

Universal Periodic Review - Ukraine

March 2017

Much has changed in Ukraine since its last Human Rights Council's review under the Universal Periodic Review (UPR) procedure, in 2012. Human Rights Watch is aware that the government has had to cope with multiple, profound crises in a short period since 2013, not least of which have been the armed insurrection in the Luhansk and Donetsk regions and Russia's occupation of Crimea. We trust that members of the Council will see this year's review as occasion not only to follow up on recommendations from the 2012 UPR review, but also as an important opportunity to raise human rights concerns with Ukrainian authorities in the context of the armed conflict in eastern Ukraine.

Summary

In eastern Ukraine, both Ukrainian authorities and Russia-backed separatists continue to subject detained civilians to serious abuses. Abuses in conflict-affected areas remain largely unaddressed. The government did not adequately respond to nationalist groups' attacks on journalists. In Crimea, Crimean Tatars face further persecution for their peaceful opposition to Russia's occupation of the peninsula.

The 2015 Minsk II Agreements significantly reduced hostilities in eastern Ukraine, but frequent skirmishes and exchanges of artillery fire continued during the year. Flare-ups in hostilities in November-December 2016 and January-February 2017 resulted in several civilian casualties and significant damage to civilian infrastructure.

According to the United Nations Human Rights Monitoring Mission in Ukraine (UNHRMMU), mortar, rocket, and artillery attacks between April 2014 and February 2017 killed 9,900 people and injured more than 23,000 — including civilians and combatants on all sides—in Donetsk and Luhansk regions. The UNHRMMU documented 23 civilian deaths between November 2016 and February 2017, many of which resulted from shelling and landmines.

Cruel and Degrading Treatment and Arbitrary Detention

Ukrainian government authorities and Russia-backed separatists in eastern Ukraine detained dozens of civilians allegedly for collaborating with the other side and held them in prolonged, arbitrary detention, depriving them of contact with lawyers and family. Most of those detained suffered torture or other forms of ill-treatment; some were denied needed medical attention. Both sides have been implicated in sexual violence, although few cases have been fully documented due to victims' reluctance to come forward.

Human Rights Watch, jointly with Amnesty International, found that 18 people had been victims of enforced disappearances, and were held in secret detention on the Security Service of Ukraine (SBU) premises in Kharkiv through the end of July 2016, one for as long as 16 months. In August 2016 Ukrainian authorities began to release them, and by December all had been released. The SBU denied allegations of enforced disappearances and secret detention and to date, has still not acknowledged that the 18 men were ever detained. The military prosecutor's office pledged to investigate. At time of writing, the investigation had yielded no tangible results.

In the self-proclaimed Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR), local security services operate in a total vacuum of rule of law, which deprives people in their custody of their rights and leaves them without recourse to any remedies.

Use of Schools in Armed Conflict

Since the beginning of the armed conflict in Ukraine, Human Rights Watch has extensively documented human rights violations by all parties to the conflict in eastern Ukraine. Hostilities have subsided since the September 2015 ceasefire, but the conflict has not ended and many concerns remain.

Both sides of the conflict in eastern Ukraine have used schools for military purposes, deploying forces in and near schools, which has turned schools into legitimate military targets. Intensive fighting and shelling between April 2014 and September 2015 damaged or destroyed hundreds of schools.

The resulting destruction has forced many children out of school and hundreds of schools to stop operating or to operate under overcrowded and difficult conditions. Targeted attacks on educational institutions that do not constitute military objectives are a war crime under international criminal law and the laws of war. Occupying a school can turn it into a legitimate military target and can put students at risk in violation of the laws of war.

Victim-activated Landmines and Booby-traps

There have been consistent reports of continued use of victim-activated landmines and booby-traps, the September 2015 ceasefire notwithstanding. These weapons are banned by most countries around the world, including Ukraine which is a party to the Ottawa Convention (Mine Ban Treaty). They are banned because of the unacceptable harm they cause to civilians and in Ukraine hundreds of people—most of them civilians—have been reported killed and injured as a result of victim-activated landmines.

Cluster Munitions

In 2014 and early 2015, Human Rights Watch gathered evidence of the use of cluster munitions by pro-government forces and Russia-backed rebels during the armed conflict in eastern Ukraine. Cluster munitions are banned by most countries around the world for causing unacceptable harm to civilians, and in Ukraine the use of cluster munitions has caused dozens of civilian casualties. Ukraine's military prosecutor launched an investigation, but it was incomplete.

Travel restrictions/access to humanitarian assistance

Many civilians remain stuck in conflict-affected zones, subject to an extremely bureaucratic travel permit system that governs civilians seeking to access other parts of Ukraine, whether for security or family reasons or to avail of live-saving services, such as medical treatment. The existing permit system impedes prompt delivery of humanitarian aid, causes unnecessary delays and places unjustified restrictions on the freedom of movement of citizens. The de-facto authorities in some rebel areas have expelled organizations that provide needed humanitarian assistance.

Accountability for Conflict-Related Abuses and Political Violence

In July 2016, parliament passed a controversial amnesty law, absolving combatants involved in the "security operations" in eastern Ukraine of criminal responsibility for non-grave crimes. In August, President Petro Poroshenko vetoed the law.

In July, authorities arrested the head of Aidar battalion, Valentin Liholit, on charges of abduction, robbery, and other violent crimes against civilians. At Liholit's remand hearing, Aidar battalion members blocked the court building, while several members of parliament disrupted the hearing inside, demanding his release. The court released him, pending further investigation.

Also in July, a former member of the Tornado police battalion was sentenced to six years' imprisonment for torture and rape. Twelve other former members of the battalion, including the commander, are under investigation for sexual violence, robbery, and other violent crimes. At an August court hearing, Tornado supporters clashed with law enforcement, injuring 27 law enforcement officers.

Authorities have made some progress toward accountability for abuses during the 2014 Maidan protests by government forces against protesters. In June, authorities charged four members of the Berkut riot police battalion with killing 3 protesters and injuring 35. At time of writing, the investigation was ongoing.

Trials continued in connection with the 2014 political violence in Odesa. In May and June, when courts ruled to release "pro-federalism" defendants from pretrial detention, "pro-unity" activists temporarily blocked the courts and threatened to harm the defendants. On both occasions police eventually rearrested the defendants. "Pro-unity" activists were not held accountable for disrupting court proceedings, and in one case, some were invited to testify against the defendant.

Freedom of Expression and Media

The government continued to take controversial steps restricting media freedom, justifying them mostly by the need to counter Russia's anti-Ukraine propaganda.

In May 2016, Ukrainian authorities banned 17 Russian journalists and media executives from entering Ukraine.

Inter, a television station widely perceived as pro-Russia, was attacked several times in 2016. The most serious attack occurred in early September, when a group of protesters tried to set Inter's building on fire. Several staff had to be evacuated and treated for carbon monoxide poisoning; one sustained a spinal injury. Several days prior to the attack, Interior Minister Arsen Avakov, through his Facebook page, accused the channel of being anti-Ukrainian.

Media ownership structures remained opaque, despite a 2015 law promoting media ownership transparency. Most television channels are believed to be controlled by oligarchs, and President Poroshenko continues to own Channel 5.

Nationalist groups attacked journalists for their work in eastern Ukraine. In May 2016, the website Myrotvoretz published the names and personal data of hundreds of journalists and others who had been accredited by the DNR press center, accusing them of "cooperat[ing] with terrorists." Authorities launched an investigation, but top government officials applauded the publication. Several reporters received threats after the data dump.

The Ukrainian Institute of Mass Media, an independent monitoring group, recorded 113 physical attacks against journalists in Ukraine in the first part of 2016.

In July 2016, a car bomb killed Pavel Sheremet, a prominent investigative journalist. At time of writing, investigative authorities had not identified suspects. The trial of suspects in the 2015 killing of Oles Buzina, a journalist known for his pro-Russian views, continued.

In a positive development, in July 2016, an appeals court acquitted journalist and blogger Ruslan Kotsaba, who had been previously convicted on treason charges for calling for boycotting conscription.

Sexual Orientation and Gender Identity

Since 2014, the government has introduced several progressive policies supporting lesbian, gay, bisexual, and transgender (LGBT) people, but anti-LGBT sentiment remains strong among high-level government officials and the public.

In March 2016, about 200 anti-gay, far-right supporters attacked a venue in Lviv hosting a LGBT equality festival, eventually causing the event to be cancelled. However, the Kyiv LGBT Pride march held in June took place without the violence against participants that had marred it in previous years. Ultra-nationalist groups had threatened to make the march a "bloody mess." Around 6,000 police officers protected the 1,500 march participants.

The first LGBT Pride march took place in Odesa in August. Local authorities initially attempted to ban it, but relented when organizers changed the route. Police arrested four ultra-nationalists who attempted to disrupt the event.

A new draft of the amended labor code does not include an anti-discrimination provision that would protect LGBT people in the workplace.

International Criminal Court (ICC)

While yet not a member of the ICC, Ukraine has accepted the Court's jurisdiction over alleged crimes committed on its territory since November 21, 2013. This time period includes the armed conflict in eastern Ukraine. The ICC prosecutor's preliminary examination as to whether it should open an investigation into abuses committed during the armed conflict remains ongoing. We note that parliament recently adopted a constitutional amendment package that would permit ratification of the ICC treaty, the Rome Statute, but includes a transitional provision that delays the relevant amendment from taking effect for three years.

Crimea

Russia has been an occupying power in Crimea since March 2014 and the actions of the de facto authorities in Crimea described below are ultimately attributable to Russia. Russia continued to prosecute people for publicly opposing its occupation of Crimea, further shrinking space for free speech and freedom of association.

Under the pretext of combating extremism or terrorism, Crimean authorities harassed and took arbitrary legal action against some Crimean Tatar activists in apparent retaliation for their peaceful opposition to Russia's occupation. In February 2016, authorities arrested human rights defender Emir Usein Kuku on charges of terrorism and involvement in Hizb ut-Tahrir, a Muslim political organization that is banned in Russia but not Ukraine. At time of writing he was in custody pending trial. In October, the Crimean Office for Juvenile Affairs approached Kuku's 9-year-old son and asked him questions about Kuku, implying that his father was neglecting his parental duties while in detention. Since 2014, fourteen people were detained on charges of involvement in Hizb ut-Tahrir; in September, four were sentenced to prison terms ranging from five to seven years.

In April, the Supreme Court in Crimea ruled to shut down Mejlis, the Crimean Tatars' elected representative body, on grounds of involvement in "extremist" activities. In September, Russia's Supreme Court upheld the ruling.

Akhtem Chiyyoz, a deputy chairman of Mejlis arrested in 2015 on charges of allegedly organizing mass disturbances, remained in custody; his trial was ongoing at time of writing. Another Mejlis deputy chairman, Ilmi Umerov, was charged with separatism for stating in a media interview that Crimea should be returned to Ukraine. In August, Umerov was confined in a psychiatric hospital for evaluation. He was released on September 7 and at time of writing was at liberty, pending trial.

In April, Russia's Federal Security Service in Crimea arrested journalist Nikolai Semena and searched his home, confiscating computer equipment. He is currently banned from leaving Crimea and faces criminal separatism charges for articles criticizing Russia's occupation. His trial is currently under way.

In May, Ervin Ibragimov, a Mejlis member, went missing. Security camera footage showed a group of men forcing him into a van and driving away. His passport was later found in Bakhchisaray. An investigation was ongoing.

Recommendations

Below are recommendations we hope the Human Rights Council will urge the Ukrainian government to take:

Ukrainian Government:

- Take urgent steps to launch swift and effective investigations into allegations of unlawful detention and torture by Ukrainian forces, and to end impunity for these grave human rights violations;
- Take concrete measures to deter the military use of schools, in line with United Nations Security Council 2225 (2015), and endorse the Safe Schools Declaration;
- Ensure Ukrainian forces do not use victim-activated landmines in any circumstances and take steps to boost their demining efforts and efforts at educating the public about the danger of preexisting mines. Ukraine has the right under the Mine Ban Treaty to request and receive international cooperation and assistance in these matters;
- Carry out a full investigation into the use of such weapons over the course of the conflict, and commit to prevent them being deployed in the future. Ukraine should also join the 2008 Convention on Cluster Munitions prohibiting the use of cluster munitions in any circumstance;
- Reform the system regulating travel between government-controlled and rebel-held areas, to remove unjustified barriers to civilian movement including for the purpose of accessing basic services.
- Ensure that LGBT people and activists are protected from homophobic and transphobic violence and harassment; include a provision in the draft labor law protecting LGBT people against discrimination; thoroughly investigate attacks against LGBT people and ensure that those responsible are held accountable;
- Publicly condemn the data dump of personal information of journalists and others, ensure a thorough investigation into the data dump with a view to holding to account those responsible for the publication and foster a favorable working climate for domestic and international journalists in Ukraine;
- Respect media freedom, and refrain from restricting it including by lifting the access bans to Ukrainian territory imposed on foreign journalists, addressing concerns related to the structure of media ownership, publicly denouncing attacks on journalists and ensuring that all attacks are thoroughly investigated with the view to holding those responsible to account;
- Ensure that the investigation into the killing of the journalist Pavel Sheremet, is effective, impartial, and thorough;

- Expedite consideration of Rome Statute ratification in a manner compatible with Ukraine's domestic legal framework.
- Cooperate fully with the ICC prosecutor's office in its preliminary examination.

To the Authorities Exercising Effective Control on the Crimean Peninsula and to the Russian Federation:

- Cease persecution of members of the Crimean Tatar community and others under the pretext of combating extremism and terrorism;
- Cease the deplorable practice of forced psychiatric confinement of detainees;
- Cease harassment and arbitrary actions against defense lawyers, who represent Crimean Tatar leaders and other critics of the de-facto authorities in Crimea;
- Ensure prompt, effective and impartial investigations into all allegations of abuses perpetrated by law-enforcement against Crimean Tatars, lawyers, human rights activists, journalists and others;
- Repeal the ban of the Mejlis and stop persecution of Mejlis members.