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## Ukraine

### Joint Submission to the UN Universal Periodic Review 28<sup>th</sup> Session of the UPR Working Group

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**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in General  
Consultative Status with ECOSOC  
and  
Center for Civil Liberties  
and  
DeJuRe Foundation**

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## 1. (A) Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, we proudly promote marginalised voices, especially from the Global South, and have members in more than 170 countries throughout the world.
- 1.2 The Center for Civil Liberties (CCL) was founded in Kyiv in 2007 to promote and implement the values of human rights in Ukraine and on the territories of the newly independent states. CCL focuses on encouraging realization of the reforms concerning human rights, establishing public control over the actions of law enforcement organs, judges, and local self-government bodies; documenting cases of political persecution in the Crimea and international crimes in the Donbas; educational activities for promoting the values of human rights; and participating in different programs of international solidarity.
- 1.3 The DeJuRe Foundation (DeJuRe) developed out of a long-term cooperation of experts of the judicial reform group of the Reanimation Package of Reforms. As its main task, the organisation focuses on the development of and support for the implementation of laws appropriate for safeguarding the rule of law and democracy in Ukraine. The expert staff of DeJuRe Foundation includes both Ukrainian and foreign lawyers.
- 1.4 In this document, CIVICUS, CCL and DeJuRe examine the Government of Ukraine's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Ukraine's fulfilment of the rights to freedom of association, peaceful assembly, and expression since its previous UPR examination in December 2012. To this end, we assess Ukraine's implementation of recommendations received during the 2<sup>nd</sup> UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations. Ukraine is listed in the 'obstructed' category on the CIVICUS Monitor which rates protection of the freedoms of expression, association and peaceful assembly.<sup>1</sup>
- 1.5 During the 2<sup>nd</sup> UPR cycle, the Government of Ukraine received 11 recommendations relating to the above mentioned rights. Of these recommendations, 7 were accepted and 4 were noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of Ukraine has fully implemented three of these recommendations, partially implemented six and not implemented two of them. Positively, laws restricting freedom of expression based on sexual orientation have not been brought forward and progress has been made on preventing discrimination against workers

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<sup>1</sup> See: <https://monitor.civicus.org/country/ukraine/>

based on sexual orientation and gender identity. New protest laws have also been drafted and, although certain concerns remain about their scope, the government of Ukraine has sought international advice as to their coherence with international standards on the freedom of peaceful assembly. New laws on combatting problems of concentration of media ownership and protection of journalists have also been introduced since Ukraine's last review, although, in practice, both of these issues remain serious concerns for freedom of expression in the country.

**1.6** CIVICUS, CCL and DeJuRe are particularly concerned by the impact on journalists, civil society organisations and human rights defenders of the armed conflict between Ukraine and Russian-backed de facto authorities in self-proclaimed autonomous areas of the country in Donbas and Crimea. The conflict is having a seriously detrimental impact on the quality of civic space in conflict zones and areas under occupation by Russia and pro-Russian illegal armed formations. The conflict also has wider implications, particularly for freedom of expression, across the whole of Ukraine.

**1.7** CIVICUS, CCL and DeJuRe are further alarmed by the continued failure to ensure justice for the victims of the killings during the EuroMaidan protests of 2013 and 2014. While we commend the Government of Ukraine's positive moves to introduce new peaceful assembly legislation, ensuring that the perpetrators of mass killings during earlier protests are held accountable is equally important to ensuring that Ukrainian citizens have confidence in the state's ability to protect their basic right to protest peacefully.

**1.8** Finally, CIVICUS, CCL and DeJuRe highlight concerns about the recent introduction of new laws which require staff of NGOs to submit asset declarations. These new rules could be abused for political purposes and specifically to silence anti-corruption advocacy by Ukrainian civil society.

- In Section B, CIVICUS, CCL and DeJuRe examine Ukraine's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.
- In Section C examine Ukraine's implementation of UPR recommendations and compliance with international human rights standards concerning the treatment of human rights defenders, civil society activists and journalists.
- In Section D, we examine Ukraine's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of expression, independence of the media and access to information.
- In Section E, we examine Ukraine's implementation of UPR recommendations and compliance with international human rights standards related to freedom of peaceful assembly.

- In Section F, we make a number of recommendations to address the concerns listed.

## 2. (B) Freedom of association

**2.1** Under the 2<sup>nd</sup> UPR cycle, the government received two recommendations related to the right to freedom of association of LGBTI people. Through these, Ukraine was urged to respect its ‘international commitments on fundamental rights related to non-discrimination’<sup>2</sup> and to adopt laws and other measures to ‘correct and prevent discrimination based on sexual orientation’.<sup>3</sup> The Government of Ukraine has partially implemented both of these recommendations, taking an important step in this regard in November 2015 when, following public protests and a series of recommendations from the European Commission<sup>4</sup>, it amended the Labour Code to prohibit discrimination on a range of grounds including sexual orientation, gender identity, race, colour, political, religious and other beliefs, membership in a trade union or other association.<sup>5</sup>

**2.2** Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Ukraine is a state party, guarantees the freedom of association. The constitution of Ukraine, in article 26, recognises the right of citizens to associate in order to advance ‘political, economic, social, cultural and other interests’.<sup>6</sup> In Ukraine, the process to register and form an organisation is straightforward, and the legal framework for civil society is mostly open and supportive.<sup>7</sup> While, in practice, some infringements of the right to freedom of association continue to be committed through the uneven enforcement of legislation, in general, a favourable environment for the creation and activities of associations prevails. The government does not have wide scope to deregister an organisation and there are no documented cases of illegal or arbitrary dissolutions of organisations.<sup>8</sup>

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<sup>2</sup> Recommendation from France, A/HRC/22/7

<sup>3</sup> Recommendation from Uruguay, A/HRC/22/7

<sup>4</sup> Fifth Progress Report on the Implementation by Ukraine of the Action Plan on Visa Liberalisation, at pages 9-10, European Commission 8<sup>th</sup> May 2015, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/international-affairs/general/docs/fifth\\_progress\\_report\\_on\\_the\\_implementation\\_by\\_ukraine\\_of\\_the\\_action\\_plan\\_on\\_visa\\_liberalisation\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/international-affairs/general/docs/fifth_progress_report_on_the_implementation_by_ukraine_of_the_action_plan_on_visa_liberalisation_en.pdf)

<sup>5</sup> See: <http://112.international/ukraine-and-eu/eu-congratulated-adoption-of-non-discrimination-amendment-to-ukraines-labour-code-1459.html>

<sup>6</sup> Full English text of Ukraine’s constitution from The Constitute Project, here: [https://www.constituteproject.org/constitution/Ukraine\\_2014?lang=en](https://www.constituteproject.org/constitution/Ukraine_2014?lang=en)

<sup>7</sup> See: [http://www.blackseango.org/wp-content/uploads/2015/11/Report-Enabling-Environment-for-CSOs-in-the-Black-Sea-Region\\_final.pdf](http://www.blackseango.org/wp-content/uploads/2015/11/Report-Enabling-Environment-for-CSOs-in-the-Black-Sea-Region_final.pdf); see also: <http://helsinki.org.ua/en/freedom-of-associations/>

<sup>8</sup> See ‘Enabling Environment for Civil Society in the Black Sea Region : Towards a Regional Strategy for Cooperation’, Black Sea NGO Forum and Balkan Civil Society Development Network, August 2015: [http://www.blackseango.org/wp-content/uploads/2015/11/Report-Enabling-Environment-for-CSOs-in-the-Black-Sea-Region\\_final.pdf](http://www.blackseango.org/wp-content/uploads/2015/11/Report-Enabling-Environment-for-CSOs-in-the-Black-Sea-Region_final.pdf)

**2.3** On 13 July 2016, new regulations were passed which updated registration procedures for not-for-profit institutions and organisations in Ukraine. Under the new rules, all not-for-profit organisations registered before mid-2015 are required to submit their founding documents which were not already held in official electronic databases, and an application form to the relevant authorities no later than 31st December 2016. Ignoring this requirement would result in the loss of an organisations' not-for-profit status.<sup>9</sup> As a result, thousands of CSOs were forced to start the procedure of submitting their statutory documents. Following an outcry from CSOs, the re-registration term was extended until July 1, 2017.

**2.4** On 27th March 2017, the president signed Law No. 6172 on Amendments to Article 3 of the Law of Ukraine on Prevention of Corruption.<sup>10</sup> This law expands the list of persons who are obliged to declare their income to the authorities to include NGO staff. This places the staff of NGOs on the same footing as government officials, and exposes them to criminal liability for the failure to make declarations. This move has been heavily criticised by civil society organisations who fear that it may allow the state to target specific organisations, restrict the operations of activities who receive foreign funding and pose a threat to the personal security of people employed in NGOs.<sup>11</sup>

**2.5** In areas of Ukraine controlled by armed groups allied to the Russian Federation, CSOs have been targeted and forced to leave, including CSOs that carry out primarily humanitarian work<sup>12</sup>, such as the Responsible Citizens Initiative. In Crimea, independent CSOs have been particularly and seriously targeted by the occupying authorities, causing an "exodus" of activists from the peninsula. Organisations including the Committee on the Rights of the Crimean Tatar People, Mejlis of the Crimean Tatars and the League of Crimean Tatar Women have all been prosecuted or oppressed in some way by the occupying authorities, through their selective use of repressive Russian legislation.<sup>13</sup> Organisations engaged in cultural activities, for example, the Ukrainian Cultural Centre in the Crimea, have also been persecuted as part of this crackdown.

### **3. (C) Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists**

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<sup>9</sup> 'Conflict with Russia causes restrictions on media freedoms', CIVICUS Monitor 11<sup>th</sup> October, 2016: <https://monitor.civicus.org/newsfeed/2016/10/11/conflict-russia-and-occupation-crimea-lead-restrictions-media-freedoms-ukraine/>

<sup>10</sup> See: <https://www.unian.info/politics/1844874-poroshenko-enacts-law-on-e-declaration-for-ngos.html>

<sup>11</sup> See: <http://en.interfax.com.ua/news/economic/412081.html>

<sup>12</sup> See: <http://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

<sup>13</sup> 'Peninsula of Fear', CCL and others, March 2016, at P.46: <http://ccl.org.ua/en/reports/the-peninsula-of-fear-chronicle-of-occupation-and-violation-of-human-rights-in-crimea/>

- 3.1** Under Ukraine's previous UPR examination, the government received no recommendations specifically related to the protection of human rights defenders, journalists and civil society representatives. Despite an absence of recommendations related to human rights defenders during Ukraine's last UPR examination, in the intervening period human rights defenders and civil society activists were subject to a range of unwarranted restrictions on their activities including arbitrary arrest, abduction and enforced disappearances.
- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection to human rights defenders. The ICCPR further guarantees the freedoms of expression, association and assembly. However, in spite of these protections, international law and national legislation are being applied in the territory of the occupied Crimea and parts of Donbas not controlled by the Ukrainian government. On 21 May 2015, the Ukrainian parliament approved a derogation from Ukraine's obligations under the ICCPR and the Convention for the Protection of Human Rights and Fundamental Freedoms. The derogation, which was subsequently communicated to the Council of Europe and the UN Secretary-General, states that Ukraine is not responsible for upholding all of the rights enshrined in those international agreements in all of its territory, based on the fact that Russia is in de facto control of parts of Donbas and the Crimea peninsula.<sup>14</sup> It also states that a derogation applies to the full application of certain rights in territory under its control until such time as full sovereignty is returned to all of its territory.<sup>15</sup>
- 3.3** Prior to the fall of the previous government at the end of February 2014, the Ukrainian authorities used legal mechanisms and extra-legal methods to prosecute activists, journalists, human rights defenders. After the fall of the regime, as a result of the Revolution of Dignity, deliberate government policies to harass or target civil society have not been observed. Nevertheless, there are a number of individual cases that give cause for concern.
- 3.4** Repressive legislation illegally introduced by the Russian Federation in the territory of the occupied Crimea is used to prosecute members of civil society. For example, the de facto authorities of Crimea opened a criminal case on charges of terrorism against human rights defender, and member of the Crimean Contact Group on Human Rights, Emir Usein Kuku. Amnesty International has recognised Kuku as a prisoner of

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<sup>14</sup> Council of Europe website, Declarations in force for Ukraine as of 15<sup>th</sup> March, 2017: <http://bit.ly/2mIzCM0>

<sup>15</sup> 'Accountability for killings in Ukraine from January 2014 to May 2016', OHCHR: [http://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

conscience<sup>16</sup> and reports indicate that he has been mistreated in custody.<sup>17</sup> His family has also been put under pressure and intimidated by the security services.

- 3.5** In parts of Donbas not controlled by the Ukrainian government, abduction, torture and extrajudicial executions aimed at pro-Ukrainian activists have become widespread practice.<sup>18</sup> In such circumstances, the activities of human rights defenders have become almost impossible. Responsibility for these violations lies with the Russian Federation as the state which exercises both overall and effective control over the self-proclaimed Donetsk People's Republic (DPR) and Lugansk People's Republic (LPR) and therefore over the part of Donetsk and Luhansk oblasts controlled by them.
- 3.6** By the same token, international rights groups and the United Nations Office of the High Commissioner for Human Rights<sup>19</sup>, have documented serious violations related to human rights abuses – including arbitrary execution, abduction and enforced disappearances – committed by Ukrainian security forces as part of its conduct of the war against against illegal armed formations in the east of the country.

#### **4. (D) Freedom of expression, independence of the media and access to information**

- 4.1** Under the 2<sup>nd</sup> UPR cycle, the government received ten recommendations relating to freedom of expression. By accepting eight of these recommendations, the government pledged to undertake a number of reforms including “prevent the adoption of a law prohibiting freedom of expression with regards to homosexuality” and “further promote freedom and pluralism of the media as key elements for enabling the exercise of freedom of expression.”<sup>20</sup> In the intervening period, Ukraine has fully implemented three of these recommendations, partially implemented six and not implemented one.<sup>21</sup>
- 4.2** Article 19 of the ICCPR, to which Ukraine has been a State Party since 1973, guarantees the right to freedom of expression and opinion.<sup>22</sup> Article 34 of the

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<sup>16</sup> ‘Ukraine: Detained Rights Defender’s Family at Risk: Emir-Usein Kuku Meriem Kuku and Bekir Kuku’, Amnesty International. 19<sup>th</sup> October 2016: <https://www.amnesty.org/en/documents/eur50/4953/2016/en/> v

<sup>17</sup> ‘Crimean activist Kuku reported about the deterioration of health and psychological pressure’, Crimean Human Rights Group, 13<sup>th</sup> January 2017: <http://crimeahrg.org/en/crimean-activist-kuku-reported-about-the-deterioration-of-health-and-psychological-pressure/>

<sup>18</sup> ‘Detentions Enforced Disappearances and Torture in Eastern Ukraine’, Amnesty International and Human Rights Watch, 21<sup>st</sup> July, 2016: <https://www.amnesty.org/en/documents/eur50/4455/2016/en/>

<sup>19</sup> ‘Accountability for killings in Ukraine from January 2014 to May 2016’, OHCHR:

[http://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf)

<sup>20</sup> Report of the Working Group on the Universal Periodic Review – Ukraine, AHRC/22/7: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/189/10/PDF/G1218910.pdf?OpenElement>

<sup>21</sup> Please refer to Annex I to this submission for more detail on this.

<sup>22</sup> Information from UN OHCHR Website on status of ratifications of ICCPR: Ukraine signed the ICCPR in 1968 and ratified it in 1973. It also accepted ICCPR individual communications procedure in 1991: <http://indicators.ohchr.org/>

Constitution of Ukraine 1996 (as amended in 2014) states that everyone is guaranteed the 'right to freedom of thought and speech, and to the free expression of his or her views and beliefs' and the 'right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.' The same article provides for lawful restrictions on these rights, which allows measures to be taken in the interests of national security, territorial indivisibility or public order.<sup>23</sup>

- 4.3** Regarding the recommendation made to ensure no laws would be passed which could impinge upon the free expression rights of the LGBTI community, although initial attempts<sup>24</sup> were made to introduce such laws in 2012, no further attempts were made after the removal of the government following the EuroMaidan protests. In December 2014, the Secretariat of the Parliamentary Committee on Freedom of Speech and Information Policy confirmed that no such laws were to come before the Verkhovna Rada.
- 4.4** International assessments indicate that since Ukraine's last UPR assessment in 2012, conditions for freedom of expression and press freedom in Ukraine have improved. Ukraine's position on the World Press Freedom Index initially fell from 126<sup>th</sup> in 2012 to 129<sup>th</sup> in 2015, however it rose to 107<sup>th</sup> in 2016 following the implementation of a number of reforms and the maintenance of a fragile ceasefire in the east.<sup>25</sup> According to Freedom House, Ukraine's press remains "partly free", however, its press freedom score improved from 48/100 in 2015 to 53/100 in 2016.<sup>26</sup> At the time of writing, Ukraine was rated "obstructed" on the CIVICUS Monitor.<sup>27</sup>
- 4.5** The level of respect for free expression and press freedom has varied widely across Ukraine since the country's last UPR review. The primary reason for this has been the armed conflict which erupted in 2014 and the eventual occupation by Russian-affiliated military forces of certain parts of the country. The most significant impact of this occupation has been on Crimea, where Russian forces effectively annexed the territory and imposed a system of authoritarian rule which has seen free speech severely curtailed.<sup>28</sup> In April 2016 Crimean journalist Mykola Semena was charged with violating the territorial integrity of Russia by means of media. The reason for the charges was an analytical article about the illegal Russian annexation of Crimea, prepared by Semena for publication in Radio Free Europe (RFE/RL). By means of the

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<sup>23</sup> Full English text of Ukraine's constitution from The Constitute Project, here: [https://www.constituteproject.org/constitution/Ukraine\\_2014?lang=en](https://www.constituteproject.org/constitution/Ukraine_2014?lang=en)

<sup>24</sup> For instance draft law № 10290 proposed by MP Kolisnichenko on March 30, 2012 and draft law № 10729 submitted by MP Zuravskiy on July 7, 2012.

<sup>25</sup> Reporters Without Borders 2016 World Press Freedom Index: <https://rsf.org/en/Ukraine>

<sup>26</sup> Freedom House Freedom of the Press 2016: <https://freedomhouse.org/report/freedom-press/2016/ukraine>

<sup>27</sup> CIVICUS Monitor ratings assess the level of respect, in law and practice, for the freedoms of association, peaceful assembly and expression: <https://monitor.civicus.org/country/ukraine/>

<sup>28</sup> 'Hostages of the Kremlin', <http://ccl.org.ua/en/reports/28-hostages-of-the-kremlin/>



malware installed on Semena's laptop, the Russian FSB was tracking his computer activity and made screenshots of the article.

- 4.6** There is significant evidence of serious human rights abuses committed by de facto authorities in the self-proclaimed Donetsk People's Republic (DPR) and the Lugansk People's Republic (LPR) and their Russian Military backers against journalists in parts of eastern Ukraine under their control. A joint CCL-FIDH report from 2015 documented several cases where journalists had been abducted because of their reporting, held in detention for long periods and often beaten. These include the case of Espresso TV journalist Egor Vorobiev who was detained for covering the conflict on 30 August 2014 and released on 7 November as part of prisoner exchange. Foreign journalists were also targets of abuse in Eastern Ukraine during this period. On 16 June 2016, Russian journalist Pavel Kanygin was detained, aggressively questioned and beaten by men in camouflage before being expelled to Russia. Even ordinary citizens attempting to use the internet to inform relatives about the conflict have been targeted and sometimes brutally murdered, as in the case of Lera Kulish's family.<sup>29</sup> In November 2016, bloggers Eduard Nedeliaev and Gennady Banitsky were detained, later they were charged with espionage.
- 4.7** Journalists have also faced threats in other parts of Ukraine since the last UPR review. Ukrainian-Belarusian journalist Pavlo Sheremet was killed in a car bomb on 20th July 2016.<sup>30</sup> He had worked for *Ukrainska Pravda*, one of the most popular publications in Ukraine, for almost five years. Sheremet is one of many journalists killed in a country that has become increasingly dangerous to the profession as a result of Ukraine's ongoing conflict with Russia.
- 4.8** Restrictions on media freedoms have also affected Ukrainian journalists and bloggers, typically accused of being too sympathetic to Russia, or opposing Ukraine's continuation of the armed conflict with separatist groups. Disproportionate reactions narrowing the space for criticism have included an arson attack on 5 September 2016 against the headquarters of TV Inter, a Ukrainian television station considered to be pro-Russian.<sup>31</sup> In a separate case, journalist Ruslan Kotsaba was arrested and charged with high treason following the release of a video in which he criticised the ongoing war and tore up his conscription papers. An appeals court overturned his conviction in July 2016.<sup>32</sup>

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<sup>29</sup> Eastern Ukraine Civilians Caught in the Crossfire, FIDH and CCL, October 2015: <http://ccl.org.ua/en/reports/zvit-tsyvilne-naselennya-pid-perehresnym-vohnem/>

<sup>30</sup> See: <http://www.kyivpost.com/article/content/ukraine-politics/ukrainian-belarussian-journalist-pavlo-sheremet-killed-in-kyiv-419071.html>

<sup>31</sup> See: <https://www.theguardian.com/world/2016/sep/05/pro-russia-tv-inter-kyiv-evacuated-fire-ukraine>

<sup>32</sup> See: <http://www.counterpunch.org/2016/12/16/interview-with-ukrainian-journalist-jailed-for-speaking-out-against-the-war-in-ukraine/>

- 4.9** Furthermore, in accordance with the general recommendation made to ensure that there is freedom and pluralism within the media, a new law on public broadcasting<sup>33</sup> aims to address the concentration of ownership of private outlets in a small group of businesspeople, as a way of increasing media plurality.<sup>34</sup> Law No. 674-VIII on Amending the Legislative Acts of Ukraine Concerning Transparency of Mass Media Ownership and Implementation of State Policy in the Field of Television and Radio Broadcasting prohibits ownership of television and radio companies by national and local government authorities, individuals and legal entities registered in the offshore zones, political parties, religious organisations and professional unions. The law also provides that information on those individuals who own 10% or more of a television or radio broadcasting company must be published on the company's website and sent to the national regulator. The law also gives the regulator the right to impose fines for incorrect or insufficient information on ownership.<sup>35</sup>
- 4.10** In practice, however, concentration of media ownership in the hands of a few wealthy businesspersons remains a serious problem in Ukraine. The Media Ownership Monitor a project of Reporters Without Borders, reports that, although the new law imposes some limits on ownership, it fails to 'define objective criteria to calculate concentration and therefore appropriate control is in fact missing.'<sup>36</sup> This failure has allowed the most influential media and the largest media groups in Ukraine to be owned by the some of the richest Ukrainians, including the President of Ukraine and owner of Channel 5 Petro Poroshenko.<sup>37</sup>
- 4.11** On 14 May 2015, the Parliament adopted "amendments to several legislative acts of Ukraine regarding strengthening guarantees of legal professional activity of journalists". According to the Prosecutor General, in 2016 a total of 31 proceedings related to the violation of journalists' rights were investigated and taken to court, an almost three-fold increase on the figure in 2015. Media organisations link the increase in the number of cases to the positive practice of filing complaints which was not previously performed by the Prosecutor's Office.
- 4.12** In February 2017, the Ukrainian president signed the information security doctrine, which grants the state the powers of continuous online monitoring, and also provides for vaguely formulated legislative proposals to block and remove information from websites. Ukrainian civil society organisations raised concerns that these new powers would allow the authorities to block the internet and restrict freedom of expression.<sup>38</sup>

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<sup>33</sup> See: <http://zakon5.rada.gov.ua/laws/show/271-19>

<sup>34</sup> See: <http://www.aljazeera.com/indepth/features/2016/04/owns-ukraine-media-160405130121777.html>

<sup>35</sup> See: <https://www.loc.gov/law/foreign-news/article/ukraine-new-law-on-tv-ownership/>

<sup>36</sup> Media Ownership Monitor for Ukraine, by Institute of Mass Information and Reporters Without Borders: <http://ukraine.mom-rsf.org/en/ukraine/findings/indicators/#!c52f062c62d85adccb383a70d5340d95>

<sup>37</sup> 'Politics, Businesses and the Media – three Pillars of Ukrainian Oligarchs' Empires', Media Ownership Monitor for Ukraine, <http://ukraine.mom-rsf.org/en/ukraine/findings/oligarchy/>

<sup>38</sup> See: <http://www.ukrweekly.com/uw/wp/ukraines-information-security-doctrine-breakthrough-or-veneer-of-change/>

## 5. (E) Freedom of peaceful assembly

**5.1** During Ukraine's examination under the 2<sup>nd</sup> UPR cycle, the government received one recommendation on the right to freedom of assembly. Ukraine accepted this recommendation and committed to 'implement a law on freedom of assembly that complies with applicable standards under article 21 of the ICCPR.'<sup>39</sup> This recommendation has not been implemented.

**5.2** Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 39 of Ukraine's constitution states that citizens have the 'right to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations', as long as they notify the authorities in advance. The constitution states that all restrictions must be provided for in law and necessary in 'the interests of national security and public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons.'<sup>40</sup>

**5.3** In respect of the recommendation made during the 2<sup>nd</sup> UPR cycle, and in response to serious violations during the Euromaidan protests in 2013, in May 2016 Ukraine asked the Council of Europe's Venice Commission for an opinion on two draft laws to protect the freedom of peaceful assembly.<sup>41</sup> The Venice Commission outlined a number of improvements that could be made to the drafts, including making sure that the concept of assemblies is properly defined to capture the "gathering of people for expressive purposes"; properly providing for spontaneous assemblies; and harmonising grounds for restricting assemblies with Ukraine's constitution.<sup>42</sup> The bills sparked sharp criticism from some civil society activists concerned that the law could legalise the forced dispersal of protests.<sup>43</sup>

**5.4** In practice, Ukrainian authorities have had a mixed record of protecting the right to protest since the last UPR review. During the Euromaidan protests from November 2013 to February 2014, many protestors were deliberately targeted in an abhorrent manner by the authorities. Grave violations of protest rights and civil liberties included murder, torture, kidnapping, unlawful arrest, fabricated criminal cases and other methods. These crimes led to the deaths of at least 114 people, including 94

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<sup>39</sup> Report of the Working Group on the Universal Periodic Review – Ukraine, AHRC/22/7: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/189/10/PDF/G1218910.pdf?OpenElement>

<sup>40</sup> Full English text of Ukraine's constitution from The Constitute Project, here: [https://www.constituteproject.org/constitution/Ukraine\\_2014?lang=en](https://www.constituteproject.org/constitution/Ukraine_2014?lang=en)

<sup>41</sup> Full English text of the two draft laws can be found on the Council of Europe's website, here: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2016\)046-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2016)046-e)

<sup>42</sup> Council of Europe, Venice Commission's opinion here: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282016%29030-e>

<sup>43</sup> See: <http://uacrisis.org/47882-silovij-rozgoniv-mirmih-zibran>

Euromaidan activists, and physical injuries to over a thousand activists.<sup>44</sup> <sup>45</sup> The government also passed legislation to criminalise the demonstrations.<sup>46</sup> Perpetrators have not been properly held to account for the killing of protestors and other human rights violations during this period.<sup>47</sup> According to the Prosecutor General, the courts issued 35 sentences in these cases, but only one person was sentenced to actual imprisonment. The trial on charges of murder of protesters on 20 February 2014 is still in progress.

**5.5** More recently, the government has been more tolerant of demonstrations, but the police have still failed to protect protestors from clashes with counter demonstrators.<sup>48</sup> In May 2017, a court in the city of Lviv banned the Equality Festival initiated by LGBT groups because of an inability to ensure security measures. Organizers moved the event indoors, but the venue was surrounded by a group of right-wing radicals in masks. As a result the organisers decided to cancel the event. In July 2016, the March of Equality by LGBT groups in Kyiv, unlike in previous years, took place without incident, although radical groups had threatened to turn it into a “bloody mess”. Safety for the march’s 1,500 participants was provided by about 6,000 policemen.<sup>49</sup>

**5.6** Freedom of peaceful assembly continues to be significantly violated in the territories controlled by armed groups.<sup>50</sup> In the Donbas region, from the beginning of the armed conflict the illegal armed formations used the threat of violence to prevent civilians from gathering in public. As a result, individuals and groups which openly challenged the armed formations (journalists, civil activists, and human rights defenders) were physically attacked or forced to leave the territory, and the remaining population lives under fear of intimidation and violent attack.

**5.7** Despite some positive developments in the implementation of positive obligations of the state for the protection and promotion of peaceful assembly, a number of systemic problems remain which can cause risks to the safety of protestors. For example, on 31 August 2015, protests against the amendments to the Constitution took place near the Parliament. The confrontation resulted in the deaths of four members of the National Guard, and, according to official data, 179 people sought medical assistance after clashes between police and protestors. During this incident, police failed to selectively neutralise aggressive individuals and separate them from the majority of peaceful

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<sup>44</sup> ‘The Price of Freedom’ by Center for Civil Liberties and other human rights organisations provides a detailed account of the brutality meted out to Euromaidan protestors in 2013 and 2014: <http://ccl.org.ua/en/reports/the-price-of-freedom/>.

<sup>45</sup> <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>

<sup>46</sup> Freedom House, Freedom of the World 2015, available at: <https://freedomhouse.org/report/freedom-world/2015/ukraine>

<sup>47</sup> See: <http://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

<sup>48</sup> See: [http://www.blackseango.org/wp-content/uploads/2015/11/Report-Enabling-Environment-for-CSOs-in-the-Black-Sea-Region\\_final.pdf](http://www.blackseango.org/wp-content/uploads/2015/11/Report-Enabling-Environment-for-CSOs-in-the-Black-Sea-Region_final.pdf)

<sup>49</sup> <http://amnesty.org.ua/nws/richna-dopovid-2016-2017-ukrayina/>

<sup>50</sup> See: <http://www.ohchr.org/Documents/Countries/UA/12thOHCHRreportUkraine.pdf>

protestors. Moreover, there were many instances of excessive use of physical violence by law enforcement officers contrary to the criteria of necessity and proportionality.<sup>51</sup>

**5.8** Many peaceful assembly violations have also taken place in Crimea, since its occupation by Russian forces. On 6 December 2016, a Crimean Tatar from Bakhchysarai Enver Sherfiyev was convicted by a Russian Court of taking part in an 'unauthorised rally' and fined 15,000 roubles (or approximately US\$260).<sup>52</sup> According to the organisation, Human Rights in Ukraine, Sherfiyev was the fourth Crimean Tatar to have been prosecuted merely for coming out onto the street on 12 May, and for questioning the presence of security forces and the arrest in handcuffs of their neighbours. Observers believe that Russian authorities in Crimea are threatening pro-Ukrainian activists in order to frighten people into staying at home and not protesting.<sup>53</sup>

**5.9** In the two years preceding this, the Russian authorities in Crimea routinely violated the protest rights of people in Crimea, and particularly those of pro-Ukrainian activists and Crimean Tatars.<sup>54</sup> This crackdown on the right to protests began at the very beginning of the occupation through the use of persecution through the courts and extra-legal methods including beatings, kidnapping and even murder. Even cultural events were prohibited. In March 2017 activists in Simferopol received a warning about "the inadmissibility of law violations" from Russian law enforcement officers in response to a request about a campaign to mark the birthday of Ukrainian writer Taras Shevchenko.

## **6. (F) Recommendations to the Government of Ukraine**

CIVICUS, CCL and DeJuRe call on the Government of Ukraine to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6 on Protecting Human Rights Defenders, 27/5 on the Safety of Journalists and 27/31 on Civil Society Space.

At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, freedom of peaceful assembly, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made:

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<sup>51</sup> <http://ccl.org.ua/en/reports/events-outsidethe-parliament-of-ukraine-31-august-2015-through-the-prism-of-human-rights/>

<sup>52</sup> See: <http://khp.org/en/index.php?id=1481147711>

<sup>53</sup> See: <https://www.kyivpost.com/article/opinion/op-ed/halya-coynash-crimean-tatars-tried-fined-solidarity-victims-persecution.html>

<sup>54</sup> 'Freedom of Assembly in Crimea Occupied by the Russian Federation', Center for Civil Liberties and E-SOS, <https://drive.google.com/file/d/0B01VVvzdDt2OTHhRVGNvbm9JYjg/view>

## **6.1 Regarding freedom of association**

- Abolish Law No. 6172 requiring staff of non-governmental organisations to submit asset declarations to the authorities.
- Repeal article 186-5 of the Code of Ukraine on Administrative Offences establishing liability for the leadership or participation in unregistered associations of citizens;
- Amend the Law of Ukraine “On public associations”, by including, under article 21 of this law, the right of associations to represent and protect the rights of their members and other persons, upon their request to initiate actions on issues of public interest;
- Amend part 2 of article 50 of the Code of Administrative Procedure of Ukraine, by including in the list of plaintiffs in the administrative case, public associations without the status of legal entity;
- Adopt changes to the Law of Ukraine "On political parties" to bring it into line with international standards;
- Simplify rules for the creation of trade unions and their associations in accordance with the requirements of the Convention on Freedom of Association and Protection of the Right to Organize (C87), in particular, to allow the possibility of their creation without registration.

## **6.2 Regarding freedom of expression, independence of the media and access to information**

- Ensure the effective investigation of all cases of obstruction of journalistic activities and violence against and death of journalists;
- Cancel the procedure of permitting registration of the print media, which is not consistent with the requirements of article 10 of the European Convention for the Protection of Human Rights;
- Eliminate technical obstacles for the creation of a public broadcaster, its adequate funding and to ensure a rapid process of reorganization of the regional companies and their adherence to the National Television Company of Ukraine;
- Refrain from imposing disproportionate restrictions on freedom of speech, using rhetoric against Russian armed aggression.

## **6.3 Regarding freedom of assembly**

- Urgently complete the investigation of widespread violations of freedom of assembly during the events on Maidan in 2013 and 2014, the events of May 2014 in Odesa, attacks on the Equality March in Kyiv in 2015, and all other cases involving the use of violence or excessive force during peaceful protests;
- Adopt a special law envisaging the guarantee of freedom of peaceful assembly, for the implementation of the decision of the European Court of Human Rights in the case "Verentsov against Ukraine";
- Cancel local government provisions, which impose rules on peaceful assembly which run contrary to article 39 of the Constitution of Ukraine;
- Ensure effective investigation and prosecution of perpetrators of unlawful obstructions of freedom of assembly;
- Increase police capacities to protect participants of peaceful assemblies in strict compliance with the principle of non-discrimination. To achieve this, align departmental normative documents and update the system of training of the National Police.

#### **5.4 Regarding access to UN Special Procedures mandate holders**

- Given the challenges described in this submission, the government should engage with the UN Special Rapporteur on the independence of judges and lawyers to analyze the situation in the occupied Crimea, where the prosecution of lawyers defending political prisoners is a serious problem. Additionally, the Government should extend an open invitation to all UN special procedures to visit the country and report on the human rights situation.

#### **5.5 Regarding State engagement with civil society**

- Implement transparent and inclusive mechanisms of public consultations with a wide range of civil society organizations on all issues mentioned above and enable more effective involvement of civil society in the preparation of law and policy.
- Include civil society organizations in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society and NGOs on the implementation of UPR including by holding periodical comprehensive consultations with a diverse range of civil society sectors.

- Incorporate the results of this UPR into its action plans for the promotion and protection of all human rights, taking into account the proposals of civil society and present a mid-term evaluation report to the Human Rights Council on the implementation of the recommendations of this session.