

# FIGHTING TERRORISM OR TERRORISING ACTIVISM?

persecution  
of civic  
activists in  
Crimea

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Fighting terrorism or terrorising activism? Persecution of civic activists in Crimea.  
Photos used in the report: Anton Naumliuk.



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# I. Executive summary

1. On 14 February 2019, in what is now believed to have been a dress rehearsal for mass arrests on 27 March, Russian security forces (siloviki) raided three Crimean Tatar households in Oktiabrskoe Krasnogvardeisk district.<sup>1</sup> The dawn searches were marred by procedural violations and resulted in the arrest of three politically active members of the Crimean Tatar community.<sup>2</sup> On 27 March 2019, at or around 06:00 a.m, Russian security forces began carrying out a coordinated large-scale operation across the Crimean Peninsula. Some 30 Crimean Tatar households located in Simferopol, Vladimirovka, Stroganovka, Kamenka, Belaye, Akropolis and Aikavan were raided by hundreds of masked and armed agents of the Russian Federal Security Services (FSB), Special Forces (OMON), Russian National Guard (Rosgvardia), police and traffic police (GAI or DPS). Twenty-three Crimean Tatars were arrested as a result of the operation.
2. Nearly all 26 detainees were affiliated with or were participants in the activities of Crimean Solidarity – an association of family members and representatives of Crimean political prisoners and disappeared persons, whose members monitor court proceedings, live-stream law enforcement activities, provide legal assistance and support to detainees and their families. All 26 detainees are accused of being members of Hizb ut-Tahrir (a transnational pan-Islamic organization banned in Russia but not in Ukraine) and charged with organizing and/or participating in the activities of a terrorist organization under Article 205.5 of the Russian Criminal Code. All but three detainees were illegally taken out of Crimea and placed in preventative detention in the Rostov region of the Russian Federation. If convicted, the detainees face between 10 and 24 years of incarceration in Russia's strict regime penal colonies.
3. The early morning raids in February and March 2019 were a very public show of force, aimed at dismantling 'Crimean Solidarity' and gagging Crimean Tatar activism. Moreover, the spectre of terrorism is being raised to isolate the Crimean Tatar community and galvanise non-Muslim support for the authorities' repressions. The number of agents involved in the operation and its manner of execution was clearly disproportionate to the immediate objective of arresting the targeted individuals. Doors were broken down, houses were invaded by dozens of masked and heavily-armed men, entire settlements were cordoned off and invasive searches were conducted in the homes of the detainees, their relatives and neighbours. Nearly all searches resulted in the alleged 'discovery' of identical brand new copies of banned Hizb ut-Tahrir literature. Detainees and their relatives maintain that the books were planted by the security forces.
4. Searches were marked by systemic violations of Russian law<sup>3</sup> and international standards – phones were immediately confiscated, lawyers were barred from being present during searches or advising clients ( in violation of Articles 16.1 and 182.11 of the Criminal Procedure Code or CPP), detainees were not fully informed of their rights ( in violation of Article 16.2 CPP), copies of search warrants and protocols were not provided to all detainees (in violation of Article 182.4 and 182.15 CCP), neighbouring houses were entered into and searched without warrant (in violation of Article 182.3

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1 Kharkhiv Human Rights Protection Group, 'Russia brings terror to more Crimean Tatar families', 15 Feb. 2019, available at: <http://khpg.org/en/index.php?id=1550186548>.

2 Witnesses C27OK01, C27OK02; Kharkhiv Human Rights Protection Group, 'Russia brings terror to more Crimean Tatar families', 15 Feb. 2019, available at: <http://khpg.org/en/index.php?id=1550186548>.

3 Whilst the wholesale replacement of Ukrainian criminal law with Russian law, on territories under belligerent occupation, is a violation of international humanitarian law (Article 64 of IV Geneva Convention), references to Russian law are included here to demonstrate that the Russian authorities' violated the laws regulating their conduct. The lawfulness of conduct under domestic law is an important factor in assessing the legality of restricting Convention rights. The fact that Russian authorities violated their own laws is strong evidence that their conduct also constitutes violations of the ECHR.

CPP), and 'official' witnesses were brought in by the security forces and appeared to be following their instructions (in violation of Article 60.1 CCP). Three of the targeted individuals were apprehended in town Aksay, Rostov region and were subjected to excessive use of force on arrest (in violation of Article 164.4 CPP). Detainees were taken into FSB custody, where their rights to an interpreter and to effective legal representation were restricted (in violation of Articles 18 and 16.1 CPP). All 26 detainees were remanded in custody following short closed (or restricted) hearings (Article 241 CPP) where all the defence motions were summarily rejected. Those arrested in February have been detained in Simferopol. Those arrested in March were secretly transferred out of Crimea to remand prisons in the Rostov region of Russia (Articles 152 and 32 CPP).

5. The searches, arrests and detention of the 26 Crimean Tatars amount to cumulative violations of the European Convention on Human Rights. The Russian authorities have failed to demonstrate that these arrests were based on an objectively reasonable suspicion of criminal activity, and that pre-trial detention as a measure of restraint is both necessary and proportionate (Article 5). The hearings on pre-trial detention were not public, fair or conducted by an independent and impartial judiciary (Article 6). The use of excessive force and invasive nature of house searches violated the right to privacy of detainees and other residents (Article 8). The detainees were singled out and subjected to particularly harsh and unlawful treatment on the basis of their ethnic and religious identity and/or political opinion, in violation of the prohibition on discrimination (Article 14). Moreover, there is a reasonable basis to believe that the targeting of actual or perceived affiliates of 'Crimean Solidarity' forms part of a broader attack on activists and vocal members of the Crimean Tatar community, and may amount to the crime against humanity of persecution as defined in Article 7(h) of the Rome Statute to the International Criminal Court (ICC Statute).
6. For the foregoing, the authors submit that the security operation conducted by Russian security forces on 14 February and 27 March 2019, and consequent arrest and detention of 26 Crimean Tatars, has violated Russian law, the European Convention on Human Rights and may amount to persecution under the ICC Statute. Russian authorities have yet to present any credible and reliable evidence that the detainees ever planned, organized or took part in any terrorist activities.<sup>4</sup> The charges are entirely based on the defendants' purported membership of Hizb ut-Tahrir – an organisation, which is yet to be directly connected to terrorist activity in Crimea, Russia or elsewhere. Moreover, to date, the main evidence of their alleged membership of Hizb ut-Tahrir – books published by the organization – appears to have been planted by the security forces. Consequently, the authors aver that these individuals are being targeted in order to dismantle 'Crimean Solidarity', as part of a wider effort to suppress actual or perceived Crimean Tatar opposition to the Russian occupation of the Crimean Peninsula.
7. The authors welcome the European Union's position on the illegal nature of these arrests,<sup>5</sup> and urge the Russian authorities to immediately and unconditionally release all 26 detainees, dismiss the criminal cases against them and provide them and their relatives with compensation for the

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4 Section 205.5 of the Russian Criminal Code criminalises 'participation in' and 'organization of' activities of a terrorist organisation, but does not define these terms. Under Article 5 of the ECHR, the deprivation of liberty as a measure of pre trial restraint requires an objectively reasonable suspicion of a criminal offense. To justify the pre trial detention of a suspect charged under section 205.5, the State must demonstrate evidence of some participation or contribution to the group's core activities (i.e. activities that give it the status of a 'terrorist' organisation). It is doubtful that the deprivation of liberty would be justified solely on evidence of the suspect's membership or affiliation to a banned group that itself has not been linked to any criminal activity.

5 European Union External Action, 'Statement by the Spokesperson on human rights violations against and the illegal detention of Crimean Tatars by the Russian Federation', 30 March 2019, available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/60408/statement-spokesperson-human-rights-violations-against-and-illegal-detention-crimean-tatars\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/60408/statement-spokesperson-human-rights-violations-against-and-illegal-detention-crimean-tatars_en).

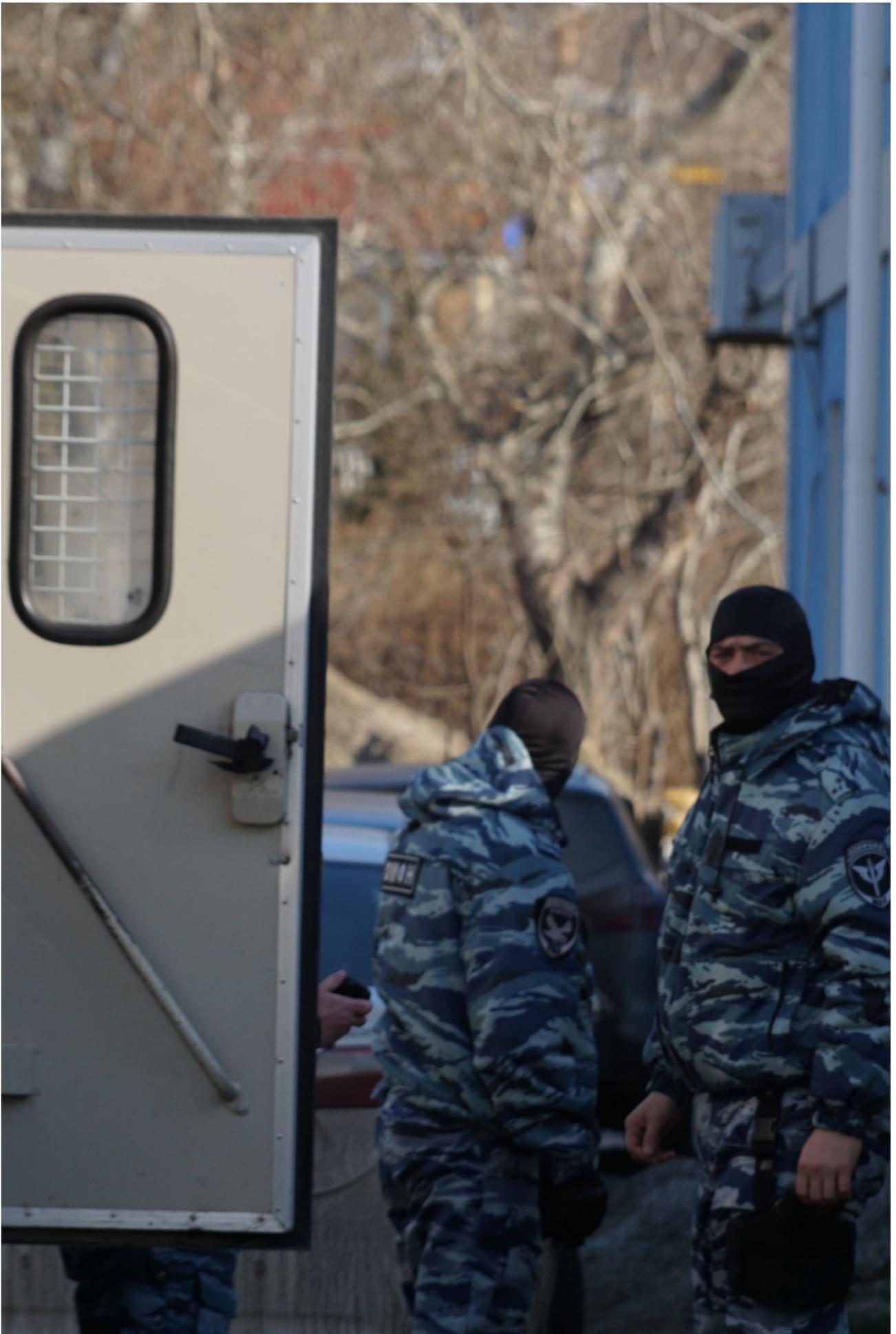
physical, material and psychological damage caused by these violations.<sup>6</sup> Moreover, the authors urge the Russian authorities to release and exonerate all other Crimean Tatars falsely accused of participating or organizing Hizb ut-Tahrir activities, and to cease the politically motivated prosecution of law-abiding Crimean activists. Further, the authors request Russian authorities to disclose any information that they may have on the whereabouts and wellbeing of Edem Iaiachikov – a Crimean Tatar whose house was searched on 27 March 2019 and who has subsequently disappeared.

8. Furthermore, the authors make the following recommendations:

- To the international community: continue to apply sanctions on individuals and entities responsible for serious violations of human rights in Crimea, and to call on Russian authorities to release all political prisoners;
- To the Prosecutor of the International Criminal Court: include these arrests into the purview of her preliminary examination on Ukraine and to request an authorisation for a full investigation as soon as practicable;
- To Ukrainian authorities: continue to investigate violations against its citizens with a view to bringing those responsible to justice;
- To the Russian Ombudsperson on Human Rights: investigate the human rights violations raised in this report, consider the wider pattern of rights deprivations and discrimination against the Crimean Tatar community and review the impact of the classification of Hizb ut-Tahrir as a terrorist organisations.

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6 As per Articles 5(5) and 13 of the ECHR.



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## II. Introduction

### A. Objectives

9. The primary objective of this report is to contribute to contemporaneous impartial documentation of serious human rights violations on the Crimean Peninsula under Russian occupation. The authors firmly believe that the documentation and preservation of evidence to a judicial standard is crucial to the establishment of a reliable historical record, and may play a key role in any future justice and accountability efforts.
10. Secondly, the authors seek to expose the procedural and substantive violations of Russian law, violations of the European Convention on Human Rights and disregard for other international standards in the Russian authorities' handling of law enforcement operations on 14 February and 27 March 2019. Systematic violations of domestic and international rules demonstrate the Russian authorities' lack of respect for the Rule of Law on the Crimean Peninsula, and discredit their claim to having a democratic and law-based mandate over the occupied territory.
11. Thirdly, the authors seek to draw the international community's attention to the bigger picture of systematic suppression of dissent and criticism of Russian rule over the Crimean Peninsula. The arrest and detention of 26 Crimean Solidarity activists (or persons affiliated with the group's initiatives) provide a stark illustration of the way in which Russian authorities are prepared to subvert the criminal justice system, and its ill-defined anti-terrorism legislation, to suppress activism and civic solidarity amongst the civilian population under occupation.

#### i. AUTHORS

12. International Partnership for Human Rights (IPHR) is a non-profit organization with its headquarters 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.
13. Truth Hounds is a team of experienced human rights professionals documenting war crimes and crimes against humanity in conflict contexts since 2014. Truth Hounds fights against impunity for international crimes and grave human rights violations through investigation, documentation, monitoring, advocacy and problem solving for vulnerable groups. Truth Hounds documenters mobilize all available resources and documentation methodology to create a systemic approach to its documentation work, and promote accountability for grave human rights abuses and international crimes. Truth Hounds has prepared three extensive submissions to the International Criminal Court and has detailed knowledge of international standards and best practices of evidence collection and systematization. Truth Hounds constantly seeks to develop new innovative approaches to its documentation work, fighting impunity and restoring accountability and justice in post-conflict societies.
14. Crimea SOS is one of the largest grassroots Crimean initiatives running diverse programmes of assistance to internally displaced persons and providing legal aid and other support to victims of

rights violations in Crimea. Crimea SOS was established by a group of volunteers on 27 February 2014 with the aim of ensuring reliable reporting on the situation in Crimea.

15. The Helsinki Foundation for Human Rights was founded in late 1989, after seven years of underground human rights activity by the Helsinki Committee in Poland. Originally established to carry out human rights research and education activities, the HFHR now functions as an independent human rights research and policy institute and is regarded as one of the most experienced and professional non-governmental organizations involved in the protection of human rights in Europe. The group is active in Poland and abroad. It conducts research, leads trainings, and organizes conferences and seminars. HFHR also provides expert consultation on human rights to international organizations, non-governmental organizations, state institutions (such as parliamentary committees, police officers, judicial officials, prison officials, border guards, public health officials) and individuals.
16. The Ukrainian Helsinki Human Rights Union is non-profit and non-partisan association of 30 Ukrainian human rights NGOs. The association researches and closely monitors the human rights situation in Ukraine, reports publicly on instances of abuse, and makes recommendations for improvements in rights protection. The UHHRU comments on draft laws and legal acts, prepares and lobbies for legislative initiatives, facilitates public discussion of draft laws, and opposes legislation that would weaken human rights safeguards. The organization defends human rights and fundamental freedoms through the courts and before government bodies, provides legal assistance to victims of rights abuse, conducts education campaigns, including seminars, training courses and conferences, and provides support for a network of human rights organizations.

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

17. Information presented in this report has been empirically documented in the course of a field mission and through desk research. The field mission, made up of documenters from Truth Hounds (Ukraine/Georgia), Crimea SOS (Ukraine) and the Helsinki Foundation for Human Rights (Poland), took place in April 2019. A total of 34 witness statements were taken through semi-structured interviews. To ensure a methodologically consistent documentation process, the documentation team used IPHR's matrix for Documentation of War Crimes in IPHR's methodological Documentation Guide.<sup>7</sup> The Guide includes detailed description of elements of crimes (war crimes and crimes against humanity), classification of evidence, instructions on collecting 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. Additional information was obtained through desk research using open-source documents.
18. The primary sources of information for this report were the 34 semi-structured witness and victim interviews collected as part of the field mission. To gather witness and supporting evidence, the documentation team travelled to the alleged crime sites with the view to identifying victims, witnesses and physical evidence. Witness interviews were conducted in an impartial and open manner – using open questions and with appropriate tests for inconsistencies and lacunas. At the end of each interview, the statement was read back to (or by) the interviewee and he or she had an opportunity to correct any errors or inaccuracies on the record. All witnesses were interviewed separately and independently to prevent collusion and evidence contamination or undue influence. Further contextual and/or corroborating information was obtained from official documents such as reports from State and quasi-State organs, international monitoring organisations and media reports.

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<sup>7</sup> Case file N018, document: "Методическое пособие по документированию военных преступлений.docx" pp. 36-41.



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# III. Background

## A. Annexation of the Crimean Peninsula and Its Impact on Crimean Tatars

### i. 2014 ANNEXATION OF THE CRIMEAN PENINSULA

19. On 23 February 2014, as President Yanukovich fled Ukraine, pro and anti-Euromaidan protesters began to gather in city centres on the Crimean Peninsula.<sup>8</sup> On the same day, Russian President Vladimir Putin ordered the 'operation for returning Crimea to Russia'.<sup>9</sup>
20. On 24 February 2014, a pro-Russian rally in Sevastopol 'appointed' Aleksei Chalyi (a Russian citizen) as 'people's mayor'.<sup>10</sup> On 26 February 2014, thousands of pro and anti-Euromaidan protesters clashed in front of the Supreme Council building in Simferopol, resulting in two deaths.<sup>11</sup> Many of the pro-Euromaidan protestors were Crimean Tatars.<sup>12</sup> At the same time, along the Crimea-Ukraine administrative border, Russian soldiers and 'Self-Defence' groups began to seal off the Crimean Peninsula from the rest of Ukraine.<sup>13</sup>
21. On 27 February, the Supreme Council of Crimea was stormed and captured by 60 to 90 unmarked combatants carrying automatic weapons, sniper rifles and rocket-propelled grenades.<sup>14</sup> The building

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8 In Simferopol, thousands of pro-Euromaidan protesters gathered in front of the Parliament building (the protests and limited clashes began on 21 February) – Interfax Ukraine, "Crimean Tatars, pro-Russia supporters approach Crimean parliament building", 26 February 2014, available at: <http://en.interfax.com.ua/news/general/192882.html>; In Sevastopol tens of thousands protested against the new authorities in Kyiv – The Guardian, "Ukraine crisis fuels secession calls in pro-Russian south", 23 February 2014, available at: <http://www.theguardian.com/world/2014/feb/23/ukraine-crisis-secession-russian-crimea>; In Kerch protesters attempted to remove the Ukrainian flag from the city hall flag-pole – Unian, "В Керчи митингующие сорвали украинский флаг и мэрии и повесили российский", 23 February 2014, available at: <http://www.unian.net/politics/888686-v-kerchi-mitinguyuschie-sorvali-ukrainskiy-flag-i-merii-i-povesili-rossiyskiy.html>.

9 Россия 1, "Крым. Путь на Родину", Кондрашов А., available at: [https://russia.tv/brand/show/brand\\_id/59195/](https://russia.tv/brand/show/brand_id/59195/); See also: BBC, "Putin Reveals Secrets of Russia's Crimea Takeover Plot", 9 March 2015, available at: <http://www.bbc.com/news/world-europe-31796226>.

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11 KyivPost, "Two die in rallies outside Crimean parliament, says ex-head of Mejlis", 26 February 2014, available at: <http://www.kyivpost.com/article/content/ukraine/two-die-in-rallies-outside-crimean-parliament-says-ex-head-of-mejlis-337708.html>.

12 BBC, "Ukraine Crimea: Rival rallies confront one another", 26 February 2014, available at: <http://www.bbc.co.uk/news/world-europe-26354705>.

13 The Globe and Mail, "Globe in Ukraine: Russian-backed fighters restrict access to Crimean city", 26 February 2014, available at: <http://www.theglobeandmail.com/news/world/tension-in-crimea-as-pro-russia-and-pro-ukraine-groups-stage-competing-rallies/article17110382/#dashboard/follows/?cmpid=tgc>; The Wall Street Journal, "Crimea Checkpoints Raise Secession Fears", 28 February 2014, available at: <http://www.wsj.com/news/articles/SB10001424052702304071004579410931310849454>; See also video of checkpoints on YouTube, "Озброєні цивільні влаштували блокпости на в'їзді Криму", 27 February 2014, available at: <https://www.youtube.com/watch?v=2xIPEHZhkQ>.

14 Reuters, "Ukraine leader warns Russia after armed men seize government HQ in Crimea", 27 February 2014, available at: <http://www.reuters.com/article/us-ukraine-crisis-crimea-idUSBREA1P23U20140227>; Interfax-Ukraine, "Здание крымского Парламента и Правительства захвачены неизвестными", 27 February 2014, available at: <http://interfax.com.ua/news/general/193046.html>; The Guardian, "Crimean parliament seized by unknown pro-Russian gunmen", 27 February 2014, available at: <http://www.theguardian.com/world/2014/feb/27/crimean-parliament-seized-by-unknown-pro-russian-gunmen>; The involvement of Russian Forces in the capture of the Parliament of Crimea was

was barricaded, all lines of communications were cut and a Russian flag was hoisted on its flagpole.<sup>15</sup> Parliamentarians inside the building allegedly voted to dismiss the government, appointed Sergey Aksyonov as the new prime minister, and agreed to hold a referendum on the status of Crimea.<sup>16</sup> Opposition lawmakers present in the building state that the vote was marked by intimidation and fraud.<sup>17</sup>

22. On 1 March 2014, the Russian Parliament granted President Putin the right to use military force in Ukraine 'to protect Russian interests'.<sup>18</sup> On the same day, Aksyonov asked President Putin to provide assistance to 'ensure peace' in Crimea.<sup>19</sup> Between 1 and 23 March, 'little green men' and the Self-Defence Force stormed and seized Ukrainian military and state assets such as military bases,<sup>20</sup> airfields,<sup>21</sup> radar stations,<sup>22</sup> navy vessels,<sup>23</sup> a ferry terminal,<sup>24</sup> television/radio transmission stations<sup>25</sup> and border posts.<sup>26</sup> On 11 March, Crimea's airspace was closed to all aircraft apart from flights from the Russian Federation.<sup>27</sup>

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confirmed by Russian Admiral Igor Kasatonov (former commander of the Black Sea Fleet) – cited in Putin.War: An Independent Expert Report, May 2015, p.14, available at: <http://4freerussia.org/putin.war/Putin.War-Eng.pdf>.

- 15 Reuters, "Ukraine leader warns Russia after armed men seize government HQ in Crimea", 27 February 2014, available at: <http://www.reuters.com/article/us-ukraine-crisis-crimea-idUSBREA1P23U20140227>; Interfax-Ukraine, "Здание крымского Парламента и Правительства захвачены неизвестными", 27 February 2014, available at: <http://interfax.com.ua/news/general/193046.html>.
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- 18 Постановление Совета Федерации "Об использовании Вооруженных Сил Российской Федерации на территории Украины", 1 марта 2014, available at: <http://www.council.gov.ru/activity/legislation/decisions/39979/>; It has been alleged that the law was procedurally defective as Parliament lacked quorum. Lenta.Ru. "Сбой какой-то в машине, да? Как Совет Федерации разрешил Путину ввести войска на Украину", Ключкин А., Дмитриев Д., 13 марта 2014, available at: <https://lenta.ru/articles/2014/03/13/sovet/>.
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24. According to leadership of the Mejlis of Crimean Tatar People, Crimean Tatars largely boycotted the referendum,<sup>32</sup> as did many of the ethnic Ukrainians who make up a quarter of the total population.<sup>33</sup> Consequently, it is alleged that contrary to official statistics, less than 40 percent of Crimean residents participated in the referendum.<sup>34</sup> There were also reports of electoral fraud, including people being unlawfully taken off the register,<sup>35</sup> confiscation of identity papers<sup>36</sup> and voting by people not eligible to do so.<sup>37</sup> The Venice Commission declared the referendum illegal under the Constitutions of Ukraine and Crimea, and international law.<sup>38</sup> The Government of Ukraine has consistently refused to recognise the results of the referendum and the legality of the Peninsula's secession.<sup>39</sup>

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25. On 17 March 2014, the Supreme Council of Crimea declared independence from Ukraine, requisitioned Ukrainian state property on the Peninsula and submitted its request to accede to the Russian Federation.<sup>40</sup> On 18 March 2014, the 'Agreement on the accession of the Republic of Crimea to the Russian Federation' was signed in the Kremlin by Vladimir Putin, Sergei Aksyonov, Vladimir Konstantinov and Alexei Chaly.<sup>41</sup> The agreement was ratified and signed into law on 21 March 2014.<sup>42</sup>
26. The annexation was widely condemned by the international community, notably by the European Union,<sup>43</sup> the United Nations General Assembly,<sup>44</sup> 13 members of the United Nations Security Council<sup>45</sup> and NATO.<sup>46</sup> In its aftermath, sanctions have been imposed on Russia and individuals who played a key role in the annexation.<sup>47</sup> On 24 March, the Group of Eight voted to suspend Russia's membership.<sup>48</sup>

## ii. SITUATION OF CRIMEAN TATARS AFTER THE ANNEXATION

27. In the run-up to the annexation, Crimean Tatars accounted for approximately 12 per cent of the Peninsula's population.<sup>49</sup> The vast majority of Crimean Tatars are Muslim and their ethnic and cultural

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identity as a group is closely associated with the Islamic faith and traditions.<sup>50</sup> Their distinction from the Slavic majority is also apparent in their unique language, script, distinctive cultural practices and historic roots.<sup>51</sup> The forced deportation of the Crimean Tatar population on Stalin's orders in 1944 undoubtedly contributes to the Crimean Tatar communities' mistrust of and opposition to Russian authority over the Peninsula.

28. As a community, Crimean Tatars have presented the strongest and most organized opposition to the occupying authorities through peaceful protest, trade blockades and other forms of non-violent resistance.<sup>52</sup> This has resulted in the systematic targeting of politically active and vocal Crimean Tatars by the Russian authorities.<sup>53</sup> Crimean Tatar political and civic organisations have been banned (e.g.: the Mejlis) or subjected to constant pressure and harassment (e.g. Crimean Solidarity). The authorities have qualified all forms of opposition to the annexation as 'extremism' or 'terrorism', deploying its law enforcement and the judiciary to gag Crimean Tatar dissent.<sup>54</sup>
29. Based on figures compiled by victims' lawyers and civil society organisations since the annexation, at least 13 Crimean Tatars have been murdered by occupying authorities or groups and persons associated with them, and a further 12 Crimean Tatars remain 'disappeared'. An estimated 96 Crimean Tatars are subject to politically motivated criminal prosecutions, hundreds have been placed in administrative detention and a further 210 have been arbitrarily detained outside the context of criminal or administrative proceedings. There are currently no accurate estimates for the number of Crimean Tatars who have been subjected to torture, inhuman or degrading treatment.<sup>55</sup>
30. Political figures, activists as well as ordinary members of the Crimean Tatar community have been subjected to widespread harassment by law enforcement, security services and militia groups, with frequent reports of physical and psychological abuse.<sup>56</sup> The Mejlis, a representative body of Crimean

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Tatars, has been banned by the occupying authorities as an 'extremist' organisation,<sup>57</sup> its leaders banished from the Peninsula, arrested and/or threatened with prosecution.<sup>58</sup>

31. Crimean Tatars have all but lost their fundamental freedoms of association, assembly and expression, with bans on public gatherings to commemorate culturally significant dates,<sup>59</sup> closure of independent Crimean Tatar media outlets,<sup>60</sup> as well as other societies and organizations.<sup>61</sup> Mosques have come under attack, either through vandalism or raids by security forces under the guise of fighting Muslim extremism.<sup>62</sup> The vast majority of madrassas have been shut down, with the last remaining madrassa now put under the occupying authorities' control.<sup>63</sup> Individual members as well as arguably the group as a whole has come under unsubstantiated accusations of religious extremism,<sup>64</sup> and subjected to religiously motivated hate-crimes.<sup>65</sup> Attacks have also been documented on property owned by Crimean Tatars<sup>66</sup> and property of historic, religious and cultural significance to the Crimean Tatar community.<sup>67</sup> According to an OSCE report, native-language education and language studies in Crimean Tatar have been 'drastically reduced' since the occupation.<sup>68</sup>

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32. Over 30 000 Crimean Tatars are believed to have fled the territory of the Crimean Peninsula, forcibly displaced by the cumulative effect of discrimination, violence and/or fear of persecution.<sup>69</sup> According to a co-founder of Crimean Solidarity, the systematic rights violations, intimidation and prosecution of active members of the Crimean Tatar community amounts to a ‘hybrid deportation’ – a hostile environment which leads to Crimean Tatars leaving the Peninsula.<sup>70</sup>

## **B. Russian Authorities Target ‘Crimean Solidarity’**

### **i. WHAT IS ‘CRIMEAN SOLIDARITY’?**

33. ‘Crimean Solidarity’ is an association of family members and representatives of political prisoners and disappeared persons on the Crimean Peninsula under Russian occupation. The association was founded on 9 April 2016 in Sevastopol and is coordinated by Diliaver Memetov. Whilst initially founded by Crimean Tatars, its membership is open to all ethnic and religious groups. The stated purpose of the organization is to seek justice – through strictly non-violent means – within the national and international legal frameworks. The association comprises over 200 affiliates – including victims’ family members, lawyers, human rights defenders and activists. Crimean Solidarity offers legal support, documents and distributes information on politically motivated proceedings, and provides socio-economic and medical assistance to families of detainees and the disappeared.<sup>71</sup> Through a wide network of ‘citizen journalists’ (i.e. streamers and bloggers), the group has effectively exposed arbitrary arrests and procedurally deficient court proceedings against what are believed to be political prisoners of the Russian authorities.<sup>72</sup>

### **ii. ‘CRIMEAN SOLIDARITY’ SYSTEMATICALLY TARGETED BY AUTHORITIES**

34. Since 2017, Russian authorities have systematically targeted ‘Crimean Solidarity’ and its members through raids, intimidation, arrests, administrative detention and criminal charges.<sup>73</sup> The authorities have focused on the group’s leaders, coordinators and persons perceived as key organisers of its ‘citizen journalism’ activities.<sup>74</sup>
35. The groups meetings have been raided for the purpose of documenting and intimidating participants. In January 2018, a meeting was raided by security forces: all those in attendance were forced to provide their passport data as a condition of leaving the building.<sup>75</sup> A further raid took place in October 2018 during which the authorities took photographs of every participant.<sup>76</sup>
36. Lawyers affiliated with the group have come under intense pressure from the authorities,

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75 Witness C27GE01.

76 Witness C27GE01.

including accusations of extremism, threats and raids on offices. On 26 January 2017, Crimean attorney Kurbedinov was convicted of ‘extremist propaganda’ under section 20.3 of the Russian Administrative Code and sentenced to 10 days in custody. On 6 December 2018, Kurbedinov was once again convicted under section 20.3 and sentenced to five days in custody. In December 2018, he was accused of ‘extremism’ and threatened with disbarment.<sup>77</sup> On another occasion, a brick was thrown through the window of his law office.<sup>78</sup> Lawyers and other active members of the group have been attacked by Kremlin-controlled media.<sup>79</sup> The wives of ‘Crimean Solidarity’ activists and junior members of the group have also come under pressure to spy on and give evidence against the leadership – often in exchange for dropping traffic fines and other minor criminal infractions.<sup>80</sup>

37. A number of key members of ‘Crimean Solidarity’ have been arrested and put through administrative proceedings as a ‘warning’ that further activism will lead to harsher treatment. In 2017, 10 activists were arrested outside a court building during the court hearings of the case against Marlene Mustafaev.<sup>81</sup> In January 2018, activist Enver Krosh was detained for a social media post dating back to 2013.<sup>82</sup> In February 2018, Nariman Memedeminov – coordinator of the group’s citizen journalist’s network – was convicted under the Administrative Code.<sup>83</sup> In April 2018, the authorities arrested Server Mustafaiev – a key coordinator of Crimean Solidarity activities.<sup>84</sup> In June 2018, Gulsum Alieva – administrator of the group’s Facebook page – was arrested.<sup>85</sup>

## C. Russian Authorities Use Hizb Ut-Tahrir to Prosecute Crimean Tatar Activists as Terrorists

### i. WHAT IS HIZB UT-TAHRIR?

38. Hizb ut-Tahrir (aka Party of Islamic Liberation) is a transnational pan-Islamic political organization. The heart of its political ideology and its primary goal is the unification of Muslim lands (the Ummah) under one Caliphate (Khilafah), ruled according to a strict interpretation of the Quran, the Sunnah and Shariah law.<sup>86</sup> The stated purpose of the organization is conveying Islam as a message to the world through da’wah<sup>87</sup> and the struggle with the Kufr (non-believers), its system and its beliefs ‘so that Islam encapsulates the world’.<sup>88</sup> It does not participate in elections or political processes in the countries where it operates, believing democracy to be incompatible with the goal of establishing a unified Islamic Caliphate.<sup>89</sup>

77 Witness C27GE01.

78 Witness C27GE01.

79 Witness C27GE03.

80 Witness C27GE01.

81 Witness C27GE01.

82 KyivPost, ‘Halya Coynash: Crimean Tatar with brain tumour arrested for social media post from 2012’, 26 Jan. 2018, available at: <https://www.kyivpost.com/article/opinion/op-ed/halya-coynash-crimean-tatar-brain-tumour-arrested-social-media-post-2012.html>.

83 Witness C27GE01.

84 Witness C27GE01.

85 Witness C27GE01.

86 Hizb ut Tahrir Central Media Office, ‘The Aim of Hizb ut-Tahrir’, 24 July 2015, available at: <http://www.hizb-ut-tahrir.info/en/index.php/definition-of-ht/item/7982-the-aim-of-hizb-ut-tahrir>.

87 Da’wah is Arabic for ‘invitation’ and refers to the proselytizing or preaching of Islam.

88 Hizb ut Tahrir Central Media Office, ‘The Aim of Hizb ut-Tahrir’, 24 July 2015, available at: <http://www.hizb-ut-tahrir.info/en/index.php/definition-of-ht/item/7982-the-aim-of-hizb-ut-tahrir>.

89 BBC, ‘Q&A: Hizb ut-Tahrir’, August 2007, available at: [http://news.bbc.co.uk/2/hi/uk\\_news/4127688.stm](http://news.bbc.co.uk/2/hi/uk_news/4127688.stm).



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39. Hizb ut-Tahrir was founded in 1953 in Jerusalem by Taquiddin al-Nabhani, an Islamic scholar and judge.<sup>90</sup> Whilst Hizb ut-Tahrir is a secretive organization that does not reveal information about its affiliate networks, it is believed to operate in over 40 countries and has up to a million active followers.<sup>91</sup> Its biggest following is understood to be in Central Asia, with up to 20,000 members in Uzbekistan.<sup>92</sup> Its biggest presence outside the Muslim world is in the United Kingdom, which is believed to be the 'nerve centre' of its global operations.<sup>93</sup>
40. Hizb ut-Tahrir is banned in at least 16 countries – most of them in the Middle East and Central Asia.<sup>94</sup> Hizb ut-Tahrir is not banned in Ukraine and operated freely in Crimea prior to the annexation. The group expressly rejects the use of violence and military struggle to achieve its goal of establishing the Caliphate,<sup>95</sup> but does not rule out jihad as a means of protecting and spreading Islam once the Caliphate is established.<sup>96</sup> Hizb ut-Tahrir has been accused of being a 'conveyor belt of radicalisation',<sup>97</sup> and there is some evidence that some of its members have joined Islamist militant organisations.<sup>98</sup> Nevertheless, its leadership does not recognise the Islamic State in Iraq and al-Sham (ISIS or Daesh), stating that its declaration establishing the 'Caliphate' is 'empty and contains no substance'.<sup>99</sup>
41. Initiatives to ban Hizb ut-Tahrir tend to focus on the group's ideological goal of eliminating nation states in favour of an expansionist Caliphate, whilst decisions not to ban the group are based on the fact that the group does not promote violence and has never been linked to an act of terror.<sup>100</sup> The European Court of Human Rights (ECtHR) has held that banning the group does not necessarily violate the Convention as 'Hizb ut-Tahrir's aims are clearly contrary to the values of

90 Global Security, 'Hizb ut-Tahrir al-Islami (Islamic Party of Liberation)', available at: <https://www.globalsecurity.org/military/world/para/hizb-ut-tahrir.htm>.

91 New Statesman, 'For Allah and the caliphate', September 2004, available at: <https://www.newstatesman.com/node/195114>; Le Monde, 'Hizb ut-Tahrir and the fantasy of the caliphate', June 2008, available at: <https://mondediplo.com/2008/06/04caliphate>; Counter Extremism Project, 'Hizb ut-Tahrir', available at: <https://www.counterextremism.com/threat/hizb-ut-tahrir>.

92 Global Security, 'Hizb ut-Tahrir al-Islami (Islamic Party of Liberation)', available at: <https://www.globalsecurity.org/military/world/para/hizb-ut-tahrir.htm>.

93 BBC, 'Q&A: Hizb ut-Tahrir', August 2007, available at: [http://news.bbc.co.uk/2/hi/uk\\_news/4127688.stm](http://news.bbc.co.uk/2/hi/uk_news/4127688.stm);

94 Most notably: Bangladesh, Egypt, Jordan, Saudi Arabia, Turkey, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, Syria, Uzbekistan, China, Germany and Russia. Counter Extremism Project, 'Hizb ut-Tahrir', available at: <https://www.counterextremism.com/threat/hizb-ut-tahrir>; Human Rights Without Frontiers International, 'Religions, Violence and Human Rights: The European Court and Hizb ut-Tahrir', Feb. 2015, available at: [https://www.academia.edu/11494672/Religions\\_Violence\\_and\\_Human\\_Rights\\_The\\_European\\_Court\\_and\\_Hizb\\_ut-Tahrir](https://www.academia.edu/11494672/Religions_Violence_and_Human_Rights_The_European_Court_and_Hizb_ut-Tahrir).

95 Centre for Social Cohesion, 'Hizb ut-Tahrir: Ideology and Strategy', 2009, available at: <http://henryjacksonsociety.org/wp-content/uploads/2013/01/HIZB.pdf>.

96 "The fact that the Party does not use material power to defend itself or as a weapon against the rulers is of no relevance to the subject of jihad, because jihad has to continue till the Day of Judgement. So whenever the disbelieving enemies attack an Islamic country it becomes compulsory on its Muslim citizens to repel the enemy.": Hizb ut Tahrir Central Media Office, 'The Method of Hizb ut-Tahrir', 24 July 2015, available at: <http://www.hizb-ut-tahrir.info/en/index.php/definition-of-ht/item/7988-the-method-of-hizb-ut-tahrir>; Hizb ut-Tahrir America, 'Press Release 20150531: Conference in Chicago', 31 May 2015, available at: <https://hizb-america.org/press-release-20150531-conference-in-chicago/>.

97 Hudson Institute, 'The Road from Tashkent to the Taliban', 2 April 2004, available at: <https://www.hudson.org/research/3976-the-road-from-tashkent-to-the-taliban>.

98 Foreign Policy, 'The Party's Not Over', 22 Dec. 2009, available at: <https://foreignpolicy.com/2009/12/22/the-partys-not-over/>.

99 Hizb ut-Tahrir, 'Media statement regarding ISIS's declaration in Iraq', 2 July 2014, available at: <http://www.hizb.org.uk/viewpoint/media-statement-regarding-isiss-declaration-in-iraq/>.

100 Counter Extremism Project, 'Hizb ut-Tahrir', available at: <https://www.counterextremism.com/threat/hizb-ut-tahrir>; The Guardian, 'Watchdog recommends Tory U-turn on banning Hizb ut-Tahrir', 18 Jul. 2011, available at: <https://www.theguardian.com/politics/2011/jul/18/watchdog-tory-uturn-hizb-ut-tahrir-ban>.

the Convention'.<sup>101</sup> Nevertheless, the right to ban an organization does not automatically translate into the right to imprison its members. The Russian Federation is the only European nation that criminalises membership of the organization, equating it to terrorism.<sup>102</sup>

## ii. 2003 RUSSIAN SUPREME COURT BAN

42. In 2003, the Supreme Court of the Russian Federation declared Hizb ut-Tahrir a terrorist organization and banned its operations on Russian territory. According to the Supreme Court:
- 'The Party of Islamic Liberation (Hizb ut-Tahrir al-Islami) is an organization whose aim is to eliminate non-Islamic governments and establish Islamic rule on a global scale by re-establishing a worldwide Islamic Caliphate, initially in regions with majority Muslim populations, including Russia and CIS countries. Its main forms of activity are: militant Islamist propaganda, combined with intolerance towards other religions; active recruitment of supporters, intentional efforts aimed at splitting society (primarily through propaganda with powerful financial support). The organization is legally banned in a number of countries in the Middle East and CIS (Uzbekistan).'<sup>103</sup>
43. The Supreme Court decision has been criticised for failing to present credible reasons for classifying Hizb ut-Tahrir as a terrorist organization, as required under terrorism legislation of the Russian Federation.<sup>104</sup> There is no credible evidence that any of its alleged members have been involved in planning, organizing or carrying out any acts of terror in Russia or elsewhere.<sup>105</sup> According to Russian human rights NGO Human Rights Centre Memorial, as of 1 March 2019, 239 persons have been arrested on suspicion of being members of Hizb ut-Tahrir – 171 of them have been convicted of 'extremism' or 'terrorism' offences.<sup>106</sup>

## iii. IMPACT OF ARTICLE 205.5 OF THE RUSSIAN CRIMINAL CODE

44. In 2013, the Russian Criminal Code was amended to include new offences of organizing and participating in activities of a terrorist organization, punishable by ten to twenty four years in custody (Article 205.5).<sup>107</sup> A 'terrorist organization' is defined by Article 24 of the Criminal Code an entity whose aims or actions are aimed at promoting, justifying and supporting terrorism or committing crimes under the Criminal Code (namely acts of terrorism, hostage taking, high jacking of vessels, theft or illegal handling of nuclear materials, attempts on a life of a public official, illegal seizure of power, armed rebellion, calls to extremism).<sup>108</sup> An 'act of terrorism' is defined as the carrying out or

101 ECtHR, *Kasymakhunov and Saybatalov v Russia*, Judgement, 14 June 2013, paras. 102-113.

102 Human Rights Centre Memorial, 'Севастопольское дело о членстве в запрещённой «Хизб ут-Тахрир», 30 Oct. 2017, available at: <https://memohrc.org/ru/special-projects/sevastopolskoe-delo-o-chlenstve-v-zapreshchyonnoy-hizb-ut-tahrir>.

103 НАС, Решение Верховного Суда РФ от 14 февраля 2003 г. N ГКПИ 03-116, available at: <http://nac.gov.ru/zakonodatelstvo/sudebnye-resheniya/reshenie-verhovnogo-suda-rf-ot-14-fevralya.html>.

104 Memorial, 'Преследование организации «Хизб ут-Тахрир», available at: <https://memohrc.org/ru/special-projects/presledovanie-organizacii-hizb-ut-tahrir>.

105 Kommersant, 'В защиту прав запрещенных', 1 March 2019, available at: <https://www.kommersant.ru/doc/3897043?query=B%20защиту%20прав%20запрещенных>.

106 Memorial, 'Преследование организации «Хизб ут-Тахрир», available at: <https://memohrc.org/ru/special-projects/presledovanie-organizacii-hizb-ut-tahrir>; Kommersant, 'В защиту прав запрещенных', 1 March 2019, available at: <https://www.kommersant.ru/doc/3897043?query=B%20защиту%20прав%20запрещенных>.

107 Consultant.ru, '«Уголовный кодекс Российской Федерации» от 13.06.1996 N 63-ФЗ (ред. от 23.04.2019), УК РФ Статья 205.5. Организация деятельности террористической организации и участие в деятельности такой организации, available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_10699/b3c75b6ea12bfa94d8edc4d027b3fa1ab7b6a27e/](http://www.consultant.ru/document/cons_doc_LAW_10699/b3c75b6ea12bfa94d8edc4d027b3fa1ab7b6a27e/).

108 Consultant.ru, '«Уголовный кодекс Российской Федерации» от 13.06.1996 N 63-ФЗ (ред. от 23.04.2019), Статья 24. Ответственность организаций за причастность к терроризму, available at: <http://www.consultant.ru>.

issuing threats of explosion, arson or other actions that frighten the population and create danger of death, causing significant property damage or other serious consequences in order to destabilize the activities of government bodies or international organizations or influence their decisions (Article 205 of the Criminal Code).<sup>109</sup>

45. According to Human Rights Centre Memorial, up to 2013, alleged members of Hizb ut-Tahrir were most often prosecuted under offences of 'extremism' (most notably under Article 282-2 of the Criminal Code – participation in the activities of an extremist organization, punishable by a fine to six years of custody<sup>110</sup>), or for attempting to subvert the constitutional order (under section 278 of the Criminal Code). Prior to 2013, over a third Hizb ut-Tahrir suspects receiving non-custodial sentences.<sup>111</sup> The introduction of Article 205.5 has led to harsher sentences for alleged members of Hizb ut-Tahrir. From 2013, 40 alleged members have been sentenced to between 15 and 24 years and a further 35 persons have been sentenced to between 10 and 15 years in custody.<sup>112</sup>

#### **iv. RUSSIAN AUTHORITIES PROSECUTING CRIMEAN TATAR ACTIVISTS AS TERRORISTS**

46. Following the annexation of Crimea, Russian authorities began detaining and prosecuting Crimean Tatars as members of Hizb ut-Tahrir. To date, some 27 Crimean Tatars have been prosecuted for allegedly organizing or participating in activities of Hizb ut-Tahrir, under Article 205.5 of the Russian Criminal Code (in addition to the 26 arrested in February and March 2019).<sup>113</sup> However, the Russian authorities have presented very little (if any) compelling evidence of their affiliation to Hizb ut-Tahrir, and of any planning of or participation in terrorist activities. Charges are typically based on allegations of holding meetings, discussing religious texts, the discovery of 'banned literature', as well as concocted statements and induced confessions.<sup>114</sup> There is mounting evidence that the Russian authorities are using the ban on Hizb ut-Tahrir to target and silence Crimean Tatar activists, including leaders and active members of Crimean Solidarity.<sup>115</sup> Searches and arrests have become so common that one female witness said that Crimean Tatar women have taken to sleeping in their hijabs, in anticipation of early morning raids.<sup>116</sup>

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[ru/document/cons\\_doc\\_LAW\\_58840/f3a150581ab0bd8135bd5a08ceed1406dc1e4a07/#dst27](http://www.consultant.ru/document/cons_doc_LAW_58840/f3a150581ab0bd8135bd5a08ceed1406dc1e4a07/#dst27).

109 Consultant.ru, '«Уголовный кодекс Российской Федерации» от 13.06.1996 N 63-ФЗ (ред. от 23.04.2019), УК РФ Статья 205. Террористический акт, available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_10699/43942021d9206af7a0c78b6f65ba3665db940264/](http://www.consultant.ru/document/cons_doc_LAW_10699/43942021d9206af7a0c78b6f65ba3665db940264/).

110 Consultant.ru, '«Уголовный кодекс Российской Федерации» от 13.06.1996 N 63-ФЗ (ред. от 23.04.2019), УК РФ Статья 282.2. Организация деятельности экстремистской организации, available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_10699/9854c783addde555fa364e762d297c660b9be113/](http://www.consultant.ru/document/cons_doc_LAW_10699/9854c783addde555fa364e762d297c660b9be113/).

111 Memorial, 'Преследование организации «Хизб ут-Тahrир», available at: <https://memohrc.org/ru/special-projects/presledovanie-organizacii-hizb-ut-tahrir>.

112 Kommersant, 'В защиту прав запрещенных', 1 March 2019, available at: <https://www.kommersant.ru/doc/3897043?query=B%20защиту%20прав%20запрещенных>; Memorial, 'Преследование организации «Хизб ут-Тahrир», available at: <https://memohrc.org/ru/special-projects/presledovanie-organizacii-hizb-ut-tahrir>.

113 Radio Free Europe, 'Crimean Tatars Detained After House Searches', 27 March 2019, available at: <https://www.rferl.org/a/crimean-tatars-said-detained-after-house-searches/29844868.html>.

114 Open Democracy, 'How Russia's security services target Crimean Tatars as "Islamic terrorists"', 19 June 2018, available at: <https://www.opendemocracy.net/en/odr/how-russias-security-services-target-crimean-tatars-as-islamic-terrorists/>; The Insider, 'Крымская правозащитница о деле «Хизб ут-Тahrир»: Дела заводят на тех, кто подходит под «портрет террориста», 14 Feb. 2018, available at: <https://theins.ru/news/91799>.

115 Nezavisimaya Gazeta, 'Russia's Campaign Against "Religious Extremism"', 5 March 2019, available at: <https://therussianreader.com/tag/russian-federal-criminal-code-article-205-5/>; Open Democracy, 'How Russia's security services target Crimean Tatars as "Islamic terrorists"', 19 June 2018, available at: <https://www.opendemocracy.net/en/odr/how-russias-security-services-target-crimean-tatars-as-islamic-terrorists/>; Witness C27GE03.

116 Witness C27AI03.

47. On 7 September 2016, four Crimean Tatars from Sevastopol were tried by a military court in Rostov-on-Don and convicted of terrorism offences under Article 205.5 of the Criminal Code (the 'Sevastopol Group').<sup>117</sup> Rustem Vaitov, Nuri Primov and Ferat Sayfullaev were convicted of participating in the activities of a terrorist organization (Hizb ut-Tahrir) and sentenced to five and seven years' custody in a strict regime penal colony. Ruslan Zeytullayev was convicted of organizing terrorist activities, and received a 15-year sentence (on retrial) to be served in a strict regime penal colony.<sup>118</sup> The prosecution presented no evidence of terrorist activity (or planning thereof) and the charges were entirely based on the 'discovery' of banned literature and alleged 'conversations' on politics and religion.<sup>119</sup>
48. On 24 December 2018, four Crimean Tatars from Bakchisarai were convicted by the military court in Rostov-on-Don of participating in activities of a terrorist organization (Hizb ut-Tahrir) under Article 205.5 of the Criminal Code (the Bakchisarai Group). Rustem Abiltarov, Remzi Memetov and Zevri Abseitov were sentenced to nine years custody and Enver Mamutov was sentenced to 17 years custody in a strict regime penal colony.<sup>120</sup> The prosecution presented no evidence of terrorist activity (or planning thereof) – the charges were entirely based on alleged 'conversations' on politics and religion.<sup>121</sup>
49. Another six Crimean Tatar defendants from Yalta are currently on trial before the Rostov-on-Don military court (the Yalta Group). Muslim Aliyev, Emir-Usein Kuku, Vadim Siruk, Inver Bekirov, Arsen Dzepparov and Refat Alimov are accused of organizing and participating in terrorist activities of Hizb ut-Tahrir, as well as a separate charge of attempting to forcibly seize power in Crimea under Article 278 of the Criminal Code. A further 14 Crimean Tatars from Bakchisarai and Simferopol are awaiting trial on the same charges.<sup>122</sup>
50. Following the arrest of three Crimean Tatars on 14 February 2019 and a further 23 Crimean Tatars on 27 March 2019 (described in detail below) and the arrest of Raim Ayvazov on 17 April 2019,<sup>123</sup> the total number of Crimean Tatars prosecuted as members of Hizb ut-Tahrir to date comes to 55 (with 41 awaiting trial) – the largest mass prosecution under Russian anti-terrorist legislation.<sup>124</sup>

117 Open Democracy, 'How Russia's security services target Crimean Tatars as "Islamic terrorists"', 19 June 2018, available at: <https://www.opendemocracy.net/en/odr/how-russias-security-services-target-crimean-tatars-as-islamic-terrorists/>.

118 Human Rights Watch, 'Crimea: Persecution of Crimean Tatars Intensifies', 14 Nov. 2017, available at: <https://www.hrw.org/news/2017/11/14/crimea-persecution-crimean-tatars-intensifies>.

119 Human Rights Centre Memorial, 'Севастопольское дело о членстве в запрещённой «Хизб ут-Тахрир», 30 Oct. 2017, available at: <https://memohrc.org/ru/special-projects/sevastopolskoe-delo-o-chlenstve-v-zapreshchyonnoy-hizb-ut-tahrir>.

120 Human Rights Centre Memorial, 'Бахчисарайское дело о членстве в запрещённой «Хизб ут-Тахрир», 24 Dec. 2018, available at: <https://memohrc.org/ru/special-projects/bahchisarayskoe-delo-o-chlenstve-v-zapreshchyonnoy-hizb-ut-tahrir>; Unian, 'Russian court hands down sentences in "Hizb ut-Tahrir case"', 24 Dec. 2018, available at: <https://www.unian.info/politics/10388562-russian-court-hands-down-sentences-in-hizb-ut-tahrir-case.html>.

121 Human Rights Centre Memorial, 'Бахчисарайское дело о членстве в запрещённой «Хизб ут-Тахрир», 24 Dec. 2018, available at: <https://memohrc.org/ru/special-projects/bahchisarayskoe-delo-o-chlenstve-v-zapreshchyonnoy-hizb-ut-tahrir>.

122 Crimean Human Rights Group, '86 человек лишено свободы в рамках политического или религиозного преследования в Крыму', 2 May 2019, available at: <https://crimeahrg.org/wp-content/uploads/2019/05/Lisheniya-svobody-aprel-2019.pdf>.

123 Crimea SOS, 'Raim Ayvazov, detained at the Kalanchak checkpoint, is arrested', 17 April 2019, available at: <http://krymsos.com/en/news/zatrimanii-na-kpvv--kalanchak--rayim-ayvazov-viishov-na-zvyazok/>.

124 Crimean Human Rights Group, '86 человек лишено свободы в рамках политического или религиозного преследования в Крыму', 2 May 2019, available at: <https://crimeahrg.org/wp-content/uploads/2019/05/Lisheniya-svobody-aprel-2019.pdf>; Open Democracy, 'My only crime is that I am a Muslim': mass terrorism arrests hit Crimean Tatar solidarity campaign', 1 April 2019, available at: <https://www.opendemocracy.net/en/odr/my-only-crime-is-that-i-am-a-muslim-mass-terrorism-arrests-hit-crimean-tatar-solidarity-campaign/>.

51. In April 2019, Ruslan Balbek – a member of Russia’s lower house of parliament (the Duma) announced the creation of treatment centres to ‘rehabilitate’ members of Hizb ut-Tahrir on the Crimean Peninsula.<sup>125</sup> A form of amnesty will be offered to members of Hizb ut-Tahrir who agree to sever ties with the organization and undergo a rehabilitation course of unspecified duration.<sup>126</sup> It remains to be seen how ‘voluntary’ these internments would be, and whether the fundamental human rights of internees will be safeguarded. This initiative bears a striking resemblance to Chinese rehabilitation centres rumoured to hold hundreds of thousands of Muslims in Xinjiang province in violation of human rights and international standards.<sup>127</sup> As in Xinjiang, it is feared that the Crimean ‘rehabilitation camps’ will serve as a tool for silencing Crimean Tatar opposition to the Russian annexation.

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125 The Moscow Times, ‘Russia to Open Terrorist Rehab Center in Annexed Crimea’, 3 April 2019, available at: <https://www.themoscowtimes.com/2019/04/03/russia-to-open-terrorist-rehab-center-in-crimea-a65068>.

126 The Moscow Times, ‘Russia to Open Terrorist Rehab Center in Annexed Crimea’, 3 April 2019, available at: <https://www.themoscowtimes.com/2019/04/03/russia-to-open-terrorist-rehab-center-in-crimea-a65068>.

127 BBC, ‘China’s hidden camps’, available at: [https://www.bbc.co.uk/news/resources/idt-sh/China\\_hidden\\_camps](https://www.bbc.co.uk/news/resources/idt-sh/China_hidden_camps); Reuters, ‘Tracking China’s Muslim Gulag’, 29 Nov. 2018, available at: <https://www.reuters.com/investigates/special-report/muslims-camps-china/>.



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# IV. Searches and arrests in February and March 2019

## A. Overview

52. On 27 March 2019, at or around 06:00 a.m., Russian security forces (siloviki) began carrying out a coordinated large-scale operation across the Crimean Peninsula. Thirty Crimean Tatar households located in Simferopol, Vladimirovka, Stroganovka, Kamenka, Beloye, Akropolis and Aikavan were raided by hundreds of masked and armed agents of the Russian Federal Security Services (FSB), Special Forces (OMON), Russian National Guard (Rosgvardia), police (MVD) and traffic police (GAI or DPS). The raid mirrored an operation conducted by the security forces on three Crimean Tatar households in Oktiabrskoe district on 14 February 2019.<sup>128</sup> Twenty-six Crimean Tatars were arrested as a result of the two operations (23 men were arrested in their homes; Remzi Bekirov, Osman Arifmemetov and Vladlen Abdulkadyrov were arrested in Aksay, Rostov region).<sup>129</sup>

- Rustem Emiruseinov
- Arsen Abhairov
- Eskender Abdulganiev<sup>130</sup>
- Riza Izetov
- Farhad Bazarov
- Alim Karimov
- Tofik Abdulgaziev
- Bilyal Adilov
- Izzet Abdullaiev
- Asan Yanikov
- Ruslan Suleymanov<sup>131</sup>
- Akim Bekirov
- Remzi Bekirov
- Osman Arifmemetov
- Vladlen Abdulkadyrov
- Rustem Seithalilov
- Rustem Sheihaliev
- Enver Ametov
- Shaban Umerov
- Djemil Gafarov
- Seiran Murtaza
- Medjit Abdulrahmanov
- Seitveli Seitabdiev

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128 Witnesses C27OK02, C27OK01; Kharkhiv Human Rights Protection Group, 'Russia brings terror to more Crimean Tatar families', 15 Feb. 2019, available at: <http://khp.org/en/index.php?id=1550186548>.

129 In addition, Edem Iaiachikov – an affiliate of Crimean Solidarity whose house was searched on 27 March 2019 was not at his home at the time and has since disappeared (see Witness C27VL01).

130 Rustem Emiruseinov, Arsen Abhairov and Eskender Abdulganiev were arrested as part of the 14 February 2019 operations in Oktiabrskoe.

131 On 26 March 2019, Ruslan Suleymanov and Remzi Bekirov attempted to cross in mainland Ukraine to obtain travel document from Ukrainian authorities. They were stopped and held on the border crossing and banned from leaving the territory of Crimea. Their Ukrainian passports were vandalised by the guards – which was then used as a justification not to let them travel – see Witnesses C27ST11, C27ST01 and C27ST03.

- Iashar Muedinov
- Erfan Osman
- Servet Gaziev

Nearly all those arrested were affiliated with the Crimean Solidarity group – either as active members and coordinators, or having participated in the groups’ protests, monitoring or support activities. All 26 were Crimean Tatars and practicing Muslims.

53. The searches were marked by systemic violations of Russian procedural law<sup>132</sup> and international standards. Nearly all searches resulted in the alleged ‘discovery’ of identical brand new copies of banned Hizb ut-Tahrir literature. Detainees and their relatives maintain that the books were planted by the security forces. All 26 detainees were taken to the FSB building and charged with offences under Article 205.5 of the Criminal Code – organizing or participating in the activities of a terrorist organisation. All 26 were subsequently remanded into pre-trial custody in a series of short (mostly closed) hearings in Simferopol. They were denied access to food and water for approximately 24 hours.<sup>133</sup> All but three detainees were secretly transferred out of Crimea to various remand prisons in the Rostov region of Russia.

## B. Conduct of Searches and Arrests

54. All households were searched simultaneously at or around 06:00 a.m. In a number of cases, searches began up to 15 minutes before six,<sup>134</sup> which is a violation of Article 164.3 of the Russian Code of Criminal Procedure (CCP).<sup>135</sup>
55. Each targeted house was cordoned off by police vehicles and heavily armed members of the security forces. In some cases, whole streets or areas were cut off throughout the search operation.<sup>136</sup> The searches were conducted by several agencies working in collaboration, including the FSB, OMON, Rosgvardia, regular police officers, anti-extremism police and road traffic police.<sup>137</sup> Members of different forces were distinguishable by the colours of their uniform and the signs or insignia on them.<sup>138</sup> In all cases, between 15 and 30 security service agents were assigned to each search– an excessive force intended to overwhelm and suppress any resistance from the local community.<sup>139</sup>
56. The searches began with loud knocking on the doors and windows, bright lights and shouting.<sup>140</sup> In some cases search warrants were shown or read out to residents before entry,<sup>141</sup> however in most cases heavily-armed and masked security agents poured in as soon as the door was opened,

132 Whilst the wholesale replacement of Ukrainian criminal law with Russian law, on territories under belligerent occupation, is a violation of international humanitarian law (Article 64 of IV Geneva Convention), references to Russian law are included here to demonstrate that the Russian authorities’ violated the laws regulating their conduct. The lawfulness of conduct under domestic law is an important factor in assessing the legality of restricting Convention rights. The fact that Russian authorities violated their own laws is strong evidence that their conduct also constitutes violations of the ECHR.

133 Witness C27ST03, C27KA03.

134 Witnesses C27SI02, C27ST02; C27KA07, C27KA02, C27AI03.

135 Consultant.ru, ‘Уголовно-процессуальный кодекс Российской Федерации» от 18.12.2001 N 174-ФЗ (ред. от 01.04.2019, с изм. от 17.04.2019) (с изм. и доп., вступ. в силу с 12.04.2019)’, available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_34481/](http://www.consultant.ru/document/cons_doc_LAW_34481/).

136 Witness C27ST08, C27ST03, C27ST16.

137 Witness C27ST08.

138 Witness C27ST08.

139 Witness C27VL01 – 20 OMON and 10 others (all in masks)– numbers; Witness C27ST08 – 15 vehicles and a helicopter and 20 to 30 agents per house; Witness C27ST06 – 100 agents cordoned off 300 meters around the house; Witness C27KA03 – the entire FSB staff for Crimea was used in this operation; Witness C27AI02.

140 E.g.: Witness C27ST02 says their door was broken down before they had time to open it.

141 Warrant shown: Witness – C27SI02 contrast with Witness C27ST01 – no copy of warrant given (despite request).

spreading out throughout the entire property unsupervised.<sup>142</sup> Entry into the property without showing or reading out a search warrant is a violation of Article 182.4 of the CPP. In some cases, physical violence was used to restrain detainees and/or family members, despite the lack of any resistance from them (Article 164.4 CPP).<sup>143</sup>

57. On entry, security forces systematically confiscated all phones, electronic tablets and other forms of communication.<sup>144</sup> Residents were told that no telephone calls were allowed, not even to inform their lawyers about the search.<sup>145</sup> When lawyers eventually arrived at the scene of the search, they were barred from entering the premises, supervising the conduct of the search or providing legal advice to their clients.<sup>146</sup> Restricting a suspect's right to the presence of a lawyer during a search is a violation of Article 16.1 and 182.11 of the CPP.
58. Detainees and their relatives were not fully informed of their rights.<sup>147</sup> Even where the detainees were aware of some of their rights and claimed them, these were explicitly denied by the security forces.<sup>148</sup> The failure to fully inform detainees of their rights is a violation of Article 16.2 of the CPP.
59. In all cases, the security forces brought their own 'witnesses' with them to the search.<sup>149</sup> The witnesses all appeared to be very young – most likely students from the local academy.<sup>150</sup> None of the residents recognised the 'witnesses' or trusted them. The residents were not allowed to call in witnesses from the neighbourhood.<sup>151</sup> In some cases, the witnesses' faces were covered with balaclavas.<sup>152</sup> There is a strong suspicion that the witnesses were colluding with the security forces and lacked impartiality and independence. The failure to ensure the presence of impartial or independent witnesses during a search is a violation of Article 60.1 of the CPP.
60. The manner in which the searches were carried out varied significantly. Some witnesses reported that the investigators and their staff conducted themselves professionally and politely.<sup>153</sup> Others reported verbal abuse, racism and a lack of respect for procedure.<sup>154</sup> One detainee was repeatedly insulted and hit throughout the search.<sup>155</sup> A number of witnesses complained that the sheer number of security forces on the premises made it impossible to supervise everything that they did (particularly when several rooms were searched simultaneously),<sup>156</sup> whilst the official 'witnesses' appeared to take little interest in their function.<sup>157</sup> In some cases, residents were forbidden from speaking Crimean Tatar to each other.<sup>158</sup> One resident was threatened with an extensive and

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142 Witnesses C27ST11; C27ST05. C27KA07, C27AK01 – pouring in without warrant or supervision.

143 Witness C27ST07 – young son restrained and handcuffed despite showing no resistance; Witness C27ST02 – restrained violently on the floor; Witness C27KA07 – restrained on the floor.

144 Witnesses C27SI01, C27ST11 (unable to call doctor for mother), Witnesses C27GE04, C27KA07.

145 Witnesses C27SI02, C27ST11, C27ST10, C27KA07.

146 Witnesses C27ST03, C27ST04, C27ST06, C27KA03, C27KA04.

147 Witness C27VL01.

148 E.g.: right to lawyer, right to make a phone call, right to impartial witnesses.

149 Witness C27ST07; C27ST11 – FSB confirmed that they had brought witnesses with them 'so as not to wake up your neighbours'.

150 One told witness C27KA05 that he was 'recruited' from the local school; Witness C27KA06 was told by a 'witness' that he was recruited the day before from an army unit stationed nearby; Witness C27KA01 – witnesses appeared not to know their own address.

151 Witness C27VL02; Witness C27KA02 – neighbour asked to be a witness but was refused.

152 Witness C27VL02.

153 Witness C27ST12.

154 Witness C27ST10 – insulted about the state of her home and told she should be praying less and working more; Witness C27KA01 – was called a 'monkey' (a racial slur in the context) by security agents.

155 Witness C27KA07.

156 Witness C27KA07.

157 Witness C27ST11, C27ST12, C27ST14.

158 Witness C27ST07. C27ST10, other

destructive search if she failed to answer questions.<sup>159</sup> Telephones, computers, hard drives and electronic tablets were confiscated, along with Islamic literature and prayer flags.<sup>160</sup>

61. The majority of affected residents report that one or several 'banned' Hizb ut-Tahrir books were 'planted' at their premises by the security forces in the course of the search. Their descriptions of the planted books are identical: the books were brand new and clearly had never been read, one was white with red writing entitled 'Caliphate', another was purple entitled 'System of Islam'.<sup>161</sup> In all cases, the books were 'discovered' in dubious circumstances.<sup>162</sup> In one house, a book was 'found' in a dusty boiler cupboard behind a gas canister – but showed no signs of dust or dirt.<sup>163</sup> In another case, a book was 'found' on a shelf in the kitchen, but showed no signs of grease or kitchen smell.<sup>164</sup> In all households, books were found when none of the witnesses or residents were watching.<sup>165</sup> In one case, a resident saw a security agent walk into an outhouse by himself, then come out and call a search party which discovered three books in a visible place.<sup>166</sup> All residents state that they have never seen the books before. The planting or falsification of evidence in a criminal case involving serious charges and consequences is an offence under Article 303.3 of the Russian Criminal Code, carrying a term of three to seven years of imprisonment.<sup>167</sup>
62. A search protocol was made in most cases, however not all detainees got to see it or keep a copy. Typically, the detainee refused to sign a search protocol in the absence of a lawyer, however no lawyers were admitted. Those who did not sign the protocol were not given a copy.<sup>168</sup> One resident noticed that a witness signed the search protocol without reading it.<sup>169</sup> Failure to provide a copy of the search protocol is a violation of Article 182.15 of the CPP.
63. Searches lasted between one and six hours,<sup>170</sup> at the end of which detainees were taken away in police vehicles.<sup>171</sup> During the searches, members of Crimean Solidarity, neighbours and others gathered outside the properties. Security forces cordoned off the houses and did not let anyone approach. All of the onlookers were photographed or filmed by the security forces.<sup>172</sup> In some cases the police declared the gatherings of onlookers to be 'unsanctioned protests' and made threats of administrative arrest.<sup>173</sup> In Kamenka, exchanges between the police and onlookers resulted in the arrest and administrative proceedings against Emil Ziadinov and Eskander Mamutov.<sup>174</sup> Witnesses confirm that security agents used a considerable amount of force as they detained them – wrestling Mamutov to the ground and kicking him in the back, and smashing Ziadinov against a car bonnet and punching him in the back of the head.<sup>175</sup>

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159 Witness C27ST05.

160 Witness C27KA06.

161 Witnesses C27GE03, C27ST12, C27ST02, C27ST01, C27KA07, C27KA05.

162 Witness C27SI01 – the man who 'found' the books was in camouflage and was going through books and pages without gloves and unsupervised; Witness C27VL02 – books were 'found' under a fridge; Witness C27ST10; Witness C27KA02 saw witnesses taking the 'planted' books out of the police car.

163 Witness C27ST11 (books were 'found' when witness had left the room).

164 Witness C27BE01

165 Witnesses C27ST11; C27ST01, C27ST02.

166 Witness C27KA05 (the search of the house was 'superficial').

167 Consultant.ru, 'Уголовный кодекс Российской Федерации' от 13.06.1996 N 63-ФЗ (ред. от 23.04.2019), available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_10699/](http://www.consultant.ru/document/cons_doc_LAW_10699/).

168 Witnesses C27VL02, C27ST07, C27ST04, C27GE04, C27ST02, C27BE01.

169 Witness C27ST05.

170 Witness C27VL01.

171 Witness C27ST06.

172 Witness C27ST03.

173 Witnesses C27KA01, C27ST03, C27ST08.

174 Witnesses C27KA01, C27AI01

175 Witnesses C27KA01, C27AI01.

64. In the course of the searches in Stroganovka, security forces cordoned off the entire settlement and conducted a house-to-house search for missing suspects. To the best of the authors' knowledge, the security forces did not have warrants to search the neighbouring properties. In some cases, doors were smashed and properties were searched while residents were absent.<sup>176</sup> Conducting searches without appropriate warrants is a violation of Article 182.3 of the CPP.

## C. Arrests in Aksay, Rostov Region

65. On 27 March 2019, at the time of the raids on their property in Crimea, Remzi Bekirov, Osman Arifmemetov and Vladlen Abdulkadyrov were in the town of Aksay, Rostov region, attempting to visit Crimean prisoners being held and tried there. Between 10:00 and 11:00 p.m., the three activists were apprehended by armed masked men dressed in black uniforms without insignia. All three were handcuffed and bundled into the back of a vehicle. According to Arifmemetov, they were driven to a wooded area, taken out of the van and viciously beaten on the feet, thighs, shins and buttocks. Arifmemetov was hit on the back of the head with a hard object and lost consciousness. The use of excessive and unnecessary physical violence detainee is a violation of Article 164.4 of the CPP. The abductors took their money, phones and other personal possessions. After the beatings, the three men were handed over to unknown persons in green uniforms, who eventually transferred them to the FSB headquarters in Simferopol.<sup>177</sup>

## D. Pre-Trial Detention

66. As previously noted, all detainees were denied the right to legal counsel during the searches and at the point of arrest. In some cases, law enforcement agents attempted to interrogate suspects during the search or induce confessions.<sup>178</sup> Restricting the right to legal counsel during searches and interrogations is a violation of Article 16.1 and 50 of the CPP. After the search, detainees were taken to the FSB headquarters in Simferopol. All detainee were charged with offences under Article 205.5 of the Criminal Code – organizing or participating in the activities of a terrorist organization. From the FSB headquarters, the detainees were taken to the *de-facto* Kyiv district court in Simferopol for hearings on measures of restraint. The court heard and approved the prosecution request to remand all 26 Crimean Tatars into custody on the day of the arrest or the day after.

67. The detainees also had restricted access to their lawyers prior to the hearings. Lawyers were allowed very limited time to consult the case file and take instructions for their clients.<sup>179</sup> Two lawyers report that they were not given a copy of the protocol of search, which was classified as a 'secret' document.<sup>180</sup> Another lawyer reports not being provided with a confidential space to confer with the client – their conversations could be easily overheard by law enforcement officers present in the room.<sup>181</sup> The same lawyer also reports that the client – a non-native Russian speaker – was denied access to an interpreter.<sup>182</sup> Restrictions on the right to confer with counsel and the denial of an interpreter are flagrant violations of Articles 16.1 and 18 of the CPP.

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176 Witnesses C27ST11, C27ST15, C27ST13, C27ST08, C27ST06. C27ST03, C27ST16.

177 Information provided by Alexei Ladin, lawyer of Osman Arifmemetov – Facebook, 'Crimean Solidarity', Force was used in the arrest of civil journalist Arifmemetov, 23 April 2019, available at: <https://www.facebook.com/Crimean-solidarity-1653084724995340/>; The account is corroborated by legal representatives of the other detainees in that group.

178 Witnesses C27SI01; C27ST02, C27KA06.

179 Witnesses C27ST03, C27KA03.

180 Witness C27VL01; C27KA04.

181 Witness C27ST03.

182 Witness C27ST03.

68. The pre-trial detention hearings were short, formulaic and either held in closed session or with severely restricted access to the public. All hearings were between five and 15 minutes long.<sup>183</sup> Defence motions relating to the conduct of the searches, defence rights and the necessity and proportionality of pre trial detention were summarily dismissed.<sup>184</sup> Some hearings were held in closed sessions<sup>185</sup> – denying access to suspects’ family members and even to defence witnesses who were called to testify in relation to the suitability of house arrest.<sup>186</sup> Other hearings were nominally ‘public’, however the security services had formed a cordon of 150 meters outside the court building and did not allow members of the public to attend the hearings.<sup>187</sup> According to Article 241 of the CPP – court hearings must take place in open court unless there are compelling circumstances for restricting public access. No such reasons were presented.
69. All 26 Crimean Tatars were remanded into custody. Judges appeared to disregard all arguments raised by the defence.<sup>188</sup> Whilst the three Crimean Tatars arrested on 14 February are being held in a remand prison in Simferopol, all 23 men arrested on 27 March were secretly taken to Simferopol airport on 28 March and flown to Rostov region of Russia (some 650 km from Simferopol), where they were dispersed to various remand prisons across the region.<sup>189</sup> Following the hearings, lawyers and family members lost all contact with the detainees.<sup>190</sup> Their lawyers and families were not informed of these transfers.<sup>191</sup> According to Article 152 and 32 of the CPP, investigations and trials must take place in the region where the crime is alleged to have taken place.

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183 E.g. Witness C27KA07 – 10 minute hearing and 10 minutes for deliberation; Witness C27KA04 – 7 minutes hearing.

184 Witness C27ST03.

185 Witnesses C27ST03, C27VL02,

186 Witness C27KA04.

187 Witness C27KA03; C27KA02.

188 Witness C27ST06 – detention was justified mainly on the client’s Ukrainian citizenship.

189 Witness C27KA02, C27ST03.

190 Witness C27VL01.

191 Witness C27ST03, C27VL01.



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# V. Violations of European Convention rights

## A. Article 5 – Right to Liberty and Security

### i. THE LAW

70. No one may be subjected to arbitrary arrest or detention or deprived of his/her liberty except on such grounds and in accordance with such procedure as are established by law.<sup>192</sup> Prior to a conviction, the right to liberty confers a general presumption of release.<sup>193</sup> This presumption may be rebutted in a limited number of exceptional circumstances where authorities have a reasonable suspicion of the suspect's criminal responsibility, namely for the purposes of bringing a suspect before a competent legal authority, to prevent the commission of an offence, to protect the public and/or to prevent the defendant from absconding from justice.<sup>194</sup> It should not be the general practice to subject defendants to pre trial detention.<sup>195</sup> Restrictions on a defendant's liberty must be lawful, reasonable, necessary and proportionate in the circumstances of the specific case.<sup>196</sup> According to the European Court of Human Rights (ECtHR), 'detention of an individual is such a serious measure that it is only justified where other, less stringent measures have been considered and found to be insufficient to safeguard the individual or the public interest which might require that the person concerned be detained'.<sup>197</sup>

### ii. ANALYSIS

71. All 26 Crimean Tatars arrested in February and March 2019 were remanded into pre trial custody by the *de-facto* Kyiv district court in Simferopol. In all 26 cases, the restrictions placed on their right to liberty fell short of ECHR standards because: (a) proceedings were not public, fair or independent; (b) the authorities failed to demonstrate a 'reasonable suspicion' of criminal conduct; and (c) the authorities failed to prove that pre trial custody was necessary and proportionate in the circumstances.

#### a. Pre trial detention hearings were not public, fair or independent

72. For reasons set forth in detail in the next sub-section (Article 6 – Fair Trial Rights), the pre trial detention hearings in all 26 cases were not public, fair or presided over by impartial and independent judges. The hearings were either closed to the public with no justifications, or restricted by authorities to the point that the hearings could no longer be viewed as 'public'.<sup>198</sup> Procedural violations prior to and during the hearings were disregarded, and all defence motions on alternatives to pre trial detention were summarily dismissed.<sup>199</sup> The hearings and subsequent deliberations were too short

192 ECHR, Article 5(1).

193 ECHR, Article 5(3); ECtHR, McKay v. the United Kingdom, Judgment, para. 41.

194 ECHR, Article 5(1)(c); Human Rights Committee (HRC) Comment 35, para. 38.

195 HRC General Comment 35, para. 38.

196 HRC General Comment 35, para. 12; 38; Human Rights Committee Decisions under the Optional Protocol (CCPR), Kulov v. Kyrgyzstan, para. 8.3.

197 ECtHR, Ambruszkiewicz v Poland, Judgment, para. 31.

198 Witnesses C27ST03, C27VL02, C27KA04.

199 Witnesses C27ST03, C27VL02, C27KA04.

to have allowed the judges to consider all of the relevant circumstances.<sup>200</sup> The independence and impartiality of presiding judges has been questioned by monitoring organisations.<sup>201</sup>

## **b. The authorities failed to demonstrate a reasonable suspicion of criminal conduct**

73. The authorities are required to demonstrate a reasonable suspicion of criminal conduct by each of the 26 detainees. The suspicion must be objectively reasonable (i.e. any reasonable trier of facts could come to the same conclusion) and supported by credible evidence. In the present case, all 26 detainees were charged with the offence of organizing or participating in the activities of a terrorist organization (Article 205.5 of the Criminal Code). The facts presented by the authorities simply do not support the existence of such a suspicion.
74. First, a reasonable suspicion would require the authorities to demonstrate evidence that the organization in question – Hizb ut-Tahrir – had carried out or was planning to carry out (or threaten to carry out) terrorist activities (as defined by Article 205 of the Criminal Code). Whilst the Russian Supreme Court has designated Hizb ut-Tahrir as a ‘terrorist’ organisation, and mere participation in Hizb ut-Tahrir activities amounts to a crime under Article 205.5 of the Criminal Code, it is doubtful that the deprivation of liberty would ever be justified solely on evidence of the suspect’s membership or affiliation to a banned group that itself has not been linked to any criminal activity. As a minimum, the State would have to prove that the ‘core’ activities of the group are criminal. To date, Hizb ut-Tahrir has not been credibly connected to any acts or threats of terrorism.<sup>202</sup> On the contrary, the organization publicly rejects the notion of achieving its objectives through violence.<sup>203</sup>
75. Second, the authorities must prove that each of the 26 detainees was a member of Hizb ut-Tahrir. Whilst the authors are not privy to the investigative file, it is understood that the authorities’ evidence of the suspects’ affiliation to Hizb ut-Tahrir is primarily based on the ‘discovery’ of banned Hizb ut-Tahrir publications during the house searches.<sup>204</sup> Witnesses to the searches state that they had never seen the books before, and that they were ‘discovered’ in suspicious circumstances by unsupervised agents. Moreover, all the books were identical, newly printed and unused.<sup>205</sup> There is in fact credible evidence to suggest that the books were ‘planted’ by the authorities in the course of the searches.
76. Third, even if the suspects’ affiliation to Hizb ut-Tahrir could be established by reliable evidence (which is not the case), the authorities would still have to demonstrate that each of the 26 detainees had either organized or participated in the group’s core or criminal conduct (see above). Mere affiliation or membership without contribution to the group’s criminal activity (if any) would not amount to a reasonable suspicion of criminal conduct for the purposes of Article 5. To the authors’ knowledge, the authorities have presented no such evidence.

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200 E.g. Witness C27KA07 – 10 minute hearing and 10 minutes for deliberation; Witness C27KA04 – 7 minutes hearing.

201 OHCHR, ‘Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)’, Sept. 2017, available at: [https://www.ohchr.org/Documents/Countries/UA/Crimea2014\\_2017\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf); Freedom House, ‘Freedom in the World 2018’, Crimea, available at: <https://freedomhouse.org/report/freedom-world/2018/crimea>: Under Moscow’s rule, Crimea is subject to the Russian judicial system, which lacks independence and is effectively dominated by the executive branch.

202 Counter Extremism Project, ‘Hizb ut-Tahrir’, available at: <https://www.counterextremism.com/threat/hizb-ut-tahrir>; The Guardian, ‘Watchdog recommends Tory U-turn on banning Hizb ut-Tahrir’, 18 Jul. 2011, available at: <https://www.theguardian.com/politics/2011/jul/18/watchdog-tory-uturn-hizb-ut-tahrir-ban>.

203 Centre for Social Cohesion, ‘Hizb ut-Tahrir: Ideology and Strategy’, 2009, available at: <http://henryjacksonsociety.org/wp-content/uploads/2013/01/HIZB.pdf>.

204 Previous Hizb ut-Tahrir prosecutions have also relied on evidence of political and religious discussions, however such evidence has not been disclosed to the suspects or public in the present cases to date.

205 See Section IV(B) above.

### **c. The prosecution failed to prove that pre trial detention is necessary and proportionate in the circumstances**

77. In all 26 cases, the prosecution failed to demonstrate that pre trial detention is necessary and proportionate in the circumstances. According to information provided by the detainees' lawyers, the prosecution's applications for pre trial detention were accepted by judges at face value, with no examination of the specific circumstances of each suspect, or any consideration given to alternative measures.<sup>206</sup> All defence motions challenging legality of detention and on the suitability of alternative measures were summarily rejected. In at least one hearing, the lawyer was not allowed to call a witness who was willing and able to provide his client with a reliable location for house arrest.<sup>207</sup> The fact that the hearings and deliberations took minutes suggests that pre trial detention was a foregone conclusion – based solely on the prosecution's unsubstantiated case that the detainees were dangerous individuals. Given that the authorities have proffered no evidence of Hizb ut-Tahrir's criminal conduct, and have failed to demonstrate the detainees' participation in such conduct, it is clear that the court did not give any, or any serious consideration to the necessity and proportionality of pre trial detention in the circumstances.

### **iii. CONCLUSION**

78. For the foregoing, the pre trial detention of all 26 Crimean Tatars arrested on 14 February and 27 March 2019 failed to reach the standards required by the ECHR. The hearings were not public, fair or independent; the authorities failed to demonstrate a reasonable suspicion of criminal activity and failed to prove that detention is necessary and reasonable in the circumstances. Consequently, the restrictions on the suspects' liberty were not justified and their pre trial detention is an on-going violation of Article 5 ECHR.

## **B. Article 6 – Fair Trial Rights**

### **i. THE LAW**

79. Fair trial guarantees extend to all stages of proceedings, including investigations and pre trial hearings.<sup>208</sup> A violation at the outset of proceedings is capable of tainting the fairness of the entire case, rendering a fair trial impossible.<sup>209</sup> All hearings, including pre trial detention hearings, must be public, fair and presided over by independent and impartial judges.<sup>210</sup> From the outset of proceedings until a secure verdict is rendered, suspects must benefit from the presumption of innocence, which includes a ban on public officials and the media from declaring their guilt.<sup>211</sup> Suspects must be afforded the right to defend themselves effectively through counsel of their choice, which includes having adequate time and facilities to confer with counsel and mount a defence to the prosecution's application.<sup>212</sup> The defence and prosecution must enjoy an equality of arms throughout the

206 Witnesses C27ST03, C27VI02, C27KA04.

207 Witness C27KA04.

208 ECtHR, *Dvorski v Croatia*, para. 76.

209 ECtHR, *Imbrioscia v Switzerland*, para. 36.

210 ECHR, Article 6(1); ECtHR, *Henryk Urban and Ryszard Urban v. Poland*, para. 46 – compliance with Article 6 depends on whether in the circumstances of the case there was a genuine separation between the judiciary and the executive.

211 ECHR, Article 6(2); See ECtHR, *Ismoilov and Others v. Russia*, para. 166.

212 ECHR, Article 6(3)(c)(d) and (e); ECtHR, *Murtazaliyeva v Russia*, para. 91.

proceedings – including equal access to case documents.<sup>213</sup> Any limitations on fair trial rights must be lawful, necessary and proportionate.

## ii. ANALYSIS

80. All 26 Crimean Tatars arrested in February and March 2019 were remanded into pre trial detention in proceedings that fell short of fair trial standards required by the ECHR. Their fair trial rights were unnecessarily and disproportionately violated without lawful justification by the authorities, because: (a) they were denied the right to a public and fair hearing by an independent and impartial judiciary; (b) their presumption of innocence was violated; (c) the authorities placed unjustified limitations on their right to defend themselves; and (d) they did not enjoy an equality of arms with the prosecution.

### a. The detainees were denied the right to a public and fair hearing by an independent and impartial judiciary

81. According to the detainees' lawyers and family members, pre-trial detention hearings in all 26 cases were either officially closed to the public or nominally opened but severely restricted to the public in practice. In cases where hearings were officially closed, no justification was provided as to why such restrictions were necessary and proportionate in the circumstances.<sup>214</sup> In other cases, hearings were nominally 'public', however the authorities did everything within their power to restrict public access to those hearings. On 28 March 2019, security forces cordoned off the entrance to the courtroom and told the gathering of family members and supporters that the hearings were closed to the public and they would not be allowed into the court building.<sup>215</sup> Meanwhile in the court building, the smallest room was allocated to the hearings and family members were not informed of their right to attend.<sup>216</sup> All attempts by lawyers to facilitate public access to the hearings were summarily rejected by judges.<sup>217</sup>
82. For reasons developed further in this sub-section, it is difficult to qualify the hearings as being 'fair'. Moreover, the independence and impartiality of presiding judges has been questioned by trial monitors,<sup>218</sup> particularly where suspects had previously been tried and convicted by the same judges in politically motivated administrative cases.<sup>219</sup>

### b. The detainees' presumption of innocence was violated

83. On 27 March 2019, Sergey Aksyonov, the de facto premiere of Crimea under Russian occupation released a statement announcing the operation to arrest 'members of the extremist organization Hizb ut-Tahrir'. In his statement, Aksyonov declared that the operation is being conducted within the framework of the law, and that 'any talk of so-called repressions on the Peninsula are lies and demagoguery aimed at painting the case in a political light'. Aksyonov also pointed out that the authorities

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213 ECtHR, *Öcalan v Turkey*, para. 140; ECtHR, *Foucher v. France*, para. 34; ECtHR, *Moiseyev v Russia*, para. 217.

214 Witnesses C27ST03, C27VL02, C27KA04.

215 Witness C27KA03; C27KA02.

216 Witness C27KA03.

217 Witnesses C27ST03, C27VL02, C27KA04.

218 OHCHR, 'Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)', Sept. 2017, available at: [https://www.ohchr.org/Documents/Countries/UA/Crimea2014\\_2017\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf); Freedom House, 'Freedom in the World 2018', Crimea, available at: <https://freedomhouse.org/report/freedom-world/2018/crimea>: Under Moscow's rule, Crimea is subject to the Russian judicial system, which lacks independence and is effectively dominated by the executive branch.

219 Witness C27ST03.

will pursue all members of banned organisations, and anyone who does not respect the laws of the Russian Federation can look for other places to live.<sup>220</sup> Moreover, the arrests were followed by a wave of state-sponsored media attacks on the detainees – calling them ‘terrorists’ with no reference to their constitutionally guaranteed presumption of innocence.<sup>221</sup> Such unequivocal pronouncements of guilt by influential public officials and state media organisations prior to any conviction are a gross violation of the detainees’ presumption of innocence. The Russian authorities’ practice of placing detainees in cages during pre trial detention hearings further violated their presumption of innocence.

### **c. The detainees’ right to an effective defence was unlawfully restricted**

84. Lawyers for the 26 detainees were not informed of the charges against their clients, and were barred from attending the searches or advising their clients during the searches and their aftermath.<sup>222</sup> During the searches, the detainees were not properly informed of their rights,<sup>223</sup> were asked to sign procedural documents<sup>224</sup> and in some cases were interrogated by investigators and pressured to ‘confess’ in the absence of their lawyers.<sup>225</sup> Lawyers report delays and restrictions to their access to case documents and clients in advance of the pre trial detention hearings.<sup>226</sup> In at least one case, a lawyer complained of not being provided with premises for holding a confidential conference with the client.<sup>227</sup> Such conduct violates Russian criminal procedure and amounts to undue restrictions on the right to an effective defence that was both unnecessary and disproportionate.

### **iii. CONCLUSION**

85. The cumulative effect of the above fair trial violations is a flagrant breach of the detainees’ equality of arms vis-à-vis the prosecution. The disparity in treatment and disregard for defence rights is particularly serious in light of the credible allegations of evidence ‘planting’ by the authorities, as well as a general suspicion of bias and lack of independence on the part of judges. Consequently, the authorities’ conduct prior to and during the pre trial detention hearings amounts to a violation of Article 6 of the ECHR. Moreover, the violations have tainted all subsequent proceedings in these cases, rendering a fair trial impossible.

## **C. Article 8 – Right to Privacy**

### **i. THE LAW**

86. The right to respect for private and family life, the home and correspondence may not be interfered with by public authorities except in accordance with the law and where such interference is

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220 Facebook page of Sergey Aksyonov (@aksenov.rk), 27 March 2019, available at: <https://www.facebook.com/267373093436157/posts/1196995977140526?s=1529697950&v=i&sfns=mo>.

221 E.g. Russian News Agency TASS broke the news of the arrests by stating ‘the FSB has foiled the activities of the Hizb ut-Tahrir terror group and detained 20 of its members (who ‘spread terrorist ideology among the peninsula’s residents and recruited Crimean Muslims into its ranks’); TASS, ‘Twenty Hizb ut-Tahrir members detained in Crimea’, 27 March 2019, available at: <http://tass.com/emergencies/1050730>;

222 Witnesses C27ST03, C27VL02, C27KA04.

223 Witnesses C27VL01 (fingerprints taken), C27VL02, C27KA04.

224 Witness C27ST02, C27KA03, C27KA07, C27KA05.

225 Witness C27ST02, C27KA06.

226 All witnesses confirm this.

227 Witness C27ST03.

necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.<sup>228</sup> Whilst authorities may enter homes to search for and secure physical evidence, all conduct in this respect must be in accordance with the law,<sup>229</sup> necessary for achieving one of the above-listed aims,<sup>230</sup> and proportionate to the aims pursued.<sup>231</sup> Daybreak raids on family homes by heavily armed and masked security agents have been found to violate Article 8, where such measures are disproportionate to the anticipated resistance therein.<sup>232</sup> House searches without judicially approved warrants are rarely compliant with Article 8.<sup>233</sup> It is paramount that all safeguards provided for in domestic legislation are complied with during searches.<sup>234</sup> All invasions of family homes must be subject to proper judicial scrutiny – before and after the search.<sup>235</sup> Furthermore, the unnecessary geographical separation of detainees from their families has been found to constitute a breach of Article 8.<sup>236</sup>

## ii. ANALYSIS

87. The daybreak raids on Crimean Tatar households on 14 February and 27 March 2019 were marred by flagrant violations of Russian procedural law: some raids took place before 6 am (Article 164.3 CPP), in many cases no warrant was shown or read out on entry (Article 182.4 CPP), in all cases lawyers were barred from participating and advising clients (Articles 16.1 and 182.11 CPP), detainees were not fully informed of their rights (Article 16.2 CPP), there are serious doubts as to the independence and impartiality of witnesses (Article 60.1 CPP) and most detainees did not receive a copy of the search protocol (Article 182.3 CPP). Moreover, in Stroganovka, multiple houses were broken into and searched without warrants (Article 182.3 CPP), whilst arrests in Aksay were tainted by gratuitous violence (Article 164.4 CPP). These systematic violations of domestic procedural safeguards demonstrate that the searches were not conducted ‘in accordance with the law’.
88. Moreover, the manner in which the security forces conducted the searches was clearly excessive and intentionally intrusive and intimidating. Witnesses recall that the houses were stormed by up to 30 heavily armed and masked members of the security forces in the early hours of the morning.<sup>237</sup> Some detainees and their relatives were violently restrained despite showing no resistance or attempts to escape.<sup>238</sup> Others were subjected to unprovoked physical and verbal abuse throughout the ordeal.<sup>239</sup> In some instances, personal possessions were thrown around and furniture was broken.<sup>240</sup> All of this took place in the presence of young children and elderly relatives.<sup>241</sup> This show of force was clearly disproportionate to the immediate objective of arresting civilians with no known history or violence and no evidence of planning or organization of terrorist activities. Moreover,

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228 ECHR, Article 8.

229 ECtHR, *L.M. v Italy*, paras. 29 and 31.

230 ECtHR, *Smirnov v. Russia*, para. 40.

231 ECtHR, *McLeod v UK*, paras. 53-57; ECtHR, *Vasylchuk v Ukraine*, para. 83 – disproportionate ransacking of premises.

232 ECtHR, *Kucera v Slovakia*, para. 119 and 122; ECtHR, *Zubal' v. Slovaka*, para. 41-45.

233 ECtHR, *Varga v Romania*, paras. 70-74.

234 ECtHR, *Khamidov v Russia*, para. 143 – particularly in ‘terrorism’ cases.

235 ECtHR, *Modestu v Greece*, para. 44; ECtHR, *Gutsanovi v Bulgaria*, para. 223 – search warrants require reasoning.

236 ECtHR, *Rodzevillo v. Ukraine*, paras. 85-87; ECtHR, *Khodorkovskiy and Lebedev v Russia*, paras. 831-851; ECtHR, *Polyakova and Others v. Russia*, para. 116.

237 Witness C27VL01 ; Witness C27ST08; Witness C27ST06; Witness C27KA03; Witness C27AI02.

238 Witness C27ST07 – young son restrained and handcuffed despite showing no resistance; Witness C27ST02 – restrained violently on the floor; Witness C27KA07 – restrained on the floor.

239 Witness C27ST10 ; Witness C27KA01; Witness C27KA07.

240 Witness C27GE05, C27GE06; See Witness C27ST05 for threats of destroying property to induce confession.

241 All witnesses confirm this.

all attempts to challenge these procedural violations were summarily rejected by the judiciary,<sup>242</sup> demonstrating a flagrant lack of proper judicial scrutiny over the conduct of security forces.

89. Finally, all 23 Crimean Tatars arrested on 27 March 2018 were transferred to Russian remand prisons some 650km away from the Crimean Peninsula, in violation of Russian procedural law (Articles 152 and 32 CPP). Their lawyers and relatives have stated that this unnecessary geographical separation presents serious obstacles to their ability to visit the detainees. In light of the fact that all investigated conduct is alleged to have taken place on the Crimean Peninsula, this relocation is clearly disproportionate to the interference with family life.

### **iii. CONCLUSION**

90. For the foregoing, the daybreak searches of Crimean Tatar households on 14 February and 27 March 2019 were conducted in violation of Russian procedural law, and amount to unnecessary and disproportionate restrictions on the detainees' and other residents' privacy. Moreover, the transfer of 23 detainees to demand prisons in Rostov region (RF) amounts to a disproportionate interference with the detainees' family life. Consequently, the authorities' conduct has violated Article 8 of the ECHR.

## **D. Article 14 – Discrimination**

### **i. THE LAW**

91. According to Article 14 of the ECHR, 'the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'. The wording of Article 14 implies that the prohibited discrimination must relate to the enjoyment of another convention right,<sup>243</sup> although it is not necessary to prove a violation of that right to prove discrimination. The list of prohibited discriminatory grounds is non-exhaustive.<sup>244</sup> To be qualified as discriminatory, the inequality of treatment must be arbitrary – i.e. show that the distinction has no objective and reasonable justification. A distinction is lawful if it pursues a legitimate aim and is characterised by a reasonable relationship of proportionality between the means employed and the aim sought to be realised.<sup>245</sup>

### **ii. ANALYSIS**

92. The manner in which Russian authorities conducted searches, arrests and pre trial detention hearings in relation to the 26 Crimean Tatars reflects a broader pattern of discrimination against politically active Crimean Tatars in occupied Crimea. From the onset of the occupation, Crimean Tatars have been collectively identified by Russian authorities as being in opposition to Russian rule, and have had their basic civil, political, economic, social and cultural rights curtailed.<sup>246</sup>

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242 Witness C27ST03.

243 ECtHR, 27 Oct. 1975, National Union of Belgian Police, Series A No. 19.

244 Evidenced by the use of 'such as' in the provision.

245 ECtHR, Rasmussen v. Denmark, para. 34.

246 OHCHR, 'Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)', Sept. 2017, available at: [https://www.ohchr.org/Documents/Countries/UA/Crimea2014\\_2017\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf); Freedom House, 'Freedom in the World 2018', Crimea, available at: <https://freedomhouse.org/report/freedom-world/2018/crimea>.

93. In the present case, the conduct of searches and arrests did not reflect standard procedures and practices by the security forces and was clearly unnecessary for and disproportionate to the objective of arresting these 26 individuals. The size of the force engaged in the searches was unprecedented: all Crimean FSB agents, OMON, Rosgvardia, police and traffic police were deployed with up to 30 agents involved in raiding each household.<sup>247</sup> Basic procedural guarantees provided for by Russian legislation were flagrantly violated. Whilst Russian law enforcement and judicial practices often breach ECHR standards, the authorities appeared to go out of their way to make a big show out of these arrests. This was clearly calculated to convince the wider public of the seriousness of the alleged criminal conduct and dangerous nature of the suspects, whilst sending a message to the Crimean Tatar community that activism and opposition will not be tolerated. Moreover, the 'terrorism' charges brought against the detainees were also calculated to play to the non-Muslim population's fears and prejudices against Crimean Tatars, to ostracise their community and galvanise public support for the authorities' actions against Crimean Tatar dissidents. Such aims clearly cannot be considered legitimate – rendering this conduct an unjustified curtailment of liberty, fair trial and privacy rights on the basis of ethnic origin, religion and/or political opinion.

### **iii. CONCLUSION**

94. For the foregoing, Russian authorities restricted the 26 Crimean Tatar detainees' rights to liberty, privacy and fair trial on the basis of their ethnic origin, religion and/or political opinion. These restrictions had no objective and reasonable justification. Thus, in addition to violating the detainees' rights under Articles 5, 6 and 8, the authorities conduct amounts to discrimination in violation of Article 14 of the ECHR.

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<sup>247</sup> Witnesses C27ST08, C27ST06, C27KA03.

## VI. Crime against humanity of persecution

95. Ukraine has accepted the jurisdiction of the International Criminal Court (ICC) over all Rome Statute crimes committed on its territory from 21 November 2013 onwards.<sup>248</sup> On this basis, the ICC Prosecutor has been conducting a preliminary examination into the situation in Ukraine since 2015.<sup>249</sup> Notwithstanding Russia's annexation of the Crimean Peninsula, the ICC's territorial jurisdiction extends over the Peninsula as, from the perspective of international law, Crimea and Sevastopol continue to form part of the sovereign territory of Ukraine. Russia's current control over the territory of the Crimean Peninsula amounts to a belligerent occupation stemming from its 2014 invasion in violation of Article 2(4) of the UN Charter. To this end, the authors will briefly consider whether the detainees' treatment qualified as the crime against humanity of persecution under the Rome Statute (Article 7(1)(h)). This analysis is of a preliminary nature - an exhaustive examination of criminal liability under these provisions is beyond the scope of this report.

### A. The Law

96. The crime against humanity of persecution is defined as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."<sup>250</sup> It criminalises patterns of severe and systemic discrimination, which includes crimes as well as "acts that are not inherently criminal [but which] may nonetheless become criminal and persecutorial if committed with discriminatory intent."<sup>251</sup> Persecutorial conduct may be of "physical, economic or judicial nature", provided it violates "an individual's right to the equal enjoyment of his basic rights".<sup>252</sup> Harassment, humiliation, psychological abuse and outrages on personal dignity,<sup>253</sup> the systemic denial of freedom of movement and judicial processes,<sup>254</sup> and the extensive destruction and/or confiscation of property,<sup>255</sup> have all been held to constitute underlying acts of the crime of persecution. It must be established that the discriminatory conduct is targeted at an identifiable group or collectivity, on "political, racial, national, ethnic, cultural, religious [...] or other grounds that are universally recognized as impermissible under international law."<sup>256</sup> The group's existence

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248 Embassy of Ukraine, Communication N. 61219/35-673-384, 9 April 2014; Note Verbale of the Acting Minister for Foreign Affairs of Ukraine, Mr. Andrii Deshchytsia, 17 April 2014. ICC, Ukraine, "Declaration lodged by Ukraine under Article 12(3) of the ICC Statute", 8 September 2015, available at: [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/ukraine/Pages/ukraine.aspx](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/ukraine/Pages/ukraine.aspx).

249 These jurisdictional parameters were preliminarily confirmed by the ICC Prosecutor: ICC Prosecutor, 'ICC Prosecutor extends preliminary examination of the situation in Ukraine following second article 12(3) declaration', Press Release, 29 September 2015, available at: [https://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/ukraine/Pages/ukraine.aspx](https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/ukraine/Pages/ukraine.aspx).

250 Article 7(2)(g) of the ICC Statute.

251 ICTY, Prosecutor v. Kvočka et al., Judgment, IT-98-30/1-T, 2 November 2001, para. 186; ICTY, Prosecutor v. Kvočka et al., Appeal Judgment, IT-98-30/1-A, February 28, 2005, para. 323 – whilst the deprivation must be severe it need not amount to one of the other listed international crimes.

252 ICTY, Prosecutor v. Duško Tadić, Judgment, IT-94-1-T, 7 May 1997, paras. 697, 710.

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

254 ICTY, Prosecutor v. Brdjanin, Judgment, IT-99-36-T, 1 September 2004, paras. 1031-1049.

255 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) – paraphrasing: ICTY, Prosecutor v. Milomir Stakic, Judgment, IT-97-24-T, 31 July 2003, para. 763.

256 ICC Elements of Crimes, Article 7(1)(h).



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is assessed according to the perpetrator's subjective identification of the group.<sup>257</sup> To constitute a crime against humanity within the meaning of the ICC Statute, the deprivation of fundamental rights must be committed in connection with another crime within the jurisdiction of the ICC,<sup>258</sup> and be intentionally or knowingly committed as part of a widespread or systematic attack against the civilian population.<sup>259</sup>

## B. Analysis

97. In the present case, the conduct of Russian authorities vis-à-vis the 26 detainees and the wider Crimean Tatar community may amount to persecutorial conduct. As discussed above (Section V(D)), the violations of privacy, liberty and fair trial discussed in this report were committed with discriminatory intent. The public show of force and severity of treatment by Russian authorities was calculated to frighten the Crimean Tatar community into submission and to deter further activism and opposition to Russian rule by its members. Moreover, the spectre of terrorism was raised in an attempt to isolate the Crimean Tatar community from the Slavic majority, and galvanise non-Muslim support for the authorities' repressions. These rights violations were connected to other criminal acts – such as the unlawful detention and inhuman treatment of these and other Crimean Tatar victims. This conduct forms part of the authorities' widespread and systematic attack against politically active or vocal Crimean Tatars, which includes at least 13 murders, 12 enforced disappearances, over 65 politically motivated prosecutions and hundreds of arbitrary arrests and detentions since 2014.<sup>260</sup> Crimean Tatars have all but lost their fundamental freedoms of association, assembly and expression, with bans on public gatherings to commemorate culturally significant dates,<sup>261</sup> closure of independent Crimean Tatar media,<sup>262</sup> political and other organisations.<sup>263</sup> In a disturbing echo of Stalin's deportations, over 30,000 Crimean Tatars have fled the Peninsula since the onset of the occupation.
98. For the foregoing, the authorities' treatment of the 26 Crimean Tatars arrested on 14 February and 27 March 2019 may form part of the authorities' attack on actual or perceived opponents of the annexation, and may amount to the crime against humanity of persecution under the Rome Statute (Article 7(1)(h)).

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257 "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.

258 ICC Elements of Crimes, Article 7(1)(h).

259 ICC Elements of Crimes, Article 7(1)(h).

260 Estimates are based on information received from civil society organisations and lawyers working on relevant cases; See also: Crimea SOS, 'Human rights in Crimea: Rollback three centuries', available at: <http://crimeamap.krymsos.com/eng/map.html?fbclid=IwAR11unj5f5fu1WPRLViEVkZV6E94Et1UpNK8ppJ3awioiNoQW7-bPPLfB74>.

261 E.g.: Crimean Tatars have been banned from publicly commemorating the 1944 Deportation on 18 May, with arrests made against Crimean Tatars who displayed ethnic symbols on or around this date: OSCE, Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015), 17 September 2015, para. 132; Unian, "Crimean Tatars banned from honoring 1944 deportation victims", 17 May 2016, available at: <http://www.unian.info/politics/1347910-crimean-tatars-banned-from-honoring-1944-deportation-victims.html>; See also: Witness C27KA02.

262 E.g.: Closure of ATR Crimean Tatar television channel – OSCE, Report of the Human Rights Assessment Mission on Crimea (6-18 July 2015), 17 September 2015, para. 17; The Guardian, "Crimea's independent Tatar TV news channel silenced by 'red tape'", 1 April 2015, available at: <https://www.theguardian.com/world/2015/apr/01/crimeas-independent-tatar-tv-news-channel-silenced-by-red-tape>.

263 E.g.: Mejlis.

## VII. Conclusion and recommendations

99. In light of the information presented in this report, the authors submit that the security operations conducted by Russian security forces on 14 February and 27 March 2019, and consequent arrest and detention of 26 Crimean Tatars, have violated Russian law, the European Convention on Human Rights and may amount to the crime against humanity of persecution under the ICC Statute. The Russian authorities have yet to present any credible and reliable evidence that the detainees planned, organized or took part in any terrorist activities. The charges are entirely based on the defendants' purported membership of Hizb ut-Tahrir – an organisation, which is yet to be directly connected to terrorist activity in Crimea, Russia or elsewhere. Moreover, to date, the main evidence of their alleged membership of Hizb ut-Tahrir – books published by the organization – appears to have been planted by the security forces. Consequently, the authors aver that these individuals are being targeted in order to dismantle the Crimean Solidarity group, as part of a wider effort to suppress actual or perceived Crimean Tatar opposition to the Russian occupation of the Crimean Peninsula.
100. On this basis, the authors welcome the European Union's position on the illegal nature of these arrests,<sup>264</sup> and make the following recommendations:
- To the Russian Authorities: immediately release all 26 Crimean Tatars, dismiss the criminal cases against them, and provide them and their relatives with compensation for the physical, material and psychological damage caused by these violations. Additionally, the authors request the Russian authorities to disclose any information that they may have on the whereabouts and wellbeing of Edem Iaiachikov.
  - To the International Community: continue to apply sanctions on individuals and entities responsible for serious violations of human rights on the Crimean Peninsula, and call on the Russian authorities to release all Crimean political prisoners.
  - To the Ukrainian Authorities: continue to investigate violations against its citizens with a view to bringing those responsible to justice.
  - To the Russian Ombudsperson on Human Rights: investigate the human rights violations raised in this Report, consider the wider pattern of rights deprivations and discrimination against the Crimean Tatar community and review the impact of the classification of Hizb ut-Tahrir as a terrorist organisations.
  - To the Prosecutor of the International Criminal Court: include these arrests into the purview of her preliminary examination on Ukraine and request an authorisation for a full investigation as soon as practicable.

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264 European Union External Action, 'Statement by the Spokesperson on human rights violations against and the illegal detention of Crimean Tatars by the Russian Federation', 30 March 2019, available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/60408/statement-spokesperson-human-rights-violations-against-and-illegal-detention-crimean-tatars\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/60408/statement-spokesperson-human-rights-violations-against-and-illegal-detention-crimean-tatars_en).

