



# SUBMISSION ON THE LIST OF ISSUES CONCERNING UKRAINE TO THE CEDAW COMMITTEE 66<sup>TH</sup> SESSION (13 FEBRUARY—3 MARCH 2017)

## ABOUT THE AUTHORS

The following submission concerns Ukraine, and specifically focuses **on the situation of women in the conflict zone in eastern Ukraine**. The updated report<sup>1</sup> was prepared by the Eastern-Ukrainian Centre for Civic Initiatives (EUCCI), which coordinates monitoring of gender-based violence (“GBV”) in the conflict zone, and the Helsinki Foundation for Human Rights (HFHR), which coordinated the submission process.

The organizations submitting the following shadow report are representatives of the Coalition “Justice for Peace in Donbas” (the “Coalition”) The Coalition was established in December 2014 and currently gathers 17 NGOs mainly from the Ukrainian regions of Donetsk and Luhansk. The Coalition’s purpose is to act together in documenting violations of human rights during armed conflict in the east of Ukraine.

## INTRODUCTION

Since 2014, the Coalition has carried out monitoring and documentation of gross human rights violations committed during the conflict in the east of Ukraine. Among the major focus of monitoring, there was also GBV.

Different forms of GBV were reported in every third interview. Based upon this information, it is evident that GBV is widespread and common in the context of the armed conflict in eastern Ukraine and women and girls constitute a group most vulnerable to sexual violence in illegal detention facilities. Despite the

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<sup>1</sup> The Coalition ‘Justice for peace in Donbas’ had previously submitted a report to the Committee’s pre-session (July, 2016).

fact that the gravity of violence is appalling, GBV remains underreported and neglected by the Ukrainian authorities.

Information for the submission was collected through semi-structured interviews with victims and witnesses of GBV, as well as experts from NGOs; desk research of Internet sources (social media, news sites); information requests to public authorities; analysis of case-law on GBV available in the Unified State Register of Court Decisions.

## 1. GENDER-BASED VIOLENCE AGAINST WOMEN IN THE CONFLICT AREA

*Women are illegally deprived of liberty by illegal armed groups in areas under their control as well as by Ukrainian military in areas close to the conflict. Illegal detention is often accompanied by the perpetration of various forms of GBV against women and girls.*

Members of the Coalition “Justice for Peace in Donbas” conducted monitoring<sup>2</sup> of GBV in the conflict zone of eastern Ukraine, in particular with the focus on GBV in illegal detention facilities. The monitoring covered the period from spring 2014 to winter 2016.

As of December 2016, 95 interviews were conducted with survivors and witnesses of GBV (men and women, girls and boys), experts (medical personnel, psychologists, social workers, lawyers, law enforcement officers) and others who have information on the subject. Out of all interviews 64 have information about GBV against women.

Based on the information from the collected interviews at least 229 women were subjected to conflict-related GBV. Of those, 94 women were victims of sexual violence in illegal detention facilities operated by illegal armed groups and 2 women were subjected to sexual violence in illegal facilities operated by Ukrainian volunteer armed groups. At least 114 women were illegally detained by the illegal armed groups in “Luhansk People’s Republic” (“LPR”) and “Donetsk People’s Republic” (“DPR”); and at least 3 women were illegally detained by Ukrainian volunteer groups, however there were no testimonies about sexual violence against them. Organizations-members of the Coalition interviewed 20 women, who were illegally detained, and 11 of them were victims of different forms of sexual violence.

Taking into account that in one interview a person could have told about more than one case of violence, 102 cases of GBV against women were documented, which constitutes 58% of all documented cases of sexual violence in illegal detention facilities.

Monitoring results have found that women were often arbitrarily apprehended and detained by illegal armed groups without any possibility to appeal their apprehension or detention. Furthermore, representatives of illegal armed groups did not consider many forms of sexual violence (sexual harassment, rape threats etc.) as a criminal offence. There was no possibility for the victims of accessing justice under any conditions. Hence, in all reported cases collected by the Coalition, victims did not have access to justice on the territories of the “LPR” and “DPR.”

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<sup>2</sup>Monitoring of GBV in the conflict zone of Eastern Ukraine was conducted by members of the Coalition “Justice for Peace in Donbas” (Eastern-Ukrainian Center for Civil Initiatives, Human Rights Centre “Postup” / Vostok SOS, NGO “MolodaProsvita” from Ivano-Frankivsk) as well as its partner Human Rights Group “Sich” from Dnipro. Luhansk Regional Human Rights Centre “Alternative” and Ukrainian Helsinki Human Rights Union contributed to the monitoring and provided several interviews or summaries of interviews with victims and witnesses of GBV. Coordination of monitoring was carried out by the Eastern-Ukrainian Center for Civil Initiatives.

As a result of the monitoring, cases of GBV were detected in the following localities as: Luhansk, Alchevsk, Dovzhansk (Sverdlovsk), Perevalsk, Kadievka (Stakhanov), Sievierodonetsk, Antratsyt, (Luhansk region); Donetsk, Horlivka, Dokuchaevsk, Ilovaysk, Druzhkivka, Kramatorsk, Khartsyzk, Kostiantynivka, Makiivka, Slovyansk, Snizhne, Toretsk (Dzerzhynsk), Shakhtarsk, Yasynuvata (Donetsk region), Dnipro and Kharkiv.

Survivors and witnesses of GBV against women reported different forms of violence. Out of 121 allegations received, the Coalition recorded 36 cases of rape (including 8 collective rapes), 4 rape attempts, 5 rape threats, 7 cases of sexual abuse, 3 cases of unnatural satisfaction of sexual desire, 3 cases of forced prostitution, 12 cases of gender-based violence as a form of torture or inhuman treatment, 3 testimonies of threats to use gendered-based violence as a form of torture or inhuman treatment, and 3 cases of sexual harassment. Furthermore, in the course of the monitoring 45 cases of women confined together with men were documented; and 78 women registered due to the fact that in some cases more than one women were confined together with men. One male witness, who had illegally detained, reported that a woman was confined together with him when he was naked.<sup>3</sup> Women were searched by men, held naked in captivity, forced to undress, were not given access to feminine hygiene products and were held in appalling sanitary conditions.

There are also testimonies about shared shower rooms and toilets in captivity. According to the testimony of a male witness: *“the woman slept on the same pallet [at the basement] that men slept; and ate the same food. Combatants did not take her to the toilet, she used a bucket, which was in the same room, where we were detained”*<sup>4</sup>.

## 2. STATISTICS ON SEXUAL VIOLENCE AGAINST WOMEN IN THE CONFLICT AREA

*There is a lack of gender-disaggregated statistics on the sexual violence against women in the conflict area. The system of data collection in place does not provide reliable and complete information on instances of sexual violence, in particular related to the conflict.*

Gender-based violence against women in the conflict zone is highly underreported due to the fear of reprisals, stigmatization of GBV survivors, discrimination, and the difficulties many women feel in speaking about sexual violence. CEDAW General Recommendation №30 recommends that states “collect and standardized data collection methods on the incidence and prevalence of gender-based violence, in particular sexual violence in different settings and against different categories of women.”<sup>5</sup> Unfortunately, official statistics do not permit an evaluation of the scope of the problem in the conflict zone or analysis of the trends over time.

The Government provides that there are no statistics on prosecution of gender-based violence, because the legislation system does not contain specific provisions.<sup>6</sup> Cases of gender-based violence are classified by the object of crime (life, health, sexual freedom and sexual integrity, etc.) without considering gender aspects. Statistical forms which are filled by investigators do not take gender aspects into consideration either. For example, when criminal proceedings are initiated on charges of robbery is combined with a rape threat, criminal statistics will record information about the victim, time, location, region, a brief description of the events and preliminary qualification – robbery (article 186 of the Criminal Code of Ukraine) without consideration of the rape threat.

<sup>3</sup> Information from the interview (C-208) with a person, who were illegally detained by the armed groups.

<sup>4</sup> Information from the interview (C-254) with a person, who were illegally detained by the armed groups.

<sup>5</sup> CEDAW/C/GC/30, para.38.

<sup>6</sup> CEDAW/C/UKR/Q/8/Add.1.

Furthermore, criminal offences are recorded both by the Prosecutor's Office and the National Police, but provided by them statistics differs. For instance, according to the Prosecutor General's Office there were 112 cases of rape during the period from January 2014 to June 2016 in the Donetsk region, while the National Police in the Donetsk region recorder 97 cases of rape during the same period of time.<sup>7</sup>

According to the State Judicial Administration of Ukraine, courts do not have statistics on the number of criminal cases and the number of persons convicted for crimes related to the armed conflict in eastern Ukraine.<sup>8</sup> Even though the Ukrainian Government indicates in the Replies (CEDAW/C/UKR/Q/8/Add.1) that there are recommendations on collection and analysis of court statistics on violence and discrimination<sup>9</sup>, there is still no progress concerning statistics on conflict-related GBV, in particular on the number of persons prosecuted and punished for GBV, including sexual violence, in the course of the conflict.

### 3. INVESTIGATION AND PROSECUTION OF SEXUAL VIOLENCE AGAINST WOMEN IN THE CONFLICT AREA

*There is a lack of effective investigation and prosecution of sexual violence committed on the territories under the Government control in Donetsk and Luhansk regions.*

Prosecution of sexual violence can be hindered by different reasons, inter alia, legal gaps; lack of awareness among law enforcement authorities; fear of reprisal from the military; unwillingness of the police to conduct investigations.

The Government is not taking measures to organize the process of collecting and recording evidence of gender-based violence against women in the territories of 'LPR' and 'DPR' (in particular those who were illegally detained by the illegal armed groups). The Ukrainian authorities have taken steps to investigate crimes that have taken place on the territory of 'LPR' and 'DPR' in the frame of special pre-trial investigation<sup>10</sup>; yet has not paid sufficient attention to investigating conflict-related GBV. According to the information provided by the Main Directorate of the National Police in Donetsk region, no cases of GBV were documented in regards to either females and males who were released from illegal detention facilities.<sup>11</sup>

In one of the documented cases, a woman filed a complaint to law enforcement authorities concerning sexual violence perpetrated by a Ukrainian soldier. The complainant was forced by the soldier to retract her complain. The employees of the NGO which helped the woman to lodge the complaint against the Ukrainian soldier also received threats from the soldier.<sup>12</sup> Though retraction of complaints by survivors of sexual violence is common in Ukraine, there are no statistics regarding discontinuation of proceeding in cases of sexual offences, including against women in the conflict area.

Another problem is the unwillingness of the police to conduct the investigation. For instance, in the Luhansk region an underage girl identified the suspected offender, a Ukrainian soldier, of sexual

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<sup>7</sup> Letter, General Directorate of the National Police of Ukraine in Donetsk region from 19.07.2016 g. Ref. № 5873/20 / 02-2016.

<sup>8</sup> Letter SJA Ukraine from 27.07.2016 g. Ref. №Інф/БП517716-517/16.

<sup>9</sup> CEDAW/C/UKR/Q/8/Add.1.

<sup>10</sup> Criminal Procedure Code of Ukraine, article 297-1 (in absentia pretrial investigation).

<sup>11</sup> Letter from the Main Directorate of the National Police in the Donetsk region, 19.07.2016. Ref. № 5873/20/02-2016.

<sup>12</sup> Data from the interview (C-236) with the expert who has been working in the conflict zone close to the contact line.

violence. However law enforcement authorities did not conduct prompt actions to investigate the case, which significantly complicated the prosecution.<sup>13</sup> From 2014 to mid-2016, only one case of rape directly connected with the anti-terrorist operation was registered by the National Police in the Luhansk region. It was terminated owing to the absence of the elements of a crime in the actions.<sup>14</sup>

There are no legal norms that envisage liability for GBV in the Criminal Code of Ukraine and the Code of Ukraine on administrative offences. Hence, the National Police of Ukraine encounter difficulties bringing the perpetrators to justice as not all forms of gender-based violence fall under the offences/crimes envisaged in the Codes (domestic violence, hooliganism, injuries, etc.).

According to the Prosecutor General of Ukraine in the districts of Donetsk region controlled by the Government in the period from 1 January 2014 to 30 June 2016, 112 rapes were registered. Out of 112 registered rapes, 47 cases were investigated, as a result 14 indictments were brought before the courts, which constituting 30% of the investigated cases. Taking into consideration the number of cases entered to the Unified Register of pre-trial investigations, the number of indictments brought to court and the number of court decisions in Ukraine, it can be concluded that only a small number of perpetrators have been brought to justice.

## RECOMMENDATIONS

- to undertake all necessary measures to organize effective process of collecting and recording evidence of sexual violence against women in the territories of 'LPR' and 'DPR', in particular against women who were illegally detained by the illegal armed groups;
- to evaluate and improve the current system of data collection of gender-based violence, including sexual violence against women, specifically related to military activity in the eastern Ukraine;
- to ensure collection of data on the number of people prosecuted and punished for sexual violence related to military activity in the eastern Ukraine;
- to improve the prosecution of sexual violence against women in the conflict area and address the problem of prosecuting sexual offences perpetrated by the Ukrainian forces.

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*"Justice for Peace in Donbas" Coalition*

*Helsinki Foundation for Human Rights*

*Kyiv-Warsaw, 23 January 2017*

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<sup>13</sup> Data from the lawyer who works with victims of the crimes related to the conflict.

<sup>14</sup> Letter of the Main Directorate of the National Police of Ukraine in Lugansk region from 18.07.2016 g. Ref. Number № ІЦ-302зi/111/18/02-2016.