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# REPORT BY NILS MUIŽNIEKS

COMMISSIONER FOR HUMAN RIGHTS  
OF THE COUNCIL OF EUROPE

FOLLOWING HIS VISIT TO UKRAINE  
FROM 29 JUNE TO 3 JULY 2015

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Commissioner Muižnieks visited Ukraine from 29 June to 3 July 2015. In the course of this visit he travelled to Kyiv, Dnipropetrovsk, Kramatorsk and the non-government controlled city of Donetsk in the east of the country. He held discussions with state and regional authorities, local decision-makers in Donetsk, representatives of human rights structures, civil society organisations and international intergovernmental and humanitarian organisations. The present report draws on the themes of the Commissioner's visit and focuses on the following issues:

### Humanitarian situation

More than a year after the outbreak of the armed hostilities in the east of the country, the on-going conflict continues to have a severe impact on the lives of ordinary people in the conflict-affected areas. The humanitarian situation is particularly difficult. More than 8000 people have lost their lives in the period since April 2014. Approximately 5 million individuals urgently need assistance to meet their basic needs. Access to clean water is a pressing issue for up to 1.3 million people. Military activities have resulted in extensive damage to infrastructure, including medical facilities, schools and kindergartens. After the disruption of regular medical supplies to conflict-affected areas, the medical institutions and affected population have become increasingly dependent on the aid provided by humanitarian organisations and other actors. The suspension of the payment of social benefits, including pensions, to individuals living in the territories outside governmental control has exacerbated the hardship of the population, which has already been severely affected by the armed hostilities, food insecurity, higher prices for basic goods and non-functioning banking sector. The ability of humanitarian actors, including international humanitarian organisations, to reach out to the most vulnerable groups without impediments to their access and work is becoming critical for the survival of many affected individuals.

### Situation of internally displaced persons (IDPs)

The national authorities, in co-operation with the international community, must step up their efforts to ensure that the basic needs of the large number of people who remain displaced are met on a regular basis. The relentless efforts by volunteers, business leaders and local governments cannot substitute for a government-led humanitarian response. To this end, the authorities should develop a detailed Action Plan for IDPs, which would include measures aimed at providing them with durable housing solutions and livelihood opportunities. It should also outline concrete steps for the integration of IDPs in their host communities, pending solutions which would create a favourable environment for their safe and voluntary return. Other important measures to be addressed in the Action Plan include protection against discrimination, access to justice, protection of property rights and safeguarding the right to vote. The Action Plan should be developed in an inclusive manner, with the participation of both registered and less visible, unregistered, groups of IDPs.

### Human rights of children

The government should adopt regulations for a simplified procedure allowing children and parents living in non-government controlled areas to acquire identity documents and legally valid educational certificates. In view of a likely increase in cases of statelessness, it is advisable to develop and put in place an effective statelessness determination procedure. The conditions of social care institutions in conflict affected areas should be regularly monitored and effective strategies should be devised to meet the basic needs of their residents. There is a need for an information campaign to raise awareness of the risks of land mines and unexploded ordnance among children and their parents on both sides of the contact line.

## Freedom of movement

Freedom of movement is not sufficiently protected and there is a need to find a solution which will reconcile appropriate security measures with the legitimate interest of the population to move freely between government-controlled and non-controlled territories. Improved movement of persons and goods would help prevent the further isolation of conflict affected territories. The existing restrictions on the movement of cargo and public transportation should be brought to the necessary minimum and revised on a regular basis.

## Access of humanitarian organisations

The restrictions on the movement of goods and related administrative obstacles introduced by the government of Ukraine are hampering the delivery of humanitarian assistance to the most vulnerable groups residing in the buffer zone and in the territories outside governmental control. Other factors affecting access are the registration and accreditation requirements for international humanitarian organisations applied by the local decision-makers in non-government controlled areas and the closure of certain checkpoints for cargo transportation. There is an urgent need to establish humanitarian corridors and to simplify the administrative procedures for humanitarian aid. The decision-makers in Donetsk and Luhansk should allow unhindered access of humanitarian aid to the affected groups living in these non-government controlled territories and reconsider any decisions which may result in the discontinuation of the work of international humanitarian missions on the ground.

## Investigations into serious human rights violations

Concerted efforts are needed to step up the fight against impunity for serious human rights violations and ensure accountability for the most urgent pending cases. To this end, both structural and operational deficiencies in the independence and effectiveness of investigations, as identified by the International Advisory Panel in its report on the Maidan investigations, should be fully and urgently addressed. The prosecutorial and other relevant law-enforcement authorities at all levels are required to have a thorough understanding of international standards for effective investigations and their practical application. There is a need to raise awareness among the judiciary of their central role in efforts to combat impunity. All military formations in the country should be fully integrated in the regular army and any groups acting outside the normal chain of command should be disarmed and disbanded without delay.

## Police and judicial reforms

The government should keep the momentum on police reform and take additional steps with a view to strengthening the rule of law, improving public trust and ensuring the efficient functioning of law-enforcement and justice systems. The reforms in the judiciary should aim to protect judges from any form of intimidation and undue pressure and influence. The law on the police should be further revised to include all necessary safeguards concerning the use of firearms in line with international standards. The establishment of an independent complaints mechanism for police activities would improve accountability and public trust in the law-enforcement system.

## Systematic work to implement human rights

The declared Ukrainian derogation from the European Convention on Human Rights and other international human rights instruments weakens the level of protection of several rights guaranteed by these instruments. This decision should be reviewed and reconsidered on a regular basis. The adoption of a National Strategy on Human Rights was an important step in promoting a comprehensive approach towards addressing human rights challenges facing Ukraine. The consequent National Human Rights Action Plan should provide a concrete road map for the implementation of the key policies envisaged by the National Strategy. The Action Plan should be prepared in an inclusive manner, through the participation of all relevant stakeholders, including representatives of civil society and the groups concerned.

## INTRODUCTION

1. Commissioner Nils Muižnieks and his delegation visited Ukraine from 29 June to 3 July 2015.<sup>1</sup> This was the Commissioner's fifth visit to the country since February 2014. The main focus of the visit was the humanitarian situation in the conflict-affected territories in the east. As part of his continuous dialogue with the Ukrainian authorities, the Commissioner also raised issues related to the on-going investigations into serious human rights violations, reforms in the police and the judiciary and systematic work to implement human rights.
2. During the mission, the Commissioner travelled to Kyiv, Dnipropetrovsk, Donetsk and Kramatorsk. His visit to the city of Donetsk was facilitated by the UN Human Rights Monitoring Mission in Ukraine.
3. In Kyiv, the Commissioner met with the Prime Minister, Mr Arseniy Yatsenyuk, the Speaker of the Parliament, Mr. Volodymyr Groysman and representatives of several parliamentary factions; and the Minister for Foreign Affairs, Mr Pavlo Klimkin. He also held meetings with the Deputy Minister of the Interior, Mr Tigran Avakyan; the Deputy Minister of Justice, Ms Nataliia Sevostianova; and the Deputy Prosecutor General and Chief Military Prosecutor, Mr Anatolii Matios. In addition, the Commissioner met with the Parliamentary Commissioner for Human Rights, Ms Valeria Lutkovska, and representatives of non-governmental and international organisations (including the UN OHCHR and OSCE).
4. In Donetsk, the Commissioner held discussions with Mr Dmitriy Trapeznikov, first deputy head of the local administration; Mr Alexandr Kofman, in charge of foreign affairs; Ms Yana Chepikova, local commissioner for children's rights; and Ms Varvara Burlasova, deputy to the local commissioner for human rights. The Commissioner also met with representatives of international humanitarian and intergovernmental organisations operating on the ground and their local partners. He visited hospital No 21 in Kuybyshev district and a traumatology unit in the city centre as well as residential areas in the vicinity of the contact line.
5. In Kramatorsk, the Commissioner had a meeting with Mr Pavlo Zhebrivskiyi, the head of the state civil and military administration in Donetsk region.
6. The Commissioner would like to thank the Ukrainian authorities for their co-operation and efforts to ensure that this visit was carried out in full compliance with his mandate. In particular, he would like to express his gratitude to the Permanent Representation of Ukraine to the Council of Europe, as well as the Ministry of Foreign Affairs for facilitating the visit. The Commissioner would also like to thank the local decision-makers in the city of Donetsk for their efforts to ensure that this visit took place as planned and for providing security for the delegation. Furthermore, he would like to extend his sincere gratitude to international organisations operating in Ukraine, most notably the UN Human Rights Monitoring Mission in Ukraine (HRMMU) and the OSCE Special Monitoring Mission, for their advice and assistance in the preparation and conduct of this mission. The Commissioner would like to express his gratitude to all of his interlocutors for their willingness to share their knowledge and views on human rights issues.
7. The human rights challenges Ukraine is facing are vast both in scope and substance and require systemic changes, including constitutional, legislative and institutional reforms as well as changes in everyday practice. While several positive initiatives were undertaken in the months following his previous visit to Ukraine in December 2014, many pressing issues still remain to be addressed effectively by the authorities to meet both old and new challenges. The Commissioner trusts that his dialogue with the authorities will be further facilitated by the present report and its recommendations. The present report covers developments until the end of September 2015.

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<sup>1</sup> During this visit, the Commissioner was accompanied by his Advisers, Ms Olena Petsun and Mr Furkat Tishaev.

## 1 HUMANITARIAN SITUATION IN THE EAST

8. At least 8,050 people, the majority of them civilians, have lost their lives in the conflict since April 2014, including at least 68 children. At least 17,811 persons were injured as a result of hostilities, including at least 186 children.<sup>2</sup> The Commissioner urges all sides to the conflict to do their utmost to ensure the de-escalation of the situation, to refrain from using violence and to resolve their differences through negotiations as outlined by the Minsk agreements of September 2014 and February 2015. It is a fundamental obligation of every member state of the Council of Europe to protect human life. The Commissioner wishes to pay his respects to those who have died and extends his deep sympathies to their families while acknowledging the suffering of those who have been injured.
9. It is estimated that 5 million people affected by the conflict are in need of assistance. Around 2 million of them, who live in the areas adjacent to the contact line between the government forces and armed groups including in the buffer zone, are in the most vulnerable situation. Many of them receive limited if any assistance from humanitarian organisations, since access to these individuals is hampered by security concerns and access-related administrative obstacles. An additional 2 million persons who live in non-government controlled areas (NGCAs) experience difficulties owing to a lack of social welfare payments and livelihood opportunities, and a non-functioning banking system. Many of the 1.4 million displaced persons are also in need of assistance. This applies in particular to older people, persons with disabilities, single mothers and families with many children.<sup>3</sup>
10. On both sides of the contact line, the Commissioner heard alarming stories about the continuing destruction of infrastructure in the conflict-affected and adjacent areas.<sup>4</sup> The hospital No 21 in Donetsk visited by the Commissioner had been subject to repeated damage according to the medical staff. The residential areas in the vicinity of the contact line at the outskirts of Donetsk have residential buildings bearing signs of damage due to shelling. Visibly, a very low number of residents lived there. The Commissioner was told that most of the civilians had either left the area or were relocated to relatively safe areas. In Kramatorsk, the Commissioner was informed that 30 schools and 20 kindergartens had been damaged by shelling.
11. During his meetings in Donetsk, several pressing humanitarian issues were highlighted by the interlocutors. These included problems in access to clean water and the availability of food and medication for the most vulnerable groups of the population, including those residing in the buffer zone; the dire situation in many institutions such as orphanages, homes for older people and people with disabilities; lack of vaccines for children resulting in a risk of polio epidemics; shortage of HIV and tuberculosis related treatments; an urgent need for psychological rehabilitation of combatants; and ecological hazards due to possible shelling of a chemical plant situated in the city of Donetsk.

### 1.1 ACCESS TO CLEAN WATER

12. Access to water is an internationally recognised human right which must be ensured during an armed conflict as well.<sup>5</sup> Estimates by UNICEF indicate that up to 1.3 million people in eastern Ukraine have little or no access to water.<sup>6</sup> According to a recent report by the OSCE Special Monitoring Mission to Ukraine (SMM), access to clean water remains a challenge in conflict-affected areas due to the following principle factors: 1) ageing and/or damaged water installations in need of repairs; 2) decreased functionality of essential water pumps because of power shortages caused by shelling; 3) difficulties of access related to the presence of armed groups, landmines or unexploded ordnances and the poor condition of roads; 4) access issues impeding workers from carrying out repair works or from receiving spare parts needed for the repair of water installations; 5) orders restricting freedom of

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<sup>2</sup> UN OHCHR, [Press release](#), Geneva, 8 September 2015 ; UNICEF, [Ukraine: Humanitarian Situation Report # 37](#), 18 July -1 September 2015 and [Statement](#) by Assistant Secretary-General for Human Rights Ivan Šimonović at the Human Rights Council Inter-active dialogue on Ukraine, 29 September 2015.

<sup>3</sup> OCHA, [Humanitarian Bulletin Ukraine](#), 1-31 August 2015, p. 1.

<sup>4</sup> The widespread use of indiscriminate weapons, including cluster munitions, during the conflict in the east of Ukraine has been documented by Human Rights Watch, [Ukraine: Widespread Use of Cluster Munitions](#), 20 October 2014.

<sup>5</sup> During armed conflicts, the obligations of States under the International Covenant on Economic, Social and Cultural Rights encompass the right to water (see UN Committee on Economic, Social and Cultural Rights, General Comment No. 15).

<sup>6</sup> UNICEF, [Ukraine: Humanitarian Situation Report # 37](#), 18 July -1 September 2015, p. 4.

movement and/or the supply of goods or water across the contact line and so interfering with the supply of water from government-controlled settlements to non-government controlled settlements; and 6) frequent cuts in water supply which have contributed to the worsening of the situation.<sup>7</sup>

13. The OSCE reports that as a result, the risk of spread of water and sanitation related disease has increased. In addition, the quality of piped water is threatened by interruptions in the supply of chlorine and other reagents to treatment facilities creating a risk of secondary contamination. The current impediments to sufficient, safe, acceptable and affordable water pose a particular risk to the most vulnerable groups such as children, persons with disabilities, chronically ill and older persons living within the least accessible conflict-affected areas.<sup>8</sup>
14. In Donetsk, the Commissioner met representatives of international humanitarian organisations working to ensure unimpeded access to clean water for the residents of conflict-affected areas. It appears, however, that these organisations may not be able to continue their work (see paragraphs 51 and 52 below).

## 1.2 ACCESS TO HEALTHCARE

15. The damage caused by the on-going armed hostilities to medical facilities is extremely alarming. Whenever active hostilities have resumed, incidents of both medical facilities and ambulances coming under fire have been reported. In hospital No 21 in Donetsk, the Commissioner was shown an ambulance car with the signs of being hit by what appeared to be artillery fire, although the ambulance was clearly marked as a medical vehicle. According to UN OHCHR, more than 150 healthcare facilities have been partly or completely destroyed in the conflict-affected areas as a result of indiscriminate shelling.<sup>9</sup>
16. The situation is of particular concern in settlements situated close to the contact line and in the buffer zone. Access of ambulances and the delivery of humanitarian aid are further exacerbated due to the fact that an exchange of fire may occur at any time. Because of the location of the checkpoints, some settlements have been completely cut off from the nearest hospitals.
17. A Decision of the National Security and Defence Council of 4 November 2014 enacted by the Presidential Decree No 875 of 14 November 2014 ordered the relocation of all state institutions which have been operational in the areas outside governmental control to government-controlled territories. Consequently, practically all hospitals located in these territories have changed their legal address and registered in the government-controlled territories, but remain operational in the NGCAs. Many of these institutions, including social care institutions, no longer receive funding from the state budget, nor deliveries of medical supplies procured with state funding. As a result these institutions are becoming increasingly dependent on humanitarian aid for remaining operational.<sup>10</sup>
18. On 1 September 2015, the Ministry of Health of Ukraine announced that two cases of poliovirus had been confirmed in south western Ukraine. In response to this polio outbreak, caused by the chronically low immunisation coverage in the country, UNICEF has already committed to supply 4.8 million doses of polio vaccines for children's immunisation. Half of the vaccines have already arrived in the country.<sup>11</sup> It is important to ensure that vaccines also reach children in the NGCAs as soon as possible, as a threat of polio outbreak exists there as well. The efforts of international humanitarian organisations to reach out to the population in those territories may be crucial in this respect.
19. There are serious concerns about HIV-related tests and treatment. The Commissioner's interlocutors in Donetsk informed him that there was an increase in the number of pregnant women who had been tested HIV-positive. The UN HRMMU has observed that specialised treatment (anti-retroviral,

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<sup>7</sup> OSCE Special Monitoring Mission to Ukraine, *Access to water in conflict-affected areas of Donetsk and Luhansk regions*, SEC.FR/741/15, 10 September 2015, p. 5.

<sup>8</sup> Ibid.

<sup>9</sup> UN OHCHR, [Report on the human rights situation in Ukraine: 16 May to 15 August 2015](#), §104.

<sup>10</sup> Apart from UN agencies and international humanitarian organisations, the government of the Russian Federation is engaged in efforts to assist the population in the NGCAs. According to the Ministry of Emergency Services of the Russian Federation, since mid-August 2014 and until mid-September 2015, over 46,000 metric tons of humanitarian aid was delivered to Luhansk and Donetsk regions. Russian humanitarian NGOs also provide assistance to vulnerable groups, including children.

<sup>11</sup> UNICEF, [Ukraine: Humanitarian Situation Report # 37](#), 18 July -1 September 2015, pp. 2-3.

tuberculosis, insulin and haemodialysis) purchased by the government remain in storage in government-controlled territories. To prevent therapy interruption since July 2014, some people have been transporting antiretroviral treatment via check-points, as well as non-official roads risking their life due to the increased presence of explosive remnants of war and improvised explosive devices.<sup>12</sup> To mitigate the shortage of essential drugs and medicines, UNICEF has initiated the procurement of antiretroviral therapy and other essential HIV/AIDS supplies for people in non-government-controlled areas. The supplies supported by the Global Fund to Fight AIDS, TB and Malaria emergency funding will cover the needs of people living with HIV for a year and will be distributed through the network of local AIDS centres in Donetsk and Luhansk regions. Supplies sufficient to cover a half-year need for ARV drugs and diagnostics were expected to be delivered to the NGCAs in the course of September 2015.<sup>13</sup>

20. Shortages of cardiac medication, blood pressure pills and sedatives in NGCAs have also been reported. Up to 143,000 people will be at a much higher risk of developing severe complications due to cardiovascular disease, high blood pressure, stroke and heart attack, possibly leading to premature death. The increased stress and trauma, a less nutritious diet and inadequate health services may result in a yet higher figure. There have also been reports of up to 400 deaths of diabetes patients due to a lack of necessary drugs and treatment.<sup>14</sup>

### 1.3 SOCIAL BENEFITS

21. Access to social benefits by persons living in NGCAs has repeatedly been raised by the Commissioner during his visits to Ukraine. Following the adoption of the Cabinet of Ministers' Resolution No 595 of 7 November 2014 ("About Financing of State Institutions, Payment of Social Benefits to Citizens and Provision of Financial Support for Some Enterprises and Organisations of Donetsk and Luhansk regions") individuals residing in NGCAs no longer receive social benefits payments, including pensions. In addition, no funds have been allocated from the state budget to social care institutions which continue to operate in these territories. This Resolution, which requires individuals to register and reside in the government-controlled areas in order to receive their social benefits was challenged in the domestic courts. In April 2015, the Kyiv Administrative Court of Appeal declared certain provisions of this Resolution as null and void and obliged the government to resume payments to individuals regardless of their registration and actual residence. The government has so far not implemented this judgment, but announced it was filing an appeal.
22. During the visit, the Commissioner raised this question with the Prime Minister. The Commissioner has continuously urged the authorities to adopt a flexible approach for paying pensions to persons travelling from NGCAs, and to apply proactive and pragmatic approaches in reaching out to people living in these territories. The authorities should cooperate closely with international organisations and humanitarian groups in ensuring that the residents of these areas receive all the necessary assistance. The Commissioner is concerned that no progress has so far been achieved in this area. According to the latest reports by UN OHCHR, as of July 2015, pension payments to 233,900 individuals have been suspended because they were not identified at their place of residence in the government-controlled areas. The OHCHR also reported that approximately 523,000 pensioners living in the NGCAs in Donetsk region received payments from local pension funds for July 2015 in roubles and that similar payments had started in the NGCAs in the Luhansk region.<sup>15</sup>
23. [Resolution 2202 \(2015\)](#) adopted by the UN Security Council at its 7384<sup>th</sup> meeting endorsed the "Package of measures for the Implementation of the Minsk Agreements", adopted and signed in Minsk on 12 February 2015.<sup>16</sup> One of the measures of the package (paragraph 8) is the "definition of modalities of full resumption of socioeconomic ties, including social transfers such as pension payments and other payments (incomes and revenues, timely payments of all utility bills, reinstating taxation within the legal framework of Ukraine)". It is envisaged that Ukraine should reinstate control of the segment of its banking system in the conflict-affected areas and that an international mechanism to facilitate such transfers could be established.

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<sup>12</sup> UN OHCHR, Report on the human rights situation in Ukraine: 16 May to 15 August 2015, § 108.

<sup>13</sup> UNICEF, [Ukraine: Humanitarian Situation Report # 37](#), 18 July -1 September 2015, p. 7.

<sup>14</sup> OCHA, [Humanitarian Bulletin: Ukraine](#), 1-31 August 2015, p. 4.

<sup>15</sup> UN OHCHR, Report on the human rights situation in Ukraine: 16 May to 15 August 2015, §§100-101.

<sup>16</sup> §1 of the Resolution.

## 2 SITUATION OF INTERNALLY DISPLACED PERSONS

24. According to the Ministry of Social Policy, as of 25 August 2015 there were 1,449,245 registered internally displaced persons in Ukraine, including 183,466 children. The latest update by UNHCR indicates that 59 percent of IDPs are pensioners and 4 percent are persons with disabilities.<sup>17</sup> Since the very beginning of the large-scale displacement of the population due to the armed conflict, the Commissioner has been closely following the situation of internally displaced persons. During his visits to the country in June and December 2014, he visited several places of compact resettlement of IDPs in Kyiv, Dnipropetrovsk and Dniprodzerzhynsk. This issue has also been discussed on several occasions with the relevant interlocutors in Kyiv and in the regions, as well as during the authorities' visits to Strasbourg.<sup>18</sup> Following his visit to Ukraine in June 2014, the Commissioner addressed a letter to the Prime Minister of Ukraine, Mr Arseniy Yatsenyuk, concerning the situation of internally displaced persons.<sup>19</sup>
25. In his letter, the Commissioner underscored the need to ensure a coordinated response at central level to challenges faced by displaced persons. Most notably, he urged the authorities to establish a centralised registration system and a centralised state entity in charge of the overall coordination of humanitarian responses to the IDP situation, and to address legislative and protection gaps in the situation of IDPs in line with European and international standards. Finally, he called on the government to develop a strategy to provide durable solutions with regard to accommodation and livelihood opportunities for those displaced persons who may not be in a position to return to their original place of residence in the coming months.
26. In October 2014 the draft law on ensuring the rights and freedoms of internally displaced persons was adopted by the Ukrainian Parliament and signed into law in November 2014. This legislation has been deemed a positive step, although further revision may be necessary in order to bring it fully in line with international standards.<sup>20</sup> During his visit to Ukraine in December 2014, the Commissioner welcomed the adoption of the IDP legislation but he pointed out that there was a need to address some specific obstacles to its implementation at the local level. During the visit covered by the present report, the Commissioner was informed that further amendments to the legislation were pending in the Parliament. Some of the amendments provide for a simplified registration procedure, others envisage compensation to IDPs for their damaged property.
27. The Ministry of Social Policy is the leading agency responsible for the registration of IDPs. The Vice Prime Minister in charge of Regional Development also co-ordinates IDP-related issues. During his visits to Ukraine, the Commissioner paid tribute to the laudable efforts by volunteers, local and regional authorities and business leaders in assisting IDPs and doing their utmost to ensure that their basic needs are met. However, their efforts alone are not sufficient. The continuous involvement of national authorities at a high level will be essential for coordinating the responses to the situation.
28. Difficulties in access to durable housing and livelihood opportunities appear to be the key problems that should be addressed as a matter of priority. According to the findings of a recent assessment on shelter and non-food item needs, the majority of IDP households live in rented or hosted accommodation, with smaller proportions residing in owned accommodation, collective shelters and hotels. One third of the households paying rent reported having insufficient funds to afford their rent for more than six months. One in five IDP households reported that they were certain to be threatened with eviction. Many households reported having insufficient access to hot and cold running water, heating, insulation and waterproofing, particularly in rural areas.<sup>21</sup>

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<sup>17</sup> UNHCR, [Ukraine Factsheet](#), October 2015.

<sup>18</sup> In particular, this issue was discussed with the current Vice Prime Minister Hennadii Zubko and his predecessor Volodymyr Groysman during their visits to Strasbourg on 17 April 2015 and 8 July 2014 respectively.

<sup>19</sup> [CommDH\(2014\)15](#) of 17 July 2014.

<sup>20</sup> [Report](#) of the UN Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, A/HRC/29/34/Add.3, 2 April 2015, §14; and [Statement](#) by Council of Europe Secretary General Thorbjørn Jagland, 20 October 2014.

<sup>21</sup> See Shelter Cluster Ukraine, [Shelter and NFI Needs Assessment, Report: Ukraine, August 2015](#). The assessment focuses on five oblasts (Kharkiv, Donetsk, Luhansk, Zaporizhia and Dnipropetrovsk) and is based on interviews with both registered

29. Social benefits and payments earmarked for IDPs are an important source of income. However, these are primarily paid to the IDPs registered with the Ministry of Social Policy leaving unregistered households in a more vulnerable situation. Private funds – savings for 45.7 percent and borrowing for 31.5 percent of the IDPs surveyed – were reported to be further sources of income. Over two thirds of households reported earning no income from employment. The depletion of personal funds and lack of employment opportunities are likely to become an increasing issue of concern in the near future.<sup>22</sup>
30. The National Strategy on Human Rights which was signed by the President in August this year has a chapter on the rights of IDPs (see also paragraphs 69 and 70 below). During his meetings with the Prime Minister and other authorities in Kyiv, the Commissioner urged the authorities to develop a separate Action Plan on IDPs, which would include concrete measures for providing durable housing and livelihood opportunities for IDPs in the host communities.

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and unregistered IDPs. The data was collected in cooperation with the Norwegian Refugee Council, the Danish Refugee Council and the Office of the United Nations High Commissioner for Refugees.

<sup>22</sup> Ibid.

31. The Commissioner's interlocutors in Donetsk brought to his attention the difficulties associated with receiving birth certificates, passports, school certificates and other documents by children born and/or currently residing in NGCAs. He was informed that an estimated 2500 children were born in the NGCAs in Donetsk region since the beginning of the conflict. Reportedly, an estimated 130 children are born every week in the NGCAs in Luhansk region. The civil registration system is not functioning and those individuals who wish to register their newly born children and/or receive other documents (such as passports or education certificates) cannot do so without travelling to the government-controlled territories, even if this can be an arduous process due to existing restrictions on freedom of movement.<sup>23</sup> Several cases were signaled to the Commissioner in which the parents/children had not been able to obtain such documents because the certificates issued by institutions functioning in Donetsk had not been accepted as legal proof.
32. The Commissioner's interlocutors in the state civil and military administration in Kramatorsk informed him that they are striving to assist the individuals who arrive from NGCAs and request various documents and certificates. However, in the absence of specific legislation in force, this process can be cumbersome. When the Commissioner raised this issue with members of the Ukrainian Parliament, he was informed that the relevant draft legislation was under preparation, in consultation with the Office of the Presidential Commissioner for Children's Rights. The Commissioner urged the Parliament to develop and adopt such legislation as a matter of priority.
33. The [draft legislation](#) concerning amendments to the Civil Procedure Code of Ukraine regarding determination of birth or death in NGCAs was introduced by the Cabinet of Ministers in the Parliament on 22 September 2015. As regards the procedure for issuing passports and education certificates, this would reportedly be addressed through a different set of amendments at a later date.
34. The Commissioner would like to underline that in the absence of legislation defining the procedure for the acquisition of birth certificates and passports and its effective implementation, minors residing in NGCAs run the risk of becoming stateless.
35. The Commissioner would like to recall that Article 7 of the UN Convention on the Rights of the Child provides for the right of the child to be registered immediately after birth and the right to acquire a nationality. Governments are obliged to implement these rights in accordance with their national law and their obligations under relevant international instruments in this field, in particular where the child would otherwise be stateless. This is also a state obligation under the 1961 UN Convention on the Reduction of Statelessness.<sup>24</sup>
36. Another important concern which was raised by several of the Commissioner's interlocutors is the urgent need to reinforce efforts aimed at educating parents and children, especially those residing close to the contact line, about the risks of land mines and unexploded ordnance. Tragic incidents of children being injured or killed after they found such ordnance have already been reported.<sup>25</sup>
37. The Commissioner was also alarmed by the information he received about dire conditions in several social care institutions for children. His interlocutors in Donetsk invited the Commissioner to visit orphanages situated in the city of Donetsk and the surrounding area. Due to time constraints the Commissioner was not yet able to visit these institutions.

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<sup>23</sup> This also affects individuals who have lost their identification or other administrative documents and wish to obtain new documents.

<sup>24</sup> Ratified by Ukraine on 25 March 2013.

<sup>25</sup> On 4 August 2015, an accident took place in Pavlograd (Dnipropetrovsk region) when a 6-year-old boy found an unexploded ordnance in the basement of his apartment building and tried to bring it home when it exploded, tearing off four of his fingers. On 24 August, a 4-year-old child was killed and three children were injured in Mariupol when an unknown object they played with exploded (See, UNICEF, [Ukraine: Humanitarian Situation Report # 37](#), 18 July -1 September 2015, p. 3). Similar tragic incidents have also been reported in NGCAs.

38. On 21 January 2015, the Temporary Order on the control of the movement of people, transport vehicles and cargo along the contact line in Donetsk and Luhansk region was endorsed by the Ukrainian authorities.<sup>26</sup> It has introduced a permit-based system for civilians wishing to cross the contact line in either direction. It also introduced restrictions on the movement of cargo and public transport. The envisaged procedure applied even during the period of increased hostilities in February 2015, when many civilians were trying to leave the conflict zone. Since the adoption of this Order, international and national organisations have been advocating for the revision of the permit system.
39. Certain changes were introduced in the Temporary Order in June 2015. The requirement to obtain a permit in the case of emergency was rescinded. However, the decision-making power in such situations was left in the hands of the officers at the checkpoints. While the civilians are still required to apply in advance for permits to cross the contact line, the introduction of a web-portal for applying and receiving permits online – launched on 7 July – has significantly simplified the procedure.
40. The revised version of the Temporary Order also facilitated the movement of children from the NGCAs. However, for children to cross the contact line, they should be in possession of a notarised power of attorney issued by both parents whenever applicable, and it is impossible to obtain such a document if at least one of the parents live in NGCAs.
41. As of mid-June, the movement of any public transport across the contact line has been prohibited. Civilians who do not have private vehicles in some cases have no other option but to walk as much as 15 kms between the nearest stops of the public transport on both sides of the contact line. Since the checkpoints and the buffer zone between them are frequently targeted, the civilians are also exposed to the risk of shelling.
42. At the time of the Commissioner's visit, the main crossing point for humanitarian cargo between government-controlled areas and NGCAs (Kurakhove in Donetsk region) had been closed since 3 June. Movement on the Volnovakha route between Mariupol and Donetsk, which was also taken by the delegation to reach the city of Donetsk, was restored on 11 June. Another route from Artemivsk to Horlivka was re-opened on 12 June. Access through the main checkpoints to and from NGCAs was reportedly granted to private vehicles on an on-and-off basis. In Luhansk region, all access points to and from NGCAs appeared to remain non-operational. This was severely affecting the ability of humanitarian organisations to deliver aid across the contact line.
43. While returning from Donetsk, the delegation observed a kilometre-long line of cars with people parked in the buffer zone, waiting to be admitted to government-controlled territory. Visibly, only one car can be checked at a time. The Commissioner also received reports about instances of corruption at the checkpoints.
44. On both sides of the contact line the Commissioner heard complaints about restrictions on freedom of movement between government-controlled and non-controlled territories. The Commissioner urged the authorities to minimise the barriers to the movement of people and the transportation of goods, and to take other pragmatic steps, for instance to enlarge staffing at the checkpoints for increasing the number of cars which can be processed simultaneously. He also urged the authorities to address the allegations of corruption at the checkpoints as a matter of priority. At the time of drafting this report, the situation with crossing the contact line remained burdensome.
45. During the visit, the Commissioner learned of plans to construct humanitarian logistics centres close to operating crossing points, with a view to facilitating the access of civilians coming from NGCAs to various services. While this idea merits further consideration, careful risk assessment should be carried out with regard to the location of such centres. There are justified concerns that under the current proposals logistics centres would be located in insecure areas with a high risk of shelling.
46. Because of the above-mentioned obstacles to freedom of movement, a significant number of people tend to choose the routes transiting the Russian Federation for reaching government-controlled

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<sup>26</sup> The Temporary Order was developed and approved by the "Operational Headquarters of the Anti-Terrorist Operation" composed of representatives of the Security services of Ukraine, Ministry of Defence, Ministry of Internal Affairs, and the State Migration, Emergency and Fiscal Services.

territories. Although such routes are usually longer, they are perceived as safer options diminishing the risk of being subject to shelling. Such border crossing options appear to be only feasible to individuals in possession of valid internationally recognised identity documents. There have been reports of instances of lengthy interrogations, detention for the purpose of questioning and other forms of intimidation at the border crossing points.<sup>27</sup> Such abusive practices should be stopped immediately.

47. Whenever a decrease in the military activities in the conflict-affected areas has been observed, a growing number of individuals have demonstrated their interest in moving back and forth across the contact line to check on their property, visit relatives, collect social benefits, withdraw cash, access medical care, and purchase food and medicine. Such movements should be encouraged. Security-related restrictions imposed on the freedom of movement should be reasonable and kept to the necessary minimum so as to prevent the further isolation of the population currently living in NGCAs.

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<sup>27</sup> OSCE Special Monitoring Mission to Ukraine, Thematic report: Protection of Civilians and their Freedom of Movement in the Donetsk and Luhansk Regions, 6 May 2015, pp. 11-12.

48. Apart from security-related concerns and restrictions on freedom of movement introduced by the Government of Ukraine (see the Chapter on freedom of movement above), international humanitarian organisations face obstacles related to the requirements for accreditation or registration introduced in June 2015 by the local decision-makers in Donetsk. As a result, the operations of major humanitarian organisations in NGCAs were interrupted during the summer.
49. As was mentioned above, the restrictions imposed on the movement of goods across the contact line and related administrative impediments have also had repercussions on the ability of international humanitarian NGOs to reach out to the affected population. Humanitarian organisations have been advocating for quite some time for free and unimpeded humanitarian access, including by limiting the applicable administrative procedures to a strict minimum. These discussions were under way during the Commissioner's visit to Ukraine and afterwards with a view to finding practical solutions.
50. The Commissioner urged the Ukrainian authorities to work in close co-operation with international organisations to facilitate the delivery of humanitarian aid to the most affected population in the vicinity of the contact line and in NGCAs, including through the establishment of special humanitarian corridors and the simplification of administrative procedures related to the delivery of assistance. After the visit, several positive initiatives have been announced by the government, such as the opening of two new crossing lines, the simplification of administrative procedures, the establishment of fast-track processes and dedicated lines for humanitarian cargo.<sup>28</sup> These initiatives should be effectively implemented.
51. During his meetings with the local decision-makers in Donetsk, the Commissioner urged them to create an enabling environment for humanitarian organisations and assist them in carrying out their mission of helping the most vulnerable groups of residents. During the drafting of the report, it was reported in the media that the decision-makers in the NGCAs of Luhansk region had decided to discontinue the operations of international humanitarian organisations in the territories under their control.<sup>29</sup> In Donetsk, the majority of international humanitarian organisations were also informed that they would most likely not be allowed to continue their operations in the NGCAs of the region. By the beginning of October 2015, only three international organisations have been able to restart their operations in the NGCAs of Donetsk region, and one in the NGCAs of Luhansk region. These organisations do not have the capacity to address the needs of the vulnerable population in these areas.<sup>30</sup>
52. The suspension of the operations of international humanitarian organisations will seriously affect the possibilities to assist those individuals who are severely affected by the protracted crisis and make the situation of the most vulnerable groups even more difficult. In this context, the Commissioner would like to recall paragraph 7 of the "Package of Measures for the Implementation of the Minsk Agreements" aimed at ensuring "safe access, delivery, storage and distribution of humanitarian assistance to those in need, on the basis of an international mechanism".

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<sup>28</sup> OCHA, Humanitarian Bulletin Ukraine, 1-31 August 2015, p. 2.

<sup>29</sup> See, for example, Le Monde, "Ukraine : les séparatistes ordonnent aux agences de l'ONU de quitter Lougansk", 25 September 2015.

<sup>30</sup> OCHA, [Ukraine: Humanitarian Snapshot](#) (as of 7 October 2015).

53. As was underlined in the Commissioner's report following his visit to Ukraine in February 2014, it is of paramount importance to ensure accountability for all serious human rights violations and take resolute measures towards fighting impunity. During his subsequent visits to the country, the Commissioner has continuously addressed this issue and urged the authorities to ensure full co-operation and in every possible way support the work of the International Advisory Panel (IAP), with regard to investigations of events on Maidan and in Odessa. The IAP's report on its review of Maidan Investigations – published on 31 March 2015 – highlighted serious deficiencies, both structural and operational, in the independence and effectiveness of the investigations which have been carried out during the time under its review. Among others, it highlighted the lack of co-operation and obstruction by the Ministry of the Interior which seriously impeded progress in the investigation involving a number of Berkut officers.
54. During his meetings in the Ministry of the Interior and the Prosecutor General's Office, the Commissioner inquired about the follow-up given to the report, as well as urged his interlocutors to promptly address the shortcomings identified in the IAP's findings with regard to the Maidan investigations. According to his interlocutors in the above-mentioned agencies, the level of co-operation between the relevant law-enforcement institutions has improved and is no longer an obstacle to the investigations in question. At the same time the prosecutorial authorities acknowledged that the investigation was proceeding very slowly.
55. The Commissioner also pointed out that, as indicated in the IAP's conclusions, "the decisions of the Pecherskyi District Court, the main court of jurisdiction in many Maidan-related proceedings, failed to comply with the requirement of Articles 2 and 3 of the Convention, undermined aspects of the effectiveness of the Maidan investigations and, more generally, weakened the deterrent effect of the judicial system in place". This highlights the need for continuous training for judges on issues related to their role in combatting impunity for serious human rights violations and the jurisprudence of the European Court of Human Rights under Articles 2 and 3 of the European Convention.
56. Following up his discussions with the prosecutorial authorities during his visit in December 2014, the Commissioner again raised issues of accountability for serious human rights violations in the east of the country. He was informed of steps taken to address impunity for such crimes implicating the members of the government forces, such as the detention of a commander and seven servicemen of the special police patrol battalion Tornado, and criminal investigations involving certain members of the "Aidar" volunteer battalion. The Commissioner emphasised the importance of a continuous message of "zero tolerance" towards impunity for human rights violations. The litmus test for the success of the reforms taking place in the law-enforcement system is its ability to efficiently combat impunity for grave crimes and to hold their perpetrators accountable, even more so when the crimes are committed by law-enforcement officials. He further highlighted the need to ensure effective involvement by victims and/or their families in the process.
57. The Commissioner is dismayed by persistent reports about cases of unlawful and arbitrary detention, including *incommunicado* detention and detention in secret places, summary executions, torture and ill-treatment, and lack of accountability for these grave human rights violations. He continues to follow the situation and intends to address these issues in greater detail during his future visits.
58. The Commissioner also raised issues related to the volunteer battalions' integration into the regular army and the police. His interlocutors in the Ministry of the Interior reiterated that the process had been completed with regard to those volunteer battalions integrated in the police force. The prosecutorial authorities informed the Commissioner about a verification procedure launched by them into the activities of all members of volunteer battalions.
59. The Commissioner has not yet had a possibility to discuss these issues with the authorities at the Ministry of Defense and other relevant security structures. However, he is aware of credible reports implicating the existence of armed groups which continue to enjoy a high degree of independence and do not appear to be fully incorporated in the regular chain of command. Most frequent references are made in this context to the groups affiliated with the Right Sector (*Pravyi Sector*). This issue should be addressed without further delay.

60. In his March 2014 report, the Commissioner highlighted the need for a comprehensive and all-encompassing reform of the police in Ukraine, as well as urged the authorities to undertake solid and concerted efforts aimed at reforming the judiciary in Ukraine, with a view to protecting its independence from any undue influence, either from the outside or inside.<sup>31</sup>
61. The Commissioner's visit to Ukraine coincided with the adoption by the Parliament of a new law on the national police and introduction of the new patrol police in Kyiv. The law regulates the use of physical force, firearms, special equipment, arrest procedures, questioning and document checks. It also requires that police measures or actions should be necessary and proportionate. The law includes provisions for the criminal, administrative, civil and disciplinary accountability of police officers who have infringed the law. It defines the powers, status and obligations of police officers, covering a wide range of police activities. In addition, it regulates the application of measures of restraint and the use of force.
62. The Commissioner would like to express caution about the provision of the law which allows the use of firearms without warning in the area of "anti-terrorist operation" as highlighted by the UN OHCHR.<sup>32</sup> The legislation in force should include all the necessary guarantees with regard to the use of force by law-enforcement officials in line with international standards. In addition, the Commissioner has recommended the establishment of an independent complaints and oversight mechanism of police activities, which would strengthen accountability and enjoy the trust of the public.<sup>33</sup> The adopted legislation does not envisage the establishment of such a mechanism.
63. A working group of the Constitutional Commission is drafting the text of amendments aimed at reforming the judicial system and the status of judges. If approved, these would remove some of the long-standing constitutional obstacles to the independence of the judiciary by introducing changes to the composition of the High Council of Justice (a majority of the membership would be judges); abolishing the probationary period for judges; and significantly reinforcing the role of the High Council of Justice in the appointment and dismissal procedures for judges.
64. Another working group of the Constitutional Commission is preparing draft amendments dealing with human rights, which should be based on the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union and UN human rights instruments.
65. Other important developments include the abolition of the general supervisory function of the Prosecutor's Office and the on-going work on draft legislation regarding the State Bureau of Investigation. The Commissioner also welcomes the ratification by Ukraine of the International Convention for the Protection of All Persons from Enforced Disappearance which entered into force on 13 September 2015.<sup>34</sup> During the visit, the Commissioner encouraged the Ukrainian authorities to keep momentum on the essential constitutional, legislative and institutional reforms which address key human rights concerns.

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<sup>31</sup> [Report](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Ukraine from 4 to 10 February 2014, CommDH(2014)7, 4 March 2014, §§ 71 and 74.

<sup>32</sup> See UN OHCHR, Report on the human rights situation in Ukraine: 16 May to 15 August 2015, §166.

<sup>33</sup> [Report](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Ukraine from 4 to 10 February 2014, CommDH(2014)7, 4 March 2014, §71.

<sup>34</sup> Accession to the 2006 International Convention for the Protection of All Persons from Enforced Disappearance was one of the Commissioner's recommendations in his 2014 Report (see § 69).

66. On 5 June 2015, the Government of Ukraine informed the Secretary-General of the United Nations and the Secretary-General of the Council of Europe that it would derogate from certain state obligations under the International Covenant on Civil and Political Rights and the European Convention on Human Rights. The derogation is envisaged in relation to the right to liberty and security, fair trial, effective remedy, respect for private and family life and freedom of movement and applies in certain districts of Donetsk and Luhansk regions in connection with anti-terrorist operations.<sup>35</sup> Some of the Commissioner's interlocutors raised questions about the effect of the declared derogation on Ukraine's co-operation with the Council of Europe and in particular with the European Court of Human Rights. The Commissioner pointed out that Ukraine remained bound by the provisions of the European Convention and that the Court would ultimately assess in each case whether the derogation was justified.
67. The Commissioner would like to recall the relevant jurisprudence of the Court requiring, *inter alia*, that any measure taken in response to public emergency must be strictly required by the exigencies of the situation. In the *Aksoy v. Turkey* judgment<sup>36</sup>, the Court highlighted that "it is for the Court to rule whether, *inter alia*, the States have gone beyond the "extent strictly required by the exigencies" of the crisis. The domestic margin of appreciation is thus accompanied by a European supervision. In exercising this supervision, the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation and the circumstances leading to, and the duration of, the emergency situation".
68. The derogation from the main international and European human rights instruments, whenever it applies, results in a lower level of protection of the rights guaranteed. Although such an option is reserved to states under Article 15 of the ECHR, it is important to ensure that it is applied as a measure of last resort and be in place for the shortest period possible. The authorities should at the very least reconsider this decision on a regular basis.
69. During his visits to Ukraine in 2014, the Commissioner had an opportunity to discuss with the national authorities in Kyiv the idea of developing a Human Rights Action Plan as an essential tool for advancing respect for human rights in the country. On 15 October 2014, the decree by the President of Ukraine endorsed the development of a National Strategy on Human Rights. In order to assist the authorities in this endeavour, a stakeholder meeting – "Systematic Work for Promoting and Protecting Human Rights in Ukraine: Developing a National Human Rights Action Plan" - was organised by the Commissioner and the UN OHCHR in partnership with the Ukrainian authorities and the Parliamentary Commissioner for Human Rights on 1 December 2014 in Kyiv. This event brought all the interested parties together to discuss relevant international experience and collectively reflect on various procedural and substantive aspects of the national action plans.
70. The Commissioner welcomes the approval of the National Strategy on Human Rights by the President of Ukraine through a Decree of 25 August 2015 and the subsequent preparations of a National Human Rights Action Plan. At the request of the Ukrainian authorities, the Commissioner has provided further guidance on the procedural and substantive issues related to the development of the Action Plan (see Appendix to the report). In the Commissioner's opinion, the preparation of a concrete National Action Plan for Human Rights following an inclusive process sends a clear message of commitment by the authorities to promote and protect human rights in the country.

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<sup>35</sup> See Ukrainian Parliamentary [Resolution](#) on the Approval of the Notification of Ukraine regarding the Derogation from Certain Obligations Determined by the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, 21 May 2015.

<sup>36</sup> *Aksoy v Turkey*, application no. 21987/93, judgment of 18 December 1996, § 68.

## 9 CONCLUSIONS AND RECOMMENDATIONS

71. The Commissioner wishes to reiterate his continuous call to all parties involved in the conflict in the east of Ukraine to respect the right to life and put an end to fighting and violence. The solution to the crisis should be sought through peaceful means as outlined by the Minsk Agreements of September 2014 and February 2015.
72. All parties to the conflict are under an obligation to respect international humanitarian law at all times, including by respecting the principles of distinction, proportionality and precaution, refraining from indiscriminate shelling of populated areas and locating military forces and weaponry within or near densely populated areas. Inflicting damage to objects indispensable to the survival of the civilian population such as water facilities, and targeting medical personnel, ambulances and medical facilities are contrary to international humanitarian law.
73. The Commissioner calls on the Ukrainian authorities to ratify the 2008 UN Convention on Cluster Munitions and to ensure its effective implementation.
74. Given the scope and complexity of the problems faced by IDPs and the acute humanitarian situation, the Commissioner recommends the preparation of a specific Action Plan focusing on the most pressing needs and protection gaps for displaced persons. Particular attention should be given to durable solutions to housing and livelihood opportunities. The Action Plan should also include measures for the integration of IDPs in the host community and safeguards to protect IDPs from discrimination on the ground of their displacement, to ensure their access to justice, and to protect their right to property and the right to vote.
75. There is a need to find proportionate solutions which will reconcile security measures with the interests of the local population willing to move freely across the contact line in either direction. Existing restrictions on freedom of movement, including for public transport and goods, should be brought to the necessary minimum and reviewed on a regular basis.
76. All sides should undertake without further delay proactive and pragmatic steps to facilitate humanitarian access to conflict-affected communities and other vulnerable groups. Access-related procedures should be simplified with a view to removing current obstacles to the delivery of humanitarian aid. There is a need to establish dedicated humanitarian corridors in consultation with humanitarian actors.
77. The decision-makers in non-government controlled areas of Donetsk and Luhansk regions should remove the barriers impeding the access of humanitarian aid and create an enabling environment for the work of international humanitarian organisations and missions providing assistance to the most vulnerable population affected by the protracted crisis.
78. The Ukrainian authorities should adopt without further delay the regulations simplifying the acquisition of legally valid identity documents, and birth and education certificates by minors and parents of newly-born children residing in non-government controlled territories. In view of a likely increase in cases of statelessness, the government should develop effective statelessness determination procedures.
79. Effective measures should be taken by all parties to protect children from unexploded ordnance and land mines. An education campaign to inform children and their parents about the existing risks and related preventive measures should be launched on both sides of the contact line.
80. Impunity for serious human rights violations must be combated as a matter of justice for the victims, as a deterrent to prevent new violations, and to uphold the rule of law and public trust in the justice system. The Commissioner urges the authorities to fully address the operational and structural deficiencies in the investigative proceedings revealed by the International Advisory Panel in its review of the on-going Maidan investigations.
81. The prosecutorial and other relevant law-enforcement authorities at all levels should have a thorough understanding of the internationally accepted principles for effective investigations and be in a position to apply them in practice. There is also a need to raise awareness among the judiciary of the principal role they play in the overall efforts to combat impunity.
82. Sustained efforts are needed to make perpetrators accountable for the serious human rights violations in the east, irrespective of the side of the conflict they stand on. Special attention should be paid to

effective and timely investigations into any alleged involvement of law-enforcement officials in such crimes.

83. Any remaining military formations which have not been fully integrated in the regular armed forces or the police and continue to act outside the normal chain of command should be disarmed and disbanded without further delay.
84. The Commissioner welcomes on-going efforts towards the reform of the police and the judicial system. He would like to reiterate that the reforms in the judiciary should strengthen the independence and impartiality of the judges both in law and in practice and to ensure their protection from any form of intimidation and undue influence or pressure.
85. Members of the police should receive continuous human rights-based training with particular reference to the use of force and the relevant case-law of the European Court of Human Rights. Legislation on the police should incorporate international standards governing the use of firearms. An independent and effective police complaints mechanism would enhance public trust and confidence in the police.
86. The Commissioner encourages the Ukrainian authorities to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).
87. The Commissioner urges the Ukrainian authorities to take proactive measures and to work in close co-operation with international organisations and humanitarian groups in reaching out to the most affected groups of people living in non-government controlled areas. There is a need to adopt a flexible approach towards paying pensions and other social benefits to persons living in these areas.
88. The decision of the Ukrainian authorities to derogate from certain obligations under the European Convention on Human Rights and other international human rights instruments should be reviewed and reconsidered on a regular basis.
89. The Commissioner welcomes the adoption of the National Strategy on Human Rights and calls on the authorities to ensure an inclusive and participatory approach in the preparation of the National Human Rights Action Plan.

Guidance Note by the Council of Europe Commissioner for Human Rights Nils Muižnieks in view of preparation of the National Human Rights Action Plan for Ukraine [17 September 2015]

Ukraine's reform agenda in the field of human rights is vast both in scope and substance. It requires systemic changes - constitutional, legislative and institutional reforms, as well as improvements in the practices of law-enforcement, prosecutorial and judicial authorities - in order to create accountable and responsive institutions and policies. Addressing this comprehensive agenda requires effective tools that can bring together all stakeholders, establish the bigger picture of inter-locking governmental and civic initiatives, and provide a collaborative space to implement, monitor and evaluate the course of reforms.

The Commissioner welcomes the approval on 25 August 2015 of the National Strategy on Human Rights by the President of Ukraine and acknowledges the hard work accomplished by the Ukrainian authorities, the Parliamentary Commissioner for Human Rights and civil society organisations to lay out this strategic framework that now must be followed by elaborating the National Human Rights Action Plan.

This Guidance Note provides some procedural and substantive elements for consideration by the drafters of the National Human Rights Action Plan in order to elaborate specific actions that address domestic expectations and international human rights obligations. Without being exhaustive, they reiterate some key points delivered by the Commissioner in his past reports, give new observations made during his most recent visits to Ukraine,<sup>1</sup> and also draw on the work accomplished by his Office with regard to Action Plans in other Council of Europe member states through the Commissioner's thematic work.<sup>2</sup> They also reflect the interaction with the participants of the stakeholder meeting on Systematic Work for Promoting and Protecting Human Rights in Ukraine: Developing a National Human Rights Action Plan organised by the Council of Europe Commissioner for Human Rights and the Office of the High Commissioner for Human Rights of the United Nations in partnership with the Ukrainian authorities and the Parliamentary Commissioner for Human Rights on 1 December 2014 in Kyiv, Ukraine.

#### I. Procedural Issues

- Inclusive participation is key to the development, implementation and evaluation of the National Action Plan (NAP). The drafting of the NAP should be coordinated by a dedicated unit or mechanism, although all activities should be formulated in close co-operation with those ministries, agencies, institutions and service providers which will carry out the activities. The participation of the Parliamentary Commissioner for Human Rights is essential. A wide variety of NGOs need to be involved and specific measures may be needed to enable sustained NGO participation and the inclusion of people with disabilities in the process. Universities and research institutions should also be represented.
- The NAP should include concrete activities with clear, time-bound targets, identified duty-bearers in charge of implementation and corresponding budgetary resources.
- Public institutions both at the national and local levels should be duly involved to provide accurate and up-to-date information which can serve as a sound base-line for specific actions to address the real needs and gaps related to human rights. Relevant and reliable gender-disaggregated data is also a pre-condition to using human rights indicators as an assessment tool.

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<sup>1</sup> For the full list of reports and other documents on Ukraine see <http://www.coe.int/en/web/commissioner/country-report/ukraine>

<sup>2</sup> For resources and country specific examples of National Action Plans for Human Rights in Europe see the Systematic human rights work thematic section on the website of the Commissioner for Human Rights: <http://www.coe.int/en/web/commissioner/systematic-human-rights-work>. See also Recommendation on systematic work for implementing human rights at the national level, Strasbourg, 18 February 2009. Available at <https://goo.gl/Hrt1rU>

- Gender analysis and gender mainstreaming should be among the main analytical tools to draft an Action Plan that gives due consideration to the differential impact of public policies on men and women. This analysis should be applied consistently in all sub-groups established to draft the NAP.
- While primarily designed to align public policies with human rights obligations and standards, it is important to pay due consideration to existing civil society initiatives, strengthen co-operation with NGOs and incorporate good practices developed by civic initiatives into public policies.
- The public authorities are normally the main actors for implementation. For the drafters, it would be particularly useful to invite to the working meetings public officials directly responsible for specific activities, in order to jointly identify shortcomings in human rights protection and ensure that the planned activities will be given priority and attention by their respective departments.
- To address the vast human rights agenda in Ukraine, a prioritisation of planned activities will be an indispensable part of the drafting process. Prioritisation should be done in a co-operative manner. It must include representatives from groups whose interests are affected and should stem from recommendations developed by domestic and international human rights bodies and monitoring mechanisms. It should also assess the issue in question in terms of public expectations about any particular human rights problem, its urgency, the systemic nature of the problem, and the impact it can have on other planned activities.
- A common question is how comprehensive and sector-based plans should relate to each other. A number of governments in Europe working with comprehensive plans also have specialised ones. If coordinated in substance and timing, the plans can reinforce each other rather than overlap or ignore one another. The comprehensive approach is intended to ensure that no important human rights are disregarded and that a clear human rights perspective is included in sector-based measures. Once the problematic areas are identified, an activity in the comprehensive plan could be developed into a specific plan for an area that requires special attention and action. Similarly, the drafters of the National Action Plan should take into account the existing sectoral action plans.
- Throughout the drafting process and during the implementation of the Action Plan, the country's political leadership and representatives from public authorities may consider making public statements or other similar interventions to raise the profile of the Action Plan and demonstrate their commitment to the on-going work. This will also ensure that the drafting process and implementation proceed without interruption and meet deadlines.
- Once adopted, it is recommended to disseminate the Action Plan by developing a media strategy, implementing public awareness campaigns, including through producing an easy-to-read version of the Action Plan accessible to the wider public and specific minority groups mentioned in the NAP. This will be an additional guarantee that the Strategy and the Action Plan adhere to the human rights based approach.
- The implementation of the Action Plan will involve many, or most, public authorities. Coordination and co-operation between different authorities is thus essential. One tested method is to establish a coordinating body consisting of representatives from all relevant governmental agencies and other authorities, National Human Rights Institutions, and civil society to follow the progress of the work and deal with challenges that arise during implementation. Such a body, ideally, should be supported by a dedicated secretariat.
- Local authorities should participate in the national process for the systematic implementation of human rights. Their participation should also encourage the development of regional and local action plans or strategies tailored to the local needs, resources and priorities.
- The implementation of the Action Plan should be continuously monitored. The NAP's coordination mechanism can carry out an annual review of implementation, which should be made public. The review could also be submitted to the parliament for a debate. It is useful to set benchmarks for short, medium, and long-term outcomes to measure progress with reference to human rights indicators. The Action Plan should be a living tool which can be adjusted under changing circumstances.

- After the implementation of the NAP, an independent evaluation assessing the overall results and impact of the plan should be carried out. In addition to assessing the overall results, it is equally important to assess the process, including in terms of participation, inclusiveness and transparency. Ultimately, both the fulfilment of the specific measures of the NAP and its actual effects on the enjoyment of human rights by the population should be assessed. The success of a good action plan is in many respects influenced by the methodology and the process behind its development. All stakeholders who have participated in the process should be able to contribute to the evaluation.

## II. Substantive Issues

- In view of the conflict in the east of Ukraine and the acute humanitarian situation affecting IDPs, it is essential to develop and improve response mechanisms to address the humanitarian needs of IDPs in co-operation with international institutions, most notably the United Nations High Commissioner for Refugees. Effective measures should be taken to protect IDPs against discrimination on the grounds of their displacement, provide for a simplified procedure for residence registration, access to social services and unemployment benefits, protect property rights, family unity, and safeguard IDPs' right to vote. Further measures should be taken to ensure access to justice for the IDP population who should have effective remedies at the domestic level to protect and restore their rights and freedoms enshrined in the European Convention on Human Rights. Given the scope and complexity of the problems faced by the IDP population, it is recommended to consider developing a sectoral action plan focusing on the needs and protection gaps for the IDP population.
- The armed conflict has a devastating impact on the lives of communities in the vicinity of the contact line. Practical steps are needed in order to facilitate access to humanitarian aid for the affected communities on both sides of the contact line, and take concrete and pragmatic steps towards minimising the existing barriers affecting their freedom of movement across the contact line. Actions are needed to simplify and facilitate access to documentation for the residents in territories currently outside governmental control and provide pragmatic and effective mechanisms to ensure the enjoyment of social and economic rights.
- Ensuring accountability for all serious human rights violations in Ukraine and combating impunity are of paramount importance. Specific measures and actions should be designed aimed at addressing systemic failures inhibiting the effective investigation into the violent incidents that took place in Ukraine from 30 November 2013 onwards, including the violence in Odessa on 2 May 2014, in line with the assessment and conclusions of the International Advisory Panel established by the Secretary General of the Council of Europe. This also entails measures to strengthen institutional capacities for effective investigation into all allegations of serious human rights violations in the east of Ukraine, including the effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance. Further specific measures are needed to promote victim involvement in criminal proceedings and safeguard victims' rights. Due attention should also be paid to investigating all cases of attacks on journalists in the exercise of their functions.
- In light of the past examples of the use of excessive force by law enforcement officials, actions need to be elaborated aimed at creating effective safeguards and a strong institutional culture against such abusive practices. This includes cases of abusive collaboration between civilian groups, private entities and the police (as documented during Maidan events) in the performance of police-like functions, especially in the context of policing demonstrations. Regular joint trainings involving police and media professionals can be organised to address the issue of co-operation between police and journalists, and the issue of the policing of assemblies, as well as any other relevant matters.
- The right to peaceful assemblies should be guaranteed both in law and in practice. To achieve this parliament should enact legislation governing peaceful assemblies as a matter of priority. The legislation should be based on the standards enshrined in the European Convention on Human Rights.
- The structural problems identified in the judgments of the ECtHR relating to Ukraine must be addressed. These include: non-enforcement or lengthy enforcement of domestic judicial decisions; excessive length of civil and criminal cases; unlawful and/or excessively long detention on remand; ill-treatment by the police and the lack of effective investigation thereof; and poor conditions of

detention, including lack of adequate medical care. These violations originate from structural problems and are, in most cases, aggravated by the lack of effective domestic remedies.

- The overall organisation of the judiciary should be thoroughly reviewed with a view to clarifying fully the respective roles and jurisdiction of different levels in the court system in line with the recommendations of the Council of Europe, including its Venice Commission. In addition, further measures are needed to increase transparency in the judicial system and make it more open to public scrutiny. The independence of the judiciary – which also implies the independence of each individual judge - should be protected both in law and in practice. Judges should be shielded from outside pressure, including of a political nature. Decisive action is needed on several fronts to remove the factors which render judges vulnerable and weaken their independence. This should include clear procedures and criteria related to the appointment and dismissal of judges as well as the application of disciplinary measures. Judicial appointments must be based on the qualifications and merits of the individual candidates. Throughout their career, judges should be provided with quality on-going training on the application of the standards enshrined in the ECHR and the case-law of the European Court of Human Rights. Measures and activities addressing the issue of judicial independence and professionalism would be an important input to the on-going judicial reforms.
- Measures and activities aimed at strengthening the integrity of the Prosecutor's office as a depoliticised institution can be another key component of the Action Plan. The Prosecutor's office must be depoliticised in law and in practice and the procedure for the selection, appointment and promotion of individual prosecutors must be based on the qualifications and merits of individual candidates. In the performance of their duties, prosecutorial authorities should be protected from political interference and any other influence by powerful interest groups. All measures to reform the Prosecutor's Office must provide effective safeguards against the prosecutorial bias in the justice system. The removal of the general supervisory function should be made fully effective in practice.
- The equality of arms in judicial proceedings must be guaranteed. Defence lawyers should have free and unimpeded access to their clients in places of deprivation of liberty and all those in need should have the possibility to receive free legal assistance. Effective remedies are needed against excessive length of proceedings and unjustified remand in custody, placing special emphasis on alternatives to imprisonment and a drastic reduction in the use of remand in custody.
- The legislative framework and the practice governing the use by police of special means to protect public order, as well as regulations governing the action of anti-riot police, should be in line with international standards and the case-law of the European Court of Human Rights. It is also important to ensure that there is a clear legislative and policy framework that reduces the chances of misconduct, identifies it and punishes it when it occurs. There should be clear guidelines on the use of force by police, which should only take place as a last resort. Police personnel at all levels should receive rigorous, human rights-based training, in particular on the use of force and established human rights principles, notably the European Convention on Human Rights and its case-law. Concrete institutional measures must be taken to have an effective and independent police complaints mechanism, which would enhance public trust and confidence in the police.
- The human rights action plan should have a focused approach to fighting discrimination against minority groups. It is important to outline specific measures for particular groups. For example, in Ukraine it is essential to plan effective measures to address the human rights protection needs of LGBTI (lesbian, gay, bisexual, trans and intersex) people, Roma and people with disabilities. Sexual orientation and gender identity should be explicitly mentioned as a prohibited ground for discrimination among other grounds. The Action Plan should also focus on the implementation of the UN Convention on the Rights of Persons with Disabilities.