

## INTRODUCTION

The Coalition "Justice for Peace in Donbas" (hereinafter – the Coalition) is an informal union of 17 human rights organizations and initiatives established in 2014. Members of the Coalition have combined efforts to conduct coordinated documenting of human rights violations, committed during the armed confrontation in eastern Ukraine.

The submission was prepared on behalf of the Coalition by the following member organizations: Eastern-Ukrainian Center for Civic Initiatives, Charitable Foundation “Vostok SOS”, Luhansk Human Rights Center “Alternatyva”, Public Organization “Mirny bereg”.

Taking into consideration that the second cycle of the UPR was held in 2012, it did not cover human rights challenges related to the conflict. This submission highlights the human rights violations that resulted from the armed conflict in Donbas. Organizations that prepared this submission have conducted separate specialized studies in relation to these violations. The topics presented in the submission outline the impact of the conflict on the human rights situation in Luhansk and Donetsk regions and illustrate the systemic issues, for which the conflict served as a catalyst. The submission takes into account specific characteristics of the region affected by the conflict, in particular concerning the mining towns and villages.

### I. PLACES OF ILLEGAL DETENTION ESTABLISHED AS A RESULT OF THE ARMED CONFLICT

1.1. The practice of establishing places of illegal detention by the “LPR/DPR” armed groups became widespread due to the power vacuum in Luhansk and Donetsk regions during the initial stage of the conflict. Based on the collected information, the EUCCI along with other members of the Coalition conducted an analysis of operations of the network of these places<sup>1</sup> over a period from April 2014 until January 2017.

1.2. By January 2017, based on the address data and detailed description provided by the victims, it was possible to identify 147 places of illegal detention established by the separatists (84 and 63 facilities in Donetsk and Luhansk regions respectively), as well as six facilities (three in the Luhansk region, two in the Dnipropetrovsk region and one in the Kharkiv region) established by Ukrainian voluntary groups. The study showed different places of detention (basements, pits, cages, office premises etc.) with varying numbers of prisoners (from several people to several hundreds).

1.3. Persons released from these places of detention often pointed at the lack of access to water, absence of sleeping accommodations, inadequate sanitary conditions, as well as the lack of access to fresh air.

1.4. Detention in these facilities was often accompanied by physical, sexual and psychological violence. Prisoners of the illegal armed groups were subjected to torture and other

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<sup>1</sup> Bielousov I.L., Korynevych A.O., Martynenko O.A., Matviychuk O.V., Pavlichenko O.M., Romensky Y.V., Shvets S.P. (2015). *Surviving Hell: Testimonies of Victims on Places of Illegal Detention in Donbas*. Kyiv: “TsP Komprint” Ltd. Retrieved from [http://www.hfhr.pl/wp-content/uploads/2016/01/SURVIVING-HELL\\_eng\\_web.pdf](http://www.hfhr.pl/wp-content/uploads/2016/01/SURVIVING-HELL_eng_web.pdf); Shcherbachenko, V., Ivanova, G., Pavlichenko, O. (2016). *PLACES OF ILLEGAL DETENTION IN EASTERN UKRAINE DURING THE MILITARY CONFLICT* (Rep.). Retrieved from [https://jfp.org.ua/system/reports/files/82/en/Justice\\_for\\_peace\\_in\\_Donbas\\_EUCCI\\_Illegal\\_detention.pdf](https://jfp.org.ua/system/reports/files/82/en/Justice_for_peace_in_Donbas_EUCCI_Illegal_detention.pdf).

cruel, inhuman or degrading treatment or punishment, forced labor and sexual violence. They also witnessed extrajudicial killings.

1.5. By now, the number of these facilities in the "LPR/DPR" has decreased due to a smaller number of competing armed groups and a certain "centralization" of power. According to open sources, some Ukrainian military prisoners are held at the Makiyivka correctional prison in the "DPR"<sup>2</sup> and the Luhansk remand prison in the "LPR."<sup>3</sup>

1.6. Detention facilities in the "LPR/DPR" are inaccessible for monitoring, in particular, for the UN and OSCE missions. Therefore, there are no grounds to state that they are no longer operating or conditions therein have improved. Even the "law enforcement bodies" of the self-proclaimed republics confirm the existence of illegal detention facilities. For instance, according to a statement of the "LPR General Prosecutor's Office" of 24 September 2016, a group of separatist leaders was detained in one of the "LPR" administrative buildings on treason charges. One of the "accused", a former head of the "Council of Ministers of the LPR" Hennadiy Tsytkalov, hung himself in the same building "having realized" the gravity of his crime.<sup>4</sup>

1.7. According to official sources, over 3000 persons have been released. Between 110 people (official data) and several hundred of people (information from volunteer organizations) remain in the illegal detention facilities of the "LPR/DPR."<sup>5</sup>

1.8. As of March 2017, the Coalition members do not have documented evidence about illegal detention facilities established by Ukrainian armed groups that are still functioning.<sup>6</sup>

1.9. Despite the gravity of issues faced by former prisoners of illegal detention facilities, there is no state program of medical and psychological support for victims of violence in places of detention. For instance, based on interviews of Coalition members with the people who had been in illegal detention facilities, only 28 percent of them sought medical assistance and only in case of urgent need.

## RECOMMENDATIONS

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<sup>2</sup> Herashchenko: boeviki uderzhivayut zahvachennyh ukrainskih voinov v ispravitelnoi kolonii v Makeevka [Herashchenko: the militants are keeping the detained Ukrainian soldiers in Makiivka correctional prison]. (2017, February 13) *Donbass.ua*. Retrieved from <http://donbass.ua/news/ukraine/2017/02/13/geraschenko-boeviki-uderzhivajut-zahvachennyh-ukrainskih-voinov-v-ispravitelnoi-kolonii-v-makeevke-video.html>.

<sup>3</sup> GTRK LNR [GTRK LNR]. *Rodstvenniki uderzhivaemyh v LNR ukrainskih voennosluzhashchih pribyli v Lugansk* [Relatives of Ukrainian soldiers imprisoned in the LPR arrived in Luhansk]. (2017, March 12) [Video file]. Retrieved from <https://www.youtube.com/watch?v=RHOXWEtG4R8>.

<sup>4</sup> GTRK LNR [GTRK LNR]. *Zaderzhanniy po delu o popytke gosperevorota Gennadii Tsytkalov sovershil samoubiistvo* [Gennadii Tsytkalov, arrested on charges of coup d'etat committed suicide] (2016, September 24) [Video file] Retrieved from <https://www.youtube.com/watch?v=b10aAjdBws>.

<sup>5</sup> Ukrainskie plennye napisali rodnym pisma. Est li nadezhda na obmen? [Ukrainian soldiers wrote letter to their families. Is here hope for exchange?] (2016, December 8). *Hromadske radio*. Retrieved from <https://hromadskeradio.org/ru/programs/kyiv-donbas/ukrainskie-plennye-napisali-rodnym-pisma-est-li-nadezhda-na-obmen>.

<sup>6</sup> The cases of illegal detention by the Ukrainian armed groups were documented by the members of the Coalition in the beginning of the armed conflict. See. PLACES OF ILLEGAL DETENTION IN EASTERN UKRAINE DURING THE MILITARY CONFLICT (Rep.). Retrieved from [https://jfp.org.ua/system/reports/files/82/en/Justice\\_for\\_peace\\_in\\_Donbas\\_EUCCI\\_Illegal\\_detention.pdf](https://jfp.org.ua/system/reports/files/82/en/Justice_for_peace_in_Donbas_EUCCI_Illegal_detention.pdf).

1.10. To ratify the European Convention on the Compensation of Victims of Violent Crimes.

1.11. To establish an interagency working group involving state authorities, law enforcement bodies, and representatives of international organizations, to oversee compliance with the international humanitarian law and international human rights law on the territory which is temporarily outside of Ukrainian control, as well as the area of the anti-terrorist operation (hereinafter - the ATO).

1.12. To ensure free examination and medical assistance for persons who had been detained in illegal detention facilities in accordance with international standards for documenting torture and other forms of cruel, inhuman or degrading treatment or punishment.

1.13. To ensure on the state level the functioning of a psychological support service for persons released from illegal detention facilities and their families, including provision of adequate funding.

## II. SEXUAL VIOLENCE RELATED TO THE CONFLICT IN EASTERN UKRAINE

2.1. The level of conflict-related gender-based and sexual violence has increased due to the atmosphere of impunity in the "LPR/DPR", the absence of the rule of law and access to justice, as well as popularization of gender roles based on traditional perception of the woman's role and orthodox interpretation of Christianity by those in power in the areas which are temporarily outside of Ukraine's control. In the government-controlled areas, violence has taken new forms because of the ATO.

2.2. By January 2017, the EUCCI along with other Coalition members has conducted 280 interviews with victims of conflict-related human rights violations, as well as experts who have information about human rights violations in the conflict area based on their professional activities.

2.3. Various forms of sexual violence were mentioned in a third of all interviews. These include rape, forced prostitution, forced sterilization, mutilation of sex organs and anus, forced stripping, forced public appearance naked, assaults, humiliation, coercion, punishments of sexual nature and threats of sexual violence, as well as damage to a pregnant woman's abdomen. There were also cases of gender-based violence against women: prolonged detention of men and women together, unlawful imprisonment of women by representatives of illegal armed groups.

2.4. According to the study, at least 206 persons (94 men and 112 women) suffered from sexual violence. At least 162 different cases of sexual violence in different forms were identified. Fifty-nine interviewees said that they suffered from and/or witnessed sexual violence during unlawful confinement. 94 women suffered from sexual violence in illegal detention facilities established by armed groups of the self-proclaimed republics.

2.5. Though sexual violence is a common practice in illegal detention facilities established in the "LPR/DPR" area, competent Ukrainian authorities do not record instances of sexual violence related to the armed conflict in Donbas adequately, including cases that may amount

to war crimes; nor do they analyze available information or create an evidence base for the national and international justice system with the aim of preventing violations of international and domestic law. For instance, according to the National Police of Ukraine, based on interviews with former male and female prisoners, there were no reported cases of sexual violence committed by representatives of illegal armed groups in Luhansk region. There is no information about the abovementioned facts in the Unified State Registry of Pre-Trial Investigations.<sup>7</sup>

2.6. There is no definition of gender-based or sexual violence in Ukrainian legislation. The Criminal Code provisions on liability for crimes against sexual liberty and inviolability do not take into account the specifics of violence during the conflict; these provisions do not meet international standards. Investigation and prosecution for sexual violence committed by Ukrainian military is impeded by a series of problems and stereotypes. Investigation is ineffective and rarely leads to perpetrators being held responsible. For example, according to the ATO force military prosecutor's office, there were two criminal proceedings against the military men under article 152 of the Criminal Code of Ukraine (rape) in 2015. They were closed due to the lack of the elements of a crime. In 2016, there were no criminal proceedings.<sup>8</sup> We should note that statistics do not reflect the actual scope of the problem, since the gender aspect is often omitted in legal qualification.

## **RECOMMENDATIONS**

2.7. To organize effective data collection and recording of sexual violence related to the conflict in accordance with international standards for documentation.

2.8. To conduct effective investigation of the acts of sexual violence related to the conflict committed by Ukrainian military.

2.9. To ensure development and implementation of a specialized program for law enforcement officials in Ukraine on combating and preventing sexual and gender-based violence related to the conflict, investigating and recording these cases.

### **III. INVOLVEMENT/RECRUITING OF CHILDREN TO ARMED GROUPS**

3.1. The armed conflict in eastern Ukraine has significantly increased the risks of involvement of children in armed conflict. Based on open-source information and testimonies of civilians and military personnel, the EUCCI along with other Coalition members has recorded 95 cases of involvement of children in armed groups where we were able to identify names, age, forms of recruitment, children's duties and identity of recruiters. In particular, there were 85 cases of involvement of children in illegal armed groups recorded on the territory

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<sup>7</sup> Main Directorate of the National Police in Luhansk region. (2017, February 10) Letter No III-13i/111/18/02-2017 in response to the information request from the Eastern-Ukrainian Center for Civic Initiatives.

<sup>8</sup> Office of the Military Prosecution of ATO forces. (2017, February 17). Letter No. 10-86вих-17 in response to the information request from the Eastern-Ukrainian Center for Civic Initiatives.

outside of Ukraine's control, and 10 cases of involvement in Ukrainian voluntary groups.

3.2. At least 32 documented cases can be qualified as war crimes pursuant to Article 8 of the Rome Statute: in 24 cases the children were under the age of 15 at the time of recruitment, in 8 cases the exact age of the children could not be determined, but there are reasons to suppose that the children were not older than 15 years.

3.3. Children took both direct and indirect part in the armed conflict. In particular, they performed armed duty at checkpoints as fighters, served as guards, mailpersons, or secretaries. They provided logistical support (for instance, kitchen work). What is more, individual instances of sexual exploitation of children were also recorded. According to collected testimonies, a 14-16 year old girl who was unlawfully detained in a basement by the "Batman" illegal armed group was sent to the frontline for fulfilling sexual needs of the group's fighters as a punishment for disciplinary violations.

3.4. At least 15 illegal armed groups were involved in the recruitment of children in the areas outside of Ukraine's control, including "Vostok" brigade, Cossack National Guard of the All-Great Don Army, Cossack Union "Oblast viiska Donskogo" [Don army region], "Sparta" battalion, "Prizrak" ["Ghost"] brigade, "Somali" battalion, "Pyatnashka" international brigade, "Bryanka" USSR battalion, "Narodne opolchennya Donbasu" "Donbas people's militia", "Batman" rapid response groups, and "Oplot" battalion.

3.5. Cases of involvement of persons under 18 years of age in Ukrainian voluntary battalions were recorded only during the initial stage of the conflict in 2014.

3.6. With the beginning of the armed conflict, youth militarized patriotic movements have become more active in the territory under government's control, as well as in the areas outside of Ukraine's control. One form of activity of such movements are military patriotic camps where children (on average, aged between 10-17) receive marching, firearms, as well as medical training, and learn combat tactics, unarmed combat etc.

3.7. We were able to identify involvement of approximately 200 children from the areas of Donetsk and Luhansk regions outside of Ukraine's control in military camps in Russia or in areas de facto controlled by Russia (Abkhazia, Crimea). Some of these camps took place in the military bases of the Armed Forces of the Russian Federation (for instance, "Boevoe bratstvo"<sup>9</sup> [Combat brotherhood] and "Hvardeets"<sup>10</sup> [Guard officer] camps) or involved representatives of law enforcement structures of the Russian Federation (for instance, members of a specialized group of the internal military of the MoI of Russia were among instructors in "Borodino" camp). During the military conflict, there is a risk of using military and patriotic rhetoric to cover-up recruitment of boys and girls to illegal armed groups.

3.8. Contrary to the 2011 recommendation of the UN Committee for the Rights of the

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<sup>9</sup> Mezhdunarodnyi molodezhnyi patrioticheskii lager "Boevoe bratstvo" Kovrov 2016 [International youth patriotic camp "Combat brotherhood", Kovrov-2016]. (n.d.) Retrieved from <http://bbratstvo.com/ob-organizatsii/proekty-organizatsii/patrioticheskie-proekty-organizatsii/mezhdunarodnyj-molodezhnyj-patrioticheskij-lager-boevoe-bratstvo-kovrov-2016/>.

<sup>10</sup> Strizhova, O. (2016, June 26). *Voennye lageria "LNR": "zombirovanie" detei ili tselenapravlennaia podgotovka armii? ["LPR" military camps: brainwashing of children or deliberate army training?]*. Radio Svoboda. Retrieved from <http://www.radiosvoboda.org/a/27824036.html>.

Child,<sup>11</sup> as of March 2017, national legislation of Ukraine has no provisions that clearly establish criminal liability for recruiting persons younger than 18 years old and their use in illegal armed groups. In addition, there are no regulations on activities of military and patriotic clubs and associations; there is no defined age limit for training on the use of small arms.

## RECOMMENDATIONS

3.9. To introduce amendments to the Criminal Code of Ukraine criminalizing recruitment and involvement of children in military action and militarized groups.

3.10. To ensure systematic data collection in relation to children who have been recruited or used in combat.

3.11. To introduce legal regulations on a minimum age limit for a child to study military tactics and handling of small arms to prevent recruitment and involvement of children in illegal armed groups.

## IV. PERSONS WHO DISAPPEARED AS A RESULT OF THE ARMED CONFLICT

4.1. An increase in the number of disappeared persons is unavoidable during military conflicts. Every state has procedures for searching for disappeared persons during peaceful time. However, they are usually ineffective in extreme situations, such as a military conflict.

4.2. According to the ICRC, over one thousand people disappeared during the conflict in Ukraine.<sup>12</sup> Documentation of disappearances was ceased in 2014 during escalation and was renewed afterwards in separate efforts for government-controlled areas and on the territory controlled by illegal armed groups. The lack of coordination between different state authorities led to different estimates as to the number of disappeared persons in the conflict area - from 488 to 1376.<sup>13</sup>

4.3. The lack of accurate data on the number of disappeared persons is a consequence of the shortcomings of Ukrainian legislation. In particular, there is a need to adopt a specialized law to regulate coordination of search efforts between the state and non-state parties. On 22 November 2016, parliament members introduced a draft law “On the legal status of disappeared

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<sup>11</sup> UN Committee on the Rights of the Child. (2011). *Consideration of reports submitted by States Parties under article 12 paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Concluding observations: Ukraine*. Retrieved from [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/OPSC/UKR/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/OPSC/UKR/CO/1&Lang=En).

<sup>12</sup> V rezultati viiny na Donbasi znyklo bilshe tysiachi liudei - Chervonyi Khrest [Over a thousand people disappeared as a result of war in Donbas – the Red Cross] (2016, January 28). *5 Kanal*. Retrieved from <http://www.5.ua/ato-na-shodi/v-rezultati-viiny-na-donbasi-znyklo-bezvisty-bilshe-tysiachi-liudei-chervonyi-khrest-104731.html>.

<sup>13</sup> Office of the United Nations High Commissioner for Human Rights. (2016) Report on the human rights situation in Ukraine, 16 August to 15 November 2016. (Rep.) Retrieved from [http://www.ohchr.org/Documents/Countries/UA/UAReport16th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf).

persons” (registered in Verkhovna Rada under No. 5435)<sup>14</sup>. However, this draft law does not have critical provisions on the prevention of enforced disappearances which pose a significant risk in areas affected by hostilities. In particular, we should note reports of national and international organizations about conflict-related enforced disappearances committed by the Security Service of Ukraine.<sup>15</sup>

4.4. In June 2015, Ukraine acceded to the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>16</sup> This means that Ukraine has an obligation to take into account the Convention and other international instruments ratified by Ukraine in relation to enforced disappearances. However, current criminal law in Ukraine does not reflect in full the legal nature of enforced disappearances.

4.5. The above-mentioned draft law does not provide for any assistance, including material, to relatives of the disappeared person if the victim was the breadwinner. Clearly, relatives of a disappeared person whose subsistence was provided by the victim (in particular, children) constitute a socially vulnerable group and require additional social protection.

4.6. The situation resulting from disappearances of military personnel of the Armed Forces of Ukraine also requires attention. According to NGO “Mirny Bereg”, by early March 2017, 425 military service people were considered missing. The laws of Ukraine and Statutes of the Armed Forces of Ukraine outline a procedure of accounting for disappeared military service people and a mechanism of material support for their families. However, these norms are ineffective in the present situation, since they are often disregarded.

4.7. Military base command often fail to conduct effective, if any, internal investigations and do not provide financial support to family members of disappeared persons. In addition, those responsible within the military do not face adequate liability for inadequate performance of duty because of the inactivity of competent authorities.

4.8. Several state authorities search for a disappeared military service person at the same time. They do not coordinate their actions, which makes the search ineffective, and the process often comes down to bureaucracy, while non-traditional approaches and means are necessary.

4.9. In relation to military service people and law enforcement officials, we should note that there is still no unified DNA database in Ukraine. Instead of conducting a DNA expertise for all military service people before engagement in the combat zone, material for expertise is collected from unidentified bodies and family members of disappeared persons to then compare the results. It makes the identification procedure significantly longer or even impossible, in case of a mismatch.

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<sup>14</sup> Verkhovna Rada of Ukraine. Draft Law on the legal status of disappeared persons. Fifth Session, VIII Assembly, No. 5435 (2016, November 22). Retrieved from [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=60560](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60560).

<sup>15</sup> Zakharov, Ye. Sluzhba bezpeky Ukrainy ta prava liudyny [State Security Service and human rights]. (2017, February 07). *Kharkiv Human Rights Protection Group*. Retrieved from <http://khhpg.org/index.php?id=1486465129>. See also: Office of the United Nations High Commissioner for Human Rights. (2017) Report on the human rights situation in Ukraine, 16 November 2016 to 15 February 2017 (Rep.) Retrieved from [http://www.ohchr.org/Documents/Countries/UA/UARreport17th\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/UARreport17th_EN.pdf).

<sup>16</sup> UPR of Ukraine (Second Cycle). Recommendations 97.1, 97.2.

## RECOMMENDATIONS

4.10. To adopt a comprehensive law regulating cooperation and coordination of state and non-state parties in their efforts to locate a disappeared person and ensure social protection for the relatives of disappeared persons.

4.11. To develop and provide funding for state programs on prevention of enforced disappearances and effective search for disappeared persons, as well as engage public organizations in implementation of these programs.

4.12. To develop mechanisms for preventing enforced disappearances and introduce necessary amendments to the Criminal Code establishing criminal liability for enforced disappearance.

4.13. Ensure provision of material and psychological support to relatives of the disappeared person.

4.14. To develop and adopt a law mandating creation of a DNA database for all military service persons.

## IV. SHELLING OF MEDICAL FACILITIES IN THE ARMED CONFLICT

5.1. International humanitarian law restricts the use of allowed weapons and military action against civilian population and objects. In particular, it is prohibited to direct attacks and bomb non-defended towns, dwellings, buildings and hospitals provided they are not being used for military purposes. In May 2016-2017, Luhansk Human Rights Centre “Alternatyva” conducted a study of attacks against healthcare facilities, their use for military purposes and consequences of these actions. Information was gathered through requests to state authorities, open sources, interviews with witnesses, victims, and persons who have relevant information, as well as monitoring visits to health care establishments in the ATO zone in the area controlled by Ukrainian government.

5.2. The study included 64 interviews with witnesses, victims, and persons who have relevant information, monitoring visits to healthcare facilities, as well as 78 information requests. As a result, numerous cases were recorded of using indiscriminate weapons against inhabited areas and civilian health care objects on their territory, which can be qualified as indiscriminate attacks:

*“We had patients in the outpatient unit, surgery, and intensive care. During the shelling, medics were carrying people to the bomb shelter - down the stairs, in the darkness, amid explosions. I was there until four in the morning, while the attack was on. When I left the basement in the morning, it was a horrible sight - there were almost no untouched windows, the roof was seriously damaged, and there was glass everywhere”,* says a staff member of Stanytsia-Luhanska central district hospital.

5.3. There are recorded cases of placing armed persons and military equipment on the territory of health care facilities and exerting psychological pressure on the staff: *“The clinic was closed for the night. When we came to work in the morning, there were military people at*

*the gate and did not let us into the clinic*”, says a former staff member of the clinic at Kondrashevskaya-Nova station (Donetsk railways).

5.4. Within the framework of the study, there were 24 shellings of health care facilities, 12 cases of armed persons and military equipment being based on their territory, 7 deaths of medical professionals and seven injuries resulting from shellings were documented.

5.5. According to the UN High Commissioner for Human Rights, at least 45 hospitals in Donetsk and Luhansk regions are destroyed or damaged and many other are partially functioning or not operational.<sup>17</sup> During yet another escalation, in particular, in February 2017 in Avdiivka, there were reports of continued shellings of medical facilities and ongoing threat to the life and health of the staff and civilians.

## **RECOMMENDATIONS**

5.6. For all parties to respect inviolability of all civilian healthcare facilities.

5.7. To ensure effective investigation of shelling of medical facilities and prosecution of those responsible.

5.8. To stop the practice of using indiscriminate weapons which cannot be directed towards a specific military target and conduct thorough recording of all shellings of civilian objects.

5.9. To tackle the problem of renovation systematically, e.g. by introducing policies or programs, to ensure proper respect for the right to an appropriate level of healthcare.

## **VI. RESTRICTIONS OF THE FREEDOM OF MOVEMENT WITHIN DONETSK AND LUHANSK REGIONS RELATED TO THE CONFLICT**

6.1. The current procedure for crossing the line of contact<sup>18</sup> is more difficult than crossing the state border of Ukraine. In addition to having a document confirming identity and citizenship, one also needs to have a permit obtained in advance.<sup>19</sup> The procedure for obtaining a permit is bureaucratic and flawed. It also serves as a source of corruption. Many problems with the permits take place at the renewal stage (since the permit is valid for one year). At the same time, all entry-exit points at the line of contact are equipped with border control systems that allow for checks of people intending to cross the line of contact.

6.2. It is worth noting that Ukraine does not have control over the 408 km section of the border with Russia in Donetsk and, partially, Luhansk regions. Therefore, anyone with a passport can cross from the territory outside of Ukraine’s control to the controlled areas through

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<sup>17</sup> Office of the United Nations High Commissioner for Human Rights. (2014) Report on the human rights situation in Ukraine, 15 November 2014. (Rep.) Retrieved from [http://www.ohchr.org/Documents/Countries/UA/OHCHR\\_sixth\\_report\\_on\\_Ukraine.pdf](http://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf)

<sup>18</sup> The line of contact is a conditional separation of the territory of Donetsk and Luhansk regions into the areas where state authorities do not exercise full or partial authority and the areas under the control of the government of Ukraine.

<sup>19</sup> Herein - a permit to cross the line of contact issued by the State Security Service of Ukraine to enter or exit the area under temporary control of illegal armed groups.

Russia without obtaining a permit. Notably, there is no permit system for crossing the administrative border with the temporarily occupied territory of Crimea.

6.3. On 3 June 2015, Ukraine introduced a ban on regular passenger transit across the line of contact. This ban affected vulnerable groups the most. They do not have their own means of transportation and have to use services of private operators who speculate on these transits. With no other options for crossing the line of contact, members of vulnerable groups are forced to follow unfavorable conditions of the operators. At the same time, passengers and operators, as well as human rights defenders, insist on official bus and railway transportation across the line of contact.

6.4. The lack of transport corridors across the line of contact is a serious challenge concerning the freedom of movement. It is particularly pertinent in Luhansk region that has only one transport corridor in Stanytsia Luhanska. Crossing on foot is only available at the ruined bridge over Siverskyi Donets River. Since autumn 2015, there have been regular discussions on reopening the Zolote-Pervomaisk transport corridor, which has already been announced several times. The exit-entry point “Zolote” on the government-controlled territory is fully equipped and ready for the launch; however, the illegal armed groups unreasonably block the movement of people through Pervomaisk.

6.5. Travel to inhabited areas in the “grey zone”<sup>20</sup> is often accompanied by unfounded requests of the military to show a permit issued for crossing the line of contact or an IDP certificate. In addition, crossing in some checkpoints is only possible if the name is on the list approved by the city administration.

## **RECOMMENDATIONS**

6.6. To eradicate the system of permits for crossing the line of contact within Donetsk and Luhansk regions and introduce passport control procedures similar to state border crossing procedure.

6.7. To restore the regular passenger service (train and bus) through the line of contact.

6.8. To reopen the transport corridor through the line of contact at “Zolote-Pervomaisk” in the Luhansk region.

6.9. To remove restrictions on movement of residents of nearby inhabited areas in the grey zone.

## **VII THE RIGHT TO SOCIAL PROTECTION FOR RESIDENTS OF AREAS TEMPORARILY OUTSIDE OF THE CONTROL OF THE GOVERNMENT**

7.1. The right to social protection is a fundamental right enshrined in the provisions of international law and domestic legislation of Ukraine. Due to the conflict in eastern Ukraine, starting from the fall of 2014, the social protection system in separate areas of Donetsk and Luhansk regions was virtually paralyzed, and funding and its distribution between recipients of social benefits or pensions were significantly restricted.

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<sup>20</sup> Grey zone is a territory adjacent to the line of contact in Luhansk and Donetsk regions.

7.2. Currently, residents of territories controlled by illegal armed groups do not have access to the social security system in Ukraine. As a result, they do not receive any social support or pension from the state. These benefits can be restored only if residents go to the government-controlled territory and register as internally displaced persons. In practice, this system forces people to become IDPs to be able to exercise their right to social security provided by the Constitution. This approach is contrary to the UN Guiding Principles on Internal Displacement that prohibit coercion to relocate.

7.3. At the same time, if residents of areas under temporary control of illegal armed groups move and register as IDPs to, for instance, receive pension, then these persons and their residence on the territory under government's control are subject to thorough inspection by the state. If the inspection establishes that these persons do not live under the address of their registration stated in the IDP certificate, or they had crossed the line of contact and did not return during a period established by the law (as a rule, during 60 days), all social payments are terminated.

7.4. It should be underlined that if a person entitled to a pension has limited mobility and cannot come to the territory under the control of the government of Ukraine, s/he has no chances to receive their pension.

7.5. The de facto "authorities" in the temporarily occupied areas provide "pension" payments, however, these cannot be considered pensions since "LPR/DPR" are not states; they do not provide guarantees or have relevant obligations before Ukrainian citizens.

## **RECOMMENDATIONS**

7.6. To develop, in cooperation with civil society organizations advocating for the rights of victims of the conflict in eastern Ukraine, a mechanism for payment of pensions to residents of areas under temporary control of illegal armed groups.

7.7. To involve representatives of international humanitarian organizations to ensure payment of pensions to retirees with limited mobility who reside in the areas temporarily outside of the control of Ukrainian government.

## **VIII. IMPACT OF THE WAR ON SOCIO-ECONOMIC RIGHTS OF RESIDENTS IN MINING COMMUNITIES IN THE CONFLICT AREA**

8.1. For many years, a large number of mining towns and villages in Donbas have been in a difficult situation. Systemic violations of social and economic rights lead to the lack of public trust and the spread of negative social phenomena. Chronic dissatisfaction with poverty and a low social status in the depressed mining communities caused the residents of Donbas to hate the state, and this hatred was also fueled by Russian propaganda and successfully used to destabilize the situation in the region. The war only exacerbated the social status of miners and their families.

8.2. In 2015, approximately 121 thousand people were employed in the coal industry in

Ukraine.<sup>21</sup> Workers in this industry most often suffer from violations of their labor rights, namely the lack of state guarantees of safe working environment and inability to provide timely remuneration. After the war in eastern Ukraine started in 2014, 76 percent of the mines of all forms of ownership remained in the territory controlled by illegal armed groups, which led to further deterioration of the situation.<sup>22</sup>

8.3. Due to a moratorium on inspections introduced by the Ukrainian government, the lack of individual safety gear, outdated equipment and personal negligence of the heads of coal enterprises, even minimal standards of safety are not upheld. In 2016, there were 481 injuries of miners at state-owned mines recorded, including 12 fatal incidents.<sup>23</sup> By 1<sup>st</sup> February 2017, state coal enterprises of Ukraine were provided with only 60%<sup>24</sup> of the necessary self-rescue devices.<sup>25</sup>

8.4. There are constant salary arrears in the mining industry. According to trade union activists, the amount of salary arrears on 1 December 2016 reached USD 14.4 million, which is almost equal to the monthly amount of workers' wages in state coal enterprises (approximately USD 14.8 million).

8.5. While employment opportunities for women at the coal mines are limited,<sup>26</sup> the mines are still key employers in single-industry communities<sup>27</sup> in Donbas. This vicious circle forces women to stay at home and give up personal development and career growth, becoming independent from their husbands-miners, who are primary breadwinners. It is important to note that economic dependency from men increases vulnerability of women to domestic violence.

8.6. The state's inability to ensure labor rights (salary arrears, lack of safety measures at state mines, lack of investments into development of mining towns and villages) stems from the scarcity of budget funds. At the same time, the state apparatus continues to initiate new practices that condone further plunder of public funds. One of these practices was the approved methodology for coal price calculation, known as the "Rotterdam plus" formula.<sup>28</sup> According to this formula, the price of coal extracted in Ukraine (including the occupied areas) was calculated as if it had been transported from Rotterdam. Following public pressure, the government dismissed the formula "Rotterdam plus"<sup>29</sup> in July 2016, however, the price

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<sup>21</sup> According to information from the official website of the State Statistics Service of Ukraine (<http://www.ukrstat.gov.ua/>).

<sup>22</sup> Ministry of Energy and Coal Industry of Ukraine. (2016, October 20). Letter No. 04/34-10974.

<sup>23</sup> Operational information about industrial injuries on the official website of the Ministry of Energy and Coal Industry of Ukraine. Retrieved from [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art\\_id=245171141&cat\\_id=202151](http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245171141&cat_id=202151).

<sup>24</sup> Ministry of Energy and Coal Industry of Ukraine. (2017, March 03). Letter No. 14.1-ВНХ/40-17.

<sup>25</sup> Self-rescue device is individual gear for protection from toxic products of combustion.

<sup>26</sup> It is caused partially by the ban on underground work for women, as well as by established opinion about "female" and "male" occupations/professions and miners' subculture based exclusively on "masculinity" and glorification of miners.

<sup>27</sup> A small single-industry town is a small town where specialization of labor of the economically active population is defined predominantly by enterprises of one-two key sectors of economy that form municipal budget revenues, ensure the functioning of social infrastructure and other essential services for population.

<sup>28</sup> National Energy and Public Utilities Regulatory Commission. (2016, March 03). On Approving the Procedure for Determining an Optimal Market Price for Electricity. Resolution No. 289.

<sup>29</sup> Minenergo pereglyanulo formulu formuvannya tsin na vuhillya [The Ministry of Energy has revised the formula

formation process has remained administrative and non-transparent.<sup>30</sup> In addition, a large part of state funds is lost through “laundering” of extracted coal at state mines, mixing low-quality coal from pits into the “household”<sup>31</sup> coal, as well as purchasing old equipment at the price of new one.

8.7. High level of corruption in the industry restricts the possibilities for people to take part in economic activities. It also prevents progressive exercise of social, economic and cultural rights, which directly depends on state resources.

8.8. Mines on the temporarily occupied territory currently do not have adequate occupational safety control. According to media sources, miners are forced to disguise work trauma as household injuries.<sup>32</sup> Since many coal enterprises in temporarily occupied areas stopped operations, illegal coal mining became more active in the region. According to the former member of the Donetsk regional council, the number of illegal mining sites has increased threefold in the recent years.<sup>33</sup>

8.9. During the military conflict in Donbas, some mines ended up directly in the zone of military activity, which also poses a serious threat to people’s safety. Shelling led to reported mine collapse incidents, emergency power outages and subsequent shutdown of ventilation systems and lack of possibility to evacuate miners working underground at the time. For instance, three mines (Dzerzhynskoho, Pivnichna, and Toretska) lost power during a shelling of Toretsk by illegal armed groups in August 2015, while 216 miners were underground.<sup>34</sup>

8.10. State mines controlled by illegal armed groups no longer receive subsidies from the state budget and were, therefore, transferred to a self-funding mode. It was not possible to establish the amount of salary arrears in the territory outside of the government’s control. Delays in salary payment in different enterprises controlled by the “DPR” and “LPR” can range from two months (Voykov and Volodarskyi mines, Dovzhansk<sup>35</sup>) to a year and a half

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for coal price calculations]. (2016, July 13). *Ekonomichna Pravda*. Retrieved from <http://www.epravda.com.ua/news/2016/07/13/599002/>.

<sup>30</sup> Minenergetiki otoshlo ot formuly tsenoobrazovaniya na ugol “Rotterdam plus”, - Nasalik [The Ministry of Energy dismissed the coal price formula “Rotterdam Plus”, says Nasalik]. (2017, February 13). 112 Ukraina. Retrieved from <http://112.ua/ekonomika/minenergetiki-otoshlo-ot-formuly-cenoobrazovaniya-na-ugol-roterdam-plyus-nasalik-371703.html>

<sup>31</sup> According to the law, current and former employees with a tenure of at least 10 years, living in houses with stove heating, have the right to receive free coal to heat their own houses.

<sup>32</sup> Na shakhtah v “LNR” gorniakov zastavliaiut “maskirovat” proizvodstvennye travmy [Miners in the “LPR” are forced to “hide” work trauma]. (2016, January 23). *Informator*. Retrieved from <http://informator.media/archives/140873>.

<sup>33</sup> Vuhillia iz zony ATO: ZMI rozpovili pro nelegalnu torhivliu palyvom, iaka zbahachuie vatazhkiv “DNR/LNR” [Coal from the ATO area: the media have reported on illegal fuel trade bringing wealth to the “DPR/LPR” leaders] (2016, April 14). UNIAN. Retrieved from <https://economics.unian.ua/energetics/1319015-vugillya-iz-zoni-ato-zmi-rozpovili-pro-nelegalnu-torgivlyu-palivom-yaka-zbagachue-vatajkiv-dnr-lnr.html>.

<sup>34</sup> Boyovyky nakryly vohnem Dzerzhynsk: Misto znestrumlene, zruinovani budynky, ye postrazhdali [The militants have shelled Dzerzhynsk: the city has no electricity, buildings are ruined, and there are victims]. (2015, August 08). Official website of the National Police Directorate in Donetsk region. Retrieved from <https://dn.npu.gov.ua/uk/publish/article/211817>.

<sup>35</sup> V “LNR” shakhteram mesiatyami ne platiat zarplatu i obeshchaiut uvolit [Miners in the “LPR” do not receive salary for months and receive promises they would be fired]. (2016, December 16). *DonPress*. Retrieved from <https://donpress.com/news/16-12-2016-v-lnr-shakhteram-mesyacami-ne-platyat-zarplatu-i-obeshchayut-uvolit>.

(enterprises that are part of “Donbasanratsyt” and “Luhanskvuhillia” associations<sup>36</sup>).

8.11. In the areas of Donetsk and Luhansk regions outside of Ukrainian government’s control, the miners have illusory possibilities to defend their rights due to severe restrictions on the freedom of expression and assembly, as well as elimination of independent trade union movement.

8.12. The self-proclaimed republics organized a campaign to eliminate independent trade unions using two key methods – psychological pressure from coal enterprises exerted on trade union leaders and/or the use of “law enforcement” structures of the self-proclaimed republics to eliminate independent trade unions. According to media reports, on 13 January 2016, miners of “Kholodna balka” (Makiyivka, Donetsk region) organized a protest against salary arrears. All of the 120 protest participants (according to other information – 132 persons) were dismissed; and the self-proclaimed authorities started “criminal cases” against organizers of the protest.<sup>37</sup>

8.13. The self-proclaimed republics use the trade union as a tool for legitimizing their power. Trade unions and associations of trade unions had to refile their documents in accordance with the so-called legislation of the self-proclaimed republics to continue their operations on the territory of the so-called “LPR/DPR”. It created conditions for screening out the independent trade unions and establishing a vertical system of trade unions under complete control of the so-called “authorities”.

8.14. According to article 170 of the Criminal Code of Ukraine, interference with legal activities of trade unions, political parties and public organizations constitutes a criminal offence. In 2014-2016, there were five criminal cases in Donetsk region and eight cases in Luhansk region launched under this article. At the same time, none of these criminal cases was sent to court.<sup>38</sup>

## RECOMMENDATIONS

8.15. To develop and implement a program to reform the coal industry in Ukraine in order to tackle the socio-economic problems of mining towns and villages.

8.16. To ensure effective investigation and prosecution of participants of corruption schemes in the coal industry.

8.17. To ensure transparent and effective state regulations on coal price calculation.

8.18. To ensure investigation and recording of cases of interference with activities of trade union organizations in Donetsk and Luhansk regions under the control of illegal armed groups.

8.19. To eliminate salary arrears for employees of coal enterprises.

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<sup>36</sup> Bahalyka, A., Kukin M. (2016, February 06). Shakhteram v “DNR” i “LNR” platiat tolko na “vitriinyh” predpriatiiah, - Lysyanskyi [Miners in the “DPR” and “LPR” receive salary only at “for show” enterprises, says Lysyanskyi]. Hromadske radio. Retrieved from <https://hromadskeradio.org/ru/programs/kyiv-donbas/shakhteram-v-dnr-i-lnr-platyat-tolko-na-vitriinyh-predpriyatiyah-lysyanskiy>.

<sup>37</sup> Esli trebuesh zarplatu, znachit ty sabotazhnik i predate: terroristy “DNR” nachali repressii protiv bastuiushchikh shahterov [If you demand a salary, you are saboteur and traitor: “DPR” terrorist began repressions against the protesting miners]. (2016, January 17). Dialog. Retrieved from [http://www.dialog.ua/news/76544\\_1452982506](http://www.dialog.ua/news/76544_1452982506).

<sup>38</sup> Office of the Prosecutor General. (2017, March 13). Letter No. 19/4-405вих-17.

8.20. To increase control over observance of occupational safety norms at coal industry enterprises.

8.21. To ensure that coal industry enterprises are fully equipped with individual safety gear.