part or in full. The worst affected healthcare facilities are 57 hospitals in Donetsk, and 18 hospitals in Horlivka. 42 bridges were destroyed or damaged.

On the territory controlled by the government in the Luhansk region, about 9,000 facilities have been destroyed, including: more than 7,400 residential buildings, 32 bridges, 94 healthcare facilities, 113 educational institutions, 14 industrial facilities, 79 cultural and sports institutions.

On the territory controlled by the government in the Donetsk region, more than 12,900 residential buildings, 21 healthcare facilities, 27 secondary schools, 13 preschool institutions, 7 vocational schools, 14 cultural institutions and 19 industrial facilities have been damaged.

During the preparation of this report, cases of seizures and attacks on 58 educational institutions in 20 cities of the Donetsk region and 21 educational institutions in 14 cities of Luhansk region were recorded. Representatives of both the IAGs and LAGs were reported to have been engaged in this.

In the Donetsk region, 62 Orthodox churches were destroyed, and in Luhansk – 10 churches. 10 temples were destroyed to the ground. Greek Catholic and Protestant churches, as well as one Muslim mosque, were also subject to damage. Three Orthodox clergy were killed, five were injured.⁶⁶

⁶² Violent Crimes Committed During the Armed Conflict in Eastern Ukraine between 2014–2018. – Kharkiv: LLB “Human Rights Publisher”, 2018. — 112 p, pages 84-92, <http://khpg.org/files/docs/1552984577.pdf>

⁶³ Humanitarian Response Plan for 2018, available at <https://www.humanitarianresponse.info/en/operations/ukraine/document/ukraine-2018-humanitarian-response-plan-hrp>.

⁶⁴ The report about the losses of the civilian population, destructions of the households and infrastructure as a result of the armed conflict in the east of Ukraine. / Yuriy Aseev, Anastasiya Yegorova, Stanislav Pylayev, Yana Smelyanska, Yevgeniy Zakharov. – Kharkiv, Human Rights Publisher, 2018. – 118 pages, p.27-30. <http://khpg.org/en/index.php?id=1538471203>; https://www.ohchr.org/Documents/Countries/UA/ReportUkraineFev-May2018_UKRAINIAN.pdf, para. 34.

⁶⁵ Materials of Donbas SOS NGO presented at the round table “Destroyed civilian housing: an agenda for the fifth year of the conflict”. Secretariat of the Ukrainian Parliament Commissioner for Human Rights, March 20, 2019, Kyiv.

⁶⁶ The report about the losses of the civilian population, destructions of the households and infrastructure as a result of the armed conflict in the east of Ukraine. / Yuriy Aseev, Anastasiya Yegorova, Stanislav Pylayev, Yana Smelyanska, Yevgeniy Zakharov. – Kharkiv, Human Rights Publisher, 2018. – 118 pages, p.7. <http://khpg.org/en/index.php?id=1538471203>

6 IDP AS A NEW SOCIAL PROBLEM IN UKRAINE

The conflict in Ukraine in 2014 caused the largest migration in Europe since World War II, when 50% of the population of the Luhansk / Donetsk regions (at least 3 million people) were forced to leave their homes. The Ministry of Social Policy of Ukraine gives the figure of 1.43 million people registered as IDPs⁶⁷, of whom a little more than 600 thousand people are pensioners. Almost all pensioners registered as IDPs are residing in their homes in uncontrolled territory and are forced to travel to controlled territories every two months for the purposes of verification and to receive their pension. About 0.5 million IDPs did not register and solved their problems after moving without the state assistance.

Social assistance. The key problems that the IDPs faced initially were the recovery and execution of documents missing due to the bombing, accommodation, employment, social protection, provision of medical care, and socio-psychological rehabilitation. These problems were primarily solved by volunteer, charitable, human rights and other non-governmental organizations.

In 2014, the state was able to arrange the payment of monthly targeted assistance (the maximum amount is UAH 1,000)⁶⁸, but the procedure for assigning payments was extremely formalized. A prerequisite was visits by inspectors to the applicant's place of residence; if the IDP could not find official employment within two months, social services deprived the applicant of compensation payments; if the checks showed that the applicant had savings of more than 12,000 UAH, or if the family had more than one car, social services deprived such citizens of the right to compensation payments.

MYKOLA KOZYRIEV, Ukrainian human rights activist: "The actually established Procedure (for the assignment of social benefits - ed.) implies literally: sit and wait until a social worker at their discretion comes to your home and records your existence here and now with a verification act. Absence at the time of verification for domestic reasons, let alone leaving, say, for a week or two to another region, automatically makes the IDP a "violator" with the corresponding sanctions. And the poor person runs the risk of losing their livelihood for several months, since social checks, including IDP pensions, are linked to the checks established by these Procedures."⁶⁹

To receive a pension, the Ukrainian government introduced a discriminatory condition on the compulsory registration of recipients of pension payments as IDPs, which has not been revoked so far; banks require annual verification of IDP pensioners.⁷⁰ This approach resulted in "pension tourism", when pensioners living in uncontrolled territories began to come to the controlled territory for several days exclusively to obtain IDP status and receive pensions. Pension tourism, accompanied by corruption risks, has led to political speculation and a negative response on the international level. In 2016-2018, the Pension Fund of Ukraine resorted to the practice of suspending pension payments for "pension tourists" using data from the SSU and the State Border Guard Service about the citizens crossing the contact line in SDDL.

⁶⁷ <https://www.msp.gov.ua/news/18074.html>

⁶⁸ Resolution of the Cabinet of Ministers of Ukraine (CMU) No. 505 of October 1, 2014 "On the provision of monthly targeted assistance to internally displaced persons to cover accommodation expenses, including payment for housing and utility services".

⁶⁹ Ibid.

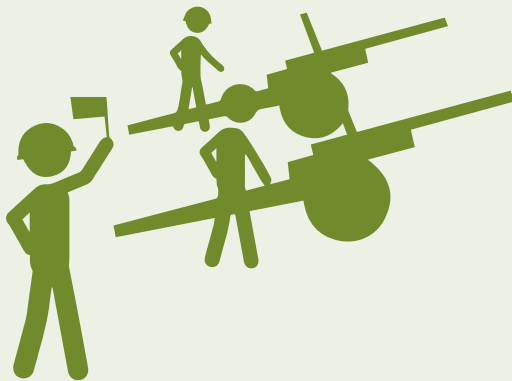
⁷⁰ <https://sud.ua/ru/news/ukraine/145422-pensij-zhitelyam-ordlo-zelenskiy-soobschil-o-vazhnykh-izmeneniyakh>



VICTIMS OF ARMED CONFLICT in the east of Ukraine 2014-2020

DESTRUCTION OF HOUSING AND INFRASTRUCTURE

- more than **20 thousand** destroyed and damaged residential buildings
- more than **2,500 infrastructure** facilities



As of the end of 2017

(since the start of hostilities in 2014)

- **40 thousand** residential buildings were damaged (excluding houses abandoned by IDPs and houses damaged during their use for military purposes)
- about **10 thousand** infrastructure facilities were seriously affected

One of the reasons for the deaths and injuries of civilians and destruction is the placement of artillery by the illegal armed forces in residential areas, near hospitals, schools, kindergartens, etc. and firing from there to hit the positions of the LAG, some of which act symmetrically -

THIS ACTUALLY MEANS USE OF CIVIL POPULATION AS A "HUMAN SHIELD"

- The destruction of energy, transport, industrial and social infrastructure during the armed conflict in Donbas caused damage of about **\$50 billion**.
- On both sides of the contact line, as of the beginning of 2020, there are more than **50 thousand** civilian homes damaged during the hostilities. Of these, about **40 thousand** families urgently need repairs. **42** bridges were destroyed or damaged.
- According to the WHO, since the beginning of the conflict, **160** healthcare facilities on both sides of the contact line have come under fire. **130** of them either stopped operating in part or in full. Most affected healthcare facilities are **57** hospitals in Donetsk, and **18** hospitals in Horlivka.
- On the territory controlled by the government in Luhansk Region, about **9,000** facilities were destroyed, including: more than **7,400** residential buildings, **32** bridges, **94** healthcare facilities, **113** educational institutions, **14** industrial facilities, **79** cultural and sports institutions.
- On the territory controlled by the government in Donetsk Region, more than **12,900** residential buildings, **21** healthcare facilities, **27** secondary schools, **13** preschool institutions, **7** vocational schools, **14** cultural institutions and **19** industrial facilities were damaged.
- cases of seizures and attacks on **58** educational institutions in **20** cities of Donetsk Region and **21** educational institutions in **14** cities of Luhansk Region were recorded by KhHRG. Representatives of both the IAGs and LAGs were reported to have been engaged in this.
- In Donetsk Region, **62** Orthodox churches were destroyed, and in Luhansk – **10** churches. **10** temples were destroyed to the ground. Damage was received by Greek Catholic and Protestant churches, as well as **one** Muslim mosque. **Three** Orthodox clergy were killed, **five** were injured.

“IN APRIL 2017, the payment of 200,200 pensions was suspended. As of April 2018, 123,500 people filed claims for the restoration of their pension rights, which were granted to 91,600 individuals. OHCHR notes that pensions have been suspended for a significant number of pensioners due to the verification and identification procedure that links the payment of pensions to registration as IDPs.”⁷¹.

In 2018, the Supreme Court ruled that the termination of the payment of an IDP pension is unlawful and may constitute unlawful interference with the applicant’s right of ownership.

Accommodation. In 2014, the vast majority of cases of the placement of displaced persons were dealt with by the volunteer organizations. Special commissions established at regional state administrations were not able to provide a systematic solution to the issue of IDP accommodation, providing assistance with short-term accommodation and information support. Allocated places for temporary resettlement – sanatoriums, healthcare facilities, hostels, children’s camps – could not accommodate all those in need. The Ministry of Social Policy reported information that temporary resettlement sites were prepared for 13,000 IDPs throughout Ukraine. Many institutions that hosted the first wave of IDPs in 2014 are still inhabited by them.

In autumn 2014, it was decided to build 7 prefabricated towns: in Kharkiv⁷², Zaporizhzhia, Pavlohrad, Krivyi Rih, Nikopol, Kamenske and Dnipro, the funds for their construction were provided by international organizations. As of today, there are no new prefabricated towns being built or planned. And the premises built in 2014-2015 are dilapidated and require thorough refurbishment.

The state has not yet developed a systematic approach to solving the accommodation problem of IDPs.

Crossing of the contact line. In accordance with the Contact Line Crossing Procedure, 6 entry-exit checkpoints (EECP) were established in 2015 without the necessary infrastructure. In 2015-2018, this led to huge lines in which people had to wait for up to 3 days. Numerous deaths were reported in these lines – heart attacks, frostbite, shooting wounds, mine injuries. In 2018 alone, more than 50 people died at the EECPs, and the total death toll is almost two hundred people.

In 2018, EECPs were repaired and the rules for the transportation of foodstuffs and household goods by citizens and crossing the contact line by children under 14 were improved. Law enforcement agencies of Ukraine abandoned the illegal methods of inspecting citizens at EECPs, namely unauthorized phone checks, recording phone IMEI, searches of personal items and unauthorized detentions «on suspicion of separatism».

Voting rights of IDPs. During the almost six years of the armed conflict in Ukraine, IDPs have been discriminated against with respect to their suffrage: they could not participate in the elections of MPs of the Verkhovna Rada in the majority districts in 2014 and 2019; were deprived of the opportunity to participate in the elections of councilors for local councils in 2015, as well as in the current elections in new ATCs in the autumn of 2019. At the end of 2019, VR adopted a new election code⁷³, which amended the rules restricting the electoral rights of IDPs. At all subsequent elections, IDPs will be able to exercise their suffrage without any restrictions.

Social integration of IDPs. As of today, practically no refusals are recorded in the access of IDPs to medical care. The Ministry of Education granted IDPs and students from uncontrolled territories the right to privileges for admission to educational institutions.

There are unresolved issues of financial lending to IDPs and full access to banking services. A comprehensive program for the employment of IDPs has not yet been developed by the Ukrainian government bodies. The social integration of IDPs into territorial communities remains a difficult issue. Some of the IDPs are still forced to migrate from place to place looking for more acceptable living conditions.

⁷¹ OHCHR. Report on the human rights situation in Ukraine. 1 February 16 - May 15, 2018, p. 13-14, https://www.ohchr.org/Documents/Countries/UA/ReportUkraineFev-May2018_RU.pdf

⁷² <https://www.city.kharkov.ua/ru/news/u-kharkovi-pobuduyut-modulni-budinki-dlya-pereselentsiv-z-donbasu-25472.html>

⁷³ <https://zakon.rada.gov.ua/laws/main/396-IX>

Conclusions

1. The current situation in Ukraine is characterized by the presence of two types of conflict – social conflict (as a result of the transition from an authoritarian post-Soviet regime to a democratic one) and armed conflict (as a result of external aggression of the Russian Federation). The latter, in turn, is both international and domestic conflict. Under these circumstances, to overcome the consequences of widespread human rights violations, the best solution is the use of Transitional Justice mechanisms in combination with other approaches: the development of Confidence-Building Measures, Disarmament, Demobilization and Reintegration (DDR), Peacebuilding, Security Sector Reform (SSR).
2. Transitional justice, being an integral concept with 40 years of experience in post-conflict countries, allows Ukraine to implement institutional reforms, improve prosecution mechanisms for war criminals, and develop forms of social protection and restoration of the rights of victims of the conflict even at the stage of “hot conflict”. Unlike international institutions, where transitional justice mechanisms are enshrined in documents of the UN and the Council of Europe, the Ukrainian authorities are only at the stage of discussing the very possibility of creating a national model of transitional justice. Civil society initiatives for the implementation of transitional justice need support from the parliament and government of Ukraine to jointly resolve many problems: documenting and investigating war crimes, establishing historical truth, developing social dialogue, protecting victims of conflict, and prospects for national reconciliation.
3. The results of the report claim that there are all the prerequisites for initiating an investigation into the situation in Ukraine in accordance with Article 53 (1) (a) - (c) of the Rome Statute of the International Criminal Court. The study also confirms that there are no factors that would make the potential cases arising from the situation in eastern Ukraine unacceptable to the ICC. In particular, the Ukrainian authorities clearly demonstrate their unwillingness to investigate and prosecute crimes committed by the LAGs, as well as recognize the victims of violence caused by LAG members, even if there are clear signs of violence, i.e. bodily harm. The same low activity is demonstrated by law enforcement agencies of Ukraine in relation to the investigation of crimes committed by IAG members. In addition, crimes were committed in Ukraine by the citizens of Ukraine and Russia. Parties involved in the commission of crimes include: members of IAGs who often acted with the support or direct participation of the Russian Armed Forces; LAG members, including units of the AFU, MIA, volunteer battalions and SSU; as well as members of the Armed Forces of Russia or Special Forces of Russia. With this in mind, it will be logical for the Office of the Prosecutor of the ICC to start an investigation as soon as possible in order to solve the problem of injustice and impunity in favor of many victims of crimes and their relatives.
4. The materials of the study give reason to believe that during the military conflict in eastern Ukraine in 2014-2020, the following crimes against humanity and war crimes qualified under Articles 7 and 8 of the Rome Statute were committed⁷⁴:

⁷⁴ Violent Crimes Committed During the Armed Conflict in Eastern Ukraine between 2014–2018, section 5, <http://khpg.org/en/index.php?id=1543997604>



Murders (extrajudicial executions, tortured to death, civilians murdered as a result of single shots), Articles 7 (1) (a), 8 (2) (a) (i), 8 (2) (c) (i) of the Statute;



Death of civilians and destruction of civilian objects (deliberate shelling, indiscriminate shelling, persons murdered as a result of explosions - mines, tripwire mines, etc., destruction and damage to residential buildings and infrastructure), Article 8 (2) (b) (i), (ii), (iv), (v), (ix), 8 (2) (e) (i), (ii), (iv) of the Statute;



Use of protected persons as “human shields”, Article 8 (2) (b) (xxiii) of the Statute;



Detention (imprisonment) or other cruel deprivation of physical freedom in illegal places of detention, Article 7 (1) (e) of the Statute;



Torture and ill-treatment, Articles 7 (1) (f), 8 (2) (c) (i) of the Statute;



Sexual and gender-based violence, Articles 7 (1) (g), 8 (2) (b) (xxii), (e) (vi) of the Statute;



Enforced disappearances, Article 7 (1) (i) of the Statute;



Encroachment on human dignity (parades of prisoners, forcing prisoners to eat insignia, forcing prisoners to rebury corpses that have decomposed, etc.), Article 8 (2) (b) (xxi), (c) (ii) of the Statute;



Persecution of an identified group (Roma, members of the LGBT community, congregation of the church that is not recognized by the Moscow Patriarchate), Article 7 (1) (h) of the Statute;



Crimes against prisoners held in institutions in a territory not controlled by the government, Article 8 (2) (a) (i), (ii), (vi), (b) (iv), (xxiii), (c) (i), (ii), (iv) Statute.

- The criminal prosecution of those guilty of war crimes and crimes against humanity by the Ukrainian side is fraught with the following number of difficulties and objective obstacles:



The Ukrainian legislation was not ready for its application under the conditions of aggression, the annexation of part of the territory of Ukraine, the commission of war crimes and crimes against humanity;



The law enforcement and judicial systems were also not ready for a quick and effective response to crimes committed under the conditions of armed conflict, taking into account the novelty and specificity of the latter;



The judges of Donetsk and Luhansk regions, which are considering the bulk of cases related to the armed conflict, due to extensive business and personal ties with the population of the SDDLRL, are subject to pressure by various groups, which negatively affects the independence and objectivity of the judicial process;



Lack of access to archives and databases, victims and witnesses in uncontrolled territory, needed for carrying out procedural and investigative actions.

- The prosecution of Russian citizens who committed crimes in connection with an armed conflict in eastern Ukraine and are currently on the territory of Russia is complicated by the fact that the Criminal Code of the Russian Federation contains virtually no norms criminalizing acts that violate international humanitarian law. Despite the fact that Russia is a party to all 4 Geneva Conventions and 2 Additional Protocols thereto, the Criminal Code of the Russian Federation still does not incorporate provisions criminalizing war crimes and crimes against humanity, as recorded in these international documents. The few articles of the Criminal Code of the Russian Federation concerning the elements of these crimes are

worded in such a general way that they are «sleeping» or «dormant». The criminal prosecution of Russian citizens participating in illegal armed groups of self-proclaimed republics in eastern Ukraine under articles for mercenarism (Article 359 of the Criminal Code of the Russian Federation) and for organizing an illegal armed formation or participation therein (Article 208 of the Criminal Code of the Russian Federation) requires the political will of the leadership of Russian law enforcement bodies which is currently missing.

7. Given the whole range of problems regarding judicial forms of prosecution of perpetrators of war crimes and crimes against humanity, this report focuses on the universal jurisdiction mechanism as such, which opens up wide opportunities, along with other mechanisms of the ICC and the ECHR. Moreover, the existing problem of limited resources against the background of a large number of potential suspects does not negate the possibility of European countries initiating criminal investigations before the suspect arrives in a particular country. Practical expediency undoubtedly dictates the initiation of such investigations at the location that has the most evidence, witnesses and victims.
8. The armed conflict on the territory of Ukraine caused the largest migration in Europe since World War II – at least 3 million people. More than 460 thousand Ukrainians fled from the military conflict to Russia, approximately 360 thousand of them received Russian citizenship under a simplified procedure. The key problems that the IDPs in Ukraine and the Russian Federation faced were the recovery and execution of missing documents, search for accommodation, employment, social protection, providing medical care, and socio-psychological rehabilitation.
9. Analysis of the number and territorial prevalence of victims of armed conflict, the actions of authorities to compensate for damage caused to the population allows us to state that in Ukraine there is no:



Comprehensive state strategy for the social protection of civilians affected by the hostilities;



Centralized system for recording damage incurred in connection with an armed conflict, which makes it impossible to estimate the scale of losses and calculate the necessary amount of assistance to victims of the conflict;



State register of damaged / destroyed real estate;



Mechanisms for the effective investigation and judicial review of cases of damage resulting from the armed conflict;



Assessment of the accommodation needs of IDPs and special national programs exclusively for IDPs, which would create an opportunity to obtain housing by acquiring property, obtaining soft loans, renting on soft terms, or otherwise.

Recommendations

The presented material makes it possible to develop a number of recommendations for the Ukrainian authorities, the implementation of which can contribute to overcoming the consequences of armed conflict, peaceful reintegration, and social dialogue.

1. To draw the attention of the authorities to the need for comprehensive, lengthy and costly preparatory work for a harmonious transition from wartime to peacetime, taking into account the requirements of a fair treatment of all parties to the armed conflict, and also that the concept of such a transition should be developed now, based on international principles of transitional justice. Focus non-governmental and state institutions, whose activities are related to issues of armed conflict, on an active inclusive process of developing the Ukrainian model of transitional justice.
2. To initiate the development, joint discussion with civil society and the subsequent consideration of draft laws aimed at restitution of property and payment of compensation to IDPs, improving the criminal prosecution of those guilty of war crimes and gross violations of IHL.
3. To develop regional housing programs for IDPs and implement specific solutions on a local level that would provide an opportunity for IDPs to purchase housing on the basis of co-financing from the regional budgets or rent housing (removing housing facilities in which IDPs are living from temporary housing funds for their further transfer for rent or purchase by IDPs; transformation of non-residential facilities to residential facilities for the purpose of their further reconstruction into residential premises for the accommodation of IDPs, etc.).
4. To develop and adopt a program for the restoration of destroyed or damaged housing and infrastructure during military operations.
5. To establish a special register of lost or abandoned property of internally displaced persons, refugees and other civilians affected by the conflict, including documentation of any sale of such property, and receive information from the IDPs on the circumstances of the sale in order to identify cases of sale under duress.
6. To establish an independent, transparent and non-discriminatory procedure for documenting, investigating and verifying ownership and other property rights to housing, land and other property.
7. To draw the attention of authorities to the need to improve the quality of legislation, as well as the procedures for its development and adoption, taking into account general international obligations in the field of human rights, the obligation to protect persons affected by armed aggression of the Russian Federation, and the equal participation of civil society organizations (victims of armed aggression, women, children, youth and human rights organizations) in these processes.
8. To develop a regulatory framework for the development of a state register of individuals affected by an armed conflict (deceased, wounded, lost property), which will simultaneously determine the procedures for maintaining such a register, mechanisms for interaction and information exchange between interested government bodies and local self-government bodies, and will determine the government agency responsible for administering this registry.

9. To immediately introduce the registration of data on the number of civilians, including internally displaced persons, who have health problems due to wounds, concussion, injuries or other illness caused by hostilities or their consequences.
10. To develop a mechanism for establishing a causal relationship between a civilian's illness and the events of an armed conflict, followed by a review of the relevant payments through compulsory state social insurance.
11. To introduce a procedure for the provision of psychological rehabilitation services and assistance to civilians affected by armed conflict and their families.
12. To ensure free access for internally displaced persons to their savings in banking institutions and guarantee them the right to access their funds without any restriction or discrimination.
13. To accelerate the adoption of the draft Law of Ukraine "On Amending Certain Legislative Acts to Ensure the Harmonization of Criminal Legislation with the Provisions of International Law", aimed at improving the norms of the Criminal Code of Ukraine regarding the criminalization of war crimes and crimes against humanity (genocide, aggression, extrajudicial executions, enforced disappearance, etc.).
14. To create a National Center for Documenting Human Rights Violations resulting from Armed Conflict, which could integrate the necessary elements of the existing state registries with the ability to exchange data upon request, process data on all registries and protect personal data.
15. To accelerate the investigation of crimes committed against civilians as a result of the armed conflict.
16. To ensure the right of civilians to freedom of movement across the contact line by creating additional transport corridors, entry and exit checkpoints and through the simplification of access procedures.
17. To expand the practice of application of documents issued by quasi-authorities in uncontrolled territories by the Ukrainian state bodies.
18. To consider the safety of the local population as a priority when deploying military personnel of the Armed Forces of Ukraine on the territory of settlements, to prevent the use of civilians as a "human shield", deploying AFU units in the settlements and jeopardizing the life and health of residents, their homes, infrastructure. To prohibit starting fire by military units from the settlements.

CivilM+ is an independent international civil society platform, founded in 2017. Today it includes 19 NGOs and experts from Ukraine, Russia, Germany, the Netherlands, Poland, Slovakia and France. CivilM + mission - to promote the unification of civic initiatives that work for a peaceful solution to the conflict in Donbass, its restoration as a peaceful, integrated and developed region of democratic Ukraine and a united Europe. In particular, CivilM + members inform the governments and the public of their countries about the armed conflict in eastern Ukraine, implement projects in the areas of peacebuilding, transitional justice, dialogue and human rights. See more at civilmplus.org and Facebook www.facebook.com/civilmplus



Auswärtiges Amt

