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**Technical assistance and capacity-building**

**Civic space and fundamental freedoms ahead of the  
presidential, parliamentary and local elections in Ukraine in  
2019-2020**

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## Contents

I.	Executive summary .....	3
II.	Methodology .....	4
III.	Legal and institutional framework .....	4
IV.	Trends negatively affecting the exercise of fundamental freedoms .....	5
	A. Freedom of opinion and expression .....	6
	B. Freedom of association .....	7
	C. Freedom of peaceful assembly.....	8
	D. Freedom of religion or belief .....	9
V.	Conclusions and recommendations .....	10

## I. Executive summary

1. Since early 2018, the Office of the United Nations High Commissioner for Human Rights (OHCHR)<sup>1</sup> has been paying particular attention to the issue of civic space<sup>2</sup> and fundamental freedoms in Ukraine. OHCHR notes a lack of accountability in most of the documented cases of attacks against journalists and other media professionals, civic and political activists, and defence lawyers. As long as such impunity remains unaddressed, space for the promotion and protection of fundamental freedoms is at risk.

2. Ahead of the presidential and parliamentary elections in March and October 2019 respectively and of the local elections in October 2020, this report provides a brief overview of developments that have affected the enjoyment of freedoms of opinion and expression, association, peaceful assembly, religion or belief, and political rights. Persistence or an increase of attacks on human rights pertinent to elections could have an impact on the exercise of the right to participate in the upcoming electoral processes and affect their fairness and credibility. The report puts forward recommendations to improve the human rights environment in the context of elections and to thereby strengthen conditions for peaceful and inclusive elections.

3. During the reporting period, OHCHR documented 164 violations and identified a set of concerns regarding restrictions to civic space, including failure of the authorities to ensure security for peaceful assemblies and inability to protect groups at risk, lack of investigation and accountability for perpetrators, and attempts to limit civic space by means of shaping the regulatory framework. In at least 34 documented incidents, perpetrators are directly linked or affiliated with extreme right-wing groups.<sup>3</sup>

4. In the context of elections, the Government should be particularly diligent in ensuring respect for fundamental freedoms and condemn and address acts of violence, intimidation, intolerance or discrimination based on any grounds, including political opinion. Peaceful and inclusive elections require an environment where all human rights, in particular the rights to equality and non-discrimination, to freedoms of opinion and expression, peaceful assembly and association, are fully respected and enjoyed by all individuals.

5. This report covers the period from 1 January 2018 to 15 January 2019 and focuses on territory where the Government exercises effective control and where the aforementioned elections will be carried out. Thus, the report does not refer to the situation in territory controlled by the self-proclaimed ‘Donetsk people’s republic’ and self-proclaimed ‘Luhansk people’s republic’ and in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation.<sup>4</sup>

<sup>1</sup> On 14 March 2014, OHCHR deployed the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU). *See* the Agreement between the Government of Ukraine and the Office of the United Nations High Commissioner for Human Rights on deployment of the short-term human rights monitoring mission in Ukraine of 31 July 2014. Full text of the Agreement is available from: [http://zakon.rada.gov.ua/laws/show/995\\_001-14](http://zakon.rada.gov.ua/laws/show/995_001-14).

<sup>2</sup> In this report, “civic space” refers to the environment and legal framework in which civil society operates; the place that civil society actors occupy within society and the relationships among civil society actors, the State, and the general public.

<sup>3</sup> In this report, the term “extreme right-wing groups” refers to political parties, movements and groups who blame vulnerable groups for societal problems and incite intolerance and violence against them. In Ukraine, extreme right-wing groups have perpetrated attacks against Roma and other minorities, including LGBTQI. Through their actions, they bring into question the fundamental principle of non-discrimination by propagating an ideology based on racism, discrimination, xenophobia and intolerance. *See* Reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/35/42 of 26 April 2017 and A/HRC/18/44 of 21 July 2011).

<sup>4</sup> General Assembly resolutions 68/262, 71/205, 72/190 and 73/263 prescribe that the Autonomous Republic of Crimea and the city of Sevastopol is territory of Ukraine under the temporary occupation of the Russian Federation. Civic space situation in territory controlled by the self-proclaimed ‘Donetsk people’s republic’ and self-proclaimed ‘Luhansk people’s republic’, and the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian

## II. Methodology

6. The report is based on information that OHCHR collected through interviews with victims, witnesses and their lawyers; and direct observation, including trial monitoring; analysis of corroborating information confidentially shared with OHCHR; official records, including court documents; open-source documents and video, photo and audio materials (including those produced by alleged perpetrators); and other relevant and reliable data. In accordance with OHCHR methodology, the standard of proof applied is that of “reasonable grounds to believe”<sup>5</sup>.

7. OHCHR is committed to the protection of its sources and therefore ensures their confidentiality. It does not disclose any information that may lead to the identification of sources, unless the latter have provided their informed consent. OHCHR also systematically assesses the potential risks of harm and retaliation against its sources and may decide not to disclose information owing to protection concerns even when it has obtained the informed consent of the source.

## III. Legal and institutional framework

8. This report addresses the situation of fundamental freedoms in Ukraine at the start of the three electoral campaigns – presidential, parliamentary and local elections. The first round of the presidential elections is scheduled for 31 March 2019. If none of the participating candidates succeeds in receiving over 50 per cent of the votes, a second round could be held on 21 April 2019. Voting day on 27 October 2019 is scheduled for parliamentary elections, and on 25 October 2020 for local elections.

9. All concerns raised in this report directly refer to human rights protected by international and regional instruments, including but not limited to the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms<sup>6</sup>, both ratified by Ukraine.

10. These rights are also protected under national legislation, including the Constitution of Ukraine (articles 34, 35, 36, 37, 38 and 39), the Civil Code, and the laws ‘On printed media’, ‘On political parties in Ukraine’, ‘On public associations’ and ‘On freedom of conscience and religious organizations’.<sup>7</sup>

11. National regulations regarding electoral procedures are enshrined in the Constitution of Ukraine and the laws “On elections of the President of Ukraine”, “On elections of members of the Parliament of Ukraine”, “On local elections”, “On Central Electoral Commission”, “On political parties in Ukraine” and “On the State register of voters”.<sup>8</sup>

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Federation is reflected in regular quarterly reports and relevant thematic reports on Crimea issued by OHCHR on 25 September 2017 and 10 September 2018.

<sup>5</sup> OHCHR draws information from direct interviews with victims and witnesses, which it corroborates with information from additional independent sources.

<sup>6</sup> These include freedom of opinion and expression (International Covenant on Civil and Political Rights, article 19, and European Convention on Human Rights and Fundamental Freedoms, article 10), freedom of peaceful assembly (International Covenant on Civil and Political Rights, article 21, and European Convention on Human Rights and Fundamental Freedoms, article 11), freedom of association (International Covenant on Civil and Political Rights, article 22, and European Convention on Human Rights and Fundamental Freedoms, article 11), freedom of religion or belief (International Covenant on Civil and Political Rights, article 18, and European Convention on Human Rights and Fundamental Freedoms, article 9), right to vote and stand for election (International Covenant on Civil and Political Rights, article 25).

<sup>7</sup> Constitution of Ukraine, 28 June 1996; Civil Code of Ukraine No. 435-IV, 16 January 2003; Law “On printed media” No. 2782-XII, 16 November 1992; Law “On political parties in Ukraine” No. 2365-III, 5 April 2001; Law “On public associations” No. 4572-VI, 22 March 2012; and Law “On freedom of conscience and religious organizations” No. 987-XII, 23 April 1991.

<sup>8</sup> Constitution of Ukraine; Law “On elections of the President of Ukraine” No. 474-XIV, 5 March 1999; Law “On elections of members of the Parliament of Ukraine” No. 4061-VI, 17 November

12. Ukraine has engaged in almost continuous electoral reform since its independence. With four major electoral system reforms – from a majoritarian system to a mixed system to fully proportional and back to mixed – it is one of the countries in the world that has undergone the most frequent changes to its electoral system. A new, ongoing reform process was initiated in 2014 when, under a Coalition Agreement, the main political parties agreed to transform the electoral system from a mixed system to a proportional one with open lists.

13. There are currently over a dozen draft laws on the agenda of the Parliament aimed at (a) ensuring regular renewal of democratic representatives through elections; (b) avoiding undue administrative influence that may have an impact on the results of elections; and (c) ensuring accountability for those who violate electoral laws. These legislative initiatives include the draft Electoral Code and are commonly referred to by experts and civil society as elements of the “electoral reform”.<sup>9</sup> Although these documents are at different stages of the legislative process, with some having passed the first reading, none of them will affect the 2019 elections.<sup>10</sup>

14. While over one million<sup>11</sup> internally displaced persons (IDPs) in Ukraine enjoy the full scope of voting rights in presidential elections, they are still not eligible to vote in local elections and to fully participate in parliamentary elections.<sup>12</sup> OHCHR remains concerned about the absence of regulatory framework to guarantee the full participation of IDPs in the elections.<sup>13</sup>

#### IV. Trends negatively affecting the exercise of fundamental freedoms

15. Throughout the reporting period, OHCHR documented 164 violations affecting the fundamental freedoms of opinion and expression, peaceful assembly and association, and religion or belief, as well as the right to non-discrimination and equal protection under the law. While documenting a gradual increase<sup>14</sup> of violations affecting journalists and other media professionals, civic and political activists, and defence lawyers, OHCHR notes that a significant number of them relate to attacks allegedly perpetrated by extreme right-wing groups, in most cases with impunity. Even though there was a decrease in violations after 15

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2011; Law “On local elections” No. 595-VIII, 14 July 2015; Law “On Central Electoral Commission” No. 1932-IV, 30 June 2004; Law “On political parties in Ukraine” No. 2365-III, 5 April 2001; and Law “On the State register of voters” No. 698-V, 22 February 2007.

<sup>9</sup> See European Parliament Policy Department, Directorate-General for External Policies, Study “The electoral reforms in three association countries of the Eastern Neighbourhood - Ukraine, Georgia and Moldova”, October 2017.

<sup>10</sup> According to good electoral practice, fundamental changes to electoral law should not be made within one year before an election. See Venice Commission’s Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), item II 2b.

<sup>11</sup> This is a raw estimation based on numbers provided by the Ministry of Temporarily Occupied Territories and IDPs of Ukraine (not taking into account the estimated number of IDPs who are under 18 years old.). According to the official statistics of the State registry of voters, there were 35,582,184 registered voters as at 31 January 2019 in Ukraine.

<sup>12</sup> In one case, in April 2018, the Prymorskyi district court of Odesa restored the voting rights of an IDP from Donetsk. In July 2018, in another case, the Supreme Court of Ukraine ruled that registration of place of residence for IDPs was a temporary measure, whereas the right to participate in local elections would be granted for those with permanent registration in a respective area. This could be considered as a setback, as IDPs should be able to exercise the right to vote in local, as well as parliamentary and presidential elections.

<sup>13</sup> According to Draft guidelines for States on the effective implementation of the right to participate in public affairs States should remove unreasonable barriers to voter registration, including onerous or burdensome administrative requirements for accessing the necessary documentation to exercise the right to vote, particularly for women, minorities, indigenous peoples, those living in remote areas and internally displaced persons (A/HRC/39/28, 20 July 2018)

<sup>14</sup> In the course of 2018, OHCHR documented 41 violations of fundamental freedoms between 16 February and 15 May, 45 violations between 16 May and 15 August, and 59 between 16 August and 15 November.

November 2018 due to the seasonal lull occurring every new year period, OHCHR is concerned that, if impunity remains unaddressed there is a risk that this will fuel further attacks.

*On 31 July 2018, a female senior staff of a city council, known for her anticorruption views, was attacked with acid. On 4 November 2018, she died in hospital following complications resulting from her injuries. The organizers of the attack are still not brought to account.*

## A. Freedom of opinion and expression

16. OHCHR observed a pattern of violent attacks and acts of intimidation against journalists and other media professionals, civil society and political activists, as well as defence lawyers throughout the reporting period. These attacks have created an atmosphere of intimidation, which has a chilling effect on people's ability and willingness to speak openly on issues of public importance, notably to express their disagreement or concerns about policies. The protection of the right to freedom of opinion and expression is particularly essential during times of political change, notably to ensure that the public is well-informed and empowered to safely and freely exercise civil and political rights. Providing the conditions for free and open political communication is an essential element of ensuring fair and democratic electoral processes.<sup>15</sup>

17. Throughout the reporting period, OHCHR observed a gradual increase of attacks against journalists, including incidents perpetrated in front of cameras during live broadcasting.<sup>16</sup> Investigators often failed to accurately classify these attacks under applicable law, disregarding perpetrators' motive to disrupt or prevent journalists' activities.<sup>17</sup> Disregarding such motive that would justify other charges carrying higher sentences leads to impunity on these charges. Investigators thereby deny the particular protection that is afforded to journalists by the law.

18. In 2018, in at least two separate cases, Ukrainian courts ruled to grant prosecution access to personal data of investigative journalists, including of their sources, which could be perceived as acts of intimidation.<sup>18</sup> These decisions are of concern and could encourage further attempts of authorities to intimidate journalists, foster censorship and discourage their investigative work.<sup>19</sup>

19. Furthermore, various authorities continued using a broad and inconsistent interpretation of criminal provisions related to terrorism, provisions on high treason and trespassing on Ukraine's territorial integrity against journalists, bloggers and social media users for publishing or posting and reposting information seen as 'anti-Ukrainian'.

20. Moreover, concerns arise about certain legislative initiatives proposing to vest State authorities with wide discretion and power to block online sources which would unduly restrict freedom of opinion and expression.<sup>20</sup>

21. OHCHR observed an increase in violent attacks against civil society activists in 2018. On 27 September 2018, approximately 70 civil society organizations and political parties

<sup>15</sup> See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 2 July 2014 (A/HRC/26/30, para 11).

<sup>16</sup> See OHCHR Report, 16 August – 15 November 2018, para 73.

<sup>17</sup> Despite of clear signs of other crimes, some of these attacks are classified only as 'hooliganism', which would lead to a milder punishment.

<sup>18</sup> See OHCHR Report, 16 August – 15 November 2018, para 75.

<sup>19</sup> In one of these cases, it was the first time the European Court of Human Rights applied interim measures under Rule 39 of the Rules of Court to the case pertaining to freedom of expression in Ukraine.

<sup>20</sup> Draft law no.6688 'On amendments to certain legislative acts of Ukraine concerning counteraction to threats to national security in the information sphere', 12 July 2017. See OHCHR Quarterly Report 16 May – 15 August 2018, para 85.

participated in an all-Ukrainian rally calling the attention of the public and authorities to attacks against various civil society activists, some of whom worked to expose corruption. Attacks documented by OHCHR in 2018 ranged from spraying acid<sup>21</sup> on victims to gun injuries<sup>22</sup> and caused the death of two activists.<sup>23</sup> Despite the creation of the Special Parliamentary Investigation Commission, investigations into several attacks are not progressing.<sup>24</sup>

22. Throughout the reporting period, OHCHR documented six cases of attacks and intimidation against defence lawyers involved in high profile cases, including lawyers representing defendants known for their independent views. Notably, these attacks were all committed either by members of extreme right-wing groups or unidentified perpetrators allegedly affiliated with such groups. All these attacks occurred inside or in front of court buildings. OHCHR notes the lack of progress in investigations into such attacks, inadequate security in and around court premises, and failure of law enforcement to effectively prevent and stop such incidents.<sup>25</sup>

23. The lack of accountability for attacks on civil society perpetrated by extreme right-wing groups also raises concern.<sup>26</sup> Throughout the reporting period, the number of attacks and acts of intimidation documented by OHCHR, involving members of extreme right-wing groups, reached 34. A few of them are currently being investigated. OHCHR documented cases when, despite sufficient police presence, authorities failed to apprehend perpetrators. OHCHR is concerned that such impunity may fuel further attacks.

## B. Freedom of association

24. OHCHR documented nine incidents targeting activists affiliated with political parties

*On 6 July 2018, an extreme right-wing group disrupted an event of a centrist political party in Kyiv and violently attacked its members. Despite numerous witnesses, the police disregarded the motive of the attack classifying it as only ‘delivering minor injuries’.*

or organizations, including physical attacks,<sup>27</sup> acts of intimidation,<sup>28</sup> attempts to forcefully enter places of residence,<sup>29</sup> and property destruction.<sup>30</sup> In at least two of these cases, investigators disregarded the status of victims as political activists, which incurs an entitlement to additional protection under national law.<sup>31</sup> At a later stage, one of the cases

<sup>21</sup> On 17 July 2018, in Kyiv, an anti-corruption activist was sprayed with Brilliant green (*zelenka*) during a rally demanding the resignation of the Head of the Special Prosecutor’s Office for anti-corruption. The victim suffered from chemical burns to the eyes. On 31 July 2018, Kateryna Handziuk, a senior staff member of the Kherson city council, known for her advocacy against corruption, was attacked with acid.

<sup>22</sup> On 22 September 2018, an activist, known for his criticism of local authorities, was shot near his house in Odesa. The bullet was extracted from his body in January 2019 and he still requires intensive care.

<sup>23</sup> This refers to two lethal cases: an incident in Kharkiv region, when an anti-corruption and environmental activist Mykola Bychko was found hanged in Eskhar village, and the death of Kateryna Handziuk in hospital following complications resulting from injuries after an acid attack.

<sup>24</sup> OHCHR meeting with member of the Special Parliamentary Investigation Commission, 18 January 2019.

<sup>25</sup> See OHCHR Quarterly Reports 16 May – 15 August 2018, para 99; and 16 August – 15 November 2018, para 60.

<sup>26</sup> A/HRC/39/28 Report of the Office of the United Nations High Commissioner for Human Rights.

<sup>27</sup> OHCHR interviews, 12 October and 9 December 2018.

<sup>28</sup> OHCHR interview, 10 September 2018.

<sup>29</sup> OHCHR interview, 12 October 2018.

<sup>30</sup> Activists were allegedly attacked for their political activism.

<sup>31</sup> In particular this refers to Article 346 of the Criminal Code of Ukraine which prescribes liability for threats or violence against State or civic actor.

was re-classified with adequate charges.<sup>32</sup> Several attacks against offices of various political parties throughout Ukraine were carried out by extreme right-wing groups in 2018. In some cases, the perpetrators physically assaulted staff in the offices.<sup>33</sup> Such acts appear to be intended to restrict the activities of certain political parties ahead of the elections, effectively hindering political pluralism and constituting undue restrictions to the freedom of association.

25. OHCHR is concerned by a growing number of legislative initiatives proposing restrictions on freedom of association, such as those aiming at introducing additional reporting requirements for civil society organizations.<sup>34</sup> Furthermore, the elections are increasingly used as a justification to elaborate new restrictive measures, such as requiring organizations “acting directly or covertly in the interests of the Russian Federation” to register as “agents of the aggressor State”, “as means of protecting national interests in the wake of elections”.<sup>35</sup> In this regard, OHCHR notes that States should not stigmatize associations by equating their objectives to those of foreign agents.<sup>36</sup>

26. OHCHR remains concerned that the widely criticized e-declaration requirements imposed on anti-corruption activists in March 2017<sup>37</sup> remain in force contrary to the recommendations of the Venice Commission.<sup>38</sup>

### C. Freedom of peaceful assembly

*On 19 August 2018, a group of unknown perpetrators violently attacked an antidiscrimination event in Mariupol. The police is investigating the incident as ‘hooliganism’, disregarding possible additional classifications based on the motives of the attack.*

27. Throughout the reporting period, OHCHR documented 17 violations of the right to freedom of peaceful assembly. All of these violations affected assemblies that were organized by minority groups or those representing alternative opinions. In ten documented incidents, police failed to protect the safety of those involved in the assemblies and to take measures against those who attacked or violently disrupted the events.<sup>39</sup> Instead, police officers

<sup>32</sup> OHCHR interview, 9 December 2018. The victim told OHCHR that the police had initially classified the attack as hooliganism but later re-classified it as an “attack against a State or civic actor”.

<sup>33</sup> OHCHR interview, 7 January 2019.

<sup>34</sup> Draft law no. 6674 ‘On amendments to certain legislative acts of Ukraine concerning transparency of information on financing of the activities of public associations and the use of international technical assistance’, 10 July 2017. This bill failed the vote in Parliament on 3 April 2018; Draft law no. 8501 ‘On amendments to certain legislative acts of Ukraine concerning transparency and openness of information on the activities of charitable organizations and public associations receiving funding from foreign countries and foreign non-governmental organizations’, 20 June 2018. Pending review in the Committee.

<sup>35</sup> Statement of parliamentarian Maksym Burbak, at the coordination meeting in Parliament, 17 September 2018. On 20 September 2018, during his annual address in Parliament, President Poroshenko expressed support for such a legislative initiative, stating that “*this law will in no way affect civil society, mass media and freedom of speech*”.

<sup>36</sup> A/HRC/38/34, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 13 June 2018, paras 34-36.

<sup>37</sup> Law of Ukraine ‘On amendments to article 3 of the law on prevention of corruption’ no. 1975-VIII, 23 March 2017.

<sup>38</sup> Joint opinion (CDL-AD(2018)006) adopted by the Venice Commission at its 114th Plenary Session (Venice, 16-17 March 2018). According to the law, the heads and members of boards of anti-corruption organizations had to submit their annual declarations on annual basis. See OHCHR Quarterly Report 16 February – 15 May 2018, para 87.

<sup>39</sup> The State has a positive obligation to facilitate peaceful assemblies, which includes the protection of participants from individuals or groups of individuals, including agents provocateurs and counter-demonstrators, who aim at disrupting or dispersing such assemblies. A/HRC/20/27, p 8, para. 27.



apprehended participants in public assemblies, issued warnings of dispersion, or physically pushed participants from the venue.

28. At least in seven cases, the perpetrators of attacks were members of extreme right-wing groups. In some of the cases, police officers failed to apprehend perpetrators either during or immediately after they had attacked or disrupted peaceful assemblies. Such acts limit the space for civil society groups to freely express their views, which is important ahead of the upcoming elections. Ensuring the right to peaceful assembly is essential in order to campaign and participate in public rallies, take part in voter education activities, cast votes, observe and monitor elections and hold candidates and elected officials accountable in case of violations.<sup>40</sup>

While OHCHR welcomes measures taken by the police to ensure public safety during mass public assemblies<sup>41</sup> in several Ukrainian cities in 2018, LGBTQI<sup>42</sup> gatherings in smaller cities, such as Chernivtsi or Mariupol, lacked sufficient protection. Also, OHCHR documented cases where the Security Service of Ukraine (SBU) prevented organizers from participating in public assemblies, for example a counter-demonstration to an official commemorative event, using informal warnings or summoning them for ‘a conversation’ on the day of the event.<sup>43</sup>

#### D. Freedom of religion or belief

*On 29 June 2018, a church in Odesa was robbed and desecrated. The police launched a criminal investigation into the fact of robbery, while disregarding a possible additional classification as hate crime.*

29. Although tensions between Orthodox communities in Ukraine existed prior to the armed conflict in eastern Ukraine, they have been significantly exacerbated by the ongoing autocephaly process.<sup>44</sup> Throughout the reporting period, OHCHR documented 10 incidents of threats and acts of intimidation against clergy and parishioners mainly affecting the Ukrainian Orthodox Church (of the Moscow Patriarchate).<sup>45</sup> OHCHR is concerned that the current political environment further contributes to tensions negatively impacting the freedom of religion or belief, with possible negative consequences for other human rights, including the right to freedom of opinion and expression, ahead of elections.

30. In November 2018, following the refusal of the Ukrainian Orthodox Church to join the newly established Orthodox Church in Ukraine, the Security Service of Ukraine (SBU)

<sup>40</sup> A/68/299, Rights to freedom of peaceful assembly and association, Note by the Secretary-General, 7 August 2013, para 6.

<sup>41</sup> This refers to celebrations of the Day of Defender of Ukraine, the processions of parishioners of the Ukrainian Orthodox Church (of Moscow Patriarchate) and Ukrainian Orthodox Church of Kyiv Patriarchates, as well as Equality Marches in Kyiv and Odesa. During mentioned assemblies OHCHR observed sufficient security and adequate protection of participants by the police.

<sup>42</sup> In this report, the acronym LGBTQI refers to lesbian, gay, bisexual, transgender, queer and intersex individuals and relevant communities. OHCHR is aware of an incompatibility of views with some of mentioned groups. This term is used as a broad description to cover as many individuals as possible who face discrimination based on sex and gender identity.

<sup>43</sup> In particular, this refers to assemblies held on commemorative dates for World War II or gatherings to commemorate victims of the violence that occurred on 2 May 2014 in Odesa.

<sup>44</sup> While the Ukrainian Orthodox Church of Kyiv Patriarchate (hereinafter UOC KP) and the Ukrainian Autocephalous Orthodox Church supported and later joined the process of receiving autocephalous (independent) status from Ecumenical Patriarchate, the Russian Orthodox Church and the Ukrainian Orthodox Church, repeatedly referred to this as interference in internal canonical matters. On 6 January 2019, a newly established Orthodox Church in Ukraine received autocephaly from the Ecumenical Patriarchate and was still awaiting registration as an official religious organization in Ukraine as at February 2019.

<sup>45</sup> Often referred to as the Ukrainian Orthodox Church – Moscow Patriarchate to differentiate it from the UOC KP, but according to the official registration (data retrieved in January 2019) it is the Ukrainian Orthodox Church and will be referred to as such.

launched a series of criminal investigations into allegations of incitement to religious hatred, with the additional charge of high treason in at least one case, without issuing notices of suspicion. In the context of these investigations, SBU searched the property of the Ukrainian Orthodox Church and the homes of the clergy hierarchy. SBU also interrogated clergymen in different regions of Ukraine.<sup>46</sup> Individuals interviewed by OHCHR, reported that such actions put them under pressure and said that despite the absence of direct threats or coercion, they considered these as attempts to influence their position on autocephaly.

31. On 20 December 2018, the Parliament voted to begin the mandatory renaming of the religious organizations affiliated with religious centres in the Russian Federation, primarily targeting the communities of the Ukrainian Orthodox Church.<sup>47</sup> The Parliament also adopted restrictions on the access of clergymen of such organizations to the premises of the Armed Forces of Ukraine on the basis of national security considerations. This contravenes article 18(3) of the International Covenant on Civil and Political Rights as national security is not a permissible ground for a restriction of freedom of religion or belief.<sup>48</sup>

## V. Conclusions and recommendations

32. OHCHR notes the efforts of the Government of Ukraine to ensure the efficiency and transparency of investigations into high-profile cases of violent attacks against civil society activists as well as increased security and protection during massive public assemblies in big cities. OHCHR is however concerned about the increase of violent acts during the reporting period targeting journalists, civil society activists and other persons at risk; the failure of law enforcement forces to immediately prevent or stop such acts; impunity of perpetrators of violent attacks; and the adoption and implementation of legislation that could negatively impact fundamental freedoms.

33. The right to participate in public affairs requires that the life, physical integrity, liberty, and security of all members of society, including journalists and civil society activists, should be protected at all times. It also requires an environment that values and takes into account the peaceful and legitimate contribution of all members of society.

34. States should protect civil society actors, including human rights defenders and journalists, in particular, from all threats, attacks, reprisals and acts of intimidation including against them or their family members, associates and legal representatives. Such acts should be promptly, thoroughly and impartially investigated, perpetrators brought to justice, and effective remedies provided. In this context, Ukrainian authorities should exercise due diligence in preventing abuse committed by non-State actors.

35. In order to promptly improve the protection of fundamental freedoms, not least ahead of the elections, OHCHR recommends:

### 1. To the Government of Ukraine:

(a) publicly condemn all violent attacks, including those committed by extreme right-wing groups,

<sup>46</sup> A criminal case under these charges was opened on 21 November, eight days after the Ukrainian Orthodox Church publically announced its refusal to support autocephaly.

<sup>47</sup> According to the Law of Ukraine no. 2662-VIII of 20 December 2018, a religious organization that is structurally affiliated with a foreign religious organization, the governing centre of which is located in the country, recognized as an “aggressor State”, should reflect in its official name that of the religious center is in such foreign state. Failure to follow this requirement within a four months deadline may render void the charter of the organization “in the part defining its full official name”.

<sup>48</sup> The United Nations Human Rights Committee, in its general comment No. 22 (1993) (para. 8) emphasized that Article 18(3) of the International Covenant on Civil and Political Rights permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. This paragraph is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.

(b) against journalists and other media professionals, civic and political activists, defence lawyers and those representing alternative opinions, and systematically call for accountability;

(c) promptly, impartially and efficiently investigate all cases of violent attacks, including those committed by extreme right-wing groups, targeting media professionals, civic and political activists, human rights defenders, political parties, and defence lawyers. Criminal motives and other aggravating circumstances should be considered during investigations and prosecution;

(d) ensure security for public assemblies, including smaller assemblies and events organized by representatives of groups that are marginalized or discriminated against, such as the LGBTQI community; and to immediately prevent and stop all acts of violence, while facilitating the exercise of freedom of peaceful assembly without discrimination;

(e) cancel the e-declaration requirements for anti-corruption activists introduced by Law No. 1975-VIII of 23 March 2017;

(f) refrain from imposing excessive financial reporting and disclosure requirements for public associations or, at a minimum, ensure that any such requirements are based on compelling evidence that they are necessary in a democratic society and proportionate to their legitimate aim;

(g) consider adopting legislation to ensure IDPs have an opportunity to participate fully in all the upcoming elections;

(h) uphold Ukraine's international human rights obligations<sup>49</sup>, i.e. not only to ensure the right to manifest one's religion or belief in worship, either individually or in community with others, observance, practice and teaching, but also to take effective measure to ensure that no one shall be subject to discrimination by any State institution, group of persons, or person on grounds of religion or belief.

## **2. To the international community:**

(a) use all available diplomatic instruments in order to amplify OHCHR recommendations to the Government to respect fundamental freedoms and abstain from activities that specifically target civic space, particularly ahead of the presidential, legislative and local elections;

(b) advocate for the Government of Ukraine to adhere to the relevant norms and standards of international human rights law and to protect civic space;

(c) call on Ukrainian authorities to condemn, prevent and stop all forms of violence against journalists and other media professionals, civic and political activists, defence lawyers and those representing alternative opinions; and

(d) urge political stakeholders to pursue their goals through peaceful means and to fully respect human rights.

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<sup>49</sup> Article 18 of the International Covenant on Civil and Political Rights and Article 2 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.