POLICY BRIEF

Putting a Stop to Impunity
Human Rights Violations in Crimea

March 2016

Despite the hopes raised by the Euromaidan movement and improvements in many facets of life and governance in Ukraine, the last two years have brought the occupation of Crimea, armed conflict in parts of eastern Ukraine, and ongoing abuses, corruption, and political unrest. The "Russianization" of Crimea and its justice system; a severe crackdown on civil society and perceived political opponents; and the arbitrary application of the law in Crimea conspire to create what is in effect a lawless zone where the de facto authorities wield near absolute power. Crimea, under the control of the Russian Federation, is subjected to a hybrid Russian legal system, where laws are flexible and local pro-government armed forces act with impunity. Restrictions on public demonstrations, civil society organizations, the media, and others are routine. This situation is exacerbated by concerted efforts to prevent Ukrainians and international human rights monitors, journalists, and others from traveling to Crimea. Governments, international organizations, and human rights organizations must take steps to bear witness to the ongoing tragedy in Crimea and do their best to put a stop to it.

Russian Occupation: Leading to Systemic Rule of Law and Human Rights Violations

Dissenting voices in Crimea are "effectively silenced and denied any public space, especially as regards to those Crimean Tatars organizations which the *de facto* authorities consider non-loyal or claim to be extremist" according to the United Nations' Human Rights Monitoring Mission in Ukraine (HRMMU).[1] The *de facto* authorities use intimidation and harassment to eliminate any public opposition to the occupation of Crimea and to the current government. Local independent media and journalists have nearly all been coopted, forced to flee, or run out of business. Local entrepreneurs, minority religious groups, and others perceived to oppose Russian rule are swiftly dealt with.



Moreover, with the human rights crisis deepening, Russian-backed groups in Crimea have sought to prevent any independent reporting on human rights violations or anything else taking place in Crimea, exacerbating the fog of occupation. The Russian

[1] See, most recently, United Nations Human Rights Monitoring Mission in Ukraine, *Report on the human rights situation in Ukraine 16 May to 15 August 2015*, para. 20. All reports of the Mission available at http://www.ohchr.org/EN/Countries/ENACARegion/Pages/UAReports.aspx.

Federal Security Service (FSB), the local police, and "self-defense" units made up of pro-Russian residents enforce this order.

Russia is imposing its legislation and legal system on the peninsula on all fronts. The HRMMU reporting, as well as reporting prepared by the Crimean Human Rights Field Mission (CHRFM) and the Crimean Human Rights Group (CHRG),[2] reveal a broad curtailment of rights of people living in Crimea, due to the application of a restrictive legal framework imposed by the Russian Federation as well as the actions of groups acting outside of the law. Those responsible for enforcing, adjudicating, and interpreting the law generally chose to switch their allegiances to Russia rather than maintaining their Ukrainian positions.[3] Despite this formal shift in loyalties, Russia authorities transferred the most sensitive cases, such as Oleh Sentsov, to the Russian Federation to undergo trial.[4]

Human rights abuses, violations of fair trial guarantees, and the obliteration of the rule of law have been evident since the beginning of the occupation by the Russia. The judicial system now in place in Crimea suffers from the same lack of independence and dominance by the executive authorities as the judicial system in Russia. Moreover, Russian authorities have taken steps to avoid international accountability for their actions through a Russian Constitutional Court ruling that Russia does not have to abide by European Court of Human Rights (ECtHR) decisions if they contradict the Russian constitution. This was apparently in response to an application to the ECtHR submitted by Ukraine.[5]

Since the beginning of the occupation, Russia has assiduously sought to "Russianize" Crimea, reversing not only the legal status of the peninsula but also the strong identification of many of the peninsula's residents as Ukrainian. Indeed, "contrary to the Russian narrative, the annexation of the region was not the result of natural sociopolitical processes, nor did it grow from the aspirations of the Crimean population."[6]

As a part of this "Russianization" campaign, Russian and *de facto* Crimean authorities have coerced residents of Crimea into receiving Russian passports by making it significantly more difficult to formally maintain their Ukrainian citizenship than to change their citizenship to Russian.[7] These circumstances in effect deprived many of their right to Ukrainian citizenship. While the Russian Federal Migration Service (FMS) issued a statement on October 30, 2015, indicating that the legal requirement to inform the FMS about residents' citizenships in addition to Russian citizenship did not apply to Crimean residents, it is not clear

[2] CHRFM and CHRG are joint groups of Ukrainian, Russian, and other human rights defenders reporting on events in Crimea. Both organizations' reports are available at http://crimeahr.org.

[3] Most recently, as reported by the Ukrainian Human Rights Information Centre, "the High Council of Justice of Ukraine dismissed 276 judges in Crimea and Sevastopol upon the recommendation of the Higher Qualification Commission of Judges of Ukraine. The judges crossed over to the service to Russia and thus violated the oath." Reporting available at http://humanrights.org.ua/en/material/vishha_rada_justiciji_zvilnila_276_suddiv_v_krimu.

[4] Such cases include Ukrainian film-maker Oleh Sientsov, trade union activist Oleksandr Kolchenko, cameraman of the Crimean Tatar TV channel ATR Eskender Nebiyev, at least five Crimean Tatars, including the Deputy-Head of the Mejlis Akhtem Chiigoz. The online newspaper Euromaidan Press refers in December 2015 to 8 Ukrainian prisoners of conscience in Russia (http://euromaidanpress.com/2015/12/26/eight-ukrainians-political-prisoners-victims-of-russias-terror-in-occupied-crimea/#arvlbdata).

[5] See the Russian Constitutional Court's statement on the ruling, available at: http://www.ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3244

[6] As reported by Andrii Klymenko, Atlantic Council of the United States and Freedom House, *op. cit.*, page 4: "Residents of Crimea have grown more 'Ukrainian' in their outlook in recent years. According to a 2011 survey by the Razumkov Center 71.3% of respondents said they considered Ukraine their homeland – up from 39.3% in a 2008 poll. Among ethnic Russian residents, 66.8% viewed Ukraine as their homeland; among ethnic Ukrainians and Crimean Tatars, that figure was above 80%. Only 18.6% of respondents said they did not think of Ukraine as their homeland, while 10% said they could not answer the question."

[7] Russian and *de facto* Crimean authorities established only eight offices where Crimean residents could express their desire to maintain their Ukrainian citizenship. These offices were open for approximately 2 weeks, while the 250 offices opened for applying for Russian citizenship continue to operate.

whether there is an actual legal basis for the FMS' claims.

Furthermore, the repression against those who consider themselves Ukrainian or hold other national or ethnic identities led many to flee Crimea. This dynamic is especially apparent with the Crimean Tatar community in a sadly ironic twist given this group's persecution in the Soviet Union. Indeed, as part of its efforts to assume total control of the peninsula, "from the first days of the occupation, the Russian Federation organized a large-scale campaign of physical harassment and criminal prosecution of potentially disloyal groups and anyone who opposed the annexation of Crimea."[8] In part because of this persecution, at least 20,000 people have fled Crimea and have registered officially as IDPs.[9]

Such violations amount to systemic human rights abuses, a consequence of Russia's occupation of Crimea.

Civil Society Activity in Crimea: Crackdown by Russian and *de facto* Crimean Authorities

Since the beginning of the occupation, Russia has cracked down on civil society in Crimea through an oppressive legislative and regulatory framework, including, among other things, Russian laws regulating civil society organizations (CSOs), laws purportedly aimed at preventing extremism and terrorism, and media regulation and manipulation.

Russian and *de facto* Crimean authorities quickly established control over what had been a pluralistic media, making the conditions for media and journalists worse than in Russia itself. Independent outlets were forcibly shut down, transmissions of Ukrainian stations were switched to broadcasts from Russia, the internet access to a number of local and Ukrainian media outlets was blocked on the territory of peninsula, and many journalists fled Crimea to escape harassment, violence, and arrests. The 2015 imposition of re-registration on media was an effective tool to block the operation and emergence of independent media in Crimea. Most of the independent outlets and channels, in particular those publishing in Crimean Tatar, have not been allowed to re-register. For example, as noted by the HRMMU "the TV channel mostly watched by the Crimean Tatar community (ATR) and the most widely read newspaper (Avdet) were denied licenses to continue their work."[10]

Russia's anti-extremism statutes are wielded against perceived political opponents in Crimea. For example, a Crimean prosecutor requested in February 2016 that the Mejlis, the representative body of the Crimean Tatar people, be declared an extremist organization and banned in the Russian Federation. If successful, such a move would threaten all Mejlis members with criminal prosecution under articles 280 (public calls for extremist activity), 282.1 (organization of an extremist group), 282.2 (organization of the activity of an extremist organization), and others. Conviction under these articles could bring imprisonment for up to 8 years.[11]

The swift implementation of these restrictive provisions is aimed, in part, at preventing information about developments in Crimea from being distributed within and outside of the peninsula. For example, CHRFM was put on the so-called "patriotic stop-list" of the Federation Council of the Russian Federation in an effort to malign the

[8] Andrii Klymenko, Atlantic Council of the United States and Freedom House, *op. cit.*, page 10.
[9] There are approximately 20,000 registered IDPs from Crimea elsewhere in Ukraine according to the UN High Commissioner for Refugees. See pp. 1 at https://issuu.com/irf_ua/docs/gi-2015-1.
[10] United Nations Human Rights Monitoring Mission in Ukraine, *Report on the human rights situation in Ukraine 16 February to 15 May 2015,* para. 166.
[11] The appeal on condemnation of prohibition of activity of Mejlis of Crimean Tatar people by the Crimean Human Rights Group http://crimeahrg.org/en/on-condemnation-of-prohibition-of-activity-of-mejlis-of-crimean-tatar-people/

group as posing a threat to Russia but also endangering the group's work and its participants.

Following the wave of intimidation against civil society activists documented by the HRMMU,[12] the only independent civil society actors with regular access to Crimea able to monitor human rights on the ground are those working within the CHRFM, while independent civil society groups and organizations are almost entirely unable to operate in Crimea.

Access Restricted: Ukrainian and International Access to Crimea Severely Limited

The *de facto* authorities in Crimea have effectively and systematically denied access to Crimea to nearly all foreign representatives and international institutions responsible for monitoring human rights, including those responsible specifically for monitoring the situation in Crimea such as the HRMMU. The few international visitors traveling to Crimea to monitor developments are representatives of European right-wing parties that travel to Crimea to voice their support for Russia's policies, as well as celebrities close to the Kremlin.

In this context, the January 2016 visit to Crimea by the Council of Europe's Commission on Human Rights in Crimea led by Gerard Studman was a positive step, in particular their ability to visit with individuals such as Akhtem Chiygoz, Vice Chairman of the Mejlis of the Crimean Tatar People, imprisoned in Simferopol.[13] Yet, following the visit some reports indicated that Crimean Tatars that had met with the delegation were targeted with raids and arrests.[14]

The civilian blockade of Crimea, which began in September 2015 on the initiative of several Crimean Tatar leaders and Members of Ukraine's parliament, including Mustafa Dzhemilev, Refat Chubarov, and Lenur Islyamov, has only complicated the human rights situation in Crimea and challenges faced by people traveling to and from the peninsula. Unlawful checkpoints were established, as well as unlawful searches of vehicles and identity documents, arrests, damage to property. The blockade organizers have also arrested and interrogated human rights defenders and journalists. This blockade was yet another development contributing to Crimea's isolation. Ukrainian law enforcement agencies have received 139 complaints of criminal offences in the four months of the Crimea blockade.[15]

The Ukrainian authorities have also complicated access to Crimea for foreign journalists, human rights monitors, and others. On 4 June 2015, the Cabinet of Ministers of Ukraine adopted decree No. 367, regulating the entry and exit from Crimea and containing the exhaustive list of the grounds on which foreign nationals may be issued a special entry permit to Crimea and requiring that foreigners enter Crimea only through Ukraine (as opposed to through Russia). The grounds for receiving an entry permit did not include human rights monitoring, legal support, or journalist activity, which significantly restricted the work of human right activists, lawyers and journalists who are not citizens of Ukraine. In a September 2015 update, human rights activity and journalism were added to the grounds for receiving a permit (legal support was not), making it possible in theory for foreign journalists and human rights monitors to travel to Crimea without running afoul of Ukrainian law.

[12] United Nations Human Rights Monitoring Mission in Ukraine, *Report on the human rights situation in Ukraine 1 December 2014 to 15 February 2015,* paras 98 and following.
[13] "Council of Europe human rights mission returns from Crimea," 3 February 2016 (www.coe.int/en/web/portal/-/council-of-europe-human-rights-mission-returns-from-crimea).
[14] See http://www.rferl.org/content/ukraine-crimea-raids-tatars-yalta-bakhchesary/27545630.html.
[15] "Law enforcement agencies receive almost 140 complaints for four months of Crimea blockade," Human Rights Information Centre, 15 January 2016 (https://humanrights.org.ua/en/material/za_chotiri_misjaci_blokadi_krimu_pravoohoronci_otrimali_majzhe_140_skarg).

Still, the procedure for foreigners to obtain a special entry permit to travel to Crimea remains highly bureaucratic and complicated. For example, there is no possibility to apply online or from abroad (e.g. through Ukrainian consulates); foreign citizens must travel to Ukraine and submit all documents in Ukrainian; and it often takes more than 5 days – and in one recent case, 3 months – to receive a permit.

This entry permit system can put some foreign journalists and human rights defenders into the difficult position of deciding whether to risk violating Ukrainian law to continue their important work; it also makes it nearly impossible for emergency trips to Crimea to, for example, cover breaking events or monitor politically-motivated trials, due to the time necessary to receive the entry permit. Ironically, the January 2016 visit to Crimea by the Council of Europe's Commission on Human Rights in Crimea likely violated Ukrainian law, despite the mission's official high-level support from the Ukrainian Foreign Minister, as the delegation traveled to Crimea via Moscow.

Recommendations

→ **We call upon Ukraine to:**

- Invite the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) to report on the human rights situation in Crimea.
- Publicly denounce, at the United Nations and other international venues, the harassment of human rights defenders and journalists working on Crimea.
- Facilitate access to Crimea by independent journalists, human rights defenders, and international monitors, including by requiring notification rather than authorization for their travel to Crimea.

→ **We call upon the international organizations with monitoring presence in Ukraine to:**

- Seek access to Crimea to monitor human rights conditions; follow up on cases of human rights abuses; and press for the implementation of recommendations by the OSCE's ODIHR and High Commissioner on National Minorities, as well as the HRMMU.
- Review the cases of people arrested in Crimea and brought to courts in the Russian Federation and demand that these people be returned to Ukraine in order to face a Ukrainian court;
- Hold the Russian Federation to the conclusions delivered by the United Nations Human Rights Committee following its review of Russia in March 2015,[16] including those calling for:
  - the investigation of all allegations of serious human rights violations, including those committed by "Crimean self-defense" forces;
  - bringing perpetrators of human rights violations to justice and providing victims or their families with effective remedies;
  - ensuring the exercise in practice of freedom of expression and information for all residents of Crimea, including freedom to use the Internet, in accordance with the Russian Federation's obligations.
- Provide technical support and capacity building for Ukrainian and Russian civil society working on Crimea.

→ **We call upon the European Union and its member States, the United States, Canada, and other concerned States to:**

- Demand accountability for human rights violations that have occurred in Ukraine, including in Crimea, through available international human rights mechanisms, including:

[16] Concluding observations on the seventh periodic report of the Russian Federation, 28 April 2015, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fRUS%2fCO%2f7&Lang=en.

  - referral of cases to the International Criminal Court and the European Court of Human Rights;
  - consideration of cases at the UN Human Rights Council, including through country-specific resolutions, the appointment of a special rapporteur on the situation in Crimea, and statements and resolutions calling out violations of human rights;
  - support a UN General Assembly resolution on the status of Crimea that calls for unimpeded international access to Crimea by journalists, human rights defenders, UN special procedures, and international human rights monitors.
- Within any discussion on Ukraine, request as a *sine qua non* condition for further engagement with the Russia, that Russia allow unhindered access to Crimea by international organizations, including the HRMMU, United Nations special procedures, the OSCE and the Council of Europe, as well as by independent journalists and human rights defenders.
- Request that the Russian Federation allow the operation of independent non-governmental organizations and media outlets, and lift the bans on access to Crimea by private citizens, particularly Crimean Tatar leaders.
- Support Ukrainian and Russian civil society actors that are documenting human rights violations in Crimea and assisting victims of such violations.