



# Fighting Impunity in Eastern Ukraine

Violations of International Humanitarian Law and International Crimes in Eastern Ukraine

**IPHR** International  
Partnership  
for Human Rights

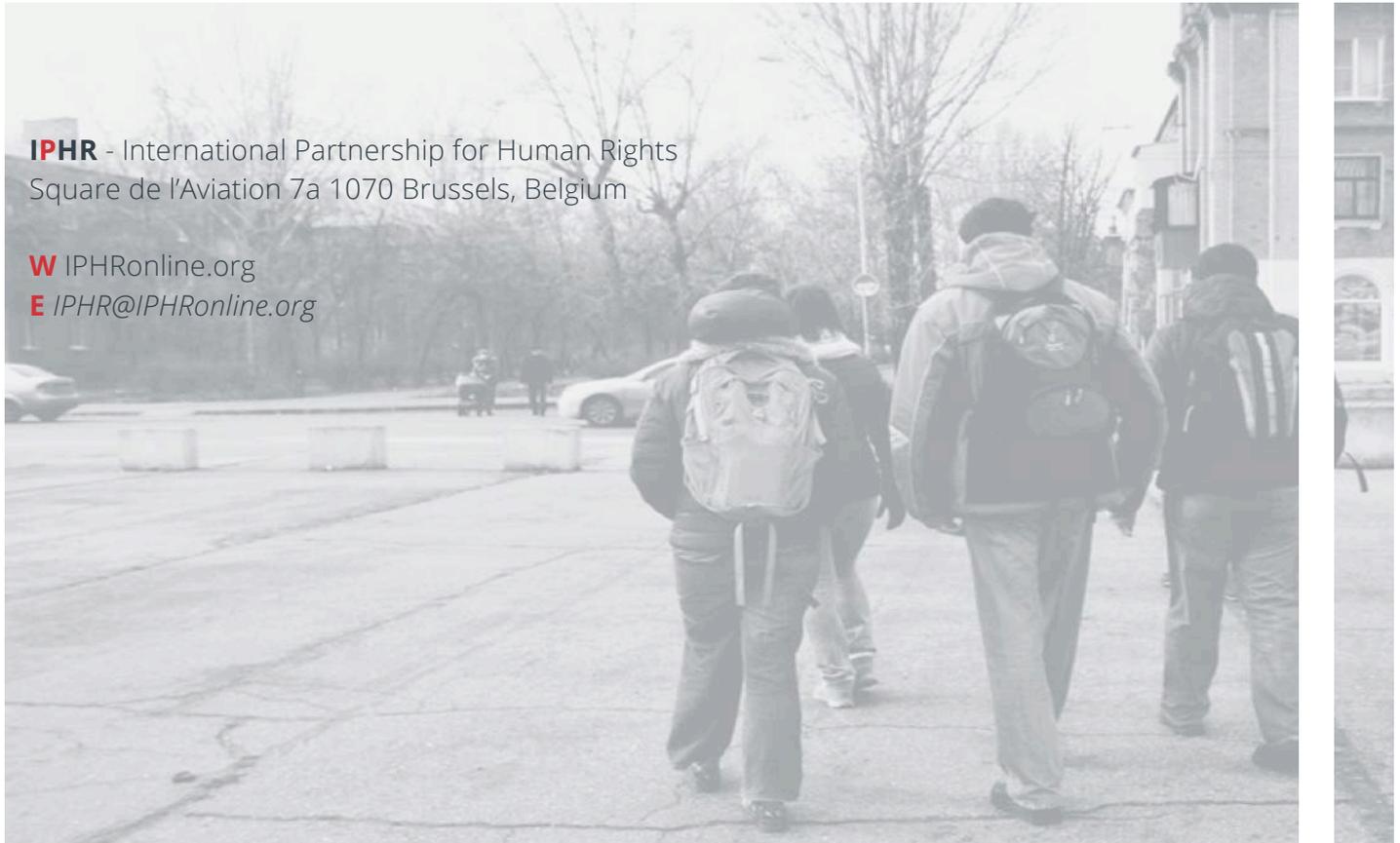
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## EXECUTIVE SUMMARY

This report presents compelling evidence of violations of international humanitarian law and international criminal law perpetrated in Eastern Ukraine since March 2014.

As of the time of publication of this report, the conflict in Eastern Ukraine has resulted in at least 7962 deaths; countless injuries; widespread destruction and illegal appropriation of property; arbitrary arrest and illegal imprisonment; inhuman treatment and torture; and the displacement of over 2.5 million civilians.

The International Partnership for Human Rights (IPHR), an independent, nongovernmental monitoring and advocacy organization based in Brussels, has collected evidence through field research in Eastern Ukraine and open-source materials. This evidence has been analysed using applicable international law and practice, and set against an overview of the context and history of the conflict. IPHR's fieldwork was conducted in the framework of Civic Solidarity Platform (CSP) project.

IPHR submits that, based on the evidence collected by its team, there is a reasonable basis to believe that the following war crimes have been perpetrated on the conflict-affected territory, mainly by separatist forces but also by Ukrainian government forces and pro-Ukrainian paramilitaries:

- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- Intentionally launching an attack in the knowledge that such attack would cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment, and which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings, which were undefended and were not military objectives;
- Inhuman and/or cruel treatment;
- Denying fair trial rights to prisoners;
- Unlawful confinement of civilians;
- Torture;
- Wilfully causing great suffering or serious injury to body and health;
- Outrages upon personal dignity, in particular humiliating and degrading treatment;
- Murder/wilful killing;
- Appropriation and destruction of property (in some cases amounting to excessive and

wanton appropriation and destruction of property); and

- Pillage.

IPHR equally submits that there is also a reasonable basis to believe that a widespread and systematic attack has been taking place against the civilian population of Eastern Ukraine, pursuant to the organizational policy of the separatist movement, and that the following crimes against humanity have been perpetrated as part of this attack:

- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- Torture;
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health;
- Murder; and
- Persecution on political and religious grounds.

Evidence documented in this report has been analysed and presented using the framework of international treaty and customary law relating to conflict and mass atrocities, i.e. international humanitarian law and international criminal law. Although the conflict has undoubtedly attained the intensity of a non-international armed conflict (NIAC), there is mounting evidence that it may also qualify as an international armed conflict (IAC), based on evidence of direct involvement of members of Russian armed and security forces, and evidence of control exercised by the Russian Federation over the separatist forces.

Civilians, who have been perceived as opponents of the separatist movement, have been subjected to a widespread and systematic attack, carried out through illegal imprisonment, torture, murder, other inhumane acts and severe violations of fundamental rights. Similarly, there is evidence to suggest that leaders and vocal followers of faiths other than the Russian Orthodox Church of the Moscow Patriarchate are subjected to persecution.

The International Partnership for Human Rights believes that pursuant to the common aspirations of peace, security and justice, it is imperative to conduct full and thorough investigations into these events and bring those responsible for international crimes to justice before an independent and impartial tribunal guaranteeing the full respect for fundamental fair trial rights.

# 1. INTRODUCTION

## WHO WE ARE

International Partnership for Human Rights (IPHR) is a non-profit organization with its seat in Brussels. It was founded in 2008 with a mandate to empower local civil society groups

and assist them in making their concerns heard at the international level. IPHR works together with human rights groups from different countries on project development and implementation, research, documentation and advocacy. Its team members have long-term experience in international human rights work and cooperates with human rights groups from across Europe, Central Asia and North America, helping to prepare publications and conduct advocacy activities. Since its establishment, IPHR has carried out a series of activities aimed at assisting and empowering local human rights groups from the Russian Federation, Central Asia and South Caucasus to engage effectively with the international community.

Since March 2014, IPHR established presence in Ukraine with the objective of supporting Ukrainian civil society organizations in their work to document human rights violations, fight impunity and advocate for desired change during the times of upheaval. As the full-fledged conflict erupted in the Southeast of Ukraine IPHR launched an open call to form a group of local observers to engage in documenting crimes of international character being committed in the context of an on-going armed conflict. 25 observers, who were selected through open call, received extensive practical training in war crime documentation in September 2014. The group of monitors commenced documentation activities in October 2014.

## **PURPOSE OF THIS REPORT**

The purpose of this report is to present evidence of a pattern of serious violations of international humanitarian law taking place on the territory of Ukraine since March 2014. The persons most responsible for these violations have incurred individual criminal responsibility under international treaty and customary laws, for which they should be investigated and prosecuted by international and domestic authorities. In an effort to close the impunity gap in relation to these crimes, the aim of this document is to assist international and domestic prosecutors to bring those responsible to justice. It is our intention to make this information available to the Office of the Prosecutor (OTP) of the International Criminal Court (ICC). By lodging a declaration under Article 12(3) of the Rome Statute on 8 September 2015, the government of Ukraine has granted the ICC jurisdiction over international crimes, which have taken place on the territory of Ukraine.

In addition to the ICC, the evidence presented in this Report may also be used for further investigations and prosecutions by domestic authorities in Ukraine, Russia and other jurisdictions based on the principle of universal jurisdiction.

## **SOURCES OF INFORMATION AND METHODOLOGY OF DOCUMENTATION**

The evidence of violations presented in this report has been empirically documented by IPHR through field missions and interviews, or collected from independent, reliable sources by IPHR monitors. To ensure a methodologically consistent documentation process, IPHR developed a tailor made crime documentation manual and a practical toolbox. The manual

includes detailed description of elements of crimes (war crimes and crimes against humanity), classification of evidence, instructions on obtaining and safely storing different categories of evidence, guidelines on conducting field interviews and obtaining appropriate statements from victims and witnesses and security aspects of the fieldwork.

Over 270 victim and witness statements have been obtained since October 2014. Statements related to concrete incidents/crimes form the basis of this report. The majority of these concern crimes allegedly committed by pro-Russian armed groups. This is explained by three factors:

- a. Practical and administrative obstacles in accessing separatist controlled territories and victims and witnesses of alleged crimes of Ukrainian side who reside on these territories;
- b. Victims of alleged Ukrainian crimes who reside on Ukrainian controlled territories fearing persecution if they give testimony on crimes allegedly committed by Ukrainian side;
- c. Witnesses of alleged Ukrainian crimes who reside on Ukrainian controlled territories fearing persecution if they give testimony on crimes allegedly committed by Ukrainian side;

IPHR is addressing this issue by establishing contacts with representatives of Russian civil society with relevant skills and qualifications and who agreed to conduct documentation activities in the separatist controlled territories, which they can access with relative ease.

Additional information was obtained through desk research using open-source documents.



Source: IPHR

## 2. BACKGROUND AND OVERVIEW OF THE CONFLICT

### 2.1 HISTORICAL BACKGROUND

Ukraine declared independence from the USSR on August 24, 1991, following a nationwide referendum that showed 90% support for independence. The Russian Federation accepted Ukraine's 1991 borders both in the December 1991 Belovezhskaya Pushcha accords -- the agreements that declared the Soviet Union dissolved -- and in the December 1994 Budapest Memorandum that finalized Ukraine's status as a non-nuclear weapons state. In 1997, Kiev gave Russia a 20-year lease on the Sevastopol naval base in Crimea, home of Russia's Black Sea Fleet.

For nearly two decades that followed, two key Western regional organisations -- the European Union and NATO -- began their eastward enlargement.

In May 1997, the Russia-NATO Permanent Joint Council was created, led by the Clinton administration, following Moscow's persistent opposition to NATO enlargement to include

countries of the former Soviet bloc<sup>1</sup>. The treaty would give Russia discretion over NATO's force dispositions and out-of-area operations. In 1999, NATO carried out a bombing campaign against Serbia, despite Russia and China vetoing the move at the UN Security Council<sup>2</sup>.

In the course of the next 10 years, NATO expanded to include Poland, Hungary, and the Czech Republic in 1999, followed by Estonia, Latvia, Lithuania, Bulgaria, Romania, Slovakia, and Slovenia in 2004 and Croatia and Albania in 2009.

The NATO membership action plan for Ukraine and Georgia, proposed by the George W. Bush administration, was blocked by NATO's European members, including Germany and France, at the Bucharest Summit in April 2008.<sup>3</sup> Future membership for the two states was declared possible at the summit<sup>4</sup>.

In 2004, 10 new members joined the EU: Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, Slovenia, Malta, and Cyprus. Romania and Bulgaria followed in 2007, and Croatia in 2013.

In the meantime, in 2003, the EU launched a new European Neighbourhood Policy to provide a framework for cooperation with neighbouring states that were non-members, but who sought greater ties, economic and political, with the EU.<sup>5</sup> Eastern partners would be granted 'association status' along with such benefits as lower trade barriers and relaxed visa requirements. In order to obtain association status the eastern partners would have to conduct certain reforms to align with EU policies, respect democratic principles and ensure the rule of law in their countries. The Eastern Partnership program, a subset of the European Neighbourhood Policy, included Moldova, Armenia, Georgia and Ukraine. The EU began negotiations for a free trade and association agreement with Ukraine in 2008, due to be signed at the summit in Vilnius on 29 November 2013.

In November 2004, alleged election fraud afforded the pro-Russian presidential candidate Viktor Yanukovich the majority vote over the pro-Western candidate Viktor Yushenko running on an anti-corruption platform. Evidence of alleged mass falsifications sparked two weeks of mass protests, the "Orange Revolution," and led to re-runs of the elections in

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<sup>1</sup> Between East & West: NATO Enlargement & the Geopolitics of the Ukraine Crisis, by Edward W. Walker, April 13 2015, available at: <http://www.e-ir.info/2015/04/13/between-east-west-nato-enlargement-the-geopolitics-of-the-ukraine-crisis/> (last accessed: 24.06.2015).

<sup>2</sup> Between East & West: NATO Enlargement & the Geopolitics of the Ukraine Crisis, by Edward W. Walker, April 13 2015, available at: <http://www.e-ir.info/2015/04/13/between-east-west-nato-enlargement-the-geopolitics-of-the-ukraine-crisis/> (last accessed: 24.06.2015)

<sup>3</sup> Stent, A. E. (2014) *The Limits of Partnership. US-Russian Relations in the 21st Century*. Princeton University Press, pp. 165-174.

<sup>4</sup> Bucharest Summit Declaration, Paragraph 23, issued on April 3, 2008, available at: [http://www.nato.int/cps/en/natolive/official\\_texts\\_8443.htm](http://www.nato.int/cps/en/natolive/official_texts_8443.htm) (last accessed: 24.06.2015).

<sup>5</sup> An Unnecessary War: The Geopolitical Roots of the Ukraine Crisis, by Peter Rutland, April 9, 2015, available at: <http://www.e-ir.info/2015/04/09/an-unnecessary-war-the-geopolitical-roots-of-the-ukraine-crisis/> (last accessed: 24.06.2015).

December 2004, which Yushchenko won. The Orange Revolution in Ukraine is one of several “color revolutions” in the region that demanded democratic elections (Georgia in 2003 and Kyrgyzstan in 2005).

In 2008, Russia lifted sanctions off the separatist areas of Abkhazia and South Ossetia in Georgia and intensified its military presence along the borders of the breakaway regions and Georgia. Georgian president Mikheil Saakashvili sent his military into the region, killing several Russian peacekeepers in the process. Russia responded with a full-scale invasion in August 2008, resulting in a military defeat for Georgia.<sup>6</sup>

In 2010, Yanukovich won the Ukrainian presidency in what observers called democratic elections. In April 2010, Yanukovich and then-Russian president Dmitry Medvedev signed a renewal lease on the Sevastopol naval base for another 25 years in exchange for a gas price drop of 30%. In June 2010, the Ukrainian parliament voted to abandon Ukraine’s accession plan to NATO. In December 2010, the Constitutional Court overturned the limits on presidential powers, introduced in 2004, reverting to a parliamentary presidential system. In November 2011, former prime minister Yulia Tymoshenko, head of the opposition party Bloc of Yulia Tymoshenko, was sentenced to seven years in prison on charges of abuse of power. In April 2013, the European Court for Human Rights found Tymoshenko’s imprisonment illegal and the EU repeatedly called for her release.<sup>7</sup>

In January 2010, Russia entered into a Customs Union with Belarus and Kazakhstan, introducing tariff-free trade between the three countries. This was the precursor to the Eurasian Economic Union, launched on 1 January 2015. In September and December 2013, respectively, Armenia and Kyrgyzstan agreed to join the Union.

## 2.2 EUROMAIDAN

On November 21, Yanukovich announced that he would not sign the association agreement with the EU in Vilnius and the Parliament of Ukraine rejected the EU demand to release Tymoshenko. Mass protests in the capital city of Kiev began following the announcement. Mass protests surged after a violent break-up of the demonstrations by riot police early on Saturday morning, November 30, 2013. Video footage quickly circulated in social media and sparked outrage among many Ukrainians. As a result, nearly a million people rallied on Maidan on December 1, and demonstrators began to occupy the city main square for weeks to come. The protests would later spread to many cities across the nation, and in several cities protesters occupied regional government buildings. The protests, dubbed “Euromaidan,” included not only citizens with pro-western views, but also people who were infuriated by the level of corruption of the government and by police and security services’ brutality, and demanded the government’s resignation.

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<sup>6</sup> The Five-Day War: Managing Moscow after the Georgia Crisis, by Charles King, available at <https://www.foreignaffairs.com/articles/russia-fsu/2008-11-01/five-day-war> (last accessed: 24.06.2015).

<sup>7</sup> An Unnecessary War: The Geopolitical Roots of the Ukraine Crisis, by Peter Rutland, April 9, 2015, available at <http://www.e-ir.info/2015/04/09/an-unnecessary-war-the-geopolitical-roots-of-the-ukraine-crisis/> (last accessed: 24.06.2015).

On December 17, Russian president Vladimir Putin and Victor Yanukovich signed a treaty whereby Russia would buy \$15bn of Ukrainian debt and reduce the price of Russian gas supplies by about a third. This bailout further angered members of the Ukrainian public, who viewed it as Russian economic manipulation over Ukraine's political sovereignty. The Ukrainian Parliament, headed by Mykola Azarov, passed restrictive anti-protest laws on January 16, 2014, further infuriating the demonstrators and intensifying the violence of the clashes with riot police. At the end of January, Prime Minister Mykola Azarov resigned and the parliament annulled the anti-protest law. Parliament passed the amnesty bill but the opposition rejected the conditions.

On February 18, clashes on the streets intensified, leaving 18 protesters dead. On February 20, at least 88 people were killed.<sup>8</sup> Video footage showed uniformed snipers firing at unarmed protesters. On February 22, Yanukovich fled the capital and protesters took control of his residence and the administration building. Yulia Tymoshenko was released from jail. Parliament appointed speaker Olexander Turchynov as interim president and Arseniy Yatsenyuk was nominated prime minister. The new government issued an arrest warrant for Yanukovich and ordered the elite Berkut police unit, blamed for deaths of protesters, to be disbanded.

Russia, as well as the EU, and the United States took active part in the unfolding political crisis, and each accused the other of igniting the conflict. A Russian propaganda machine began to work full force, with twisted and fictitious news reportages on Russian TV, depicting the protests in Ukraine as a take-over by nationalists and fascists, orchestrated and financed by Western institutions. A vote by the Ukrainian Parliament to remove the status of Russian as a second language gave further grounds for the officials in Moscow to portray the new leaders in Kiev as US-backed Ukrainian nationalists bent on violating minority rights.

## 2.3 OVERVIEW OF THE CONFLICT

In the last days of February 2014, unidentified gunmen seized key government buildings in Simferopol, the Crimean capital. Gunmen in combat uniforms without insignia, immediately dubbed "green men" by the locals and the media for the colour of their uniforms, appeared outside Crimea's main airports and began to block Ukrainian military bases on the Black Sea peninsula.

On March 1, 2014, Russia's parliament approved President Vladimir Putin's request to use military force in Ukraine. The Russian government also discussed some legal considerations to make it easier for Russians in the region to obtain Russian passports. Warnings and alarms begin to be discussed concerning the need to protect the rights of ethnic Russians amidst Ukraine's chaos.

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<sup>8</sup> See BBC, "Ukraine Crisis: Timeline", 13 November 2014, available at: <http://www.bbc.com/news/world-middle-east-26248275> (last accessed: 24.06.2015).

Sergei Aksyonov, whose political party won four percent of the vote in the parliamentary election in 2010, was nominated the new prime minister of Crimea. Within a week of its building being taken over by armed gunmen, the regional parliament in Crimea was voting in favour of the peninsula becoming part of Russia.

On March 16, Crimea's secession referendum on joining Russia was apparently backed by 97 percent of voters in a poll that local opposition lawmakers claimed was a farce, characterized by rigging, fraud, and intimidation. The EU and US moved quickly to impose travel bans and asset freezes on several officials in connection with the Crimean referendum. On March 18, Putin signed legislation to absorb Crimea into the Russian Federation. Western governments did not recognize the results of the referendum. Russia, on the other hand, acknowledged the results, citing the precedent of the recognition of the independence of Kosovo and the right of people to self-determination as specified in the UN Charter.

In light of this situation, it is worth considering how Crimea became part of Ukraine in the first place.

Tsarist Russia annexed Crimea in 1783 after defeating the Ottoman Empire. In 1954, the Soviet government transferred Crimea from the Russian Soviet Federation of Socialist Republics (RSFSR) to the Ukrainian Soviet Socialist Republic (UkrSSR). The transfer was positioned to commemorate the 300th anniversary of the Treaty of Pereyaslav- a symbol of the unification of Ukraine with Tsarist Russia. Furthermore, territorial closeness and cultural links to mainland Ukraine were used as justifications by the government and propagated by the Soviet newspapers. Of particular importance in the transfer was the role of Soviet premier Nikita Khrushchev and his agenda for securing his political strength<sup>9</sup>. Prior to being nominated for the post of First Secretary in September 1953, he had served as the head of the Communist Party of Ukraine and during the last years of his tenure he had supervised the Soviet side in the bitter war in the newly annexed western regions of Ukraine in Volyn' and Galicia. The struggle was marked by gruesome atrocities on both sides. Khrushchev, true to Stalinist tactics, was ruthless in extending control over western Ukraine and when the war was over, he saw the transfer of Crimea as a demonstration of good will and friendship to solidify Soviet control over Ukraine. The transfer of Crimea brought some 860,000 ethnic Russians into Ukraine, increasing the identification of the region with Russia and securing Soviet control.

In 1950s, the population of Crimea was roughly 75 percent Russian and 25 percent Ukrainian, with about 300,000 Tatars who had lived in Crimea for centuries. In May 1944, Stalin ordered the Tartar community deported to Central Asia where they lived without the right to return for nearly half a century. After Ukraine declared independence in 1991, Tatars began to return to their historic homeland and by the time of annexation of Crimea by Russia in March 2014, the largely pro-Ukrainian Tartar community grew to account for

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<sup>9</sup> See Wilson Center, "Why did Russia give away Crimea sixty years ago?" by Mark Kramer, available at: <http://www.wilsoncenter.org/publication/why-did-russia-give-away-crimea-sixty-years-ago> (last accessed: 24.06.2015).

roughly 12 percent of the population. Ethnic Russian made up 58% of the populations and Ukrainians accounted for 24 percent<sup>10</sup>.

In a constitutional context, the transfer of Crimea in 1954 was carried out in accordance with Article 18 of the Soviet constitution and both the Russian and the Ukrainian republics gave parliamentary consent to their territorial alterations.

After the quick and bloodless annexation of Crimea, pro-Russian separatists began to move for control of the industrial east, seizing control of government buildings in Donetsk, Luhansk, Kharkiv, Sloviansk, Horlivka and Kramatorsk in April 2014, and calling for a referendum on independence. As Russian forces appeared to be building up at the border, the new Ukrainian authorities in Kyiv ordered an “anti-terrorist operation” and regained control of Kharkiv.

On May 2, clashes in the mainland Black Sea port city of Odessa left 42 people dead, most of them pro-Russian separatists trapped in a burning city administration building.<sup>11</sup> A week later pro-Russian separatists in the Donetsk and Luhansk regions held unrecognized referendums, declared independence as the Donetsk Peoples Republic and the Luhansk Peoples Republic, and drafted their constitutions. On May 25, Ukraine elected Petro Poroshenko as the president in elections not possible in much of the east of the country.

Fighting ensued throughout the eastern region of the Donbas region that encompasses Luhansk and Donetsk. Casualties, among them civilians, began to mount. In the middle of June the separatists shot down a Ukrainian military Ilyushin Il-76MD aircraft preparing to land at the Luhansk International Airport, killing all 49 Ukrainian soldiers onboard. On July 17, the civilian passenger jet Malaysia Airlines flight MH17 en route from Amsterdam to Kuala Lumpur was shot down in rebel-held territory, claiming 298 lives.

Heavy fighting took place in and around Donetsk at the end of July, with the government offensive making great strides. The cities of Sieverodonetsk, Horlivka, Lysychansk, Shakhtarsk, Popasnaya and the smaller towns in the area were re-taken by government forces, isolating the insurgents in the city center of Donetsk and cutting off supply routes between Luhansk People’s Republic (LPR) and Donetsk People’s Republic (DPR). By July 28, the strategic heights of Savur-Mohyla were under Ukrainian control, along with the town of Debaltseve, an important railroad hub connecting the self-proclaimed Republics. Military operations were paused on July 31, to allow international experts to continue an investigation of the crash site of Malaysia Airlines Flight 17, located in the area of the most fierce fighting. The Ukrainian Army closed in on Luhansk and Donetsk on August 3, prompting Igor Girkin, insurgent commander for the DPR, to openly call for Russian military intervention.

Intense fighting continued around Donetsk in the first weeks of August 2014. Intensive

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<sup>10</sup> Ukrainian census, 2001, available at: <http://2001.ukrcensus.gov.ua/results/general/nationality/crimea/> (last accessed: 24.06.2015).

<sup>11</sup> See BBC, “Ukraine Crisis: Timeline”, 13 November 2014, available at: <http://www.bbc.com/news/world-middle-east-26248275> (last accessed: 24.06.2015).

cross-fire between the insurgents and the government forces and heavy shelling and artillery barrage of the city caused tens of civilian deaths and injuries, and damaged hospitals and residential buildings, while many remaining residents took shelter in basements. Igor Girkin resigned from his post as commander of the insurgent forces of the Donetsk People's Republic and was replaced by Vladimir Kononov, who is known by the nom de guerre "Tsar."

On August 14, a convoy of some twenty armored personnel carriers and other vehicles with official Russian military plates reportedly entered Ukraine near the insurgent-controlled Izvaryne border crossing. NATO Secretary General Anders Fogh Rasmussen called the incident a "Russian incursion" into Ukraine, while the Russian Defense Ministry denied the existence of any such convoy.

By August 19, the Ukrainian Army moved into the city of Luhansk and shelled the DPR headquarters in Donetsk.

Between August 22 and 25, Russian artillery, personnel, and what Russia called a "humanitarian convoy" were reported to have crossed the border into Ukrainian territory without the permission of the Ukrainian government. Crossings were reported to have occurred both in areas under the control of pro-Russian forces and areas that were not under their control, such as the south-eastern part of Donetsk Oblast, near Novoazovsk. These events followed the reported shelling of Ukrainian positions from the Russian side of the border over the course of the preceding month.

By August 25, an insurgent counter-offensive had stalled the Ukrainian military offensive on Donetsk and Luhansk. The prospect of insurgent defeat appeared to have prompted the Russian artillery fire from within Russian territory on the advancing Ukrainian troops, and direct intervention by Russian troops in combat roles on the Ukrainian territory became a regular feature of the conflict.

At the end of August reports from local residents surfaced of military men with Russian accents and no identifying insignias appearing in the south-east district of the Donetsk region. The local residents referred to them as "polite green men," a term that was used to refer to the Russian forces that occupied Crimea in the late February 2014. Following the appearance of these men, ten soldiers in green military uniforms with white armbands were detained by Ukrainian forces at Dzerkalne, a village 20 kilometres from the Russian border. The Russian military confirmed that these men were indeed Russian paratroopers, mistakenly lost on Ukrainian territory while conducting exercises at the border.

The incursion hampered the momentum Ukrainian forces had made in weakening the insurgents in their strongholds of Donetsk and Luhansk and caused the government troops to retreat. Ukraine accused Russia of sending an armored column toward the coastal city of Mariupol, far from the fighting around Luhansk and Donetsk, and opening up a third front on the coast of Azov Sea.

Over the course of the next months DPR and LPR insurgents regained part of the territory

they had lost during the preceding government military offensive.

After days of peace talks in Minsk under the auspices of the Organization for Security and Co-operation in Europe (OSCE), Ukraine, Russia, the DPR, and the LPR agreed to a ceasefire on 5 September.

Despite the ceasefire, however, heavy fighting continued across the Donbas region through October, leaving many soldiers and civilians dead. The most fierce fighting took place around Donetsk International Airport, Debaltseve, and Shchastya. A UN Office of the United Nations High Commissioner for Human Rights (OHCHR) report released in October 2014 said that at least 331 people had been killed since the start of the ceasefire and that the majority of civilian deaths were caused by both insurgent and Ukrainian shelling.<sup>12</sup>

On November 2, in violation of agreements of the Minsk Protocol, DPR and LPR authorities held parliamentary and executive elections. Intermittent shelling of Donetsk renewed on November 5th. OSCE monitors reported on November 8 that there were large movements of unmarked heavy equipment in separatist-held territory. These movements included armoured personnel carriers, lorries, petrol tankers, and tanks, which were being manned and escorted by men in dark green uniforms without insignias. On November 12, NATO commander Gen Philip Breedlove stated that Russian military equipment and Russian combat troops had been seen entering Ukraine in columns over several days.<sup>13</sup>

The shaky ceasefire came to a final halt after separatists captured the Donetsk International Airport after an eight-month standoff. Alexander Zakharchenko, the newly elected head of the self-proclaimed Donetsk People's Republic, vowed to advance and push the ceasefire line further west. Heavy fighting broke out along the Siverskyi Donets River and pro-Russian separatists attacked and captured several checkpoints in the area and began an assault on the government-controlled strategic town of Debaltseve, barraging it with artillery fire and causing many civilian and combatant casualties. On January 24, 2015, Grad rockets hailed from rebel-controlled territory on the residential district of Mariupol left more than thirty civilians dead and nearly a hundred wounded.

Minsk II, the new package of peacemaking measures, was signed on February 11, 2015. After the ceasefire started the rebels continued their assault, taking over the city by February 18. The rebels also attacked the headquarters of the government's anti-terrorist operation (ATO), located far beyond the conflict zone, hitting residential districts and killing civilians in the process.

Minor violations of the ceasefire continued throughout March and April, but the ceasefire

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<sup>12</sup> Press release to the Office of the United Nations High Commissioner for Human Rights report on the human rights situation in Ukraine, released 8 October 2014, available at: <http://www.un.org.ua/en/information-centre/news/1870> (last accessed: 24.06.2015)

<sup>13</sup> See The Guardian, "Russian tanks and troops crossing into Ukraine, says NATO commander", available at: <http://www.theguardian.com/world/2014/nov/12/russian-tanks-troops-crossing-into-ukraine-nato-supreme-commander> (last accessed: 24.06.2015).

was largely observed throughout the conflict zone. Both sides withdrew heavy weaponry from the frontline, as specified by the Minsk II accords. Fighting ensued again on June 3, when the pro-Russian separatists attacked government-controlled Marinka. In a special report, the OSCE observers on the ground strongly indicated that the separatists attacked first.<sup>14</sup> Marinka is a frontline settlement located along the major road out of Donetsk going west, with several rebel and Ukrainian checkpoints. Another site of renewed fighting, Shyrokyne, lies on the third frontline south of Donetsk and just east of Mariupol. It is the last government-held settlement before the major port city.

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<sup>14</sup> Spot report by the OSCE Special Monitoring Mission to Ukraine (SMM), 3 June 2015: Fighting around Marinka, available at: <http://www.osce.org/ukraine-smm/162116> (last accessed: 24.06.2015).



Source: IPHR

## 3. PRELIMINARY MATTERS

### 3.1 THE LEGAL FRAMEWORK

Evidence documented in this report has been analysed and presented using the framework of international treaty and customary law relating to conflict and mass atrocities, – international humanitarian law and international criminal law.

Ukraine is a State party to the Geneva Conventions of 1949<sup>15</sup> and their Additional Protocols.<sup>16</sup> Ukraine has also ratified a number of conventions relating to the means and methods of warfare, most notably the Convention Prohibiting Certain Conventional

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<sup>15</sup> Geneva Conventions (I) on Wounded and Sick in Armed Forces in the Field, (II) on Wounded, Sick and Shipwrecked of Armed Forces at Sea, (III) on Prisoners of War, (IV) on Civilians of 1949, ratified on 03 August 1954

<sup>16</sup> Additional Protocols I and II to the Geneva Conventions of 1977, ratified on 25 January 1990.

Weapons and its five Additional Protocols.<sup>17</sup> In addition to international treaty law, conflicts and atrocities taking place on the territory of Ukraine fall under the purview of customary international law.<sup>18</sup>

The most serious violations of international humanitarian law – known as grave breaches or war crimes – attract individual criminal responsibility and raise an obligation on States to prosecute or extradite those within their jurisdictions responsible for such acts.<sup>19</sup> Similarly, crimes against humanity are considered to be peremptory norms of customary international law; prohibitions against such crimes allow for no derogation and grant States universal jurisdiction to prosecute alleged perpetrators.<sup>20</sup>

According to Article 9 of the Constitution of Ukraine, properly ratified international treaties form an integral part of national legislation.<sup>21</sup> Moreover, Articles 438 and 439 of the Criminal Code of Ukraine incorporate the provisions of international humanitarian law treaties ratified by Ukraine into the domestic criminal law framework.<sup>22</sup>

The Rome Statute to the International Criminal Court (hereinafter “ICC Statute”) translates treaty and customary norms into concrete and indictable criminal offences. The ICC Statute is a useful analytical tool for assessing and presenting evidence of international crimes committed on the territory of Ukraine. In addition to assisting a potential investigation by the ICC Prosecutor, this analysis may be used for framing domestic investigations and prosecutions in Ukraine and other jurisdictions in relation to the events described in this report.

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<sup>17</sup> Convention Prohibiting Certain Conventional Weapons (CCW) or 1980 amended Article 1 on 2001, ratified on 23 June 1982 and 29 June 2005; CCW Protocol I on Non-Detectable Fragments or 1980, ratified on 23 June 1982; CCW Protocol II prohibiting Mines, Booby-Traps and Other Devices of 1980 amended 1996, ratified on 23 June 1982 and 15 January 1999; CCW Protocol III prohibiting Incendiary Weapons of 1980, ratified on 23 June 1982; CCW Protocol IV on Blinding Laser Weapons of 1995, ratified on 28 May 2003; CCW Protocol V on Explosive Remnants of War of 2003, ratified on 17 May 2005.

<sup>18</sup> For an authoritative catalogue of customary international humanitarian law see: ICRC, Customary IHL database, available at: <https://www.icrc.org/customary-ihl/eng/docs/home> (last accessed: 27.06.2015).

<sup>19</sup> Arts. 49, 50, 129, and 146, respectively, of the First, Second, Third, and Fourth Geneva Conventions of 1949.

<sup>20</sup> Cherif Bassiouni, “Crimes Against Humanity”, Crimes of War, available at: <http://www.crimesofwar.org/a-z-guide/crimes-against-humanity/> (last accessed: 7 April 2015).

<sup>21</sup> Article 9, Constitution of Ukraine, Adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996, Amended by the Law № 2952-VI dated 01.02.2011, and the Law № 586-VII dated 19.09.2013.

<sup>22</sup> Articles 438 and 439 of the Criminal Code of Ukraine, entered into force on September 1, 2001.

## 3.2 LEGAL QUALIFICATION OF THE CONFLICT TAKING PLACE IN EASTERN UKRAINE SINCE MARCH 2014

The legal qualification of events as an international armed conflict (IAC) or a non-international armed conflict (NIAC) determines the normative framework that can be applied to establish violations and responsibility. Existence of an IAC is evidenced by the “resort to armed force between States.”<sup>23</sup> Qualification as a NIAC requires protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups.<sup>24</sup>

The fact that the conflict between the Ukrainian armed forces and separatist forces satisfies the criteria for a NIAC is beyond any doubt. To engage the protection of international humanitarian law, a NIAC must reach a minimum level of intensity<sup>25</sup> and the parties involved in the conflict must show a minimum of organisation.<sup>26</sup> Application of Additional Protocol II also requires non-state actors to exercise a form of territorial control to enable them to “carry out sustained and concerted military operations” and to implement the Protocol.<sup>27</sup> With nearly 8000 fatalities to date,<sup>28</sup> regular resort to heavy artillery<sup>29</sup> including cluster munitions,<sup>30</sup> proclamations of self-governance and territorial control,<sup>31</sup> the conflict in

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<sup>23</sup> Common Article 2 of the 1949 Geneva Conventions; ICTY, *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70.

<sup>24</sup> Whereas Article 1 para. 1 of Additional Protocol II limits its application to conflicts between regular armed forces and non-state organised armed groups, the protection of common Article 3 to the Geneva Conventions of 1949 extends to conflicts between non-state groups. The latter more inclusive definition is also applied by international criminal tribunals and the ICC Statute: see ICTY, *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para.70 and Statute of the ICC, art. 8 para. 2 (f).

<sup>25</sup> Evidenced by the collective nature of hostilities and the use of regular armed forces rather than the police: see ICTY, *The Prosecutor v. Fatmir Limaj*, Judgment, IT-03- 66-T, 30 November 2005, para. 135-170.

<sup>26</sup> Requiring the armed groups to have as a minimum a certain command structure and the capacity to sustain military operations: see ICTY, *The Prosecutor v. Fatmir Limaj*, Judgment, IT-03-66-T, 30 November 2005, para. 94-134.

<sup>27</sup> Additional Protocol II, Article 1(1).

<sup>28</sup> OHCHR, “Report on the human rights situation in Ukraine 16 May to 15 August 2015”, 8 September 2015, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16394&LangID=E>

(last accessed: 15.09.2015)

<sup>29</sup> OSCE, “Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 18:00 (Kyiv time)”, 7 April 2015, available at: <http://www.osce.org/ukraine-smm/150396> (last accessed: 14/04/15).

<sup>30</sup> Human Rights Watch, “Ukraine: More Civilians Killed in Cluster Munition Attacks”, 19 March 2015, available at: <http://www.hrw.org/print/news/2015/03/19/ukraine-more-civilians-killed-cluster-munition-attacks> (last accessed: 10/04/2015).

Eastern Ukraine falls well within the definition of a NIAC. This fact has also been recognised by the International Committee of the Red Cross<sup>32</sup> alongside other international groups and commentators.<sup>33</sup>

The more challenging question is whether an IAC exists between Ukraine and Russia. There are three ways in which international law relating to IACs may apply to the conflict: (1) if Russian armed forces are or have been directly engaged in the conflict; (2) if Russia has control over the separatist forces; and (3) if Russian forces have occupied a part of Ukrainian territory.<sup>34</sup>

### **3.2.1 RUSSIAN ARMED FORCES ARE OR HAVE BEEN DIRECTLY ENGAGED IN THE CONFLICT**

An IAC is in existence on the territory of Ukraine if active members of the Russian armed forces are or have been directly engaged in the conflict. Proof of one Russian soldier engaged in a single attack would be sufficient for the existence of an IAC, as there is no intensity threshold for this type of conflict.<sup>35</sup> Russia's denial of its involvement is immaterial.<sup>36</sup>

On March 1, 2014, the Russian Duma (Parliament) approved the Russian President's request for an authorisation to deploy troops in Ukraine.<sup>37</sup> There is increasing evidence that Russian nationals and members of the Russian armed forces have been engaged in direct combat with the armed forces of Ukraine.<sup>38</sup> There is also evidence of regular

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<sup>31</sup> See Global Security, "Federal State of Novorossiya: Union of the Peoples' Republics", available at: <http://www.globalsecurity.org/military/world/para/novorossiya.htm> (last accessed: 14/04/2015).

<sup>32</sup> ICRC, "Ukraine: ICRC Calls on All Sides to Respect International Humanitarian Law", available at: <https://www.icrc.org/eng/resources/documents/news-release/2014/07-23-ukraine-kiiev-call-respect-ihl-repatriate-bodies-malaysian-airlines.htm> (last accessed: 09/04/2015).

<sup>33</sup> See Human Rights Watch, "Eastern Ukraine: Questions and Answers about the Laws of War", available at: <http://www.hrw.org/print/news/2014/09/11/eastern-ukraine-questions-and-answers-about-laws-war> (last accessed: 09/04/2015); cite others...incl UN/OSCE if possible.ADD SOMETHING

<sup>34</sup> ICTY, *The Prosecutor v. Dusko Tadic, Appeals Judgment, IT-94-1-A*, 15 July 1999, para 84.

<sup>35</sup> See ICRC Commentary on the Four Geneva Conventions of 1949, pp. 20–21: "It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to the human person as such is not measured by the number of victims"; See also: "Ukraine's Crisis Part 2: LOAC's Threshold for International Armed Conflict." *Harvard National Security Journal*, available at: <http://harvardnsj.org/2014/05/ukraines-crisis-part-2-loacs-threshold-for-international-armed-conflict/> (last accessed: 9 April 2015).

<sup>36</sup> ICRC Commentary on the Four Geneva Conventions of 1949, pp. 20–21.

<sup>37</sup> BBC, "Russian parliament approves troop deployment in Ukraine", 1 March 2014, available at: <http://www.bbc.com/news/world-europe-26400035> (last accessed: 28/06/2015).

<sup>38</sup> Atlantic Council, "Hiding in Plain Sight: Putin's War in Ukraine", May 2015, available at: <http://www.atlanticcouncil.org/publications/reports/hiding-in-plain-sight-putin-s-war-in-ukraine-and-boris-nemtsov-s-putin-war> (last accessed: 28/06/2015); Igor Sutyagin, "Russian Forces in Ukraine", Royal United Service Institute: Briefing Paper, March 2015, available at: [https://www.rusi.org/downloads/assets/201503\\_BP\\_Russian\\_Forces\\_in\\_Ukraine\\_FINAL.pdf](https://www.rusi.org/downloads/assets/201503_BP_Russian_Forces_in_Ukraine_FINAL.pdf), (last accessed: 14/04/2015); DW, "Evidence mounting of Russian troops in Ukraine", available at: <http://www.dw.de/evidence->

mobilisation of Russian troops to the border of Ukraine, camp build-ups along the border and supporting artillery fire being launched from the territory of the Russian Federation.<sup>39</sup> To establish the existence of an IAC, Russia's claims that all Russian nationals involved in the conflict in Ukraine are volunteers or soldiers on leave,<sup>40</sup> must be refuted. This can be achieved by ascertaining an active link between those Russian nationals and the Russian military hierarchy, through evidence of orders, active chain of command or remuneration.<sup>41</sup> Such evidence is mounting,<sup>42</sup> as well as evidence of army-repatriated coffins (known as Cargo 200) and revelations on social media.<sup>43</sup> In August 2015, Delovaya Zhizn (Business Life) Magazine, reported that the Russian government had approved the payment of 3 million roubles (approximately USD 50,000) of compensation for families of Russian soldiers killed in Eastern Ukraine, and one and half million roubles (approximately USD 25,000) to those "who have become invalids during military action."<sup>44</sup> In all, as of February 1, 2015, monetary compensation had been paid to more than 2,000 families of fallen soldiers

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*mounting-of-russian-troops-in-ukraine/a-18294255* (last accessed: 14/04/15); The Guardian, "Invisible army: the story of a Russian soldier sent to fight in Ukraine ", 25 March 2015, available at: <http://www.theguardian.com/world/2015/mar/25/russia-ukraine-soldier> (last accessed: 28.06.2015); Radio Free Europe, "OSCE: Fighters Captured In Ukraine Admit To Serving In Russia Army", 21 May 2015, <http://www.rferl.org/content/osce-says-fighters-captured-claim-to-be-in-russian-army/27029665.html> (last accessed: 28/06/2015).

<sup>39</sup> Atlantic Council, "Hiding in Plain Sight: Putin's War in Ukraine", May 2015, available at: <http://www.atlanticcouncil.org/publications/reports/hiding-in-plain-sight-putin-s-war-in-ukraine-and-boris-nemtsov-s-putin-war> (last accessed: 28/06/2015); Bellingcat, "Origin of Artillery Attacks on Ukrainian Military Positions in Eastern Ukraine Between 14 July 2014 and 8 August 2014", available at: [https://www.bellingcat.com/wp-content/uploads/2016/02/bellingcat\\_-\\_origin\\_of\\_artillery\\_attacks\\_02-12-15\\_final1.pdf](https://www.bellingcat.com/wp-content/uploads/2016/02/bellingcat_-_origin_of_artillery_attacks_02-12-15_final1.pdf) (last accessed: 14/04/2015).

<sup>40</sup> DW, "Evidence mounting of Russian troops in Ukraine", available at: <http://www.dw.de/evidence-mounting-of-russian-troops-in-ukraine/a-18294255> (last accessed: 14/04/15).

<sup>41</sup> See ICTY, Prosecutor v. Naletilic and Martinovic, Judgment, IT-98-34, 31 March 2003, para 189; 195 - the ICTY did not accept that Croatian soldiers who remained on the army payroll were volunteers, stressing that 'it is the Republic of Croatia that did in fact organise the sending of the vast majority of them, while attempting to conceal their presence by asking them, for example to replace their uniforms and insignia for those of the [armed opposition group]'.

<sup>42</sup> OSCE, "Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 19:30 (Kyiv time)", 20 May 2015 available at: <http://www.osce.org/ukraine-smm/159296> (last accessed: 28/06/2015); The Guardian, "Invisible army: the story of a Russian soldier sent to fight in Ukraine ", 25 March 2015, available at: <http://www.theguardian.com/world/2015/mar/25/russia-ukraine-soldier> (last accessed: 28.06.2015).

<sup>43</sup> Atlantic Council, "Hiding in Plain Sight: Putin's War in Ukraine", May 2015, available at: <http://www.atlanticcouncil.org/publications/reports/hiding-in-plain-sight-putin-s-war-in-ukraine-and-boris-nemtsov-s-putin-war>, p. 15-17 (last accessed: 28/06/2015).

<sup>44</sup> Forbes "Russia may have inadvertently posted its casualties in Ukraine: 2000 deaths, 3200 disabled", 26 August 2015, available at: <http://www.forbes.com/sites/paulroderickgregory/2015/08/25/kremlin-censors-rush-to-erase-inadvertent-release-of-russian-casualties-in-east-ukraine/> The article is supported with a screenshot of the Delovaya Zhizn report, which was taken off the website by Russian government censors who claim that the report was a forgery.

and to 3,200 military personnel suffering heavy wounds and recognized as invalids.<sup>45</sup> Moreover, a daily payment of 1,800 roubles is envisioned for contract “fighters” in the conflict zone.<sup>46</sup>

### 3.2.2 RUSSIA HAS CONTROL OVER THE SEPARATIST FORCES

An internal conflict may become “internationalised” if a foreign State is proven to have control over the rebel forces fighting against government troops.<sup>47</sup> The meaning of control depends on the nature of the separatist force in question. An unorganised separatist force with no clear command structure or set rules will require “effective control” by the foreign State.<sup>48</sup> In the case of organised separatist forces with an existing chain of command, the test is that of “overall control.”<sup>49</sup> In the latter case, it is not necessary to prove that the foreign State issued specific orders, directed each individual operation or instructed the commission of specific acts.<sup>50</sup> Nevertheless, overall control requires the foreign State’s participation in the organisation, co-ordination or planning of military operations, and not just financial and training assistance, military equipment and operational support.<sup>51</sup> Such participation may be shown through documentary evidence or witnesses to meetings in which orders and military strategies are given by or coordinated with foreign armed forces,<sup>52</sup> as well as records of separatists’ wages being paid by the foreign government,<sup>53</sup> the sharing of personnel,<sup>54</sup> identical or similar military structures,<sup>55</sup> and the existence of shared objectives.<sup>56</sup>

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<sup>45</sup> Forbes “Russia may have inadvertently posted its casualties in Ukraine: 2000 deaths, 3200 disabled”, 26 August 2015, available at: <http://www.forbes.com/sites/paulroderickgregory/2015/08/25/kremlin-censors-rush-to-erase-inadvertent-release-of-russian-casualties-in-east-ukraine/>

<sup>46</sup> Forbes “Russia may have inadvertently posted its casualties in Ukraine: 2000 deaths, 3200 disabled”, 26 August 2015, available at: <http://www.forbes.com/sites/paulroderickgregory/2015/08/25/kremlin-censors-rush-to-erase-inadvertent-release-of-russian-casualties-in-east-ukraine/>

<sup>47</sup> ICTY, The Prosecutor v. Dusko Tadic, Appeals Judgment, IT-94-1-A, 15 July 1999, para. 137; ICTY, Prosecutor v. Naletilic and Martinovic, Judgment, IT-98-34, 31 March 2003, para 184; ICTY, The Prosecutor v. Blaskic, Judgment, IT-95-14-T, 3 March 2000, para. 100; ICC, The Prosecutor v. Thomas Lybanga Dyilo, Judgment, ICC-01/04-01/06, 14 March 2012, para 541.

<sup>48</sup> To establish “effective control” it is necessary to prove that the foreign State issued orders, directed individuals operations and instructed the commission of specific acts: *Tadic* AJ, paras.118, 137.

<sup>49</sup> ICTY, The Prosecutor v. Dusko Tadic, Appeals Judgment, IT-94-1-A, 15 July 1999, para. 131, 137, 145. See also ICTY, The Prosecutor v. Zlatko Aleksovski, Appeal Judgment, IT-95-14/1-A, 24 March 2000, paras.131-134; ICTY, The Prosecutor v. Dario Kordic and Mario Cerkez, Appeal Judgment, IT-95-14/2-A para. 313.

<sup>50</sup> ICTY, The Prosecutor v. Dusko Tadic, Appeals Judgment, IT-94-1-A, 15 July 1999, paras. 131, 137.

<sup>51</sup> ICTY, Prosecutor v. Naletilic and Martinovic, Judgment, IT-98-34, 31 March 2003, para. 198.

<sup>52</sup> ICTY, The Prosecutor v. Blaskic, Judgment, IT-95-14-T, 3 March 2000, para. 118; ICTY, The Prosecutor v. Dusko Tadic, Appeals Judgment, IT-94-1-A, 15 July 1999, para 151; ICTY, Prosecutor v. Naletilic and Martinovic, Judgment, IT-98-34, 31 March 2003, para. 201.

<sup>53</sup> ICTY, The Prosecutor v. Blaskic, Judgment, IT-95-14-T, 3 March 2000, para. 101.

<sup>54</sup> ICTY, The Prosecutor v. Blaskic, Judgment, IT-95-14-T, 3 March 2000, paras 114-117.

<sup>55</sup> ICTY, The Prosecutor v. Dusko Tadic, Appeals Judgment, IT-94-1-A, 15 July 1999, para 151.

<sup>56</sup> ICTY, Prosecutor v. Naletilic and Martinovic, Judgment, IT-98-34, 31 March 2003, para. 200; ICTY, The Prosecutor v. Blaskic, Judgment, IT-95-14-T, 3 March 2000, paras 108-110.

Evidence suggests that the Russian government has, or at one point had, overall control over the separatist movement. The military and civilian leadership of the separatist movement is composed of active or former members of the Russian armed forces, intelligence services and Russian political consultants.<sup>57</sup> A number of these figures were also involved in the Kremlin-acknowledged<sup>58</sup> Russian military intervention in Crimea.<sup>59</sup> Former separatist leader and Russian Federal Security Service (FSB) colonel Girkin (aka Strelkov) has publicly acknowledged that the separatist movement was organised and led by the Kremlin,<sup>60</sup> while a former Kremlin aid claims that this intervention had been planned for years.<sup>61</sup> A number of witnesses who were detained by separatist forces testify that Russian military or intelligence officers appear to have been in command at the detention and interrogation facilities.<sup>62</sup> There is also evidence that key battles have been led by Russian battalions and supported by artillery fire launched from the territory of the Russian Federation.<sup>63</sup>

### 3.2.3 RUSSIAN FORCES HAVE OCCUPIED A PART OF UKRAINIAN TERRITORY

The occupation of a territory by a foreign force engages the law of international armed conflict, whether that occupation meets with resistance or not.<sup>64</sup> The “occupation” extends only to the territory over which the foreign power is able to exercise its authority.<sup>65</sup> The occupation of Crimea by Russian troops<sup>66</sup> engages the international humanitarian law relating to IAC as regards events taking place on that territory. It may also be argued that

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<sup>57</sup> See section 5 of this report.

<sup>58</sup> Russia Today, “Putin in Film on Crimea: US Masterminds Behind Ukraine Coup, Helped Train Radicals,” March 15, 2015, available at <http://rt.com/news/240921-us-masterminds-ukraine-putin/> (last accessed: 28/06/2015).

<sup>59</sup> E.g.: Ukraine Today, “Moscow agent Strelkov admits Russian army behind Crimean referendum,” 25 January 2015, available at: <http://uatoday.tv/news/moscow-agent-strelkov-admits-russian-army-behind-crimean-referendum-404995.html> (last accessed: 30/07/2015).

<sup>60</sup> See YouTube, “И.Стрелков vs Н.Стариков “ЦЕНТРСИЛЫ / СИЛАЦЕНТРА,” January 22, 2015, available at: <https://www.youtube.com/watch?v=G04tXnvKx8Y> (last accessed: 28/06/2015).

<sup>61</sup> See YouTube, “Andrei Illarionov, NATO Parliamentary Assembly, Vilnius, May 31st, 2014,” 4 June 2014, available at: <https://www.youtube.com/watch?v=J8ISQpbfoBI> (last accessed: 28/06/2015).

<sup>62</sup> E.g.: FILE 47 witness 0047-K-562; FILE 87 witnesses 0087-K-604 and 0087-K-608; FILE 3 witness 0003-K-503; FILE 8 witness 0008-K-508; FILE 35 witness 0035-K-544; FILE 97 witness 0097-K-617.

<sup>63</sup> Atlantic Council, “Hiding in Plain Sight: Putin’s War in Ukraine,” May 2015, available at: <http://www.atlanticcouncil.org/publications/reports/hiding-in-plain-sight-putin-s-war-in-ukraine-and-boris-nemtsov-s-putin-war> (last accessed: 28/06/2015); Radio Free Europe, “Vostok Battalion, A Powerful New Player In Eastern Ukraine,” 30 May 2014, available at: <http://www.rferl.org/content/vostok-battalion-a-powerful-new-player-in-eastern-ukraine/25404785.html> (last accessed: 28/06/2015).

<sup>64</sup> Article 2 of Geneva Convention IV of 1949: “The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”

<sup>65</sup> Article 42, Regulations concerning the Laws and Customs of War on Land, annexed to Convention (IV) respecting the Laws and Customs of War on Land, The Hague, 18 October 1907.

<sup>66</sup> BBC, “Putin reveals secrets of Russia’s Crimea takeover plot,” 9 March 2015, available at: <http://www.bbc.co.uk/news/world-europe-31796226> (last accessed: 14/04/2015).

the Russian-led occupation of territories in Eastern Ukraine qualifies as Russian occupation and engages international humanitarian law applicable to IAC.

It is important to note that a NIAC and an IAC may exist in parallel on the territory of the same State.<sup>67</sup> Thus, only events related to direct engagements of Russian troops, acts by separatist forces under Russia's control and the Russian occupation would be covered by laws relating to IAC. This relationship is not necessarily limited by geographical location but must be established on a case-by-case basis.<sup>68</sup> Conversely, events related only to hostilities between the Ukrainian and autonomous separatist forces are deemed to be a NIAC.

Further investigations are needed into the scope of Russia's involvement in the conflict in Eastern Ukraine. The ultimate decision as to the classification of the conflict in relation to each event set out in this report is for the courts. As a result, this report contains analysis of events in light of both IAC and NIAC legal frameworks.

### **3.3 EVIDENCE OF A WIDESPREAD AND/OR SYSTEMATIC ATTACK ON THE CIVILIAN POPULATION**

War crimes and crimes against humanity may take place in parallel on the territory of the same State. Nevertheless, whereas war crimes require a direct link to an armed conflict,<sup>69</sup> crimes against humanity may take place in time of war or peace.<sup>70</sup> Prosecuting crimes against humanity requires proof of a widespread or systematic attack against a civilian population (or identifiable group of civilians) pursuant to a State or organizational policy to commit such an attack.<sup>71</sup>

We submit that there is a reasonable basis to believe<sup>72</sup> that such attacks has been taking

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<sup>67</sup> 1986 *Nicaragua case*, ICJ Reports, p. 114; *Tadic Appeal Judgment*, para. 84.

<sup>68</sup> *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No.IT-95-14/2-A, Judgment, App.Ch., 17 December 2004 (“*Kordić AJ*”), para.320, citing *Kordić TJ*, para.70. See also *Prosecutor v.Thiomir Blaškić*, Case No.IT-95-14-T, Judgment, T.Ch., 3 March 2000 (“*Blaškić TJ*”), para.94: “[t]he determination as to whether the conflict is international or internal has to be made on a case-by-case basis, that is, each case has to be determined on its own merits, and accordingly, it would not be permissible to deduce from a decision that an internal conflict in a particular area in Bosnia was internationalised that another internal conflict in another area was also internationalised. However, it would be wrong to construe the Appeals Chamber’s Decision [in *Tadic*] as meaning that evidence as to whether a conflict in a particular locality has been internationalised must necessarily come from activities confined to the specific geographical area where the crimes were committed, and that evidence of activities outside that area is necessarily precluded in determining that question.”

<sup>69</sup> See ICC Elements of Crimes – each war crimes must take place in the context of and be associated with an armed conflict.

<sup>70</sup> See ICTR, *The Prosecutor v. Jean-Paul Akayesu*, Judgment, ICTR- 96-4-T, 2 September 1998, para. 581.

<sup>71</sup> See Article 7(1) of the ICC Statute.

<sup>72</sup> The “reasonable basis to believe” standard in Article 53(1)(a) of the ICC Statute is the lowest evidentiary standard provided for in the Statute. The information available to the Prosecutor is neither expected to be

place on the territory of Eastern Ukraine since March 2014, and that the offences set out in this report form part of this attack.

### 3.3.1 ATTACK ON A CIVILIAN POPULATION

The term “attack” is defined as a “sustained campaign or operation carried out against the civilian population.”<sup>73</sup> It may constitute an accumulation of “episodes reaching varying levels of intensity at different location and at different times.”<sup>74</sup> In other words, an attack for the purpose of identifying crimes against humanity is the sum of all of its underlying crimes.<sup>75</sup>



“comprehensive” nor “conclusive.” It must be understood within the context in which it operates: the standard should be construed and applied against the underlying purpose of the procedure in article 15(4) of the Statute, which is to prevent the Court from proceeding with unwarranted, frivolous, or politically motivated investigations that could have a negative effect on its credibility. Nor does all the information under this standard need to necessarily point to one conclusion: ICC, Situation in the Republic of Kenya, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya,” 31 March 2010, paras. 27-35.

<sup>73</sup> ICC Elements of Crimes, Introduction to Article 7 of the Statute, para. 3.

<sup>74</sup> ICC, Situation in the Republic of Cote d’Ivoire, “Decision on the prosecutor’s provision of further information regarding potentially relevant crimes committed between 2002 and 2010,” ICC-02/11-36, 22 February 2012, para. 36.

<sup>75</sup> “Commission of the acts referred to in Article 7(1) of the Statute constitute the attack itself and, beside the commission of the acts, no additional requirements for the existence of an attack should be proven,” ICC, Situation in the Central African Republic, Prosecutor v. Bemba, “Decision Pursuant to Article 61(7)(a) and (b) of the ICC Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo,” ICC-01/05-01/08-424, 15 June 2009, para. 75.

This report documents a plethora of criminal conduct perpetrated by separatists against civilians in Eastern Ukraine, including 18 murders, 57 cases of illegal detention, 36 episodes of ill treatment amounting to torture, inhuman and/or degrading treatment, multiple cases of illegal destruction and appropriation of civilian property and other forms of persecution on political and religious grounds. Due to access and resource limitations, our findings are likely to represent only a fraction of the actual criminal conduct. We submit that all of these crimes form part of a single attack by the separatist movement against civilians in Eastern Ukraine.

The term “civilian population” refers to civilians who are not members of regular armed forces, dissident armed forces or other organised armed groups.<sup>76</sup> “The civilian population must be the primary object of the attack in question and cannot merely be an incidental victim.”<sup>77</sup> Nevertheless, the attack need not target the entire civilian population,<sup>78</sup> as long as its victims constitute an identifiable group rather than randomly selected individuals.<sup>79</sup>

In the case of Eastern Ukraine, the primary object of the attack have been civilians living inside or in the vicinity of the conflict zone. Although not all civilians have been being targeted, the pattern of perpetration shows an identifiable targeted group whose members are actual or perceived opponents of the separatist movement.<sup>80</sup> This group includes civilians identified as right-wingers (*pravoseki*),<sup>81</sup> those accused of being part of the Euromaidan movement,<sup>82</sup> and more generally civilians perceived as being pro-Ukrainian or anti-separatist.<sup>83</sup> The group also includes religious leaders and vocal followers of faiths other than the Russian Orthodox Church of Moscow Patriarchate.<sup>84</sup> Individual victims testify to having been targeted on account of their actual or perceived membership of these

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<sup>76</sup> See Addition Protocol II, Article 1.

<sup>77</sup> ICC, Situation in the Central African Republic, Prosecutor v. Bemba, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo,” ICC-01/05-01/08-424, 15 June 2009, para. 77.

<sup>78</sup> ICC, Situation in the Central African Republic, Prosecutor v. Bemba, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo,” ICC-01/05-01/08-424, 15 June 2009, para. 76.

<sup>79</sup> ICC, Situation in the Central African Republic, Prosecutor v. Bemba, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo,” ICC-01/05-01/08-424, 15 June 2009, para. 77.

<sup>80</sup> See analogous situation in ICC, Situation in the Libyan Arab Jamahiriya, “Decision on the “Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL- SENUSSI”, ICC-01/11-12, 27 June 2011, para. 32.

<sup>81</sup> E.g.: Witness 0002-K-502 FILE 2, witness 0008-K-509 FILE 8, witness 0060-K-579 FILE 60: all accused of being *pravoseki* during their interrogations and torture.

<sup>82</sup> E.g.: Witness 0105-K-620 FILE 105

<sup>83</sup> E.g.: Witness 0010-K-516 FILE 10; witness 0052-K-566 FILE 52; witness 0033-K-542 FILE 33; witness 0028-K-536 FILE 28.

<sup>84</sup> See section 4.5.4 of this report.

groups.<sup>85</sup>

### 3.3.2 WIDESPREAD OR SYSTEMATIC

The attack on the civilian population must be widespread or<sup>86</sup> systematic.<sup>87</sup> The term “widespread” is a quantitative measure referring to the scale of the attack in terms of its geographic reach, the frequency of underlying crimes, the prevalence of perpetrators and the number of civilians targeted.<sup>88</sup> The term “systematic” refers to the organised nature of the underlying crimes and the improbability of their random occurrence.<sup>89</sup>

In the situation at hand, the attack clearly qualifies as widespread. Perpetration has taken place across the disputed region and surrounding areas covering an estimated area of 15400 square kilometers.<sup>90</sup> Underlying crimes have taken place across the conflict zone on a regular basis throughout the period of documentation.<sup>91</sup> Although it is difficult to quantify the overall number of civilian victims of crimes against humanity, according to the latest statistics at least 7962 people have been killed (of whom the majority are civilians), 2.5 million people have become displaced,<sup>92</sup> thousands have been arbitrarily arrested and ill-treated, and an even greater number subjected to other crimes and human rights

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<sup>85</sup> E.g.: Witnesses 0057-K-577, 0057-K-577-2 FILE 57: arbitrarily detained and subjected to inhuman treatment on account of daughter’s journalistic activities; Witness 0029-K-537 FILE 29: arbitrarily detained and subjected to inhuman treatment for being a “pro-Kyiv” journalist; Witness 0010-K-516 FILE 10: subjected to arbitrary detention, cruel and degrading treatment for carrying out a one-man protest with a Ukrainian flag; Witness 0052-K-566 FILE 52: subjected to arbitrary detention and inhuman treatment for expressing “subversive” opinion against pro-separatist propaganda; Witness 0033-K-542 FILE 33: subjected to arbitrary detention, inhuman treatment and mock executions for having a small Ukrainian flag in the boot of his car.

<sup>86</sup> “This contextual element applies disjunctively, such that the alleged acts must be either widespread or systematic,” ICC, Situation in the Republic of Kenya, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya,” ICC-01/09-19-Corr, 31 March 2010, para. 94.

<sup>87</sup> “Only the attack, and not the alleged individual acts are required to be ‘widespread’ or ‘systematic,’” ICC, Situation in the Republic of Kenya, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya,” ICC-01/09-19-Corr, 31 March 2010, para. 94.

<sup>88</sup> ICC, Situation in the Central African Republic, Prosecutor v. Bemba, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo,” ICC-01/05-01/08-424, 15 June 2009, para. 83.

<sup>89</sup> ICC, Situation in the Democratic Republic of the Congo, The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, “Decision on the confirmation of charges,” ICC-01/04-01/07-717, para. 394.

<sup>90</sup> Surface area of conflict zone calculated by using the Draft Logic ‘Google Maps Calculator Tool’, available at: <http://www.daftlogic.com/projects-google-maps-area-calculator-tool.htm> (last accessed: 29.06.2015); See also: New York Times, “Ukraine Crisis in Maps,” available at: <http://www.nytimes.com/interactive/2014/02/27/world/europe/ukraine-divisions-crimea.html> (last accessed: 29.06.2015).

<sup>91</sup> Period of documentation being from the beginning of the conflict in March 2014 until July 2015.

<sup>92</sup> OHCHR, “Report on the human rights situation in Ukraine 16 May to 15 August 2015”, 8 September 2015, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16394&LangID=E> (last accessed: 15.09.2015)

violations associated with the conflict.<sup>93</sup>

Further or alternatively, the attack was of a systematic nature. Evidence shows a regular pattern of perpetration and displays a common plan or objective of stifling any civilian opposition to the separatist movement.<sup>94</sup> Victims were identified and targeted on the basis of their actual or perceived opposition to the separatist movement, or on the basis of their religious beliefs.<sup>95</sup> Those who were hunted down were subjected to a recurring pattern of illegal detention and ill treatment in a network of makeshift prisons located in the basements of illegally occupied public and private property.<sup>96</sup> Some were killed on arrest or in custody.<sup>97</sup> Others narrowly escaped the nightmare but were forcibly displaced as a result of intimidation or fear of this systematic violence.<sup>98</sup> There is a reasonable basis to believe that these crimes have been ordered and overseen at the highest level of the separatist hierarchy.<sup>99</sup>

### **3.3.3 PURSUANT TO STATE OR ORGANISATIONAL POLICY TO COMMIT SUCH AN ATTACK**

The attack must be perpetrated pursuant to State or organisational policy to commit such an attack. The attack must display elements of planning and organisation, and cannot consist of nothing more than a series of spontaneous and isolated acts of violence.<sup>100</sup> A policy to commit the attack may be inferred from evidence of repeated perpetration of the same acts, the mobilisation of armed forces, and the methods employed to implement the attack.<sup>101</sup> It may also be inferred from evidence of deliberate failure by those in effective control to take action to prevent the underlying crimes.<sup>102</sup> When non-state groups commit

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<sup>93</sup> For the latest UN statistics on human rights violations in Eastern Ukraine see: OHCHR, "Report on the human rights situation in Ukraine 16 May to 15 August 2015", 8 September 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16394&LangID=E> (last accessed: 15.09.2015)

<sup>94</sup> See section 4.5.4 of this report.

<sup>95</sup> See section 4.5 of this report.

<sup>96</sup> See sections 4.2 and 4.4 of this report.

<sup>97</sup> See section 4.3 of this report.

<sup>98</sup> According to UN agencies there are over 1.3 million internally displaced persons as a result of this conflict: OCHA, "UKRAINE Situation update No. 4 as of 12 June 2015," 12 June 2015, available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/ocha\\_ukraine\\_situation\\_update\\_number\\_4\\_as\\_of\\_12\\_june\\_2015\\_1.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/ocha_ukraine_situation_update_number_4_as_of_12_june_2015_1.pdf) (last accessed: 27.06.2015).

<sup>99</sup> See section 5 of this report.

<sup>100</sup> ICC, Situation in the Democratic Republic of the Congo, The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, "Decision on the confirmation of charges," ICC-01/04-01/07-717, para. 396.

<sup>101</sup> ICC, Situation in The Democratic Republic of Congo, Prosecutor v. Katanga, "Judgment", ICC-01/04-01/07, 7 March 2014, para. 1109; ICC, Situation in the Republic of Kenya, "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya," ICC-01/09-19-Corr, 31 March 2010, para. 121.

<sup>102</sup> ICC Elements of Crimes, Introduction to Article 7 of the Statute, footnote 6; ICC, Situation in The Democratic Republic of Congo, Prosecutor v. Kantanga, "Judgment," ICC-01/04-01/-07, 7 March 2014, para. 1108.

the attack, what matters is not the formal nature of a group and the level of its organisation but its capability to perform acts which infringe on basic human values.<sup>103</sup>

The existence of a policy to commit an attack against civilians in actual or perceived opposition to the separatist movement can be reasonably inferred from the repeated pattern of perpetration in the cases set out in this report. Many of the crimes take place in the buildings occupied by separatist leaders.<sup>104</sup> Moreover, there appears to be very little if any separation between the political and military structures of the separatist movements.<sup>105</sup> The existence of this policy is further supported by the widespread anti-Ukrainian and pro-separatist propaganda disseminated by the separatists and Russian State television channels, which may in some cases amount to an incitement to hatred and the perpetration of international crimes.<sup>106</sup> It is equally supported by the repressive and discriminatory measures and decrees issued by the self-proclaimed governments of the breakaway regions.<sup>107</sup> There is therefore a reasonable basis to believe that the recurrent underlying crimes against civilians set out in this report are part of a policy to commit an attack against targeted groups of civilians in Eastern Ukraine.

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<sup>103</sup> ICC, Situation in the Republic of Kenya, "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya," ICC-01/09-19-Corr, 31 March 2010, paras. 90; 93: setting out the following guidelines for a qualifying non-state organisation: (i) whether the group is under a responsible command, or has an established hierarchy; (ii) whether the group possesses, in fact, the means to carry out a widespread or systematic attack against a civilian population; (iii) whether the group exercises control over part of the territory of a State; (iv) whether the group has criminal activities against the civilian population as a primary purpose; (v) whether the group articulates, explicitly or implicitly, an intention to attack a civilian population; (vi) whether the group is part of a larger group, which fulfils some or all of the abovementioned criteria.

<sup>104</sup> E.g.: detention and interrogation centers in Sloviansk, Donetsk and Lugansk town halls where the leadership headquarters were located – see section 4.2 of this report.

<sup>105</sup> See section 5 of this report.

<sup>106</sup> OHCHR, "Report on the human rights situation in Ukraine," 15 April 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14511>

(last accessed 29.06.2015); calling on all parties to counter "misinformation, propaganda and incitement to hatred"; Cambridge Globalist, "The Success of Russia's Propaganda: Ukraine's 'Banderovtsy,'" 29 January 2015, available at:

<http://cambridgeglobalist.org/2015/01/29/success-russias-propaganda-ukraines-banderovtsy/> (last accessed:

29.06.2015); BBC, "Propaganda 'alive and well' amid Ukraine crisis", 27 November 2014, available at:

<http://www.bbc.com/news/blogs-eu-30225268> (last accessed: 29.06.2015); See also "Stop Fake: Struggle against

fake information about events in Ukraine", available at: <http://www.stopfake.org/en/11796/> (last accessed:

29.06.2015).

<sup>107</sup> E.g.: From May 2014, DPR authorities introduced martial law with a strictly enforced night curfew: Kyiv Post, "Donetsk People's Republic imposes martial law, cuts off Ukrainian TV channels," 16 July 2014, available at: <http://www.kyivpost.com/content/ukraine/donetsk-peoples-republic-imposes-martial-law-cuts-off-ukrainian-tv-channels-356315.html> (last accessed: 29.06.2015); Article 21 of the DPR Constitution allows separatist forces to persecute any religion labelled as a 'sect' – available in English at: <http://garizo.blogspot.com/2014/05/donetsk-he-constitution-of-peoples.html> (last accessed: 29/06/2015); Separatist leader Alexandr Mozhogovoi decrees that all women found in bars or restaurants will be arrested: You Tube, "Novorossia" "court" and views of woman's role," available at: <https://www.youtube.com/watch?v=4ijS358QGts> (last accessed: 29.06.2015).



Source: thetruthspeaker.com

## 4. EVIDENCE OF UNDERLYING CRIMES

In this section we present our evidence and analyse it with reference to international humanitarian law and international crimes. Although collecting evidence on every offence committed in the region is beyond our current capacity, the evidence presented herein gives a representative account of a pattern of perpetration, and gives an idea of its seriousness and scale.<sup>108</sup> For the purposes of this report, identified offences have been grouped into the following sections:

- 4.1 Attacks on civilians and civilian objects;
- 4.2 Illegal imprisonment, torture, inhuman and degrading treatment;
- 4.3 Wilful killing/Murder;
- 4.4 Destruction and appropriation of property;
- 4.5 Persecution; and
- 4.6 Other crimes.

For reasons set out in section 3.2 above, we submit that the conflict in Eastern Ukraine has undoubtedly reached the level of an “armed conflict” for the purpose of international humanitarian law. We also submit this conflict may in part or as whole qualify as an IAC. In

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<sup>108</sup> See Articles 7(1) and 8(1) of the ICC Statute.

order to be considered as a war crime, it must be established that each underlying crime was perpetrated in the context of and associated with the armed conflict. According to the ICTY Appeals Chamber:

“The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict.”<sup>109</sup>

The non-exhaustive list of criteria for establishing the nexus between an underlying crime and an armed conflict includes: the fact that the perpetrator is a combatant; the fact that the victim is non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator’s official duties.<sup>110</sup>

For reasons set out in section 3.3 above, we submit that there is sufficient evidence for the existence of a widespread and systematic attack on the civilian population in Eastern Ukraine. As such, underlying crimes that are committed as part of this attack, as opposed to isolated acts, may qualify as crimes against humanity. The issue of whether an act was committed, as part of a widespread or systematic attack needs to be analyzed on a case-by-case basis with regard to each particular act.<sup>111</sup> A crime would be regarded as an isolated act when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack.<sup>112</sup>

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<sup>109</sup> ICTY, Prosecutor v. D. Kunarac, R. Kovac e Z. Vukovic, Appeal Judgment, IT-96-23-A, 12 June 2002, para 58 and 59.

<sup>110</sup> ICTY, Prosecutor v. D. Kunarac, R. Kovac e Z. Vukovic, Appeal Judgment, IT-96-23-A, 12 June 2002, para 58 and 59.

<sup>111</sup> ICC, Situation in the Republic of Kenya, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya,” ICC-01-09-01/11, 31 March 2010, para. 135.

<sup>112</sup> ICTY, Prosecutor v. D. Kunarac, R. Kovac e Z. Vukovic, Appeal Judgment, IT-96-23-A, 12 June 2002, para. 100.



Source: IPHR

## 4.1 ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS

### 4.1.1 OVERVIEW

Civilians have become the main casualties in the conflict in Eastern Ukraine.<sup>113</sup> Whether they are specifically targeted or indiscriminately bombed, attacking civilians constitutes a serious violation of international humanitarian law and may amount to war crimes. In this section we present evidence of three representative examples of attacks against civilians that in our opinion and on the basis of available evidence violate international humanitarian law and engage the international criminal liability of those responsible. We outline a further 20 attacks, which are likely to constitute unlawful attacks and require further investigation.

### 4.1.2 APPLICABLE LAW

The principle of distinction<sup>114</sup> and the prohibition on making the civilian population or

<sup>113</sup> ICRC, "Ukraine crisis: Intense fighting in Donetsk puts civilians in peril," 21 January 2015, available at: <https://www.icrc.org/en/document/ukraine-crisis-intense-fighting-donetsk-puts-civilians-peril> (last accessed: 16.04.2015).

<sup>114</sup> "The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians": ICRC, Customary IHL, "Rule 1 Rule 1. The Principle of Distinction between Civilians and Combatants," available at: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule1](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule1) (last accessed: 15/04/2015).

individual civilians the object of an attack are fundamental<sup>115</sup> in both IAC<sup>116</sup> and NIAC.<sup>117</sup> The presence of isolated non-civilian persons amongst the civilian population does not deprive it of its civilian character,<sup>118</sup> and in any case of doubt a person should be considered as civilian.<sup>119</sup> Civilians and civilian objects lose the protection of the law against a military attack only when and for such time that they take a direct part in hostilities.<sup>120</sup>

Violation of the principle of distinction by wilfully attacking civilians is a grave breach<sup>121</sup> and a war crime listed in the ICC Statute<sup>122</sup> and in customary international law.<sup>123</sup> A successful prosecution in such cases requires proof of actual civilian death or serious injury, and the perpetrator's intent (or recklessness) to target the civilian population.<sup>124</sup> The concept of 'military necessity' cannot be invoked as a defence in such cases.<sup>125</sup> Likewise, there is no requirement for intent to attack particular civilians.<sup>126</sup>

The principle of distinction may also be violated by indiscriminate attacks: "attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."<sup>127</sup> Wilfully or recklessly launching such an attack is a grave breach<sup>128</sup> and a war crime in IAC.<sup>129</sup> In NIAC, an indiscriminate attack may constitute a war crime when the perpetrator deliberately fails to distinguish between civilian and

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<sup>115</sup> See: ICJ, Legality of the threat or use of nuclear weapons: Advisory Opinion, 8 July 1996, para. 434: the principle of distinction was described as one of the "cardinal principles" of international humanitarian law and one of the "intransgressible principles of international customary law."

<sup>116</sup> Articles 48, 51(2) and 52(2) of Additional Protocol I.

<sup>117</sup> Article 13(2) of Additional Protocol II.

<sup>118</sup> Article 50(3) of Additional Protocol I; ICTY, *The Prosecutor v. Stanilav Galic*, Appeal Judgment, IT-98-29-A, 30 November 2006, para. 136; ICTY, *The Prosecutor v. Mrksic et al.*, Appeal Judgment, IT-95-13/1-A, 5 May 2009, para. 31.

<sup>119</sup> PA1, Article 50.1.

<sup>120</sup> Article 51(3) of Additional Protocol I and Article 13(3) of Additional Protocol II.

<sup>121</sup> Article 85(3)(a) of Additional Protocol I.

<sup>122</sup> Article 8(2)(b)(i) for IACs and Article 8(2)(e)(i) for NIACs.

<sup>123</sup> See ICTY, *The Prosecutor v. Kordić and Čerkez*, Appeal Judgment, IT-95-14/2-A, 17 December 2004, para. 97; ICTY, *The Prosecutor v. Blaškić*, Appeal Judgment, IT-95-14, 29 July 2004, para. 110.

<sup>124</sup> ICTY, *Prosecutor v. Stanislav Galic*, Judgment, IT-98-29-T, 5 December 2003, para. 55-56.

<sup>125</sup> ICTY, *The Prosecutor v. Stanislav Galic*, Judgment, IT-98-29-T, 5 December 2003, para. 43-44; confirmed by the Appeals Chamber: ICTY, *The Prosecutor v. Stanilav Galic*, Appeal Judgment, IT-98-29-A, 30 November 2006.

<sup>126</sup> ICTY, *Prosecutor v. Pavle Strugar*, Appeal Judgment, IT-01-42-A, 17 July 2008, para. 271.

<sup>127</sup> Additional Protocol 1, Article 51(5) (Protection of the civilian population). See also ICC Elements of Crimes footnote 36: "The expression 'concrete and direct overall military advantage' refers to a military advantage that is foreseeable by the perpetrator at the relevant time. Such advantage may or may not be temporally or geographically related to the object of the attack. The fact that this crime admits the possibility of lawful incidental injury and collateral damage does not in any way justify any violation of the law applicable in armed conflict."

<sup>128</sup> Article 85(3)(b) Additional Protocol I.

<sup>129</sup> Article 8.2(b)(iv) ICC Statute.

military objects.<sup>130</sup> The question of proportionality is decided on whether the accused used all available means to spare civilian lives and took all necessary measures to avoid inflicting harm, loss or damage to the civilian population.<sup>131</sup> An important precautionary measure that impacts the assessment of proportionality is the obligation on all parties to give effective advance warning of attacks that may affect the civilian population, unless circumstances do not permit.<sup>132</sup>

The indiscriminate nature of the attack relates to both means and methods of combat.<sup>133</sup> As such, a weapon, which is incapable of distinguishing between civilian and military targets, is inherently indiscriminate.<sup>134</sup> In the specific case of cluster bombs, the ICTY has held that their use in urban areas is indiscriminate and may qualify as “a direct attack against civilians.”<sup>135</sup> Similarly the method of area bombardment – “an attack that treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects” is inherently indiscriminate.<sup>136</sup>

International law gives special protection to buildings dedicated to religion, education, art, science, charitable purposes, historic monuments, hospitals and places where the sick and

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<sup>130</sup> ICTY, *The Prosecutor v. Stanilav Galic*, Appeal Judgement, IT-98-29-A, 30 November 2006, para. 132; See also - Ukraine, *Manual on the Application of IHL Rules*, Ministry of Defence, 11 September 2004, §§ 1.8.5 and 2.3.5.1; see also § 2.4.3: which requires special attention to be paid to the prevention of indiscriminate attacks during combat in urban environments; Russian Federation, *Regulations on the Application of International Humanitarian Law by the Armed Forces of the Russian Federation*, Ministry of Defence of the Russian Federation, Moscow, 8 August 2001, § 54; see also § 7 (prohibited methods of warfare).

<sup>131</sup> ICTY, *The Prosecutor v. Dario Kordic, Mario Cerkez*, Appeal Judgement, IT-95-14/2-A, 17 December 2004, para. 52.

<sup>132</sup> ICRC, *Customary IHL, “Rule 20: Advance Warning,”* available at: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter5\\_rule20#Fn\\_25\\_10](https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter5_rule20#Fn_25_10) (last accessed: 2/08/2015): Advance warning may not be required where the element of surprise is essential to the success of an operation or to the security of the attacking forces or that of friendly forces – see Hague Regulations, Article 26; Additional Protocol I, Article 57(2)(c).

<sup>133</sup> See ICRC, *Customary IHL, “Rule 12: Definition of Indiscriminate Attacks,”* available at: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule12](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule12) (last accessed: 25 March 2015); See also Article 51(4)(b) and (c) Additional Protocol 1 and Article 8(2)(b)(xx) ICC Statute.

<sup>134</sup> ICJ, *Legality of the threat or use of nuclear weapons: Advisory Opinion*, 8 July 1996, para. 78–79.

<sup>135</sup> ICTY, *The Prosecutor v Martić*, Appeal Judgment, IT-95-11-A, 8 October 2008, para 260; The indiscriminate character of cluster munitions is supported by the fact that 116 States have joined the Cluster Munitions Convention of which 91 are State Parties (not including Ukraine and Russia): <http://www.stopclustermunitions.org/en-gb/the-treaty/treaty-status.aspx> (last accessed: 25/04/2015).

<sup>136</sup> See Article 51(5)(a) of Additional Protocol I; For NIAC, see See ICRC, *Customary IHL, “Rule 13: Area Bombardment,”* available at: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule13](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule13) (last accessed: 25/04/2015): “[A]rea bombardments” have been considered to constitute a type of indiscriminate attack, and because indiscriminate attacks are prohibited in non-international armed conflict, it must follow that “area bombardments” are prohibited in non-international armed conflicts; See also: Ukraine, *Manual on the Application of IHL Rules*, Ministry of Defence, 11 September 2004, § 2.4.2.; Russian Federation, *Regulations on the Application of International Humanitarian Law by the Armed Forces of the Russian Federation*, Ministry of Defence of the Russian Federation, Moscow, 8 August 2001, § 21; see also § 54.

wounded are collected,<sup>137</sup> and makes it a separate war crime to intentionally direct attacks against such objects, provided they are not military objectives.<sup>138</sup>

In assessing whether the principle of distinction has been violated engaging individual criminal responsibility for one of the above offenses, a court must consider:

- The means and methods used during the attack;
- The status of the victims and their number;
- The nature of the crimes committed during the attack;



Джерело: Dmytro Smolyenko for ukrinform.ua

- The resistance to the assailants at the relevant time;
- The extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war; and
- The character of the weapons used.<sup>139</sup>

<sup>137</sup> See Article 12 and Article 53 Additional Protocol 1; Article 19 of Geneva Convention IV; Articles 11 and 16 of Additional Protocol 2; Article 19 of Geneva Convention I.

<sup>138</sup> Article 85(4)(d) Additional Protocol 1; Articles 8(2)(b)(ix) and 8(2)(e)(iv) ICC Statute.

<sup>139</sup> ICTY, *The Prosecutor v. Stanilav Galić*, Appeal Judgment, IT-98-29-A, 30 November 2006, para. 132.

### 4.1.3 REPRESENTATIVE EXAMPLES OF ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS

Evidence collected by our team and other independent monitors<sup>140</sup> suggests that a large number of attacks on civilians and civilian objects have taken place on the conflict-affected territory of Eastern Ukraine since March 2014. Distinguishing a lawful military action from an unlawful attack requires a thorough investigation, resources and access to all available evidence. To conduct such investigations for each documented incident is beyond the current capacity of this organisation. As a result, we have identified three attacks as the most representative cases in the region and have focused our investigation on these three cases. The table in section 4.1.4 identifies further incidents that may amount to unlawful attacks on civilians, but require further investigation.

The common threads that run through all of these episodes is the use of inherently indiscriminate means of warfare such as unguided rockets and cluster munitions, and/or reliance on inherently indiscriminate methods such as area bombardments and the targeting of areas with high concentrations of civilians. Such attacks demonstrate the attackers' deliberate failure to distinguish between civilians and combatants, and in some cases, suggest a wilful targeting of civilians. All of these attacks took place within the context of the armed conflict between the Ukrainian government and Russian controlled and/or assisted separatist forces.

#### 4.1.3.1 BUGAS CHECKPOINT - VOLNOVAKHA (DONETSK PROVINCE) – January 13, 2015

##### 4.1.3.1.1 Overview of the attack

On January 13, 2015, at approximately 14:25 EET a busy Ukrainian Government security checkpoint on the outskirts of the city of Volnovakha was attacked using Grad rocket launchers resulting in the deaths of 12 civilians and injuries to 16 civilians and two members of the Ukrainian armed forces. The majority of victims were located inside a regular-schedule civilian inter-city bus on its way through the checkpoint. The attack originated from separatist-controlled territory.

##### 4.1.3.1.2 Means and methods employed in the attack

According to witness testimony,<sup>141</sup> impact crater analysis,<sup>142</sup> analysis of recovered

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<sup>140</sup> Amnesty International, "Eastern Ukraine: Both sides responsible for indiscriminate attacks", 6 November 2014, available at <http://www.amnestyusa.org/news/news-item/eastern-ukraine-both-sides-responsible-for-indiscriminate-attacks> (last accessed: 8/07/2015).

<sup>141</sup> FILE 55 witnesses 0055-K-569, 0055-K-571, 0055-K-575 and others.

<sup>142</sup> FILE 55: photo names: voln.jpg; 11;12;16;18;19;20; Video names: 25;26;30;31;32. Video footage from the crime scene was taken during field mission to Volnovakha by IPHR documentators DU-00372, DU-00375; See also: IPHR Report on Volnovakha incident

[http://www.iphronline.org/uploads/9/0/2/7/9027585/volnovakha\\_mission\\_report\\_jan\\_2015.pdf](http://www.iphronline.org/uploads/9/0/2/7/9027585/volnovakha_mission_report_jan_2015.pdf)

fragments,<sup>143</sup> medical expert testimony,<sup>144</sup> and video evidence,<sup>145</sup> the attack was carried out using at least three Grad Combat Machine 21 rocket launchers (MRLS).<sup>146</sup> It is estimated that 60-90 unguided shells exploded within a 400-meter radius of the checkpoint, projecting a large quantity of shrapnel in the impact area. There is no evidence that a warning was issued in advance of this attack.

#### 4.1.3.1.3 Provenance of the attack

The Bugas checkpoint was located approximately 12 km from the conflict frontline and 18 km southwest of the separatist-controlled town of Dokuchaevsk. Impact craters and surrounding soil displacement patterns indicate that the attack was launched from the north-northeast direction.<sup>147</sup> An eyewitness located in the Dokuchaevsk area at the time of the attack testified to seeing and hearing missile launches from three APC-type Grad Combat Machine 21 vehicles, firing in the direction of Volnovakha from a location in or around Dokuchaevsk at approximately 14:25.<sup>148</sup> In the immediate aftermath of the attack, pro-separatist social media accounts announced that a successful separatist attack had been conducted on the Bugas checkpoint.<sup>149</sup> There is therefore a reasonable basis to believe that separatist forces launched this attack.

#### 4.1.3.1.4 Proportionality of the attack

The Bugas checkpoint, located approximately 2 km from Volnovakha City, sits on a major civilian thoroughway between Donetsk and Mariupol (highway H-210) and is manned by combatants of the Volunteer MIA Kyiv-2 Battalion (hereinafter K-2), the Border Guard of Ukraine and the Volnovakha Police Department.<sup>150</sup> Although an unscheduled closure of the checkpoint was planned for 14:00, at the time of the attack it was fully operational. At the time of the attack, there were approximately 33 combatants and 150-180 civilians at or in

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<sup>143</sup> FILE 55: physical evidence list signed by battalion officer from Kyiv-2 battalion, file name "evidence."

<sup>144</sup> FILE 55: witness 0055-K-570.

<sup>145</sup> FILE 55: video name 1\_02\_H\_150113140000; video N 7.

<sup>146</sup> Consistent with assessment by Human Rights Watch: Human Rights Watch, "Ukraine: Rising Civilian Death Toll," 3 February 2015, available at: <http://www.hrw.org/news/2015/02/03/ukraine-rising-civilian-death-toll> (last accessed: 17 April 2015).

<sup>147</sup> FILE 55: witnesses 0055-K-571, 0055-K-575; Confirmed by OSCE monitors: OSCE, "Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 18:00 (Kyiv time), 16 January 2015," 17 January 2015, available at: <http://www.osce.org/ukraine-smm/135211> (last accessed: 17.04.2015)

<sup>148</sup> FILE 55: witnesses 0055-K-575, 0055-K-574, 0055-K-571; On 21 January 2015, video footage presumably taken from a balcony in Dokuchaevsk in which the characteristic discharge of a Grad MRLS can be heard at around 14:25, appeared on the internet and downloaded to FILE N 55, video 9.

<sup>149</sup> Aric Toler, "Unpicking the Donetsk People's Republic's Tangled Volnovakha Bus Massacre Narrative," Bellingcat, 18 January 2015, available at:

<https://www.bellingcat.com/news/uk-and-europe/2015/01/18/unpicking-the-donetsk-peoples-republics-tangled-volnovakha-bus-massacre-narrative/> (last accessed: 17.04.2015); see also Human Rights Watch, "Ukraine: Rising Civilian Death Toll", 3 February 2015, available at:

<http://www.hrw.org/news/2015/02/03/ukraine-rising-civilian-death-toll> (last accessed: 17 April 2015).

<sup>150</sup> FILE 55: witness 0055-K-574.

the vicinity of the checkpoint.<sup>151</sup> Civilians were located on board 2 regular-schedule inter-city buses (Yutong and I-Van) and 1 passenger vehicle inside the checkpoint, and 3 regular-schedule buses and 20 passenger vehicles lined up 5-10 metres outside the checkpoint gate.<sup>152</sup> Schedules of the relevant busses were publicly available and accessible to all parties.<sup>153</sup> The time of the attack corresponds to a regular and well-known period of heavy civilian traffic.<sup>154</sup> Weather conditions at the time of the attack allowed for excellent visibility.<sup>155</sup> In light of the above, we submit that the circumstances, timing and weapon employed in this attack render the danger to civilians it posed disproportionate to the military objective of destroying the checkpoint.

#### 4.1.3.1.5 Conclusion

There is a reasonable basis to believe that the attack on the Bugas checkpoint on January 13, 2015, was perpetrated by separatist forces and qualifies as an unlawful attack on civilians. The means and methods employed in this attack show a lack of any attempt to distinguish between military objectives and the civilian population. Moreover, the blatant disregard for clear risk to civilians demonstrates a potential intent to cause civilian casualties and spread terror among the civilian population. As a result, the attack may be characterised as a direct and at the very least an indiscriminate attack against the civilian population, and constitutes a war crime.

### 4.1.3.2 MARIUPOL CITY (DONETSK PROVINCE) – January 24, 2015

#### 4.1.3.2.1 Overview of the attack

On January 24, 2015, at approximately 9:20 EET, the Vostochniy residential district of the Ukrainian Government-controlled city of Mariupol was attacked using multiple Grad MRLS, resulting in the deaths of 30 civilians and injuries to 108 civilians.<sup>156</sup> The attack also resulted in the total or partial destruction of civilian residences, cars and

led to at least 10 destructive fires.<sup>157</sup> Shelling also struck educational institutions, administrative buildings, shops and public areas, including one kindergarten, two schools and two markets.<sup>158</sup>

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<sup>151</sup> The number of civilians was estimated by IPHR documenters DU-00372 and DU-00375, based on the quantity of civilian vehicles in the area. The majority of combatants were away on a special operation – see Witness 0055-K-569.

<sup>152</sup> FILE 55: witness 0055-K-574; Report of field mission documenters DU-00372 and DU-00375.

<sup>153</sup> For schedule of busses see: <http://bus.com.ua/144300/time.html> (last accessed: 8/07/2015).

<sup>154</sup> See FILE 55: video name 1\_02\_H\_150113140000.

<sup>155</sup> FILE 55: witness 0055-K-574; video name 1\_02\_H\_150113140000.

<sup>156</sup> List of killed and wounded in Mariupol shelling available at: <http://www.mvs.gov.ua/mvs/control/donetsk/ru/publish/article/159508> (last accessed: 8/07/2015).

<sup>157</sup> Based on investigations conducted by an IPHR field mission on 26-30 January 2015; See also Report of the IPHR field mission to Mariupol after the shelling. Report of Ukrainian police: <http://www.mvs.gov.ua/mvs/control/donetsk/uk/publish/article/159511> (last accessed: 8/07/2015).

<sup>158</sup> Based on investigations conducted by an IPHR field mission (see mission report).



#### 4.1.3.2.2 Means and methods employed in the attack

According to witnesses,<sup>159</sup> analysis of 91 impact craters,<sup>160</sup> recovered missile fragments,<sup>161</sup> medical expert testimony and video evidence,<sup>162</sup> the attack was carried out using multiple unguided Grad MRLS. The OSCE Special Monitoring Mission reported the additional use of Uragan MRLS,<sup>163</sup> but our team did not discover any traces of weapons other than Grad. An estimated 100 rockets had been used in the attack within a timeframe ranging from 35 seconds to several minutes.<sup>164</sup> No trace of any other types of weapons was discovered. The total impact area of the attack is 817 meters on the east-west axis, and 1380 m on the

<sup>159</sup> FILE 68: witnesses 0068-K-580, 0068-K-581, 0068-K-582 and others.

<sup>160</sup> See map of the impact craters prepared by IPHR on the basis of the Field Mission: <http://bit.ly/1MsuD8i> (last accessed 8/07/2015).

<sup>161</sup> FILE 68: Physical evidences collected in the field: photos N p1-p10.

<sup>162</sup> Link to evidence table FILE N 68: Video 91-94; folder "FandV" photos and videos taken on 26-30.01.15 by IPHR documenters DU-00372 and DU-00376. The list of photo 1-90 collected by IPHR documenters from open sources: 0629.com.ua; i24.com.ua.

<sup>163</sup> See: OSCE, "Spot report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol", 24 January 2015, available at: <http://www.osce.org/ukraine-smm/136061> (last accessed: 20/04/2015); Human Rights Watch, "Ukraine: Rising Civilian Death Toll," 3 February 2015, available at: <http://www.hrw.org/news/2015/02/03/ukraine-rising-civilian-death-toll> (last accessed: 17 April 2015).

<sup>164</sup> OSCE monitors reported a 35 second attack, while civilian witnesses testify to an attack lasting several minutes: See OSCE, "Spot report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol," 24 January 2015, available at: <http://www.osce.org/ukraine-smm/136061> (last accessed: 20/04/2015); FILE 68: witnesses 0068-K-583, 0068-K-584, 0068-K-582 and others.

north-south axis.<sup>165</sup> Target accuracy of each rocket used in this attack (CEP) is known to be 1,27 percent at maximum range.<sup>166</sup>

#### 4.1.3.2.3 Provenance of the attack

Impact crater analysis indicates that the attack came from two launch-sites. The majority of rockets in this attack were launched from the east-north-east direction (azimuth 65-80 degrees).<sup>167</sup> These findings and the known range of Grad MRLS rockets lead us to conclude that the main attack launch-site was the Dzherzhynske-Kachkarske-Rosa Luxemburg villages inside separatist-controlled territory.<sup>168</sup> According to the OSCE, the Uragan rocket craters indicate that they came from the east and are most likely to have been launched in the separatist-held area of Zaichenko.<sup>169</sup> Of note, the de facto head of the Donetsk region separatist forces, Zakharchenko, had on the same day publicly announced the separatist attack on Mariupol.<sup>170</sup> In a video-recorded statement, one witness identifies the commanding officer of the 1<sup>st</sup> Slaviansk Rota (Ponomarenko aka Terrorist) and his artillery commander (Pepe) as responsible for the attack.<sup>171</sup>

#### 4.1.3.2.4 Proportionality of the attack

The Vostochniy district of the city of Mariupol is located in the East of the city at a distance of approximately 4.5km from the conflict frontline at the time of the attack. The district is home to a population of approximately 30,000 civilians and at the relevant time did not contain any military objectives. The closest potential military objective is a Ukrainian military checkpoint located on the crossroads between Taganrogskaia and Marshal Zhukov Streets, at a distance of 830 meters from the nearest identified impact crater and 1.9km from the

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<sup>165</sup> Report of the field mission by IPHR documenters DU-00372, DU-00376 and others. Team measured distance between the impact holes identified. Distance between the top north impact and the top south was 1380 m. East-West – 817 m

<sup>166</sup> EDEPRO, “MRLS GRAD and its modifications,” available at: [http://www.edepro.com/files/R122\\_G2000\\_Cargo.pdf](http://www.edepro.com/files/R122_G2000_Cargo.pdf) table on Page 6 (last accessed: 8/07/2015).

<sup>167</sup> Exceptions to this general pattern are: at the impact site no. 24 on the map, the shelling was determined to have originated from the south-east direction, azimuth 100-120°, and at the site no. 87 from east, azimuth 95-100°: FILE N 68: Video 91-94; folder “FandV” photos and videos taken on 26-30.01.15 by IPHR documenters DU-00372, DU-00376.; See also: Human Rights Watch, “Ukraine: Rising Civilian Death Toll”, 3 February 2015, available at: <http://www.hrw.org/news/2015/02/03/ukraine-rising-civilian-death-toll> (last accessed: 17 April 2015).

<sup>168</sup> FILE N 68, folder “FandV”, photo “map.” OSCE’s analysis points to Oktyabr area as the most likely launch-site for the Grad rocket attack: OSCE, “Spot report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol”, 24 January 2015, available at: <http://www.osce.org/ukraine-smm/136061> (last accessed: 20/04/2015);

<sup>169</sup> OSCE, “Spot report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol”, 24 January 2015, available at: <http://www.osce.org/ukraine-smm/136061> (last accessed: 20/04/2015).

<sup>170</sup> YouTube, “Захарченко заявил о начале наступления на Мариуполь 24 01 15”, 24 January 2015, available at: <https://www.youtube.com/watch?t=10&v=ZZemCBmB7-0> (last accessed: 8/07/2015).

<sup>171</sup> FILE 68, video “Evidence of forward observer Kirsanov”; FILE 68: “audio\_kirsanov\_terrorist” and “terrorist\_pepe”.

furthest.<sup>172</sup> The visibility at the relevant time was very high on account of the time of day and dry weather.<sup>173</sup> In light of the choice of weapon, method of execution and context of the attack, there is a reasonable basis to believe that the attack was disproportionate to any conceivable military objective.

#### 4.1.3.2.5 Conclusion

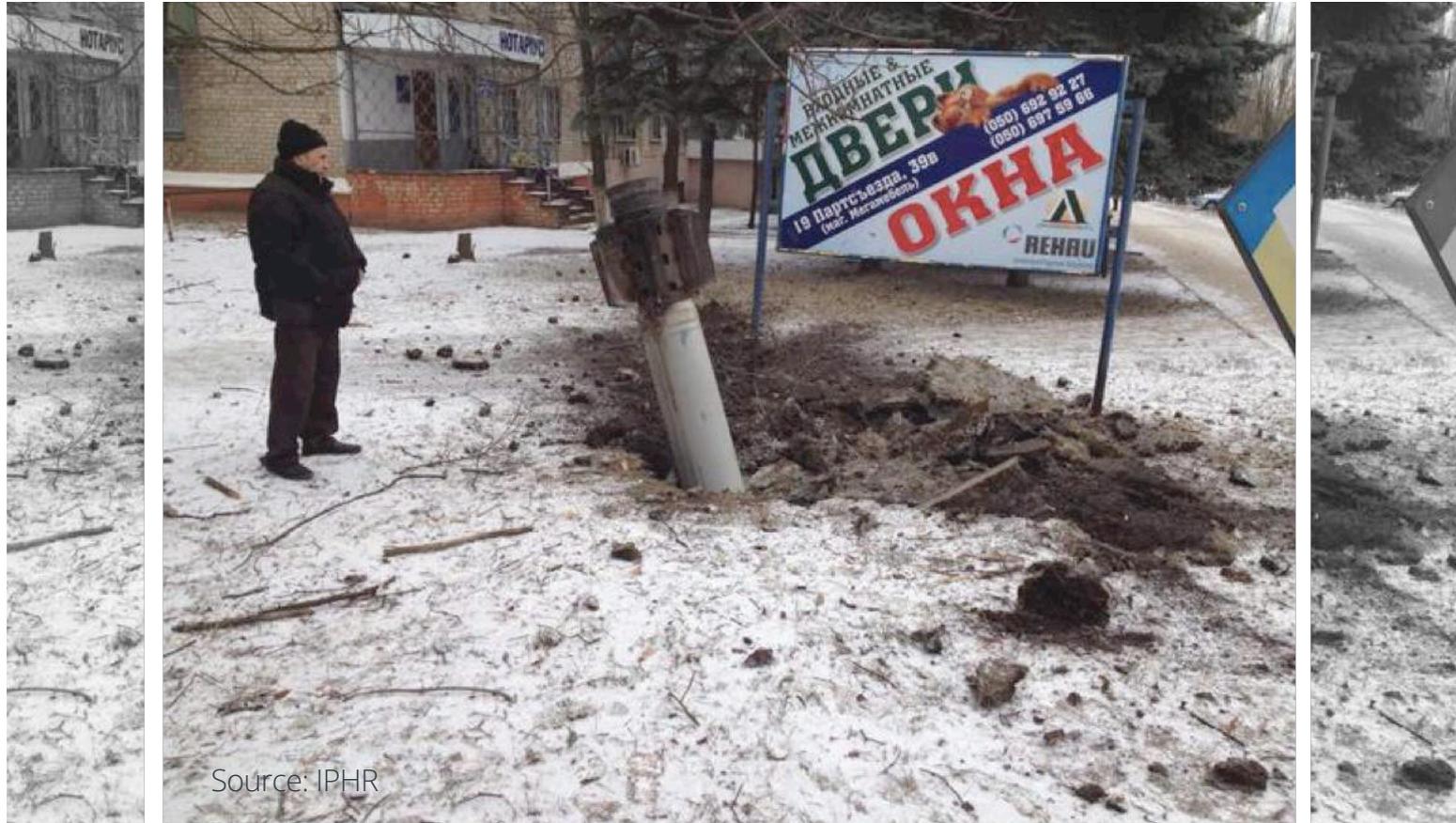
There is a reasonable basis to believe that the attack on the Vostochniy district of Mariupol on January 24, 2015, was perpetrated by separatist forces and qualifies as an unlawful attack on the civilian population and civilian objects. This attack was either deliberately directed at an entirely civilian area, or in light of the employed means and methods, shows a complete lack of any attempt to distinguish between military objective and the civilian population. Moreover, this blatant disregard for clear risk to civilians demonstrates a potential intent to cause civilian casualties and spread terror among the civilian population. As a result, the attack may be characterised as a direct attack or at the very least an indiscriminate attack against the civilian population, and constitutes a war crime.



Source: IPHR

<sup>172</sup> FILE 68: photo "Mariupol\_map\_shelling." The OSCE reports that the distance from the checkpoint to the impact zone was 400 meters, but this is inconsistent with our investigations: OSCE, "Spot report by the OSCE Special Monitoring Mission to Ukraine (SMM), 24 January 2015: Shelling Incident on Olimpiiska Street in Mariupol," 24 January 2015, available at: <http://www.osce.org/ukraine-smm/136061> (last accessed: 20/04/2015);

<sup>173</sup> FILE 68: witnesses 0068-K-580, 0068-K-581. FILE N 81: photos 1-24 collected on open sources: 0629.com.ua; i24.com.ua.



Source: IPHR

#### 4.1.3.3 KRAMATORSK CITY (DONETSK PROVINCE) – February 10, 2015

##### 4.1.3.3.1 Overview of the attack

On February 10, 2015 at approximately 12:30 EET, the airport and residential quarters of the Ukrainian government-controlled city of Kramatorsk were bombarded by Smerch rocket launchers armed with cluster munitions. As a result of this attack, 9 civilians were killed and 35 civilians were injured (including 5 children). In addition, 8 Ukrainian Army soldiers were killed and 29 injured. Damage was incurred to residential buildings, a hospital and a children's clinic.<sup>174</sup> The attack originated from separatist-controlled territory.

##### 4.1.3.3.2 Means and methods employed in the attack

According to the analysis of missile fragments, impact crater analysis,<sup>175</sup> witness statements<sup>176</sup> and examination of injuries, the attack was conducted using 300mm cluster-munitions rockets delivering 9N210 or 9N235 antipersonnel fragmentation submunitions (parts of larger munitions that separate from them on impact) fired from a BM-30 Smerch

<sup>174</sup> Based on observations made during an IPHR field mission to Kramatorsk on 10 February 2015 – see IPHR, "Mission Report: Rockets hit residential area in Kramatorsk, Ukraine," 22 May 2015, available at: <http://www.iphronline.org/ukraine-rockets-hit-residential-area-in-kramatorsk-report-20150522.html> (last accessed: 9/07/2015).

<sup>175</sup> Conducted during IPHR field mission by documenters DU-00372 and DU-00374 – see Mission Report.

<sup>176</sup> See FILE 81 – Witnesses 0081-K-596, 0081-K-597, 0081-K-598, 0081-K-599, 0081-K-600, 0081-K-601 and others.

or Tornado Multiple Rocket Launch System (MRLS).<sup>177</sup> According to information provided by the Ukrainian security services, the attack was launched using 4 Smerch systems emitting 32 rockets delivering submunitions.<sup>178</sup> There is no evidence that a warning was issued prior to this attack.

#### 4.1.3.3.3 Provenance of the attack

Witness statements and impact crater analysis suggest that the attack was launched from the southeast.<sup>179</sup> The conflict frontline at the time of the attack was located approximately 44 – 50 km to the east and southeast. Range of the missile system and direction of launch site suggest that the attack was launched from the separatist controlled area.<sup>180</sup>

#### 4.1.3.3.4 Proportionality of the attack

The primary military objective within the area of the attack was a Ukrainian anti-terrorist operation (ATO) base and missile launch site located in Kramatorsk airport (approximately 2.5km from the city). Another potential objective was a building used by border guard forces located on Lenin Street. IPHR has collected and mapped out evidence of impact craters, munitions fragments and civilian casualties connected with this incident.<sup>181</sup> Evidence reveals that the attack had a large impact area reaching as far as 6.5km from the airport base and covering densely populated urban areas. The decision to use the area bombardment method and cluster munitions for this attack were clearly disproportionate to the primary military objective of destroying the ATO base.

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<sup>177</sup> Confirmed by OSCE monitors: OSCE, "Spot report by the OSCE Special Monitoring Mission in Ukraine (SMM): Shelling in Kramatorsk, 10 February 2015," 10 February 2015, available at: <http://www.osce.org/ukraine-smm/139836> (last accessed: 16.04.2015); Confirmed by Human Rights Watch: HRW, "Ukraine: More Civilians Killed in Cluster Munition Attacks," 19 March 2015, available at: <http://www.hrw.org/print/news/2015/03/19/ukraine-more-civilians-killed-cluster-munition-attacks> (last accessed: 16.04.2015).

<sup>178</sup> Information was provided to the IPHR field mission by SBU Lt. 0000-V-642 to documenter DU-00372 : "Оск-касетн. 32 снаряди 1 залп 4 установки під кутом 70-80°. Горловка" – see FILE 81.

<sup>179</sup> Based on analysis by IPHR field mission and witnesses statements of 0081-K-596, 0081-K-597, 0081-K-600, 0081-K-601 – FILE 81; A similar conclusion was reached by the OSCE monitors: OSCE, "Spot report by the OSCE Special Monitoring Mission in Ukraine (SMM): Shelling in Kramatorsk, 10 February 2015," 10 February 2015, available at: <http://www.osce.org/ukraine-smm/139836> (last accessed: 16.04.2015).

<sup>180</sup> See HRW, Human Rights Watch: HRW, "Ukraine: More Civilians Killed in Cluster Munition Attacks," 19 March 2015, available at: <http://www.hrw.org/print/news/2015/03/19/ukraine-more-civilians-killed-cluster-munition-attacks> (last accessed: 16.04.2015).

<sup>181</sup> Impact analysis has been mapped out by IPHR and can be accessed here: [https://www.google.com/maps/d/viewer?mid=zOpD4yJ1C5PI.kgHo-MOMOH\\_S](https://www.google.com/maps/d/viewer?mid=zOpD4yJ1C5PI.kgHo-MOMOH_S) (last accessed 16.04.2015)

#### 4.1.3.3.5 Conclusion

There is a reasonable basis to believe that the attack on Kramatorsk City on February 10, 2015, was perpetrated by separatist forces and qualifies as an unlawful attack on civilians. The means and methods employed in this attack show a lack of any attempt to distinguish between military objectives and the civilian population. As a result, the attack may be characterised as a direct or at the very least an indiscriminate attack against the civilian population and constitutes a war crime.

#### 4.1.4 OTHER EVIDENCE OF ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS

Episodes set out in the preceding section are by no means the only examples of unlawful attacks on civilians and civilian objects. Our team has collected evidence from a number of other episodes of shelling, which may qualify as serious violations of international humanitarian law. In addition, there may be other episodes that our team was unable to document. All of these episodes require full investigation by independent, competent authorities. Below is a table enumerating 20 episodes, allegedly perpetrated by separatist or government forces, which, on the basis of available evidence, raise a reasonable suspicion of being unlawful attacks on civilians and civilian objects.



Source: IPHR

LOCATION	DATE	ALLEGED PERPETRATORS	CASE FILE NUMBER
Gorlovka – Donetsk Province	18.01.2015; 21.01.2015; 24.01.2015 – 28.01.2015	Ukrainian armed forces	76
Mariupol city – Donetsk province	24.01.2015	Separatists of DPR	68
Bugas checkpoint – Volnovakha city – Donetsk province	13.01.2015	Separatists of DPR	55
Kramatorsk city – Donetsk province	10.02.2015	Separatists of DPR	81, 9
Zhelobok village – Lugansk province	28.01.2014	-	79
Lysychansk city – Lugansk province	14.06.2014-25.07.2014	Separatists of LPR	102
Popasna city – Lugansk province	18.07.2014-19.07.2014 (till 12.12.14)	Donbass battalion (national guard of Ukraine) Separatists of LPR	45
Severodonetsk city – Lugansk province	03.06.2014; 10.06.2014; 01.07.2014	Separatists of LPR	48
Dzerzhynsk city – Lugansk province	21.07.2014; 23.01.2015; 26.02.2015	Separatists of LPR	27; 114; 117;
Artemovsk city – Donetsk province	13.02.2015	Ukrainian armed forces Separatists of DPR	99
Semenovka village – Donetsk province	04.2014-06.2014	Ukrainian armed forces	119
Debaltsevo city – Donetsk province	27-29.07.2014; 06.02.2015;	Ukrainian armed forces Separatists of DPR	116, 77, 79

Chernukhino village – Donetsk province	19.01.2015-24.01.2015; 25.07.2014-27.01.2015 January 2015	Separatists of DPR	115
Gol'movski village, Gorlovka city area, Donetsk province	26.07.2014-13.08.2014	Separatists of DPR	6
Belenkoe village, Kramatorsk city area, Donetsk province	4-5.07.2014	Ukrainian armed forces Separatists of DPR	72
Tselinnyy village, Slaviansk city area, Donetsk province	28.04.2014-12.06.2014	Separatists of DPR	11
Berestovoie city, Donetsk province	29.07.2014	Ukrainian armed forces Separatists of DPR	17
Slaviansk city, Donetsk province	15.05.2014-29.05.2014; 29.06.2014	Separatists of DPR Ukrainian armed forces	53, 54
Hriaschevatoe city, Lugansk province	18.08.2014	Ukrainian armed forces Separatists of LPR	30
Krasnyy Luch city, Lugansk province	08.08.2014	Separatists of LPR	37
Novoselovka village, Donetsk province	14.02.2015	Separatists of DPR	88, 92
Peremozhne village, Lugansk province	08.06.2014-19.08.2014	Separatists of LPR	89
Svietlodarsk city, Donetsk province	24-25.01.2015	Separatists of DPR	79
Avdeevka city – Donetsk province	08.11.2014-09.06.2015; 2014 – 08.02.2015	Separatists of DPR	118

#### 4.1.5 CONCLUSION

In light of the evidence presented in this chapter, there is a reasonable basis to believe that the following war crimes have been committed on the territory of Ukraine since March 2014:

- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- Intentionally directing attacks against civilian objects, that is, objects that are not military objectives;
- Intentionally launching attacks in the knowledge that such attacks will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment, which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; and
- Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings that are undefended and are not military objectives.



Source: Reuters

## 4.2 ILLEGAL IMPRISONMENT, TORTURE, INHUMAN AND DEGRADING TREATMENT

### 4.2.1 OVERVIEW

Abduction, imprisonment and ill-treatment of detainees have been a major feature of the conflict in Eastern Ukraine.<sup>182</sup> Accurate figures for the number of detained persons are unavailable due to a lack of reporting and a high detainee turnover.<sup>183</sup>

<sup>182</sup> According to the OHCHR, "several hundred people were thought to be detained at any given time between December 2014 and mid-February 2015." OHCHR, "Report on the human rights situation in Ukraine: 1 December 2014 to 15 February 2015," para 33, available at: <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf> (last accessed: 11.05.2015).

<sup>183</sup> "Estimates of the number of people held by armed groups vary continuously and reflect the constantly evolving pattern of detentions and releases." OHCHR, "Report on the human rights situation in Ukraine: 1 December 2014 to 15 February 2015," para 33, available at: <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf> (last accessed: 11.05.2015); "There are no comprehensive or reliable figures for the number of abducted persons in the east of Ukraine. This is due in part to the fact that the authorities in Kyiv have no direct access to areas controlled by the armed groups in the east, which makes it difficult to record and evaluate human rights abuses. It became clear during meetings which Amnesty International had with officials in Kyiv at the end of June, that there has been no attempt to try to create a single register of incidents of reported

Hundreds of civilians and captured combatants have been held without charge or judicial supervision in makeshift prisons across the separatist-controlled territory.<sup>184</sup> Similarly, hundreds of actual or perceived separatist have been held without charge by Ukrainian authorities and pro-Kyiv volunteer battalions.<sup>185</sup> Detainees are being held for ransom,<sup>186</sup> as bargaining chips,<sup>187</sup> de facto prisoners of war or “on suspicion of espionage.”<sup>188</sup> Many detainees have been subjected to inhuman and degrading treatment and torture.<sup>189</sup> In the context of an armed conflict, such treatment is a serious violation of international humanitarian law for which those responsible may be criminally liable. When perpetrated against civilians, these egregious acts may also constitute crimes against humanity. In this section we present evidence of 57 cases

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abductions. As a result the information is not very well coordinated between the different law enforcement agencies involved in dealing with the conflict in the east of Ukraine.” Amnesty International, “Abductions and Torture in Eastern Ukraine,” July 2014, page 12, available at: <https://www.amnesty.org/en/articles/news/2014/07/ukraine-mounting-evidence-abduction-and-torture/> (last accessed: 29.04.2015).

<sup>184</sup> OHCHR, “Report on the human rights situation in Ukraine 16 February to 15 May 2015,” June, 2015, paras. 30-34 available at: <http://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf> (last accessed: 3.06.2015); OHCHR, “Report on the human rights situation in Ukraine: 1 December 2014 to 15 February 2015,” paras 33-36, available at:

<http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf> (last accessed: 11.05.2015).

<sup>185</sup> OHCHR, “Report on the human rights situation in Ukraine 16 February to 15 May 2015,” June, 2015, paras. 30-34, available at:

<http://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf>

(last accessed: 3.06.2015); OHCHR, “Report on the human rights situation in Ukraine: 1 December 2014 to 15 February 2015,” paras 37-40, available at:

<http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf> (last accessed: 11.05.2015);

“Ukrainian security services and pro-Kiev volunteer battalions detained over 1,000 persons suspected of involvement in the insurgency, sometimes holding them for over 14 days and subjecting them to ill-treatment.” Human Rights Watch, “Country Summary: Ukraine,” World Report 2015, January 2015, available at: <http://www.hrw.org/world-report/2015/country-chapters/ukraine?page=2> (last accessed: 11.05.2015).

<sup>186</sup> Amnesty International, “Abductions and Torture in Eastern Ukraine,” July 2014, page 10, available at: <https://www.amnesty.org/en/articles/news/2014/07/ukraine-mounting-evidence-abduction-and-torture/> (last accessed: 29.04.2015).

<sup>187</sup> See The Guardian, “Vyacheslav Ponomarev: the ‘people’s mayor’ who runs Slavyansk,” 25 April 2014, available at: <http://www.theguardian.com/world/2014/apr/25/vyacheslav-ponomarev-slavyansk-mayor-ukraine> (last accessed: 11.05.2015).

<sup>188</sup> See Amnesty International, “Abductions and Torture in Eastern Ukraine,” July 2014, page 10, available at: <https://www.amnesty.org/en/articles/news/2014/07/ukraine-mounting-evidence-abduction-and-torture/> (last accessed: 29.04.2015)

<sup>189</sup> See OHCHR, “Report on the human rights situation in Ukraine 16 February to 15 May 2015,” June, 2015, available at:

<http://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf> (last accessed: 3.06.2015);

Amnesty International, “Abductions and Torture in Eastern Ukraine,” July 2014, available at: <https://www.amnesty.org/en/articles/news/2014/07/ukraine-mounting-evidence-abduction-and-torture/> (last accessed: 29.04.2015)

of illegal imprisonment, 36 cases of torture, and 32 cases of other forms of inhuman and degrading treatment, perpetrated in 19 locations across the conflict-affected territory of Eastern Ukraine. Due to resource and access limitations, the evidence collected by our team may only represent a fraction of all such cases in the region.<sup>190</sup>

## 4.2.2 APPLICABLE LAW

International humanitarian law and custom require civilians and other protected persons in all forms of armed conflict to be treated humanely.<sup>191</sup> Any treatment that is inconsistent with the principle of humanity,<sup>192</sup> and which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity, is characterised as inhuman treatment.<sup>193</sup> Inhuman treatment is a serious violation of international humanitarian law<sup>194</sup> and may amount to a war crime in both IAC and NIAC.<sup>195</sup> It may also constitute a crime against humanity.<sup>196</sup> The form, severity and duration of the violence, the intensity and duration of the physical or mental suffering, serve as a basis for assessing whether crimes were committed.<sup>197</sup>

### 4.2.2.1 ILLEGAL IMPRISONMENT

International law does not prohibit detention per se. Its legality depends on the legitimacy of its grounds and the detainer's compliance with minimum procedural safeguards. In the context of an IAC, all enemy combatants may be detained as prisoners of war for the duration of active hostilities.<sup>198</sup>

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<sup>190</sup> "There are no comprehensive or reliable figures for the number of abducted persons in the east of Ukraine." Amnesty International, "Abductions and Torture in Eastern Ukraine," July 2014, page 12, available at:

<https://www.amnesty.org/en/articles/news/2014/07/ukraine-mounting-evidence-abduction-and-torture/> (last accessed: 29.04.2015):

<sup>191</sup> Common Article 3 of the Geneva Conventions; Additional Protocol I, Article 75(1); Additional Protocol II, Article 4(1).

<sup>192</sup> "To prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all peoples." Jean Pictet, "Red Cross Principles," 1 January 1979, available at:

<https://www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm#a2> (last accessed: 26.04.2015).

<sup>193</sup> ICTY, *The Prosecutor v. Delalic et al.*, Judgment, IT-96-21-T, 16 November 1998, para. 543.

<sup>194</sup> Common Article 3 of the Geneva Conventions.

<sup>195</sup> Article 8(2)(a)(ii) and Article 8(2)(c)(i) of the ICC Statute.

<sup>196</sup> Article 7(1)(k) of the ICC Statute.

<sup>197</sup> ICTY, *The Prosecutor v. Zlatko Aleksovski*, Trial Judgment, IT-95-14/1-T, 25 June 1999, para. 57.

<sup>198</sup> Geneva Convention III, Articles 21 and 118.



Source: Zhenya Savilov, AFP/East News

They must be afforded security from active combat,<sup>199</sup> guaranteed standards of hygiene and healthfulness,<sup>200</sup> and must at all times be protected against reprisals and acts of violence or intimidation and against insults and public curiosity.<sup>201</sup>

Any prisoner accused of committing a crime other than that of taking part in hostilities, must be afforded the full guarantees of a fair trial.<sup>202</sup> Civilians may only be detained if and only for as long as there are serious and legitimate reasons to think that the detained persons may seriously prejudice the security of the detaining or occupying power.<sup>203</sup> They must be provided with an opportunity to challenge the detention,<sup>204</sup> and be promptly informed, in a language they understand, of the reasons for the detention.<sup>205</sup>

In the context of NIAC, detention of combatants and civilians must be grounded in

<sup>199</sup> Article 23, Geneva Convention III.

<sup>200</sup> Article 22 and Articles 25-32 of Geneva Convention III.

<sup>201</sup> Article 13 of Geneva Convention III.

<sup>202</sup> Article 105 of Geneva Convention III.

<sup>203</sup> Article 42 of Geneva Convention IV; Article 78 of Geneva Convention IV; See also: ICTY, The Prosecutor v *Delalić et al.*, Judgment, IT-96-21-T, 16 November 1998, para. 576.

<sup>204</sup> Article 43 of Geneva Convention IV; Article 9(4) ICCPR; Article 5(4) ECHR.

<sup>205</sup> Additional Protocol I, Article 75(3); Article 9(2) ICCPR; Article 5(2) ECHR.

applicable domestic law,<sup>206</sup> and comply with the minimum safeguards set out in international human rights law.<sup>207</sup> Under Ukrainian law, the power to detain may only be exercised in accordance with the principles set out in Article 12 of Criminal Procedure Code. Additionally, anyone has the right to detain, without a decision of a judge, any person (other than judges and members of parliament) for committing or attempting to commit a criminal offense – provided that all persons who are not legally authorised to exercise detention immediately deliver the detainee to an authorized officer or immediately inform an authorized officer of his or her whereabouts.<sup>208</sup>

In all cases, for the detention to remain lawful, the legal basis for the initial deprivation of liberty must apply throughout the period of detention.<sup>209</sup> Violation of these principles renders the detention arbitrary or illegal. Illegal imprisonment may amount to cruel or inhuman treatment<sup>210</sup> – a war crime in both IAC and NIAC.<sup>211</sup> In addition, denying fair trial rights to prisoners and the unlawful confinement of civilians constitute stand-alone war crimes in the context of an IAC.<sup>212</sup> Unlawful imprisonment of civilians may also constitute a crime against humanity, where the gravity of the conduct is such that it is in violation of fundamental rules of international law and it takes place as part of a widespread and systematic attack on the civilian population.<sup>213</sup>

#### 4.2.2.2 TORTURE

Torture is the most extreme form of inhuman treatment<sup>214</sup> and its prohibition is considered to be *jus cogens*, that is, an overriding principle of international law from

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<sup>206</sup> E.g.: as a result of a lawful conviction, for the purposes of bringing a person to trial, to prevent the spread of disease or to effect an extradition Article 9(1) ICCPR; Article 5(1) ECHR.

<sup>207</sup> See Article 9 ICCPR; Article 5 ECHR: Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him; anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release; anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

<sup>208</sup> Article 207 of the Code of Criminal Procedure.

<sup>209</sup> ICTY, *Prosecutor v. Milorad Krnojelac*, Judgement, IT-97-25-T, 15 March 2002, para. 114.

<sup>210</sup> ICRC, “Rule 99. Deprivation of Liberty,” Customary IHL, available at: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_ru\\_rule99](https://www.icrc.org/customary-ihl/eng/docs/v1_ru_rule99) (last accessed: 26.04.2015).

<sup>211</sup> Article 8(2)(a)(ii) and Article 8(2)(c)(i) of the ICC Statute.

<sup>212</sup> Article 8(2)(a)(vii) and Article 8(2)(a)(vi) of the ICC Statute.

<sup>213</sup> Article 7(1)(e) of the ICC Statute.

<sup>214</sup> ICTY, *The Prosecutor v. Delalic et al.*, Judgment, IT-96-21-T, 16 November 1998, para. 544.

which no derogation is permitted, and confers universal jurisdiction.<sup>215</sup> To qualify as a war crime in both IAC and NIAC, an act of torture must inflict severe physical or mental pain or suffering upon one or more persons for such purposes as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.<sup>216</sup> It does not require the involvement of a public official.<sup>217</sup> As a crime against humanity, torture does not require proof of a specific “purpose,” but the fact that the victim was in the custody or control of the perpetrator, and that the pain and suffering was not inherent in or incidental to, lawful sanctions, must be set out.<sup>218</sup> The pain and suffering threshold for the crime of torture has not been clearly defined; however, diverse acts such as interrogations under threat to life,<sup>219</sup> rape and sexual assault,<sup>220</sup> beating, electric shocks, mock executions,<sup>221</sup> and psychological abuse<sup>222</sup> have all qualified as torture.

#### 4.2.2.3 OTHER FORMS OF INHUMAN TREATMENT

Other forms of inhuman treatment, which do not amount to torture, may still qualify as war crimes or crimes against humanity. Examples of inhuman treatment of persons in custody include severe beatings<sup>223</sup> and threats of physical violence,<sup>224</sup> denial of appropriate medical care,<sup>225</sup> and the use of detainees for certain types of labour.<sup>226</sup> The war crime of “wilfully causing great suffering or serious injury to body

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<sup>215</sup> *Bartle and the Commissioner of Police for the Metropolis and Others, Ex Parte Pinochet; R v. Evans and Another and the Commissioner of Police for the Metropolis and Others, Ex Parte Pinochet* [1999] UKHL 17 (24th March, 1999), per Lord Millet.

<sup>216</sup> ICC Elements of Crimes, Article 8(2)(a)(ii); Article 8(2)(c)(i); This list of purposes is meant to be representative and non-exhaustive: ICTY, *The Prosecutor v. Delalic et al.*, Judgment, IT-96-21-T, 16 November 1998, para. 470. Furthermore, the qualifying purpose need not be the only or main purpose for the torture. ICTY, *The Prosecutor v. Delalic et al.*, Judgment, IT-96-21-T, 16 November 1998, para. 470.

<sup>217</sup> ICTY, *The Prosecutor v. Kunarac et al.*, Judgment, IT-96-23-T & IT-96-23/1-T, 22 February 2001, paras. 488-495.

<sup>218</sup> ICC Elements of Crimes, Article 7(1)(f).

<sup>219</sup> ICTR, *The Prosecutor v Akayesu*, Judgement, ICTR-96-4-T, 2 September 1998, para. 682.

<sup>220</sup> ICTR, *The Prosecutor v Akayesu*, Judgement, ICTR-96-4-T, 2 September 1998, para. 682 and 597, respectively.

<sup>221</sup> Human Rights Committee, *Muteba v. Zaire*, Communication n°124/1982, Report of the Human Rights Committee, UN Doc. A/39/40, pp. 182 ff; *Gilboa v. Uruguay*, Communication n°147/1983, Report of the Human Rights Committee, UN Doc. A/41/40, pp. 128 ff.

<sup>222</sup> *Estrella v. Uruguay*, Communication n°74/1980, Report of the Human Rights Committee, UN Doc. A/38/40, pp. 150 ff.

<sup>223</sup> ECtHR, *Ireland v United Kingdom*, Judgment 5310/71, 18 January 1978; ECtHR, *Tomasi v France*, Judgment, 12859/87, 21 August 1992.

<sup>224</sup> ECtHR, *Gäfgen v Germany*, Judgment, 22978/05, 1 June 2010.

<sup>225</sup> ECtHR, *Mouisel v France*, Judgment, 67263/01, 21 May 2003; ECtHR, *Gorodnichev v Russia*, Judgment, 32275/03, 31 November 2007.

<sup>226</sup> ICTY, *The Prosecutor v. Blaskic.*, Judgment, IT-95-14-T, 3 March 2000, para. 713.

and health<sup>227</sup> encompasses acts that do not meet the purposive requirements for the offence of torture.<sup>228</sup> It includes moral as well as physical suffering,<sup>229</sup> and does not require the harm to be permanent or irremediable.<sup>230</sup> The war crime of “committing outrages upon personal dignity, in particular humiliating and degrading treatment”<sup>231</sup> is a form of inhuman treatment where the resultant harm relates to an individual’s human dignity.<sup>232</sup> This offence can also be committed against dead persons and the victim need not be personally aware of the humiliation.<sup>233</sup> Outside the context of an armed conflict, the infliction of great suffering, or serious injury to body or to mental or physical health, may qualify as a crime against humanity as “other inhumane acts.”<sup>234</sup>

### **4.2.3 EVIDENCE OF ILLEGAL IMPRISONMENT, TORTURE, INHUMAN AND DEGRADING TREATMENT OF CIVILIANS PERPETRATED BY SEPARATISTS**

There is little evidence to suggest that the self-proclaimed separatist republics of DPR and LPR have functioning, independent and impartial justice systems. Makeshift and unequipped prisons, usually located in the basements of former administrative or State security buildings, have been used to interrogate and/or punish civilians accused of petty crimes, serious offences and political opposition, alongside captured Ukrainian combatants and punished rebel fighters.<sup>235</sup> All arrests, confinement and interrogations take place in the absence of judicial supervision or set procedure. Those accused of petty crimes, substance abuse and curfew violations tend to receive a summary punishment of several days’ or weeks’ detention.<sup>236</sup>

Those held on suspicion of “subversive” activities are held for longer periods and subjected to intense interrogations. Evidence presented in this section focuses on the latter group.

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<sup>227</sup> Article 8(2)(iii) of the ICC Statute – N.B: this specific war crime can only be charged in IAC. In NIAC, such crimes can be charged as ‘cruel treatment’ under Article 8(2)(c)(i).

<sup>228</sup> ICTY, *The Prosecutor v. Delalic et al.*, Judgment, IT-96-21-T, 16 November 1998, para. 442; 511.

<sup>229</sup> ICTY, *The Prosecutor v. Delalic et al.*, Judgment, IT-96-21-T, 16 November 1998, para. 509.

<sup>230</sup> ICTR, *The Prosecutor v Akayesu*, Judgement, ICTR-96-4-T, 2 September 1998, para. 502.

<sup>231</sup> Article 8(2)(b)(xxi) and Article 8(2)(c)(ii) of the ICC Statute.

<sup>232</sup> ICTY, *The Prosecutor v. Kordic & Cerkez*, Trial Judgement, IT-95-14/2-T, 26 February 2001, para. 245.

<sup>233</sup> ICC Elements of Crimes, footnote 40.

<sup>234</sup> Article 7(1)(k) of the ICC Statute.

<sup>235</sup> OHCHR, “Report on the human rights situation in Ukraine: 1 December 2014 to 15 February 2015,” para 34, available at: <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf> (last accessed: 11.05.2015); Human Rights Watch reports that separatists “have captured hundreds of civilians, targeting presumed critics, including journalists, pro-Ukrainian political activists, religious activists, and in some cases their family members.” Human Rights Watch, “Ukraine: Rebel Forces Detain, Torture Civilians,” 28 August 2014, available at: <http://www.hrw.org/news/2014/08/28/ukraine-rebel-forces-detain-torture-civilians> (last accessed: 11.05.2015).

<sup>236</sup> E.g.: see FILE 35 witness 0035-K-544.

Arrests of civilians suspected of subversive activities have usually been akin to abduction. Armed men in camouflage, displaying no insignia apart from black and orange stripes of the separatist movement, accost and immobilise their victims in their homes, on the street or at separatist checkpoints.<sup>237</sup> They forcibly bind the victims' hands and put masking tape or a bag over the head.<sup>238</sup> Personal effects such as phones, cameras, computers, cars and money are confiscated and rarely returned at the end of the detention.<sup>239</sup> The victims are then taken into a building controlled by the separatists for initial questioning and processing.<sup>240</sup> In most cases, the first place of detention has not been the final destination, and the victims have been transferred to other locations (in some cases multiple).<sup>241</sup> Although there are exceptions, in the vast majority of cases, victims have been beaten up on arrest, during the initial interrogation and during the transfer.<sup>242</sup> Beatings range from a few hits to severe battery on the head, face and body with hand, feet, rubber batons, chains and rifle butts.<sup>243</sup>

Victims have been kept in detention without charge, trial or any other form of legal process, in abominable conditions. Witnesses report that cells were too small,<sup>244</sup> unequipped for detention and lacking close to all basic amenities required by the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>245</sup> There were no sinks or lavatories in the cells, although some cells had communal buckets intended for such purposes.<sup>246</sup> Food was inadequate, consisting mostly of plain porridge, noodles or bread.<sup>247</sup> Some victims were deprived of food for several days,<sup>248</sup> while others were

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<sup>237</sup> E.g.: FILE 10 witness 0010-K-516 was arrested on the street; FILE 8 witness 0008-K-509 was arrested in his workplace; FILE 25 witness 0025-K-533 was arrested in his home; FILE 35 witness 0035-K-544 was lured into his arrest on the pretext of a fake business meeting; FILE 33 witness 0033-K-542 was arrested at a checkpoint.

<sup>238</sup> E.g.: FILE 2 witness 0002-K-502, FILE 95 witness 0095-K-616, FILE 105 witness 0105-K-620.

<sup>239</sup> E.g.: FILE 57 witnesses 0057-K-577, 0057-K-577-2; FILE 33 witness 0033-K-542; FILE 107 witness 0107-K-622. For further details see section 4.4 of this report.

<sup>240</sup> E.g.: FILE 95 witness 0095-K-616.

<sup>241</sup> E.g.: FILE 95 witness 0095-K-616 was taken to IZOLIATSIA, then the SBU basement, then back to IZOLIATSIA; FILE 107 witness 0107-K-622 was taken 3 different destinations in Lugansk province.

<sup>242</sup> E.g.: FILE 3 witness 0003-K-503; FILE 25 witness 0025-K-533; FILE 35 witness 0035-K-544.

<sup>243</sup> E.g.: FILE 107 witness 0107-K-622, FILE 97 witness 0097-K-617, FILE 105 witness 0105-K-620, FILE 56 witness 0056-K-57 and many others.

<sup>244</sup> E.g.: FILE 41 witness 0041-K-551 was placed in a 4x4m cell with 39 other people; FILE 29 witness 0029-K-537 was held in a 1.3x7m cell with 19 other people.

<sup>245</sup> UN Economic and Social Council, "Standard Minimum Rules for the Treatment of Prisoners," resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, available at: [http://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](http://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf) (last accessed: 8.05.2015).

<sup>246</sup> See statements from all witnesses on detention.

<sup>247</sup> All witnesses complain of inadequate food.

<sup>248</sup> E.g.: FILE 35 witness 0035-K-544, FILE 84 witness 0084-K-603 and FILE 107 witness 0107-K-622.

given food incompatible with their medical conditions.<sup>249</sup> In some cases, victims were denied access to water.<sup>250</sup> Most facilities were located in damp, cold basements.<sup>251</sup> There were rarely any beds, mattresses or blankets.<sup>252</sup> Cells were often overcrowded.<sup>253</sup> In at least two cases, victims were detained tied to chairs.<sup>254</sup> Vital medicines and medical care were often denied to victims over a prolonged period, whilst other victims with health problem were forced to take too much medicine<sup>255</sup> - leading to serious long-term medical conditions and the risk of premature death.<sup>256</sup> In some cases artificial limbs are taken away.<sup>257</sup>

Most detainees were forced to work. Forced labour typically consisted of packing and carrying boxes of supplies and armaments, cleaning and digging trenches and graves.<sup>258</sup> Women were forced to cook and clean.<sup>259</sup> Victims were harassed and intimidated throughout the detention period.<sup>260</sup> In many cases, they were subjected to gratuitous violence and cruelty.<sup>261</sup> Many victims testified to being subjected to simulated executions and at least one testified to being forced to “play” Russian roulette.<sup>262</sup> Many victims also testified to prolonged sleep deprivation and other

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<sup>249</sup> See FILE 82 witness 0082-K-602.

<sup>250</sup> E.g.: FILE 28 witness 0028-K-536, FILE 29 witness 0029-K-537 and FILE 82 witness 0082-K-602; FILE 10 witness 0010-K-516 claims to have been given urine instead of water.

<sup>251</sup> E.g.: FILE 52 witness 0052-K-566, FILE 35 witness 0035-K-544, FILE 82 witness 0082-K-602, FILE 97 witness 0097-K-617.

<sup>252</sup> E.g.: FILE 41 witness 0041-K-551.

<sup>253</sup> E.g.: FILE 33 witness 0033-K-542, FILE 41 witnesses 0041-K-550 and 0041-K-551.

<sup>254</sup> E.g.: FILE 25 witness 0025-K-533 and FILE 107 witness 0107-K-622

<sup>255</sup> E.g.: FILE 41 witness 0041-K-551 was given 10 pills for heart disease (Validol) while having heart problems.

<sup>256</sup> E.g.: FILE 82 witness 0082-K-602 was denied insulin and given bread in full knowledge of his diabetes, resulting in ulcers, pancreatitis and cancerous growth; FILE 8 witness 0008-K-509 spent at least one month convalescing in hospital after torture; Another witness (anonymous) contracted Hepatitis C.

<sup>257</sup> E.g.: FILE 41 witness's 0041-K-550 limb was taken and given back only in a few days.

<sup>258</sup> E.g.: FILE 2 witness 0002-K-502 was forced to work in the kitchen; FILE 8 witness 0008-K-509 and FILE 8 witness 0008-K-508 were forced to clean the premises; FILE 35 witness 0035-K-544 describes being forced to dig trenches seven days a week, occasionally under direct fire by Ukrainian forces; FILE 95 witness 0095-K-616 describes being beaten and threatened with execution for refusing to work; FILE 94 witness 0094-K-615 had to dig a grave for himself.

<sup>259</sup> E.g.: FILE 57 witness 0057-K-577, FILE 41 witness 0041-K-551.

<sup>260</sup> E.g.: FILE 33 witness 0033-K-542.

<sup>261</sup> E.g.: FILE 97 witness 0097-K-617 describes being hit with the blunt side of an axe to imitate maiming; FILE 3 witness 0003-K-503 describes being threatened with rape; FILE 10 witness 0010-K-516 describes knives being thrown at him; Witness 0010-K-516 witnessed bottles of urine being given instead of water; FILE 41 witness 0041-K-551 was forced to drink three liters of water.

<sup>262</sup> E.g.: FILE 82 witness 0082-K-602 was lined up against the wall and had a gun shot next to his head on a daily basis for a week; FILE 97 witness 0097-K-617 was told to pray and prepare for execution, taken to the edge of a dug-out grave and had shots fired at his feet; FILE 75 witness 0075-K-586 was threatened with a violent death; FILE 41 witnesses 0041-K-550 and 0041-K-551 were forced to watch simulated

forms of psychological pressure.<sup>263</sup> Interrogations vary in style and violence, ranging from propaganda to torture. In addition to what has already been described and the cumulative effect of such treatment, acts that could amount to torture included the use of electric shock,<sup>264</sup> use of hammers and other implements on fingers toes and kneecaps,<sup>265</sup> rape,<sup>266</sup> denial of vital medicines,<sup>267</sup> forcible drug taking<sup>268</sup> and other forms of sadistic treatment.<sup>269</sup> The purpose of most interrogations and torture was to obtain information about enemy activity,<sup>270</sup> to induce a confession,<sup>271</sup> as well as punishment for being perceived pro-Ukrainian or as right-wingers (pravosek).<sup>272</sup> In the case of persons tortured on religious grounds, the purpose of torture and ill treatment appears, at least in part, to have been punishment for heresy and inducement to change faith.<sup>273</sup>

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executions of each other; FILE 44 witness 0044-K-555 was forced to play Russian roulette several times and “got lucky.”

<sup>263</sup> E.g.: FILE 25 witness 0025-K-533 was violently awoken by a guard every 10 minutes; FILE 33 witness 0033-K-542-2 claims he was beaten every time he fell asleep; FILE 107 witness 0107-K-622 describes severe psychological pressure; FILE 49 witness 0049-K-564 was told that he would be released then taken to an imitated execution; FILE 56 witness 0056-K-576 was promised to be severely tortured and sat on the floor covered with oil cloth to avoid blood spilling.

<sup>264</sup> E.g.: FILE 105 witness 0105-K-620, FILE 46 witness 0046-K-561.

<sup>265</sup> E.g.: FILE 25 witness 0025-K-533 describes having his fingers twisted using metal implements; FILE 33 witness 0033-K-542-2 describes having his fingers cut to the bone and stomach poked with an awl; FILE 60 witness 0060-K-579 describes having his fingers smashed with a hammer; FILE 47 witness 0047-K-562 describes having his nose taken by nippers.

<sup>266</sup> E.g.: One witness describes the rape of a female inmate (FILE 18); FILE 3 witness 0003-K-503 was threatened with rape and made to undress and put a bag over her head; FILE 41 witness 0041-K-551.

<sup>267</sup> E.g.: FILE 82 Diabetic witness 0082-K-602 was denied access to insulin; FILE 33 witness 0033-K-542 was denied vital medical treatment for 5 hours.

<sup>268</sup> E.g.: FILE 41 witness 0041-K-551.

<sup>269</sup> E.g.: FILE 97 witness 0097-K-617 had his arms broken and was made to lift heavy objects; FILE 2 witness 0002-K-502 was beaten, strangled and threatened to have his tattoos cut out; FILE 105 witness 0105-K-620 witnessed torture by application of a mask filled with ammonia; FILE 47 witness 0047-K-562 had water with lime poured on his back to imitate an acid attack; FILE 94 witness 0094-K-615 was forced to dig his own grave.

<sup>270</sup> E.g.: FILE 33 witness 0033-K-542-2, FILE 25 witness 0025-K-533.

<sup>271</sup> E.g.: FILE 97 witness 0097-K-617, FILE 107 witness 0107-K-622.

<sup>272</sup> E.g.: FILE 2 witness 0002-K-502; FILE 8 witness 0008-K-509; FILE 25 witness 0025-K-533, FILE 60 witness 0060-K-579.

<sup>273</sup> E.g.: FILE 75 witness 0075-K-586, FILE 60 witness 0060-K-579, FILE 82 witness 0082-K-602, FILE 18.



Source: AFP

#### 4.2.4 EVIDENCE OF ILLEGAL IMPRISONMENT, TORTURE, AND INHUMAN AND DEGRADING TREATMENT OF COMBATANTS PERPETRATED BY SEPARATISTS

Ukrainian security services estimate that over 3000 Ukrainian servicemen have experienced separatist custody.<sup>274</sup> The vast majority of such detainees have been held without trial or judicial supervision – as de facto “prisoners of war.”<sup>275</sup> The legality of such detention depends on the legal qualification of the conflict, as there is no internationally recognised legal status of “prisoner of war” in NIACs. Aside from the issue of legality of detention, there is strong evidence to suggest that a large number of combatant detainees have been subjected to inhuman and degrading treatment, in numerous cases amounting to torture. Ukrainian combatants have been detained in a number of different facilities across the separatist-held territory of Eastern Ukraine. Nevertheless, evidence reveals that many of captured Ukrainian combatants have been transferred to the former Security Service (SBU) building in

<sup>274</sup> UNIAN, “SBU: More than 2500 people released from militant captivity,” 8 April 2015, available at: <http://www.unian.info/society/1064896-sbu-more-than-2500-people-released-from-militant-captivity.html> (last accessed: 6/7/2015).

<sup>275</sup> The only exceptions have been Ukrainian servicemen who have been imprisoned by Russian authorities and processed through the criminal justice system of the Russian Federation – e.g.: BBC, “Nadiya Savchenko: Ukraine resistance symbol in Russia,” 6 March 2015, available at: <http://www.bbc.co.uk/news/world-europe-31760381> (last accessed: 6/7/2015).

Donetsk City. As this facility appears to serve as a de facto prisoner of war camp, for the purpose of this report, practices that have taken place there will be used as a representative example of the separatists' treatment of Ukrainian combatants.

All interviewed Ukrainian combatants detained at the former SBU facility in Donetsk City testify that their ill treatment began at the point of arrest. They report being severely beaten and humiliated at the time of arrest<sup>276</sup> and during the transfer to Donetsk.<sup>277</sup> Some report being threatened with imminent execution or experiencing simulated executions.<sup>278</sup>

All former detainees described inhuman detention conditions in the SBU building and in temporary holding facilities on the way to Donetsk – particularly overcrowding and the lack of basic amenities.<sup>279</sup> In one case, detainees were placed in a cage for a week without sufficient space to sit or lie down.<sup>280</sup> The main holding facility in the SBU building known as “the Archive” is described as being 15 by 5 meters and holding up to 180 inmates at a time.<sup>281</sup> All detainees claim to have been given insufficient food, usually amounting to a small piece of bread and a small portion of porridge once or twice a day.<sup>282</sup> Similarly, all detainees confirm that they were only allowed to drink water when taken to the lavatories, once or twice a day.<sup>283</sup> Injured combatants report restricted access to medical treatment.<sup>284</sup>

Gratuitous beatings and degrading treatment of detainees took place throughout the detention period. Detainees report being in constant fear of separatists walking in to cells to commit random acts of battery and humiliation.<sup>285</sup> The vast majority of detainees were forced to work. Typical work involved packing and carrying supplies as well as more humiliating tasks such as washing separatists' personal effects and

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<sup>276</sup> E.g.: FILE 87 witnesses 0087-K-605, 0087-K-604, 0087-K-608, 0087-K-607.

<sup>277</sup> E.g.: FILE 87 witness 0087-K-605 was taken to Snezhnoe town and made to kneel while anyone from the local population could kick him; Witness 0087-K-608-2: During the transfer to Donetsk, people were encouraged to beat the bound detainees at every checkpoint stop.

<sup>278</sup> E.g.: FILE 87 witness 0087-K-607 reported that he was to be executed on arrest as the separatists were ordered to “take no prisoners;” Witness 0087-K-606 claims that during the transfer separatists simulated his execution by putting a knife to his throat or a gun to his head.

<sup>279</sup> E.g.: see FILE 87 description of cells by witnesses 0087-K-606 and 0087-K-607.

<sup>280</sup> See FILE 87 witness 0087-K-605.

<sup>281</sup> See FILE 87 witness 0087-K-606 who counted 128 bunks and up to 136 inmates. FILE 87 witness 0087-K-608-2 counted 100-180 inmates in the same cell; Witness 0087-K-607 counted 148 and notes that there was not enough air and no ventilation.

<sup>282</sup> E.g.: FILE 87 witness 0087-K-606; Witness 0087-K-608 claims that he was denied all food and water for 3 days.

<sup>283</sup> E.g.: FILE 87 witness 0087-K-605.

<sup>284</sup> E.g.: FILE 87 witnesses 0087-K-604 and 0087-K-608.

<sup>285</sup> See FILE 87 witnesses 0087-K-606 and 0087-K-607 – noting that drunken separatists would often come into the cells to administer beatings at night.

facilities.<sup>286</sup> One detainee describes being put under duress to denounce the Ukrainian government in front a television camera.<sup>287</sup> Another witness saw separatists giving guns to Ukrainian soldiers and offering them freedom for shooting their peers.<sup>288</sup>

All combatants were subjected to intense interrogations, whilst officers and those perceived as spies were interrogated the most.<sup>289</sup> In general, initial interrogations involved severe beatings,<sup>290</sup> while later sessions relied more on psychological pressure.<sup>291</sup> The explicit purpose of all questioning was to gather information on Ukrainian positions or to persuade combatants to change sides.<sup>292</sup> In many cases, the intensity of beatings and psychological pressure applied during interrogations coupled with poor conditions of detention, constant violence and intimidation, amounted to torture.

All inmates report that among of the most traumatic and humiliating experiences during the period of incarceration were the prisoner parades that took place in the centre of Donetsk on August 24, 2014 and January 22, 2015.<sup>293</sup> Inmates were lined up in columns and made to march an approximate distance of one kilometre through an angry crowd of civilians.<sup>294</sup> Objects such as eggs and rocks were thrown at inmates while members of the crowd shouted insults and threatened the inmates with injuries and violent death.<sup>295</sup>

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<sup>286</sup> See FILE 87 witnesses 0087-K-607, 0087-K-606, 0087-K-608.

<sup>287</sup> See FILE 87 witness 0087-K-607.

<sup>288</sup> FILE 112 witness 0112-K-624 – even those who did shoot (guns were not loaded) were not released.

<sup>289</sup> See FILE 87 witness 0087-K-608-2.

<sup>290</sup> E.g.: FILE 87 witness 0087-K-608-2 testifies to being tied up and beaten on the face, head and body; FILE 87 witness 0087-K-604 talks of severe beating by separatist 'Advokat' despite sustaining gun-shot injuries; Witness 0087-K-607 testifies to being beaten with baseball bats on the knee-caps.

<sup>291</sup> E.g.s: FILE 87 witnesses 0087-K-605, 0087-K-608-2, 0087-K-607.

<sup>292</sup> See FILE 87 witnesses 0087-K-607, 0087-K-606.

<sup>293</sup> For footage of the parade, see <https://www.youtube.com/watch?v=dIsTfjD-nSI> (last accessed: 4/5/2015);

<sup>294</sup> See FILE 87 witnesses 0087-K-608, 0087-K-608-2, 0087-K-607, 0087-K-606, 0087-K-604, 0087-K-605.

<sup>295</sup> See FILE 87 witnesses 0087-K-608, 0087-K-608-2, 0087-K-607, 0087-K-606, 0087-K-604, 0087-K-605.



Source: alliance /dpa

The parade, overseen by separatist leader Zakharchenko and designed to evoke the German prisoner of war parade of 1945, was condemned by the UN and Human Rights Watch as a violation of humanitarian law and a possible war crime.<sup>296</sup>

On average, detainees spent between one and three months at the SBU facility. Many report weight loss of between 10 and 15 kilograms.<sup>297</sup> All report being deeply traumatised by the experience, leading to symptoms of posttraumatic stress disorder such as anxiety and insomnia.<sup>298</sup> Many report persisting physical injuries to the cranium, spine and digestive system.<sup>299</sup>

Available evidence suggests that the detention and ill-treatment of Ukrainian combatants was organised, ordered and supervised at the highest levels of the Donetsk-based separatist hierarchy. Senior separatist figures such as Girkin and Zaharchenko were sighted in or on the way to the detention facility,<sup>300</sup> and during the prisoner parade.<sup>301</sup> In addition, inmates report identifying Russian officers (by accent

<sup>296</sup> Human Rights Ivan Simonovic who publicly denounced such prisoner parades as potential war crimes: See UNOHCHR, "Statement to the Security Council by Ivan Šimonović, Assistant Secretary-General for Human Rights, at the meeting on Ukraine," 6 March 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15662&LangID=E> (last accessed: 4.05.2015); Human Rights Watch, "Dispatches: Marking Ukrainian Independence Day with a Laws-of-War Violation," 24 August 2014, available at: <http://www.hrw.org/news/2014/08/24/dispatches-marking-ukrainian-independence-day-laws-war-violation> (last accessed: 4.5.2015); See also witness 0087-K-606 who overheard separatist "63" boasting that the parade had been his idea.

<sup>297</sup> See FILE 87 witnesses 0087-K-605 and 0087-K-608-2.

<sup>298</sup> See FILE 87 witnesses 0087-K-606, 0087-K-607, 0087-K-608, 0087-K-604.

<sup>299</sup> See FILE 87 witnesses 0087-K-606, 0087-K-607, 0087-K-608, 0087-K-604.

<sup>300</sup> See FILE 87 witness 0087-K-604; witness 0105-K-620.

<sup>301</sup> The Economist, "Fog of War," 23 January 2015, available at:

and uniform) carrying out interrogations or giving orders to separatist fighters.<sup>302</sup> This suggests active Russian military involvement in the arbitrary detention, inhuman treatment and torture of Ukrainian combatants at the facility.

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*<http://www.economist.com/news/europe/21640636-shells-and-accusations-fly-only-sure-thing-war-eastern-ukraine-back-fog> (last accessed: 4 May 2015).*

<sup>302</sup> See FILE 87 witnesses 0087-K-605, 0087-K-604, 0087-K-608-2, 0087-K-607.

#### 4.2.5 TABLE OF SEPARATIST-RUN DETENTION SITES

Province/City	Detention Site (Address)	Unit/Entity in charge	Documented Crimes	Alleged Perpetrators	Documented Victims	File Number
Donetsk Province – Kramatorsk City	Basement 1	'ISPOLKOM Group'	Arbitrary detention, Cruel/Inhuman treatment, Torture, Outrages upon personal dignity		0002-K-502	2
	Basement 2		Arbitrary detention, Cruel/Inhuman treatment, Torture, Outrages upon personal dignity	"Lev" – commanding officer, "Tuman" (interrogator), "Lenin" and "Bandera"	0002-K-502	2
	ISPOLKOM Building	ISPOLKOM Group	Arbitrary detention, Cruel/Inhuman treatment, Torture, Outrages upon personal dignity	Gromov (interrogator), "Babay".	0003-K-503; 0010-K-516	3, 10
	Kramatorsk City Police Headquarters	ISPOLKOM Group	Arbitrary detention, Cruel/Inhuman treatment, Torture, Outrages upon personal dignity	Gromov	0003-K-503	3

Kramatorsk prosecutor office building	Strelkov Group	Arbitrary detention, Cruel/inhuman treatment, Torture, Outrages upon personal dignity	"spetsy," professionals	0Z_02-K-643	Z_02
SBU Building Basement		Arbitrary detention, Inhuman treatment	"Medved" (commanding officer)	0078-K-590	78
SBU building basement	NKVD Group	Torture; Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Lurii Tyhyi Alexandr Arhipov (from Russia), Glavnyy (Top man) (Russian accent), commandant Pinochet	0008-K-509, 0008-K-508	8, 25, 35
Detained in Sloviansk - SBU and IVS		Torture, Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Callsign «Dima» cossack from Sloviansk. Chief «Bieriya» Roma. Callsigns «Nos,» «Zubr,» «Zub,» Senia.	0025-K-533, 0035-K-544	
SBU building basement	SBU building group (chief Beria), Strelkov	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Callsign «Loschenyy,» Skudar, Callsigns «Konduktor», «Illich», «Piervyi», Andrey Chernyshov AKA Sanych, Russian soldier Callsign Trifon, "Kapone," Strelkov Group (the group of Igor Girkin, commander-in-chief of the DNR armed forces at the time) . "Specialists"	0033-K-542, 0126-K-631, 0123-K-630-4, 0075-K-586; 0043-K-554, 0Z_01-K-644, 0Z_04-K-645	33, 126, 123, 75, 43, Z_04, Z_01,

"spetsy" (professionals) with call signs: "Romashka" (CO), "Babay" (CO) (Mozhaev Aleksandr Ivanovich), "Edward (also Edic) Piterskiy," "Dima Kharkovskiy," "Kleshch," "Chorniy," "Desantnik," "Zubr" (CO) (Zubanov Aleksandr Viktorovich), "Nos" (CO) (Anosov Viktor Yurievich), "Advocat" (Parkhomenko Yuriy Vladimirovich), "Shchit". The Terek Cossacks (also the Terekskiye Kazaki); Guards (separatists): Dima, Vova call sign "Odessa." Vyacheslav Ponomarev – self-proclaimed mayor of Sloyansk, the so-called "people's mayor." Roma call sign "Beriya," Miron call sign "Kon" (Leshchenko Miroslav Mikhailovich); "Rys."

Donetsk province, Konstantinivka city,	IVS (police) temporary holding facility	IVS building group	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Group of "Kerch" (CO), "Cherep" (Sepa) and the so-called "KGB" members, "Mara," "Svyat," "Yug," "Slava," "Cherv," "Mirazh" (former SBU officer) Oleg "Begunok", Igor Nikolaievich Bezler, battalions «Oplot,» «Schit,» «Russian Orthodox Army;» cossak Khriakov, Prikhodko, Smirnov, Zaharchenko, Hottab, San Sanych, Ohotnik, Dollar (aka Roman) Afghanistan fighters of Konstantinovka, Zhadko Sergey (callsign «Dushman») Artamonov, Leonid Kharchenko, "Krot," Alexandrov, Officer «Yaponiets,» Commandant Roman «Mirotvoriets,» special representative of Girkin (Russian citizen), Commandants Alexandr and Vladimir. Sergey callsign «D'ed.» Former	0049-K-564, 0105-K-620, 0043-K-554	49, 105, 43
Donetsk province, Konstantinivka city,	ISPOLKOM	ISPOLKOM group	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	0028-K-536	28	

Donetsk province	Konti Autobase	Bezler	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	policemen Sergey Andrikson, Sergey Krasovskiy, Igor Plahuta, Alexandr (Sergey) Inin, Iurii Sudeyko Russian regular troops, separatists with 'deer' symbols on lapels: Batia-Botsman; Stas (used to keep in prison journalist Nastia Stanko), Kovaliov, Bezler, Tygran Parsegian, Ariy.	0097-K-617	97
Donetsk province, Donetks City	Donetsk OGA building	Commandant of OGA	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Commandant of OGA "Zaza," Valeriy, "Man from the caucases." Members of "Oplot" group (separatists)	0060-K-579, OZ_03-K-646	60, Z_03
Donetsk City	IZOLITSYIA	MGB unit	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	MGB unit, FSB agent, Mongol, ex-SIZO worker "Oper," Bagira, Hotabich, "Lenin," "Tihiy," and "Gliuk." "Robinzon," "lozh," "Palych"(ex policeman), "Analitik."	0095-K-616, 0057-K-577, 0057-K-577-2	95, 57

military unit at Elevatrona (or Elevatornaya) st.	Vostok battalion	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Battalion members with call signs "Komar," "Gruzin," "Phil," "Babay" (Artem), "Zaur." (separatists)	0Z_06-K-647	Z_06
SBU Basement	DPR leadership	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention, Torture	Callsign Shah; minister of defence of DPR, Oleg -63-d, «Krutoy»; Pilipenko Sergey Ivanovich; «Kent,» «Adrenalin,» «Kirill,» «Ruliet,» «Zaiats,», Colonel Beziakov, callsign Shah (Somali unit), Motorola, Oleg -63-d. «Mikhas,» head of prison. «Miasnik,» «Adrenalin,» «Varvar,» - "kaukasian nationality." «lezhyk,»«Rulet,» Priests from Novosybirsk, Sniper "Bagira, ";Strelkov-Girkin," Advokat "Krava" (Kravchenko Nikolay Ivanovich), "Koshchey," "Kiev," "Krutoy."	0095-K-616, 0087-K-604, 0087-K-605, 0087-K-608, 0087-K-608-2, 0087-K-607, 0087-K-606, 0112-K-624, 0Z_08-K-648	95, 87, Z_08

Donetsk Province, Krasnolyman skyi District	Novoselovka Village	Members of DPR	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention, Torture	Members of DPR	0Z_07-K-649	Z_07,
Donetsk area	unknown place - possibly a Soviet-era kids' camp	Russian Orthodox Army	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Russian agents	0082-K-602	82
Donetsk Province, Makiyivka Town (or Makeyevka Town),	Basement of Makiyivka unit of Donetsk Regional Directorate for Combatting Organized Crime (UBOP)	GROUP of Vladimir Ivanovych call sign "Sherif"	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Group of Vladimir Ivanovych call sign "Sherif," "Spartak," "Mongol," Oleg Kubrak (!), "Malysh," Halina Tsyganka (separatists)	0Z_05-K-650	Z_05
Lugansk province (Stanitsa Luganskaya or Lugansk itself)		Dmitriy Aliev (Boroda),	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	«Grigorich,» Roma, Zhenia, Dmitriy Aliev (Boroda), Marina, Sergey, Commandant Arhipov Sergey Viktorovich	0084-K-603	84
Lugansk province, Stakhanov city	DCOC basement		Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Borodaty, «Sedoy» - Gennady Grinievich	0019-K-526	19

Lugansk city	military commander of Zhovtnevy area of the city (former rayon council of Zhovtnevy area of Lugansk city)		Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	«Grigorych» - Viktor Grigorievich, Alexandr callsign «Chorny.» Combatant with callsign «Astrakhan.» Chief of Lugansk city battalion «Kobra» Khasan. Separatist callsign "Cheh," Masha "Faina," unknown man, possibly Russian, Litvin Sergey Anatolievich (callsign "TT"), Dmitrii Sergeievich, Andrey, Kostik, Liosha, Leonid "Akim."	0029-K-537, 0041-K-550, 0041-K-551	29, 41
	basement of IVS of Lenin ROVD of Lugansk city basement of ODA		Cruel treatment and/or outrages upon personal dignity; Arbitrary detention Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Members of LPR	0041-K-550, 0041-K-551, 0Z_10-K-651	41
Lugansk city	SBU basement Lioha	Commander Lioha	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Yaprintsev Nikolay Zakharovich, Saniok, lawyer Iurii Rudenko, Callsign "Krym," Valentin, Kunchenko, callsigns Di'ed,	0044-K-555 0056-K-576, 0Z_09-K-652	41, Z_10 44, 56, Z_09

Lugansk province, Lysychansk city	Stekolny factory basement		Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Maloy, Medved, call sign "Odessa," Commander Lioha.	0046-K-561	46
Lugansk province, Lysychansk city	Barracks		Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Policeman Andrey Kharchenko, chechen Habib, Doctor Maralishvili.	0094-K-615	94
Lugansk province, Severodonetsk city	SBU basement	Dremov and Kozitsyn.	Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Zamkomvzvod of Prizrak battalion, Sasha, Aleksey, Iurii, two citizens of Russia	0047-K-562	47
Donetsk province, Semenovka village	House of victims		Cruel treatment and/or outrages upon personal dignity, Arbitrary detention	Vasiliy Pefteev, Ataman Pasha, commander «Barmaley» - Alexey Vydysh, Tsygan - Dmitriy Balkonov, Daniil, Russian citizen from GRU, Dremov and Kozitsyn. Soldier Yampol, and Sergeant or Iefreitor	0119-K-628	119

#### **4.2.6 EVIDENCE OF ILLEGAL IMPRISONMENT, TORTURE, AND INHUMAN AND DEGRADING TREATMENT PERPETRATED BY UKRAINIAN AND PRO-UKRAINE FORCES**

The UN Human Rights Office has reported evidence of “a pattern of enforced disappearances, secret detention and ill-treatment by Ukrainian law enforcement agencies and paramilitaries in the security operation area and adjacent territories,” with at least “37 cases of people who had disappeared on the territory controlled by the Ukrainian armed forces” as of January 2015.<sup>303</sup> In its latest report, the UNHCHR sets out further evidence of systemic, arbitrary detention and abuse in custody perpetrated by Ukrainian armed forces and pro-Ukrainian paramilitaries.<sup>304</sup> A genuine and effective investigation into such allegations would require full disclosure of evidence from Ukrainian authorities and access to witnesses currently located in separatist-occupied territories. Both measures are currently beyond this organisation’s capacity. Nevertheless, our team has documented at least three cases that support the UN’s findings. In the first case, a man was arrested at a Ukrainian government checkpoint and told to confess that he was helping separatists. Having refused to do so, he was severely beaten and detained in an outdoor cage for approximately 24 hours.<sup>305</sup> In another case, Ukrainian armed forces abducted a man and his grandson, subjected them to severe beatings and simulated drowning in order to induce a confession.<sup>306</sup> In the third case a man was abducted by Ukrainian armed forces from the bus and taken in an unknown direction. He disappeared for a month and was released only after recourse to the ECHR.<sup>307</sup>

#### **4.2.7 CONCLUSION**

In light of the evidence presented in this chapter, there is a reasonable basis to believe that the following crimes have been committed on the territory of Ukraine since March 2014:

- War crimes of inhuman and/or cruel treatment;
- War crimes of denying fair trial rights to prisoners;
- War crimes of unlawful confinement of civilians;

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<sup>303</sup> OHCHR, “Report on the human rights situation in Ukraine: 1 December 2014 to 15 February 2015,” paras 37-39, available at: <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf> (last accessed: 11.05.2015).

<sup>304</sup> OHCHR, “Report on the human rights situation in Ukraine 16 February to 15 May 2015,” June, 2015, paras. 30-34 available at: <http://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf> (last accessed: 3.06.2015).

<sup>305</sup> FILE 144 witness 0144-K-634

<sup>306</sup> FILE 129 witness 0129-K-625.

<sup>307</sup> FILE 145 witness 0145-K-635.

- War crimes of torture;
- War crimes of wilfully causing great suffering or serious injury to body and health;
- War crimes of committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- Crimes against humanity of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- Crimes against humanity of torture; and
- Crimes against humanity of other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.



Source: RusVesna.su

## 4.3 WILLFUL KILLING/MURDER<sup>308</sup>

### 4.3.1 OVERVIEW

In addition to evidence of civilians killed in direct and indiscriminate attacks outlined in section 4.1 of this report, there is growing evidence that civilians and non-active combatants have been subject to summary and extra-judicial executions.<sup>309</sup> In the context of an armed conflict, the killing of protected persons and combatants rendered hors de combat is a serious violation of international humanitarian law for which those responsible are criminally liable. When perpetrated against civilians, murder may also constitute a crime against humanity. In this section we present

<sup>308</sup> “[T]here can be no line drawn between “willful killing” and “murder” which affects their content.” ICTY, Prosecutor v. Delalic et al., Judgment, IT-96-21-T, 16 November 1998, paras. 422-423.

<sup>309</sup> Office of the United Nations High Commissioner for Human Rights, “Report on the human rights situation in Ukraine 16 February to 15 May 2015,” June 2015, available at:

<http://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf>

(last accessed: 3.06.2015); Amnesty International, “Summary killings during the conflict in Eastern Ukraine,” October 2014, available at:

<https://www.amnesty.org/en/documents/EUR50/042/2014/en/> (last accessed: 3.06.2015); Amnesty International, “New evidence of summary killings of Ukrainian soldiers must spark urgent investigations,” 9 April 2015, available at:

<https://www.amnesty.org/en/articles/news/2015/04/ukraine-new-evidence-of-summary-killings-of-captured-soldiers-must-spark-urgent-investigations/> (last accessed: 3.06.2015).

evidence of 26 cases of murder and 5 cases of attempted murder, perpetrated at 11 locations across the conflict-affected areas of Eastern Ukraine. Due to resource and access limitations, this evidence is likely to represent a small portion of such crimes in the region.

#### 4.3.2 APPLICABLE LAW

The killing of combatants during active hostilities is an unfortunate reality of war and not illegal per se. However, international law does prohibit the killing of and/or threats to kill all persons not taking an active part in hostilities, namely civilians and other protected persons, and combatants who have laid down their arms or have become hors de combat<sup>310</sup> through sickness, wounds, detention or any other cause.<sup>311</sup> According to the ICC Pre-Trial Chamber, the prohibition extends to killings, which “occur after the overall attack has ended, and defeat or full control of the targeted village has been secured.”<sup>312</sup> The act of killing one or more persons falling into these categories is a serious violation of international humanitarian law<sup>313</sup> and may amount to a war crime in both IAC and NIAC.<sup>314</sup>

The killing of civilians may also amount to a crime against humanity, when committed as part of a widespread or systematic attack directed against any civilian population.<sup>315</sup> According to the ICC Elements of Crimes, the term “killing” is interchangeable with the term “caused death,”<sup>316</sup> which can be committed by either an act or a fault of omission.<sup>317</sup> Nevertheless, for a finding of criminal responsibility “the conduct of the accused must be a substantial cause of the death of the victim.”<sup>318</sup>

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<sup>310</sup> “[...] A person hors de combat is: (a) anyone who is in the power of an adverse party; (b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or (c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape.” ICRC, “Rule 47: Attacks against persons *hors de combat*,” Customary IHL, available at: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_ru\\_rule47](https://www.icrc.org/customary-ihl/eng/docs/v1_ru_rule47) (last accessed: 16.05.2015).

<sup>311</sup> Additional Protocol I, Article 75 (2) (a) & (e) and Additional Protocol II, 4 (2) (a) & (h).

<sup>312</sup> ICC, The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, “Decision on the confirmation of Charges,” ICC-01/04-01/07, 30 September 2008, para. 294.

<sup>313</sup> Common Article 3 of the Geneva Conventions, Article 50 of Geneva Convention I, Article 51 of Geneva Convention II, Article 130 of Geneva Convention III, Article 147 of Geneva Convention IV.

<sup>314</sup> Article 8(2)(a)(i), Article 8(2)(b)(iv), Article 8(2)(c)(i) of the ICC Statute.

<sup>315</sup> Article 7(1)(a) of the ICC Statute.

<sup>316</sup> See footnotes 2 and 7 of the ICC Elements of Crimes.

<sup>317</sup> ICTY, Prosecutor v. Delalic et al., , Judgment, IT-96-21-T, 16 November 1998, para. 424; See also ICTY, Prosecutor v. Kordic & Cerkez, Judgment, IT-95-14/2-T, 26 February 2001, para. 229; ICTR, Prosecutor v. Akayesu, Judgment, ICTR-96-4-T, 2 September 1998, para. 589.

<sup>318</sup> ICC, Situation of the Democratic Republic of Congo, Prosecution v. Germain Katanga, Judgment, ICC-01/04-01/07, 7 March 2014, para. 767, ICTY, Prosecutor v. Delalic et al., , Judgment, IT-96-21-T, 16 November 1998, para. 424; ICTY, Prosecutor v. Kordic & Cerkez, Judgment, IT-95-14/2-T, 26 February 2001, para. 229.



In cases where no body can be identified, the death of a victim can be proved by circumstantial evidence provided that it is the only reasonable conclusion that can be made under the circumstances.<sup>319</sup>

An attempt to commit murder is defined in Article 25(3)(f) of the ICC Statute as: “taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person’s intentions.”<sup>320</sup>

#### **4.3.3 EVIDENCE OF WILLFUL KILLING/MURDER**

Evidence suggests that shortly after the hostile takeover of parts of Eastern Ukraine by separatist forces, “target” or “execution” lists were drawn up for the major cities

<sup>319</sup> ICC, Situation of the Democratic Republic of Congo, Prosecution v. Germain Katanga, Judgement, ICC-01/04-01/07, 7 March 2014, para. 768.

<sup>320</sup> “However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.” Article 25(3)(f) ICC Statute.

and administrative areas under the separatists' control.<sup>321</sup> Such lists contain names of persons identified as enemies of the separatist movement who were earmarked for elimination. Listed persons were typically actual or perceived members of right wing or pro-Ukrainian organisations, such as "Svoboda," "Provista" and "Priviy Sektor,"<sup>322</sup> or other activists and vocal critics of Russia and the separatist movement.<sup>323</sup> Lists appear to have existed on a regional level<sup>324</sup> as well as town or village level.<sup>325</sup> There is also evidence of a list compiled by the organisers of the separatist movement for the entire region, referred to by some witnesses as the "Girkin" list (after Igor Girkin aka Strelkov).<sup>326</sup> Such lists represent strong evidence of a plan or policy of the movement, and of its leaders' intention, to eliminate the opposition through targeted assassinations.

The "execution list" policy is implemented through extra-judicial executions or sweeps conducted by death squads in occupied territories. An example of the former is the assassination of Genadyi Hitrenko, a Krymskoie village resident believed to have provided food and basic supplies to Ukrainian soldiers stationed at a nearby roadblock, as a result of which he received regular threats.<sup>327</sup> After filing a report at the Lysichansk police station on separatist activities in his village, Hitrenko was shot dead outside his home on August 29, 2015.<sup>328</sup> A representative example of a sweep took place on August 22, 2014, in Peremozhne village (Lugansk Province), when a death squad of separatist fighters proceeded to systematically seek out, detain and summarily execute persons identified for actual or perceived pro-Ukrainian inclination.<sup>329</sup> The operation was carefully planned as the vehicles of all suspected pro-Ukrainians were stolen prior to the sweep, impeding their flight during the operation.<sup>330</sup> Four members of the Bochnovich family were summarily executed during the raid.<sup>331</sup> Prior to this raid, two couples were abducted by the separatist

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<sup>321</sup> So far, there is evidence that "execution lists" existed for the following areas: Donetsk province: FILE 7 - Sloviansk, FILE 31 - Khartsyzsk, FILE 8 - Druzhkovka, FILES 22 and 24 - Konstantinovka. Lugansk Province: FILE 89 Peremozhne village.

<sup>322</sup> See for example – DPR Druzhkovka execution list – FILE 8.

<sup>323</sup> E.g.: FILE 22 witness 0022-K-529 – A journalist and anti-corruption investigator; FILE 31 witness 0031-K-540 – active member of local political and civil society.

<sup>324</sup> There is evidence of a DPR list and an LPR list – FILES 7, 31, 8, 22, 24, 89.

<sup>325</sup> E.g.: the Druzhkovka execution list – FILE 8; the Sloviansk City execution list – FILE 7, Peremozhne village, FILE 89.

<sup>326</sup> E.g.: FILE 24 witness 0024-K-530; FILE 31 witness 0031-K-540.

<sup>327</sup> See FILE 58 witness 0058-K-578 and witness 0058-K-578-2.

<sup>328</sup> See FILE 58 witness 0058-K-578.

<sup>329</sup> See FILE 89 witnesses 0089-K-611, 0089-K-614-9-2, 0089-K-613, 0089-K-612, 0089-K-610 and 0089-K-609.

<sup>330</sup> See FILE 89 witness 0089-K-614-9-2.

<sup>331</sup> FILE 89 witnesses 0089-K-611 and 0089-K-614-9-2.

gunmen and never seen again.<sup>332</sup>

There is also evidence that detainees, including Ukrainian servicemen, have been summarily executed in custody. In one case, the bodies of Margarita Vidak and her daughter were found buried in a field by Orehovo village in Lugansk Province, after being abducted and imprisoned by separatist forces.<sup>333</sup> In Sloviansk City, there is evidence of at least six extra-judicial executions of detainees carried out by the Strelkov and Bezler groups.<sup>334</sup> In addition to the execution of political prisoners, it is believed that four members of the Sloviansk Transfiguration Church were abducted and murdered on religious grounds, while in detention at the Security Services building in Sloviansk.<sup>335</sup> A witness detained in the SBU basement in Donetsk City claims to have seen a separatist known as “Motorola” (Arsenyi Pavlov) summarily execute a captured Ukrainian serviceman.<sup>336</sup> “Motorola,” head of the pro-Russian Sparta Battalion, has also publicly confessed to executing 15 captured Ukrainian servicemen.<sup>337</sup>

There is evidence that murder has also been committed by Ukrainian armed forces and pro-Kyiv paramilitaries.<sup>338</sup> In one instance, a suspected separatist supporter was detained alongside his grandfather. Their property and business were raided, and they were taken to a military base for questioning. After undergoing beatings and interrogation that may constitute torture, the victim was allegedly executed by his

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<sup>332</sup> Witnesses 0089-K-614-2 and 0089-K-614-3; 0089-K-609 and 0089-K-614-4 – according to the latest information, 0089-K-609 and 0089-K-614-4 were killed during their detention. DNA samples from bodies suspected to belong to the couple are currently being analyzed by the Government of Ukraine. – see FILE 89 witness 0089-K-609.

<sup>333</sup> FILE 101 witness 0101-K-618: An official logbook confirms that the two victims were under separatist commander Sergey Bondarev’s authority on the day of the abduction.

<sup>334</sup> There is evidence that FILE Z\_11M witness OZ\_11-K-653 , FILE Z\_12M witness OZ\_12-K-654 and FILE Z\_11M witness OZ\_11-K-653-2 were shot, while FILE Z\_13M witnesses OZ\_12-K-655, OZ\_12-K-655-2, OZ\_12-K-655-3 were drowned.

<sup>335</sup> See open-source materials: IMZAK, “Масові поховання експлкують”, 4 August 2014, available at: <http://www.imzak.org.ua/articles/article/id/4090> (last accessed: 3/07/2015); YouTube, “Vice News: Missing Civilian Bodies found in Mass Graves: Russian Roulette (Dispatch 63)”, 31 July 2014, available at: [https://www.youtube.com/watch?v=UBsEkF\\_GY0E](https://www.youtube.com/watch?v=UBsEkF_GY0E) (last accessed: 3/07/2015) – The victims were pastors’ sons Reuben Pavenko, Albert Pavenko and the church’s deacons: Viktor Bradarsky and Vladimir Velichko. Their bodies were found with evidence of brutal beatings in a mass grave near a local children’s hospital.

<sup>336</sup> FILE 112 witness 0112-K-624.

<sup>337</sup> The Guardian, “I killed 15 prisoners of war in Ukraine, claims Russian fighter,” April 10, 2015, available at: <http://www.theguardian.com/world/2015/apr/10/russian-fighter-ukraine-motorola> (last accessed: 3.06.2015).

<sup>338</sup> See Amnesty International, “Summary killings during the conflict in Eastern Ukraine,” October 2014, p.12 – 14. available at: <https://www.amnesty.org/en/documents/EUR50/042/2014/en/> (last accessed: 3.06.2015).

captors.<sup>339</sup> In another case, a husband and wife were abducted from their home in a town under the control of the “Aidar” battalion, and never seen again.<sup>340</sup>

In addition to persons murdered for their actual or perceived political views or religious beliefs, a number of civilians have been murdered for their property. In one instance, it is suspected that a family was targeted at least partly because they lent a substantial amount of money to a local businessman turned separatist leader.<sup>341</sup> In another case, a man was murdered during an attempt to steal his car.<sup>342</sup> In such cases, there is a reasonable basis to believe that the conflict played a substantial part in the perpetrator’s ability to commit the murder, or his decision to commit it and the manner in which it was committed.

Other people were lucky enough to escape before their summary executions could be carried out. Such people fled the separatist occupied territories, usually after a series of threats, failed attempts at abduction or tip-offs.<sup>343</sup> The subsequent finding of their names on recovered “execution lists” and evidence of their active pursuit provides a reasonable basis to believe that their murder was intended and in some cases may amount to attempted murder.

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<sup>339</sup> FILE 129 witness 0129-K-625.

<sup>340</sup> FILE 108 witness 0108-K-623.

<sup>341</sup> FILE 89 witness 0089-K-611.

<sup>342</sup> FILE 1 witnesses 0001-K-501-2 and 0001-K-501.

<sup>343</sup> E.g.: FILE 31 witness 0031-K-540; FILE 22 witness 0022-K-529; FILE 24 witness 0024-K-530; FILE 7 witness 0007-K-507; FILE 4 witness 0004-K-504.

#### 4.3.4 TABLE OF DOCUMENTED MURDERS

Province/City	File No.	Date	Documented Victims	Alleged Perpetrators
Krymskoie village – Lugansk Province	58	28.08.2014	0058-K-578-3	Redkoborodovy brothers (Sergey, Oleg and Iuriy). Zhukov Eduard Aleksandrovich (village separatist leader), Masenko Aleksandr Ivanovich, Iuriy Ruzhakov, Mikhail Mihailovich Zolotariov.
Peremozhne village – Lutigino area – Lugansk Province	89	10.08.2014 (disappearance); 22.08.2014 (murder)	0089-K-614-5, 0089-K-614-6, 0089-K-614-7, 0089-K-614-8, 0089-K-614-2, 0089-K-614-3, 0089-K-614-9	Matychak Sergey Grigorievich, Matychak Andrey Sergeevich, Kozlov alexandr Olegovich, Kozlov Sergey Olegovich, Commandant Byshko, Nikolai Udud.
Sloviansk city – Donetsk Province	Z_11M, Z_12M, Z_13M, Z_15M.	15.04.14 10.07.14	OZ_11-K-653, OZ_11-K-653-2, OZ_12-K-654, OZ_12-K-655, OZ_12-K-655-2, OZ_12-K-655-3, OZ_15-K-656	Strelkov Group (the group of Igor Girkin) (commander-in-chief); "specialists"(professionals)— "Nos" (CO) (Anosov Viktor Yurievich), "Balu" (Vyacheslav Anatolevich), "Sedoy" (Mikhail Aleksandrovich), "Trifon" (Trifonov Sergey Ivanovich), "Zubr" (CO) (Zubanov Aleksandr Viktorovich), "Advocat" (Parkhomenko Yuriy Vladimirovich), "Romashka" (CO), "Edward (also Edic) Piteriskiy," "Dima Kharkovskiy," "Kleshch," "Desantnik,"guards (separatists): Dima, "Sanych". Strelkov Group.
Sloviansk City – Donetsk Province	Open-source	08.06.15- 20.07.15	Reuben Pavenko, Viktor Bradarsky, Vladimir Velichko.	

Orehovo village – Antratsyt area – Lugansk province	101	Disappeared on 10.09.2014	0101-K-618-2, 0101-K-618-3, 0101-K-618-4	Group of Cossaks - "Sasha Chiorny," Cossak "Prapor." Sergey Bondariev
SBU Basement - Donetsk City – Donetsk Province	112	February 2015	0112-K-624-2	"Motorolla," Members of the Vostok battalion, separatist Serb; David (local policeman)
Khartsyzk City – Donetsk Province	31	May-June 2014	0031-K-540 (attempt)	Boris Berkovich
Konstantinovka City – Donetsk Province	24	April – September 2014	0022-K-529, 0024-K-530 (attempt)	Britchenko Sergey head of local Cossacks neighbor from Kalinina 42 str. Member of biker society "Skif." Former Afganistan soldier, head of local Afganistan soldiers society. «Mirotvorets,» Valeriy Ivanovich Khodyriev, Sergey Zeleny (or Zelenin), cousin of Valeriy Khodyriev, Lionia, callsign «Krot,» Former neighbor Sasha, owner of 3 taxi cars "Prestizh."
Bylbasivka village – Sloviansk area – Donetsk Province	7	April 2015	0007-K-507 (attempt)	Volodymyr Tverdy, Viktor Pomortsev, Rudenko brithers, Yakovenko family, Vasylychenko, Boyko, Ivan Bezrukyh, Vasyl Chendarov, Kozunets, head of prison Dmytro Dykyy
Starobeshevo – Donetsk Province	129	Disappeared on 26.07.2014	0129-K-625	Ukrainian forces. Combatants Miasnik, Dok
Alekseevo-Druzhkovka – Donetsk Province	4	May-July 2014	0004-K-504 (attempt)	Vereschaga Maksim Iurievich, Nagorskaya Luliia Nikolaievna, Vlasenko (callsign "Esaul")

Schastie village – Donetsk Province	108	Disappeared on 15.02.2015	0108-K-623; 0108-K-623-2	Members of the pro-Ukrainian “Aydar” battalion.
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Source: IPHR

#### **4.3.5 CONCLUSION**

In light of the above, there is a reasonable basis to believe that the war crime and/or crime against humanity of wilful killing (or murder) was committed by separatist and pro-Ukrainian forces on the conflict-affected territory of Eastern Ukraine since March 2014.



Source: IPHR

## 4.4 DESTRUCTION AND APPROPRIATION OF PROPERTY

### 4.4.1 OVERVIEW

Many of the offences described in preceding sections of this report have commonly been accompanied by the destruction and/or appropriation of public or personal property. In the context of an armed conflict, the destruction and appropriation of property and acts of pillage, not justified by military necessity, constitute serious violations of international humanitarian law for which those responsible are criminally liable. In this section we set out some representative examples of pillage, destruction and appropriation of property, perpetrated across the conflict-affected area of Eastern Ukraine by separatist and pro-Ukrainian forces.

### 4.4.2 APPLICABLE LAW

#### 4.4.2.1 DESTRUCTION OF PROPERTY

International humanitarian law prohibits any destruction of public or private property

that is not justified by military necessity.<sup>344</sup> The term “destruction” includes total or partial damage as a result of a military attack, arson or demolition.<sup>345</sup> The destruction of protected property such as civilian objects,<sup>346</sup> medical units,<sup>347</sup> hospitals,<sup>348</sup> vehicles conveying the wounded and sick,<sup>349</sup> as well as property dedicated to religion, charity, education, arts and sciences<sup>350</sup> cannot be justified by military necessity, unless and only for such time that these objects lose their protected character<sup>351</sup> and become military objectives. Military objectives are “objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”<sup>352</sup> Furthermore, all acts motivated by reprisals against protected persons and their property are strictly prohibited.<sup>353</sup>

To constitute a grave breach,<sup>354</sup> the unlawfully destroyed property must belong to a hostile party or adversary.<sup>355</sup> This term has been widely interpreted by the ICC to include “individuals or entities aligned with or with allegiance to a party to the conflict adverse or hostile to the perpetrator, which can be established in the light of the ethnicity or place of residence of such individuals or entities.”<sup>356</sup> When such destruction takes place in the context of and is associated with an armed conflict, it

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<sup>344</sup> Article 53 of Geneva Convention IV reads, “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.” See also ICTY, Prosecutor v. Tihomir Blaskic, Trial Judgement, IT-95-14-T, 3 March 2000, para. 157.

<sup>345</sup> ICC, Prosecutor v. Germain Katanga, Judgment pursuant to article 74 of the Statute, ICC-01/04-01/07, 7 March 2014, para. 891: The question of whether partial damage amounts to “destruction” is a question of degree to be decided on a case-by-case basis.

<sup>346</sup> Articles 48, 51(2) and 52(2) of Additional Protocol I; Article 13(2) of Additional Protocol II.

<sup>347</sup> Articles 19, 20 and 33 of Geneva Convention I.

<sup>348</sup> Article 18 of Geneva Convention IV.

<sup>349</sup> Article 21 of Geneva Convention IV.

<sup>350</sup> Article 56 of the Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

<sup>351</sup> Civilians and civilian objects lose the protection of the law against a military attack only when and for such time that they take a direct part in hostilities. Article 51(3) of Additional Protocol I and Article 13(3) of Additional Protocol II.

<sup>352</sup> Article 52(2) of the 1977 Additional Protocol I.

<sup>353</sup> Article 33 of Geneva Convention IV.

<sup>354</sup> Article 50 of Geneva Convention I; Article 51 of Geneva Convention II; Article 147 of Geneva Convention IV.

<sup>355</sup> Article 50 of Geneva Convention I; Article 51 of Geneva Convention II; Article 147 of Geneva Convention IV; ICC Elements of Crimes, Article 8(2)(b)(xiii) and Article 8(2)(e)(xii).

<sup>356</sup> ICC, The Prosecutor v. Germain Katanga, Judgment pursuant to article 74 of the Statute, ICC-01/04-01/07, 7 March 2014, para. 892.

may amount to a war crime.<sup>357</sup> Excessive and wanton destruction has its own legal qualification in the context of an IAC, and ostensibly carries greater culpability and punishment.<sup>358</sup>

#### 4.4.2.2 APPROPRIATION OF PROPERTY

International Humanitarian Law restricts the opportunity of a belligerent party to appropriate the property of an adversary to that which is strictly required by military necessity.<sup>359</sup> This limitation applies to the private property of civilians, as well as “the economic substance of the belligerently occupied territory [which] must not be taken over by the occupant or put to the service of his war effort [with the exception of that which is] strictly limited to the needs of the army of occupation insofar as such needs do not exceed the economic strength of the occupied territory.”<sup>360</sup> Moreover, any “requisitions in kind must be in proportion to the resources of the country and must be paid for insofar as possible in cash, or alternatively a receipt must be given and the amount owed paid as soon as possible.”<sup>361</sup> Similarly, all interned civilians must be given receipts for all confiscated moneys and documents, which must be given back at the end of the internment.<sup>362</sup> All such acts committed as part of reprisals against protected persons and their property are strictly prohibited.<sup>363</sup> The seizure of property belonging to an adversary and protected by international law in violation of these principles may amount to a grave breach<sup>364</sup> and a war crime, when committed in the context of an armed conflict.<sup>365</sup> As with destruction, extensive and wanton appropriation carries a separate legal qualification under the ICC Statute in the context of an IAC.<sup>366</sup>

In addition, the act of “pillage” (also known as “plunder” and “spoliation”<sup>367</sup>) is strictly

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<sup>357</sup> In the context of an IAC - Article 8(2)(b)(xiii) ICC Statute; in the context of a NIAC – Article 8(2)(e)(xii) ICC Statute.

<sup>358</sup> Article 8(2)(a)(iv) ICC Statute – please note that the crime of ‘Extensive destruction’ only applies in IAC.

<sup>359</sup> Articles 23(g) and 52 of the Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907; Article 147 of Geneva Convention IV.

<sup>360</sup> UNWCC, *Krupp case, LRTWC*, vol. X, p. 135.

<sup>361</sup> SCSL, *The Prosecutor v. Sesay et al*, Judgment, SCSL-04-15, 2 March 2009, Para. 987.

<sup>362</sup> Article 97 of Geneva Convention IV.

<sup>363</sup> Article 33 of Geneva Convention IV.

<sup>364</sup> Article 50 of Geneva Convention I; Article 51 of Geneva Convention II; Article 147 of Geneva Convention IV.

<sup>365</sup> In the context of an IAC - Article 8(2)(b)(xiii) ICC Statute; in the context of a NIAC – Article 8(2)(e)(xii) ICC Statute.

<sup>366</sup> Article 8(2)(a)(iv) of the ICC Statute.

<sup>367</sup> ICTY, *The Prosecutor v. Delalic et al.*, Judgment, IT-96-21-T, 16 November 1998, para. 591; ICTY, *The Prosecutor v. Simić*, IT-95-9, Judgment, 17 October 2003, Para. 98.

prohibited by international humanitarian law<sup>368</sup> on the entire territories of the parties to a conflict.<sup>369</sup> Pillage is defined in international law as the act of appropriation of certain property (public or private) for private and personal use, without the consent of the owner (whether civilian or combatant) and with the intention to deprive its owner of the property.<sup>370</sup> Appropriations justified by military necessity cannot constitute the crime of pillage.<sup>371</sup> The term pillage is broad in scope and “extends both to acts of looting committed by individual soldiers for their private gain, and to the organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory.”<sup>372</sup> For the purpose of international law, pillage “does not require the appropriation to be extensive or to involve a large economic value.”<sup>373</sup> Nevertheless, to constitute a war crime, pillage must take place in the context of an armed conflict,<sup>374</sup> and must reach a certain level of seriousness, assessed on a case-by-case basis in light of the consequences for or number of victims.<sup>375</sup>

#### 4.4.3 EVIDENCE OF DESTRUCTION AND APPROPRIATION OF PROPERTY

Evidence suggests that there have been a large number of cases of unlawful destruction and appropriation of property and pillage across the conflict-affected

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<sup>368</sup> Articles 28 and 47 of the Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907; Article 15 of Geneva Convention I; Article 18 of Geneva Convention III; Article 33 of Geneva Convention IV; Article 4(2)(g) of Additional Protocol II to the Geneva Conventions.

<sup>369</sup> ICTY, Prosecutor v. Delalić et al., Trial Judgment, IT-96-21-T, 16 November 1998, para. 588.

<sup>370</sup> ICC Elements of Crimes, Article 8(2)(b)(xvi) and Article 8(2)(e)(v); See also ICC, Prosecutor v. Germain Katanga, Judgment pursuant to article 74 of the Statute, ICC-01/04-01/07, 7 March 2014, paras. 904-907.

<sup>371</sup> Footnote 62 of the ICC Elements of Crimes; See also ICC, Prosecutor v. Germain Katanga, Judgment pursuant to article 74 of the Statute, ICC-01/04-01/07, 7 March 2014, paras. 906.

<sup>372</sup> ICC, Prosecutor v. Germain Katanga, Judgment pursuant to article 74 of the Statute, ICC-01/04-01/07, 7 March 2014, paras. 905; ICTY, Prosecutor v. Simić, Judgment, IT-95-9, 17 October 2003, para. 99; ICTY, Prosecutor v. Delalić et al., Trial Judgment, IT-96-21-T, 16 November 1998, para. 590: “Isolated instances of theft of personal property of modest value were treated as war crimes in a number of trials before French Military Tribunals following the Second World War” - See *Trial of Alois and Anna Bommer and their daughters* before the Permanent Military Tribunal at Metz, Judgment delivered on 19 Feb. 1947, Vol. IX, Law Reports, p. 62 ff; *Trial of August Bauer*, Judgment of the Permanent Military Tribunal at Metz, 10 June 1947; *ibid.*, p. 65; *Trial of Willi Buch*, Judgment of the Permanent Military Tribunal at Metz, 2 Dec. 1947, *ibid.*, p. 65; *Trial of Elizabeth Neber*, Judgment of the Permanent Military Tribunal at Metz 6 April 1948; *ibid.* p. 65; *Trial of Christian Baus*, Judgment of the Permanent Military Tribunal at Metz 21 Aug. 1947; *ibid.* p. 68 ff.

<sup>373</sup> ICTY, The Prosecutor v. Naletilić and Martinović, Judgment, IT-98-34, 31 March 2003, para. 612.

<sup>374</sup> Article 8(2)(b)(xvi) ICC Statute in the context of an IAC and Article 8(2)(e)(v) ICC Statute in the context of a NIAC.

<sup>375</sup> ICC, *Prosecutor v. Germain Katanga*, Judgment pursuant to article 74 of the Statute, ICC-01/04-01/07, 7 March 2014, paras. 909.

territory of Eastern Ukraine. It is beyond the scope of this report to document all such cases. Instead, we have identified the most representative examples to give an indication of the gravity and extent of these offences in the region.

#### 4.4.3.1 BUILDINGS DEDICATED TO RELIGION

There is strong evidence that churches and other buildings or structures dedicated to religion other than those belonging to the Orthodox Church of the Moscow Patriarchate have been subject to attacks,<sup>376</sup> serious damage,<sup>377</sup> appropriation<sup>378</sup> and pillage<sup>379</sup> by separatist forces in the course of the conflict in Eastern Ukraine. In some cases, religious icons and personal effects of the clergy were appropriated or destroyed.<sup>380</sup> In other cases, religious premises were appropriated in their entirety and used to hold Orthodox religious ceremonies,<sup>381</sup> stockpile weapons, and prepare and launch attacks.<sup>382</sup> There is no evidence that the religious buildings damaged or

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<sup>376</sup> E.g.: the Prayer Marathon organised by the Donetsk Council of Churches came under attack on numerous occasions, during which the organisers' tent, religious symbols and other possessions were vandalised or thrown into a nearby river. FILE 60 witness 0060-K-579.

<sup>377</sup> E.g., a Ukrainian Orthodox Church was shot at, its windows were shattered – FILE 153 witness 0153-K-641.

<sup>378</sup> E.g.: Kind News Church of Sloviansk. See video shot and made available by the pro-Russian combatants: YouTube, available at: <https://www.youtube.com/watch?v=ljFKNeuL6qQ> (last accessed: 9/07/2015); the Evangelical Church of Shakhtarsk was used to deploy attacks – FILE 148; Bethany Baptist Church – See Institute of Religious Freedom, “Хронология террора: боевики “ДНР” и “ЛНР” преследуют христиан Донбасса” August 6, 2014, available at: [http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1456%3A1&catid=34%3Aua&Itemid=61&lang=ru](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1456%3A1&catid=34%3Aua&Itemid=61&lang=ru); (last accessed: 9/07/2015).

<sup>379</sup> E.g., the New Generation Evangelical Church in Horlivka was looted for computer equipment and legal documents. See Institute of Religious Freedom, “Хронология террора: боевики “ДНР” и “ЛНР” преследуют христиан Донбасса” 6 August 2014, available at: [http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1456%3A1&catid=34%3Aua&Itemid=61&lang=ru](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1456%3A1&catid=34%3Aua&Itemid=61&lang=ru); (last accessed: 9/07/2015).

<sup>380</sup> E.g., the New Generation Evangelical Church in Horlivka was looted for computer equipment and legal documents - See Institute of Religious Freedom, “Хронология террора: боевики “ДНР” и “ЛНР” преследуют христиан Донбасса” 6 August 2014, available at: [http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1456%3A1&catid=34%3Aua&Itemid=61&lang=ru](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1456%3A1&catid=34%3Aua&Itemid=61&lang=ru); (last accessed: 9/07/2015).

<sup>381</sup> E.g., the Kind News Church of Sloviansk – See video shot and made available by the pro-Russian combatants: YouTube, available at: <https://www.youtube.com/watch?v=ljFKNeuL6qQ> (last accessed: 9/07/2015).

<sup>382</sup> E.g., the Evangelical Church of Shakhtarsk was used to deploy attacks – FILE 148; Bethany Baptist Church – See Institute of Religious Freedom, “Хронология террора: боевики “ДНР” и “ЛНР” преследуют христиан Донбасса” 6 August 2014, available at: [http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1456%3A1&catid=34%3Aua&Itemid=61&lang=ru](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1456%3A1&catid=34%3Aua&Itemid=61&lang=ru); (last accessed: 9/07/2015).

appropriated by separatists had at any point been directly used in hostilities by the Ukrainian army or pro-Ukrainian paramilitary forces, or had become military objectives by offering a definitive military advantage. Moreover, there is no evidence that any intention of or attempt at compensation had ever been made to the dispossessed clergy. There is also evidence that in some cases, these violations were motivated by reprisals against religious organisations perceived as being “pro-Ukrainian,”<sup>383</sup> or as part of a policy of religious persecution.<sup>384</sup>

#### 4.4.3.2 PUBLIC BUILDINGS, HOTELS AND BUSINESSES

There is convincing evidence that a number of public and privately owned buildings located on the territory of Eastern Ukraine have been appropriated by separatist forces as part of the conflict. Such buildings have been used as barracks,<sup>385</sup> command headquarters,<sup>386</sup> armament, ammunition and supply stockpiles,<sup>387</sup> as well as detention and interrogation centers.<sup>388</sup>

Public administration buildings and police or security services buildings (and all moveable property located therein) have been appropriated by separatist forces in every locality occupied by them.<sup>389</sup> Any claim that the appropriation of such buildings is justified by military necessity are undermined by the fact that many of the appropriated buildings were or are being used to perpetrate international crimes

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<sup>383</sup> E.g., on June 17, 2014, 30 combatants from the separatist ‘Vostok’ battalion stormed the Evening Light Christian Rehabilitation Center in Donetsk and detained 27 worshipers, accusing them of collaborating with Ukrainian volunteer battalions. See FILE 60 - testimony of 0060-K-579, 0150-K-639. See also: ProChurchInfo, “Похищенных в ребцентре Донецка людей отпустили”, June 19, 2014, available at: <http://prochurch.info/index.php/news/more/29617> (last accessed: 9/07/2015); In October 2014, the Oplot battalion occupied the Petrovsky Church of Christ in Donetsk accusing its leadership of collaborating with Americans – See Aljazeera, “In rebel-held Donetsk, religious intolerance grows,” March 17, 2015, available at: <http://america.aljazeera.com/multimedia/2015/3/in-rebel-held-donetsk-religious-intolerance-grows.html> (last accessed: 9/07/2015); See also the case of Evangelical Church of Victors in Druzhkivka – See Dankor Online, “Итоги года: религиозные преследования на Донбассе и в Крыму”, January 13, 2015, available at: <http://www.dancor.sumy.ua/news/mosaic/144911> (last accessed: 09/07/2015).

<sup>384</sup> See section 4.5 of this report.

<sup>385</sup> E.g., FILE 94 witness 0094-K-615; FILE 119 witness 0119-K-628, 0119-K-629, 0119-K-630 and others.

<sup>386</sup> E.g., Donetsk and Luhansk City Hall

<sup>387</sup> E.g., FILE 24 Hotel Evropa witness 0024-K-532; FILE 119 witness 0119-K-629; FILE 8 witness 0008-K-508; FILE 29 witness 0029-K-537 and many others.

<sup>388</sup> E.g., Slaviansk SBU and IVS temporary holding facility, Kramatorsk Ispolkom and SBU, Donetsk SBU, District council in Lugansk city, Konstantinovka Ispolkom, Gorlovka City police station, Donetsk IZOLITSIA and OGA building, Severodonetsk SBU and many others.

<sup>389</sup> Town and Regional Administration buildings, police and SBU headquarters in Donetsk, Luhansk, Slaviansk, Horlivka, Kramatorsk, Druzhkovka, Konstantinovka, Snizhne, Stanitsa Luganskaya, Stahanov, Severodonetsk and many others.

such as arbitrary detention and torture,<sup>390</sup> which cannot be regarded as legitimate military objectives. In addition, private businesses such as hotels,<sup>391</sup> supermarkets<sup>392</sup> and factories<sup>393</sup> have been pillaged and appropriated for similar purposes. A further challenge to the argument of military necessity is the fact that in many cases, businesses were chosen not on the basis of their location, but on the basis of actual or perceived political positions of their owners.<sup>394</sup> In some instances, such buildings were seriously damaged or destroyed as part of reprisals against the owners or what they are perceived to stand for.<sup>395</sup>

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<sup>390</sup> See section 4.2 of this report.

<sup>391</sup> E.g., Evropa Hotel in Konstantinovka – FILE 24; Vostok hotel in Konstantinovka – FILE 28; Hotel Liverpool’ in Donetsk – FILE 95; Initsial hotel in Lugansk – FILE 84.

<sup>392</sup> E.g., Metro supermarket in Donetsk – FILE 105; Private shop in Stakhanov – FILE 19.

<sup>393</sup> Izoliatsia factory in Donetsk City – FILES 95, 57; Konti factory in Donetsk area – FILE 97; Stekolny factory in Lysychansk – FILE 46; Donetsk state factory of chemical products – FILE 143.

<sup>394</sup> E.g., Evropa Hotel in Konstantinovka – FILE 24; Greenhouse in Peremozhne village – FILE 89; Funeral business in Yasynuvata city – FILE 77(2).

<sup>395</sup> E.g., Office of the “Provintsia” newspaper In Konstantinovka – FILE 71.



Source: IPHR

#### 4.4.3.3 CIVILIAN HOUSING AND OTHER PROTECTED BUILDINGS

A large number of residential buildings inhabited by civilians have been damaged and destroyed by both separatists<sup>396</sup> and Ukrainian and pro-Ukrainian armed forces<sup>397</sup> during the armed conflict. Likewise, other protected buildings such as schools, hospitals and nursing homes have been damaged or destroyed.

In some cases, the partial or total destruction of civilian objects took place as a result of indiscriminate attacks on residential areas as described in section 4.1 of this report.<sup>398</sup> In other cases, individual properties or civilian areas were deliberately targeted as part of direct attacks or reprisals.<sup>399</sup> Numerous properties of civilians who have been detained or intimidated into fleeing the separatist-occupied areas have

<sup>396</sup> E.g., Buildings in Avdiivka with Ukrainian flag – FILE 118; Houses of people in Peremohzhe village who helped to Ukrainian army with water and food – FILE 89.

<sup>397</sup> E.g., Aviation attack by Ukrainian army in Golma City – FILE 06.

<sup>398</sup> E.g., 41 buildings damaged in Kramatorsk including school/hospital – Information from SBU published in press: Ukrainskaya Pravda, “В Краматорске от обстрелов погибло 16 человек, еще 48 пострадали”, February 11, 2015, available at: <http://www.pravda.com.ua/rus/news/2015/02/11/7058146/> (last accessed: 09/07/2015); More than 650 buildings and other objects destroyed in Mariupol including school, hospital – Investigation of the shelling of Mariupol on January 24, 2015: see section 4.1 of this report.

<sup>399</sup> E.g., Semenovka village – FILE 119; Popasna City – FILE 45; Severodonetsk City – FILE 48; and many others.

been appropriated and pillaged by separatist forces.<sup>400</sup> There is no evidence in any of these cases that targeted properties had lost their civilian character to become legitimate military objectives.

#### 4.4.3.4 MEDIA OUTLETS

A number of private media outlets,<sup>401</sup> ranging from private bloggers<sup>402</sup> to premises of accredited journalists,<sup>403</sup> have been appropriated by separatist forces and leadership, as part of the conflict.<sup>404</sup> Premises and equipment have been pillaged and in some cases used to create pro-separatist propaganda.<sup>405</sup>

#### 4.4.3.5 VEHICLES

Vehicles belonging to civilians,<sup>406</sup> businesses<sup>407</sup> and public services<sup>408</sup> have been primary targets for appropriation by separatist forces and leadership, as part of the conflict. There is evidence that the unlawful appropriation of vehicles is a standard practice in cases of unlawful arrest and detention at separatist checkpoints<sup>409</sup> and house raids.<sup>410</sup> Vehicles are rarely returned on release,<sup>411</sup> and in some cases are taken as a “ransom price” to secure the victim’s return.<sup>412</sup> Appropriated vehicles are used as part of the “war effort”<sup>413</sup> as well as personal “war trophies” by separatist soldiers and commanders.<sup>414</sup> Vehicles are typically appropriated from actual or perceived political opponents of the separatist movement,<sup>415</sup> although there is no

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<sup>400</sup> E.g., FILE 89 witnesses 0089-K-609, 0089-K-611, 0089-K-610; FILE 79 witness 0079-K-591; FILE 108 witness 0108-K-623.

<sup>401</sup> E.g., Office of the “Provintsiya” newspaper In Konstantinovka – FILE 71.

<sup>402</sup> E.g., FILE 95 witness 0095-K-616.

<sup>403</sup> E.g., FILE 29 witness 0029-K-537.

<sup>404</sup> E.g., FILE 95 witness 0095-K-616 was taken by DPR fighters for being blogger and interrogated by FSB agents; FILE 29 witness 0029-K-537 was taken by LPR fighters despite of having accreditation from LPR.

<sup>405</sup> E.g., “Provintsiya” newspaper In Konstantinovka – FILE 71; FILE 09 witness 0009-K-511, Tehnopolis newspaper.

<sup>406</sup> E.g., FILE 89 witness 0089-K-609; FILE 24 witness 0024-K-530; FILE 58 witness 0058-K-578; FILE 125 witness 0125-K-630-2; FILE 33 witness 0033-K-542; FILE 137 witness 0137-K-633; FILE 78 witness 0078-K-590; and many others.

<sup>407</sup> E.g., FILE 49 witness 0049-K-564.

<sup>408</sup> E.g., FILE 3 witness 0003-K-503.

<sup>409</sup> E.g., FILE 89 witness 0089-K-609; FILE 18 witness 0018-K-525; FILE 28 witness 0028-K-536.

<sup>410</sup> E.g.: FILE 05 witness 0005-K-505; FILE 47 witness 0047-K-562; FILE 44 witness 0044-K-555; and others.

<sup>411</sup> E.g., FILE 137 witness 0137-K-633.

<sup>412</sup> E.g., FILE 24 witness 0024-K-530

<sup>413</sup> E.g.: FILE 18 witness 0018-K-525.

<sup>414</sup> E.g., FILE 89 witness 0089-K-609.

<sup>415</sup> E.g., FILE 58 witness 0058-K-578; FILE 89 witness 0089-K-609; FILE 24 witness 0024-K-530.

evidence that those targeted or their property had taken direct part in the hostilities.

#### 4.4.3.6 DOCUMENTS AND OTHER PERSONAL EFFECTS

In addition to the above-mentioned property, actual or perceived “subversives”(on either side) and arrestees are systematically stripped of money, documents, information technology and other personal effects, as part of the conflict. Documents may include identification,<sup>416</sup> car registration papers<sup>417</sup> and title deeds to residential or business property.<sup>418</sup> Computers, phones and tablets are commonly taken during arrest under the pretext of checking for subversive materials,<sup>419</sup> but rarely returned whether or not such material is found.<sup>420</sup> Cash found on arrestees’ persons or in their residence or businesses is also taken.<sup>421</sup> In the majority of cases no receipts are provided for confiscated items and the items are not returned upon release.<sup>422</sup> There is evidence that such practices are carried out by separatist<sup>423</sup> and pro-Ukrainian forces.<sup>424</sup>

#### 4.4.4 CONCLUSION

In light of the above, there is a reasonable basis to believe that the war crimes of appropriation and destruction of property (in some cases amounting to excessive and wonton appropriation and destruction), and pillage have been committed by separatist and pro-Ukrainian forces on the conflict-affected territory of Eastern Ukraine since March 2014.

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<sup>416</sup> E.g., FILE 18 witness 0018-K-525; FILE 105 witness 0105-K-620; FILE 86 witness 0086-K-603-2.

<sup>417</sup> E.g., FILE 78 witness 0078-K-590; FILE 86 witness 0086-K-603-2; FILE 132 witness 0132-K-632.

<sup>418</sup> E.g., FILE 38 witness 0038-K-548-2.

<sup>419</sup> E.g., FILE 47 witness 0047-K-562, FILE 44 witness 0044-K-555, FILE 29 witness 0029-K-537: their properties were taken and not given back.

<sup>420</sup> E.g., FILE 118 witness 0118-K-627: cell phone was given back; FILE 35 witness 0035-K-544: found cell phone by himself.

<sup>421</sup> E.g., FILE 95 witness 0095-K-616; FILE 35 witness 0035-K-544; FILE 89 witness 0089-K-613; FILE 132 witness 0132-K-632; FILE 57 witness 0057-K-577 family; and many others.

<sup>422</sup> E.g., FILE 95 witness 0095-K-616; FILE 126 witness 0126-K-631; FILE 19 witness 0019-K-526; FILE 132 witness 0132-K-632; and many others.

<sup>423</sup> E.g., FILE 47 witness 0047-K-562, FILE 44 witness 0044-K-555, FILE 29 witness 0029-K-537; FILE 95 witness 0095-K-616; FILE 126 witness 0126-K-631.

<sup>424</sup> E.g., FILE 144 witness 0144-K-634; FILE 145 witness 0145-K-635; FILE 108 witness 0108-K-623.

## 4.5 PERSECUTION

### 4.5.1 OVERVIEW

Strong evidence has emerged from Eastern Ukraine that persons and groups perceived to be in opposition to the separatist movement have been systematically targeted and discriminated against on political grounds by separatist forces and leadership. Furthermore, there is evidence that leaders and vocal followers of faiths other than the Russian Orthodox Church of the Moscow Patriarchate are targeted and discriminated against on religious grounds by the separatist movement. When perpetrated as part of a widespread or systematic attack on the civilian population, the severe deprivation of fundamental rights on political and/or religious grounds may amount to the crime against humanity of persecution.

### 4.5.2 APPLICABLE LAW

According to the ICC Statute, persecution is “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”<sup>425</sup> The group’s identity and ensuing discrimination may be based on “political, racial, national, ethnic, cultural, religious [...] or other grounds that are universally recognized as impermissible under international law.”<sup>426</sup> Either the group as such or individual members of the group or collectivity may be the victims of the persecution.<sup>427</sup> Where individual members are targeted, it must be specifically because of their actual or perceived association with that group.<sup>428</sup> What matters is the perpetrator’s subjective identification of the group including all those “defined by the perpetrator as belonging to the victim group due to their close affiliations or sympathies for the victim group.”<sup>429</sup>

The crime against humanity of persecution is an umbrella offence aimed at prosecuting severe and systemic discrimination, encompassing “acts that are not inherently criminal [but which] may nonetheless become criminal and persecutorial if committed with discriminatory intent.”<sup>430</sup> Persecution may involve “a variety of acts, including, inter alia, those of a physical, economic or judicial nature, that violate an individual’s right to the equal enjoyment of his basic rights.”<sup>431</sup> Acts of harassment, humiliation, psychological abuse and other outrages on personal dignity have been

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<sup>425</sup> Article 7(2)(g) of the ICC Statute.

<sup>426</sup> ICC Elements of Crimes, Article 7(1)(h).

<sup>427</sup> “The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.” See ICC Elements of Crimes, Article 7(1)(h), Element 2.

<sup>428</sup> Gerhard Werle, “Principles of International Criminal Law”, 2<sup>nd</sup> Ed, 2009, paras. 890, 899.

<sup>429</sup> ICTY, Prosecutor v. Naletilic and Martinovic, Judgement, IT-98-34, 31 March 2003, para 636.

<sup>430</sup> ICTY, Prosecutor v. Kvočka et al., Judgement, IT-98-30/1-T, 2 November 2001, para. 186.

<sup>431</sup> ICTY, Prosecutor v. Duško Tadić, Judgment, IT-94-1-T, 7 May 1997, paras. 697, 710.

recognised as being capable of amounting to persecution.<sup>432</sup> Similarly, the systemic denial of freedom of movement and judicial processes,<sup>433</sup> and the extensive looting, destruction and/or confiscation of homes, buildings, businesses, civilian personal property and livestock can also be acts of persecution.<sup>434</sup>

Whilst the deprivation must be “severe” it need not amount to one of the other listed international crimes.<sup>435</sup> The severity may be assessed by considering the context<sup>436</sup> and “the cumulative effect of all the underlying acts of the crime of persecution.”<sup>437</sup> For the purpose of an ICC prosecution, the deprivation of fundamental rights must be committed in connection with another crime within the jurisdiction of the ICC,<sup>438</sup> and be intentionally or knowingly committed as part of a widespread or systematic attack against the civilian population.<sup>439</sup>

Persecution on political grounds includes the targeting of civilians on the basis of their actual or perceived political opposition to a movement, regime or leader.<sup>440</sup> Such targeted groups are defined not by the members’ political affiliations, party membership or shared ideology, but by their actual or perceived shared political opinion.<sup>441</sup>

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<sup>432</sup> ICTY, Prosecutor v. Kvočka et al., Judgment, IT-98-30/1-T, 2 November 2001, paras. 232-235.

<sup>433</sup> ICTY, Prosecutor v. Brđjanin, Judgment, IT-99-36-T, 1 September 2004, paras. 1031-1049.

<sup>434</sup> Laurence Carrier-Desjardins, “The Crime of Persecution and the Situation in Darfur: A Comment on the Al Bashir Arrest Warrant Decision,” August 28, 2009, available at: [http://www.haguejusticeportal.net/index.php?id=10761#\\_edn18](http://www.haguejusticeportal.net/index.php?id=10761#_edn18) (last accessed: 27/05/14) – paraphrasing: ICTY, Prosecutor v. Milomir Stakic, Judgment, IT-97-24-T, 31 July 2003, para. 763.

<sup>435</sup> ICTY, Prosecutor v. Kvočka et al, Appeal Judgment, IT-98-30/1-A, February 28, 2005, para. 323.

<sup>436</sup> “[T]he underlying acts should not be considered in isolation, but rather in the context of other acts and crimes, by looking at their cumulative effect. This, in combination with references to persecution as implying a series of acts (rather than a single act), reflects the *collective* and *multifaceted* nature of crimes against humanity under international criminal law, which aims to capture a range of acts or patterns, rather than isolated behaviour,” in United Nations High Commissioner for refugees, Legal and Protection Policy Research Series, “*Forced Displacement and International Crimes*,” Guido Acquaviva, June 2011, p. 21.

<sup>437</sup> “[I]t is not necessary that every individual act underlying the crime of persecution should be of a gravity corresponding to other crimes against humanity: underlying acts of persecution can be considered together. It is the cumulative effect of all the underlying acts of the crime of persecution, which must reach a level of gravity equivalent to that for other crimes against humanity. Furthermore, the context in which these underlying acts take place is particularly important for the purpose of assessing their gravity,” in ICTR, Ferdinand Nahimana, Jean-Bosco Barayagwiza & Hassan Ngeze v. The Prosecutor, Appeal Judgment, ICTR-99-52-A, para. 987.

<sup>438</sup> ICC Elements of Crimes, Article 7(1)(h).

<sup>439</sup> ICC Elements of Crimes, Article 7(1)(h).

<sup>440</sup> ICC, Situation in Libyan Arab Jamahiriya, “Decision on the “Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI”, ICC-01/11, 27 June 2011, para. 65.

<sup>441</sup> ICC, Situation in Libyan Arab Jamahiriya, “Decision on the Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI,”

### 4.5.3 EVIDENCE OF PERSECUTION ON POLITICAL GROUNDS

From the first days of unrest in Eastern Ukraine, there has been evidence of a separatist policy of targeting civilians suspected of being in opposition to the separatist movement.

Targeted persons and groups include actual or perceived members of pro-Ukraine political parties and organisations,<sup>442</sup> members of “right-wing” parties and organisations (referred to as *pravoseki*),<sup>443</sup> “pro-Kyiv” journalists, bloggers and civil society actors,<sup>444</sup> and all other groups and individuals that are perceived to hold a pro-Ukrainian or anti-separatist position.<sup>445</sup> The uniting factor between all members of this collectivity, and the ground on which they are targeted, is their actual or perceived opposition to the separatist movement (hereinafter referred to as “subversives” – a term adopted by the separatist leadership to refer to members of this collectivity).<sup>446</sup>

These so-called subversives have been subjected to international crimes and severe

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ICC-01/11, 27 June 2011, para. 65; Paras. 42-64: those who were described by the PTC as targeted persons included activists and demonstrators against the Abo Sleem massacre, writers and journalists perceived as dissidents, recipients of banned television frequencies, protestors against arrests of activists and members of a funeral procession for murdered dissidents; See also Gerhard Werle, “Principles of International Criminal Law,” 2<sup>nd</sup> Ed, 2009, para 907.

<sup>442</sup> E.g., FILE 25 witness 0025-K-533, FILE 35 witness 0035-K-544, FILE 49 witness 0049-K-564 were all detained, interrogated and ill-treated on the grounds of their membership of SVOBODA – a pro-Ukrainian political organisation.

<sup>443</sup> E.g., FILE 2 witness 0002-K-502, FILE 8 witness 0008-K-509, FILE 60 witness 0060-K-579 – all accused of being *pravoseki* during their interrogations and torture.

<sup>444</sup> E.g., FILE 105 witness 0105-K-620: active civil society actor arrested on orders from Zaharchenko and Prikhodko and subjected to arbitrary detention and inhuman treatment for political reasons; FILE 95 witness 0095-K-616: political analyst and blogger subjected to arbitrary detention and inhuman treatment for his activities and for refusing to assist separatist propaganda; FILE 57 witnesses 0057-K-577, 0057-K-577-2: arbitrarily detained and subjected to inhuman treatment on account of daughter’s journalistic activities; FILE 29 witness 0029-K-537: arbitrarily detained and subjected to inhuman treatment for being a “pro-Kyiv” journalist.

<sup>445</sup> E.g., FILE 10 witness 0010-K-516: subjected to arbitrary detention, cruel and degrading treatment for carrying out a one-man protest with a Ukrainian flag; FILE 52 witness 0052-K-566: subjected to arbitrary detention and inhuman treatment for expressing ‘subversive’ opinion against pro-separatist propaganda; FILE 33 witness 0033-K-542: subjected to arbitrary detention, inhuman treatment and mock executions for having a small Ukrainian flag in the boot of his car; FILE 28 witness 0028-K-536: detained and subjected to inhuman and degrading treatment for refusing to hand over police weapons to the separatists.

<sup>446</sup> On January 22, the “head” of the “Donetsk People’s Republic” declared that up to five Ukrainian ‘subversives’ aged between 18 and 35 were being detained every day: OHCHR, “Report on the human rights situation in Ukraine: 1 December 2014 to 15 February 2015,” para 33, available at: <http://www.ohchr.org/Documents/Countries/UA/9thOHCHRreportUkraine.pdf> (last accessed: 5.06.2015).

deprivations of fundamental rights by separatists. There is evidence that “execution lists” have been drawn up on local and regional levels, targeting leaders of the so-called “subversive” organizations and other outspoken critics of the separatist movement.<sup>447</sup> A number of people on these execution lists have been summarily executed.<sup>448</sup> Others were taken into custody, arbitrarily detained, ill treated and tortured.<sup>449</sup> The most fortunate targets managed to escape the separatist-occupied territories in time, often leaving their family, friends and possessions behind.<sup>450</sup>

Beyond those targeted for elimination is a wider pool of so-called “subversives” who have been arrested, arbitrarily detained and subjected to inhuman and degrading treatment in custody.<sup>451</sup> Frequently, such treatment has amounted to torture, the purpose of which was to obtain information on or punish for suspected subversive activities.<sup>452</sup>

The so-called subversives are also primary targets for property appropriation and/or destruction.<sup>453</sup> Residential properties and businesses belonging to suspected subversives have been appropriated, pillaged or used to launch attacks.<sup>454</sup> Vehicles, mobile phones and other personal belongings of suspected subversives are regularly requisitioned by separatists.<sup>455</sup>

Most targeted persons testify to being constantly intimidated, threatened and harassed by separatists and their supporters.<sup>456</sup> Verbal abuse, threatening telephone messages, calls and harassment on social media are common.<sup>457</sup> In some cases, their property is defaced with graffiti or even subjected to attempted arson and criminal damage.<sup>458</sup> There is also evidence that prior to shelling residential areas, separatists selectively warn only those residents who they consider to be on their side, deliberately withholding this information from perceived “pro-Ukrainians.”<sup>459</sup>

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<sup>447</sup> See section 4.3 of this report.

<sup>448</sup> E.g., FILE 58 witness 0058-K-578-3; FILE 89 witness's 0089-K-614-9-2 family; FILE 89 witness's 0089-K-614-3 family; FILE 89 witnesses 0089-K-609 and 0089-K-614-4.

<sup>449</sup> E.g., FILE 8 witness 0008-K-508; FILE 89 witness 0089-K-609 and 0089-K-614-4 found dead after tortures.

<sup>450</sup> E.g., FILE 89 witness's 0089-K-612 family; FILE 31 witness 0031-K-540; FILE 32 witness 0032-K-541.

<sup>451</sup> See section 4.2 of this report.

<sup>452</sup> E.g., FILE 25 witness 0025-K-533; FILE 35 witness 0035-K-544; FILE 33 witness 0033-K-542; etc.

<sup>453</sup> See section 4.4 of this report.

<sup>454</sup> E.g., FILE 30 witness 0030-K-539-2; FILE 24 witness's 0024-K-530 family; FILE 71 witness's 0071-K-584-2 family.

<sup>455</sup> E.g., FILE 98 witness 0098-K-617-2; FILE 97 witness 0097-K-617.

<sup>456</sup> E.g., FILE 4 witness 0004-K-504-2; FILE 77(2) witness 0077-K-589.

<sup>457</sup> E.g., FILE 24 witness's 0024-K-530 family; FILE 31 witness 0031-K-540; FILE 32 witness 0032-K-541.

<sup>458</sup> E.g., FILE 71 witness 0071-K-584-2; FILE 5 witness 0005-K-505; FILE 38 witness 0038-K-548-2.

<sup>459</sup> E.g., FILE 89 witnesses 0089-K-612, 0089-K-614-9-2, 0089-K-609.

All opposing opinion and organisations are being actively suppressed by the separatist movement. Those who openly criticise the actions of separatists through print or social media have been hunted down, imprisoned, abused and killed.<sup>460</sup> Media and publishing outfits perceived as “pro-Ukrainian” have been appropriated by separatists and used for distributing propaganda.<sup>461</sup> Any attempts at exercising the right to peaceful assembly by those who oppose the war or the separatist movement have been repressed with violence and intimidation.<sup>462</sup> Suspected subversives in the conflict area have had their freedom of movement restricted, either by denying the right to leave an area, or not allowing them to enter certain areas.<sup>463</sup>

There is strong evidence that the acts described above are neither spontaneous nor isolated incidents. The actions and words of the separatist leadership evidence the existence of a policy of persecution of suspected subversives on political grounds. In a number of speeches, separatist leaders have expressed their intention to hunt down and eliminate anyone opposed to their movement.<sup>464</sup> Messages transmitted through posters, separatist media, Russian State media and online media also support the existence of such a policy.<sup>465</sup>

In light of all of the above, it appears that there is a clear policy to persecute civilian persons and groups who are suspected of being in opposition to the separatist movement. Furthermore, there is little doubt that this political persecution is taking place as part of the separatist movement’s widespread and systematic attack on the civilian population.

#### **4.5.4 EVIDENCE OF PERSECUTION ON RELIGIOUS GROUNDS**

There is persuasive evidence of a separatist policy to persecute leaders and vocal followers of religions other than that of the Russian Orthodox Church of Moscow Patriarchate. This policy has manifested itself in regular attacks on places of worship

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<sup>460</sup> E.g., FILE 19 witness 0019-K-526; FILE 2 witness 0002-K-502.

<sup>461</sup> E.g., FILE 24 witness 0024-K-530 family; FILE Z\_09 witness 0Z\_09-K-652; FILE 95 witness 0095-K-616; FILE 57 witness 0057-K-577 family.

<sup>462</sup> E.g., FILE 105 witness 0105-K-620; FILE 31 witness 0031-K-540; FILE 94 witness 0094-K-615.

<sup>463</sup> E.g.: FILE 3 witness 0003-K-503; FILE 121 witness 0121-K-630-3.

<sup>464</sup> E.g., see recording of Pavel Guvarev: YouTube, “Павел Губарев обращение 4 Июля,” July 5, 2015, available at: <https://www.youtube.com/watch?v=y9X19GKGkiA> (last accessed: 13/07/2015);

<sup>465</sup> E.g., See posters in FILE 24 witness 91-AXh1HjgU; FILE 25 witness 0025-K-533; See also, KyivPost, “Russia retains Soviet propaganda tools in its war against Ukraine”, 5 June 2015, available at: <http://www.kyivpost.com/content/kyiv-post-plus/russia-retains-soviet-propaganda-tools-in-its-war-against-ukraine-390320.html> (last accessed: 10.07.2015); See also: DonbassUA, “В Москве призывают убивать украинцев”, May 14, 2015, available at: <http://donbass.ua/news/world/2015/05/14/v-moskve-prizyvajut-ubivat-ukraincev.html> (last accessed: 13/07/2015).



and religious gatherings, as well as murder, abduction, arbitrary imprisonment, torture and other forms of ill treatment perpetrated on religious grounds. This policy has resulted in a de facto ban on religious worship on separatist controlled territory of Eastern Ukraine for anyone other than followers of the Orthodoxy of Moscow Patriarchy.

Evidence suggests that all faiths other than the Russian Orthodox Church of Moscow Patriarchate have been targeted. Furthermore, it is clear from victim and witness testimony, perpetrators' statements and other evidence that individuals have been targeted because of their membership in these religious groups.<sup>466</sup> Religious leaders, vocal devotees and military unit chaplains within targeted groups are most likely to fall victim to persecutory acts. Most of the evidence collected by our team relates to attacks on various denominations of Christianity.<sup>467</sup> Nonetheless, there is evidence that members of non-Christian faiths are also targeted.<sup>468</sup>

<sup>466</sup> E.g., 0146-K-636 was accused by his torturers of proselytizing on behalf of a religious sect and told that "there shall only be one religion in this land." FILE 146; Father 0082-K-602-2 was lectured by one of his captors on the truth of Orthodoxy and the heretical nature of other religions. FILE 82.

<sup>467</sup> Including the Ukrainian Greek Catholic Church and Roman Catholic Church; Ukrainian Orthodox Church of Kyiv Patriarchate; Protestant and Evangelical Churches; the Donetsk Council of Churches, comprised of some 60 churches of different Christian denominations.

<sup>468</sup> E.g., FILE 2 witness 0002-K-502 testifies to the detention and abuse in custody of a "Hare Krishna" follower. There is evidence that in April 2014, leaflets signed by the "People's Republic of Donetsk" were distributed demanding that all Jews living on occupied territory should register and pay a new tax or leave the territory. See BBC, "Pay new tax or leave" pamphlet revives old Donetsk Jews fears." April 19, 2014, available at: <http://www.bbc.co.uk/news/world-europe-27086345> (last accessed: 15/06/2015); JerusalemPost, "Fearing rebels, Donetsk's Jews flee Mariupol," October 9, 2014, available at: <http://www.jpost.com/Diaspora/Fearing-rebels-Donetsks-Jews-flee-Mariupol-374913> (last accessed: 10/07/2015).

Persecutory acts include international crimes that have been discussed elsewhere in this report. There is evidence of at least four cases of murder perpetrated on religious grounds. After their abduction in Slaviansk on June 8, 2014, by separatist fighters, the Slaviansk Transfiguration Church pastor's sons Reuben Pavenko and Albert Pavenko and two of the church's deacons, Viktor Bradarsky and Vladimir Velichko were beaten and murdered by separatist fighters whilst in detention in the former Security Services building in Slaviansk.<sup>469</sup> The names of other clergymen, especially those belonging to the Ukrainian Orthodox Church of Kyiv Patriarchate, have been found on separatist "execution lists"<sup>470</sup> Others were threatened with death if they continued their religious activities.<sup>471</sup>

There are numerous cases of arbitrary detention and ill treatment of individuals on religious grounds. Some have been detained and ill treated for continuing to profess their faith.<sup>472</sup> Others have been targeted for defending their members' right to public worship.<sup>473</sup> In other cases, membership of non-Orthodox churches has been automatically equated with "pro-Ukrainian" politics, leading to arbitrary detention and ill treatment on that basis.<sup>474</sup> In some cases, the ill treatment amounted to torture.<sup>475</sup>

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<sup>469</sup> See Interview of Col. Igor Rybalchenko, Vice News, «Missing Civilian Bodies found in Mass Graves: Russian Roulette (Dispatch 63),» July 31, 2014, available at:

[https://www.youtube.com/watch?v=UBsEkF\\_GY0E](https://www.youtube.com/watch?v=UBsEkF_GY0E) (last accessed: 10/07/2015) – their bodies were found with evidence of brutal beatings in a mass grave near a local children's hospital.

<sup>470</sup> E.g., FILE witness 147 - 0147-K-637; FILE 82 witness 0082-K-602.

<sup>471</sup> E.g., Evangelical Church of Torez; Evangelical Church of Shakhtarsk FILE 148 witness 0148-K-638.

<sup>472</sup> Some 14 organizers of the Prayer Marathon in Donetsk have been illegally detained and subjected to inhuman treatment, occasionally amounting to torture: see FILES 60, 82, 146.

<sup>473</sup> E.g., 0060-K-579 was detained and subjected to brutal beatings and inhuman treatment for attempting to dissuade separatists from breaking up the Prayer Marathon in Donetsk. FILE 60; 0060-K-579-2 was detained by DPR forces for 20 days for questioning the separatists' authority to order a halt to Horlivka Seventh Day Adventist church mass. The Seventh Adventists Church in Ukraine, «Вооруженные люди в Горловке похитили адвентистского пастора из молитвенного дома во время святого причастия», September 28, 2014, available at:

[http://www.adventist.org.ua/news\\_vk\\_gorlovka2014\\_pohitili\\_advent\\_pastora.html](http://www.adventist.org.ua/news_vk_gorlovka2014_pohitili_advent_pastora.html) (last accessed: 10/07/2014).

<sup>474</sup> For example, on June 17, 2014, 30 combatants from the separatist "Vostok" battalion stormed the Evening Light Christian Rehabilitation Center in Donetsk and detained 27 people worshipers, accusing them of collaborating with Ukrainian volunteer battalions – See FILE 60: Witness 0060-K-579; See also FILE 150; 0150-K-639 on ProChurchInfo, "Похищенных в ребцентре Донецка людей отпустили," June 19, 2014, available at: <http://prochurch.info/index.php/news/more/29617> (last accessed: 10/07/2015); In October 2014, the Oplot battalion occupied the Petrovsky Church of Christ in Donetsk accusing its leadership of collaborating with Americans. See Aljazeera, "In rebel-held Donetsk religious intolerance grows," March 17, 2015, available at: " <http://america.aljazeera.com/multimedia/2015/3/in-rebel-held-donetsk-religious-intolerance-grows.html> (last accessed: 10/07/2015); See also the case of Evangelical

In one such example, a Donetsk-based pastor was hung up on a rack, forced to wear a mask and suffocated or had his lungs “burned” with ethanol.<sup>476</sup> The same victim and a number of others were subjected to mock executions.<sup>477</sup>

Property belonging to religious organisations or their leadership is regularly vandalised, appropriated and used to prepare or conduct attacks. For example, the Prayer Marathon organised by the Donetsk Council of Churches<sup>478</sup> came under attack on numerous occasions, during which the organisers’ tent, religious symbols and other possessions were vandalised or thrown into a nearby river.<sup>479</sup> In another case, a Ukrainian Orthodox Church was shot at, its windows were shattered, and the icons, literature and other ecclesiastical objects were burned in the churchyard.<sup>480</sup> Churches have also been taken over and declared “Orthodox,”<sup>481</sup> or used by separatist forces to store weapons or launch attacks.<sup>482</sup> Appropriation of Church properties is conducted by separatist armed forces<sup>483</sup> as well as its civilian leadership.<sup>484</sup>

In other instances, Mass and other forms of worship have been broken up by armed separatists and forbidden under threat of death or serious injury.<sup>485</sup> Executive acts

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Church of Victors in Druzhivka – DankorOnline, “Итоги года: религиозные преследования на Донбассе и в Крыму”, January 13, 2015, available at:

<http://www.dancor.sumy.ua/news/mosaic/144911> (last accessed: 10/07/2015).

<sup>475</sup> E.g., FILE 82; FILE 18; FILE 73.

<sup>476</sup> FILE 146 witness 0146-K-636.

<sup>477</sup> FILE 146 witness 0146-K-636; FILE 82 witness 0082-K-602-2.

<sup>478</sup> The Council brings together 60 churches of different denominations.

<sup>479</sup> FILE 82 witness 0082-K-602; FILE 146 witness 0146-K-636; FILE 60 witness 0060-K-579.

<sup>480</sup> FILE 152 witness 0152-K-640.

<sup>481</sup> E.g., the Kind News Church of Sloviansk.

<sup>482</sup> E.g., the Evangelical Church of Shakhtarsk was used to deploy attacks; Bethany Baptist Church; The New Generation Evangelical Church in Horlivka was looted for computer equipment and legal documents. See Institute of Religious Freedom, “Хронология террора: боевики “ДНР” и “ЛНР” преследуют христиан Донбасса,” August 6, 2014, available at:

[http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1456%3A1&catid=34%3Aua&Itemid=61&lang=ru](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1456%3A1&catid=34%3Aua&Itemid=61&lang=ru); (last accessed: 9/07/2015).

<sup>483</sup> E.g., A separatist force led by Igor Strelkov took over the Kind News Church of Sloviansk, using it to store weapons which were discovered there after the City’s liberation. See recording of Church leader Igor Dudnik CBN, “Ukraine Protestants Target of Russian Orthodox ‘Jihad’?,” available at: <http://stories.cbn.com/ukraine-protestants-target-russian-orthodox-jihad> (last accessed: 13/07/2015).

<sup>484</sup> E.g., On 8<sup>th</sup> July 2014, the acting Director of the Donetsk Christian University, 0150-K-639, was given an order from the “Ministry of Donetsk People’s Republic” to vacate the property within two days, leaving all items except for personal belongings behind – FILE 150.

<sup>485</sup> On September 27, 2014, armed separatists broke up a mass at the Seventh Day Adventist church in Horlivka. The congregation was ordered to leave and were told by combatants that “this is Orthodox land and there is no place for sects.” FILE 60. Similarly, in August 2014, during a service at the Pentecostal church in Donetsk, separatist gunmen ordered a halt to the service and forbade the

by the separatist leadership, such as the DPR “unsanctioned meetings law” has also been used to prohibit public worship.<sup>486</sup> Such acts, in conjunction with the abovementioned crimes have contributed to a prevailing climate of intimidation, harassment<sup>487</sup> and religiously motivated verbal abuse,<sup>488</sup> and have led to a serious deprivation of the targeted faith-groups’ fundamental right to exercise their religion and peaceful assembly.<sup>489</sup> This religiously motivated attack has also led to the forced displacement of targeted group members – either following a direct threat to life<sup>490</sup> or from a genuine fear of persecution.<sup>491</sup>

There is a reasonable basis to believe that these persecutory acts were not isolated events, but were committed pursuant to a separatist plan or policy. Article 9 of the so-called Donetsk Peoples Republic’s Constitution entrenches the Russian Orthodox Church of Moscow Patriarchate as the dominant faith in the region,<sup>492</sup> while Article 21

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congregation to come back to the church in the future. See VICE News, “Secret Protestant Churches in Donetsk: Ukraine’s Religious War,” March 2015, available at:

<https://www.youtube.com/watch?v=mhEe2PSaEW0> (last accessed 10/07/2015).

<sup>486</sup> FILE 146 witness 0146-K-636. This law was relied on to justify the breaking up of the Prayer Marathon by the Donetsk Church Council.

<sup>487</sup> E.g., on May 23, about 15 gunmen from a local separatist group destroyed the Donetsk Council of Churches prayer tent, took all the equipment and threatened to shoot anyone who came to pray there. FILE 60.

<sup>488</sup> There are numerous examples of faith organisations being publicly labelled as “sects” in a pejorative sense and their members as “uniates”, “schismatics” and “satanists.” E.g., FILE 146 and 82, witnesses 0146-K-636 and 0082-K-602; See also Moscow Patriarch Kiril’s letter calling for religious war: ChurchBY.info, “Опубликованное и удаленное Послание Патриарха Московского Кирилла Вселенскому Патриарху Варфоломею о преследовании православных христиан на Востоке Украины,” available at: <http://churchby.info/rus/964> (last accessed: 10/07/2015); see also: World, “Ukraine: Christians threatened with firing squads and pastors held hostage,” October 3, 2014, available at: <http://www.christiantoday.com/article/ukraine.christians.threatened.with.firing.squads.and.pastors.held.hostage/41224.htm> (last accessed: 10/07/2015).

<sup>489</sup> See Articles 18 and 21 of the ICCPR; Article 9 and 11 of the ECHR.

<sup>490</sup> E.g., 0151-K-639-2, a Catholic priest of the Sacred Heart of Jesus Christ parish in Horlivka, was arrested and held captive for ten days by pro-Russian combatants. Upon release, he was threatened with execution should he ever return to Horlivka. FILE 151.

<sup>491</sup> Most Ukrainian Orthodox Church of Kyiv Patriarchate clergy in separatist-controlled territory had to be evacuated from the region due to their names appearing on the “execution lists.” FILES 60, 82. Most of the 10,000 Donetsk Jews have fled the conflict-affected area for fear of religious persecution. Jerusalem Post, “Fearing rebels, Donetsk’s Jews flee Mariupol,” October 9, 2014, available at: <http://www.jpost.com/Diaspora/Fearing-rebels-Donetsks-jews-flee-Mariupol-374913> (last accessed: 10/07/2015).

<sup>492</sup> Article 9 of the DPR Constitution of May 16, 2014, states, “The leading and dominant faith is the Orthodox faith ... as professed by the Russian Orthodox Church (Moscow Patriarchate). The historical heritage and role of the Russian Orthodox Church (Moscow Patriarchate) are recognized and respected, including as a main pillar of the Russian World doctrine.”

grants separatist authorities the right to outlaw and suppress all other religious groups.<sup>493</sup> Moreover, there is evidence that senior members of the separatist movement have led or were present during a number of the above-stated violations.<sup>494</sup> There is also evidence of the Moscow Patriarchy's complicity in this persecutory policy. In August 2014, its leader Patriarch Kirill wrote an open letter in which he called the war in Donbas a religious war accusing "uniates" and "schismatics" of taking up arms against the Orthodox clergy.<sup>495</sup>

The Russian Orthodox Army and the Most Glorious Legion of Don appear to be the main implementers of this persecutory policy. Both fight under religious-themed banners and proclaim themselves as the defenders of Christianity and of the Russian World.<sup>496</sup> The former, led by Cossack Babai (Alexander Mozhajev), has connections to the Moscow Patriarchate<sup>497</sup> and the patronage of the President of the Russian Federation.<sup>498</sup> Its motto is "Warriors of the faith, brothers of the Great Russia, we will unite the whole Southeast," and flag depicts a Christian cross.<sup>499</sup> After its formation in February 2014, it proclaimed Igor Strelkov (Girkin) as its leader and operated from the occupied city of Slaviansk.<sup>500</sup> It also appears to have had support from the Moscow Patriarchate-controlled Lavra in Slaviansk, from which the initial attacks on

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<http://dnrespublika.info/%D0%BE%D1%80%D0%B5%D1%81%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B5/konstituciya-doneckoj-narodnoj-respubliki/>

<sup>493</sup> Article 21 of the DPR Constitution of May 16, 2014, states that "... nothing in this Constitution limits the Donetsk People's Republic's right to protect the public from the activities of religious sects according to the law."

<sup>494</sup> E.g., the takeover of the Kind News Church of Sloviansk was led by Igor Strelkov (Girkin).

<sup>495</sup> Moscow Patriarch Kirill's letter calling for religious war, ChurchBY.info, "Опубликованное и удаленное Послание Патриарха Московского Кирилла Вселенскому Патриарху Варфоломею о преследовании православных христиан на Востоке Украины", available at: <http://churchby.info/rus/964> (last accessed: 10/07/2015); see also: World, "Ukraine: Christians threatened with firing squads and pastors held hostage," October 3, 2014, available at: <http://www.christiantoday.com/article/ukraine.christians.threatened.with.firing.squads.and.pastors.held.hostage/41224.htm> (last accessed: 10/07/2015).

<sup>496</sup> See: FILE 82; See also: Bigmirnet, "За веру и СССР: Русская православная армия на Востоке Украины," May 19, 2014, available at: <http://news.bigmir.net/ukraine/817240-Za-very-i-bilyu-slavy-SSSR-Rysskaya-pravoslavnaya-armiya-na-Vostoke-Ukraini> (last accessed: 10/07/2015).

<sup>497</sup> The Russian Orthodox Church has a special Synodal Committee for the Cooperation with Cossacks; - the official address of the Synodal Committee is The Moscow Patriarchate, The Holy Synod of the Russian Orthodox Church Committee for Cooperation with the Cossacks 115419 Moscow, Don area building.

<sup>498</sup> The group is part of the Council for Cossacks Affairs under the patronage of the President of the Russian Federation. Decree 835 of President of Russian Federation from August 9, 1995.

<sup>499</sup> See FILE "Chevrons."

<sup>500</sup> NBC News, "Meet the Russian Orthodox Army, Ukrainian Separatists' Shock Troops," May 17, 2014, available at: <http://www.nbcnews.com/storyline/ukraine-crisis/meet-russian-orthodox-army-ukrainian-separatists-shock-troops-n107426> (last accessed: 10/07/2015).

the city appear to have been launched.<sup>501</sup>

The Most Glorious Legion of Don is a battalion made up of Cossack affiliates from the Rostov-on-Don region of the Russian Federation.<sup>502</sup> In his “address and order” to the Cossack community, the battalion leader Nikolai Kozitsyn defined the armed conflict as “an occupation of Ukraine by the Poles, Romanians and Hungarians who exploit it for resources and aim to exterminate the local Slavic population.”<sup>503</sup>

There is little doubt that this religious persecution is taking place as part of the separatist movement’s widespread and systematic attack on the civilian population.

#### 4.5.5 CONCLUSION

In light of the evidence presented in this chapter, there is a reasonable basis to believe that the crime against humanity of persecution has been committed by separatists on the territory of Eastern Ukraine since March 2014:

- Against actual or perceived opponents of the separatist movement on political grounds; and
- Against leaders and vocal followers of religions other than the Russian Orthodox Church of Moscow Patriarchate on religious grounds.

## 4.6 OTHER CRIMES

International crimes set out in the preceding chapters of this report are not the only offences perpetrated on the conflict-affected territory of Eastern Ukraine. Our team has collected evidence of other serious violations of humanitarian and human rights laws, which may amount to war crimes and crimes against humanity. A detailed examination of these additional offences is merited, and may form the subject matter of a future investigation by this or other organisations and public authorities. Such offences include, but are not limited to:

- The war crime and/or crime against humanity of forcible transfer of the civilian population.<sup>504</sup> Civilians lawfully residing on the territory occupied by separatist forces have been forcibly displaced from the territory by expulsion or other

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<sup>501</sup> Some of these priests, alongside priests from Novosibirsk, appeared to have taken part in the ill-treatment of detainees. See FILE 87.

<sup>502</sup> See this organization’s website: <http://wd2003.narod.ru> (last accessed: 10/07/2015).

<sup>503</sup> Russian Historical Library, “Атаман Козицын о перемирии 5.09 между ополченцами и Украиной,” available at:

<http://rushist.com/index.php/articles/2531-ataman-kozitsyn-o-peremirii-5-09-mezhdu-opolchentsami-i-ukrainoj> (last accessed: 10/07/2015).

<sup>504</sup> Article 8(2)(b)(viii), Article 8(2)(e)(viii), Article 7(1)(d) of the ICC Statute.

coercive acts without grounds permitted under international law.<sup>505</sup>

- The war crime of taking hostages.<sup>506</sup> Persons have been detained and held hostage by separatist forces in exchange for ransom or other conditions and under threat of violence and further detention.<sup>507</sup>
- The war crime of intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance.<sup>508</sup> Humanitarian corridors and vehicles involved in evacuation of civilians have been subjected to direct attacks by separatist forces.<sup>509</sup>
- The war crime and/or crimes against humanity of rape and other forms of sexual violence.<sup>510</sup> Female detainees in certain separatist detention facilities may have been subjected to rape and other forms of sexual violence.<sup>511</sup>
- The war crime of using the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations.<sup>512</sup> Civilians and detainees have been used as “human shields” to protect separatist forces and equipment.<sup>513</sup>
- The war crime of declaring that no quarter will be given.<sup>514</sup> There is evidence that an order was given from the top of the separatist leadership to give no quarter to captured pro-Ukrainian combatants.<sup>515</sup>

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<sup>505</sup> There is evidence that some civilians have been physically expelled from the occupied territory and warned not to return under threat of death; see, e.g., Witness 0082-K-602, FILE 82. There is also evidence that a number of civilians have been coerced into leaving the occupied territory through acts of intimidation and violence or after learning that their names are on separatist “execution lists;” see, e.g., Witnesses 0032-K-541, 0031-K-540, 0022-K-529, FILES 32, 31, 22.

<sup>506</sup> Article 8(2)(a)(viii) and Article 8(2)(c)(iii) of the ICC Statute.

<sup>507</sup> E.g., Witness 0046-K-561 FILE 46.

<sup>508</sup> Article 8(2)(b)(iii) and Article 8(2)(e)(iii) of the ICC Statute.

<sup>509</sup> E.g., Witness 0045-K-559 FILE 45, Witness 0087-K-608-2 FILE 87.

<sup>510</sup> Article 8(2)(b)(xxii), Article 8(2)(e)(vi) and Article 7(1)(g) of the ICC Statute.

<sup>511</sup> E.g., Witness 0018-K-525 FILE 18, Witness 0003-K-503 FILE 3.

<sup>512</sup> Article 8(2)(b)(xxiii) of the ICC Statute.

<sup>513</sup> E.g., Witness 0019-K-526 FILE 19, Witness 0056-K-576 FILE 56.

<sup>514</sup> Article 8(2)(b)(xii) and Article 8(2)(e)(x) of the ICC Statute.

<sup>515</sup> Witnesses 0087-K-606 and 0087-K-607 FILE 87.

# 5. GROUPS AND PERSONS LIKELY TO BE SUBJECTS OF A FUTURE INVESTIGATION

## 5.1 OVERVIEW

Information currently at our disposal allows us to identify only a limited number of direct perpetrators for each alleged offence. Witnesses are rarely able to identify suspects by name. At best they are able to provide a pseudonym or call sign alongside a physical description. Similarly, there is a dearth of available official public records in relation to the conflict and its dramatis personae. Identifying the perpetrators of direct and indiscriminate attacks on the civilian population presents an even greater challenge. Nevertheless, piecing together information about the location and timing of offences, alongside information on the presence of individuals and military or paramilitary units in those locations, we are able to identify groups and individuals who are likely to form part of a future investigation into the alleged offences.<sup>516</sup> We also rely on public sources to trace a chain or hierarchy of units and organisations suspected of involvement in the perpetration of international crimes, and identify those individuals who may bear command or superior responsibility for crimes alleged in this report. It is also noteworthy that a number of individuals and units belonging to Russian armed forces and security services are suspected of operating on the conflict-affected territory of Eastern Ukraine.<sup>517</sup>

## 5.2 APPLICABLE LAW

### 5.2.1 INDIVIDUAL CRIMINAL RESPONSIBILITY

Under the ICC Statute, individuals may bear criminal responsibility as principals or accessories in the following ways:

- By committing a crime, whether as an individual, jointly with another or through

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<sup>516</sup> In order to request the Pre-Trial Chamber to open a full investigation, the ICC Prosecutor is required to present a statement of facts indicating, as a minimum, the persons involved, if identified, or a description of the persons or groups of persons involved. See Regulation 49(2)(c) of the Regulations of the Court, ICC Statute.

<sup>517</sup> For a breakdown of Russian armed forces units involved in the conflict, see Royal United Services Institute, "Russian Forces in Ukraine," *Briefing Paper*, March 2015, available at: <https://www.rusi.org/publications/other/ref:054FDBC478D8B/> (last accessed: 30/07/2015).

another person,<sup>518</sup> regardless of whether that other person is criminally responsible;<sup>519</sup>

- By ordering, soliciting or inducing the commission of such a crime, which in fact occurs or is attempted;<sup>520</sup>
- Facilitating the commission of such a crime by aiding, abetting or otherwise assisting in its commission or its attempted commission, including providing the means for its commission;<sup>521</sup> or
- In any other way contributing to the commission or attempted commission of such a crime by a group of persons acting with a common purpose.<sup>522</sup>

Individual criminal responsibility for ordering requires the existence of a hierarchical relationship or authority, although an order need not be explicit, and its existence may be proved through circumstantial evidence.<sup>523</sup> The person who carries out the prohibited act need not have received the order directly from the superior, but he or she must be aware of the substantial likelihood that a crime will be committed as a result of its execution.<sup>524</sup>

Soliciting, instigating or inducing a crime means prompting or provoking someone, whether physically or psychologically by action or omission, to commit an international crime.<sup>525</sup> There is no requirement to show that the crime would not have occurred but for the solicitation or inducement, provided that it was a contributing factor to the commission of the offence.<sup>526</sup>

Facilitation requires proof of a direct and substantial effect on the commission of a crime, but does not require proof of causality. The accessory's motive to facilitate the

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<sup>518</sup> Leaders and organizers who have joint control or make an essential contribution to the commission of a crime may fall within the definition of "commission," without necessarily having to physically commit the offence. ICC, *The Prosecutor v Thomas Lubanga Dyilo*, "Decision on the Confirmation of Charges", ICC-01/04-01/06, January 29, 2007, para. 330.

<sup>519</sup> Article 25(3)(a) of the ICC Statute.

<sup>520</sup> Article 25(3)(b) of the ICC Statute.

<sup>521</sup> Article 25(3)(c) of the ICC Statute.

<sup>522</sup> Article 25(3)(d) of the ICC Statute.

<sup>523</sup> ICTY, *The Prosecutor v. Blaskic*, Judgment, IT-95-14-T, 3 March 2000, para. 281.

<sup>524</sup> ICTY, *The Prosecutor v. Blaskic*, Judgment, IT-95-14-T, 3 March 2000, para. 282.

<sup>525</sup> ICTY, *The Prosecutor v. Blaskic*, Judgment, IT-95-14-T, 3 March 2000, para. 280; ICTY, *The Prosecutor v. Krstic*, Judgment, IT-98-33-T, 2 August 2001, para. 601; ICTY, *The Prosecutor v. Kvočka et al.*, Judgment, IT-98-30/1-T, 2 November 2, 2001, para. 252.

<sup>526</sup> ICTY, *The Prosecutor v. Kvočka et al.*, Judgment, IT-98-30/1-T, 2 November 2001, para. 252.

commission of a crime may be deduced from his or her acts.<sup>527</sup>

## 5.2.2 COMMAND/SUPERIOR RESPONSIBILITY

Under the ICC Statute, a military commander, or a person acting as a military commander, shall be criminally responsible for international crimes committed by forces under his or her effective command and control, or effective authority and control,<sup>528</sup> as a result of his or her failure to exercise control properly over such forces.<sup>529</sup> To be prosecuted under this form of liability, it must be shown that the de facto commander:

- Knew or in the circumstances ought to have known that the forces were committing or were about to commit the relevant offences,<sup>530</sup>
- Failed to take all necessary and reasonable measures<sup>531</sup> within his or her power to prevent<sup>532</sup> or repress<sup>533</sup> their commission, or failed to submit the matter to the

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<sup>527</sup> Schabas William, *The International Criminal Court: A Commentary on the Rome Statute*, *Oxford Commentaries on International Law*, March 11, 2010, p. 434-436.

<sup>528</sup> Effective command and control may be proved through the suspect's official position, evidence of power to give orders, capacity to ensure compliance with orders, position within the military structure, capacity to order engagement in hostilities, power to promote, replace, remove or discipline. See ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Art. 61(7)(a) and (b), Pre Trial Chamber II, ICC-01/05-01/0815, June 15, 2009, para. 417.

<sup>529</sup> Article 28(a) of the ICC Statute.

<sup>530</sup> Knowledge may be evidenced by: the number of illegal acts, their scope, whether their occurrence is widespread, the time during which the prohibited acts took place, the type and number of forces involved, the means of available communication, the modus operandi of similar acts, the scope and nature of the superior's position and responsibility in the hierarchical structure, the location of the commander at the time and the geographical location of the acts, and the existence of an organized structure and reporting or monitoring systems. ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Art. 61(7)(a) and (b), Pre Trial Chamber II, ICC-01/05-01/0815, 15 June 2009, para. 429.

<sup>531</sup> Necessary and reasonable measures are assessed according to the commander's *de jure* powers and *de facto* abilities: ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Art. 61(7)(a) and (b), Pre Trial Chamber II, ICC-01/05-01/0815, June 15, 2009, para. 443.

<sup>532</sup> The duty to prevent includes: ensuring that the commander's forces are adequately trained in international humanitarian law; securing reports that military actions were carried out in accordance with international law; issuing orders aiming at bringing the relevant practices into accord with the rules of war; and taking disciplinary measures to prevent the commission of atrocities by his or her forces. ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Art. 61(7)(a) and (b), Pre Trial Chamber II, ICC-01/05-01/0815, June 15, 2009, para. 437.

<sup>533</sup> Includes stopping ongoing crimes and administering punishment for those that have been committed. ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Art. 61(7)(a) and (b), Pre Trial Chamber II, ICC-01/05-01/0815, June 15, 2009, para. 439.

competent authorities for investigation and prosecution.<sup>534</sup>

The law requires commanders to take an active approach to obtaining knowledge of the conduct of their subordinates.<sup>535</sup> There is no requirement to show direct causality, only that the commander's omission increased the risk of the commission of the offence.<sup>536</sup>

Similarly, a civilian superior may be criminally responsible for crimes committed by subordinates under his or her effective authority and control.<sup>537</sup> A successful prosecution must establish that the civilian superior:

- Knew, or consciously disregarded information,<sup>538</sup> which clearly indicated that the subordinates were committing or about to commit one or more international crimes;
- The crimes concerned activities that were within the effective responsibility and control of the superior; and
- The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of such crime(s), or failed to submit the matter to the competent authorities for investigation and prosecution.

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<sup>534</sup> Article 28(a) of the ICC Statute as interpreted in ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Art. 61(7)(a) and (b), Pre Trial Chamber II, ICC-01/05-01/0815, June 15, 2009, para. 407.

<sup>535</sup> ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Art. 61(7)(a) and (b), Pre Trial Chamber II, ICC-01/05-01/0815, June 15, 2009, para. 433.

<sup>536</sup> ICC, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Art. 61(7)(a) and (b), Pre Trial Chamber II, ICC-01/05-01/0815, 15 June 2009, para. 425.

<sup>537</sup> Article 28(b) of the ICC Statute.

<sup>538</sup> To "consciously disregard" is to ignore existing information at the superior's disposal that the superior knew of at the time. See Chantal Meloni, *Command Responsibility in International Criminal Law*, Ed. The Hague, June 2010, p.187.



Source: novayagazeta-ug.ru

## 5.3 MEMBERS OF THE SEPARATIST MOVEMENT LIKELY TO BE SUBJECTS OF A FUTURE INVESTIGATION

### 5.3.1 MILITARY AND CIVILIAN LEADERSHIP OF THE SEPARATIST MOVEMENT

The leadership dynamics within the separatist movement has been marked by a high turnover of key actors and factionalism. As a result, it has proven difficult to determine to a high degree of certainty the precise civilian or military leadership in de facto command and control of a given territory at a given period in time. In addition to frequent changes in the official hierarchy of the two self-proclaimed separatist republics, the degree to which those hierarchies control certain militant groups and leaders remains to be determined.<sup>539</sup> The tables in this sub-section identify key players in the top echelon of the separatist movement, their official positions and the periods of time during which those position were held.

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<sup>539</sup> An example of the internal territorial and power struggle within the LPR can be illustrated by the actions and proclamations of the Don Cossacks' leader – Nikolai Kosytsyn. Aljazeera, "Opportunists take advantage of eastern Ukraine leadership confusion," November 16, 2014, available at: <http://america.aljazeera.com/multimedia/2014/11/donetsk-ukraine-leadership.html> (last accessed: 30/07/2015).

### 5.3.1.1 CURRENT CIVILIAN LEADERS AND/OR MILITARY COMMANDERS WITHIN THE DPR

Name	Current Position(s)	Period	Previous position(s)	Period
Alexandr Zakharchenko <sup>540</sup>	The Head of State and Head of Government Prime Minister of the DPR	Since 12 November 2014 Since 7 August 2014	The commander of the division "Oplot" of DPR Army, military commandant in Donetsk	16 May 2014- 7 July 2014
Andrey Purgin <sup>541</sup>	Supreme Commander of the armed forces of the DPR Speaker of the Peoples' Soviet (Narodniy Soviet)	Since July 2014	First Vice-Chairman of the Council of Ministers of the DPR (First Vice Prime Minister)	16 May 2014 — 4 November 2014
Denis Pushylin <sup>542</sup>	Vice Speaker of the Peoples' Soviet of DPR Authorized representative of DPR in negotiations of	Since 14 November 2014 Since 9 November 2014	Chairman of the Presidium of the Supreme Soviet (Verhovnyi Soviet) of the DPR Vice "people's governor" of the Donetsk Region	15 May 2014 — 18 July 2014 5 April 2014 -unknown

<sup>540</sup> TASS, "Александр Захарченко утвержден в должности премьера Донецкой Народной Республики", August 8, 2014, available at: <http://tass.ru/mezhdunarodnaya-raznitsa/1369369> (last accessed: 30/07/2015).

<sup>541</sup> ОФИЦИАЛЬНЫЙ САЙТ НАРОДНОГО СОВЕТА ДОНЕЦКОЙ НАРОДНОЙ РЕСПУБЛИКИ, "Руководство Народного Совета", available at: <http://dnr-sovet.su/struktura/rukovodstvo-n/> (last accessed: 30/07/2015).

<sup>542</sup> ОФИЦИАЛЬНЫЙ САЙТ НАРОДНОГО СОВЕТА ДОНЕЦКОЙ НАРОДНОЙ РЕСПУБЛИКИ, "Руководство Народного Совета", available at: <http://dnr-sovet.su/struktura/rukovodstvo-n/> (last accessed: 30/07/2015).

Vladimir Kononov <sup>543</sup>	the contact group in Minsk (appointed by Zakharchenko)	Since 14 August 2014	The commander of militia units near Slaviansk	13 April 2014 – 14 August 2015
Alexandr Hodakovskiy <sup>544</sup>	Defense Minister of DPR General-Major of DPR armed forces Secretary of the DPR Security Council Brigade commander of the "Vostok" battalion	Since 2014 Since 12 November 2014 Since May 2014	Security Minister of the DPR Head of Donetsk "Alfa" SBU	16 May -16 July 2014

### 5.3.1.2 FORMER CIVILIAN LEADERS AND/OR MILITARY COMMANDERS WITHIN THE DPR

Name	Previous position(s) held	Period
Igor Girkin (alias Strelkov) <sup>545</sup>	Head of the National Security Council and Defense Minister of the DPR Commander of Donetsk	16 May 2014 — 14 August 2014 6 July 2014 — 14 August 2014

<sup>543</sup> RIA, "Биография Владимира Кононова", August 15, 2015, available at: <http://ria.ru/spravka/20140815/1020202621.html> (last accessed: 30/07/2015).

<sup>544</sup> RIA, "Совет безопасности создан в ДНР во главе с Ходаковским," November 12, 2014, available at: <http://ria.ru/world/2014112/1033036759.html> (last accessed: 30/07/2015).

<sup>545</sup> BBC, "Ukraine crisis: Key players in Eastern unrest," August 28, 2014, available at: <http://www.bbc.com/news/world-latin-america-27211501> (last accessed: 30/07/2015).

Pavel Gubariev <sup>546</sup>	Peoples governor of Donetsk region	6 July 2014 — 14 August 2014
Alexandr Boroday <sup>547</sup>	Speaker of the Ministers soviet of the DPR	16 May 2014 - 7 August 2014
Vyacheslav Ponomaryov <sup>548</sup>	General Counsel - First Vice Chairman of the Council of Ministers of the DPR	8 August — 20 October 2014
Vladimir Antyufeyev <sup>549</sup>	The 'Peoples' Mayor of Slaviansk	April 2014 – 10 June 2014
	Deputy Prime-Minister of the DPR in charge of security forces, internal affairs and justice	July 2014 – August 2014
	De facto leader of the DPR	28 July 2014 -

<sup>546</sup> RT, "Павел Губарев избран лидером политического движения «Новороссия»," May 22, 2014, available at: [HTTP://russian.rt.com/article/33119](http://russian.rt.com/article/33119) (last accessed: 30/07/2015).

<sup>547</sup> Novorosinform, "Бородай Александр Юрьевич", available at: <http://www.novorosinform.org/reference/id/11> (last accessed: 30/07/2015).

<sup>548</sup> Vice News, "Who is Who in the Donetsk Peoples' Republic," July 1, 2014, available at: <https://news.vice.com/article/whos-who-in-the-donetsk-peoples-republic> (last accessed: 28/07/2015).

<sup>549</sup> BBC, "Russian ex-police chief Antyufeyev leads Donetsk rebels," July 31, 2014, available at: <http://www.bbc.com/news/world-europe-28546157> (last accessed: 30/07/2015).

### 5.3.1.3 CURRENT CIVILIAN LEADERS AND/OR MILITARY COMMANDERS WITHIN THE LPR

Name	Position	Period	Previous Position(s)	Period
Igor Plotnitskiy <sup>550</sup>	Head of LPR	Since 4 November 2014 (acting Head from 14 August 2014 )	Speaker of the LPR Council of Ministers	20 August 2014 — 26 August 2014
Alexey Kariakin <sup>551</sup>	Speaker of the Peoples' Soviet (Narodnyi Soviet) of LPR	Since 18 May 2014	Defense Minister of LPR Commander of battalion "Zaria"	21 May 2014— 14 August 2014 April 2014-?
Oleg Tsariov <sup>552</sup>	Speaker of Novorossia Parliament	Since 26 June 2014	Member of Parliament of Ukraine	12 December 2012 - 27 November 2014

<sup>550</sup> RT, "Incumbent Donbass leaders Zarkarchenko and Plotnitsky win elections – final results," November 2, 2014, available at: <http://www.rt.com/news/201711-donetsk-lugansk-republics-elections/> (last accessed: 30/07/2015).

<sup>551</sup> NSLNR, «Председатель Народного Совета Луганской Народной Республики», available at: <https://nslnr.su/about/predsdate/> (last accessed: 30/07/2015).

<sup>552</sup> Lenta.ru, «Принята конституция союза ДНР и ЛНР», June 26, 2014, available at: <http://lenta.ru/news/2014/06/26/souz/> (last accessed: 30/07/2015).

Gennadi Tsytkalov <sup>553</sup>	Head of LPR Council of Ministers (Prime minister)	Since 26 August 2014	Acting head of LPR	13 of May - 17 of May 2014
Igor Kornet <sup>554</sup>	Minister of Internal Affairs of LPR	Since 27 August 2014 <sup>555</sup>	Vice head of LPR	April-May 2014
Vasili Nikitin <sup>556</sup>	Vice Chairman of the Council of Ministers of the LPR on Social Policy	Since 4 of July 2014	First vice prime minister	24 of May 2014
Nikolai Kozitsyn <sup>557</sup>	Leader of the Don Cossack militant group	1994	Prime minister of LPR	18 of May 2014-4 of July 2014

<sup>553</sup> Forbes.ru, «За Украину ответили: кто попал под новые санкции Евросоюза», September 12, 2014, available at: <http://www.forbes.ru/sobytiya-photogallery/obshchestvo/267573-za-ukrainu-otvetili-cto-popal-pod-novye-sanktsii-evrosoyuza/photo/4> (last accessed: 30/07/2015).

<sup>554</sup> Official webpage of the LPR Ministry of Internal Affairs: <http://mvdlnr.ru/>.

<sup>555</sup> Live Journal: «Новые лица в руководстве ЛНР», 1 October 12, 2014, available at: <http://yadocent.livejournal.com/628953.html> (last accessed: 30/07/2015).

<sup>556</sup> Live Journal: «Новые лица в руководстве ЛНР», 1 October 12, 2014, available at: <http://yadocent.livejournal.com/628953.html> (last accessed: 30/07/2015).

<sup>557</sup> IBT, "Who are the Cossack fighters who spearheaded rebels' capture of Debaltseve in Eastern Ukraine," February 19, 2015, available at: <http://www.ibtimes.com/who-are-cossack-fighters-who-spearheaded-rebels-capture-debaltseve-eastern-ukraine-1821514> (last accessed: 30/07/2015).

Sergey Kozlov <sup>558</sup>	De facto ruler in towns of Antratsyt and Prevalsk	Since April 2014	
	Commander of Lughansk Peoples' Militia	February 2015	
Vitaliy Kisselev <sup>559</sup>	Deputy Defence Minister of LPR	February 2015	

<sup>558</sup> Worldcrunch, "The Mysterious Air Force Of Ukraine's Pro-Russian Separatists," February 27, 2015, available at: [http://www.worldcrunch.com/world-affairs/the-mysterious-air-force-of-ukraine-039-s-pro-russian-separatists/lpr-lugansk-aviation-air-force/c1s18256/#.Ybn2\\_BOqqkp](http://www.worldcrunch.com/world-affairs/the-mysterious-air-force-of-ukraine-039-s-pro-russian-separatists/lpr-lugansk-aviation-air-force/c1s18256/#.Ybn2_BOqqkp) (last accessed: 30/07/2015).

<sup>559</sup> RBTH, "Press Digest: The deteriorating situation in Ukraine and France's ambassador to Russia gives his views," 15 January 15, 2015, available at: [http://rbth.com/international/2015/01/15/press\\_digest\\_the\\_deteriorating\\_situation\\_in\\_ukraine\\_and\\_france\\_42909.html](http://rbth.com/international/2015/01/15/press_digest_the_deteriorating_situation_in_ukraine_and_france_42909.html) (last accessed: 30/07/2015).

### 5.3.1.4 FORMER CIVILIAN LEADERS AND/OR MILITARY COMMANDERS WITHIN THE LPR

Name	Previous Position(s) Held	Period
Valeriy Bolotov <sup>560</sup>	Head of LPR	18 May 2014 - 14 August 2014
	“Peoples governor” of Lugansk region	April-August 2014
	Commander of the combined armies of the Southeast (People's Police of the LPR)	April-August 2014
Iurii Ivakin <sup>561</sup>	Minister of Internal Affairs LPR	18 May 2014- 27 August 2014
	Head of police in Zhytomyr region of Ukraine	22 of March 2010-2012
Marat Bashyro <sup>562</sup>	Head of the LPR Council of Ministers	4 of July -20 of August 2014
Alexandr Bednov (alias Batman) – MIA presumed	Minister of Defence of LPR <sup>563</sup>	August 2014

<sup>560</sup> KyivPost, “Bolotov resigns as Luhansk People’s Republic leader, will be replaced by Plotnitsky,” August 14, 2014, available at: <http://www.kyivpost.com/content/ukraine/bolotov-resigns-as-luhansk-peoples-republic-leader-will-be-replaced-by-plotnitsky-360563.html> (last accessed: 30/07/2015).

<sup>561</sup> Korrespondent.net, «У Луганской народной республики появился свой глава МВД,» May 18, 2015, available at: <http://korrespondent.net/ukraine/politics/3364730-uhanskoi-narodnoi-respubliky-roiavy/sia-svoi-hlava-mvd> (last accessed: 30/07/2015).

<sup>562</sup> Islam News, «Марат Баширов возглавил Луганскую народную республику,» July 4, 2014, available at: <http://www.islamnews.ru/news-146797.html> (last accessed: 30/07/2015).

<sup>563</sup> XXIVEK, “В ЛНР - новый министр обороны, ”August 17, 2014, available at: <https://xxivek.net/news/24983> (last accessed: 30/07/2015).

dead		
Alexei Mozgovoi (deceased) <sup>564</sup>	Head of LPR Peoples' Army 4th Brigade	From May 2014
	Head of the LPR-based "Prizrak" (Ghost) Brigade	April 2014 – May 2015
	De facto Head of Alchevsk	
Oleg Bugrov <sup>565</sup> (arrested by Russian FSB in April 2015) <sup>566</sup>	Commander of the Peoples' Militia of LPR	7 October 2014 – April 2015
	Defence Minister of LPR	27 August 2014 - ?

<sup>564</sup> International Business Times, "Ukraine Crisis: Alexei Mozgovoi, Ukrainian Separatist 'Ghost' Battalion Rebel Commander Who Opposed Women Going To Pubs, Killed In Ambush," May 24, 2015, available at: <http://www.ibtimes.com/ukraine-crisis-alexei-mozgovoi-ukrainian-separatist-ghost-battalion-rebel-commander-1936365> (last accessed: 29/07/2015).

<sup>565</sup> Live Journal: «Новые лица в руководстве ЛНР,» Октябрь 12, 2014, available at: <http://yadocent.livejournal.com/628953.html> (last accessed: 30/07/2015).

<sup>566</sup> Espresso.tv, «Арештований экс-"міністр оборони ЛНР" Олег Бугров», April 4, 2015, available at: [http://espresso.tv/blogs/2015/04/04/areshtovanyy\\_eks\\_quotministr\\_oborony\\_inrquot\\_oleh\\_buhrov](http://espresso.tv/blogs/2015/04/04/areshtovanyy_eks_quotministr_oborony_inrquot_oleh_buhrov) (last accessed: 30/07/2015).

### 5.3.2 SEPARATIST GROUPS AND INDIVIDUALS LINKED TO INTERNATIONAL CRIMES THROUGH EVIDENCE PRESENTED IN THIS REPORT

In order to identify groups and individuals that could form part of a future investigation, we have chosen to set out available information on separatist paramilitary units and individuals present in locations where there is a reasonable basis to believe that international crimes have taken place. Due to the dynamics of the conflict and a high turnover of separatist leaders and fighters, it has not been possible to account for every group and individual involved in the perpetration.

#### 5.3.2.1 LUGANSK CITY

There is evidence of two separatist battalions operating from the premises of the former SBU building in Lugansk City since May 2014: “Leshiy” (led by Oleksiy Pavlov) and “Yugoslav” (led by Sergiy Syvach).<sup>567</sup> Multiple sources have linked the Leshiy battalion and its leader to international crimes such as torture and other forms of political persecution.<sup>568</sup> There is also evidence that battalion leader Pavlov was the de facto leader of Lugansk for several months,<sup>569</sup> and that the battalion has been in control of the SBU building,<sup>570</sup> and the premises of the Lugansk Police Academy. It is understood that the battalion is subordinate to the LPR Ministry of the Interior.<sup>571</sup> In addition, witnesses have linked the following separatist fighters to potential

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<sup>567</sup> See the following for the commanders’ names: <http://gordonua.com/publications/Byvshiy-separatist-a-seychas-boec-ATO-V-fevrale-2014-go-Efremov-pri-mne-govoril-chto-privez-70-tysyach-pasportov-RF-dlya-Luganska-80258.html>; See the following sources for a link to the location <http://sprotyv.info/ru/news/1243-terroristicheskie-gruppy-v-luganskoy-oblasti-dannye>; <http://fakty.ua/183278-obnarodovany-dannye-po-terroristicheskim-gruppam-oruduyuchshim-v-luganskoj-oblasti>

<sup>568</sup> [Гордон.ua: Досье на 10 главных террористов ДНР, available at: http://gordonua.com/спецпроекты/terrorlist.html](http://gordonua.com/спецпроекты/terrorlist.html); [novorossia.pro: Подразделение Лешего available at: http://novorossia.pro/gum\\_cent/227-podrazdeleniya-leshego.html](http://novorossia.pro/Подразделение_Лешего); Yuliya Polukhina, Novaya Gazeta: “Leshiy is the head of one of battalion of rebels, which is located in Lugansk SBU – people call it “Izbushka” [home of witch in popular fairy tale]. Soldiers of battalions are afraid of Leshiy. They say that for drinking on duty, looting, selling humanitarian assistance people can get to basement of Leshiy, where people can survive, can become disabled, or can be beaten to death. <http://www.novayagazeta.ru/politics/65828.html>.

<sup>569</sup> [informer.lg.ua: Болотов пообещал разобраться с батальоном «Леший» available at: http://informer.lg.ua/?p=11765](http://informer.lg.ua/?p=11765)

<sup>570</sup> [pravlitlug.ru: Батальон спецназначения «Леший» - одна из страниц истории рождения Новороссии, available at: http://pravlitlug.ru/index.php/publitsistika1/item/2092-batalon-spetsnaznacheniya-leshij-i-istoriya-rozhdeniya-novorossii](http://pravlitlug.ru/index.php/publitsistika1/item/2092-batalon-spetsnaznacheniya-leshij-i-istoriya-rozhdeniya-novorossii)

<sup>571</sup> [pravlitlug.ru: Батальон спецназначения «Леший» - одна из страниц истории рождения Новороссии, available at: http://pravlitlug.ru/index.php/publitsistika1/item/2092-batalon-spetsnaznacheniya-leshij-i-istoriya-rozhdeniya-novorossii](http://pravlitlug.ru/index.php/publitsistika1/item/2092-batalon-spetsnaznacheniya-leshij-i-istoriya-rozhdeniya-novorossii)

international crimes perpetrated in the former SBU building: Yaprincev Nikolay Zakharovich, "Saniok," lawyer Iurii Rudenko (alias "Krym"), "Valentin," Kunchenko,<sup>572</sup> fighters with aliases "Di'ed," "Maloy," "Medved," and "Odessa," and commander "Lioha."<sup>573</sup>

The Lugansk Provincial Administration building has been controlled by a separatist formation known as "Bema."<sup>574</sup> There is evidence that the military leadership of Lugansk (the Lugansk kommandatura), headed by Sergiy Grachev and subordinate to the LPR Ministry of Defense,<sup>575</sup> has used the Provincial Administration building to perpetrate international crimes such as illegal imprisonment, inhuman treatment and torture. Lawyer turned separatist fighter Arkadiy Korniyevskiy has been specifically named as an active perpetrator.<sup>576</sup>

In addition, there is evidence linking the following separatists to crimes perpetrated on the premises of the Oktiabrsk/Zhovtnevy Police Department in Lugansk City: Viktor Grigorievich (alias "Grigorych"), Alexandr alias "Chorny," a Russian fighter codenamed "Astrakhan," "Kobra" militia commanders Oleg Udodov (alias "Khasan") and Vladlen Zaruba (alias "Kuba").<sup>577</sup>

### 5.3.2.2 DONETSK CITY

Based on available evidence, the following separatist paramilitary units are known to have operated on the premises of the former SBU building in Donetsk City: "Kerch" (battalion commander Vadim Pogodin<sup>578</sup>), "Vostok" (battalion commander Alexandr Hodakovskiy), "Yug company" – part of the Vostok battalion<sup>579</sup> (company commander alias "Zaur"), "Sparta" (battalion commander Arseniy Pavlov alias "Motorola"). All of the abovementioned units form part of the military forces of DPR, and are subordinate to

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<sup>572</sup> File N 44 witness 0044-K-555

<sup>573</sup> File N 56 witness 0056-K-576

<sup>574</sup> sprotyv.info: Террористические группы в Луганской области: данные ИС, available at: <http://sprotyv.info/ru/news/1243-terroristicheskie-gruppy-v-luganskoy-oblasti-dannye>

<sup>575</sup> lug-info.com: Военный комендант ЛНР Грачев: комендатура выполняет широкий спектр задач - и воюет, и порядок обеспечивает, available at: <http://lug-info.com/comments/one/211>

<sup>576</sup> nvrus.org: Комендатура Луганска в действии, available at: <http://nvrus.org/2355-komendatura-luganska-v-deystvii.html>

<sup>577</sup> FILES 29, 41

<sup>578</sup> pravda-tv.ru: Командир батальона «Керчь» МО ДНР Вадим Погодин о боях в Новороссии, патриотизме и русском мире, available at: <http://www.pravda-tv.ru/2014/11/27/104169>

<sup>579</sup> youtube.com: Командир роты «Юг» (бригада «Восток») о странном инциденте в Донецке, available at: <https://www.youtube.com/watch?v=eWLI2eDB1d8>

the DPR Ministry of Defence.<sup>580</sup> The DPR Ministry of Defence is subordinate to the supreme commander of DPR military forces, Alexandr Zaharchenko (since August 4, 2014).<sup>581</sup>

In addition, the following individuals have been linked to international crimes perpetrated on the SBU premises: Vadim Kenal<sup>582</sup> (alias "Cherep"); members of the KGB group, including "Mara," "Sviat," "Yug," "Cherv," "Mirage," "Komar," Partsvania Roman (alias "Gruzin"<sup>583</sup>), "Phil" and "Babai." Sparta battalion commander Arseniy Pavlov (alias "Motorola") has been directly linked to a number of international crimes,<sup>584</sup> including the torture and murder or multiple Ukrainian servicemen in custody.<sup>585</sup> There is also evidence implicating Pavel Gubarev (the peoples' governor of Donetsk) in ordering the illegal imprisonment of actual or perceived "subversives" at the SBU premises.<sup>586</sup>

Premises of a private enterprise known as Izoliatsia have also played a key role in the perpetration of international crimes in Donetsk City. The takeover of Izoliatsia was overseen by Roman Liagin (DPR Minister of Social Affairs) and members of the Vostok battalion commanded by 'Mongol'.<sup>587</sup> The premises served as a detention and interrogation camp, and a base for the Vostok battalion and "Oplot formation"<sup>588</sup> (commanded by Alexandr Zaharchenko up to 7 July 2014, then Tihonov).<sup>589</sup> The premises are under the overall control of a special DPR committee chaired by Leonid Baranov.<sup>590</sup>

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<sup>580</sup> [interfax.ru: Добровольцы из батальона "Восток" решили вернуться в Южную Осетию](http://www.interfax.ru/world/412729), available at: <http://www.interfax.ru/world/412729>

<sup>581</sup> [gazeta.ru: «Мирный» Бородай уступил военному](http://www.gazeta.ru/politics/2014/08/07_a_6166445.shtml) available at: [http://www.gazeta.ru/politics/2014/08/07\\_a\\_6166445.shtml](http://www.gazeta.ru/politics/2014/08/07_a_6166445.shtml)

<sup>582</sup> [rusnext.ru: 19-летнего ополченца Вадима Киналя пытаются в застенках СБУ в Николаеве](http://rusnext.ru/news/1426425340), available at <http://rusnext.ru/news/1426425340>

<sup>583</sup> <https://psb4ukr.org/criminal/parcvaniya-roman-kondratovich/>

<sup>584</sup> [fakty.ua: Александр Скрипнюк: "Моторола" застрелил нашего избитого товарища, заметив: "Скорая" ему уже не нужна](http://fakty.ua/198122-motorola), available at <http://fakty.ua/198122-motorola>

<sup>585</sup> See section 4.2 of this report.

<sup>586</sup> [Svoboda.org: "Я семь дней провела в камере смертников"](http://www.svoboda.org/content/article/26693134.html), available at <http://www.svoboda.org/content/article/26693134.html>

<sup>587</sup> [dn.vgorode.ua: Во что превратили Изоляцию и кто теперь "командует парадом"](http://dn.vgorode.ua/news/sobytyia/228719-vo-chto-prevratyly-izoliatsyui-y-kto-teper-komanduet-paradom), available at: <http://dn.vgorode.ua/news/sobytyia/228719-vo-chto-prevratyly-izoliatsyui-y-kto-teper-komanduet-paradom>; photos available at

[http://pravdoryb.info/upload/editor/news/2014.10/542cec3b8c54f\\_1412230203.jpg](http://pravdoryb.info/upload/editor/news/2014.10/542cec3b8c54f_1412230203.jpg) and [http://pravdoryb.info/upload/editor/news/2014.10/542cec3b97263\\_1412230203.jpg](http://pravdoryb.info/upload/editor/news/2014.10/542cec3b97263_1412230203.jpg)

<sup>588</sup> [culture.lb.ua: Любовь Михайлова: "Единого голоса Донбасса не существует"](http://culture.lb.ua/news/2014/08/06/275296_lyubov_mihaylova.html), available at: [http://culture.lb.ua/news/2014/08/06/275296\\_lyubov\\_mihaylova.html](http://culture.lb.ua/news/2014/08/06/275296_lyubov_mihaylova.html)

<sup>589</sup> [garmata.org: Пятая бригада оплот террористов ДНР](http://garmata.org/razvedka/dnr/item/312-piataia-bryhada), available at: <http://garmata.org/razvedka/dnr/item/312-piataia-bryhada>

<sup>590</sup> <http://izolyatsia.org/ru/foundation/exile/>

### 5.3.2.3 PEREMOZHNE – LUGANSK PROVINCE

During the occupation of Peremozhie by LPR forces, governing authority was exercised by “Bishko.”<sup>591</sup> According to available evidence, the separatist paramilitary force in charge was the “Odessa” battalion (formed by “Yakut”<sup>592</sup> and commanded by Aleksey Fomichev, alias “Foma”<sup>593</sup>), alongside Russian secret services officer Victok Ivanovich Veremey.<sup>594</sup>

The following separatists have been linked to international crimes on the territory of Peremozhie: Igor Alekseevich,<sup>595</sup> Matishak Sergei Grigorievich, Matishak Andrei Sergeevich, Kozlov Aleksandr Olegovich, Kozlov Sergei Olegovich, Verbovskiy Vladimir Ivanovich, Tkachenko Leonid Leonidovich, Kocherova Olga Aleksandrovna, Nikolai Udud, “Foma,” “Medved,” “Yakut,” “Variag” and “Hohol,”<sup>596</sup> as well as unidentified Russian and Chechen combatants.<sup>597</sup>

### 5.3.2.4 KONSTANTINOVKA – DONETSK PROVINCE

During the occupation of Konstantinovka by DPR forces, governing authority was exercised by Roman (alias “Mirotvorets”), special envoy of DPR de facto leader Girkin.<sup>598</sup> It is also suspected that former deputy mayor Svetlana Astahova took part in the DPR takeover and the exercise of its authority over the town.<sup>599</sup>

The following separatists have been linked to international crimes on the territory of Konstantinovka: “Dima” (Sloviansk Cossack), “Beria,” “Roma,” “Nos,” “Zubr,” “Zub,” “Senia,”<sup>600</sup> Sergey Zhadko (alias “Dushman”), Artamonov, Leonid Kharchenko, “Krot,” Alexandrov, ‘Mertviy’, former police officers Sergey Andrikson, Serkey Krasovskiy, Igor Plahuta, Alexandr Inin, Iurii Sudeyko, officer “Iaponets,” and commanders Alexander and Vladimir.<sup>601</sup>

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<sup>591</sup> FILE 89

<sup>592</sup> regnum.ru: В ДНР разоружен добровольческий батальон Одесса, available at: <http://www.regnum.ru/news/polit/1883499.html>

<sup>593</sup> antimaydan.info В Краснодоне разоружают добровольческий батальон Одесса, available at: [http://antimaydan.info/2015/01/v\\_krasnodone\\_razoruzhaut\\_batalon\\_odessa\\_10\\_yanvarya\\_2015\\_221821.html](http://antimaydan.info/2015/01/v_krasnodone_razoruzhaut_batalon_odessa_10_yanvarya_2015_221821.html)

<sup>594</sup> FILE 89.

<sup>595</sup> <https://psb4ukr.org/criminal/alekseevichev-igor/>

<sup>596</sup> FILE 89.

<sup>597</sup> FILE 89.

<sup>598</sup> See FILE 24. See also: korrespondent.net Милиция перешла на сторону ополчения Донбасса – “комендант” Константиновки <http://korrespondent.net/ukraine/politics/3355425-mylytsyia-pereshla-na-storonu-opolchenyia-donbassa-komendant-konstantynovky>

<sup>599</sup> <http://pravda.dn.ua/details/231864/>

<sup>600</sup> FILES: 33, 126, 123, 75, 43, Z\_04, Z\_01

<sup>601</sup> FILE 28.

### 5.3.2.5 DRUZHKOVA – DONETSK PROVINCE

The leader of separatist forces during and immediately after the takeover of Druzhkovka was Vasiliy Chernenko (arrested in July 2014),<sup>602</sup> with the active assistance of mayor Valeriy Gnatenko.<sup>603</sup> The governing authority in town was a local man codenamed "Vostok," followed by "Vasilich" (who answered directly to "Bes").<sup>604</sup>

The following separatists have been linked to international crimes on the territory of Druzhkovka (particularly on the premises of the former SBU building and the former Town Administration building<sup>605</sup>): Iurii Tyhyi, Alexandr Arhipov, Kotliarento Alexandr Borisovich and his son Alexandr, "Topaz," Oleg Zhurba, "Glavnyy," "Pinochet," Shutova and members of the "NKVD" group (led by Kiseliov).<sup>606</sup>

### 5.3.2.6 STAHANOV/SEVERODONETSK/PERVOMAISK – LUGANSK PROVINCE

From June to August 2014, the area was under the control of the 1<sup>st</sup> Cossack Regiment commanded by Pavel Dremov. From January 2015, the regiment was integrated into the Peoples' Militia.<sup>607</sup> Smaller units operating in the area identified Pavel Dremov as their leader, as well as paying allegiance to Cossack General N. Kozitsin.<sup>608</sup>

Witnesses detained in Stahanov testified that the head of separatist fighters in the detention facility was Gennady Grinievich (alias "Sedoy" or "Borodatyi").<sup>609</sup> Those detained in the former SBU building in Severodonetsk link the following separatists to international crimes: Vasiliy Pefteev, Ataman Pasha, commander Alexey Vydysch (alias "Barmaley"), Dmitriy Balkonov (alias "Tsygan") and "Daniil."<sup>610</sup>

A motorized military brigade commanded by Oleg Turnov took part in key battles in the area, including Debaltsevo and Chernuhino.<sup>611</sup> The People's Militia is also known

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<sup>602</sup> unian.net Батальон Азов задержал лидера террористов ДНР из Дружковки Василя Черненко, available at: <http://www.unian.net/politics/938972-batalon-azov-zaderjal-lidera-terroristov-dnr-iz-druzhkovki-vasiliya-chenenko.html>

<sup>603</sup> tsn.ua: Жизнь освобожденной Дружковки: в городе "правят" чиновники-сепаратисты, а патриоты сидят в подполье <http://ru.tsn.ua/ukrayina/zhizn-osvobozhdennoy-druzhkovki-v-gorode-pravyat-chinovniki-separatisty-a-patrioty-sidyat-v-podpole-407241.html>

<sup>604</sup> druzhko.org: Как Дружковка на стала вторым Славянском, available at: <http://druzhko.org/2014/07/23/kak-druzhkovka-ne-stala-vtorym-slavyanskom/>

<sup>605</sup> FILES 8, 25, 35

<sup>606</sup> FILES 8, 25, 35

<sup>607</sup> History of LPR army, available at : <http://yadocent.livejournal.com/697892.html?thread=4183076>

<sup>608</sup> History of LPR army, available at : <http://yadocent.livejournal.com/697892.html?thread=4183076>

<sup>609</sup> FILE N 19 witness 0019-K-526.

<sup>610</sup> FILE N 47 witness 0047-K-562.

<sup>611</sup> History of LPR army, available at : <http://yadocent.livejournal.com/697892.html?thread=4183076>

to have regularly shelled Popasnaia from their position on the Bahmutskaya motorway.<sup>612</sup>

### 5.3.2.7 POPASNA – LUGANSK PROVINCE

The town of Popasna was captured by the LPR Peoples' Militia on July 8, 2014, commanded by Valeriy Bolotov.<sup>613</sup> After the town's re-capture by Ukrainian forces (Donbass battalion commanded by Semion Semionchenko) on July 22, 2014,<sup>614</sup> the town was shelled and attacked by the 31<sup>st</sup> Cossack Donskoy army, commanded by the self-appointed mayor of Pervomaisk, Evgeniy Ishenko, Pavel Dremov, "Malish" and former mayor of Stahanov Sergey Zhivlakov.<sup>615</sup>

### 5.3.2.8 ALCHEVSK – LUGANSK PROVINCE

The town's command has been divided between the "Zaria" battalion, and the "Alexandr Nevskiy" battalion (commanded by Alexandr Viktorovych Kostin)<sup>616</sup>, later merging into the "Prizrak" battalion (commanded by Aleksey Mosgovoij).<sup>617</sup>

### 5.3.2.9 LISICHANSK – LUGANSK PROVINCE

During the takeover of Lisichansk, Alexandr Kostin<sup>618</sup> was the head of LPR separatist forces on the ground (assisted by deputies Aleksei Markov, Petr Biriukov and Kirill Androsov).<sup>619</sup> Throughout its occupation, the town was under the control and command of the "Prizrak" battalion (commanded by Aleksey Mozgovoij)<sup>620</sup> as well as

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<sup>612</sup> History of LPR army, available at : <http://yadocent.livejournal.com/697892.html?thread=4183076>

<sup>613</sup> «Ополченцы ЛНР заняли город Попасную на границе с Донецкой областью»: <http://www.rosbalt.ru/ukraine/2014/07/08/1289317.html>

<sup>614</sup> ukrinform.ua: Антитеррористическая операция. Хроника событий, available at: [http://www.ukrinform.ua/rus/news/antiterroristicheskaya\\_operatsiya\\_hronika\\_sobitij\\_1627765](http://www.ukrinform.ua/rus/news/antiterroristicheskaya_operatsiya_hronika_sobitij_1627765)

<sup>615</sup> [podrobnosti.ua](http://podrobnosti.ua): Попасную обстреливает неподконтрольная ЛНР банда Донского: есть жертвы (фото), available at: <http://podrobnosti.ua/996499-popasnju-oblivelivaet-nepodkontrolnaja-lnr-banda-donskogo-est-zhertyv-foto.html>

<sup>616</sup> [ukraina.ru](http://ukraina.ru): Командир батальона «Август»: Я не против украинского народа, я против фашизма, available at: <http://ukraina.ru/interview/20141028/1011002451.html>

<sup>617</sup> [ukraina.ru](http://ukraina.ru): Командир батальона «Август»: Я не против украинского народа, я против фашизма, available at: <http://ukraina.ru/interview/20141028/1011002451.html>

<sup>618</sup> Один из лидеров луганского ополчения Алексей Мозговой: «С той стороны наши враги, их нужно уничтожать», available at <http://www.kp.by/daily/26248/3128982>

<sup>619</sup> Бригада «Призрак» выступила с заявлением в связи с гибелью Мозгового, available at: <http://lifenews.ru/news/154422> ; Украинский кризис: последние дни жизни Алексея Мозгового, героя-повстанца из батальона "Призрак", убитого из засады, available at: <http://www.inopressa.ru/article/25may2015/independent/mozgovoij.html>

<sup>620</sup> База батальона террористов "Призрак" в Лисичанске: "Сникерсы" от КПРФ и марихуана. ФОТОрепортаж, available at:

the Cossack Donskoy Army (commanded by General Nikolai Kozitsin)<sup>621</sup> made up of "Kirovsk" battalion, "Alexandr Nevskiy" battalion, "Ermak" battalion and a number of foreign volunteer formations.

Witnesses have linked the following separatists to international crimes on the territory of Lisichansk: "Politseiskiy," Andrey Kharchenko, Chechen "Habib," "Doctor Maralishvili," "Sasha," "Aleksey," and "Yuriy."<sup>622</sup>

### 5.3.2.10 SLAVIANSK/KRAMATORSK – DONETSK PROVINCE

Slaviansk was occupied by DPR separatists from April until July 5, 2014. The commander of the occupying forces was Igor Girkin (alias "Strelkov," a Russian citizen).

Witnesses link the following separatists to international crimes perpetrated on the territory of Slaviansk: "Cossack Dima," "Bieriya," "Roma," "Nos," "Zubr," "Zub," "Senia,"<sup>623</sup> "Loschenyy," "Skudar,"<sup>624</sup> "Illia from Nizhniaia Cherevkovka," "Konduktor," "Illich," "Piervyi," "Advokat," "Schit," and "Capone,"<sup>625</sup> Also heavily implicated in the perpetration of international crimes was the self-proclaimed peoples' mayor of Slaviansk, Vecheslav Ponopariov.<sup>626</sup>

The separatist force that took over Kramatorsk had come from Slaviansk, commanded by "Terts."<sup>627</sup> According to witnesses, the head of detention in Kramatorsk was separatist "Medved."<sup>628</sup> Separatists known as "Tuman," "Lev," "Lenin," and "Bandera" have also been implicated in international crimes.<sup>629</sup>

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[http://censor.net.ua/photo\\_news/296475/baza\\_batalona\\_terroristov\\_prizrak\\_v\\_lisichanske\\_snikersy\\_ot\\_kprf\\_i\\_m\\_arihuana\\_fotoreportaj](http://censor.net.ua/photo_news/296475/baza_batalona_terroristov_prizrak_v_lisichanske_snikersy_ot_kprf_i_m_arihuana_fotoreportaj)

<sup>621</sup> Semen Semenchenko's post: <https://www.facebook.com/dostali.hvatit/posts/787755167925926>

<sup>622</sup> FILE N 46 witness 0046-K-561; N 94 witness 0094-K-615;

<sup>623</sup> FILE N 35 witness 0035-K-544

<sup>624</sup> FILE N 52 witness 0052-K-566

<sup>625</sup> FILE N 75 witness 0075-K-586; FILE N 33 witness 0033-K-542

<sup>626</sup> FILE N 123 0123-K-630-4; <https://stampsy.com/user/39344/latest/17149>

<sup>627</sup> [http://news.liga.net/news/politics/4024000-](http://news.liga.net/news/politics/4024000-strelkov_rasskazal_pochemu_v_pervuyu_ochered_zakhvatil_slavyansk.htm)

[strelkov\\_rasskazal\\_pochemu\\_v\\_pervuyu\\_ochered\\_zakhvatil\\_slavyansk.htm](http://news.liga.net/news/politics/4024000-strelkov_rasskazal_pochemu_v_pervuyu_ochered_zakhvatil_slavyansk.htm)

<sup>628</sup> FILE N 78 witness 0078-K-590

<sup>629</sup> FILE 2 witness 0002-K-502.

## 5.4 UKRAINIAN GOVERNMENT AND PRO-KYIV PARAMILITARY PERSONNEL LIKELY TO FORM PART OF A FUTURE INVESTIGATION

### 5.4.1 UKRAINE'S MILITARY HIGH COMMAND DURING THE CONFLICT

Name	Position	Period
Petro Poroshenko <sup>630</sup>	Supreme Commander of the Armed Forces of Ukraine	Since 7 June 2014
Alexandr Turchinov <sup>631</sup>	Vice Supreme Commander of the Armed Forces of Ukraine	22 February- 7 June 2014
Mikhail Kutsin <sup>632</sup>	Chief of Staff, Chief of the Armed Forces of Ukraine	28 February- 3 July 2014
Viktor Muzhenko <sup>633</sup>	Chief of Staff, Chief of the Armed Forces of Ukraine	Since 3 July
Mikhail Koval <sup>634</sup>	Minister of Defense of Ukraine	25 March- 3 July 2014
Valeri Geletey <sup>635</sup>	Minister of Defense of Ukraine	3 July- 14 October 2014
Stepan Poltorak <sup>636</sup>	Minister of Defense of Ukraine	Since 14 October
Anatoli Pushniakov <sup>637</sup>	The commander of the Land Forces	Since 6 May 2014
Sergey Drozdov <sup>638</sup>	The commander of the Air Forces	Since 20 July 2015

<sup>630</sup> [http://censor.net.ua/news/288924/poroshenko\\_stal\\_verhovnym\\_glavnokomanduyuschim\\_ukrainy](http://censor.net.ua/news/288924/poroshenko_stal_verhovnym_glavnokomanduyuschim_ukrainy).

<sup>631</sup> [http://files.lb.ua/person/1298\\_turchinov\\_aleksandr\\_valentinovich.html](http://files.lb.ua/person/1298_turchinov_aleksandr_valentinovich.html);

<http://zakon4.rada.gov.ua/laws/show/140/2014>

<sup>632</sup> <http://www.pravda.com.ua/news/2014/02/28/7016681/>

<sup>633</sup> <http://www.mil.gov.ua/ministry/kerivnicztvo/kerivnicztvo-gsh-zsu/general-lejtenant-muzhenko-viktor-mikolajovich.html>

<sup>634</sup> <http://www.pravda.com.ua/news/2014/03/25/7020231/>

<sup>635</sup> <http://www.pravda.com.ua/news/2014/07/3/7030849/>

<sup>636</sup> <http://www.mil.gov.ua/ministry/kerivnicztvo/>

<sup>637</sup> <http://www.mil.gov.ua/ministry/kerivnicztvo/>

<sup>638</sup> <http://www.president.gov.ua/documents/4432015-19269>

Iurii Baidak <sup>639</sup> <sup>640</sup>	The commander of the Air Forces	8 June 2012-13 July 2015
Sergey Gayduk <sup>641</sup>	The commander of the Naval Forces of Ukraine	Since 7 March 2014
Litvin Petro Mikhaylovich <sup>642</sup> <sup>643</sup>	The commander of the forces of sector D	April - 25 August 2014
Alexandr Turchinov	11th Secretary of the National Security and Defence Council of Ukraine	Since 16 December 2014
Andriy Parubiy	10th Secretary of the National Security and Defence Council of Ukraine	27 February – 7 August 2014
Arsen Avakov	Minister of Internal Affairs	Since 27 February 2014

<sup>639</sup> <http://politrada.com/dossier/Yurij-Avramovich-Bajdak/>

<sup>640</sup> <http://nv.ua/ukraine/politics/prezident-uvolil-komanduyushchego-vozdushnyh-sil-ukrainy-59007.html>

<sup>641</sup> [http://ukr.lb.ua/news/2014/03/07/258591\\_voennomorskie\\_sili\\_ukraini.html](http://ukr.lb.ua/news/2014/03/07/258591_voennomorskie_sili_ukraini.html)

<sup>642</sup> <http://ruporzt.com.ua/zhittya/39311-komanduvach-suhoputnih-vysk-zsu-genady-vorobyov-osobisto-priyihav-u-zhitomir-predstavlyati-petra-litvina-foto.html>

<sup>643</sup> [http://espresso.tv/news/2014/09/10/heneral\\_lytvyn\\_pokynuv\\_biyziv\\_ya\\_khochu\\_\\_schob\\_comu\\_nadaly\\_p\\_ravovu\\_ocinku\\_\\_\\_komandyr\\_quotdnipraquot](http://espresso.tv/news/2014/09/10/heneral_lytvyn_pokynuv_biyziv_ya_khochu__schob_comu_nadaly_p_ravovu_ocinku___komandyr_quotdnipraquot)

## 5.4.2 PRO-KYIV VOLUNTEER BATTALIONS INVOLVED IN THE CONFLICT

### Volunteer battalions involved in military action in Eastern Ukraine

In Ukraine today, 44 volunteer Territorial Defense Battalions (TDBs) with the Ukrainian Armed Forces, UAF, 32 volunteer special purpose patrol battalions (SPPBs with the Interior Ministry, MIA), 3 volunteer special purpose National Guard battalions (SPNGBs), and several battalions under the Volunteer Ukrainian Corps (VUCs) have been established or are in the process of being organized

							
<b>Donbas</b>	<b>Named after Kulchitsky</b>	<b>Aidar</b>	<b>Kryvbас</b>	<b>Kyivska Rus</b>	<b>Dnipropetrovsk</b>	<b>Dnipro-2</b>	<b>Kyivska Rus</b>
full name: Donbas SPPB attachment: National Guard official number: 430 actual number: >600 commander: Semen Semenchuk founded: 18 April 2014 assignment region: Donetsk Oblast	General Kulchitsky SPPB National Guard 430 >325 5 April (August) 2014 Kyiv Oblast	Aidar 14th TDB UAF Ministry of Defense 423 423 424 Sergiy Melnichuk May 2014 Luhansk Oblast	Kryvbас 40th TDB UAF Ministry of Defense 423 423 424 Mykola Kolesnyk May 2014 Dnipropetrovsk Oblast	Kyivska Rus 25th TDB UAF Ministry of Defense 423 423 424 Andriy Yanchenko 15 April 2014 Kyiv oblast	Dnipropetrovsk 20th TDB UAF Ministry of Defense 423 423 400 Oleksandr Rachevsky May 2014 Dnipropetrovsk Oblast	Dnipro-2 39th TDB UAF Ministry of Defense 423 400 May 2014 Dnipropetrovsk Oblast	Kyivska Rus 11th TDB UAF Ministry of Defense 423 450 15 May 2014 Kyiv oblast
							
<b>Azov</b>	<b>Dnipro-1</b>	<b>Kyiv-1</b>	<b>Kyiv-2</b>	<b>Zoloti Vorota</b>	<b>Artemivsk</b>	<b>Shakhtarsk</b>	<b>Sich</b>
Azov SPPB MIA MIA 430 500 -500 Andriy Biletskyi 5 May 2014 Kyiv oblast	Dnipro-1 SPPB MIA MIA 430 500 -4000 Yuriy Bereza 14 April 2014 Dnipropetrovsk Oblast	Kyiv-1 SPPB MIA MIA 462 -300 Evgen Deidsey April 2014 Kyiv	Kyiv-2 SPPB MIA MIA 150 Bohdan Vaitsekhovskiy April 2014 Kyiv	Zoloti Vorota SPPB MIA MIA 300 -300 Mykola Shvalya 2 May 2014 Kyiv	Artemivsk SPPB MIA MIA 200 200 Kostyantyn Mateichenko 1 May 2014 Dnipropetrovsk Oblast	Shakhtarsk SPPB MIA MIA 200 -100 Andriy Filanenko 16 June 2014 Dnipropetrovsk Oblast	Sich SPPB MIA MIA 300 -100 Oleksandr Fedorenko June 2014 Kyiv
							
<b>Luhansk-1</b>	<b>Sicheslav</b>	<b>Lviv</b>	<b>Myrotvorets</b>	<b>Shtorm</b>	<b>Ivano-Frankivsk</b>	<b>Kherson</b>	<b>Poltava</b>
Luhansk-1 SPPB MIA MIA 200 -100 Andriy Lenko June 2014 Luhansk Oblast	Sicheslav SPPB MIA MIA 500 -100 Vladyslav Portnyak 8 May 2014 Dnipropetrovsk Oblast	Lviv SPPB MIA MIA 500 220 Oleg Zarlichnyi April 2014 Lviv Oblast	Myrotvorets SPPB MIA MIA - Andriy Teteruk 9 May 2014 Kyiv Oblast	Shtorm SPPB MIA MIA 300 -50 Sergiy Shestakov 14 May 2014 Odessa Oblast	Ivano-Frankivsk SPPB MIA MIA 300 120 Oleksandr Polishchuk May 2014 Ivano-Frankivsk Oblast	Kherson SPPB MIA MIA 230 -80 Ruslan Storcheus May 2014 Kherson Oblast	Poltava SPPB MIA MIA 300 209 Oleksandr Fedorenko 28 April 2014 Poltava Oblast
							
<b>Slobozhanshina</b>	<b>Kharkiv-1</b>	<b>Svitlyz</b>	<b>Kirovograd</b>	<b>Svyatyi Mykolai</b>	<b>Vinnytsya</b>	<b>Ternopil</b>	<b>Chernigiv</b>
Slobozhanshina SPPB MIA MIA 1000 - Andriy Yangolenko April 2014 Kharkiv Oblast	Kharkiv-1 SPPB MIA MIA 300 150 Sergiy Yangolenko April 2014 Kharkiv Oblast	Svitlyz SPPB MIA MIA 100 -150 Oleksandr Fatsievych June 2014 Volynska Oblast	Kirovograd SPPB MIA MIA 200 -150 Vyacheslav Shevchenko May 2014 Kirovograd Oblast	Mykolaiiv SPPB MIA MIA - 50 Vitaliy Goncharov 5 May 2014 Mykolaiiv Oblast	Vinnytsya SPPB MIA MIA 200 155 Ruslan Monoz May 2014 Vinnytsya Oblast	Ternopil SPPB MIA MIA 430 - Volodymyr Katruk May 2014 Ternopil Oblast	Chernigiv SPPB MIA MIA 200 46 Roman Prytsyk 9 May 2014 Chernigiv Oblast
							
<b>Bogdan Company</b>	<b>Kremenchuk Company</b>	<b>OUN</b>	<b>Right Sector</b>	<b>Right Sector</b>			
Bogdan SPPB MIA MIA 100 Oleksandr Zhymentnykh June 2014 Khmelnytska Oblast	Kremenchuk SPPB MIA MIA 120 Oleg Berkeleya May 2014 Poltava Oblast	- -100 Mykola Kokhanivskiy 31 July 2013 Nizhn	RS 5th Det'd Battalion VUC VUC - Chornyi 2014 -	RS 9th Det'd Battalion VUC VUC 120 - 2014 -			

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### 5.4.3 EVIDENCE CONNECTING PRO-KYIV FORCES TO INTERNATIONAL CRIMES PRESENTED IN THIS REPORT

Battalion	Area	Dates	Crime	Case File
Azov, Aydar	Checkpoint near Starobeshevo, Donetsk area	Summer 2014	Tortures	129
Azov, Aydar	Starobeshevo, Donetsk area	26.07.14	Tortures	144
Border Guard Service of Ukraine	Chackpoint Georgievka, Marjinka region, Donetsk area	09.04.15	Captivity	145
Ukrainian armed forces	Gorlovka, Donetsk Province	18.01.2015; 21.01.2015; 24.01.2015 – 28.01.2015	Shelling	76
Donbass batalion	Lysychansk city, Lugansk province	14.06.2014-25.07.2014	Shelling	102
Aydar battalion	Dzerzhynsk city – Lugansk province	21.07.2014;	Shelling	27; 114; 117
	Semenovka vilage – Donetsk province	04.2014-06.2014	Shelling	119
Battaliions Kyivska Rus, Donbass, Kulchytskogo , Lviv, National guard forces	Debaltsevo city – Donetsk province	27-29.07.2014; 24.08.2014-06.02.2015; 01.02.2015; 19.01.2015-24.01.2015; 25.07.2014-27.01.2015	Shelling	116, 77, 79
Ukrainian armed forces and DPR fighters	Belenkoe village, Kramatorsk city area, Donetsk province	4-5.07.2014	Shelling	72
Ukrainian armed	Berestovoie city, Donetsk province	29.07.2014	Shelling	17

forces and DPR fighters				
Ukrainian armed forces	Slaviansk city, Donetsk province	15.05.2014-29.05.2014	Shelling	11;53
Batalion Aydar	Schastie village – Donetsk Province	15.02.2015	Murder, theft of property	108

## 6. CONCLUSION

From March 2014 up to the time of publication of this report, an armed conflict has been taking place on the territory of Eastern Ukraine, resulting in over 7962 deaths, many thousands of injuries, widespread persecution, imprisonment, ill treatment and torture, the displacement of over 2.5 million civilians and other sources of immeasurable suffering. In order to document the human rights violations and crimes perpetrated as part of this conflict, IPHR has been conducting field missions to parts of the conflict-affected area as well as desk research into open-source information. Having analysed the evidence with reference to international humanitarian law and international criminal law, we submit that there is a reasonable basis to believe that the following war crimes have been perpetrated on the conflict-affected area:

- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- Intentionally launching an attack in the knowledge that such attack would cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment, and which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings, which were undefended and were not military objectives;
- Inhuman and/or cruel treatment;
- Denying fair trial rights to prisoners;
- Unlawful confinement of civilians;
- Torture;
- Wilfully causing great suffering or serious injury to body and health;
- Outrages upon personal dignity, in particular humiliating and degrading treatment;
- Murder/wilful killing;

- Appropriation and destruction of property (in some cases amounting to excessive and wonton appropriation and destruction of property); and
- Pillage.

Additionally, we submit that there is a reasonable basis to believe that a widespread and systematic attack has been taking place against the civilian population of Eastern Ukraine, pursuant to the organizational policy of the separatist movement, and that the following crimes against humanity have been perpetrated as part of this attack:

- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- Torture;
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health;
- Murder; and
- Persecution on political and religious grounds.

We believe that pursuant to the common aspirations of peace, security and justice, it is imperative to conduct full and thorough investigations into these events and bring those responsible for international crimes to justice before an independent and impartial tribunal guaranteeing the full respect for fundamental fair trial rights.



Source: IPHR





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