



PROFESSIONAL ARTICLE

Justice in the East of Ukraine During the Ongoing Armed Conflict

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This article reviews the consequences of the invasion by military elements of the Russian Federation and its adjuncts, including pro-Russian separatist armed groups,¹ into Ukraine's eastern regions or oblasts following Russia's annexation of the Crimea. The review focuses on the adverse impact and ongoing trespass on Ukraine's (i) criminal and, to a lesser extent, civil and administrative justice systems; (ii) police, prosecutorial and court institutions; (iii) access to justice by the Ukrainian citizens residing in the conflict zones of the Donetsk and Luhansk oblasts, and (iv) the long-term implications of restoring Ukraine's justice framework to the conflict areas once the invading forces are routed. The authors summarize the efforts of the invasive forces to undermine the rule of law by establishing their own presumptive rogue constructs for processing matters ordinarily adjudicated by sovereign courts. These rogue constructs staffed by persons of unquestioning political loyalty to the Russian Federation and operating pursuant to substantive law and procedure based on Russian legal models.

Keywords: Ukraine justice system; Ukraine judicial system; transitional justice; armed conflict; justice administration in armed conflict; and preserving rule of law in armed conflict; rogue justice systems; access to justice during invasions; justice in Ukraine's eastern oblasts

1. Introduction

During the final days of the Revolution of Dignity in Ukraine that commenced on 21 November 2013 and continued through 22 February 2014, military elements of the Russian Federation invaded Ukraine's Crimean Peninsula and immediately began to implement plans

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¹ The Prosecutor of ICC assessed that direct military engagement between the respective armed forces of the Russian Federation and Ukraine, indicated the existence of an international armed conflict in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict. Report on Preliminary Examination Activities 2019, par.266. Available at <https://www.icc-cpi.int/itemsDocuments/191205-rep-otp-PE.pdf>.

for its annexation. This unprecedented act of aggression caught Ukrainian government and military officials, weakened and compromised by the three-month national Revolution, off guard. Moreover, previous pro-Russian HR policy during Yanukovich's² presidency, disorganization and changing the top-officials within Ukraine's interior security, police and law enforcement communities, inhibited the country's capacity to promptly and vigorously organize and mount an effective counter-attack. Their delay enabled the militants, including both covert Russian military forces and pro-Russian separatists and armed groups loyal to and coordinated by Russia, to complete their offensive and implement a framework for seizing control of key local and regional government institutions in the Donetsk and Luhansk regions or oblasts.

The Ukrainian government eventually responded by deploying an anti-terrorist operation (ATO) in the East of Ukraine in what is referred to as the Donbas area that includes the Donetsk and Luhansk oblasts. Although Russia denied its participation in the war, the hostilities morphed into a large-scale armed conflict that extended throughout most of Ukraine's Donbas. Its scope was international with the aggressors receiving military support, materiel and funding from the Russian Federation (RF). Anxious to prevent a regional conflagration, a Trilateral Contact Group was organized comprising representatives from Ukraine, Russia and the Organization for Security and Cooperation in Europe (OSCE) to negotiate successive ceasefire and peace agreements known as Minsk Protocols I and II. In general, the protocols reduced the level of hostilities but failed to achieve a binding ceasefire or end to the conflict.

The adverse impact of the hostilities prompted most courts, prosecutors' offices, police and related internal affairs bureaus, jails and prisons in the occupied parts of Donetsk and Luhansk oblasts to cease operations in 2014.



Source: Ukraine National Security and Defense Council reproduced in BBC News 29 October 2019.

"Ukraine Conflict: Front-line troops begin pullout".

² Viktor Yanukovich – President of Ukraine (2010–2014), fled to the Russian Federation after Revolution of Dignity.

On 12 August 2014, the Ukrainian Parliament adopted the Law “On the Administration of Justice and Criminal Proceedings in Connection with the Conduct of the Anti-Terrorist Operation”. This law empowers presidents of high courts to reassign the competence of courts located in the temporarily occupied territory to safer neighboring courts located elsewhere in Donbas or neighboring oblasts.

On 12 November 2014, Petro Poroshenko, then-President of Ukraine, issued decrees relocating seven of the economic and administrative courts of appeals from the occupied sectors to territory controlled by Ukrainian authorities. In November 2014, following the liberation of individual district centers, several district courts that had closed were able to restore operations.

How did the armed conflict cripple the ongoing operations of the Ukrainian justice system and its capacity to ensure justice? How prepared was it to deal with those challenges? How effectively is it coping with these challenges today as the stalemate continues? How do Ukraine’s justice system leaders realistically anticipate what challenges they might face in the future under differing scenarios, and what can they do to minimize their adverse impact on the delivery of justice?

To answer these questions, a group of Ukrainian experts conducted a two-year study initiated and supported by the International Renaissance Foundation. The research was conducted in close cooperation with a range of civil society organizations: National Police, Military Prosecutor’s Office of the ATO Forces, Prosecutor’s Office in Donetsk and Luhansk regions, and the Press Centre of the Judiciary. This article is based on the research and findings of that study.³

The aim of the study was to assess the capacity of Ukrainian justice system to operate in the armed conflict conditions in the East of Ukraine and to ensure the right to a fair trial. Its authors would also craft recommendations on how to improve and expand capacity in those areas. The authors of the study defined the primary research objectives:

- ✓ Availability of infrastructure, trained personnel and financial resources;
- ✓ Sufficiency of legal framework;
- ✓ Compliance with access to justice standards; and
- ✓ Ability of the Ukrainian justice system to conduct effective investigations and objectively prosecute the insurgents for conflict-related crimes.

Research sources and methods:

- ✓ Analyze legislation, draft laws and infrastructure requirements relating to administering justice in areas of armed conflict in the East of Ukraine provoked by agents of RF aggression;
- ✓ Collect and analyze of statistics relating to the justice system operations in 2013–2017 – the last year prior to the conflict and the four years of actual conflict;
- ✓ Collect information about related studies of armed incursions and aggression against civilian populations in other countries;
- ✓ Monitor 214 hearings and proceedings in different categories of cases in the Donetsk and Luhansk regional or *oblast* courts located near the ATO areas, as well as in other courts to which conflict-related cases were transferred to facilitate their adjudication;

³ *Justice in the Eastern Ukraine during the Military Aggression of Russian Federation* (2018). Available at: https://www.irf.ua/content/files/justice_in_eastern_ukraine_engl.pdf.

- ✓ Select and analyze 400 court decisions in cases related to the RF aggression in the East of Ukraine. Case categories included criminal cases, cases on compensation of damage to health, life and real property; cases on the rights of internally displaced persons and victims of the hostilities; cases on establishing the legal facts in the occupied areas, etc.; and
- ✓ Interview more than 40 persons involved in the administration of justice in criminal, administrative, commercial and civil cases: 10 judges; two public prosecutors; 11 investigators; four lawyers; five victims; five criminal defendants; one forensic expert; one human rights defender, and one Ombudsman's Office representative, most of whom reside and all of whom work in Donetsk and Luhansk oblasts. Some interviewees had moved from the non-government-controlled areas to safer environs to ensure the safety of their family members.

The identified problem areas were discussed in four focus groups comprising judges, prosecutors, investigators, lawyers and human rights defenders. In addition, questionnaires were developed, tested and administered to evaluate the scale of identified problems and relevance of solutions. Responses to the questionnaires were provided by:

- ✓ 100 judges: 40 in Donetsk oblast; 29 in Luhansk oblast; and 31 in Kyiv oblast;
- ✓ 100 prosecutors: 43 in Donetsk oblast; 34 in Luhansk oblast; and 23 in Kyiv oblast;
- ✓ 100 investigators: 37 in Donetsk oblast; 31 in Luhansk oblast; and 32 in Kyiv oblast;
- ✓ 85 lawyers: 37 in Donetsk oblast, 17 in Luhansk oblast, and 31 in Kyiv oblast; and
- ✓ 70 human rights defenders: 27 in Donetsk oblast; 18 in Luhansk oblast; and 25 in Kyiv oblast.

The study identified the top five challenges created as a consequence of armed conflict in civilian locations in the East of Ukraine.

2. Most relevant issues affecting the administration of justice in areas of armed conflict

2.1. Lack of access to case files sequestered in courts abandoned in the temporarily occupied territories.

According to the judges, the most relevant issue in administration of justice in the armed-conflict areas is the lack of access to active court files and other documentation relating to enforcement proceedings in the occupied territories. The delay created by the absence of prompt decision-making and action by Ukraine's central authorities made it impossible to remove case files and materials related to enforcement proceedings, both ongoing and completed, from the occupied areas and the zone of hostilities prior to their falling into enemy hands.

In the summer of 2014, the Ukrainian Council of Judges asked the Security Service of Ukraine and the Ministry of Internal Affairs to take measures to secure affected court facilities and retrieve all case-related documents in those facilities.⁴

On 2 September 2014, heads of three high specialized courts amended the territorial jurisdiction of 58 courts in the areas temporarily occupied or adversely affected by the hostilities; their orders mandated the transfer of venue for all cases filed those courts to relevant

⁴ Decision of the Council of Judges no. 2, 11 July 2014, Council of Judges of Ukraine (official website), available at: <http://rsu.gov.ua/ua/site/download?doc=L3VwbG9hZHMvZG9jdW11bnRzL3JzdTlxMTA3MjAxNDlucGRm>.

courts in territory under Ukraine government control: Donetsk, Luhansk, Dnipropetrovsk, and Zaporizhzhia oblasts.⁵

Removing those courts' archives entailed serious risks for the affected courts' judicial officers and employees, including endangering their lives.⁶ Although some judges reported attempts to evacuate case files, pro-Russian armed groups at checkpoints turned the vehicles back. Only in limited individual instances were case files successfully removed by judges and court officials at personal risk. Some were transferred by mail.

Case files were lost when courts and prosecution offices ceased to function and danger levels precluded access to them. When court facilities were looted or destroyed by shelling, files either disappeared or were stolen by the Russian-separatist armed groups, by vandals or by parties against which claims were pending.

Article 17(2) of Ukraine's Criminal Procedure Code (CPC) provides that no person shall be required to prove his or her innocence when charged with having committed a criminal offence; moreover, persons duly charged shall be acquitted unless the prosecution proves their guilt beyond any reasonable doubt. In the absence of case files, judges and prosecutors were placed in the untenable position of having to acquit suspects or revoke their pending convictions. In addition, focus groups revealed that authorities had to release persons being temporarily held in detention facilities and in prisons in government-controlled areas if their case files remained in the occupied areas and were inaccessible. Moreover, when case files were in the possession of courts in government-controlled areas, but the suspects or accused persons were in detention in the occupied areas, their names were put on wanted list.

To solve the problem of lost or destroyed case files, court staff attempted to recreate them using the automated case information databases which archived electronic copies of court decisions. In most instances, these case files were insufficient to enable judges to reach a full judgment. Some enterprising defendants struck deals with representatives of the illicit authorities in the occupied territories to locate and remove relevant case files in the closed courts in exchange for bribes.

The CPC process for restoring criminal proceedings may be deployed only if the proceedings had been completed in the original court. The CPC does not provide a procedure for restoring files lost or destroyed in a pending or active criminal case. Equally, in civil, economic and administrative proceedings, case files lost or destroyed prior to completion of trial cannot be restored, but litigants have the option of submitting new claims. Of course, proving the claim is more difficult if relevant evidence was lost or destroyed along with the case files.

In civil cases, courts also face issues related to restoring case files. In particular, such issues emerge in the resolution of loan disputes, where copies of contracts or documents are maintained only in electronic format. In 2017, Ukraine's High Specialized Court for Civil and Criminal Cases prepared an overview of case law⁷ highlighting three issues related to restoration of lost proceedings.

First, courts that received cases transferred from courts located in the occupied territories sometimes returned requests to restore lost proceedings on grounds that such requests

⁵ Judiciary of Ukraine (official website), available at <http://court.gov.ua/ato>.

⁶ *Pravosuddya v ekzylі. Dotrymannya prava na spravedlyvyj sud na Sxodi Ukraїny, vkladychno iz terytoriyeyu, tymchasovo nepidkontrolnoyu ukraїnskomu uryadu* [Justice in exile. The right to a fair trial in the East of Ukraine, including the territories temporarily outside the control of the Ukrainian authorities], Kyiv, 2016, p. 6. Available at: https://court.gov.ua/userfiles/zvit_sp_sud.pdf.

⁷ Overview of cases law on issues related to restoring lost court proceedings, in particular, in the temporarily occupied territory and in the ATO area. High Specialized Court of Ukraine for Civil and Criminal Cases (official website). Available at: sc.gov.ua/.../УЗАГАЛЬНЕННЯ_відновлення%20втраченого%20провадження.doc.

should be submitted to the courts of original jurisdiction located in the ATO zone once hostilities subsided and they resume their operations. In other words, further action would be postponed indefinitely.

Second, courts sometimes demanded that plaintiffs submit persuasive evidence that case files and related materials were inaccessible in the court buildings in the occupied areas due to unacceptable risk factors. When such demands were appealed, higher courts typically vacated such unreasonable orders in favor of the applicants.

Third, when case jurisdiction was transferred from courts in occupied areas to other courts, service of process issues emerged when the receiving courts were unable to transmit official court notices in accordance with the law to parties who lived in the occupied areas because mail services had been suspended.

By the end of 2019, the Ukrainian Helsinki Human Rights Union with the involvement of Ukrainian Supreme Court judges drafted a new law "On Amendments to the Criminal Procedure Code of Ukraine on the Specifics of Pre-Trial Investigation and Trial in Cases where Case Files Are Unavailable or Destroyed in the Temporarily Occupied Territories". The draft law addresses these procedural issues and has been submitted to the Ukrainian Parliament for review and approval.

2.2. Pressure and other influence on the court

In addition to common problems related to ensuring the independence and impartiality of the actors in the criminal justice system such as corruption, political influence, oligarch influence etc., the Russian aggression created new challenges. These included threats against justice system officials, especially in relation to criminal proceedings against participants of both sides of the conflict, as well as other similar cases. They also included threats directed at relatives of prosecutors and judges in the temporarily occupied areas. According to the questionnaires, judges from Donetsk and Luhansk oblasts consider the threats to relatives in the temporarily occupied areas as the most common form of illicit outside influence on the administration of justice.

However, judicial status and related risks have not prevented determined judges from visiting their relatives and property in the ORDLO temporarily outside of Ukraine's control. Indeed, some judges continued living in their communities and commuting daily to their assigned courts, including passing through the checkpoints. In some instances, the media reported the arrest and detention of judges who enter the non-government-controlled territory to visit family members or check on their property.

The first report about a judicial kidnapping appeared in October 2014. It referred to Mykola Starosud, a judge of Donetsk Oblast's Administrative Court of Appeal, who was detained by militants of the Oplot group of the DPR⁸ but later released.⁹ No details of the release were provided.

In October 2016, Vitalii Rudenko, a judge of the Appeal Court of Luhansk Oblast, was apprehended upon entering non-government controlled Krasnodon to attend his father's funeral. Militant forces detained him for nine months. During his detention, he was accused of authorizing the arrest of the director of water utilities service and leaving the residents of

⁸ Terorysty vykraly sudydu Doneckoho apelyacijnoho adminsudu [Head of Donetsk Administrative Court of Appeal kidnapped by terrorists]. Available at: <https://www.pravda.com.ua/news/2014/10/9/7040309>.

⁹ Z polonu zvilнено sudydu Doneckoho apelyacijnoho adminsudu Starosuda [Head of Donetsk Administrative Court of Appeal Starosud released]. Available at: <https://ua.112.ua/suspilstvo/z-polonu-zvilнено-sudyda-doneckogo-apelyacijnogoadminsudu-starosud-127939.html>.

the LPR without running water.¹⁰ After his release, the judge described having been subjected to psychological pressure and torture.¹¹

In March 2017, Eduard Kaznacheiev, a judge of Donetsk Oblast Administrative Court of Appeal, went missing. It turned out that militants kidnapped the judge when he visited his house in Donetsk.¹² He subsequently was one of 73 prisoners released by officials of the DPR and LPR in December 2017 in exchange for persons arrested and detained by Ukrainian authorities.

In many cases, judges fear for their lives, relatives or property and recuse themselves to avoid participation in the terrorism-related criminal cases. Prosecutors in focus groups said that judges carry decisions acquitting representatives of the DPR and LPR to the non-government controlled areas where they are able to move freely.

To address this issue, the study participants suggested rotating judge assignments and restricting access to the identities of prosecutors who lead prosecutions and judges who issue decisions in such politically sensitive cases. Although the Unified State Register of Court Decisions requires that names of judges and prosecutors be indicated in all decisions, in late 2017 the Parliament considered the recommendation and amended the Law of Ukraine “On access to court decisions”.¹³ According to the amendments, open-access court decisions in criminal cases can omit the names of judges or trial participants when justified by legitimate security concerns.

In their questionnaires, 65 percent of judges, 53 percent of prosecutors, and 13 percent of investigators in Donetsk and Luhansk oblasts confirmed that the legal framework does not take into account political sensitivities and personal security risks that attend working in armed conflict and enemy-occupied areas.

A separate issue concerns the security of court premises in conflict areas. Of the total number of court premises inspected in Luhansk and Donetsk oblasts, 33 percent offered no security for the risks entailed in working there either for judges or court employees. Often, these unprotected courts were located near the shifting military conflict borders.

Judges and prosecutors reported widespread attempts to influence trials and judicial decision-making by supporters of the accused or other parties to the case through (i) demonstrations in front of courts or, less-frequently, prosecutors’ offices or (ii) occupying public seating in courtrooms with support and advocacy teams, which include, *inter alia*, Ukrainian parliament members. Most often, such groups of observers come to support the defendants from the Ukrainian military or volunteers.

In 2017, judges started using trial broadcasting in high-profile cases, including conflict-related proceedings, to minimize the sometimes disruptive and occasionally intimidating tactics of overly aggressive defendant advocacy and support groups. An added benefit is that online trial broadcasts also facilitate broader public exposure of the Ukrainian population to court hearings and processes. For many citizens who otherwise would not have opportunity

¹⁰ Terorysty LNR zakhopyly v polon luhanskoho suddiu – volonter [LPR terrorists captured a judge from Lugansk, says volunteer]. *UNIAN*. Available at: <https://www.unian.ua/war/1611342-teroristi-lnr-zahopili-v-polon-luganskogo-suddyu-volonter.html>.

¹¹ Zvilnenyj z polonu ukrajiniec rozpoviv podrobyci katuvan u pidvalax bojovykiv [The Ukrainian released from captivity told the details of torture in the basements of militants]. Available at: https://www.youtube.com/watch?time_continue=318&v=WEF21KBnOKI.

¹² Boeviki DNR vzjali v zalozhniki sudju Doneckogo apelljacionnogo adminsuda [DPR militants kidnapped the judge of Donetsk Administrative Court of Appeal]. Available at: https://lb.ua/news/2017/04/11/363619_boeviki_dnr_vzyali_zalozhniki_sudju.html?aid=13P92Y.wghot.

¹³ Law of Ukraine “On amendments to the Code of Economic Procedure, Code of Civil Procedure, the Code of Administrative Procedure of Ukraine and other laws”. *Verkhovna Rada Gazette*, no. 48 (2017), p. 436.

to witness the administration of justice during working hours, the online access helps to inform their quest for truth and understanding about events taking place in the occupied oblasts and the conflict areas under rebel control. It is an important principle in transitional justice designed to achieve peace and to protect the victims of the conflict.

2.3. Restricted or Non-existent Access to Courts

Due to the aggression of Russia and its illegal armed groups, it has become virtually impossible to administer justice in the ORDLO. Between May and August 2014, all state institutions providing justice services in the ORDLO ceased to operate. As a consequence, ORDLO oblast residents involuntarily forfeited access to justice through no fault of their own. Although they do have access to courts located in territory controlled by Ukraine, the practical reality is that physical access to those courts is significantly restricted and entails personal risks. Once the territorial jurisdiction of their local courts is transferred to others in safe areas, residents of the ORDLO localities must apply to the relevant courts in the those safe, government-controlled areas. In the rush to reconfigure judicial jurisdiction, however, the physical remoteness of the transferee courts and public access to them were not factored into the process of creating the new territorial jurisdictional framework. Citizens in the war zones who need to access court services often must travel not only through hostile territory but, in addition, to the far border of a neighboring oblast, entailing significant transit time. For those citizens, the burden of accessing justice is compounded through no fault of their own.

As they assessed the material condition of the justice-sector infrastructure and administrative resources of the local courts in Donetsk and Luhansk oblasts, monitors noted reduced and sometimes non-existent access to public transportation services, inadequate or destroyed public signage for directions to court facilities, and court locations that were difficult and inconvenient to find. Although court working hours are listed on court websites, where Internet access is diminished or unavailable in the war zones, those websites are inaccessible.

Citizens who live in ORDLO areas are further inconvenienced when required to take part in court hearings. Frequently, they must pass through checkpoints several times, first to appear in court, then again to obtain copies of court decisions because mail is not delivered to the non-government-controlled areas of the East of Ukraine.

This inconvenience extends to securing other justice-related services. Residents of the non-government-controlled areas face significant restrictions in their ability to incur basic services such as having documents notarized and obtaining birth or death certificates. To address these issues, on February 2016 the Ukrainian Parliament adopted a new law on establishing the facts of birth or death in the temporarily occupied oblasts of Ukraine.¹⁴ The law provides that citizens who require official certification of vital statistics regarding births or death may prepare and submit applications to any court in any Ukrainian oblast regardless of the applicant's residence of record. Moreover, courts are obliged to process such applications immediately upon receipt. Courts issue copies of their decisions and either provide them directly to applicants or promptly send the decisions to neighboring registration authorities in the area for official state registration of births and deaths. To confirm a birth, citizens provide a birth certificate issued by the ORDLO, medical certificates, photos of the pregnant woman, etc. To confirm a death, they provide a contract for burial services, photos of the grave, witness statements, etc.

¹⁴ Law of Ukraine «On amendments to the Code of Civil Procedure of Ukraine on establishing the birth or death of a person in the temporarily occupied territory of Ukraine», Verkhovna Rada Gazette, no. 10 (2016), p. 107.

During the focus-group sessions, participating judges emphasized the need to establish an out-of-court administrative procedure for establishing such facts, because (i) processing such applications places an undue burden on the courts, and (ii) there are no compelling reasons why administrative tasks of this type require the attention of a judge as opposed to an authorized administrator.

The Law of Ukraine “On the state policy to ensure state sovereignty of Ukraine in the temporarily occupied areas of Donetsk and Luhansk regions” adopted in January 2018 provides that activities of the armed groups of the Russian Federation and the occupying administration of the RF in Donetsk and Luhansk oblasts violate international law, lack sovereign authority and are illegal. Any documents issued by the administrative organs established by the RF in connection with these activities are null and void except those that confirm births or deaths in the temporarily occupied areas of Donetsk and Luhansk oblasts. However, the Ministry of Justice has not yet developed formal instructions for state registration authorities to comply with the provisions of this new law. In the absence of such instructions, residents of non-controlled territories must continue to complete the complex and cumbersome three-stage process – executive authority/court review/executive authority – for establishing and officially certifying births and deaths.

In October 2019, the Ukrainian government introduced a mechanism for verification of medical certificates issued in the temporarily occupied territories of Donetsk and Luhansk oblasts by relevant health-care institutions and forensic institutions.

It is foreseen that a new special commission will be created to more fully address the procedure for confirming births and deaths in areas where the conflict precludes state authorities from exercising their official authority. Presumably, it will establish the criteria for reviewing the circumstances of each case and the authority for formally verifying the birth or death for the state registration bodies. On the positive side, governmental authorities are developing an administrative procedure for establishing the facts surrounding the death of a person. Once established, the courts will no longer be required to handle such matters. Whether this proposed procedure will introduce efficiencies that minimize the burden of Ukrainian citizens in such matters remains to be seen.

Procedural rights of ORDLO residents, in particular, the right and the obligation to participate in court hearings, are limited by the inability of court administrators to provide direct service-of-process notices either by mail or other means to individuals and to legal entities in the occupied territories regarding scheduled court proceedings. Since November 2014, the government's official mail service, *Ukrposhta*, suspended mail delivery in the areas of Donetsk and Luhansk oblasts not under Ukrainian government control. Until recently, the courts had no alternative means to notify individuals and legal entities of scheduled proceedings and other requirements. Discussions included possible alternatives to mail services such as announcements in “Uriadovyi kurier”, electronic text messages, electronic mail, court websites, or telephone calls.

Finally, a new law adopted on 3 October 2017 and entered into force on 15 December that year,¹⁵ mandates that courts exercise their statutory service of process responsibilities by summoning and notify persons individuals and legal entities through the Ukrainian judiciary's official website in all cases where the residential or employment addresses of any party lie within an area that is temporarily occupied or in which where government ATO

¹⁵ The Law of Ukraine “On Amendments to the Economic Procedure Code of Ukraine, Civil Procedure Code of Ukraine, Administrative Judiciary Procedure Code of Ukraine and other laws”, Verkhovna Rada Gazette, no. 48 (2017), p. 436.

maneuvers are being conducted. Clearly, however, this substitute means of notification is problematic. Trial participants are unlikely to track online announcements on the judiciary's websites for a variety of reasons that range from not having Internet service to not owning a PC, smartphone or other device. Persons without access should not be subject to court penalties for not responding to electronic notices. In the future, efforts to impose court penalties could result in appeals to the European Court of Human Rights (ECHR) under Article 6 of the Convention relative to violations of due process rights.

2.3.1. Whether Perpetrators will be able to Evade Justice by Staying in the Temporarily Occupied Territories

Of problems related to criminal prosecution, some respondents noted that numerous perpetrators seek to avoid justice in the non-government-controlled areas because:

- ✓ Currently no practical means exist for searching for and apprehending criminal suspects in the conflict zones;
- ✓ There is no systematic cooperation between the National Police of Ukraine and the State Border Guard Service;
- ✓ No integrated reference database of criminal suspects exists;
- ✓ Even when suspects pass through Ukrainian-controlled checkpoints, no means exists for conducting an identity or records check;
- ✓ Suspects who are not promptly detained after the commission of a crime from virtually anywhere in Ukraine can avoid being brought to justice by traveling to and crossing over into a non-government controlled areas.

The limited capacity of Ukraine's Justice and Interior Ministries to apprehend and prosecute members of armed ORDLO or Russian separatist groups operating in the temporarily uncontrolled territories, is clearly evidenced by statistics.

According to court statistics from 2013–2017, the courts of Ukraine convicted:¹⁶

- ✓ 223 persons for treason and crimes against national security of Ukraine under Articles 109–114-1 of the Criminal Code of Ukraine, hereinafter – the CCU;
- ✓ 175 persons for terrorism offences under CCU Articles 258–258-5;
- ✓ 16 persons for planning, preparing, initiating and waging aggressive war under CCU Article 437.

In the meantime, 8,486 Ukrainian military servicemen were convicted of military crimes under CCU Articles 402–426-1. The difference between the number of convictions of (i) members of illegal armed groups or foreign insurgents and (ii) the Ukrainian military is striking. Focus group participants attribute the difference to (i) the complexity and difficulty of apprehending suspects and conducting terrorism or treason investigations in the occupied territories, and (ii) the absence of impartiality on the part of judges whose families and property in the uncontrolled territories were susceptible to threats, seizure, kidnapping, expropriation and destruction.

¹⁶ Statistics of the Prosecutor General's Office of Ukraine. Prosecutor General's Office of Ukraine (official website). Available at: https://www.gp.gov.ua/ua/stst2011.html?dir_id=113281&libid=100820&c=edit&Samp;_c=fo.

Court Statistics. Judiciary of Ukraine (official website). Available at: https://court.gov.ua/inshe/sudova_statystyka.

Impunity for crimes committed in the context of armed conflict is also compounded by the lack of proper cooperation or a unified approach and strong coordination between different law enforcement agencies. The investigation sections of the Security Service of Ukraine, the National Police of Ukraine, and the State Bureau of Investigations share concurrent jurisdiction and authority to investigate certain crimes, but coordination is poorly organized and executed. Similarly, procedural oversight of their activities has until recently been carried out by various structural units of the Prosecutor General's Office. However, in October 2019, a special Department for Oversight in Conflict-Related Criminal Proceedings was set up and is now endeavoring to address these important issues.

2.4. Shortage of Human Resources and Lack of Special Knowledge of Conflict-related Issues

Many courts and prosecutors' offices in Donetsk and Luhansk oblasts are understaffed for reasons having to do with:

- ✓ Introduction recently of a comprehensive *ad hoc* procedure to assess the qualifications, competence and integrity of individual judges at all levels, including the Supreme Court. Approximately 1/3 of Ukraine's judges opted to retire rather than to subject themselves to such assessments;
- ✓ Failure to conduct objective competitions for judicial candidates; and
- ✓ The crises generated by the Russian invasion of Ukraine's eastern oblasts and sustained combat operations in residential areas resulting in population displacement, threats to personal security, loss of personal property, etc.

When amendments to the Constitution of Ukraine on justice came into force on 30 September 2016, 219 courts across Ukraine – almost every third court – had on board half or less of their authorized complement of judges.¹⁷ By December 2016, four courts found themselves without a single appointed judge, and five other courts had no judges authorized to adjudicate cases due to the expiration of the first five-year authorization. In the second half of 2016, nationwide there were 4,397 judges on board out of a total of 7,698 authorized positions; only 62 percent of approved positions were filled.¹⁸

The high judicial vacancy rates in the courts of Donetsk and Luhansk oblasts also is due to many judges in those courts opting to be reassigned to courts in adjacent territories or neighboring oblasts under government control out of concern for their and their families' safety and well-being. Judges who transferred to government-controlled areas in other cities in Donetsk and Luhansk or other oblasts confronted challenges of accommodation in their new courts and reorganization of their and their families daily lives. At the same time, such judges received only UAH 442 – equivalent to less than 20 Euros as relocation assistance – the monthly assistance for utilities provided to internally displaced persons (IDPs).

¹⁷ The list of courts with 50 percent or more judges not administering justice (due to the expiration of the five-year authorization, reaching 65 years of age, or failure to take the oath). Status update: 12 October 2016. High Qualification Commission of Judges of Ukraine. Available at: <http://vkksu.gov.ua/ua/oblikposad-suddiw/spisok-suddiw-w-iakich-kilkist-suddiw-shtcho-nie-zdijsniuiut-prawosuddia-u-zwiazku-iz-zakintchienniampiatir-itchnogo-stroku-pownowazien-dosiagnienniam-suddieiu-65-ritchnogo-wiku-ta-z-nieskladienniam-prisiagi-sud-diskladae-50-i-bilshie-widsotkiw-stanom-na-1>.

¹⁸ Decision of the Council of Judges no. 87 "On the staffing situation in Ukrainian courts", 2 December 2016. Council of Judges of Ukraine. Available at: <http://www.rsu.gov.ua/ua/events/risenna-rsu-no-87-vid-02122016-sodo-kadrovoi-situacii-aka-sklalasa-u-sudah-ukraini>.

Severe staff shortages in the courts have also adversely affected access to justice and led to significant increases in case-processing delays, particularly for disputes or serious crimes whose adjudication require a panel of judges. Some courts have only one judge in service, precluding formation of a judicial panel. In courts at or near hostility frontlines, lack of sufficient support staff has exacerbated the dire security situation for both judges and staff. Courts near the contact line often have no security personnel, notwithstanding the numerous risks their personnel, records and facilities face.

Seventy-three percent of interviewed prosecutors from Donetsk and Luhansk Oblasts indicated that the number of employees in their offices has significantly decreased since the beginning of the armed conflict in the East of Ukraine; indeed, almost every tenth prosecutor noted that the number of his/her employees has decreased by more than half with the consequence of seriously undermining their ability to perform their statutory criminal justice responsibilities.

Perhaps the most difficult human resource situation rests in the police investigation units in areas located near the hostility frontline. In focus groups, police investigators mentioned depleted office staff being assigned myriad other time-consuming duties such as maintaining roadblocks and checkpoints and ensuring public safety in addition to their professional functions, resulting in growing backlogs in criminal case investigations. The National Police have sought to address these manpower issues by seconding investigators from other regions for two months of duty at the understaffed offices on the frontline. However, due to the relatively short seconding terms, orientation to work in a hostile environment, and inability to achieve long-term results, this temporary measure has neither substantially increased effectiveness nor reduced delays.

Sixty-one percent of investigators from Donetsk and Luhansk oblasts stated that since the onset of armed conflict in the East of Ukraine, the number of employees in their offices has decreased. Fifty-three percent of lawyers working in Donetsk and Luhansk oblasts reported an influx of lawyers from the non-government-controlled areas. Questionnaires showed that 85% of judges, 68% of prosecutors, 54% of investigators, 96% of lawyers and 76% of human rights defenders reported facing new conflict-related issues due to the armed aggression of the RF in the East of Ukraine.

There are specialized training programs on the topic of Russian armed aggression and its impact on the administration of justice, but their implementation is often delayed. Because they are designed and delivered with the support of various NGOs or other donor groups, there is little subject-matter and curricular coordination. As a consequence, the courses tend to be repetitive and fail to build on each other in any systematic manner. Numerous focus on protecting the rights of IDPs.

The issues explored above reflect the ongoing effort of the Ukrainian government and numerous civil society organizations to grasp and respond to the myriad challenges that the Russian- invasion of the East of Ukraine and the rise of separatist armed groups supported by the Russians has entailed. There is no recent institutional history or experience the country can draw on; it is the first time that Ukraine's still young Justice and Interior Ministries have had to confront the serious specter of war crimes, mass atrocity and crimes against humanity and fundamental challenges to the nation's sovereignty. Many survey respondents suggested that the government seriously consider establishing a new category of either highly secured special courts or special chambers where judges trained in such specialties would adjudicate these serious conflict-related criminal cases.

Seventy-nine percent of human rights defenders surveyed supported the idea of specialized hybrid courts or chambers staffed both local and international judges, prosecutors,

investigators and experts with relevant experience. Sixty-one% of lawyers and 47% of prosecutors surveyed concurred with the idea, but surprisingly only 10% of the judges surveyed agreed.

3. Rogue Justice systems in the temporary occupied territories of Ukraine

Shortly after the invasion and occupation of certain districts of Donetsk and Luhansk oblasts, the Russian Federation started to establish in them quasi-military justice centers, a project spearheaded by the heads of the DPR and LPR terrorist organizations under the oversight of Russian military officials. By August 2014, a two-tiered system of military courts for criminal cases was operating in the occupied territories of Donetsk oblast; it was supposed to include the field military courts with first-instance jurisdiction and a military tribunal with intermediate appellate jurisdiction. No publicly available information on the activities of such “courts” was found, but their creation did not stop the practice of arbitrary detention and “summary executions”, which was repeatedly reported by the Office of the United Nations High Commissioner for Human Rights (hereinafter – OHCHR) in 2014–2016.

In October 2014, self-appointed heads of the DPR began creating a new “court system” modelled on the Russian judiciary. It was determined that this “court system” would comprise a “supreme court”, “arbitration court”, and “local courts” (civil/criminal) and “military courts”. The key roles in creating this new system were assumed by the “head” of the DPR, who appointed the judges, and by the titular head of the supreme court who was authorized to create and reorganize the “courts”.

Between December 2014 and April 2015, the “head” of the “supreme court” established 15 “local courts”, an “arbitration court”, and “field military courts”. The first “courts” in the occupied territories of the Donetsk oblast started operating in January 2015, and by May 2017, all “courts” were operational. In August 2018, this illicit courts framework was amended to call for the establishment in January 2022 of an intermediate “appellate court” to review the decisions of the “arbitration court”, the “field military court” and the “local courts”. Prior to the creation of this new “court,” an appeal chamber was created within the “supreme court”.

For the first four years of operations, no judicial qualification requirements were formally established for candidates appointed as “judges” in this framework of illegal occupancy “courts”. The primary criteria for appointment appear to have been the ideological reliability¹⁹ of the candidates and their total submission to the Russian military and political chains of command. Not until August 2018 did the separatist government adopt a regulation defining the formal candidacy requirements and a procedure for selecting jurists. The UN’s OHCHR report for 16 November 2015–15 February 2016 states that the presumptive judicial system of the DPR is “largely composed of people with no relevant competence”.²⁰ According to the Center of Policy and Legal Reform²¹ at the end of 2018, the “judicial corps” of the DPR comprised 118 persons, including 43 former Ukrainian judges who defected.

¹⁹ Kak stat sudiej? – Predsedatel Verhovnogo suda DNR Eduard Yakubovskiy [How to become a judge? – Head of the DPR Supreme Court, Eduard Yakubovskiy], available at: https://www.youtube.com/watch?time_continue=8&v=n0UDpo9Zvtc; Vesy Donbaskogo pravosudija [The scales of Donbas justice], available at: <http://dnr-news.com/pressa/36339-vesy-Donbaskogo-pravosudiya.html>.

²⁰ Office of the United Nations High Commissioner for Human Rights: report on the human rights situation in Ukraine. 16 November 2015 to 15 February 2016. https://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf.

²¹ Smaliuk, R. “Court proceedings in separate districts of the East of Ukraine (2019) (analytical overview of the situation in the temporarily occupied Donbas in 2014-2018). Available at: <http://pravo.org.ua/ua/about/books/JudiciaryInEastUkr?fbclid=IwAR0TQz-kgLVFOkUv1x92UlzkQiuAtlXpvq20oDo-dfm3uCbUlyyMDiedv3E>.

The DPR “courts” adjudicate and review all categories of cases. Until September 2018, the old Soviet-era Ukrainian Criminal Procedure Code was used for criminal cases. Subsequently, the DPR “leadership” adopted its own procedural code. When adjudicating civil, economic and administrative cases, the DPR “courts” in the temporarily occupied territories apply Ukrainian procedural law as interpreted by the “head” of the DPR “supreme court”. The Ukrainian legislation is to be applied unless it contradicts the presumptive regulations adopted by the DPR hierarchy.

According to DPR statistics, since inception of the rogue judicial system, approximately 100,000 civil cases, 10,000 arbitration cases, and more than 5,000 administrative offense cases have been adjudicated. In 2018 and 2019, nearly 3,000 persons were sentenced to imprisonment.

In the temporarily occupied territories of Lugansk oblast, “leaders” of the LPR established their own “court system” with “military courts”. The corresponding “law” was adopted in June 2014. Their ineffectiveness was manifest when, in October 2014, vigilante justice surfaced and decisions regarding the guilt or innocence of suspects was left to the local population by a showing of raised hands in public forums. In one such case, a suspect was found guilty and sentenced to death.²² Work on establishing a system of “ordinary courts” commenced on April 2015. According to formal acts adopted by LPR hierarchy, the framework comprises a “supreme court” that became operational in October 2018, an “arbitration court”, a “military court” that became operational in October 2015, and 17 “local courts”, 16 of which are currently operational, that commenced work in the fourth quarter of 2015.

According to the Center of Policy and Legal Reform,²³ at the end of 2018, the LPR’s “judicial corps” comprised 78 persons, including 32 defecting Ukrainian judges. For nearly four years, the LPR “courts” adjudicated only criminal and administrative offense cases. Adjudication of civil cases commenced in December 2018.

Unlike the DPR system, judicial procedure in LPR “courts” is based on acts adopted by the heads of the terrorist organization which are largely duplicative of Russian Federation law and procedural codes. The LPR hierarchy adopted its criminal procedure code in 2015, its code of administrative offenses in 2016, and its codes of arbitration procedure, administrative procedure and civil procedure in 2018. Statistical data on the number and types of cases heard by the LPR courts was not accessible in the public domain.

OHCHR regularly assesses these rogue justice systems in its periodic status reports:

- ✓ “In territories controlled by the armed groups, law and order has collapsed and illegal parallel structures have developed. These structures are wielded as tools to intimidate and control the population.... OHCHR is concerned that the development of parallel structures of ‘administration of justice’ leads to systematic abuses of the rights of persons deprived of their liberty by the armed groups and issuance of decisions which contravene human rights norms”;²⁴
- ✓ “These structures are also used to formalize the conduct of the armed groups that violates human rights...OHCHR considers that armed groups lack the legitimacy to sentence or deprive anyone of liberty”;²⁵ and,

²² LNR. *Pervyi narodnyi sud v Alchevske nad nasilnikami* [LPR. First people’s trial of rapists in Alchevsk]. Available at: <https://www.youtube.com/watch?v=1jpmNxmt5dk>.

²³ Smaliuk (2019).

²⁴ Office of the United Nations High Commissioner for Human Rights: report on the human rights situation in Ukraine. 16 February to 15 May 2016. Available at: https://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf.

²⁵ Office of the United Nations High Commissioner for Human Rights: report on the human rights situation in Ukraine. 16 November 2015 to 15 February 2016. Available at: https://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf.

- ✓ “These structures do not comply with the right to a fair and public hearing by a competent, independent and impartial tribunal established by law”.²⁶

The OSCE Special Monitoring Mission in Ukraine also noted that “parallel justice systems...do not cooperate or comply with Ukrainian legislation, ...are largely nontransparent and operate in an extremely difficult environment; these ‘systems’ ... remain largely non-operational, face serious constraints and raise considerable access-to- justice concerns particularly with respect to due process and fair trial rights”²⁷.

Ukrainian law recognizes neither the decisions taken by the “courts” of the DPR and LPR nor the entities that render such decisions and the allegations of fact on which such decisions presumptively are based.

4. How to rebuild justice after the war – transitional justice

Albeit slowly, Ukraine is building the capacity of its framework of courts to minimize the negative impact of hostilities on its justice system institutions and their ability to effectively administer justice. In particular, judges and court staff are being trained on how to respond to emergency situations. Also, within the framework of a long-awaited transition from paper to electronic document management in the courts, case files are being digitized through a scanning process. This will ensure preservation of virtually all information in cases of lost, stolen or destroyed paper files.

At the same time, Ukraine must begin now to prepare for the scenario when, in the future, civic order is returned throughout the eastern oblasts and the rogue militias, separatists and Russian troops are routed from the temporarily occupied territories through a mediated settlement process, diplomatic negotiations, a military operation or a combination of these. Conditions for the opportunities to achieve a final resolution may emerge at any time, and Ukraine must not be caught off guard a second time.

The preparation process must begin with careful consideration in integrated fashion of the wide range of issues that will attend this restorative process. It also must proceed under the authority of existing Ukrainian law and in accordance with Ukrainian legislation, in particular the systemic restoration of the justice framework and process in the Donbas oblasts. For example:

- ✓ What status will be attached to the decisions of the illegal courts and what type of review process must they undergo;
- ✓ How will the counterfeit sentences imposed in criminal verdicts of the rogue courts be addressed and the convictions of citizens in detention be reviewed;
- ✓ What safeguards will be instituted to ensure the safety and due-process rights of those who served in various capacities in these rogue justice systems? It will be imperative to do so quickly to preclude their victims from engaging in vigilante justice;
- ✓ Will the restored local courts have the jurisdiction to investigate war crimes, mass atrocities and crimes against humanity and prosecute the perpetrators or will specialized courts or chambers be established to adjudicate those categories of cases;
- ✓ Will the Ukrainian criminal law and procedure codes need to be amended to provide for amnesty in certain cases and to specify and provide sentencing ranges for various

²⁶ Office of the United Nations High Commissioner for Human Rights: report on the human rights situation in Ukraine. 16 August to 15 November 2016. Available at: https://www.ohchr.org/Documents/Countries/UA/UARreport16th_EN.pdf.

²⁷ OSCE Special Monitoring Mission to Ukraine, Access to Justice and the Conflict in Ukraine, Thematic Report, December, 2015. Available at: <https://www.osce.org/ukraine-smm/212311>.

categories of war crimes, mass atrocities and crimes against humanity that are currently not covered but which the government is obligated to prosecute to the extent that those crimes are set forth in international treaties and other agreements to which Ukraine is a signatory;

- ✓ How will issues of legal status that were altered by rogue government authorities in the absence of Ukrainian government sovereignty, such as real and intellectual property, labor relations, family and individual status law, contracts, commercial and business law be resolved;
- ✓ How will claims for restitution under a variety of circumstances involving illicit judgments of the rogue courts be reviewed and adjudicated;
- ✓ How will the criminal culpability of the illicit judges, prosecutors, investigators, attorneys and police of the rogue DPR and LPR governments be addressed – criminal penalties, incarceration, lustration, rehabilitation or a moratorium on persecution; and,
- ✓ What might be done to expedite the restoration of judicial authority and court processes as the Ukrainian government seeks to restore civil society and reintegrate the populations of the formerly occupied sections of the eastern oblasts.

Currently, these types of questions are starting to be debated and considered. The issues they raise are just the beginning. Many more will emerge that require foresight, patience, political will and imagination for their resolution as Ukraine embarks on the difficult road to restoring justice and civil society in the Donbas oblasts. There is no handbook of prescribed solutions here. The restoration and reconciliation processes will entail compromises that will take time both to craft and to implement. The long-term goal driving the various restoration initiatives should be to fully reintegrate the temporary occupied territories and their citizens back into the Ukrainian state.

Let us illustrate the situation with an example. Suppose a person was charged with a crime and sentenced to imprisonment by a rogue court of one of these illicit republics. Under current Ukrainian law, the convicted person is a victim who was deprived of liberty and due process in the absence of a verdict by a competent tribunal; therefore he/she should be released and the charges dismissed. At the same time, simply dismissing the charges may be challenged as unfair. What if the person's actions included victimizing innocent citizens? Are there the local residents who witnessed the victimization first-hand and are willing to testify? Should the victims be able to seek the assistance of the Ukrainian prosecutors and judges to review and investigate the matter once the prosecution and court services have been restored? Do procedural provisions against double jeopardy apply in such cases? What if the convicted person can show that the rogue prosecutor and/or judge relied on evidence that would normally have been declared inadmissible? If such a case is reviewed and the person is convicted in a restored court, must the judge credit time already served in the illicit justice system's detention facilities? There may be other complicating legal factors that should be included in the review. Accordingly, clear and systematic due process procedures are required for considering the release of persons in custody or for the selection of new preventive measures, as well as for reviewing their cases.

The deployment of legitimate justice bodies is an equally difficult question. No staff remained in the offices and courts that ceased functioning. They either were transferred to offices and courts in another locality following the occupation and or they may have opted to seek employment in the illicit prosecution offices, courts, etc. As these offices and courts are restored, Ukraine's State Judicial Administration will have to create and train an advance staff reserve capable of managing and operating them almost immediately when the time comes. This may entail seconding existing justice system employees from prosecution offices and

courts elsewhere in the country for three- to six-month temporary assignments during which they organize and manage the setup and resumption of justice-related services.

The Minsk Agreements to suspend armed conflict in the Donbas include provisions that directly relate to the justice system. They envisage, first, “participation of organs of local self-government in the appointment of heads of public prosecution offices and courts in the ORDLO”, and, second, “pardon and amnesty by enacting the law prohibiting the prosecution and punishment of persons in connection with the events that took place in the ORDLO”.²⁸

The first provision focuses on the control of the prosecutor’s office and the courts through the appointment of heads of these bodies by the occupying administration, which is legalized through local government elections. It has nothing to do with the right to a fair trial and the independence of justice under the sovereign authority of the established state. To that extent, implementation of this paragraph runs counter to the idea of restorative justice. Perhaps one way to solve this problem would be to replace the heads of prosecutors offices and courts with managers who, by their status, would not be judges and prosecutors but who have legal/financial/administration training and experience.

The second provision regarding pardon and amnesty threatens to become a ticking bomb by exempting from prosecution any and all criminal acts of persons committed during the ORDLO. Such blanket amnesty for serious violent crimes sets the stage for the spontaneous expression of mob justice in the form of beatings, lynching and other forms of summary execution, theft and destruction of property and other vigilante-type street-justice actions. The interests of justice and maintenance of the social order mandate that an organized and objective process for reviewing and determining culpability for criminal acts be established. Currently, active discussions are underway regarding appropriate justice mechanisms and how they should be implemented. Options include hybrid systems in which international experts such as police, investigators, prosecutors and even judges would work together with Ukrainian officials on the national and oblast levels. They would address impunity and ensure investigation and prosecution of war crimes, crimes against humanity, aggression, and other grave crimes according to international law and Ukrainian law. Such a hybrid system would guarantee the impartiality, professional expertise and credibility of investigators, prosecutors and the judiciary. In addition, it would have the effect of exposing local officials to the broad base of international experience and best practices in detecting and exposing such crimes.

The value of such a hybrid approach to dealing with war-related crimes and justice toward broadening the experience and expertise of Ukrainian justice officials would be significant. Although this approach would entail significant costs, the cumulative lessons learned from ensuring the administration of justice for actions taken over the years of conflict should not be underestimated. Ukraine should emerge from this experience stronger, better and more committed to the rule of law and the effective administration of justice.

5. Conclusions

Ukraine has taken some measures to ensure the administration of justice in the government-controlled areas, including some that address the residents of the temporarily occupied territories. However, the major challenges to the effective administration of justice caused by the armed conflict in the East of Ukraine include the loss of case files; significant pressure, threats and other burdens on judges, in particular, ensuring the safety and well-being of their relatives and property in the occupied areas; restricted access to justice, in particular for residents of ORDLO; the ability of suspects to evade justice in the temporarily occupied areas;

²⁸ See Package of Measures for the Implementation of the Minsk Agreements, 2015. Available at: <https://www.osce.org/ru/cio/140221>.

the lack of sufficient human resources; and the lack of specialized knowledge and expertise in war-related criminal law issues.

At the same time, the self-proclaimed and illicit DPR and LPR regimes created fraudulent puppet justice systems which rely on antiquated Russian-era models of investigating and organizing the administration of justice.

In the future, the development of parallel legal relations and the functioning of “judicial institutions” created and operated by the occupying power will pose a significant challenge for the reintegration of the ORDLO territories into Mother Ukraine. It therefore is crucial to develop concepts, plans, resources, approaches and mechanisms in advance for restoring meaningful justice to those areas. Importing international experience to ensure justice in the aftermath of the illegal invasion and resulting insurgency may be a prerequisite for ending the international conflict and restoring justice in the Donbas. It has the potential to be a valuable contribution by western countries to restoring peace and security in Europe.

Abbreviations

ORDLO – certain districts of Donetsk and Luhansk regions under the control of the so-called self-proclaimed “Donetsk People’s Republic” and “Luhansk People’s Republic”

IDP – internally displaced person

ATO – anti-terrorist operation

DPR – of the so-called self-proclaimed “Donetsk People’s Republic”

LPR – the so-called self-proclaimed “Luhansk People’s Republic”

RF – Russian Federation

Competing Interests

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